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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.
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P. O. Box 1427
Boise, ID 83701-1427
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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, and
Case No. 39576) 36-07218 (Clear Springs Foods)
)
) **Affidavit of Dana L. Hofstetter in**
) **Support of Motion to Alter or Amend**

STATE OF IDAHO)
) ss:
COUNTY OF ADA)

Dana L. Hofstetter, being first duly sworn deposes and states:

- (1) I am Dana L. Hofstetter, one of the attorneys of record for the North Snake Ground Water District, May Farms, Ltd., and Faulkner Land & Livestock Company in this proceeding.

(2) Attached hereto as exhibits are true and correct copies of the following documents that I obtained from the Idaho Department of Water Resources licensing files for the respective indicated water rights:

Exhibit A: February 21, 1972 letter from John C. Hepworth to the Idaho Department of Water Administration (Attn: D. McEldowney) (License File Nos. 36-07218 and 36-07201).

Exhibit B: February 24, 1977 Application for Extension of Time (License File No. 36-07218).

Exhibit C: March 13, 1972 Application for Permit (License File No. 36-07218).

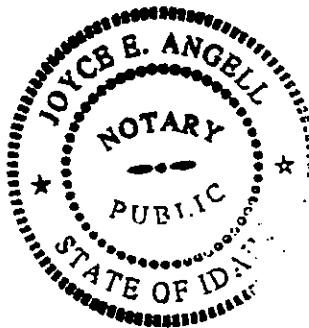
FURTHER YOUR AFFLIANT SAYETH NAUGHT.

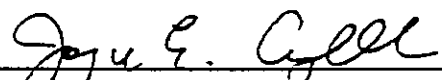
DATED this 27th day of September, 1998.



DANA L. HOFSTETTER

SUBSCRIBED AND SWORN to before me this 27th day of September, 1998.





Notary Public in and for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 07-24-02

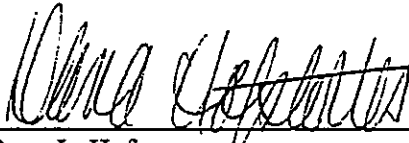
CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 1998, I caused to be served copies of the foregoing **AFFIDAVIT OF DANA L. HOFSTETTER IN SUPPORT OF MOTION TO ALTER OR AMEND** 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

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098
 U.S. Mail Fed Ex Hand Fax

Chief, Natural Resources Division
Office of the Attorney General
P. O. Box 44449
Boise, Idaho 83711-4449
 U.S. Mail Fed Ex Hand Fax



Dana L. Hofstetter

D:\1780\2\ac\2424

BUHL, IDAHO - 83316

JOHN C. HEPWORTH
WM. L. NUNGESTER
MICHAEL H. FELTON

Department of Water Administration

February 21, 1972

Dept. of Water Administration
Statehouse - annex 2
Boise, Idaho 83797

Atten: D. McEldowney

Re: Clear Springs Trout Co.
Applications: 36-7218
36-7201

Dear Don:

Pursuant to your letter dated February 7, 1972, concerning application for Permit No. 36-7218, directed to Clear Springs Trout Co., I submit the following:

- (1) Enclosed you will find a letter from the President of the Farmers National Bank, attesting to our company's financial ability to complete the projects contemplated.
- (2) Application No. 36-7201, for 10 c.f.s. of water is still pending. Our company expects to use this water in connection with holding ponds which we now have (there is a possibility additional holding ponds will be constructed) adjacent to our processing plant. The water would also be used in conjunction with the processing plant. This is supplementary water to the water now being used for these purposes and this water will become necessary as our facilities are expanded and we are processing greater quantities of trout. No hatchery design would seem necessary since we have previously submitted the hatchery design and the hatchery construction is now largely completed.

36-7218

Exhibit A
to
Affidavit of Dana L. Hoff
(36-02708, 36-07201, 36-

(3) The only additional construction in connection with this application would be one or two additional holding ponds which would be adjacent to and parallel to the present holding ponds. If these are necessary at all, they would be constructed within the next seven years as our expansion dictated.

