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FACSIMILE COVER SHEET

DATE: July 28, 2009

TO: Idaho Department of Water Resources
TO: Chief, Natural Resources Division
Office of the Attorney General
TO: United States Department of Justice
Environment & Natural Resource Division

FACSIMILE#: 287-6700

FACSIMILE#: 854-8071

FACSIMILE#:

RE: SunValley Ranch / Wood River Ranch

FROM: Albert P. Barker

NUMBER OF PAGES INCLUDING THIS COVER SHEET: 19



Original will not be sent.



Original will be sent by first class mail



Original will be sent by Federal Express.

MESSAGE:

Please see the attached documents.

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Albert P. Barker, ISB #2867
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Attorneys for Lakeside Industries dba Wood River Ranch

**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 No. 39576

)
) Subcase Nos. 37-60; 37-61; 37-62; 37-63A;
) 37-64A; 37-66A; 37-67B; 37-68A; 37-230;
) 37-231B; 37-232; 37-577AZ
)
) **MOTION TO FILE LATE OBJECTION**
) **AND REQUEST FOR EXPEDITED**
) **HEARING**
)

COMES NOW, Lakeside Industries, doing business as Wood River Ranch, hereinafter
 “Wood River Ranch,” by and through its attorneys of record, and pursuant to Rule 55(c) of the
 Idaho Rules of Civil Procedure and Administrative Order 1 (AO1), Section 4(d)(2)(d), hereby
 moves the Court for permission to file a late objection to Water Right Nos. 37-60, 37-61; 37-62;
 37-63A; 37-64A; 37-66A; 37-67B; 37-68A; 37-230; 37-231B; 37-232; 37-577AZ. This motion
 is supported by the Affidavit of Sharon Lee filed contemporaneously herewith. Furthermore,
 Wood River Ranch requests an expedited hearing on this motion pursuant to AO1, Section
 6(f)(2).

Wood River Ranch is the owner of a ranch immediately up river on the Big Wood River
 from the SunValley Ranch property. SunValley Ranch is the owner of the water rights at issue

in these subcases. Presently there are objections to the SunValley Ranch water rights pending based on quantity and place of use, filed on behalf of Tom O'Gara, et al. As of this time, the pending objections to the SunValley Ranch water rights have not been resolved through negotiations of the parties. The SunValley Ranch has filed a motion asking the Court to schedule the objections for trial. The Court has not yet acted on that motion, but it is scheduled for hearing on August 29, 2009.

Wood River Ranch, as the owner of the adjacent property, is familiar with the manner in which water rights have been delivered to SunValley Ranch immediately downstream, and is directly impacted by the delivery methods. When SunValley Ranch filed its claim for water rights, it claimed several points of diversion. However, when the recommendation came out, a point of diversion was added on certain of the SunValley Ranch's water rights at the following location: T01N R18E Section 12, NWSESW. This location is what is known as the Bypass Canal. This POD at the Bypass Canal was not included in the claim or in any amended claim. When the river flow drops to the point that the flow of the river can be accommodated in the Bypass, the entire Big Wood River is diverted into the Bypass Canal. At the time water is returned to the River by way of the Baseline Bypass, Rights below the Baseline Bypass are diverted directly from the River. When the river flow drops and priority cuts are made on the June 15, 1883 and earlier rights, all the water is diverted into the Bypass Extension, rather than returned to the River.

The Bypass Canal point of diversion is north of the Wood River Ranch property. All of the other points of diversion recommended and claimed for SunValley Ranch were located downstream of the Wood River Ranch. Wood River Ranch has a point of diversion located at

the Bypass Canal and also has a point of division on the River below the Bypass Canal diverting to the west at what is known as the Graf 62 Ditch point of diversion.

Wood River Ranch has no objection to the SunValley Ranch rights being delivered to SunValley through the Bypass and the Bypass Extension, if they are delivered as they have been historically delivered. SunValley Ranch's rights have historically been diverted into the Bypass Extension when the June 15, 1883 priority cuts are made, and they have not interfered with the delivery of other water rights on the Bypass Extension, including Wood River Ranch's rights.

