

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: **A36-04013B**
Date Received: 9/ 1/1988
Receipt No: S002014
Received By: _____

**NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW**

1. Name: CLEAR SPRINGS FOODS INC 208-543-4316
Address: PO BOX 712
BUHL ID 83316

2. Date of Priority: FEB 4, 1964

3. Source: SPRINGS (CLEAR SPRINGS) Trib. to: CLEAR LAKES

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4 of	Lot	County
09S	14E	2	SE	SE	NE	5	GOODING

5. Description of diverting works:
COLLECTION DITCH & 36" & 42" PIPELINES TO RACEWAYS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
FISH PROPAGATION	01/01	12/31	31.000		

7. Total Quantity Appropriated is:
31.000 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
FISH, PROPAGATION

10. Place of Use:

Township	Range	Section	1/4 of	1/4 of	Lot	Use	Acres
09S	14E	1	SW	NW	5	FISH	
			NW	SW	12	FISH	

11. Place of use in counties: GOODING

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FEB 04 1993

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

A36-02703, 02048, 07148, 04013, 04013A

14. Remarks:

SEE A36-04013 & A36-02703.

15. Basis of Claim: STATUTORY CLAIM

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: _____

For Individuals:

I/We do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant(s): _____ Date: _____
_____ Date: _____

State of Idaho)
County of _____) SS.

Subscribed and sworn (or affirmed) before me this _____ day
of _____ 19 _____

Notary Public

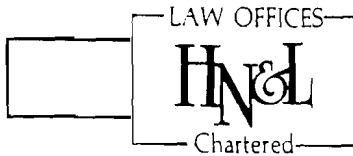
Seal

Residing at _____

My Commission Expires _____

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FEB 04 1993



Hepworth, Nungester & Lezamiz

December 29, 1992

Twin Falls Office

John C. Hepworth
Wm. L. Nungester
John T. Lezamiz
Jeffrey E. Roig
John C. Hohnhorst
Jeffrey J. Hepworth
Penelope Parker**
Eileen A. McDevitt*
Patrick D. Brown

Boise Office

J. Charles Hepworth*
John J. Jans

*Member CA Bar
**Member UT Bar

RECEIVED

JAN 5 1993

Department of Water Resources

Jodi I. Schultz
Legal Assistant
Idaho Department of Water Resources
1301 North Orchard St.
Statehouse Mail
Boise, ID 83720-9000

Re: Clear Springs Foods, Inc.

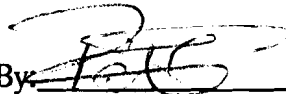
Dear Ms. Schultz:

Enclosed is the Certificate of Amendment of Clear Springs Trout Company and the portion of the articles of amendment which reflect the name change from Clear Springs Trout Company to Clear Springs Foods, Inc. Consistent with those documents, I ask that you revise your records for each water right claimed under the name of Clear Springs Trout Company to reflect the name change.

Thank you for making the change and please forward a letter to me confirming that the change has been made.

Very truly yours,

HEPWORTH, NUNGESTER & LEZAMIZ,
CHARTERED

By: 

Patrick D. Brown

PDB:bjs
Enclosures
cc: Tim Hanifen

(1229SCHU.BJS)

Twin Falls Office

Blick Building
133 Shoshone St. N.
P.O. Box 389
Twin Falls, ID
83303-0389
(208) 734-7510
FAX: (208) 734-4115

Boise Office

537 West Bannock
P.O. Box 2582
Boise, ID 83701-2582
(208) 343-7510
FAX: (208) 342-2927

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FEB 04 1993

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A36-04013B
Date Received: 8/30/1988
Receipt No: S 002-014
Received By: DS

COPY

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CLEAR SPRINGS TROUT CO.
Address: P. O. BOX 712
BUHL, ID

208-543-4316

83316

2. Date of Priority: FEB 04, 1964

3. Source: SPRINGS (CLEAR SPRINGS) Trib. to: CLEAR LAKES

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
09S	14E	2	SE	SE	NE	5	GOODING

5. Description of diverting works:
COLLECTION DITCH & 36" & 42" PIPELINES TO RACEWAYS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
FISH PROPAGATION	01/01	12/31	31.000		

7. Total Quantity Appropriated is:
31.000 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
COMMERCIAL TROUT PRODUCTION

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
09S	14E	1	SW	NW	5	FISH	
			NW	SW	12	FISH	

11. Place of use in counties: GOODING

A36-04013B

Page 1

Date: 08/31/88

MICROFILMED
OCT 18 1994

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:
36-2703, 2048, 7148, 4013, 4013A

14. Remarks:
SEE A36-04013 & A36-02703.

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

For Organizations:

I do solemnly swear or affirm that I am President of
Clear Springs Trout Company Organization, that I have signed the foregoing
document in the space below as President of
Clear Springs Trout Company and that the statements contained in the
foregoing document are true and correct.

Signature of Authorized Agent

President Clear Springs Trout Company
Title and Organization

8/30/88

Date

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 30th day

of August 19 88

Kurt B. Sneyd
Notary Public

Seal

Residing at Boise ID

My Commission Expires 11-17-92

State of Idaho

Department of State

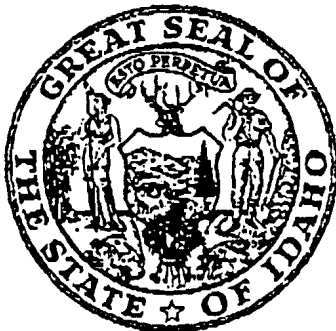
CERTIFICATE OF AMENDMENT OF

CLEAR SPRINGS TROUT COMPANY

I, PETE T. CENARRUSA, Secretary of State of the State of Idaho, hereby certify that duplicate originals of Articles of Amendment to the Articles of Incorporation of CLEAR SPRINGS FOODS, INC. duly signed and verified pursuant to the provisions of the Idaho Business Corporation Act, have been received in this office and are found to conform to law.

ACCORDINGLY and by virtue of the authority vested in me by law, I issue this Certificate of Amendment to the Articles of Incorporation and attach hereto a duplicate original of the Articles of Amendment.

October 25, 1991



Pete T. Cenarrusa

SECRETARY OF STATE

Ray J. Clark

Corporation Clerk

MICROFILMED

FEB 04 1993

ARTICLES OF AMENDMENT
TO THE
ARTICLES OF INCORPORATION
OF
CLEAR SPRINGS TROUT COMPANY

RECEIVED
SEC. OF STATE

91 OCT 9 AM 8 49

RECEIVED
SEC. OF STATE

91 OCT 25 AM 10 19

Pursuant to the provisions of Idaho Code 30-1-59, etc., the undersigned corporation adopts the following Articles of Amendment to its Articles of Incorporation:

FIRST: The name of the corporation is Clear Springs Trout Company.

SECOND: The following amendments of the Articles of Incorporation were adopted by the shareholders of the corporation on September 30, 1991, in the manner prescribed by Idaho Code Section 30-1-59 etc.

1. That ARTICLE I of the Articles of Incorporation of Clear Springs Trout Company be amended to read as follows:

The name of the corporation is and shall be Clear Springs Foods, Inc.

2. That ARTICLE IV(i) of the Articles of Incorporation of Clear Springs Trout Company be amended to read as follows:

(i) The preferential rights and restrictions granted to the corporation and the remaining shareholders shall not apply or pertain where an existing shareholder desires to sell, convey, give or otherwise transfer any or all of his shares to such stockholder's spouse, former spouse, issue or child, or other lineal descendent, or any trust or other institutional recipient established and created for the direct maintenance or benefit of such shareholder, shareholder's spouse, former spouse, issue or child, or lineal descendent. In the event a shareholder shall desire to sell, convey, give or otherwise transfer any or all of his shares as herein provided, such stockholder shall, upon request of the secretary or other duly authorized officer of the corporation present such proof or evidence as the corporation may deem necessary to demonstrate and provide the existence of the relationship described above.

THIRD: The number of shares of the corporation outstanding at the time of such adoption was 1,671,758; and the number of shares entitled to vote thereon was the same.

FOURTH: The corporation only has one type or class of stock. All stockholders were eligible to vote.

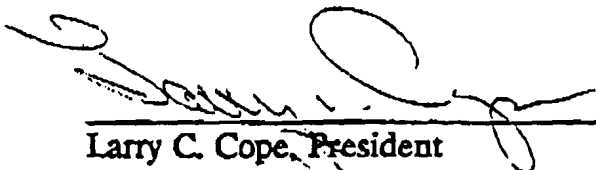
FIFTH: At a special meeting of the stockholders held on September 30, 1991, at the corporate headquarters at Buhl, Idaho, after due and legal notice was given, the number of shares voted for such amendment was 1,349,277; and the number of shares voted against such amendment was 3,400. The amendments were therefore duly passed.

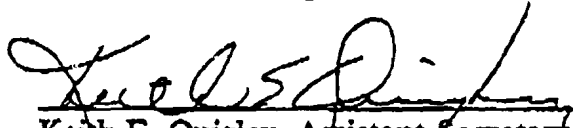
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FEB 04 1993

Dated this 30th day of September, 1991.

CLEAR SPRINGS TROUT COMPANY


Larry C. Cope, President


Keith E. Quigley, Assistant Secretary

STATE OF IDAHO)

) ss.

County of Twin Falls)

The undersigned, a notary public, does hereby certify that on this 30th day of September, 1991, personally appeared before me Larry W. Cope and Keith E. Quigley who, being first duly sworn by me, declared that they are the President and Assistant Secretary respectively of Clear Springs Trout Company, that they signed the foregoing document as President and Assistant Secretary of the corporation, and that the statements therein contained are true.


NOTARY PUBLIC FOR IDAHO

Residing at: 

My Commission Expires: 12-22-94

(WLN\81019ART.003)

MICROFILMED

FEB 04 1993

MEMORANDUM

To: Judy Givens

From: Helen Harrington-Thornton
Marci Sterling

Date: February 21, 1992

Subject: Incorrect Entry of Attorney/Notice of Appearance

=====

We are currently in active review of the following SRBA claims filed by Clear Springs Trout Co. These claims identify William Ringert as the attorney acting for the claimant. Upon contacting Mr. Ringert, we discovered that he is not, nor has he ever been, the attorney for Clear Springs Trout Co. We have not been able to locate any reason for Mr. Ringert to have been entered as attorney. We have spoken with Anna Baumhoff, and Jeannie Robertson has checked the original claim files and no documentation has been uncovered. Please, therefore, remove Mr. Ringert from the following claims and attach a copy of this memo to each file for explanation if future questions arise.

A36-02048	A36-02703	A36-02708	A36-02734
A36-04011	A36-04013A	A36-04013B	A36-04013C
A36-04014	A36-07040	A36-07083	A36-07148
A36-07151	A36-07201	A36-07218	A36-07568

The only suspected reason for Mr. Ringert on these claims is due to his acting as attorney for Clear Lakes Trout Co. and that he was erroneously entered on Clear Springs claims.

The claims listed above are those being acted on in the Boise office. You may wish to check other claims/files in order to determine if Mr. Ringert is identified on other claims in error.

cc: Anna Baumhoff

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FEB 04 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 734-3578

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 3, 1990

not sent

TO: [illegible]
FROM: [illegible]
SUBJECT: [illegible]

DATE: [illegible] TIME: [illegible]

Dear Claimant(s):

In the past you submitted the claim(s) identified with the number(s) shown above your name and address at the top of this letter. You indicated on the claim(s) that the basis for establishing the water right(s) was Beneficial Use, meaning the water right was not previously confirmed by a decree, water right license or permit before you filed the claim(s).

The purpose of this letter is to request evidence supporting the priority date(s) you have claimed. The enclosed pamphlet describes what this means. While I encourage you to read all of the pamphlet, I direct your attention to the right-hand half of the pamphlet after you open it. There you will find two sections: What Kind of Evidence is Required, and Some Examples of Documents which May Be Evidence of the Priority Date. These sections tell you what must be submitted. The other sections tell you why the evidence is necessary and what the consequences of not submitting the evidence could be.

Please submit the requested evidence by November 1, 1990. When returning to the Department please reference all documents with the claim(s) identification number(s) listed above.

If you have questions not addressed by the pamphlet or need other technical assistance, please feel free to contact this office. For advice on your water right(s), please contact your attorney.

Sincerely,

Allen Merritt, P.E.
Water Rights Supervisor

Enclosure

MICROFILMED
FEB 04 1993

36-4013

EXHIBIT "E"

AFFIDAVIT

STATE OF IDAHO)
) SS
COUNTY OF Twin Falls)

ROBERT A. ERKINS, being first duly sworn on his oath, deposes and says:

I reside at the Snake River Trout Farm in Gooding County, Idaho and I am President of Thousand Springs Trout Farms, Inc., which operates the Snake River Trout Farm.

To the best of my knowledge the Snake River Trout Farm was incorporated in 1928 with the first trout being hatched in 1929, and has produced Rainbow Trout continually since that period. The original plan called for a maximum production of 50,000 pounds of trout, but as the years passed the production was increased to supply an ever growing demand.

I have been personally familiar with the complete operation of the Snake River Trout Farm since 1951. To the best of my knowledge the original water use was 60 cubic feet per second. However, as the years went by, the farm used increasingly more water so that by 1964 its water usage was 120 cubic feet per second.

This increase in water usage is as follows.

In the fall of 1940 a 2 foot pipe was installed to carry 14 cubic feet of water per second from a newly constructed concrete dam.

On September 15, 1955, a dam diversionary system was completed to supply a spawner pond operation with 15 cubic feet of water per second.

On February 4, 1964, a large concrete dam and 3 foot intake pipe system were put into operation, which gave the hatchery an additional flow of 31 cubic feet per second.

Since the above dates the water in each system has flowed continually.

The cost of the diversionary dam at Gooding on September 15, 1955, was \$18,000.00 for the diversionary system and the spawning ponds which it supplied, also the four experimental tanks that were constructed. This unit was instrumental in developing spawning techniques for the expanding trout farm industry.

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FEB 04 1993

36-4013

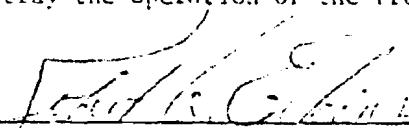
EXHIBIT "E"

Affidavit -2-

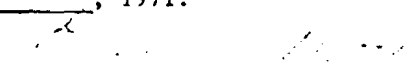
The construction completed on February 4, 1964, consisting of a very sizable dam system and diversionary works, was built to supply twenty-nine experimental ponds and three large market ponds. The costs of the diversionary system and the ponds were in excess of \$80,000.00. Vital experimental work was carried on, and because of the nature of this work each experimental pond required its own intake system for water and a separate discharge system so that the water would be used only once. Prior to this time, the farm had produced up to 600,000 pounds of trout annually. Following the construction in 1963 and 1964 and the use of more water (a total of 120 cubic feet per second), the farm increased annual production to a maximum of 850,000 pounds of trout, and in the year 1965 produced over 900,000 pounds of trout. Annual production, therefore, increased by about 40% and was brought about by a 60% increase in rearing capacity and a 40% increase in water flow.

From 1964 to date, extensive testing has been carried out by our biologist to determine the optimum conditions for trout rearing. Data has been accumulated on water quality in trout ponds as well as physical requirements for effective rearing. Our rearing program is now based on this data and is dependent upon the use of 120 cubic feet per second. This includes a water exchange rate of one to two exchanges per hour, depending on the factors within a given pond which directly relate to the size of the fish, density, and health conditions.

The attached reprints of articles from various publications accurately portray the operation of the trout farm at various dates.


ROBERT A. ERKINS

Subscribed and sworn to before me this 15th day of March, 1971.


Notary Public

Residing in Buhl, Idaho

My Commission Expires: 1-1-73

MICROFILMED

FEB 04 1973

36-4013

EXHIBIT "D"

AFFIDAVIT

STATE OF IDAHO)
)
COUNTY OF Twin Falls) SS

J. David Erickson, being first duly sworn on his oath, deposes and says:

I am a professional fishery biologist residing at the Snake River Trout Farm in Gooding County, Idaho. I am employed as hatchery biologist by Thousand Springs Trout Farms, Inc. I have worked for this company or its predecessor since 1961.

I have worked at the Snake River Trout Farm since 1961. I am personally familiar with the complete operation of the trout ponds and the processing plant.

I am personally familiar with the construction of additional diversion works that were completed in February 1964, which provided an additional flow of 31 cubic feet per second into the hatchery complex. Prior to this construction the total annual trout production was about 600,000 pounds. Following this construction, the total annual production increased to 850,000 pounds.

I accompanied Mr. James A. Bondurant, a registered professional engineer, on August 18, 1969, when he measured the total diversion of spring flow onto the property at 117.70 cubic feet per second.

I have carried out extensive testing since 1964 to determine the optimum conditions for trout rearing. Data has been accumulated on water quality in trout ponds as well as physical requirements for effective rearing. The rearing program that I helped develop is dependent on a flow of 120 cubic feet per second through the Snake River Trout Farm ponds. This program allows a water exchange rate of one to two exchanges per hour, depending on factors within a given pond, such as size of fish, density and health conditions.

J. David Erickson
J. David Erickson

Subscribed and sworn to before me this 15th day of March, 1971.

Notary Public
Residing in Idaho

My Commission Expires: 1-1-73

MICROFILMED
FEB 04 1993

36-4013

AFFIDAVIT

STATE OF IDAHO)
) SS
COUNTY OF Gooding)

JAMES A. BONDURANT, being first duly sworn on his oath deposes and says:

I am a registered professional engineer residing in Kimberly, Idaho.

I have personally visited the Snake River Trout Farm located in Sec. 2, T.9S., R.14E. in Gooding County, Idaho and I am familiar with the large spring flows that are diverted onto the property for fish propagation and related purposes.

On August 18, 1969 I measured the flow of the diverted spring water at several locations on the property. The total diversion on that date was 117.70 cubic feet per second.

James A. Bondurant
JAMES A. BONDURANT

Subscribed and sworn to before me this 31 day of August, 1971.

Notary Public
Residing in _____, Idaho

My Commission Expires: _____

36-4013

MICROFILMED
FEB 04 1993



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 16, 1992

RECEIVED

DEC 18 1992

Department of Water Resources
Southern Region Office

Patrick D. Brown
Hepworth, Nungester, Lezamiz, Chtd.
P.O. Box 389
Twin Falls, ID 83303-0389

Re: Snake River Basin Adjudication, Twin Falls County Case No. 39576

Dear Mr. Brown:

We received your Notice of Appearance on behalf of Clear Springs Foods, Inc. The records for the following claim numbers have been updated to reflect this change:

36-02048	36-07218	A36-07148
36-02703	36-07568	A36-07151
36-02708	A36-02048	A36-07201
36-04013A	A36-02703	A36-07218
36-04013B	A36-02708	A36-07568
36-04013C	A36-04013A	A47-13466
36-07040	A36-04013B	A47-13467
36-07083	A36-04013C	A47-13468
36-07148	A36-07040	A47-13469
36-07151	A36-07083	A47-13470
36-07201		

The Notice of Appearance indicates that the ownership of the above claims has been changed from Clear Springs Trout Co. to Clear Springs Foods, Inc. However, we have not received the required Notice of Change of Water Right Ownership form. Without authorization from Clear Springs Trout Co. or written proof of the change of ownership (a Deed copy to confirm the reconveyance and legal description), we are not able to change the claimant's name on the claims filed by Clear Springs Trout Co.

Please complete the enclosed Notice of Change of Water Right Ownership form (one form may be used for all of the claims) and return it to our Southern Region office at 222 Shoshone St. East, Twin Falls, ID 83301.

MICROFILMED
FEB 04 1993

RECEIVED

APR 11 2000

Department of Water Resources

200 APR 10 AM 10:17

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

**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. 39576

ORDER OF PARTIAL DECREE,

For Water Right 36-04013B

The Notice of Challenge filed in the above subcase having been heard and ruled upon, IT IS
THEREFORE ORDERED that water right 36-04013B is hereby decreed as set forth in the attached
Partial Decree Pursuant to I.R.C.P. 54(b).

IT IS SO ORDERED.

DATED APR 8 2000.


BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

RECEIVED

APR 11 2000

Department of Water Resources

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. 39576)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-040138

2000 APR 10 AM 10:19
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: CLEAR SPRINGS FOODS INC
PO BOX 712
Buhl ID 83316

SOURCE: SPRINGS TRIBUTARY: CLEAR LAKES

SOURCE IS ALSO KNOWN AS CLEAR SPRINGS.

QUANTITY: 27.00 CFS

PRIORITY DATE: 02/04/1964

POINT OF DIVERSION: T09S R14E S02 LOT 5 (SEBENE) Within GOODING County

MULTIPLE POINTS OF DIVERSION LOCATED IN T09S, R14E, S02,
LOT 5 (SEBENE).

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	FISH PROPAGATION	01-01 12-31	27.00 CFS

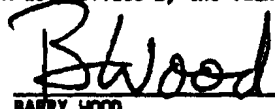
PLACE OF USE: FISH PROPAGATION Within GOODING County
T09S R14E S01 Lot 5 (SUNU) Lot 12 (NWSW)
S02 Lot 5 (SENE) Lot 8 (NESE)

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.


