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**DEPARTMENT OF
WATER RESOURCES**

Estate of Tina Iest, Tina Iest Family LLLP,
The Hauck Family Revocable Trust, and
Greg Obendorf

Dana L. Hofstetter, ISB #3867
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
(208) 424-7800
(208) 424-8774 (Facsimile)

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR TWIN FALLS COUNTY**

In Re SRBA

Case No. 39576

) Subcase Nos. 63-127A, 63-128A,
) 63-129A, 63-130A, 63-131A and
) 63-178C
)
) **MOTION TO FILE LATE**
) **OBJECTIONS**

MOTION

The Estate of Tina Iest, The Tina Iest Family LLLP, The Hauck Family Revocable Trust and Greg Obendorf, by and through their counsel of record, Dana Hofstetter of Hofstetter Law Office, LLC, hereby move, pursuant to I.R.C.P. Rule 55(c) and SRBA Administrative Order 1, for leave to file late Objections to the above-referenced water rights. This Motion is supported by the Memorandum below, the proposed Objections attached hereto as Exhibit A, the contemporaneously filed Affidavit of Dana L. Hofstetter and the record.

MEMORANDUM

I. FACTUAL BACKGROUND

Water Right Nos. 63-127, 63-128, 63-129, 63-130, 63-131 and 63-178 originally were claimed in the SRBA by the Andrews Ditch Company. *Affidavit of Dana L. Hofstetter*. However, in 2006, one of the members of the Andrews Ditch Company, Tree Top Ranches LP, proposed dissolving the entity and dividing the water rights between the then two recognized members of the Andrews Ditch Company, Tree Top Ranches, and Tina Iest. *Id.* The Idaho Department of Water Resources ("IDWR") divided the Andrews Ditch Company water rights between these two parties based on the 1906 *Stewart* decree places of use for these water rights. *Id.* Water Right Nos. 63-127A, 63-128A, 63-129A, 63-129A, 63-130A, 63-131A and 63-178A were recommended disallowed in the name of the Andrews Ditch Company; Water Right Nos. 63-127B, 63-128B, 63-129B, 63-130B, 63-131B and 63-178B were recommended to Tree Top Ranches; and Water Right No. 63-178C was recommended to Tina Iest.

However, very recently as a result of case investigation on other matters it has been discovered that other parties properties also were covered by the place of use descriptions and that other parties should have also been recommended portions of these water rights based on the decreed place of use descriptions. *Affidavit of Dana L. Hofstetter*. For example, The Hauck Family Revocable Trust owns a portion of the place of use of Water Right No. 63-178, as decreed in the *Stewart* decree. *Id.* Further, Greg and Ann Obendorf own portions of the irrigated place of use decreed to Water

Right Nos. 63-127, 63-128, 63-129, 63-130 and 63-131 but were not apportioned some of the Andrews Ditch Company water rights. *Id.*

This information raises questions about the history of the Andrews Ditch Company and its water fights from the time of the Stewart decree in 1906 until the present. *Id.* Perhaps, it was incorrect to assume that there were only 2 remaining members of the Andrews Ditch Company. Perhaps, the water rights should have been apportioned among other water users also. Perhaps, if even there remained only two members of the Andrews Ditch Company, the water rights should have been apportioned between these two parties on a different historical basis. This Motion to File Late Objection is being filed to prevent the potentially affected water rights from being partially decreed so that these issues can be more fully investigated and appropriate revised Director's Report Recommendations issued.

II. GOOD CAUSE EXISTS TO GRANT LEAVE TO FILE LATE OBJECTIONS

The decision to allow a late objection to be filed in the SRBA, is based on the good cause standard of I.R.C.P. 55(c). *Order on Motion to Set Aside Partial Decrees and File Late Objections, SRBA Subcase Nos. 65-19812 et al. (January 31, 2001).* The Rule 55(c) standard requires good cause and a meritorious defense. *McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d 274, 278 (Ct. App. 1993). The Rule 55(c) standard for setting aside entry of default is less stringent than the Rule 60(b) standard for setting aside default judgment. *Id.* at 935-36, 854 P.2d at 278-79. This approach is consistent with the policy that cases generally should be decided on their merits and that in an earlier stage of where there has been no judgment, a liberal approach is

appropriate. *Id.* at 936, 854 P.2d at 279. The Rule 55(c) standard has been described as requiring the movant to show “whether the default was willful, whether setting aside the default would prejudice the opponent and that a meritorious position exists.” *Id.* This Motion is consistent with these factors.

A. The failure to submit timely Objections was not willful as the existence of other possible holders of Andrews Ditch Company water rights was only recently discovered.