However, at the beginning of the 2009 water year, when water first began to be delivered to SunValley Ranch and the other water users on the Big Wood, for the first time, SunValley Ranch demanded that the Department deliver all of its water through the Bypass Extension, even before the June 15, 1883 priority cuts went into effect and even before the River was plowed shut at the Bypass. Wood River Ranch learned of this demand and had discussions with Brockway Engineering, who was acting for SunValley Ranch, and the Department of Water Resources. Wood River Ranch raised, on several occasions, with the SunValley Ranch principals, its concern that changing the manner in which water had been delivered to SunValley Ranch by increasing diversions into the Bypass Extension would cause injury to Wood River Ranch's ability to deliver water to its own rights delivered through the Bypass Extension, would expand of the use of the Bypass Extension over and above its historic delivery capacities without any legal authorization, and would injury Wood River Ranch because less water would be left in the River below the Baseline Extension to ensure that sufficient deliveries could be made to Wood River Ranch's Graf 62 Ditch and POD.

At a meeting on July 13, 2009, between Sharon Lee of Wood River Ranch and George Kirk of SunValley Ranch, Ms. Lee discussed these issues with Mr. Kirk. She was advised by

Mr. Kirk that he would have to look into these concerns and would not be able to work out any agreement on the point of delivery prior to the hearing on SunValley Ranch's motion to set the objections for trial. Accordingly, Mr. Kirk told Ms. Lee that she should file a Motion for Leave to File a Late Claim regarding the point of diversion at the Bypass, if she felt it necessary to protect Wood River Ranch rights.

Standard of Review

Under this Court's precedent a motion for leave to file late objections is reviewed under the criteria of Rule 55(c) of the Idaho Rules of Civil Procedure. See *Order Granting Motion to File Late Objections and Setting Deadlines*, Subcase No. 37-00111, et al. (July 31, 2008). This Court has noted that the "good cause" standard under Rule 55(c) is more lenient than the standard under Rule 60(b) for setting aside the judgment. *Id.* The Rule 55(b) standard requires the Court to take into account three factors: (1) whether the default was willful, (2) whether setting aside the judgment would prejudice the opponent, and (3) whether a meritorious position has been presented. *Id.*, citing Order on Motion to Set Aside Partial Decrees and File Late Objections (A1 Cattle) (January 31, 2001).

Analysis

Here, Wood River Ranch seeks to file an objection to the change in point of diversion. This objection is directed at protecting the historic diversion practices and is not intended to preclude SunValley Ranch from requesting delivering water through the Bypass Canal or Bypass Extension when the priority cuts are made and the entire River is diverted into the Bypass Extension. It was not until the 2009 water year when water was first being delivered, that Wood River Ranch learned that SunValley Ranch was demanding delivery of all of its water through the Bypass Canal and Bypass Extension, based on the new POD in the recommendation.

Accordingly, any delay here was not willful because it was not until this year (2009) that SunValley Ranch made its demands on manner and delivery of water apparent to Wood River Ranch.

The second factor is prejudice. Here, no partial decree has been entered, there is no decree to set aside. In this instance, while the subcase has been pending for some time, no action has been taken upon it by the Court. No resolution has been reached with the other objectors. The other objectors do not object to including the point of diversion issue raised by Wood River Ranch in the pending subcases. The subcases have not been set for trial, and this motion was brought before hearing the motion to set the case for trial specifically so the Court would be aware that this POD issue was a matter that should be included in any trial preparation and schedule.

