

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 A36-02659
Date Received 9-1-88
Receipt Number C002451

NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW

RECEIVED

SEP 01 1988

Department of Water Resources

Please type or print clearly

1. Name of Claimant (s) Clear Lakes Trout Company, Inc. Phone (208) 342-0090
Mailing Address 1301 Vista Avenue, Boise, Idaho Zip 83705

2. Date of Priority (Only one (1) per claim) June 23, 1966

3. Source of water supply (a) Clear Lakes Springs
which is tributary to (b) Snake River

4. a. Location of existing point of diversion is: Township _____ Range _____ Section _____,
NE 1/4 SE 1/4
SE _____ 1/4 of NE _____ 1/4 of _____ 1/4, Govt. Lots 5 & 6 B.M., County of Gooding

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.

East diversion pond is approximately 550
to 600 ft. of earth dam, pipelines and concrete headgates. In 1983 Clear Springs Trout
Company constructed a new earth and rock filled dike to pool water for diversion by Clear
Springs Trout Company and for diversion to the center and the west side of the Clear Lakes
Trout Co. raceways. The west diversion is a concrete headworks structure constructed by
Clear Springs Trout Co. for diversion by Clear Lakes Trout Co. and is located adjacent to
and immediately east of the west boundary line of the SE 1/4 of NE 1/4-Govt. Lot 5. The pool
impounded by Clear Springs extends west into the SW 1/4 of NE 1/4. The center discharge consists
of a concrete diversion headgate and a 4' diameter CMP installed through the top of the new
dike.

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6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Fish Propagation purposes from Jan. 1 to Dec. 31 amount 100.0 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 100.0 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Fish Propagation - See Remarks below

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
9 S	14 E	2				Lot 5 H									Lot 6 H	Lot 7 H	Lot 8 H		

Total number of acres irrigated _____

11. In which county (ies) are lands listed above as place of use located? Gooding

12. Do you own the property listed above as place of use? Yes x No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

License No. 36-7004 owned by Clear Lakes Trout Company is used at the same _____ or None ()
place but for separate use from 36-2659 herein described

14. Remarks: Item 9 above-Some of the raceways shown on the drawing included in the beneficial use file have been and are being divided and changed in dimensions for a more efficient use of the water. However, these changes will not exceed the 26 acre feet of facility volume as shown on the license.

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Last Name _____ Ident No. _____

Copies: White - State, Yellow - Claimant

Scale: 2 inches equals 1 mile

T 9

R 14 E

S

Points of Diversion S E

2

NE

Place of Use

Lot 5

Lots 6 & 8

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Last Name _____ Ident No. _____

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) ☐ Official Use ☐ Posted Notice ☒ License ☐ Permit ☐
Decree _____
If applicable provide IDWR Water Right Number 36-2659
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

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 one

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

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

For Organizations: I do solemnly swear or affirm that I am President _____

Title

of Clear Lakes Trout Co., Inc. _____, that I have signed the foregoing
Organization

document in the space below as President _____ of Clear Lakes Trout Co., Inc. _____
Title Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Eileen Harey _____

Title and Organization Clear Lakes Trout Co., Inc. _____ Date August 31, 1988

State of Idaho/or Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 31st day of August 19 88

SEAL

Notary Public Mary Anne Johnson

Residing at Boise, Idaho

My Commission Expires 1-11-92

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, W.F. RINGERT will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature W.F. Ringert

Address Box 2773 Boise, ID 83701

Date 9-1-88

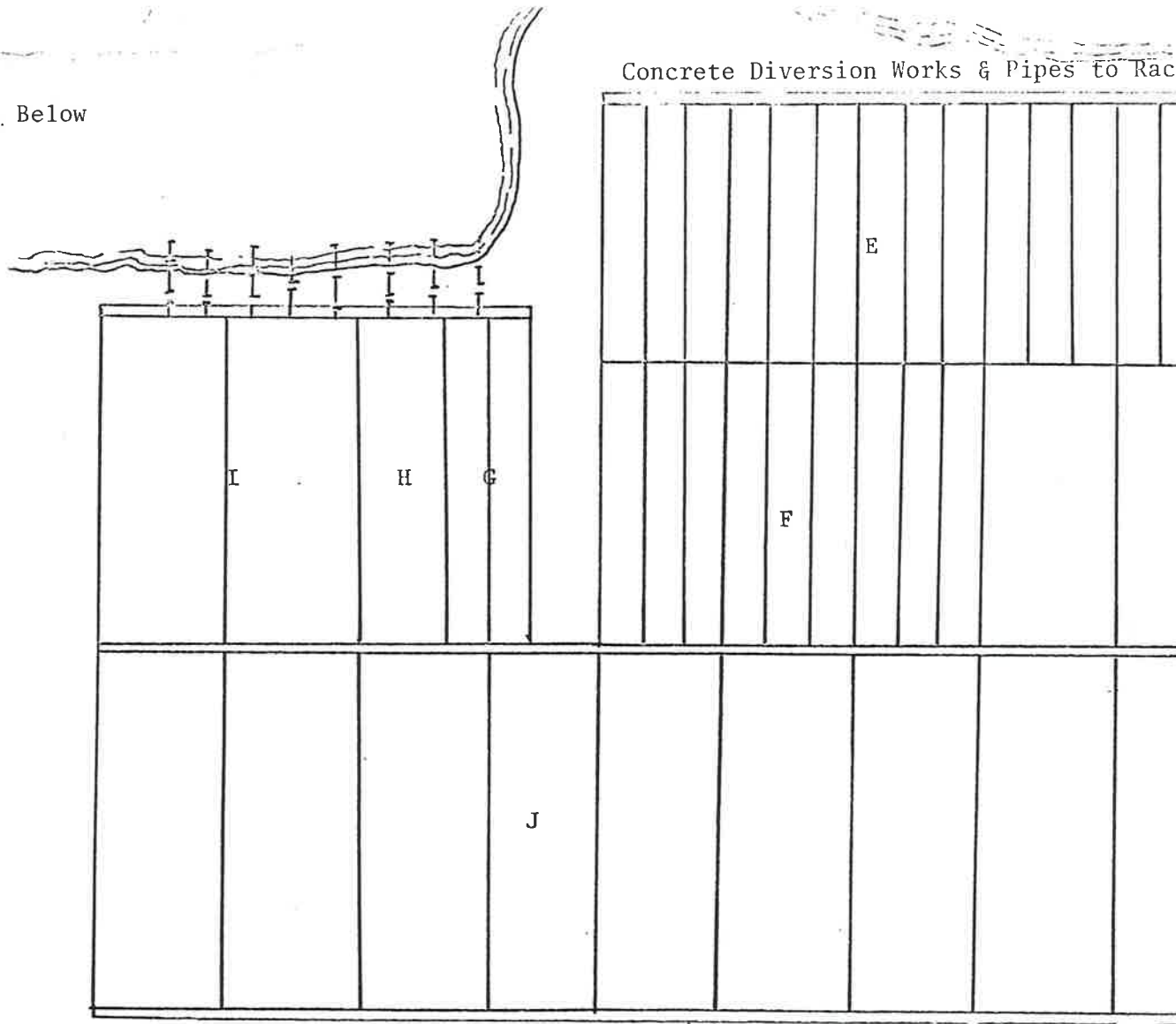
Last Name _____ Ident. Number _____

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Copies White State, Yellow-Claimant

Concrete Diversion Works & Pipes to Race

See Note Below



Note Above:

New Diversion Dike and Works Constructed in the above area by Clear Springs Trout Company for diversion by Clear Springs and Clear Lakes Trout Company - See Item 5 of Notice of Claim.

WEIR

HOLDING PONDS

PROCESSING PLANT

M

DISCHARGE

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86-1-153-1

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

CIVIL CASE NUMBER: 39576

Ident. Number: A36-02659
Date Received: 9/01/1988
Receipt No: C002451
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

1. Name: CLEAR LAKES TROUT CO. INC. 208-342-0090
Address: 1301 VISTA AVENUE
BOISE, ID 83705

2. Date of Priority: JUN 23, 1966

3. Source: CLEAR LAKE SPRINGS Trib. to: SNAKE RIVER

4. Point of Diversion:

Township	Range	Section	1/4 of	1/4 of	1/4	Lot	County
09S	14E	2	SE	NE		5	GOODING
			NE	SE		6	GOODING

5. Description of diverting works:
DAM, FLUMES, PONDS & PIPE. (SEE REMARKS)

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
FISH PROPAGATION	01/01	12/31	100.000		

7. Total Quantity Appropriated is:
100.000 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	Lot	Use	Acres
09S	14E	2			8	FISH	
			SE	NE	5	FISH	

A36-02659

Page 1

Date: 10/04/88

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024-10-1994

10. Place of Use: Continued

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
09S	14E	2	NE	SE	6	FISH	

11. Place of use in counties: GOODING

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

13. Other Water Rights Used:
36-07004

14. Remarks:

ITEM 9; SOME OF THE RACEWAYS SHOWN ON THE DRAWING INCLUDED IN THE BENEFICIAL USE FILE HAVE BEEN AND ARE BEING DIVIDED AND CHANGED IN DIMENSIONS FOR A MORE EFFICIENT USE OF THE WATER. HOWEVER, THESE CHANGES WILL NOT EXCEED 26 ACRE FEET OF FACILITY VOLUME AS SHOWN ON THE LICENSE.

ITEM 5; EAST DIVERSION POND IS APPROXIMATELY 550' TO 600' OF EARTH DAM, PIPELINES, AND CONCRETE HEADGATES. IN 1983 CLEAR LAKES TROUT COMPANY CONSTRUCTED A NEW EARTH AND ROCK FILLED DIKE TO POOL WATER FOR DIVERSION BY CLEAR SPRINGS TROUT COMPANY AND FOR DIVERSION TO THE CENTER AND THE WEST SIDE OF THE CLEAR LAKES TROUT CO. RACEWAYS. THE WEST DIVERSION IS A CONCRETE HEADWORKS STRUCTURE CONSTRUCTED BY CLEAR SPRINGS TROUT CO. FOR DIVERSION BY CLEAR LAKES TROUT CO. AND IS LOCATED ADJACENT TO AND IMMEDIATELY EAST OF THE WEST BOUNDARY LINE OF THE SE 1/4 OF NE 1/4, GOVT. LOT 5. THE POOL AND IMPOUNDED BY CLEAR SPRINGS EXTENDS WEST INTO THE SW 1/4 OF NE 1/4. THE CENTER DISCHARGE CONSISTS OF A (CONT.) CONCRETE DIVERSION HEADGATE AND A 4' DIAMETER CMP INSTALLED THROUGH THE TOP OF THE NEW DIKE.

15. Basis of Claim: LICENSE
Water Right Number: 33176

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 Organizations:

I do solemnly swear or affirm that I am _____ of
_____, that I have signed the foregoing
document in the space below as _____ of
_____ and that the statements contained in the
foregoing document are true and correct.

Signature of Authorized Agent

Title and Organization

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 _____

8/01/1988

SRBA CLAIMS RECEIVING CHECKLIST

CLAIMANT'S NAME Clear Lake Trout Co.CLAIM ENT. NO. A36-02659DATE RECEIVED 9-1-88CK # 1191AMOUNT \$ ~~100~~ 1050.00

YES

NO

1. Is the name and address complete with zip code?

✓

2. Is priority date entered?

✓

Is the water use exempt from the Permit requirements, or if it is not exempt, has a Permit been approved or a License issued?

A Permit is required: (1) for groundwater developed after March 25, 1963 (except single family domestic and stockwater wells using less than 13,000 gpd), or (2) for surface water developed after May 20, 1971 (except for instream stockwater). USE CARE IF CLAIM IS RETURNED. REFER TO ADJUDICATION MEMOS # 1 (ADJ. CLAIMS/APPLICATIONS) AND # 9 (REJECTION OF CLAIMS). EXPLAIN IN COMMENTS.

3. (a) Is a source entered?

✓

(b) Is a tributary to entered? (if required)

✓

4. Is the legal description of the p.d. complete?

✓

comment

5. Is there a description of the diverting works?

✓

6. Are the water uses appropriate for the form? The short form limited domestic and stockwater. Instream stockwater must use long form.

✓

Is the period of use included?

✓

Is a quantity claimed for each use?

✓

7. Is a total quantity claimed entered?

✓

8. Is the consumptive use correct?

✓

If required is a consumptive use entered?

✓

9. Are the non-irrigation uses listed properly? If this claim is on the short form, and more than one domestic use is listed, single ownership must be stated. If not under single ownership, each household must file a separate claim. See Adjudication Memo # 4.

✓

10. Is (are) the place(s) of use entered?

✓

11. Is (are) the county(ies) entered?

✓

12. Is the ownership of p.u. checked?

✓

13. Are other water rights listed or "none" checked?

✓

14. If required, are remarks correct? (If the claimant does not own the place of use, authority for filing the claim must be explained in the remarks.)

✓

15. Is the basis of the claim checked?

✓

16. Is the claim signed by the claimant?

✓

Is the signature appropriate? (If an individual is the claimant, has that individual signed the claim, or if an organization is the claimant, is the organization signature block complete?)

✓

Has the claim been signed, sealed, and dated by a notary?

✓

Is the fee enclosed correct?

✓

If this claim is based on an existing water right, has the identification number been entered?

N/A

✓

Should this claim be receipted and data entered?

✓

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Claim checked by: CAComments: ④ See Item 10 & Map For Twn, Rng. & Sec.

*Clear Lakes
Trow*

A36-04032B
W.F. RINGERT
P.O. BOX 2773

BOISE ID 83704

A36-07167
W.F. RINGERT
P.O. BOX 2773

BOISE ID 83701

A36-02680
W.F. RINGERT
P.O. BOX 2773

BOISE ID 83701

A36-04032A
W.F. RINGERT
P.O. BOX 2773

BOISE ID 83704

A36-04032C
W.F. RINGERT
P.O. BOX 2773

BOISE ID 83704

A36-07725
W.F. RINGERT
P.O. BOX 2773

BOISE ID 83701

A36-02659
W.F. RINGERT
P.O. BOX 2773

BOISE ID 83701

A36-07004
W.F. RINGERT
P.O. BOX 2773

BOISE ID 83701

A36-10855
W. F. RINGERT
P.O. BOX 2773

BOISE ID 83701

A36-07800
W. F. RINGERT
P.O. BOX 2773

BOISE ID 83701

A36-07731
W.F. RINGERT
P.O. BOX 2773

BOISE ID 83701

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JAN 28 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

18-Jul-1990 13:51

A36-07080 *
W.F. RINGERT
P.O. BOX 2773

BOISE

ID 83701

RE: Field examination of a water right claimed
in the Snake River Basin Adjudication

Dear Counselor,

The field staff of this agency may need to conduct water right field examinations of your client's water right claim(s) during the coming season. The field examiner may be visiting your client's property to obtain information necessary to verify the water use.

If a field exam is necessary your client will be contacted directly about the examination unless you contact us otherwise. If you wish to accompany your client at the time of any field examination, or if you have any questions regarding the field examination, you may contact this office.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Allen Merritt'.

Allen Merritt, P.E.
Water Rights Supervisor

*See Attached Pages for Other Water Rights

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State of Idaho
Department of Water Resources

WATER RIGHT LICENSE

Number of Water Right No. 36-2659 Priority June 23, 1966 Amount 100.0 cfs

THIS IS TO CERTIFY, that CLEAR LAKES TROUT CO.
of Boise, Idaho, has complied with the terms and conditions of Permit
No. 36-2659 issued pursuant to Application for Permit dated September 16, 1966
and has submitted proof to the Department of Water Resources on September 9, 1977
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 180.0 cfs of water from Clear Lake Springs
tributary to Snake River, and that the permit holder has applied to a beneficial use an
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Fish Hatchery	from <u>January 1</u> to <u>December 31</u>	at <u>100.0 cfs</u> and <u>N/A</u>	
	from _____ to _____	at _____ cfs and _____	
	from _____ to _____	at _____ cfs and _____	

(both dates inclusive)

Subject, however, to the condition that no more than 100.0 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
N/A acre feet per year, said waters to be diverted within the NE $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, Sec. 2,
Twp. 9S, Rge. 14E, B.M. in the County of Gooding

Description and location of place of use:

Twp.	Range	Sec.	NE $\frac{1}{4}$				NW $\frac{1}{4}$				SW $\frac{1}{4}$				SE $\frac{1}{4}$				Totals
			NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	NE $\frac{1}{4}$	NW $\frac{1}{4}$	SW $\frac{1}{4}$	SE $\frac{1}{4}$	
9S	14E	2				X													

Facility volume equals 26 acre feet

Total number of acres irrigated _____

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NOTE: Modifications to or variance from this license must be made within the limits of Section 42-222, Idaho Code, or the applicable Idaho Law. This right may be forfeited by five years of non-use.