As part of the preparations of Greg Obendorf’s legal counsel for contested quantity proceedings in SRBA Subcase Nos. 63-127B, 63-128B, 63-129B, 63-130B and 63-131B, the original Stewart *decree* descriptions of the root rights were located and reviewed in December 2008 and January 2009. *Affidavit of Dana L. Hofstetter*. From review of this decree, it appeared that Greg Obendorf and, perhaps, other parties own portions of the originally decreed places of use for the former Andrews Ditch Company water rights. *Id.* Greg Obendorf also leases the nearby Tina Iest property. *See Affidavit of Greg Obendorf*, SRBA Subcase Nos. 63-127B *et. al* (February 3, 2009).

Other parties’ possible interests in the former Andrews Ditch Company water rights were only discovered in the last month. Therefore, these parties did not willfully fail to file timely Objections.

B. There would be no prejudice as these proceedings are at a relatively early stage and Rule 55(c) policy favors deciding cases on the merits.

These subcases and the related subcases are at a relatively early stage and no Partial Decrees have yet been issued or trials held. Movants’ legal counsel only very recently found information apparently confirming the possible incorrect apportionment

of the subject water rights, upon dissolution of the Andrews Ditch Company. Consistent with Rule 55(c), the policy in favor of deciding cases on the merits and the purpose of the SRBA to establish the nature and extent of water rights, this Motion to File Late Objections should be granted so that this recently identified information may be reviewed and considered along with other historic information regarding the Andrews Ditch Company and its water rights.

C. A meritorious case is presented as the 1906 Stewart decree establishes that IDWR should have apportioned portions of these historic water rights to the Movants upon dissolution of the Andrews Ditch Company.

When the Andrews Ditch Company was dissolved, IDWR apparently apportioned the subject water rights between Tree Top Ranches and Tina Iest apparently based on the place of use descriptions in the *Stewart* decree. *Affidavit of Dana L. Hofstetter*.

However, it appears that other parties' places of use also were associated with these water rights as described in the *Stewart* decree and IDWR should have considered the interests of these other parties in issuing these water right recommendations. *Id.* Water rights ordinarily are appurtenant to their places of use and the *Stewart* decree establishes that the former Andrews Ditch Company water rights are appurtenant to the Obendorf, and Hauck properties along with the Tree Top and Iest properties. *Id.*

The business and corporate affairs of the Andrews Ditch Company appear to have been neglected for many years and it appears that other parties may have had interests in its water rights besides just Iest and Tree Top. *Id.* The Andrews Ditch runs through the Hauck property and also delivers Boise River water to the Obendorf property. *Id.* Both of these properties also have other irrigation rights associated with them that are junior to

these historic rights and these senior rights would be important appurtenances to the subject properties. *Id.* The Tina Iest Family LLLP has an interest in making certain that the Andrews Ditch Company water rights are appropriately apportioned among the parties entitled thereto.

The *Stewart* decree establishes the interest of the Movants in the subject water rights. When the Andrews Ditch Company originally filed the SRBA claims to these rights in 1990, it was acting on behalf of all its water users. However, over time the parties associated with the Andrews Ditch Company had become less clear as property ownerships changed and company records were lost. When the Andrews Ditch Company was formerly set aside and the *Stewart* decree was used to apportion the subject water rights, the interests of the Obendorfs, the Haucks and perhaps others, as owners of the subject places of use also should have been considered.

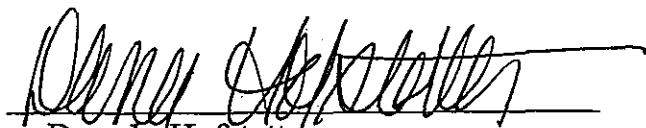
III. CONCLUSION

For the reasons stated above, this Motion to File Late Objections should be granted.

RESPECTFULLY SUBMITTED this 5th day of February, 2009.

HOFSTETTER LAW OFFICE, LLC

By


Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2009, I caused to be served copies of the foregoing **Motion to File Late Objections** by the methods indicated below:

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
✕ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449
✕ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MSC 033
Boise, ID 83724
✕ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Andrews Ditch Company
c/o David Tidwell
5700 S. Linder Road
Meridian, ID 83642
✕ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Andrews Ditch Company
c/o Larry and Marianne Williams
914 Houston
Boise, ID 83704
✕ U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax


Dana L. Hofstetter

4091.1/8356

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 39576

A. Subcase 63-127A
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Estate of Tina Iest Greg Obendorf
The Tina Iest Family LLLP
Address: c/o Helen Tidwell 26496 Deb Lane
5700 S. Linder Road Parma, Idaho 83660
Meridian, Idaho 83642
Daytime Phone: (208) 888-3325

Name & Address of Attorney, if any:

Dana L. Hofstetter
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702

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

Name:	<u>Andrews Ditch Company</u>	<u>Andrews Ditch Company</u>
Address:	<u>c/o David Tidwell</u>	<u>c/o Larry & Marianne Williams</u>
	<u>5700 S. Linder Road</u>	<u>914 Houston</u>
	<u>Meridian, Idaho 83642</u>	<u>Boise, Idaho 83706</u>