With respect to Application 36-7218 for 75 c.f. of water, I want to call your attention to the fact I left with Mr. Higginson a drawing of our hatchery showing the ponds now constructed, as well as the new ponds to be constructed. The new ponds to be constructed are to be colored in with blue. The information requested by your office in connection with this application is as follows:

(1) You will find enclosed a letter from The Farmers National Bank with respect to our being able to complete this project from a financial viewpoint.

(2) I think the drawing submitted, together with the fact that we are now using 200 c.f. of water beneficially is rather good evidence of the fact that we can use the additional water. It would be possible if additional water were available to construct ponds which would utilize more than this amount of water but our water studies do not indicate that such water would be available.

(3) Construction will probably proceed, beginning in June of 1973. It may take us as long as seven years to complete everything we expect to do. We are undertaking other projects at the same time and in order to have an orderly schedule consistent with our marketing capability, the work will be done as needed. We certainly expect to have all construction projects completed on or before the seven years allowed by statute.

We fully appreciate that measuring devices will be required to measure the quantity of water being used. I was unaware of the fact that you expected devices to be installed measuring the return of the water. This would be nearly impossible for most hatchery operations in our location at least, inasmuch as the water out of separate raceways empties into Clear Lakes. Ours

36-7218

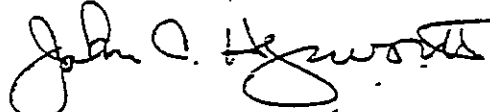
February 10 1972

-3-

is a nonconsumptive use and while I appreciate that fish do consume some water, our studies indicate that the amount consumed is hardly measureable. Therefore, the amount returned will be the same as the amount diverted. If there is any question about this I would appreciate hearing from you as soon as possible.

Very truly yours,

HEPWORTH, NUNGESTER & FELTON



John C. Hepworth

JCH:bh

36-7218

REC'D DEPARTMENT OF WATER ADMINISTRATION
FEB 24 1977 APPLICATION FOR EXTENSION OF TIME

State of Idaho Department of Water Resources)
Southern District Office)
County of Twin Falls)

Permit No. 36-7218

Clear Springs Trout Co. of Box 548, Buhl, (address)
(name)

State of Idaho, being first duly sworn, upon his oath deposes and says:
That he is the holder, or the duly authorized agent of the holder *, of Permit to Appropriate
the Public Waters of the State of Idaho No. 36-7218.

That under the terms and conditions of said permit, work thereunder was required to be com-
pleted on or before March 1, 19 77.

That he has heretofore performed the following work described under said permit:
That the works are completed, including the installation of a measuring
device under the direction of C. E. Brockway, P.E.; however, because of the
seasonal fluctuation, the maximum flow does not occur until October. In addi-
tion due to the unusual light moisture during this past year, it is anticipate
that the spring flow may be less than normal. We, therefore, ask for an exten-
sion in order that we might have the measurement for license made in October of
a normal year and ask that it be extended to November 1, 1980.

That he is unable to complete the remainder of the work within the required time for the
following reasons, to-wit:

Wherefore, he asks that the Department of Water Administration extend the time for the
completion of obligations under said permit to November 1, 19 80.

CLEAR SPRINGS TROUT CO.
(signature) * Secretary

Subscribed and sworn before me this 24 day of February, 19 77.

(notary public)

My commission expires 7-3-77

ACTION OF THE DEPARTMENT OF WATER ADMINISTRATION
Administrator, Operations Division
I, A. KENNETH DUNN, Director of the Idaho Department of Water Administration,
State of Idaho, hereby APPROVE the above application for extension of time to November 1,
1980.

Witness my hand this 1st day of March, 19 77.

