

Movant's Name  
May Farms Limited

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8-18

**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     | ) | Case No. 36-10283A        |
|                | ) |                           |
| Case No. 39576 | ) | <b>AFFIDAVIT OF RALPH</b> |
|                | ) | <b>MAY IN SUPPORT</b>     |
|                | ) | <b>OF MEMORANDUM</b>      |
| _____          | ) |                           |

Ralph May, duly sworn on oath, states as follows:

1. I am an officer of May Farms Limited, the Movant in this matter.
2. May Farms Limited is the owner of water rights located in Basin 36 of the Snake River Basin Adjudication ("SRBA").
3. Ya-Ta-Hay Investments, Inc., a foreign corporation ("Ya-Ta-Hay") has objected to the Director's Report with respect to its water right number 36- 10283A in Basin 36. The source of the water is Billingsley Creek. The water right has a claimed priority date of June 26, 1881. The IDWR file for SRBA claim 36-10283A shows that Ya-Ta-Hay claimed 7.5 cfs (375 inches) for the

irrigation of 147 acres from Billingsley Creek, tributary to the Snake River. This is equivalent to 2.55 inches to the acre. Following a field examination of the Ya-Ta-Hay property and diversion and delivery system, the Director recommended 1.3 cfs for the irrigation of 54 acres. Since .22 cfs were recommended for conveyance losses from the Padgett ditch and the John Bell Ditch, the Director actually recommended 1.08 cfs for irrigation at the field headgate. This is equivalent to one inch to the acre. The Ya-Ta-Hay objection seeks the full decree right as stated in the claim -- 7.5 cfs -- for 63 acres. This is equivalent to 5.95 inches to the acre. The objection also seeks to add aesthetic, wildlife habitat and subdivision development as uses, with year round season of use. These additional uses were part of the Ya-Ta-Hay SRBA claim but may have significantly later priority dates and constitute, in some instances, change of use. The differences between the Director's Report and Ya-Ta-Hay's objection are significant and Ya-Ta-Hay claims water greatly in excess of all conceivable beneficial use. Cf. IDAHO CODE § 42-220. Reputable studies, including the Department's, indicate that the statutory standard of one inch per acre is sufficient, on average, to irrigate property such as Ya-Ta-Hay's. These facts, if established, would constitute a meritorious defense to the Ya-Ta-Hay objection.

4. Based on the pleadings and party status of IDWR prior to the 1994 amendments to the SRBA statutes, May Farms Limited decided not to participate in this subcase, choosing instead to rely on the Director's report and IDWR's defense of its pleading. The facts of this situation show that the IDWR, had it remained a party to this subcase, would have been, without substantial outside assistance, able to defend its report and significantly reduce the claimed diversion rate by Gisler.

5. With the removal of IDWR and the Director as a party to the SRBA and all subcases, parties such as May Farms Limited who opted to rely on IDWR to litigate and advocate in favor of the Director's Report are unable to do so.

DATED: August 18, 1995

/s/  
Ralph May, partner

STATE OF IDAHO )  
 ) ss  
County of Ada )

Subscribed and sworn before me on August 18, 1995.

/s/  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Boise, Idaho  
Commission Expires: \_\_\_\_\_