

Party's Name: May Farms, Ltd.

8-18

Attorney's Name and Address

Josephine P. Beeman
DILLION BOSCH DAW & BOCK Chtd.
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Boise, Idaho 83702

**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	)	
	)	RESPONSE TO YA-TA-HAY INVESTMENTS, INC.
_____	)	OBJECTION

I. GENERAL INFORMATION

1. Person responding to objection: 95-12-0063

Name: May Farms, Ltd.

Address: 3509 South 2400 East
Jerome, Idaho 83338

Briefly describe your interest in this water right:

Ya-Ta-Hay Investments, Inc. is a water claimant in reporting area 3 (Basin 36) who diverts from a common aquifer with May Farms.

2. Person who filed objection:

Name: Ya-Ta-Hay Investments, Inc.

Address: 813 West Kiowa
Hobbs, New Mexico 88240

3. If this response is filed by an attorney:

Attorney Name: Josephine P. Beeman

Attorney Address: DILLION BOSCH DAW & BOCK Chtd.
Fidelity Building
242 N. 8th Street, Suite 200
BOISE, ID 83702

Attorney Phone No.: (208) 344-8990

II. STATEMENT OF THE RESPONSE

3. ☒ Quantity: I respond to the objection concerning:
- a. ☒ the total quantity of water used in cubic feet per second; or
 - c. ☒ the total quantity of water reserved for each and every purpose, including all present and future use.
7. ☒ Purpose of Use: I respond to the objection concerning the purpose(s) of use.
8. ☒ Period of Year: I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
9. ☒ Place of Use: I respond to the objection concerning:
- a. ☒ the legal description of the place of use; or
10. ☒ Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.
14. ☒ Other: I respond to the objection concerning:

All matters raised in the claimant's answer, affirmative defenses, and prayer for relief.

REASONS SUPPORTING EACH BOX CHECKED

A. Statement of Objections 3 and 3a. In response to Statement of Objections 3 and 3.a., and all allegations of the objection regarding those items, Ya-Ta-Hay Investments, Inc. responds as

follows: (1) it recommended the amount of water it determined was being beneficially used; (2) the claimant is not entitled to any amount greater than that which is beneficially used (Idaho Code Secs. 42-104 and 42-1402); (3) the recommendation of the Director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right; and (4) the eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

B. Statement of Objection 3c. In response to Statement of the Objection item 3c., and all allegations of the objection regarding that item, May Farms, Ltd. Responds as follows: Since this water right is not a federal reserved water right, this objection item is inapplicable and the claimant's assertion of it is in error. May Farms, Ltd. Further responds that under Idaho law water cannot be reserved for future use, but must be appropriated and put to beneficial use before the user can acquire a water right.

C. Statement of Objection 7. In response to Statement of the Objection item 7., and all allegations of the objection regarding that item, May Farms, Ltd. Responds that it recommended the same purpose or purposes of use that were identified on the notice of claim and that were found when the claim was investigated. By identifying in the objection as additional use or uses that the claimant did not list on the notice of claim, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim after a Director's report is filed, just as a party must obtain leave of the court to file a late claim after the Director's report is filed. Once leave of the court is granted, May Farms, Ltd. Can investigate the amended claim and make an appropriate recommendation to the court.

D. Statement of Objection 8. In response to Statement of the Objection item 8., and all allegations of the objection regarding this item, Ya-Ta-Hay Investments, Inc. responds as follows: Idaho Code 42-1411(2)(g) requires the Director to determine the period of use of each water right acquired under state law that is recommended in the Director's report. Ya-Ta-Hay Investments, Inc. has developed irrigation season of use standards for various climatic areas throughout the state based on a 75% chance of a 24 degree Fahrenheit frost. The irrigation season of use cannot exceed the period in which water may be beneficially used. The period of the year during which this water right may be used is consistent with the standard irrigation season of use for the area in which the place

of use of this water right is located. Water may be used for irrigation outside the standard season of use, subject to the conditions set forth in general provision 12b of the Director's report. In further response to this objection item, May Farms, Ltd. Responds that it recommended stockwater use year-round, and that is recommended the period of use for irrigation as claimed. By now asserting a year-round season of use for irrigation, the claimant improperly seeks to use the objection process to amend the notice of claim. A claimant must obtain leave of court to amend a notice of claim just as a party must obtain leave of court to file a late claim after the Director's report is filed. Once leave of court is granted, May Farms, Ltd. can investigate the amended claim and make appropriate recommendation to the court.

