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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Claimant Syringa Ranch Trust

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 38576

Subcase No. 37-04133

MOTION TO FILE LATE OBJECTION

COMES NOW SRBA Claimant and Objector Syringa Ranch Trust (hereinafter "Syringa"), by and through its attorneys, Ringert Clark, Chartered, and hereby files this Motion to File Late Objection to the recommendation of water right number 67-04133 claimed in the SRBA by Syringa. This motion is filed pursuant to I.R.C.P. 7(b). The grounds for this motion are that Syringa has good cause pursuant to the standards of I.R.C.P. 55(c) for not having filed their objection earlier. A copy of the Objection that Syringa seeks to file is attached hereto as Exhibit "A". This Motion and Argument are supported by the Affidavits of Victoria White Evans, Gene Drussell, Charles L. Honsinger and by the argument herein.

FACTS

Syringa owns water right no. 37-04133 claimed in the Snake River Basin Adjudication. *Affidavit of Victoria White Evans*. From early 1999, the approximate date that Syringa purchased the property, Mrs. White Evans left details of irrigation to her ranch manager. *Id.* Since 2002, Ms. White Evans has lived in California and has continued to leave the details of farm irrigation and management to her ranch manager. *Id.* On or about September 9, 2004, IDWR sent a letter to Syringa informing it of a public meeting in late September 2004. That letter was returned to IDWR as undeliverable. *Affidavit of Charles L. Honsinger*. On or about June 17, 2005, IDWR sent a letter to Syringa requesting proof of the priority date claimed for water right no. 37-04133, and explaining that if no evidence was submitted, the water right may be disallowed. That letter was returned to IDWR as undeliverable. *Id.* Finally, IDWR mailed a third letter to Syringa on or about November 21, 2006. That letter was also returned to IDWR as undeliverable. *Id.* Upon recently meeting with her Idaho water law attorney, Mrs. White Evans discovered for the first time the need to file an objection to the the director's report for water right no. 37-04133. *Affidavit of Victoria White Evans*. Thomas O'Gara has filed an objection in this subcase requesting the recommendation of water right no. 37-04133. The objection proposed to be filed by Mrs. White Evans mirrors that filed by Mr. O'Gara.

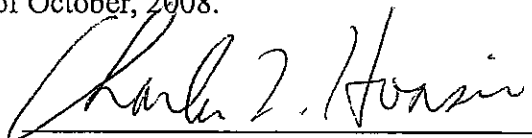
ARGUMENT

The legal standard for filing a late objection to a water right recommended in the SRBA is set forth in the *Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcase Nos. 65-19812 et. al. (January 31, 2001). That decision holds that motions to file late objections should be reviewed under the standards by which a default judgment may be set aside

pursuant to I.R.C.P. 55(c). *Id.*, at p. 6. "The I.R.C.P. 55(c) Standard takes into account the following factors: 1) whether the default was willful; 2) whether setting aside the judgment would prejudice the opponent; and 3) as with a Rule 60(b) motion, whether a meritorious position has been presented." *Id.*, at p. 7. Syringa's *Motion to File a Late Objection* meets all three criteria.

First, Syringa's failure to file an objection was not willful - Mrs. White Evans was simply unaware of the need to do so - as is indicated by three letters sent to Syringa by IDWR that were subsequently returned as undeliverable. Second, Syringa's proposed objection aligns itself with the objection filed by Mr. O'Gara; because both objections request the exact same relief, no prejudice is possible. Third, as is apparent from Mr. Drussell's Affidavit, the water right has been historically used since at least 1964 - indicating that it likely was used earlier than that. Therefore, Syringa has presented a meritorious position. Accordingly, the Court should grant this motion, and Syringa respectfully requests the same.

Respectfully submitted this 6th day of October, 2008.

A handwritten signature in dark ink, reading "Charles L. Honsinger", written over a horizontal line.