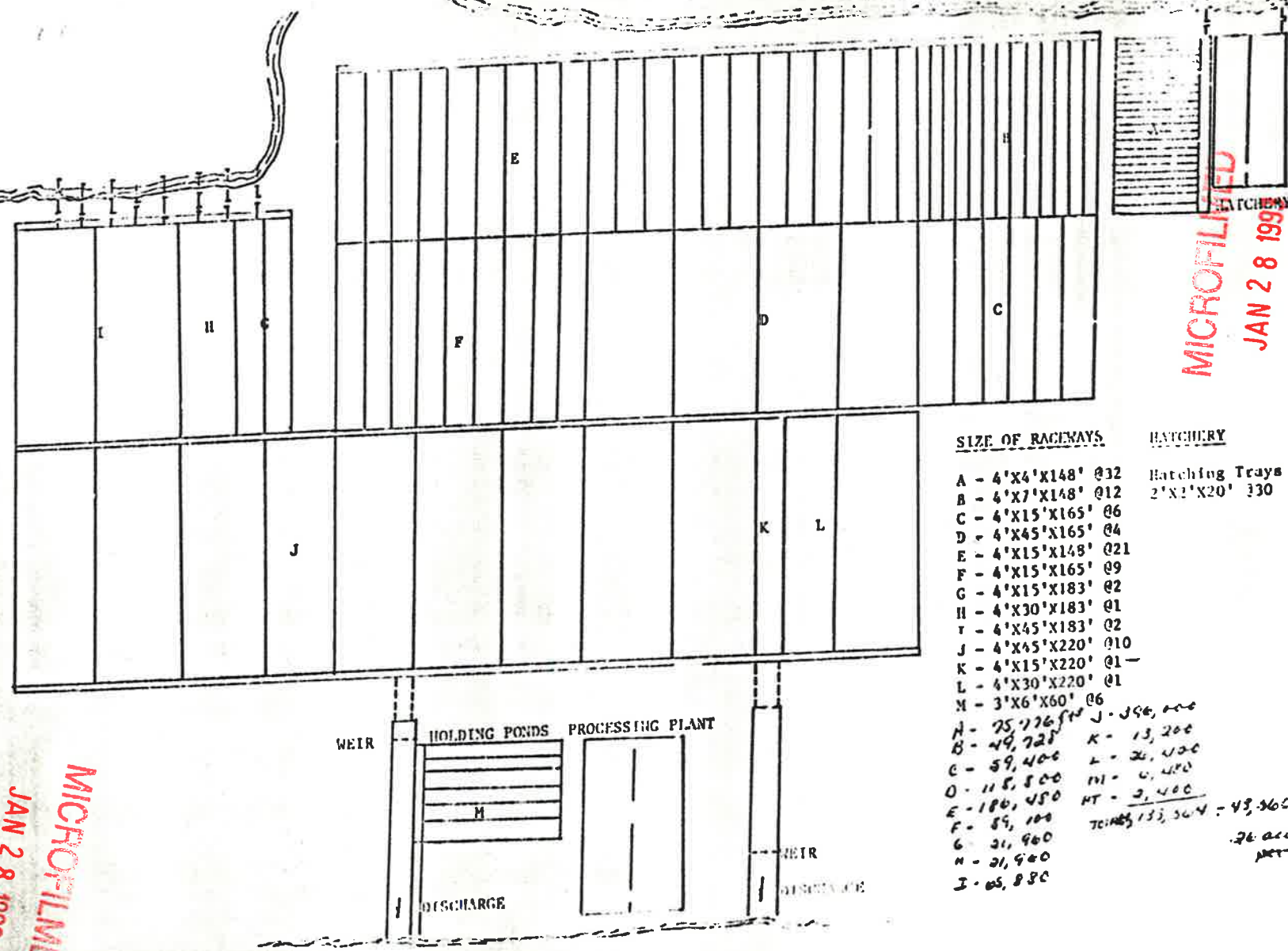
The right to the use of the water hereby confirmed is restricted and appurtenant to the lands or place of use herein described, as provided by the laws of Idaho.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 2nd day of July, 19 80.

[Signature]
Deputy Director

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JAN 28 1993



SIZE OF RACEWAYS

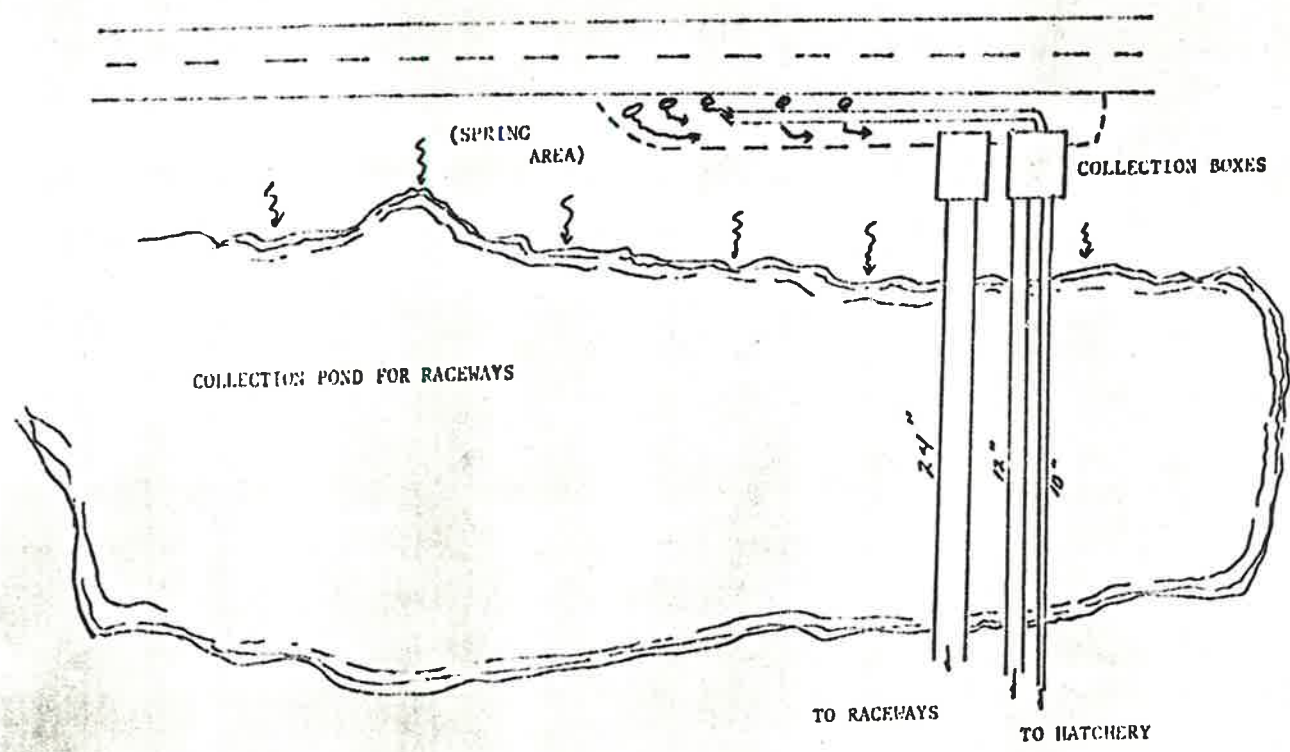
HATCHERY

- A - 4'X4'X148' @32
- B - 4'X7'X148' @12
- C - 4'X15'X165' @6
- D - 4'X45'X165' @4
- E - 4'X15'X148' @21
- F - 4'X15'X165' @9
- G - 4'X15'X183' @2
- H - 4'X30'X183' @1
- I - 4'X45'X183' @2
- J - 4'X45'X220' @10
- K - 4'X15'X220' @1
- L - 4'X30'X220' @1
- M - 3'X6'X60' @6

Hatching Trays
2'X2'X20' 330

- N - 75,176 sq ft
- O - 49,721
- P - 59,400
- Q - 118,800
- R - 180,450
- S - 89,100
- T - 31,900
- U - 31,900
- V - 65,880

J - 54,400
K - 13,200
L - 26,400
M - 0,480
N - 3,400
TOTAL 153,504 = 43,360 =
26 acre feet
per year



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JAN 28 1993

C. E. BROCKWAY P.E.
ENGINEERING CONSULTANT

Groundwater, Hydrology,
and Hydraulic Engineering

Route 1, Box 186
Kimberly, Idaho 83341
March 28, 1977

Mr. Bobby Fleenor
Idaho Department of Water Resources
373 W. Franklin
Boise, ID 83720

Dear Mr. Fleenor:

On March 22, 1977, accompanied by Mr. Hal Ward of the Clear Lakes Trout Company, I measured the total flow passing through the Clear Lakes Trout Company facility near Euhl. All flow was passing through the two 12 ft. rectangular suppressed weirs. All bypass around the weir channels was shut off including the holding pond bypass which is an 18x36" corrugated metal arch pipe. This pipe feeds the holding ponds south of the raceways. Flow was adjusted in the tail race so that both weirs were operating correctly. The west weir does not aerate when the head reading exceeds about 1.75 ft. At 2:00 p.m. on March 22nd, the following readings and discharges were measured.

Weir	Staff Gage Reading	Discharge
West	1.68	89.5
East	1.66	87.5
total		177. cfs

At this same time the Clear Springs Trout Company main inlet which is fed by the same spring source read 1.88 feet for a discharge of 206 cfs.

A check was made of the east weir performance, both aerated and non-aerated. When the weir is operating non-aerated the staff gage reading used with the standard rating curve indicates about 4.5 cfs greater discharge than is actually passing for a discharge in the 80 to 90 cfs range.

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JAN 28 1993

543-6444

Mr. Bobby Fleenor

-2-

March 28, 1977

A check was also made of the approximate capacity of the holding pond bypass. Water was diverted from the east weir through the holding pond bypass pipe resulting in a decrease in total flow through both weirs of 9.5 cfs. Therefore, it can be assumed that with the tail race regulated as it was on March 22nd, that the holding pond bypass discharges about 9.5 cfs. As I understand, it is planned to regulate the tail race so that excessive flow is not diverted to the west weir to cause non-aeration of the nappe. This weir has not been aerating since it was installed.

I hope these measurements will suffice for your determination of discharge for licensing purposes.

Sincerely,

C. E. Brockway
C. E. Brockway, P.E.

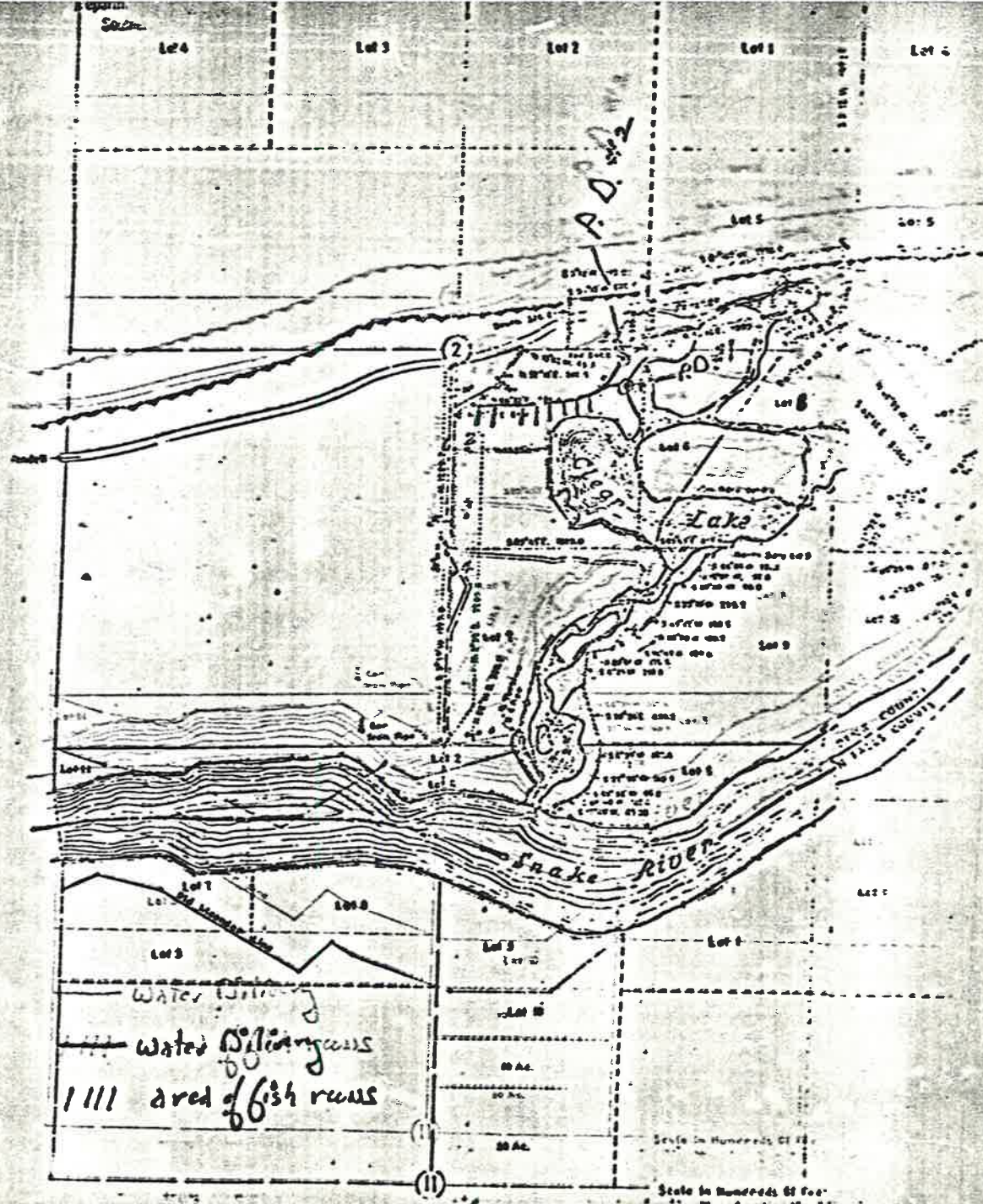
CEB:ld

enc. - Rating curve for 12 ft. Rectangular suppressed weir.

cc: Mike Steele, IDWR
Hal Ward, Clear Lakes Trout

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JAN 28 1993





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JAN 28 1993

MEMORANDUM

TO: FILE
FROM: GARY FUNDERBURG

DATE: 2/21/78

SUBJECT: 36-7004 and 36-2659

The source of water for Permit No. 36-7004 and 36-2659 is a series of springs located in the North side of the Snake River in Govt. Lot 5 (SE1/4), Govt. Lot 6 (NE1/4), Sec. 2, Twp. 9S, Rge. 14E, and used in Lot 5 (SE1/4), Lot 6 (NE1/4), of Sec. 2, Twp. 9S, Rge. 14E.

There are three methods used to divert the springs to the raceways.

1. The spring water is collected in a holding pond then diverted into the concrete raceways and discharged into the Clear Lakes.
 2. (1) 24 inch diameter steel pipe is connected to a concrete collection box at the mouth of the springs. The water is conveyed through the pipe to a concrete diversion which allows the water to be distributed to the raceways. (see diagram).
 3. The water used at the hatchery is diverted directly from the springs through (2) steel pipes. (1) 10 inch diameter and (1) 12 inch diameter. These pipes are connected to a concrete collection box at the mouth of the springs and runs into a diversion box at the hatchery building. The water is then diverted into 30 hatching trays. (see diagram R for size of trays) and can be discharged into the raceways or into the Clear Lakes.
- When the water leaves the raceways it is conveyed through (2) 12 foot concrete flumes and discharged into Clear Lakes. A 12 foot rectangular suppressed weir is built at the outlet of each flume. These weirs were designed and computed by C. E. Brockway, a Professional Engineer. Chart #1 is the curve for both weirs, and Chart #2 is the rating table for both weirs.
- Part of the spring water is used at the processing plant and discharged into Clear Lakes.

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Point of exchange: NS, Rge FW, B.M., Sec Sub 1/4 1/4 County

Lat. 1205.15 (2) Standard Reference

Total Q measured 1205.15 Method of measurement Standard Reference

Total Q recommended 100' 01" S. Meter No. 1 Type 12' Condition good

Total V recommended ✓

Recommended Amendments: SEE MEMO DATED 2/21/78

P.D. 10/15/78 Sec 2 T95 R 143 only

Place of Use NEARLY, NUTMAN, Sec 2 T95 R 143

Other None

MEASUREMENT CALCULATION:

1. $W_{100} = 1.77$ Sec. Computed from Francis formula = 97.5 cfs

2. $W_{100} = 1.46$ Sec. Computed from Francis formula = 87.5 cfs

SYSTEM DESCRIPTION:

Water used for the Fish Hatchery is conveyed from the springs through two pipes - 12" dia. & 10" dia. See Sheet #1. Water used for the Raceways is conveyed through (1) 2" dia. steel pipe, (2) 2" dia. steel conduits. See Sheet #2. The water leaves the Raceways and discharges into Clear Lake through (2) 12" concrete flumes.