E. Statement of Objections 9 and 9.a. In response to Statement of the Objection 9 and 9.a., and all allegations of the objection regarding those items, Ya-Ta-Hay Investments, Inc. responds that the recommended water right accurately describes the place of use of the right.

F. Statement of Objection 10. In response to Statement of the Objection item 10 and all allegations of the objection regarding this item, Ya-Ta-Hay Investments, Inc. responds as follows: (1) The decree asserted by the claimant did not set an annual volume of consumptive use for this water right. (2) Idaho Code Sec. 42-1411(2)(i) requires the Director to determine the annual volume of consumptive use for each water right acquired under state law and recommended in the Director's report. (3) Idaho Code Sec. 42-1401A(2) provides that the quantification of consumptive use "is included as a rebuttable presumption in a decree only for the purpose of transfers pursuant to section 42-222, Idaho Code"; therefore, the consumptive use recommended for this water right is included solely for use in future transfer proceedings. (4) The annual volume of consumptive use recommended for this right is 3 acre feet per acre. This is the maximum volume of water consumed by the most water consumptive crop (pasture) that can be grown in the area during the period of year when water is used for irrigation, as provided for by Idaho Code Sec. 42-1401A(2). (5) The recommendation of the Director to the SRBA Court as to how the right should be decreed does not constitute a taking because it is simply a recommendation and not a final determination of the right. (6) The eventual decree by the SRBA Court of the amount of water beneficially used, even if less than the amount previously decreed, will not constitute a taking because the right is limited to that amount beneficially used.

G. Statement of Objection 11. In response to Statement of the Objection item 11, and all allegations of the objection regarding that item, Ya-Ta-Hay Investments, Inc. responds as follows: There is an error in the remarks in description of this right in the Director's report. The recommendation should be corrected as shown in the attachment entitled "Recommended Water Rights Acquired under State Law". In further response to this objection item, Ya-Ta-Hay Investments, Inc. responds as follows: As to the remaining remarks, it has authority pursuant to Idaho Code Sec. 42-1411(2)(j) to include in its recommendations of water rights acquired under state law and recommended in the Director's report "such other matters as are necessary to define the right." The remark or remarks objected to are necessary to adequately describe and define this water right.

H. Statement of Objection 14. In response to Statement of the Objection item 14, and all allegations of the objection regarding that item, see attached "Ya-Ta-Hay Investments, Inc.'s Response to Answer Affirmative Defenses and Prayer for Relief of Claimant".

I. General Objection. In response to the sentence listed in Changes to the Director's Report, whereby the claimant attempts to "reserve the right to claim all purposes of use and quantities of use as shown by the evidence at trial," Ya-Ta-Hay Investments, Inc. responds as follows: Insofar as this purported reservation of rights may constitute an attempt to reserve the right to amend at trial the claimant's notice of claim, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim. A claimant must obtain leave of the court to amend a claim just as a party must obtain leave of the court to file a late claim after the Director's report is filed.

CHANGES TO THE DIRECTOR'S REPORT

Ya-Ta-Hay Investments, Inc. proposes no changes to the description of this claim in the Director's report.

- ☒ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary:

Affidavit of Josephine P. Beeman	2 pages
May Farms, Ltd.'s Response to Answer Affirmative Defenses and Prayer for Relief of Claimant	4 pages

VERIFICATION

State of IDAHO)
 : SS
County of ADA)

Mary Ruth Barrett being first duly sworn, upon oath, deposes and says:

I am a principal in Ya-Ta-Hay Investments, Inc., a party to this proceeding, as defined by I.C. § 42-1401A(1) and (7); that Josephine P. Beeman is my attorney in fact for these matters and is authorized to verify this response; and I have read the foregoing response, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

YA-TA-HAY INVESTMENTS, INC.

By: /5/

DILLION BOSCH DAW & BOCK, Chtd.

By: /5/
Josephine P. Beeman, Attorney signing in
Representative capacity

Subscribed and sworn to before me this 18th day of August, 1995 .

 /5/
Notary Public for _____
Residing at: _____
My Commission expires: _____

CERTIFICATE OF MAILING

I hereby certify that on the 18th day of August, 1995, I mailed the original and copies of the foregoing response, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. Copies to:

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, Idaho 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, Idaho 83734

Patrick D. Brown
HEPWORTH LEZAMIZ & HONHORST, Chtd.
P.O. Box 389
Twin Falls, ID 83303-0389

/s/
JOSEPHINE P. BEEMAN