

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

2004 APR 7 PM 3 52

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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

Case No. 39576,

)
) Subcases 36-10090, 36-10863A,
) 36-15264A, 36-15264B, 36-10033,
) 36-10037, 36-11643, 36-15152,
) 36-15356A, 36-16123, 36-16124
) 36-10035

) STATEMENT OF CLARIFICATION
) OF ISSUE ON CHALLENGE
)

COMES NOW Claimants of the above-entitled subcases, by and through their attorneys of record and submit the following statement of issue on challenge. The issue on challenge involves the priority date included in the subordination language that is recommended for enlargement claims brought pursuant to the Amnesty Statute, I.C. §42-1426. Although this is the single issue on challenge, the following sub-issues must be analyzed to reach a conclusion on the single issue:

1. Whether the Doctrine of Waiver and Estoppel bars other ground water users from seeking to have the Claimants' enlarged rights subordinated to other water

1 rights obtained after the enactment date of I.C. §42-1416 and before the enactment
2 date of I.C. §42-1426.

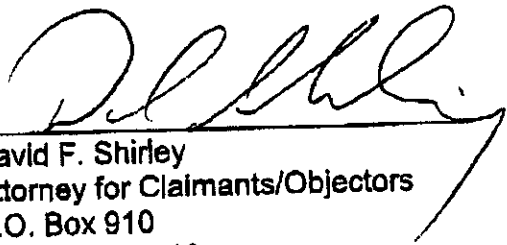
3 2. Whether the Special Master erred in ruling that the only certain way to fully
4 mitigate per se potential injury, if any, to junior appropriators is to subordinate the
5 Claimants' enlargement claims to all other water rights with priority dates earlier than
6 April 12, 1994.

7 3. Whether the Special Master erred in failing to recognize the subordination
8 date as the enactment date of the Amnesty Statute provided by I.C. §42-1416, which
9 was relied upon by the Claimants.
10

11 The issue described above and each of the sub-issues are directly at issue in
12 the A & B matter. (See Notice of Appeal in the A & B matter paragraphs No. 6h, k and
13 l). Because the facts in the A & B matter concerning this issue and its sub-issues are
14 nearly identical to the issues of the subcases pending before this Court, it is believed
15 that a decision in the A & B matter will decide the outcome of Claimants' Challenge.
16

17 DATED this 7 day of April, 2004.

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DATED this 6th day of April, 2004.

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