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DEPARTMENT OF  
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**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 Nos. 34-2459, 34-2460, 34-**  
) **2461, 34-2462, 34-10925**  
)  
)  
) **MOTION FOR PERMISSIVE**  
) **REVIEW OF THE SPECIAL**  
) **MASTER'S SEPTEMBER 4, 2009**  
) **ORDER & MOTION TO STAY**  
) **TRIAL**  
)  
)  
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COMES NOW, Doug Schureman, Tyler Felton, Jim Huelsman, Darrell McDonald and  
Norm Sowards (collectively referred to as "Objectors"), by and through their undersigned

attorneys of record, and hereby move the Special Master for an order recommending permissive review of the September 4, 2009 *Order on Motion to Set Aside Partial Decree*, in the above subcases, pursuant to Administrative Order #1 9.e. Objectors also seek a stay of the trial currently set for November 9-10 and 16, 2011, until such time as the Presiding Judge has had an opportunity to issue an order on permissive review.

Whether or not the Court should set aside the Partial Decrees entered in the above subcases is a threshold legal question and jurisdictional issue that must be determined before the parties may proceed to trial and spend significant time and resources. On September 4, 2009, the Special Master issued an order, concluding that the motion should be granted.

Permissive review of this decision is warranted because the facts and law show that there was no “clerical error” in the prior decrees. Consequently, further proceedings in these subcases, including a trial, is not allowed. First, the circumstances surrounding the filing of the Amended Claims demonstrate that the Claimants’ did not intend to assert an accomplished transfer of the points of diversion for water rights 34-2459 through 34-2462.

Furthermore, what appears to have been lost in the Claimants’ prior briefing is the fact that the SRBA Court decreed the water rights exactly as they were recommended by the Director. Importantly, the Claimants did not object to Director’s recommendation. No objection was filed and no effort was made to amend the claims or fix the so-called “clerical error.” The Claimant’s failure to file an objection, or take any action to address the alleged deficiencies in the claims and Director’s recommendation, cannot now be construed as a “clerical error.” As such, Claimants’ motion does not meet the standards of Rule 60(a) and should be denied.

Currently, the parties are preparing for a trial on November 9-10 and 16, 2011. A trial in this matter will cost a significant amount of the parties’ time, money and other resources.

However, if the court determines that the decrees should not be set aside, then this time and money will have been wasted. In the interests of judicial economy the court should address the threshold issue as to whether or not the partial decrees can even be set aside in the first place. As such, the trial should be stayed pending a final order from the Presiding Judge on the Claimants' 60(a) motion.

Accordingly, the Special Master should grant the Objector's request for permissive review of the September 9, 2009 *Order* and stay the trial. This motion is supported by the *Memorandum in Support of Motion Seeking Permissive Review of the Special Master's September 4, 2009 Order on Motion to Set Aside Partial Decree & Seeking Stay of Trial*, and the *Affidavit of Paul L. Arrington*, each filed concurrently herewith.

DATED this 15<sup>th</sup> day of September, 2011.

**BARKER ROSHOLT & SIMPSON LLP**

  
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\_\_\_\_\_  
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## CERTIFICATE OF SERVICE

I hereby certify that on the 15<sup>th</sup> day of September, 2011, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

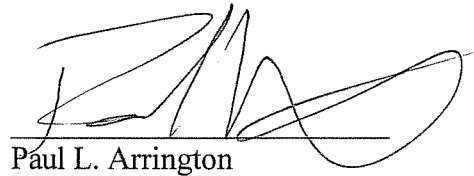
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