

DEPARTMENT OF  
WATER RESOURCES

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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

**AFFIDAVIT OF SCOTT N. KING IN SUPPORT  
OF TREE TOP'S MOTION TO VACATE AND  
CONTINUE TRIAL SETTING AND PRETRIAL  
DEADLINES**

follows:

1. I am a professionally licensed engineer with expertise in water resources engineering, including water right investigations, water flow measurements, and water channel analyses. Currently, I am a Supervising Engineer with SPF Water Engineering, LLC, and I was formerly employed by the Idaho Department of Water Resources. I am also one of the expert consultants retained by Tree Top Ranches, L.P. to assist it in the above-captioned subcases. Consequently, I am familiar with the nature of the above-captioned subcases, and the issues presented therein. I make this affidavit based upon my personal knowledge.

2. One of the contentions of the parties to be addressed in the above-captioned subcases is that of the local irrigation duty of water on lands irrigated by water rights conveyed in the Andrews Ditch. A comprehensive analysis of the local irrigation duty of water requires various field inspections and measurements that are more appropriately completed during the irrigation season. Among the irrigation season-based analyses that need to be completed are: (1) a conveyance loss analysis of the Andrews Ditch; and (2) a field inspection of irrigation practices and patterns to be used to evaluate and quantify field irrigation requirements as determined via "Hubble Analyses." Ditch conveyance losses need be considered when determining the appropriate quantity of these water rights, and the most accurate and credible irrigation conveyance loss analysis must be completed during the irrigation season. This is because ditch conveyance losses can vary based upon ditch water levels which, in turn, can vary from season to season, or can vary dependant upon different purposes of use.

3. Though the Andrews Ditch may currently be conveying water for wildlife purposes, the winter operational and management regime of the ditch for winter wildlife purposes is not necessarily the same as the operational and management regime found during the irrigation season. Overall winter ditch flows and/or the use or elevation of check structures

designed to serve wildlife purposes likely creates a situation where the ditch is being operated at higher or lower water elevation levels than would be found during the irrigation season. This deviation from typical irrigation season operation can result in different conveyance loss rates.

4. Also, diversions and deliveries from the Andrews Ditch during the non-irrigation season may result in the use of headgates, turnouts, or other infrastructure that are not used during the irrigation season. The use of these alternative headgates or infrastructure can alter ditch flow regimes which, in turn, also effect ditch flow elevations and corresponding ditch conveyance losses.

5. Ditch conveyance loss rates can also be influenced by local shallow groundwater levels. Higher or lower seasonal groundwater levels can result in lesser or greater conveyance losses, respectively. Seasonal evaporative demands can alter ditch losses, as can the seasonal presence of riparian vegetation and aquatic vegetation (such as in-stream moss). Likewise, seasonal ground conditions (whether the ditch substrate is frozen) can affect ditch conveyance loss conditions.

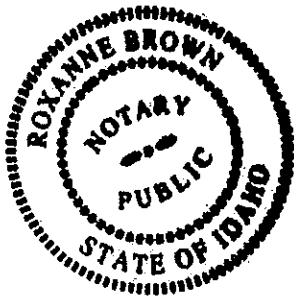
6. Regarding analysis of irrigation practices and patterns (the on-site examination of ditches and fields for field irrigation requirement determination purposes), these field investigations also need to be conducted during the irrigation season while water is being diverted and applied under normal irrigation practices. The quantity of water turned into a field headgate, and methods for applying water to fields for irrigation purposes can differ when compared to wildlife use operations. Additionally, field runoff available for subsequent re-use on another field may also be available in different quantities and/or in different locations when comparing irrigation and non-irrigation operations and management.

7. In sum, the true measure of irrigation season conditions and irrigation duty of water data requires that corresponding analyses and field investigations take place during the irrigation season.

Further your affiant sayeth naught.

Scott N. King  
Scott N. King

SUBSCRIBED AND SWORN to before me this 27<sup>th</sup> day of December, 2009.



Roxanne Brown  
NOTARY PUBLIC FOR IDAHO  
Residing at Bosc, ID  
My Commission Expires 5/16/2014

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29<sup>th</sup> day of December, 2009, I caused a true and correct copy of the foregoing **AFFIDAVIT OF SCOTT KING IN SUPPORT OF TREE TOP'S MOTION TO VACATE AND CONTINUE TRIAL SETTING AND PRETRIAL DEADLINES** to be served by the method indicated below, and addressed to the following:

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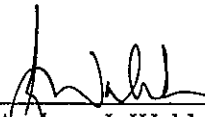
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Andrew J. Waldera