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DEPARTMENT OF
WATER RESOURCES

Attorneys for Tree Top Ranches, L.P.

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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 No. 39576

Subcase Nos. 63-00178C

**TREE TOP'S MOTION AND MEMORANDUM
IN SUPPORT OF MOTION TO FILE LATE
OBJECTION**

MOTION

COMES NOW, Larry and Marianne Williams d/b/a Tree Top Ranches, L.P.

("Tree Top"), by and through its undersigned counsel of record and pursuant to Idaho Rules of Civil Procedure 7 and 55(c), and Administrative Order 1 ("AO1") Sections 4 and 10, and hereby files this Motion to File Late Objection to water right no. 63-00178C; a water right claimed by, and recommended to, Tina Iest ("Iest"). This motion is supported by the Affidavit of Scott L. Campbell (filed with the Court previously on March 13, 2009) and the Affidavit of Andrew J.

Waldera filed contemporaneously herewith. Further, Tree Top requests an expedited hearing on this Motion pursuant to AO1 Section 6(f)(2), and has accordingly sent a copy of this motion and its supporting documents to all parties listed in the Court's current *Certificate of Mailing for Expedited Hearings*.

MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

This matter involves the convoluted history of what was once locally known as the Andrews Ditch Company. It is questionable whether the "company" ever existed as a formal legal entity. In reality, it appears that the "company" was nothing more than a loosely organized group of water users who collectively diverted water from the Boise River into a conveyance facility known as the Andrews Ditch.

On or about February 5, 2009, the Estate of Tina Iest, the Tina Iest Family L.L.L.P., the Hauck Family Revocable Trust, and Greg Obendorf filed a joint motion seeking leave of the Court to file a late objection in each of subcase nos. 63-00127A, 63-00128A, 63-00129A, 63-00130A, 63-00131A, and 63-00178C. Water right nos. 63-00127A, 63-00128A, 63-00129A, 63-00130A, and 63-00131A (hereinafter the "Andrews Ditch Company rights") were originally claimed by the Andrews Ditch Company. Water right no. 63-00178C was claimed by Tina Iest. On or about February 27, 2009, the Estate of Tina Iest, the Tina Iest Family L.L.L.P., and the Hauck Family Revocable Trust filed a motion seeking leave of the Court to file a late objection in each of subcase nos. 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B, 63-00178B, and 63-00178C. Water right nos. 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B, and 63-00178B (hereinafter the "Tree Top Rights") are

owned by Tree Top.¹ Also on February 27, 2009, Obendorf filed a motion seeking leave of the Court to amend their already pending objections to the Tree Top Rights. On or about April 20, 2009, Tree Top filed Standard Form 2 Responses to all of the objections ultimately filed in the “A” and “C” subcases. The foregoing water rights were all recommended in the Director’s Report for Basin 63, Part 3, and each of the water rights traces its roots to the *Stewart Decree*.

II. BACKGROUND

Tree Top owns and claims 285 irrigated acres in Sections 22 and 27 of Township 5N, Range 5W. Obendorf, the Iest Family, and the Hauck Family Trust own adjoining acreage in Sections 22, 23, 26, and 27 of Township 5N, Range 5W. In June of 2006, Tree Top and a representative of the Iest Family met with the Idaho Department of Water Resources (the “Department”) to discuss the legal/operational status of the Andrews Ditch Company, and to discuss the water rights claimed thereby. *See* Affidavit of Scott L. Campbell (“Campbell Aff.”), dated March 13, 2009, at ¶ 2.² It was determined and agreed upon by Tree Top, the Iest Family, and the Department that the Andrews Ditch Company was not at that time, or at any time previously, a valid legal entity. *Id.*; *see also*, Affidavit of Andrew J. Waldera (“Waldera Aff.”) filed contemporaneously herewith at Ex. A. Consequently, the parties (Tree

¹ For reasons discussed below, the Tree Top Rights are proportionate shares of the previously disallowed Andrews Ditch Company rights based upon Tree Top’s land ownership patterns within the underlying Place of Use.

² The Campbell Affidavit is already on file with the Court and was filed in connection with Tree Top’s responses in opposition to the Obendorf, Iest Family, and Hauck Family Trust motions filed on February 27, 2009. Consequently, Iest is already in possession of Campbell Affidavit. For purposes of this motion, Tree Top requests that the Court take judicial notice of the Campbell Affidavit on file in Subcase no. 63-00127B, among others, pursuant to Idaho Rule of Evidence 201(d).