REMARKS:

Charles Beckwith was present during the exam. He represents Clear Lake Trout Co.

Notes for Raceways are on Sheet #2.

Examiner's Signature

James E. Lindenberg

Date 10-31-77

Checked by

J. E. Lindenberg

Date 9-19-78

Approved by

Date

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NOV 3 - 1999

Department of Water Resources

RECEIVED

NOV 08 1999

Department of Water Resources
Southern Region

1999 NOV -1 AM 10:14

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

North Snake Ground Water District

D. Craig Lewis
University of Idaho
College of Law
6th & Rayburn Street
Moscow, ID 83843
(208) 885-6422
ISB No. 2063

'R' news modified 11-5-99.

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

In Re SRBA

Case No. 39576

Subcase Nos. 36-07071, 36-02356,
36-07210, 36-07427, 36-07720, 36-02659,
36-07004, 36-07080, and 36-07731

Notice of Appearance as Co-Counsel
(Consolidated Issues)

PLEASE TAKE NOTICE that D. Craig Lewis hereby enters his appearance as co-counsel
to represent the North Snake Ground Water District in the above-mentioned subcases.

DATED this 1st day of November, 1999.


D. Craig Lewis

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of November, 1999, I caused to be served copies of the foregoing **Notice of Appearance as Co-Counsel (Consolidated Issues)** by the method indicated:

Patrick D. Brown
109 S. Adams Street
Jerome, ID 83338
* U.S. Mail ☐ Fed Ex ☐ Hand ☐ Fax

Dan Steenson
Ringert Clark
P. O. Box 2773
Boise, ID 83701-2773
☐ U.S. Mail ☐ Fed Ex ☒ Hand ☐ Fax

Norman Semanko
John E. Robertson
Rosholt, Robertson & Tucker
P. O. Box 1906
Twin Falls, ID 83303
☐ 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

D:\1780\2\ac\CSF\3640


Dana L. Hofstetter

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AUG 31 1998

Department of Water Resources
Southern Region

RECEIVED

AUG 26 1998

Department of Water Resources

South #
DT

1998 AUG 21 PM 2:06

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

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

) Subcase Nos. 36-02659, 36-07004, 36-
) 07080 and 36-07731 (Clear Lakes)

) ORDER STAYING PROCEEDINGS ON
) CHALLENGE
)

On July 23, 1998, The North Snake Ground Water District filed a *Notice of Challenge* in the above subcases. The court has reviewed the issues to be challenged and finds them to be similar or identical to issues in other subcases currently before the Special Masters. In the interests of judicial economy, the proceedings in the above challenges are STAYED. These subcases will be reviewed when subcases in which these matters arise are completed by the Special Masters.

IT IS SO ORDERED

DATED August 21, 1998



DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

ORDER STAYING PROCEEDINGS
ON CHALLENGE

CERTIFICATE OF MAILING

I certify that a true and correct copy of the **ORDER STAYING PROCEEDINGS ON CHALLENGE** was mailed on August 24, 1998, with sufficient first-class postage to the following:

Land & Water Fund of the Rockies
PO Box 1612
Boise, ID 83701-1612

William F. Ringert
Daniel V. Steenson
PO Box 2773
Boise, ID 83701-2773

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

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

U.S. Dept of Justice
Environment & Natural Resources Div
550 West Fort Street, MSC 033
Boise, ID 83724

FAXED TO

Beeman & Hofstetter
388-8400



Deputy Clerk of the Court

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MAY - 8 1998

Department of Water Resources
Adjudication Bureau

RECEIVED

MAY 08 1998

Department of Water Resources

Clear Lakes Trout Company, Inc.

Daniel V. Steenson
Charles L. Honsinger
Ringert Clark Chartered
P.O. Box 2773
Boise, ID 83702
(208)342-4591

RECEIVED

JUN 10 1998

Department of Water Resources
Southern Region

SOUTHERN
FILES

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

)
) SUBCASE NUMBERS 36-02659, 36-07004,
) 36-07080 and 36-07731
)

) MOTION TO ALTER OR AMEND
) SPECIAL MASTER'S RECOMMENDATION
)

DESCRIPTION

This is Clear Lakes Trout Company, Inc.'s ("Clear Lakes") Motion to Alter or Amend the *Special Master's Recommendations* for water right nos. 36-02659, 36-07004, 36-07080 and 36-07731.

MOTION

Clear Lakes, through its attorneys of record, hereby respectfully moves this court to Amend the *Special Master's Recommendations* for water right nos. 36-02659, 36-07004, 36-07080, and 36-07731 for decree. Clear Lakes' reasons for so moving are set forth below.

FACTUAL BACKGROUND

On November 2, 1992, the Director of IDWR filed the *Director's Report for Reporting Area 3* recommending claim nos. 36-02659, 36-07004, 36-07080 and 36-07731. On May 29, 1993 Clear Lakes filed objections to those recommendations, in which Clear Lakes objected to

the following aspects of IDWR's recommendations:

A. Clear Lakes Objections

1. IDWR's inclusion of remarks relating to facility volume.
2. The inclusion of General Provision Number 5 stating that the Snake Plain Aquifer within Basin 36, the springs within Basin 36 that are tributary to the Snake River, and the Snake River itself will be conjunctively managed once the Director determines the nature and degree of impact that groundwater diversions within Basin 36 have upon water rights diverted from the springs, spring-fed tributaries to the Snake River, and the Snake River in Basin 36.
3. The inclusion of General Provision Number 7 providing that the Director may require measuring devices of any appropriator.
4. For water right nos. 36-02659 and 36-07004 only, a request for clarification in the remarks in the recommendations regarding the location and configuration of diversion works and the diversion of other water rights.

B. Status of Objections

The status of each of these objections is as follows:

1. Clear Lakes' objection to IDWR's inclusion of facility volume remarks was resolved after trial on a stipulated record by the *Special Master's Report* which found that such remarks were not necessary to define, clarify or administer the water rights.
2. Clear Lakes' objection to the inclusion of General Provision 5 has not yet been resolved. The SRBA court determined that this General Provision should not be included in the decree because it did not apply to "all" water rights in the SRBA. On appeal, the Idaho Supreme Court reversed the court's decision and remanded the matter for an evidentiary hearing to

determine the necessity of the conjunctive management General Provisions.

3. Clear Lakes' objection to General Provision Number 7 was resolved by the filing of an Amended Director's Report without a General Provision regarding measuring devices.

4. There is no resolution to Clear Lakes' objection requesting remarks in the recommendations of water right nos. 36-02659 and 36-07004 regarding the location and configuration of diversion works and the diversion of other water rights. The possibility of a *Motion to Alter or Amend the Special Master's Recommendation* of these rights to address this objection was discussed during a pretrial conference on December 18, 1997.

On January 8, 1998, a trial was held only on the issue of whether facility volume should be included in right nos. 36-02659, 36-07004, 36-07080, and 36-07731. On January 26, 1998, a *Preliminary Report and Recommendation* was filed which addressed only the facility volume issue. On March 3, 1998, Special Master Terrence A. Dolan issued *Special Master's Recommendations* which addressed only the facility volume issue.

ARGUMENT

The *Special Master's Recommendations* for water right nos. 36-02659, 36-07004, 36-07080 and 36-07731 should be amended to address Clear Lakes' objections which have not been resolved.

A. 36-02659, 36-07004, 36-07080, and 36-07731 (General Provision Number 5)

In its objections to the recommendations of these rights, Clear Lakes stated that the Director's Report should be held in abeyance until the Director has completed his investigation of the interconnection between groundwater and the springs from which Clear Lakes diverts, that the report should then be supplemented or amended, and that additional time should be allowed for

filing objections to groundwater claims in Basin 36. Because the recent Supreme Court opinion regarding General Provision Number 5 did not specifically address Clear Lakes' concerns, its objections remain unresolved. Clear Lakes wishes to preserve its objections to this General Provision and may wish to further pursue its objections in proceedings before the SRBA court. To protect its right to proceed on its objections, Clear Lakes respectfully requests that the Special Master either delay his issuance of *Special Master's Recommendations* for these rights until Clear Lakes' objections to General Provision Number 5 have been resolved by the court, or that he specifically note in the *Special Master's Recommendations* that Clear Lakes' objections to General Provision Number 5 are unresolved.

B. 36-02659 and 36-07004 (Points of Diversion)

The *Special Master's Recommendation* does not accurately define the location of the points of diversion for water right nos. 36-02659 and 36-07004.

1. Original Points of Diversion

The October 25, 1968 aerial photograph attached hereto as Exhibit A shows Clear Lakes' diversion and use of water under water right nos. 36-02659 and 36-07004 as originally appropriated, and diversion and use of water under water right no. 36-02708 by Clear Springs Foods, Inc. ("Clear Springs"). It is Clear Lakes' understanding that Clear Springs later appropriated water right no. 36-07218 to divert water through the same point(s) of diversion established under water right no. 36-02708.

Water discharged from the canyon wall at various locations as generally indicated by arrows in Exhibit A. These spring discharges flowed into two separate streams; one flowing to the west and to the south to Clear Lakes (marked as "Western Stream" on Exhibit A), and one

flowing to the east and to the south to Clear Lakes (marked as "Eastern Stream" on Exhibit A), both flowing around the land marked as "Clear Lakes Property." The natural elevation and contour of the land caused the water to flow in opposite directions at the approximate location marked as "1" on Exhibit A. Clear Lakes diverted water from the western stream into two fish rearing ponds at the diversion point marked as "2" on Exhibit A under water right 36-02659 with a priority date of June 23, 1966. Clear Lakes diverted water from the eastern stream into one fish rearing pond at the diversion point marked as "3" on Exhibit A under water right 36-07004 with a priority date of July 21, 1967.

2. Present Point of Diversion for 36-07004

As part of the construction of modern fish rearing raceways during the period 1969 to 1971, Clear Lakes moved the point of diversion for water right no. 36-07004 upstream of the original point of diversion in the eastern stream by constructing a dam marked as "3a" on the June, 1969 aerial photograph attached hereto as Exhibit B. The construction of this dam is shown in the photograph attached hereto as Exhibit B-1. When construction of this dam was completed, use of the original point of diversion was discontinued, and the dam diverted the entire flow of the eastern stream into the pool marked as "Pool" on the June, 1977 aerial photograph attached hereto as Exhibit C. These changes occurred during the permit stage of water right 36-07004 to fully develop the water right. The dam has diverted the entire flow of the eastern stream into the pool from the date construction of the raceways was completed to the present. The water this dam diverts from the eastern stream is commingled in the pool with water diverted pursuant to water right no. 36-02659 and flows into the Clear Lakes fish rearing facility through pipes at the southern end of the pool. This dam is the only point of diversion for water right no. 36-07004.

This dam is located in the SESENE of Section 2, Township 09S, Range 14E, and is the only point of diversion for water right no. 36-07004. Therefore, Clear Lakes respectfully requests that the Special Master remove recommended points of diversion in the SESWNE and SWSENE of Section 2, Township 09S, Range 14E from the *Special Master's Recommendation* of this right.

3. Present Points of Diversion for 36-02659

Also as part of the construction of modern fish rearing raceways, Clear Lakes added a point of diversion for water right no. 36-02659 upstream of the original point of diversion in the western stream by constructing a dam marked as "2a" on the June, 1969 aerial photograph attached hereto as Exhibit B. When construction of this dam was completed, the dam diverted a portion of the water Clear Lakes is entitled to divert under water right no. 36-02659 from the western stream into the pool marked as "Pool" on the June, 1977 aerial photograph attached hereto as Exhibit C. This dam has diverted a portion of the water Clear Lakes is entitled to divert under water right no. 36-02659 from the western stream into the pool from the date construction of the raceways was completed to the present. These changes occurred during the permit stage of water right 36-02659 to fully develop the water right. The water this dam diverts from the western stream is commingled in the pool with water diverted pursuant to water right no. 36-07004 and flows into the Clear Lakes fish rearing facility through pipes and a flume at the southern end of the pool.

This dam is located so close to the quarter quarter section lines that it is difficult for Clear Lakes to pinpoint its location within a quarter quarter section. This dam appears to be located in the SENE of Section 2, Township 09S, Range 14E. Clear Lakes requests IDWR's assistance in pinpointing the location of this diversion.

Clear Lakes has continued to divert the balance of the water it is entitled to divert from the western stream under water right no. 36-02659 through the downstream diversion structures marked as "2 on Exhibits A and B, as "2b" on the June, 1977 aerial photograph attached hereto as Exhibit C, and as "2c" on the June, 1997 aerial photograph attached hereto as Exhibit D. The diversion structure marked as "2b" on Exhibit C was installed as a result of Clear Springs' construction of the dike marked as "Clear Springs Dike" on Exhibit C. This diversion structure replaced the prior diversion structure, and consisted of a pipe and gate to control the flow of water. Water flowed to Clear Lakes through the eastern end of the Clear Springs Dike and entered Clear Lakes' raceways through pipes at the northern end of the set of five Clear Lakes raceways shown in Exhibit C. This downstream Clear Lakes diversion was replaced by the diversion marked as "2c" on Exhibit D during the early 1980s.

Clear Springs is entitled to divert water from the western stream under water right nos. 36-02708 and 36-07218. Clear Springs Trout Company (Clear Springs) has diverted water from the western stream through the dikes and flumes shown in Exhibits A, B, and C, and currently through the diversion structure marked as "2c" on Exhibit D.

This diversion structure is located so close to the quarter quarter section lines that it is difficult for Clear Lakes to pinpoint its location within a quarter quarter section. The diversion structure appears to be located in the SWNE of Section 2, Township 09S, Range 14E. Clear Lakes requests IDWR's assistance in pinpointing the location of this diversion.

There are no other points of diversion for water right no. 36-02659. The *Special Master's Recommendation* should be amended as necessary to describe only Clear Lakes' dam and the common diversion structure in the western stream.

4. 36-02659 and 36-07004 (Remarks)

Remarks should be included in the *Special Master's Recommendations* to provide proper definition and administration of Clear Lakes' water rights consistent with development and diversion of the water rights described above. Water right no. 36-07004 has always been diverted exclusively from the eastern stream. No other water right has ever been diverted from the eastern stream. Clear Springs has not established any entitlement and has never attempted to divert water from the eastern stream. Water right no. 36-02659 has always been diverted exclusively from the western stream, originally through one, and later through two diversion points. Clear Springs' water right nos. 36-02708 and 36-07218 are also diverted from the western stream, through the common diversion structure shown in Exhibit D. Definition and administration of water right no. 36-07004 as if it were diverted from the same source as Clear Lakes' water right no. 36-02659 and Clear Springs' water right nos. 36-02708 and 36-07218 does not accurately describe Clear Lakes' water rights and will, in effect, improperly subordinate water right no. 36-07004 to Clear Lakes' water right no. 36-02659 and Clear Springs' water right no. 36-02708. Although water right no. 36-07004 is junior to water right nos. 36-02659 and 36-02708 by priority date, it is not subject to curtailment to satisfy those rights because it is the only water right established in and diverting from the eastern stream, which is a separate source of water.

To correctly define and ensure proper administration of Clear Lakes' water rights, Clear Lakes respectfully requests that the following remarks be added to the *Special Master's*

Recommendation of the description for water right number 36-07004:

ALL OF THIS WATER RIGHT AND A PORTION OF WATER RIGHT NO. 36-02659 ARE DIVERTED INTO A COMMON COLLECTION POOL. WATER IS DIVERTED INTO THE POOL UNDER THIS RIGHT BY A DAM LOCATED AT THE EASTERN

END OF THE POOL.

THE SOURCE OF THIS WATER RIGHT IS SEPARATE FROM THE SOURCE OF WATER RIGHT NOS. 36-02659, 36-02708, AND 36-07218. NO OTHER WATER RIGHT IS DIVERTED FROM THE SOURCE OF THIS WATER RIGHT.

THE DIVERSIONS OF THIS RIGHT AND WATER RIGHT NO. 36-02659 ARE MEASURED COLLECTIVELY AT THE POINTS OF DISCHARGE FROM THE FISH REARING FACILITY.

Clear Lakes Trout Company respectfully requests that the following remarks be added to the description for water right number 36-02659:

A PORTION OF THIS WATER RIGHT AND ALL OF WATER RIGHT NO. 36-07004 ARE DIVERTED INTO A COMMON COLLECTION POOL.

