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Department of Water Resources

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DISTRICT COURT - SRBA  
TWIN FALLS CO., IDAHO

North Snake Ground Water District,  
May Farms, Ltd. and Faulkner  
Land & Livestock Company

Josephine P. Beeman  
Dana L. Hofstetter  
BEEMAN & HOFSTETTER, P.C.  
608 West Franklin Street  
P. O. Box 1427  
Boise, ID 83701-1427  
(208) 388-8900  
(208) 388-8400 (Facsimile)  
beehof@micron.net

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

In Re SRBA ) Subcase Nos. 36-02708 and 36-07218  
)  
Case No. 39576 ) **Affidavit of David B. Shaw**  
)  
\_\_\_\_\_ )

STATE OF IDAHO )  
) ss:  
COUNTY OF ADA )

David B. Shaw, being first duly sworn deposes and states:

(1) My work address is ERO Resources Corporation, 2309 North Mountain View Drive, Suite 174, Boise, Idaho 83706-1065.

(2) My educational background includes Bachelor's and Master's degrees in Agricultural Engineering from the University of Idaho in 1966 and 1972, respectively. I am a registered Professional Engineer and land surveyor in the State of Idaho.

(3) My work experience includes five years of teaching at the University of Idaho in the College of Engineering from 1968 to 1973. I was with the Idaho Department of Water Resources ("IDWR") and its predecessor agencies from November 1973 until July 1996. With IDWR, I served in a number of technical and administrative positions, including Regional Supervisor for IDWR Western Region from 1978 to 1985, and Adjudication Bureau Chief from 1985 to 1996. My experience with IDWR includes successfully managing a variety of water right, water supply, and water delivery situations. Since July 1996, I have been employed by ERO Resources Corporation, providing consulting services to clients in the areas of water rights, water right adjudication, and water distribution and management.

(4) I have examined public records from IDWR regarding the water rights in the above-listed subcases, including SRBA claim records and the diversion records for 1995 - 1997. I also examined public records of the Idaho Department of Health and Welfare, Division of Environmental Quality ("DEQ") for Clear Springs Foods, Inc.'s Middle Hatchery, identification number ID-0000931.

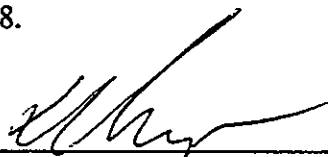
(5) DEQ's records which I reviewed include Discharge Monitoring Reports ("DMR's") which are submitted on a monthly basis by the operator of a fish raising facility operating under the requirements of a National Pollutant Discharge Elimination System ("NPDES") permit. Among other information, the quantity of discharged water is reported on the DMR's as required by the NPDES permit. For these types of continuous flow fish propagation facilities, the amount of water discharged generally equals the amount of water diverted into the facility. I examined DMR's for the period 1983 through June 1998 for Clear Springs Foods' Middle Hatchery. In Table 1, attached hereto as Exhibit A and incorporated herein, I tabulated the DMR information in million gallons per day ("mgd") and cubic feet per second ("cfs") for the Middle Hatchery. In Table 2, attached hereto as Exhibit B and incorporated herein, I tabulated the available IDWR diversion data in cfs for Clear Springs Foods' Middle Hatchery.

(6) Table 1 shows the average monthly discharge for the Middle Hatchery for the period 1983 through June 1998 to be 194.20 cfs and the average maximum monthly discharge for the same period to be 202.45 cfs. Average monthly discharges for the period range from a low of 186.07 cfs in April to a high of 201.90 cfs in October. Table 1 also lists the two water rights (36-02708 and 36-07218) I have identified to be used in this facility based on DEQ and IDWR records. Table 1 also indicates the total Special Master's recommended diversion rate of 251.55 cfs for fish propagation under these two water rights. All discharge amounts on Table 1 are substantially less than the Special Master's recommended total of 251.55 cfs.

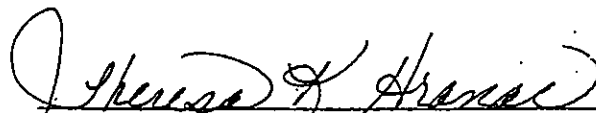
(7) Table 2 shows the IDWR diversion data for the Middle Hatchery for the period March 1995 through December 1997. Table 2 further shows that the average monthly diversion rate during this period was 185.34 cfs, and the average maximum monthly diversion for the same period was 193.05 cfs. Average monthly diversions for the period range from a low of 178.17 cfs in May to a high of 193.05 cfs in October. The IDWR diversion data and DMR data for the Middle Hatchery are consistent with one another. All diversion rates on Table 2 are substantially less than the Special Master's recommended total of 251.55 cfs for Clear Springs Foods' Middle Hatchery.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 28<sup>th</sup> day of September, 1998.

