

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: A36-02708
Date Received: 8/24/1988
Receipt No: 5002014
Received By: _____

COPY
FOR YOUR FILES
DO NOT RETURN

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

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

2. Date of Priority: SEP 28, 1966

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

4. Point of Diversion:

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

5. Description of diverting works:
CHECK DAM & CONCRETE DITCH TO FISH RACEWAYS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
FISH PROPAGATION	01/01	12/31	200.000		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
COMMERCIAL TROUT PRODUCTION

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
09S	14E	2	NW	SE		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:
LIC. 36-7218, 7201

14. Remarks:
RACEWAY VOLUME IS 590,400 CU. FT., CONSISTING OF 82 RACEWAYS 18'
WIDE X 4' DEEP X 100' AVERAGE LENGTH.

15. Basis of Claim: LICENSE
Water Right Number: 33281

16. Signature(s)

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

Number of attachments: 1

For Organizations:

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

[Signature]
Signature of Authorized Agent
President Clear Springs Trout Company
Title and Organization
8/30/88
Date

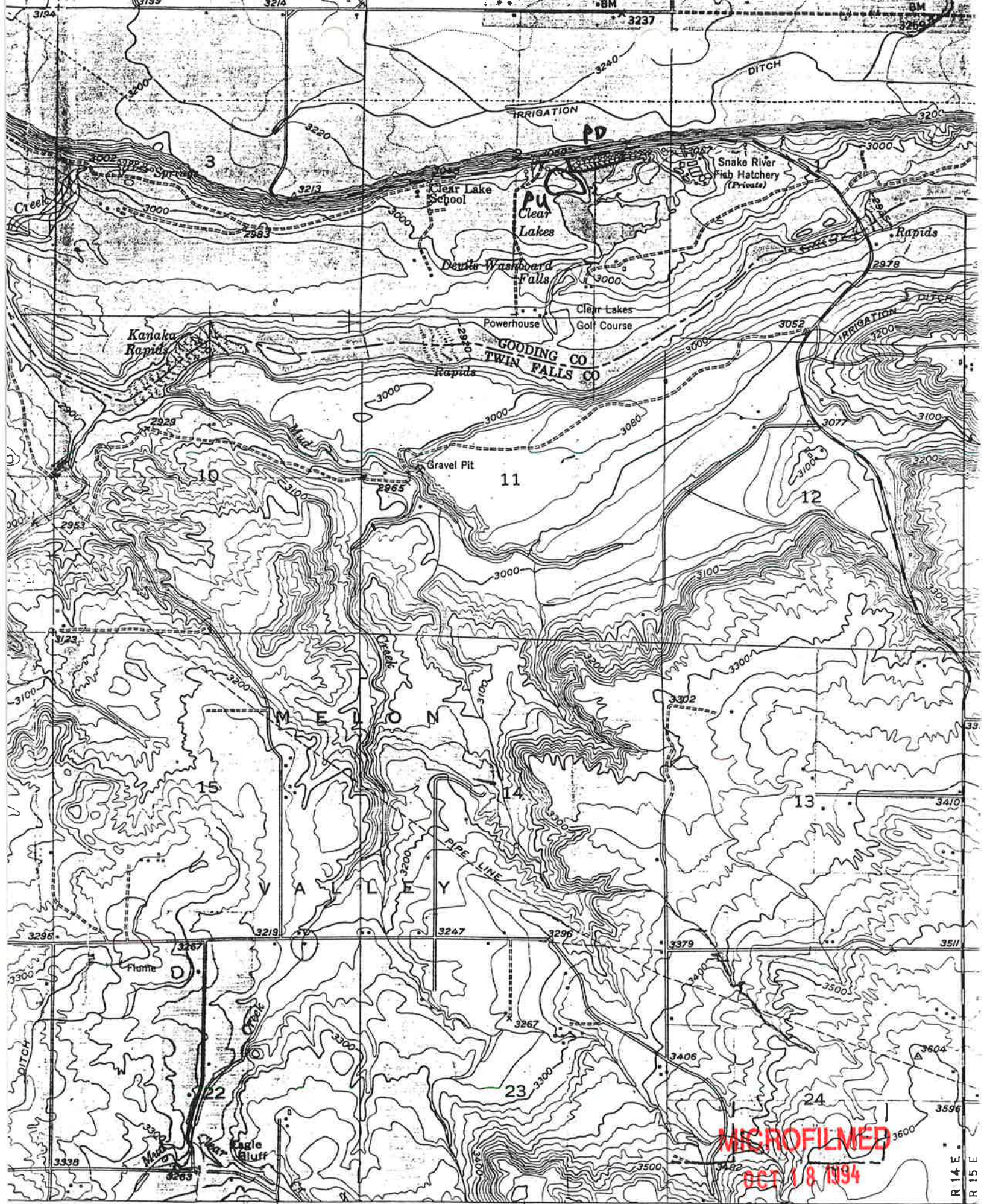
State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 30th day of August 19 88
[Signature]
Notary Public

Seal

Residing at B.C.C. ID
My Commission Expires 11-17-92

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OCT 18 1994



MICROFILMED
OCT 18 1994

1:24000

Scale: 1:24,000
 47'30"

INTERIOR GEOLOGICAL SURVEY, WASHINGTON, D. C.
 BUHL (U.S. 30) 19 MI.
 TWIN FALLS ID.

R 14 E.
 R 15 E.

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: **A36-02708**
Date Received: 9/ 1/1988
Receipt No: S002014
Received By: _____

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

- 1. Name: THE PROSPECT CO 208-543-4316
Address: PO BOX 712
BUHL ID 83316
AND/OR
Name: CLEAR SPRINGS FOODS INC 208-543-4316
Address: PO BOX 712
BUHL ID 83316

2. Date of Priority: SEP 28, 1966

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

4. Point of Diversion:

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

5. Description of diverting works:
CHECK DAM & CONCRETE DITCH TO FISH RACEWAYS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
FISH PROPAGATION	01/01	12/31	200.000		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
FISH, COMMERCIAL TROUT PRODUCTION

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FFR U 1 1993

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
09S	14E	2	NW	SE		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:
A36-07218, A36-07201

14. Remarks:
RACEWAY VOLUME IS 590,400 CU. FT., CONSISTING OF 82 RACEWAYS 18' WIDE X 4' DEEP X 100' AVERAGE LENGTH.

15. Basis of Claim: LICENSE
Water Right Number: 33281

16. Signature(s)

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

Number of attachments: _____

For Individuals:

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

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

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State of Idaho)
County of _____) SS.

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

Notary Public

Seal

Residing at _____

My Commission Expires _____

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FEB 01 1993

LAW OFFICES

HN&L

Chartered

Hepworth, Nungester & Lezamiz

December 29, 1992

Twin Falls Office

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

Boise Office

J. Charles Hepworth*
John J. Janis

*Member CA Bar
**Member UT Bar

RECEIVED

JAN 5 1993

Department of Water Resources

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

Re: Clear Springs Foods, Inc.

Dear Ms. Schultz:

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

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

Very truly yours,

HEPWORTH, NUNGESTER & LEZAMIZ,
CHARTERED

By: 
Patrick D. Brown

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

PDB:bjs
Enclosures
cc: Tim Hanifen

(1229SCHU.BJS)

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

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State of Idaho

Department of State

CERTIFICATE OF AMENDMENT OF

CLEAR SPRINGS TROUT COMPANY

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

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

October 25, 1991



Pete T. Cenarrusa

SECRETARY OF STATE

Sean J. Clark

Corporation Clerk

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FFR U 1 1993

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

RECEIVED
SEC. OF STATE

91 OCT 9 AM 8 49

RECEIVED
SEC. OF STATE

91 OCT 25 AM 10 19

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

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

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

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

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

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

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

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

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

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

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Dated this 30th day of September, 1991.

CLEAR SPRINGS TROUT COMPANY

[Signature]

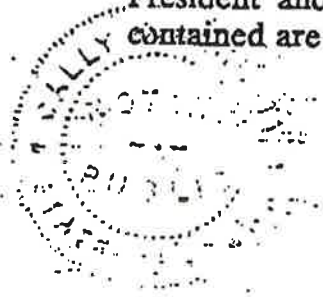
Larry C. Cope, President

[Signature]

Keith E. Quigley, Assistant Secretary

STATE OF IDAHO)
) ss.
County of Twin Falls)

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



[Signature]

NOTARY PUBLIC FOR IDAHO
Residing at: *[Signature]*
My Commission Expires: 12-22-91

(WLN\81019ART.003)

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FEB 1 1993



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

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

March 11, 1992

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

Re: Clear Springs Trout Company
Water Rights/Facilities Update

Dear Marci:

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

SNAKE RIVER HATCHERY:

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

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

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

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FEB 1 1993

Ms. Marci Sterling
Page 2
March 11, 1992

CLEAR LAKES HATCHERY:

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

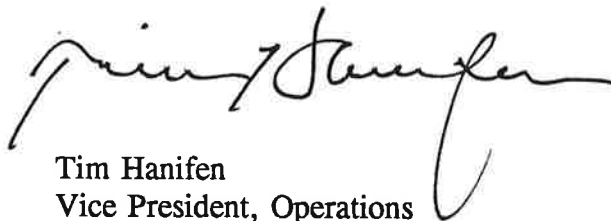
RESEARCH HATCHERY:

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

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

Sincerely,

CLEAR SPRINGS TROUT COMPANY



Tim Hanifen
Vice President, Operations

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FEB 01 1993

CLEAR SPRINGS TROUT COMPANY
 Clear Lakes Hatchery
 Rearing Volumes
 March 1992

Pond No. =====	Width =====	Depth =====	Length =====	Cubic Ft. Per Pond =====	Total Cubic Ft. =====	Total Surface Area
1-24A	18	3.00	124	6,696	160,704	53,568
1-24B	18	3.00	124	6,696	160,704	53,568
1-4C	10	2.50	232	5,800	23,200	9,280
5-6C	10	2.50	171	4,275	8,550	3,420
7-8C	18	2.50	126	5,670	11,340	4,536
9-10C	18	2.50	104	4,680	9,360	3,744
11-12C	18	2.50	85	3,825	7,650	3,060
13-14C	18	2.50	86	3,870	7,740	3,096
15-16C	18	2.50	85	3,825	7,650	3,060
17-18C	18	2.50	84	3,780	7,560	3,024
19-20C	18	2.50	91	4,095	8,190	3,276
21-22C	18	2.50	92	4,140	8,280	3,312
23-24C	18	2.50	93	4,185	8,370	3,348
25-26C	18	2.50	94	4,230	8,460	3,384
27-28C	18	2.75	101	5,000	9,999	3,636
27-28D	18	2.75	103	5,099	10,197	3,708
29-30C	18	2.75	99	4,901	9,801	3,564
29-30D	18	2.75	101	5,000	9,999	3,636
31-32C	18	2.75	104	5,148	10,296	3,744
31-32D	18	2.75	97	4,802	9,603	3,492
36-43C	18	3.00	197	10,638	85,104	28,368
					=====	
Total Volume					582,757	203,824

Total A Section 160,704
 Total B Section 160,704
 Total C Section 231,550
 Total D Section 29,799

All dimensions in feet

=====

Grand Total: 582,757 Cubic Feet

Surface Area = 203,824 ft²
 = 4.68 ac.

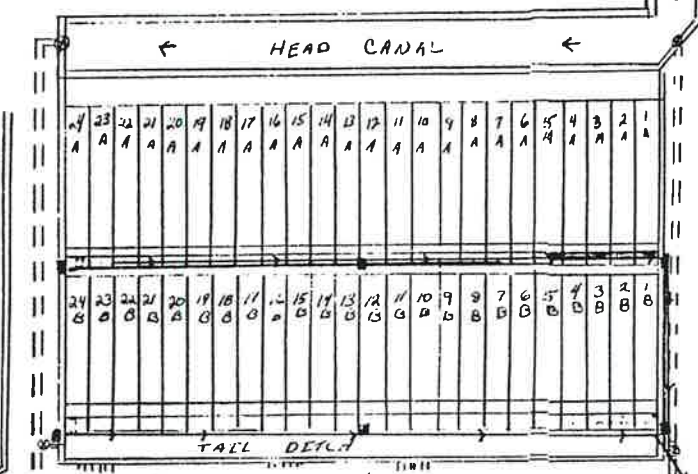
MICROFILMED
 FEB 01 1993

IN COMING SPRINGS

OFFICE SHOP
FEED STORAGE

OFFICE

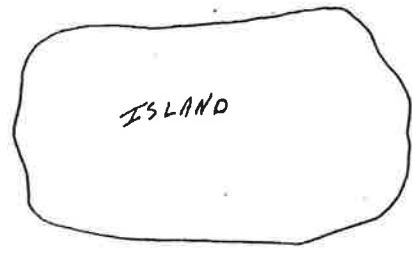
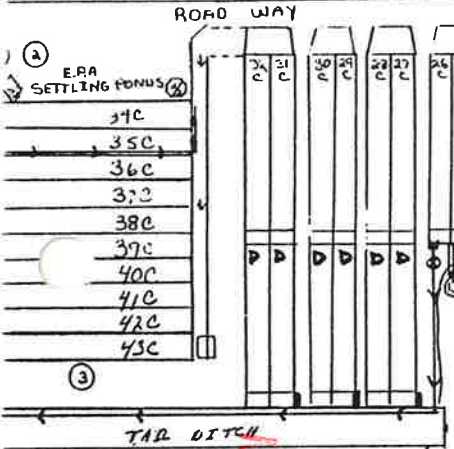
CLEAR SPRINGS TROUT CO
CLEAR LAKE HATCHERY



MICROFILMED
FEB 01 1993

LEGEND

- ELECTRICAL OUTLETS FOR PUMPS
- PIPE LINE FOR PUMPED SLUDGE AND DIRECTION OF FLOW
- DISCHARGE POINTS ① THRU ⑭
- STATE APPROVED MEASURING WEIR FOR INFLUENT SPEND
- ① THRU ⑭ POINTS FOR SAMPLING EFFLUENT
- ⊗ POINT FOR MEASURING AND SAMPLING PUMPED SLUDGE TO SETTLING PONDS
- ⊕ POINT OF DISCHARGE OF TREATED EFFLUENT
- ① FEED GINS
- SETTLING BASINS



SWAMPY AREA

MICROFILMED
FEB 01 1993

CLEAR LAKE

MEMORANDUM

To: Judy Givens
From: Helen Harrington-Thornton
Marci Sterling
Date: February 21, 1992
Subject: Incorrect Entry of Attorney/Notice of Appearance

=====

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

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

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

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

cc: Anna Baumhoff

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FEB 01 1993



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

December 16, 1992

RECEIVED

DEC 18 1992

Department of Water Resources
Southern Region Office

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

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

Dear Mr. Brown:

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

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

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

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

MICROFILMED
FEB 11 1993

January 22, 1937

Re: Permit No. 17850

J. W. TINGEY
Buhl, Idaho

Dear Sir:

We are enclosing herewith, Certificate of Completion of Works together with a License and Certificate of Water Right, authorizing the appropriation of forty second feet of water for fish hatchery purposes under the terms of Permit No. 17850, and also our office receipt in the amount of \$19.00 for the fees you paid in connection with proof of completion of works and proof of beneficial use of the water.