Top and the Iest Family) agreed that each would pursue its own separate claims in the SRBA, seeking proportionate shares of the water originally claimed in the name of the Andrews Ditch Company, of which Tree Top and the Iest Family were the underlying “corporate” principals. Campbell Aff. at ¶ 2.

On December 19, 2006, the Department recommended disallowance of the Andrews Ditch Company rights (the “A” split rights). Those former Andrews Ditch Company rights were subsequently and proportionately recommended to Tree Top (the “B” splits) and to Tina Iest (the “C” split). On June 19, 2007, Obendorf timely objected to the Quantity element of the Tree Top Rights as recommended in the December 2006 Director’s Report. On June 19, 2007, Tree Top also timely objected to the Tree Top recommendations as to Purpose of Use, Period of Year, and Place of Use. On August 20, 2007, Obendorf responded to Tree Top’s objections as to the same, although Obendorf had not originally objected to those elements. In addition, the Boise Project Board of Control and the United States Bureau of Reclamation responded to Tree Top’s objections to Purpose of Use and Period of Year.

With the exception of Obendorf, the then parties (Tree Top, the Boise Project Board of Control, and the United States Bureau of Reclamation) engaged in negotiations to settle Tree Top’s objection to the Purpose of Use and Period of Year elements as recommended in the Director’s Reports. The negotiations resulted in a Joint Motion for Approval of Season of Use, filed December 16, 2008, on behalf of Tree Top, the Boise Project Board of Control, and the United States Bureau of Reclamation. Said motion sought approval of a duly negotiated season of use remark under the Purpose of Use and Period of Use element for each of the Tree Top Rights. Unfortunately, Obendorf declined to participate in the negotiations and the subsequent Joint Motion. Campbell Aff. at ¶ 3. Consequently, on December 3, 2008, the Court issued a

scheduling order, setting a trial for June 11 and 12, 2009, regarding the Tree Top Rights given Obendorf's unwillingness to resolve the Purpose of Use and Period of Use objections.

On February 5, 2009, Obendorf, the Iest Family, and the Hauck Family Trust filed a Motion to File Late Objections to the Andrews Ditch Company rights (again, the "A" splits) and the Iest right (63-00178C), despite the fact that Tree Top, the Iest Family, and the Department previously agreed that the Andrews Ditch Company was a legal fiction. Obendorf, the Iest Family, and the Hauck Family Trust objected to each element of the recommendations of the "A" splits, stating that the former Andrews Ditch Company rights should also have been partly recommended in the name of Obendorf, and that the Department should have included the Obendorf property as a recognized Place of Use for that water. Obendorf, the Iest Family, and the Hauck Family Trust also alleged that the Iest right (the "C" split) should have been partly recommended in the name of the Hauck Family Trust, and that it should have included the Hauck Family Trust property as a recognized Place of Use for that water. Stated differently, Obendorf and the Hauck Family Trust believe that they should have received proportionate shares of the former Andrews Ditch Company rights in the same manner that Tree Top and Tina Iest received them. However, neither Obendorf nor the Hauck Family Trust timely claimed the proportionate shares of the former Andrews Ditch Company rights to which they believe they are entitled. As discussed above, and for its part, Tree Top timely filed Standard Form 2 Responses to each of the objections filed in the "A" and "C" split subcases on or about April 20, 2009.

On February 27, 2009, Obendorf, the Iest Family, and the Hauck Family Trust filed another Motion to File Late Objections to the Tree Top Rights and again to the existing Iest right. Obendorf also filed a Motion to Amend Objections to the Tree Top Rights. Both of these motions were brought on the same grounds, alleging: (1) that the Tree Top Rights should also

have been recommended in the name of Obendorf as claimed, and that the recommendations should have included the Obendorf property within the Place of Use; (2) that water right number 63-00178B should also have been recommended in the names of each of Tree Top, Obendorf, Iest Family, and Hauck Family Trust as claimed, and that that recommendation should have included each of their respective properties within the Place of Use; and (3) that the Iest right should have been recommended in the name of Obendorf and that the recommendation should have included the Obendorf property within the recommended Place of Use.

