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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 No. 63-33590

**AFFIDAVIT OF ANDREW J. WALDERA IN  
SUPPORT OF TREE TOP RANCHES, L.P.'S  
MOTION AND MEMORANDUM IN SUPPORT  
OF MOTION TO FILE LATE CLAIM**

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.

2. During extensive multi-party settlement negotiations in SRBA Subcase Nos. 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B, and 63-00178B, among others, it became apparent that certain historic water uses from the Andrews Ditch had not been claimed in the SRBA.

3. The unclaimed water uses are associated with properties owned by Tree Top, Greg and Ann Obendorf, the Iest Family L.L.L.P., and THEDRAKE, LLC, each of whom divert water from the Boise River and convey the same through the Andrews Ditch.

4. During the parties' settlement negotiations, spanning portions of 2010 and early 2011, Tree Top shared Andrews Ditch capacity and flow measurements it received from SPF Water Engineering ("SPF"). Tree Top had previously hired SPF in an expert consultant and witness capacity to support its Parma ranch water right claims in the SRBA. A true and correct copy of SPF's Andrews Ditch analysis is attached hereto as Exhibit A.

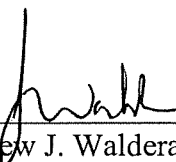
5. While negotiating the division of Stewart Decree-based Andrews Ditch-conveyed water rights among themselves based upon present day property ownership patterns and the place of use descriptions contained within the Stewart Decree, the parties discovered that the Andrews Ditch capacity and flow measurements taken by SPF (40.0 cfs) exceeded the cumulative quantity of the Stewart Decree-based water rights conveyed by the ditch (26.7 cfs) by 13.3 cfs. This concerned the parties because their irrigation operations are predicated upon the ditch operating at full (40.0 cfs) capacity.

6. In order to support historic Andrews Ditch operations and, therefore, the parties' collective irrigation operations, the parties expressly agreed to file SRBA late claims to claim, in aggregate, the above-referenced 13.3 cfs water shortfall. Tree Top's current claim represents its proportionate share of the 13.3 cfs shortfall as negotiated and memorialized by the parties' settlement agreement. The Court has already granted the respective and corresponding late claims motions of the Obendorfs (63-33497), the Iest Family L.L.P. (63-33498), and THEDRAKE, LLC (63-33499).

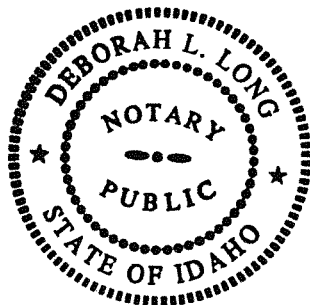
7. IDWR approved the parties' February 2011 comprehensive Andrews Ditch-related settlement agreement, and began issuing Standard Form 5 settlement documents in the form prescribed by the settlement agreement in August 2011.

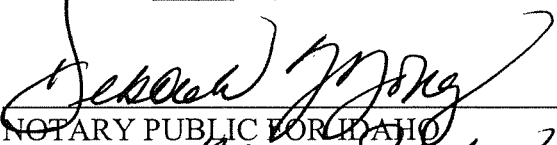
8. Tree Top did not file its motion sooner because it did not want to expend the time, effort, and expense of seeking this late claim until it was assured that IDWR approved of the parties' comprehensive settlement agreement.

Further your affiant sayeth naught.

  
\_\_\_\_\_  
Andrew J. Waldera

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of October, 2011.



  
\_\_\_\_\_  
NOTARY PUBLIC FOR IDAHO  
Residing at Bosse, Idaho  
My Commission Expires 10/10/2013

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28<sup>th</sup> day of October, 2011, I caused a true and correct copy of the foregoing **AFFIDAVIT OF ANDREW J. WALDERA IN SUPPORT OF TREE TOP RANCHES, L.P.'S MOTION AND MEMORANDUM IN SUPPORT OF MOTION TO FILE LATE CLAIM** to be served by the method indicated below, and addressed to the following:

IDWR Document Depository  
Idaho Department of Water Resources  
322 E. Front Street, 6th Floor  
P.O. Box 83720  
Boise, ID 83720

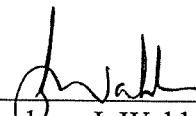
☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

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

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

United States Department of Justice  
Environmental & Natural Resource Division  
550 West Fort Street, MSC 033  
Boise, ID 83724

☒ U.S. Mail, Postage Prepaid  
☐ Hand Delivered  
☐ Overnight Mail  
☐ Facsimile

  
\_\_\_\_\_  
Andrew J. Waldera



## **MEMORANDUM**

**DATE:** December 5, 2008  
**TO:** William Mulder  
**FROM:** Scott King  
**CC:** Scott Campbell  
**RE:** November 19, 2008 Andrews Ditch Discharge Measurements

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On November 19, 2008, discharge in Andrews Ditch was measured at three locations. Flow was measured with SPF's Pygmy current meter<sup>1</sup> mounted on a top-setter rod with data collected on a JBS Instruments' AquaCalc™ Pro. Measurements are summarized in Table 1 and depicted on the attached map.

