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Attorneys for Raymond C. Barker, Jr.
Charles J. Kritz, Jr. and Diane B. Kritz

9-28
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SEP 29 2010
DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

Subcase No. 2-2318A

MOTION TO ALTER OR AMEND

On September 8, 2010, Objectors Raymond C. Barker, Jr., Charles J. Kritz, Jr. and Diane B. Kritz, ("Objectors") filed a *Motion for Reconsideration, Brief in Support of Motion for Reconsideration, and Affidavit of Norman C. Young ins Support of Reconsideration* (collectively, the "*Reconsideration Documents*"). To the extent that the hearing on the *Motion to Reconsider* occurs after the *Motion to Alter or Amend* deadline applicable to the Special Master's *Order Denying Motion to Strike, Granting Summary Judgment and Vacating Trial and Special Master Report* filed on August 25, 2010 (hereafter, the "*Order*") in this matter, and to

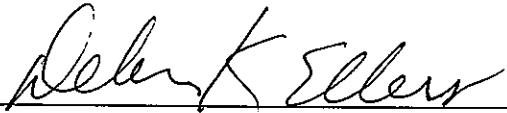
the extent that the pending *Motion to Reconsider* did not suspend the *Motion to Alter or Amend* deadline, pursuant to Snake River Basin Adjudication (“SRBA”) Administrative Order No. 1, Section 13a, Objectors, by and through their counsel of record, Debra K. Ellers, respectfully move the Court to alter or amend its Order. Specifically, this Court is respectfully requested to reconsider its ruling on the following issues in its *Order*:

- (i) The *Order* incorrectly concluded that the Motion to Strike was no longer relevant based on Objectors’ own evidence, and consequently made an incorrect finding of fact regarding Objectors’ or their predecessors’ alleged attempts to block Mr. Wilkerson or his predecessors from exercising Water Right No. 02-2318A;
- (ii) Issues relating to the doctrines of abandonment, waiver and laches are factual, and based on the material facts in dispute and inferences therefrom in the record, require denial of Claimants’ *Motion for Summary Judgment*, and proceeding to trial;
- (iii) For purposes of preserving this issue, Objectors contend that the doctrine of forfeiture should be applied in this Subcase; and
- (iv) The Special Master’s *Recommendation for the Partial Decree of Water Right 02-2318A* in the *Order* should be modified to include a remark in the point of diversion element that no right of way or easement is conferred across the property of another.

This Motion is supported by the *Reconsideration Documents*, the *Memorandum in Support of Motion to Alter or Amend*, which Objectors reserve the right to file in accordance with I.R.C.P. 7(b)(3) within 14 days from the date hereof, and other matters of record. Oral argument is requested.

DATED this 28th day of September, 2010.

DEBRA K. ELLERS
ATTORNEY AT LAW

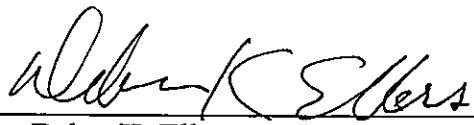
By: 
Debra K. Ellers

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 2010, I caused to be served copies of the foregoing Motion To Alter or Amend by the method(s) indicated below:

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