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Department of Water Resources

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

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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, 36-07201, and
)	36-07218
Case No. 39576)	(Clear Springs Foods)
)	
_____)	Motion to Alter or Amend

The North Snake Ground Water District, on behalf of its members, including May Farms, Ltd. and Faulkner Land & Livestock Company, by and through its counsel of record, Josephine P. Beeman and Dana L. Hofstetter of Beeman & Hofstetter, P.C., hereby moves this Court, pursuant to SRBA Administrative Order No. 1, Section 13a, Rules 7(b)(1) and 7(b)(3), I.R.C.P., and *Idaho Code*, Title 42, Chapter 52, to alter or amend the Special Master's recommendation. This Motion is supported by the

contemporaneously filed Affidavit of David B. Shaw, Affidavit of Brett Rowley, Affidavit of Dana L. Hofstetter, and the record in these subcases. Pursuant to Rule 7(b)(3), I.R.C.P., a brief in support of this Motion will be filed within 14 days. Oral argument is requested.

The grounds for this motion are as follows:

1. The Notices of Claim for certain of these subcases include facility volume designations. The claimant subsequently objected to facility volume designations but never sought to file amended claims. The attempt to delete facility volume remarks through the objection process is improper. Based on SRBA Administrative Order 1, Section 4.d(1)(b) and SRBA Court precedent, the claimant cannot seek to amend its claims without filing a motion to amend.

2. The Special Master's Recommendation does not include a facility volume quantity for fish propagation Water Right No. 36-02708. The absence of a facility volume quantity reflecting the size of the fish propagation facilities could improperly subject other water users to supply or mitigate water demands associated with facility expansion. Where a facility volume limit is designated by the Special Master for Water Right Nos. 36-07201 and 36-07218, it is negated by qualifying remarks.

3. The Special Master's Recommendations for the quantity element, do not adequately take into consideration actual beneficial use, including issues of partial forfeiture, abandonment, adverse possession, estoppel, other legal principles, and seasonal water supply or use fluctuations.

4. Diverted volume quantities reflecting actual beneficial use should be included in the Special Master's recommendations for each of these fish propagation water rights.

DATED this 28th day of September, 1998.

BEEMAN & HOFSTETTER, P.C.

By



Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 1998, I caused to be served copies of the foregoing **Motion to Alter or Amend** by depositing a copy thereof in the U.S. mail, postage prepaid, upon:

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