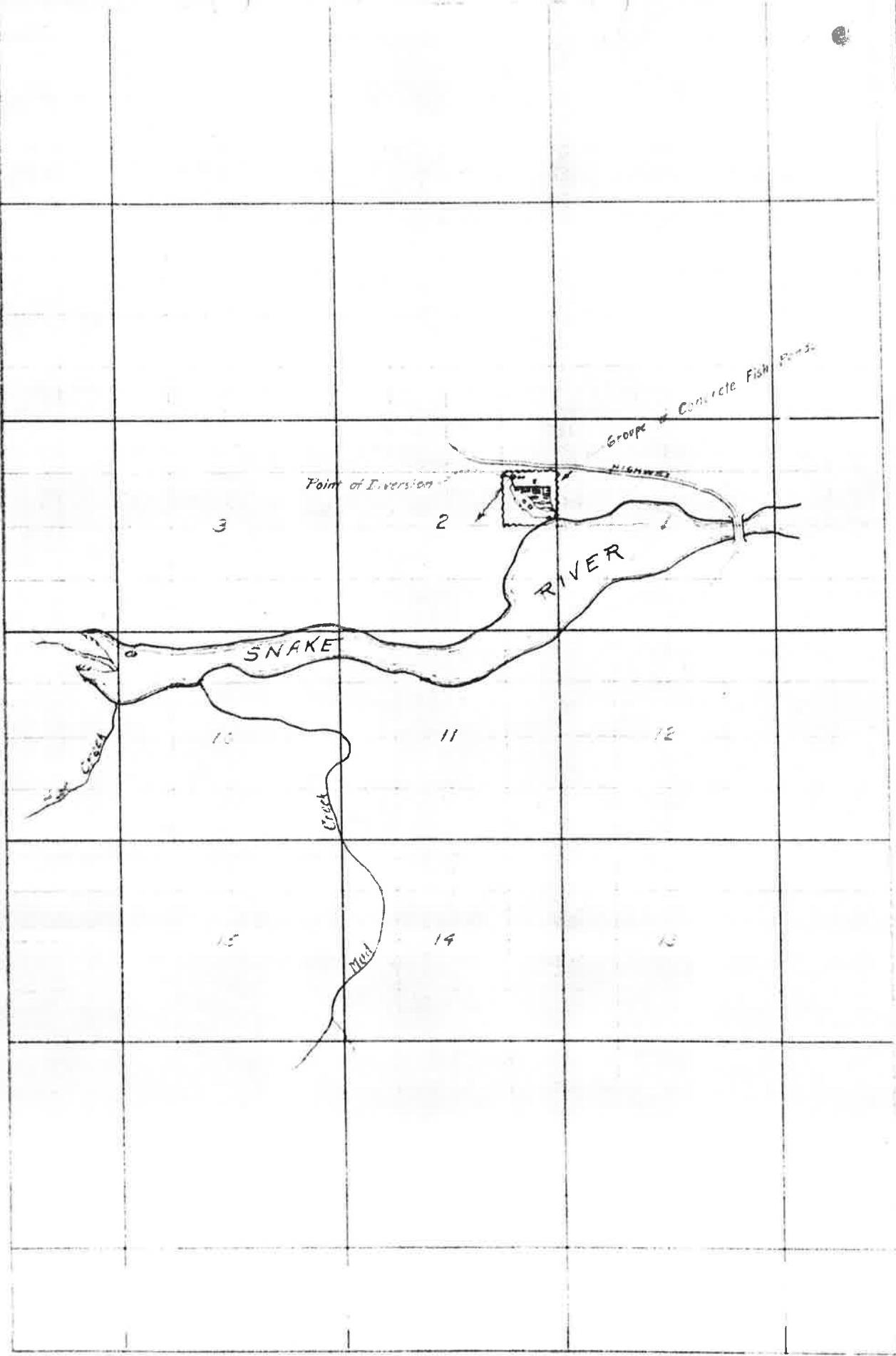
A short time ago, the bonding company which executed your surety bond for the water filing, wrote to this office asking as to whether or not it would be necessary to renew the bond for another year. We advised them at that time that a Certificate of Completion of Works would be issued shortly, and the bond would therefore no longer be necessary. If you are billed for this premium again, you should advise the company that the bond is no longer required.

Very truly yours

Chief Clerk & Office Engineer

PLH/ej
encl

17850



HAWLEY TROXELL ENNIS & HAWLEY
ATTORNEYS AND COUNSELORS

ROBERT I. TROXELL
JESS B. HAWLEY, JR.
PAUL B. ENNIS
JOHN T. HAWLEY
THOMAS A. MILLER
M. NEAL NEWHOUSE
CRAIG L. MEADOWS
ROBERT L. BILOW
JOSEPH D. McCOLLUM, JR.
WAYNE B. SLAUGHTER, JR.
GARY D. BABBITT
P. CRAIG STORTI
MERLYN W. CLARK
RICHARD F. GOODSON
CARL W. HARDER
PHILLIP M. BARBER
EDWIN V. APEL, JR.
KAREN L. LANSING
EUGENE A. RITTI
RICHARD G. SMITH
JOHN F. KURTZ, JR.
P. MARK THOMPSON
LINDA L. HOLDEMAN

May 6, 1981

Copied from licensing
file 36-2703
11/27/91

ONE CAPITAL CENTER
POST OFFICE BOX 1617
BOISE, IDAHO 83701

TELEPHONE
(208) 344-6000

State of Idaho
Department of Water Resources
450 West State Street
Boise, Idaho 83720

RE: Water License Nos. 32600/36-3734,
28339/36-2414,
27848/36-2379,
17850/36-2703 and
18605/36-2048,

Claims to a Water Right Nos. 36-4011, 36-4013
and 36-4014 and Water Permit No. 36-7148,
Thousand Springs Trout Farms, Inc.

Gentlemen:

We write as attorneys for Thousand Springs Trout Farms, Inc. Our client has recently sold and subleased to Clear Springs Trout Co. real property which it owned or leased within the State of Idaho. Pursuant to the agreement between said parties, all of Thousand Springs Trout Farms, Inc.'s interest in and to the above referenced Water Licenses, Claims to a Water Right and Water Permit appurtenant to the land in question was also transferred and assigned to Clear Springs Trout Co. As collateral security for the deferred balance of the purchase price, Clear Springs Trout Co. has mortgaged to Thousand Springs Trout Farms, Inc. all of its newly acquired right, title and interest in and to the above referenced Water Licenses, Claims to a Water Right and Water Permit.

Please find the following enclosed in connection with the above referenced matter:

1. Three original Notice of Lienholder's Interest concerning Claims to a Water Right Nos. 36-4011, 36-4013 and 36-4014 and one copy thereof.
2. Executed original and one copy of the Assignment of Permit No. 36-7148 from Thousand Springs Trout Farms, Inc. to Clear Springs Trout Co.

HAWLEY TROXELL ENGINEERS & HAWLEY

Department of Water Resources

Page Two

May 6, 1981

3. Executed original and one copy of the Assignment of Permit No. 36-7148 from Clear Springs Trout Co. to Thousand Springs Trout Farms, Inc. as collateral security for the deferred balance of the purchase price.

4. Four copies of this letter.

I have enclosed a copy of this letter for you to place in each one of your files concerning the above referenced Water Licenses.

Please file and acknowledge the enclosed original Notice of Lienholder's Interest. Please return to our office as soon as possible the copy of the enclosed Notice of Lienholder's Interest stamped with your filing data and acknowledged by the Department of Water Resources.

Would you also file the enclosed Assignment of Permit No. 36-7148 from Thousand Springs Trout Farms, Inc. to Clear Springs Trout Co. and subsequent thereto, file the Assignment of Permit No. 36-7148 from Clear Springs Trout Co. to Thousand Springs Trout Farm, Inc. as collateral security for the deferred balance of the purchase price. Please return to our office the enclosed copy of each Assignment of Permit stamped with your filing data.

If you have any questions whatsoever concerning this matter, please give me a call. Thank you in advance for your usual time and consideration.

Very truly yours,

RICHARD F. GOODSON

RFG:pe

encls.

cc: Mr. George T. Hill

Mr. John Hepworth

1 HEPWORTH, NUNGESTER & FELTON
2 1020 Main Street
3 Buhl, Idaho 83316
4 Telephone: 543-4368

36-2048

Accepted EDF

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6
7
8 STATE OF IDAHO
9 DEPARTMENT OF WATER ADMINISTRATION

10
11 In the Matter of Applications)
12 Number 36-2448, 36-2703, 36-4013) PROTEST
13 and 36-7148 of Thousand Springs)
14 Trout Farm, Inc.)

15 Comes now JOHN C. HEPWORTH, Secretary of CLEAR SPRINGS TROUT
16 COMPANY, a corporation, and respectfully alleges:

- 17 1. That Thousand Springs Trout Farm, Inc., has filed applica-
18 tions with the Department of Water Administration as follows:
19 a. A proposed change of water rights with respect to
20 Applications No. 36-2048 and 36-2703;
21 b. A proposed change of a Claim to a Water Right
22 No. 36-4013; and
23 c. An amendment to Application for Permit No. 36-7148.
24 2. Clear Springs Trout Company, an Idaho corporation, claims
25 rights and has issued to it permits in connection with the same
26 water source to which Thousand Springs Trout Farm, Inc.'s
27 applications relate. The applications and permits of Clear Springs
28 Trout Company are designated by the Department of Water Administra-
29 tion as being permits numbered:
30 36-2708
31 36-7218
32 3. That Clear Springs Trout Company and its assignee for
security purposes, Farmers' National Bank of Buhl, Idaho, protest

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the applications of Thousand Springs Trout Farm, Inc., set forth above on the following basis:

a. That the proposed changes by Thousand Springs Trout Farm, Inc., cannot be made without injuring the permits and rights of Clear Springs Trout Company and its assignee, Farmers' National Bank of Buhl, Idaho;

b. That the proposed changes and amendments by Thousand Springs Trout Farm, Inc., if allowed, would constitute an enlargement of any rights they now have and would thereby injure other permit holders including Clear Springs Trout Company and its assignee.

WHEREFORE, Clear Springs Trout Company and its assignee, Farmers' National Bank of Buhl, Idaho, respectfully pray that Application Nos. 36-2048, 36-2703, 36-4013, and 36-7148 of Thousand Springs Trout Farm, Inc., be denied, disallowed and rejected and that the Department of Water Administration refuse the applications made thereunder.

DATED: September 11, 1972.

John C. Hepworth
John C. Hepworth

STATE OF IDAHO)
County of Twin Falls) ss.

JOHN C. HEPWORTH, being first duly sworn under oath, says:

That he is the secretary of Clear Springs Trout Company and is the authorized attorney for Farmers' National Bank of Buhl, Idaho, in connection with the applications of Thousand Springs Trout Farm, Inc.; that he has read the above and foregoing and knows the contents thereof and believes the facts stated therein to be true and that this verification is made as secretary of Clear Springs Trout Company and under his power of attorney from the Farmers' National Bank of Buhl, Idaho.

John C. Hepworth
Leticia K. Gordon

Subscribed and sworn to before me this 11th day of September, 1972.

Notary Public for Idaho
Residing at Twin Falls, Idaho

PHONE 342-0090

EARL M. HARDY
BOISE, IDAHO 83705
September 8, 1972

1340
2222 VISTA AVE NWE

Accepted July 2
JDF

Re: Proposed Changes of Water Rights
Nos. 36-2043, 36-2703
Proposed Change of A Claim to a
Water Right No. 36-4013
Amendment to Application For Permit
No. 36-7149 - Thousand Springs Trout
Farms, Inc.

RECEIVED

SEP 8 1972

Mr. R. Keith Higginson, Director,
Department of Water Administration
State House -- Annex 2
Boise, Idaho

Department of Water Administration

Dear Mr. Higginson:

The undersigned hereby protests the above applications to change and enlarge the existing diversion works as proposed therein.

The undersigned, Clear Lakes Trout Co., is the owner of the following approved permits to appropriate water from the same source as that from which Thousand Springs Trout Farms, Inc. proposes to take additional water under the above applications:

- No. 36-2659, dated June 24, 1966 for 100 c.f.s.
- No. 36-7004, dated July 21, 1967 for 75 c.f.s.

The additional water which Thousand Springs Trout Farms, Inc. proposes to take under these applications runs into and is a part of the water appropriated by and presently being used by Clear Lakes Trout Co., Inc. under its approved applications set forth above.

All of the water adjacent to and west of the existing diversion of the applicant, Thousand Springs Trout Farms, Inc., is presently being used by the protestant herein and any extension of this existing diversion to the west as proposed by the applicant would decrease the amount of water available to the protestant and thereby cause injury to the Clear Lakes Trout Co., Inc. under the provisions of Sec. 42-103, I. C.

Under the above applications, it appears that Thousand Springs Trout Farms, Inc. is attempting to obtain additional water to that which it is entitled to based on the Claim to a Water Right No. 36-4013 and "Due to changes in flow of spring, old diversion no longer collects and diverts the quantity of water to which applicant has a prior right. New diversion will enlarge existing diversion to extent necessary to collect water to which applicant has an established existing right.", as stated by applicant in Item 10-3 of the applications. Clear Lakes Trout Co., Inc. does not necessarily consider that said claim to a Water Right No. 36-4013 is either accurate or valid insofar as the 60 c.f.s. water claimed therein is concerned. Furthermore, all of the water measurements of the Clear

RECORDED

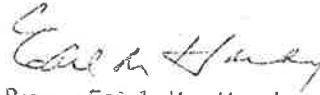
Mr. R. Keith Higginson
Page 2
September 8, 1972

Lake Spring available to Clear Lakes Trout Co., Inc. do not support that there is a decrease in spring flow which would necessitate the proposed changes in diversion, even if it were assumed that the applicant has an established and prior right for the quantity of water stated in said claim No. 36-4013, which protest it does not so assume. But rather, Clear Lakes Trout Co., Inc., assumes that by filing these applications to enlarge and extend its diversions constitutes an attempt by Thousand Springs Trout Farms, Inc. to enlarge its use of the water it is actually entitled to, contrary to Section 42-222, I. C.

It is requested that this letter be entered as a formal protest on behalf of the undersigned to the allowance of said applications and request that they be denied.

Respectfully yours,

CLEAR LAKES TROUT CO., INC.



By: Earl M. Hardy
President

EMH/skh

MICROFILMED

Identification 1945
 Transfer No. 56.2703

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

APPLICATION FOR TRANSFER OF WATER RIGHT
To Change the Point of Diversion and/or the Place of Use

1. Name of Right Holder Thousand Springs Trout Farm, Inc.
 Post office address P. O. Box 232, Buhl, Idaho 83316
2. Right obtained by:
 - a. Decree to Not Applicable in Case of _____
 (Name)
 vs. _____, Dated _____ in _____
 (Name of Court)
 Court. County of _____.
 - b. License No. 17850 issued by the State of Idaho, Department of Reclamation.
3. Source of water Clear Springs tributary to Snake River
 (Name of stream or source)
4. Date of Priority November 23, 1933
5. Amount of water
 - a. 40.0 c.f.s. and/or
 - b. _____ acre feet/annum
6. Water is used for fish hatchery from January 1 to December 31
 (Month, Day) (Month, Day)
7. Original location of point of diversion is Lot 5 SE 1/4 NE 1/4 of Section 2,
 Township 9 South, Range 14 East, B.M., in Gooding County;
 Additional points of diversion, if any None

8. Lands presently irrigated or place of use:

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	
<u>9 S</u>	<u>14 E</u>	<u>1</u>																	

Total number of acres presently irrigated _____

9. If applicant was not the original holder of this right explain how it was acquired: Applicant acquired the right by acquisition of Snake River Out Company which had acquired the right from J. W. Tingey, the original holder.

10. CHANGE IN POINT OF DIVERSION

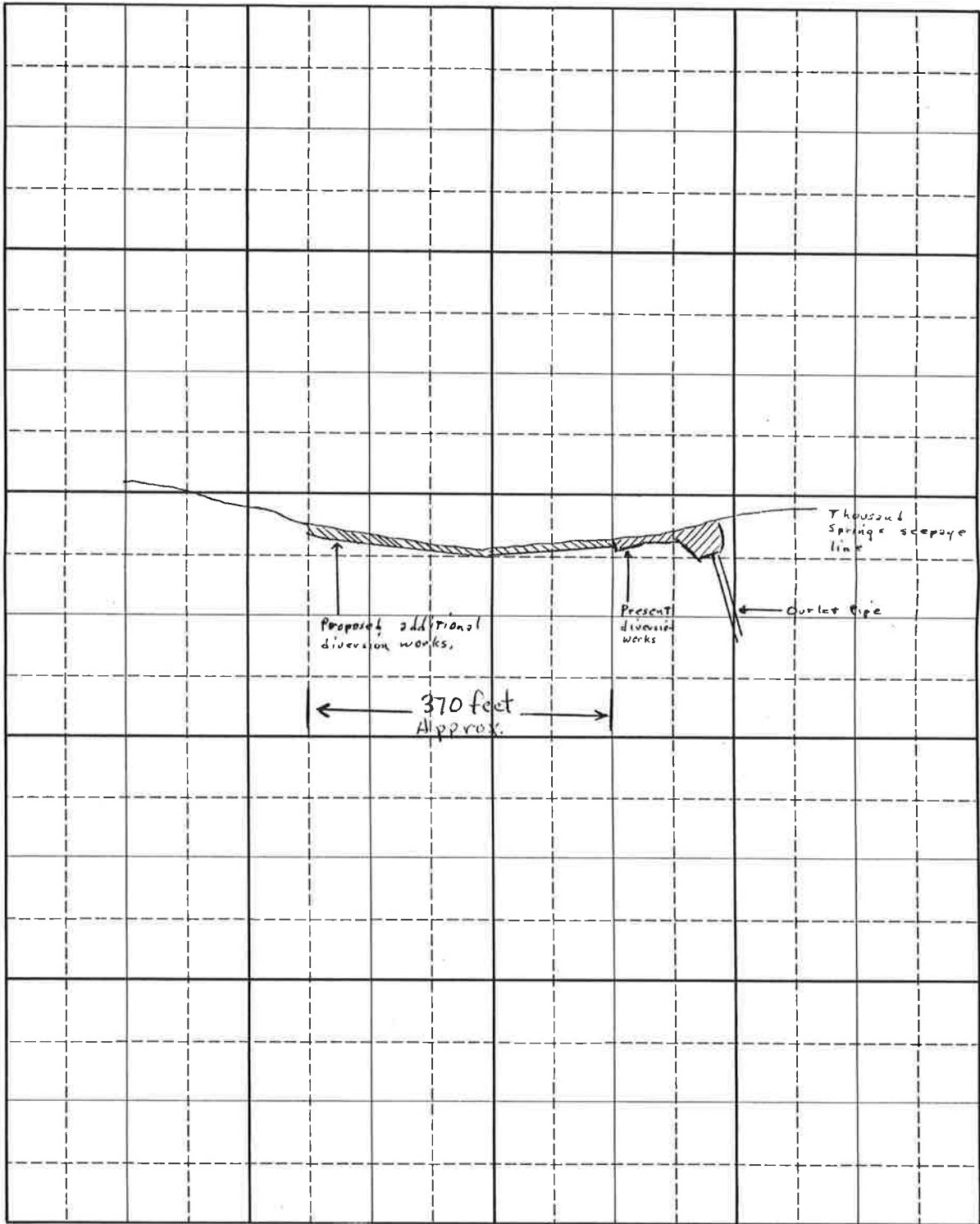
- a. Quantity to be diverted at new point: 40.0 c.f.s. and/or _____ acre feet
- b. New point of diversion: Lot 5 SE 1/4 NE 1/4, Section 2, Township 9 South, Range 14 East, B.M.
- c. Description of method of diversion and conveyance from new points of diversion: New diversion will consist of enlarged concrete collection box (which was old diversion method) to collect spring water which is then diverted through 12 inch pipeline approximately 800 feet in length to place of use.
- d. Is water to be conveyed to the lands previously irrigated? Yes No _____
 Water to be used for fish hatchery in same place.
 If not, the place of use should be changed below.
- e. Describe the reasons for applying for a change in the point of diversion:
Due to changes in flow of spring, old diversion no longer collects and diverts the quantity of water to which applicant has prior right. New diversion will enlarge existing diversion to extent necessary to collect water to which applicant has an established existing right.
- f. Do you intend to make the transfer permanent? Yes
- g. Do you intend to abandon completely the old point of diversion? No
- h. Indicate on the above plat the new point of diversion and lands to be irrigated.

