

Shurte, Jan

From: Shurte, Jan
Sent: Friday, December 13, 2013 9:24 AM
To: 'Andy Waldera'; Carter, Meghan
Subject: RE: Andrews Ditch SF5s

Hi Andy,

I looked up my comments on 63-33571 to check on the change from the 107 acre limitation to the 241 acre limitation. I know it has no bearing on your client and just thought it would be best to explain it in case it comes up in the future. This email will go in the file for that purpose.

The recommendation for 63-33570 reflected 134 acres from a 1939 aerial photo of the area. Right No. 63-33570 was recommended with the limiter of those 134 acres. Then in 1971 a field exam was conducted on the license for 63-3201 which did show an additional 107 acres being irrigated at that time. Because of this information I limited 63-33571 to a combination of the 134 acres from 1939 and the 107 acres from 1971 totaling the 241 acres within the permissible place of use. The 254 acre permissible place of use came from a field exam conducted in 1987 for Right No. 63-9744 which did show 254 acres being irrigated. I could not recommend the 13 additional acres under the 1971 priority date so I recommended the permissible place of use with the 241 acre limitation between the two rights. Right Nos. 63-3201 and 63-9744 were then disallowed.

The claims for Right Nos. 63-33570 and 63-33571 turned out to be a mix of lands and earlier priority dates for 63-3201 and 63-9744 rather than one claim replacing one right and the other claim replacing the other right. Thanks for looking at these again and we are getting close. I won't be celebrating until they are filed with the Court. I tried that once before. Have a Merry Christmas too.

Thanks,

Jan

From: Andy Waldera [mailto:AJW@moffatt.com]
Sent: Thursday, December 12, 2013 3:51 PM
To: Carter, Meghan
Cc: Shurte, Jan
Subject: Andrews Ditch SF5s

Meghan,

Thank you for shooting 63-33511, -33570, and -33571 over to me this afternoon. I took a look and all is good from my end. I will sign accordingly.

As we discussed, I leave it up to IDWR to double check the POU remark discrepancy I found on 33571 between the June 2013 version and the current version. But, that has no bearing on my client, so I am not concerned with it.

Thanks again. We are inching ever closer to having this totally wrapped up. Merry Christmas to all!

--Andy

NOTICE: This e-mail, including attachments, constitutes a confidential attorney-client or other confidential communication. It is not intended for transmission to, or receipt by, any unauthorized persons. If you have received this communication in error, do not read it. Please delete it from your system without copying it, and notify the sender by e-mail or by calling (208) 345-2063, so that our address record can be corrected. Thank you.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33570

NAME AND ADDRESS: GREG OBENDORF

26496 DEB LN

PARMA ID 83660

ANN OBENDORF

26496 DEB LN

PARMA ID 83660

SOURCE:

SAND HOLLOW CREEK

UNNAMED DITCH

UNNAMED STREAM

TRIBUTARY: SAND HOLLOW CREEK

TRIBUTARY: SNAKE RIVER

TRIBUTARY: SAND HOLLOW CREEK

QUANTITY:

2.620 CFS

PRIORITY DATE:

03/01/1939

POINT OF DIVERSION:

T05N R04W S30 SWNW Lot 6 within CANYON County

T05N R05W S24 SWSE within CANYON County

T05N R05W S24 SWSE within CANYON County

T05N R05W S25 NENW within CANYON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/01 11/15

2.620 CFS

PLACE OF USE:

IRRIGATION in CANYON County

T05N R05W S23	NWNE	5.00	T05N R05W S23	SWNE	25.00
T05N R05W S23	SENE	12.00	T05N R05W S23	NENW	29.00
T05N R05W S23	SENW	17.00	T05N R05W S23	NESE	35.00
T05N R05W S23	SESE	32.00	T05N R05W S24	NESW	2.00
T05N R05W S24	NMSW	23.00	T05N R05W S24	SMSW	30.00
T05N R05W S24	SESW	34.00	T05N R05W S24	SWSE	10.00

254 ACRES TOTAL

Right Nos. 63-33570 and 63-33571 are limited to the irrigation of 241 acres within the place of use described above in a single irrigation season.

This right is limited to the irrigation of 134 acres within the place of use described above in a single irrigation season.

Use of water under this right will be regulated by a water master with responsibility for the distribution of water among appropriators within a water district. At the time of this recommendation, this water right is within State Water District No. 63, Boise River. Sand Hollow Creek is also known as Cole Slough, Sand Hollow Drain, and Sand Run Gulch.

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

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.

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

Shurte, Jan

From: Shurte, Jan
Sent: Monday, October 07, 2013 4:52 PM
To: 'Dana Hofstetter'
Cc: Cooley-Denney, Suzy
Subject: FW: Final SF5s to be mailed
Attachments:

SF5 Right No. 63-127A.docx; SF5 Right No. 63-127B.docx; SF5 Right No. 63-127C.docx; SF5 Right No. 63-127D.docx; SF5 Right No. 63-128A.docx; SF5 Right No. 63-128B.docx; SF5 Right No. 63-128C.docx; SF5 Right No. 63-128D.docx; SF5 Right No. 63-129A.docx; SF5 Right No. 63-129B.docx; SF5 Right No. 63-129C.docx; SF5 Right No. 63-129D.docx; SF5 Right No. 63-130A.docx; SF5 Right No. 63-130B.docx; SF5 Right No. 63-130C.docx; SF5 Right No. 63-130D.docx; SF5 Right No. 63-131A.docx; SF5 Right No. 63-131B.docx; SF5 Right No. 63-131C.docx; SF5 Right No. 63-131D.docx; SF5 Right No. 63-178B.docx; SF5 Right No. 63-178D.docx; SF5 Right No. 63-178E.docx; SF5 Right No. 63-3201.docx; SF5 Right No. 63-9744.docx; SF5 Right No. 63-33497.docx; SF5 Right No. 63-33498.docx; SF5 Right No. 63-33499.docx; SF5 Right No. 63-33511.docx; SF5 Right No. 63-33570.docx; SF5 Right No. 63-33571.docx; SF5 Right No. 63-33590.docx; SF5 Right No. 63-21530.docx; SF5 Right No. 63-178C.docx

Hi Dana,

Here are all of these again. Please look at the the Obendorfs rights which have had the mitigation language changed, the name on 63-178C now shows The lest Family LLP and the change in the acre limitation on 63-33571.

The idea is to send these out for signature as soon as we get the correct signatory names for each from you. Then, if you get me a deed for the land under 63-178C with the name of The lest Family LLP on it I can change our database. I wanted these circulating for signature asap so I changed the name in the overstrike/underline format for the SF5s.

Email Suzy or myself the names for signature on the cover sheets and we will get these out the door.

Thanks,
Jan

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33570

NAME AND ADDRESS: GREG OBENDORF

26496 DEB LN
PARMA ID 83660ANN OBENDORF
26496 DEB LN
PARMA ID 83660

SOURCE:

SAND HOLLOW CREEK
UNNAMED DITCH
UNNAMED STREAMTRIBUTARY: SNAKE RIVER
TRIBUTARY: SAND HOLLOW CREEK
TRIBUTARY: SAND HOLLOW CREEK

QUANTITY:

2.620 CFS

PRIORITY DATE:

03/01/1939

POINT OF DIVERSION:

T05N R04W S30 SWNW Lot 6 within CANYON County

T05N R05W S24 SWSE within CANYON County

T05N R05W S24 SWSE within CANYON County

T05N R05W S25 NENW within CANYON County

PURPOSE AND

PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/01 11/15

2.620 CFS

PLACE OF USE:

IRRIGATION in CANYON County

T05N R05W S23	NWNE	5.00	T05N R05W S23	SWNE	25.00
T05N R05W S23	SENE	12.00	T05N R05W S23	NENW	29.00
T05N R05W S23	SENM	17.00	T05N R05W S23	NESE	35.00
T05N R05W S23	SESE	32.00	T05N R05W S24	NESW	2.00
T05N R05W S24	NMSW	23.00	T05N R05W S24	SWSW	30.00
T05N R05W S24	SESW	34.00	T05N R05W S24	SWSE	10.00

254 ACRES TOTAL

Right Nos. 63-33570 and 63-33571 are limited to the irrigation of 241 acres within the place of use described above in a single irrigation season.

This right is limited to the irrigation of 134 acres within the place of use described above in a single irrigation season.

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 - Beneficial Use

Sand Hollow Creek is also known as Cole Slough, Sand Hollow Drain, and Sand Run Gulch.

Shurte, Jan

From: Shurte, Jan
Sent: Thursday, April 04, 2013 8:50 AM
To: Dana Hofstetter; Courtney, Andrea
Subject: RE: 63-33571 - 4027.5

Dana,

Right No. 63-33571 was recommended for the 1971 priority date based on the date that the field exam was eventually completed for 63-3201. A field exam was attempted in 1970, however, no water was flowing and no crops were being grown. An additional exam was conducted in 1971 per an inscription on the bottom of the original exam and the memo dated August 30, 1971 for the quantity.

Your email of May 23, 2012, was considered in the recommendation for these rights. Based on that memo I was able to recommend the 134 acres irrigated in 1939 and based on the field exam in 1971 I was able to recommend an additional 107 acres for a total of 241 acres. Based on the exam for 63-9744 in 1987 I was able to recommend 13 additional acres for 63-9744 all with a permissible place of use of 254 acres.

If we were to eliminate the recommendation for 63-9744 by disallowing it and recommending 63-33570 and 63-33571 only, those rights would total 7.0 cfs with a permissible place of use for 254 acres and an acre limitation of a total of 241 acres in any given irrigation season.

Your question concerning the quantity recommendation under 63-33571 for 4.38 cfs rather than the claimed 5.03 cfs is based on the field examiner's memo to the file for 63-3201 in 1971 which reflects a maximum of 7.0 cfs at that time. Right No. 63-33570 was recommended for 2.62 cfs per the claim and with the 4.38 cfs from 63-33571 both rights total 7.0 cfs.

Jan

-----Original Message-----
From: Dana Hofstetter [mailto:Dana@Idahowaterlaw.com]
Sent: Tuesday, April 02, 2013 2:49 PM
To: Shurte, Jan
Cc: Courtney, Andrea
Subject: 63-33571 - 4027.5

Jan,

With regard to the quantity for 63-33571, it appears that the latest recommendation has 4.38 cfs, instead of the 5.03 cfs claimed. The 5.03 cfs was claimed so that 63-33570 and 63-33571 add up to the total mitigation quantity (7.65 cfs) under the historic Andrews Ditch rights for this property. I believe the 5.03 cfs also can be justified based on the field irrigation requirement analysis done in the area.

Dana

Shurte, Jan

From:

Sent:

To:

Subject:

Attachments:

Shurte, Jan
Thursday, March 07, 2013 12:19 PM
Dana Hofstetter; Courtney, Andrea; Norm Young
Obendorf Right Nos. 63-3201, 9744, 33570 and 33571 Update
63-33570 and 63-33571 acreage totals.docx; Right No. 63-9744 - Draft Rec.docx; Right No.
63-33570 - Draft Rec.docx; Right No. 63-33571 - Draft Rec.docx

Hi Dana,

Per your request I have reviewed the acres on the above sub cases to try and show where the 241 acres for 63-33570 and 63-33571 lie and where the 13 acres for 63-9744 lie. As we know 63-3201 is being replaced by 63-33570 and 63-33571 with the 1939 priority date for 134 acres and 63-33571 for 107 acres with the 1971 priority date. The remaining 13 acres are being recommended for 63-9744.

In reviewing these rights I found it difficult to pin point the exact 13 acre place of use due to the adding and subtracting of acres since 1971 and earlier. I compared the 1934 acres against the 1971 exam for 63-3201 and against the 1987 exam for 63-9744. The progression of changes in the acreage from 1939 to 1987 make it impossible to tell you exactly where the 13 acres are at this time. The facts show the 134 acres in 1939 plus the 107 acres in 1971 after computing the acreage overlap between 1934 and 1971 which leaves 13 acres to account for in the permissible place of use for 254 acres.

The 254 acre place of use came from Steve Lester's field exam where he actually found 235 total acres during his 1987 exam. You submitted a map outlining an additional 10 acres in the SWNE, S23, 4 acres in the SWSW, S24 and 5 acres in the SSW, S24 for a total of 254 acres. Thus, the license was issued for 254 acres. Attached is a table showing the progression of acreage changes over the years. If Norm needs copies of the maps they can be located in the back files of 63-3201 and 63-9744. He already has the 1939 outline of acres that you sent in and we adopted for the 1939 priority date.

Attached are our recommendations for these three rights. The only changes I have made is to show the 254 acre permissible place of use on 63-33570. For some reason I had put the 134 acre place of use rather than the permissible place of use. Please email with your questions.

Jan Shurte

Adjudication Technical Analyst
Idaho Dept of Water Resources
322 E Front St
Boise, Idaho 83720
(208) 287-4992

Acreage comparisons for 63-33570, 63-33571 and 63-9744 using 1934 map submitted by Obendorfs, 1971 field exam map and diagram from Right No. 63-3201 and 1987 field exam map plus Dana Hofstetter's additional acreage map from Right No. 63-9744 to total the 254 acres.

Sec. 23, Twp. 5N, Rge. 5W

1939	1971	1987	Acreage changes
NENW	29 AC	29 AC	
SENW	25 AC	17 AC - minus 8 acres	
NWNE	5 AC	5 AC	
SWNE	15 AC	25 AC - plus 10 acres	
SENE	12 AC	12 AC - minus 3 acres	
NESE	5 AC	35 AC - plus 4 acres	
SESE		32 AC - plus 2 acres	

Sec. 24, Twp. 5N, Rge. 5W

NWSW	10 AC	18 AC	23 AC	
NESW	3 AC	4 AC	2 AC - minus 2 acres (note only 2 acres ever existed on the land south of the road rather than 3)	
SESW	20 AC	34 AC	34 AC	
SWSW	10 AC	30 AC	30 AC	
SWSE		10 AC	10 AC	
Total	134 AC	167 AC	254 AC Additional 13 acres due to progression and correction of acres for 1987 licensing	
Total by 1971 - 241 AC				

Note on licensing of 63-9744.

Steve Lester originally found 15 acres in the SWNE, S23 on his 1987 field exam, however, 10 more acres were indicated by Dana as being irrigated for a total of 25 acres licensed. Found 26 acres in the SWSW, S24 on original exam and added 4 more per same indicator by Dana for a total of 30 acres licensed. Found 30 acres in the SESW, S24 on original 1987 exam and added 5 acres per Dana for a total of 35 acres licensed. Thus, the total 254 acre place of use.

03/07/2013

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-33570
NAME AND ADDRESS: GREG OBENDORF
26496 DEB LN
PARMA ID 83660
ANN OBENDORF
26496 DEB LN
PARMA ID 83660
SOURCE: SAND HOLLOW CREEK
UNNAMED DITCH
UNNAMED STREAM
TRIBUTARY: SNAKE RIVER
TRIBUTARY: SAND HOLLOW CREEK
TRIBUTARY: SAND HOLLOW CREEK
QUANTITY: 2.620 CFS
The rights listed below are limited to a total combined diversion rate of 5.08
cfs. Combined Right Nos.: 63-9744, 63-10867, 63-33570 and 63-33571.
PRIORITY DATE: 03/01/1939
POINT OF DIVERSION:
T05N R04W S30 SWNW Lot 6 within CANYON County
T05N R05W S24 SWSE within CANYON County
T05N R05W S24 SWSE within CANYON County
T05N R05W S24 SWSE within CANYON County
T05N R05W S25 NEWN within CANYON County
PURPOSE AND
PERIOD OF USE:
PURPOSE OF USE
PERIOD OF USE
QUANTITY

IRRIIGATION
03/01 11/15
2.620 CFS
PLACE OF USE: IRRIIGATION in CANYON County

T05N R05W S23	NWNE	5.00	T05N R05W S23	SWNE	25.00
T05N R05W S23	SENE	12.00	T05N R05W S23	NEWN	29.00
T05N R05W S23	SENW	17.00	T05N R05W S23	SWSW	30.00
T05N R05W S23	NESE	35.00	T05N R05W S23	SESE	32.00
T05N R05W S24	NESW	2.00	T05N R05W S24	NMSW	23.00
T05N R05W S24	SESW	34.00	T05N R05W S24	SWSE	10.00

254 ACRES TOTAL

This right is limited to the irrigation of 134 acres within the place of use
described above in a single irrigation season.
Right Nos. 63-9774, 63-33570, and 63-33571 are limited to the irrigation of
combined total of 254 acres in a single irrigation season.

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 - Beneficial Use

Sand Hollow Creek is also known as Cole Slough, Sand Hollow Drain, and Sand Run Gulch.

Shurte, Jan

From: Dana Horstetter [Dana@IdahoWaterLaw.com]
Sent: Wednesday, May 23, 2012 10:34 AM
To: Shurte, Jan
Cc: Norm Young
Subject: 63-33570 and 63-33571

Jan:

This email responds to the questions in your April 3, 2012 email regarding the above-referenced water rights. As you will note, numerous attachments are referenced. I will send these by separate email(s) a little later today as I wanted to provide you this email without any further delay.

Irrigated Acreage:

In response to your request regarding the irrigated acreage, I attach an aerial photo from 1939, depicting the minimum area on the Obendorf property that appears to have been irrigated from Sand Hollow Creek as of that date. It is possible that more ground on that property could have been irrigated from Sand Hollow Creek at that time as there is additional irrigated acreage on the Obendorf property in this aerial photo; but the area outlined covers the area that appears to have been irrigated from the primary ditch from Sand Hollow Creek. The total irrigated acreage in the outlined area appears to be well in excess of 87, amounting to about 135 irrigated acres.

With regard to the irrigated acreage as of 1960, the license file for 63-3201 provides significant information. A remark on the second page of the Permit Application notes that the water right had already been developed at the time of the Permit Application in 1960: "This Permit is being made to replace Permit No. 19985 which was cancelled in May 1952. The works had been completed, however the notice of time for making the proofs were not received and the proofs were never made." I attach a copy of IDWR Permit file 19985 which was on microfilm so the quality is not too good. It appears that Permit Application No. 19985 was submitted to IDWR in 1946 for 4.5 cfs for irrigation of 220 acres in Section 23. From a review of the files for 19985 and Permit Application 63-3201, it appears that the applicant's (Locklear) address changed sometime after 1946 and before 1960 and that is why he did not receive the correspondence concerning proof of beneficial use. In any event, based on the comments in the file for 63-3201, the use already was in place by 1960. For some reason that is not clear, Permit Application 63-3201 did not include the portion of the Obendorf property in the W1/2 and the W1/2E1/2 of Section 23. However, the file for license 63-3201 confirms that 167 acres were irrigated in just the SENE, NESE and SESE of Section 23 and in the SW1/4 and SWS of Section 24 at that time. Thus, the license for 63-3201 (and the associated examiner's report) would describe the 167 acres that are covered under the 1960 (1952) beneficial use right.

I have not been able to locate good quality aerial photographs during the 1950's-1970's at this location. However, the 1987/1988 infrared aerial photograph for this area in the SRBA claim file for 63-9744 indicates that by 1987/1988 a total of at least 254 acres (87 + 167) were irrigated on the Obendorf property, with 87 of those acres in the areas not covered by license 63-3201 (NENW, SENW, MNNE and SMNE of Section 23). Thus by 1987 at least 87 of the 1939 acres had been relocated by accomplished transfer to cover the acreage that was not covered under what was determined to be irrigated under 63-3201.

Section 25 Point of Diversion:

Norm Young has not been able to locate the Section 25 point of diversion yet and thus a measurement has not yet been possible. Another old point of diversion from Sand Hollow was identified at a different location on the Obendorf property but this point of diversion was silted in and no longer in use. Greg Obendorf recalls it being in use in the 1960's and the headgate appearing old at that time. I attach Greg's Affidavit to this effect. From reviewing the license file for 63-3201, it appears that the diversion point in the NENM of Section 25 was determined to have at least 6 cfs of capacity. I attach a September 19, 1973 IDWR letter to this effect, identifying only one point of diversion (in Section 25) and 6.0 cfs of water diverted. Correspondence in the license file for 63-3201 indicates that a representative of the Applicant requested to have two points of diversion added to the one found in Section 25 by the examiner but that in the license only one, the Section 30 point of diversion, was added to the one found by the examiner.

While Norm at his recent field exam was not able to locate the Section 25 point of diversion, he did measure the point of diversion in Section 24 (identified in the 63-9744 file) to be 4 cfs. Also, he also measured Obendorf's section 30 point of diversion to be more than adequate to handle 7+ cfs. Further, Greg confirmed that the Section 30 point of diversion has not been modified since he bought the property in 1987. Further Norm located numerous places where the Johnson ditch from Sand Hollow discharges into the Obendorf Sand Hollow Ditch even further increasing the flow to the Obendorf property. Please let me know if you would like any affidavits from Greg and/or Norm to this effect.

With regard to proving that 2.62 cfs were diverted in 1939, it is difficult to identify any witnesses. However, I note that Marc's Jan 29, 2006 Memo to David Tuttle regarding Diversion Rate Analysis for Haas Ditch Co. Right Nos. 63-172B and 63-202B identified an irrigation requirement in the area of 0.06 cfs per acre. This would amount to much more than 2.62 cfs for 87 acres. It seems reasonable to assume that the diversion works would have been adequate to at least deliver 0.02 cfs per acre over the entire 135 acres that appear to have been irrigated from this source on the Obendorf property as of 1939.

Please let me know if you need any additional information or have any questions.

Thank you,
Dana

DISALLOWED

05/30/2012

RECOMMENDATION OF WATER RIGHTS ACQUIRED UNDER STATE LAW
IDAHO DEPARTMENT OF WATER RESOURCES

RIGHT NUMBER: 63-33570
NAME AND ADDRESS: GREG OBENDORF
26496 DEB LN
PARMA ID 83660
ANN OBENDORF
26496 DEB LN
PARMA ID 83660
SOURCE: SAND HOLLOW CREEK
UNNAMED DITCH
UNNAMED STREAM
TRIBUTARY: SNAKE RIVER
TRIBUTARY: SAND HOLLOW CREEK
TRIBUTARY: SAND HOLLOW CREEK

QUANTITY: 2.620 CFS

PRIORITY DATE: 03/01/1939

POINT OF DIVERSION:

T05N R04W S30 SWNW Lot 6 Within CANYON County

T05N R05W S24 SWSE Within CANYON County

T05N R05W S24 SWSE Within CANYON County

T05N R05W S25 NENW Within CANYON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USE

PERIOD OF USE

QUANTITY

IRRIGATION

03/01 11/15

2.620 CFS

PLACE OF USE:

IRRIGATION in CANYON County

T05N R05W S23	NWNE	5.00	T05N R05W S23	SWNE	25.00
T05N R05W S23	SENE	12.00	T05N R05W S23	NENW	29.00
T05N R05W S23	SENW	17.00	T05N R05W S23	NESE	35.00
T05N R05W S23	SESE	32.00	T05N R05W S24	NESW	2.00
T05N R05W S24	NMSW	23.00	T05N R05W S24	SWSW	30.00
T05N R05W S24	SESW	34.00	T05N R05W S24	SWSE	10.00

254 ACRES TOTAL

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

Recommended as Right Nos. 63-3201 and 63-9744

EXPLANATORY MATERIAL: BASIS OF CLAIM - Beneficial Use

Recommended as Right Nos. 63-3201 and 63-9744: This is included for a claim that is proposed to be disallowed because the right claimed is

recommended pursuant to another right. The condition indicates the water right number of the other right that is proposed to be recommended. If you are not mailed a notice of the recommendation of the other right, then the other right is recommended in another claimant's name.

Shurte, Jan

From: Dana Hofstetter [Dana@IdahoWaterLaw.com]
Sent: Tuesday, August 30, 2011 7:30 PM
To: Shurte, Jan
Subject: Obendorf Late SRBA Claims 4027.5
Attachments: 9854 - SRBA Late Claim.doc; 9857 - SRBA Late Claim.doc

Jan:

After looking at the files for 63-3201 and 63-9744 and available aerial photos, I have decided to submit 2 late SRBA claims ultimately to supersede 63-3201 and 63-9744 if successful. I attach these draft claims for your reference.

As you will note, one draft claim is for 87 acres with a 1939 priority. This is based on a 1939 aerial photo provided to me by Mike Ciscell. 87 acres in certain quarter-quarters were not covered under license 63-3201 but these acres appear irrigated in the 1939 aerial.

The second draft claim is based on the file for 63-3201 which includes several affidavits confirming that the irrigation was in place in the 1960 irrigation season. The examiner found 167 acres of irrigation in the 1970 field exam but apparently this figure did not include acreage that was being irrigated in other quarter-quarter sections (under the 1939 right).

The duty of water for both claims is based on the Obendorfs' Andrews Ditch mitigation rights. The file for 63-3201 also confirms that the diversion works (however, apparently not including all points of diversion) had a capacity in the 7 cfs range. So I tried to stay close to this amount total. I would be happy to sit down with you and discuss these, if you would like to do so before numbers are assigned and they are filed with the Court.

Thank you,
Dana

Shurte, Jan

From: Dana Hofstetter [Dana@IdahoWaterLaw.com]
Sent: Thursday, May 03, 2012 12:44 PM
To: Shurte, Jan
Cc: Courtney, Andrea; Williams, Ray
Subject: Re: 63-33570, 63-33571

Sounds good. I will get you the materials early next week.

I hope you're feeling better. Please do take care of yourself. I had pneumonia in the 1990's and I know it must be taken seriously.

(Andrea: Sorry about forgetting that you're on this case.)

BTW, I have a Notice of Change in Water Right Ownership (from Ray Obendorf to Basin and Range) to file for 63-21614. Should I file it at Western or at the State Office?

Thank you,
Dana

On 5/3/2012 10:46 AM, Shurte, Jan wrote:

> Dana,
>
> Andrea Courtney is the attorney working with me on these files. What
> would be the best approach is if you could submit the information you
> have available for 63-33570, 33571, 33497, 33498 and 33499, then we
> could review it and have a meeting to discuss.

> Would you be able to submit this information early next week? We
> could then schedule a meeting at the end of next week giving me time
> to make recommendations.

> Please let me know.

> Thanks,
> Jan

> -----Original Message-----
> From: Hofstetter Law Office [mailto:Dana@IdahoWaterLaw.com]
> Sent: Wednesday, May 02, 2012 5:34 PM
> To: Spencer, Nick; Shurte, Jan
> Subject: 63-33570, 63-33571

> Jan and Nick:

> Please let me know your upcoming availability for a meeting to discuss
> the above (and the Andrews Ditch priority info.).

> Thank you,
> Dana

Shurte, Jan

From: Hofstetter Law Office [Dana@IdahoWaterLaw.com]
Sent: Thursday, April 26, 2012 3:52 PM
To: Spencer, Nick
Cc: Shurte, Jan; Fritschle, Carter; Norm Young
Subject: Re: Late Claim Nos. 63-33570 & 63-33571 - Obendorf

Nick:

Please keep me posted on whether the deadline will be extended. If it will not be, I will draft an extensive email tomorrow. Norm Young and I went to the site yesterday. Norm, after walking the ditch was unable to locate the POD in Section 25. However, we have other information that I think should address the relevant issues. It would be much easier to spread this all out on a table and explain it, but we will do it by email if necessary.

Thank you,
Dana

On 4/26/2012 3:24 PM, Spencer, Nick wrote:

Hi Dana. A meeting about the information you have collected regarding these late claims simply isn't going to happen at this very late date. I suggest that you e-mail the documents to Jan instead. The affidavits say whatever they say and the POD measurement that I presume you have had taken is whatever it is. I don't see what purpose a meeting will serve, particularly when Jan has a large number of claims to prepare recommendations for and now only two work days up to coming in to work tomorrow or Monday, the April 30th deadline for reporting these claims is looking less and less feasible. We will decide tomorrow whether under the circumstances IDWR ought to ask the court for an extension.

NBS

From: Hofstetter Law Office [mailto:Dana@IdahoWaterLaw.com]
Sent: Thursday, April 26, 2012 2:31 PM
To: Shurte, Jan; Spencer, Nick
Subject: Re: Late Claim Nos. 63-33570 & 63-33571 - Obendorf

Jan and Nick/Andrea:

We have gathered information in connection with these rights for the late claims Directors Report. I understand that Jan remains out of the office and I am wondering how to provide this information before the submission to the SRBA Court on Monday, April 30. I was hoping to schedule a meeting to discuss the available information and provide the Affidavits.

(I could not recall whether Andrea or Nick was on these cases so I am emailing you both.)

Thank you,
Dana

On 4/23/2012 10:03 AM, Shurte, Jan wrote:
Hi Dana,

I am not at work today, but the reason I need the measurement for the NENW, S25 is because there has never been a measurement of that point of diversion. There was an estimate by the field examiner, however, no actual measurement. So, before I recommend an additional amount of water I have to make sure it can carry an additional amount.

Hope this helps and thanks for working on these.

Jan

From: Dana Horstetter [mailto:Dana@IdahoWaterLaw.com]

Sent: Fri 4/20/2012 7:40 PM

To: Shurte, Jan

Subject: Re: Late Claim Nos. 63-33570 & 63-33571 - Obendorf

Jan:

I am working on this (and the Andrews Ditch matter) and am planning to provide you information next week. I tried calling you earlier today but ended up talking to Steve Clelland. It was after 4 and apparently you were gone for the day. I have a question as to why the only diversion point on Sand Hollow that you consider relevant in terms of capacity is the one in the NE NW of Section 25. As you know, Greg also has at least 3 other diversion points on Sand Hollow Creek.

Thank you,
Dana

On 4/3/2012 4:07 PM, Shurte, Jan wrote:
Dana,

I am in the process of reviewing the above late claims for submittal to the SRBA Court on April 30, 2012. During the course of my review I have come across information I will need before I can make my recommendations. Following are the items needed:

63-33570 – This claim is filed for a water right from Sand Hollow Creek, Unn. Stream (aka Cole Slough) and Unn. Ditch for a 3-1-1939 priority. From an email you sent to me on 8-30-2011 it appears the claim is for 87 acres irrigated in 1939 within the 254 acre permissible place of use. A map needs to be submitted outlining which 87 acres were being irrigated in the 1939 photo. A measurement of the diversion point in the NE NW, S25, T5N, R5W is also needed. The license for 63-3201 does have a Memo to the file concerning the estimated flow rate. However, the flow was never measured from this point of diversion and the license was issued for an inch to the acre for 167 acres or 3.34 cfs without a measurement. This point of diversion was again not measured in the 1987 field exam conducted by Steve Lester for 63-9744 and 63-10867. In order to consider additional flow, a measurement of the point of diversion in S25 is needed along with a description of the diverting works. Some type of proof, such as an affidavit from past owners or neighbors, stating that the diversion works have been capable of a diversion rate of 2.62 cfs since 1939 is also needed. The proof of application of water to beneficial use for 63-3201, upon which the priority of Right No. 63-33571 is based, shows proof of 5.1 cfs being diverted in the 1960s.

63-33571 – This claim is filed for a water right from Sand Hollow Creek, Unn. Stream (aka Cole Slough) and Unn. Ditch for a 3-1-1960 priority date. Based upon the same email mentioned for 63-33570 it appears this claim is for the remaining 167 acres originally licensed under Water Right No. 63-3201. I also need a map outlining the 167 acres being claimed in the 254 acre permissible place of use for this right. The same measurement is needed for the point of diversion in the NE NW, S25 as explained under 63-33570 above. The quantity that proof of beneficial use was submitted for under 63-3201 states a diversion rate of 5.1 cfs. Again some type of proof as mentioned above will be needed documenting that a total of 7.65 cfs (33570 + 33571) was capable of being diverted in 1960. It could be that the diversion works have not changed, I just need to know that.

Note: Per the Motion for Reconsideration filed in March, 2009, the capacity of the works is likely at least 5.08 cfs. Some proof of a greater amount needs to be in the file and the missing piece is the amount of water being diverted from the point of diversion in the NENW, S25.

Thanks,
Jan

Shurte, Jan

From:
Sent:
To:
Subject:

Shurte, Jan
Tuesday, April 03, 2012 4:07 PM
Dana Hofstetter
Late Claim Nos. 63-33570 & 63-33571 - Obendorf

Dana,

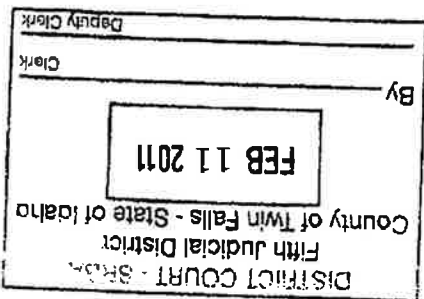
I am in the process of reviewing the above late claims for submittal to the SRBA Court on April 30, 2012. During the course of my review I have come across information I will need before I can make my recommendations. Following are the items needed:

63-33570 – This claim is filed for a water right from Sand Hollow Creek, Unn. Stream (aka Cole Slough) and Unn. Ditch for a 3-1-1939 priority. From an email you sent to me on 8-30-2011 it appears the claim is for 87 acres irrigated in 1939 within the 254 acre permissible place of use. A map needs to be submitted outlining which 87 acres were being irrigated in the 1939 photo. A measurement of the diversion point in the NENW, S25, T5N, R5W is also needed. The license for 63-3201 does have a Memo to the file concerning the estimated flow rate. However, the flow was never measured from this point of diversion and the license was issued for an inch to the acre for 167 acres or 3.34 cfs without a measurement. This point of diversion was again not measured in the 1987 field exam conducted by Steve Lester for 63-9744 and 63-10867. In order to consider additional flow, a measurement of the point of diversion in S25 is needed along with a description of the diverting works. Some type of proof, such as an affidavit from past owners or neighbors, stating that the diversion works have been capable of a diversion rate of 2.62 cfs since 1939 is also needed. The proof of application of water to beneficial use for 63-3201, upon which the priority of Right No. 63-33571 is based, shows proof of 5.1 cfs being diverted in the 1960s.

63-33571 – This claim is filed for a water right from Sand Hollow Creek, Unn. Stream (aka Cole Slough) and Unn. Ditch for a 3-1-1960 priority date. Based upon the same email mentioned for 63-33570 it appears this claim is for the remaining 167 acres originally licensed under Water Right No. 63-3201. I also need a map outlining the 167 acres being claimed in the 254 acre permissible place of use for this right. The same measurement is needed for the point of diversion in the NENW, S25 as explained under 63-33570 above. The quantity that proof of beneficial use was submitted for under 63-3201 states a diversion rate of 5.1 cfs. Again some type of proof as mentioned above will be needed documenting that a total of 7.65 cfs (33570 + 33571) was capable of being diverted in 1960. It could be that the diversion works have not changed, I just need to know that.

Note: Per the Motion for Reconsideration filed in March, 2009, the capacity of the works is likely at least 5.08 cfs. Some proof of a greater amount needs to be in the file and the missing piece is the amount of water being diverted from the point of diversion in the NENW, S25.

Thanks,
Jan



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 Nos. 63-00127A 63-00129A 63-00130A 63-00127B 63-00128B 63-00129B 63-00178B 63-00160
NOTICE OF SETTLEMENT
63-03201 63-09744
63-00178C 63-21530

COMB NOW Tree Top Ranches, L.P., Greg and Ann Obendorf, The Tina Test

Family, L.L.P., the Hauck Family Revocable Trust, and THE DRAKE LLC, successor-in-

interest to the Hauck Family Revocable Trust, by and through undersigned counsel of record and

hereby submit this Notice of Settlement with the Court. The above-referenced parties are

pleased to inform that they have amicably resolved this matter through the Settlement Agreement

attached hereto as Exhibit A.

NOTICE OF SETTLEMENT - 1

Through filing and service of this notice, the above-referenced parties are submitting the Settlement Agreement ("Agreement") to the Idaho Department of Water Resources (the "Department") for its review. Throughout the settlement negotiation process, the parties kept Department personnel and counsel informed of their progress and of the general parameters of the Agreement. The above-referenced parties are confident that the Agreement will meet with the Department's approval, and are committed to working with the Department to address any questions or comments it might have concerning the Agreement.

Likewise, the above-referenced parties are confident that the Standard Form 5 ("SF5") Settlement Documents called for in the Agreement will meet with the approval of the Boise Project Board of Control and the United States Bureau of Reclamation, both of whom are also parties to the above-captioned subcases by virtue of their Standard Form 2 Responses. This is because the Agreement incorporates the same season of use remark previously negotiated and submitted to the Court by Tree Top Ranches, L.P., the Boise Project Board of Control, and the United States Bureau of Reclamation in their Joint Motion For Approval of Season of Use, filed December 16, 2008. See Agreement at Section II.B.4 "Season of Use" (Agreement, p. 4).

DATED this 11th day of February, 2011.

MOFFATT, THOMAS, BARNETT, ROCK &
FIELDS, CHARTERED

By 
Andrew J. Walders - Of the Firm
Attorneys for Tree Top Ranches, L.P.

DATED this 11th day of February, 2011.

DANA L. HOFSTETTER

By *[Signature]* Dana L. Hofstetter - Of the Firm
Attorneys for the Estate of Tina Iest, Tina
Iest Family L.L.P., Greg and Ann
Obendorf, and the Hauck Family
Revocable Trust

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of February, 2011, I caused a true and correct copy of the foregoing NOTICE OF SETTLEMENT 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

Albert P. Barker
BARKER ROSHOLT & SIMPSON
1010 W. Jefferson, Suite 102
P.O. Box 2139
Boise, ID 83701-2139

David W. Gehlert
U.S. DEPARTMENT OF JUSTICE
999 18th Street
South Terrace - Suite 370
Denver, CO 80202

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

Jan Shurte (Courtesy Copy)
IDAHO DEPARTMENT OF WATER RESOURCES
WESTERN REGION OFFICE
2735 Airport Way
Boise, ID 83705

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

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

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

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

Andrew J. Waldera

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made as of the 1st day of February, 2011, by, between and among Tree Top Ranches L.P. ("Tree Top"), Greg and Ann Obendorf ("Obendorf"), The Tina Iest Family L.L.P. ("Iest"), the Hauck Family Revocable Trust ("Hauck"), and THEDRAKE LLC, successor-in-interest to the Hauck Family Revocable Trust.

I.

PURPOSE

This Agreement is made as a compromise by, between and among the parties for the complete and final settlement of their respective claims, differences, and causes of action in the following water right subcases now pending in the Snake River Basin Adjudication ("SRBA") and any SRBA subcases that may arise relating to the same or following root (or parent) water rights:

63-00127A, 63-00128A, 63-00129A, 63-00130A, 63-00131A, 63-00127B, 63-00128B, 63-00129B, 63-00130B, 63-00131B, 63-00178B, 63-00178C, 63-21530, 63-00160, 63-03201, and 63-9744.

Each of the above-referenced root water rights (i.e., 63-00127, 63-00128, 63-00129, 63-00130, 63-00131, 63-00160 and 63-00178), with the exceptions of water rights diverted through a common conveyance known as the Andrews Ditch. Each of the parties to this Agreement now owns portions of the underlying places of use originally decreed for the above-referenced water rights, and the parties have agreed to the apportionment of those water rights between and among them as set forth herein.

In addition to addressing the above-referenced SRBA subcases, this Agreement is also made as a compromise between the parties for the complete and final settlement of any respective claims, differences, and causes of action regarding the following "winter" wildlife water right permits or permit applications:

63-11617, 63-32066, 63-32067, 63-32459, 63-32460, 63-32466, 63-32462, 63-32467, 63-32911, and 63-32912.

¹ Water Right No. 63-21530 is owned by Tree Top and is used on its Parma Ranch in conjunction with the other irrigation rights referenced herein. However, Water Right No. 63-21530 is a Sand Hollow Creek-sourced water right, not a Boise River-sourced water right diverted through the Andrews Ditch. Water Right No. 63-21530 was included in the trial setting of the Andrews Ditch subcases for administrative reasons. Consequently, this Agreement also resolves the parties' respective claims, differences, and causes of action with respect to SRBA Subcase No. 63-21530 and Obendorf's SRBA Subcase Nos. 63-03201 and 63-09744.

II. TERMS OF SETTLEMENT

A. Winter Wildlife Water Right Permits

The parties hereto hereby expressly acknowledge and agree as follows:

1. Tree Top shall request and direct the Idaho Department of Water Resources to revoke and cancel Permit No. 63-32466 (the Sand Hollow Creek diversion just off of East Road) within thirty (30) days of the full and complete execution of the SRBA Standard Form 5 documents for the irrigation rights described below.

2. Tree Top agrees that its winter wildlife water use under Water Right Nos. 63-32462, 63-32467, 63-32911, and 63-32912 shall be returned to the respective source from which the water was initially diverted (i.e., winter water diverted from the Boise River will be returned to the Boise River, and winter water diverted from Sand Hollow Creek will be returned to Sand Hollow Creek). Said return flow condition is already contained within Permit Nos. 63-32466, 63-32467, 63-32911, and 63-32912. Tree Top shall request and direct that the same condition be included within Permit No. 63-32462 (which currently exists as a pending Application for Permit), and that the condition carry over into all Licenses issued under the above-referenced wildlife water rights.

3. Obendorf shall withdraw all pending petitions, protests, and/or objections of any kind whatsoever to Tree Top Permit Nos. 63-32462 (Sand Hollow Creek diversion at Highway 95), 63-32467 (Boise River diversion through Andrews Ditch), 63-32911 (Boise River diversion via pump), Obendorf shall withdraw all said petitions, protests, and/or objections within thirty (30) days of the full and complete execution of the SRBA Standard Form 5 documents for the irrigation rights described below.

4. Tree Top shall not file any petitions, protests, and/or objections of any kind to any of Permit Nos. 63-11617, 63-32066, or 63-32067 provided that the owners of those permits do not seek material or substantial amendments to the existing permits. Further, Tree Top shall withdraw all pending petitions, protests, and/or objections of any kind whatsoever to G.O. Investments, LLC Applications for Permit Nos. 63-32459 and 63-32460. Tree Top shall withdraw all said petitions, protests, and/or objections within thirty (30) days of the full and complete execution of the SRBA Standard Form 5 documents for the irrigation rights described below.

B. Irrigation Water Rights

The parties hereto hereby expressly acknowledge and agree to execute SRBA Standard Form 5 settlement documents for the identified irrigation water rights based on the following:

1. 63-00127 through 63-00131

The Stewart Decree decreed a total of 750 inches (or 15.0 cfs) for these water rights. Tree Top and Obendorf own the lands constituting the historic, decreed place of use of these water rights, and hereby agree to apportion these water rights among them as follows:

63-00127
Tree Top: 2.89 cfs
Obendorf: 0.41 cfs

63-00128
Tree Top: 5.28 cfs
Obendorf: 0.72 cfs

63-00129
Tree Top: 1.14 cfs
Obendorf: 0.16 cfs

63-00130
Tree Top: 0.79 cfs
Obendorf: 0.11 cfs

63-00131
Tree Top: 3.08 cfs
Obendorf: 0.42 cfs

In sum, under these water rights, Tree Top will be decreed a total of 13.18 cfs and Obendorf will be decreed a total of 1.82 cfs.

2. 63-00178

The Stewart Decree decreed a total of 425 inches (or 8.5 cfs) for this water right. Tree Top, Obendorf, Iest, and Hauck own the lands constituting the historic, decreed place of use of this water right, and hereby agree to apportion this water right among them as follows:

Tree Top: 0.42 cfs
Obendorf: 0.54 cfs
Iest: 7.33 cfs
Hauck: 0.21 cfs
63-00160

The Stewart Decree decreed a total of 350 inches (or 7.0 cfs) for this water right. Obendorf and Johnson Feedlot ("Johnson") own the lands constituting the historic, decreed place of use of this water right. At present, Obendorf has claimed the entirety of water right no. 63-00160 (7.0 cfs) in the SRBA through a late claim granted by the SRBA Court on May 20, 2009. Due to the proportionate land ownership pattern of the historic, decreed place of use for this water right, and

Johnson's pending late claim for 3.8 cfs of the total available 7.0 cfs. Obendorf agrees to amend his pending late claim to claim no more than a 3.2 cfs proportionate share of water right no. 63-00160. Obendorf agrees to file the necessary papers amending his claim from 7.0 cfs to 3.2 cfs within ninety (90) days of the parties' full and complete execution of this Agreement. Obendorf further agrees to divert no more than 2.5 cfs of water right 63-00160 from Andrews Ditch, thereby leaving the remaining (up to) 0.7 cfs within the Andrews Ditch for communal carriage purposes. If the Idaho Department of Water Resources ("IDWR" or "Department") recommends a quantity of 2.5 cfs or less to Obendorf under this claim, the parties agree that Obendorf may divert the entirety of the right ultimately recommended from the ditch. The parties further agree not to object to, protest, or otherwise hinder the Obendorf amended claim for 63-00160 (3.2 cfs).

4. Season of Use

Each of the parties' respective Andrews Ditch water rights shall have the same season of use remark for uniformity purposes. To this end, the parties agree that each Andrews Ditch water right shall contain the following Season of Use remark, which has been previously approved by Boise Project Board of Control and the United States Bureau of Reclamation:

"Diversion of irrigation water under this water right prior to April 1 and after October 31 shall occur only when the natural flow of the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE 1/4 of the SR 1/4 of the SR 1/4, 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 not interfere with storage of water under water rights for Lake Lowell, Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs."

5. 63-03201, 63-09744 and 63-21530

Tree Top shall withdraw its pending objections, and shall not file any further petitions, protests, responses and/or objections of any kind whatsoever in SRBA Subcase Nos. 63-03201 and 63-09744. Obendorf shall withdraw their pending objections and/or responses, and shall not file any further petitions, protests, responses and/or objections of any kind whatsoever in SRBA Subcase No. 63-21530. Tree Top and Obendorf agree to withdraw their respective pending objections/responses within ninety (90) days of the execution of this Agreement.

C. The Hauck Transfer of Water Right Permit No. 63-32176

Hauck is the owner of Permit No. 63-32176. The permit allows Hauck to divert 0.15 cfs from a pond on the Hauck property for irrigation purposes. The permit provides that the pond is tributary to the Boise River. Hauck is considering submitting an Application for Transfer of a Water Right with the IDWR for purposes of transferring and/or adding a point of diversion into Permit No. 63-32176 from the pond on the Hauck property to the Boise River for diversion into the Andrews Ditch. Hauck is considering this transfer in order to facilitate gravity-based irrigation of the Hauck property from Andrews Ditch. The parties agree not to object to, protest,

or otherwise hinder the proposed Hauck transfer application described herein should Hauck choose to pursue the administrative transfer.

D. Additional Beneficial Use Claims

Upon the investigation of the parties, it appears that Andrews Ditch has historically diverted and conveyed up to 40 cfs from the Boise River for irrigation by the Andrews Ditch water users. This ditch capacity exceeds the quantity of water historically decreed by the Stewart Decree under water right nos. 63-00127 (3.3 cfs), 63-00128 (6.0 cfs), 63-00129 (1.3 cfs), 63-00130 (0.9 cfs), 63-00131 (3.5 cfs), 63-00160 (3.2 cfs), and 63-00178 (8.5 cfs) by 13.3 cfs. In order to promote and preserve the historic operations of the Andrews Ditch, the parties hereto agree to file additional beneficial use water right claims in the SRBA with claimed priorities no earlier than, January 19, 1906, one day after issuance of the Stewart Decree, to the remaining 13.3 cfs based upon their respective proportionate shares of the Stewart Decree water rights. Thus, the parties shall submit late SRBA beneficial use irrigation water right claims for water diverted from the Andrews Ditch to the remaining 13.3 cfs in the following respective proportions/quantities:

Tree Top: 51% (or 6.78 cfs) 63-33590
Obendorf: 21% (or 2.79 cfs) 63-33497
East: 27% (or 3.59 cfs) 63-33498
Hauck: 1% (or 0.14 cfs) 63-33499

The above-referenced percentages are predicated upon the parties' collective assumption that the Department will ultimately recommend the full 3.2 cfs to Obendorf under claim number 63-00160. The parties agree to adjust these percentages, if necessary, to conform to the quantity of water ultimately recommended by the Department under claim number 63-160. The parties shall not oppose each others' late SRBA beneficial use water right claims complying with the terms of this Section and shall mutually cooperate in obtaining IDWR and SRBA Court approval for such claims.

E. Additional Terms

1. This Agreement represents the full and final resolution of the facts, circumstances, and claims of the parties hereto regarding the matters discussed herein.
2. The parties hereby agree to execute and file with the SRBA Court and the IDWR any and all documents reasonably necessary and incidental to this Agreement in order to fulfill the agreements and obligations set forth herein. This includes, but is not limited to, the parties filing express notices withdrawing Objections and Responses now pending in the SRBA subcases identified herein. This Agreement is contingent upon IDWR approval, complete execution of the SRBA Standard Form 5s provided for herein, the SRBA Court's entry of Partial Decrees in substantial conformance herewith, and IDWR approval of the permit amendments provided for herein. If such IDWR and SRBA Court approvals are not obtained, the parties hereto may restate their respective Claims, Objections, and Responses in the SRBA, and their respective wildlife water permit protests, petitions and objections.

3. The parties agree and acknowledge that each will bear their own attorney fees and costs in these matters.
4. The parties to this Agreement respectively represent and warrant that they have the sole right and exclusive authority to execute this Agreement.
5. None of the parties to this Agreement, nor any other person or entity, may orally or by conduct modify, delete, vary or contradict the terms and/or conditions of this Agreement or this Section. This Agreement may be modified only by a written agreement signed by each of the named parties to this Agreement.
6. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, heirs, successors, and assigns.
7. This Agreement is entered into in the State of Idaho and shall be construed and interpreted in accordance with its laws.
8. The invalidity or unenforceability of any provision herein, or portion thereof, shall in no way affect the enforceability of the remaining provisions of this Agreement, which remaining provisions shall remain in full force and effect as if this Agreement had been executed with the invalid portion(s) thereof eliminated.
9. The parties declare and represent that no promise, inducement, or agreement not contained herein has been made, that this Agreement contains the entire agreement between the parties hereto, and that the terms of this Agreement are contractual and not merely recitals. In deciding to enter into this Agreement, the parties have had the opportunity to consult with their legal counsel of choice, have done so, and their respective counsel have fully explained the terms of this Agreement. The terms of this Agreement have been completely read by the parties, and the terms are understood and voluntarily accepted.

[Signature and Notary Pages Following]



Ben Buckendorf
NOTARY PUBLIC FOR IDAHO
Residing at *Adams*
My Commission Expires *3/30/2016*

On this 25 day of January, 2011 before me, the undersigned, a Notary Public in and for said State, personally appeared Larry D. Williams, General Partner of Tree Top Ranches L.P., an Idaho corporation which is the known or identified to me to be the President of LTDW, Inc., an Idaho corporation, and the General Partner who subscribed said limited partnership name to the foregoing instrument, and acknowledged to me that he executed the foregoing instrument on behalf of said corporation, and that such corporation executed the same in said limited partnership's name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Tree Top Ranches L.P.
By: LTDW, Inc., Its General Partner
Larry D. Williams, President

STATE OF IDAHO)
) ss.
County of Ada)

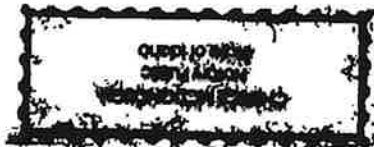
[Signature]
Greg Obendorf
Personally and for the Community

[Signature]
Ann Obendorf
Personally and for the Community

STATE OF IDAHO
)
) ss.
) County of Carver

On this 15th day of January, 2011, before me, the undersigned, a Notary Public, personally appeared Greg Obendorf, known or identified to me, that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

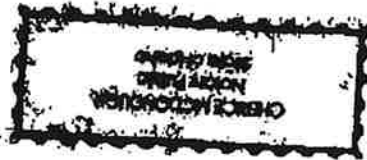


[Signature]
NOTARY PUBLIC FOR IDAHO
Residing at Ann
My Commission Expires 12/02/2011

STATE OF IDAHO
)
) ss.
) County of Carver

On this 15th day of January, 2011, before me, the undersigned, a Notary Public, personally appeared Ann Obendorf, known or identified to me, that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]
NOTARY PUBLIC FOR IDAHO
Residing at Ann
My Commission Expires 12/02/2011

Helen C. Tidwell
The Iest Family L.L.P.
By: Helen C. Tidwell, General Partner

STATE OF IDAHO)
County of Ada) ss.

On this 14 day of January, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Helen C. Tidwell, known or identified to me to be the General Partner of The Tina Iest Family L.L.P., an Idaho limited liability limited partnership, and the General Partner who subscribed said limited liability partnership name to the foregoing instrument; and acknowledged to me that she executed the same in said limited liability limited partnership's name

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Tonya Smith
NOTARY PUBLIC FOR IDAHO
Residing at Muskegon Idaho
My Commission Expires 4-14-2011

Hauck Family Revocable Trust
John Hauck, Trustee

STATE OF IDAHO
County of ADA
ss. }

On this 8th day of Feb

undersigned, a Notary Public, personally appeared JOHN HAUCK, known or identified to me to be the person whose name is subscribed to the within instrument as the Trustee of the Hauck Family Revocable Trust and acknowledged to me that he executed the same as such Trustee of the Hauck Family Revocable Trust.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



[Signature]
NOTARY PUBLIC FOR IDAHO
Residing at Bolivar
My Commission Expires 12/10/13


THEHDRAKE LLC, successor-in-interest to
the Hauck Family Revocable Trust
John Hauck, Trustee
By: Douglas K. Bates, Manager of BID, LLC, the
managing entity of THEHDRAKE LLC

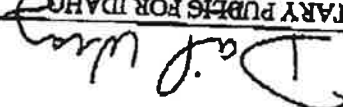
STATE OF IDAHO
County of ADA
ss. }

On this 8th day of Feb

undersigned, a Notary Public in and for said State, personally appeared Douglas K. Bates,
known or identified to me to be the Manager of BID, LLC, an Idaho limited liability company
which is the Manager of THEHDRAKE LLC, an Idaho limited liability company, and the
Manager who subscribed THEHDRAKE LLC's name to the foregoing instrument, and
acknowledged to me that he executed the foregoing instrument on behalf of BID, LLC, and that
BID, LLC executed the same in THEHDRAKE LLC's name.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official
seal the day and year in this certificate first above written.




NOTARY PUBLIC FOR IDAHO
Residing at PO Box 37
My Commission Expires 12/10/13