BARRY WOOD
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

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

D. Craig Lewis
University of Idaho
College of Law
Moscow, Idaho 83843
(208) 885-6422
Fax: (208) 885-7609

RECEIVED

DEC 15 1998

Department of Water Resources

RECEIVED

DEC 22 1998

Department of Water Resources

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

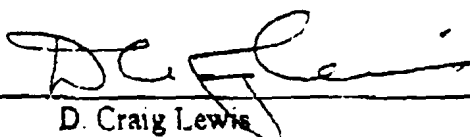
In Re SRBA	)	Subcase Nos. 36-02708, 36-07201,
	)	36-07218, 36-02048, 36-02703,
Case No. 39576	)	36-04013A, 36-04013B, 36-04013C,
	)	36-07040, 36-07148, and 36-07568
_____	)	(Clear Springs Foods)

NOTICE OF APPEARANCE

Please take notice that D. Craig Lewis enters his appearance as co-counsel for the North Snake Ground Water District, May Farms, Ltd., and Faulkner Land & Livestock Company. You are requested to serve all future papers and pleadings on him at the address listed below:

D. Craig Lewis
University of Idaho
College of Law
Moscow, Idaho 83843
(208) 885-6422
Fax: (208) 885-7609

DATED this 14th day of December, 1998.


D. Craig Lewis

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of December, 1998, I caused to be served copies of the foregoing **Notice of Appearance** by the method indicated below:

Patrick D. Brown
Parker Warr & Brown
812 Shoshone St. East
Twin Falls, Idaho 83301
☐ U.S. Mail ☐ Fed Ex ☐ Hand ☒ Fax

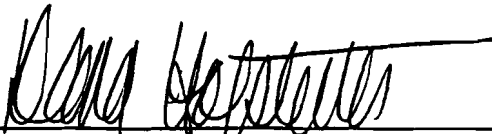
The Prospect Co
P. O. Box 712
Buhl, ID 83316
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Dan Steenson
Ringert Clark
P. O. Box 2773
Boise, Idaho 83701-2773
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Office of the Attorney General
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Boise, Idaho 83720-0010
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United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724
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Dana L. Hofstetter

DA1780\2b\CFS\2576

AUG 31 1998

Department of Water Resources
Southern Region

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AUG 19 1998

Department of Water Resources
Adjudication Bureau

North Snake Ground Water District

Josephine P. Beeman
Dana L. Hofstetter
BEEMAN & HOFSTETTER, P.C.
608 West Franklin Street
P. O. Box 1427
Boise, ID 83701-1427
(208) 388-8900
(208) 388-8400 (Facsimile)
beehof@micron.net



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. 36-02048, 36-02703,
	)	36-04013A, 36-04013B, 36-04013C,
Case No. 39576	)	36-07040, 36-07148, and 36-07568
	)	
_____	)	NOTICE OF CHANGE OF HEARING DATE AND TIME

PLEASE TAKE NOTICE that the August 24, 1998 hearing on the *Motion to Alter or Amend* previously set for 11:00 a.m. has been changed to **September 28, 1998 at 9:00 a.m.**

Undersigned counsel certifies that all counsel to these subcases have indicated they do not oppose this change in date and time.

DATED this 12th day of August, 1998.

BEEMAN & HOFSTETTER, P.C.

By Josephine P. Beeman
Josephine P. Beeman

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August, 1998, I caused to be served copies of the foregoing **Notice of Change of Hearing Date and Time** by the methods indicated below:

Patrick D. Brown
Parker Warr & Brown
812 Shoshone St. East
Twin Falls, Idaho 83301

*Via Facsimile (208) 735-8820
and U.S. Certified Mail Postage Prepaid*

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

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Josephine P. Beeman

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OCT 27 1953

Don't forget to check out the
 2000-2001 calendar

SEP 29 1998

Department of Water Resources
Adjudication Bureau

In Re SRBA) **A** Subcase 36-04013B
)
) (Insert water right number)
Case No. 39576)
)
) **STANDARD FORM 1**
) **OBJECTION**
)

B. NAME AND ADDRESS OF PERSON OBJECTING

Name & Address of Attorney, if any:

Josephine P. Beeman
Dana L. Hofstetter
Beeman & Hofstetter, P.C.
608 West Franklin Street
P. O. Box 1427
Boise, Idaho 83701-1427
(208) 388-8900

Name: Clear Springs Trout Company
Address: P. O. Box 712
Buhl, Idaho 83316

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es)).

1. ☐ **Name and Address**
Should be: _____
2. ☐ **Source**
Should be: _____
3. ☒ **Quantity**
Should be: _____
4. ☐ **Priority Date**
Should be: _____
5. ☐ **Point(s) of Diversion**
Should be: _____
6. ☐ **Instream Flow Description**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____

11. I object because:

- ☐ This water right should not exist.
- ☐ This water right was not recommended, but should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTION(S): The quantity element does not adequately take into consideration actual beneficial use, including issues of partial forfeiture, adverse possession, other legal principles, and seasonal water supply or use fluctuations.

F.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

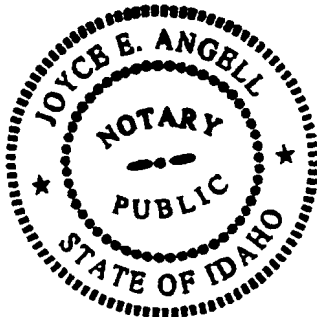
Dana L. Hofstetter, duly sworn, upon oath, deposes and says:
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by IC. §§ 42-1401A(i) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

Dana L. Hofstetter
(Attorney signing in representative capacity)

Subscribed and sworn to before me on: September 27, 1998



Joyce E. Angell
Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 07-24-02

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the Court. **FAX filings will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G.

CERTIFICATE OF MAILING

I certify that on September 28, 1998, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Name: Clear Springs Trout Company
Address: P. O. Box 712
Buhl, Idaho 83316

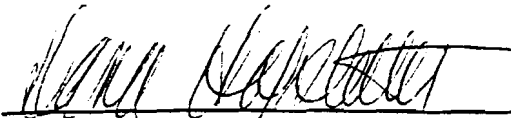
Patrick D. Brown
Parker Warr & Brown
812 Shoshone St. East
Twin Falls, Idaho 83301

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

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

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

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SEP 29 1998

North Snake Ground Water District, on behalf of
its members, including May Farms, Ltd. and
Faulkner Land & Livestock Company

Department of Water Resources
Adjudication Bureau

RECEIVED
SEP 28 1998
OFFICE OF THE
ATTORNEY GENERAL

Josephine P. Beeman
Dana L. Hofstetter
BEEMAN & HOFSTETTER, P.C.
608 West Franklin Street
P. O. Box 1427
Boise, ID 83701-1427
(208) 388-8900
(208) 388-8400 (Facsimile)
beehof@micron.net

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OCT 05 1998

Department of Water Resources
Southern Region

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. 36-02048, 36-02703,
	)	36-04013A, 36-04013B, 36-04013C,
Case No. 39576	)	36-07040, 36-07148, and 36-07568
	)	
_____	)	NOTICE OF EXPEDITED HEARING ON MOTION TO CONTINUE HEARING

PLEASE TAKE NOTICE that a telephonic hearing on the *NSGWD's Motion to Continue Hearing on Motion to Alter or Amend and Motion to Set Scheduling Conference* has been scheduled for **September 24, 1998 at 9:00 a.m.** before Judge Hurlbutt. Undersigned counsel, will initiate the telephonic conference call.

DATED this 23rd day of September, 1998.

BEEMAN & HOFSTETTER, P.C.

MAIL



By

Dana L. Hofstetter

Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of September, 1998, I caused to be served copies of the foregoing **Notice of Expedited Hearing on Motion to Continue Hearing** by the methods indicated below:

Patrick D. Brown
Parker Warr & Brown
812 Shoshone St. East
Twin Falls, Idaho 83301

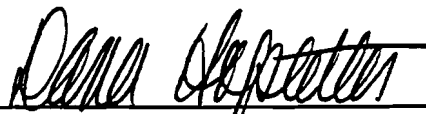
Via Facsimile (208) 735-8820

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Via Facsimile 327-5400

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Office of the Attorney General
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Boise, Idaho 83711-4449

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Dana L. Hofstetter

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OCT 05 1998

Department of Water Resources
Southern Region

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SEP 29 1998

Department of Water Resources

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

Josephine P. Beeman
Dana L. Hofstetter
BEEMAN & HOFSTETTER, P.C.
608 West Franklin Street
P. O. Box 1427
Boise, ID 83701-1427
(208) 388-8900
(208) 388-8400 (Facsimile)
beehof@micron.net

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. 36-02048, 36-02703,
	)	36-04013A, 36-04013B, 36-04013C,
Case No. 39576	)	36-07083, 36-07568, 36-02708, and
	)	36-07218
_____	)	

MOTION TO FILE LATE OBJECTIONS

MOTION

The North Snake Ground Water District and its members, May Farms, Ltd. and Faulkner Land & Livestock Company (hereinafter collectively the "NSGWD"), hereby move for leave to file late objections to water right claim numbers 36-02048, 36-02703, 36-04013A, 36-04013B, 36-04013C, 36-07083, 36-07568, 36-02708, and 36-07218. This Motion is supported by the Memorandum below, the Affidavit of David Shaw in Support of Motion to File Late Objections, the proposed objections, and the record in these subcases.

MEMORANDUM

The Idaho Department of Water Resources ("IDWR") issued its recommendations for 36-02048, 36-02703, 36-04013A, 36-04013B, 36-04013C, 36-07083, 36-07568, 36-02708, and 36-07218 in 1992 as part of the SRBA Basin 36 Director's Report. The claimants submitted objections to these water rights. The claimant's objections except for facility volume were resolved through stipulation. In February 1998, a hearing relating to the facility volume matter was held.¹ The Special Master subsequently issued recommendations based on the Director's Report recommendations and the stipulation, but deleted or qualified the facility volume remarks..

Over five years have passed since IDWR conducted its field examination for these rights and issued its Director's Report recommendations. Further, over five years have passed since the close of the objection period for Basin 36 (April 1993). Only very recently has a full five years of data become available confirming reduced use of these water rights after the close of the Basin 36 objection period. This reduced use gives rise to forfeiture, adverse possession, and estoppel issues, as well as issues based on other possible legal principles. These legal principles could have resulted in diminution of the rights. The members of the NSGWD, including May Farms, Ltd. and Faulkner Land & Livestock Company, divert water under junior water rights from the Eastern Snake Plain Aquifer. Members of the NSGWD and other water users holding junior water rights could be subject to water right decrees for the rights in these subcases. Therefore, it is important for the Court to consider data concerning the current extent of actual beneficial use. *See Musser v. Higginson*, 125 Idaho 392, 871 P.2d 809 (1994).

¹ Due to audio recording difficulties, David Tuthill's testimony was retaken on July 28, 1998.

Commercial fish propagation facilities like the ones associated with these water rights discharge water from their facilities to surface water bodies and are normally required to obtain National Pollutant Discharge Elimination System ("NPDES") permits under the Federal Clean Water Act. These facilities submit monthly discharge monitoring reports ("DMR's") as a condition of the NPDES permit. The DMR's are filed with EPA by the facility operator/permit holder, and a copy is placed on file with the Idaho Division of Environmental Quality ("DEQ") regional office. In this case, the Twin Falls office of DEQ contains the pertinent files.

The NSGWD has reviewed the discharge amount portions of the DMR's for Clear Springs Foods' Snake River Hatchery (Water Right Nos. 36-02048, 36-02703, 36-04013A, 36-04013B, 36-04013C, and 36-07148), Crystal Springs Hatchery (Water Right Nos. 36-07568 and 36-07083), and Middle Hatchery (Water Right Nos. 36-02708 and 36-07218). *See Affidavit of David Shaw*. For these kinds of continuous flow facilities, the amount of water discharged generally equals the amount of water diverted to the facility. *Id.* For the period 1993 - 1998, the discharge figures indicate that only a portion of the water claimed through the rights identified above was put to beneficial use. *Id.* IDWR diversion rate data available for these facilities for these years confirm the DMR figures. *Id.*

**GOOD CAUSE EXISTS TO GRANT
LEAVE TO FILE LATE OBJECTIONS**

The decision to set aside an entry of default or to allow a late notice of claim to be filed, and presumably, to allow a late objection to be filed, is based on the good cause standard of I.R.C.P. 55(c). *See* SRBA Administrative Order 1, Sec. 4.d(2)(d). The Rule 55(c) standard requires only good cause and a meritorious defense. *McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d 274, 278 (Ct. App. 1993). The Rule 55(c) standard for setting aside entry of default is

more lenient than the Rule 60(b) standard for setting aside default judgment. *Id.* at 935-36, 854 P.2d at 278-79. This approach is consistent with the policy that cases generally should be decided on their merits and that in the earlier stage of entry of default where there has been no judgment, a liberal approach is appropriate. *Id.* at 936, 854 P.2d at 279. The Rule 55(c) standard has been described as requiring the movant to show “some excuse for failure to answer, that a meritorious defense exists, and the policy of deciding cases on the merits should be recognized.” *Id.*

The five-year period post-dating the objection deadline recently transpired (in May 1998). The post-objection deadline data could not have been included in the original Director’s Report, yet the data for this five-year period also constitutes a basis for which forfeiture, adverse possession, estoppel, and other legal principles may be asserted. *See 24 Hagerman Subcases*, 130 Idaho 736, 947 P.2d 409 (1997). In addition to representing a separate cause of action, the five-year post-objection period data also confirms the preceding years’ data and establishes the ongoing nature of reductions in water use. Obviously, the data for the years 1993 - 1998 was not available during the original objection period. In fact, the data for the full five-year period was not available until after the February 1998 facility volume hearing. Yet, the new data impacts the validity of the Clear Springs’ claims as they are now recommended by the Special Master and awaiting partial decree. If the claims are decreed as recommended without consideration of this new evidence, the decrees would be out-of-date upon issuance. If the decrees are to have a current effective date after the close of the objection period, then the five years of data post-dating the objection period should be taken into consideration.

The Affidavit of David Shaw with the tables of water usage data for the Clear Springs facilities establishes that there is a meritorious claim. The DMR data and the confirmatory

IDWR data demonstrate that these facilities have operated at substantially less than their currently recommended water right diversion rates for the last five years and beyond. This data substantiates that there has been a reduction in actual beneficial use over the years. *See 24 Hagerman Subcases*, 130 Idaho 736, 947 P.2d 409 (1997).

The five-year period post-dating the objection period both confirmed prior water usage information and established a new cause of action. The data for this five-year period did not exist at the end of the original objection period, and this satisfies the Rule 55(c) good cause standard. In fact, it even satisfies the more stringent Rule 60(b) additional criterion of "newly discovered evidence." Further, the water usage data in David Shaw's affidavit establishes that there is a meritorious claim that a portion of these rights have not been used for more than five years. Consistent with the policy in favor of deciding cases on the merits and consistent with the purpose of the SRBA to establish the nature and extent of water rights, this Motion to File Late Objections should be granted.

CONCLUSION

For the reasons stated above, the Motion to File Late Objection should be granted.

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 File Late Objections** by the methods indicated below:

Patrick D. Brown

Parker Warr & Brown

812 Shoshone St. East

Twin Falls, Idaho 83301

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Idaho Department of Water Resources

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Chief, Natural Resources Division

Office of the Attorney General

P. O. Box 44449

Boise, Idaho 83711-4449

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Dana L. Hofstetter

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Department of Water Resources
Adjudication Bureau

North Snake Ground Water District, on behalf of
its members, including May Farms, Ltd. and
Faulkner Land & Livestock Company

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SEP 29 1998

Department of Water Resources
Southern Region

Josephine P. Beeman
Dana L. Hofstetter
BEEMAN & HOFSTETTER, P.C.
608 West Franklin Street
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Boise, ID 83701-1427
(208) 388-8900
(208) 388-8400 (Facsimile)
beehof@micron.net

**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. 36-02048, 36-02703,
	)	36-04013A, 36-04013B, 36-04013C,
Case No. 39576	)	36-07040, 36-07148, and 36-07568
	)	
_____	)	MOTION TO CONTINUE HEARING ON MOTION TO ALTER OR AMEND, MOTION TO SET SCHEDULING CONFERENCE, and MOTION FOR EXPEDITED HEARING

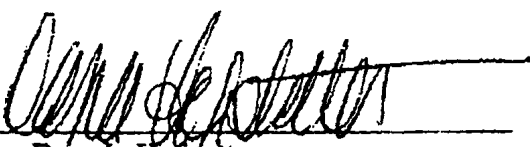
The North Snake Ground Water District ("NSGWD"), on behalf of its members including May Farms, Ltd. and Faulkner Land & Livestock Company, by and through its attorneys of record, Beeman & Hofstetter, P.C., hereby moves this Court to vacate the hearing on the *Motion to Alter or Amend* currently scheduled for September 28, 1998, at 9 a.m., and requests that the Court hold a scheduling conference at that time instead. The NSGWD further moves for an expedited telephonic hearing for Thursday morning, September 24, 1998, on these matters.

for hearing on September 28, 1998. *Id.* Nor was it listed on the August 1998 SRBA Docket Sheet. Thus, the NSGWD had no notice, constructive or otherwise, of the existence of the *Supplemental Findings*. Since the *Supplemental Findings* amend the basis for the Special Master's recommendations, the NSGWD needs additional time to revise its briefing and adequately prepare for hearing on these matters. *Id.*

3. Facility volume remarks were included in certain of the SRBA claims in subcases scheduled for hearing on September 28, 1998 (e.g., 36-07040 and 36-07568). 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 Court precedent, the claimant cannot seek to amend its claims without filing a motion to amend. Additional time is necessary for the claimant to seek the amendment of its claims.

DATED this 23rd day of September, 1998.

BEEMAN & HOFSTETTER, P.C.

By 
Dana L. Hofstetter



STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
1341 FILLMORE STREET, SUITE 200
TWIN FALLS, ID 83301-3380
PH. (208) 736-3033

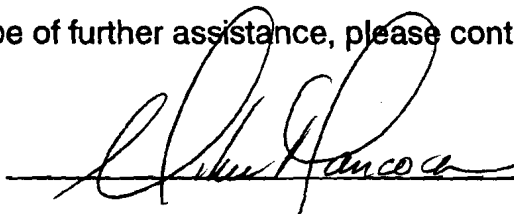
Date 6-9-98
Name Beeman & Hofstetter
Address Boise

No. of Copies	Materials	Cost
788	Copies @ .05	\$39.40
	Complete files	
	Claim numbers: A36-07040	
	A36-02703 - 02048 - 07148	
	- 04013 A, B, C, - 07568	
	Clear Springs Trout	
TOTAL		\$39.40

Please find enclosed the form(s) and/or information you requested. The charge, if any, is indicated above.

If we may be of further assistance, please contact us.

Sincerely,


Mike Hancock

MAY 01 1998

Department of Water Resources
Snake River Basin

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MAR 27 1998

Department of Water Resources
Adjudication BureauSOUTHERN
FYI

1998 MAR 25 AM 11:39

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

Subcases See Exhibit A

Case No. 39576

ORDER PARTIALLY VACATING
TRIAL and DEADLINES

Special Master Haemmerle issued *Findings of Fact and Conclusions of Law (Facility Volume)* on February 24, 1998. A *Stipulation* was filed by the claimants and IDWR on February 24, 1998.

All the subcases on Exhibit A are currently set for trial. However, subcases 36-02048, 36-02703, 36-04013A, 36-04013B, 36-04013C, 36-07040, 36-07083, 36-07148, 36-07151, and 36-07568 have all been settled per the *Stipulation* and *Findings of Fact*. Therefore, since the aforementioned subcases are settled the trial and the deadlines are vacated. Trial is still scheduled July 6 and 7, 1998, for subcases 36-02708, 36-07201, and 36-07218.

DATED March 25, 1998.

FRITZ X. HAEMMERLE

Special Master

Snake River Basin Adjudication

CERTIFICATE OF MAILING

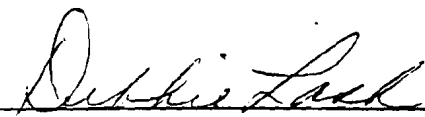
I certify that a true and correct copy of the ORDER PARTIALLY VACATING TRIAL DATE AND DEADLINES was mailed on March 25, 1998, with sufficient first-class postage to the following:

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

Patrick D. Brown
P O Box 389
Twin Falls, Idaho 83303-0389

Director of IDWR
P O Box 83720
Boise, Idaho 83720-0098

Daniel V. Steenson
P O Box 2773
Boise, Idaho 83701-2773


Deputy Clerk

ORDER PARTIALLY VACATING TRIAL DATE and DEADLINES

SUBCASE NO. 36-04013B

	CLAIM (8/30/88)	AMENDED CLAIM	RECOMMENDATION	OBJECTION
NAME	Clear Springs Trout Co.	N/A	Clear Springs Foods Inc. (See notes below)	XX Clear Springs Foods, Inc. P.O. Box 712 Buhl, ID 83316
BASIS OF CLAIM	Beneficial Use		Beneficial Use	
SOURCE	Springs (Clear Springs)		Springs	
QUANTITY	31.000 cfs		27.00 cfs	
PRIORITY DATE	02/04/1964		02/04/1964	
PURPOSE OF USE	Fish Propagation/ Commercial Trout Production		Fish Propagation/ Commercial Trout Production	
PERIOD OF USE	1/1 - 12/31		1/1 -12/31	
POINT OF DIVERSION	T09S R14E S2		T09S R14E S02	
PLACE OF USE	T09S R14E S1		T09S R14E S01 T09S R14E S02	
REMARKS			+ see below	XX "Facility Volume" & "Combined Facility Volume" are not elements of the water right. Right no. 36- 07148 of 1.67 cfs is diverted after the research station. Therefore, the combined diversion rate, if any, should be 121.67 cfs, which is the 1.67 cfs plus the 120 cfs appropriated under the other rights.

Notes: IDWR, in its response, stated there was an error in the remarks and recommended the addition of right no. 36-07148 in the combined right and other right statements below (underlined). IDWR also stated a change of ownership was filed with the department after the filing of the director's report and recommended the name and address of the claimant should be changed.

