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DEPARTMENT OF
WATER RESOURCES

OPY

**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. 2-103 and 2-10300

**RESPONSE TO COTTONWOOD'S
NOTICE OF OPPOSITION TO
MOTION FOR PERMISSIVE
REVIEW**

Black Mesa Farms LLC ("Black Mesa"), by and through its counsel Givens Pursley LLP, files this response to Cottonwood Canal Company's ("Cottonwood's") February 27, 2012 *Notice of Opposition to Motion for Permissive Review*.

Contrary to Cottonwood's assertions, the most efficient manner for these subcases to proceed is for the Presiding Judge to first rule on the issues of law concerning all aspects of the parties' claims of ownership to the disputed water right. The issues on which Black Mesa seeks permissive review are strictly questions of law based on the record, which the Presiding Judge is uniquely situated to determine.

It is premature to address issues Cottonwood and Black Mesa might raise concerning specific elements of the water right if one of the parties does not own the right (which

presumably is the case). For example, if Cottonwood does not own the water right, there is no need for the Special Master to address Cottonwood's argument that the right should be decreed with a total annual volume limitation of 1,600 acre-feet rather than the 1,338.95 acre-feet recommended by IDWR. Similarly, if Black Mesa does not own the right, there is no need for the Special Master to address whether the right should be decreed for use within Black Mesa's permissible place of use.

In addition, a final determination on who owns which part of the water right's "bundle of sticks" will allow the Special Master to include provisions in the partial decree that may be necessary for administration of the right, such as the remark the Idaho Supreme Court ordered be included in partial decrees in *U.S. v. Pioneer Irr. Dist.*, 144 Idaho 106, 115, 157 P.3d 600, 610 (2007).

Accordingly, Black Mesa's *Motion for Permissive Review* should be granted.

DATED this 28th day of February, 2012.

GIVENS PURSLEY, LLP

By: 

Michael P. Lawrence

Attorneys for Black Mesa Farms LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of February, 2012, Black Mesa Farms, LLC filed and served the foregoing document as indicated below:

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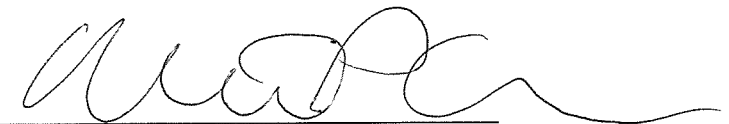
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