(Signature)
Director

IF OTHER THAN HOLDER, Power of Attorney must be supplied. Forms are available through Exhibit B
to the Department of Water Administration, Statehouse - Annex 2, Boise, Idaho, 83707
Affidavit of Dana L. B
(36-02708, 36-07201, 3

MICROFILME

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

APPLICATION FOR PERMIT

APPROVED

To appropriate the Public Waters of the State of Idaho
(TYPE OR PRINT IN INK)

1. Name of applicant Clear Springs Trout Company
post office address Buhl, Idaho 83316
2. Source of water supply Clear Lake Stream (springs) which is a tributary of Snake River
(2 points)
3. a. Location of point of diversion is NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 2 Township 9S
Range 14E B.M. Gooding County; additional points of diversion if any: _____

- b. If water is not consumed, it will be discharged into Clear Lake at a point in NW $\frac{1}{4}$
of SE $\frac{1}{4}$ of Section 2 Township 9S Range 14E B.M. _____
4. Water will be used for the following purposes:
Amount 75.0 for Fish Prop. purpose from Jan. 1 to Dec. 31 (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
Amount _____ for _____ purpose from _____ to _____ (both dates inclusive)
(cfs or acre-feet per annum)
5. Total quantity to be appropriated:
a. 75.0 cubic feet per second and/or
b. _____ acre feet per annum.
6. Proposed diverting works:
a. Description of ditches, flumes, pumps, headgates, etc. Diversion dam - ditch Flume and pipe

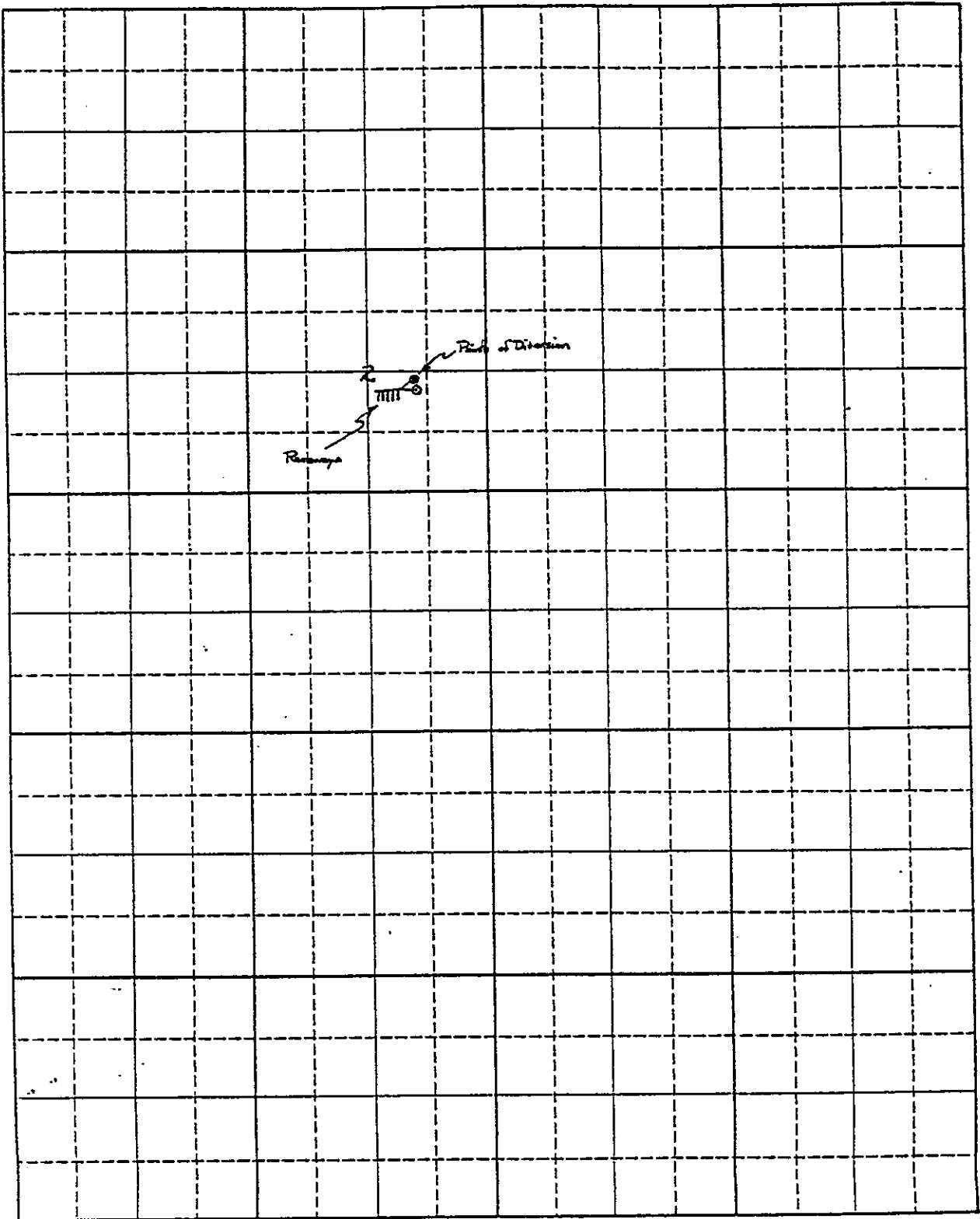
b. Height of storage dam _____ feet, active reservoir capacity _____ acre feet; total reservoir
capacity _____ acre feet, materials used in storage dam: _____
Period of year during which storage will occur _____ to _____ inclusive.
(Mo. Day) (Mo. Day)
c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
7. a. Time required for the completion of the works and application of the water to the proposed beneficial use
is 5 years.
b. Estimated construction cost is \$ 75,000.00
8. Description of proposed uses:
a. If water is not for irrigation:
(1) Give the place of use of water: NW $\frac{1}{4}$ of SE $\frac{1}{4}$ of Section 2 Township 9S
Range 14E B.M.
(2) Amount of power to be generated: _____ hp under _____ feet of head.
(3) List number of each kind of livestock to be watered _____