THE POINTS OF DIVERSION OF THIS WATER RIGHT ARE A DAM LOCATED AT THE WESTERN END OF THE COLLECTION POOL (UPSTREAM DIVERSION), AND A DOWNSTREAM DIVERSION STRUCTURE WHICH ALSO DIVERTS WATER FOR WATER RIGHT NOS. 36-02708 AND 36-07218.

THE SOURCE OF THIS WATER RIGHT IS THE SAME AS THE SOURCE OF WATER RIGHT NOS. 36-02708 AND 36-07218.

THE DIVERSIONS OF THIS RIGHT AND WATER RIGHT NO. 36-07004 ARE MEASURED COLLECTIVELY AT THE POINTS OF DISCHARGE FROM THE FISH REARING FACILITY.

The addition of these remarks to the *Special Master's Recommendations* of water right nos. 36-02659 and 36-07004 will clarify and facilitate proper administration of these rights, and will resolve Clear Lakes' objections requesting remarks regarding the location and configuration of diversion works through which these water rights are diverted.

5. Relationship to Pending Subcase Nos. 36-02708, 36-07210, and 36-07218

The possibility of a *Motion to Alter or Amend* the *Special Master's Recommendation* of these rights to address Clear Lakes' objections regarding remarks pertaining to the location and

configuration of the diversions for water right nos. 36-02659 and 36-07004 was discussed during a pretrial conference on December 18, 1997. Counsel for Clear Lakes advised the Special Master that these objections related to Clear Lakes' objections to Clear Springs water right nos. 36-02708 and 36-07218. At that time, it was counsel's belief that these objections could be resolved by stipulation. It has become clear that no such resolution is possible.

Clear Lakes' objections regarding the location and configuration of the diversion works for water right nos. 36-02659 and 36-07004 are directly related to Clear Lakes' objections to Clear Springs water right nos. 36-02708 and 36-07218, which are scheduled for trial on July 6-7, 1998. Clear Lakes is providing Clear Springs and Special Master Haemmerle copies of this motion, and requests that the Special Master hold a status conference including Clear Springs to discuss whether Clear Lakes' diversion objections in Subcase Nos. 36-02659 and 36-07004 should either be stayed pending the outcome of Subcase Nos. 36-02708 and 36-07218, or consolidated into those subcases.

DATED this 7th day of May, 1998.

Ringert Clark Chartered



Daniel V. Steenson

STATE OF IDAHO)
)ss.
County of ADA)

EARL HARDY, President of Clear Lakes Trout Company, being first duly sworn, deposes and states that he has read the foregoing MOTION TO AMEND SPECIAL MASTER'S RECOMMENDATION, knows he contents thereof, and believes the facts therein stated to be true.

Earl Hardy
Earl Hardy

SUBSCRIBED AND SWORN to before me this 7th day of May, 1998.



Kim A. White
Notary Public for Ada County
Residing at 1200 N. 200th St.
My Commission Expires: 04/20/01

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing document was mailed on May 7, 1998, with sufficient first-class postage to the following:

Josephine Beeman
Beeman & Hofstetter
608 W. Franklin St.
Boise, Idaho 83702

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

Director of IDWR
Box 83720
Boise, Idaho 83720



Person mailing documents

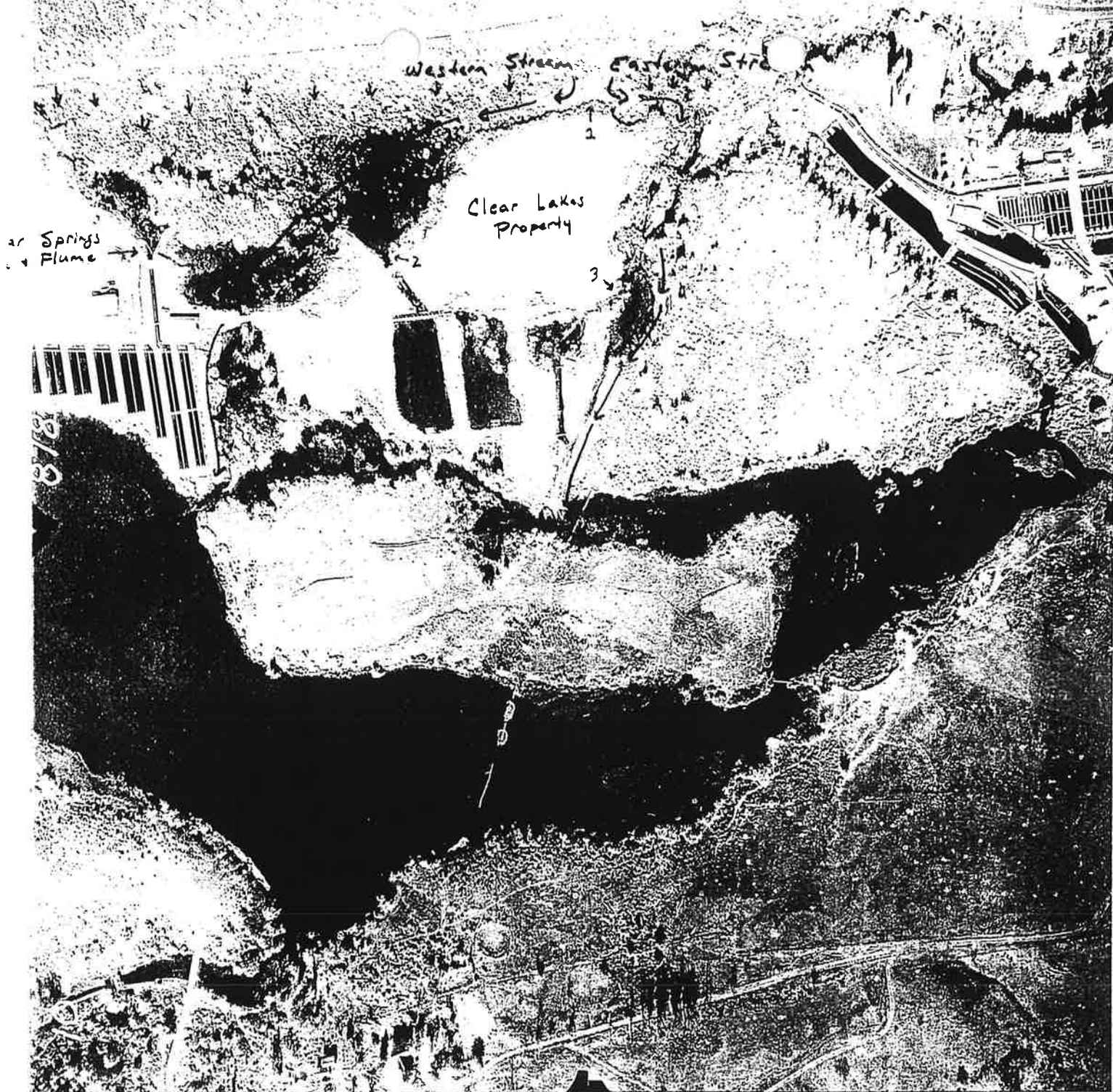


Exhibit A



Exhibit B



Exhibit B-1



Exhibit C



Exhibit D

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MAY 07 1998

OFFICE OF THE
ATTORNEY GENERAL

MAIL 13990



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MAY - 8 1998

Department of Water Resources
Adjudication Bureau

1998 MAY - 5 PM 1:10

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

Subcases 36-02659, 36-07004, 36-07080
and 36-07731

ORDER GRANTING MOTION FOR
EXTENSION

RECEIVED

JUN 10 1998

Department of Water Resources
Southern Region

A *Special Master's Report* for the above four (4) claims, with *Recommendations for Partial Decrees* attached, was entered on March 3, 1998. The *Report* was published in the Docket Sheet issued on April 6, 1998, so motions to alter or amend were due on April 27, 1998, or twenty-one (21) days later.

On April 24, 1998, claimant Clear Lakes Trout Company, Inc., filed its *Motion for Extension of Time to File Motion to Alter or Amend Special Master's Recommendation*. In support of its *Motion*, Clear Lakes stated: "Additional factual information recently obtained by counsel for Clear Lakes and the Supreme Court's April 22, 1998 decision on reargument and rehearing of Basin-Wide Issue No. 5 affects the motion and must be incorporated into the motion." Clear Lakes is the only party to the subcases.¹

For good cause shown, THEREFORE, IT IS ORDERED that Clear Lakes' *Motion* is granted. If it so chooses, Clear Lakes shall file a motion to alter or amend no later than May 8, 1998.

DATED May 5, 1998.

TERRENCE A. DOLAN

Special Master

Snake River Basin Adjudication

¹ The North Snake Ground Water District filed a *Motion to Alter or Amend* in these four (4) subcases on April 28, 1998. However, there remains an issue of whether the *Motion* is timely filed because no documents or brief were filed with the *Motion*. *SRBA Administrative Order 1, Rules of Procedure* (Amended 10/16/97), paragraph 6, f(4), (a), page 12.

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER GRANTING MOTION FOR EXTENSION was mailed on May 5, 1998, with sufficient first-class postage to the following:

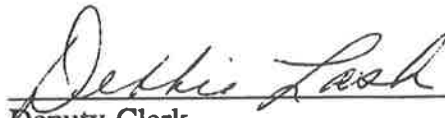
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 44449
Boise, ID 83711-4449

Director of IDWR
Box 83720
Boise, Idaho 83720-0098

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

United States Department of Justice
550 West Fort Street, MSC 033
Boise, Idaho 83724

Josephine Beeman
Box 1427
Boise, Idaho 83701-1427


Deputy Clerk

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MAY 07 1998

OFFICE OF THE
ATTORNEY GENERAL

MAIL13991



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MAY - 8 1998

Department of Water Resources
Adjudication Bureau

1998 MAY -5 PM 2:33

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

) Subcases 36-02356, 36-07210, 36-07427
) and 36-07720

) ORDER SETTING DEADLINE FOR
) BRIEFS
)

RECEIVED

JUN 10 1998

Department of Water Resources
South

On November 25, 1997, a *Special Master's Report*, with *Recommendations for Partial Decrees* attached, was entered in the above four subcases. However, on December 16, 1997, claimant Blue Lakes Trout Farm, Inc., filed a *Motion to Alter or Amend* in one of the subcases-36-02356.

An *Order Granting Motion to Alter or Amend* was entered on March 10, 1998, increasing the annual volume for domestic use from 1.2 afy to 2.4 afy and also increasing the total annual volume for the right from 72,242.29 afy to 72,243.49 afy. Because the four subcases are integral to one another, an *Amended Special Master's Report*, with *Recommendations for Partial Decrees* attached, was entered on March 18, 1998, for all four subcases.¹

On April 28, 1998, the North Snake Ground Water District filed a *Motion to Alter or Amend* in all four subcases because the *Recommendations* did not include facility volume. No documents or briefs in support of the *Motion* were filed with the *Motion*.

The District's *Motion* raises three questions which need to be answered:

1. Whether the District's *Motion* has been properly filed when documents and briefs in support of the *Motion* were not filed with the *Motion*,²

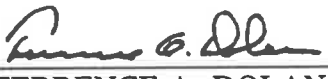
¹ Only the *Recommendation* for 36-02356 was amended in conformance with the March 10, 1998 *Order Granting Motion to Alter or Amend*.

² "All documents and briefs in support of a motion shall be filed with the motion and served on the parties...." *SRBA Administrative Order 1, Rules of Procedure*, paragraph 6, f (4) (a), page 12.

2. Whether the District may file a second *Motion to Alter or Amend* in 36-02356.³ and
3. Whether the deadline has expired to file a motion to alter or amend the November 25, 1997 *Report* in 36-07210, 36-07427 and 36-07720.

THEREFORE, IT IS ORDERED that, if Blue Lakes Trout Farm, Inc., and the North Snake Ground Water District so choose, they shall file with the SRBA Court briefing on the questions no later than **Friday, June 5, 1998**. After that date, the Special Master will consider the questions submitted for final determination.

DATED May 5, 1998.


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER SETTING DEADLINE FOR BRIEFS was mailed on May 5, 1998, with sufficient first-class postage to the following:

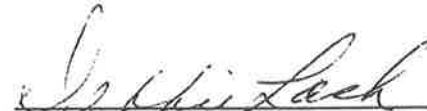
Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
Box 44449
Boise, ID 83711-4449

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

Director of IDWR
Box 83720
Boise, Idaho 83720-0098

Josephine Beeman
Box 1427
Boise, Idaho 83701-1427

Norman M. Semanko
Box 1906
Twin Falls, Idaho 83303-1906


Deputy Clerk

³ "No second *Motion to Alter or Amend* may be filed on the decision granting or denying a *Motion to Alter or Amend*. SRBA Administrative Order 1, Rules of Procedure, paragraph 13, b, page 20.



State of Idaho

DEPARTMENT OF WATER RESOURCES

1341 Fillmore Street, Suite 200, Twin Falls, ID 83301-3380

Phone: (208) 736-3033 FAX: (208) 736-3037

July 9, 1998

PHILIP E. BATT
GOVERNOR

KARL J. DREHER
DIRECTOR

PATRICK D BROWN
PARKER WARR & BROWN LLP
812 SHOSHONE ST E
TWIN FALLS ID 83301

Re: SRBA claim files 36-02659 and 36-07004
Clear Lakes Trout Co. Inc.

Dear Mr. Brown:

The attached copies of the above claim files are the
complete copies of our files as of July 9, 1998.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Trish Fawcett', written in dark ink.

Trish Fawcett
Technical Records Specialist

/tf

April 14, 1998

NOTE TO FILE

FROM: V.Hancock

CLAIM NO: 36-02659 -07004 -07080 -07731 -02356 -07210 -07427
and 36-07720

Matt Howard requested copies of these entire files. Sent copies to him at Beeman and Hoffstetter this date.

March 27, 1998

NOTE TO FILE

FROM: V.Hancock

CLAIM NO: A36-02659, -02708, -07004, -07201, -07218

Charlie Honsinger of Ringert & Clark requested entire copies of the above files. They were copied and send to him this date.

6/9/94

COMMUNICATION DOCUMENTATION

Claim No. SEE BELOW

This form is to be used to document public record information requests regarding any SRBA claim or claims. The form may also be used to document IDWR communications requesting information regarding any SRBA claim or claims when the request is not made in writing or the claim verification report is not readily available to document the request. This form is to be filed in all relevant claim files or a central office file.

IDWR Employee/Agent Steve Clelland

March 20, 1998 12:00pm

NAME:
CHARLIE HONSINGER & DAN STEENSON

RE:
POD QUESTIONS

THEY DISCUSSED THE CLEAR SPRINGS/CLEAR LAKES POINT OF DIVERSION ISSUE AND THE PROPOSED REMARK LANGUAGE TO CLARIFY THE USES. I UNDERSTAND THE DESIRED RESULTS THEY ARE AFTER AND THE FLEXIBILITY UNDER WHICH THE RIGHTS WERE DEVELOPED. IT APPEARS SINCE THE STIPULATION BETWEEN THE PARTIES IS NO LONGER IN PLACE A MORE RIGID DESCRIPTION OF THE RIGHTS MUST BE WRITTEN.

OPTIONS ARE; 1) TREAT THE SITE AS ONE SOURCE, ONE DIVERSION AND DELIVER ALL RIGHTS BY PRIORITY, 2) TREAT THE SITE AS ONE SOURCE BUT WITH TWO DISTINCT POD'S, THEN ASSIGN A PORTION OF THE 100 CFS RIGHT TO BE COMMITTED TO EACH RESPECTIVE DIVERSION. I BELIEVE THIS IS THE CORRECT APPROACH.; 3) PERHAPS UNDER THE #2 OPTION A SEPARATE RIGHT WAS DEVELOPED FOR THE EAST POD SOURCE IN ADDITION TO THE 75 CFS ALREADY LICENSED AND THE 100 CFS IS USED EXCLUSIVELY FROM THE WESTERN POD. THESE ARE SIMPLY POSSIBLE OPTIONS TO CONSIDER IN RESOLVING THE DISPUTE HERE.

SUGGESTED THEY DISCUSS THIS WITH TIM LUKE TO GET A DIFFERENT PERSPECTIVE ON HOW TO SETTLE.

CLAIMS: A36-02659 & A36-07004

Water Right Number 36-07004

Remarks: THE SPRING FLOWS FROM WHICH WATER RIGHT NUMBER 36-07004 IS DIVERTED ARE DIVIDED INTO TWO SEPARATE FLOWS: ONE TO THE WEST AND ONE TO THE EAST. WATER RIGHT NUMBER 36-07004 IS DIVERTED EXCLUSIVELY FROM THE EASTERN FLOW.