  
\_\_\_\_\_  
DAVID B. SHAW

SUBSCRIBED AND SWORN to before me this 28<sup>th</sup> day of September, 1998.

  
\_\_\_\_\_  
Notary Public in and for the State of Idaho  
Residing at: Luna Falls  
My Commission Expires: 6-26-2002

CERTIFICATE OF SERVICE

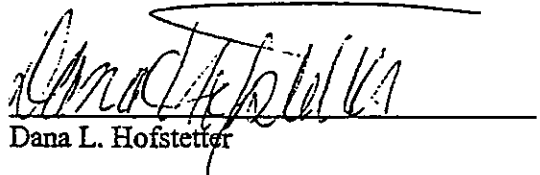
I hereby certify that on the 26<sup>th</sup> day of September, 1998, I caused to be served copies of the foregoing **AFFIDAVIT OF DAVID B. SHAW** by the method indicated upon the following:

Patrick D. Brown  
Parker Warr & Brown  
812 Shoshone St. East  
Twin Falls, Idaho 83301  
 U.S. Mail  Fed Ex  Hand  Fax

Dan Steenson  
Ringert Clark  
P. O. Box 2773  
Boise, Idaho 83701-2773  
 U.S. Mail  Fed Ex  Hand  Fax

Idaho Department of Water Resources  
Document Depository  
P. O. Box 83720  
Boise, Idaho 83720-0098  
 U.S. Mail  Fed Ex  Hand  Fax

Chief, Natural Resources Division  
Office of the Attorney General  
P. O. Box 44449  
Boise, Idaho 83711-4449  
 U.S. Mail  Fed Ex  Hand  Fax

  
Dana L. Hofstetter

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Table 1

Exhibit A  
to  
Affidavit of David B. Shaw  
(36-02708 and 36-07218)

