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Department of Water Resources
Adjudication Bureau

12-1-95

Claimants:

G. David Nelson

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

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DEC 1 8 1995

DEPT. OF WATER RESOURCES
ADJUDICATION BUREAU

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. 34-10563
)
)
)
)
)
)

Case No. 39576

MOTION TO STAY SUBCASE

* * * * *

COMES NOW, G. David Nelson, by and through his counsel of record, and
moves the court to stay proceedings in the above entitled subcase (including settlement
conferences).

This motion is made on the grounds that on December 5, 1995, HWRO filed
a "Motion to Designate Basin Wide Issue Nos. 10 and 11," which asks the court to decide
whether the concept of partial forfeiture is Idaho law, and whether the reduction of a water
right through such a concept constitutes a taking of property for which compensation is due.
As the affidavit of counsel filed with the motion to designate states, while those legal issues

HLH
Chartered
Hepworth,
Lezamiz &
Hohnhorst

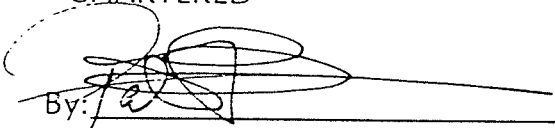
MOTION TO STAY SUBCASE - 1

1 remain unresolved, it is unlikely that any of the particular subcases will be settled. Idaho
2 Department of Water Resources, (who is the sole entity involved other than this claimant),
3 and claimant are in disagreement about those two fundamental concepts. Consequently,
4 initial disclosures, settlement conferences, and other pretrial exchanges would be wasteful
5 given pendency of those largely dispositive issues. More particularly, if partial forfeiture is
6 not recognized in Idaho, initial disclosures may be far more limited than if the concept is
7 recognized. In one instance, it may be necessary to document the full use of the water right
8 from year to year, and, in the other, all that would be necessary is presentation of a decree
9 or license under which IDWR has confirmed partial use. In sum, the motion is made
10 because it is more expeditious and economical to resolve the issues by proceeding with the
11 designation of Basin Wide Issues. Further, it is unjust to require any party to proceed until
12 the legal framework has been decided.

13 Oral argument is requested on the motion at a time convenient for the court.

14 Dated this 11 day of December, 1995.

15 HEPWORTH, LEZAMIZ & HOHNHORST,
16 CHARTERED

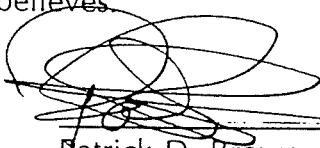
17 By: 
18 _____

19 Patrick D. Brown
20 Attorneys for G. David Nelson
21
22
23

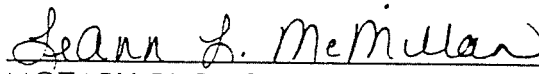
1 STATE OF IDAHO)
2) ss.
3 County of Twin Falls)

4 Patrick D. Brown, being first duly sworn upon oath, deposes and says as
5 follows:

6 That he is counsel of record in the above-entitled action; that he has read the
7 above and foregoing Motion to Stay Subcase and knows the contents thereof; and that the
8 facts therein stated are true as he verily believes.

9 
10 Patrick D. Brown

11 SUBSCRIBED and SWORN to before me this 14th day of December, 1995.

12
13 

14 NOTARY PUBLIC FOR IDAHO

15 Residing at: Jerome, ID

16 My Commission Expires: 8/24/2001
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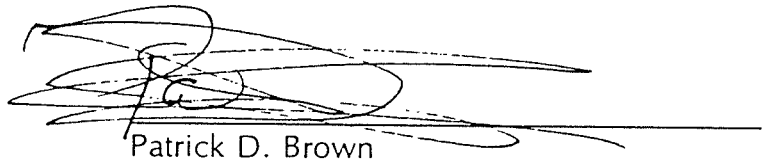
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CERTIFICATE OF MAILING

The undersigned, a resident attorney of the State of Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin Falls, Idaho 83303-0389, and one of the attorneys for the claimants in this matter, certifies that he caused to be mailed a copy of the above and foregoing MOTION TO STAY PROCEEDINGS on the 14 day of December, 1995, to:

Chief, Natural Resources Division
Office of Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

The United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724


Patrick D. Brown

(\WATER\41040MOT.D14)\lm