### **Measurement Details**

Location 1: A discharge of 40 cfs was measured about 340 feet downstream of point of diversion from Boise River. Although flow conditions were good with steady, even velocities, the ditch has some minor weedy vegetation and significant loose sediment deposits on the channel sides, with a harder sand bottom at mid-channel. Channel bottom conditions were better upstream, but flow conditions were not as good with unsteady, turbulent flows. Recommendations for future measurements include trying to identify an upstream point with less sediment and acceptable flow conditions, and/or using a rake or other tools to dislodge sediment and vegetation prior to measurement. Verticals were measured at 1 foot distances (in general) across the channel with single-point measurements (at 0.6 x depth) at shallow verticals and three-point measurements (at 0.2, 0.6, and 0.8 x depth) when depths exceeded 2 feet. Accuracy would generally be considered within 5% or better due to the many point measurements, but is estimated at +/- 5 to 10% because of the soft channel bottom and resulting difficulty in placing the current meter at the appropriate depth.

Location 2: A culvert pipe conveys flow from Andrews Ditch to an adjacent slough to the west. Because flow exiting the culvert was diffused, current-meter measurement would be quite difficult and was not attempted. Visual approximations were used to estimate a discharge of about 10 cfs. The culvert pipe size appeared to be between 18 and 24 inches in diameter, but size was not easy to confirm because the pipe has been deformed and was

nearly submerged. Review of culvert flow nomographs tend to confirm the 10 cfs discharge approximation. Estimates on discharge can be improved by confirming culvert diameter, length, and type and inspecting condition when the canal is dry. Flows could be measured with a current meter if the channel below culvert discharge was modified to create a single, defined channel for a distance of about 10 to 15 feet.

| Loc ID | Location Description                                                                           | Discharge (cfs) | Estimated Accuracy | Notes                                                                                                     |
|--------|------------------------------------------------------------------------------------------------|-----------------|--------------------|-----------------------------------------------------------------------------------------------------------|
| 1      | 340 ft below Boise River Point of Diversion (43.735476N, 116.879357W)                          | 40              | +/- 5 to 10%       | Soft channel bottom on edges, some weeds. Discharge measured with current meter.                          |
| 2      | Culvert overflow to slough, about 0.9 miles below POD (43.744186N, 116.888575W)                | 10 (est)        | +/- 50%            | Visual estimate and culvert-equation discharge approximations.                                            |
| 3a     | Discharge passing first turnout, about 1.2 miles below POD (43.74654N, 116.891898W).           | 15.3            | +/- 10%            | Measured flow passing through "notch" in concrete check structure with current meter.                     |
| 3b     | Overflow to Sand Hollow Creek                                                                  | 6.9             | +/- 10%            | Discharge over check boards measured with contracted rectangular weir equation, L = 3.25 ft, H = 0.77 ft. |
| 4      | Andrews Ditch at Tree Top Ranch about 75 feet below highway culvert (43.748314N, 116.912791W). | 13.1 cfs        | +/- 3 to 5%        | Discharge measured with current meter. Good location and flow conditions.                                 |

Table 1: Summary of Andrews Ditch Discharge Measurements.

Location 3: A discharge of 15.3 cfs was passing through the first check structure and continuing down Andrews Ditch. The current meter measurements were taken in the rectangular "notch." Although this location was not ideal as flows were converging into the notch from the sides and bottom, it appeared to be the best available location for

<sup>1</sup> Gurley Precision Instruments, Model No. 625, Serial No. AR2072.