11. CHANGE IN PLACE OF USE Place of use not changed.

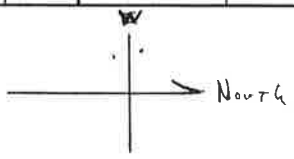
- a. Describe the new lands on which you wish to use your right.

TWP.	RANGE	SEC.	NE 1/4				NW 1/4				SW 1/4				SE 1/4				TOTALS
			NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	NE 1/4	NW 1/4	SW 1/4	SE 1/4	

Total number of acres to be irrigated _____



SCALE: $\frac{1}{16}$ Inches Equal 1 Mile. Draw Plan in Ink.



b. Do you intend to make the transfer permanent? Not applicable

c. Are you completely abandoning the lands previously irrigated by this right? If not, explain your plans:
Not applicable

d. Describe any other water rights that you claim for the new ground upon which you wish to transfer this right: Not applicable

e. Indicate on the above plat the new land to be irrigated and the point of diversion. Not applicable

I hereby assert that no one will be injured by such transfer and that the change will be made at my own risk. The information contained in this application is true to the best of my knowledge.

John E. Evans
(signature of applicant)

Subscribed and sworn to before me this 25th day of July, 1972

Looney D. Matthews
(notary public) for Idaho
Residing at Dallas

My commission expires Jan. 1, 1973

**ACTION OF STATE RECLAMATION ENGINEER
AND CERTIFICATE OF TRANSFER**

This is to certify that I have examined Application for Transfer of Water Rights No. _____,
and said application is hereby _____.

- Approval of said application is subject to the following limitations and conditions:

- Denial of said application is for the following reasons: _____

Witness my hand this _____ day of _____, 19____.

State Reclamation Engineer

FOR DEPARTMENT USE ONLY

Received by <u>EDH</u>	Date <u>8-10-72</u>	Protest filed by:	Date
Prelim. check by <u>DDF</u>	Date <u>8/10/72</u>		
Fee received by <u>EDH</u>	Date <u>8-11-72</u>	Fee <u>\$30⁰⁰</u>	<u>interest # 8700</u>
Approved for publication by _____			
Published in _____	Dates _____		
Hearing held _____			
Watermaster Recommendation sent _____			

STATE OF IDAHO
DEPARTMENT OF WATER ADMINISTRATION

Statehouse - Annex 2
Boise, Idaho 83707
(208) 384-1235

September 14, 1970

Re: License nos. - 17850/36-2703

76 75 16-2048

Permit no. - 16817 - CANCELLED

Mr. Donald Olson
Attorney-at-Law
425 West Second
Idaho Falls, Idaho 83401

Dear Mr. Olson:

Pursuant to your telephone request of September 14, 1970, we are enclosing copies of water licenses 17850/36-2703 and 18605/36-2048. Permit no. 16817 was cancelled and the file has been destroyed. We have in our microfilm records copies of the cancelled file should you need them in the future.

Though copies from the copies of the licenses, they remain in the name of J. W. Timony, as our records will not reflect any change of ownership under a license. To the best of our knowledge, the only thing that would affect the licenses would be the abandonment or the right of the tortfeasor through five years of nonuse. We have no record of either action.

If you need any further assistance, please contact us.

Sincerely,
_____,

Donald W. McElweeny
Approval Section Supervisor

DWM/DK
ENCLOSURES

Copied from licensing
file 36-2703

11/25/91



E. Keith Higginson
Director

Water Policy Administration
Water Pollution Investigation
Dam and Reservoir Safety
Water Well Drilling
Flood Plain Management
Frigation and
Flood Control Districts

36-2703
17850

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

REPORT OF ENGINEER

Form No. 1760

This proof is for **Comp. of Works & Ben. Use**

Water District No.

1. Name of applicant: **J. N. Tingey**

2. Source of water supply: **Clear Springs**

3. Location of point of diversion: Is in the **Lot 5**

Section **2**

T. **9 S.** R. **14 E.** County of **Gooding**

4. Describe works as they exist, giving dimensions and capacities of same: *Dam of rock and concrete 30ft long x 25ft high. Ditch 6ft wide x 15ft deep. 700ft long and concrete lined. 29 concrete pools, size from 50' x 7' ^{to} maximum, of 80' x 12', also several ponds of earth.*

Capacity of works is in excess of 40 Cu. Ft.

5. Water is used for: **Fish Hatchery purposes**

6. State whether or not water has been turned into works of diversion: *Yes*

7. List legal subdivisions of lands to be irrigated. If proof is for beneficial use, give exact number of acres under cultivation in each forty-acre tract. (Describe manner and place of use if for other than irrigation.)

(Submit map on attached plat, showing location and details of above description.)

8. What large stream would the water here appropriated finally reach: *Snake River*

Remarks: *Water covered by this permit is returned directly to Snake River*

EXAMINED

J. N. Tingey

EXAMINER

Sketches on attached plat, showing location and details of the station.

What large stream was the water here ~~collected~~ finally back *Trade River*
Remarks *Water covered by this permit is returned
to the Trade River*

4

36

Signed)

J. D. Linn

Examiner

State of Idaho

License and Certificate of Water Right

Water License No. 17850

Amount 40.0 sec. ft.

Water District No.

Priority November 23, 1933

THIS IS TO CERTIFY that J. W. TINGEY of Buhl, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated November 23, 1933; that Permit No. 17850 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 40.0 second feet, was issued thereunder on December 30, 1936, showing that said works were completed on the 15th day of April, 1936; and that on the 15th day of April, 1936,

J. W. TINGEY

of Buhl, State of Idaho, made proof to the satisfaction of the Commissioner of Reclamation of Idaho, of the right to use the waters of Clear Springs, a tributary of Snake River, for the purpose of fish hatchery, under Use Permit No. 17850 of the Commissioner of Reclamation and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the Commissioner of Reclamation of Idaho and entered of record in Volume 7 of Licenses, at page 3851, on the 21st day of January, 1937;

The right hereby confirmed dates from November 23, 1933;

The Point of Diversion is located in the 14 Lot 5 14, Sec. 2, Tp. 9 S., R. 14 E., B. M. Gooding County

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 40.0

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 40.0 cubic feet per second.

Description and location of use: At Mr. Tingey's fish hatchery in Snake River Canyon

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated

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

WITNESS the seal and signature of the Commissioner of Reclamation, affixed at Boise, Idaho, this 21st day of January, 19 37

R. W. FARIS

Commissioner of Reclamation

(SEAL)

Water Right Number - R36-02708 Prefix Translation: RESEARCH Old (D) Number - 33281

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

*** C - CURRENT OWNER ***
PROSPECT CO

THE

1 - PO BOX 712
2 -
3 -
City- BUHL State- ID Zip- 83316
Phone - 208-543-4316
1 - PO BOX 712
2 -
3 -
City- BUHL State- ID Zip- 83316
Phone - 208-543-4316

CLEAR SPRINGS TROUT CO

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
09/28/1966 17 SOUTHERN L - LICENSE

+ - - - - Source - - - - - + + - - - - - Tributary - - - - - +
SPRINGS 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

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
19 - FISH PROPAGATION 01/01 12/31 200.000

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
200.000 13.6

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

Total Acres:

+ - - Diversion Means - CHECK DAM & CONCRETE DITCH TO FISH RACEWAYS

+ - - Non-Irrigation Use - FISH, COMMERCIAL TROUT PRODUCTION

+ - - Other Rights for Same Use - 36-07218

+ - - - - Remarks - - - - - +
SOURCE IS ALSO KNOWN AS CLEAR SPRINGS.
FACILITY VOLUME 10.2 AF.
USE OF THIS RIGHT WITH RIGHT NO. 36-07218 IS LIMITED TO A

Water right number - A36-02708

Prefix Translation: ADJUDICATION CLAIM

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

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

No Old Water Right Numbers Found

+ - - - - Conditions of Approval - - - - - +

No Conditions of Approval found.

+ - - - - Decree Plaintiff - - - +

+ - - - - Decree Defendant - - - +

+ - Decree Date - +
00/00/0000

+ - - - - Comments - - - - - +

No Comments Found

+ - - Audit Fields - - +

02/26/92 GIVENS

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

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	- 00/00/0000	Old Judicial District	-
Claim Received Date	- 09/01/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
		Receipt Number	- S002014	Water District	-
		POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	-
				Notice of Error Flag	-

Water right number - A36-02708

Adj. flag translation: Adjudication Temporary Work Area

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

+ - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers found.

+ - - - - Conditions of Approval - - - - - +
No Conditions of Approval found.

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

+ - - - - -Comments- - - - - +
No Comments Found

+ - - Audit Fields - 08/24/88 STANTON

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

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	- 06/03/1985	Old Judicial District	-
Claim Received Date	- 09/01/1988	Last Amended Date	- 00/00/0000	Temporary Right	- P
Claims Tape Error Flg	-	Receipt Number	- S002014	Water District	-
Fee Exempt Flag	-	POU Ownership Flag	- Y	Federal/State Indicator	- S
		Name Connector	- AND/OR	Presumption Flag	-

Water Right Number - 36-02708 Prefix Translation: WATER RIGHT Old (D) Number - 33281

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

*** C - CURRENT OWNER ***
CLEAR SPRINGS TROUT CO.

1 -
2 -
3 -
City- BUHL State- ID Zip-
Phone -

*** O - ORIGINAL OWNER ***
EASTMAN, JR.

JESS O.

1 -
2 -
3 -
City- Phone - State- Zip-

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
09/28/1966 17 SOUTHERN L - LICENSE

+ - - - - Source - - - - + + - - - - - Tributary - - - - - +
CLEAR LAKE STREAM SNAKE RIVER

+ - - - - Point of Diversion - - - - - +
Twn Rng Sec Tract Lot RFlg County Stream Index (Blank if no Index Code)
09S 14E 2 NW SE (47) GOODING 272.0 409.0 0.4

+ - - - - Water Use - - - - - +
Code Description Period From Period To Diversion Rate Diversion Volume
19 - FISH PROPAGATION 01/01 12/31 200.000 144540.00

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Div. Capacity - +
200.000 144540.00

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

+ - - Diversion Means -
+ - - Non-Irrigation Use -
+ - - Other Rights for Same Use -

+ - - - - Remarks - - - - - +
No Remarks found.

+ - - - - Old Water Right Numbers - - - - - +
No Old Water Right Numbers found.

Water right number - 36-02708

Prefix Translation: WATER RIGHT

+ - - - - Conditions of Approval - - - - -
No Conditions of Approval found.

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

+ - - - - Comments - - - - -
No Comments Found

+ - - Audit Fields - 06/03/85 05/28/88 CONVERT

+ - - - - Water Rights Dates and Flags Area - - - - -

Proof Due Date - 00/00/0000	Field Exam Made - 00/00/0000	Field Exam Fee -
Approved/Denied - 00/00/0000	Protested Date - 00/00/0000	Swan Falls -
Proof Made Date - 00/00/0000	Hearing Date - 00/00/0000	Temporary Right - P
Exam to S.O. Date - 00/00/0000	Verified Date - 06/03/1985	DLE/Carey Act -
Order Show Cause - 00/00/0000	Receipt Number -	Water District -
Licensed Date - 05/01/1979	Appl Received - 00/00/0000	Transfer/Amended -
Decree Date - 00/00/0000	Presumption Flag -	

RECEIVED

DEC 15 1998

Department of Water Resources

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

RECEIVED

DEC 21 1998

Department of Water Resources

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

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. 36-02708, 36-07201,
) 36-07218, 36-02048, 36-02703,
) 36-04013A, 36-04013B, 36-04013C,
) 36-07040, 36-07148, and 36-07568
) (Clear Springs Foods)

NOTICE OF APPEARANCE

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

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

DATED this 14th day of December, 1998.



D. Craig Lewis

CERTIFICATE OF SERVICE

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

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

The Prospect Co
P. O. Box 712
Buhl, ID 83316
 U.S. Mail Fed Ex Hand Fax

Dan Steenson
Ringert Clark
P. O. Box 2773
Boise, Idaho 83701-2773
 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 83720
Boise, Idaho 83720-0010
 U.S. Mail Fed Ex Hand Fax

United States Department of Justice
Environment & Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724
 U.S. Mail Fed Ex Hand Fax



Dana L. Hofstetter

D:\1780\2b\CFSV2576

RECEIVED

APR 11 2000

Department of Water Resources

200 APR 10 AM 10:17

DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED _____

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

In Re SRBA

Case No. 39576

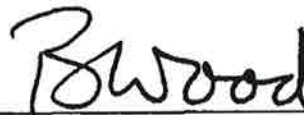
ORDER OF PARTIAL DECREE

For Water Right 36-02708

The Notice of Challenge filed in the above subcase having been heard and ruled upon, IT IS
THEREFORE ORDERED that water right 36-02708 is hereby decreed as set forth in the attached
Partial Decree Pursuant to I.R.C.P. 54(b).

IT IS SO ORDERED.

DATED APR 8 @ 2000



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

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APR 11 2000

Department of Water Resources

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

In Re SRBA)
Case No. 39576)

PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b) FOR Water Right 36-02708

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

NAME & ADDRESS: CLEAR SPRINGS FOODS INC
THE PROSPECT CO
PO BOX 712
BUHL ID 83316

SOURCE: SPRINGS TRIBUTARY: CLEAR LAKES
SOURCE IS ALSO KNOWN AS CLEAR SPRINGS.

QUANTITY: 200.00 CFS
144540.0 AFY

PRIORITY DATE: 09/28/1966

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

MULTIPLE POINTS OF DIVERSION LOCATED IN T09S, R14E, S02, LOT 5 (SWSENE), SESWNE, NENWSE.

PURPOSE AND PERIOD OF USE: PURPOSE OF USE PERIOD OF USE QUANTITY
FISH PROPAGATION 01-01 12-31 200.00 CFS
144540.0 AFY

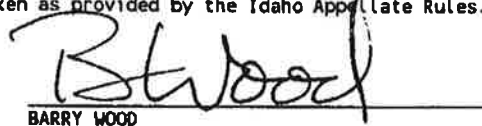
PLACE OF USE: FISH PROPAGATION Within GOODING County
T09S R14E S02 NWSE

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

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

RULE 54(b) CERTIFICATE

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



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

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Department of Water Resources
Southern Region

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SEP 29 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)

A. Subcase 36-02708

(Insert water right number)

Case No. 39576)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B: NAME AND ADDRESS OF PERSON OBJECTING

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

Address: 2092 East 3600 South
Wendell, Idaho 83355

Daytime Phone: (208) 536-6553

Name & Address of Attorney, if any:

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

C: CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Clear Springs Trout Company
The Prospect Company

Address: P. O. Box 712
Buhl, Idaho 83316

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

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

11. I object because:

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

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

E.

VERIFICATION (Must be Completed)

State of Idaho)
) ss.
County of Ada)

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

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

(Signature of person filing objection)

Dana L. Hofstetter
(Attorney signing in representative capacity)

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



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

INSTRUCTIONS FOR MAILING

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

G.

