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**DEPARTMENT OF
WATER RESOURCES**

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.: 22-13509

**MOTION FOR PERMISSIVE REVIEW OF
THE SPECIAL MASTER'S AMENDED ORDER
ON SHOW CAUSE HEARING (MARCH 14,
2012) AND ORDER ON MOTION FOR
RECONSIDERATION (MAY 22, 2012)**

David W. Miller, Larry J. Miller, Ralph P. Miller, M. Phillip Miller, Lewis J. Miller, Daniel D. Miller and Ronald K. Miller (collectively "Miller"), by and through its counsel of record, Robert L. Harris of Holden, Kidwell, Hahn & Crapo, PLLC, hereby moves this court for an order recommending permissive review of the March 14, 2012 *Amended Order on Show Cause Hearing* and the May 22, 2012 *Order on Motion for Reconsideration*, in the above subcase, pursuant to Administrative Order #1.9.e.

Rule 4d(3) of AO1 states quite clearly: "Where parties reach an agreement on a contested water right recommendation, they shall file either a stipulation with the court using a Standard Form 5 or some other stipulation acceptable to the court. **Subcases may also be resolved orally on the record.**" (Emphasis added). There is no SRBA precedent on what is

required to have an oral agreement on the record, but in the above subcase, despite clear statements of agreement on the record before the Special Master, the Special Master nevertheless determined that this was not enough to bind the parties.

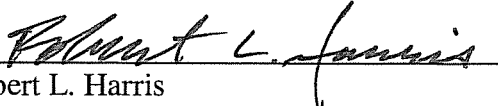
The enumeration of the parameters of what is meant by Rule 4d(3) is critical to this subcase. Millers believe they had a binding settlement agreement with the objector in this matter, Michael Reid, who agreed on the record to resolution of 22-13509 as spelled out in a letter from IDWR agent Michael Holliday. His agreement to the settlement parameters were then confirmed **on the record** before the Special Master.

Before the parties engage in expensive litigation, a critical threshold issue is to flesh out the parameters of how a subcase can be resolved orally on the record before the SRBA court. The evidence and arguments are straightforward, and will not result in significant time or expense to brief. Before engaging in the trial process that will cost a significant amount of the parties' time, money, and other resources, permissive review should be permitted. It is in the interests of judicial economy to address the threshold issue of whether or not there was a binding oral agreement to resolve 22-13509, just as a number of other similarly-situated Paradise Springs subcases were resolved. The Millers are currently on the outside looking in to a global resolution of these subcases, with everyone but them enjoying the peace that often comes with such a settlement of disputed and uncertain matters. Given their singular status as the only party who, at this point, do not enjoy these benefits, it is little to ask to allow them to have the matter of whether Rule 4d(3) means anything reviewed before the Presiding Judge before they engage in the expensive litigation they had hoped to avoid through settlement.

Accordingly, the Special Master should grant Millers' request for permissive review of the March 14, 2012 *Amended Order on Show Cause Hearing* and the May 22, 2012 *Order on*

Motion for Reconsideration, in the above subcase. This motion is supported by the accompanying supporting memorandum, and the previous claims, director's reports, pleadings, affidavits, and other documents filed on this subcase.

Dated this 12th day of June, 2012.


Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC

CERTIFICATE OF MAILING

I certify that on this 12th day of June, 2012, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. ORIGINAL TO:

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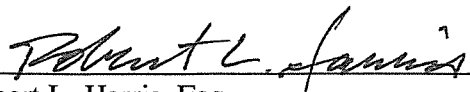
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