- + Right includes accomplished change in place of use pursuant to Idaho Code 42-1416A.
- Source is also known as Clear Springs.
- Facility volume 253,936 cu. ft.

Multiple points of diversion located in SESENE, S02, T09S, R14E.

Use of this right with rights listed below is limited to a total combined diversion rate of 116.0 cfs.

Combined right no.: 36-02048, 36-02703, 36-04013A, 36-04013C and 36-07148.

Rights listed below are also diverted through point of diversion described above, and the total combined rate of diversion of these rights is limited to 116.0 cfs (capacity of diversion system). Other right nos.: 36-02048, 36-02703, 36-04013A, 36-04013C, 36-04076, 36-04148B and 36-07148.

Use of this right with rights listed below is limited to a total combined facility volume of 299,900 cu. ft.

Combined right nos.: 36-02048, 36-02703, 36-04013A, 36-04013C, and 36-07148.

CLAIMANT'S NAME: Clear Springs Trout Company

DATE: 6/12/92

COUNTY: Gooding

EMPLOYEE: Marci Sterling

Regarding the mail messages exchanged between Steve Clelland and myself: there was some question as to whether the point of diversion for his statutory claim, A36-04148B for 1.5 cfs, is the same point as that for my claims, A36-02048, A36-02703, A36-04013A, B, & C, and A36-07148. I questioned whether I should mention his claim under the remark F06, since I did not see the pipe described in that claim when I was out in the field. I asked him whether the source was the same one which supplies Clear Springs' facility. He stated that he had not followed the pipe all the way back to the actual point of diversion, but had gone back as far as the head box, which is just beyond the northeast edge of Clear Spring's property. He also said that Lori Graves and Bob Worstell had looked at the point of diversion, but that they may not have done a thorough investigation. This conversation took place on 3/20/92. That same day, I spoke with Lori Graves to find out what she remembered as far as diversion works. She remembered going out there, but did not remember any specific details concerning the diversion method or location. She said they just did kind of a "drive by" of the diversion works and concentrated more on the flow measurements.

There was one pipeline out there which began at Clear Springs Trout's main source and traveled southeast some distance. Mr. Hanifen explained that the water being carried in that pipe was leased to the golf course and that the pipe supplies up to 3 cfs instantaneously. He said the pipe was put in about two years ago and provides water to 3 homes in a subdivision after emptying into a storage tank. When the storage tank is full, the additional water dumps into Clear Springs Trout's ponds. I thought that this could possibly be the same 3 cfs as the 3 cfs claimed in A36-04148A & B, but I believe that at least 1.5 cfs of the 3 cfs being leased is actually being accounted for in the permit 36-08329. Steve didn't believe that this pipeline was the same one supplying A36-04148B.

Steve said that there used to be a ditch going from the main source eastward to the headbox described above. When the new ponds went in at Clear Springs Trout Co., the ditch must have interfered because he said that they replaced the ditch with an underground pipe at that time.

The pipe being described here is believed to be the same pipe as the one described in right number 36-04076 for Mr. Madalena. During our 5/20/92 meeting at Clear Springs offices, Allen Merritt described Mr. Madalena's claim, at which point Clear Springs representatives explained that it was the same pipe as their pipe which supplies their trout raceways. I have concluded that the pipe used and measured by Clear Springs is the same pipe that carries the water for both rights 36-04076 and 36-04148B. Because of this, I will cite both those rights in Remark F06 of all Clear Springs' rights that also use this pipe.

The water use by Mr. Madalena and Clear Lakes Country Club is not a year-round use, so no water will be cut from Clear Springs' claims to account for the use by both these parties.

See file A36-02048 for more information.

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MEMO TO FILES A36-04013A, B, & C

RE: Description of activity with statutory claim 36-04013 in
chronological order

BY: Marci Sterling

DATE: June 12, 1992

?/ ?/ ?	Thousand Springs filed statutory claim.
08/10/72	Application for Transfer of Water Right was received to increase the length of the diversion works by 370 ft.
09/08/72	Clear Lakes protested the transfer.
09/11/72	Clear Springs protested the transfer.
02/07/74	Hearing was held to resolve the disputes.
05/06/81	Hatchery changed ownership from Thousand Springs to Clear Springs.

After the 1974 hearing, a decision was to be prepared by the Department if no other hearings were deemed necessary. I found no evidence of that decision or of any further hearings in the file. There is not a problem with the protests because of the fact that the transfer of point of diversion never took place. This was learned during the meeting of May 20, 1992 at Clear Springs main office. Loren Holmes inquired about the transfer applications and Ted Eastman and Larry Cope explained that the planned change in point of diversion by Thousand Springs Trout was never completed. They were familiar with the original plans to extend the point of diversion and explained that they had no intentions of making that change. I will recommend the point of diversion as it was described in the statutory claims and the related licenses.

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FEB 04 1993



**CLEAR SPRINGS
TROUT COMPANY™**
A Clear Springs Foods Company

CLEAR SPRINGS TROUT COMPANY
General Office P.O. Box 712, Buhl, Idaho 83316

Phone 208 543-4316
Sales 800 635-8211
Fax 208 543-5608

March 11, 1992

Ms. Marci Sterling, Engineering Specialist
IDAHO DEPARTMENT OF WATER RESOURCES
1301 N. Orchard
Boise, Idaho 83706

Re: Clear Springs Trout Company
Water Rights/Facilities Update

Dear Marci:

With regard to the questions and requests discussed during your latest visit to my office on February 26, 1992, I am enclosing the following information.

SNAKE RIVER HATCHERY:

Diversion of spring water to the new (current) Snake River Hatchery, from the old site, was begun in **DECEMBER, 1987**. Water was diverted to the new Snake River Hatchery gradually while trout populations were transferred from the old site to the current site. The full inventory transfer was accomplished in calendar year 1988 and all available water was then diverted to the current facility.

Peak flows to the current hatchery were measured at approximately 115 cubic feet per second (CFS) in 1989. A portion of this water is first diverted to the Clear Springs' Research Facility before arrival at the Snake River Hatchery. Between 1 and 2 CFS of the total water source is diverted through the Clear Springs Visitor Center ponds and discharges to Clear Lake without reuse. The Visitor Center diversion began in 1990.

The water rights licensed for this facility total 121.67 cubic feet per second. The difference between the licensed flow and the highest, actual measured flow in 1989 is the result of prolonged drought conditions in the Magic Valley. This drought has continued to the present time reflecting flow reductions of 3 to 5 percent annually. Records substantiating a flow rate of 121.67 CFS are unavailable. Flow records which may have existed earlier, were removed by the previous owners prior to the Clear Springs' purchase of the properties. I assume substantiated records of earlier flows would be on file at the Department of Water Resources.

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FEB 04 1993

Ms. Marci Sterling

Page 2

March 11, 1992

CLEAR LAKES HATCHERY:

Enclosed, please find a map of the Clear Lakes Hatchery and the rearing volumes you requested. Additionally, you requested the date of the diversion change at this hatchery. Sections A and B as noted on the map were constructed, along with the new diversion (common with the Clear Lake Trout Company facility) in 1983/84. Water was first turned into the new diversion in **May, 1984**. The new diversion included the installation of measuring weirs to assure the proper allocation of water between the two competing facilities. No change in the spring water source(s) occurred.

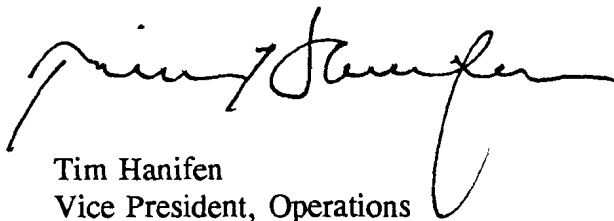
RESEARCH HATCHERY:

Enclosed, please find a diagram of the rearing volume at the Research Center Hatchery as you requested. Keep in mind that the water utilized at the Research Center is diverted to the Snake River Hatchery following use and becomes part of the measured flow at the Snake River Hatchery meters.

I believe the above covers all the topics we discussed during our last meeting. If I can be of further assistance, please advise.

Sincerely,

CLEAR SPRINGS TROUT COMPANY



Tim Hanifen
Vice President, Operations

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SNAKE RIVER HATCHERY
POND VOLUMES

6/18/91

HATCH HOUSE : (20 PONDS)(50' LENGTH)(5'6" WIDTH)(3' DEPTH)(7.48 Gals/Ft³) = 123,420 gals

A DECK : (14 PONDS)(140'L)(18'W)(3'D)(7.48 G/Ft³) = 791,683 gals

B DECK : (16 PONDS)(140'L)(18'W)(3'D)(7.48 G/Ft³) = 904,780 gals

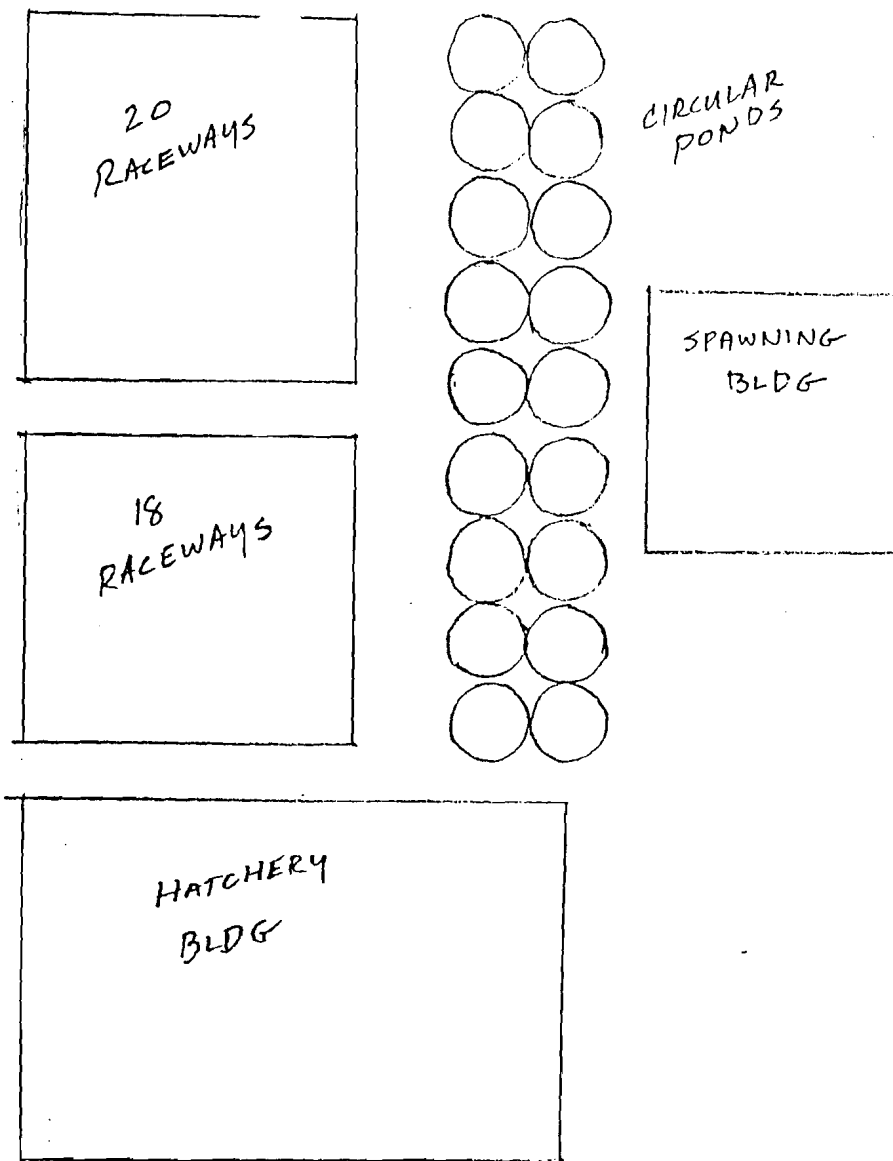
C DECK : (16 PONDS)(130'L)(18'W)(3'D)(7.48 G/Ft³) = 840,153 gals

D DECK : (16 PONDS)(130'L)(18'W)(3'D)(7.48 G/Ft³) = 840,153 gals

E DECK : (16 PONDS)(120'L)(18'W)(3'D)(7.48 G/Ft³) = 775,526 gals

Total hatchery = 4,275,715 gals
= 571,619 Ft³

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Volume of rearing containers and headditches at R&D.

	Gallons
Outside:	-----
1. Raceways (38 @ 9450 gal)	359100
2. Head ditches: (Total = 35910 gal)	35910
3. Circulars: (18 @ 9400 gal)	169200
4. Spawning Bldg: (Total = 6500 gal)	6500
5. Tail Ditches: (Total = 7500)	7500
Inside:	
1. Total Volume: 12780 gal	12780

GRAND TOTAL	590990 GAL. (79009 Cu. Ft.) 571,619 650,628

Clear Springs Trout Company - Research and Development Hatchery

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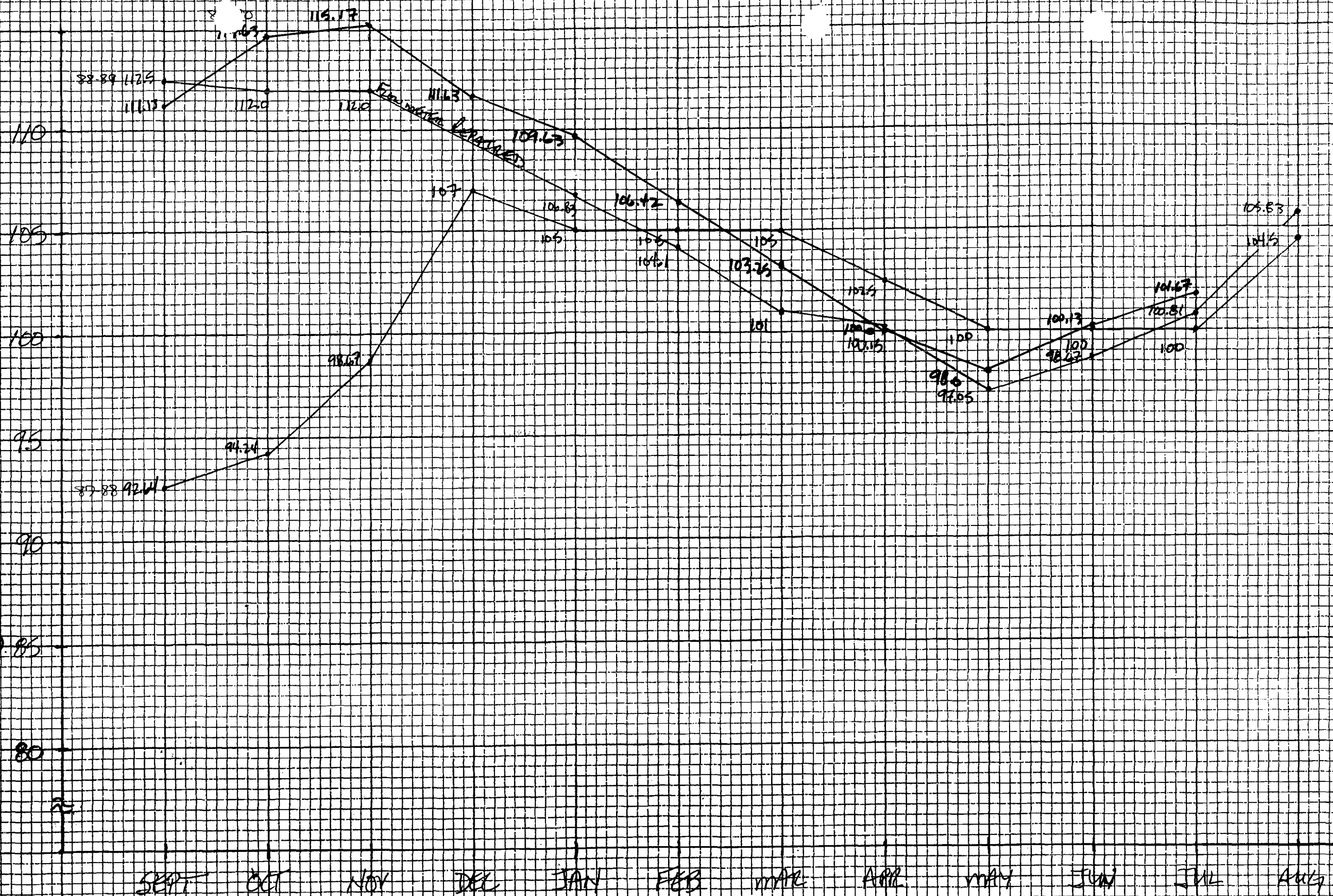
FEB 04 1993

CFS

1987-88 (first 4 months of old Snake) 85

1988-89

1989-90



AVG MONTHLY WATER FLOWS
SNAKE RIVER HATCHERY

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AVG. MONTHLY WATER FLOWS
SNAKE RIVER HATCHERY

SNAKE RIVER HATCHERY

MONTHLY H₂O Flow

MONTH & FY: 1989-90 OCTOBER

DATE	<u>PIPE</u>		TOTAL
	FRESH	USED	
10/3/89	75	38½	113.50
10/16/89	75	40	115.0
10/23/89	80	35	115.0
10/30/89	80	35	115.0
TOTALS			458.5
Avg Flow			114.63

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MONTHLY H₂O Flow

MONTH & FY: Nov 1989-90

DATE	<u>PIPE</u>		TOTAL
	FRESH	USED	
11/6/89	80	36	116 CFS
11/13/89	78 ³ / ₄	37	115 ³ / ₄ CFS
11/28/89	76 ¹ / ₄	37 ¹ / ₂	113 ³ / ₄ CFS
TOTALS			345.5
Avg Flow			115.17

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Monthly H₂O Flow

MONTH # FY: 11/12/90

DATE	<u>PIPE</u>		TOTAL
	FRESH	USED	
11/12/90	78.0	36.0 ^{+1.0 VISITOR CENTER}	115
11/30/90	75.0	37.5 ^{1.0}	113.5
TOTALS			
Avg Flow			114.25

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FEB 04 1993

R PROOF

CVR

MAPS

PHOTOS

MISC

MICROFILMED

OCT 18 1994

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

In Re the General Adjudication)
of the Rights to the Use of Water)
from the Snake River Basin)
Water System)
_____)

Case No. 36-04013B -0001

The State of Idaho, ex rel.)
R. Keith Higginson in his)
official capacity as Director)
of the Idaho Department of)
Water Resources,)

RESPONSE TO OBJECTION

Petitioner,)

vs.)

The United States; the State)
of Idaho; and all Claimants to)
the use of water from the Snake)
River Basin Water System,)

Respondents.)
_____)

I. GENERAL INFORMATION

1. Person responding to objection:

Name: R. KEITH HIGGINSON, DIRECTOR

Address: IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449

Briefly describe your interest in this water right:

IDWR is required to file a response to an objection to part
I of the director's report pursuant to I.C. section 42-1412(2).

(Over)

2. Person who filed objection:

Name: CLEAR SPRINGS FOODS INC
Address: PO BOX 712
BUHL ID 83316

3. If this response is filed by an attorney:

Attorney Name(s): NICHOLAS B. SPENCER
Attorney Address: DEPUTY ATTORNEY GENERAL(S)
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449
Attorney Phone No.: (208) 327-7900

II. STATEMENT OF THE RESPONSE

1. ☒ Name and Address: I respond to the objection concerning the name and/or address of the owner of the water right.
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 BY THE CLAIMANT'S ANSWER,
AFFIRMATIVE DEFENSES, AND PRAYER FOR RELIEF.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection item 1, and all allegations of the objection regarding this item, IDWR responds as follows:

After the director's report was filed a notice of change in ownership was filed with IDWR. The name and address of the claimant should be changed as shown in the attachment entitled "Recommended Water Rights Acquired Under State Law."

In response to Statement of the Objection item 11 and all allegations of the objection regarding this item, IDWR responds

as follows:

Idaho Code section 42-1411(2) provides that the director's report shall include "such other matters as are necessary to define the right." The facility volume correctly describes the current use of water diverted for fish propagation purposes. Description of the current use is necessary to define the right and to prevent future expansions in use of the right. 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 by the court; the eventual decree by the SRBA Court of the water right based on the actual beneficial use of the water diverted does not constitute a taking, because a water right is limited to the actual beneficial uses of the water diverted.

IDWR further responds that there is an error in the remarks in the description of this right in the director's report. Right nos. 36-04013A, 36-04013B, 36-04013C, 36-02048, 36-02703, 36-04076, 36-07148 and 36-04148B are diverted through the same diversion system. All of the flow diverted pursuant to these rights is measured through one of two measuring devices on the system, and measurement data provided by the claimant shows that the maximum total flow diverted through the system is 116 cfs. The combined total of all 8 of these rights should therefore be limited to 116 cfs. However, the two remarks limiting combined diversion rate omit right no. 36-07148. The recommendation should therefore be corrected as shown in the attachment entitled "Recommended Water Rights Acquired Under State Law."

In response to Statement of the Objection item 14 and all allegations of the objection regarding this item, IDWR responds as follows:

See attached "IDWR's Response to Answer, Affirmative Defenses and Prayer for Relief of Claimant."

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", IDWR 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 just as a party must obtain leave of court to file a late claim after the director's report is filed.

(Over)

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CHANGES TO THE DIRECTOR'S REPORT

See attached List of Recommended Water Rights Acquired under State Law.

