

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
	)	
	)	ASSOCIATION'S
	)	OBJECTION TO
Case No. 39576	)	RECOMMENDED ORDER
_____	)	

**DESCRIPTIVE SUMMARY**

This is Magic Valley Underground Pumpers Association's Objection to Special Master Dolan's March 7, 1996 Findings and Recommendation of Denying Motion for Permissive Review ("Recommendation").

**OBJECTION**

Magic Valley Underground Pumpers Association, Inc., ("Association"), by and through its counsel, Givens Pursley & Huntley, LLP, hereby objects to, asks for reconsideration of, and appeals from the Special Master's Recommendation that the Association be denied an opportunity to file a late objection in, and thus become a party to, this subcase.

**STATEMENT OF REASONS**

On December 22, 1994, the Association, acting on behalf of its members who are parties to the SRBA, filed a motion with the Special Master seeking to enter this subcase and assert a late objection to the water right priority stated for a

portion of the water right held by A & B Irrigation District in Basin 36. On August 21, 1995, Special Master Dolan issued his Order Denying Motion for Leave to File Late Objection.

On September 5, 1995, the Association appealed the Special Master's denial by filing both an objection to the special Master's ruling under rule 53(e)(2) and a notice of appeal under rule 83(f), Idaho R. Civ. Pro. The Association noted that it was appealing in this way due to the lack of any express procedure for appealing the denial, by a special master, of what amounts to a motion to intervene in an SRBA subcase.

On December 14, 1995, Special Master Dolan issued an order ruling that, rather than take up the Association's appeal under one of the rules the Association cited, he would "consider the *Notice of Appeal and Objections* together as a *Motion for Permissive Review*." Order Deeming Notice of Appeal and Objections as a Motion for Permissive Review, Subcase No. 36-02080 (December 14, 1995). The Association then moved for leave for all parties to file briefs. The Special Master granted the motion to file briefs, with the proviso that argument be limited to the standards for granting permissive review. The parties did so.

Having deemed the Association's appeal to be a Motion for Permissive Review, and having received briefs from the Association and the other parties in support of their positions on the motion styled on that basis, the Special Master issued his Recommendation to which the Association now objects.

The Recommendation concluded that the motion for permissive review must be denied because the Association is not yet a party to the subcase.

In the Recommendations, the Special Master concludes that a motion for permissive review is not available to the Association because it has not yet become a

party to the case, despite the fact that it was the Special Master himself who ordered that the Association's appeal must be treated as a motion for permissive review, and despite the fact that the question at hand is not what a non-party's rights might be, but whether the Association should be permitted to become a party.

In other words, the Special Master's ruling is that the Association has no right to appeal the denial of its intervention into the case—at least at the subcase level—because it has not yet been allowed into the case. This circular reasoning denies the Association any effective ability to appeal or seek reconsideration of the denial of its entry into this subcase.

The Association respectfully requests a reversal of the Special Master's Recommendation, and an opportunity either to brief the issues to this Court or to submit further argument to the Special Master pursuant to an order of remand.

Dated this 15th day of March, 1996.



Michael C. Creamer  
Givens Pursley & Huntley LLP

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of March, 1996, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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