



Clear Lakes Trout Company, Inc.

Daniel V. Steenson (ISB # 4332)
Charles L. Honsinger (ISB# 5240)
Ringert Clark, Chartered
P.O. Box 2773
Boise, ID 83702
PHONE: (208)342-4591
FAX: (208) 342-4657

Karl
RECEIVED

APR 25 2000

Department of Water Resources

4-24

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)	SUBCASE NUMBERS 36-02708 and 36-07218
)	
)	
Case No. 39576)	MOTION TO ALTER OR AMEND JUDGMENT,
)	OR IN THE ALTERNATIVE, MOTION TO
)	RECONSIDER MEMORANDUM DECISION
)	AND ORDER ON CHALLENGE
)	
)	

DESCRIPTION

This is Clear Lakes Trout Company, Inc.'s (hereinafter "Clear Lakes"), *Motion to Alter or Amend Judgment, or in the Alternative, Motion to Reconsider Memorandum Decision and Order on Challenge* in subcase numbers 36-02708, 36-07201 and 36-07218. This motion is made pursuant to I.R.C.P. 59(e) or in the alternative, pursuant to I.R.C.P. 11(a)(2).

MOTION

Clear Lakes, through its attorneys of record, hereby respectfully moves this Court to amend the Partial Decrees entered in the above captioned subcases to provide that the water rights represented by those Partial Decrees are diverted from a source that is separate from the

source for Clear Lakes' water right number 36-07004, and that there is only one point of diversion for the above-referenced water rights.

Alternatively, Clear Lakes respectfully moves this Court to reconsider its Memorandum Decision and Order on Challenge (hereinafter "Decision"), and amend its Decision to provide that the source for Clear Springs' water right nos. 36-02708 and 36-07218 should be administered separately from the source for Clear Lakes' water right no. 36-07004, and that Clear Springs water right nos. 36-02708 and 36-07218 should be decreed with only one point of diversion.

The first ground for this motion is that the Court's conclusion that Clear Springs' water right nos. 36-02708 and 36-07218 have the same source as Clear Lakes' water right no. 36-07004 for purposes of defining or administering these water rights cannot be reconciled with the clear and undisputed fact that Clear Springs' water rights were perfected in the western stream and Clear Lakes' water right was established in the eastern stream, and that these two streams were physically separated so that diversion from one stream could not affect the flow of water in the other stream. The second ground for this motion is that the Court has failed to consider or address the undisputed evidence that Clear Springs has never attempted or claimed the right to divert any of the water flowing in the eastern stream or the springs flowing into the eastern stream. This undisputed evidence includes the testimony of Jess Eastman, Clear Springs Chairman of the Board and developer of Clear Springs' water rights. Mr. Eastman's testimony unequivocally establishes that the eastern stream and its tributary springs have never been part of the source of Clear Springs' water rights. These errors are compounded by the Court's erroneous finding that Clear Springs' water rights' include points of diversion that have never existed, but could, if decreed, enable Clear Springs to take eastern stream water that Clear Springs has never


before used or claimed.

Issuing decrees which treat these water rights as if they were from the same source strips Clear Lakes of the water supply and priority of water right no. 36-07004, and grants Clear Springs the windfall of an additional source of water and new priority of right at Clear Lakes' expense. This result is contrary to Idaho's prior appropriation doctrine and water right permit system under which Clear Lakes has established and now seeks to protect its water rights.

This motion is timely because it is filed within 14 days of the Court's April 10, 2000 entry of Partial Decrees in both of the above referenced subcases as required by both I.R.C.P. 59(e) and I.R.C.P. 11(a)(2). Pursuant to I.R.C.P. 7(b)(3), Clear Lakes requests oral argument on this motion and hereby notifies the court and party that it intends to file with the Court its brief in support of this Motion within 14 days of the filing of this motion.

DATED this 24th day of April, 2000.

RINGERT CLARK, CHARTERED



Charles L. Honsinger
Attorney for Clear Lakes Trout Farms, Inc.

CERTIFICATE OF MAILING

I certify that on April 24, 2000, I served by facsimile copies of this document, including all attachments to the following:

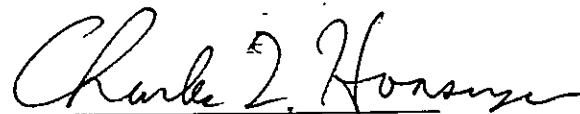
Director, Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83712
Fax: (208) 327-5400

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449
Fax: (208) 334-2690

John C. Hepworth
Hepworth Lezamiz & Hohnhorst
133 Shoshone St. N.
P.O. Box 389
Twin Falls, ID 83303-0389
Fax: (208) 734-4115

Josephine P. Beeman
Beeman & Hofstetter, PC
608 W. Franklin St.
Boise, ID 83702
Fax: (208) 388-8400

Norman Semanko
Rosholt Robertson & Tucker
P.O. Box 1906
Twin Falls, ID 83301
Fax: (208) 736-0041


Person faxing documents