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DEPARTMENT OF
WATER RESOURCES

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

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**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, 63-127B,
) 63-128A, 63-128B, 63-129A, 63-129B,
) 63-130A, 63-130B, 63-131A, 63-131B,
) 63-178B and 63-178C
)

) **MOTION TO STRIKE AFFIDAVIT**
) **OF SCOTT L. CAMPBELL AND**
) **MOTION FOR EXPEDITED**
) **HEARING**

MOTION

Greg Obendorf, The Hauck Family Revocable Trust, the Estate of Tina Iest and the Tina Iest Family LLLP, by and through their counsel of record, Dana Hofstetter of Hofstetter Law Office, LLC, hereby move the Court, pursuant to I.R.C.P. Rules 7(b)(3) and 56(e) and SRBA Administrative Order 1, to Strike the Affidavit of Scott L.

Campbell dated March 13, 2009 and for an expedited hearing on this Motion to Strike in conjunction with the hearing scheduled on related matters for March 20, 2009 at 10:00 a.m.. These Motions are supported by the Memorandum below and the record.

MEMORANDUM

I. LEGAL STANDARDS

It is fundamental that affidavits must set forth facts that would be admissible in evidence. I.R.C.P. Rule 56(e). The affiant's written testimony must provide supporting facts, not just conclusory legal statements. *See Yribar v. Fitzpatrick*, 87 Idaho 366, 374, 393 P. 2d 588 (1964). The facts asserted must be relevant, I.R.E. Rules 401, 402 and 403. Further, hearsay generally is not permissible unless a specific hearsay exclusion applies. I.R.E. Rule 802.

II. THE SECOND PARAGRAPH OF MR. CAMPBELL'S AFFIDAVIT LACKS FOUNDATION, CONTAINS NON-RELEVANT PREJUDICIAL ASSERTIONS AND IS HEARSAY.

In the second paragraph of his affidavit, Mr. Campbell asserts that certain agreements were reached at a June 6, 2006 meeting as to the status of the Andrews Ditch Company. The content of this paragraph contains no foundation, includes non-relevant, prejudicial material and is inadmissible hearsay.

With regard to lack of foundation, paragraph 2 includes only conclusory statements about agreements reached. There is no foundation as to who agreed to what, how the agreements were made (orally or in writing) and what specifically the terms of the agreements were.

Further, this paragraph constitutes impermissible hearsay as it includes only Mr. Campbell's description of statements made at the meeting as a basis for apparently asserting that binding agreements as to certain matters existed. Instead of hearsay, other evidence of the existence of such agreements should be provided.

Nevertheless, the relevancy of such agreements, even if they existed, is not even clear. How would such agreements concern the instant Motions to File Late and Amended Objections? Even if the asserted agreements existed, they would not appear to preclude other parties from subsequently pursuing their interests in the former Andrews Ditch Company water rights.

III. THE THIRD PARAGRAPH OF MR. CAMPBELL'S AFFIDAVIT ALSO LACKS FOUNDATION, CONTAINS NON-RELEVANT PREJUDICIAL ASSERTIONS AND IS HEARSAY.

Also, in the third paragraph, Mr. Campbell's affidavit succumbs to the same faults. This paragraph appears to suggest possible case delays due to Mr. Obendorf's failure to participate in settlement.

The paragraph provides no foundation as to which parties endeavored to reach settlement and how Greg Obendorf was offered and refused to settle the season of use matter. (The record at Status Conferences, *etc.* actually reflects that Greg Obendorf's counsel was not approached to join in this settlement.) The paragraph describes settlement discussions, while the record itself and the Joint Motion filed by certain parties provide non-hearsay evidence of this very same settlement. Further, the Court has denied the Joint Motion, rejecting that settlement, and so it is irrelevant as to case timing that the settlement occurred. Also, the settlement, involving the subject matter of

season of use is irrelevant to the subject Motions to File Late and Amended Objections.

The relevancy of this paragraph to the matter at hand is unclear, while the chief point of this paragraph appears to try to prejudice the court against Mr. Obendorf based on faulty assertions.

IV. CONCLUSION

For the reasons stated above, the Motion to Strike and the Motion for Expedited Hearing on same should be granted.

RESPECTFULLY SUBMITTED this 19th day of March, 2009.

HOFSTETTER LAW OFFICE, LLC

By

A handwritten signature in black ink, appearing to read "Dana L. Hofstetter", is written over a horizontal line.

Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of March, 2009, I caused to be served copies of the foregoing **Motion to Strike and Motion for Expedited Hearing** by the methods indicated below:

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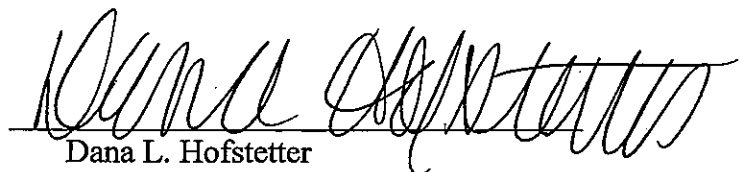
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Office of the Attorney General
State of Idaho
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