☒ 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:

	No. of Pages
Notice of Claim No. A36-04013B	3
Recommended Water Rights Acquired Under State Law	1
IDWR's Respons to Answer, Affirmative Defenses and Prayer for Relief of Claimant	4

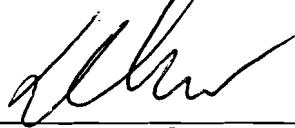
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

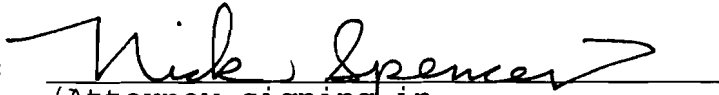
David B. Shaw, being first duly sworn, upon oath, deposes and says:

That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director of IDWR, to verify this response; and that 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.



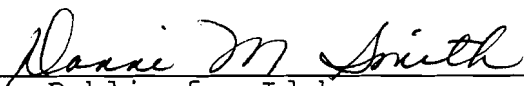
Signature of person filing response

By:



(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 10th day of September,
1993.



Notary Public for Idaho

Residing at: _____

My Commission expires: _____

Danni Smith, Notary Public
Residing at Boise, Idaho
My Commission Expires December 5, 1994

(Over)

CERTIFICATE OF MAILING

I hereby certify that on the 10th day of SEPTEMBER, 1993, 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 prepared 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. One copy to the owner of the water right, and you must fill in the following information:

See No. 3

3. One copy to the party who filed the objection, or if represented by an attorney, to their attorney; and you must fill in the following information:

Name: HEPWORTH NUNGESTER & LEZAMIZ
Address: PATRICK D BROWN
PO BOX 389
TWIN FALLS ID 83303

4. One copy to:

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



Signature of Respondent or attorney
mailing on Respondent's behalf

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A36-04013B
Date Received: 8/30/1988
Receipt No: 5002014
Received By: DS

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CLEAR SPRINGS TROUT CO. 208-543-4316
Address: P. O. BOX 712
BUHL, ID 83316

2. Date of Priority: FEB 04, 1964

3. Source: SPRINGS (CLEAR SPRINGS) Trib. to: CLEAR LAKES

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
09S	14E	2	SE	SE	NE	5	GOODING

5. Description of diverting works:
COLLECTION DITCH & 36" & 42" PIPELINES TO RACEWAYS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S.	(or)	A.F.A.
FISH PROPAGATION	01/01	12/31	31.000		

7. Total Quantity Appropriated is:
31.000 C.F.S. (and/or) A.F.A.

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
COMMERCIAL TROUT PRODUCTION

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
09S	14E	1	SW	NW	5	FISH	
			NW	SW	12	FISH	

11. Place of use in counties: GOODING

A36-04013B Page 1 Date: 08/31/88

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FEB 04 1993
OCT 18 1994

12. Do you own the property listed above as place of use? YES

13. Other Water Rights Used:

36-2703, 2048, 7148, 4013, 4013A

14. Remarks:

SEE A36-04013 & A36-02703.

15. Basis of Claim: BENEFICIAL USE

16. Signature(s)

(a.) By signing below, I/We acknowledge that I/We have received, read and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do _____ do not X wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments: 1

For Organizations:

I do solemnly swear or affirm that I am President of
Clear Springs Trout Company Organization, that I have signed the foregoing
Organization

document in the space below as President of
Clear Springs Trout Company Organization and that the statements contained in the
foregoing document are true and correct.

Signature of Authorized Agent

President Clear Springs Trout Company
Title and Organization

8/30/88

Date

State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 30th day

of August 19 88

Karl B. Spring
Notary Public

Seal

Residing at Boise ID

My Commission Expires 11-17-92

IDWR'S RESPONSE TO ANSWER, AFFIRMATIVE DEFENSES AND PRAYER FOR
RELIEF OF CLAIMANT

This portion of the response addresses the multi-page attachment to the objection (hereinafter "the attachment"), wherein the claimant admits or denies all sections of Parts I, II, and III of the director's report, asserts 27 affirmative defenses, and alleges a prayer for relief. The attachment contains the following sections, corresponding to the various sections of the director's report:

- (1) I. GENERAL RESPONSE
- (2) II. DESCRIPTIVE SUMMARY, (first unnumbered page of Part I of the director's report)
- (3) III. TABLE OF CONTENTS (second and third unnumbered pages of Part I of the director's report)
- (4) IV. 1. INSTRUCTIONS FOR USING THIS REPORT PART I (page 1 of Part I of the director's report)
- (5) IV. 2. SCOPE OF THE ADJUDICATION (pages 1-3 of Part I of the director's report)
- (6) IV. 3. PURPOSE OF THIS REPORT PART I (pages 3-4 of Part I of the director's report)
- (7) V. 1. BOUNDARIES OF BASIN (pages 4-6 of Part I of the director's report)
- (8) V. 2. WATER SOURCES (page 6 of Part I of the director's report)
- (9) V. 3. DEVELOPMENT OF WATER USE (pages 6-9 of Part I of the director's report)
- (10) VI. GENERAL PROVISIONS 1-8 APPLY TO ALL WATER RIGHTS IN BASIN 36 (page 9 of Part I of the director's report)
- (11) VI. General Provision 1. EFFECT OF ADJUDICATION (page 9 of Part I of the director's report)
- (12) VI. General Provision 2. GENERAL ADMINISTRATIVE PROVISIONS (pages 9-10 of Part I of the director's report)
- (13) VI. General Provision 3. CONJUNCTIVE ADMINISTRATION (page 10 of Part I of the director's report)
- (13) VI. General Provision 4. ADMINISTRATION OF GROUND WATER RIGHTS (page 10 of Part I of the director's report)
- (14) VI. General Provision 5. ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER (page 10 of Part I of the director's report)
- (15) VI. General Provision 6. ADMINISTRATION OF SMALL DOMESTIC AND STOCK WATER RIGHTS (page 11 of Part I of the director's report)
- (16) VI. General Provision 7. MEASURING DEVICES AND CONTROL

- WORKS (page 11 of Part I of the director's report)
- (17) VI. General Provision 8. FIRE FIGHTING PURPOSES (page 11 of Part I of the director's report)
 - (18) VI. General Provision 9. CONSUMPTIVE USE (page 12 of Part I of the director's report)
 - (19) VI. GENERAL PROVISION 10 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH DOMESTIC USE AS A PURPOSE OF USE (page 12 of Part I of the director's report)
 - (20) VI. General Provision 10. DOMESTIC USE (page 12 of Part I of the director's report)
 - (21) VI. GENERAL PROVISION 11 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH STOCK WATER USE AS A PURPOSE OF USE (page 13 of Part I of the director's report)
 - (22) VI. General Provision 11. STOCK WATER USE (page 13 of Part I of the director's report)
 - (23) VI. GENERAL PROVISIONS 12-16 APPLY TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH IRRIGATION AS A PURPOSE OF USE (page 13 of Part I of the director's report)
 - (24) VI. General Provision 12. IRRIGATION USE (pages 13-14 of Part I of the director's report)
 - (25) VI. General Provision 13. DIVERSION VOLUME FOR IRRIGATION (page 14 of Part I of the director's report)
 - (26) VI. General Provision 14. CONSUMPTIVE USE FOR IRRIGATION (pages 14-15 of Part I of the director's report)
 - (27) VI. General Provision 15. AMOUNT OF COMBINED WATER RIGHTS FOR IRRIGATION (page 15 of Part I of the director's report)
 - (28) VI. General Provision 16. DIVERSION RATES IN EXCESS OF .02 CFS PER ACRE (pages 15-16 of Part I of the director's report)
 - (30) VI. 17. INSTRUCTIONS FOR USE OF LIST OF RECOMMENDED WATER RIGHTS (pages A-i through A-iii of Part I of the director's report)
 - (31) VI. 18. IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW (pages A-1 through B-25 of Part I of the director's report)
 - (32) DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36), (DIRECTOR'S REPORT PART II)
 - (33) DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36), (DIRECTOR'S REPORT PART III)

The attachment also contains part VIII, AFFIRMATIVE DEFENSES (pp. 20 through 28) and a PRAYER FOR RELIEF (untitled, p. 28).

In response to each of the items enumerated above IDWR responds that pursuant to Section 4 a.(2)(c) of SRBA Administrative Order 1, Rules of Procedure, IDWR generally denies each and every allegation, if any, contained in each enumerated portion of the attachment. IDWR affirmatively responds that neither SRBA Administrative Order 1, Rules of Procedure, nor Title 42, Chapter 14, Idaho Code, make provision for IDWR to affirm, amplify, or otherwise respond to the claimant's admissions, or to deny the claimant's denials, and that IDWR therefore does not believe that it is required to do so. Title 42, Chapter 14, Idaho Code solely defines the content and scope of the director's report. It is to contain a description of the water system and is to provide a recommendation as to each water right claimed and as to those matters necessary for administration of those water rights. Therefore, the content and scope of the objection is limited to those same matters. The attachment to the present objection asserts or otherwise raises matters not directly addressing the elements of the water right as recommended, the description of the water system, or the general provisions. Rather, the attachment raises broad issues as to the constitutional, statutory and administrative efficacy of the entire adjudication process. All such issues should be raised by means of motions to designate basinwide issues and similar procedural vehicles specifically designed to provide for basinwide notice and participation. They should not be permitted to divert the focus of any individual subcase away from the issues directly connected to the elements of the water right and the administration thereof. Therefore, because the attachment to the present objection is not within the scope of the statutory purpose of an objection it should be stricken.

However, in the event that the court should determine that all or part of the attachment is properly within the scope of the objection, IDWR further responds as follows:

IDWR affirmatively responds that all statements within the director's report are properly included therein pursuant to Title 42, Chapter 14, Idaho Code, and in particular pursuant to Idaho Code §§ 42-1411 and 42-1412(8); and that the provisions of the Idaho Rules of Civil Procedure regarding pleadings are inapplicable to the extent that they are in conflict with the statutory requirements. Therefore IDWR denies all allegations directed at the contents of the director's report.

As to the enumerated portions of the attachment addressing the listings of recommended water rights, abstracts of federal reserved water right claims, or negotiated agreements, other than the individual recommendation that is the subject of this objection, IDWR responds that such claims or agreements are not brought before this court by this objection.

Responding to the 27 affirmative defenses asserted in the attachment, IDWR generally denies each and every affirmative defense asserted. IDWR further responds that affirmative defense numbers 1, 2, 4, 5, 10, 11, 12, 18, and 22, asserting various violations of civil or constitutional rights, fail to comply with the requirements I.R.C.P. 9(b) providing that in all averments of violation of civil or constitutional rights the factual circumstances constituting such violation must be stated with particularity. Accordingly, IDWR asserts that those affirmative defenses should be stricken.

In response to that portion of the multi-page attachment to the objection wherein the claimant asserts a prayer for relief, IDWR responds as follows:

1. IDWR denies that the director's report asserts any claims against the claimant; rather, the director's report contains only the recommendation of the director as to how the claimant's water right should be decreed and administered.
2. IDWR denies that the claimant is entitled to have the water right decreed as claimed unless in the director's report the water right has been recommended as claimed.
3. IDWR denies that any acts upon its part constitute the taking of private property for which just compensation should be allowed and awarded.
4. IDWR denies that the claimant is entitled to recover court costs and reasonable attorney fees.
5. IDWR denies that the claimant by this objection has raised any claims against IDWR entitling such claimant to any relief other than the eventual judicial determination and decree of the various elements of the claimant's water right, if any, and of those related matters necessary to describe and administer that water right.

IDAHO DEPARTMENT OF WATER RESOURCES
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: SEP-2-1993
PAGE: A-7

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	PURPOSE OF USE	PERIOD OF USE FROM TO	MAXIMUM QUANTITY	BASIS OF CLAIM
SOURCE: SPRINGS		TRIBUTARY: CLEAR LAKES				
36-04013B	CLEAR SPRINGS TROUT CO CLEAR SPRINGS FOODS INC PO BOX 712 BUHL ID 83316	02/04/1964	FISH PROPAGATION	01-01 12-31	27.00 CFS	BENEFICIAL USE
					TOTAL QUANTITY:	27.00 CFS

NON-IRRIGATION-USES:

COMMERCIAL TROUT PRODUCTION

POINT OF DIVERSION:

T09S R14E S02 LOT 5 (SESENE)

PLACE OF USE: FISH PROPAGATION

T09S R14E S01 Lot 5 (SWNW) Lot 12 (NWSW)
S02 Lot 5 (SENE) Lot 8 (NESE)

REMARKS: RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO IDAHO CODE 42-1416A.
SOURCE IS ALSO KNOWN AS CLEAR SPRINGS.
FACILITY VOLUME 253,936 CU. FT.
MULTIPLE POINTS OF DIVERSION LOCATED IN SESENE, S02, T09S, R14E.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED DIVERSION RATE OF 116.0 CFS
COMBINED RIGHT NOS.: 36-02048, 36-02703, 36-04013A, 36-04013C AND 36-07148.
RIGHTS LISTED BELOW ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE, AND THE TOTAL COMBINED RATE OF DIVERSION OF THESE RIGHTS IS LIMITED TO 116.0 CFS (capacity of diversion system). OTHER RIGHT NOS.: 36-02048, 36-02703, 36-04013A, 36-04013C, 36-04076, 36-04148B AND 36-07148.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED FACILITY VOLUME OF 299,900 CU. FT.
COMBINED RIGHT NOS.: 36-02048, 36-02703, 36-04013A, 36-04013C, AND 36-07148.

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**RECEIPT
For Monies Paid
to the
IDAHO DEPARTMENT OF WATER RESOURCES**

-04013B

Receipt No: 8015470

Date: 3/ 9/1993
Time: 10:40:39

Received

From: CLEAR SPRINGS FOODS

Type of Payment	Program Acct Class	Amount
COPIES/ADJ FILES	64100 229 21 1760	57.36

Total

CHECK 191650

\$57.36

Region: SOUTHERN

Signature:

Janie Robertson

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OCT 18 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

01-Mar-1993

TIM HANIFEN
CLEAR SPRINGS FOODS INC
PO BOX 712
BUHL ID 83316

RE: Copy of SRBA File(s): 36-02048, 36-02703, 36-02708, 36-04013ABC,
36-07040, 36-07083, 36-07148, 36-07151,
36-07201, 36-07218, 36-07568

Dear Mr. Hanifen:

Please find enclosed the copies of documents you recently requested contained in the above referenced SRBA file(s) as of this date. Please note that copies of orthophoto quad maps or NAPP photography or aerial slides which may have been used in the review of your claim(s) have not been included since they are not easily reproduced. These items are however available for your review at our office. Please also note that in some situations some water rights may have other associated files which contain privileged information between IDWR staff and our legal council which has not been copied.

Please remit the following for the cost of the copies and postage:

\$57.36

Sincerely,

Jeanie
Jeanie Robertson
Records Clerk

Encl:

Clear Springs Foods
78
59
74
90
69
69
62
56
56
57
63
920 x 5 = 4600
10.90
46
57.36

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**CLEAR
SPRINGS
FOODS™**

JEANNIE

!!

Have Fun
w/ these
scr

CLEAR SPRINGS FOODS, INC.
Corporate Office P.O. Box 712, Buhl, Idaho 83316

Phone 208 543-4316
Sales 800 635-8211
Fax 208 543-5608

February 15, 1993

Mr. Steve Clelland, Water Agent
Adjudication Bureau
DEPARTMENT of WATER RESOURCES
222 Shoshone St. East
Twin Falls, Idaho 83301

RECEIVED

FEB 17 1993

Department of Water Resources
Southern Region Office

Re: Clear Springs Foods Water Filings

Dear Steve:

I am writing to request complete copies of the Clear Springs, Basin 36 water right files listed below.

36-02048	36-07218	A36-07148
36-02703	36-07568	A36-07151
36-02708	36-07151	A36-07201
36-04013A	36-07201	A36-07218
36-04013B	A36-02708	A36-07568
36-04013C	A36-04013A	A36-07040
36-07040	A36-04013B	A36-07083
36-07083	A36-04013C	A36-02048
36-07148	A36-02703	

Please have the files copied and mailed to my attention at the letterhead address. The cost of reproducing and mailing these files should also be billed to my attention.

Thank you for your attention to this matter.

Sincerely,

CLEAR SPRINGS FOODS, INC.


Tim Hanifen
Vice President, Operations

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RECEIVED

APR 30 1993

Department of Water Resources
Adjudication Bureau

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

In Re the General Adjudication
of Rights to the Use of Water
from the Snake River Basin
Water System

Case No. A36-04013B
(You must insert the
water right number you
are objecting to)

The State of Idaho, ex rel.
R. Keith Higginson in his
official capacity as Director
of the Idaho Department of
Water Resources,

OBJECTION

Petitioner,

36-04013B -0001/
93-04-0255

vs.

The United States; the State
of Idaho; and all Claimants to
the use of water from the Snake
River Basin Water System,

Respondents.

INSTRUCTIONS

This form must be used to file an objection to any water right recommended in the Director's Report. You may object to one water right per objection form. The water right number you are objecting to must be indicated above in the blank space following "Case No." To object to more than one water right, you must file a separate objection form for each. Forms may be obtained from the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form, as long as it is identical to the court's form. You must file your objection by the deadline shown in the notice that IDWR mailed to you. The objection must be received by the court on or before the deadline specified. Instructions for mailing this objection are found at Page 6, and must be strictly followed.

Any party physically filing 25 (twenty-five) or more objections must make an appointment with the Clerk of the Adjudication Court and arrange for an appointment to file multiple objections.

(Over)

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By filing an objection form, you are certifying that the objection is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and that it is not filed for any improper purpose, such as to harass, cause unnecessary delay or needless increase in the cost of litigation.

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: Clear Springs Foods, Inc.

Address: P. O. Box 712

Buhl, Idaho 83316

Briefly describe your interest in this water right:

Owner of the water right

2. Owner of the water right:

Name: Clear Springs Foods, Inc.

Address: P. O. Box 712

Buhl, Idaho 83316

3. If this objection is filed by an attorney:

Attorney Name: Patrick D. Brown

Attorney Address: Hepworth, Nungester & Lezamiz

P.O. Box 389, Twin Falls, ID 83303

Attorney Phone No.: (208) 734-7510; Fax: (208) 734-4115

If filed by an attorney, notice of pending court proceedings will be sent to the attorney only.

II. STATEMENT OF THE OBJECTION

Please check each "box" which states your objection to the recommendation in the Director's Report.

1. ☒ Name and Address: I object to the name and/or address of the owner of the water right.
2. ☐ Source: I object to the source of water.
3. ☐ Quantity: I object to:
 - a. ☐ the total quantity of water used in cubic feet per second; or
 - b. ☐ the total quantity of water stored in acre-feet per year; or
 - c. ☐ the total quantity of water reserved for each and every purpose, including all present and future uses.
4. ☐ Priority Date: I object to the priority date.
5. ☐ Points of Diversion: I object to the legal description of the point(s) of diversion.
6. ☐ Instream Flow: I object to the legal description of the beginning and ending points of the instream flow.
7. ☐ Purpose(s) of Use: I object to the purpose(s) of use.
8. ☐ Period of Year: I object to the period of year when water is used or is necessary for the purpose stated.
9. ☐ Place of Use: I object to:
 - a. ☐ the legal description of the place of use; or
 - b. ☐ the number of irrigated acres within each forty (40) acre subdivision.
10. ☐ Consumptive Use: I object to the annual volume of consumptive use.
11. ☒ Remarks: I object to the "remarks" listed with the water right.

(Over)

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12. ☐ Water Right Recommendation: I object to:
- a. ☐ this water right being recommended at all; or
- b. ☐ this water right not being recommended.
13. ☐ Description of Reservation: I object to the legal description of the reservation.
14. ☒ Other: I object to: See attached
-
-
-
-

REASONS SUPPORTING EACH BOX CHECKED

In the space following, you must state the reason(s) by number for each box checked. You may use additional pages if necessary.

See page 7

CHANGES TO THE DIRECTOR'S REPORT

Specifically describe how you want the Director's Report to be changed. You may use additional pages if necessary.

See page 7

Please note: You should attach copies of documents which support your objection. Note on each document the "box number" it supports.



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. Exhibit "A": January

5, 1993 . letter from Jodi I. Schultz to Patrick D. Brown-
1 page. Exhibit "B": October 2, 1992, letter from Marci
Sterling to Timothy J. Hanifen- 2 pages.

VERIFICATION (Must be Completed)

State of Idaho

County of Twin Falls.

TIMOTHY J. HANIFEN, being first duly
(Name of person filing objection)
sworn, upon oath, deposes and says:

That I am the person or entity filing this objection, that I am a water claimant or party in this proceeding, as defined by I.C. Sec 42-1401A(1) and (7), and that I have read the foregoing objection, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

Timothy J. Hanifen
Signature of person filing objection
By: [Signature]
(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 28th day of April,
1993.

[Signature]
Notary Public for Idaho
Residing at: Twin Falls
My Commission Expires: 9.20.94

(Over)

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INSTRUCTIONS FOR MAILING

You must mail the objection, including all attachments, to the Clerk of the Court. **FAX filings will not be accepted by the Clerk of the Court.** You must also send a copy to the owner of the water right, if other than yourself; to the Office of the Attorney General, State of Idaho; and to the United States Department of Justice, as set out below in the Certificate of Mailing. Finally, you must sign the Certificate of Mailing to show that you followed these steps.

CERTIFICATE OF MAILING

I hereby certify that on the 28 day of April, 1993, I mailed the original and copies of the foregoing objection, 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. One copy to the owner of the water right, and you must fill in the following information:

Owner name: Clear Springs Foods, Inc.
Owner's address: P. O. Box 712
Buhl, Idaho 83316

3. One copy to:

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

4. One copy to:

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, Box 33
Boise, ID 83724



Signature of Objector or attorney
mailing on Objector's behalf

REASONS SUPPORTING EACH BOX CHECKED, page 4

Box 1 - See Paragraph 1, page 2, and Exhibit "A" for correct name and/or address.