## Clear Springs Foods Middle Hatchery -- ID0000931 -- DMR Discharge Records

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg	Max	Min
<b>MGD</b>															
83	141.98	144.02	137.43		136.40	136.40		139.00	142.00	132.00	134.00	134.00	137.72	144.02	132.00
84	132.00		134.00		125.10	127.02	128.91	130.80	133.00	135.90	137.04		131.53	137.04	125.10
85	132.70	130.17	128.91	127.64	125.13	126.37	127.64	131.44	136.59	137.88	137.88	134.00	131.36	137.88	125.13
86	130.17	128.91	128.91	126.37	127.64	130.17		134.00	139.17	141.78	140.48	137.90	133.23	141.78	126.37
87	135.29	134.00	132.71	131.44	128.91	131.44	134.00	137.88	139.17	141.78		136.59	134.84	141.78	128.91
88	134.00	131.44	130.17	126.87	125.40	129.22	131.42	128.91		132.71	130.17	128.91	129.93	134.00	125.40
89	126.37	121.77	121.77	120.04	120.04	121.85	123.14	124.40	129.43	130.70	129.43	127.53	124.71	130.70	120.04
90	124.40	124.40		117.65	121.84	123.12	121.83	126.90	126.67	129.41	126.88		124.31	129.41	117.65
91		122.48	120.64	119.40	118.78	118.92	119.39	121.83	123.74	126.00	125.62	123.12	121.81	126.00	118.78
92	121.88	120.40	119.11	116.35	117.26	118.19	122.08	121.90	121.52	120.66	119.41	118.19	119.75	122.08	116.35
93	118.19	116.96	115.60	115.73	115.73	115.54	119.41	120.66	129.39	123.14	120.66	120.66	119.31	129.39	115.54
94	118.19	116.96	116.96	115.73	115.73	114.51	114.51	120.66	123.14	125.64	123.14	121.90	118.92	125.64	114.51
95	119.42	118.19	115.73	114.51	115.73	118.19	116.96	119.42	121.90	121.90	121.90	121.90	118.81	121.90	114.51
96	119.42	118.19	116.96	113.30	179.04 <sup>1</sup>	180.94 <sup>1</sup>	118.19	120.66	123.14	124.40	123.14	122.00	119.94	124.40	113.30
97	120.60	119.42	119.40	116.96	116.96	120.66	119.42	123.14	125.60	125.90	125.60	124.40	121.51	125.90	116.96
98	121.90	121.90	120.66	121.90	118.19	120.66							120.87	121.90	118.19
<b>CFS</b>															
83	219.64	222.80	212.60		211.01	211.01		215.03	219.67	204.20	207.30	207.30	213.06	222.80	204.20
84	204.20		207.30		193.53	196.50	199.42	202.35	205.75	210.24	212.00		203.48	212.00	193.53
85	205.29	201.37	199.42	197.46	193.58	195.49	197.46	203.34	211.30	213.30	213.30	207.30	203.22	213.30	193.58
86	201.37	199.42	199.42	195.49	197.46	201.37		207.30	215.30	219.33	217.32	213.33	206.10	219.33	195.49
87	209.29	207.30	205.30	203.34	199.42	203.34	207.30	213.30	215.30	219.33		211.30	208.59	219.33	199.42
88	207.30	203.34	201.37	196.27	193.99	199.90	203.31	199.42		205.30	201.37	199.42	201.00	207.30	193.99
89	195.49	188.38	188.38	185.70	185.70	188.50	190.50	192.45	200.23	202.19	200.23	197.29	192.92	202.19	185.70
90	192.45	192.45		182.00	188.49	190.47	188.47	196.31	195.96	200.20	196.28		192.31	200.20	182.00
91		189.48	186.63	184.71	183.75	183.97	184.70	188.47	191.43	194.92	194.33	190.47	188.44	194.92	183.75
92	188.55	186.26	184.26	179.99	181.40	182.84	188.86	188.58	187.99	186.66	184.73	182.84	185.25	188.86	179.99
93	182.84	180.94	178.83	179.03	179.03	178.74	184.73	186.66	200.17	190.50	186.66	186.66	184.57	200.17	178.74
94	182.84	180.94	180.94	179.03	179.03	177.15	177.15	186.66	190.50	194.37	190.50	188.58	183.97	194.37	177.15
95	184.74	182.84	179.03	177.15	179.03	182.84	180.94	184.74	188.58	188.58	188.58	188.58	183.80	188.58	177.15
96	184.74	182.84	180.94	175.28			182.84	186.66	190.50	192.45	190.50	188.73	185.55	192.45	175.28
97	186.57	184.74	184.71	180.94	180.94	186.66	184.74	190.50	194.30	194.77	194.30	192.45	187.97	194.77	180.94
98	188.58	188.58	186.66	188.58	182.84	186.66							186.98	188.58	182.84
<b>Ave</b>	<b>195.59</b>	<b>192.78</b>	<b>191.72</b>	<b>186.07</b>	<b>188.61</b>	<b>191.03</b>	<b>190.03</b>	<b>196.12</b>	<b>200.50</b>	<b>201.09</b>	<b>198.39</b>	<b>196.48</b>	<b>194.20</b>	<b>202.45</b>	<b>186.49</b>

Recommended water right #'s 36-02708 & 36-07218 for 251.55 cfs for use in this facility.

<sup>1</sup> These values were reported as MGD but appear to be CFS. They are reported here but not used in the computation of summary statistics.

Table 2

Clear Springs Foods Middle Hatchery -- Diversion Records Submitted to IDWR

Year CFS	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Avg	Max	Min
95			180.94	176.84	177.70	180.56	181.00	181.92	186.85	190.32	188.58	188.58	183.33	190.32	176.84
96	186.51	183.56	181.12	179.30	176.73	180.72	181.98	184.44	189.54	192.50	192.50	189.39	184.86	192.50	176.73
97	186.66	184.88	184.74	182.52	180.08	184.24	185.55	188.21	193.15	196.32	194.50	193.12	187.83	196.32	180.08
<b>Ave</b>	<b>186.59</b>	<b>184.22</b>	<b>182.27</b>	<b>179.55</b>	<b>178.17</b>	<b>181.84</b>	<b>182.84</b>	<b>184.86</b>	<b>189.85</b>	<b>193.05</b>	<b>191.86</b>	<b>190.36</b>	<b>185.34</b>	<b>193.05</b>	<b>177.88</b>

Exhibit B  
to  
Affidavit of David B. Shaw  
(36-02708 and 36-07218)