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DEPARTMENT OF  
WATER RESOURCES

Claimant Name:  
Three Creeks Ranch L.L.C.

Attorney Name & Address:  
James P. Speck, ISB#2067  
Speck & Aanestad  
A Professional Corporation  
120 East Avenue  
P.O. Box 987  
Ketchum, Idaho 83340  
Phone: (208) 726-4421  
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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

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A. Subcase 37-2553B

MOTION TO FILE LATE  
OBJECTION

Three Creeks Ranch L.L.C. (the "Claimant"), by and through its undersigned counsel of record and pursuant to Idaho Rules of Civil Procedure 7 and 55(c), hereby files this Motion to File Late Objection to Water Right 37-2553B. This Motion is supported by the Affidavit of James P. Speck in Support of Motion to File Late Objection and the Affidavit of Jack Croul in Support of Motion to File Late Objection (the "Affidavits").

Claimant seeks an order from the Court granting leave to file a late objection to the place of use and other elements of this irrigation water right (a copy of the proposed Objection is attached hereto as **Exhibit A**).

The factual grounds for this Motion are set forth in the Affidavits. 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(d)(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 aside 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, March 22, 2005) (“*Bedke I*”). In doubtful cases, relief should be granted to reach a judgment on the merits. *Bedke I* at 10. Default judgments are disfavored. *A.L. Cattle* at 8.

The submission of this Objection after the deadline is not “willful.” As set forth in the Affidavits the Director’s Report recommendation for this water right correctly lists the name and

address of Claimant, but incorrectly, and inexplicably, inserts for all of the other elements of the water right an exact copy of the elements for 37-2553A, the other portion of the parent right moved to adjacent property by Transfer 4254 in 1995. Claimant, in reviewing the water right recommendations for his property without the assistance of legal counsel, simply did not catch these errors. The sole purpose of the Objection is to correct these errors and have the water right recommended to Claimant's property as it was properly claimed.

Assuming the motion is granted, the Court can then set by a scheduling order deadlines for an amended director's report, objections to the amended director's report and responses to the objections. In that way there will be no prejudice to any other party to the SRBA.

Finally, the proposed objection states a meritorious position in that the Department admits the recommendation for this water right includes all of these errors.

For the foregoing reasons, Claimant respectfully requests that the Court grant its Motion to File Late Objection and to accept for filing the objection attached hereto as **Exhibit A**.

DATED this 3 day of February, 2010.

SPECK & AANESTAD  
A Professional Corporation  
Attorneys for Claimant

By:   
James P. Speck

## CERTIFICATE OF SERVICE

I hereby certify that on the 3 day of Feb., 2010, I served a true and correct copy of the foregoing MOTION TO FILE LATE OBJECTION on the following persons in the manner designated below:

Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
P. O. Box 2707  
Twin Falls, Idaho 83303-2707

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

Three Creeks Ranch L.L.C.  
1901 Bayadere Terrace  
Corona Del Mar, CA 92625

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

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

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

The United States Department of Justice  
Environmental and Natural Resources  
Division  
550 West Fort Street  
Box 33  
Boise, ID 83724

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

Idaho Department of Water Resources  
Document Depository  
P.O. Box 83720  
Boise, ID 83720-0098

- ☒ United States Mail, Postage Prepaid
- ☐ Hand Delivery
- ☐ Facsimile, with copy by United States Mail, Postage Prepaid

  
JAMES P. SPECK

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 37-2553B

STANDARD FORM 1  
OBJECTION

Please fill in the following information:

**B. NAME AND ADDRESS OF PERSON OBJECTING**

Name: Three Creeks Ranch, L.L.C.

Address: 190 Bayadere Terrace  
Corona Del Mar, CA 92625

Daytime Phone: (949) 548-0776

Name & Address of Attorney, if any:  
James P. Speck  
SPECK & AANESTAD  
A Professional Corporation  
PO Box 987  
Ketchum, ID 83340

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

Name: Three Creeks Ranch LLC

Address: 190 Bayadere Terrace  
Corona Del Mar, CA 92625

EXHIBIT A

**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: Drainage ditch tributary to Loving Creek
3. ☒ **Quantity**  
Should be: 2.0 cfs and 805 AFA
4. ☐ **Priority Date**  
Should be:
5. ☒ **Point(s) of Diversion**  
Should be: As set forth in the Notice of Claim filed herein, a copy of which is attached hereto as Exhibit 1.
6. ☐ **Instream Flow Description**  
Should be:
7. ☐ **Purpose(s) of Use**  
Should be:
8. ☐ **Period of Year**  
Should be:
9. ☒ **Place of Use**  
Should be: As set forth in the Notice of Claim filed herein, a copy of which is attached hereto as Exhibit 1.
10. **I object because:**
  - ☐ This water should not exist.
  - ☐ This water right was not recommended, but should be recommended with the elements described above.

