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Department of Water Resources
Adjudication Bureau

Magic Valley Underground Pumpers Association, Inc.

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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

MOTION FOR PERMISSION TO
FILE DOCUMENTS AND BRIEF
IN SUPPORT OF MOTION FOR
PERMISSIVE APPEAL

MOTION

Magic Valley Underground Pumpers' Association, Inc., and its individual members, ("Association"), through its attorneys, Givens Pursley & Huntley LLP, hereby moves the Court for permission to file documents and a brief in support of its recently designated Motion for Permissive Appeal.

REASONS FOR MOTION

On December 22, 1994, the Association filed its Motion for Leave to File Late Objection to Claim No. 36-02080 in the SRBA. On August 21, 1995, the Special Master issued its Order denying the Association's Motion on the grounds that the Association has failed to demonstrate good cause for not filing an

objection within the time originally allotted by the Court, and that its claim is barred by the doctrine of *res judicata*. Order at 11-12.

On September 5, 1995, the Association, through its then counsel Holland & Hart¹, filed its Notice of Appeal ("Notice") pursuant to I.R.C.P. 83(f), and its Objections to Special Masters' Order Denying Motion for Leave to File Late Objection ("Objections"). These pleadings were filed in the alternative because there did not appear to be a clear procedure in the SRBA for obtaining review of such an order by the Special Master. Moreover, simply by their nature, these pleadings succinctly stated the grounds for the motion, but did not include the Association's supporting legal analysis and arguments. Typically, briefing on such pleadings would be scheduled after their acceptance. Neither the Idaho Rules of Civil Procedure nor SRBA Administrative Order No. 1 ("AO1") specifically provide for submission of memoranda with such pleadings.

On December 14, 1995, the Special Master issued his Order Deeming Notice of Appeal and Objections as a Motion for Permissive Review. That Order deemed the Motion for Permissive Review to have been filed as of the date of the Order, or December 14, 1995. The Special Master also ordered that the Motion, and any responses thereto, would follow AO1, section 11d.

The only provision in AO1 dealing with the time for filing supporting briefs is section 7(e), which is under the General Docket Sheet Procedure. AO1 section 7(e) provides that "[a]ll documents and briefs in support of a motion shall be filed

¹On December 15, 1995, the Association filed with the Court a Notice of Substitution of Counsel, which substituted the law firm of Givens Pursley & Huntley LLP for Holland & Hart in this subcase.

with the motion and served on the parties listed in section 7d(2) or 7e(2)".

The Association believes that it should be permitted to submit documents and a brief in support of the newly-designated Motion for Permissive Review. Moreover, the Association believes that the Special Master, in making his determination regarding whether to grant the Motion for Permissive Review, would benefit from the Association's presentation of the legal basis for review and reversal of the Order denying the Association's late objection.

Therefore, the Association respectfully requests that the Special Master permit it to file documents and a brief in support of its Motion for Permissive Review. The Association requests that the Court permit it to submit such supporting documents and brief fourteen (14) days following the Court's granting of this Motion, and that the Court establish such other deadlines for response and reply documents and briefs as the Court deems appropriate under the circumstances.²

The Association does not request oral argument on this Motion.

Dated this 28th day of December, 1995.



Jeffrey C. Fereday
Michael C. Creamer
Givens Pursley & Huntley LLP
Attorneys for Magic Valley Underground
Pumpers Association, Inc.

²Inasmuch as this matter remains at the subcase level, it does not appear that a briefing schedule can or should be tied to a motion's appearance in the general docket sheet.

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of December, 1995, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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

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 OVERNIGHT MAIL
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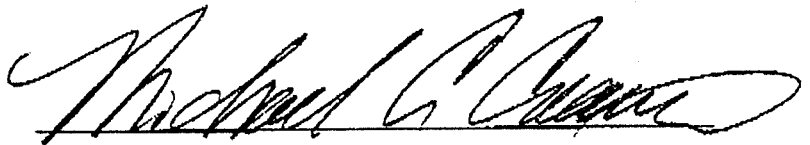
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The U.S. Department of Justice
Environmental & Natural Resources Division
550 West Fort Street
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FAX COVER SHEET

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DATE: December 28, 1995
TIME: 11:16 am (Mountain Time)
PAGES (INCLUDING COVER):
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OUR FILE NUMBER: 4382-2

MATTER: A & B Objection Appeal

TO:

Table with 3 columns: Name, Organization, Fax Phone. Rows include Diana Delaney, Chief, Natural Resources Div., Envir./Natural Resources Div., Roger D. Ling, and Laird J. Lucas.

MESSAGE:

Attached for filing please find our Motion for Permission to File Documents and Brief in Support of Motion for Permissive Appeal on behalf of Magic Valley Underground Pumpers Association, Inc.

If you have any questions regarding the attached, do not hesitate to call me.

Thank you.

-Mike Creamer

If transmission is incomplete, call Molly Creswell at (208) 388-1248.

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