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

1. ☒ **Name and Address**
Should be: Greg and Ann Obendorf
2. ☒ **Source**
Should be: as claimed by Andrews Ditch Company
3. ☒ **Quantity**
Should be: as decreed.
4. ☒ **Priority Date**
Should be: as claimed by Andrews Ditch Company
5. ☒ **Point of Diversion**
Should be: as claimed by Andrews Ditch Company
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: as claimed by Andrews Ditch Company
8. ☒ **Period of Year**
Should be: irrigation 3/1 to 11/15; stockwater 1/1-12/31
9. ☒ **Place of Use**
Should be: Obendorf property in Sections 23 and 24, T5N, R5W
11. **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):** Stewart decree

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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.

Signature of person filing objection

Dana Hofstetter
Attorney signing in representative capacity

Subscribed and sworn to before me on: February 5, 2009



Briana E. Belden
Notary Public for the State of Idaho
Residing at: Meridian
My Commission expires: 01-10-13

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on February 5, 2009, I filed the original with the SRBA Court and mailed copies of this Objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court (*via Hand Delivery*)
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:

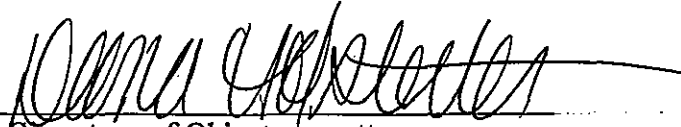
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3. Copies to:

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Boise, ID 83720-0098

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

United States Department of Justice
Environment and Natural Resources Division
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Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

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 39576

A. Subcase 63-128A

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Estate of Tina Iest Greg Obendorf

The Tina Iest Family LLLP

Address: c/o Helen Tidwell 26496 Deb Lane

5700 S. Linder Road Parma, Idaho 83660

Meridian, Idaho 83642

Daytime Phone: (208) 888-3325

Name & Address of Attorney, if any:

Dana L. Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

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

Name: Andrews Ditch Company

Andrews Ditch Company

Address: c/o David Tidwell

c/o Larry & Marianne Williams

5700 S. Linder Road

914 Houston

Meridian, Idaho 83642

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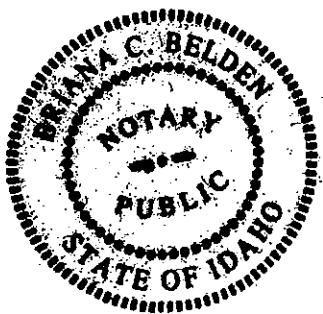
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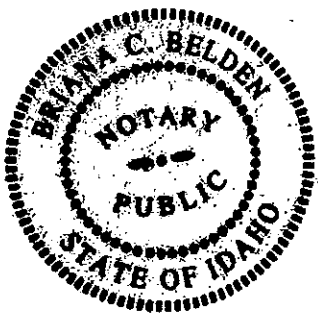
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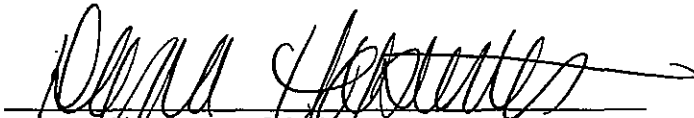
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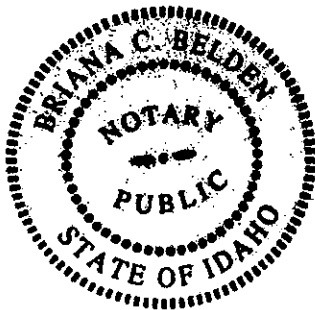
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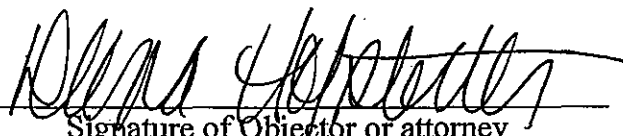
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PO Box 83720
Boise, ID 83720-0098

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

United States Department of Justice
Environment and Natural Resources Division
550 West Fort Street, MCS 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

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 39576

A. Subcase 63-131A

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Estate of Tina Iest Greg Obendorf

The Tina Iest Family LLLP

Address: c/o Helen Tidwell 26496 Deb Lane

5700 S. Linder Road Parma, Idaho 83660

Meridian, Idaho 83642

Daytime Phone: (208) 888-3325

Name & Address of Attorney, if any:

