

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

Water Right 36-7201

<u>Owner Type</u>	<u>Name and Address</u>
Attorney	PATRICK D BROWN 516 HANSEN ST E PO BOX 125 TWIN FALLS, ID 83303 (208) 733-5044
Current Owner	CLEAR SPRINGS FOODS INC PO BOX 712 BUHL, ID 83316 (208)543-4316
Current Owner	THE PROSPECT CO PO BOX 712 BUHL, ID 83316 (208)543-4316
Directors Report Owner	CLEAR SPRINGS TROUT CO PO BOX 712 BUHL, ID 83316 (208)543-4316

Priority Date: 8/4/1971

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
SPRINGS	CLEAR LAKES

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
INDUSTRIAL	1/01	12/31	2.000 CFS	
FISH PROPAGATION	1/01	12/31	8.000 CFS	
	<u>Total Diversion</u>		10.000 CFS	

Source and Point(s) of Diversion

SPRINGS	NWNWSE	Sec. 2, Twp 09S, Rge 14E, GOODING County
SPRINGS	SWSWNE	Sec. 2, Twp 09S, Rge 14E, GOODING County

Place Of Use

FISH PROPAGATION within GOODING County

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S	14E	2														X			

INDUSTRIAL within GOODING County

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
09S	14E	2														X			

IDAHO DEPARTMENT OF WATER RESOURCES
Proof Report

Conditions of Approval:

1. FACILITY VOLUME 5652 CU. FT.
2. C18 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.
3. THE REMARK ADDRESSING FACILITY VOLUME IS INCLUDED IN THIS WATER RIGHT ONLY BECAUSE THE REMARK APPEARED ON THE LICENSE. THE REMARK ADDRESSING FACILITY VOLUME DOES NOT DEFINE THE EXTENT OF BENEFICIAL USE AND CANNOT BE USED TO LIMIT ANY ELEMENT OF THIS WATER RIGHT. THE REMARK SHALL NOT PREVENT THE OWNER OF THE LICENSE FROM EXPANDING FACILITY VOLUME.
4. INDUSTRIAL, FISH PROCESSING PLANT; FISH PROP., HOLDING PONDS

Dates and Other Information

Decreed Date: 4/10/2000
Civil Case Number: 39576
Judicial District: FIFTH
State or Federal: S
Owner Name Connector: And
Water District Number: 130
Mitigation Plan: False

Combined Use Limits

N/A

SubCase:

SubCaseNumber: 36-7201
Class: 1
SF5 Filed Date:
Special Master Recom Signed Date: 8/28/1998
Attorney Assigned: NICHOLAS B SPENCER
Adjudication Agent:
Basis of Claim:
Date Filed: 4/29/1993
Objection Status: Active

Water Supply Bank:

N/A

CATHERINE B. WRIGHT
3675 Canyon Lane
Buhl, Idaho 83316

RECEIVED

JUL 19 2005

Department of Water Resources
Southern Region

July 18, 2005

Mr. Allen Merritt, PE
Southern Region Manager
Department of Water Resources State of Idaho
Twin Falls, Idaho 83301

RE: Request for Hearing – In the matter of request for recovery and reuse of water diverted under right 36-7201 in the name of Clear Springs Foods, Inc.

Dear Mr. Merritt:

In accordance with Idaho Code § 42-1701A, I would like to request a hearing on the above-referenced Preliminary Order. As set forth in the attached petition, approval of the pump-back system would injure our water rights by negatively affecting water quality. Accordingly, I respectfully request a hearing with respect to the Preliminary Order.

Sincerely,



Catherine Wright

Cc: Brockway Engineering
Clear Springs Foods, Inc.

56-7201

CATHERINE B. WRIGHT
3675 Canyon Lane
Buhl, Idaho 83316

RECEIVED

JUL 19 2005

Department of Water Resources
Southern Region

July 18, 2005

Mr. Allen Merritt, PE
Southern Region Manager
Department of Water Resources State of Idaho
Twin Falls, Idaho 83301

RE: Petition for Reconsideration – In the matter of request for recovery and reuse of water diverted under right 36-7201 in the name of Clear Springs Foods. Inc.

Dear Mr. Merritt:

I would like to request reconsideration of the preliminary order for the above-referenced Preliminary Order. Approval of the pump-back system would injure our water rights by negatively affecting water quality.

We understand that under paragraph 8 of the Preliminary Order, pump-back will only occur to the extent "Clear Springs retains control of the effluent from their facilities." We feel this requirement is inadequate because (i) there is no definition of "control" in the Preliminary Order, (ii) the Preliminary Order does not take oxygen levels into account and (iii) the Preliminary Order does not take into account existing decreased flows in Kanaka Creek.

1. Control Needs to be Defined. Retention of "control" needs to be defined by definite, objective standards. As currently drafted, this paragraph contains little, if no restriction on the actual levels of effluent in the water that will be delivered to our property. To take an extreme example, Clear Springs could "retain control" of the effluent at an otherwise unacceptable level (e.g. 95% effluent) and still be in compliance with the Preliminary Order. We request (i) that measuring equipment be put in place to determine the level of effluent in the water flowing from the Clear Springs facility and (ii) that a bright-line objective standard be put in place, and if the flows do not meet this standard, continued pump-back not be allowed.

2. Measurements Need to Take Oxygen Levels into Account. In addition to effluent, decreased oxygen in the water would injure our water quality. We have a right to 14.94 cfs of water under our fish rearing permit #36-7248. Due to diversion of industrial water by Clear Springs, diversion of ground water from the aquifer, and a drought, the quantity and quality of water coming in Kanaka Creek to our property has been reduced drastically (water flows are well less than half of the permitted amount). Re-circulating the water according to the proposed pump-back will lead to lower total oxygen levels, which will even further injure our ability to raise fish under the existing permit. We request (i) that measuring equipment be put in place to determine the level of oxygen levels in the water flowing from the Clear Springs facility and (ii)

that a bright-line objective standard be put in place, and if the flows do not meet this standard, continued pump-back not be allowed.

3. Pump-Back Calculations Need to Take into Account Current Decreased Flows. The pump-back calculations are based on 8 cfs flowing into Kanaka Creek. However, presently in the summer, there probably aren't more than 5 to 6 cfs in the entire Kanaka Creek. Because of these decreased flows, the proportion of water flowing into Kanaka Creek that has been "pumped-back" will be unacceptably high. A few numerical examples are illustrative:

Water Diverted at Upper Spring	Pump-Back Rate	Percentage of Water in Kanaka Creek that has been "Pumped-Back"
8	0	0.0%
7	1	12.5%
6	2	25.0%
5	3	37.5%
4	4	50.0%
3	4	57.1%
2	4	66.7%
1	4	80.0%
0.5	4	88.9%
0.1	4	97.6%
0	4	N/A

As you see from the above, as the water levels decrease, the percentage of "pumped-back" water increases up to (although it does not hit) 100% of the total flows into Kanaka Creek.

This problem is exacerbated by the fact that Clear Springs is apparently not returning all of the water it is required to return to Kanaka Creek. In connection with Clear Springs' initial permit application under permit 36-7201, they agreed to return all water diverted except for 0.5 cfs to Kanaka Creek, which would then flow to our property under our earlier water rights. From reading the Preliminary Order, it appears that not all of the water is flowing as required. Decreasing these flows into Kanaka Creek in violation of the agreement (if that is in fact happening) further reduces the water quality flowing to our property. Accordingly, we request that the Preliminary Order be adjusted to take into account any decreased water flows.

Sincerely,



Catherine Wright

Cc: Brockway Engineering
Clear Springs Foods, Inc.

EARL M. HARDY
BOISE, IDAHO 83705

November 2, 1971

1220
XXXX VISTA AVENUE

RECEIVED

JUL 19 2005

Department of Water Resources
Southern Region

RECEIVED

Re: Application for Permit No. 36-7201
Clear Springs Trout Sales

Department of Water Resources

November 8, 1971

BDF

Mr. Donald W. McEldowney
Department of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

Dear Don:

Following my letter to you of October 18, I talked to Ted Eastman of Clear Springs Trout Sales as to the location of the diversion under the above application for permit.

He showed me the source of the water applied for and apparently does not run into the Clear Lakes water supply from which our Application No. 36-2659 is involved. The water Mr. Eastman showed me runs to the west through the Brailsford property.

Therefore, based on this being the source of subject application, this satisfies the question I raised in my letter of September 13, 1971.

Sincerely yours,

CLEAR LAKES TROUT CO., INC.

E. Hardy
Earl M. Hardy

EMH/skh

Re: Applicat

John Roshalt
Box 525
Twin Falls, Id.

Dear John:
Pursuant to our

copy of the abo
If we can be of

Very truly yours,

Dorian Clay
Appropriation Ex

DC:CR

Enc: copy

DEPARTMENT OF

WATER

ADMINISTRATION

Director

Administration

Investigations

Resource Safety

and Drilling

Management

and

Local Districts

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y this

PARRY, ROBERTSON, DALY & LARSON

LAWYERS

THE FIRST NATIONAL BANK BUILDING

BOISE, IDAHO 83707

TWIN FALLS, IDAHO 83301

June 6, 1972

Dep. Sec. of Water
Telephone
Room 233 3775

Department of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

Attention: Bobby Fleenor

Dear Bobby:

Re: Permit No. 36-7201

Clear Springs Trout Company and Fred Brailsford have entered into an agreement concerning the questions raised in Mr. Brailsford's previous protest of the above permit.

Although the permit has already been issued, this letter should be kept in your file as evidence of Mr. Brailsford's withdrawal of protest.

