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OFFICE OF THE
ATTORNEY GENERAL

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2 Claimants: Hagerman Water Users Association
3 Attorney Name and Address: HEPWORTH, LEZAMIZ & HOHNHORST,
4 CHARTERED
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11 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
12 STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

13 * * * * *

14 In Re SRBA) Subcase No. 36-15168
15)
16) MOTION AND MEMORANDUM FOR
17) PROTECTIVE ORDER AND
18) REQUEST FOR EXPEDITED HEARING
19 Case No. 39576)
20)
21)

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25 **DESCRIPTIVE SUMMARY**

26 This document contains the Motion for Protective Order filed by Hagerman
27 Water Users Association ("HWUA") to prevent, or postpone, the proposed November 21,
28 1995 deposition of HWUA by Sand Springs Ranch ("Sand Springs") pursuant to Sand
29 Springs' November 12, 1995 deposition notice.

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31 **MOTION FOR PROTECTIVE ORDER**

32 HWUA, through its attorneys, Hepworth, Lezamiz & Hohnhorst, and pursuant
33

1 to Rule 26(c) I.R.C.P., hereby moves the Court for an order protecting HWUA from the
2 deposition that Sand Springs seeks to conduct on November 21, 1995, on the grounds that
3 such deposition, at this time and carried out by this entity, would be untimely, oppressive
4 and unreasonable. A copy of Sand Springs' November 12, 1995 deposition notice served
5 on HWUA (the "deposition notice") is attached hereto for the Court's reference.

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

12 HWUA requests an expedited hearing.

13 **MEMORANDUM**

14 On or about August 18, 1995, Sand Springs filed a Motion to File Late
15 Response to HWUA Objection, which seeks leave to file late responses to the objection to
16 the Basin 36 director's report filed by HWUA (subcase 36-15168). Sand Springs waived its
17 right to be a party to the subcase by failing to timely file a response to HWUA's objection
18 pursuant to 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
proceedings in the subcase. (Emph. added).

21 No relief has been granted to set aside Sand Springs waiver and, therefore, Sand Springs is
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1 not a party to the subcase and has no right to conduct discovery. As I.R.C.P. 30(A) reflects
2 only a party is entitled to conduct discovery.

3 Pursuant to the affidavits of Patrick D. Brown and LeAnn McMillan filed
4 simultaneously herewith, Sand Springs' deposition notice is intended to delay discovery by
5 HWUA. 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 HWUA does not assert immunity from discovery. However, for the above
8 reasons, the depositions should not be conducted by Sand Springs at this time. HWUA
9 respectfully requests that the court grant this motion for protective order.

10 Dated this 15th day of November, 1995.

11 HEPWORTH, LEZAMIZ & HOHNHORST,
12 CHARTERED

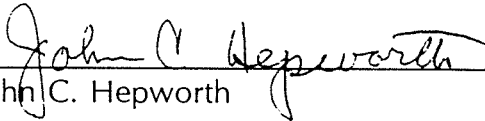
13 By: John C. Hepworth
14 John C. Hepworth, Attorneys for
15 HWUA
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CERTIFICATE OF SERVICE

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. ☒ U.S. Mail
Office of the Attorney General ☐ Hand Delivered
State of Idaho ☐ Overnight Mail
P. O. Box 44449 ☐ Telecopy (Fax)
Boise, ID 83711-4449

Josephine P. Beeman ☒ U.S. Mail
Dillion, Bosch, Daw & Bock, Chtd. ☐ Hand Delivered
Fidelity Building ☐ Overnight Mail
242 N. 8th Street, Suite 200 ☐ Telecopy (Fax)
Boise, ID 83702


John C. Hepworth

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