Water Right Number 36-02659

Remarks: THE SPRING FLOWS FROM WHICH WATER RIGHT NUMBER 36-02659 IS DIVERTED ARE DIVIDED INTO TWO SEPARATE FLOWS: ONE TO THE WEST AND ONE TO THE EAST. WATER RIGHT NUMBER 36-02659 IS DIVERTED FROM BOTH FLOWS. THE PORTION OF WATER RIGHT NUMBER 36-02659 THAT IS DIVERTED FROM THE EASTERN FLOW AT THAT FLOW RATE THAT EXCEEDS THE 75.0 CFS DIVERTED PURSUANT TO WATER RIGHT NUMBER 36-07004. THE REMAINDER OF WATER RIGHT NUMBER 36-02659 IS DIVERTED FROM THE WESTERN FLOW.

Proposed
Language
from Charlie H.
see 3/19/98

RECEIVED

RECEIVED

MAR 06 1998

MAR 04 1998

1998 MAR -3 PM 2: 28

Department of Water Resource
Southern Region

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

Subcases 36-02659, 36-07004, 36-07080
and 36-07731

Case No. 39576

SPECIAL MASTER'S REPORT

FINDINGS OF FACT

CLAIMS AND DIRECTOR'S REPORT

36-02659

Clear Lakes Trout Company, Inc. (Clear Lakes), filed a *Notice of Claim to a Water Right* under 36-02659 for 100 cfs from Clear Lakes Springs for year 'round fish propagation based on a license. The claimed priority date is June 23, 1966. On November 2, 1992, the Director of the Idaho Department of Water Resources filed his *Director's Report for Reporting Area 3 (Basin 36)* recommending the claim as filed. However, under "remarks," the Director included the language: "facility volume 26 af." Similar language was in the license.

On April 29, 1993, the claimant filed its *Objection* in this subcase, as well as the other three subcases, to the inclusion of facility volume and general provisions. Each of the Director's *Responses to Objections* proposed no changes to his recommendations. The single contested issue in all four subcases is whether facility volume should be decreed by the SRBA Court for fish propagation water rights.

36-07004

Clear Lakes filed a claim under 36-07004 for 75 cfs from Clear Lakes Springs for year 'round fish propagation with a priority date of July 21, 1967, based on a license. Again, the Director recommended the claim as filed, but with the remark: "facility volume 26 af."

36-07080

Clear Lakes filed a claim under 36-07080 for 11.54 cfs from "springs" for year 'round fish propagation with a priority date of August 22, 1969, based on a license. The Director recommended

this claim as filed, but with the remark: "**facility volume 7.7 af.**" Similar language was in the license. The Director also included the remark: "Return flow shall be treated to insure that the effluent meets Idaho water quality standards." A similar remark was in the license.

36-07731

Clear Lakes filed a claim under 36-07731 for 18 cfs from "springs" for year 'round fish propagation with a priority date of July 8, 1977, based on a permit.¹ The Director recommended 15 cfs and included the remark: "**facility volume 2.5 af.**" The Director also included the following remark: "Return flow if discharged to a surface water system shall meet Idaho water quality standards. This language, plus the facility volume remark, were in the license.

PRE-TRIAL STIPULATION

On January 7, 1988, Clear Lakes and IDWR filed a *Stipulation* covering all four subcases. The *Stipulation* provided, in relevant parts:

1. Copies of Clear Lakes' licenses in all four subcases are part of the record;
2. The facts in the Blue Lakes subcases² and Clear Lakes' subcases, relevant to the issue of facility volume, are not materially different;
3. The issue of facility volume can be decided based on the record in the Blue Lakes subcases, plus Clear Lakes' licenses for its four claims; and
4. Two of Clear Lakes' subcases, in which the licenses contained a remark about compliance with Idaho water quality standards (36-07080 and 36-07731), may be decreed without such remark.

TRIAL

Trial was held on January 8, 1998, at the SRBA Courthouse in Twin Falls, Idaho. Daniel V. Steenson appeared for Clear Lakes and Charles L. Honsinger appeared for IDWR. Based on the *Stipulation*, no witnesses or exhibits were offered beyond the record in the Blue Lakes subcases and Clear Lakes' licenses. Clear Lakes requested and was granted permission to lodge a post-trial memorandum no later than January 23, 1998. No memorandum was filed by that date.

BLUE LAKES RECORD

The record in the Blue Lakes subcases consisted of testimony by three witnesses, plus twenty exhibits. David R. Tuthill, Jr., IDWR's Adjudication Bureau Chief, testified at length in support of

¹ A license for 36-07731 was issued on September 30, 1992-- after the SRBA claim was filed.

² Clear Lakes participated in the trial of subcases 36-02356, 36-07210, 36-07427 and 36-07720 on September 4, 1997. Blue Lakes Trout Farm, Inc. (Blue Lakes), was the claimant. The single contested issue in those subcases was the same as the present subcases-- whether facility volume should be decreed by the SRBA Court for fish propagation water rights. A *Special Master's Report* and attached *Recommendations* were entered on November 25, 1997. The *Report* concluded that facility volume is *not* necessary for definition or clarification of Blue Lakes' rights or for efficient administration of the rights by the Director.

inclusion of facility volume in fish propagation rights. James E. Parsons, research and technical director at Blue Lakes Trout Farm, testified against inclusion of facility volume. Clear Lakes called Harold Johnson, office manager of Idaho Trout Processors, the processing and sales company for trout raised at several hatcheries, including Clear Lakes, Rimview, Rainbow, White Springs and Fisheries Development. Mr. Johnson also spoke against inclusion of any facility volume remark.

A complete review of the Blue Lakes record will not be made here. Rather, the evidence will be summarized.

David R. Tuthill, Jr.

Mr. Tuthill said that IDWR recommended facility volume based on the Director's statutory duty to determine elements appropriate and proper "to define and administer the water rights acquired under state law." I.C. §42-1411 (2). Included among those elements are remarks "necessary for definition of the right, for clarification of any element of a right, or for administration of the right by the director." I.C. §42-1411 (2) (j).

Mr. Tuthill said that for an accurate, appropriate determination of the extent of beneficial use, the quantity element required three "parameters:" 1) rate of flow, 2) total volume diverted and 3) facility volume. He said IDWR has included facility volume in licenses since 1979, primarily because of "the impact of fish propagation facilities on each other relative to water quality"³ on Billingsley Creek.

Mr. Tuthill agreed that authority to regulate water quality is primarily vested in the Idaho Department of Health and Welfare, Division of Environmental Quality (DEQ). However, he felt that IDWR has the responsibility to establish benchmarks from which to evaluate changes in water quality. Mr. Tuthill cited the Idaho Supreme Court decision in *Shokal v. Dunn*⁴ as mandating IDWR's consideration of water quality, even though IDWR has not adopted its own standards or rules governing water quality.

James E. Parsons

Mr. Parsons, research and technical director for Blue Lakes Trout Farm, said that before any fish propagation facility can be expanded, the owner must prove to DEQ that the enlarged facility will meet National Pollutant Discharge Elimination System (NPDES) guidelines. He guessed that Blue Lakes' facility will have to be expanded in the future to meet higher water quality standards.

³ Report Regarding IDWR's Recommendation of Fish Propagation Facility Volume Pursuant to Claim to Water Right Nos. 36-02356, 36-07210, 36-07427, 36-07720 [Blue Lakes subcases], p. 4, paragraph 13.

⁴ 109 Idaho 330, 707 P.2d 441 (1985).

Harold Johnson

Mr. Johnson, office manager of Idaho Trout Processors, said that Clear Lakes' hatchery and Blue Lakes' are very similar. DEQ comprehensively regulates hatchery discharges through its "Water Quality Standards and Wastewater Treatment Requirements." Hatcheries incur a substantial expense to meet those standards. If IDWR imposes its own standards, hatcheries will have to endure additional costs and delays when they change their operations. Mr. Johnson said there are no disputes about water quality between fish propagators along Billingsley Creek.

CONCLUSIONS OF LAW

The record in the Blue Lakes subcases, plus the licenses issued to Clear Lakes for the present claims, comprise sufficient evidence to overcome the *prima facie* weight given the *Director's Report*.⁵ Facility volume is not necessary for definition or clarification of Clear Lakes' fish propagation water rights or for efficient administration of the rights by the Director.

IDWR's main concern to include facility volume in fish propagation water rights is water quality. But control of water quality is the responsibility of DEQ which comprehensively occupies the field. If the SRBA Court were to include facility volume in Clear Lakes' water rights as the Director recommended, nothing would change. DEQ enforces water quality standards and IDWR routinely defers to DEQ's expertise. Whether a fish facility remains the same or is changed in any way, it must still comply with DEQ's water quality standards.

IDWR has the authority to consider whether the design of any particular facility will meet all environmental requirements:

We believe this to be a correct assessment of the law, but add a word of caution regarding the differing functions of Water Resources [IDWR] and the Department of Health and Welfare [DEQ]. Water Resources must oversee the water resources of the state, insuring that those who have permits and licenses to appropriate water use the water in accordance with the conditions of the permits and licenses and the limits of the law. It is not the primary job of Water Resources to protect the health and welfare of Idaho's citizens and visitors-- that role is vested in the Department of Health and Welfare, including compliance with the water quality regulations and monitoring effluent discharge in our state's water-ways.

Shokal v. Dunn, 109 Idaho at 340-341, 707 P.2d at 451-452.

PRELIMINARY REPORT AND RECOMMENDATION

A *Preliminary Report and Recommendation* was filed on January 26, 1998. No one filed a motion to alter or amend.

⁵ The Director's recommendations of water right claims are entitled to *prima facie* weight. I.C. §42-1411 (4). Unless that evidentiary presumption is overcome by the evidence, the facts set forth in the *Director's Report* are established. *In Re SRBA Case No. 39576*, 128 Idaho 246, 256, 912 P.2d 614, 624 (1995).

RECOMMENDATION

It is recommended that Clear Lakes Trout Company, Inc., be decreed water rights as described in the *Special Master's Recommendations for Partial Decrees for Water Rights 36-02659, 36-07004, 36-07080 and 36-07731*.

DATED March 3, 1998.



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the SPECIAL MASTER'S REPORT was mailed on March 3, 1998, with sufficient first-class postage to the following:

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

Director of IDWR
Box 83720
Boise, Idaho 83720-0098

Daniel V. Steenson
Box 2773
Boise, Idaho 83701



Deputy Clerk

RECEIVED

MAR 04 1998

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

Department of Water Resources

In Re SRBA)
Case No. 39576)
_____)

SPECIAL MASTER'S RECOMMENDATION FOR
PARTIAL DECREE FOR
Water Right 36-02659

1998 MAR -3 PM 2:28

FILED *[Signature]*
TWIN FALLS, IDAHO

NAME & ADDRESS: CLEAR LAKES TROUT CO INC
1301 VISTA AVE
BOISE ID 83705

SOURCE: SPRINGS TRIBUTARY: CLEAR LAKES

QUANTITY: 100.00 CFS

USE OF THIS RIGHT AND RIGHT NO. 36-07004 IS LIMITED TO THE
TOTAL COMBINED RATE OF DIVERSION OF 175 CFS.

PRIORITY DATE: 06/23/1966

POINT OF DIVERSION: T09S R14E S02 SESWNE Within GOODING County
LOT 5 (SWSENE)
LOT 5 (SESENE)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	FISH PROPAGATION	01-01 12-31	100.00 CFS

PLACE OF USE: FISH PROPAGATION Within GOODING County
T09S R14E S02 Lot 5 (SENE) Lot 6 (NESE) Lot 8 (NESE)

DATED: 3.3.98

[Signature]
TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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MAR 04 1998

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

SPECIAL MASTER'S RECOMMENDATION FOR

PARTIAL DECREE FOR

Water Right 36-07004

1998 MAR -3 PM 2:21

DISTRICT
TWIN FALLS
FILED

NAME & ADDRESS: CLEAR LAKES TROUT CO INC
1301 VISTA AVE
BOISE ID 83705

SOURCE: SPRINGS TRIBUTARY: CLEAR LAKES

QUANTITY: 75.00 CFS

THIS RIGHT AND RIGHT NO. 36-02659 IS LIMITED TO THE TOTAL
COMBINED RATE OF DIVERSION OF 175 CFS.

PRIORITY DATE: 07/21/1967

POINT OF DIVERSION: T09S R14E S02 SESWNE Within GOODING County
LOT 5 (SWSENE)
LOT 5 (SESENE)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	FISH PROPAGATION	01-01 12-31	75.00 CFS

PLACE OF USE: FISH PROPAGATION Within GOODING County
T09S R14E S02 Lot 5 (SENE) Lot 6 (NESE) Lot 8 (NESE)

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

A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE
MAINTAINED AS A PART OF THE DIVERTING WORKS.

DATED: 3.3.98



TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

RECEIVED

MAR 04 1998

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS
Department of Water Resources

In Re SRBA

Case No. 39576

SPECIAL MASTER'S RECOMMENDATION FOR

PARTIAL DECREE FOR

Water Right 36-07080

1998 MAR -3 PM 2:29

FILED

NAME & ADDRESS: CLEAR LAKES TROUT CO INC
1301 VISTA AVE
BOISE ID 83705

SOURCE: SPRINGS TRIBUTARY: BILLINGSLEY CREEK

SOURCES ARE ALSO KNOWN AS BIG POND SPRINGS, RUBY SPRINGS,
STEVEN SPRING, LEACH SPRING AND RAVENSCROFT SPRING.

QUANTITY: 11.54 CFS

PRIORITY DATE: 08/22/1969

POINT OF DIVERSION: T07S R13E S12 S13
SWESE
NENENE
NWNENE
SENE
Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	FISH PROPAGATION	01-01 12-31	11.54 CFS

PLACE OF USE: FISH PROPAGATION Within GOODING County
T07S R13E S13 NENE

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

A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE
MAINTAINED AS A PART OF THE DIVERTING WORKS.

DATED: 3.3.98


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

SPECIAL MASTER'S RECOMMENDATION
Water Right 36-07080

PAGE 1
FEB-9-1998

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

SPECIAL MASTER'S RECOMMENDATION FOR

PARTIAL DECREE FOR

Water Right 36-07731

1998 MAR -3 PM 2:29

DISTRICT COURT
TWIN FALLS, IDAHO
FILED *RL*

NAME & ADDRESS: CLEAR LAKES TROUT CO INC
1301 VISTA AVE
BOISE ID 83705

SOURCE: SPRINGS TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 15.00 CFS
10745.2 AFY

PRIORITY DATE: 07/08/1977

POINT OF DIVERSION: T07S R13E S13 NENENE Within GOODING County
NWNENE
SENE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
FISH PROPAGATION		01-01 12-31	15.00 CFS 10745.2 AFY

PLACE OF USE: FISH PROPAGATION Within GOODING County
T07S R13E S13 NENE NWNE

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

A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE
MAINTAINED AS A PART OF THE DIVERTING WORKS.
THIS WATER RIGHT DOES NOT AUTHORIZE ANY ENLARGEMENT IN THE
PHYSICAL DIMENSIONS OF THE RACEWAYS.

DATED: 3.3.98

Terrence A. Dolan
TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

RECEIVED

MAR 04 1998

Department of Water Resources

1998 MAR -3 PM 2:29

FILED
SRBA
03/03/98

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)
_____)

NOTICE OF ISSUANCE OF
SPECIAL MASTER'S
RECOMMENDATION

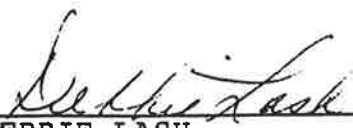
Water Right(s): 36-02659
36-07004 36-07080 36-07731

On March 03, 1998, Special Master TERRENCE A. DOLAN issued a SPECIAL MASTER'S RECOMMENDATION for the above subcase(s) pursuant to SRBA Administrative Order 1 (AO1), Section 13a.

Pursuant to SRBA Administrative Order 1, Section 13a, any party to the adjudication including parties to the subcase, may file a Motion to Alter or Amend on or before the 28th day of the next month.

Failure of any party in the adjudication to pursue or participate in a Motion to Alter or Amend the SPECIAL MASTER'S RECOMMENDATION shall constitute a waiver of the right to challenge it before the Presiding Judge.

DATED March 03, 1998.



DEBBIE LASH
Deputy Clerk

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. 36-02659 -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 LAKES TROUT CO INC
Address: 1301 VISTA AVENUE
BOISE ID 83705

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

11. ☒ Remarks: I respond to the objection concerning the
"remarks" listed with the water right.
14. ☒ Other: I respond to the objection concerning:
GENERAL PROVISIONS 5 & 7

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection item 11.1, and all allegations of the objection regarding this item, IDWR responds as follows.

Idaho Code section 42-1411(2) provides that the director's recommendation 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.