Box 11 - "Facility Volume" and "Combined Facility Volume" are not elements of the water right. There is no basis in law or fact for imposing such limitations and doing so constitutes a taking. Also, right number 36-07148 of 1.67 cfs is diverted after the research station. Therefore, the combined diversion rate, if any, should be 121.67 cfs, which is the 1.67 cfs plus the 120 cfs appropriated under the other rights.

CHANGES TO DIRECTOR'S REPORT, page 4

The report should be changed to correct the name and to eliminate the restrictions noted in the "Reasons Supporting Each Box Checked."

Objectors reserve the right to claim any additional uses and quantities of use shown by the evidence at trial.

Question 14., page 4, Other

I.

GENERAL RESPONSE

Except as specifically admitted herein, objectors deny each and every allegation contained in the Director's Report, any related or subsidiary pleadings, and/or any attachments thereto.

II.

DESCRIPTIVE SUMMARY

(DIRECTOR'S REPORT PART I)

(hereinafter DRP-I)

(DRP-I at first unnumbered page)

The objectors admit that Part I of the Director's recommendation contains some claims to water rights appropriated under state law from Reporting Area 3. The objectors deny all other averments because the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of the averments.

III.

TABLE OF CONTENTS

(DRP-I at 2nd and 3rd unnumbered pages)

The objectors admit that the Table of Contents reflects the page numbers of the referenced sections and deny all other averments based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because any averment, expressed or implied, is so

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indefinite that it prevents the objectors from knowing what would be admitted or denied.

IV.

INTRODUCTION

1. INSTRUCTIONS FOR USING THIS REPORT PART I. (DRP-I at page 1)

The objectors admit that Part I consists of seven sections; that the description of the water system includes a brief description of Reporting Area 3 and an illustration of the boundaries of the reporting area; that the water rights and the list of the recommended rights are grouped alphabetically by source and listed chronologically by priority date; that the rights or claims in the list of claims/rights not recommended are listed numerically by water right number; and that brief instructions are found at the beginning of the applicable sections. The objectors deny that any description or any implication that the description of the water system or the illustrations are true and accurate due to lack of knowledge or information regarding the truth of the averment; deny that the general provisions apply to all water rights or define or limit classes of water rights; and deny that the general provisions "will affect your water right," based upon insufficient knowledge or information upon which to form a belief as to the truth of the averments.

2. SCOPE OF THE ADJUDICATION. (DRP-I at page 1 - 3)

The objectors deny all averments in paragraph a., due to lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments.

Regarding paragraph b., the objectors lack sufficient information or knowledge upon which to form a belief as to whether water rights which are not claimed in the adjudication will or will not exist upon entry of the court's decree and, therefore, deny such averment. The objectors admit that the court entered an order dated January 17, 1989, but presently lack sufficient knowledge to know whether any of the other averments concerning the court's order are true or accurate and, therefore, deny the same. The objectors deny that a right must be adjudicated before water may be distributed by the director. The objectors deny all other averments in paragraph b.

3. PURPOSE OF THIS REPORT PART I. (DRP-I at page 3 - 4)

The objectors admit that portion of the first sentence which states "This report contains the Director's recommendations to the SRBA District Court as to the nature and extent of water rights," but deny that such recommendations "are necessary for administration of water rights in Reporting Area 3," and further deny the Director has authority to "administer" such rights.

Regarding the second paragraph, the objectors admit that all water rights remain subject to the applicable law generally, but deny the remainder of the second paragraph.

Regarding the third paragraph of this section, the objectors deny all averments therein based upon lack of knowledge or information upon which to form a belief as to the truthfulness of the averments.

V.

DESCRIPTION OF THE WATER SYSTEM: BASIN 36

1. BOUNDARIES OF BASIN. (DRP-I at pages 4 - 6)

Regarding the first paragraph of this section, the objectors deny all averments due to a lack of knowledge or information upon which to admit or deny.

Regarding the second, third and fourth paragraphs of this section, the objectors admit that as broad statements, those paragraphs are generally accurate but the statements are so broad and attenuated from any matter relevant to the objectors' water right that the objectors are unable to know what would be implicitly admitted or denied and therefore, deny the same.

With respect to the fifth paragraph of this section, the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred and, therefore, deny the averments.

2. WATER SOURCES. (DRP-I at page 6)

The objectors admit that the Snake River Plain Aquifer is the source of outflows of springs located along the Snake River Canyon Wall in the Hagerman Valley. The objectors presently lack sufficient knowledge or information upon which to form an opinion as to the truth of the other averments set out in this section and, therefore, deny the same.

3. DEVELOPMENT OF WATER USE. (DRP-I at pages 6 - 9)

The objectors admit that numerous factual and historical averments are set out in this section, which may be accurate, but

these objectors have no basis for knowing whether some or all of the averments are intended to relate to the objectors' claims and, thus, are prevented from knowing what would be admitted or denied. Therefore, the averments are denied.

VI.

GENERAL PROVISIONS

GENERAL PROVISIONS 1 - 8 APPLY TO ALL WATER RIGHTS IN BASIN 36.

(DRP-I at page 9)

The objectors deny that "General Provisions 1 - 8" apply to all water rights in Basin 36 as the statements are so broad and attenuated from any matter relevant to the objectors' water rights, that the objectors are unable to know what would be explicitly admitted or denied. The objectors also specifically deny that general provisions 1-8 apply to the objectors' right.

1. EFFECT OF ADJUDICATION. (DRP-I at page 9)

With respect to paragraph a., the objectors presently have no knowledge or information upon which to form a belief as to the truth of whether a future decree would supersede prior decrees, or whether unclaimed rights would cease to exist and, therefore, deny the same.

Regarding paragraph b., the objectors deny that the Director has any powers to administer water rights other than those specifically delegated by the Legislature of the State of Idaho, and which do not violate the objectors' state and federal constitutional rights, and therefore the averments are denied.

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2. GENERAL ADMINISTRATIVE PROVISIONS. (DRP-I at pages 9 - 10)

The objectors admit paragraphs a. and b.

3. CONJUNCTIVE ADMINISTRATION (DRP-I at page 10)

The objectors deny the conjunctive administration provisions based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because any averment expressed or implied is so indefinite that it prevents the objectors from fairly understanding what would be admitted or denied. Additionally, the objectors deny that the Department of Water Resources has any statutory or regulatory authority for the "conjunctive administration" as therein described.

4. ADMINISTRATION OF GROUND WATER RIGHTS (DRP-I at page 10)

The objectors deny the averments within this section.

5. ADMINISTRATION OF BASIN 36 RELATIVE TO THE SNAKE RIVER (DRP-I at page 10)

The objectors admit that the springs are hydrologically interconnected with the Snake River Aquifer, but deny all other averments based upon the objectors' lack of sufficient information or knowledge upon which to form a belief as to the averments herein. The objectors additionally deny any said averments expressed or implied because the averments are so indefinite and generalized as to prevent the objectors from fairly understanding what would be admitted or denied.

6. ADMINISTRATION OF SMALL DOMESTIC AND STOCK WATER RIGHTS (DRP-I at page 11)

The objectors admit that part of the first sentence of subparagraph a. to the effect that "small domestic and stock water rights from surface water are not subject to administration," but deny the balance of said sentence and said paragraph.

The objectors admit the first sentence of paragraph b., and deny the balance of that paragraph because the criteria set forth therein ("if the director determines that administration is necessary") is so ambiguous, indefinite and uncertain that it prevents the objectors from knowing what would be admitted or denied, and by further reason of the fact that no statutory or regulatory authority exists conferring such sweeping and unlimited authority upon the Director or the Department.

The objectors deny the averments in paragraph c. as the averments are inaccurate and because the objectors lack sufficient knowledge or information upon which to form a belief as to the truth of the matters averred.

7. MEASURING DEVICES AND CONTROL WORKS (DRP-I at page 11)

The objectors deny all averments contained herein as such averments are based upon an indeterminate subjective standards which are so ambiguous and indefinite as to prevent the objectors from fairly knowing what would be admitted or denied. Additionally, no statutory or regulatory authority exists conferring such sweeping and unlimited authority upon the Director or the Department as is alleged in this paragraph.

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8. FIRE FIGHTING PURPOSES (DRP-I at page 11)

The objectors admit that subparagraph a. and subparagraph b. are generally accurate statements of present law, but deny the averments are in any way relevant to defining the objectors' right.

9. CONSUMPTIVE USE (DRP-I at page 12)

The objectors admit the averments in this section.

GENERAL PROVISION 10 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH DOMESTIC USE AS A PURPOSE OF USE (DRP-I at page 12)

The objectors deny that "General Provision 10" applies to all water rights in Basin 36 shown with domestic use as a purpose of use as the statements are so broad and attenuated from any matter relevant to the objectors' water rights, that the objectors are unable to fairly understand what would be explicitly admitted or denied and, therefore, deny the same.

10. DOMESTIC USE (DRP-I at page 12)

The objectors deny that the definition of "domestic use" contained in paragraphs a., b., and c. is consistent or in conformity with the definition of such term for purposes of the Idaho Constitution, or statutory definition contained in I.C. Section 42-111 as now, or as heretofore in effect at relevant times. The objectors further deny that the limitations set forth therein exist, are in force, or apply or serve in any way to limit objectors' rights.

GENERAL PROVISION 11 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH STOCK WATER USE AS A PURPOSE OF USE. (DRP-I at page 13)

The objectors deny that "General Provision 11" applies to all water rights in Basin 36 shown with stock water use as a purpose of use as the statements are so broad and attenuated from any matter relevant to the objectors' water right, that the objectors are unable to fairly understand what would be admitted or denied and, therefore, deny the same.

11. STOCK WATER USE (DRP-I at page 13)

The objectors deny the averments herein as beyond the scope and applicability of the definition as provided by Idaho law as now, or as heretofore in effect at relevant times. The objectors further deny that the limitations set forth therein limit the objectors' right or are relevant to the right.

GENERAL PROVISIONS 12 - 16 APPLY TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH IRRIGATION AS A PURPOSE OF USE (DRP-I at page 13)

The objectors deny that "General Provisions 12 - 16" apply to all water rights in Basin 36 shown with irrigation as a purpose of use as the statements are so broad and attenuated from any matter relevant to the objectors' water right that the objectors are unable to fairly understand what would be admitted or denied.

12. IRRIGATION USE. (DRP-I at pages 13 - 14)

The objectors deny all averments based upon the objectors' lack of sufficient knowledge or information upon which to form a belief as to the truth of the averments and because

averments expressed and implied are so indefinite and vague as to prevent the objectors from fairly knowing what would be admitted or denied; because the standard utilized ("as determined by the director") is ambiguous, subjective and indefinite so as to prevent objectors from knowing what would be admitted or denied; and because it is both expressly and implicitly in excess of the power and authority conferred upon the State of Idaho, the Director or the Department by the Constitutions of the United States and State of Idaho, pertinent provisions of the Idaho Code or valid applicable regulations, if any, adopted by the Department in conformity with law. Therefore, the objectors deny the same.

13. DIVERSION VOLUME FOR IRRIGATION. (DRP-I at page 14)

The objectors admit that Figure 1 generally depicts certain lands in Basin 36; however, the objectors deny all other averments as they are so attenuated from any matter relevant to the objector's right.

14. CONSUMPTIVE USE FOR IRRIGATION. (DRP-I at page 14 and 15)

The objectors admit that the recommended water rights contained within the Director's Report show only the irrigation use listed unless otherwise indicated in "Remarks." The objectors deny all other averments contained within this section, because the averments are so attenuated from any matter relevant to the objector's rights.

15. AMOUNT OF COMBINED WATER RIGHTS FOR IRRIGATION. (DRP-I at page 15)

The specific averments have no relationship to or basis in fact relating to the individual needs or rights of the objectors, and accordingly, objectors deny this section in its entirety. In addition, no statutory or regulatory authority exists conferring upon the Director, or the Department, the power to limit use and ownership of objectors' private property rights as alleged.

16. DIVERSION RATES IN EXCESS OF .02 CFS PER ACRE. (DRP-I at page 15 - 16)

The objectors deny the averments contained in this section in its entirety.

17. INSTRUCTIONS FOR USE OF LIST OF RECOMMENDED WATER RIGHTS. (DRP-I at page A-i, A-ii and A-iii)

The objectors admit that each water right in the list of recommended water rights includes a description including right number, name and address, source, maximum quantity, consumptive use, priority date, point of diversion, purpose of use, period of use, place of use, basis of right and others. The objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred in said descriptions other than that the descriptions allegedly include the Director's or Department's version of the facts as they relate to the matters identified. Objectors deny the accuracy of the substantive allegations or information set forth with regard to the objectors' right.

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18. IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW. (DRP-I, pages A-1 - B-25)

The objectors lack sufficient knowledge or information upon which to form a belief as to the truth of any matter averred in said recommended water rights other than those specific admissions contained in Questions 1 - 12 of the attached individual objection, and therefore deny the same.

DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36)

(DIRECTOR'S REPORT PART II)

I.

Objectors do not understand the allegations, averments or contents of Part II of the Director's Report for Reporting Area 3 (Basin 36) to pertain or relate to objectors or their claims, and do not believe any response is required. To the extent a response is required, objectors deny the same in its entirety.

DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36)

(DIRECTOR'S REPORT PART III)

I.

No report denominated as Part III of the Director's Report for Reporting Area 3 (Basin 36) has been filed, and accordingly objectors are unable to admit, deny or otherwise response to the same. Objectors do not understand that the contemplated subject matter of such Part III will relate or pertain to objectors or their claims, and no response is required in any case. To the extent any response is required, objectors deny the same in its entirety.

VIII.

AFFIRMATIVE DEFENSES

Pursuant to I.R.C.P. 8(c), objectors herewith state the following matters of affirmative defense or avoidance:

AFFIRMATIVE DEFENSE NO. 1

The objectors' water right is an incorporeal form of real property (as defined by Idaho Code Sections 7-703, 73-114, 55-101, and like statutes) protected by Section 14, Article 1, of the Idaho Constitution, and the Fifth Amendment to the United States Constitution, and allege that the actions of the Director in recommending, limiting and/or regulating said rights is an unconstitutional infringement upon and a taking of private property, without just compensation and violation thereof.

AFFIRMATIVE DEFENSE NO. 2

The adjudication authorization legislation, I.C. Section 42-1401, et seq., on its face and as applied by the Director and the Department constitutes an improper delegation of constitutional power and authority conferred upon the executive, legislative and/or judicial branches of government and as such violate the provisions governing separation of powers set forth in Article 2, Section 1, Idaho Constitution.

AFFIRMATIVE DEFENSE NO. 3

The procedure set forth in the adjudication authorization legislation, statutes, I.C. Section 42-1401, et seq., and any rules, regulations, procedures, policies or standards promulgated by the Director and/or the Department, if any, are vague and so

lacking in reasonable specificity so as to render them impossible of reasonable comprehension, or consistent and meaningful application.

AFFIRMATIVE DEFENSE NO. 4

The procedures, rules, regulations, policies or standards, if any, adopted, implemented and applied by the Department and/or the Director violate the equal protection and due process clauses of the Fourteenth Amendment, United States Constitution, and Article 1, Sections 2 and 13, Idaho Constitution.

AFFIRMATIVE DEFENSE NO. 5

The adjudication authorization legislation, Idaho Code Section 42-1401, et seq., and the actions of the Director and Department in recommending, limiting and/or regulating the objectors' water right constitutes a violation of 42 U.S.C. Section 1983.

AFFIRMATIVE DEFENSE NO. 6

The water right owned by the objectors is the subject of valid existing license issued by the Director and Department, which license is binding upon the State of Idaho, the Department and the Director. As a result, the State of Idaho, the Department and the Director are precluded by the doctrines of res judicata, collateral estoppel, judicial estoppel and the like from relitigating or questioning the validity, existence or priority of such right, and/or from taking any position in the Director's Report, or otherwise, which is inconsistent with such license.

AFFIRMATIVE DEFENSE NO. 7

The Director's recommendations are contrary to decreed rights, historical use and extent licenses and permits issued by the Department. There has been no forfeiture nor abandonment of the objectors' water rights, nor have the objectors' water rights been prescriptively or adversely possessed, nor have such decrees been vacated or such licenses and permits revoked.

AFFIRMATIVE DEFENSE NO. 8

The Directors' Report fails to state a claim to the extent the same asserts a forfeiture, abandonment, prescriptive or adverse acquisition or loss, or loss resulting from estoppel, of the objectors' water right in the absence of any fact upon which forfeiture, abandonment, prescriptive or adverse acquisition for loss, or loss resulting from estoppel, may be based or asserted.

AFFIRMATIVE DEFENSE NO. 9

The objectors' water right is an incorporeal form of real property, as defined by Idaho Code Sections 7-703, 73-114, 55-101, and like statutes, and, as such, pursuant to Idaho Code Section 7-904, et. seq., the actions of the Director in attempting to limit, reduce and/or regulate such rights, and the assertion of some inconsistent proprietary ownership or right to use or control by the State of Idaho, constitutes an unauthorized and invalid taking of private property without the payment of just compensation, or compliance with statutory requirements, all in violation of Title 7, Chapter 7, Idaho Code.

investigation as required by law; (2) are the product of arbitrary and capricious action on the part of the Department or the Director; (3) have been made in excess of the constitutional and statutory authority of the Department and the Director; (4) have been made upon an unlawful and invalid procedure; (5) are affected by various and sundry errors of law; and/or (6) are clearly erroneous in view of the reliable, probative and substantial evidence.

AFFIRMATIVE DEFENSE NO. 13

The Director's Report is a pleading subject to the provisions of the Idaho Rules of Civil Procedure, including, but not limited to the requirement of I.R.C.P. 8(a)(1) that such pleadings contain a clear and plain statement of the facts, demonstrating an entitlement to relief. The Director's Report violates such provision.

AFFIRMATIVE DEFENSE NO. 14

The Director's Report fails to state a claim upon which relief may be granted.

AFFIRMATIVE DEFENSE NO. 15

The Director's Report is subject to, and must comply with, the requirements of Idaho Code Section 42-1411. The Director's Report does not comply with the requirements of the statute.

OBJECTION - 25

AFFIRMATIVE DEFENSE NO. 16

In conducting the investigation and compiling the Director's Report, the Department and the Director have not complied with the requirements of Idaho Code Section 42-1410.

AFFIRMATIVE DEFENSE NO. 17

In conducting the investigation and compiling the Director's Report, the Department and the Director have not complied with the requirements of Idaho Code Section 42-1416.

AFFIRMATIVE DEFENSE NO. 18

The procedures specified in the authorizing legislation and procedural rules promulgated in accordance therewith serve to deny objectors due process of law in violation of Amendment Fourteen to the Constitution of the United States and Art. 1, Section 13, Idaho Constitution.

AFFIRMATIVE DEFENSE NO. 19

The "General Provisions" and "Other Statements" contained in the Director's Report, along with the Claims Investigation Manual, Adjudication Memoranda and other materials of a similar nature used or employed by the Department, the Director and/or their agents, servants and/or employees constitute rules and regulations which were required to be proposed, promulgated, adopted and approved in conformity with the Administrative Procedures Act and other applicable statutory provisions. The Department, Director and their agents, servants and employees have failed to comply with such requirements, and accordingly, the

"General Provisions," "Other Statements", Claims Investigation Manual and the like are invalid, void and of no force or effect.

AFFIRMATIVE DEFENSE NO. 20

Neither the "General Conditions," the Claims Adjudication Manual, Adjudication Memoranda or other promulgations, adoptions, policies, or the like have been submitted to or approved by the Legislature as required by Idaho Code Section 67-5217.

AFFIRMATIVE DEFENSE NO. 21

The relief requested by the Department and the Director in the Director's Report are beyond and in excess of the subject matter jurisdiction of the Court.

AFFIRMATIVE DEFENSE NO. 22

The actions of the Legislature, or the Department and the Director to enact, adopt, implement or enforce statutes, regulations, rules or policies subsequent to November 19, 1987, and to apply or enforce the same for the purpose of, or with the effect of recommending, diminishing or altering objectors' water rights, constitute a violation of Amendment Fourteen, United States Constitution; Art. 1, Section 13, Idaho Constitution; the SRBA authorization legislation; and Idaho Code Sections 73-101 and 73-106.

AFFIRMATIVE DEFENSE NO. 23

These proceedings are subject to the requirements and provisions of Idaho Code Sections 12-117, 12-121, 12-123 and I.R.C.P. 11, and the provisions of the private attorney general doctrine, and other related doctrines, and the Department, Director

and State of Idaho are obligated to objectors for the payment and reimbursement of any and all reasonable costs or attorney fees incurred herein.

AFFIRMATIVE DEFENSE NO. 24

The Director's Report asserts what amounts to be a taking of private property by power of eminent domain as governed by Idaho Code Section 7-701 et seq., and as such, venue is therefore improper.

AFFIRMATIVE DEFENSE NO. 25

The Department and the Director are equitably estopped from seeking any reduction in the quantity, quality or priority of objectors' water rights by virtue of prior statements, representations and actions of the Department, Director or their agents, servants and employees.

AFFIRMATIVE DEFENSE NO. 26

The Department and the Director are barred by laches and the applicable statutes of limitation, including, but not limited to, Idaho Code Sections 5-202, 5-203, 5-204, 5-206, 5-207, 5-208, 5-215, 5-218, 5-219(2), 5-224 and/or 5-241.

AFFIRMATIVE DEFENSE NO. 27

Objectors hereby reserve the right to assert any further affirmative defenses not expressly stated herein, but which subsequently become apparent.

