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Attorneys for Claimants/Objectors

**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 36-10033, 36-10035, 36-10037; 36-10090;
) 36-10863A; 36-11643; 36-16123; 36-16124;
 Case No. 39576,) 36-15152; 36-15264A; 36-15264B; and 36-15356A
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**NOTICE OF CHALLENGE OR, IN THE
 ALTERNATIVE, MOTION TO ALTER OR AMEND
 THE AMENDED SPECIAL MASTER
 REPORT AND RECOMMENDATION**

COME NOW the Claimants/Objectors, Roost Potato Company, Inc.,
 Vernon C. Phillips and Marilyn L. Phillips, Jack Harman, Kent Harman, Salmon
 Falls Land & Livestock Co., Inc., and W. H. Moller and Velva Moller, hereinafter
 collectively referred to as "Claimants," by and through their attorneys of record
 Ling, Robinson & Walker, and pursuant to A.O.1, section 13, paragraph c.
 amended 10/16/97, and A.O.1, section 13, paragraph a. amended 10/16/97,
 and respectfully submit this *Notice of Challenge or, in the Alternative, Motion to
 Amend the Amended Special Master Report and Recommendation* dated January

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SPECIAL MASTER REPORT AND RECOMMENDATION

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3 28, 2004. This Motion is made in the alternative for the reason that the *Order*
4 *Granting Motions to Alter or Amend & Amended Special Master Report and*
5 *Recommendation* does not appear to directly address the Claimants' previous
6 *Motion to Alter or Amend* filed on February 26, 2003 regarding the objection to
7 the inclusion of the subordination language in their *Objections*. To the extent the
8 *Order Granting Motions to Alter or Amend & Amended Special Master Report and*
9 *Recommendation* dated January 28, 2004 constitutes a new *Special Master's*
10 *Report and Recommendation*, the Claimants respectfully request that the
11 *Amended Special Master Report and Recommendation* be altered or amended so
12 as to exclude the subordination language consistent with Claimants' *Motion to*
13 *Alter or Amend* filed February 26, 2003. If, however, the *Order Granting Motions*
14 *to Alter or Amend & Amended Special Master Report and Recommendation* is
15 deemed to have been an *Order* denying Claimants' *Motion to Alter or Amend*
16 dated February 26, 2003, the Claimants do hereby respectfully submit this
17 *Notice of Challenge* pursuant to A.O.1, section 13, paragraph c.
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20 **STATEMENT OF ISSUES ON NOTICE OF CHALLENGE**

21 1. Whether the *Amended Special Master Report and*
22 *Recommendation* dated January 28, 2004 and the *Special Master's Report and*
23 *Recommendation* dated January 10, 2002 erred in recommending that the
24 Claimants' enlargement claims be subordinate to all water rights required by
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3 permit and license with priority dates earlier than April 12, 1994 wherein said
4 enlargement claims do not injure any other water rights existing on the date of
5 the enlargement of use.

6 2. Whether the Special Master erred in including the
7 subordination language thereby denying the Claimants' right to rely on the
8 enactment of the amnesty statute provided by Idaho Code §42-1416.

9
10 3. Whether respondents are barred from asserting subordination
11 of Claimants' enlargement claims by waiver and estoppel.

12 4. Whether the Special Master erroneously ruled that there were
13 no genuine issues of material fact with respect to the enlargement claims of the
14 Claimants, the subordination language, and the nature and source of the water
15 associated with these claims.

16
17 5. Whether the Special Master erroneously held that there is
18 always injury when an enlargement claim takes priority over a validly
19 established junior water right.

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

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23 7. Whether the Special Master erroneously held that the only
24 certain way to fully mitigate potential injury to junior appropriators is by
25 subordination of the Claimants' enlargement claims to all other water rights with
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3 priority dates earlier than April 12, 1994.

4 **DETAILED DESCRIPTION OF TRANSCRIPTS REQUESTED**

5 1. Transcript of oral argument on Respondents' *Motion for*
6 *Summary Judgment* in front of Special Master Terrence Dolan, dated July 8,
7 1998 at 2:00 o'clock p.m.

8
9 COST FOR PREPARATION: The court reporter has been contacted
10 for an estimate of the cost for preparation of the transcript, and has agreed to
11 waive any estimate fee and to bill the Claimants' counsel when the transcript has
12 been prepared for payment.

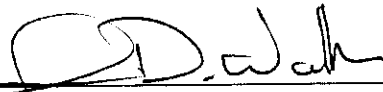
13 **EXHIBITS**

14 All exhibits admitted during the proceedings of this matter should
15 be considered part of the record.

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17 The Court should take judicial notice of all SRBA filings, including,
18 but not limited to, all affidavits and briefs lodged with the court during the
19 course of these.

20 Respectfully submitted this 12th day of February, 2004.

21 LING, ROBINSON & WALKER

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24 By: 
25 Jason D. Walker
26 Attorneys for Claimants

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CERTIFICATE OF MAILING

I hereby certify that on the 12th day of February, 2004, I served a true and correct copy of the ***Notice of Challenge or in the Alternative Motion to Alter or Amend the Amended Special Master Report and Recommendation***, 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
1150 N. Curtis Rd.
Boise, ID 83706-1234

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Burley, ID 83318

Attorneys for: Dale H. Klingler
North Ridge, LLC
Ross Hunsaker
Samuel C. and Margaret Large

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2
3 Jeffrey C. Fereday, Esq.
4 Karl T. Klein, Esq.
5 GIVENS PURSLEY, LLP
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7 Boise, ID 83701

8 Attorneys for: Tim Deeg
9 Mack Neibaur
10 Ralph E. Breeding
11 Aberdeen-American Falls Ground Water District
12 Bingham Ground Water District
13 Magic Valley Ground Water District

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16 Eden, ID 83325

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

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