



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

May 19, 2008

Hon. John Melanson
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

RE: Subcase No. 63-3362 (*Tyson Fresh Meats, Inc.*)

Dear Judge Melanson:

An *Order of Partial Decree* was entered for this water right on February 16, 2007. It has recently come to the attention of the Idaho Department of Water Resources ("IDWR") that the partial decree contains clerical errors.

Subcase no. 63-3362 was an uncontested water right based on a license (attached hereto). IDWR recommended the water right as licensed; however, a transfer was approved on April 27, 2000, subsequent to the October, 21, 1970 license. As a result of the transfer, the point of diversion and place of use elements of the water right were changed, along with several comments. IDWR's recommendation of this water right mistakenly did not include the changes resulting from the transfer. As a result of this error, subcase no. 63-3362 was partially decreed as licensed and did not include the proper description of the water right pursuant to the later transfer. I am attaching an Amended Director's Report in underline/strikeout format to illustrate the inadvertent errors described above.

I respectfully request the Court issue an amended partial decree pursuant to Rule 60(a) of the Idaho Rules of Civil Procedure, correcting the errors in the partial decree.

I am copying this letter to the claimant so that it will be aware of this error.

If you should have any questions or comments, please feel free to contact me at (208) 287-4810.

Sincerely,

A handwritten signature in cursive script that reads "Andrea L. Courtney".

Andrea L. Courtney
Deputy Attorney General, IDWR

Enclosures

cc: Tyson Fresh Meats, Inc.
Sandy Egbert

State of Idaho
Department of Water Administration

LICENSE OF WATER RIGHT

License of Water Right No. 63-3362 Priority July 11, 1963 Amount 2.67 c.f.s.

THIS IS TO CERTIFY, that STANDARD INSURANCE COMPANY
of Portland, Oregon has complied with the terms and conditions of Permit
No. 63-3362 issued pursuant to Application for Permit dated 7-11-63,
and has submitted proof to the Department of Water Administration on 3-12-68,
that he has applied water to a beneficial use; an examination by the Department indicates that the
works have a capacity of 2.67 c.f.s. and that the water has in fact been applied to a
beneficial use; a right to the use of water from a ground-water source
tributary of _____, is hereby confirmed in the following amounts:

Amount 2.67 c.f.s. for Irrigation from April 1 to Oct. 31 (both dates inclusive)

Amount _____ for _____ from _____ to _____ (both dates inclusive)

Amount _____ for _____ from _____ to _____ (both dates inclusive)

Subject, however, to the condition that no more than 2.67 c.f.s. of water be diverted at
any one time, said waters to be diverted within the _____

SW 1/4 Sec. 31, T. 2 N., R. 2 E., B.M.

in the county of Ada, and that the amount of water so diverted and to which such
right is entitled and confirmed is for the purposes aforesaid and is limited to the amount which can
actually be beneficially used and shall not exceed 837 _____ acre feet per year or
4.5 _____ acre feet per acre.

Description and location of place of use:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
<u>2 N.</u>	<u>2 E.</u>	<u>31</u>									<u>35</u>	<u>37</u>	<u>597</u>	<u>38</u>			<u>38</u>		<u>155.5</u>

Total number of acres irrigated 186

The right to the use of the water hereby confirmed is restricted and appurtenant to the lands
or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 21st day of

October, 19 70.

R. Kirk Higgs
Director

63-3362
31242

Amended Directors Report -- 63-3362

IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED
WATER RIGHTS ACQUIRED UNDER STATE LAW

RIGHT NUMBER: 63-3362

NAME AND ADDRESS:

TYSON FRESH MEATS, INC
ATTN: JOHN MEYER
800 STEVENS PORT DRIVE SUITE 709
DAKOTA DUNES SD 57049

SOURCE:

Source:
GROUND WATER

Tributary:

QUANTITY:

2.670 CFS
837.000 AFY

Rights 63-07531 and 63-10383 when combined shall not exceed a total diversion rate of 5.87 cfs.

The total instantaneous diversion of water from all points of diversion under Transfer 5442 shall not exceed 10.77 cfs, nor a total combined annual volume of 4403.1 af.

PRIORITY DATE: 07/11/1963

POINT OF DIVERSION:

T01N R02E S6 Lot 2 NWNE
Within ADA County

T01N R02E S6 Lot 3 NENW
Within ADA County

T01N R02E S7 Lot 3 NWSW
Within ADA County

T01N R02E S7 SWSE
Within ADA County

T01N R02E S18 Lot 2 SNNW
Within ADA County

T02N R02E S31 SWSE
Within ADA County

Three (3) points of diversion are located within Lot 3 (NWSW), S07, T01N, R02E

A single new point of diversion is authorized in either the SWSE, S07 or Lot 2 (SNNW), S18, T01N, R02E to provide water that shall not exceed a temperature greater than 85 degrees Fahrenheit.

PURPOSE AND
PERIOD OF USE:

Purpose of use	Period of use:	Quantity:
IRRIGATION	4/01 10/31	2.670 CFS 837.00 AFY

THE USE OF WATER FOR IRRIGATION UNDER THIS RIGHT MAY BEGIN AS EARLY AS MARCH 1 AND MAY CONTINUE TO AS LATE AS NOVEMBER 15, PROVIDED OTHER ELEMENTS OF THE RIGHT ARE NOT EXCEEDED. THE USE OF WATER BEFORE APRIL 1 AND AFTER OCTOBER 31 UNDER THIS REMARK IS SUBORDINATE TO ALL WATER RIGHTS HAVING NO SUBORDINATED EARLY OR LATE IRRIGATION USE AND A PRIORITY DATE EARLIER THAN THE DATE A PARTIAL DECREE IS ENTERED FOR THIS RIGHT.

