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Department of Water Resources

Jason D. Walker, Esq.
LING & ROBINSON
P. O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804
ISB No. 5790

Attorneys for Claimant/Objector,
A & B Irrigation District

**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) Subcases 36-02080, 36-15127 (36-15127A
) and 36-15127B), 36-15192, 36-15193
Case No. 39576,) (36-15193A and 36-15193B), 36-15194
) (36-15194A and 36-15194B), 36-15195
) (36-15195A and 36-15195B), 36-15196
) (36-15196A and 36-15196B) (US/BOR)

NOTICE OF CHALLENGE

COMES NOW the Claimant/Objector, A & B Irrigation District,
by and through its attorneys of record Ling & Robinson, and pursuant
to A.O.1, section 13, paragraph c. amended 10/16/97, submits this
Notice of Challenge to the Special Master's Report and Recommendation
dated October 5, 2002 and Order Denying Motion to Alter or Amend
dated November 20, 2002.

STATEMENT OF ISSUES

1. Whether the Special Master's Report and Recommendation
erred in identifying the source of the "B" claims as "ground water"
instead of "drain water" and "ground water" where the water at issue
is either water pumped from the ground or is water collected in the
drains of A & B Irrigation District after it has been delivered to

NOTICE OF CHALLENGE

LING & ROBINSON
ATTORNEYS AT LAW
RUPERT, IDAHO 83350-0396

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3 landowners within A & B Irrigation District by the District.

4 2. Whether the Special Master erred in recommending that
5 A & B Irrigation District's enlargement claims be subordinated to
6 all water rights acquired by Permit and License with priority dates
7 earlier than April 12, 1994 where A & B Irrigation District's rate
8 of diversion does not exceed the rate of diversion for its original
9 right and where the enlargement in use does not injure any other
10 water rights existing on the date of the enlargement of use.

11 3. If the subordination language is applicable, did the
12 Special Master erroneously deny claimant A & B Irrigation District's
13 right to rely on the enactment date of the Amnesty Statute provided
14 by Idaho Code §42-1416 which was relied upon to make the "B" claims
15 which statute was simultaneously repealed with the enactment of the
16 enlargement statute set out in Idaho Code §42-1426 and where A & B
17 Irrigation District had relied to its detriment upon the original
18 statute by withdrawing its permit applications upon the enactment
19 of Idaho Code § 42-1416.

20 4. Whether respondents are barred from asserting
21 subordination of A & B Irrigation District's enlargement claims by
22 waiver and estoppel where the respondents had failed to file a timely
23 objection to the claims of A & B Irrigation District under the
24 repealed Amnesty Statute (I.C. § 42-1416).

25 5. Whether the Special Master erred with respect to
26 Subcase Nos. 36-15193B and 36-15194B in not recognizing the
27 constitutional appropriation of this surface/waste water, where the

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drain water identified in these claims was put to beneficial use on additional acres in April of 1965 and April of 1968, respectively, which dates are prior to the mandatory permit date for surface water.

6. Whether the Special Master erroneously ruled that there were no genuine issues of material fact with respect to the enlargement claims of A & B Irrigation District, the subordination language, and the nature and source of the water associated with these claims.

7. Whether the Special Master erroneously held that there is always injury when an enlargement takes priority over a validly established junior water right.

8. Whether the Special Master erred in finding that the enlargement claims would cause potential injury to junior appropriators.

9. Whether the Special Master erroneously held that the only certain way to fully mitigate potential injury to junior appropriators was to subordinate A & B Irrigation District's enlargement claims to all other water rights with priority dates earlier than April 12, 1994.

DETAILED DESCRIPTION OF TRANSCRIPTS REQUESTED

1. Transcript of oral argument on Respondent's Motion for Summary Judgment in front of Special Master Terrence Dolan, February 23, 2001 at 10:00 o'clock a.m.

2. Transcript of oral argument on A & B Irrigation District's Motion to Alter or Amend Special Master's Report and

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Recommendation in front of Special Master Terrence Dolan, November 14, 2002 at 3:00 o'clock p.m.

COST FOR PREPARATION: The court reporter has been contacted for an estimate of the cost for preparation of the transcript, and has agreed to waive any estimate fee and to bill the claimant/objector's counsel when the transcript has been prepared for payment.

EXHIBITS


All exhibits admitted should be considered part of the record.

The Court should take judicial notice of all SRBA filings, including, but not limited to, the following:

1. Preliminary Report of C. E. Brockway;
2. Bureau of Reclamation Supplement to Preliminary Report by Mark Croghyan, R. D. Schmidt, Joe Spinazola, and Dave Zimmer;
3. Affidavit of C. E. Brockway;
4. Affidavit of Dala Walton; and
5. Affidavit of Dan Temple.

Respectfully submitted this 2nd day of December, 2002.

LING & ROBINSON

By: 
Jason D. Walker
Attorneys for Claimant/Objector
A & B Irrigation District

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ATTORNEYS AT LAW
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CERTIFICATE OF MAILING

I hereby certify that on the 2nd day of December, 2002, I served a true and correct copy of the *Notice of Challenge*, upon:

SRBA Court Reporter
P. O. Box 2707
Twin Falls, ID 83303-2707

IDWR Document Depository
P. O. Box 83720
Boise, ID 83720-0098

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

U. S. Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, Idaho 83724

USDI Bureau of Reclamation
Regional Director PN Region
550 W Fort Street, Box 043
Boise, ID 83724

Jeffrey C. Fereday, Esq.
Karl T. Klein, Esq.
GIVENS PURSLEY, LLP
P. O. Box 2720
Boise, ID 83701

Attorneys for: Tim Deeg
Mack Neibaur
Ralph E. Breeding
Aberdeen-American Falls Ground Water District
Bingham Ground Water District
Magic Valley Ground Water District

by depositing copies thereof in the United States mail, postage prepaid, in envelopes addressed to said parties at the foregoing addresses.


Jason D. Walker