CERTIFICATE OF MAILING

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

1. Original to:

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

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

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

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

3. Copies to:

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

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

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



Signature of Objector or attorney
mailing on Objector's behalf

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OCT 05 1998

Department of Water Resources
Southern Region

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SEP 29 1998

Department of Water Resources

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

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

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

In Re SRBA	)	Subcase Nos. 36-02708, 36-07201, and
	)	36-07218
Case No. 39576	)	(Clear Springs Foods)
)	
_____	)	Motion to Alter or Amend

The North Snake Ground Water District, on behalf of its members, including May Farms, Ltd. and Faulkner Land & Livestock Company, by and through its counsel of record, Josephine P. Beeman and Dana L. Hofstetter of Beeman & Hofstetter, P.C., hereby moves this Court, pursuant to SRBA Administrative Order No. 1, Section 13a, Rules 7(b)(1) and 7(b)(3), I.R.C.P., and *Idaho Code*, Title 42, Chapter 52, to alter or amend the Special Master's recommendation. This Motion is supported by the

contemporaneously filed Affidavit of David B. Shaw, Affidavit of Brett Rowley, Affidavit of Dana L. Hofstetter, and the record in these subcases. Pursuant to Rule 7(b)(3), I.R.C.P., a brief in support of this Motion will be filed within 14 days. Oral argument is requested.

The grounds for this motion are as follows:

1. The Notices of Claim for certain of these subcases include facility volume designations. The claimant subsequently objected to facility volume designations but never sought to file amended claims. The attempt to delete facility volume remarks through the objection process is improper. Based on SRBA Administrative Order 1, Section 4.d(1)(b) and SRBA Court precedent, the claimant cannot seek to amend its claims without filing a motion to amend.

2. The Special Master's Recommendation does not include a facility volume quantity for fish propagation Water Right No. 36-02708. The absence of a facility volume quantity reflecting the size of the fish propagation facilities could improperly subject other water users to supply or mitigate water demands associated with facility expansion. Where a facility volume limit is designated by the Special Master for Water Right Nos. 36-07201 and 36-07218, it is negated by qualifying remarks.

3. The Special Master's Recommendations for the quantity element, do not adequately take into consideration actual beneficial use, including issues of partial forfeiture, abandonment, adverse possession, estoppel, other legal principles, and seasonal water supply or use fluctuations.

4. Diverted volume quantities reflecting actual beneficial use should be included in the Special Master's recommendations for each of these fish propagation water rights.

DATED this 28th day of September, 1998.

BEEMAN & HOFSTETTER, P.C.

By



Dana L. Hofstetter

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of September, 1998, I caused to be served copies of the foregoing **Motion to Alter or Amend** by depositing a copy thereof in the U.S. mail, postage prepaid, upon:

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

Dan Steenson
Ringert Clark
P. O. Box 2773
Boise, Idaho 83701-2773

Idaho Department of Water Resources
Document Depository
P. O. Box 83720
Boise, Idaho 83720-0098

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



Dana L. Hofstetter

D:\1780\2\ac\2404

Clear Lakes Trout Company, Inc.

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

RECEIVED
SEP 29 1998
Department of Water Resources
SOUTH
DJ

RECEIVED
OCT 05 1998
Department of Water Resources
Southern Region

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

In Re SRBA)	
	)	SUBCASE NUMBERS 36-02708, 36-07201
	)	and 36-07218
)	
Case No. 39576	)	MOTION TO ALTER OR AMEND
	)	SPECIAL MASTER'S RECOMMENDATIONS
)	
)	

DESCRIPTION

This is Clear Lakes Trout Company, Inc.'s ("Clear Lakes") *Motion to Alter or Amend the Special Master's Recommendations* for water right numbers 36-02708, 36-07201 and 36-07218.

MOTION

Clear Lakes, through its attorneys of record, hereby respectfully moves this Court to amend the *Special Master's Recommendations* for water right numbers 36-02708, 36-07201 and 36-07218 in the following manners:

1. Points of Diversion

There should be only one Point of Diversion listed for water right numbers 36-02708 and 36-07218. The other Points of Diversion listed should be deleted from the

Special Masters' Recommendations for both rights.

2. Remarks

Water Right Numbers 36-02708 and 36-07218 should each contain the following remark:

THIS WATER RIGHT AND WATER RIGHT NUMBER 36-07004 ARE DIVERTED FROM SEPARATE SOURCES.

Water Right Number 36-07201 should contain the following remark:

THIS WATER RIGHT IS DIVERTED FROM A SEPARATE SOURCE THAN THE SOURCE FOR WATER RIGHT NUMBERS 36-02659, 36-02708, AND 36-07218 AND THE SOURCE FOR WATER RIGHT NUMBER 36-07004.

This *Motion* is made pursuant to procedures set forth in SRBA Administrative Order 1.

BACKGROUND

The claimant of water right numbers 36-02708, 36-07201 and 36-07218 is Clear Springs Foods, Inc. ("Clear Springs"). Clear Lakes filed objections to IDWR's recommendations of these water rights. Clear Lakes' objections were resolved at trial after which the court entered its *Findings of Fact and Conclusions of Law on Involuntary Dismissal* (August 21, 1998). The *Special Master's Reports* entered August 28, 1998, and recommending these water rights for decree are therefore based in part on the *Findings of Fact and Conclusions of Law on Involuntary Dismissal (Dismissal)*. This *Motion to Alter or Amend* is timely as the *Special Master's Reports* were docketed on the September, 1998 SRBA District Court Docket Sheet.

GROUNDS FOR MOTION

This *Motion* is based on the following errors contained in the *Dismissal*:

1. The *Dismissal* errs in according *prima facie* weight to the portion of the Director's

Report listing the source element of water right numbers 36-02708, 36-07201 and 36-07218 as “springs,” and errs in concluding that Clear Lakes failed to meet its burden to identify the different sources from which Clear Springs’ and Clear Lakes’ water rights were historically and are currently diverted.

2. The *Dismissal* fails to make any findings regarding the source of the water rights at issue: Clear Springs’ water right numbers 36-02708, 36-07201 and 36-07218.

3. The *Dismissal* errs in finding that there were not historically and are not currently separate sources for Clear Springs’ water right numbers 36-02708 and 36-07218 and Clear Lakes’ water right number 36-07004.

4. The *Dismissal* errs in that the presumption under the authorities cited in the *Dismissal* that all water within the Snake River Basin is connected does not constitute, mandate, or imply a presumption that Clear Springs’ water rights and Clear Lakes’ water rights have the same source.

5. The *Dismissal* fails to find that the source for Clear Springs’ water right numbers 36-02708 and 36-07218 is the western stream.

6. The *Dismissal* fails to find that Clear Springs never attempted to divert water from the eastern stream.

7. The *Dismissal* fails to find that water flowing through the former eastern stream did not historically, and can not currently contribute to the source of Clear Springs’ water right numbers 36-02708 and 36-07218.

8. The *Dismissal* and the *Special Master’s Report* for water right number 36-07201 fail to find, consistent with the evidence, that the source element for water right number

36-07201 is separate from the source for water right numbers 36-02659, 36-02708 and 36-07218, and the source for water right number 36-07004.

9. The *Dismissal* errs in finding that precise location of the “division point” is necessary to demonstrate that there were and are separate sources for Clear Springs’ and Clear Lakes’ water rights.

10. The *Dismissal* errs in concluding that there is no method by which to administer the historic separate sources.

11. The *Dismissal* errs in concluding that Clear Lakes is estopped from claiming two separate sources.

12. The *Dismissal* erroneously identifies and describes the historic and current location and configuration of Clear Lakes’ diversions.

13. The *Dismissal* fails to find, consistent with the evidence, that only one point of diversion exists for water right numbers 36-02708 and 36-07218.

14. The *Dismissal* errs in concluding that Clear Lakes water right numbers 36-02659 and 36-07004 have the same points of diversion because the licenses for each of those water rights describe the points of diversion as being within the same quarter quarter section.

15. The *Dismissal* errs in failing to find that the permit to appropriate water right number 36-07004 entitles Clear Lakes to first priority to the source from which that water right was historically and is currently diverted.

16. The *Dismissal* errs with respect to its conclusions regarding the applicability of Idaho Code Sections 42-212 and 42-213 to Clear Springs’ water rights. The evidence


demonstrates that Clear Springs' diversions and water rights were established in the western stream. Under Idaho Code Sections 42-212 and 42-213, Clear Springs could not have established water rights in springs located wholly on another's private land.

Therefore, the source of Clear Springs' water rights can only be the western stream.

Pursuant to I.R.C.P. 7(b)(3), Clear Lakes requests oral argument on this motion and hereby notifies the court and party that it intends to file with the Court its brief in support of this Motion within 14 days of the filing of this motion.

DATED this 28th day of September, 1998.

RINGERT CLARK, CHARTERED



Charles L. Honsinger

Attorney for Clear Lakes Trout Farms, Inc.

CERTIFICATE OF MAILING

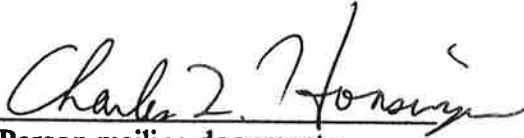
I certify that on September 28, 1998, I served by facsimile copies of this document, including all attachments to the following:

Director, Idaho Department of Water Resources
1301 N. Orchard
Boise, ID 83712

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

Patrick D. Brown
Parker, Warr & Brown, LLP
812 Shoshone Street East
Twin Falls, ID 83301

John C. Hepworth
Hepworth Lezamiz & Hohnhorst
133 Shoshone St. N.
P.O. Box 389
Twin Falls, ID 83303-0389


Person mailing documents

RECEIVED

OCT 05 1998

Department of Water Resources
Southern Region

SOUTH
RECEIVED

SEP 29 1998

Department of Water Resources

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

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

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

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

MOTION TO FILE LATE OBJECTIONS

MOTION

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

MEMORANDUM

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

DATED this 28th day of September, 1998.

BEEMAN & HOFSTETTER, P.C.

By


Dana L. Hofstetter

CERTIFICATE OF SERVICE

- I hereby certify that on the 28th day of September, 1998, I caused to be served copies of the foregoing **Motion to File Late Objections** by the methods indicated below:

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

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

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



Dana L. Hofstetter

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Department of Water Resources

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SEP 09 1998

Department of Water Resources
Southern Region

Clear Springs
South
8-23
1998 AUG 28 AM 10: 51

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	)	SPECIAL MASTER'S REPORT
)	
Case No. 39576	)	FINDINGS OF FACT AND
	)	CONCLUSIONS OF LAW
)	
	)	FOR WATER RIGHT Subcase 36-02708
)	

I. FINDINGS OF FACT

A notice of claim was filed for this water right pursuant to I.C. § 42-1409 (1990). The Director of the State of Idaho Department of Water Resources examined the water system for this reporting area. The *Director's Report* contained a recommendation or abstract for the elements of this water right.

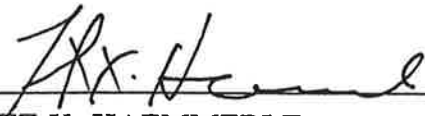
The Claimant, Clear Springs Foods, Inc., filed an objection as to a facility volume remark. That objection was resolved at trial after which the court entered its *Supplemental Findings of Fact and Conclusions of Law (Facility Volume)* (July 31, 1998), incorporated herein by reference.

Another objection was filed by Clear Lake Trout Company as to the source element. That objection was resolved at trial after which the court entered its *Findings of Fact and Conclusions of Law on Involuntary Dismissal* (August 21, 1998), incorporated herein by reference.

II. CONCLUSIONS OF LAW

Therefore, based on the file and record herein, IT IS RECOMMENDED that this water right be decreed with the elements as set forth in the *Partial Decree Pursuant to I.R.C.P. 54(b) for Water Right 36-02708*.

DATED: 8/28/98



 FRITZ X. HAEMMERLE
 Special Master
 Snake River Basin Adjudication

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AUG 31 1988

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)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-02708

1998 AUG 28 AM 10: 51
DISTRICT COURT-SRBA
TWIN FALLS CO., IDAHO
FILED *[Signature]*

NAME AND ADDRESS: CLEAR SPRINGS FOODS, INC.
PO BOX 712
BUHL, ID 83316

SOURCE: SPRINGS TRIBUTARY: CLEAR LAKES

QUANTITY: 200.00 CFS
144540.00 AFY

PRIORITY DATE: 09/28/1966

POINT OF DIVERSION: T09S R14E S02 SESWNE Within Gooding County
NENWSE
LOT 05 (SWSENE)

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	Fish Propagation	01-01 TO 12-31	200.00 CFS 144540.00 AFY

PLACE OF USE: Fish Propagation Within Gooding County
T09S R14E S02 NWSE

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

SOURCE IS ALSO KNOWN AS CLEAR SPRINGS.
MULTIPLE POINTS OF DIVERSION LOCATED IN SWSENE, SESWNE, NENWSE,
S02, T09S, R14E.
THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION
DESCRIBED ABOVE: 36-07218, 36-02659, & 36-07004.

RULE 54(b) CERTIFICATE

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

Daniel C. Hurlbutt, JR.
Presiding Judge
Snake River Basin Adjudication

RECOMMENDATION
AUG 28 1998
<i>[Signature]</i>
SPECIAL MASTER

RECEIVED

MAY 01 1998

Department of Water Resources
Southern Region

RECEIVED
MAR 27 1998
Department of Water Resources
Adjudication Bureau

Southern
FYI

1998 MAR 25 AM 11:39

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

In Re SRBA)
)
Case No. 39576)
)
_____)


Subcases See Exhibit A

ORDER PARTIALLY VACATING
TRIAL and DEADLINES

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

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

DATED March 25, 1998.


FRITZ X. HAEMMERLE
Special Master
Snake River Basin Adjudication

CERTIFICATE OF MAILING

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

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

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

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

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


Deputy Clerk

RECEIVED

MAY 01 1998

Department of Water Resources
Southern Region

RECEIVED

MAR 27 1998

Department of Water Resources

3-25

1998 MAR 25 AM 11:39

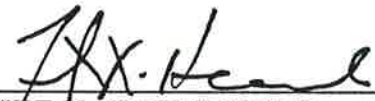
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcases 36-02708, 36-07201,
	)	and 36-07218
Case No. 39576)	
_____	)	AMENDED SCHEDULE ORDER

A Trial is currently scheduled for July 6-7, 1998 in the above listed subcases. The trial dates will remain as scheduled. The amended deadlines are as follows:

Discovery to be complete	Friday, May 1, 1998, by 5:00 p.m.
Dispositive Motions due	Friday, May 15, 1998, by 5:00 p.m.

DATED March 25, 1998.


 FRITZ X. HAEMMERLE
 Special Master
 Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the AMENDED SCHEDULE ORDER was mailed on March 25, 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

Patrick Brown
 812 Shoshone Street East
 Twin Falls, Idaho 83303

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

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


 Deputy Clerk

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.

SUBCASE NO. 36-02708

	CLAIM (8/24/88)	AMENDED CLAIM	RECOMMENDATION	OBJECTION
NAME	Clear Springs Trout Co. The Prospect Co.	N/A	<i>Clear Springs Foods Inc. PO Box 712 Buhl, ID 83316 (see notes below)</i>	XX Clear Springs Foods, Inc. P.O. Box 712 Buhl, ID 83316
BASIS OF CLAIM	License		License	
SOURCE	Springs (Clear Springs)		Springs	
QUANTITY	200,000 cfs		200.00 cfs	
PRIORITY DATE	09/28/1966		09/28/1966	
PURPOSE OF USE	Fish Propagation/ Commercial Trout Production		Fish Propagation/Fish/ Commercial Trout Production	
PERIOD OF USE	1/1 - 12/31		1/1 - 12/31	
POINT OF DIVERSION	T09S R14E S2		T09S R14E S02	
PLACE OF USE	T09S R14E S02		T09S R14E S02	
REMARKS			+ see notes	XX "Facility Volume" is not an element of the water right.

Notes: IDWR, in its response, stated a change of ownership was filed with the department after the filing of the director's report and recommended the name and address of the claimant be changed. Change shown above in italics.

+ Right includes accomplished change in point of diversion pursuant to Idaho Code 42-1416A.

Source is also known as Clear Springs.

Facility volume 335,504 cu. ft.

Multiple points of diversion located in SWSENE, SESWNE, NENWSE, S02 T09S R14E.

The following rights are also diverted through point of diversion described above: 36-07218, 36-02659, & 36-07004.

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. 36-02708 -0002

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)

MICROFILMED
OCT 18 1994

2. Person who filed objection:

Name: CLEAR LAKES TROUT CO INC
Address: 1301 VISTA AVE
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

2. Source: I respond to the objection concerning the source of water.
5. Points of Diversion: I respond to the objection concerning the legal description of the point(s) of diversion.