Sincerely,

John A. Rosholt

JOHN A. ROSHOLT

JAR:php

cc: Hepworth
Brailsford

AGREEMENT

THIS AGREEMENT, made and entered into this 25th day of May, 1972, by and between CLEAR SPRINGS TROUT CO., an Idaho corporation, with its principal place of business in Buhl, Idaho, parties of the first part, hereinafter referred to as "Clear Springs," and FRED BRAILSFORD, individually, and FRED BRAILSFORD, INC., an Idaho corporation, with its principal place of business in Buhl, Idaho, parties of the second part, hereinafter referred to as "Brailsford,"

WITNESSETH:

WHEREAS, Clear Springs filed an application with the State of Idaho, Department of Water Administration, No. 36-7201, asking to appropriate ten cubic feet per second of water from an unnamed spring which is tributary to the Snake River, asserting a point of diversion in the Northwest Quarter of the Southeast Quarter of Section 2, Township 9 South, Range 14 East, Boise Meridian, Gooding County, Idaho; and

WHEREAS, the springs filed upon in the above application are located in the same general area as springs where Brailsford obtains water for domestic, irrigation and stockwatering purposes; and

WHEREAS, the parties wish to set forth their agreement in detail so that Permit No. 36-7201 can be issued;

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein contained, well and truly performed by the parties hereto, the parties agree as follows:

1. Clear Springs shall not interfere with or in any way impair Brailsford's domestic water supply.

2. Clear Springs recognizes all the prior rights that Brailsford has in the unnamed springs based upon past use for irrigation, stockwatering, and domestic use and further acknowledges

1 that Brailsford and his predecessors have previously used all of
2 the water rising in said springs for such beneficial purposes.

3 3. Clear Springs agrees as follows as to the use of
4 water applied for in application for permit No. 36-7201:

5 (a) Clear Springs will not consumptively use in
6 excess of .5 cfs for industrial purposes pursuant to
7 said permit.

8 (b) Clear Springs will use the remainder [in excess
9 of 3(a) above] of said total appropriation only in holding
10 ponds used in connection with its processing plant.

11 (c) After the water has flowed through the holding
12 ponds, the remaining amount [less the amount set forth in
13 paragraph 3(a) above for consumptive uses] shall be re-
14 turned at the expense of the applicant to the existing
15 natural channel prior to the point where said natural
16 channel crosses the boundary line to the property of
17 Brailsford.

18 4. Clear Springs will not protest any claim or decree
19 action brought by Brailsford to further perfect water usages and
20 rights, and will not protest any application for permit to appro-
21 priate and re-use the same water for fish propagation purposes on
22 the property of Brailsford.

23 5. Upon the execution of this agreement, Brailsford will
24 notify the Department of Water Administration that application
25 No. 36-7201 may be issued.

26 The parties hereto bind their heirs, personal representa-
27 tives, executors, successors and assigns.

28 IN WITNESS WHEREOF, we hereunto affix our signatures the
29
30

1 day and year first above written.

2 CLEAR SPRINGS TROUT CO.

3 By: Jess O. Eastman
4 Jess O. Eastman

5 ATTEST:

6 John C. Hepworth
7 John C. Hepworth

8 BRAILSFORD

9 Fred Brailsford, Individually, and
10 as President of Brailsford, Inc.

11 STATE OF IDAHO)
12) ss.
13 County of Twin Falls)

14 On this 25th day of May, 1972, before me, the under-
15 signed, a notary public in and for said state, personally appeared
16 JESS O. EASTMAN and JOHN C. HEPWORTH, known to me to be the
17 president and secretary, respectively, of the CLEAR SPRINGS TROUT
18 CO., the corporation that executed the within instrument, and
19 acknowledged to me that such corporation executed the same.

20 WITNESS my hand and official seal.

21 Art L. Hanson
22 Notary Public for Idaho
23 Residing at: Buhl, Idaho

24 STATE OF IDAHO)
25) ss.
26 County of Twin Falls)

27 On this _____ day of _____, 1972, before me, the under-
28 signed, a notary public for the said state, personally appeared
29 FRED BRAILSFORD, known to me to be the president of FRED BRAILS-
30 FORD, INC., the corporation that executed the within instrument
and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

Notary Public for Idaho
Residing at: _____

January 24, 1972

State of Idaho
Dept. of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

Atten: D. W. McEldowney

Re: Permit No. 36-2708
Clear Springs Trout Co.
Permit No. 36-7083
Clear Springs Trout Sales, Inc.
Permit No. 36-7201

Dear Don:

I am writing as an officer and attorney for Clear Springs Trout Co. We filed an application for a water permit in 1966, which was approved October 28, 1966. We expect to have all of the water diverted and being used beneficially by the middle of February of this year. One of the purposes in writing this letter is to request the Department to make its inspection to satisfy itself that we have complied with our application and to make final proof. I do not recall if there is a form we are to fill out in connection with this, but if there is, would you please forward it to me so we can submit the same. I am wondering if we could arrange to have the inspection made by your department either the end of February or some time in March. Please advise.

In 1969, Clear Springs Trout Co., filed for 300 cubic second feet of water from Crystal Springs, under Permit No. 36-7083. Later we formed a new corporation whose stock is wholly owned by Clear Springs Trout Company, by the name of Clear Springs Trout Sales, Inc. Permit No. 36-7083 was assigned by Clear Springs Trout Co. to the new corporation, to wit, Clear Springs Trout Sales, Inc. Under the terms of the approval of that permit, we were given two years within which to construct new facilities and apply the water to a beneficial use, provided that an extension could be

granted if we should comply. We, of course, a substantially beneficially tional const take us two One of the time be gran

In connection decision state had proceeded invite inspection determination is the largest finest. I made application additional approved permit need as much project, alt

Lastly, I have Permit No. 36 to furnish a of the point department, t and Earl Hard gentlemen, an the proposed application i original loca any expense, source of thi Lakes Road on leasing with Country Club farm. If we our processin

36-7201

Dept. of Water Administration
January 24, 1972

-2-

granted if we had not completed our works. This means that we should complete our facilities by the 25th day of February, 1972. We, of course, have not completed it although we have completed a substantial part of it and would estimate that we are probably beneficially using 200 second feet of water. We plan for additional construction this coming summer, but it will probably take us two or three years to fully develop the entire facility. One of the purposes of this letter is to request that additional time be granted for this purpose.

In connection with the last mentioned permit, the memorandum decision stated that an extension would be granted if our company had proceeded with reasonable diligence. I would certainly invite inspection of this facility by the department to make that determination. I am sure that the part which we have completed is the largest commercial hatchery in the U.S., and we think the finest. I might also mention that later on we filed an additional application which was also approved for the same location for an additional 100 second feet of water. In other words, we have approved permits for a total of 400 second feet of water. We may need as much as five years to complete construction on the entire project, although it is nearly one-half complete now.

Lastly, I have received correspondence concerning approval for Permit No. 36-7201, filed for 10 second feet. I have been asked to furnish a more precise description with respect to the location of the point of diversion. While the request came from the department, the other parties concerned were Fred M. Brailsford and Earl Hardy. I have talked personally with each of these gentlemen, and I am sure that they both understand exactly where the proposed point of diversion is located. This particular application is for an additional 10 second feet of water at our original location, adjacent to Clear Lakes. Rather than incurring any expense, I am sending you my own free hand drawing of the source of this water. We will tap into it just below the Clear Lakes Road on a small triangular piece of property which we are leasing with an option to buy which is located between the Country Club leading off Clear Lakes Road and Fred Brailsford's farm. If we use this water, it will be used in conjunction with our processing plant. We have agreed with Fred Brailsford that

Dept. of Water Administration
January 24, 1972
-3-

this water will be on his land. My request may serve. I think it may be a lawyer rather than an artist. Filing, please advise approval of the permit.

I am enclosing a drawing which we have under divert the ten second feet 36-7201.

JCH:bh
Encl.

Dept. of Water Administration
January 24, 1972

-3-

this water will be returned by us to the stream bed which flows on his land. My rough drawing is enclosed for whatever purpose it may serve. I think you will at least say that I am a better lawyer than artist. If something further is needed for the filing, please advise; if not we would appreciate receiving approval of the permit.

I am enclosing a description of the triangular piece of land which we have under lease and option and from which we will divert the ten second feet of water applied for under Permit No. 26-7201.

Very truly yours,

HEPWORTH, NUNGESTER & FELTON



John C. Hepworth

JCH:bh
Encl.

LAW OFFICES

HEPWORTH, NUNGESETER, AND FELTON --
PROFESSIONAL CENTER
1020 MAIN
AREA CODE 208
PHONE 843-4388

BUHL, IDAHO - 83316

JOHN C. HEPWORTH
WILLIAM L. NUNGESETER
MICHAEL H. FELTON

January 24, 1972

State of Idaho
Dept. of Water Administration
Statehouse - Annex 2
Boise, Idaho 83707

Atten: D. W. McEldowney Re: Permit No. 36-2708
Clear Springs Trout Co.
Permit No. 36-7083
Clear Springs Trout Sales, Inc.
Permit No. 36-7201

Dear Don:

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January 24
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Dept. of Water Administration
January 24, 1972

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Dept. of Water Administration
January 24, 1922
-3-

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I am enclosing a description of the triangular piece of land which we have under lease and option and from which we will divert the ten second feet of water applied for under Permit No. 36-7201.

Very truly yours,

HEPWORTH, NUNGESTER & FELTON

John C. Hepworth

John C. Hepworth

JCH:bh
Encl.

