

RECEIVED

DEC 02 2009

DEPARTMENT OF
WATER RESOURCES

Attorneys for Tree Top Ranches, L.P.

Scott L. Campbell, ISB No. 2251
Andrew J. Waldera, ISB No. 6608
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 S. Capitol Blvd., 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
22567.0000

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 No. 63-00178C

**RESPONSE TO MOTION TO
SUBSTITUTE/JOIN PARTIES**

COMES NOW Larry and Marianne Williams d/b/a Tree Top Ranches, L.P.
("Tree Top"), by and through undersigned counsel of record and pursuant to Idaho Rule of Civil
Procedure 7(b)(3)(E), and hereby submits this memorandum in response to the Motion to
Substitute/Join Parties ("Motion") filed by the Estate of Tina Iest, The Tina Iest LLLP, The
Hauck Family Revocable Trust and Greg Obendorf, dated November 6, 2009.

I. INTRODUCTION

The pending Motion seeks to substitute both the Estate of Tina Iest and The Tina Iest Family LLLP as parties in the place of Tina Iest and The Tina Iest Family Limited Partnership. Tree Top does not object to the requested substitution of these parties. However, Tree Top is submitting this memorandum to clarify what it views as inaccuracies contained within the Factual Background section of the Motion.

II. DISCUSSION

In short, Tree Top disagrees with the Motion's statement that *it* proposed the dissolution of the Andrews Ditch Company, and the subsequent division of the company's water right holdings between Tree Top and Tina Iest. Motion at 1. Instead, the decision to "dissolve" the Andrews Ditch Company was a collective decision between the Idaho Department of Water Resources ("Department"), Dave Tidwell (a representative of Tina Iest), and Tree Top. In fact, investigation into the existence and operation of the Andrews Ditch Company demonstrated that there was no legal entity to dissolve.

On June 6, 2006, representatives of Tree Top and Tina Iest met with representatives of the Idaho Department of Water Resources to discuss the legal and operational status of the Andrews Ditch Company. *See* Affidavit of Scott Campbell ("Campbell Aff."), dated March 13, 2009, at ¶ 2.¹ As early as February 28, 2006, the Department was questioning the existence of the Andrews Ditch Company in light of conversations between it and Iest

¹ The Campbell Affidavit is already on file with the Court, and was filed in connection with Tree Top's responses in opposition to the various motions filed by Obendorf, the Iest Family, and the Hauck Family Trust on February 27, 2009, in Subcase no. 63-00127B, among others. For purposes of this memorandum, Tree Top requests that the Court take judicial notice of the Campbell Affidavit on file in Subcase no. 63-00127B pursuant to Idaho Rule of Evidence 201(d).

Family representative Dave Tidwell. *See* Affidavit of Andrew J. Waldera (“Waldera Aff.”), dated November 30, 2009, at ¶ 1 and Ex. A.² During the June 6, 2006 meeting, the parties (Tree Top, the Iest Family, and the Department) *collectively* determined that the Andrews Ditch Company was not, and never had been, a valid legal entity. Campbell Aff. at ¶ 2. As a result, the parties agreed that each would pursue their own, separate shares of the Andrews Ditch Company water rights through the SRBA for purposes of Department recommendation, and that the Department would recommend that the Andrews Ditch Company splits (the “A” splits of the water rights) be disallowed. *Id.*

In sum, the so-called dissolution of the Andrews Ditch Company, and the subsequent division of the company’s water rights, was not unilaterally proposed or pursued by Tree Top. If anything, the discussion of the existence and operation of the Andrews Ditch Company from the Department’s standpoint was triggered by Department discussions with Iest Family representative Dave Tidwell who stated that the only remaining users of the Andrews Ditch were Tina Iest and Tree Top. These discussions occurred over three months before Tree Top’s participation in the June 6, 2006 meeting that resulted in the “dissolution” of the company, and the subsequent division of the company’s water rights.

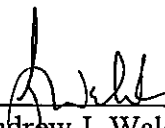
² The Waldera Affidavit is already on file with the Court, and was filed in connection with Tree Top’s Motion For Leave to File Late Objections in Subcase nos. 63-03201 and 63-09744, dated November 30, 2009. For purposes of this memorandum, Tree Top requests that the Court take judicial notice of the Waldera Affidavit on file in Subcase no. 63-03201 pursuant to Idaho Rule of Evidence 201(d).

**III.
CONCLUSION**

Again, Tree Top does not object to the substance of the pending Motion (the substitution of parties). Instead, Tree Top submits this responsive memorandum to correct what it views as factual inaccuracies contained within the Motion.

DATED this 1st day of December, 2009.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By 
Andrew J. Waldera – Of the Firm
Attorneys for Tree Top Ranches, L.P.

CERTIFICATE OF SERVICE

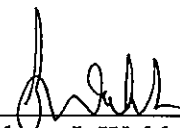
I HEREBY CERTIFY that on this 1st day of December, 2009, I caused a true and correct copy of the foregoing **RESPONSE TO MOTION TO SUBSTITUTE/JOIN PARTIES** to be served by the method indicated below, and addressed to the following:

Dana L. Hofstetter
HOFSTETTER LAW OFFICE, LLC
608 W. Franklin St.
Boise, ID 83702-5509

(X) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile

Director
IDAHO DEPARTMENT OF WATER RESOURCES
322 E. Front Street, 6th Floor
P.O. Box 83720
Boise, ID 83720

(X) U.S. Mail, Postage Prepaid
() Hand Delivered
() Overnight Mail
() Facsimile


Andrew J. Waldera