**E. REASONS SUPPORTING OBJECTION(S):** See Claimant's Motion to File Late Objection and the Affidavits of James P. Speck and Jack Croul filed in support thereof.

**F. VERIFICATION (Must be completed)**

State of Idaho       )  
                              )  
County of Blaine    )       ss.

James P. Speck, being first 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)

Subscribed and sworn to before me on: \_\_\_\_\_

\_\_\_\_\_  
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 of the parties listed below in the Certificate of Mailing.

### G. CERTIFICATE OF MAILING

I certify that on February \_\_\_, 2010, 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  
P. O. Box 2707  
Twin Falls, Idaho 83303-2707

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

Name: Three Creeks Ranch LLC  
Address: 1901 Bayadere Terrace  
Corona Del Mar, CA 92925

3. Copies to:

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

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

United States Department of Justice  
Environment and Natural Resource  
Division  
550 West Fort Street, Box 33  
Boise, Idaho 83734

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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 A37-02553B  
Date Received \_\_\_\_\_  
Receipt Number \_\_\_\_\_

RECEIVED

NOV 27 1990

Department of Water Resources  
Southern Region Office

NOTICE OF CLAIM  
TO A  
WATER RIGHT  
ACQUIRED UNDER STATE LAW

Please type or print clearly

1. Name of Claimant (s) THREE CREEKS RANCH, INC. Phone (208 ) 726-0973  
Mailing Address P.O. BOX 1864, KETCHUM, IDAHO Zip 83340

2. Date of Priority (Only one (1) per claim) 6/28/1954

3. Source of water supply (a) DRAINAGE DITCH  
which is tributary to (b) LOVING CREEK

4. a. Location of existing point of diversion is: Township 1S Range 19E Section 14,  
1/4 of NW 1/4 of NE 1/4, Govt. Lot, B.M., County of BLAINE

Additional points of diversion if any: NENW and NWNW

b. If instream flow, beginning point of claimed instream flow is:

Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4,  
Govt. Lot \_\_\_\_\_ B.M., County of \_\_\_\_\_  
ending point is: Township \_\_\_\_\_ Range \_\_\_\_\_ Section \_\_\_\_\_, \_\_\_\_\_ 1/4 of \_\_\_\_\_ 1/4 of \_\_\_\_\_  
1/4, Govt. Lot \_\_\_\_\_ B.M., County of \_\_\_\_\_

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),  
including the dates of any changes or enlargements in use, the dimensions of the diversion works as  
constructed and as enlarged and the depth of each well.

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FEB 23 1993

EXHIBIT 1

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For IRRIGATION purposes from 04/01 to 11/01 amount 2 or \_\_\_\_\_

For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

For \_\_\_\_\_ purposes from \_\_\_\_\_ to \_\_\_\_\_ amount \_\_\_\_\_ or \_\_\_\_\_

7. Total quantity claimed (a) 2 (cfs) and/or (b) \_\_\_\_\_ (acre feet)

8. Total consumptive use claimed is \_\_\_\_\_ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) \_\_\_\_\_

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

| TWP | RNG | SEC | NE 1/4 |       |       |       | NW 1/4 |       |       |       | SW 1/4 |       |       |       | SE 1/4 |       |       |       | Totals |
|-----|-----|-----|--------|-------|-------|-------|--------|-------|-------|-------|--------|-------|-------|-------|--------|-------|-------|-------|--------|
|     |     |     | NE1/4  | NW1/4 | SW1/4 | SE1/4 | NE1/4  | NW1/4 | SW1/4 | SE1/4 | NE1/4  | NW1/4 | SW1/4 | SE1/4 | NE1/4  | NW1/4 | SW1/4 | SE1/4 |        |
| 1S  | 19E | 14  |        | 30    | 40    |       | 40     | 40    | 40    | 40    |        |       |       |       |        |       |       |       | 230    |
|     |     |     |        |       |       |       |        |       |       |       |        |       |       |       |        |       |       |       |        |
|     |     |     |        |       |       |       |        |       |       |       |        |       |       |       |        |       |       |       |        |
|     |     |     |        |       |       |       |        |       |       |       |        |       |       |       |        |       |       |       |        |
|     |     |     |        |       |       |       |        |       |       |       |        |       |       |       |        |       |       |       |        |
|     |     |     |        |       |       |       |        |       |       |       |        |       |       |       |        |       |       |       |        |
|     |     |     |        |       |       |       |        |       |       |       |        |       |       |       |        |       |       |       |        |

Total number of acres irrigated 230

11. In which county (ies) are lands listed above as place of use located? BLAINE

12. Do you own the property listed above as place of use? Yes XXXXXXXX No \_\_\_\_\_  
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.  
A37-04341, A37-07811 or None ( )

14. Remarks:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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FEB 23 1993

Last Name THREE CREEKS RANCH Ident No. INC.