Clear Springs Trout

Clear Lake Road

Developed property

Proposed point
of diversion for
10 ft permit #36-7201

Clear County Club Road

return to stream

Point of
use

Clear Springs Trout
facility

John K. Simpson
BARKER ROSHOLT & SIMPSON LLP
205 N. 10th Street, Suite 520
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 336-0700
Fax: (208) 344-6034
ISB # 4242

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF REQUEST	)	
FOR RECOVERY AND RE-USE OF	)	
WATER DIVERTED UNDER RIGHT	)	
36-7201 IN THE NAME OF	)	MOTION FOR
CLEAR SPRINGS FOODS INC	)	RECONSIDERATION
_____	)	

COMES NOW, Clear Springs Foods, Inc. ("Clear Springs") by and through its attorneys of record, Barker Rosholt & Simpson LLP, and hereby moves the Idaho Department of Water Resources ("IDWR") to reconsider the Preliminary Order dated July 1, 2005 issued in the above captioned matter. Specifically, for the following reasons, Clear Springs requests that Findings of Fact No. 2, No. 3, No. 11, No. 12, No. 13 and No. 15 be eliminated or revised. Further, Clear Springs requests that Conclusions of Law Nos. 5 and 6 be eliminated or revised. Finally, Clear Springs requests that conditions of approval listed in the Order as Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 be eliminated or revised.

36-7201

ARGUMENT

On March 15, 2004, the State of Idaho and certain water users within Water District 130 reached an agreement which was subsequently memorialized as the "Eastern Snake Plain Aquifer Mitigation, Recovery and Restoration Agreement for 2004". This one year agreement provided that spring water users would stay pending delivery calls against ground water users diverting from the Eastern Snake Plain Aquifer ("ESPA") in exchange for implementation of a suite of short term mitigation measures and other actions. The State of Idaho funded a total of \$500,000 in grant funds for mitigation projects in the Thousand Springs Reach of the Snake River Basin.

On May 29, 2004 Clear Springs submitted a mitigation assistance grant application entitled "Processing Plant Mitigation Well and Pump-Back System". The Economic Development division of the Idaho Department of Commerce acknowledged this application on June 8, 2004. Pursuant to that notice the State identified that the grant applications were receiving a technical and legal review by IDWR. That review was an integral part of the working group of the legislative natural resource interim committee, which reviewed and prioritized all applications. Further, said review substantiated the technical feasibility of the project, the amounts and plans submitted.

Following review by the State of Idaho, Clear Springs was awarded a grant for partial funding of the pump back mitigation project. The awarding of the grant constituted approval by the State of Idaho and reviewing agencies of the proposed project and its benefits to the intent of the program. Following the notice of award, Clear Springs submitted and sought approval of construction and operation drawings and plans consistent with the previous submittals to the Department of Commerce and the Idaho

Department of Water Resources. While Clear Springs viewed the original approval of IDWR of the mitigation project as sufficient, IDWR has chosen to memorialize its prior approval in the July 1, 2005 Preliminary Order for which this Motion seeks reconsideration.

With respect to Findings of Facts Nos. 2 and 3, Clear Springs objects to IDWR's intent to redefine the partially decreed water right 36-7201. A review of 36-7201 and its elements indicates that Clear Springs is authorized to divert a total of 10 cfs through the points of diversion identified in the partial decree. The partially decreed water right does not identify a limitation on how much water can be diverted through either spring. The source of water for the springs is a common source. Water from the upper spring can be diverted to either the "holding ponds" or into the "processing plant", which utilizes a fresh water storage tank. The diversions from the lower spring are, in fact, limited to diversions into the "processing plant". Clear Springs objects to any effort to limit or redefine the uses and diversion of water under this water right.

With respect to Finding of Fact No. 11, Clear Springs objects to a finding that it proposed a maximum ramping rate that would not reduce the existing flow of Kanaka Creek by more than 29 gallons per minute. Instead, Clear Springs would propose that prior to operation of the pump back system an operating plan be submitted to the Watermaster and approved by the Watermaster, which would govern operations of the pump back system.

With respect to Finding of Fact No. 13, Clear Springs would object to the wording of Finding of Fact No. 13 with respect to the word "control" and the implicit meaning from the use of the word. Diversions, including those on Kanaka Creek are under the regulation and supervision of IDWR and the watermaster in Water District 130. Again,

Clear Springs would propose that operation of the pump back system would fall under an operating plan that would be reviewed and approved by the IDWR and watermaster.

With respect to Finding of Fact No. 15 Clear Springs would object to the same use of the word "control" for the reasons previously identified.

With respect to Conclusions of Law No. 5, Clear Springs objects to the quantity limitation of 8 cfs provided in this Conclusion of Law, as opposed to the licensed right of 10 cfs. Conclusion of Law No. 5, as depicted, is inconsistent with the partial decree for water right no. 36-7201.

With respect to Conclusion of Law No. 6, Clear Springs again objects to the limitation provided.

With respect to the Conditions of Approval depicted in the Order, Clear Springs would object as follows:

With respect to Condition No. 1, Clear Springs objects to the pump back system being under the "control" of the watermaster. Clear Springs would request that an operating plan subject to the approval of IDWR and the Watermaster be the controlling document in the operation of the pump back system.

With respect to Condition No. 2, Clear Springs objects on the basis that the standard weir has been upgraded to the watermaster's approval and the wording regarding control removed.

With respect to Condition No. 3, the flow meters have been installed. Further, Clear Springs objects to lockable valves under the control of the watermaster being placed on this system. The system requires intermittent adjustments, which should be the subject of the operating plan, approved by the watermaster and IDWR. Given the

availability of flows and the needs of Clear Springs, immediate flexibility in operating said pump back system is necessary for the efficient operation.

With respect to Condition No. 4, Clear Springs objects to the pump back ramping rate and instead would request that a ramping rate be integrated into the operating plan, which would be subject to the watermaster and IDWR approval prior to operation. Further, IDWR has allowed initial ramping of the project and that information is pertinent to developing the operation plan.

With respect to Condition No. 5, Clear Springs would request it simply contact the watermaster prior to any ramping event. The watermaster could in turn notify any other users in Kanaka Creek to ensure full disclosure.

With respect to Condition No. 6, Clear Springs objects to the language contained in said condition and would propose the following language “operation of the pump back system in accordance with the approved operating plan and in conjunction with diversion of water pursuant to water right no. 36-7201 shall not result in more than 8 cfs diverted to the holding pond.”

With respect to Condition No. 7, Clear Springs objects to said condition given IDWR’s previous finding that there is no injury.

With respect to Condition No. 8, Clear Springs would request that the condition read, “pump back under this order shall occur only to the extent that Clear Springs retains control of the effluent from their facilities described in the operating plan.”

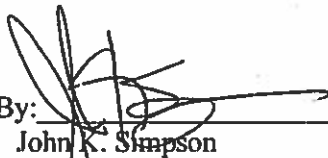
With respect to Condition No. 9, Clear Springs objects to this condition given IDWR’s previous finding that operation of the pump back system does not injure any other water rights. If an approved operating plan is in place, operations consistent with the plan should suffice.

CONCLUSION

For the foregoing reasons, Clear Springs requests that IDWR revise the Findings and Facts, Conclusions of Law and Conditions identified above. Additionally, Clear Springs respectfully requests a hearing on this motion. Furthermore, Clear Springs requests that a status conference be scheduled in this matter.

DATED this 18th day of July, 2005.

BARKER ROSHOLT & SIMPSON

By: 
John K. Simpson

CERTIFICATE OF MAILING

I hereby certify that on this 18th day of July, 2005, I served a copy of the foregoing *Motion for Reconsideration/Request for Hearing*, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

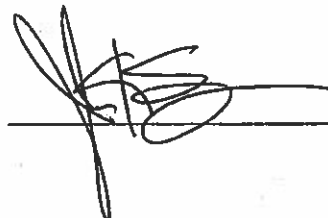
Hand Delivered: Karl Dreher
Idaho Department of Water Resources
1301 N. Orchard
Boise, Idaho 83706

CE Brockway PE
Brockway Engineering
2016 N. Washington St, Suite 4
Twin Falls, ID 83301

Clear Springs Foods, Inc.
PO Box 712
Buhl, ID 83316

Catherine and Gary Wright
3675 Canyon Lane
Buhl, ID 83316

Allen Merritt and Cindy Yenter
Southern Region, IDWR
1341 Fillmore St, Suite 200
Twin Falls, ID 83301-3380



Merritt, Allen

From: Merritt, Allen
Sent: Tuesday, July 19, 2005 8:07 AM
To: Spackman, Gary
Subject: RE: Phone conversation with Catherine Wright regarding Clear Springs Pump back

After our phone conversation I contacted Catherine Wright and told her there may be some mis-interpretation as to what avenue she had in addressing her concerns about the order. I told her that if she had a problem with the order it may be more appropriate for her to request a hearing instead of filing a petition for reconsideration. She indicated that she was sent something twice and one was some sort of correction. She was not clear as to what the difference was. She indicated she thinks she is a party since we sent them notice of the order. She indicated she intends to file something this week. I guess we'll wait and see what comes in.

Allen

-----Original Message-----

From: Spackman, Gary
Sent: Monday, July 18, 2005 1:55 PM
To: Merritt, Allen
Cc: Gibson, Deborah; Wigle, Victoria
Subject: RE: Phone conversation with Catherine Wright regarding Clear Springs Pump back

Allen,

I believe Catherine will have to request a hearing under Section 42-1701A, not request reconsideration. I hope we remailed the notice with proper instructions.

