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Department of Water Resources
Adjudication Bureau

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Appellants' Names:

Magic Valley Underground Pumpers
Association, Inc. and Its Individual Members

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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)	Subcase No. 36-02080
)	
Case No. 39576)	NOTICE OF APPEAL
)	
)	

DESCRIPTIVE SUMMARY

Pursuant to Rule 83(f), I.R.C.P., this is a Notice of Appeal initiating an appeal by the Magic Valley Underground Pumpers Association, Inc. and the Association's individual members of Special Master Terrence A. Dolan's August 21, 1995 Order Denying Motion for Leave to File Late Objection. Due to the unestablished means of appealing a such Special Master's decision in the SRBA, Objections to the Special Master's Order pursuant to



Rule 53(e)(2), I.R.C.P. are being filed in the alternative contemporaneously herewith.

TO: THE UNITED STATES, A&B IRRIGATION DISTRICT AND THEIR ATTORNEYS OF RECORD, AND THE CLERK OF THE ABOVE-ENTITLED COURT:

NOTICE IS HEREBY GIVEN THAT:

1. The Magic Valley Underground Pumpers Association, Inc. (the "Association") and its members appeal to the District Judge's Division of the above-entitled Court the August 21, 1995 Order Denying Motion for Leave to File Late Objection issued by the Special Master in the above-referenced subcase.

2. This Appeal involves matters of law and fact.

3. The hearing before the Special Master on the Motion to File Late Objection was recorded on audio tapes which are believed to be in the possession of the Special Master and this Court.

STATEMENT OF THE ISSUES ON APPEAL

The Association and its members assert the following issues on appeal:

1. The Special Master lacked authority to issue the August 21, 1995 Order denying the Association and its members leave to file a late objection.

2. The Special Master's August 21, 1995 decision incorrectly applied the standard in Rule 60(b), I.R.C.P., rather

than Rule 55(c), I.R.C.P, to the Association's and its members' Motion for Leave to File Late Objection.

3. The Special Master's August 21, 1995 decision incorrectly interprets the Rule 60(b), I.R.C.P. standard by evaluating whether due diligence was exercised over 30 years ago in contesting license issuance, rather than evaluating whether due diligence was exercised since the May 1, 1993 objection deadline in seeking to set aside the default.

4. The Special Master's August 21, 1995 decision incorrectly concludes on the grounds of *res judicata* that the Association and its members do not have a meritorious claim. *Res judicata* cannot bar members of the Association who were not parties to the previous lawsuits and cannot bar subsequent litigation where the previous lawsuits were not judgments on the merits.

5. The Special Master's August 21, 1995 decision incorrectly concludes that pre-licensing issues and issues concerning the validity of a license cannot be raised in the SRBA.

6. The Special Master's August 21, 1995 decision incorrectly concludes that the Association offered no explanation of why some of its senior members did not file timely objections in the SRBA.

7. The Special Master's August 21, 1995 decision incorrectly concludes that the Association's predecessors in

interest exhibited indifference or unreasonable delay in prosecuting their rights.

PRAYER

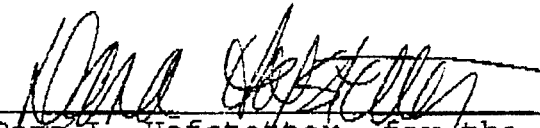
WHEREFORE, the Association and its members pray for relief as follows:

1. For judgment setting aside the Special Master's August 21, 1995 decision and granting the Motion for Leave to File Late Objection; and
2. For judgment granting such other and further relief as the Court deems just and equitable in the premises.

DATED this 1ST day of September, 1995.

HOLLAND & HART

By:


Dana L. Hofstetter, for the firm
Attorneys for Magic Valley
Underground Pumpers Association,
Inc. and Its Individual Members

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of September, 1995, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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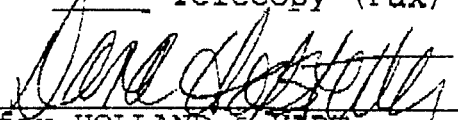
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