REASONS SUPPORTING EACH BOX CHECKED

In response to Statement of the Objection items 2 and 5, and all allegations of the objection regarding these items, 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 pond/ditch which collectes the flow of springs in the center of the spring complex. Two of these rights, 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 through a ditch/pond that collects the flow of springs in the eastern part of the spring complex. Right no. 36-07201 is diverted for use in the Clear Springs Foods facility by means of pipes from two springs

in the western part of the spring complex, and some of the individual springs which are the source for water right no. 36-07004 are also the source for water right no. 36-02708.

The description of this right should be corrected to list the name and address of the owner of the right as shown in the attachment entitled "Recommended Water Rights Acquired Under State Law."

CHANGES TO THE DIRECTOR'S REPORT

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

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

	No. of Pages
The notice of claim is attached to IDWR's response to Objection No. 36-02708-0001	
Recommended Water Rights Acquired under State Law	1

(Over)

FILED IN 1993
PROBATION

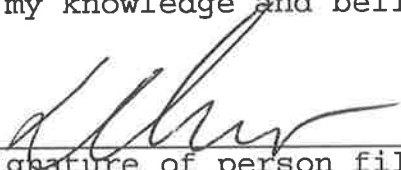
VERIFICATION (Must be Completed)

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:

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

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

RECEIVED

SFP 01 1993

Department of Water Resources
Adjudication Bureau

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

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

Case No. 36-02708
(The water right number
you are responding to
must be inserted)

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

STANDARD FORM 2
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.)
_____)

INSTRUCTIONS

This form must be used to file a response to any objection filed against a water right recommended in a Director's Report. You may respond to all objections filed against one water right, using one response form. If you choose this option, your response should cover every issue raised in the objections. To respond to objections filed against more than one water right, you must file a separate response form for each water right. Forms may be obtained from the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you do, the text must be on the front and back of each page exactly as it appears here. The response must be received by the court on or before the deadline specified in the Notice of Filing the Director's Report that IDWR mailed to you. Follow the Instructions for Mailing this response (Page 5), or the court will not accept it for filing.

This form has been adopted by the court in SRBA Administrative Order 1 (amended June 21, 1993), Section 4, which may be consulted for further information.

Any party filing 25 (twenty-five) or more responses must make an appointment with the Clerk of the SRBA Court.

(Over)

MICROFILMED

OCT 18 1994

By filing a response form, you are certifying that the response 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. Party/Claimant responding to objection:

Name: Clear Springs Foods, Inc.

Address: P. O. Box 712
Buhl, Idaho 83316

Phone: Work: (208) 543-4316 Home: _____

Briefly describe your interest in this water right:

Owner of the water right

If this response is filed by an attorney:

Attorney Name: Patrick D. Brown

Attorney Address: Hepworth, Nungester & Lezamiz
P.O. Box 389, Twin Falls, ID 83303

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

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

2. Party/Claimant who filed objection:

Name: Clear Lakes Trout Company, Inc.

Address: 1301 Vista Avenue
Boise, Idaho 83705

RECEIVED
2008 JUN 10 10:00 AM
WATER RIGHTS DIVISION

II. STATEMENT OF THE RESPONSE

Please check each "box" which identifies your response.

1. **Name and Address:** I respond to the objection concerning the name and/or address of the owner of the water right.
2. **Source:** I respond to the objection concerning the source of water.
3. **Quantity:** I respond to the objection concerning:
 - a. the total quantity of water used in cubic feet per second; or
 - b. the total quantity of water stored in acre-feet per year; or
 - c. the total quantity of water reserved for each and every purpose, including all present and future uses.
4. **Priority Date:** I respond to the objection concerning the priority date.
5. **Points of Diversion:** I respond to the objection concerning the legal description of the point(s) of diversion.
6. **Instream Flow:** I respond to the objection concerning the legal description of the beginning and ending points of the instream flow.
7. **Purpose(s) of Use:** I respond to the objection concerning the purpose(s) of use.
8. **Period of Year:** I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
9. **Place of Use:** I respond to the objection concerning:
 - a. the legal description of the place of use; or
 - b. the number of irrigated acres within each forty (40) acre subdivision.
10. **Consumptive Use:** I respond to the objection concerning the annual volume of consumptive use.
11. **Remarks:** I respond to the objection concerning the "remarks" listed with the water right.
12. **Water Right Recommendation:** I respond to the objection concerning:
 - a. this water right being recommended at all; or
 - b. this water right not being recommended.

13. **Description of Reservation:** I respond to the objection concerning the legal description of the reservation.

14. **Other:** I respond to the objection concerning: _____

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.

2 and 5. Claimant denies that 36-7004 fully appropriated the natural spring flows; that the source of water for 36-7004 was ever separate from the source of this right; and that IDWR should decree the sources as being separate and distinct.

CHANGES TO THE DIRECTOR'S REPORT

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

See this claimant's Objection.

Please note that you should attach copies of documents which support your response. Note on each document the "box number" it supports.

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

VERIFICATION (Must be Completed)

State of Idaho

County of Twin Falls

Patrick D. Brown

(Name of person filing objection)
sworn, upon oath, deposes and says:

, being first duly

That I am the person or entity filing this response (as listed on Page 2, Section 1, "Person responding to objection"), as defined by I.C. Sec 42-1401A(1) and (7), and I have read this response, know its contents and that the statements are true to the best of my knowledge and belief.

Signature of party/claimant
filing response

By: [Signature]
(Attorney signing in
representative capacity)

Subscribed and sworn to before me this 1st day of September,
1993.

[Signature]
Notary Public for Idaho
Residing at: in Idaho
My Commission Expires: 9-20-94

INSTRUCTIONS FOR MAILING

You must mail the response, 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 all of the parties listed below in the Certificate of Mailing.

You must sign the Certificate of Mailing to show that you followed these steps.

MICROFILMED
OCT 18 1994

CERTIFICATE OF MAILING

I hereby certify that on the 1ST 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 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:

Name: Clear Springs Foods, Inc.
Address: P. O. Box 712
Buhl, Idaho 83316

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: Clear Lakes Trout Co., Inc.
Address: 1301 Vista Avenue
Boise, Idaho 83705

4 One copy to:

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

5 One copy to:

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



Signature of party/claimant
or attorney

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. 36-02708 -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)

FILED
APR 20 1988
IDAHO DEPARTMENT OF WATER RESOURCES

2. Person who filed objection:

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

3. If this response is filed by an attorney:

Attorney Name(s): NICHOLAS B. SPENCER
Attorney Address: DEPUTY ATTORNEY GENERAL(S)
IDAHO DEPARTMENT OF WATER RESOURCES
P.O. BOX 44449
BOISE, ID 83711-4449

Attorney Phone No.: (208) 327-7900

II. STATEMENT OF THE RESPONSE

- 1. Name and Address: I respond to the objection concerning the name and/or address of the owner of the water right.
- 11. Remarks: I respond to the objection concerning the "remarks" listed with the water right.
- 14. Other: I respond to the objection concerning:
ALL MATTERS RAISED BY THE CLAIMANT'S ANSWER,
AFFIRMATIVE DEFENSES AND PRAYER FOR RELIEF.

REASONS SUPPORTING EACH BOX CHECKED

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

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

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

as follows:

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

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

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

In response to the sentence listed in Changes to the Director's Report, whereby the claimant attempts to "reserve the right to claim all purposes of use and quantities of use as shown by the evidence at trial", IDWR responds as follows:

Insofar as this purported reservation of rights may constitute an attempt to reserve the right to amend at trial the claimant's notice of claim, the claimant improperly seeks to use the objection process to amend the claim. A claimant must obtain leave of the court to amend a claim just as a party must obtain leave of court to file a late claim after the director's report is filed.

CHANGES TO THE DIRECTOR'S REPORT

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

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

(Over)

OBJECTION
ADMITTED

	No. of Pages
Notice of Claim No. A36-02708	4
Recommended Water Rights Acquired Under State Law	1
IDWR's Response to Answer, Affirmative Defenses and Prayer for Relief of Claimant	4

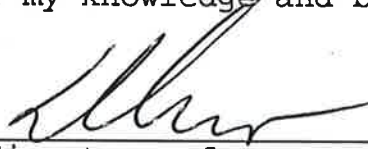
VERIFICATION (Must be Completed)

State of IDAHO

County of ADA

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

That R. Keith Higginson, in his official capacity as director of the Idaho Department of Water Resources, is a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that I am the Adjudication Bureau Chief for IDWR and am authorized by R. Keith Higginson, in his official capacity as director of IDWR, to verify this response; and that I have read the foregoing response, know its contents and that the statements contained therein are true to the best of my knowledge and belief.




Signature of person filing response

By: 

(Attorney signing in
representative capacity)

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



Notary Public for Idaho
Residing at: _____
My Commission expires _____

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

(Over)

MICROFILMED
OCT 18 1994

1307
MICROFILM

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

NO COMMISSION EXPENSE RECOVERED
REGARDING THE FILING OF THIS
OBJECTION TO THE ORDER OF 10/13/93

2. One copy to the owner of the water right, and you must fill in the following information:

See No. 3

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

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

4. One copy to:

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


Signature of Respondent or attorney
mailing on Respondent's behalf

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

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

CIVIL CASE NUMBER: 39576

Ident. Number: A36-02708
Date Received: 8/24/1988
Receipt No: 5002014
Received By: _____

NOTICE OF CLAIM TO A WATER RIGHT
ACQUIRED UNDER STATE LAW

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

AND/OR

Name: THE PROSPECT CO. 208-543-4316
Address: P. O. BOX 712
BUHL, ID 83316

2. Date of Priority: SEP 28, 1966

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

4. Point of Diversion:

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

5. Description of diverting works:
CHECK DAM & CONCRETE DITCH TO FISH RACEWAYS

6. Water is used for the following purposes:

Purpose	From	To	C.F.S	(or)	A.F.A.
FISH PROPAGATION	01/01	12/31	200.000		

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

8. Total consumptive use is Acre Feet Per Annum.

9. Non-irrigation uses:
COMMERCIAL TROUT PRODUCTION

A36-02708

Page 1

Date: 08/24/88

MICROFILMED
MICROFILMED
FEB 07 1993
OCT 18 1994

10. Place of Use:

Township	Range	Section	1/4 of	1/4	Lot	Use	Acres
09S	14E	2	NW	SE		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:
LIC. 36-7218, 7201

14. Remarks:
RACEWAY VOLUME IS 590,400 CU. FT., CONSISTING OF 82 RACEWAYS 18'
WIDE X 4' DEEP X 100' AVERAGE LENGTH.

15. Basis of Claim: LICENSE
Water Right Number: 33281

16. Signature(s)

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

Number of attachments: 1

For Organizations:

I do solemnly swear or affirm that I am _____ President _____ of _____ Title _____ Clear Springs Trout Company _____, that I have signed the foregoing Organization _____ document in the space below as _____ President _____ of Title _____

Clear Springs Trout Company _____ and that the statements contained in the Organization _____ foregoing document are true and correct.

[Signature]
Signature of Authorized Agent
President Clear Springs Trout Company
Title and Organization
8/30/88
Date

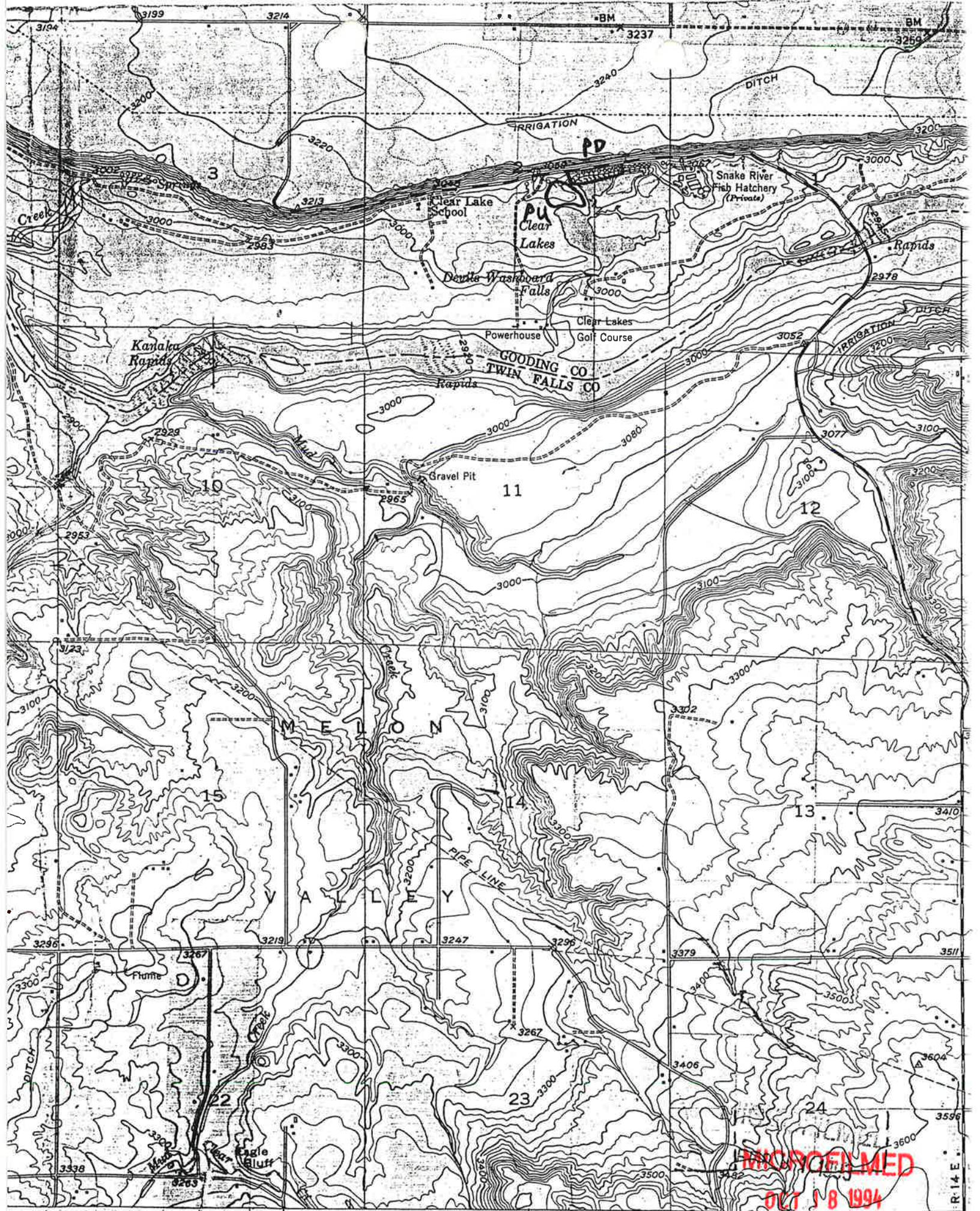
State of Idaho)
County of Twin Falls) SS.