Amended Directors Report – 63-3362

PLACE OF USE: IRRIGATION within ADA County

T01N R02E S06 Lot 1 NENE 35.0

T01N R02E S06 Lot 2 NWNE 40.0

T01N R02E S06 SWNE 40.0

T01N R02E S06 SENE 40.0

T01N R02E S06 Lot 3 NENW 40.0

T01N R02E S06 SENW 40.0

T01N R02E S06 NESW 40.0

T01N R02E S06 SESW 40.0

T01N R02E S06 NWSE 40.0

T01N R02E S06 SWSE 39.0

T01N R02E S07 NENW 40.0

T01N R02E S07 Lot 1 NWNW 40.0

T01N R02E S07 Lot 2 SWNW 40.0

T01N R02E S07 NESW 40.0

T01N R02E S07 Lot 4 SWSW 36.0

T01N R02E S07 SESW 32.0

T01N R02E S07 SWSE 32.0

T01N R02E S18 NENE 32.0

T01N R02E S18 NWNE 40.0

T01N R02E S18 SENE 40.0

T01N R02E S18 NENW 40.0

T01N R02E S18 Lot 1 NWNW 40.0

T01N R02E S18 Lot 2 SWNW 40.0

T01N R02E S18 SENW 40.0

T01N R02E S18 NESW 40.0

T01N R02E S18 Lot 3 NWSW 40.0

T01N R02E S18 Lot 4 SWSW 40.0

T01N R02E S18 SESW 40.0

T02N R02E S31 NESW 40.0

T02N R02E S31 Lot 3 NWSW 40.0

T02N R02E S31 Lot 4 SWSW 40.0

T02N R02E S31 SESW 40.0

T02N R02E S31 SWSE 40.0

DOMESTIC within ADA County

T01N R02E S07 Lot 3 NWSW

COMMERCIAL Same as IRRIGATION

1286 ACRES TOTAL

~~186 ACRES TOTAL~~

~~T02N R02E S31 NESW 35.0~~

~~T02N R02E S31 Lot 3 NWSW 38.0~~

~~T02N R02E S31 Lot 4 SWSW 37.0~~

~~T02N R02E S31 SESW 38.0~~

~~T02N R02E S31 SWSE 38.0~~

Right 63-03362 is limited to the irrigation of 186.0 acres in the place of use described above in a single irrigation season.

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.

Amended Directors Report – 63-3362

EXPLANATORY MATERIAL: BASIS OF CLAIM - License

Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code.

After specific notification by the Department, the right holder shall install a suitable measuring device or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.

Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion.

Wastewater pond is located within Lot 1 (NWNW), S19, T01N, R02E

The right holder shall use the full allotment of appurtenant surface water rights in conjunction with groundwater diverted under Right 63-11347 and shall only divert groundwater under this right when water from the appurtenant surface water rights cannot be delivered to the right holder.

This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.5 afa per acre at the field headgate for irrigation of the lands above.

Rights 63-03362, 63-07531, 63-10383 and 63-11347 when combined are limited to the irrigation of 619.0 total acres under the irrigation components of the rights in the 1286.0 acre place of use described above in a single irrigation season. This condition does not limit the acreage upon which wastewater from the industrial and commercial uses under the rights may be land applied for wastewater treatment purposes to satisfy water quality requirements.

Use of water under Rights 63-07531 and 63-10383 shall comply with applicable water quality standards of the Division of Environmental Quality of the Idaho Department of Health and Welfare.

The place of industrial and commercial use authorized by this approval includes land upon which wastewater may be applied for wastewater treatment purposes to satisfy water quality requirements. Water diverted under the industrial and commercial components of Rights 63-07531 and 63-10383 shall not be land applied unless the water is first used for the commercial/industrial purposes as authorized under these rights. A single new point of diversion is authorized in either the SWSE, S07 or Lot 2(SWNW), S18, T01N, R02E to provide water that shall not exceed a temperature greater than 85 degrees Fahrenheit.

The right holder shall be required to utilize any cold water from the well located in the NENW, S06, T01N, R02E B.M. up to its capacity for irrigation of the place of use under Right 63-11347. The low temperature geothermal well in the NWNE, S06, T01N, R02E B.M. shall only be diverted at the rate equal to the remaining portion of 2.23 cfs not capable of being satisfied by cold water from the well.

Failure of the right holder to comply with the conditions of Transfer 5442 is cause for the Director to rescind approval of the transfer.

If the surface water right (s) appurtenant to the place of use is sold, transferred, leased or used on any other place of use, Right 63-11347 to divert groundwater shall not be used without an approved transfer pursuant to Section 42-222, Idaho Code, or approval of the Department if a transfer is not required.

~~The total instantaneous diversion of water from all points of diversion under Transfer 5442 shall not exceed 10.77 cfs, nor a total combined annual volume of 4403.1 af.~~

~~Rights 63-07531 and 63-10383 when combined shall not exceed a total diversion rate of 5.87 cfs.~~

~~Right 63-03362 is limited to the irrigation of 186.0 acres in the place of use described above in a single irrigation season.~~

Amended Directors Report – 63-3362

~~Right 63-07531 is limited to the irrigation of 160.0 acres in the place of use described above in a single irrigation season.~~

~~Right 63-10383 is limited to the irrigation of 151.0 acres in the place of use described above in a single irrigation season.~~

~~Right 63-11347 is limited to the irrigation of 122.0 acres in the place of use described above in a single irrigation season.~~

~~Three (3) points of diversion are located~~

~~The right holder shall accomplish the change authorized by this transfer within one (1) year of the date of this approval.~~