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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 36-10090, 36-10863A,
	)	36-15264A, 36-15264B
Case No. 39576,	)	<u>NOTICE OF CHALLENGE</u>
	)	
	)	

COME NOW the Claimants/Objectors, North Ridge LLC, Owhyee Ranches, Inc., Blaine Cook, Deon Cook, Bruce Hunsaker, and Rebecca Hunsaker, by and through their attorneys of record Parsons, Smith & Stone, LLP, and pursuant to A.O.1, Section 13, Paragraph (c) Amended 10/16/97, and submit this Notice of Challenge to the Special Master's Report and Recommendation dated January 28, 2004, and the Order on Motions for Summary Judgment dated September 11, 1998.

STATEMENT OF ISSUES

1. Whether the Special Master's Report and Recommendation erred in recommending that the enlargement claims of the Claimants be subordinated to all

1 water rights with a priority date earlier than April 12, 1994, that are not decreed as an
2 enlargements pursuant to Section 42-1426, Idaho Code where:

3 a) the rates of diversion of the Claimants do not exceed the rate of diversion
4 for their original rights; and/or

5 b) where there was no injury to existing water rights on the date of the
6 enlargements and where there was no showing or proof of injury presented; and/or

7 c) where no person with a water right earlier than April 12, 1994, filed a
8 petition with the Idaho Department of Water Resources asserting injury; and/or

9 d) where the Idaho Legislature enacted Idaho Code Section 42-1416(2) on
10 March 1, 1985, effectively waiving the mandatory permit requirements, and where no
11 injury can be shown to a water right acquired after that date.
12

13 2. Whether Respondents are barred from asserting subordination of the
14 Claimants' enlargement claims by waiver and estoppel where the Respondents had
15 failed to file a timely objection to the claims under the repealed Amnesty Statue (I.C.
16 §42-1416).
17

18 3. Whether the Special Master erroneously ruled that there were no genuine
19 issues from material fact with respect to the determination that there is always injury
20 when an enlargement takes priority over a validly established junior water right.
21

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

24 5. Whether the Special Master erroneously held that the only certain way to
25 fully mitigate potential injury to junior appropriators was to subordinate the Claimants'
26 claims to all other water rights with priority dates earlier than April 12, 1994.

6. Whether the director of I.D.W.R has the lawful authority to include

1 subordination language in his recommendations of Claimants' claims where no one
2 with a priority date earlier than April 12, 1994, filed a petition with I.D.W.R asserting
3 injury and therefore deprived Claimants of an opportunity to propose a specific
4 mitigation plan.

5 **DETAILED DESCRIPTION OF TRANSCRIPTS REQUESTED**

6
7 1. Transcript of oral argument on Motions for Summary Judgment in front of
8 Special Master Terrance Dolan, July 8, 1998, held at the S.R.B.A Courthouse in Twin
9 Falls, Idaho at 2:00 o'clock p.m. The court reporter has been contacted for an
10 estimate of the cost of preparation. The court clerk has indicated that an estimate
11 would be given before March 1, 2003, at which time Claimants will send the fee to the
12 court.

13 **EXHIBITS**

14
15 All exhibits admitted should be considered part of the record. The Court
16 should take judicial notice of all S.R.B.A filings.

17 DATED this 11 day of February, 2004.

18 PARSONS, SMITH & STONE, LLP

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22 Attorney for Claimants/Objectors
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CERTIFICATE OF MAILING

I hereby certify that on the 11 day of February, 2004, I served a true and correct copy of the NOTICE OF CHALLENGE, upon:

Director of IDWR
PO Box 83720
Boise ID 83720-0098

Clive Strong
Chief, Natural Resources Division
Deputy Ag Office of Attorney General
Statehouse Mail
Boise ID 83720-0010

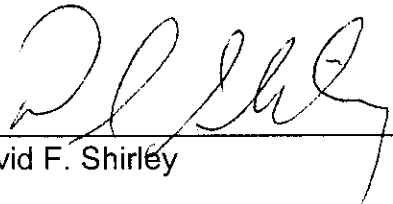
U.S. Department of Justice
Environment & Natural Resources Division
550 West Fort Street, MSC 033
Boise ID 83724

Jeffery C. Fereday, Esq
GIVENS PURSLEY, LLP
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LING & ROBINSON
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Rupert ID 83350

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

PARSONS, SMITH & STONE, LLP



David F. Shirley