In response to Statement of the Objection item 11.2, and all allegations of the objection regarding this item, IDWR responds as follows.

Right nos. 36-07201, 36-02708, 36-07218, 36-07004, and

36-02659 are all diverted from the same complex of hydrologically-connected springs tributary to Clear Lakes. Two of these rights, nos. 36-02708 and 36-07218, are diverted for use in the Clear Springs Foods facility, by means of a ditch/pond which collects the flow of springs in the center of the spring complex. Right nos. 36-07004 and 36-02659 are diverted for use in the Clear Lakes Trout facility, in part by means of the same ditch/pond, and in part by means of a ditch/pond that collects the flow of springs in the eastern part of the spring complex. Right nos. 36-07201 is diverted for use in the Clear Springs Food facility, by means of pipes from two springs in the western part of the spring complex. The remarks correctly reflect that right no. 36-02659 and 36-07004 share the same diversions, and that right nos. 36-07218 and 36-02708 share a portion of the same diversions, and are sufficient for purposes of distribution of water by a watermaster.

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

IDWR denies this portion of the objection.

CHANGES TO THE DIRECTOR'S REPORT

The director proposes no changes to the description of this claim in the Director's Report.

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

	No. of Pages
Notice of Claim No. A36-02659	5

(Over)

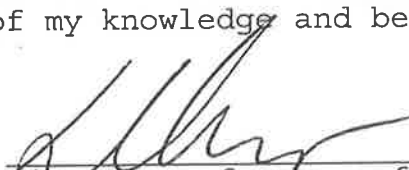
VERIFICATION (Must be Completed)

State of IDAHO

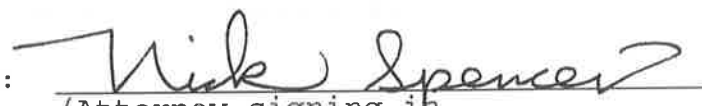
County of ADA

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

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: WILLIAM F RINGERT
Address: PO BOX 2773
BOISE ID 83701

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 436-02459
Date Received 9-1-88
Receipt Number C002451

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

RECEIVED
SEP 01 1988

Department of Water Resources

Please type or print clearly

1. Name of Claimant (s) Clear Lakes Trout Company, Inc. Phone (208) 342-0090

Mailing Address 1301 Vista Avenue, Boise, Idaho Zip 83705

2. Date of Priority (Only one (1) per claim) June 23, 1966

3. Source of water supply (a) Clear Lakes Springs
which is tributary to (b) Snake River

4. a. Location of existing point of diversion is: Township _____ Range _____ Section _____,
NE 1/4 SE 1/4
SE _____ 1/4 of NE _____ 1/4 of _____ 1/4, Govt. Lots 5 & 6 B.M., County of Gooding

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of

_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well.

East diversion pond is approximately 550
to 600 ft. of earth dam, pipelines and concrete headgates. In 1983 Clear Springs Trout
Company constructed a new earth and rock filled dike to pool water for diversion by Clear
Springs Trout Company and for diversion to the center and the west side of the Clear Lakes
Trout Co. raceways. The west diversion is a concrete headworks structure constructed by
Clear Springs Trout Co. for diversion by Clear Lakes Trout Co. and is located adjacent to
and immediately east of the west boundary line of the SE 1/4 of NE 1/4-Govt. Lot 5. The pool
impounded by Clear Springs extends west into the SW 1/4 of NE 1/4. The center discharge consists
of a concrete diversion headgate and a 4' diameter CMP installed through the top of the new
dike.

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For Fish Propagation purposes from Jan. 1 to Dec. 31 amount 100.0 or _____
For _____ purposes from _____ to _____ amount _____ or _____
For _____ purposes from _____ to _____ amount _____ or _____
For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 100.0 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is _____ acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Fish Propagation - See Remarks below

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
9 S	14 E	2				Lot 5 H									LOTS 6 7 8 H H H				

Total number of acres irrigated _____

11. In which county (ies) are lands listed above as place of use located? Gooding

12. Do you own the property listed above as place of use? Yes x No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.

License No. 36-7004 owned by Clear Lakes Trout Company is used at the same or None ()
place but for separate use from 36-2659 herein described

14. Remarks: Item 9 above-Some of the raceways shown on the drawing included in the beneficial
use file have been and are being divided and changed in dimensions for a more efficient
use of the water. However, these changes will not exceed the 26 acre feet of facility
volume as shown on the license.

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Last Name _____ Ident No. _____

Copies: White State, Yellow Claimant
OCT 18 1994

Scale: 2 inches equals 1 mile

This is a detailed plat map of a section of land, likely a quarter section, divided into a grid of smaller parcels. The map includes labels for 'T 9', 'R 14', 'E', 'N', 'S', 'Points of Diversion', 'Sec', 'Lot 5', 'Lots 6 & 8', and 'Place of Use'. A small area is highlighted with a red outline and labeled 'Place of Use'.

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OCT 18 1994

Last Name _____ Ident No. _____

Copies: White-State, Yellow-Claimant

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License ☒ Permit _____
Decree _____
If applicable provide IDWR Water Right Number 36-2659
Court _____ Case Number _____ Decree Date _____
Plaintiff vs Defendant _____

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 one

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true
and correct.

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

For Organizations: I do solemnly swear or affirm that I am President _____
Title _____

of Clear Lakes Trout Co., Inc. _____, that I have signed the foregoing
Organization _____
document in the space below as President _____ of Clear Lakes Trout Co., Inc. _____
Title _____ Organization _____

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent Eileen Hardy _____
Title and Organization Clear Lakes Trout Co., Inc. _____ Date August 31, 1988

State of Idaho/or Idaho)
County of Ada) SS.

Subscribed and sworn (or affirmed) before me this 31st day of August 19 88

SEAL

Notary Public Mary Anne Johnson
Residing at Boise, Idaho
My Commission Expires 1-11-92

Please Print Name

17. Notice of Appearance:
Notice is hereby given that I, W.F. RINGERT will be acting as attorney at law on behalf
of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above
should be mailed to me at the address listed below.

Signature W.F. Ringert
Address Box 2773 BOISE, ID 83701
Date 9-1-88

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OCT 18 1994

Last Name _____ Ident. Number _____

Copies White-State, Yellow-Claimant

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New Diversion Dike and Works Constructed in the above area by Clear Springs Trout WEIR Company for diversion by Clear Springs and Clear Lakes Trout Company - See Item 5 of Notice of Claim.

[illegible]

Govt Lot
8 Line

DISCHARGE

PROCESSING PLANT

The Southeast Corner of the Raceways appear to be in Lot 8 (NE 1/4 SE 1/4) per Gary Lee's Drawing of 11/15/83

WEIR

DISCHARGE

HATCHERY

A - 4'X4'X148' @32 Hatching Trays
B - 4'X7'X148' @12 , 2'X2'X20' @30
C - 4'X15'X165' @6
D - 4'X45'X165' @4
E - 4'X15'X148' @21
F - 4'X15'X165' @9
G - 4'X15'X183' @2
H - 4'X30'X183' @1
I - 4'X45'X183' @2
J - 4'X45'X220' @10
K - 4'X15'X220' @1
- L - 4'X30'X220' @1
M - 3'X6'X60' @6
A - 75,776 ft³ J - 396,000
B - 49,728 K - 13,200
C - 59,400 L - 26,400
D - 118,800 M - 6,480
E - 186,480 HT - 2,400
F - 89,100
G - 21,960
H - 21,960
I - 65,880
TOTAL, 133,564 ft³ 43,560
26 ac
pitt

HATCHERY

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OCT 18 1994

RECEIVED

APR 29 1993

Department of Water Resources
Adjudication Bureau

W. F. RINGERT
D. V. STEENSON
RINGERT CLARK CHARTERED
455 S. Third St., P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591

Attorneys for Nampa & Meridian Irrigation District,
Grindstone Butte Mutual Canal Company, Rim View Trout
Company and others

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

*
*
*

36-02659 -0001/
93-04-0231

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

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

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.)

Case No. 36-02659
(You must insert the
water right number you
are objecting to)

OBJECTION

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

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OCT 18 1994

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 to 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.

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 LAKES TROUT CO., INC.
Address: 1301 Vista Avenue
Boise, ID 83705

Briefly describe your interest in this water right:
OWNER

2. Owner of the water right:

Name: CLEAR LAKES TROUT CO., INC.
Address: 1301 Vista Avenue
Boise, ID 83705

3. If this objection is filed by an attorney:

Attorney name: William F. Ringert
Attorney Address: P. O. Box 2773
Boise, ID 83701
Attorney Phone No.: (208) 342-4591

ALL DOCUMENTS
FILED IN CASE NO. 1301

760 5-11-00

RECEIVED

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
 - 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. ☒ number of irrigated acres within each forty (40) acre subdivision.
10. ☒ Consumptive Use: I object to the annual volume of consumptive use.

- EL 1000
APPROVED
11. X Remarks: I object to the "remarks" listed with the water right.
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. X Other: I object to: General Provision No. 5; General Provision No. 7.

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.

11. 1. The facility volume is neither required nor authorized by statute. An increase in facility volume does not necessary involve an expansion of use, and any expansion of use resulting from increase in facilities volume for fish production is within the scope of the water right as established by the original facilities volume. Claimant does not know how volume was calculated and challenges the stated volume.
2. The remarks fail to accurately describe and identify the location and configuration of the diversion works shared with Right No. 36-07004. The watermaster will not have sufficient instructions for distributing water without a more accurate description and identification of the diversion works.
14. 1. Idaho Code § 42-1410 requires the Director to continue his examination of the water system covered by the Snake River Basin Adjudication "for such a period of time as is necessary to evaluate the extent and nature of each water right for which a notice of claim has been filed. The director may conduct any fact-finding hearing necessary for a full and adequate disclosure of the fact." General Provision No. 5 violates this statutory requirement and claimants whose water rights are in springs fed by the Snake Plain aquifer should not be required to file objections against any ground water rights recommended in Basin 36

until such time as the Director has determined the hydraulic connection between the ground water within the Snake Plain aquifer and the springs that are fed by the Snake Plain aquifer.

2. The Director has no authority under the adjudication statutes to require installation of measuring devices and control works with respect to vested water rights or to include General Provision No. 7 in his report. Any authority the Director has in those areas is contained in Idaho Code § 42-701, and there is neither need nor authority for incorporating the provisions of that statute into the adjudication process or into the decree.

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.

1. Delete remark pertaining to facility volume.
2. Describe the diversion works shared with Right No. 36-07004 sufficiently to enable the watermaster to properly distribute water between the two water rights.
3. Delete General Provision 5. The Director's Report should be held in abeyance until such time as the necessary investigations have been completed, and the report then should be supplemented or amended, and an additional period of time should be allowed for filing objections to ground water claims in Basin 36.
4. Delete General Provision 7.

Please note: You should attach copies of documents which support your objection. Note on each document the "box number" it supports. The description of the water system in Basin 36, which the Director is required to include in his report (Idaho Code § 42-1411(1), is not adequate or sufficient to enable this claimant to determine whether there is sufficient connection between ground water rights in Basin 36 and this claimant's water rights in the springs fed by the Snake River aquifer, to warrant investigations to determine whether grounds exist for objections to any of such ground water rights on the basis of abandonment, forfeiture, unauthorized expansion, or any other facts or legal theories upon which any ground water right recommended

DECLERED
RECORDED

by the Director in Basin 36 could be challenged.

☒ 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.

VERIFICATION (Must be Completed)

State of Idaho

County of Ada

William F. Ringert, being first duly 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. § 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.

Clean Lakes Trout Co., Inc.
Signature of person filing objection

By: W F Ringert
(Attorney signing in representative capacity)

Subscribed and sworn to before me this 26th day of April, 1993.

Anta C McCormick
Notary Public for Idaho
Residing at: Boise Idaho
My Commission expires: 11-14-98

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 Lakes Trout Co., Inc.
Owner's address: 1301 Vista Avenue
Boise, ID 83705

3. One copy to:

Chief, Natural Resources Division
Office of the Attorney General
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, Idaho 83724



Signature of Objector or Attorney
mailing on Objector's behalf

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OCT 18 1994

NOTICE OF ERROR

RESPONSE

CORRECTED R PROOF

MICROFILMED

JAN 28 1993

AUG-24-1992

NOTICE OF ERROR FORM

RECEIVED

SEP 23 1992

Department of Water Resources

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

Idaho Department of Water Resources

Statehouse Mail

Boise, Idaho 83720-9000

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

1. Water right number: 36-02659

2. Name: Clear Lakes Trout Co., Inc.

Address: 1301 Vista Avenue, Boise, ID 83705

Attorney: W. F. Ringert

Address: P.O. Box 2773, Boise, ID 83701

Weekday Telephone Number: Clear Lakes Trout Co., Inc. - 344-7321
W. F. Ringert - 342-4591

TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE

SEP 28 1992

Department of Water Resources
Southern Basin Unit
MICROFILMED

JAN 28 1993

(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:
Remarks - Facility volume stated as 26 AF.

4. Describe the changes you wish to have made in the proposed recommendation:
Delete the remark identified in item 3, above.

5. Describe why you disagree with the proposed recommendation:
The facility volume is neither required nor authorized by statute.

6. Date: September 17, 1992.

SIGNATURE



RECEIVED

SEP 23 1992

Department of Water Resources
Southern Region 4/2/92

RECEIVED

SEP 24 1992

Department of Water Resources

W. F. RINGERT
D. V. STEENSON
RINGERT CLARK CHARTERED
455 S. Third St., P.O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591

Attorneys for Clear Lakes Trout Company, Inc.

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. 39576

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

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.

AMENDED
NOTICE OF ERROR

Claimant Clear Lakes Trout Co., Inc., amends its Notice of
Error for Water Right No. 36-02659 to read as follows:

1. Water right No. 36-02659
2. Name: Clear Lakes Trout Co., Inc.

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JAN 28 1993

Address: 1301 Vista Avenue, Boise, ID 83705

Attorney: W. F. Ringert

Address: P. O. Box 2773, Boise, ID 83701

Weekday telephone number:

Clear Lakes Trout Co., Inc. - 344-7321

W. F. Ringert - 345-4591

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

Remarks - Facility volume stated as 26 AF. Right No. 36-07004 is also diverted through point of diversion described above, and the total combined rate of diversion of these rights is limited to 175 cfs. The following rights are also diverted through the point of diversion Township 9 South, Range 14 East, S2, SWSENE, Lot 5 and SESWNE: 36-02708, 36-07218

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

Delete reference to facility volume. Right No. 36-07004 is also diverted through the same point of diversion through which a portion of this right is diverted. A portion of this right, No. 36-02659, is diverted through a diversion structure used jointly with Clear Springs Trout Company for rights 36-02708 and 36-07218.

5. Describe why you disagree with the proposed recommendation:

The facility volume is neither required nor authorized by

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JAN 28 1993

statute. The remarks regarding the diversion facilities fail to recognize that this right diverts through two different diversion structures, only one of which is shared with Clear Springs Trout Company.

6. Date: September 24, 1992.

SIGNATURE: _____

S. H. Rungt

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JAN 28 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 LAKES TROUT CO INC 1301 VISTA AVE BOISE ID 83705 (208) 342-0090	06/23/1966	FISH PROPAGATION	01-01 12-31	100.00 CFS	
TOTAL DIVERSION:					100.00 CFS	

Water Source: SPRINGS

Tributary to: CLEAR LAKES

Stage: LICENSE

Point(s) of Diversion:

T09S R14E S02

SESWNE Lot05(SWSENE) 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	2	:					05-F	:									06-F	:
09S	14E	2	:						:									08-F	:

POU County: GOODING

Non-Irrigation Uses: FISH PROPAGATION

Other Rights: 36-07004

Conditions of Approval:

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

Remarks:

FACILITY VOLUME 26 AF.
RIGHT NO. 36-07004 IS ALSO DIVERTED THROUGH POINT OF DIVERSION DESCRIBED ABOVE, AND THE TOTAL COMBINED RATE OF DIVERSION OF THESE RIGHTS IS LIMITED TO 175 CFS.
THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION T9S, R14E, S2, SWSENE, LOT 5 AND SESWNE: 36-02708, 36-07218.