(4) Name of municipality to be served _____, or number of families to be
supplied with domestic water _____
(5) If water is to be used for other purposes describe: Fish propagation in expansion of
existing facilities

36-7218
Affidavit of Dana L. H
(36-02708, 36-07201, 36-07202)

Exhibit C
to

11. Map of proposed project. Show clearly the proposed point of diversion, place, section number, township and range number.



Scale: 2 inches equal 1 mile

BE IT KNOWN that the undersigned hereby makes application for permit to appropriate the public waters of the State of Idaho as herein set forth.

CLEAR SPRINGS TROUT COMPANY, BY

W. H. [Signature]
(Applicant)

21-7218

36-7218

Received by BDF Date 1/24/72^{BDF} Time 8:30 a.m.
 Preliminary check by BDF Fee \$ 470.00
 Received by lj Date 1-24-72
 Publication prepared by cr Date 2-4-72
 Published in Gooding County Leader
 Publication dates 2-10 & 2-17-72
 Publication approved cl Date 2-25-72
 Priority reduced to 1/2 Reason _____

 Protests filed by: _____

 Copies of protests forwarded by _____
 Hearing held by _____ Date _____
 Recommended for approval denial by R BDF

ACTION OF THE DIRECTOR, DEPARTMENT OF WATER ADMINISTRATION

This is to certify that I have examined Application for Permit to appropriate the public waters of the State of Idaho No. 36-7218, and said application is hereby APPROVED.

- 1. Approval of said application is subject to the following limitations and conditions:
 - a. SUBJECT TO ALL PRIOR WATER RIGHTS.
 - b. Proof of construction of works and application of water to beneficial use shall be submitted on or before March 1, 19 77.
 - c. Other: Pursuant to Order of this date.

2. Denial of said application is for the following reasons: _____

Witness my hand this 13 day of March, 19 72.

[Signature]
Director