Gary Spackman

-----Original Message-----

From: Merritt, Allen
Sent: Monday, July 18, 2005 9:57 AM
To: Dreher, Karl; Tuthill, Dave; Spackman, Gary; Yenter, Cindy (Hodges); Rassier, Phil
Subject: Phone conversation with Catherine Wright regarding Clear Springs Pump back

Catherine Wright called and indicated she is intending to file a request for reconsideration. She was wanting to know if she had to get a lawyer and I told her she did not have to have one. I told her she had to file the request with the department within 14 days of issuance of the order and send copies to the other parties. Apparently she has a problem with water quality or oxygen issues.



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

July 6, 2005

CATHERINE AND GARY WRIGHT
3675 CANYON LN
BUHL ID 83316

CLEAR SPRINGS FOODS INC
PO BOX 712
BUHL ID 83316

RE: In the matter of request for recovery and reuse of water diverted under right 36-7201 in the name of Clear Springs Foods, Inc.'s.

Dear Sirs & Madame:

The department discovered an error in the service of the Preliminary Order issued on July 1, 2005 by David R. Tuthill, Jr. in the above-referenced matter. I am providing you a second copy of the Preliminary Order with an Amended Certificate of Service establishing a new issuance date, along with a statement of available procedures and applicable time limits for when a hearing before the department has not been held. The statement enclosed with the previous order was not appropriate and should be disregarded.

If you have any questions, please contact the department.

Sincerely,

Deborah Gibson
Administrative Assistant
Water Allocation Bureau

Enclosures

Cc: C. E. Brockway, PhD, PE
Southern Region

56-7201

RECEIVED
JUL 08 2005
Department of Water Resources
Southern Region

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF REQUEST FOR)	
RECOVERY AND RE-USE OF WATER)	PRELIMINARY ORDER
DIVERTED UNDER RIGHT 36-7201 IN THE)	
<u>NAME OF CLEAR SPRINGS FOODS INC)</u>	

In a letter to the Department of Water Resources ("Department") dated May 2, 2005, Dr. Charles E. Brockway, consultant for Clear Springs Foods, Inc. ("Clear Springs"), requested approval of the construction and operation of a pump-back system pursuant to provisions of Idaho Code § 42-105 for re-circulation of water diverted under water right no. 36-7201. The Department responded in a letter dated May 17, 2005, seeking more detail and clarification of the pump-back system. In a letter dated June 7, 2005, Dr. Brockway provided more details of the intended pump-back system.

FINDINGS OF FACT

1. Clear Springs is the owner and operator of water right no. 36-7201 which is recorded in the records of the Department as follows:

Status:	Decree
Priority:	08/04/1971
Source:	Springs
Tributary to:	Clear Lakes

<u>Beneficial Use</u>	<u>From To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
Fish Propagation	1/1 12/31	8.0 cfs	
Commercial	1/1 12/31	2.0 cfs	
		Total Diversion	10.0 cfs

Location of Point(s) of Diversion

Spring	NW¼NW¼SE¼ Sec 2, Twp 09S, Rge 14E, B.M.
Spring	SW¼SW¼NE¼ Sec 2, Twp 09S, Rge 14E, B.M.

Place of Use

Fish Propagation and Commercial Use located within:
NW¼SE¼ Sec 2, Twp 09S, Rge 14E, B.M.

Conditions of Right

- The remark addressing facility volume is included in this water right only because the remark appeared on the license. The remark addressing facility volume does not define the extent of beneficial use and cannot be used to limit any element of this water right. The remark shall not prevent the owner of the license from expanding facility volume.
- Industrial, Fish Processing plant; Fish Propagation, Holding ponds
- This partial decree is subject to such general provisions necessary for the definition of the 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.
- Facility volume 6552 Cubic Feet.

2. Clear Springs diverts water from an upper spring and a lower spring. Clear Springs collects water from the upper spring in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec 2, Twp 09S, Rge 14E, B.M. and diverts the water to a set of small raceways identified by Brockway as the "holding ponds" that are located within the processing plant building. These raceways are used to hold fish just prior to processing. Clear Springs is authorized to divert up to 8.0 cfs from the upper spring into these raceways. Water from the holding ponds is discharged back to Kanaka Creek.

3. Clear Springs collects water from the lower spring in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec 2, Twp 09S, Rge 14E, B.M. and diverts to the "processing plant." A separate pipeline from the lower spring diverts flow on an intermittent basis to a fresh-water storage tank in the processing plant. This water is chlorinated and used in the fish process operations. When flows are not being diverted into storage, the lower pipeline discharges into Kanaka Creek. Wastewater from fish processing is discharged into a treatment plant and then into Clear Lakes. Clear Springs is authorized to divert up to 2.0 cfs from the lower spring.

4. Supply pipelines from the upper and lower springs do not have measuring devices. Prior to the pump-back project, flows available to the holding ponds and to the processing plant were collectively estimated by measuring flows over the weir in Kanaka Creek at the point where Kanaka Creek exits the Clear Springs property. These measurements were taken during times when the storage tank was not filling and all flows were in Kanaka Creek. This method will also measure any additional flows in Kanaka Creek that may not be diverted by Clear Springs. IDWR approved this method of measurement in 1995 with the understanding that it might result in readings that were higher than actual diversions made by Clear Springs.

5. The spring source of right 36-7201 is hydraulically connected to the Eastern Snake Plain Aquifer ("ESPA"). Due to prolonged drought, diversion of ground water from the aquifer, reduced recharge to the aquifer, and other hydrologic reasons, the flows of the springs

have declined from historic levels that were relied on by Clear Springs to beneficially use water under right no. 36-7201.

6. To alleviate impacts of reduced spring flows, the State of Idaho awarded monetary grants to various spring users including Clear Springs to develop projects. The proposed pump-back system is such a project.

7. Water discharging from the Clear Springs holding ponds flows into Kanaka Creek. The discharge of Clear Springs' wastewater effluent is regulated under existing NPDES permits.

8. The pump-back system project proposes installation of a pump in Kanaka Creek with a capacity of up to 4.0 cfs. The pump will be located in the NW¼NW¼SE¼ Sec 2, Twp 09S, Rge 14E, B.M. downstream from the points where return flows from the holding ponds discharge into Kanaka Creek. The pump-back system is designed to discharge into the "Spring Collector Box," the diversion identified above as the upper spring point of diversion, located in the SW¼SW¼NE¼ Sec 2, Twp 09S, Rge 14E, B.M.

10. Springs discharge into Kanaka Creek as it flows downstream to the point of discharge of the Clear Springs effluent to Kanaka Creek above the pump-back intake. Water not diverted from the springs, additional gain to Kanaka Creek below the springs diverted by Clear Springs, and Clear Springs' effluent accumulate in Kanaka Creek. Clear Springs has advised IDWR that most of the flows of Kanaka Creek emanate from the springs that are diverted to the holding ponds and the processing plant. Holders of other downstream water rights rely on the flows of Kanaka Creek to fill their water rights.

11. Initial operation of the pump-back system will temporarily decrease the flows in Kanaka Creek until an equilibrium state is attained. Slowly ramping-up the diversion rate of the pump-back system will minimize the reduction in flow of Kanaka Creek between the commencement of pump-back and the time when the point of equilibrium is reached. When ramping-up the pump-back system, Clear Springs proposes that it will not reduce the existing flow in Kanaka Creek by more than 29 gpm.

12. Clear Springs' operation plan provides for installation of measuring devices on (a) the pump-back system pipeline, and (b) the pipeline delivering water from the Spring Collector Box to the holding ponds, below where the pump-back water and the spring water are combined. The operation plan also proposes maintenance of the existing weir on Kanaka Creek located downstream of the proposed pump-back pump intake.

13. Diversions in the area including the springs and those on Kanaka Creek are under the control of the watermaster of Water District 130.

14. The watermaster has visited the site and is familiar with the existing water rights, facilities and diversions. The watermaster does not oppose the proposed plan provided all the measuring devices are installed as proposed.

15. The present measurement of the two spring diversions is not satisfactory and does not allow for adequate watermaster monitoring and control of the pump-back system.

CONCLUSIONS OF LAW

1. Idaho Code § 42-105 states, in pertinent part:

(1) The water that a person is entitled to divert by reason of a valid water right may be turned into the channel of a natural waterway and mingled with its water, and then reclaimed, but in reclaiming the water so mingled, the amount of water to which prior appropriators may be entitled shall not be diminished, and due allowance shall be made for loss by evaporation and seepage. The use of natural waterways to commingle and reclaim water shall be subject at all times to the supervision and control of the director of the department of water resources and shall be subject to the regulation of the watermaster within an established water district. The amounts of water turned into or diverted from all natural waterways are subject to the requirement of measurement and reporting.

2. Clear Springs could intercept return flows from the holding ponds prior to discharge back into Kanaka Creek and re-circulate the water to the head of the holding ponds without prior approval of the Department which would have a similar effect on the rate of flow in Kanaka Creek as the current pump-back proposal.

3. Because the pump-back intake is located in Kanaka Creek, Clear Springs will be diverting water from a source not authorized by its existing water right. The commingling and redirection recognized by Idaho Code § 42-105 allows pumping from a natural water source in which water from the original source of water is mingled. In most factual settings, where commingling under Idaho Code § 42-105 has been allowed, the commingled water has not been beneficially used prior to commingling in the public source. Because Clear Springs' use of water is largely nonconsumptive, however, it is physically possible for Clear Springs to divert and beneficially use (a) water from the original source, and (b) water from the new source, comprised of both (i) fresh water flowing in the new source, and (ii) water diverted from the original source that Clear Springs has already beneficially used and has discharged into the new source. This is acceptable only to the extent that Clear Springs retains control of the effluent.

