

RECEIVED

OCT 29 2009

DEPARTMENT OF
WATER RESOURCES

Troost Family Living Trust

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

**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 No. 63-33146

**MOTION TO FILE LATE
OBJECTION**

MOTION

The Troost Family Living Trust, by and through its counsel of record, Dana Hofstetter of Hofstetter Law Office, LLC, hereby moves, pursuant to I.R.C.P. Rule 55(c) and SRBA Administrative Order 1 Section 17(c), for leave to file a late Objection to Water Right No. 63-33146. This Motion is supported by the Memorandum below, the proposed Objection attached hereto as Exhibit A, and the record.

MEMORANDUM

The Troost Family Living Trust filed a Transfer Application for Water Right No. 63-33146 on or about June 4, 2009 with the Idaho Department of Water Resources ("IDWR"). This Transfer Application was consistent with a Release and Settlement Agreement filed in this Subcase on or about May 8, 2009. As a result of approval of this Transfer Application, IDWR filed an NCAP in this matter on or about September 25, 2009. This Motion to File Late Objection was necessitated by Administrative Order 1, Section 17(c) and the need to correct certain aspects of the Amended Director's Report/NCAP.

GOOD CAUSE EXISTS TO GRANT LEAVE TO FILE A LATE OBJECTION

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). 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 some excuse for a failure to answer and that a meritorious defense exists, as the policy of deciding cases on the merits should be recognized. *Id.* Further SRBA Administrative Order 1, Section 17(c)

provides for the filing of Motions to File Late Objections in instances such as these where an NCAP has been issued: "Any party wishing to file an objection to an Amended Director's Report [NCAP] may do so by filing a *Motion to File a Late Objection* within 21 days following the notice of filing the Amended Director's Report [NCAP] in the Docket Sheet."

This Motion is consistent with these authorities. This Motion to File Late Objection became necessitated by IDWR's issuance of the NCAP in this matter. This Motion complies with the time frame provided in Administrative Order 1, Section 17(c) for such motions. Further, IDWR records evidence the meritorious claim.

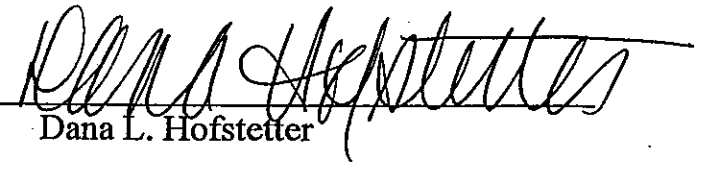
CONCLUSION

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

RESPECTFULLY SUBMITTED this 28th day of October, 2009.

HOFSTETTER LAW OFFICE, LLC

By


Dana L. Hofstetter

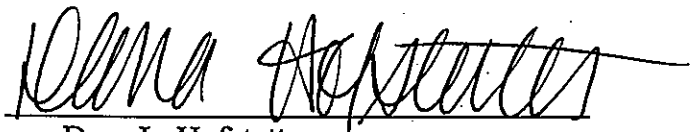
CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, 2009, I caused to be served copies of the foregoing **Motion to File Late Objection** 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


Dana L. Hofstetter

4096.1/8830

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 63-33146

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Troost Family Living Trust

Address: 30540 Sabin Road

Parma, Idaho 83660

Daytime Phone: (208) 722-7325

Name & Address of Attorney, if any:

Dana Hofstetter, ISB #3867

Hofstetter Law Office, LLC

608 West Franklin Street

Boise, Idaho 83702

(208)-424-7800

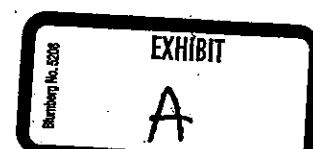
C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Troost Family Living Trust

Greg Troost

Address: 30540 Sabin Road

Parma, Idaho 83660



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: Troost Family Living Trust, of which Greg Troost is a Trustee
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: Remark should not reference lands above.
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
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. ☒ **Other Provisions**
Should be: Remark regarding transfer should be deleted.
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):** Greg Troost is a Trustee of the Trust. There are no lands described above the quantity remark. Transfer condition should be moved to explanatory material.

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

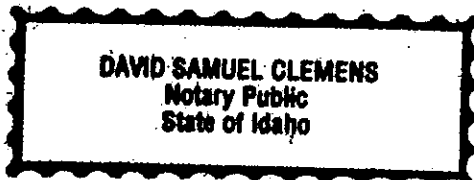
Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

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: October 28, 2009



David Samuel Clemens
Notary Public for the State of Idaho
Residing at: BOISE, ID
My Commission expires: 7/15/2014

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 October 28, 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: Troost Family Living Trust

Address: 30540 Sabin Road
Parma, ID 83660

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
Environment and Natural Resources Division
550 West Fort Street, MCS 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf