

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

RIGHT NUMBER: 63-33498

NAME AND ADDRESS: THE TINA IEST FAMILY LLLP
C/O HELEN TIDWELL
5700 S LINDER RD
MERIDIAN ID 83642

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 3.590 CFS

PRIORITY DATE: 03/01/1964

POINT OF DIVERSION:

T05N R05W S25 SWSE Lot 2 Within CANYON County

PURPOSE AND
PERIOD OF USE:

PURPOSE OF USEPERIOD OF USEQUANTITY

IRRIGATION

03/15 03/01 11/15

3.590 CFS

Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE¼ of the SE¼ of the SE¼, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall ~~be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576,~~ not interfere with storage of water under water rights for Lake Lowell, Lucky Peak, Arrowrock or Anderson Ranch Reservoir.

PLACE OF USE: IRRIGATION in CANYON County

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

225.1 ACRES TOTAL

Right Nos. 63-178C and 63-33498 are limited to the irrigation of a combined total of 225.1 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

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-33498 V1

WATER RIGHT NUMBER: 63-33498 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	THE TINA IEST FAMILY LLLP C/O HELEN TIDWELL 5700 S LINDER RD MERIDIAN, ID 83642 (208) 888-3325
Attorney	DANA L HOFSTETTER HOFSTETTER LAW OFFICE LLC 608 W FRANKLIN ST BOISE, ID 83702 (208)424-7800

Priority Date: 03/01/1964

Basis: Beneficial Use

Status: Closed

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/15 to 11/15	3.590 CFS	
	<u>Total Diversion:</u>	3.590 CFS	

<u>Location of Point(s) of Diversion</u>	
BOISE RIVER CANYON County	L2 (SW1/4SE1/4) Sec. 25, Twp 05N, Rge 05W, B.M.

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	05W	23									31.1	15.2	34.3	38.2		12.3	27.2		158.3
05N	05W	26	27.0	27.6			12.2												66.8
			L 1	L 2															

Total Acres: 225.1

Conditions of Approval:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-33498 V1

1. S49 Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE¼ of the SE¼ of the SE¼, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.
2. C18 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.
3. E55 Right Nos. 63-178C and 63-33498 are limited to the irrigation of a combined total of 225.1 acres in a single irrigation season.

Remarks:

Comments:

1. jshurte 5/21/2012 Recommendation
Comment: See comments in 63-33497.

2. jshurte 5/31/2012 CFS per acre rec
Comment: This right plus overlapping Right No. 63-178C allow for .05 cfs/acre. The Hubble analysis for the Haas Ditch company (see copy in 63-33497) was used for the original recommendations for the rights from the Andrews ditch and allowed for .06 cfs per acre. No combined use condition for the cfs per acre is being recommended.

Water Supply Bank:

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-33498 V2

WATER RIGHT NUMBER: 63-33498 V2

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	THE TINA IEST FAMILY LLLP C/O HELEN TIDWELL 5700 S LINDER RD MERIDIAN, ID 83642 (208) 888-3325
Attorney	DANA L HOFSTETTER HOFSTETTER LAW OFFICE LLC 608 W FRANKLIN ST BOISE, ID 83702 (208)424-7800

Priority Date: 03/01/1964

Basis: Beneficial Use

Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/01 to 11/15	3.590 CFS	
	<u>Total Diversion:</u>	3.590 CFS	

Location of Point(s) of Diversion

BOISE RIVER	L2 (SW1/4SE1/4)	Sec. 25, Twp 05N, Rge 05W, B.M.
CANYON County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
05N	05W	23									31.1	15.2	34.3	38.2		12.3	27.2		158.3
05N	05W	26	27.0	27.6		12.2													66.8
			L 1	L 2															

Total Acres: 225.1

Conditions of Approval:

1. S49 Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE¼ of the SE¼ of the SE¼, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall not interfere with storage of water under water rights for Lake Lowell, Lucky Peak, Arrowrock, or Anderson Ranch Reservoirs.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-33498 V2

2. C18 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.
3. E55 Right Nos. 63-178C and 63-33498 are limited to the irrigation of a combined total of 225.1 acres in a single irrigation season.

Remarks:

Comments:

1. jshurte 5/7/2013 Recommendation

Comment: See emails, memos and comments in 63-33497 pertaining to this right. Plus the settlement dated February 11, 2011.

Water Supply Bank:

SRBA DIRECTORS REPORT 63-33498

[Return to SRBA Home Page](#)

IWT072

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

Right Number: 63-33498

Name and Address: THE TINA IEST FAMILY LLLP
C/O HELEN TIDWELL
5700 S LINDER RD
MERIDIAN, ID 83642

Source: BOISE RIVER Tributary: SNAKE RIVER

Quantity: 3.59 CFS

Priority Date: 03-01-1964

Diversion Point: T05N R05W S25 LOT 2 (SWSE)Within Canyon County

Purpose and

Period of Use:	Purpose of Use	Period of Use	Quantity
	Irrigation	~~03-15~~ TO 11-15 3-1	3.59 CFS

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

Place of Use:	Irrigation	Within Canyon County
	T05N R05W S23	NESW 31.1 NWSW 15.2 SWSW 34.3 SESW 38.2 NWSE 12.3 SWSE 27.2
	S26 LOT 1	(NENE) 27 LOT 2 (NWNE) 27.6 NENW 12.2
	225.1 Acres Total	

Right Nos. 63-178C and 63-33498 are limited to the irrigation of a combined total of 225.1 acres in a single irrigation season.

Other Provisions Necessary for Definition / Administration of this Water Right:

Explanatory Material: Basis of Claim - Beneficial Use

[Return to SRBA Home Page](#)

05/06/2013

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

RIGHT NUMBER: 63-33498

NAME AND ADDRESS: THE TINA IEST FAMILY LLLP
C/O HELEN TIDWELL
5700 S LINDER RD
MERIDIAN ID 83642

SOURCE: BOISE RIVER

TRIBUTARY: SNAKE RIVER

QUANTITY: 3.590 CFS

PRIORITY DATE: 03/01/1964

POINT OF DIVERSION:

T05N R05W S25 SWSE Lot 2 Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/01 11/15	3.590 CFS
Diversion for mitigation 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, NE¼ of the SE¼ of the SE¼, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall not interfere with storage of water under Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.		

PLACE OF USE: IRRIGATION in CANYON County

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

225.1 ACRES TOTAL

Right Nos. 63-178C and 63-33498 are limited to the irrigation of a combined total of 225.1 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

Shurte, Jan

From: Shurte, Jan
Sent: Thursday, March 28, 2013 3:04 PM
To: 'Dana Hofstetter'
Cc: Courtney, Andrea; Andy Waldera
Subject: RE: Right Nos. 63-33497, 33498 and 33499

Dana,

No, Andy stated that Tree Top is good with the 1964 priority date, but did not want to be counted out if we were to recommend the 1938 date.

Jan

From: Dana Hofstetter [<mailto:Dana@IdahoWaterLaw.com>]
Sent: Thursday, March 28, 2013 2:48 PM
To: Shurte, Jan
Cc: Courtney, Andrea
Subject: Re: Right Nos. 63-33497, 33498 and 33499

Jan,

Thank you for this email. This is my next priority and I will be in touch tomorrow on this. Could you give me an update on where Tree Top is on the priority date issue? Did they obtain any pre-1964 evidence?

Thank you,
Dana

On 3/28/2013 11:10 AM, Shurte, Jan wrote:

Dana,

At our last meeting concerning these rights we discussed the following (based on your client's objections):

- 1- Changing the season of use remark to the remark agreed upon in your settlement with Tree Top and already included in the 63-127C thru 63-131C and 178C thru 178E.
- 2- Going back to a 1938 priority date which represented when E G Johnson began using Sand Hollow Creek water and no longer used Boise River water under his Stewart decreed rights.
- 3- Under 63-33499 and 63-178E the place of use is not the same as recommended, there may be more acres, or the acres recommended are not correct. You had stated you would send me a map outlining which acres go with each right.

This email serves as an update on my progress and also a reminder of what I still need from you.

I am in the process of changing the season of use remark to match the remark from your settlement for these rights.

I cannot change the priority date to 1938 because I do not have proof that when E G Johnson began using Sand Hollow Creek instead of the Boise River it immediately was used by the Obendorfs. You've given me no proof that the Obendorfs or their predecessor(s) actually diverted the water for the purpose of irrigation of their lands, only the theory that it happened by default. There needs to be

evidence that the 40 cfs was in the ditch in 1938 since the decreed water rights, at that time, did not add up to 40 cfs. My suggestion is we settle with the 1964 priority date that is proven by the landowner's affidavits. If the lower Boise River were ever administered by the water master it is unlikely a right with either a 1938 or 1964 priority would be delivered in lieu of the Stewart and Bryan decreed rights.

Please send me the maps concerning 63-33499 and 63-178E as to where the 7.5 acres for each lie. In the meantime I will work on all of the water rights in the settlement to prepare them for SF5s.

Thanks,
Jan

05/31/2012

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

RIGHT NUMBER: 63-33498

NAME AND ADDRESS: THE TINA IEST FAMILY LLLP
C/O HELEN TIDWELL
5700 S LINDER RD
MERIDIAN ID 83642

SOURCE: BOISE RIVER TRIBUTARY: SNAKE RIVER

QUANTITY: 3.590 CFS

PRIORITY DATE: 03/01/1964

POINT OF DIVERSION:
T05N R05W S25 SWSE Lot 2 Within CANYON County

PURPOSE AND
PERIOD OF USE:

<u>PURPOSE OF USE</u>	<u>PERIOD OF USE</u>	<u>QUANTITY</u>
IRRIGATION	03/15 11/15	3.590 CFS
Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE¼ of the SE¼ of the SE¼, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.		

PLACE OF USE: IRRIGATION in CANYON County

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

225.1 ACRES TOTAL

Right Nos. 63-178C and 63-33498 are limited to the irrigation of a combined total of 225.1 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

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-33498 V1

WATER RIGHT NUMBER: 63-33498 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	THE TINA IEST FAMILY LLLP C/O HELEN TIDWELL 5700 S LINDER RD MERIDIAN, ID 83642 (208) 888-3325
Attorney	DANA L HOFSTETTER HOFSTETTER LAW OFFICE LLC 608 W FRANKLIN ST BOISE, ID 83702 (208)424-7800

Priority Date: 03/01/1964
Basis: Beneficial Use
Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	03/15 to 11/15	3.590 CFS	
	<u>Total Diversion:</u>	3.590 CFS	

Location of Point(s) of Diversion

BOISE RIVER	L2 (SW1/4SE1/4)	Sec. 25, Twp 05N, Rge 05W, B.M.
CANYON County		

Place of UseIRRIGATION Within CANYON County

T05N R05W S23	NESW	31.1	T05N R05W S23	NWSW	15.2
T05N R05W S23	SWSW	34.3	T05N R05W S23	SESW	38.2
T05N R05W S23	NWSE	12.3	T05N R05W S23	SWSE	27.2
T05N R05W S26 Lot 1	NENE	27.0	T05N R05W S26 Lot 2	NWNE	27.6
T05N R05W S26	NENW	12.2			

Total Acres: 225.1

Conditions of Approval:

1. C18 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.

SEE
COMMENTS
IN 63-33498
REFERENCING
THIS RIGHT.

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-33498 V1

2. S49 Diversion for irrigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE¼ of the SE¼ of the SE¼, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.
3. E55 Right Nos. 63-178C and 63-33498 are limited to the irrigation of a combined total of 225.1 acres in a single irrigation season.

Remarks:

Comments:

1. jshurte 5/21/2012 Recommendation
Comment: See comments in 63-33497.

2. jshurte 5/31/2012 CFS per acre rec
Comment: This right plus overlapping Right No. 63-178C allow for .05 cfs/acre. The Hubble analysis for the Haas Ditch company (see copy in 63-33497) was used for the original recommendations for the rights from the Andrews ditch and allowed for .06 cfs per acre. No combined use condition for the cfs per acre is being recommended.

Water Supply Bank:

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Recommendation Report 63-33497 V1

WATER RIGHT NUMBER: 63-33497 V1

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	GREG OBENDORF 26496 DEB LN PARMA, ID 83660 (208)722-6451
Attorney	DANA L HOFSTETTER HOFSTETTER LAW OFFICE LLC 608 W FRANKLIN ST BOISE, ID 83702 (208)424-7800

Priority Date: 03/01/1964
Basis: Beneficial Use
Status: Active

<u>Source</u>	<u>Tributary</u>
BOISE RIVER	SNAKE RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
MITIGATION	03/01 to 11/15	2.790 CFS	
	<u>Total Diversion:</u>	2.790 CFS	

Location of Point(s) of Diversion

BOISE RIVER	L2 (SW1/4SE1/4)	Sec. 25, Twp 05N, Rge 05W, B.M.
CANYON County		
BOISE RIVER	NW1/4NW1/4	Sec. 25, Twp 05N, Rge 05W, B.M.
CANYON County	(Injection)	

Place of Use

MITIGATION Within CANYON County

T05N R05W S23	NWNE	T05N R05W S23	SWNE
T05N R05W S23	SENE	T05N R05W S23	NENW
T05N R05W S23	SENE	T05N R05W S23	NESE
T05N R05W S23	SESE	T05N R05W S24	NESW
T05N R05W S24	NWSW	T05N R05W S24	SWSW
T05N R05W S24	SESW	T05N R05W S24	SWSE

Conditions of Approval:

JRE
COMMENTS
RELATING
TO REC. FOR
63-33498

IDAHO DEPARTMENT OF WATER RESOURCES

Adjudication Recommendation Report 63-33497 V1

1. S49 Diversion for mitigation under this water right prior to April 1 and after October 31 shall occur only when the natural flow in the Boise River below the Star Bridge in Township 04 North, Range 01 West, Section 18, NE¼ of the SE¼ of the SE¼, Boise Meridian (approximate river mile 33.9) is sufficient for water to be available for diversion at the point of diversion described above, provided that any such use of this water right prior to April 1 and after October 31 shall be subordinated to water rights for storage in Lucky Peak Reservoir, Lake Lowell, Arrowrock Reservoir, and/or Anderson Ranch Reservoir, as decreed in SRBA Case No. 39576.
2. C18 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.
3. This right is diverted from the Boise River in the SWSE, S25, Twp. 5N, Rge. 5W, and injected into Sand Hollow Creek in the NWNW, S. 25, Twp. 5N, Rge. 5W for mitigation of Sand Hollow Creek Right Nos. 63-3201 and 63-9744.

Remarks:

Comments:

1. jshurte 5/21/2012 Disallowal

Comment: This claim was filed as a part of the settlement of the Andrews Ditch Co. water rights. The Stewart decree rights totaled 26.7 cfs and the ditch was measured in 2008 at 40 cfs. Each member of the ditch then filed b/u claims to make up the difference. I requested proof that the ditch was flowing 40 cfs at the time the Stewart decree was finalized because these are b/u claims and evidence of priority is needed especially where the Stewart decree had just been completed decreeing a certain amount. Evidence was requested and none submitted so this right is being disallowed. See comments in 63-33590 also.

2. jshurte 5/29/2012 Recommendation

Comment: Evidence in the form of two affidavits from individuals still living was submitted on 5-21-2012 which dated back to 1964. The priority for the first day of the irrigation season was given 3-1-1964. The original priority date claimed was one day after the Stewart Decree or 1/19/1906. I requested evidence that the ditch was able to carry this amount dating back to 1906 and received the above mentioned affidavits. This right is a part of a settlement between Tree Top Ranches, Obendorf, Iest and Hauck. A measurement was conducted by SPF Water engineering on 11-19-2008 on the Andrews ditch. With the ditch full 40 cfs was being diverted. The water rights decreed in 1906 from the Stewart Decree total 26.7 cfs. The parties then filed beneficial use claims on the remaining 13.3 cfs in order to keep the system running as it has historically been. There was mention of Boise River rights for E G Johnson aka Right Nos 63-180, 63-181 and 63-33406 which have been recommended as mitigation for Sand Hollow creek right nos. 63-4036A and B. These rights date back to 1938 when the diversion of 63-180 et al from the Boise River Andrews ditch was ceased and 63-4036A and B represent the beginning of diverting Sand Hollow Creek water instead of the Boise River water for the same lands due to better irrigation methods and more available flow in Sand Hollow Creek from increased irrigation of surrounding lands and increased wastewater into Sand Hollow Creek. The thought is that when the flow was reduced from the Andrews ditch by E G Johnson ceasing diversion in 1938 then that would be the priority date justification for that amount of water remaining in the Andrews ditch. However that amount of water is 9.5 cfs and not 13.3 cfs so the 1964 affidavits were used. An objection will likely be filed on this and the other rights 63-33498, 63-33499 and 63-33590. This comment will be a reference for all of these rights.

3. jshurte 5/31/2012 CFS per acre

Comment: This right is for mitigation for irrigation. However, if you add up all the cfs for the Boise River mitigation rights plus the Sand Hollow Creek Right Nos. 63-3201 and 63-9744 the cfs per acre for 254 acres is .03 cfs per acre. The Hubble analysis allows for .06 cfs for this area. This Hubble was done for the Haas ditch company in this area and used in the original recommendations for the Andrews Ditch Co. The acres are still limited to the 254 acres now irrigated from the Sand Hollow Creek rights 63-3201 and 63-9744.

Shurte, Jan

From: Hofstetter Law Office [Dana@IdahoWaterLaw.com]
Sent: Monday, May 21, 2012 8:11 PM
To: Shurte, Jan
Subject: Re: Late Claim Nos. 63-33497 - Obendorf, 63-33498 - Iest, 63-33499 - The Drake LLC
Attachments: Greg Obendorf Affidavit.pdf; Tidwell Affidavit.pdf

Jan:

In response to your request, I attach Affidavits of Greg Obendorf and David Tidwell, documenting use of a full Andrews Ditch back to the early 1960's based on their personal observations. Unfortunately, it is difficult, based on the witnesses currently available, to document this beneficial use any earlier than that. I do note, however, that the Johnson right nos. 63-33406 (based on a portion of 63-160), 63-180 and 63-181 which were originally decreed in the Stewart Decree from the Andrews Ditch appear to support a priority date of about 1938 for the beneficial use rights from the Andrews Ditch. As you know, 63-33406, 63-180, and 63-181 were decreed in the SRBA as accomplished transfer rights for mitigation of 63-4036A&B, 63-28751 and 63-32394 which have 1938 priorities. Thus, this indicates that as of 1938, 63-33406, 63-180 and 63-181 (amounting to 9.5 cfs) would have been left in the River for mitigation and this additional capacity in the Andrews Ditch would have been available for the diversion and delivery of the beneficial use rights from the Andrews Ditch. The portion of Greg Obendorf's Affidavit indicating that the old headgate for the branch of the Andrews Ditch, leading to his property, appeared to date at least to the 1930's would also suggest that as of the 1930's the Andrews Ditch was run as full as possible back at least to the 1930's to serve the branches of the Ditch and the respective lands. Please let me know, if you have any questions or need any additional information.

Thank you,
Dana

On 3/23/2012 12:56 PM, Shurte, Jan wrote:
Hi Dana,

I am in the process of reviewing the beneficial use late claims for the Andrews ditch in preparation for the April 30th due date. The above b/u late claims are claiming a 1/19/1906 priority date for a total of 6.52 cfs over and above the amount decreed for the Andrews ditch in the Stewart Decree.

In order to recommend this priority date I will need some evidence of priority that could document that this additional amount of water was being diverted in 1906. This can be in the form of affidavits, documentation of who spoke of this amount of water to necessitate the filing, newspaper articles, historical articles, just about anything will help. We know the ditch diverts more than it's decreed rights at this time, so I am looking for some kind of idea as to why we can go back to 1906.

If you have any questions concerning this request, please feel free to contact me.

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

PROOF OF 1967 priority

Dana L. Hofstetter, ISB #3867
HOFSTETTER LAW OFFICE, LLC
608 West Franklin Street
Boise, Idaho 83702
Telephone (208) 424-7800
Facsimile: (208) 424-8774
Email: Dana@IdahoWaterLaw.com

Attorney for Greg and Ann Obendorf,
The Tina Iest Family L.L.L.P., and
THEDRAKE LLC

**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	)	
	)	
	)	Subcase Nos. 63-33497, 63-33498,
Case 39576	)	63-33499 and 63-33590
	)	
	)	AFFIDAVIT OF GREG OBENDORF
	)	
_____	)	

STATE OF IDAHO)
) ss:
COUNTY OF CANYON)

Greg Obendorf, being first duly sworn on oath, deposes and says:

(1) I was born in 1955 and grew up in the Parma, Idaho area. I recall at age 12, hunting ducks on what is now the Canyon County, Idaho property owned by The Tina Iest Family L.L.L.P through which the Andrews Ditch runs (hereinafter the "Iest Property").

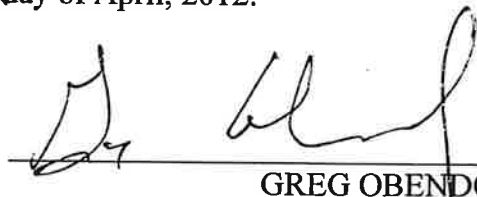
(2) My wife and I purchased property adjacent to the Iest Property in March 1987. Since that time, I have resided adjacent to the Iest Property and have also leased and farmed the Iest Property since about 1988.

(3) The Andrews Ditch on the Iest Property was full when I first recall seeing it when I was 12 years old. Based on what I have observed since then, it always has been operated full during the irrigation season. The capacity of the Andrews Ditch has remained the same over the period of time from when I was 12 until the present.

(4) The branch of the Andrews Ditch delivering water to Sand Hollow Creek on my property had a headgate that was very old at the time I purchased my property in 1987, appearing at least 40-50 years old at that time. It was so old that I replaced it a couple of years ago. The presence of this old headgate confirmed that this branch of the Andrews Ditch had existed for quite some time

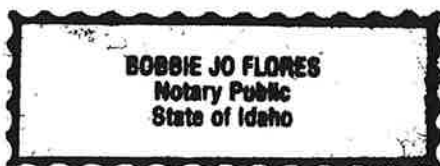
FURTHER YOUR AFFIANT SAYETH NAUGHT.

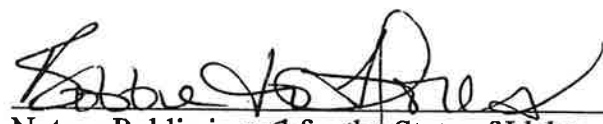
DATED this 25th day of April, 2012.



GREG OBENDORF

SUBSCRIBED AND SWORN to before me this 25th day of April, 2012.





Notary Public in and for the State of Idaho
Residing at: Panna, ID
My Commission Expires: 8-9-12

**Attorney for Greg and Ann Obendorf,
The Tina Iest Family L.L.P., and
THEDRAKE LLC**

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

Case 39576

AFFIDAVIT OF DAVID TIDWELL

David Tidwell, being first duly sworn on oath, deposes and says:

AFFIDAVIT OF DAVID TIDWELL – Page 1

(2) My father-in-law, Helen Tidwell's father, purchased the Iest Property in September, 1962 from Lester Yaekel.

(3) I recall my father-in-law showing me the Iest Property within the year or two after he purchased it. During that tour of the Iest Property which was during the irrigation season, I remember being impressed with the amount of water available to the Iest Property. In particular, I recall the Andrews Ditch on the Iest Property being brimming full during that tour. Based on what I have observed since then, up to the present, the Andrews Ditch always has been operated full during the irrigation season.

FURTHER YOUR AFFLIANT SAYETH NAUGHT.

DATED this 23 day of April, 2012.



DAVID TIDWELL

SUBSCRIBED AND SWORN to before me this 23rd day of April, 2012.

ROSE MOORE
NOTARY PUBLIC
STATE OF IDAHO


Notary Public in and for the State of Idaho
Residing at: Boise - ada County
My Commission Expires: 12-06-2016

Shurte, Jan

From: Hofstetter Law Office [Dana@IdahoWaterLaw.com]
Sent: Thursday, April 26, 2012 2:37 PM
To: Shurte, Jan; Courtney, Andrea
Cc: AJW@moffatt.com
Subject: Re: Late Claim Nos. 63-33497 - Obendorf, 63-33498 - Iest, 63-33499 - The Drake LLC

Jan and Andrea:

I have obtained 2 Affidavits in connection with this matter. I would like to provide this information prior to the April 30 submission of the Director's Reports to the SRBA Court. However, I understand that Jan remains out of the office. Please advise how and to whom I should submit this information.

Thank you,
Dana

On 3/23/2012 12:56 PM, Shurte, Jan wrote:
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I am in the process of reviewing the beneficial use late claims for the Andrews ditch in preparation for the April 30th due date. The above b/u late claims are claiming a 1/19/1906 priority date for a total of 6.52 cfs over and above the amount decreed for the Andrews ditch in the Stewart Decree.

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Jan Shurte
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