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Claimants:

Dan H. and Irma R. McFaddan
Fred and Susan Walmsley
Robert Brailsford
Hagerman Water Users Association
Walten E. Mildren
Harry R. Gisler
Ya-Ta-Hay Investments, Inc.

Attorney Name and Address:

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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 Nos. 36-00048A, 36-00049,
) 36-02169, 36-00039D, 36-04260B,
) 36-15168, 36-00051A, 36-00021 &
) 36-10283A

Case No. 39576

) CLAIMANTS' RESPONSE TO JOINT
) CONSOLIDATED MOTION FOR
) PERMISSIVE REVIEW OF SPECIAL
) MASTER'S JUNE 17, 1996 ORDER AND
) MOTION FOR EXPEDITED HEARING
) AND DECISION

* * * * *

BACKGROUND

On June 17, 1996, Special Master Haemmerle entered an Order Vacating
Hearing; indicated that he was denying the motions to file late responses by Cranney

CLAIMANTS' RESPONSE TO JOINT CONSOLIDATED MOTION
FOR PERMISSIVE REVIEW OF SPECIAL MASTER'S JUNE 17, 1996
ORDER AND MOTION FOR EXPEDITED HEARING AND DECISION - 1

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Hepworth,
Lezamiz &
Hohnhorst

1 Brothers, May Farms, Ltd., Sand Springs Ranch Partnership, and Faulkner Land and Livestock
2 Co. (collectively the "Ground Water Users"); and stated that he would be issuing a written
3 decision including Findings of Facts and Conclusions of Law within two weeks of the date
4 of the Order. There, the Special Master specifically indicated that a written decision,
5 promised within two weeks, would "constitute the final decision."

6 On about July 1, and without waiting for the final decision from Special
7 Master Haemmerle, the Ground Water Users moved for permissive appeal of the June 17th
8 Order. The motion for review is based on two grounds. First, the Ground Water Users
9 contend that the June 17, 1996 Order conflicts with a previous decision of Special Master
10 Dolan, therefore demonstrating that "there is a controlling question of law." Second,
11 Ground Water Users contend that "Special Master Haemmerle's June 17, 1996 Order goes
12 further than just addressing whether reconsideration of Special Master Dolan's decision
13 should be granted."

14 The claimants submit that the motion for permissive review should be denied
15 because neither of the two stated reasons are grounds for review. First, the motion purports
16 to allege error without meaningful specificity, and without awaiting the written decision of
17 Special Master Haemmerle which sets forth the basis for his decision. Therefore, it would
18 be improvident to grant interlocutory, permissive review, especially considering that the
19 promised final decision was issued on July 8, 1996.

20 Second, to the extent the motion questions the propriety of the Special
21 Master's actions in the context of a motion for reconsideration, the motion is misdirected.
22 If the Ground Water Users desired to challenge the propriety of Judge Hurlbutt's order
23

1 remanding the issue for reconsideration, challenges concerning the propriety of the remand
2 should have been raised against the order remanding the case, should have been filed with
3 Judge Hurlbutt, and should have been prosecuted before the Ground Water Users elected
4 to proceed with and participate in the reconsideration hearing on June 5, 1996.

5 Finally, the Ground Water Users motion for interlocutory, permissive review
6 would in no way expedite the litigation, given a final decision and order was issued on July
7 8, 1996.

8 For the reasons stated above, the claimants respectfully request that Special
9 Master Haemmerle recommend the motion for permissive review be denied and that Judge
10 Hurlbutt deny the motion.

11 Because neither the claimants nor the Ground Water Users have requested a
12 hearing on this issue, the claimants ask that Special Master Haemmerle issue his
13 recommendation and that Judge Hurlbutt rule on the motion without hearing. In the event
14 the court elects to hold hearings, the claimants wish to inform the court that their counsel
15 will be unavailable for any hearings on this motion at least through the month of July.

16 Respectfully submitted this 15th day of July, 1996.

17 HEPWORTH, LEZAMIZ & HOHNHORST,
18 CHARTERED

19 
20 By Patrick D. Brown
21 Patrick D. Brown
22 Attorneys for Claimants
23

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 July, 1996, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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