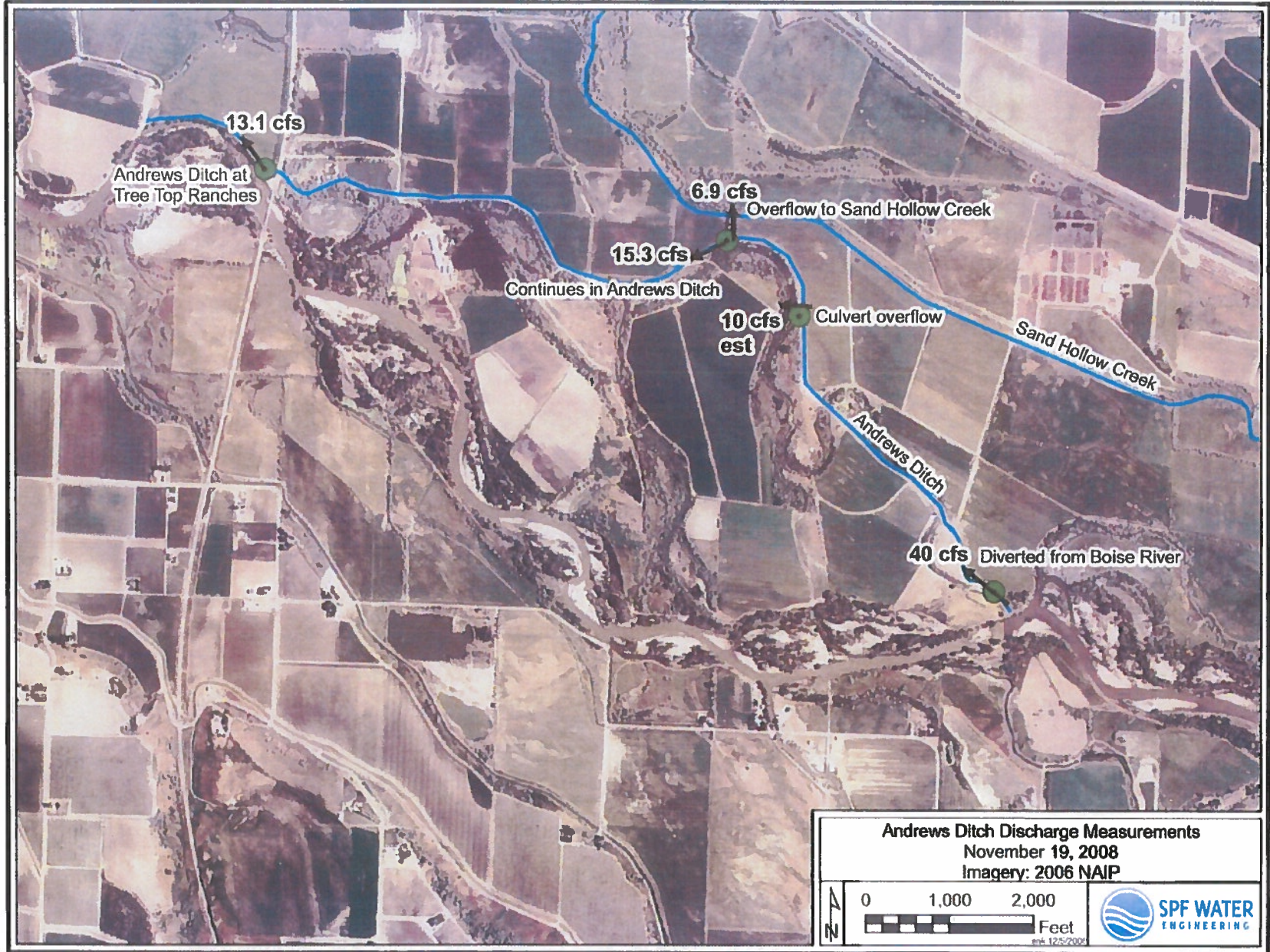
measurement. Depths in the ditch below the check were too great for safe wading. The notch was 4.6 feet wide, and verticals were taken using the three-point method at 0.5 foot distance increments. Flow depth was 2 feet. A tarp dam was being used to prevent flow from entering the concrete ditch on the north side. Overflow from the ditch to Sand Hollow Creek was flowing over check boards and this discharge is estimated at 6.9 cfs using the contracted rectangular weir formula for a crest length of 3.25 feet and flow depth of 0.77 feet. Although flow was freely discharging over the check structure, the structure is not a "standard" contracted rectangular weir and therefore accuracy is somewhat questioned and estimated at +/- 10%. Although it appears from the downstream side that a low-level "notch" allows additional flow to pass under the check, this notch was probed with a long steel bar found at the site. This probing indicated that the notch is plugged and I could not find any sign of significant flow discharging below the check boards.

Location 4: A discharge of 13.1 cfs was measured in Andrews Ditch as it enters Tree Top Ranches property using the current meter. Verticals were measured at 0.5 foot distances with single-point (0.6 x depth) methods. Accuracy of this measurement is expected to be "good." Flow was even and steady and channel conditions were acceptable.

#### **Conveyance Losses / Unaccounted Flow**

Assuming that the measurement of 15 cfs passing the first check structure is reasonably accurate, it appears that losses and/or diversions from the ditch from this point to Tree Top Ranches were approximately 2 cfs as 13 cfs was measured entering the property.

There appears to be more significant unaccounted-for water losses and/or inaccurate measurements or estimates above the first check structure. The total flow at the first check structure was 22 cfs. About 10 cfs was being discharged at the upstream culvert. With 40 cfs measured at the most upstream point, about 8 cfs remains unaccounted for. All or a portion of this 8 cfs may be associated with a combination of conveyance losses, measurement inaccuracies, and incorrect estimates of culvert flow.



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