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Attorney for Mary Batruel, Paul Batruel, and Batruel Dairy

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	)	Subcase Nos. 61-02248B and 61-07189
Case No. 39576	)	
	)	NOTICE OF CHALLENGE
	)	
	)	
	)	
	)	

DESCRIPTIVE SUMMARY

Pursuant to Administrative Order 1 § 13(c), Mary Batruel, Paul Batruel, and Batruel Dairy, (the Batruels) by and through their undersigned counsel, file this Notice of Challenge to the *Order Denying Motion to Alter or Amend and Correcting Clerical Mistake* (Aug. 30, 2000) issued by Special Master Cushman in the above-captioned subcases. This challenge concerns the six issues detailed below.

DETAILED STATEMENT OF ISSUES

1 Whether the Special Master erred in recommending the quantity element of an unclaimed permit (no 61-07724) under the quantity remarks for water right nos. 61-02248B and 61-07189, which resulted in an increase of the total combined diversion volume from 66 acre-feet-per-year (AFY) to 338 AFY?

2 Whether the recommendation of the quantity element of an unclaimed permit (no. 61-07724) violates constitutional due process protections of notice and a meaningful opportunity to object to the quantity allowed by the permit?

3 Whether the recommendation of the quantity element of an unclaimed permit (no. 61-07724) violates the statutory procedures set forth in Chapter 14, Title 42, Idaho Code, which require, at a minimum, that the permit be subject to the claim, director's report, and objection processes before being decreed in the SRBA?

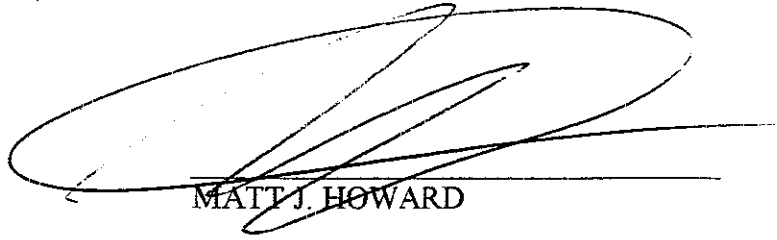
4 Whether the Special Master erred in concluding that the remark, which included a recommendation of the quantity element of unclaimed permit no. 61-07724, was necessary and clarifying?

5 Whether the Special Master erred by failing to include language expressly mandated by Idaho Code § 42-1421(3) to be inserted into decrees for "any claimed water right for which proof of beneficial use has not been filed" (i.e., a permit), and failing to include additional clarifying language set forth in the Batruels' *Comments Re: Motion to Alter or Amend* dated May 18, 2000?

6 Whether the Special Master erred in recommending a year 'round season of use for water right no. 61-07189 based on Idaho Code § 42-1425?

No transcripts are requested.

DATED this 11 day of September, 2000



MATT J. HOWARD

CERTIFICATE OF SERVICE

The undersigned certifies that on the 11 day of September, 2000, a true and correct copy of the within NOTICE OF CHALLENGE was sent to the following person(s) by the method indicated below:

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Deputy Attorney General
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United States Department of Justice
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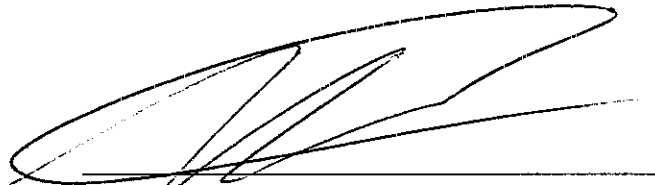
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