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OFFICE OF THE  
ATTORNEY GENERAL

Claimants:

Harry R. Gisler

Attorney Name and Address:

HEPWORTH, LEZAMIZ & HOHNHORST,  
CHARTERED

133 Shoshone St. North

P.O. Box 389

Twin Falls, ID 83303-0389

Telephone: (208)734-7510

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. 36-00021B

)

)

**MOTION AND MEMORANDUM FOR  
PROTECTIVE ORDER AND  
REQUEST FOR EXPEDITED HEARING**

Case No. 39576

)

)

\* \* \* \* \*

**DESCRIPTIVE SUMMARY**

This document contains the Motion for Protective Order filed by Harry R. Gisler ("Gisler") to prevent, or postpone, the proposed November 20, 1995 deposition of Harry R. Gisler by May Farms, Ltd. ("May") pursuant to May's November 12, 1995 deposition notice.

**MOTION FOR PROTECTIVE ORDER**

Gisler, through his attorneys, Hepworth, Lezamiz & Hohnhorst, and pursuant

1 to Rule 26(c) I.R.C.P., hereby moves the Court for an order protecting Gisler from the  
2 deposition that May seeks to conduct on November 20, 1995, on the grounds that such  
3 deposition, at this time and carried out by this entity, would be untimely, oppressive and  
4 unreasonable. A copy of May's November 12, 1995 deposition notice served on Gisler (the  
5 "deposition notice") is attached hereto for the Court's reference.

6 Gisler requests that the Court order that: 1) such discovery may be had only  
7 after May has been allowed to become a party to a subcase in which Gisler is also a party;  
8 2) the deposition request is interposed for the purpose of causing unnecessary delay and  
9 attempting to prohibit Gisler from proceeding with discovery; 3) May is not a proper entity  
10 to engage in such discovery; and 4) May pay Gisler's reasonable attorney fees and expenses  
11 in seeking this order, pursuant to I.R.C.P. 37(a)(4).

12 Gisler requests an expedited hearing.

### 13 MEMORANDUM

14 On or about August 18, 1995, May filed a Motion to File Late Response to  
15 Gisler Objection, which seeks leave to file late responses to the objections to the Basin 36  
16 director's report filed by Harry R. Gisler (subcase 36-00021B). May waived its right to be  
17 a party to the subcase by failing to timely file a response to Gisler's objection pursuant to  
18 Administrative Order 1, Rule 6.f., which reads as follows:

19 A party to the adjudication who does not file an objection or response waives  
20 the right to be a party to the subcase and to receive notice of further  
21 proceedings in the subcase. (Emph. added).

22 No relief has been granted to set aside May's waiver and, therefore, May is not a party to  
23

1 the subcase and has no right to conduct discovery. As I.R.C.P. 30(A) reflects only a party  
2 is entitled to conduct discovery.

3 Pursuant to the affidavits of Patrick D. Brown and LeAnn McMillan filed  
4 simultaneously herewith, May's deposition notice is intended to delay discovery by the  
5 Gisler. I.R.C.P. 26(d) specifically provides "the fact that a party is conducting discovery,  
6 whether by deposition or otherwise, shall not operate to delay any other party's discovery."

7 Gisler does not assert immunity from discovery. However, for the above  
8 reasons, the depositions should not be conducted by May at this time. Gisler respectfully  
9 requests that the court grant this motion for protective order.

10 Dated this 15th day of November, 1995.

11 HEPWORTH, LEZAMIZ & HOHNHORST,  
12 CHARTERED

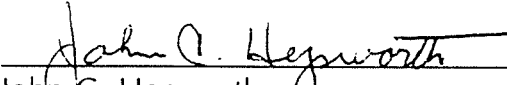
13 By: John C. Hepworth  
14 John C. Hepworth Attorneys for  
15 Gisler  
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CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin Falls, Idaho 83303, and one of the attorneys for the claimants in this matter, certifies that on the 15th day of November, 1995, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

|                                |                                                    |
|--------------------------------|----------------------------------------------------|
| Chief, Natural Resources Div.  | <input type="checkbox"/> U.S. Mail                 |
| Office of the Attorney General | <input type="checkbox"/> Hand Delivered            |
| State of Idaho                 | <input type="checkbox"/> Overnight Mail            |
| P. O. Box 44449                | <input checked="" type="checkbox"/> Telecopy (Fax) |
| Boise, ID 83711-4449           |                                                    |

|                                   |                                               |
|-----------------------------------|-----------------------------------------------|
| Josephine P. Beeman               | <input checked="" type="checkbox"/> U.S. Mail |
| Dillion, Bosch, Daw & Bock, Chtd. | <input type="checkbox"/> Hand Delivered       |
| Fidelity Building                 | <input type="checkbox"/> Overnight Mail       |
| 242 N. 8th Street, Suite 200      | <input type="checkbox"/> Telecopy (Fax)       |
| Boise, ID 83702                   |                                               |

  
John C. Hepworth

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