Subscribed and sworn (or affirmed) before me this 30th day of August 19 88
[Signature]
Notary Public

Seal

Residing at B. C. ID
My Commission Expires 11-17-92

MICROFILMED
FFR 11/18/88
MICROFILMED
OCT 18 1994



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

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

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

- 17 216
PROCESSED
- (17) **WORKS** (page 11 of Part I of the director's report)
 - (18) VI. General Provision 8. **FIRE FIGHTING PURPOSES** (page 11 of Part I of the director's report)
 - (19) VI. General Provision 9. **CONSUMPTIVE USE** (page 12 of Part I of the director's report)
 - (20) VI. **GENERAL PROVISION 10 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH DOMESTIC USE AS A PURPOSE OF USE** (page 12 of Part I of the director's report)
 - (21) VI. General Provision 10. **DOMESTIC USE** (page 12 of Part I of the director's report)
 - (22) VI. **GENERAL PROVISION 11 APPLIES TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH STOCK WATER USE AS A PURPOSE OF USE** (page 13 of Part I of the director's report)
 - (23) VI. General Provision 11. **STOCK WATER USE** (page 13 of Part I of the director's report)
 - (24) VI. **GENERAL PROVISIONS 12-16 APPLY TO ALL WATER RIGHTS IN BASIN 36 SHOWN WITH IRRIGATION AS A PURPOSE OF USE** (page 13 of Part I of the director's report)
 - (25) VI. General Provision 12. **IRRIGATION USE** (pages 13-14 of Part I of the director's report)
 - (26) VI. General Provision 13. **DIVERSION VOLUME FOR IRRIGATION** (page 14 of Part I of the director's report)
 - (27) VI. General Provision 14. **CONSUMPTIVE USE FOR IRRIGATION** (pages 14-15 of Part I of the director's report)
 - (28) VI. General Provision 15. **AMOUNT OF COMBINED WATER RIGHTS FOR IRRIGATION** (page 15 of Part I of the director's report)
 - (29) VI. General Provision 16. **DIVERSION RATES IN EXCESS OF .02 CFS PER ACRE** (pages 15-16 of Part I of the director's report)
 - (30) VI. 17. **INSTRUCTIONS FOR USE OF LIST OF RECOMMENDED WATER RIGHTS** (pages A-i through A-iii of Part I of the director's report)
 - (31) VI. 18. **IDAHO DEPARTMENT OF WATER RESOURCES RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAW** (pages A-1 through B-25 of Part I of the director's report)
 - (32) **DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36), (DIRECTOR'S REPORT PART II)**
 - (33) **DIRECTOR'S REPORT FOR REPORTING AREA 3 (BASIN 36), (DIRECTOR'S REPORT PART III)**

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

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

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

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

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

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

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

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

A. DOES DIVERSION RATE CLAIMED AGREE WITH EXISTING RECORDS? Y(X) N()

AJ TOTAL CLAIMED DIVERSION RATE: 200.000 CFS
 WR ROOT RIGHT TOTAL DIVERSION RATE: 200.000 CFS

*** IF NO or IF STATUTORY CLAIM or BENEFICIAL USE then flow measurement required. ***
 ** If an amount smaller than the original diversion rate is **
 ** claimed and an exam is NOT required, explain in remarks. **

FLOW MEASUREMENT REQUIRED? _____
 DUE TO STAGE OR DIVERSION RATE DISCREPANCY? (Y/N) N
 FIELD EXAMINER N

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 FEB 11 1993

B. FLOW MEASUREMENT
 MEASUREMENT METHOD _____, SEE ATTACHED CALCULATIONS.

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

OTHER RIGHTS LISTED IN CLAIM: A36-07218, ~~A36-07201~~ ← *POU within same 40 acres, but not the same ponds + a different source*

LIST ALL RIGHTS WITH A SAME POU AND IRRIGATION USAGE:

CLAIM NO.	SOURCE	NAME	DIV. RATE	DIV. RATE/ACRE	DIV. VOL.	DIV. VOL./ACRE
A36-04149	CLEAR LAKES	CLEAR LAKE RANCH INC.	1.400	0.029		

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

CLAIM NO.	PURPOSES	NAME	MONTH/DAY	RATE	VOLUME
A36-02659	FISH PROPAGATION	CLEAR LAKES TROUT CO. INC.	FROM 01-01 TO 12-31	100.000 CFS	

RECEIPT
For Monies Paid
to the
IDAHO DEPARTMENT OF WATER RESOURCES

-02708

Receipt No: S015470

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

Received
From: CLEAR SPRINGS FOODS

Type of Payment	Program Acct Class	Amount
COPIES/ADJ FILES	64100 229 21 1760	57.36
		<hr/>
		Total
CHECK	191650	\$57.36

Region: SOUTHERN

Signature: Janie Robertson

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OCT 18 1994



CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

01-Mar-1993

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

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

Dear Mr. Hanifen:

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

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

\$57.36

Sincerely,

Jeanie
Jeanie Robertson
Records Clerk

Encl:

Clear Springs books

78
59
74
90
69
69
62
64
123
56
56
57
63
920 x 5 =
4600
10.90
46
57.36

post.
amt.

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OCT 18 1994



JEANNIE
!!
Have Fun
w/ these
scr

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

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

February 15, 1993

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

RECEIVED

FEB 17 1993

Department of Water Resources
Southern Region Office

Re: Clear Springs Foods Water Filings

Dear Steve:

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

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

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

Thank you for your attention to this matter.

Sincerely,

CLEAR SPRINGS FOODS, INC.

Tim Hanifen
Vice President, Operations

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RECEIVED

APR 30 1993

Department of Water Resources
Adjudication Bureau

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

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

Case No. A36-02708
(You must insert the
water right number you
are objecting to)

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

OBJECTION

Petitioner,)

36-02708 -0001/
93-04-0242

vs.)

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

Respondents.)
_____)

INSTRUCTIONS

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

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

(Over)

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OCT 18 1994

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

I. GENERAL INFORMATION

Please fill in the following information:

1. Person objecting:

Name: Clear Springs Foods, Inc.
Address: P. O. Box 712
Buhl, Idaho 83316

Briefly describe your interest in this water right:

Owner of the water right

2. Owner of the water right:

Name: Clear Springs Foods, Inc.
Address: P. O. Box 712
Buhl, Idaho 83316

3. If this objection is filed by an attorney:

Attorney Name: Patrick D. Brown
Attorney Address: Hepworth, Nungester & Lezamiz
P.O. Box 389, Twin Falls, ID 83303
Attorney Phone No.: (208) 734-7510; Fax: (208) 734-4115

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

II. STATEMENT OF THE OBJECTION

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

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

(Over)

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

REASONS SUPPORTING EACH BOX CHECKED

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

See page 7

CHANGES TO THE DIRECTOR'S REPORT

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

See page 7

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

Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary. Exhibit "A": January 5, 1993 letter from Jodi I. Schultz to Patrick D. Brown- 1 page. Exhibit "B": October 2, 1992, letter from Marci Sterling to Timothy J. Hanifen- 2 pages.

VERIFICATION (Must be Completed)

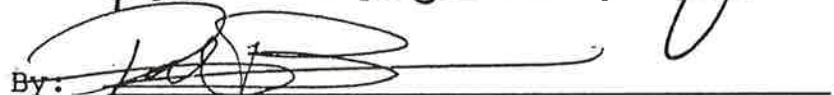
State of Idaho

County of Twin Falls.


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

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


Signature of person filing objection

By: 
(Attorney signing in representative capacity)

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


Notary Public for Idaho
Residing at: Twin Falls
My Commission Expires: 09.20.94

(Over)

INSTRUCTIONS FOR MAILING

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

CERTIFICATE OF MAILING

I hereby certify that on the 28 day of April, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the owner of the water right, and you must fill in the following information:

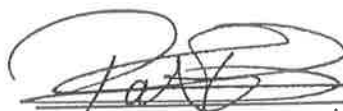
Owner name: Clear Springs Foods, Inc.
Owner's address: P. O. Box 712
Buhl, Idaho 83316

3. One copy to:

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

4. One copy to:

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



Signature of Objector or attorney
mailing on Objector's behalf

REASONS SUPPORTING EACH BOX CHECKED, page 4

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

Box 11 - "Facility Volume" is not an element of the water right. There is no basis in law or fact for imposing such a limitations and doing so constitutes a taking.

CHANGES TO DIRECTOR'S REPORT, page 4

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

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

Question 14., page 4, Other

I.

GENERAL RESPONSE

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

II.

DESCRIPTIVE SUMMARY

(DIRECTOR'S REPORT PART I)

(hereinafter DRP-I)

(DRP-I at first unnumbered page)

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

III.

TABLE OF CONTENTS

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

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

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OCT 18 1994

OBJECTION

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

IV.

INTRODUCTION

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

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

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

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

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

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

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

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

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

V.

DESCRIPTION OF THE WATER SYSTEM: BASIN 36

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

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

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

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

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

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

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

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

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

VI.

GENERAL PROVISIONS

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

(DRP-I at page 9)

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

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

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

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

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

The objectors admit paragraphs a. and b.

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

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

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

The objectors deny the averments within this section.

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

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

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

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

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

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

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

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

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

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

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

The objectors admit the averments in this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(DIRECTOR'S REPORT PART II)

I.

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

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

(DIRECTOR'S REPORT PART III)

I.

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

VIII.

AFFIRMATIVE DEFENSES

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

AFFIRMATIVE DEFENSE NO. 1

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

AFFIRMATIVE DEFENSE NO. 2

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

AFFIRMATIVE DEFENSE NO. 3

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

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

AFFIRMATIVE DEFENSE NO. 4

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

AFFIRMATIVE DEFENSE NO. 5

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

AFFIRMATIVE DEFENSE NO. 6

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

AFFIRMATIVE DEFENSE NO. 7

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

AFFIRMATIVE DEFENSE NO. 8

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

AFFIRMATIVE DEFENSE NO. 9

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

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AFFIRMATIVE DEFENSE NO. 10

The actions of the Director, the Department and their agents, servants and employees in recommending, limiting, reducing and/or regulating objector's water rights, either as alleged in the Director's Report or as in fact applied, violates objectors' rights as secured by Art. 1, Section 1; Art. 15, Sections 3, 4 and/or 5; and/or as otherwise provided in the Constitution of the State of Idaho.

AFFIRMATIVE DEFENSE NO. 11

The various allegations, statements and assertions contained in the Director's Report concerning the Department and/or the Director's position or intentions with regard to the adjudication, as well as the implementation of statutes and/or regulations, as well as the administration of water or management of water rights or claims to the beneficial uses of water, if implemented, constitute a violation of various provisions the United States and Idaho constitutions, and/or a violation of the letter, spirit and/or intent of various statutes enacted by the legislature, and/or constitute an exercise of purported authority or powers either in excess of those conferred by law, or in a manner inconsistent with those conferred by law, or both.

AFFIRMATIVE DEFENSE NO. 12

The individual recommendations relating to the specific water right of the objectors as set forth in the Director's Report are (1) not based upon substantial evidence and/or are not, in fact, the product of any reasonable, complete or accurate

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

AFFIRMATIVE DEFENSE NO. 13

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

AFFIRMATIVE DEFENSE NO. 14

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

AFFIRMATIVE DEFENSE NO. 15

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

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AFFIRMATIVE DEFENSE NO. 16

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

AFFIRMATIVE DEFENSE NO. 17

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

AFFIRMATIVE DEFENSE NO. 18

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

AFFIRMATIVE DEFENSE NO. 19

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

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

AFFIRMATIVE DEFENSE NO. 20

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

AFFIRMATIVE DEFENSE NO. 21

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

AFFIRMATIVE DEFENSE NO. 22

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

AFFIRMATIVE DEFENSE NO. 23

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

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

AFFIRMATIVE DEFENSE NO. 24

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

AFFIRMATIVE DEFENSE NO. 25

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

AFFIRMATIVE DEFENSE NO. 26

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

AFFIRMATIVE DEFENSE NO. 27

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

WHEREFORE, the objectors pray for judgment as follows:

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

asserted against objectors, be dismissed.

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

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

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

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

(WATER\FISH)



State of Idaho
DEPARTMENT OF WATER RESOURCES

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

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

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

January 5, 1993

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JAN 08 1993

Department of Water Resources
Southern Region Office

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

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

Dear Mr. Brown:

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

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

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

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

Sincerely,

Jodi I. Schultz
JODI I. SCHULTZ

Legal Assistant
Idaho Department of Water Resources

cc: Judy Givens, IDWR Southern Region Office

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OCT 18 1994



State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1992

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

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

Dear Mr. Hanifen:

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

Diversion Volume

Claim numbers: 36-07148 & 36-07040

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

Claim number: 36-02708

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

Facility Volume

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

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

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EXHIBIT B

Diversion Rate

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

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

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

Sincerely,

Marci Sterling

Marci Sterling
Engineering Specialist (EIT)

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NOTICE OF ERROR



RESPONSE



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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

*
*
*

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

Case No. 36-02708
(You must insert the
water right number you
are objecting to)

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

OBJECTION

-vs-

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

36-02708 -0002/
93-04-0243

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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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 COMPANY, INC.
Address: 1301 Vista Avenue
Boise, ID 83705

Briefly describe your interest in this water right:

Objector has a water right that diverts from a source that may be confused with the source for this right.

2. Owner of the water right:

Name: CLEAR SPRINGS TROUT CO.
THE PROSPECT CO.
Address: P. O. Box 712
Buhl, ID 83316

NO FURTHER ACTION
NECESSARY
AUG 3 1970
SECRET

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

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

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- b. number of irrigated acres within each forty (40) acre subdivision.
- 10. Consumptive Use: I object to the annual volume of consumptive use.
- 11. Remarks: I object to the "remarks" listed with the water right.
- 12. Water Right Recommendation: I object to:
 - a. this water right being recommended at all; or
 - b. this water right not being recommended.
- 13. Description of Reservation: I object to the legal description of the reservation.
- 14. Other: I object to:

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.

2 and 5. The natural flow of the springs appropriated under objector's License No. 36-7004 were fully appropriated by the water right established under License No. 36-7004, and that source of water was physically separated, by natural geographical conditions, from the source of water for the water right established under License No. A36-02708.

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.

2 and 5. The Director's Report should note expressly that the source of water for this water right, No. A36-02708, is separate and distinct from the source of water for Water Right No. 36-07004.

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

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

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.

Clear Lakes Trout Company, Inc.
Signature of person filing objection

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

Subscribed and sworn to before me this 30th day of April, 1993.

Quita 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.

APR 30 1993

CERTIFICATE OF MAILING

I hereby certify that on the 30 day of April, 1993, I mailed the original and copies of the foregoing objection, including all attachments, to the following persons, by mailing the original and/or true and correct copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P. O. Box 2707
Twin Falls, Idaho 83303-2707

2. One copy to the owner of the water right, and you must fill in the following information:

Owner name: Clear Springs Trout Co.
The Prospect Co.
Owner's address: P. O. Box 712
Buhl, ID 83316

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

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

1. Water right number: 36-02708
2. Name: CLEAR SPRINGS TROUT COMPANY
TIMOTHY J. HANIFEN, VICE PRESIDENT/OPERATIONS
Address: P.O. BOX 712
BUHL, IDAHO 83316

Weekday Telephone Number: (208) 543-4316

RECEIVED

SEP 23 1992

Department of Water Resources
Boise, Idaho 83720

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SEP 01 1993

TEAR AT PERFORATIONS AND COMPLETE FORM ON OTHER SIDE

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

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

SEE ATTACHED.

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

SEE ATTACHED.

5. Describe why you disagree with the proposed recommendation:

SEE ATTACHED.

6. Date:

SIGNATURE

A handwritten signature in cursive script, appearing to read "Timothy J. Keizer", is written over a horizontal line.



RECEIVED

SEP 28 1992

Department of Water Resources
Southern Region Office

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

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

NOTICE OF ERROR FORM

RECEIVED

SEP 23 1992

Department of Water Resources

Continued:

RIGHT NUMBER: 36-02708

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

1. MAXIMUM QUANTITY (AFY)
2. REMARKS:
 - A. Facility volume

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

1. Maximum quantity designation of 200.00 CFS for fish propagation should be retained. However, the respective designation for AFY should be stricken because this is an irrigation designation and has no relationship to the non-consumptive fish propagation use.
- 2A. The fish propagation facility has a rearing capacity of 582,757 CU.FT.

#5 Describe why you disagree with the proposed recommendation:

SEE #4 ABOVE.

#6 Date: September 21, 1992

SIGNATURE

A handwritten signature in cursive script, appearing to read "Timothy J. Huggin", written over a horizontal line.

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State of Idaho

DEPARTMENT OF WATER RESOURCES

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

CECIL D. ANDRUS
Governor

R. KEITH HIGGINSON
Director

October 2, 1992

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

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

Dear Mr. Hanifen:

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

Diversion Volume

Claim numbers: 36-07148 & 36-07040

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

Claim number: 36-02708

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

Facility Volume

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

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

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Diversion Rate

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

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

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

Sincerely,

Marci Sterling

Marci Sterling
Engineering Specialist (EIT)

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RIGHT NUMBER	NAME & ADDRESS	PRIORITY DATE	WATER USE	USE PERIOD FROM TO	MAXIMUM DIVERSION	STAGE
--------------	----------------	---------------	-----------	--------------------	-------------------	-------

36-02708	THE PROSPECT CO CLEAR SPRINGS FOODS INC PO BOX 712 BUHL ID 83316	09/28/1966	FISH PROPAGATION	01-01 12-31	200.00 CFS	LICENSE
----------	---	------------	------------------	-------------	------------	---------

TOTAL DIVERSION RATE: 200.00 CFS
TOTAL DIVERSION VOLUME: 144540.00 AFA

SOURCE: SPRINGS

TRIBUTARY: CLEAR LAKES

POINT OF DIVERSION:

T09S R14E S02 SESWNE
 LOT 5 (SWSENE)
 NENWSE

PLACE OF USE: FISH PROPAGATION

T09S R14E S02 NWSE

CONDITIONS OF APPROVAL:

C03 - RIGHT INCLUDES ACCOMPLISHED CHANGE IN POINT OF DIVERSION
- PURSUANT TO IDAHO CODE 42-1416A.

REMARKS: SOURCE IS ALSO KNOWN AS CLEAR SPRINGS.

