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DEPARTMENT OF
WATER RESOURCES

Michael P. Tribe, ISB No. 6816
ROBINSON & ASSOCIATES
Attorneys at Law
P.O. Box 396
Rupert, Idaho 83350
Telephone (208) 436-4717
Facsimile (208) 436-6804

Attorneys for Objector,
William A. Poulton

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 No. 45-00167A
)
Case No. 39576) **NOTICE OF CHALLENGE TO**
) **SPECIAL MASTER'S REPORT**
) **AND ORDER DENYING MOTION**
) **TO ALTER OR AMEND**
_____)

COMES NOW William A. Poulton, the objector in Water Right No. 45-00167A,
by and through his attorneys of record Robinson & Associates, and pursuant to A.O.1, section
13(c), respectfully submits this *Notice of Challenge* to the *Special Master Report* dated March 20,
2007 and the *Order Denying Motion to Alter or Amend*, dated September 6, 2007. The cause for
such challenge is as follows:

STATEMENT OF ISSUES ON NOTICE OF CHALLENGE

1. Whether the Special Master erred in finding that there was a resumption of
use prior to a claim of right after finding that the Objector "clearly established non-use of Willow
Creek water between 1908 and 1962," in his Special Master Report of March 20, 2007.

NOTICE OF CHALLENGE - 1

ROBINSON & ASSOCIATES

ATTORNEYS AT LAW

RUPERT, IDAHO 83350-0396

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3 2. Whether the Special Master erred by not finding specific facts demonstrating
4 resumption of use after the findings of the Directors Report were rebutted by testimony of Objector
5 and other witnesses.

6 3. Whether the Special Master erred by not considering the doctrine of partial
7 forfeiture in his Special Master Report of March 20, 2007. Specifically:

8 a. Whether the Special Master erred by not determining the amount of water
9 that was resumed and put to beneficial use after finding that there was a resumption of use.
10

11 b. Whether the Special Master erred by not determining the amount of land that
12 was beneficially irrigated by the claimant after finding that there was a resumption of use.

13 4. Whether the Special Master erred by not determining the proper point of
14 diversion for a resumption of use when there was no testimony that the claimed point of
15 diversion was capable of diverting water.
16

17 5. Whether the Special Master erred in finding that there existed circumstances
18 beyond the Claimants control in his Special Master Report of March 20, 2007. Specifically:

19 a. Whether the Claimant was reasonable in relying on Objector's statement
20 that her newly acquired property was a "dry piece of ground;" and

21 b. Whether the movement of the channel of Willow Creek by the Highway
22 District and the claimed point of diversion was a circumstance beyond the Claimants control
23 despite testimony that the claimed point of diversion had never been used and could not be used
24 because no diversion work existed at the claimed diversion point.
25

26 6. Whether the Special Master erred by not considering that the water right was
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3 abandoned based upon the extended period of nonuse.

4 **DETAILED DESCRIPTION OF TRANSCRIPTS REQUESTED**

5 1. Transcript of trial on subcase 45-167A held in front of Special Master
6 Terrence Dolan, on January 11, 2007.

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 to
9 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 limited
15 to, all affidavits and briefs lodged with the court during the course of the proceedings for subcase
16 45-00167A.
17

18 Respectfully submitted this 20th day of September, 2007.

19
20 ROBINSON & ASSOCIATES

21
22 By: Michael P. Tribe

23 Michael P. Tribe

24 Attorneys for Objector
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CERTIFICATE OF MAILING

I hereby certify that on the 20th day of September, 2007, I delivered the original *Notice of Challenge to Special Master's Report and Order Denying Motion to Alter or Amend*, and served true and correct copies, upon:

Original to: Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
253 Third Avenue North
Twin Falls, Idaho 83303-2707

☐ U. S. Mail ☐ E-mail
☒ Hand Delivery
☐ Facsimile Transmission

Copies to: Leah Rose
994 S. 150 E.
Burley, ID 83318

☒ U. S. Mail ☐ E-mail
☐ Hand Delivery
☐ Facsimile Transmission

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

☒ U. S. Mail
☐ Hand Delivery
☐ Facsimile Transmission
☐ E-mail

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

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

☒ U. S. Mail
☐ Hand Delivery
☐ Facsimile Transmission
☐ E-mail

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

☒ U. S. Mail ☐ E-mail
☐ Hand Delivery
☐ Facsimile Transmission

by hand delivering said original to the SRBA Clerk, and depositing copies of same in the U.S. Mail, postage prepaid, in envelopes addressed to all known parties to this action at the foregoing addresses.


Michael P. Tribe