Copies: White -State, Yellow-Claimant

Scale: 2 inches equals 1 mile

[illegible]

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FEB 23 1993

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use \_\_\_\_\_ Posted Notice \_\_\_\_\_ License XXX Permit \_\_\_\_\_  
Decree \_\_\_\_\_  
If applicable provide IDWR Water Right Number 37-02595 53 11-28-1990  
Court \_\_\_\_\_ Case Number \_\_\_\_\_ Decree Date \_\_\_\_\_  
Plaintiff vs 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 XX  
wish to receive and pay a small annual fee for monthly copies of the docket sheet.  
Number of attachments 1

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true  
and correct.

Signature of Claimant (s) \_\_\_\_\_ Date \_\_\_\_\_  
\_\_\_\_\_ Date \_\_\_\_\_

For Organizations: I do solemnly swear or affirm that I am SECRETARY Title \_\_\_\_\_  
of THREE CREEKS RANCH, INC. Organization \_\_\_\_\_, that I have signed the foregoing  
document in the space below as SECRETARY Title \_\_\_\_\_ of THREE CREEKS RANCH, INC. Organization \_\_\_\_\_  
and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Pete de Vries  
Title and Organization SECRETARY, THREE CREEKS RANCH, INC. Date 11/9/90

State of Idaho or \_\_\_\_\_ )  
County of BLAINE ) SS.

Subscribed and sworn (or affirmed) before me this 9th day of November 19 90

SEAL

Notary Public

Residing at

My Commission Expires

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, \_\_\_\_\_ will be acting as attorney at law on behalf  
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above  
should be mailed to me at the address listed below.

Signature \_\_\_\_\_

Address \_\_\_\_\_

Date \_\_\_\_\_

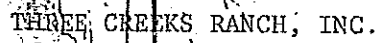
Last Name THREE CREEKS RANCH  
INC. Ident. Number \_\_\_\_\_

Copies White-State, Yellow-Claimant

MICROFILMED  
FEB 23 1993

LITTLE WOOD AVENUE  
ALSEA VILLAGE

79 10' 30 460 000 FEET 732 114°07'30" 43°22'30"



ATTACHMENT A

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 37-2553B  
Date Received: 11/28/1990  
Receipt No: S012856  
Received By:

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

THREE CREEKS RANCH L.L.C. Phone: (714)545-7101x2101  
  
1901 BAYADERE TERRACE  
CORONA DEL MAR CA USA 92625

2. Date of Priority: 06/28/1954

3. Source: DRAINAGE DITCH , DRAINAGE DITCH , DRAINAGE DITCH Trib. to: LOVING CREEK  
, LOVING CREEK , LOVING CREEK

4. Point of Diversion:

| Township | Range | Section | 1/4 of 1/4 of 1/4 Lot | County | Type |
|----------|-------|---------|-----------------------|--------|------|
| 01S      | 19E   | 14      | NE NW                 | BLAINE |      |
| 01S      | 19E   | 14      | NW NW                 | BLAINE |      |
| 01S      | 19E   | 14      | NW NE                 | BLAINE |      |

5. Description of diverting works:

DITCH, GRAVITY IRRIGATION

6. Water is used for the following purposes:

| Purpose    | From | To    | C.F.S. | (or) A.F.A |
|------------|------|-------|--------|------------|
| IRRIGATION | 4/01 | 11/01 | 2      | 920        |

7. Total Quantity Appropriated is:

2 C.F.S. and/or 920 A.F.A.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

| Township | Range | Section | 1/4 of 1/4 | Lot | Use           | Acres |
|----------|-------|---------|------------|-----|---------------|-------|
| 01S      | 19E   | 14      | NW         | NE  | IRRIGATION    | 30    |
|          |       |         | SW         | NE  | IRRIGATION    | 40    |
|          |       |         | NE         | NW  | IRRIGATION    | 40    |
|          |       |         | NW         | NW  | IRRIGATION    | 40    |
|          |       |         | SW         | NW  | IRRIGATION    | 40    |
|          |       |         | SE         | NW  | IRRIGATION    | 40    |
|          |       |         |            |     | Section Acres | 230   |
|          |       |         |            |     | Total Acres   | 230   |

11. Place of use in counties: BLAINE

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

13. Other Water Rights Used:

14. Remarks:

30 ACRES OVERLAPPED WITH A37-04341

15. Basis of Claim: License