Charles L. Honsinger
Ringert Law, Chartered

CERTIFICATE OF MAILING

I certify that on ^{October 6}~~August 20~~, 2008, I mailed the original and copies of this document, including all attachments, to the following persons:

Thomas M. O'Gara
c/o Paul L. Arrington
Barker, Rosholt & Simpson, LLP
P.O. Box 485
Twin Falls, ID 83303-0485

Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

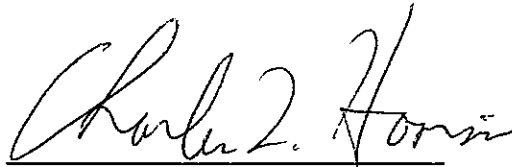

Person mailing document

Exhibit A

**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	)	A.	Subcase <u>37-04133</u>
	)		(Insert water right no.)
Case No. 39576	)		
	)		
	)		STANDARD FORM 1
	)		OBJECTION
_____	)		

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: SYRINGA RANCH TRUST

Address: c/o Victoria White Evans
1061 Woodland Drive
Beverly Hills, CA 90210

Daytime Phone: (310) 273-2815

Name & Address of Attorney, if any:
Charles L. Honsinger
Ringert Law Chartered
P.O. Box 2773
Boise, ID 83701

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTORS'S REPORT

Name: SYRINGA RANCH TRUST

Address: c/o Victoria White Evans
1061 Woodland Drive
Beverly Hills, CA 90210

D. I object to the following elements as recommended in the Director's Report. (Please check the Appropriate box(es)).

1. X **Name and Address**
Should be: As claimed
2. X **Source**
Should be: As claimed
3. X **Quantity**
Should be: As claimed
4. X **Priority Date**
Should be: As claimed
5. X **Point(s) of Diversion**
Should be: As claimed
6. ☐ **Instream Flow Description**
Should be: _____
7. X **Purpose(s) of Use**
Should be: As claimed
8. X **Period of Year**
Should be: As claimed
9. X **Place of Use**
Should be: As claimed
10. X **I object because:**

☐ This water right should not exist.
☒ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION (S): Historical, beneficial use of the water right in the manner it was claimed can be established.

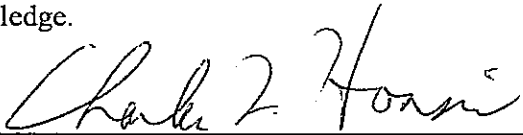
F.

VERIFICATION (must be completed)

State of Idaho)
) ss.
County of Ada)

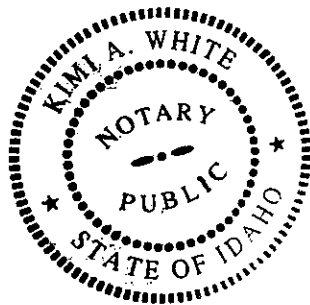
Charles L. Honsinger, duly sworn, upon oath, deposes and says:

That I am the party/claimant filing this objection, as defined by I. C. §§ 42-1401A (1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.



Charles L. Honsinger

Subscribed and sworn to before me on: October 6, 2008





Notary Public for Idaho
Residing at: Boise, Idaho
My Commission Expires: 04/01/10

CERTIFICATE OF MAILING

I certify that on October 6, 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:

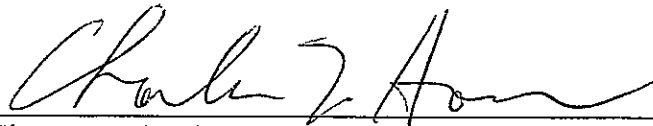
Name: SYRINGA RANCH TRUST

Address: c/o Victoria White Evans
1061 Woodland Drive
Beverly Hills, CA 90210

3. Copies to:

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

Thomas M. O'Gara
c/o Paul L. Arrington
Barker, Rosholt & Simpson, LLP
P.O. Box 485
Twin Falls, ID 83303-0485



Signature of Objector or attorney
mailing on Objector's behalf