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DEPARTMENT OF
WATER RESOURCES

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ISB #3862

Attorneys for Respondents, Flying Heart Ranch II Subdivision; Evergreen Ventures, LLC;
James and Evelyn Phillips; Howard and Carol Knight

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. (See List Exhibit A)
	)	
Case No. 39576	)	OBJECTION TO MOTION TO AMEND
	)	
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COMES NOW, the Respondents, Flying Heart Ranch II Subdivision; Evergreen Ventures, LLC; James and Evelyn Phillips; Howard and Carol Knight, by and through Fritz X. Haemmerle of Haemmerle & Haemmerle, P.L.L.C., and hereby objects to the Motion to Amend filed by Tom O'Gara, John Fell Stevenson, Bill Molyneux, Pete Van Der Meulen, Grace Eakin, Rocky Sherbine, Gerald Bashaw, and Pepin Corso-Harris, by and through their attorney of record, Albert P. Barker of Barker Rosholt & Simpson, LLP., and the Big Wood Canal Company, by and through its attorney of record Craig Hobdey of Hobdey & Hobdey (collectively "Objectors"). The basis of the objection is as follows:

OBJECTION TO MOTION TO AMEND - 1

1. The Motion to Amend states an entirely new basis for the Objection as evidenced by the “dismissal” of the original Objection. *Motion to Amend*, ¶ 2. The original Objection focused solely on the legal basis of the beneficial use. The proposed Amended Objection focuses on the factual extent of the beneficial use. Because the Objectors are “dismissing” their original Objection, the Motion to Amend should be treated as a Late Objection, subject to the standard of filing a Late Objection.

2. As a Late Objection, the Objectors must show: (1) good cause; and (2) a meritorious position. In this case, the Objectors have not shown good cause. What they have shown is that there was no merit to their original Objection, and they now wish to state an entirely new cause of action. There is no “good cause” shown as to why the position, if any, stated in the Motion to Amend could not have been asserted at an earlier time during the original Objection period.

3. As to “meritorious position,” the sole basis of the Motion to Amend is that the Objectors now wish to “focus their objections on the factual circumstances surrounding the beneficial use of water under this right.” *Motion to Amend*, ¶ 3. This statement, by itself, does not state a claim and, therefore, is insufficient to raise a meritorious position.

4. Even if the Motion to Amend is treated as an amendment, as opposed to a new objection, the amended Objection is insufficient on its face. Under I.R.C.P. 15(a), a court can consider “whether the new claims proposed to be inserted into the action by the amended complaint state a valid claim.” *Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 114 P.3d 974 (2005). In this case, as previously argued, there is no evidence of any “valid claim” – i.e. that the claimant has failed to use the water in a beneficial manner, as a matter of fact. Rather, the

Objectors have alleged noting more than a “fishing expedition” into the use of the claimant’s water rights.

5. To illustrate the frivolous and baseless nature of the Motion to Amend, the Objectors have requested a remark addressing “water quality.” Water quality is not within the jurisdiction of the Snake River Basin Adjudication (“SRBA”). Under Idaho Code Section 42-1411(2)(j), remarks may be inserted into a recommendation provided the remark is “necessary for the definition of the right, for clarification of any element of a right, or for administration of the right by the director.” Water “quality” is not an element of a water right, and the director does not administer water quality. Accordingly, the SRBA has no jurisdiction to include any water “quality” element.

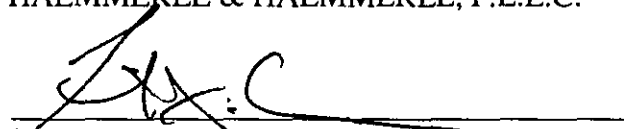
6. The Objectors have filed blanket Motions to Amend that seemingly apply to aesthetic, recreation and wildlife uses that may have been derived from original irrigation rights. To the extent that the right was not derived from an original irrigation right, the Motion to Amend and reasons supporting the Motion would have no applicability – i.e. the “diversion rate” and volume/consumptive use” reasons. Assuming the Objectors have not conducted individual examinations to separate out the rights that are not derived from original irrigation rights, the Objectors will face claims for I.R.C.P. Rule 11(b) sanctions for failing to investigate the basis of their claims.

7. Furthermore, since the original Objection failed to have any legal basis, and the claimants spent time and money in responding to the baseless original Objection, the Objectors should not be allowed to “dismiss” their original Objection without penalty. Under I.R.C.P. 41(a)(1), claims may only be dismissed by stipulation of the parties, provided the opposing party has answered or has filed some responsive pleading. In this case, each of the claimants filed

Responses to the Objections. Since a responsive pleading has been filed, the Objectors must negotiate the "dismissal" of the original Objections. Because the original Objections were filed without any legal merit, the dismissal of the original Objections would involve claims for attorney's fees and costs. Also, as stated previously, the dismissal of the frivolous and baseless original Objections would involve I.R.C.P. Rule 11(b) sanctions.

DATED this 11th day of June, 2008.

HAEMMERLE & HAEMMERLE, P.L.L.C.


By: Fritz X. Haemmerle

CERTIFICATE OF MAILING

I certify that on June 11th, 2008, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:
Elise Lufkin, served c/o counsel below
Sinclair Oil, d.b.a. Sun Valley Company

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449

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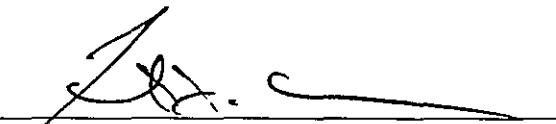

By: Fritz X. Haemmerle

EXHIBIT A

1. 37-497B (Lufkin)
2. 37-496B (Lufkin)
3. 37-12111 (Sinclair Oil)