The third factor is whether the objector has shown a meritorious position. In SRBA, a remark on a right is appropriate where necessary to assist in the administration of the right. Here, Wood River Ranch seeks a remark clarifying for the water master how the points of diversion for SunValley Ranch are to be administered in a fashion that does not cause harm to the Wood River Ranch water rights. It is necessary for this issue to be raised in the SRBA because SunValley Ranch has never gone through a transfer proceeding seeking to change its point of diversions to the Bypass Canal. SunValley Ranch did go through prior transfer proceedings in the 1980s changing its points of diversion, but did not make any attempt to add the Bypass as a point of diversion. See transfers 2936 (water rights 36-60, 61 and 62) and 2973 (water rights 37-230, 231 and 232). Typically, the Department's position has been that changes in the water rights from what has been claimed require an amended claim. Here there was no amended claim by SunValley Ranch claiming a POD at the Bypass. The change was

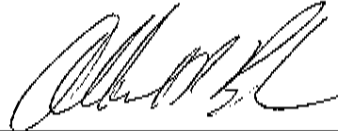
accomplished internally with the Department without notice to other parties until the recommendation was released. Second, it was not until a matter of a few months ago that SunValley Ranch made the demand on the Department that all of its water be delivered on a full-time basis through the Bypass Canal and Bypass Extension. Therefore, there was never any prior notice to Wood River Ranch that any objection needed to be made because there was never any indication until this year that SunValley Ranch sought to modify the delivery practices. Thus, the prejudice would flow in the direction of Wood River Ranch if the motion is denied. Consequently, having shown the potential for injury to delivery of Wood River Ranch rights as a result of modifying the point of division to a place higher up on the River, Wood River Ranch has shown a meritorious position.

Finally, Wood River Ranch has made efforts to try and resolve its concerns over impacts of the delivery and the change in the manner of delivery of SunValley Ranch rights with representatives of SunValley Ranch. Wood River Ranch has not been able to achieve an understanding with the owners of SunValley Ranch. SunValley Ranch has recently taken the position that, once a point of diversion has been identified, then they have the legal right to have all of their water delivered at that point. The purpose of the objection is to clarify for the Department exactly how the water is to be delivered and when water is to be delivered through the Bypass point of division. Sharon Lee of Wood River Ranch had several conversations with George Kirk, the representative for SunValley Ranch concerning these issues about impacts to water rights of Wood River Ranch. She wrote him several letters and had a meeting on July 13, 2009 to try and resolve these issues. Mr. Kirk advised her that he would look into these concerns but was unable to resolve them prior to the time of the hearing date on the motion to set objections on SunValley Ranch's subcases for trial.

Under these circumstances, Wood River Ranch requests leave to file an amended objection in the form attached hereto to ensure that it is not injured by the change in point of diversion on the SunValley Ranch water rights.

DATED this 28th day of July, 2009.

BARKER ROSHOLT & SIMPSON LLP



Albert P. Barker

Attorneys for Wood River Ranch

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of July, 2009, I caused to be served a true and correct copy of the foregoing **MOTION TO FILE LATE OBJECTION AND REQUEST FOR EXPEDITED HEARING** by the method indicated below, and addressed to each of the following:

Original faxed to:

Clerk of the District Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

Copies mailed to:

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Boise, ID 83720-0098

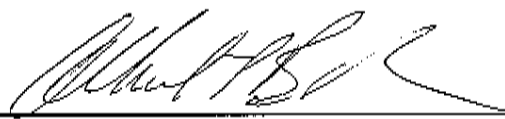
United States Department of Justice
Environment & Natural Resources
Division
550 West Fort Street, MSC 033
Boise, ID 83724

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

Scott L. Campbell / Andrew Waldera
Moffatt Thomas Barrett Rock & Fields
P.O. Box 829
Boise, ID 83701

Lawson & Laski Clark & Pogue PLLC
675 Sun Valley Road, Suite A
P. O. Box 3310
Ketchum, ID 83340

Craig Hobdey
Hobdey & Hobdey
P. O. Box 176
Gooding, ID 83330



Albert P. Barker

**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 No. 37-60; 37-61; 37-62;
	)	37-63A; 37-64A; 37-66A; 37-67B;
	)	37-68A; 37-230; 37-231B;
	)	37-232; 37-577AZ
	)	
Case No. 39576	)	STANDARD FORM 1
	)	OBJECTION
_____	)	