Obendorf, the Iest Family, and the Hauck Family Trust supported their February 2009 motions by arguing that recent investigation of the 1906 *Stewart* Decree uncovered “questions about the history of the Andrews Ditch Company.” *See, e.g.*, Motion to File Late Objections (“Motion”), filed February 27, 2009, in Subcase no. 63-00127B, at 3. Obendorf, the Iest Family, and the Hauck Family Trust contended that “[p]erhaps, it was incorrect to assume that there were only 2 remaining members of the Andrews Ditch Company [and] [p]erhaps, the water rights should have been apportioned among other water users also.” *Id.*

Tree Top, Obendorf, the Iest Family, and the Hauck Family Trust all agree that the water rights at issue in this matter stem from the *Stewart* Decree. In short, Tree Top is concerned with the quantity of Iest recommendation (63-00178C). At present, water right 63-00178C recommends a quantity of 7.33 cfs for the irrigation of 225.1 acres. *See* Waldera Aff. at Ex. B. This quantity equals 1.63 inches per acre.³ This is particularly

³ Though it is difficult to tell what ultimate quantity of water Iest seeks per acre, Iest has objected to the quantity element of the recommendation, among others, and seeks the quantity of water that was originally claimed. *See* Waldera Aff. at Ex. C. The original claim for water right no. 63-00178 sought 8.5 cfs, which would yield upwards of 1.9 inches per acre. *See* Waldera Aff. at Ex. D. However, the “revised” claim filed on August 1, 2006 (after the June 2006

disconcerting given Obendorf's and Iest's objections seeking to reapportion and restrict Tree Top's *Stewart* Decree-based water rights on the basis of "no more than one miner's inch [or 0.02 cfs] per acre" because the present recommendations "exceed [] the statutory standard." *See, e.g.,* Waldera Aff. at Ex. E. While Tree Top has filed a Standard Form 2 Response in subcase no. 63-00178C, Tree Top seeks to file a formal objection in order to properly preserve and pursue its quantity concerns. Subcase no. 63-00178C remains unresolved at this time, and it is set for the same trial as the Tree Top and Andrews Ditch Company subcases. Waldera Aff. at ¶ 7.

The filings of Obendorf, the Iest Family, the Hauck Family Trust, and the Department spanning from February 2009 to date, required Tree Top to reexamine the *Stewart* Decree and the land ownership patterns in Sections 22, 23, 26, and 27. Waldera Aff. at ¶ 8. Tree Top had no reason to do so previously because the Department had simply apportioned the former Andrews Ditch Company water rights according to the intentions of the parties (Tree Top, Iest, and the Department) in 2006. *Id., see also,* Campbell Aff. at ¶ 2.

As the Court is aware, Tree Top, Obendorf, the Iest Family, and the Hauck Family Trust are all endeavoring to sort out the ownership of the former Andrews Ditch Company water rights. Each of the water rights (including the "A," "B," and "C" splits) are currently set for trial commencing March 29, 2010. Part and parcel of sorting these water rights out is the uniform consideration and treatment of each of the *Stewart* Decree-based rights. Area Hubble analyses demonstrate that the duty of water on lands lying under or in the vicinity of the Andrews Ditch exceeds the general standard of one miner's inch per acre, and the efficient, joint

meeting at the Department), sought 7.33 cfs for the irrigation of 225.1 acres—the quantity and acreage ultimately recommended. *Id.* Thus, Iest's "as claimed" quantity objection is confusing because the Department's quantity and acreage recommendation matches the August 2006 claim.

administration of the Andrews Ditch requires the collective evaluation of all water rights delivered by the ditch. Consequently, Tree Top files this motion in an effort to ensure the uniform consideration and treatment of all of the Andrews Ditch *Stewart* Decree-based water rights at issue, including Iest right no. 63-00178C.

III. ARGUMENT

A. The Legal Standard For Filing A Late Objection Is Lenient

In light of the facts and circumstances in this case, Tree Top seeks an order from the Court granting it leave to file late objection to water right no. 63-00178C. In his *Order on Motion to Set Aside Partial Decrees and File Late Objections*, Subcase Nos. 65-07267, *et al.* (Jan. 31, 2001) (“*A.L. Cattle*”), Presiding Judge Burdick succinctly explained the standard governing motions to file late objections as follows:

In subcases for which partial decrees have not been entered, the legal standard for filing a late objection to a water right claim in the SRBA has been historically determined pursuant to the standard set forth in *AOI* for filing late claims since *AOI* does not expressly provide a standard for reviewing late objections. A motion to file a late claim is determined pursuant to I.R.C.P. 55(c), which provides the standard for setting aside the entry of a default. *See AOI* § 4d(2)(d) (late claims reviewed under I.R.C.P. 55(c) criteria) and (k) (leave to amend a notice of claim shall be freely given when justice so requires). In determining whether to set aside the entry of a default under I.R.C.P. 55(c), Idaho Courts apply a “good cause” for untimeliness standard. I.R.C.P. 55(c). The “good cause” standard is a more lenient threshold than the Rule 60(b) standard. *McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d, 274 (1993). The I.R.C.P. 55(c) standard takes into account the following factors:

- (1) whether the default was willful;
- (2) whether setting side the judgment would prejudice the opponent; and

(3) as with a Rule 60(b) motion, whether a meritorious position has been presented.

