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Attorneys for Dan and Mary Hearn

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

Case No. 39576

Subcase No. 78-12162

**MOTION FOR RECONSIDERATION,
OBJECTION TO ORDER GRANTING
MOTION TO RESET INITIAL HEARING.
AND OPPOSITION TO MOTION TO RESET
INITIAL HEARING**

Dan and Mary Hearn, through their counsel of record, hereby object and move for reconsideration of the Order Granting Motion to Reset Initial Hearing, dated August 3, 2007.

They also oppose the Motion to Reset Initial Hearing.

The Motion for Reconsideration is brought pursuant to Rule 11(a)(2) of the Idaho Rules of Civil Procedure. The grounds for the Objection, Motion for Reconsideration, and Opposition to the Motion to Reset Initial Hearing in this matter are fundamental to procedural due process.

**MOTION FOR RECONSIDERATION, OBJECTION TO
ORDER GRANTING MOTION TO RESET INITIAL HEARING.
AND OPPOSITION TO MOTION TO RESET INITIAL HEARING - 1**

BOI_MT2:661984.1

First, the Hearn's received no notice of the pro se motion to reset, signed by Jennifer Eld and filed with the SRBA District Court on August 3, 2007, until the Order Granting Motion to Reset Initial Hearing was mailed to Dan and Mary Hearn and their counsel of record on August 3, 2007. Said Order was received at the offices of Moffatt, Thomas, Barrett, Rock & Fields, Chartered, on August 6, 2007. Consequently, since no service of the Motion to Reset was performed on counsel for Dan and Mary Hearn or upon the Hearn's themselves, they were provided with no opportunity to oppose the Motion to Reset before the Order was issued by Special Master Theodore Booth on August 3, 2007. On this basis alone, the Order should be rescinded.

Additionally, the Order should be rescinded because Jennifer Eld has not filed any valid objections to the water rights in the above referenced subcase. Consequently, except as to subcase 78-00206A, in which Ms. Eld is a claimant, she has no standing to participate in the initial hearing on the above captioned subcase and is not a proper party before the Special Master with respect to this subcase. Consequently, she has no valid basis to file the Motion to Reset in this subcase proceeding.

Finally, the Order should be rescinded or modified based on the date and time of the rescheduled initial hearing. Mr. Dan Hearn will not be available for the Initial Hearing on that date in New Meadows, Idaho. Consequently, his participation in the Initial Hearing will not be possible based upon the rescheduled hearing date and time.

Also, conducting the Initial Hearing in New Meadows, Idaho, is not convenient for the Hearn's. Since their counsel is located in Boise, Idaho, the Initial Hearing originally scheduled in this matter to take place at the Idaho Supreme Court Building is more convenient.

For all of the above reasons, the Order Granting Motion to Reset Initial Hearing should be rescinded. If an alternative location and date are selected for the Initial Hearing, they should be at location and at a time and date when the Hearn's can participate conveniently. In the alternative, the Court should modify the requirement of the physical presence of the Hearn's at the Initial Hearing so that their interests can be represented solely by counsel at the hearing.

REQUEST FOR EXPEDITED CONSIDERATION

The Hearn's request the Court to consider this Motion and Objection on an expedited basis.

DATED this 10th day of August, 2007.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell – Of the Firm
Attorneys for Dan and Mary Hearn

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of August, 2007, I caused a true and correct copy of the foregoing **MOTION FOR RECONSIDERATION, OBJECTION TO ORDER GRANTING MOTION TO RESET INITIAL HEARING. AND OPPOSITION TO MOTION TO RESET INITIAL HEARING** to be served by the method indicated below, and addressed to the following:

Jennifer Eld
P.O. Box 103
Donnelly, Idaho 83615

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Barbara J. Clancy
2810 Southside Blvd.
Nampa, Idaho 83686

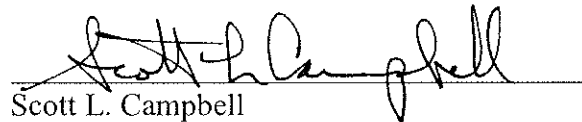
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

United States Department of Justice
Environment and Natural Resources Division
United States Department of Justice
550 West Fort Street, MSC 033
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile

Director
Idaho Department of Water Resources
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Facsimile



Scott L. Campbell