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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
	)	
_____	)	

NOTICE OF CHALLENGE

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 respectfully submit this *Notice of Challenge to the Amended Special Master Report and Recommendation* dated January 28, 2004, and the *Order Denying Motions to Alter or Amend Amended Special Master's Report and Recommendation* dated March 4, 2004.

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3 **STATEMENT OF ISSUES ON NOTICE OF CHALLENGE**

4 1. Whether the *Amended Special Master Report and Recommendation* dated
5 January 28, 2004 and the *Special Master's Report and Recommendation* dated January 10, 2002
6 erred in recommending that the Claimants' enlargement claims be subordinate to all water rights
7 required by permit and license with priority dates earlier than April 12, 1994 wherein said
8 enlargement claims do not injure any other water rights existing on the date of the enlargement of
9 use.
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11 2. Whether the Special Master erred in including the subordination language
12 thereby denying the Claimants' right to rely on the enactment of the amnesty statute provided by
13 Idaho Code §42-1416.
14

15 3. Whether respondents are barred from asserting subordination of
16 Claimants' enlargement claims by waiver and estoppel.
17

18 4. Whether the Special Master erroneously ruled that there were no genuine
19 issues of material fact with respect to the enlargement claims of the Claimants, the subordination
20 language, and the nature and source of the water associated with these claims.
21

22 5. Whether the Special Master erroneously held that there is always injury
23 when an enlargement claim takes priority over a validly established junior water right.
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25 6. Whether the Special Master erred in finding that the enlargement claims
26 would cause potential injury to junior appropriators.
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28 7. Whether the Special Master erroneously held that the only certain way to
fully mitigate potential injury to junior appropriators is by subordination of the Claimants'

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3 enlargement claims to all other water rights with priority dates earlier than April 12, 1994.

4 **DETAILED DESCRIPTION OF TRANSCRIPTS REQUESTED**

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

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

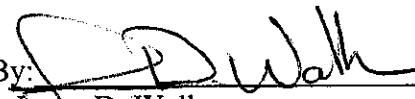
11 **EXHIBITS**

12 All exhibits admitted during the proceedings of this matter should be considered
13 part of the record.

14 The Court should take judicial notice of all SRBA filings, including, but not
15 limited to, all affidavits and briefs lodged with the court during the course of these.
16

17 Respectfully submitted this 9th day of March, 2004.

18 LING, ROBINSON & WALKER

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21 By: 
22 Jason D. Walker
23 Attorneys for Claimants
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3 **CERTIFICATE OF MAILING**

4 I hereby certify that on the 9th day of March, 2004, I served a true and correct copy
5 of the *Notice of Challenge* upon:

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

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

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

14 U. S. Department of Justice
15 Environment & Natural Resource Division
16 550 West Fort Street, MSC 033
Boise, Idaho 83724

17 USDI Bureau of Reclamation
18 Regional Director PN Region
19 1150 N. Curtis Rd.
Boise, ID 83706-1234

20 David F. Shirley, Esq.
21 PARSONS, SMITH & STONE, LLP
22 P. O. Box 910
Burley, ID 83318

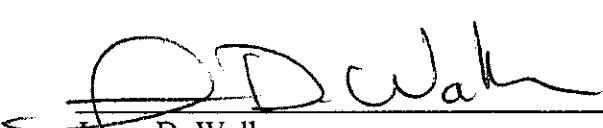
23 Attorneys for: Dale H. Klingler
North Ridge, LLC
24 Ross Hunsaker
25 Samuel C. and Margaret Large
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9 Mack Neibaur
10 Ralph E. Breeding
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12 Bingham Ground Water District
13 Magic Valley Ground Water District

14 Daniel L. Willie
15 1017 South 1150 East
16 Eden, ID 83325

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

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Jason D. Walker