WHEREFORE, the objectors pray for judgment as follows:

1. That the State of Idaho take nothing by reason of its Directors' Report, and that this action, and any claims

asserted against objectors, be dismissed.

2. That a decree be entered adjudicating the existence, validity, amount and priority of objectors' water rights in accordance with objectors' claims.

3. That to the extent the acts of the Department or Director constitute a taking of objectors' property for public use, that objectors be allowed and awarded just compensation therefor.

4. That the objectors be allowed all costs of suit and reasonable attorney fees incurred herein.

5. For such further relief to which the Court finds objectors justly entitled.

(WATER\FISH)



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000

Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 5, 1993

RECEIVED

JAN 08 1993

Department of Water Resources
Southern Region Office

Patrick D. Brown
Hepworth, Nungester and Lezamiz Chtd.
P.O. Box 389
Twin Falls, ID 83303-0389

Re: Snake River Basin Adjudication, Twin Falls County Case No. 39576

Dear Mr. Brown:

In response to your request in your letter dated December 29, 1992, I am writing to confirm that our records have been updated to reflect Clear Springs Trout Company's name change to Clear Springs Foods, Inc.

The records for the following claim numbers have been updated to reflect this change:

36-02048	36-07218	A36-07148
36-02703	36-07568	A36-07151
36-02708	A36-02048	A36-07201
36-04013A	A36-02703	A36-07218
36-04013B	A36-02708	A36-07568
36-04013C	A36-04013A	A47-13466
36-07040	A36-04013B	A47-13467
36-07083	A36-04013C	A47-13468
36-07148	A36-07040	A47-13469
36-07151	A36-07083	A47-13470
36-07201		

Thank you for sending a copy of the Certificate of Amendment of Clear Springs Trout Company filed with the Secretary of State. If you have any further questions regarding this matter, please call me at 327-5444.

Sincerely,

Jodi I. Schultz
JODI I. SCHULTZ

Legal Assistant

Idaho Department of Water Resources

cc: Judy Givens, IDWR Southern Region Office

MICROFILMED

OCT 18 1994

A



State of Idaho
DEPARTMENT OF WATER RESOURCES
Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1992

Timothy J. Hanifen
Clear Springs Trout Company
P.O. Box 712
Buhl, Idaho 83316

RE: Response to Notices of Error in Snake River Basin
Adjudication for Rights: 36-02048, 36-02703, 36-02708,
36-04013A, 36-04013B, 36-04013C, 36-07040, 36-07083,
36-07148, 36-07218, & 36-07568

Dear Mr. Hanifen:

This letter is in response to the remaining Notices of Error you submitted on your claims in Basin 36. The following will outline our recommendations per item.

Diversion Volume

Claim numbers: 36-07148 & 36-07040

The diversion volumes which were included on both of these rights are being removed from the recommendations. Both of the diversion volumes were added to the rights in error. Diversion volume is not a necessary element of a water right if the source of the water is surface water.

Claim number: 36-02708

The diversion volume is not being removed from this recommendation. This right is based on a license for which a diversion volume was described. Since a diversion volume was included in the original license, it may not be removed at this time.

Facility Volume

Claim numbers: 36-02048, 36-02703, 36-02708, 36-04013A, 36-04013B, 36-04013C, 36-07040, 36-07083, 36-07148, 36-07218, & 36-07568

Based on our understanding of the law, the facility volume associated with the priority date of a water right is an essential element of that right. Any expansion of the facility volume would require the appropriation of a new water right. We have used all available information in an attempt to recommend a facility volume which correctly describes the volume for the date pertaining to each right.

MICROFILMED
OCT 18 1993
B

Diversion Rate

Claim numbers: 36-02048, 36-02703, 36-04013A, 36-04013B, & 36-04013C

The combined diversion rate for these rights was recommended as 116.0 cfs because the highest record of flow rate which you supplied for your Snake River Hatchery was 116.0 cfs. The 1.67 cfs licensed under 36-07148 flows into one of the pipes leading to the hatchery before the measuring device measures the flow through that pipe. Because of this, that 1.67 cfs then becomes a part of the flow for which you have submitted records. Unless evidence of greater flow rates is submitted to us by October 16, 1992, the recommendation will remain the same.

You will be sent notice of the Director's final recommendation to the court and if you disagree with this final recommendation, you may file an objection with the court. The objection process will be explained when you receive your final recommendation.

Sincerely,

Marci Sterling

Marci Sterling
Engineering Specialist (EIT)

MICROFILMED
MICROFILMED
OCT 18 1994

NOTICE OF ERROR

X

RESPONSE

X

CORRECTED R PROOF

✓
OFILMED
FEB 04 1993

AUG-24-1992

NOTICE OF ERROR FORM

Please type or print clearly, fill out completely, and return to:

Idaho Department of Water Resources

Statehouse Mail

Boise, Idaho 83720-9000

RECEIVED

SEP 23 1992

Department of Water Resources

The notice of error must be received at IDWR by the **deadline date** printed below with your proposed recommendation.

YOUR DEADLINE FOR FILING A NOTICE OF ERROR IS: SEP-24-1992

RECEIVED

SEP 23 1992

Department of Water Resources
Southern Region Office

1. Water right number: 36-04013B

2. Name: CLEAR SPRINGS TROUT COMPANY
TIMOTHY J. HANIFEN, VICE PRESIDENT/OPERATIONS

Address: P.O. BOX 712
BUHL, IDAHO 83316

Weekday Telephone Number: (208) 543-4316

MICROFILMED

FEB 04 1993

TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE

(Instead of filling in items 3 and 4 below you may include a copy of your proposed recommendation with the changes marked on the copy.)

3. Describe the portion of proposed recommendation with which you disagree:

SEE ATTACHED.

4. Describe the changes you wish to have made in the proposed recommendation:

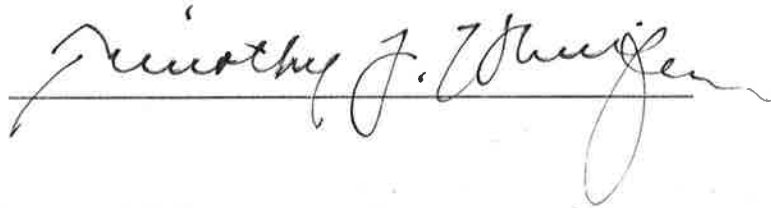
SEE ATTACHED.

5. Describe why you disagree with the proposed recommendation:

SEE ATTACHED.

6. Date:

SIGNATURE

A handwritten signature in dark ink, appearing to read "Timothy J. Thurgood", is written over a horizontal line.

RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	MAXIMUM DIVERSION	STAGE
36-04013B	CLEAR SPRINGS FOODS INC PO BOX 712 BUHL ID 83316	02/04/1964	FISH PROPAGATION	01-01 12-31	27.00 CFS	BENEFICIAL USE
					TOTAL DIVERSION RATE:	27.00 CFS
					TOTAL DIVERSION VOLUME:	0.00 AFA

SOURCE: SPRINGS

TRIBUTARY: CLEAR LAKES

POINT OF DIVERSION:
T09S R14E S02 LOT 5 (SESENE)

PLACE OF USE: FISH PROPAGATION
T09S R14E S01 Lot 5 (SWNW) Lot 12 (NWSW)
S02 Lot 5 (SENE) Lot 8 (NESE)

CONDITIONS OF APPROVAL:

- C05 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO
- IDAHO CODE 42-1416A.

REMARKS: SOURCE IS ALSO KNOWN AS CLEAR SPRINGS.

FACILITY VOLUME 253,936 CU. FT.
MULTIPLE POINTS OF DIVERSION LOCATED IN SESENE, S02, T09S, R14E.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 116.0 CFS
COMBINED RIGHT NOS.: 36-02048, 36-02703, 36-04013A, 36-04013C.
RIGHTS LISTED BELOW ARE ALSO DIVERTED THROUGH POINT OF DIVERSION
DESCRIBED ABOVE, AND THE TOTAL COMBINED RATE OF DIVERSION OF
THESE RIGHTS IS LIMITED TO 116.0 CFS (capacity of diversion
system). OTHER RIGHT NOS.: 36-02048, 36-02703, 36-04013A, 36-
04013C, 36-04076, AND 36-04148B.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED FACILITY VOLUME OF 299,900 CU. FT.
COMBINED RIGHT NOS.: 36-02048, 36-02703, 36-04013A, 36-04013C,
AND 36-07148.

OTHER RIGHTS: 36-02703, 36-02048, 36-04013A, 36-04013C, 36-07148

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FEB 04 1993

IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM PROFILE REPORT
(REGIONAL)

OWNER CODE	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	DIVERSION RATE	DIVERSION VOLUME
C	CLEAR SPRINGS TROUT CO PO BOX 712 BUHL ID 83316 (208) 543-4316	02/04/1964	FISH PROPAGATION	01-01 12-31	27.00 CFS	
TOTAL DIVERSION:					27.00 CFS	

Water Source: SPRINGS

Tributary to: CLEAR LAKES

Stage: BENEFICIAL

Point(s) of Diversion:

T09S R14E S02 Lot05(SESENE)

GOODING County

Place of use Legal Description for: FISH PROPAGATION

				NE				NW				SW				SE			
T	R	S	:	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac	Lt	Ac
09S	14E	1	:																
09S	14E	2	:					05-F										08-F	

POU County: GOODING

Non-Irrigation Uses: COMMERCIAL TROUT PRODUCTION

Other Rights: 36-02703, 36-02048, 36-04013A, 36-04013C, 36-07148

Conditions of Approval:

- C05 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO
- IDAHO CODE 42-1416A.

Remarks:

SOURCE IS ALSO KNOWN AS CLEAR SPRINGS.
FACILITY VOLUME 253,936 CU. FT.
MULTIPLE POINTS OF DIVERSION LOCATED IN SESENE, S02, T09S, R14E.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 116.0 CFS
COMBINED RIGHT NOS.: 36-02048, 36-02703, 36-04013A, 36-04013C.
RIGHTS LISTED BELOW ARE ALSO DIVERTED THROUGH POINT OF DIVERSION
DESCRIBED ABOVE, AND THE TOTAL COMBINED RATE OF DIVERSION OF
THESE RIGHTS IS LIMITED TO 116.0 CFS (capacity of diversion
system). OTHER RIGHT NOS.: 36-02048, 36-02703, 36-04013A, 36-
04013C, 36-04076, AND 36-04148B.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED FACILITY VOLUME OF 299,900 CU. FT.
COMBINED RIGHT NOS.: 36-02048, 36-02703, 36-04013A, 36-04013C,
AND 36-07148.

Dates: Exam Made Date: 06/18/1991 Verified Date:

Misc: Water District Number: Field Inspection Flag:
Presumption Flag:

Comments: Date: 02/07/1992 User-ID: STERLING Subject: COPIED FROM REMARKS

MICROFILMED
FEB 04 1993

Comments: Date: 02/07/1992 User-ID: STERLING Subject: COPIED FROM REMARKS
SEE A36-04013 & A36-02703.

Date: 06/11/1992 User-ID: STERLING Subject: CHANGES TO CLAIM
THE RIGHT IS BEING RECOMMENDED AS THE FACILITY EXISTED BEFORE IT
WAS REBUILT, BECAUSE THAT WAS DONE AFTER COMMENCEMENT. THE PLACE
OF USE HAS ALWAYS BEEN IN LOTS 5 & 12 OF SECTION 1 AND LOTS 5 & 8
OF SECTION 2. IT WAS NOT CLAIMED IN ALL OF THOSE LOTS, BUT SINCE
THAT IS HOW THE FACILITY EXISTED, IT WILL BE RECOMMENDED AS SUCH.
4 CFS WAS CUT FROM THIS RIGHT BECAUSE THE INFORMATION THEY SUP-
PLIED SHOWED A DIVERSION RATE OF ONLY 116.0 CFS AND THEY HAVE
CLAIMED A TOTAL OF 120 CFS. THE FLOW RATE THAT WE FOUND DURING
OUR FIELD EXAM WAS LOWER YET, BUT WAS IN A LOW TIME OF YEAR.
SINCE THIS RIGHT HAS THE LATEST PRIORITY, IT WILL BE THE ONE CUT.

6/24/92 NO INFORMATION REGARDING FACILITY VOLUME WAS FOUND FOR
THE DATE OF THIS LICENSE, SO THE FACILITY VOLUME GIVEN TO 36-
02048 & 36-02703 WAS ASSIGNED TO THIS RIGHT ALSO, SINCE IT IS THE
ONLY FACILITY VOLUME FOUND AT A DATE PREVIOUS TO THE LICENSING
DATE OF THIS RIGHT.

Date: 09/24/1992 User-ID: SCHULTZ Subject: NOTICE OF ERROR (NOE)
RECEIVED NOE 9/23/92. CHANGED NOE FLAG FROM BLANK TO A.
CLAIM VERIFIED 6/24/92. DID NOT REVERIFY ANY PART OF CLAIM.

Date: 10/02/1992 User-ID: SOUTH1 Subject: NOE - RESPONSE
NO CHANGE TO FACILITY VOLUME. LETTER SENT 10/2/92. M. STERLING

Date: 10/28/1992 User-ID: MCCARTHY Subject: CHANGED RECORD
CHANGED BASIS OF RIGHT FROM S TO J

Audit: 10/28/92 MCCARTHY

MICROFILMED
FEB 04 1993



RECEIVED

SEP 23 1992

DEPARTMENT OF WATER RESOURCES
SALT LAKE CITY, UTAH

CLEAR SPRINGS FOODS, INC.
Corporate Office P.O. Box 712, Buhl, Idaho 83316

Phone 208 543-4316
Sales 800 635-8211
Fax 208 543-5608

NOTICE OF ERROR FORM

Continued:

RECEIVED

SEP 23 1992

RIGHT NUMBER: 36-04013B

Department of Water Resources

- #3 Describe the portion of proposed recommendation with which you disagree:

BASIS OF CLAIM: STATUTORY CLAIM

REMARKS: 1. Facility volume of 253,936 CU.FT.
2. Combined diversion rate of 116.0 CFS
3. Rights limited to a combined facility volume of 299,000 CU.FT.

- #4 Describe the changes you wish to have made in the proposed recommendation:

BASIS OF CLAIM: Change to BENEFICIAL USE

REMARKS: 1. Facility volume, including the enclosed hatchery ponds, is 481,800 CU.FT. of rearing space.
2. The combined diversion rate should be 117.67 CFS. This total is inclusive of Right #36-07148 (as indicated) which is licensed at 1.67 CFS and is diverted to the farm site following flow through the Research Center (capacity of diversion is greater than 116.0 CFS).
3. Right should not be limited to any specific facility volume. This is a non-consumptive right which cannot be equated to an irrigation right. The facility volume must be allowed to expand, as technologies advance, without an increase in diversion rate. To suggest otherwise would preclude economic expansion. A permit should be required only in the event of a proposed increase in diversion rate.

MICROFILMED

FEB 04 1993

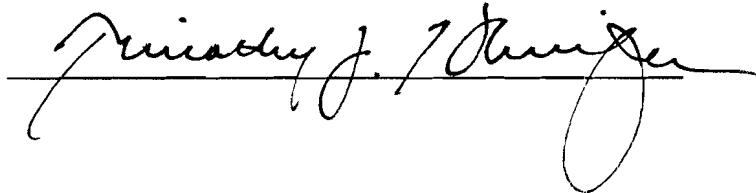
Right Number: 36-04013B
NOTICE OF ERROR FORM
Page 2

#5 Describe why you disagree with the proposed recommendation:

SEE #4 ABOVE.

#6 Date: September 21, 1992

SIGNATURE

A handwritten signature in black ink, appearing to read "Timothy J. Kruger", is written over a horizontal line.

MICROFILMED

FEB 04 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

Southern Region, 222 Shoshone St. East, Twin Falls, Idaho 83301 (208) 736-3033

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1992

Timothy J. Hanifen
Clear Springs Trout Company
P.O. Box 712
Buhl, Idaho 83316

RE: Response to Notices of Error in Snake River Basin
Adjudication for Rights: 36-02048, 36-02703, 36-02708,
36-04013A, 36-04013B, 36-04013C, 36-07040, 36-07083,
36-07148, 36-07218, & 36-07568

Dear Mr. Hanifen:

This letter is in response to the remaining Notices of Error you submitted on your claims in Basin 36. The following will outline our recommendations per item.

Diversion Volume

Claim numbers: 36-07148 & 36-07040

The diversion volumes which were included on both of these rights are being removed from the recommendations. Both of the diversion volumes were added to the rights in error. Diversion volume is not a necessary element of a water right if the source of the water is surface water.

Claim number: 36-02708

The diversion volume is not being removed from this recommendation. This right is based on a license for which a diversion volume was described. Since a diversion volume was included in the original license, it may not be removed at this time.

Facility Volume

Claim numbers: 36-02048, 36-02703, 36-02708, 36-04013A, 36-04013B, 36-04013C, 36-07040, 36-07083, 36-07148, 36-07218, & 36-07568

Based on our understanding of the law, the facility volume associated with the priority date of a water right is an essential element of that right. Any expansion of the facility volume would require the appropriation of a new water right. We have used all available information in an attempt to recommend a facility volume which correctly describes the volume for the date pertaining to each right.

MICROFILMED

FEB 04 1993

Diversion Rate

Claim numbers: 36-02048, 36-02703, 36-04013A, 36-04013B, & 36-04013C

The combined diversion rate for these rights was recommended as 116.0 cfs because the highest record of flow rate which you supplied for your Snake River Hatchery was 116.0 cfs. The 1.67 cfs licensed under 36-07148 flows into one of the pipes leading to the hatchery before the measuring device measures the flow through that pipe. Because of this, that 1.67 cfs then becomes a part of the flow for which you have submitted records. Unless evidence of greater flow rates is submitted to us by October 16, 1992, the recommendation will remain the same.

You will be sent notice of the Director's final recommendation to the court and if you disagree with this final recommendation, you may file an objection with the court. The objection process will be explained when you receive your final recommendation.

Sincerely,

Marci Sterling

Marci Sterling
Engineering Specialist (EIT)

MICROFILMED

FEB 04 1993

R PROOF

X

CVR

X

MAPS

X

PHOTOS

MISC

X

MICROFILMED

FEB 04 1968

VERIFIED
YMB 6/24/92IDAHO DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIMS PROOF READING REPORT
(REGIONAL)

Water Right Number - R36-04013B

Prefix Translation: RESEARCH

Old (D) Number -

+ - - - - Last Name - - - - + + - First Name - - + + - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
CLEAR SPRINGS TROUT CO1 - PO BOX 712
2 -
3 -
City- BUHL
Phone - 208-543-4316

State- ID Zip- 83316

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
02/04/1964 ERROR IN REGION S - STATUTORY CLAIM+ - - - - Source - - - - - + + - - - - Tributary - - - - - +
SPRINGS CLEAR LAKES+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County
09S 14E 2 SE SE NE 5 (47) GOODING+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
19 - FISH PROPAGATION 01/01 12/31 27.000
+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
27.000 0.0+ - - - - Place of Use - - - - - +
Twn Rng Sec Tract Lot Acres Code Description County
09S 14E 1 SW NW 5 19 FISH PROPAGATION (47) GOODING
09S 14E 1 NW SW 12 19 FISH PROPAGATION (47) GOODING
09S 14E 2 SE NE 5 19 FISH PROPAGATION (47) GOODING
09S 14E 2 NE SE 8 19 FISH PROPAGATION (47) GOODING

Total Acres:

+ - - Diversion Means - COLLECTION DITCH & PIPELINES TO RACEWAYS

+ - - Non-Irrigation Use - COMMERCIAL TROUT PRODUCTION

+ - - Other Rights for Same Use - 36-02703, 36-02048, 36-04013A, 36-04013C, 36-07148

+ - - - - Remarks - - - - - +
SOURCE IS ALSO KNOWN AS CLEAR SPRINGS.
FACILITY VOLUME 253,936 CU. FT.
MULTIPLE POINTS OF DIVERSION LOCATED IN SESENE, S02, T09S, R14E.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL
COMBINED DIVERSION RATE OF 116.0 CFS
COMBINED RIGHT NOS.: 36-02048, 36-02703, 36-04013A, 36-04013C.MICROFILMED
FEB 04 1993

Water right number - R36-04013B

Prefix Translation: RESEARCH

+ - - - - - Remarks - - - - - +
RIGHTS LISTED BELOW ARE ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE, AND THE TOTAL COMBINED RATE OF DIVERSION OF THESE RIGHTS IS LIMITED TO 116.0 CFS (capacity of diversion system). OTHER RIGHT NOS.: 36-02048, 36-02703, 36-04013A, 36-04013C, 36-04076, AND 36-041488.
USE OF THIS RIGHT WITH RIGHTS LISTED BELOW IS LIMITED TO A TOTAL COMBINED FACILITY VOLUME OF 299,900 CU. FT.
COMBINED RIGHT NOS.: 36-02048, 36-02703, 36-04013A, 36-04013C, AND 36-07148.

+ - - - - - Old Water Right Numbers - - - - - +
3604013

+ - - - - - Conditions of Approval - - - - - +
C05 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN PLACE OF USE PURSUANT TO
- IDAHO CODE 42-1416A.