4. Idaho Code § 42-105 expressly states that commingling cannot diminish the amount of water to which prior appropriators may be entitled. Idaho Code § 42-105 must also be reconciled with Idaho Code § 42-222, which governs transfers of water including adding a new point of diversion. Idaho Code § 42-222 prohibits approval of a transfer that will result in an enlargement of use of a water right. An enlargement of use includes diversion of more flow rate than the water right originally authorizes. Commingling under Idaho Code § 42-105 cannot circumvent the prohibition of enlargement of use in Idaho Code § 42-222.

5. As a result, Clear Springs' combined diversion of water from Kanaka Creek and from the upper spring cannot exceed 8.0 cfs. Combined diversion of more than 8.0 cfs would result in diversion from Kanaka Creek and the upper spring of a flow rate in excess of the flow rate authorized by Clear Springs' water rights. For instance, if 7.0 cfs of natural spring water is diverted from the upper spring at the Spring Collector Box, and the flow in Kanaka Creek at the pump-back intake is 5.0 cfs, the pump-back rate must be limited to 1.0 cfs.

6. To ensure that the combined flow rate diverted from Kanaka Creek and from the upper spring is limited to 8.0 cfs, both the flow rate of the diversion from the upper spring and the flow rate of the pump-back system must be determined.

7. Measurement of the pump-back flow and measurement of the mixed flow of the pump-back and the diversion from the upper spring allows determination of the flow diverted from the upper spring.

8. Approval of this pump-back system, if properly monitored, will not injure other water rights.

9. Approval of this pump-back system, as conditioned, will not enlarge the use of water right no. 36-7201.

10. Approval of this pump-back system is in the public interest.

11. Approval of this pump-back system is consistent with conservation of the water resources of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that the request for operation of the pump-back system as described, pursuant to the provisions of Idaho Code § 42-105, is **APPROVED** subject to the following conditions:

1. The pump-back system is under the control of the watermaster of WD130.
2. Prior to operation of the pump-back system the weir in Kanaka Creek below the pump-back station intended to monitor Kanaka Creek leaving the Clear Spring's property shall be upgraded to meet standard weir conditions subject to watermaster control.
3. Flow meters shall be installed on the pump-back diversion pipeline and on the pipeline delivering water from the spring collector box to the holding ponds as outlined in the system diagram that has been provided by Brockway Engineering PLLC. A lockable regulating valve shall be installed on the pump-back diversion. Flow meters and lockable control valves must be acceptable to the watermaster and the Department. The watermaster shall have control over the measuring and control devices.

4. The watermaster of WD130 shall be present during initial operation and ramping of the pump-back system to monitor installed measuring devices, control works, and local impacts. Impact to Kanaka Creek during pump-back ramping shall be limited to no more than 29 gpm or to a greater amount determined by the watermaster during the initial ramping. Upon completion of the initial ramping Clear Springs or their consultant shall develop a "time vs. rate of flow" ramping schedule in consultation with the watermaster and file it with IDWR. The schedule shall be considered for future ramping events.

5. Prior to any ramping event, all downstream Kanaka Creek water users shall be notified and coordinated with to avoid potential injury.

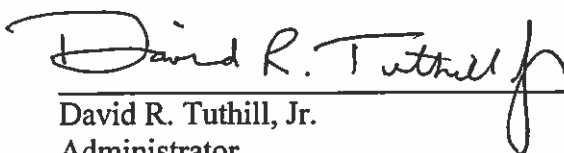
6. The pump-back rate is limited to the lesser of: (a) 4.0 cfs, or (b) the difference between 8.0 cfs and the amount of water diverted from the upper spring; minus any amount determined not to be returning to Kanaka Creek.

7. Clear Springs assumes all risk should the use of the pump-back system injure other water rights.

8. Pump-back under this Order shall occur only to the extent that Clear Springs retains control of the effluent from their facilities.

9. The Department may cancel this approval at any time upon the Department's determination that the operation of the pump-back system injures other water rights.

DATED this 1st day of July, 2005.



David R. Tuthill, Jr.
Administrator
Water Management Division

AMENDED CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of July, 2005, a true and correct copy of the above and foregoing document(s) described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Document(s) Served: Preliminary Order

Statement of Available Procedures and Applicable Time Limits, when a hearing has not been held.

CE BROCKWAY PE
BROCKWAY ENGINEERING
2016 N WASHINGTON ST STE 4
TWIN FALLS ID 83301

CATHERINE AND GARY WRIGHT
3675 CANYON LN
BUHL ID 83316

CLEAR SPRINGS FOODS INC
PO BOX 712
BUHL ID 83316

SOUTHERN REGION
ATTN ALLEN MERRITT & CINDY YENTER
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3380


Deborah J. Gibson
Administrative Assistant

Statement of Available Procedures and Applicable Time Limits

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES (To be used in connection with actions when a hearing was not held)

(Required by Rule of Procedure 730.02)

The accompanying order or approved document is a "Preliminary Order" issued by the department pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department of Water Resources ("department") unless a party petitions for reconsideration, files an exception and brief, or requests a hearing as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the department within fourteen (14) days of the service date of this order. **Note: the petition must be received by the department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding with the Director. Otherwise, this preliminary order will become a final order of the agency.

REQUEST FOR HEARING

Unless a right to a hearing before the Department or the Water Resource Board is otherwise provided by statute, any person aggrieved by any final decision, determination, order or action of the Director of the Department and who has not previously been afforded an opportunity for a hearing on the matter may request a hearing pursuant to section 42-1701A(3), Idaho Code. A written petition contesting the action of the Director and requesting a hearing shall be filed within fifteen (15) days after receipt of the denial or conditional approval.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, requests for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with IDAPA Rules 37.01.01302 and 37.01.01303 (Rules of Procedure 302 and 303).

FINAL ORDER

The Director will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

RECEIVED
JUL 05 2005
Department of Water Resources
Southern Region

IN THE MATTER OF REQUEST FOR)
RECOVERY AND RE-USE OF WATER) **PRELIMINARY ORDER**
DIVERTED UNDER RIGHT 36-7201 IN THE)
NAME OF CLEAR SPRINGS FOODS INC)

In a letter to the Department of Water Resources ("Department") dated May 2, 2005, Dr. Charles E. Brockway, consultant for Clear Springs Foods, Inc. ("Clear Springs"), requested approval of the construction and operation of a pump-back system pursuant to provisions of Idaho Code § 42-105 for re-circulation of water diverted under water right no. 36-7201. The Department responded in a letter dated May 17, 2005, seeking more detail and clarification of the pump-back system. In a letter dated June 7, 2005, Dr. Brockway provided more details of the intended pump-back system.

FINDINGS OF FACT

1. Clear Springs is the owner and operator of water right no. 36-7201 which is recorded in the records of the Department as follows:

Status: Decree
Priority: 08/04/1971
Source: Springs
Tributary to: Clear Lakes

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
Fish Propagation	1/1	12/31	8.0 cfs	
Commercial	1/1	12/31	2.0 cfs	
	Total Diversion			10.0 cfs

Location of Point(s) of Diversion

Spring NW¼NW¼SE¼ Sec 2, Twp 09S, Rge 14E, B.M.
Spring SW¼SW¼NE¼ Sec 2, Twp 09S, Rge 14E, B.M.

Place of Use

Fish Propagation and Commercial Use located within:
NW¼SE¼ Sec 2, Twp 09S, Rge 14E, B.M.

Conditions of Right

- The remark addressing facility volume is included in this water right only because the remark appeared on the license. The remark addressing facility volume does not define the extent of beneficial use and cannot be used to limit any element of this water right. The remark shall not prevent the owner of the license from expanding facility volume.
- Industrial, Fish Processing plant; Fish Propagation, Holding ponds
- This partial decree is subject to such general provisions necessary for the definition of the 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.
- Facility volume 6552 Cubic Feet.

2. Clear Springs diverts water from an upper spring and a lower spring. Clear Springs collects water from the upper spring in the SW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, Sec 2, Twp 09S, Rge 14E, B.M. and diverts the water to a set of small raceways identified by Brockway as the "holding ponds" that are located within the processing plant building. These raceways are used to hold fish just prior to processing. Clear Springs is authorized to divert up to 8.0 cfs from the upper spring into these raceways. Water from the holding ponds is discharged back to Kanaka Creek.

3. Clear Springs collects water from the lower spring in the NW $\frac{1}{4}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$, Sec 2, Twp 09S, Rge 14E, B.M. and diverts to the "processing plant." A separate pipeline from the lower spring diverts flow on an intermittent basis to a fresh-water storage tank in the processing plant. This water is chlorinated and used in the fish process operations. When flows are not being diverted into storage, the lower pipeline discharges into Kanaka Creek. Wastewater from fish processing is discharged into a treatment plant and then into Clear Lakes. Clear Springs is authorized to divert up to 2.0 cfs from the lower spring.

4. Supply pipelines from the upper and lower springs do not have measuring devices. Prior to the pump-back project, flows available to the holding ponds and to the processing plant were collectively estimated by measuring flows over the weir in Kanaka Creek at the point where Kanaka Creek exits the Clear Springs property. These measurements were taken during times when the storage tank was not filling and all flows were in Kanaka Creek. This method will also measure any additional flows in Kanaka Creek that may not be diverted by Clear Springs. IDWR approved this method of measurement in 1995 with the understanding that it might result in readings that were higher than actual diversions made by Clear Springs.

5. The spring source of right 36-7201 is hydraulically connected to the Eastern Snake Plain Aquifer ("ESPA"). Due to prolonged drought, diversion of ground water from the aquifer, reduced recharge to the aquifer, and other hydrologic reasons, the flows of the springs

have declined from historic levels that were relied on by Clear Springs to beneficially use water under right no. 36-7201.

