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Department of Water Resources
Adjudication Bureau

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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)	OBJECTIONS TO SPECIAL
)	MASTER'S ORDER DENYING
)	MOTION FOR LEAVE TO FILE
)	LATE OBJECTION

DESCRIPTIVE SUMMARY

Pursuant to Rule 53(e)(2), I.R.C.P., this document provides the objections of the Magic Valley Underground Pumpers Association, Inc. and the Association's individual members to 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 Special Master's decision in



the SRBA, a Notice of Appeal pursuant to Rule 83(f), I.R.C.P. is being filed in the alternative contemporaneously herewith.

OBJECTIONS

Pursuant to Rule 53(e)(2), I.R.C.P. the Magic Valley Underground Pumpers Association, Inc. (the "Association") and its members object to the Special Master's Order Denying Motion for Leave to File Late Objection on the following grounds:

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.

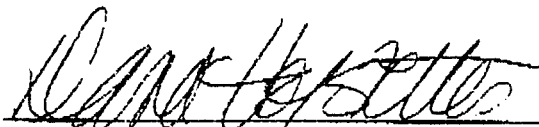
7. The Special Master's August 21, 1995 decision incorrectly concludes that the Association's predecessors in interest exhibited indifference or unreasonable delay in prosecuting their rights.

THEREFORE, the Magic Valley Underground Pumpers Association, Inc. and its members submit that the Court should set aside the Special Master's Order and grant the Motion for Leave to File Late Objection.

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 1st 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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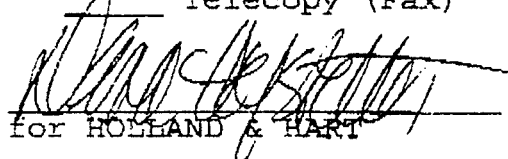
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