+ - - - - Decree Plaintiff - - - + + - - - - Decree Defendant - - - + + - Decree Date - +
00/00/0000

+ - - - - - Comments - - - - - +
Date: 02/07/1992 User Id: STERLING Subject: COPIED FROM REMARKS
SEE A36-04013 & A36-02703.
Date: 06/11/1992 User Id: STERLING Subject: CHANGES TO CLAIM
THE RIGHT IS BEING RECOMMENDED AS THE FACILITY EXISTED BEFORE IT WAS REBUILT, BECAUSE THAT WAS DONE AFTER COMMENCEMENT. THE PLACE OF USE HAS ALWAYS BEEN IN LOTS 5 & 12 OF SECTION 1 AND LOTS 5 & 8 OF SECTION 2. IT WAS NOT CLAIMED IN ALL OF THOSE LOTS, BUT SINCE THAT IS HOW THE FACILITY EXISTED, IT WILL BE RECOMMENDED AS SUCH. 4 CFS WAS CUT FROM THIS RIGHT BECAUSE THE INFORMATION THEY SUPPLIED SHOWED A DIVERSION RATE OF ONLY 116.0 CFS AND THEY HAVE CLAIMED A TOTAL OF 120 CFS. THE FLOW RATE THAT WE FOUND DURING OUR FIELD EXAM WAS LOWER YET, BUT WAS IN A LOW TIME OF YEAR. SINCE THIS RIGHT HAS THE LATEST PRIORITY, IT WILL BE THE ONE CUT.
***** 6/24/92 NO INFORMATION REGARDING FACILITY VOLUME WAS FOUND FOR
THE DATE OF THIS LICENSE, SO THE FACILITY VOLUME GIVEN TO 36- 02048 & 36-02703 WAS ASSIGNED TO THIS RIGHT ALSO, SINCE IT IS THE
ONLY FACILITY VOLUME FOUND AT A DATE PREVIOUS TO THE LICENSING DATE OF THIS RIGHT.

+ - - Audit Fields - - +
06/24/92 STERLING

+ - - - - - Adjudication Rights Dates and Flags Area - - - - - +

Court Report Filing	- 00/00/0000	Field Inspection Made	- 06/18/1991	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 09/01/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S002014	Water District	-
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	-	Presumption Flag	-
				Notice of Error Flag	-

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

15:06:03
11/20/91

PAGE: 13
QUICKLOOK INFORMATION

CLAIM NUMBER: A36-04013B

WR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE	Y			N		mps 6/11/92	mps 2/17/92	mps 6/24/92
POINT OF DIV	Y			N				
SOURCE	Y			Y	1			
PLACE OF USE	Y			Y	1,6			
DIV. AMOUNT CFS/VOLUME	Y			Y	5,6			
CONSUMPTIVE USE	-			N		mps 7/11/92		
PURPOSES	Y			N		mps 6/11/92		
PERIOD OF USE	Y			N				
BASIS OF CLAIM	Y			N				
REMARKS	Y			Y				

"VERIFIED BY" CODES

TOPO MAP/ORTHO-PQ = 1
ASCS MAP = 2
WATERMASTER RECORDS = 3
NAPP PHOTOS = 4
FIELD EXAM = 5
OTHER (SEE REMARKS) = 6

THESE CODES ARE USED TO INDICATE HOW THE FIELD EXAMINER VERIFIED THE INFORMATION
USED FOR THIS FIELD EXAMINATION. INDICATED ARE ALL CODES WHICH APPLY.

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STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ADJUDICATION CLAIM VERIFICATION REPORT

15:06:03
11/20/91

PAGE: 1
GENERAL INFORMATION

CLAIM NUMBER: A36-04013B

LAST: CLEAR SPRINGS TROUT CO.
ADDRESS: P.O. BOX 712
CITY: BUHL
PHONE NUMBER: 208-543-4316

FIRST:
STATE: ID ZIP: 83316

OWNER CODE: C

LAST: RINGERT
ADDRESS: 455 SOUTH 3RD.
CITY: BOISE
PHONE NUMBER: 208-342-4591

FIRST: WILLIAM F.
STATE: ID ZIP: 83701

OWNER CODE: A

FIELD EXAM REQUIRED?

VERIFICATION REQUIRED DUE TO REMARKS?

DATABASE
Y

FIELD
EXAMINER

CLAIM REMARKS: SEE A36-04013 & A36-02703.

478
6/24/92

No information was found for the facility volume at licensing date, so the volume given to rights 36-2048 & 2703 was given since it was the only volume found prior to 253,936 ft³ this date.

Standard Remarks: D06 - Total pond volume = 13.1 ac. ft

B01 - Source → Clear Springs

F02 - Multiple points of diversion

F06 - Same pt. of diversion: ~~36-7148~~, 36-2048, 36-2703, 36-4013A, 36-4013B, 36-4013C

E11 - Combined diversion rate = 116 cfs; ~~combined consumptive use volume =~~

Condition Code: C05

Remarks: E08 - Instead of F06; capacity of system = 116.0 cfs

Combined facility volume between this rt. & 36-2048, 36-2703, 36-4013A, 36-4013C, & 36-7148 is 299,900 cu. ft.

Information was taken from "Aquaculture in Idaho & Nationwide" by IDWR & UI. No better information was found for facility volume at the time of the most recent license. (See file 36-02148 for more.)

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CONTACT PERSON: Tim Hanifen / ~~W.F. Ringer~~

PHONE NUMBER: (208) 543-4316 ~~342-4591~~

DATE OF FIELD EXAM: 6/18/91

APPOINTMENT MADE: Y(X) N()

TIME: 8:30 A(M) P()

ACCOMPANIED BY: Tim Hanifen

PHONE NUMBER: () 543-4316

RELATIONSHIP TO CLAIMANT: Director of Operations

DIRECTIONS TO PROPERTY / REMARKS:

see attached memo regarding Notice of Appearance - 2/21/91 mjs

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A. AJ CLAIM: # A36-04013B PRIORITY DATE: 02-04-1964 STAGE: S
B. WR RECORD: # 36-04013 PRIORITY DATE: 06-01-1940 STAGE: S

C. FIELD EXAM REQUIRED?
DUE TO PRIORITY DATE DISCREPANCY? (Y/N) DATABASE Y FIELD EXAMINER N

ARE THERE OBVIOUS REASONS TO QUESTION THE PRIORITY DATE CLAIMED? Y() N(X)
IF YES EXPLAIN.

REMARKS: In the statutory claim file, 36-04013, are 3 affidavits, one of which explains the development of the facility, giving dates & amounts of increases in water use. That evidence is sufficient to recommend the claimed priority date. (See affidavit from Robert Erkins dated 3/15/71.)

RECOMMENDED PRIORITY DATE:

02-04-1964

REVIEWED BY

ms

DATE

12/13/91

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A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A36-04013B	09S	14E	2	SE	SE	NE	5	GOODING

OTHER AJ CLAIMS WITH SAME AJ POD

A PREFIX	R PREFIX
A36-02048	R36-04148A
A36-02703	R36-04148B
A36-04013A	
A36-04013C	
A36-04148A	
A36-04148B	

WR RECORDS IN SAME 40 ACRE TRACT

36-02048
36-02703
36-07798
36-08329

SOURCE: SPRINGS (CLEAR SPRINGS)

TRIB: CLEAR LAKES

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
36-04013	09S	14E	2		SE	NE	5	GOODING

OTHER WR RECORDS WITH SAME WR POD

36-02048
36-02703
36-07798
36-08329

AJ CLAIMS IN SAME 40 ACRE TRACT

A PREFIX	R PREFIX
A36-02659	NONE
A36-02703	
A36-04013A	
A36-04148B	
A36-07004	

SOURCE: SPRINGS

TRIB: SNAKE RIVER

C. FIELD EXAM REQUIRED?

DUE TO POD DISCREPANCY? (Y/N)	Y
DUE TO SOURCE DISCREPANCY? (Y/N)	Y

DATABASE
Y
Y

FIELD
EXAMINER

<u>Y</u>
<u>Y</u>

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REMARKS:

The source is a series of springs which flow into a ditch & small pond. Water is then diverted into a concrete collection box & piped underground to the facilities. The springs are all located within the same 10 acre tract. The springs are tributary to Clear Lakes, as is evident from OQ map BB-20. They are commonly known as Clear Springs.

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:

TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	COUNTY
09S	14E	2	SE	SE	NE	5	Gooding

SOURCE: Spring TRIB: Clear Lakes
 REVIEWED BY: 4/23 DATE: 6/24/92

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A. ROOT WATER RIGHT NUMBERS: A36-04013A
A36-04013B
A36-04013C

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
09S	14E	1	SW	NW	5	CLEAR SPRINGS TROUT CO.	A36-04013B /	- /	20.0	⊕	⊕
			SW	NW	5	CLEAR SPRINGS TROUT CO.	A36-02703 /	- /			
			SW	NW	5	CLEAR SPRINGS TROUT CO.	A36-04013A /	- /			
			SW	NW	5	CLEAR SPRINGS TROUT CO.	A36-04013C /	- /			
			SW	NW	5	CLEAR LAKE RANCH INC.	R36-04148A / 0.3	- /			
			SW	NW	5	CLEAR SPRINGS TROUT CO.	A36-02048 /	- /			
			SW	NW	5	RINGERT, WILLIAM F.	A36-07148 /	- /			
			SW	NW	5	CLEAR LAKE RANCH INC.	A36-04148A / 0.3	- /			
			SW	NW	5	CLEAR LAKES RANCH INC.		36-04148 / 6.0			
			SW	NW	5	L & M INC		36-08329 /			
09S	14E	1	NW	SW	12	CLEAR SPRINGS TROUT CO.	A36-04013B /	- /	10.0	⊕	⊕
			NW	SW	12	CLEAR LAKE COUNTRY CLUB	R36-04148B / 10.6	- /			
			NW	SW	12	CLEAR LAKE COUNTRY CLUB	R36-10154 / 10.6	- /			
			NW	SW	12	CLEAR LAKE COUNTRY CLUB	A36-04148B / 10.6	- /			
			NW	SW	12	CLEAR SPRINGS TROUT CO.	A36-02703 /	36-02703 /			
			NW	SW	12	CLEAR SPRINGS TROUT CO.	A36-04013A /	- /			
			NW	SW	12	CLEAR SPRINGS TROUT CO.	A36-04013C /	- /			
			NW	SW	12	RINGERT, WILLIAM F.	A36-07148 /	36-07148 /			
			NW	SW	12	CLEAR LAKE RANCH INC.	A36-04148A / 13.1	- /			
			NW	SW	12	CLEAR LAKE RANCH INC.	A36-04149 / 4.0	36-04149 / 4.0			
			NW	SW	12	CLEAR LAKE RANCH INC.	R36-04148A / 13.1	- /			
			NW	SW	12	CLEAR SPRINGS TROUT CO.	A36-02048 /	36-02048 /			
			NW	SW	12	CLEAR LAKE COUNTRY CLUB	R36-04074 / 10.6	- /			
			NW	SW	12	CLEAR SPRINGS TROUT CO.		36-04013 /			
			NW	SW	12	CLEAR LAKES RANCH INC.		36-04148 / 25.0			
			NW	SW	12	L & M INC		36-08329 /			
TOTAL ACRES							A36-04013B		30.00		

ARE IRRIGATED ACRES FOUND IN TRACTS OTHER THAN INDICATED ABOVE, Y() N(X)
IF YES SEE ATTACHED SHEET:

C. FIELD EXAM REQUIRED?

DUE TO POU DISCREPANCY? (Y/N)

DATABASE
Y

FIELD
EXAMINER
Y

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PRESUMPTION FLAG:

REMARKS:

~~The POU has moved to the east of the original POU, but is still in the same lots as before. The POU has always been in the both Lot 5 & Lot 12, but was not claimed as such in the statutory claim. Need evidence of the date of change in POU for an injury analysis.~~

RECOMMENDATIONS:

TOTAL ACRES: 0

REVIEWED BY: ms

DATE: 6/11/92

The new facility did not begin using the water until December, 1987, so the right will be recommended as it existed with the old facility. The facility was in Lots 5 & 8 of Section 2 as well as Lots 5 & 12 of Section 1 & has always been in all four lots, so it will be recommended that way.

Recommended POU: Section 1 SWNW Lot 5
1 NWSW Lot 12
2 SENE Lot 5
2 NESE Lot 8

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A. AJ CLAIMED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A36-04013B FISH PROPAGATION	FROM 01-01 TO 12-31	31.000 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		31.000 CFS

B. WR RECORDED USES:

PURPOSES	MONTH/DAY	DIVERSION QUANTITY
36-04013 FISH PROPAGATION	FROM 01-01 TO 12-31	60.000 CFS
36-04013 INDUSTRIAL	FROM 01-01 TO 12-31	60.000 CFS
36-04013 DOMESTIC	FROM 01-01 TO 12-31	60.000 CFS
TOTAL DIVERSION RATE/VOLUME CLAIMED		60.000 CFS

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

	DATABASE	FIELD EXAMINER
DUE TO WATER-USE DISCREPANCY? (Y/N)	Y	<u>Y</u>
DUE TO DIVERSION RATE DISCREPANCY? (Y/N)	Y	<u>Y</u>
DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N)	Y	<u>N</u>

D. PERIOD OF USE:

RECOMMEND AS CLAIMED?

Y(X) N()

RECOMMEND TO WR STANDARDS OR OTHER?

Y() N() Explain in remarks, below.

REMARKS:

Entire statutory claim usage has been claimed in adjudication claims, but has been split up into parts A, B, & C because of different priority dates. The 31 cfs claimed under this right is not all used, so this right should be cut back because it has the latest priority of the beneficial use rights. The largest recorded flow rate was 118.17 cfs for Nov. 6, 1989 & the total amount claimed was 120 cfs. Should recommend $(120 - 116 =) 4$ cfs less than was claimed for this right, $\therefore$ recommend $(31 - 4 =) 27$ cfs.

D.

RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE

ACRES _____ x 0.02 CFS/ACRE = _____ CFS
(Taken from p/u review)

DOES AMOUNT CLAIMED EXCEED 0.02 CFS/ACRE? Y() N()

1b. CALCULATIONS

*** IF YES ADDITIONAL WATER USE FORM FILED AND ATTACHED? Y() N() ***

2. ~~IRRIGATION~~ ^{Evaporation} CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = _____ AF/A

ACRES 4.4 x CONSUMPTIVE VOL. AF/A FOR AREA 4.0 = 17.6 ac.ft/yr

TOTAL CONSUMPTIVE USE 17.6 AF/A
de minimus

3. ~~IRRIGATION~~ DIVERSION VOLUME

CLAIMED DIVERSION VOLUME = _____ AF/A

ACRES _____ x DIVERSION VOL. AF/A FOR AREA _____ =

TOTAL DIVERSION VOLUME _____ AF/A

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N(X)

REMARKS: (Include limitations on CONSUMPTIVE USE for combined rights.)

No diversion volume is necessary since the source is surface water.
(See Adj. Memo #34) Total diversion rate to the facility was recorded
to be 97 cfs on 6/18/91. The diversion rate has ranged from 97.05 cfs
(avg. for ~~May~~ ^{May} 1988-1989) to 115.17 cfs (avg. for ~~Nov.~~ ^{Nov.} 1989-90) since the facility
was rebuilt. The flow meters are checked at least once a year by emptying
a pond of known volume + timing the fill time. No measurement was
possible with our equipment because pipes run underground the entire
distance from the collection box to the ponds.

Consumptive use due to evaporation is "de minimus". *7/1/92*

7/24/92

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*Total pond volume = 253,936
571,619 ft³ (1 ac (43,560 ft³))
5.8
= 13.1 ac.ft*

*Surface Area = $\frac{13.1 \text{ ac.ft}}{3 \text{ ft}}$
5.8
= 4.37 ac.*

4.37 ac.

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS?

Y() N(X)

Stat. claim

AJ TOTAL CLAIMED DIVERSION RATE: 31.000 CFS
WR ROOT RIGHT TOTAL DIVERSION RATE: 60.000 CFS

*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***

** If an amount smaller than the original diversion rate is **

** claimed and an exam is NOT required, explain in remarks. **

FLOW MEASUREMENT REQUIRED?

FIELD
DATABASE EXAMINER

DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N)

Y

Y

B.

FLOW MEASUREMENT

MEASUREMENT METHOD In-line flow meter, SEE ATTACHED CALCULATIONS.

C. ARE OTHER WATER RIGHTS USED? Y() N() IF YES COMPLETE OVERLAP REVIEW.

OTHER RIGHTS LISTED IN CLAIM: ^{A36-}A36-02703, ³⁶⁻02048, ³⁶⁻07148, 04013, 04013A, ³⁶⁻36-07148

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
R36-04074	CLEAR LAKES STREAM	CLEAR LAKE COUNTRY CLUB	0.920	0.006		
R36-04148A	SPRINGS	CLEAR LAKE RANCH INC.	1.500	0.020	292.00	4.00
A36-04148A	SPRINGS	CLEAR LAKE RANCH INC.	1.500	0.020	328.00	4.49
R36-04148B	SPRINGS	CLEAR LAKE COUNTRY CLUB	1.500	0.010		
A36-04148B	SPRINGS	CLEAR LAKE COUNTRY CLUB	1.500	0.016	360.00	4.00
A36-04149	CLEAR LAKES	CLEAR LAKE RANCH INC.	1.400	0.029		
R36-10154	CLEAR LAKES STREAM	CLEAR LAKE COUNTRY CLUB	0.240	0.001		

LIST ALL RIGHTS WITH SAME POU BUT NOT USED FOR IRRIGATION.

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
A36-02703	FISH PROPAGATION	CLEAR SPRINGS TROUT CO.	FROM 01-01 TO 12-31	40.000 CFS	

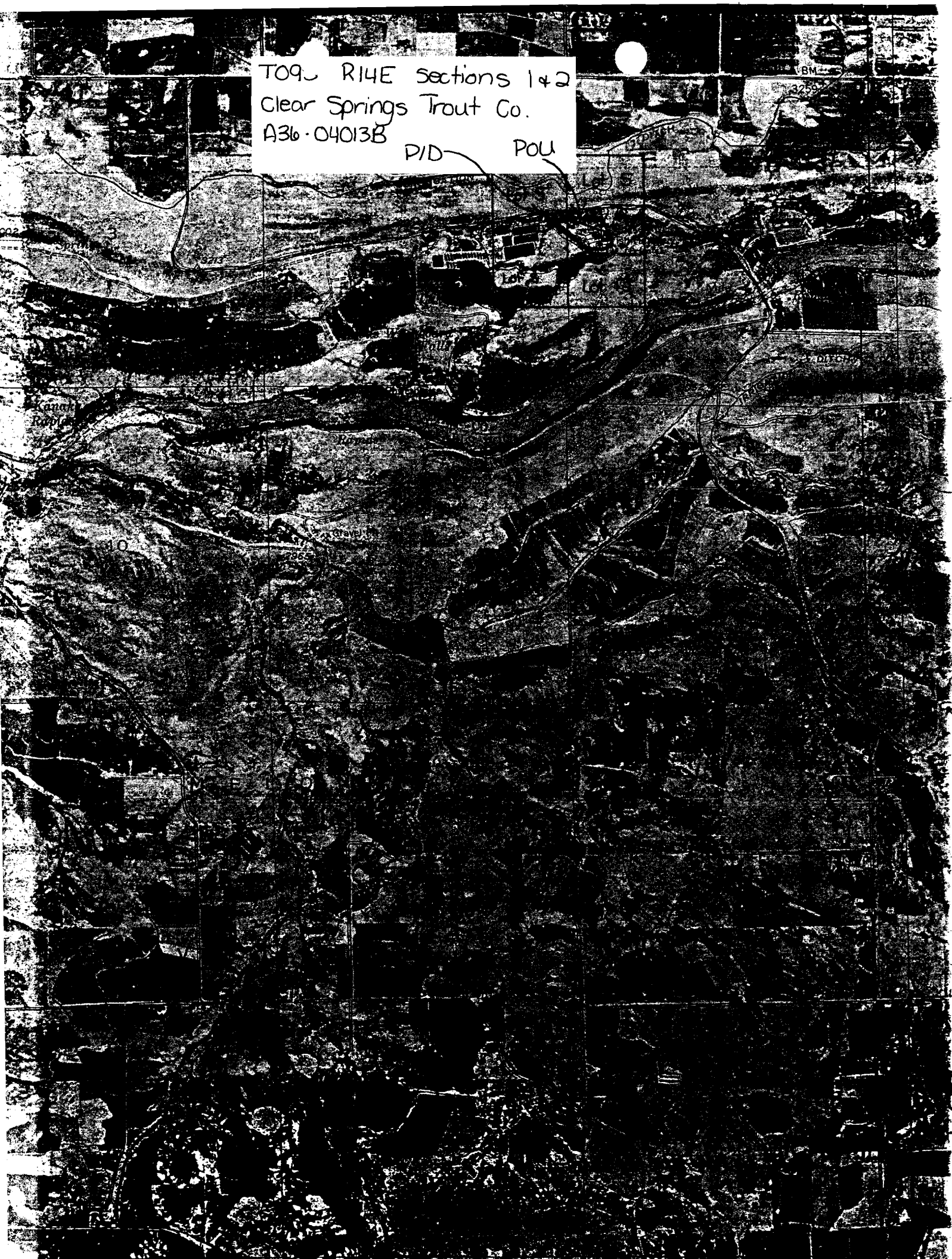
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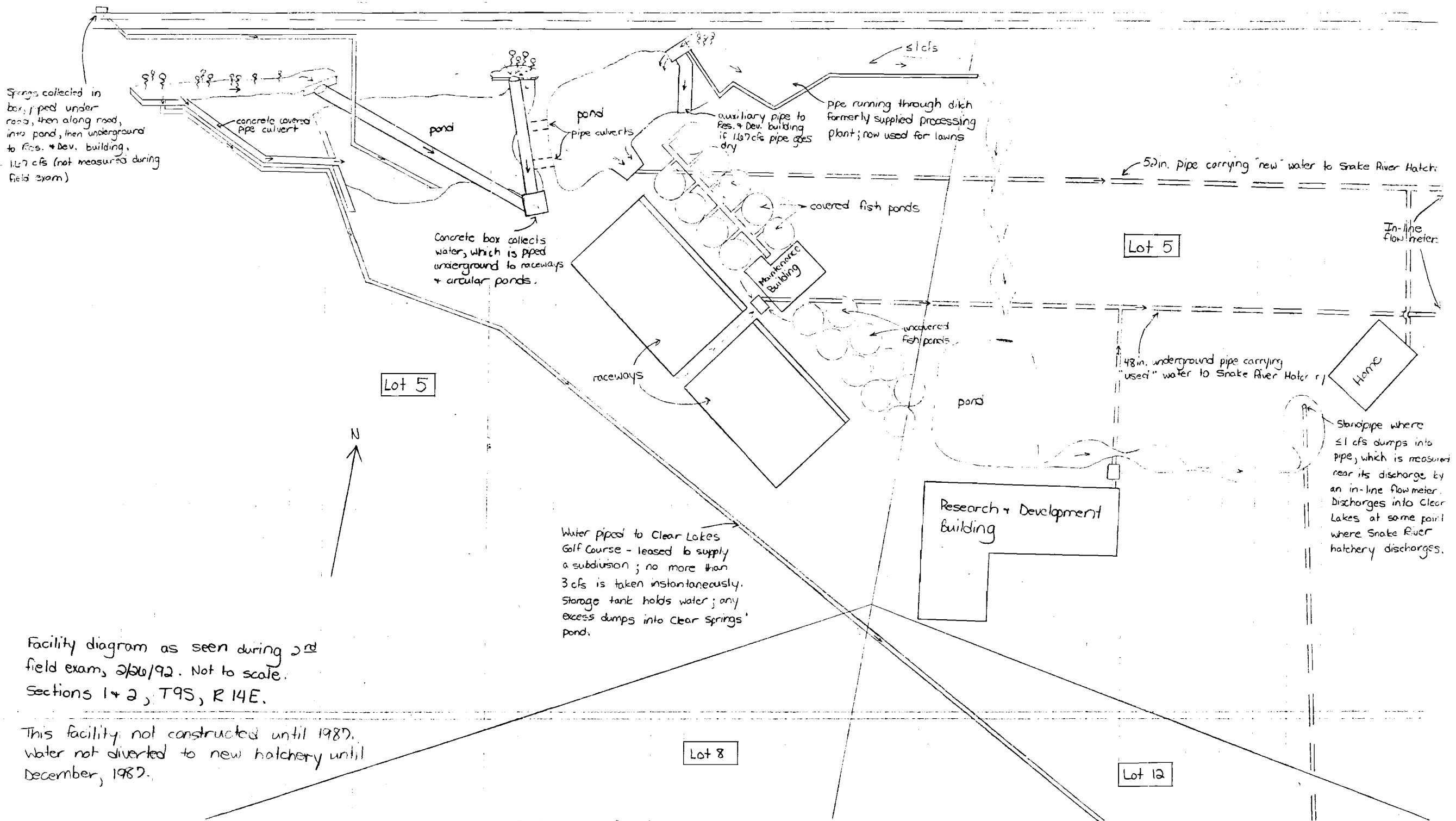
RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD FROM TO	REC. DIV RATE CFS	REC. DIV VOL. AF/A	REC. CONS. USE
		DATABASE EXAMINER	DATABASE EXAMINER	DATABASE EXAMINER
<u>Fish Propagation</u>	<u>01-01 12-31</u>	<u>27.0</u>	<u>—</u>	<u>17.6</u> de minimus <u>ms</u>
		<u>27.0</u>	<u>—</u>	<u>17.6</u> de minimus <u>7/1/92</u>
TOTAL FOR THIS RIGHT				
REVIEWED BY: <u>ms</u>	DATE: <u>6/24/92</u>			