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING:

Name: Lakeside Industries dba Wood River Ranch
 Address: P.O. Box 479
 Bellevue, ID 83313
 Daytime Phone: 208-720-2141

Name and Address of Attorney, if any:

Attorney Name: Albert P. Barker
 Attorney Address: Barker Rosholt & Simpson LLP
 1010 W. Jefferson, Suite 102
 P.O. Box 2139
 Boise, Idaho 83701-2139
 Attorney Phone: (208) 336-0700

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

Name:	Sun Valley Ranch LLC	Lawson Laski Clark & Pogue PLLC
Address:	P.O. Box 40380	P.O. Box 3310
	Ketchum, ID 83340	Ketchum, ID 83340

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

1. ☐ **Name and Address**
Should be:
2. ☐ **Source**
Should be:
3. ☐ **Quantity**
Should be:
4. ☐ **Priority Date**
Should be:
5. ☒ **Point(s) of Diversion**
Should be: Should not include T01N R18E S12 NWSESW
6. ☐ **Instream Flow Beginning and Ending Point**
Should be:
7. ☐ **Purpose(s) of Use**
Should be:
8. ☐ **Period of Year**
Should be:
9. ☐ **Place of Use**
Should be:
10. ☐ **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):

The objected-to point of diversion is the Bypass Canal. The claim for this right did not ever include a claim for a POD at T01N R18E S12 NWSESW, but it was included as a POD in the Director's recommendations. This point of diversion at the Bypass Canal has only been historically used during low water levels of the

Big Wood River when water is diverted into the Bypass Canal, routed around the Dry Beds in the Big Wood River and returned to the Big Wood River for diversion to Claimant into the Blacks 61 POD. To move the POD on a permanent basis to the Bypass Canal, rather than just during low flow conditions in the Big Wood, will injure Wood River Ranch.

F.

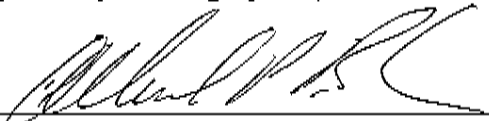
VERIFICATION

State of IDAHO)
) ss.
County of Ada)

Albert P. Barker, 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.

(Signature of person filing objection)

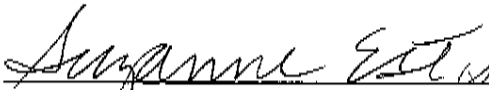


(Attorney signing in representative capacity)

Albert P. Barker

Barker, Rosholt & Simpson, LLP

Subscribed and sworn to before me on: July 28, 2009

Notary Public for: Idaho

Residing at:

My Commission Expires:

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.

CERTIFICATE OF MAILING

I certify that on July 28, 2009, 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
P.O. Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name:	Sun Valley Ranch LLC	Lawson Laski Clark & Pogue PLLC
Address:	P.O. Box 40380	P.O. Box 3310
	Ketchum, ID 83340	Ketchum, ID 83340

3. One copy to the objector of the water right at the following address:

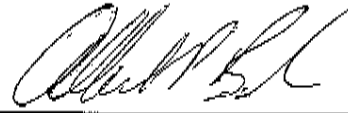
Tom O'Gara	Big Wood Canal Company
John F. Stevenson	112 South Apple Street
Pete Van Der Meulen	Shoshone, ID 83352
Grace Eakin	
Gerald Bashaw	
c/o Concerned Water Users	
P.O. Box 1200	
Bellevue, ID 83313	

4. Copies to:

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Boise, ID 83720-0098

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

Chief, Natural Resources Division
Office of the Attorney General
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) 37-231B; 37-232; 37-577AZ

)
) **AFFIDAVIT OF SHARON LEE**
)
)
)
)

STATE OF IDAHO)
) ss.
 County of Ada)

I, SHARON LEE, being first duly sworn upon oath, deposes and states as follows:

1. I am the co-owner of Lakeside Industries, the Owner of the Wood River Ranch.
2. I am familiar with the matters set forth herein and have no impediment to
 testifying.
3. Wood River Ranch is located immediately north of SunValley Ranch. The
 Bypass Canal delivers irrigation water to Wood River Ranch land east of the Big Wood River
 with surface water rights. We also have irrigation rights delivered out of the Graff 62 Ditch on
 the west side of the River below the Bypass Canal.