A.L. Cattle at 6-7.

Importantly, this Court has significant discretion to grant a motion to file a late objection, and its decision will not be reversed on appeal unless an abuse of discretion clearly appears. *Memorandum Decision and Order on Challenge*, Subcase Nos. 47-16433, *et al.*, at 9 (J. Melanson, Mar. 22, 2005) (“*Bedke I*”). Moreover, in doubtful cases, relief should be granted to reach a judgment on the merits. *Bedke I* at 10. This is because default judgments are disfavored. *A.L. Cattle* at 8.

B. Tree Top’s Motion Should be Granted

1. The Delay Is Not Willful

Tree Top’s submission of its objection after the deadline is not “willful,” as the term is defined by this Court. This Court has stated that “willful” means “intentional, knowing, or voluntary.” *Bedke I* at 12. In addition, “willful” requires a higher degree of culpability than mere negligence or carelessness. *Id.* In order to find that any delay on behalf of Tree Top was “willful,” this Court must find that Tree Top had prior reason to investigate and review the elements of Iest’s water rights, that Tree Top has been aware of the grounds for objecting to Iest’s water rights, and that Tree Top has purposefully failed to act. In this case, the Affidavit of Andrew J. Waldera clearly shows that Tree Top’s delay in objecting to the recommendations of water right no. 63-00178C was not willful.

As discussed in Section II, *supra*, Tree Top had no reason to undertake such a detailed investigation of the *Stewart* Decree and other water rights appurtenant to neighboring *Stewart* Decree lands until recently. Waldera Aff. at ¶ 8. As of June 2006, Tree Top and Iest (at least at the time), with the aid of the Department, thought all was resolved, and each claimed

their share of the former Andrews Ditch Company water. Subsequently, the Department recommended those water rights accordingly. The recent filings of Obendorf, the Iest Family, and the Hauck Family Trust have required all involved to reevaluate this matter. As such, Tree Top's delay in filing these objections was not willful. Instead, Tree Top's investigation and this motion are the result of recent events, spanning from February 2009 to date.

2. Allowing Tree Top's Late Objection Would Not Prejudice Iest

Allowing Tree Top to file its late objections would not prejudice Iest or any other third parties. Subcase 63-00178C is already jointly set for trial with each of the other Andrews Ditch subcases (the "A," "B," and/or "C" splits of water right nos. 63-00127, 63-00128, 63-00129, 63-00130, 63-00131, and 63-00178). Waldera Aff. at ¶ 7. Tree Top is already a party to subcase no. 63-00178C, but believes that proper procedure requires that it file an objection as opposed to relying upon a Standard Form 2 Response. *Id.* Like the other Andrews Ditch subcases, subcase no. 63-00178 remains unresolved (*i.e.*, the filing of a late objection would not unwind any preexisting settlement of the right). *Id.* Additionally, subcase 63-00178C was also subject to the late objections of the Estate of Tina Iest, the Tina Iest Family, L.L.L.P., the Hauck Family Revocable Trust, and Greg Obendorf. *Id.* It is in everyone's best interests to have the Andrews Ditch water rights evaluated as a cohesive group. Moreover, by objecting to Tree Top's water rights on grounds including quantity and the appropriate duty of water, Iest has subjected her own Andrews Ditch water right (63-00178C) to the same level of scrutiny, and equal treatment.

Due to the nascent posture of Subcase no. 63-00178C, granting Tree Top's proposed late objection will not amount to the prejudicial relitigation of the right. *See, e.g., Order Granting Motions to File Late Objections in Subcases 51-11921, 51-11925,*

and 51-11936, Subcase Nos. 51-11891, *et al.*, at 13 (Mar. 13, 2002). Further, this Court has held that some prejudice alone is not a sufficient basis to deny a late objection. *Bedke I* at 13-14. As such, it is unlikely that Iest would suffer any material prejudice as a result of allowing Tree Top's late objection.

3. Tree Top's Proposed Objection Presents Meritorious Positions

The grounds supporting Tree Top's objections are meritorious legal positions under Idaho water law. The "meritorious position" standard simply requires that the late objector allege sufficient facts that, if established, would allow that objector to prevail. *See A.L. Cattle* at 6. At a minimum, Tree Top objects to water right no. 63-00178C on quantity and duty of water grounds. As discussed in Section II, *supra*, the current Iest *Stewart* Decree-based recommendation yields up to 1.63 inches of water for irrigation purposes and Iest appears to be seeking a greater quantity than that by way of a pending objection. *See Waldera Aff.* at Exs. B, C, and D. These quantities stand in stark contrast to what Iest and Obendorf contend is the appropriate duty of water for the locale (0.02 cfs or one miner's inch per acre). *See, e.g., Waldera Aff.* at Ex. E.