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T09 R14E sections 1 & 2
Clear Springs Trout Co.
A36-04013B
P/D ——— POU





Facility diagram as seen during 2nd field exam, 2/26/92. Not to scale. Sections 1 + 2, T9S, R14E.

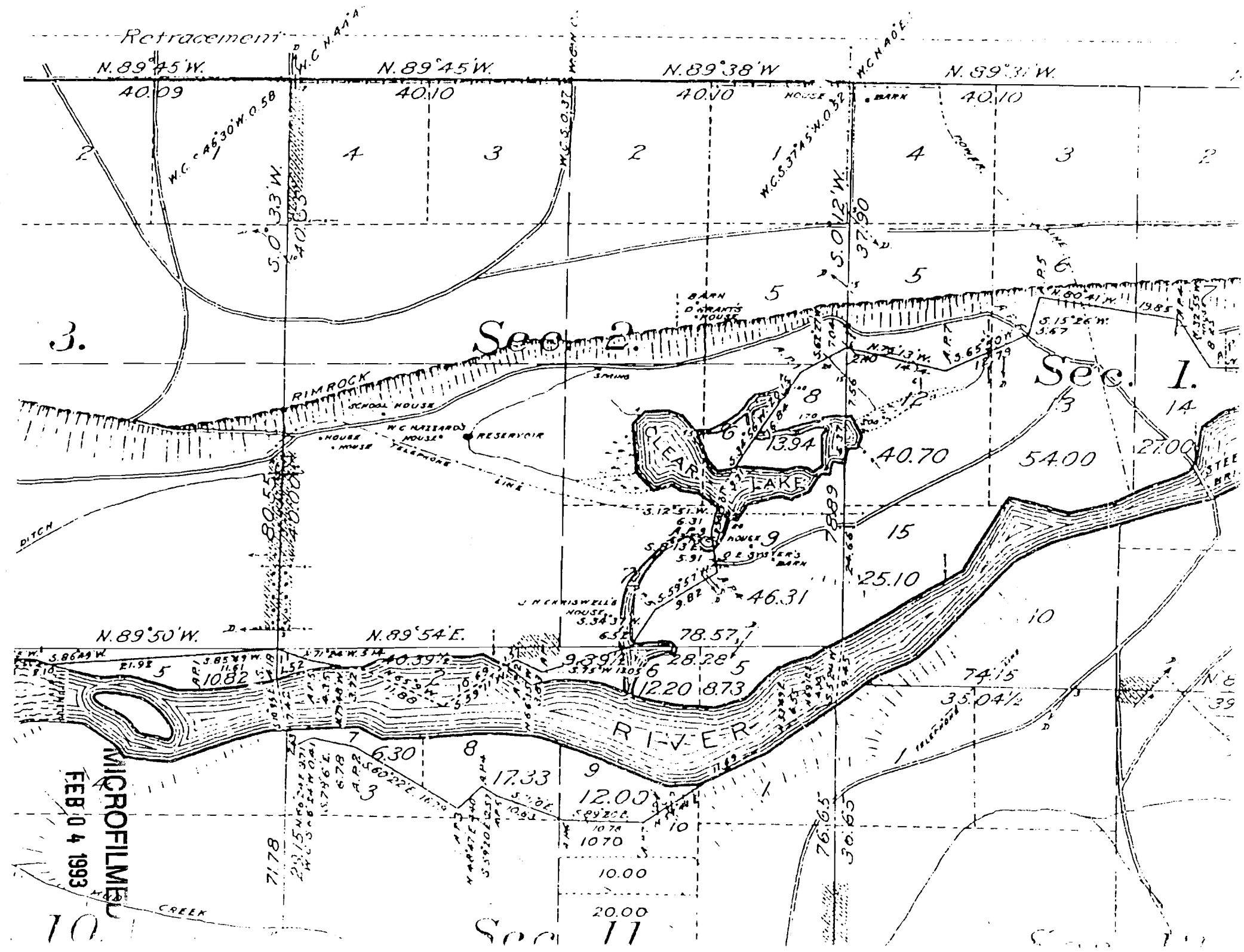
This facility not constructed until 1987. Water not diverted to new hatchery until December, 1987.

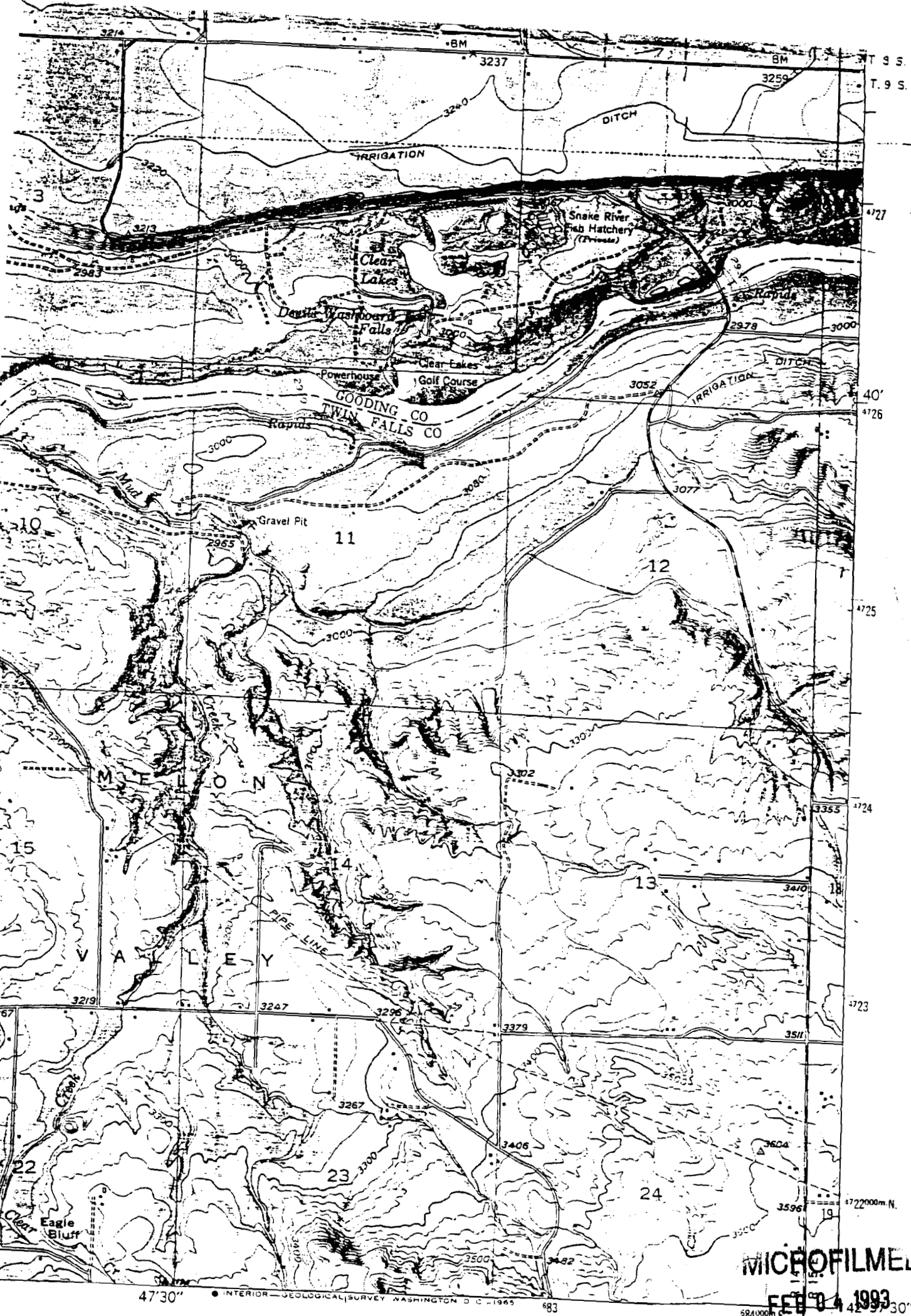
C9S14E

08 LT10	08 LT09	08 LT08	08 LT01	05 LT04	05 LT03	05 LT02	05 LT01	05 LT03	04 LT11	04 LT02	04 LT10	03 LT04	03 LT03	03 LT02	03 LT01	02 LT04	02 LT03	02 LT02	02 LT01	01 LT04	01 LT03	01 LT02	01 LT01
08 LT05	08 SENW	08 SWNE	08 SESE	05 SWNW	05 SENW	05 SWNE	05 SESE	04 SWNW	04 LT05	04 SENW	04 SWNE	03 SWNW	03 SENW	03 SWNE	03 SESE	02 SWNW	02 SENW	02 SWNE	02 SESE	01 LT05	01 LT06	01 LT07	01 LT08
08 LT08	08 NESW	08 NWSE	08 NESE	05 NWNW	05 NESW	05 NWNE	05 NESE	04 NWNW	04 LT13	04 LT10	04 LT13	03 NWNW	03 NESW	03 NWNE	03 NESE	02 NWNW	02 NESW	02 NWNE	02 SESE	01 LT12	01 LT13	01 LT14	01 LT15
08 LT07	08 SE3W	08 SW3E	08 SE3E	05 SW3W	05 SE3W	05 SW3E	05 SE3E	04 SW3W	04 LT08	04 LT17	04 LT18	03 SW3W	03 SE3W	03 SW3E	03 SE3E	02 SW3W	02 SE3W	02 SW3E	02 SE3E	01 LT15	01 LT10	01 SW3E	01 SE3E
07 LT01	07 SENW	07 SWNE	07 SESE	08 SWNW	08 SENW	08 SWNE	08 SESE	01 SWNW	01 SENW	01 SWNE	01 SESE	10 SWNW	10 SENW	10 SWNE	10 SESE	11 SWNW	11 SENW	11 SWNE	11 SESE	12 NWNW	12 SENW	12 SWNE	12 SESE
07 LT02	07 SENW	07 SWNE	07 SESE	08 SWNW	08 SENW	08 SWNE	08 SESE	01 SWNW	01 SENW	01 SWNE	01 SESE	10 SWNW	10 SENW	10 SWNE	10 SESE	11 SWNW	11 SENW	11 SWNE	11 SESE	12 NWNW	12 SENW	12 SWNE	12 SESE
07 LT03	07 NESW	07 NWSE	07 NESE	08 NWNW	08 NESW	08 NWNE	08 NESE	09 NWNW	09 NESW	09 NWNE	09 NESE	10 NWNW	10 NESW	10 NWNE	10 NESE	11 NWNW	11 NESW	11 NWNE	11 SESE	12 NWNW	12 NESW	12 NWNE	12 SESE
07 LT04	07 SE3W	07 SW3E	07 SE3E	08 SW3W	08 SE3W	08 SW3E	08 SE3E	09 SW3W	09 SE3W	09 SW3E	09 SE3E	10 SW3W	10 SE3W	10 SW3E	10 SE3E	11 SW3W	11 SE3W	11 SW3E	11 SE3E	12 SW3W	12 SE3W	12 SW3E	12 SE3E
18 LT01	18 NENW	18 NWNE	18 NENE	17 NWNW	17 NENW	17 NWNE	17 NENE	18 NWNW	18 NENW	18 NWNE	18 NENE	15 NWNW	15 NENW	15 NWNE	15 NENE	14 NWNW	14 NENW	14 NWNE	14 SESE	13 NWNW	13 NENW	13 NWNE	13 SESE
18 LT02	18 SENW	18 SWNE	18 SESE	17 SWNW	17 SENW	17 SWNE	17 SESE	18 SWNW	18 SENW	18 SWNE	18 SESE	15 SWNW	15 SENW	15 SWNE	15 SESE	14 SWNW	14 SENW	14 SWNE	14 SESE	13 SWNW	13 SENW	13 SWNE	13 SESE
18 LT03	18 NESW	18 NWSE	18 NESE	17 NWNW	17 NESW	17 NWNE	17 NESE	18 NWNW	18 NESW	18 NWNE	18 NESE	15 NWNW	15 NESW	15 NWNE	15 NESE	14 NWNW	14 NESW	14 NWNE	14 SESE	13 NWNW	13 NESW	13 NWNE	13 SESE
18 LT04	18 SE3W	18 SW3E	18 SE3E	17 SW3W	17 SE3W	17 SW3E	17 SE3E	18 SW3W	18 SE3W	18 SW3E	18 SE3E	15 SW3W	15 SE3W	15 SW3E	15 SE3E	14 SW3W	14 SE3W	14 SW3E	14 SE3E	13 SW3W	13 SE3W	13 SW3E	13 SE3E
19 LT01	19 NENW	19 NWNE	19 NENE	20 NWNW	20 NENW	20 NWNE	20 NENE	21 NWNW	21 NENW	21 NWNE	21 NENE	22 NWNW	22 NENW	22 NWNE	22 NENE	23 NWNW	23 NENW	23 NWNE	23 SESE	24 NWNW	24 NENW	24 NWNE	24 SESE
19 LT02	19 SENW	19 SWNE	19 SESE	20 SWNW	20 SENW	20 SWNE	20 SESE	21 SWNW	21 SENW	21 SWNE	21 SESE	22 SWNW	22 SENW	22 SWNE	22 SESE	23 SWNW	23 SENW	23 SWNE	23 SESE	24 SWNW	24 SENW	24 SWNE	24 SESE
19 LT03	19 NESW	19 NWSE	19 NESE	20 NWNW	20 NESW	20 NWNE	20 NESE	21 NWNW	21 NESW	21 NWNE	21 NESE	22 NWNW	22 NESW	22 NWNE	22 NESE	23 NWNW	23 NESW	23 NWNE	23 SESE	24 NWNW	24 NESW	24 NWNE	24 SESE
19 LT04	19 SE3W	19 SW3E	19 SE3E	20 SW3W	20 SE3W	20 SW3E	20 SE3E	21 SW3W	21 SE3W	21 SW3E	21 SE3E	22 SW3W	22 SE3W	22 SW3E	22 SE3E	23 SW3W	23 SE3W	23 SW3E	23 SE3E	24 SW3W	24 SE3W	24 SW3E	24 SE3E
30 LT01	30 NENW	30 NWNE	30 NENE	29 NWNW	29 NENW	29 NWNE	29 NENE	28 NWNW	28 NENW	28 NWNE	28 NENE	27 NWNW	27 NENW	27 NWNE	27 NENE	26 NWNW	26 NENW	26 NWNE	26 SESE	25 NWNW	25 NENW	25 NWNE	25 SESE
30 LT02	30 SENW	30 SWNE	30 SESE	29 SWNW	29 SENW	29 SWNE	29 SESE	28 SWNW	28 SENW	28 SWNE	28 SESE	27 SWNW	27 SENW	27 SWNE	27 SESE	26 SWNW	26 SENW	26 SWNE	26 SESE	25 SWNW	25 SENW	25 SWNE	25 SESE
30 LT03	30 NESW	30 NWSE	30 NESE	29 NWNW	29 NESW	29 NWNE	29 NESE	28 NWNW	28 NESW	28 NWNE	28 NESE	27 NWNW	27 NESW	27 NWNE	27 NESE	26 NWNW	26 NESW	26 NWNE	26 SESE	25 NWNW	25 NESW	25 NWNE	25 SESE
30 LT04	30 SE3W	30 SW3E	30 SE3E	29 SW3W	29 SE3W	29 SW3E	29 SE3E	28 SW3W	28 SE3W	28 SW3E	28 SE3E	27 SW3W	27 SE3W	27 SW3E	27 SE3E	26 SW3W	26 SE3W	26 SW3E	26 SE3E	25 SW3W	25 SE3W	25 SW3E	25 SE3E
31 LT01	31 NENW	31 NWNE	31 NENE	32 NWNW	32 NENW	32 NWNE	32 NENE	33 NWNW	33 NENW	33 NWNE	33 NENE	34 NWNW	34 NENW	34 NWNE	34 NENE	35 NWNW	35 NENW	35 NWNE	35 SESE	36 NWNW	36 NENW	36 NWNE	36 SESE
31 LT02	31 SENW	31 SWNE	31 SESE	32 SWNW	32 SENW	32 SWNE	32 SESE	33 SWNW	33 SENW	33 SWNE	33 SESE	34 SWNW	34 SENW	34 SWNE	34 SESE	35 SWNW	35 SENW	35 SWNE	35 SESE	36 SWNW	36 SENW	36 SWNE	36 SESE
31 LT03	31 NESW	31 NWSE	31 NESE	32 NWNW	32 NESW	32 NWNE	32 NESE	33 NWNW	33 NESW	33 NWNE	33 NESE	34 NWNW	34 NESW	34 NWNE	34 SESE	35 NWNW	35 NESW	35 NWNE	35 SESE	36 NWNW	36 NESW	36 NWNE	36 SESE
31 LT04	31 SE3W	31 SW3E	31 SE3E	32 SW3W	32 SE3W	32 SW3E	32 SE3E	33 SW3W	33 SE3W	33 SW3E	33 SE3E	34 SW3W	34 SE3W	34 SW3E	34 SE3E	35 SW3W	35 SE3W	35 SW3E	35 SE3E	36 SW3W	36 SE3W	36 SW3E	36 SE3E

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47°30' N. INTERIOR GEOLOGICAL SURVEY WASHINGTON D.C. 1965

FEB 04 1993

(Clear Springs Trout Co.)
Snake River Trout Farm:

6/8/92
M. Sterling

<u>Dimensions:</u>	<u>Surface Area:</u>	<u>Total volume:</u>
7 x 50 x 9	3150	12600
12 x 80 x 16	15360	61440
30 x 150 x 1	4500	18000
45 x 138 x 1	6210	24840
50 x 150 x 1	7500	30000
50 x 200 x 1	10000	40000
12 x 80 x 4	3840	15360
18 x 78 x 1	1404	5616
36 x 70 x 1	2520	10080
50 x 180 x 1	9000	36000
		<u>253,936 ft³</u>

Assumed all ponds were 4 ft deep

Dimensions were taken from drawing attached to licensing exam by Harold Merritt & dated 12/16/36

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FEB 04 1993