4. The Bypass Extension and Baseline Bypass run through our property. The Bypass Extension delivers some water to the SunValley Ranch. The Baseline Bypass also returns water to the Big Wood River for delivery to the Graff 62 and to SunValley Ranch's Blacks 61 delivery. The Bypass Extension does not have sufficient capacity to deliver all of the rights claimed by SunValley Ranch to its property. I expressed concern to Mr. Kirk, both in person and by letter, of the impact to Wood River Ranch property from delivering all the water to SunValley Ranch through the Bypass Extension. Mr. Kirk said he would evaluate those concerns and get back to me. As of this time, I have not received an explanation of how SunValley Ranch could prevent impacts to our property if it diverts all of the water to SunValley Ranch through the Bypass Extension.

5. I have also expressed my concern to Mr. Kirk over the inability to deliver water to the Graff 62 Ditch if increasing amounts of water are delivered to the SunValley Ranch through the Bypass Extension. Again, I have received no explanation from SunValley Ranch as to how that Graff delivery point would be protected if all of SunValley Ranch's water was delivered to the Bypass Extension.

6. Wood River Ranch's sole purpose in raising these objections is to ensure that its water rights are protected and not injured by the change in point of diversion and not injured by the demand by SunValley Ranch that the Department of Water Resources deliver water to the SunValley Ranch exclusively through the Bypass Extension. The first time I ever heard that SunValley Ranch was interested in diverting all of its water through the Bypass Extension and not through its other points of division below the Wood River Ranch was this water year (2009) when our ranch manager reported to me on a meeting that he had attended with Brockway

CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 28th day of July, 2009, I caused to be served a true and correct copy of the foregoing **AFFIDAVIT OF SHARON LEE** by the method indicated below, and addressed to each of the following:

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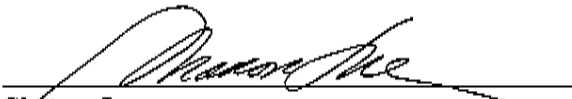
Craig Hobdey
Hobdey & Hobdey
P. O. Box 176
Gooding, ID 83330

Albert P. Barker

when our ranch manager reported to me on a meeting that he had attended with Brockway Engineering representing SunValley Ranch and the Department of Water Resources, in March of 2009, where Brockway was seeking expansion of the capacity of the Bypass Extension.

7. It is my understanding through my conversations with George Kirk that it is SunValley Ranch's intention to ask all of its water be delivered through the Bypass Canal and Bypass Extension. Mr. Kirk agreed to provide me with an explanation of whether he would be willing to modify this delivery request but that he could not make a decision before the hearing on SunValley Ranch's motion to set the pending objections for trial. He suggested that we file a late objection if that is what we felt we needed to do to protect Wood River Ranch.

Dated this 28th day of July, 2009.


Sharon Lee

SUBSCRIBED AND SWORN before me this 28 day of July, 2009




Notary Public for Idaho
Residing at Boise Idaho
My commission expires June 1, 2012

CERTIFICATE OF SERVICE

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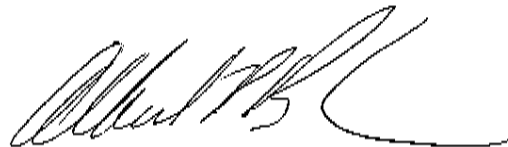
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Hobdey & Hobdey
P. O. Box 176
Gooding, ID 83330



Albert P. Barker