Dates: Exam Made Date:

Verified Date:

Misc: Water District Number:

Field Inspection Flag:

Presumption Flag:

Comments: Date: 03/16/1992 User-ID: THORNTON Subject: COPIED FROM REMARKS
ITEM 9; SOME OF THE RACEWAYS SHOWN ON THE DRAWING INCLUDED IN THE BENEFICIAL USE FILE HAVE BEEN AND ARE BEING DIVIDED AND CHANGED IN DIMENSIONS FOR A MORE EFFICIENT USE OF THE WATER. HOWEVER, THESE CHANGES WILL NOT EXCEED 26 ACRE FEET OF FACILITY VOLUME AS SHOWN ON THE LICENSE.
ITEM 5; EAST DIVERSION POND IS APPROXIMATELY 550' TO 600' OF EARTH DAM, PIPELINES, AND CONCRETE HEADGATES. IN 1983 CLEAR LAKES TROUT COMPANY CONSTRUCTED A NEW EARTH AND ROCK FILLED DIKE TO POOL WATER FOR DIVERSION BY CLEAR SPRINGS TROUT COMPANY AND

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JAN 28 1993

Comments: Date: 03/16/1992 User-ID: THORNTON Subject: COPIED FROM REMARKS
FOR DIVERSION TO THE CENTER AND THE WEST SIDE OF THE CLEAR LAKES
TROUT CO. RACEWAYS. THE WEST DIVERSION IS A CONCRETE HEADWORKS
STRUCTURE CONSTRUCTED BY CLEAR SPRINGS TROUT CO. FOR DIVERSION BY
CLEAR LAKES TROUT CO. AND IS LOCATED ADJACENT TO AND IMMEDIATELY
EAST OF THE WEST BOUNDARY LINE OF THE SE 1/4 OF NE 1/4, GOVT.
LOT 5. THE POOL AND IMPOUNDED BY CLEAR SPRINGS EXTENDS WEST INTO
THE SW 1/4 OF NE 1/4. THE CENTER DISCHARGE CONSISTS OF A (CONT.)
CONCRETE DIVERSION HEADGATE AND A 4' DIAMETER CMP INSTALLED
THROUGH THE TOP OF THE NEW DIKE.

Date: 09/24/1992 User-ID: SCHULTZ Subject: NOTICE OF ERROR (NOE)
NOE RECEIVED 9/23/92. CHANGED NOE FLAG FROM BLANK TO A.
CLAIM VERIFIED 5/20/92. DID NOT REVERIFY ANY PART OF CLAIM.

Date: 10/20/1992 User-ID: THORNTON Subject: NOTICE OF ERROR RECONCILIATION
CHANGED FLAG FROM A TO B - NO CHANGE.
SENT LETTER TO RINGERT.

Audit: 10/20/92 THORNTON

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JAN 28 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

20-Oct-1992

Mr. W. F. Ringert, Attorney
PO Box 2773
Boise, ID 83701

RE: Snake River Basin Adjudication (SRBA)
Notices of Error

Hardy - A36-07510
Clear Lakes Trout Co., Inc - A36-07800, A36-07731,
A36-07725, A36-07080, A36-07004, A36-02659,
Rim View Trout Co. - A36-07167, A36-02680, A36-10819,
A36-04032A, A36-04032B, A36-04032C

Dear Mr. Ringert:

We are in receipt of the Notices of Error on the above referenced claims. Each Notice of Error will be addressed below.

Hardy - A36-07510

No changes have been made to the recommendation. The recommendation is based on a field examination of the place of use which identified the actual acres under irrigation and other IDWR information. The diversion rates and volumes and consumptive use volume are based in IDWR standards for beneficial use and crop requirements.

Clear Lakes Trout Co., Inc. - A36-07800, A36-07731, A36-07725

As to the completion of licensing process remarks, these remarks shown in the recommendations on the above referenced claims are based on Idaho Code 42-1421(3). No change will be made to the recommendation.

Clear Lakes Trout Co., Inc. - A36-07080

Regarding the measuring device condition, this remark is based on Idaho Code 42-701 and conditions set forth in the license. Regarding the effluent standards remark, this remark is carried over to the recommendation as a condition is set forth in the license. As to facility volume, this remark is based on Idaho Code 42-1411(2)(j) which provides that Director's Report

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JAN 28 1993

of water right appropriated under state law shall include such other matters necessary to define the right; facility volume is necessary to prevent future expansion in use of the right. No changes will be made to the recommendation.

Clear Lakes Trout Co., Inc. - A36-02659, A36-07004

Regarding facility volume remarks, see discussion in paragraph immediately above. Regarding the other rights diverted at the recommended points of diversion, the points of diversion recommended for both rights included the same three 10-acre tracts. As you stated in your Amended Notice of Error, a portion of A36-02659 is diverted through the same diversion structure as this right. Both claims referenced above described the same facility system with co-mingled water. Therefore, with the same points of diversion and facility, it is appropriate to include the remarks on both recommendations. Also, the remarks describing rights owned by Clear Springs Trout Co. specifically identify only two of the 10-acre tracts, thereby clearly showing that only a portion of the points of diversion are shared. No changes will be made to the recommendations.

Rim View Trout Co. - A36-02680

See paragraph under A36-07080 for discussion on facility volumes. The total volume is calculated based on the diversion rate over 365-day period. The diversion rate recommended is based on IDWR records and documents relating to this and associated rights. No changes will be made to the recommendation.

Rim View Trout Co. - A36-04032A, A36-04032B

The recommendations are based on measurement data available for the diversion rates corresponding to the dates of priority recommended. See A36-07080 above for facility volume discussion. No changes will be made to the recommendations.

Rim View Trout Co. - A36-04032C

The recommendation is based on measurements and records reflecting the balance of diversion rate put to beneficial use was diverted under development described in 36-02680. No changes will be made to the recommendation.

Rim View Trout Co. - A36-10819

The remarks have been changed to identify recommendation for 36-02680 as the right under which this water use is described.

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JAN 28 1993

This recommendation is based on measurements and records supporting the development of the water use at the priority date recommended. No other changes will be made to the recommendation.

Rim View Trout Co. - A36-07167

See paragraph under A36-07080 for discussion of measuring devices, effluent standards and facility volumes. For clarification the total diversion volume of the system based on the season of use and diversion rate. The facility volume described in the remarks is a description of the facility dimensions. No changes will be made to the recommendation.

If you still do not agree with the proposed IDWR recommendation to the court, you may file an objection with the court after you receive the final recommendation of your water right. The objection process will be explained when you receive your final recommendation of your water right.

Sincerely,



Helen Harrington-Thornton
Water Resource Agent

HHT

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JAN 28 1993

R PROOF



CVR



MAPS



PHOTOS



MISC



MICROFILMED

JAN 28 1993

Water Right Number - R36-02659

Prefix Translation: RESEARCH

Old (D) Number - 33176

+ - - - - Last Name - - - - +

+ - First Name - - +

+ - - - - - Address - - - - - +

*** C - CURRENT OWNER ***
CLEAR LAKES TROUT CO. INC.

1 - 1301 VISTA AVE.

2 -

3 -

City- BOISE

State- ID Zip- 83705

Phone - 208-342-0090

*** O - ORIGINAL OWNER ***
KASTER

RICHARD

1 -

2 -

3 -

City- N/A

State- ID Zip- 00000

Phone - 208-000-0000

*** A - ATTORNEY ***
RINGERT

W.F.

1 - P.O. BOX 2773

2 -

3 -

City- BOISE

State- ID Zip- 83701

Phone - 208-000-0000

+ - - Priority Date - - +
06/23/1966+ - - Region - - - +
17 SOUTHERN+ - - Stage - - - +
L - LICENSE

+ - - Status - - - +

+ - - - - Source - - - - +
SPRINGS+ - - - - Tributary - - - - - +
CLEAR LAKES

+ - - - - Point of Diversion - - - - - +						
Twn	Rng	Sec	Tract	Lot	RFlg	County
09S	14E	2	SE SW NE		(47)	GOODING
			SW SE NE	5	(47)	GOODING
			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	100.000	

+ - Total Div. Rate - +		+ - Total Div. Volume - +		+ - Total Consumptive Use - +		+ - KW Usage - +	
100.000				0.0			

+ - - - - Place of Use - - - - - +								
Twn	Rng	Sec	Tract	Lot	Acres	Code	Description	County
09S	14E	2	SE NE	5		19	FISH PROPAGATION	(47) GOODING
09S	14E	2	NE SE	6		19	FISH PROPAGATION	(47) GOODING
09S	14E	2	NE SE	8		19	FISH PROPAGATION	(47) GOODING

Total Acres:

VERIFIED ADM

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JAN 28 1993

Prefix Translation: RESEARCH

+ - - Other Rights for Same Use - 36-07004

FACILITY VOLUME 26 AF.
RIGHT NO. 36-07004 IS ALSO DIVERTED THROUGH POINT OF DIVERSION
DESCRIBED ABOVE, AND THE TOTAL COMBINED RATE OF DIVERSION OF
THESE RIGHTS IS LIMITED TO 175 CFS.
THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVER-
SION T9S, R14E, S2, SWSENE, LOT 5 AND SESWNE: 36-02708, 36-07218.

No Old Water Right Numbers Found

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

+ - Decree Date - +
00/00/0000

Date: 03/16/1992 User Id: THORNTON Subject: COPIED FROM REMARKS
ITEM 9; SOME OF THE RACEWAYS SHOWN ON THE DRAWING INCLUDED IN THE
IN DIMENSIONS FOR A MORE EFFICIENT USE OF THE WATER. HOWEVER,
SHOWN ON THE LICENSE.
EARTH DAM, PIPELINES, AND CONCRETE HEADGATES. IN 1983 CLEAR
TO POOL WATER FOR DIVERSION BY CLEAR SPRINGS TROUT COMPANY AND
TROUT CO. RACEWAYS. THE WEST DIVERSION IS A CONCRETE HEADWORKS
CLEAR LAKES TROUT CO. AND IS LOCATED ADJACENT TO AND IMMEDIATELY
LOT 5. THE POOL AND IMPOUNDED BY CLEAR SPRINGS EXTENDS WEST INTO
CONCRETE DIVERSION HEADGATE AND A 4' DIAMETER CMP INSTALLED
BENEFICIAL USE FILE HAVE BEEN AND ARE BEING DIVIDED AND CHANGED
THESE CHANGES WILL NOT EXCEED 26 ACRE FEET OF FACILITY VOLUME AS
ITEM 5; EAST DIVERSION POND IS APPROXIMATELY 550' TO 600' OF
LAKES TROUT COMPANY CONSTRUCTED A NEW EARTH AND ROCK FILLED DIKE
FOR DIVERSION TO THE CENTER AND THE WEST SIDE OF THE CLEAR LAKES
STRUCTURE CONSTRUCTED BY CLEAR SPRINGS TROUT CO. FOR DIVERSION BY
EAST OF THE WEST BOUNDARY LINE OF THE SE 1/4 OF NE 1/4, GOVT.
THE SW 1/4 OF NE 1/4. THE CENTER DISCHARGE CONSISTS OF A (CONT.)
THROUGH THE TOP OF THE NEW DIKE.

+ - - Audit Fields - - +
05/20/92 MERRITT

Court Report Filing	- 00/00/0000	Field Inspection Made	- 00/00/0000	Civil Case Number	- 39576
Objection Filed Date	- 00/00/0000	Field Inspection Flag	-	Old Case Number	-
Response Filed Date	- 00/00/0000	Verified Date	- 05/20/1992	Old Judicial District	-
Claim Received Date	- 09/02/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- C002451	Water District	-
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- OR	Presumption Flag	-
				Notice of Error Flag	-

JAN 28 1963

Scale: 2 inches equals 1 mile

This is a detailed plat map of a section of land, likely a quarter section, divided into a 36x36 grid of smaller lots. The map includes labels for 'T 9', 'R 14', 'E', 'N', 'S', 'Points of Diversion', 'Sec', 'Lot 5', 'Lots 6-8-Place of Use', and 'NE'. A small diagram shows a path or boundary line with arrows and the number '2'.

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JAN 28 1992

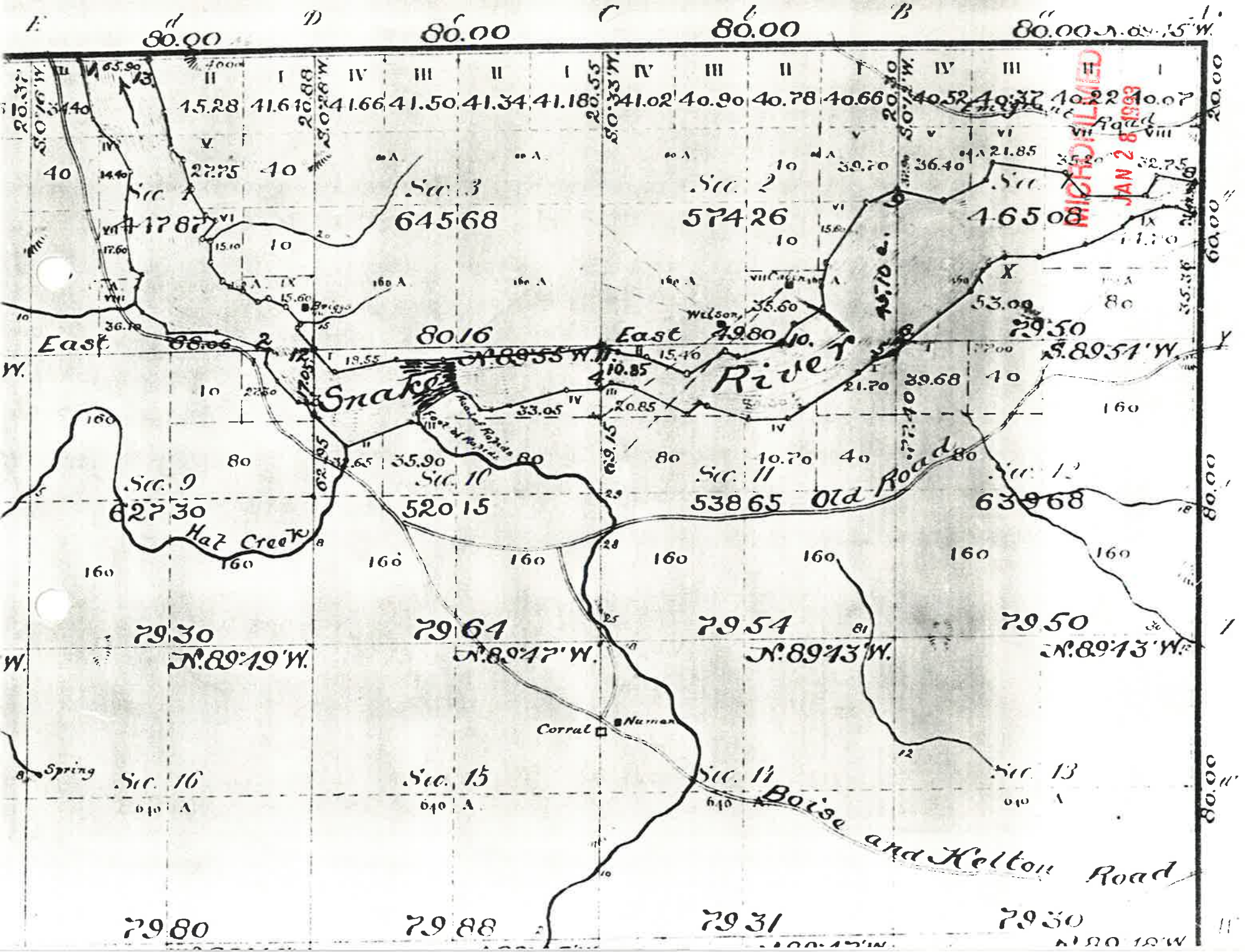
Last Name

Ident No.