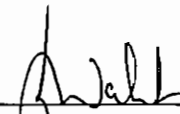
Tree Top's proposed quantity objection represents a valid concern that must be considered in order to properly adjudicate the Andrews Ditch water rights. Based upon the valid objection set forth by Tree Top, and the supporting facts outlined in its proposed objection, Tree Top has presented meritorious positions for objecting to the above-referenced water right because such facts, if proven, would require the revision or sufficient conditioning of the Iest Andrews Ditch water right (63-00178C).

**IV.
CONCLUSION**

For the foregoing, Tree Top respectfully requests that the Court grant it leave to file the proposed late objection attached hereto as Exhibit A. The delay in filing said objection was not willful, the filing will not prejudice Iest or other third parties, and the objection presents a meritorious position.

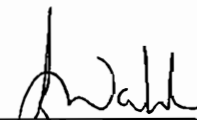
DATED this 18th day of December, 2009.

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 18th day of December, 2009, I caused a true and correct copy of the foregoing **MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO FILE LATE OBJECTION** to be served by U.S. Mail, First-Class, and addressed to the parties listed on the SRBA Mailing List.


Andrew J. Waldera

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)
_____)

A. Subcase 63-00178C

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Tree Top Ranches L.P.

Address: P.O. Box 8126

Boise, ID 83707

Daytime Phone: (208) 377-0998

Name & Address of Attorney, if any:

Scott L. Campbell / Andrew J. Waldera

Moffatt Thomas Barrett Rock & Fields

P.O. Box 829, Boise, ID 83701-0829

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

Name: Tina Iest c/o Helen Tidwell

Address: 5700 S. Linder Road

Meridian, ID 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: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity** limited to no more than 0.02 cfs per acre for irrigation; or the
Should be: irrigation duty of water proven for the locale. _____
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. ☐ **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 OBJECTIONS(S):** At present, water right
no. 63-00178C provides 7.33 cfs for the irrigation of 225.1 acres. This yields 1.63
inches (or 0.03256 cfs) of water for irrigation purposes.

F.

VERIFICATION (must be completed)

State of Idaho)
)ss.
County of Ada)

Andrew J. Waldera, 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.

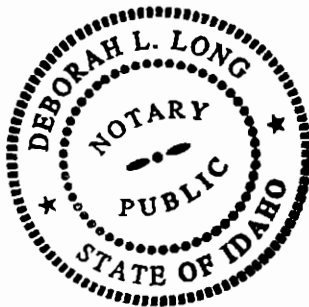
(Signature of person filing objection)

[Signature]

(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

December 18, 2009



[Signature]
Notary Public for Idaho

Residing at: Boise, ID

My Commission Expires: 10/10/2013

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 December 18th, 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
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: Tina Iest c/o Helen Tidwell

Address: 5700 S. Linder Road
Meridian, ID 83642

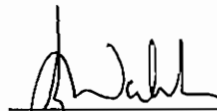
3. Copies to:

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

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

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

SRBA Expedited Mailing List



Signature of objector or attorney
mailing on Objector's behalf

DEC 21 2009

DEPARTMENT OF
WATER RESOURCES

Attorneys for Tree Top Ranches, L.P.

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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 No. 39576

Subcase Nos. 63-00178C

**AFFIDAVIT OF ANDREW J. WALDERA IN
SUPPORT OF TREE TOP'S MOTION AND
MEMORANDUM IN SUPPORT OF MOTION
TO FILE LATE OBJECTION**

STATE OF IDAHO)
) ss.
County of Ada)

Andrew J. Waldera, having been duly sworn upon oath, deposes and states as follows:

1. I am one of the attorneys providing legal services to Tree Top Ranches, L.P. ("Tree Top"), in the above-captioned matter. I have knowledge of the files in this matter, and I make this affidavit based upon personal knowledge.

**AFFIDAVIT OF ANDREW J. WALDERA IN SUPPORT OF TREE TOP'S MOTION
AND MEMORANDUM IN SUPPORT OF MOTION TO FILE LATE OBJECTION - 1**

Client:1457686.1

2. Attached hereto as Exhibit A is a true and correct e-mail from Idaho Department of Water Resources ("IDWR") GIS mapping specialist Danielle Bruno-Favreau to IDWR personnel David Tuthill and Jan Shurte, dated February 28, 2006. The e-mail is from the IDWR adjudication backfile for water right no. 63-00127B.