6. To alleviate impacts of reduced spring flows, the State of Idaho awarded monetary grants to various spring users including Clear Springs to develop projects. The proposed pump-back system is such a project.

7. Water discharging from the Clear Springs holding ponds flows into Kanaka Creek. The discharge of Clear Springs' wastewater effluent is regulated under existing NPDES permits.

8. The pump-back system project proposes installation of a pump in Kanaka Creek with a capacity of up to 4.0 cfs. The pump will be located in the NW¼NW¼SE¼ Sec 2, Twp 09S, Rge 14E, B.M. downstream from the points where return flows from the holding ponds discharge into Kanaka Creek. The pump-back system is designed to discharge into the "Spring Collector Box," the diversion identified above as the upper spring point of diversion, located in the SW¼SW¼NE¼ Sec 2, Twp 09S, Rge 14E, B.M.

10. Springs discharge into Kanaka Creek as it flows downstream to the point of discharge of the Clear Springs effluent to Kanaka Creek above the pump-back intake. Water not diverted from the springs, additional gain to Kanaka Creek below the springs diverted by Clear Springs, and Clear Springs' effluent accumulate in Kanaka Creek. Clear Springs has advised IDWR that most of the flows of Kanaka Creek emanate from the springs that are diverted to the holding ponds and the processing plant. Holders of other downstream water rights rely on the flows of Kanaka Creek to fill their water rights.

11. Initial operation of the pump-back system will temporarily decrease the flows in Kanaka Creek until an equilibrium state is attained. Slowly ramping-up the diversion rate of the pump-back system will minimize the reduction in flow of Kanaka Creek between the commencement of pump-back and the time when the point of equilibrium is reached. When ramping-up the pump-back system, Clear Springs proposes that it will not reduce the existing flow in Kanaka Creek by more than 29 gpm.

12. Clear Springs' operation plan provides for installation of measuring devices on (a) the pump-back system pipeline, and (b) the pipeline delivering water from the Spring Collector Box to the holding ponds, below where the pump-back water and the spring water are combined. The operation plan also proposes maintenance of the existing weir on Kanaka Creek located downstream of the proposed pump-back pump intake.

13. Diversions in the area including the springs and those on Kanaka Creek are under the control of the watermaster of Water District 130.

14. The watermaster has visited the site and is familiar with the existing water rights, facilities and diversions. The watermaster does not oppose the proposed plan provided all the measuring devices are installed as proposed.

15. The present measurement of the two spring diversions is not satisfactory and does not allow for adequate watermaster monitoring and control of the pump-back system.

CONCLUSIONS OF LAW

1. Idaho Code § 42-105 states, in pertinent part:

(1) The water that a person is entitled to divert by reason of a valid water right may be turned into the channel of a natural waterway and mingled with its water, and then reclaimed, but in reclaiming the water so mingled, the amount of water to which prior appropriators may be entitled shall not be diminished, and due allowance shall be made for loss by evaporation and seepage. The use of natural waterways to commingle and reclaim water shall be subject at all times to the supervision and control of the director of the department of water resources and shall be subject to the regulation of the watermaster within an established water district. The amounts of water turned into or diverted from all natural waterways are subject to the requirement of measurement and reporting.

2. Clear Springs could intercept return flows from the holding ponds prior to discharge back into Kanaka Creek and re-circulate the water to the head of the holding ponds without prior approval of the Department which would have a similar effect on the rate of flow in Kanaka Creek as the current pump-back proposal.

3. Because the pump-back intake is located in Kanaka Creek, Clear Springs will be diverting water from a source not authorized by its existing water right. The commingling and rediversion recognized by Idaho Code § 42-105 allows pumping from a natural water source in which water from the original source of water is mingled. In most factual settings, where commingling under Idaho Code § 42-105 has been allowed, the commingled water has not been beneficially used prior to commingling in the public source. Because Clear Springs' use of water is largely nonconsumptive, however, it is physically possible for Clear Springs to divert and beneficially use (a) water from the original source, and (b) water from the new source, comprised of both (i) fresh water flowing in the new source, and (ii) water diverted from the original source that Clear Springs has already beneficially used and has discharged into the new source. This is acceptable only to the extent that Clear Springs retains control of the effluent.

4. Idaho Code § 42-105 expressly states that commingling cannot diminish the amount of water to which prior appropriators may be entitled. Idaho Code § 42-105 must also be reconciled with Idaho Code § 42-222, which governs transfers of water including adding a new point of diversion. Idaho Code § 42-222 prohibits approval of a transfer that will result in an enlargement of use of a water right. An enlargement of use includes diversion of more flow rate than the water right originally authorizes. Commingling under Idaho Code § 42-105 cannot circumvent the prohibition of enlargement of use in Idaho Code § 42-222.

5. As a result, Clear Springs' combined diversion of water from Kanaka Creek and from the upper spring cannot exceed 8.0 cfs. Combined diversion of more than 8.0 cfs would result in diversion from Kanaka Creek and the upper spring of a flow rate in excess of the flow rate authorized by Clear Springs' water rights. For instance, if 7.0 cfs of natural spring water is diverted from the upper spring at the Spring Collector Box, and the flow in Kanaka Creek at the pump-back intake is 5.0 cfs, the pump-back rate must be limited to 1.0 cfs.

6. To ensure that the combined flow rate diverted from Kanaka Creek and from the upper spring is limited to 8.0 cfs, both the flow rate of the diversion from the upper spring and the flow rate of the pump-back system must be determined.

7. Measurement of the pump-back flow and measurement of the mixed flow of the pump-back and the diversion from the upper spring allows determination of the flow diverted from the upper spring.

8. Approval of this pump-back system, if properly monitored, will not injure other water rights.

9. Approval of this pump-back system, as conditioned, will not enlarge the use of water right no. 36-7201.

10. Approval of this pump-back system is in the public interest.

11. Approval of this pump-back system is consistent with conservation of the water resources of the State of Idaho.

ORDER

IT IS HEREBY ORDERED that the request for operation of the pump-back system as described, pursuant to the provisions of Idaho Code § 42-105, is **APPROVED** subject to the following conditions:

1. The pump-back system is under the control of the watermaster of WD130.
2. Prior to operation of the pump-back system the weir in Kanaka Creek below the pump-back station intended to monitor Kanaka Creek leaving the Clear Spring's property shall be upgraded to meet standard weir conditions subject to watermaster control.
3. Flow meters shall be installed on the pump-back diversion pipeline and on the pipeline delivering water from the spring collector box to the holding ponds as outlined in the system diagram that has been provided by Brockway Engineering PLLC. A lockable regulating valve shall be installed on the pump-back diversion. Flow meters and lockable control valves must be acceptable to the watermaster and the Department. The watermaster shall have control over the measuring and control devices.

4. The watermaster of WD130 shall be present during initial operation and ramping of the pump-back system to monitor installed measuring devices, control works, and local impacts. Impact to Kanaka Creek during pump-back ramping shall be limited to no more than 29 gpm or to a greater amount determined by the watermaster during the initial ramping. Upon completion of the initial ramping Clear Springs or their consultant shall develop a "time vs. rate of flow" ramping schedule in consultation with the watermaster and file it with IDWR. The schedule shall be considered for future ramping events.

5. Prior to any ramping event, all downstream Kanaka Creek water users shall be notified and coordinated with to avoid potential injury.

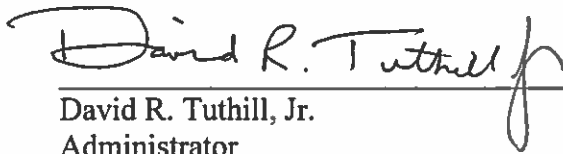
6. The pump-back rate is limited to the lesser of: (a) 4.0 cfs, or (b) the difference between 8.0 cfs and the amount of water diverted from the upper spring; minus any amount determined not to be returning to Kanaka Creek.

7. Clear Springs assumes all risk should the use of the pump-back system injure other water rights.

8. Pump-back under this Order shall occur only to the extent that Clear Springs retains control of the effluent from their facilities.

9. The Department may cancel this approval at any time upon the Department's determination that the operation of the pump-back system injures other water rights.

DATED this 1st day of July, 2005.



David R. Tuthill, Jr.
Administrator
Water Management Division

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July, 2005, a true and correct copy of the above and foregoing documents described below were served on the following by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Documents Served: Preliminary Order

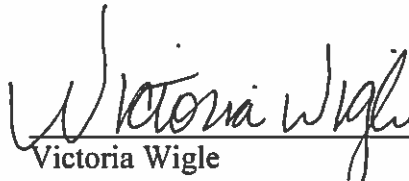
Statement of Available Procedures and Applicable Time Limits

CE BROCKWAY PE
BROCKWAY ENGINEERING
2016 N WASHINGTON ST STE 4
TWIN FALLS, ID 83301

CLEAR SPRINGS FOODS, INC.
PO BOX 712
BUHL, ID 83316

CATHERINE AND GARY WRIGHT
3675 CANYON LN
BUHL, ID 83316

SOUTHERN REGION
ATTN ALLEN MERRITT & CINDY YENTER
1341 FILLMORE ST STE 200
TWIN FALLS, ID 83301-3380



Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources

RESPONDING TO PRELIMINARY ORDERS ISSUED BY THE IDAHO DEPARTMENT OF WATER RESOURCES

The accompanying order is a **Preliminary Order** issued by the Idaho Department of Water Resources (Department) pursuant to section 67-5243, Idaho Code. **It can and will become a final order without further action of the Department unless a party petitions for reconsideration within fourteen (14) days after issuance as further described below:**

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a preliminary order with the hearing officer within fourteen (14) days of the service date of the order as shown on the certificate of service.

