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Department of Water Resources  
Adjudication Bureau

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Respondent's Name:  
A & B Irrigation District  
Attorney's Name & Address:  
Roger D. Ling  
LING, NIELSEN & ROBINSON  
Attorneys at Law  
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Rupert, Idaho 83350  
Telephone (208) 436-4717  
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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 ) RESPONSE TO MOTION FOR  
 ) PERMISSION TO FILE  
 ) DOCUMENTS AND BRIEF IN  
 ) SUPPORT OF MOTION FOR  
 ) PERMISSIVE APPEAL

A & B Irrigation District, one of the parties to the above subcase, files this response to the motion of Magic Valley Underground Pumpers Association, Inc. for permission to file documents and brief in support of its motion for permissive appeal.

Although any document or brief in support of the Motion for Permissive Appeal should have been filed at the time the Motion for Permissive Appeal was filed pursuant to SRBA Administrative Order No. 1, § 7e(4)(a), a brief in support of

LING, NIELSEN & ROBINSON  
ATTORNEYS AT LAW  
RUPERT, IDAHO 83350

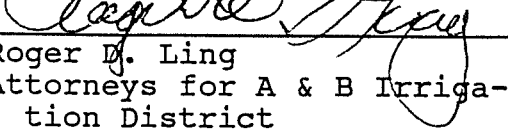
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2 a motion for permission to appeal may identify for all of the  
3 parties why the Association believes that the Order of the  
4 Special Master involves a controlling question of law as to  
5 which there are substantial grounds for difference of opinion  
6 and in which immediate consideration of the determination may  
7 advance the orderly resolution of the litigation. These are  
8 the only issues provided under A.O. 1, § 11d upon which a  
9 permissive appeal may be granted. A & B Irrigation District  
10 opposes the grant of any permission to the Association to file  
11 documents in support of its Motion for Permissive Review, as  
12 requested. The submission of documents on the Motion for  
13 Permissive Review would be inappropriate, as any review that  
14 may be allowed must be on the record that was before and relied  
15 upon by the Special Master, and not extraneous documents for  
16 the inclusion of new issues. A & B Irrigation District also  
17 opposes the granting of any permission to the Association to  
18 submit either documents or a brief which go to the merits of  
19 the permissive review sought by the Association. In the event  
20 a permissive review is granted to the Association, it will have  
21 substantial opportunity to address the merits of its position  
22 in its brief on the review. The Association should not have  
23 the opportunity to submit two arguments in briefs, on the  
24 merits. Any brief allowed by the Special Master to be filed  
25 in support of the Association's Motion for Permissive Review  
26 must be limited to the issues on that motion, and not the

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2 ultimate issues to be addressed should there be a permissive  
3 review.

4 Claimant A & B Irrigation District will rely upon  
5 this response and waives its right to oral argument on the  
6 Association's Motion for Permissive Review.

7 DATED this 2nd day of January, 1996.

8 LING, NIELSEN AND ROBINSON

9  
10 By:   
11 Roger D. Ling  
12 Attorneys for A & B Irriga-  
13 tion District

14 CERTIFICATE OF MAILING

15 I hereby certify that on the 2nd day of January,  
16 1996, I served a copy of the foregoing **RESPONSE TO MOTION FOR**  
17 **PERMISSION TO FILE DOCUMENTS AND BRIEF IN SUPPORT OF MOTION FOR**  
18 **PERMISSIVE APPEAL** upon:

19 Chief, Natural Resource Division  
20 Office of the Attorney General  
21 State of Idaho  
22 P. O. Box 44449  
23 Boise, Idaho 83711-4449

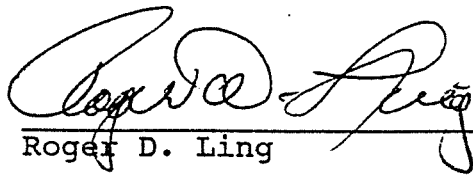
24 United States Department of Justice  
25 Environment and Natural Resource Division  
26 550 West Fort Street, Box 33  
27 Boise, Idaho 83734

28 Daria J. Zane  
Attorney at Law  
U.S. Department of Justice  
Environmental and Natural Resource Division  
Washington, D.C. 20004

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Jeffrey C. Fereday, Esq.  
Michael C. Creamer  
GIVENS, PURSLEY & HUNTLEY  
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by depositing a copy thereof in the United States mail, postage prepaid, in an envelope addressed to said persons at the foregoing addresses.

  
Roger D. Ling

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