3. Attached hereto as Exhibit B is a true and correct copy of the current Director's Report Recommendation of water right no. 63-00178C.

4. Attached hereto as Exhibit C is a true and correct copy of the joint objection to water right no. 63-00178C filed by the Estate of Tina Iest and the Iest Family, L.L.L.P.

5. Attached hereto as Exhibit D are true and correct copies of the March 1990 and subsequent August 2006 Notices of Claim to Water Right for water right no. 63-00178 filed by, or on behalf of, Tina Iest.

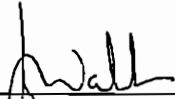
6. Attached hereto as Exhibit E is a true and correct copy of Standard Form 1 Objection against Tree Top's water right no. 63-00127B, filed jointly by the Estate of Tina Iest and The Tina Iest Family, L.L.L.P.

7. Subcase no. 63-00178C remains unresolved at this time; the subcase is set for the same trial setting as that of the Andrews Ditch Company and Tree Top subcases; Tree Top is already a party in subcase no. 63-00178C; and subcase no. 63-00178C was recently subject to the late objection filings of the Estate of Tina Iest, the Tina Iest Family, L.L.L.P., the Hauck Family Revocable Trust, and Greg Obendorf.

8. The recent SRBA filings of Obendorf, the Iest Family, the Hauck Family Trust, and the IDWR, spanning from February 2009 to date, required Tree Top to reexamine the *Stewart* Decree and the land ownership patterns in Sections 22, 23, 26, and 27. Tree Top had no

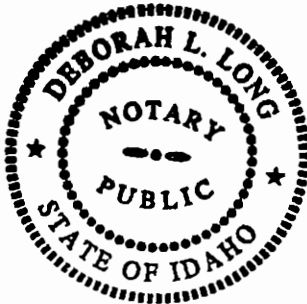
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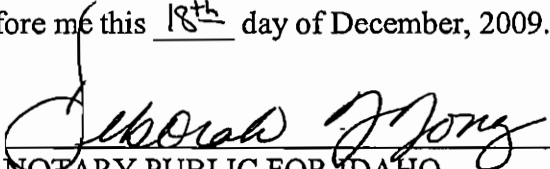
Further your affiant sayeth naught.



Andrew J. Waldera

SUBSCRIBED AND SWORN to before me this 18th day of December, 2009.

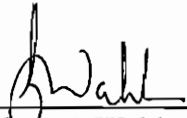




NOTARY PUBLIC FOR IDAHO
Residing at Bose, Idaho
My Commission Expires 10/10/2013

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of December, 2009, I caused a true and correct copy of the foregoing **AFFIDAVIT OF ANDREW J. WALDERA IN SUPPORT OF TREE TOP'S MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO FILE LATE OBJECTION** to be served by U.S. Mail, First-Class, and addressed to the parties listed on the SRBA Mailing List.



Andrew J. Waldera

2-28-06

Favreau, Danielle

To: Tuthill, Dave; Shurte, Jan
Subject: Andrews Ditch Co.

Hello,

I just spoke to Dave Tidwell today. (He was on vacation.) He said that there are only 2 users on the Andrews Ditch:
The East Family Partnership - Tina East
Treetop Farms - Larry Williams

Dave has just been taking care of things for the Andrews Ditch because he attended many of the meetings.

Dave would like to know the cfs that goes to each person on the ditch as they need to do some improvements.

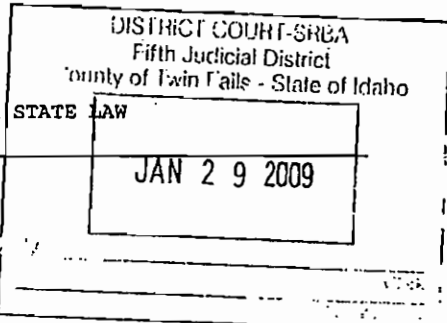
Well, it looks as if these are individual claims, not a true ditch company.

What is the next step?