Copies: White-State, Yellow-Claimant

95 14E

Surveyed: 10/13-19/1821

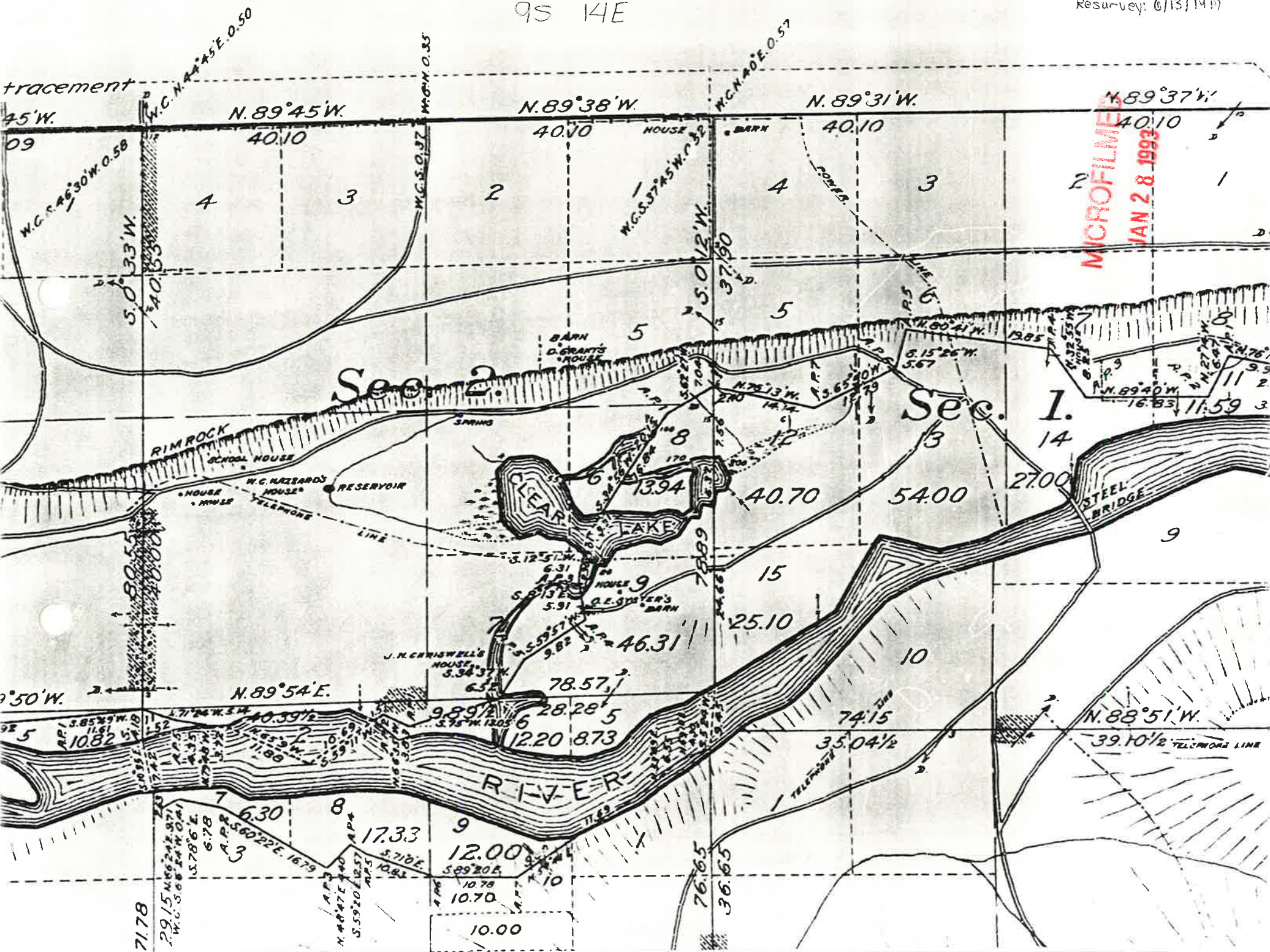




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Resurvey: 6/13/1917



C. E. BROCKWAY P. E.
ENGINEERING CONSULTANT

RECEIVED

MAR 31 1977

Groundwater, Hydrology,
and Hydraulic Engineering

Route 1, Box 186
Kimberly, Idaho 83341
March 28, 1977

Department of Water Resources
Southern District Office

Mr. Bobby Fleenor
Idaho Department of Water Resources
373 W. Franklin
Boise, ID 83720

543-6444

Dear Mr. Fleenor:

On March 22, 1977, accompanied by Mr. Hal Ward of the Clear Lakes Trout Company, I measured the total flow passing through the Clear Lakes Trout Company facility near Buhl. All flow was passing through the two 12 ft. rectangular suppressed weirs. All bypass around the weir channels was shut off including the holding pond bypass which is an 18x36" corrugated metal arch pipe. This pipe feeds the holding ponds south of the raceways. Flow was adjusted in the tail race so that both weirs were operating correctly. The west weir does not aerate when the head reading exceeds about 1.75 ft. At 3:00 p.m. on March 22nd, the following readings and discharges were measured.

<u>Weir</u>	<u>Staff Gage Reading</u>	<u>Discharge</u>
West	1.68	89.5
East	1.66	87.5

total 177. cfs

At this same time the Clear Springs Trout Company main inlet which is fed by the same spring source read 1.88 feet for a discharge of 206 cfs.

A check was made of the east weir performance, both aerated and non-aerated. When the weir is operating non-aerated the staff gage reading used with the standard rating curve indicates about 4.5 cfs greater discharge than is actually passing for a discharge in the 80 to 90 cfs range.

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Mr. Bobby Fleenor

-2-

March 28, 1977

A check was also made of the approximate capacity of the holding pond bypass. Water was diverted from the east weir through the holding pond bypass pipe resulting in a decrease in total flow through both weirs of 9.5 cfs. Therefore, it can be assumed that with the tail race regulated as it was on March 22nd, that the holding pond bypass discharges about 9.5 cfs. As I understand, it is planned to regulate the tail race so that excessive flow is not diverted to the west weir to cause non-aeration of the nappe. This weir has not been aerating since it was installed.

I hope these measurements will suffice for your determination of discharge for licensing purposes.

Sincerely,


C. E. Brockway, P.E.

CEB:ld

enc. - Rating curve for 12 ft. Rectangular suppressed weir.

cc: Mike Steele, IDWR
Hal Ward, Clear Lakes Trout



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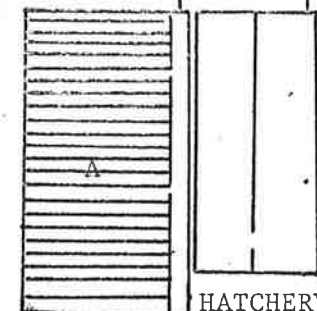
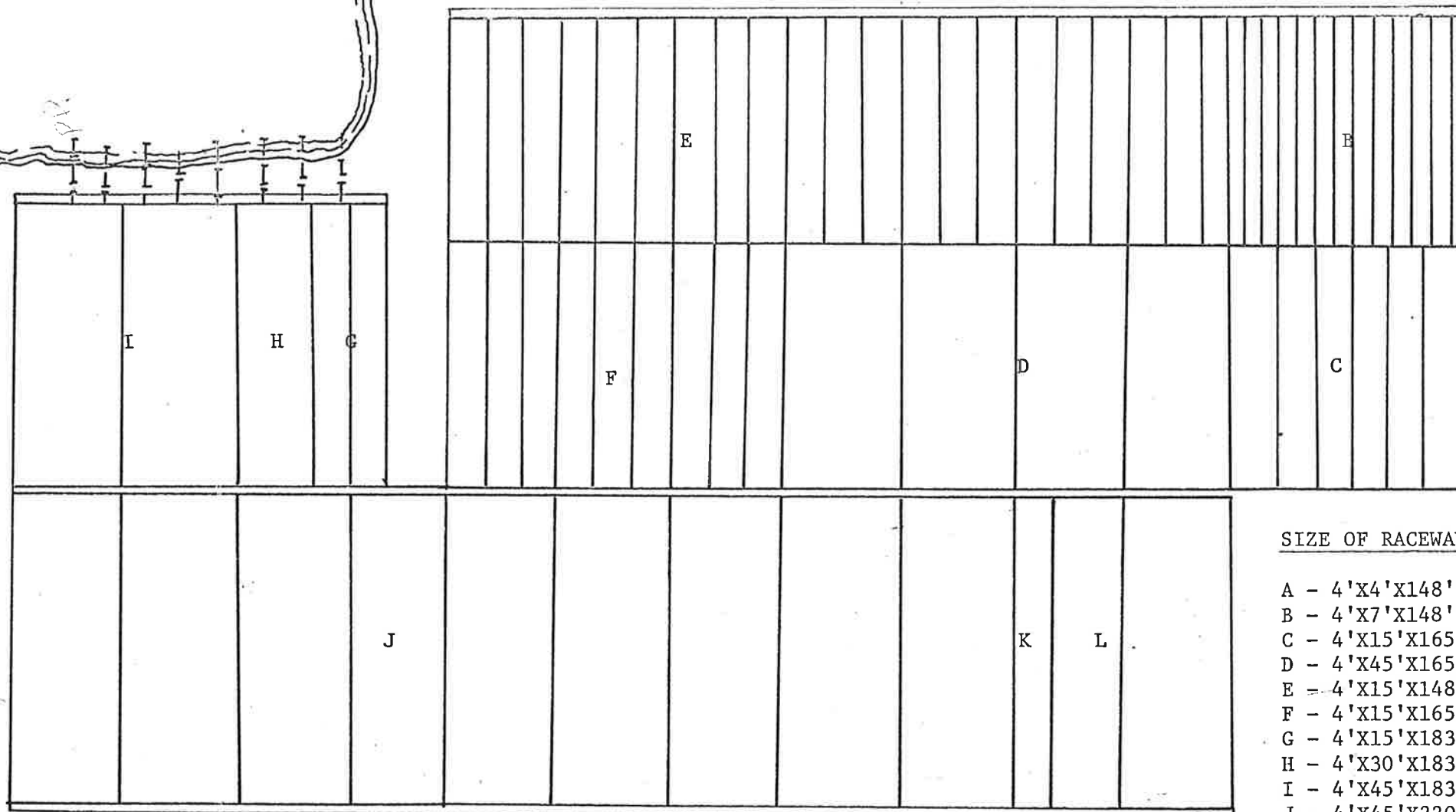
JAN 28 1993

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DIAGRAM B

INLET POND

(3) PIPES FROM S...



SIZE OF RACEWAYS

HATCHERY

- A - 4'X4'X148' @32
- B - 4'X7'X148' @12
- C - 4'X15'X165' @6
- D - 4'X45'X165' @4
- E - 4'X15'X148' @21
- F - 4'X15'X165' @9
- G - 4'X15'X183' @2
- H - 4'X30'X183' @1
- I - 4'X45'X183' @2
- J - 4'X45'X220' @10
- K - 4'X15'X220' @1
- L - 4'X30'X220' @1
- M - 3'X6'X60' @6

Hatching Trays
2'X2'X20' @30

- A - 75,776 ft³
- B - 49,728
- C - 59,400
- D - 118,800
- E - 186,480
- F - 89,100
- G - 21,960
- H - 21,960
- I - 65,880
- J - 396,000
- K - 13,200
- L - 26,400
- M - 6,480
- HT - 2,400

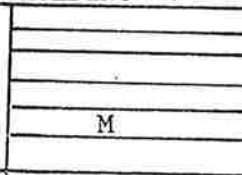
TOTAL 133,564 ÷ 43,560 =

26 acre feet per acre.

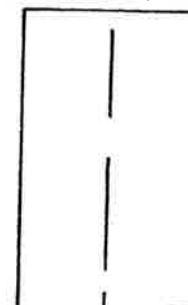
WEIR

HOLDING PONDS

PROCESSING PLANT



DISCHARGE



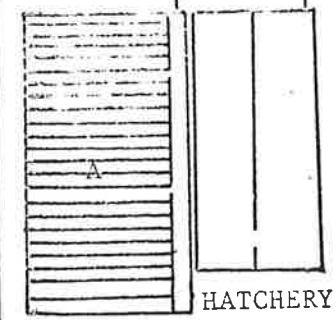
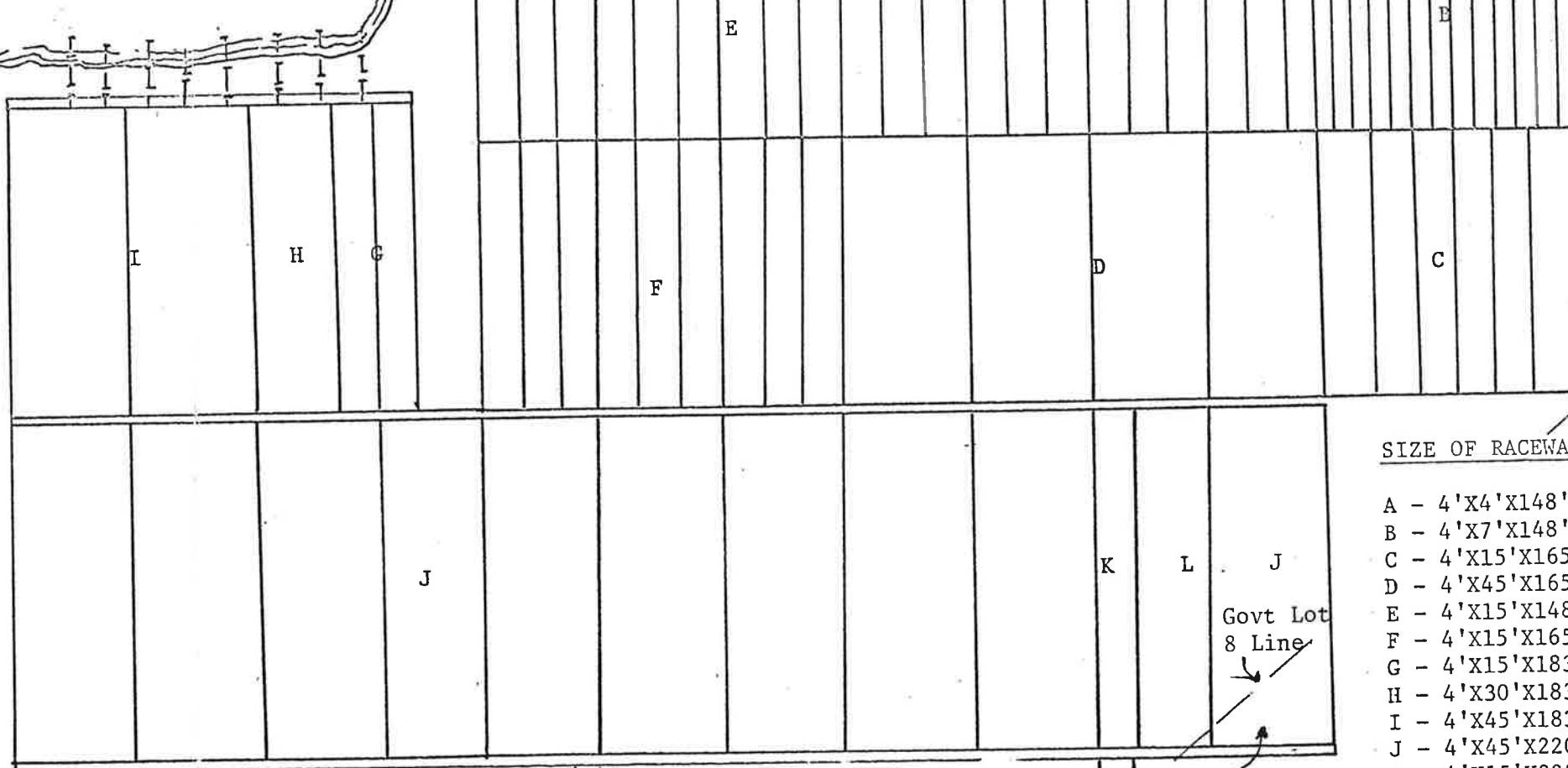
WEIR

DISCHARGE

MICROFILMED

See Note, Below

Concrete Diversion Works & Pipes to Raceways from Inlet Pond Not Shown



SIZE OF RACEWAYS

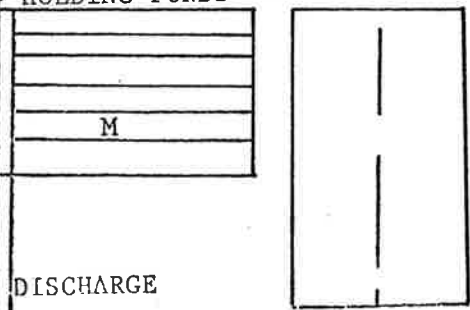
HATCHERY

- A - 4'X4'X148' @32
 - B - 4'X7'X148' @12
 - C - 4'X15'X165' @6
 - D - 4'X45'X165' @4
 - E - 4'X15'X148' @21
 - F - 4'X15'X165' @9
 - G - 4'X15'X183' @2
 - H - 4'X30'X183' @1
 - I - 4'X45'X183' @2
 - J - 4'X45'X220' @10
 - K - 4'X15'X220' @1
 - L - 4'X30'X220' @1
 - M - 3'X6'X60' @6
- Hatchery Trays
 2'X2'X20' @30
- A - 75,776 ft²
 B - 49,728
 C - 59,400
 D - 118,800
 E - 186,480
 F - 89,100
 G - 21,960
 H - 21,960
 I - 65,880
- J - 396,000
 K - 13,200
 L - 26,400
 M - 6,480
 HT - 2,400
- TOTAL 133,564 ÷ 43,560 =
 26 acre feet per acre.

Note Above:

New Diversion Dike and Works Constructed in the above area by Clear Springs Trout Company for diversion by Clear Springs and Clear Lakes Trout Company - See Item 5 of Notice of Claim.

HOLDING PONDS PROCESSING PLANT



The Southeast Corner of the Raceways appear to be in Lot 8 (NE 1/4 SE 1/4) per Gary Lee's Drawing of 11/15/83

WEIR
DISCHARGE

MICROFILMED