Note: the petition must be received by the Department within this fourteen (14) day period. The hearing officer will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5243(3) Idaho Code.

EXCEPTIONS AND BRIEFS

Within fourteen (14) days after (a) the service date of a preliminary order, (b) the service date of a denial of a petition for reconsideration from this preliminary order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing support or take exceptions to any part of a preliminary order and may file briefs in support of the party's position on any issue in the proceeding to the Director. Otherwise, this preliminary order will become a final order of the agency.

If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the Director. The Director retains the right to review the preliminary order on his own motion.

ORAL ARGUMENT

If the Director grants a petition to review the preliminary order, the Director shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. If oral arguments are to be heard, the Director will within a reasonable time period notify each party of the place, date and hour for the argument of the case. Unless the Director orders otherwise, all oral arguments will be heard in Boise, Idaho.

CERTIFICATE OF SERVICE

All exceptions, briefs, request for oral argument and any other matters filed with the Director in connection with the preliminary order shall be served on all other parties to the proceedings in accordance with Rules of Procedure 302 and 303.

FINAL ORDER

The Department will issue a final order within fifty-six (56) days of receipt of the written briefs, oral argument or response to briefs, whichever is later, unless waived by the parties or for good cause shown. The Director may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. The Department will serve a copy of the final order on all parties of record.

Section 67-5246(5), Idaho Code, provides as follows:

Unless a different date is stated in a final order, the order is effective fourteen (14) days after its issuance if a party has not filed a petition for reconsideration. If a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:

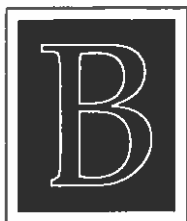
- (a) the petition for reconsideration is disposed of; or
- (b) the petition is deemed denied because the agency head did not dispose of the petition within twenty one (21) days.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal.



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

June 7, 2005

Allen Merritt, Regional Manager
Idaho Department of Water Resources
1341 Fillmore, Suite 200
Twin Falls, ID 83301

RECEIVED

JUN 08 2005

Department of Water Resources
Southern Region

Re: Clear Springs Foods Pumpback System - Water Right 36-7201

Dear Allen:

I received the enclosed letter from Dave Tuthill indicating that the additional diversion for the Clear Springs Foods pumpback project could be authorized under 42-105 which allows commingling of waters in the natural channel. He indicated that the Department needs a more detailed request and additional information. I am enclosing a schematic drawing of the system which shows locations of flow meters and specific components of the system.

1. Relative to Water Quality for Downstream Flows:

Water flow quality conforms to current NPDES permit requirements. Water samples are collected and analyzed weekly with average and maximum loadings reported quarterly in conjunction with Processing Permit Number ID-G13-0125. Upon commencement of the pumpback operation, water flow quality will be subject to and perform within the same NPDES permit parameters.

It is estimated that, with the addition of the pump back flow, the nitrogen, phosphorus and solids total content will not be appreciably impacted since there will be no increase in the number of holding ponds and no increase in loading of the holding ponds. Only the flow- through discharge will be increased when spring flows are below the permitted amounts. .

Water quality will continue to be monitored at the inlet and outlet of the holding ponds and reported as required by the Processing Permit.

2. System Diagram-

The enclosed diagram shows the spring source, route through the holding ponds, and locations of flow meters. The meters will be magnetic meters with totalizers and instantaneous flow indicators. Discharge reports will be provided to the Watermaster.

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506

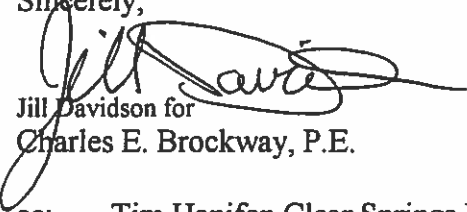
SCANNED
JUN 27 2005

3. Operational Ramping Plan. In order to reduce or eliminate short-term changes in the flow of the stream leaving the property a start-up protocol will we adopted.

The holding ponds are always full from the main spring source. The operating plan is to maintain the discharge in the pumpback system up to the amount of the spring flow or 8.0 cfs continuously since the holding ponds need to operate continuously at full capacity. The system has a backup generator to assure that power will always be available. The only time that the system would be shut down and the pipe emptied is for emergency reasons or for maintenance. Starting up the pump-back system will only fill the pipe which is 300 feet long and 12 inches in diameter. If startup occurs with an empty pipe, the pump will be throttled so that it fills in one hour. This will cause a decrease in flow in the stream of a maximum of 29 gpm for one hour plus the flow time through the full pond system. The stream discharge, downstream of the pump back diversion, varied from 4.95 to 8.15 cfs in 2004. The decrease of 29 gpm results in a decrease of 1.4 to 0.8 percent of the stream flow. Again, this will rarely occur and depending on the nature of the maintenance required, the pipe can remain full during repairs so there would be no impact on the stream.

I am formally requesting that this pumpback system and operation be approved in conjunction with water right 36-7201. I assume that this request is sufficient and that a formal application for permit is not required. However, if additional information, fees, or formal application is required, please let me know. I am also requesting that an evaluation and decision on this request be expedited since the Company is anxious to put the system to use. Thank you for your consideration.

Sincerely,

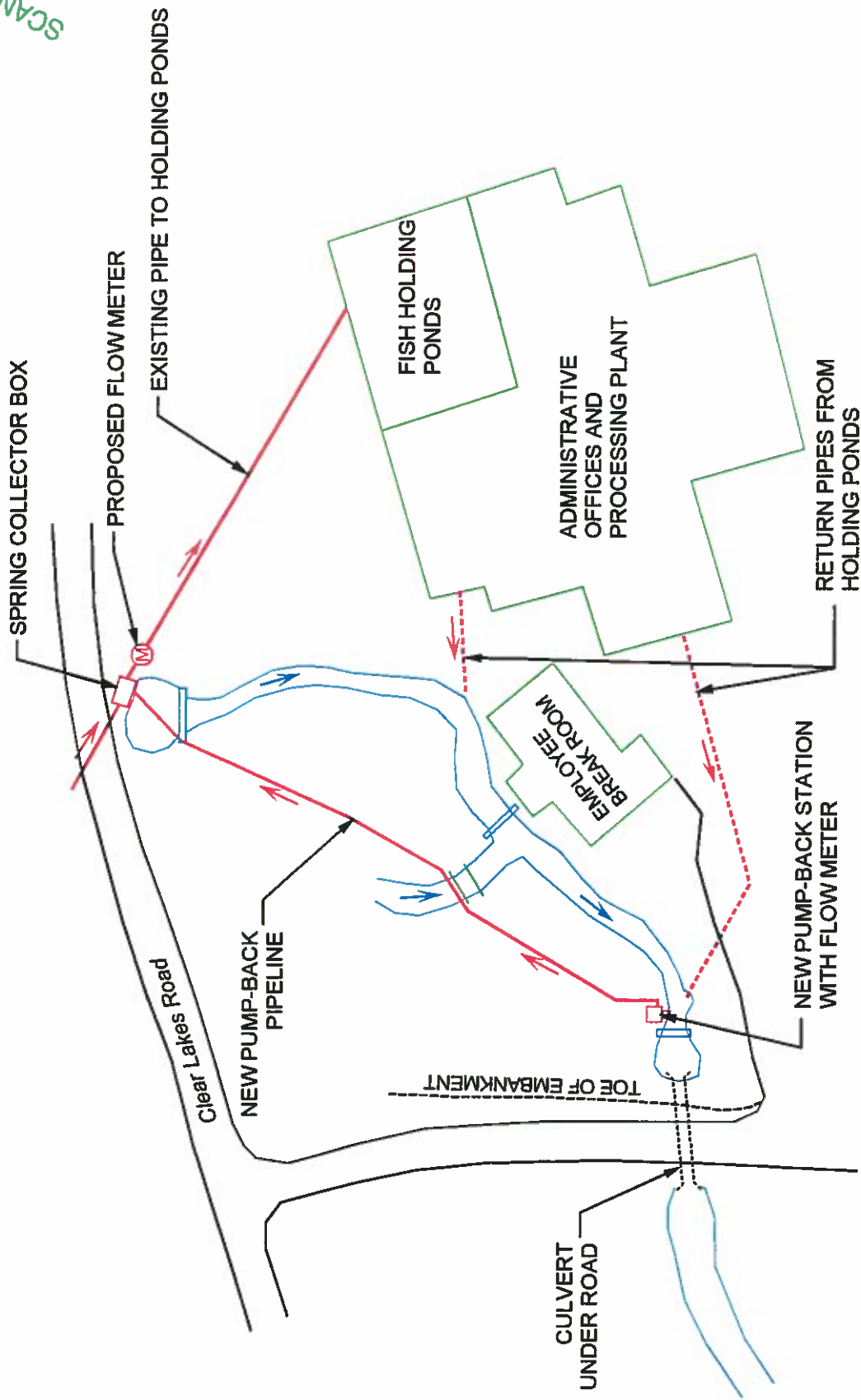

Jill Davidson for
Charles E. Brockway, P.E.

cc: Tim Hanifen Clear Springs Foods Inc.
John Simpson

Enclosures: Copy of letter from Dave Tuthill May 17, 2005
Pumpback System Schematic

SCANNED
JUN 27 2005

SCANNED
JUN 27 2005



WATER SYSTEM SCHEMATIC FOR EXCHANGE APPLICATION

CLEAR SPRINGS FOODS, INC.
PUMP-BACK SYSTEM

Allen Merritt



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street, P.O. Box 83720, Boise, ID 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700 Web Site: www.idwr.idaho.gov

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

May 17, 2005
RECEIVED

MAY 19 2005

Department of Water Resources
Southern Region

Charles E. Brockway, Ph.D., P.E.
Brockway Engineering, P.L.L.C.
2016 N. Washington, Suite 4
Twin Falls, ID 83301

RE: Clear Springs Foods Pumpback System – Water Right 36-7201

Dear Chuck:

RECEIVED
MAY 19 2005
Department of Water Resources
Southern Region

I am responding to your letter dated May 2, 2005, in which you requested under the provisions of § 42-105 to allow commingling of waters in the natural channel of spring water for Clear Springs Foods, Inc. As you have indicated, the purpose is to provide the ability for Clear Springs Foods to maintain the flow of water through the fish holding ponds by pumping back water already diverted from the main spring, which has decreased in discharge.