Danielle

Danielle Bruno-Favreau
GIS Specialist
Idaho Water Resource Research Institute
Idaho Department of Water Resources
322 East Front St.
PO Box 83720
Boise, ID 83720-0098
Phone: (208) 287-4938
Fax: (208) 287-6701

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER



RIGHT NUMBER: 63-178C
NAME AND ADDRESS: TINA IEST
C/O HELEN C TIDWELL
5700 S LINDER RD
MERIDIAN ID 83642
C/O DAVID TIDWELL
5700 S LINDER RD
MERIDIAN ID 83642

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER
QUANTITY: 7.330 CFS

Whenever it becomes necessary for the watermaster to deliver this right the following condition shall apply. This right shall receive 100 percent of its decreed quantity until the natural flow of the waters of the Boise River shall decrease so that all rights containing this condition cannot receive 100 percent of their decreed quantities, at which time this right and the other rights containing this condition shall first be cut to 75 percent of their decreed quantities, as the natural flow of the river decreases, beginning with the latest rights containing this condition and proceeding to the earliest rights containing this condition in the order of their priority dates, and after all of the rights containing this condition shall have been reduced to 75 percent of their decreed quantities, should the natural flow of the waters of the river decrease below the amount necessary to supply 75 percent of those decreed quantities, then this right and the other rights containing this condition, beginning with the latest and proceeding to the earliest, shall be reduced to 60 percent of their decreed quantities.

PRIORITY DATE: 06/01/1869

POINT OF DIVERSION:

T05N R05W S25 SWSE Lot 2 Within CANYON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE	PERIOD OF USE	QUANTITY
IRRIGATION	03/01 11/15	7.330 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE¼ of the SE¼ of the SE¼, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.

PLACE OF USE:

IRRIGATION in CANYON County

T05N R05W S23	NESW	31.10	T05N R05W S23	NWSW	15.20
T05N R05W S23	SWSW	34.30	T05N R05W S23	SESW	38.20
T05N R05W S23	NWSE	12.30	T05N R05W S23	SWSE	27.20
T05N R05W S26 Lot 1	NENE	27.00	T05N R05W S26 Lot 2	NWNE	27.60
T05N R05W S26	NENW	12.20			
225.1 ACRES TOTAL					

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Decreed

This right is designated as No. 44 in the Stewart Decree and the Boise Water Distribution Report.

This right is renumbered from former right 63-178.

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

LODGED

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

DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
FEB - 5 2009
By _____ Clerk _____ Deputy Clerk

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.

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:

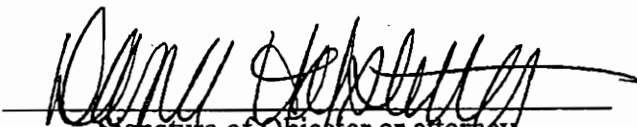
Name: Tina Iest
Address: c/o Helen Tidwell
5700 S. Linder Road
Meridian, Idaho 83642

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

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A63-00178

Date Received: 3/06/1990

Receipt No: 401132 (850)

Received By: [Signature]

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: ANDREWS DITCH CO. 208-888-3325
Address: C/O DAVID TIDWELL
5700 S. LINDER RD.
MERIDIAN, ID 83642

Name: ANDREWS DITCH CO.
Address: C/O JERRY KRAMER
RT. 1, BOX 1013
PARMA, ID 83660

2. Date of Priority: JUN 01, 1869

3. Source: BOISE RIVER Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
05N	05W	25	SW	SE		2	CANYON

5. Description of diverting works:
DIV. DAM IN RIVER, GRAVITY FLOW DITCH, FLOOD IRRIGATION.

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
IRRIGATION	03/15	11/15	8.500		

7. Total Quantity Appropriated is:
8.500 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
INSTREAM STOCKWATERING.

A63-00178

Page 1

Date: 03/14/90

Exhibit D

MICROFILMED

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
05N	05W	22	SW	NE		IRR	15.0
			SE	NW		IRR	23.0
			NE	SW		IRR	24.0
			SE	SW	2	IRR	16.0
			NE	SE		IRR	23.0
			NW	SE		IRR	35.0
			SW	SE	1	IRR	32.0
			SE	SE		IRR	28.0
			Section Acres				196.0
		23	NE	SW		IRR	35.0
			NW	SW		IRR	38.0
			SW	SW		IRR	40.0
			SE	SW		IRR	38.0
			NW	SE		IRR	14.0
			SW	SE		IRR	31.0
			Section Acres				196.0
		26	NW	NE		IRR	30.0
			SW	NE		IRR	35.0
			NE	NW		IRR	12.0
			Section Acres				77.0
		27	NW	NE		IRR	6.0
			NE	NW		IRR	7.0
			Section Acres				13.0
			Total Acres				482.0

11. Place of use in counties: CANYON

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

CLAIM NO.'S A63-00127, 00128, 00129, 00130, & 00131.