Dana L. Hofstetter

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

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

Name: Andrews Ditch Company

Andrews Ditch Company

Address: c/o David Tidwell

c/o Larry & Marianne Williams

5700 S. Linder Road

914 Houston

Meridian, Idaho 83642

Boise, Idaho 83706

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

1. ☒ **Name and Address**
Should be: Greg and Ann Obendorf
2. ☒ **Source**
Should be: as claimed by Andrews Ditch Company
3. ☒ **Quantity**
Should be: as decreed.
4. ☒ **Priority Date**
Should be: as claimed by Andrews Ditch Company
5. ☒ **Point of Diversion**
Should be: as claimed by Andrews Ditch Company
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: as claimed by Andrews Ditch Company
8. ☒ **Period of Year**
Should be: irrigation 3/1 to 11/15; stockwater 1/1-12/31
9. ☒ **Place of Use**
Should be: Obendorf property in Sections 23 and 24, T5N, R5W
11. **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):** Stewart decree

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

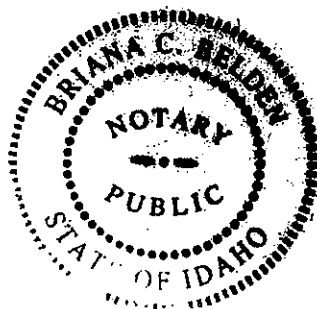
Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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.

Signature of person filing objection

Dana L. Hofstetter
Attorney signing in representative capacity

Subscribed and sworn to before me on: February 5, 2009



Briana C. Belden
Notary Public for the State of Idaho
Residing at: Meridian
My Commission expires: 01-16-13

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on February 5, 2009, I filed the original with the SRBA Court and mailed copies of this Objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court (*via Hand Delivery*)
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:

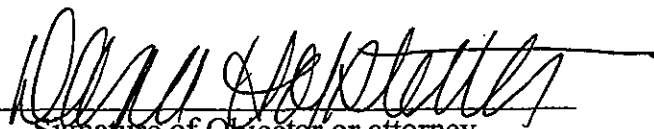
Name:	<u>Andrews Ditch Company</u>	<u>Andrews Ditch Company</u>
Address:	<u>c/o David Tidwell</u>	<u>c/o Larry & Marianne Williams</u>
	<u>5700 S. Linder Road</u>	<u>914 Houston</u>
	<u>Meridian, Idaho 83642</u>	<u>Boise, Idaho 83706</u>

3. Copies to:

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

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

United States Department of Justice
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Signature of Objector or attorney
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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 39576

A. Subcase 63-178C
(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Estate of Tina Iest The Hauck Family Revocable Trust
The Tina Iest Family LLLP

Address: c/o Helen Tidwell 30 Horizon Drive
5700 S. Linder Road Boise, Idaho 83702
Meridian, Idaho 83642
Daytime Phone: (208) 888-3325

Name & Address of Attorney, if any:

Dana L. Hofstetter
Hofstetter Law Office, LLC
608 West Franklin Street
Boise, Idaho 83702

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

Name: Tina Iest
Address: c/o Helen Tidwell
5700 S. Linder Road
Meridian, Idaho 83642

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

1. ☒ **Name and Address**
Should be: include The Hauck Family Revocable Trust
2. ☒ **Source**
Should be: as claimed.
3. ☒ **Quantity**
Should be: as claimed.
4. ☒ **Priority Date**
Should be: as claimed.
5. ☒ **Point of Diversion**
Should be: as claimed.
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☒ **Purpose(s) of Use**
Should be: as claimed.
8. ☒ **Period of Year**
Should be: irrigation 3/1 to 11/15; stockwater 1/1-12/31
9. ☒ **Place of Use**
Should be: include Hauck property in Lot 4, Section 26, 5N, R5W
11. **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):** Stewart decree

F.

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State of Idaho)
) ss.
County of Ada)

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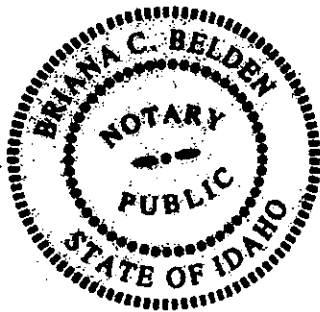
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Signature of person filing objection

Dana L. Hofstetter

Attorney signing in representative capacity

Subscribed and sworn to before me on: February 5, 2009



Briana C. Belden
Notary Public for the State of Idaho
Residing at: Meridian
My Commission expires: 01/16/13

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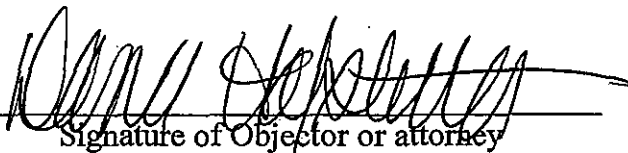
Name: Tina Iest
Address: c/o Helen Tidwell
5700 S. Linder Road
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Signature of Objector or attorney
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