I have discussed this issue with members of the Department staff and with the Director. We have concluded that we can contemplate approval of the system under the provisions of § 42-105. However, consistent with the Director's discussions with you in this matter we need a more detailed request, which includes the following elements:

1. Information about impacts on the quality of water for downstream flows that will result from operation of this pumpback system.
2. A diagram of the system, including locations of the metering devices that you have proposed to be installed to ensure that the system does not result in an increased diversion from another water source.
3. A description of operational ramping for the pumpback system, to ensure that project startup will not disrupt downstream flows.

Please work directly with Allen Merritt of our Southern Regional Office to provide this information. The Department is committed to working closely with you to ensure that the project as installed and operated will not negatively impact other water users.

Sincerely,

David R. Tuthill, Jr., Ph.D., P.E.
Administrator, Water Management Division

SCANNED
JUN 27 2005



BROCKWAY
ENGINEERING
P.L.L.C.

Hydraulics

Hydrology

Water Resources

RECEIVED

MAY 03 2005

Department of Water Resources
Southern Region

May 2, 2005

Idaho Department of Water Resources
Attn.: Allen Merritt
1341 Fillmore Street, Suite 200
Twin Falls, ID 83301

RE: Clear Springs Foods Pumpback System - Water Right 36-7201

Dear Allen:

This letter is a request under provisions of § 42-105 to allow commingling of waters in the natural channel of spring water for Clear Springs Foods Inc. The purpose is to provide the ability for Clear Springs Foods to maintain the flow of water through the fish holding ponds by pumping back water already diverted from the main spring which has decreased in discharge.

Water is diverted from the spring through a collector box under water right 36-7201 and flows into the holding ponds and then returns to the stream. This application proposes to inject water from the hatchery holding pond through two pipes into the small stream where it intermingles with other spring flows. One pipe is approximately 150 feet upstream of the diversion and the other is near the diversion. The water is pumped back into the head box inlet to the holding ponds. The purpose is to maintain flow through the holding pond system because of declining flow from the spring.

The design flow for the pumpback system is 4.0 cfs and an in-line flowmeter is being installed in the diversion system. There is also a weir in the stream just downstream of the proposed redirection which is measured to assure that no impact to downstream flow occurs. Under this proposal, there will be no increase in water use from the spring and no increase in consumptive use of the return water.

I have discussed this project with the watermaster, Cindy Hodges-Yenter, and I believe she could approve this project with the addition of a flow meter from the main spring box to the holding ponds. I have discussed this with the Clear Springs Foods and they are in agreement to install an in-line magnetic flow meter in the pipeline from the spring box to the holding ponds.

SCANNED
JUN 27 2005

CHARLES E.
BROCKWAY,
PH.D., P.E.

CHARLES G.
BROCKWAY,
PH.D., P.E.

2016 NORTH
WASHINGTON
STREET • SUITE 4

TWIN FALLS,
IDAHO 83301

208•736•8543

FAX: 736•8506

May 2, 2005
Allen Merritt
RE: Clear Springs

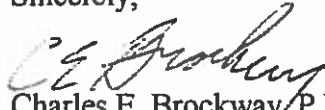
Page 2

The sole purpose is to maintain flows in the holding ponds which have been insufficient because of the decline of the main spring.

Construction of this project, which is partially funded by the Idaho Department of Commerce as part of the ESPA mitigation program, is nearly complete and your prompt processing of the request is appreciated.

Please feel free to call should you have additional questions.

Sincerely,



Charles E. Brockway, P.E.

cc: Tim Hanifin-Clear Springs Foods Inc.
John Simpson
Karl Dreher

SCANNED
JUN 27 2005

RECEIVED

NOV 5 1985

State of Idaho
Department of Water Resources

Department of Water Resources
Section 200 - Licenses

WATER RIGHT LICENSE

License of Water Right No. 36-7201 Priority August 4, 1971 Amount 10.0 cfs

THIS IS TO CERTIFY, that The Prospect Company & Clear Springs Trout Company
of Buhl, Idaho, has complied with the terms and conditions of Permit
No. 36-7201 issued pursuant to Application for Permit dated August 4, 1971,
and has submitted proof to the Department of Water Resources on October 30, 1980,
that he has applied water to a beneficial use; an examination by the Department indicates that the works have a
capacity for the diversion of 16.99 cfs of water from springs,
tributary to Clear Lakes, and that the permit holder has applied to a beneficial use and
established a right to use water as follows:

Beneficial Use	Period of Use	Rate of Diversion	Annual Volume
Industrial	from <u>January 1</u> to <u>December 31</u>	at <u>2.0</u> cfs and	<u>N/A</u>
Fish Propagation	from <u>January 1</u> to <u>December 31</u>	at <u>8.0</u> cfs and	<u>N/A</u>
	from _____ to _____	at _____ cfs and	

(both dates inclusive)

Subject, however, to the condition that no more than 10.0 cfs of water be diverted at any one time, and
that the amount of water so diverted and to which such right is entitled and confirmed is for the purpose
aforementioned and is limited to the amount which can actually be beneficially used and shall not exceed
N/A acre feet per year, said waters to be diverted within the NW $\frac{1}{4}$ SE $\frac{1}{4}$, (2 pts)SW $\frac{1}{4}$ NE,
Section 2, Twp 9S, Rge 14E in the County of Gooding

Description and location of place of use:

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

Total number of acres irrigated _____

CONDITIONS OF APPROVAL

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

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

c. Any water right confirmed in this license for hydropower purposes shall be junior and subordinate to all rights to the use of water, other than hydropower, within the State of Idaho that are initiated later in time than the priority of this license and shall not give rise to any right or claim against any future rights to the use of water other than hydropower, within the State of Idaho initiated later in time than the priority of this license.

Ponds (6) Volume = 5652 cubic feet.

Industrial use is for fish processing plant.

Use of water under this right is subject to policies set forth in the State of Idaho Water Plan, including Policy No. 32F.

Witness the seal and signature of the Director, affixed at Boise, Idaho, this 15TH day of NOVEMBER, 19 85.

Acting for the Director

Norm C. Young

STATE OF IDAHO

Licensing

APPLICATION FOR AMENDMENT OF A PERMIT 1985

RECEIVED

To change the point of diversion and/or the place of use Department of Water Resources

APPROVED

Comes now The Prospect Co. & Clear Springs Trout Co.

Phone _____

of (address) Box 548 Buhl, ID 83316

, and represents to the

Director of the Idaho Department of Water Resources:

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho No. 36-7201, and requests that the permit and permit map be changed as follows:

1. Point of diversion: NW ¼ SE ¼, Section 2, Township 9S, Range 14E, B.M., County of Gooding. Other points of diversion: SWNE, Sec. 2, Twp 9S, Rge. 14E

2. Period and nature of use: (irrigation, domestic, stockwatering, industrial, etc.)

No change fish propagation

Amount 10 cfs for & Industrial purposes from January 1 to December 31 (both dates inclusive)
(cfs or acre feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre feet per annum)

3. Place of use or land to be irrigated:

No change

TWP	RGE	SEC	NE¼				NW¼				SW¼				SE¼				TOTALS
			NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	NE¼	NW¼	SW¼	SE¼	
9S	14E	2														X			

Total number of acres to be irrigated = N/A

4. a. Who owns the property at the point of diversion? Clear Springs Trout Co.
- b. Who owns the land to be irrigated or the place of use? Clear Springs Trout Co.
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: N/A

36-7201

Complete the following map by showing land and point of diversion as proposed by this amendment.

Show 40-acre subdivisions, townships, ranges and ditches.

Not Necessary

A blank sheet of graph paper featuring a uniform grid of squares. The grid consists of solid black lines forming the outer border and dashed horizontal and vertical lines creating smaller squares within. There are 10 columns and 8 rows of small squares, resulting in a total of 80 small squares. The paper is otherwise empty, with no text or markings.

Scale: 2 inches equal 1 mile.

That no one will be injured by such change, and that such change will be made at permit holder's own risk.

Signed at Buhl, Idaho, this 21st day of October, 19 85.

James Cope
(Signature) President

FOR DEPARTMENT USE ONLY

Preliminary check by EW Fee = \$20.00 ✓

Received by Ag Date 10-25-85 #37260

Publication prepared by N/A Date

Published in _____

Publication dates

ACTION OF THE DEPARTMENT OF WATER RESOURCES

I, A. KENNETH DUNN, of the Department of Water Resources hereby
Approve the above Application for Amendment for Permit No. 36-7201.

Witness my hand this 1st day of NOVEMBER, 19 85.

Acting for the Director