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Department of Water Resources

Clear Lakes Trout Company, Inc.

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

In Re SRBA)	
)	SUBCASE NUMBERS 36-02708, 36-07201
)	and 36-07218
)	
Case No. 39576)	MOTION TO ALTER OR AMEND
)	SPECIAL MASTER'S RECOMMENDATIONS
)	
)	

DESCRIPTION

This is Clear Lakes Trout Company, Inc.'s ("Clear Lakes") *Motion to Alter or Amend the Special Master's Recommendations* for water right numbers 36-02708, 36-07201 and 36-07218.

MOTION

Clear Lakes, through its attorneys of record, hereby respectfully moves this Court to amend the *Special Master's Recommendations* for water right numbers 36-02708, 36-07201 and 36-07218 in the following manners:

1. Points of Diversion

There should be only one Point of Diversion listed for water right numbers 36-02708 and 36-07218. The other Points of Diversion listed should be deleted from the

Special Masters' Recommendations for both rights.

2. Remarks

Water Right Numbers 36-02708 and 36-07218 should each contain the following remark:

THIS WATER RIGHT AND WATER RIGHT NUMBER 36-07004 ARE DIVERTED FROM SEPARATE SOURCES.

Water Right Number 36-07201 should contain the following remark:

THIS WATER RIGHT IS DIVERTED FROM A SEPARATE SOURCE THAN THE SOURCE FOR WATER RIGHT NUMBERS 36-02659, 36-02708, AND 36-07218 AND THE SOURCE FOR WATER RIGHT NUMBER 36-07004.

This *Motion* is made pursuant to procedures set forth in SRBA Administrative Order 1.

BACKGROUND

The claimant of water right numbers 36-02708, 36-07201 and 36-07218 is Clear Springs Foods, Inc. ("Clear Springs"). Clear Lakes filed objections to IDWR's recommendations of these water rights. Clear Lakes' objections were resolved at trial after which the court entered its *Findings of Fact and Conclusions of Law on Involuntary Dismissal* (August 21, 1998). The *Special Master's Reports* entered August 28, 1998, and recommending these water rights for decree are therefore based in part on the *Findings of Fact and Conclusions of Law on Involuntary Dismissal (Dismissal)*. This *Motion to Alter or Amend* is timely as the *Special Master's Reports* were docketed on the September, 1998 SRBA District Court Docket Sheet.

GROUND FOR MOTION

This *Motion* is based on the following errors contained in the *Dismissal*:

1. The *Dismissal* errs in according *prima facie* weight to the portion of the Director's

Report listing the source element of water right numbers 36-02708, 36-07201 and 36-07218 as "springs," and errs in concluding that Clear Lakes failed to meet its burden to identify the different sources from which Clear Springs' and Clear Lakes' water rights were historically and are currently diverted.

2. The *Dismissal* fails to make any findings regarding the source of the water rights at issue: Clear Springs' water right numbers 36-02708, 36-07201 and 36-07218.

3. The *Dismissal* errs in finding that there were not historically and are not currently separate sources for Clear Springs' water right numbers 36-02708 and 36-07218 and Clear Lakes' water right number 36-07004.

4. The *Dismissal* errs in that the presumption under the authorities cited in the *Dismissal* that all water within the Snake River Basin is connected does not constitute, mandate, or imply a presumption that Clear Springs' water rights and Clear Lakes' water rights have the same source.

5. The *Dismissal* fails to find that the source for Clear Springs' water right numbers 36-02708 and 36-07218 is the western stream.

6. The *Dismissal* fails to find that Clear Springs never attempted to divert water from the eastern stream.

7. The *Dismissal* fails to find that water flowing through the former eastern stream did not historically, and can not currently contribute to the source of Clear Springs' water right numbers 36-02708 and 36-07218.

8. The *Dismissal* and the *Special Master's Report* for water right number 36-07201 fail to find, consistent with the evidence, that the source element for water right number

36-07201 is separate from the source for water right numbers 36-02659, 36-02708 and 36-07218, and the source for water right number 36-07004.

9. The *Dismissal* errs in finding that precise location of the “division point” is necessary to demonstrate that there were and are separate sources for Clear Springs’ and Clear Lakes’ water rights.

10. The *Dismissal* errs in concluding that there is no method by which to administer the historic separate sources.

11. The *Dismissal* errs in concluding that Clear Lakes is estopped from claiming two separate sources.

12. The *Dismissal* erroneously identifies and describes the historic and current location and configuration of Clear Lakes’ diversions.

13. The *Dismissal* fails to find, consistent with the evidence, that only one point of diversion exists for water right numbers 36-02708 and 36-07218.

14. The *Dismissal* errs in concluding that Clear Lakes water right numbers 36-02659 and 36-07004 have the same points of diversion because the licenses for each of those water rights describe the points of diversion as being within the same quarter quarter section.

15. The *Dismissal* errs in failing to find that the permit to appropriate water right number 36-07004 entitles Clear Lakes to first priority to the source from which that water right was historically and is currently diverted.

16. The *Dismissal* errs with respect to its conclusions regarding the applicability of Idaho Code Sections 42-212 and 42-213 to Clear Springs’ water rights. The evidence

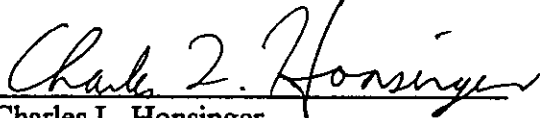
demonstrates that Clear Springs' diversions and water rights were established in the western stream. Under Idaho Code Sections 42-212 and 42-213, Clear Springs could not have established water rights in springs located wholly on another's private land.

Therefore, the source of Clear Springs' water rights can only be the western stream.

Pursuant to I.R.C.P. 7(b)(3), Clear Lakes requests oral argument on this motion and hereby notifies the court and party that it intends to file with the Court its brief in support of this Motion within 14 days of the filing of this motion.

DATED this 28th day of September, 1998.

RINGERT CLARK, CHARTERED


Charles L. Honsinger
Attorney for Clear Lakes Trout Farms, Inc.

CERTIFICATE OF MAILING

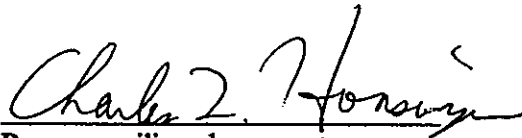
I certify that on September 28, 1998, I served by facsimile copies of this document, including all attachments to the following:

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