14. Remarks:

15. Basis of Claim: DECREED

Case Number:

Court :

Decree date:

A63-00178

Page

2

Date: 03/14/90

MICROFILMED

Aug 17 1992

FARMERS CO-OP DITCH CO.
Decree Plaintiff

vs

RIVERSIDE IRR. DIST.
Decree Defendant

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments:

For Organizations:

I do solemnly swear or affirm that I am Agent of
Liua Test Title
Organization, that I have signed the foregoing
document in the space below as Agent of
Liua Test Title
Organization and that the statements contained in the
foregoing document are true and correct.

David Fiderl
Signature of Authorized Agent
Agent of Liua Test
Title and Organization
March 20, 1990
Date

State of Idaho)
County of ADA) SS.

Subscribed and sworn (or affirmed) before me this 20th day
of March 19 90

Jan Shute
Notary Public

Seal

Residing at Mendocino, ID
My Commission Expires 9-14-94

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number 63-178C
Date Received: ~~6/27/2006~~ 8/1/2006
Receipt No: W011432
Received By: *ala*

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

TINA IEST Phone: (208)888-3325

C/O DAVID P TIDWELL
5700 SOUTH LINDER RD

MERIDIAN ID USA 83642

2. Date of Priority: 06/01/1869

3. Source: BOISE RIVER Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of 1/4 of 1/4 Lot	County	Type
05N	05W	25	SW SE 2	CANYON	

5. Description of diverting works:

DIV. DAM IN RIVER, GRAVITY FLOW DITCH, FLOOD IRRIGATION

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or) A.F.A
IRRIGATION	03/01	11/15	7.33	

7. Total Quantity Appropriated is:
7.33 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

Township	Range	Section	1/4 of 1/4		Lot	Use	Acres
05N	05W	23	SW	SW		IRRIGATION	34.3
			NW	SE		IRRIGATION	12.3
			SE	SW		IRRIGATION	38.2
			NW	SW		IRRIGATION	15.2
			NE	SW		IRRIGATION	31.1
			SW	SE		IRRIGATION	27.2
						Section Acres	158.3
05N	05W	26	NE	NE	1	IRRIGATION	27
			NE	NW		IRRIGATION	12.2
			NW	NE	2	IRRIGATION	27.6
						Section Acres	66.8
						Total Acres	225.1

11. Place of use in counties: CANYON

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

14. Remarks:

15. Basis of Claim: Decreed

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do do not / wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s):

Tim Sest
David P. Fairwell

Date: 7/31/06

Date: 7/31/06

State of Idaho)

County of Canyon)

SS.

Subscribed and sworn (or affirmed) before me this

of 31st July 2006

Cherice McDonough

Notary Public

Residing at

Palmer Terrace

My commission Expires

12/02/2011



1998

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 63-127B

(Insert water right number)

STANDARD FORM 1
OBJECTION

LODGED

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

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

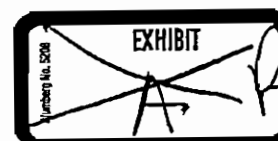
DISTRICT COURT-SRBA Fifth Judicial District County of Twin Falls - State of Idaho
FEB 27 2009
<i>[Signature]</i>

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: Tree Top Ranches LP
Address: 914 Houston Road
Boise, ID 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: also Greg and Ann Obendorf or just Andrews Ditch Company
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: no more than one miner's inch per acre
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: include Greg and Ann Obendorf's property and as claimed by Andrews Ditch Company
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):** Greg and Ann Obendorf own portions of the place of use for this water right, as decreed in the Stewart decree. The quantity of water recommended exceeds the statutory standard. No more than a proportional amount of water per acre, as decreed in the Stewart decree, should be allocated under this right.

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 27, 2009



Briana C. Belden
Notary Public for the State of Idaho
Residing at: Meridian
My Commission expires: 01-16-2013

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 27, 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:

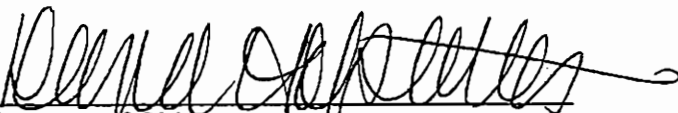
Name:	<u>Tree Top Ranches LP</u>	<u>Scott Campbell</u>
Address:	<u>914 Houston Road</u>	<u>Moffatt Thomas</u>
	<u>Boise, Idaho 83706</u>	<u>P.O. Box 829</u>
		<u>Boise, Idaho 83701-0829</u>

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



Signature of Objector or attorney
mailing on Objector's behalf