FACILITY VOLUME 335,504 CU. FT.
MULTIPLE POINTS OF DIVERSION LOCATED IN SWSENE, SESWNE, NENWSE,
S02, T09S, R14E.
THE FOLLOWING RIGHTS ARE ALSO DIVERTED THROUGH POINT OF DIVERSION
DESCRIBED ABOVE: 36-07218, 36-02659, & 36-07004

OTHER RIGHTS: 36-07218

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Water Right Number - R36-02708 Prefix Translation: RESEARCH Old (D) Number - 33281

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

*** C - CURRENT OWNER ***
CLEAR SPRINGS TROUT CO 1 - PO BOX 712
2 -
3 -
City- BUHL State- ID Zip- 83316
Phone - 208-543-4316

PROSPECT CO THE 1 - PO BOX 712
2 -
3 -
City- BUHL State- ID Zip- 83316
Phone - 208-543-4316

+ - - Priority Date - - + + - - - Region - - - + + - - - Stage - - - + + - - - Status - - - +
09/28/1966 17 SOUTHERN L - LICENSE

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

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

+ - - - - Water Use - - - - - +						
Code	Description	Period From	Period To	Diversion Rate	Diversion Volume	
19	FISH PROPAGATION	01/01	12/31	200.000	144540.00	

+ - Total Div. Rate - + + - Total Div. Volume - + + - Total Consumptive Use - + + - KW Usage - +
200.000 144540.00 0.0

+ - - - - Place of Use - - - - - +						
Tw	Rng	Sec	Tract	Lot	Acres	County
09S	14E	2	NW SE		19	(47) GOODING

Total Acres:

+ - - Diversion Means - CHECK DAM & CONCRETE DITCH TO FISH RACEWAYS

+ - - Non-Irrigation Use - FISH, COMMERCIAL TROUT PRODUCTION

+ - - Other Rights for Same Use - 36-07218

+ - - - - - Remarks - - - - - +
SOURCE IS ALSO KNOWN AS CLEAR SPRINGS.
FACILITY VOLUME 335,504 CU. FT.

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WR ELEMENT	FIELD EXAM Y/N	CORRESPONDENCE SENT/RECEIVED BY WHOM/DATE	FIELD EXAM BY WHOM/DATE	CHANGE CLAIM Y/N	VERIFIED BY CODE	COMPLETED REVIEW WHOM/DATE	COMPLETED DATA ENTRY WHOM/DATE	VERIFIED DATE WHOM/DATE
PRIORITY DATE	N		mp 6/18/91	N		mp 5/26/92	mp 11/19/91	mp 6/17/92
POINT OF DIV	Y		↓	N		↓	↓	↓
SOURCE	Y			Y	1,4,5			
PLACE OF USE	N			N				
DIV. AMOUNT CFS/VOLUME				N				
CONSUMPTIVE USE				N				
PURPOSES	N			N				
PERIOD OF USE	N			N				
BASIS OF CLAIM	N			N				
REMARKS	Y			Y	6			

"VERIFIED BY" CODES

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

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

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FEB 1 1993

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

FIRST: THE
STATE: ID ZIP: 83316

OWNER CODE: C

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

FIRST:
STATE: ID ZIP: 83316

OWNER CODE: C

FIELD EXAM REQUIRED?

VERIFICATION REQUIRED DUE TO REMARKS?

DATABASE
Y

FIELD
EXAMINER

CLAIM REMARKS: RACEWAY VOLUME IS 590,400 CU. FT., CONSISTING OF 82 RACEWAYS 18'
WIDE X 4' DEEP X 100' AVERAGE LENGTH.

Std Remark: $D06 \Rightarrow \text{Volume} = 335,504 \text{ ft}^3$ (no vol. information in licensing file, so
volume from 36-7218's licensing file was used)

~~E01 \Rightarrow Limit the consumptive use volume only~~

F06 \Rightarrow 36-7218, 36-2659, 36-7004 through same P/D

B01 \Rightarrow Clear Springs

F02 \Rightarrow Multiple P/Ds within SWSENE, SESWNE, + NENWSE

Conditions: C03

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CONTACT PERSON: Tim Hanifen

PHONE NUMBER: (208) 543-4316

DATE OF FIELD EXAM: 6/18/91 APPOINTMENT MADE: Y() N()

TIME: 8:30 A() P()

ACCOMPANIED BY: Tim Hanifen

PHONE NUMBER: (208) 543-4316

RELATIONSHIP TO CLAIMANT: Director of Operations

DIRECTIONS TO PROPERTY / REMARKS:

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A. AJ CLAIM POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
A36-02708	09S	14E	2	SE	SW	NE		GOODING
A36-02708	09S	14E	2	SW	SE	NE	45	GOODING
A36-02708	09S	14E	2	NE	NW	SE		GOODING

OTHER AJ CLAIMS WITH SAME AJ POD
 A PREFIX R PREFIX
 A36-07201 R36-02659
 A36-07218 R36-07004
 R36-07218

WR RECORDS IN SAME 40 ACRE TRACT

36-02003A
 36-02003B
 36-02710
 36-04019
 36-07201
 36-07218
 36-07790
 36-07798

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SOURCE: SPRINGS (CLEAR SPRINGS)

TRIB: CLEAR LAKES

B. WR POINT OF DIVERSION AND SOURCE:

RIGHT	TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	CNTY
36-02708	09S	14E	2		NW	SE		GOODING

OTHER WR RECORDS WITH SAME WR POD

36-02003A
 36-02003B
 36-04019
 36-07201
 36-07218
 36-07790
 36-07798

AJ CLAIMS IN SAME 40 ACRE TRACT
 A PREFIX R PREFIX

A36-04019 NONE
 A36-07201
 A36-07218

SOURCE: CLEAR LAKE STREAM

TRIB: SNAKE RIVER

C. FIELD EXAM REQUIRED?

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

DATABASE
 Y
 Y

FIELD EXAMINER
Y

REMARKS:

The diversion system was changed when a new road was put in & the newer ponds added. This was done because Clear Lakes Trout could no longer access their facility because of the new ponds. Proof of the date of these changes was sent - changes made in May, 1984. Letter explaining this received from T. Hanifen on 3/11/92. Because diversion

RECOMMENDED POINT(S) OF DIVERSION AND SOURCE:							
TWP.	RGE.	SEC.	1/4	1/4	1/4	LOT	COUNTY
09S	14E	02	SW	SE	NE	5	Gooding
09S	14E	02	SE	SW	NE	-	Gooding
SOURCE: Springs			TRIB: Clear Lakes				
REVIEWED BY: <u>mp</u>			DATE: <u>5/24/92</u>				

Adtl. P/D : 09S 14E 02 NENWSE

started in May, 1984, injury analysis is necessary. Because the diversion works are shared & water is measured by both parties, injury is very doubtful. The construction of the new diversion system was a cooperative effort between the 2 companies. More than 5 years have passed since the new system was put in place & no injury is evident at this time or at any time since the construction. See Remarks in claim A36-2659 (copy in this file).

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A. ROOT WATER RIGHT NUMBERS: A36-02708
R36-02708

B. POU LISTING

TWP	RNG	SEC	1/4	1/4	LOT	NAME	AJ #/ACRES	WR #/ACRES	LANDSAT DATA	FIELD EXAM.	RECOMM. ACRES
09S	14E	2	NW	SE		PROSPECT CO. , THE	A36-02708 /	36-02708 /	11.0	ϕ	ϕ
			NW	SE		CLEAR LAKES TROUT CO. INC.	A36-02659 /	- /			
			NW	SE		STEWART , FRANK R.	A36-11162 /	- /			
			NW	SE		CLEAR SPRINGS TROUT CO.	A36-07218 /	36-07218 /			
			NW	SE		CLEAR SPRINGS TROUT CO	R36-07201 /	36-07201 /			
			NW	SE	8	CLEAR LAKE RANCH INC.	A36-04149 / 7.0	- /			
			NW	SE		STEWART , BETTY E.	R36-11162 /	- /			
			NW	SE		PROSPECT CO. , THE	A36-07201 /	- /			
			NW	SE		CLEAR SPRINGS TROUT CO	R36-02708 /	- /			
			NW	SE		PROSPECT CO , THE	R36-07218 /	- /			
			NW	SE		CLEAR SPRINGS TROUT CO.		36-07798 /			
TOTAL ACRES							A36-02708		11.00		

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

C. FIELD EXAM REQUIRED? DUE TO POU DISCREPANCY? (Y/N)

DATABASE Y

FIELD EXAMINER _____

POU COUNTY: GOODING

PRESUMPTION FLAG:

REMARKS:

POU is entirely within the NWSE. There is no discrepancy.

RECOMMENDATIONS:

TOTAL ACRES: ϕ

REVIEWED BY: 778

DATE: 5/26/92

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A. AJ CLAIMED USES:

	PURPOSES	MONTH/DAY	DIVERSION QUANTITY
A36-02708	FISH PROPAGATION	FROM 01-01 TO 12-31	200.000 CFS
	TOTAL DIVERSION RATE/VOLUME CLAIMED		200.000 CFS

B. WR RECORDED USES:

	PURPOSES	MONTH/DAY	DIVERSION QUANTITY
36-02708	FISH PROPAGATION	FROM 01-01 TO 12-31	200.000 CFS 144540.00 AF/A
	TOTAL DIVERSION RATE/VOLUME CLAIMED		200.000 CFS 144540.00 AF/A

PRESUMPTION FLAG:

C. FIELD EXAM REQUIRED?

		DATABASE	FIELD EXAMINER
DUE TO WATER-USE DISCREPANCY? (Y/N)		N	<u>2</u>
DUE TO DIVERSION RATE DISCREPANCY? (Y/N)		N	<u>2</u>
DUE TO PERIOD FROM/TO DISCREPANCY? (Y/N)		N	<u>2</u>

D. PERIOD OF USE:

RECOMMEND AS CLAIMED? Y() N()

RECOMMEND TO WR STANDARDS OR OTHER? Y() N() Explain in remarks, below.

REMARKS:

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D. RATE/VOLUME CALCULATIONS: (IRRIGATION)

1a. IRRIGATION RATE
ACRES _____ x 0.02 CFS/ACRE = _____ CFS
(Taken from p/u review)

1b. CALCULATIONS

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

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

2. IRRIGATION CONSUMPTIVE USE

CLAIMED CONSUMPTIVE USE = _____ AF/A
ACRES _____ x CONSUMPTIVE VOL. AF/A FOR AREA _____ =
TOTAL CONSUMPTIVE USE _____ AF/A

3. IRRIGATION DIVERSION VOLUME

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

4. CALCULATIONS FOR USES OTHER THAN IRRIGATION:

SEE ATTACHED SHEET? Y() N()

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

Since a diversion volume was given in the license, it must be recom-
mended with the right. Consumptive use due to evaporation is "de minimus".
YMS 7/1/92

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RECOMMENDATIONS:

REC. PURPOSES	REC. PERIOD		REC. DIV		REC. DIV		REC. CONS. USE	
	FROM	TO	RATE	CFS	VOL.	AF/A	DATABASE	EXAMINER
FISH PROPAGATION	01-01	12-31	DATABASE 200.000	EXAMINER <u>200.00</u>	DATABASE	EXAMINER <u>144,540</u>	DATABASE 0.0	EXAMINER <u>de minimus</u>
TOTAL FOR THIS RIGHT			200.000	<u>200.00</u>		<u>144,540</u>	0.0	<u>de minimus</u> <u>ms 7/1/92</u>
REVIEWED BY:	<u>ms</u>		DATE:		<u>6/17/92</u>			

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A. CHECK ONLY THE FOLLOWING THAT APPLY:

OWNERSHIP _____	ACCEPTED AS CLAIMED	NEEDS REVIEW
FORFEIT/ABANDON _____	(X)	()
ADDITIONAL DIV. AMOUNT _____	(X)	()
	(X)	()

B. SPLIT WATER RIGHT REVIEW

ROOT WATER RIGHT NUMBER: 36-02708

TOTAL DIVERSION RATE OF WR SPLITS	DATABASE 200.000	EXAMINER <u>200.00</u>	CFS
-----------------------------------	---------------------	---------------------------	-----

SPLITS:

OLD RIGHT NUMBERS	CURRENT CLAIM NUMBERS	DIVERSION RATE	CURRENT "R" CLAIM NUM.	"R" DIV. RATE	WR RIGHT NUMBERS	DIVERSION RATE
-	A36-02708	200.000	R36-02708	200.000	36-02708	200.000
	TOTAL CFS	200.000		200.000		200.000

DIVERSION RATE REVIEW

DO THE SUM CFS RATE OF THE SPLITS EQUAL THE ROOT RIGHT CFS RATE? (Y/N)
IF NO, is the written review sheet attached? (Y/N)

DATABASE Y	FIELD EXAMINER <u>Y</u>
---------------	-------------------------------

REMARKS:

AUTHENTICATION:

SIGNATURE: Marci Sterling DATE: 6/17/92
 NAME OF FIELD EXAMINER: Marci Sterling TITLE: _____

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09S14E

06 LT01	06 LT02	06 LT03	06 LT04	05 LT01	05 LT02	05 LT03	05 LT04	04 LT01	04 LT02	04 LT03	04 LT04	03 LT01	03 LT02	03 LT03	03 LT04	02 LT01	02 LT02	02 LT03	02 LT04	01 LT01	01 LT02	01 LT03	01 LT04
06 LT05	06 SENW	06 SWNE	06 SESE	05 SWNW	05 SENW	05 SWNE	05 SESE	04 SWNW	04 SENW	04 SWNE	04 SESE	03 SWNW	03 SENW	03 SWNE	03 SESE	02 SWNW	02 SENW	02 SWNE	02 SESE	01 LT05	01 LT06	01 LT07	01 LT08
06 LT08	06 NESW	06 NWSE	06 NESE	05 NWNW	05 NESW	05 NWNE	05 SESE	04 NWNW	04 NESW	04 NWNE	04 SESE	03 NWNW	03 NESW	03 NWNE	03 SESE	02 NWNW	02 NESW	02 NWNE	02 SESE	01 LT12	01 LT13	01 LT14	01 LT09
06 LT07	06 SESW	06 SWSE	06 SESE	05 SWSW	05 SESW	05 SWSE	05 SESE	04 SWSW	04 SESW	04 SWSE	04 SESE	03 SWSW	03 SESW	03 SWSE	03 SESE	02 SWSW	02 SESW	02 SWSE	02 SESE	01 LT15	01 LT16	01 LT17	01 SESE
07 LT01	07 NENW	07 NWNE	07 NESE	06 NWNW	06 NENW	06 NWNE	06 SESE	05 NWNW	05 NENW	05 NWNE	05 SESE	04 NWNW	04 NENW	04 NWNE	04 SESE	03 NWNW	03 NENW	03 NWNE	03 SESE	02 LT01	02 LT02	02 LT03	02 LT04
07 LT02	07 SENW	07 SWNE	07 SESE	06 SWNW	06 SENW	06 SWNE	06 SESE	05 SWNW	05 SENW	05 SWNE	05 SESE	04 SWNW	04 SENW	04 SWNE	04 SESE	03 SWNW	03 SENW	03 SWNE	03 SESE	02 LT05	02 LT06	02 LT07	02 LT08
07 LT03	07 NESW	07 NWSE	07 NESE	06 NWNW	06 NESW	06 NWNE	06 SESE	05 NWNW	05 NESW	05 NWNE	05 SESE	04 NWNW	04 NESW	04 NWNE	04 SESE	03 NWNW	03 NESW	03 NWNE	03 SESE	02 LT09	02 LT10	02 LT11	02 LT12
07 LT04	07 SESW	07 SWSE	07 SESE	06 SWSW	06 SESW	06 SWSE	06 SESE	05 SWSW	05 SESW	05 SWSE	05 SESE	04 SWSW	04 SESW	04 SWSE	04 SESE	03 SWSW	03 SESW	03 SWSE	03 SESE	02 LT13	02 LT14	02 LT15	02 LT16
18 LT01	18 NENW	18 NWNE	18 NESE	17 NWNW	17 NENW	17 NWNE	17 SESE	16 NWNW	16 NENW	16 NWNE	16 SESE	15 NWNW	15 NENW	15 NWNE	15 SESE	14 NWNW	14 NENW	14 NWNE	14 SESE	13 LT01	13 LT02	13 LT03	13 LT04
18 LT02	18 SENW	18 SWNE	18 SESE	17 SWNW	17 SENW	17 SWNE	17 SESE	16 SWNW	16 SENW	16 SWNE	16 SESE	15 SWNW	15 SENW	15 SWNE	15 SESE	14 SWNW	14 SENW	14 SWNE	14 SESE	13 LT05	13 LT06	13 LT07	13 LT08
18 LT03	18 NESW	18 NWSE	18 NESE	17 NWNW	17 NESW	17 NWNE	17 SESE	16 NWNW	16 NESW	16 NWNE	16 SESE	15 NWNW	15 NESW	15 NWNE	15 SESE	14 NWNW	14 NESW	14 NWNE	14 SESE	13 LT09	13 LT10	13 LT11	13 LT12
18 LT04	18 SESW	18 SWSE	18 SESE	17 SWSW	17 SESW	17 SWSE	17 SESE	16 SWSW	16 SESW	16 SWSE	16 SESE	15 SWSW	15 SESW	15 SWSE	15 SESE	14 SWSW	14 SESW	14 SWSE	14 SESE	13 LT13	13 LT14	13 LT15	13 LT16
19 LT01	19 NENW	19 NWNE	19 NESE	20 NWNW	20 NENW	20 NWNE	20 SESE	19 NWNW	19 NENW	19 NWNE	19 SESE	18 NWNW	18 NENW	18 NWNE	18 SESE	17 NWNW	17 NENW	17 NWNE	17 SESE	16 LT01	16 LT02	16 LT03	16 LT04
19 LT02	19 SENW	19 SWNE	19 SESE	20 SWNW	20 SENW	20 SWNE	20 SESE	19 SWNW	19 SENW	19 SWNE	19 SESE	18 SWNW	18 SENW	18 SWNE	18 SESE	17 SWNW	17 SENW	17 SWNE	17 SESE	16 LT05	16 LT06	16 LT07	16 LT08
19 LT03	19 NESW	19 NWSE	19 NESE	20 NWNW	20 NESW	20 NWNE	20 SESE	19 NWNW	19 NESW	19 NWNE	19 SESE	18 NWNW	18 NESW	18 NWNE	18 SESE	17 NWNW	17 NESW	17 NWNE	17 SESE	16 LT09	16 LT10	16 LT11	16 LT12
19 LT04	19 SESW	19 SWSE	19 SESE	20 SWSW	20 SESW	20 SWSE	20 SESE	19 SWSW	19 SESW	19 SWSE	19 SESE	18 SWSW	18 SESW	18 SWSE	18 SESE	17 SWSW	17 SESW	17 SWSE	17 SESE	16 LT13	16 LT14	16 LT15	16 LT16
30 LT01	30 NENW	30 NWNE	30 NESE	29 NWNW	29 NENW	29 NWNE	29 SESE	28 NWNW	28 NENW	28 NWNE	28 SESE	27 NWNW	27 NENW	27 NWNE	27 SESE	26 NWNW	26 NENW	26 NWNE	26 SESE	25 LT01	25 LT02	25 LT03	25 LT04
30 LT02	30 SENW	30 SWNE	30 SESE	29 SWNW	29 SENW	29 SWNE	29 SESE	28 SWNW	28 SENW	28 SWNE	28 SESE	27 SWNW	27 SENW	27 SWNE	27 SESE	26 SWNW	26 SENW	26 SWNE	26 SESE	25 LT05	25 LT06	25 LT07	25 LT08
30 LT03	30 NESW	30 NWSE	30 NESE	29 NWNW	29 NESW	29 NWNE	29 SESE	28 NWNW	28 NESW	28 NWNE	28 SESE	27 NWNW	27 NESW	27 NWNE	27 SESE	26 NWNW	26 NESW	26 NWNE	26 SESE	25 LT09	25 LT10	25 LT11	25 LT12
30 LT04	30 SESW	30 SWSE	30 SESE	29 SWSW	29 SESW	29 SWSE	29 SESE	28 SWSW	28 SESW	28 SWSE	28 SESE	27 SWSW	27 SESW	27 SWSE	27 SESE	26 SWSW	26 SESW	26 SWSE	26 SESE	25 LT13	25 LT14	25 LT15	25 LT16
31 LT01	31 NENW	31 NWNE	31 NESE	32 NWNW	32 NENW	32 NWNE	32 SESE	31 NWNW	31 NENW	31 NWNE	31 SESE	30 NWNW	30 NENW	30 NWNE	30 SESE	29 NWNW	29 NENW	29 NWNE	29 SESE	28 LT01	28 LT02	28 LT03	28 LT04
31 LT02	31 SENW	31 SWNE	31 SESE	32 SWNW	32 SENW	32 SWNE	32 SESE	31 SWNW	31 SENW	31 SWNE	31 SESE	30 SWNW	30 SENW	30 SWNE	30 SESE	29 SWNW	29 SENW	29 SWNE	29 SESE	28 LT05	28 LT06	28 LT07	28 LT08
31 LT03	31 NESW	31 NWSE	31 NESE	32 NWNW	32 NESW	32 NWNE	32 SESE	31 NWNW	31 NESW	31 NWNE	31 SESE	30 NWNW	30 NESW	30 NWNE	30 SESE	29 NWNW	29 NESW	29 NWNE	29 SESE	28 LT09	28 LT10	28 LT11	28 LT12
31 LT04	31 SESW	31 SWSE	31 SESE	32 SWSW	32 SESW	32 SWSE	32 SESE	31 SWSW	31 SESW	31 SWSE	31 SESE	30 SWSW	30 SESW	30 SWSE	30 SESE	29 SWSW	29 SESW	29 SWSE	29 SESE	28 LT13	28 LT14	28 LT15	28 LT16

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FEB U 1 1993

HAROLD WM MERRITT

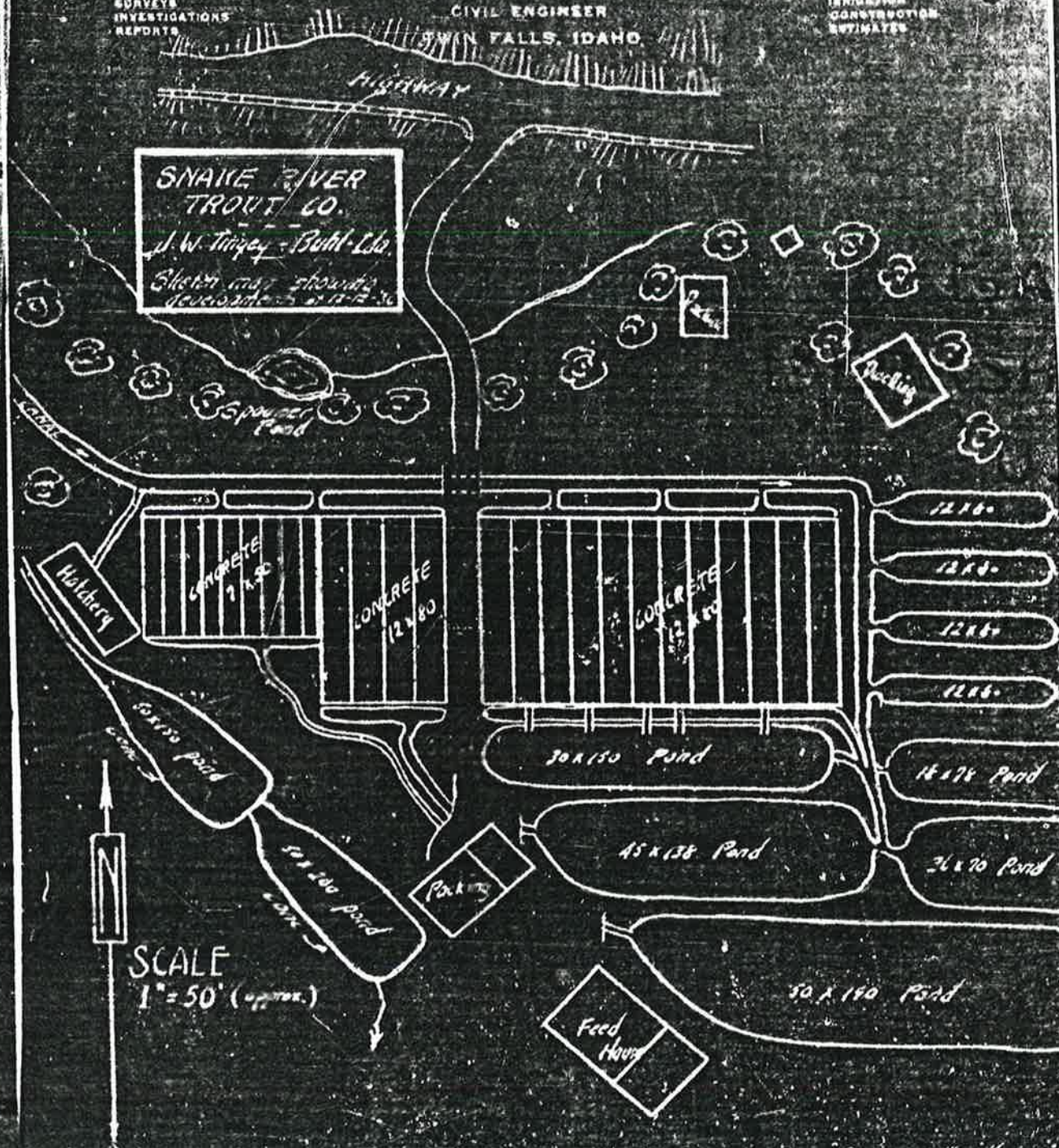
CIVIL ENGINEER

SNY FALLS, IDAHO

SURVEYS
INVESTIGATIONS
REPORTS

IRRIGATION
CONSTRUCTION
ESTIMATES

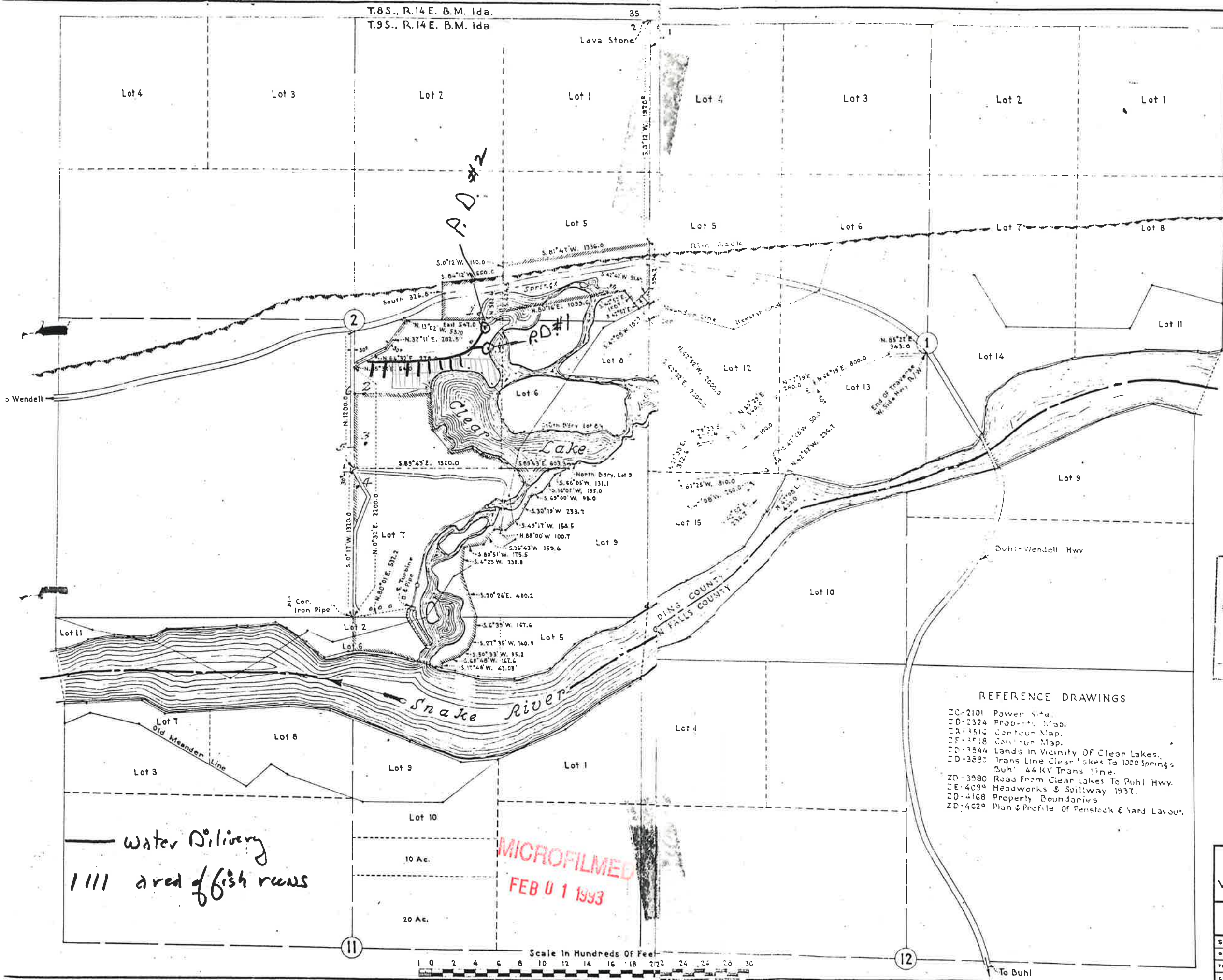
Snake River
Trout Co.
J. W. Tinney - Build. Lda.
Sketch map showing
development of 12-14-36



SCALE
1" = 50' (approx.)

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FEB 0 1 1993

Copied from licensing file 36-2708



T.9S., R.14E. B.M. Ida.
GOODING COUNTY

APPROVED
OCT 23 1966
33231
REGISTERED PROFESSIONAL ENGINEER

- REFERENCE DRAWINGS
- ZD-2101 Power Site
 - ZD-2324 Property Map
 - ZD-2516 Contour Map
 - F-2718 Contour Map
 - ZD-2544 Lands in Vicinity of Clear Lakes
 - ZD-3583 Trans Line Clear Lakes To 1000 Springs
 - ZD-3980 Road from Clear Lakes To Buhl Hwy.
 - E-4094 Headworks & Spillway 1937
 - ZD-4168 Property Boundaries
 - ZD-4629 Plan & Profile of Penstock & Yard Layout

Water Delivery
1111 a/c of fish runs

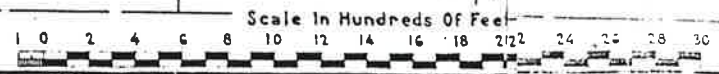
MICROFILMED
FEB 01 1993

PERMANENT RECORD MAPS
LAND OWNERSHIP
VICINITY OF CLEAR LAKES

IDAHO POWER CO,
BOISE, IDAHO

SCALE: 1" = 400' DATE July 3, 1952

APPROVED	D-10912
CH	



Claim Identification No. A36-02708 & A36-07218



1 Date: 6/18/91
Time: approx.
10:30a.m.

1
collection ditch for source springs supplying Clear Springs & Clear
Lakes. At this point, the water is split up. Clear Springs' supply
goes to the left (west) & Clear Lakes' water goes right (east).
1



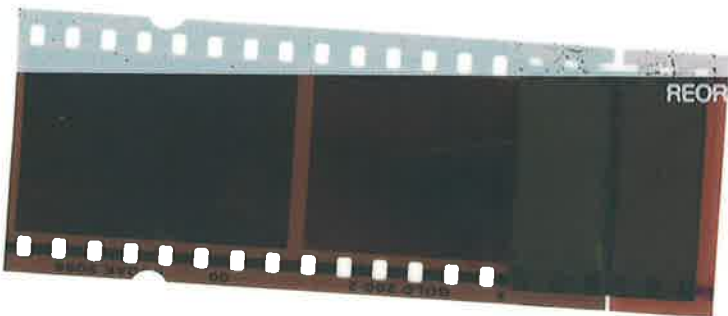
MICROFILMED
FEB 11 1993

Claim Identification No. A36-02708 & A36-07218



Date: 2/26/92
Taken by:
M. Sterling

Clear Lakes Trout Co. raceways in foreground. Clear Springs Trout Co. processing plant & Clear Lakes facility in back of photo. Ditch further right is the shared diversion system between C.L. & C.S. Looking west.



MICROFILMED
FEB 9 1992

Water Right Number - A36-02659

Prefix Translation: ADJUDICATION CLAIM

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

+ - - - - Source - - - - - + + - - - - - Tributary - - - - - +
CLEAR LAKES SPRINGS SNAKE RIVER

+ - - - - Point of Diversion - - - - - +						
Twn	Rng	Sec	Tract	Lot	RFlg	County
09S	14E	2	SE NE	5	(47)	GOODING
			NE SE	6	(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 Div. Capacity - + + - Total Consumptive Use - + + - KW Usage - +
100.000 0.0

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

+ - - Diversion Means - DAM, FLUMES, PONDS & PIPE. (SEE REMARKS)

+ - - Non-Irrigation Use - FISH PROPAGATION

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FEB 11 1993

C. E. BROCKWAY P. E.
ENGINEERING CONSULTANT

Groundwater, Hydrology,
and Hydraulic Engineering

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

RECEIVED

MAR 31 1977

Department of Water Resources
Southern District Office

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

543-6444

Copied from licensing
file 36-2659, Clear
Lakes Trout Co.
1/22/92

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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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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DATE OF EXAM OCT 19, 1972

ACREAGE

Found _____
Recommended _____

Irrigation Requirement _____ Ac Ft/Ac

USE

Irrigation Q= _____ c.f.s. V= _____ AF/Ann. from _____ to _____
Domestic Q= _____ c.f.s. V= 144,540 AF/Ann. from _____ to _____
FISH P-OP. Livestock Q= 200.0 c.f.s. V= 145,000.0 AF/Ann. from JAN 1 to DEC. 31

Is water co-mingled? yes _____ no

Name source: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Exchange? yes _____ no _____

Name source exchanged with: _____
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Point of injection:
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Point of exchange:
twp. _____ N/S, Rge _____ E/W, B.M., Sec. _____, Sub. _____ 1/4 _____ 1/4 _____
County _____

Total Q measured 228.8 C.F.S Method of measurement PARTIAL FLUME

Total Q recommended 200.0 C.F.S Meter No. _____ Type _____ Condition _____

Total V recommended 144,540. Acr. Ft/ANN

Recommended Amendments:

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FEB 11 1993