

**Yenter, Cindy**

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**From:** Yenter, Cindy  
**Sent:** Friday, January 11, 2008 9:54 AM  
**To:** Simpson John (E-mail)  
**Cc:** Williams Rob (E-mail); Merritt, Allen  
**Subject:** Clear Springs Foods application 36-16156

John -  
Rob Williams has shared with me your letter of December 27, 2007 and asked for any comments. I apologize for my tardy reply, and realize the SWC hearing is commencing next week. I do, however, have these comments:

Item 2. The pipeline from the well as currently configured cannot deliver ground water to the holding ponds. It can only deliver water to the holding tank from which the process water and the domestic water are drawn. I recently visited the site and confirmed this configuration. CSF has, however, recently modified a portion of its process discharge system so that untreated cooling water formerly discharged directly to Clear Lakes can now be discharged back to Kanaka Creek. This flow (0.3+ cfs) could be used if necessary to offset permit mitigation requirements (see Item 4), but mostly it should be available as additional water in the creek. There has been a small pitot tube instant flow device installed on this pipeline. I tested the accuracy of the device and found it to read about 9% high, but it would still be sufficient to monitor return flows. The important point here is that the schematic system diagram accompanying the application shows the cooling water still returning to Clear Lakes, as well as an additional 0.4 cfs from the holding ponds originally intended for mitigation purposes. This diagram must be modified and replaced, and the application for permit amended to clarify the current and intended operation.

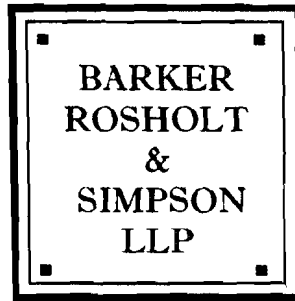
Item 4. You are correct in your understanding that the new ground water right will have a combined limit with the existing surface right 36-7201, and that all mitigation requirements may be included in the permit approval, making the transfer application unnecessary. If a portion of 36-7201 is used to mitigate for the new permit then an equivalent amount of flow diverted pursuant to the permit must be available at the spring source, and must subsequently be left in the creek. There is still some ongoing discussion whether the mitigation pipeline from the holding ponds to provide 0.4 cfs directly to the river will be required. Based on my understanding of the well capacity (1.34 cfs) and my knowledge of the historical diversion rate to the storage tank from the spring (~1.6 cfs), the mitigation condition should be able to be met while the well is in use. CSF should submit a withdrawal request for the transfer.

Item 5. Even if CSF is not willing to stipulate to a rate limitation of 1.34 cfs, if that is in fact the maximum sustainable flow from the well, 1.34 will be the licensed rate of diversion even though the permitted rate might be 2.0 cfs.

Please contact me at your convenience if you have any questions. Otherwise, please keep us advised of progress.

Regards,  
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*John K. Simpson*  
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December 27, 2007

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Re: Application No. 36-16156 & Transfer No. 70606  
Settlement Proposal Pursuant to IRE 408

Dear Concerned Parties:

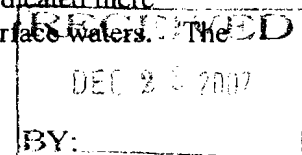
Clear Springs Foods provides the following response to the various proposals from the Wright's and ITP legal counsel. Jason Helms from Brockway Engineering had previously responded to questions from Mr. Charlie Honsinger. It is our hope that the responses below will adequately address your concerns and the protests to WR Application 36-16156.

1. The original Agreement dated May 25, 1972 would be acknowledged as remaining in force. A copy would be attached to the new agreement as an exhibit.

Clear Springs Foods will acknowledge that the original agreement dated May 25, 1972 will remain in force as it pertains to surface water in Kanaka Creek. We are not agreeable to a new agreement (see #5 below).

2. All water from the springs and the new well, except for 0.5 cfs, would return to Kanaka Creek to be delivered to the Wright's property. Your client would provide a revised map demonstrating how this will be accomplished.

Clear Springs Foods is agreeable to no more than 0.5 cfs consumptive use of Kanaka Creek surface water as per our 1972 agreement. The well pump test indicated there would be no impact of our ground water pumping on Kanaka Creek surface waters. The



ground water we are seeking a permit to use is fundamentally intended to satisfy federal Safe Drinking Water Act requirements. We also anticipate a future demand from the US FDA that water used in food processing must also comply with the Safe Drinking Water Act and must be supplied from a bio-secure source. While we do not anticipate exceeding in total (i.e. surface and ground water) 0.5 cfs consumptive use into the future, we must maintain flexibility in our use of the ground water we will pump (up to the licensed amount). For economic reasons Clear Springs Foods will seek to minimize ground water pumping but we can assure the Wrights that we will also strive to maximize our ground water returns to Kanaka Creek. Any ground water Clear Springs returns to the creek will not have been used in manufacturing or other use that requires treatment for NPDES permit purposes. Water used in manufacturing and for drinking water would need to go through our waste treatment system located on the south side of our processing plant. The most likely scenario is that ground water returned to Kanaka Creek would have been used in our fish holding ponds. Clear Springs Foods will provide the Wrights a map demonstrating how this will be accomplished.

3. Appropriate measurement devices approved by my clients would be installed at agreed upon locations to demonstrate ongoing compliance with the provisions of paragraph 2. The data would be freely available to my clients.

We assume the Wright's want to ensure appropriate measurement of water used by Clear Springs Foods. The IDWR also wants to ensure such measurement and as a water-user we are statutorily required to provide such measurement to the State. Clear Springs Foods is agreeable to installation of an IDWR required flow measurement device, the same as required of all ground water pumpers. This device would be located at the pump and would be accessible to the Watermaster upon request. Clear Springs Foods will annually provide water pumping measurements to IDWR and the Water District as required by regulation. These data are public information obtainable from IDWR should the Wrights want to review the measurements.

4. There would be a remark on the approved transfer indicating that the water right as modified by the transfer is subject to the terms of the new agreement.

It is our understanding the new ground water right will have a combined limitation with the Kanaka Creek surface right of 2 cfs. A water right transfer will not be necessary and we will consequently drop the transfer application. However, mitigation will be a requirement of the new ground water right. Clear Springs Foods will mitigate for ground-water pumping via 1:1 exchange of surface water from Kanaka Creek. This means that for each 1 cfs of ground water pumped out through our processing plant, Clear Springs Foods would not use the same amount of surface water from Kanaka Creek thus benefiting total water flow in Kanaka Creek.

5. The new agreement would be in a form allowing it to be recorded in the records of Gooding County.

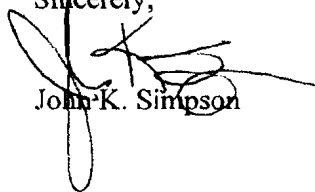
Clear Springs Foods does not see the need for a new agreement given the acknowledgement of the original 1972 agreement. This agreement can be recorded in Gooding County as the Wrights deem appropriate.

6. Will Clear Springs stipulate to a 1.34 cfs rate limitation upon any permit issued?

Clear Springs Foods is agreeable to stipulate to a 1.34 cfs rate limitation if such a stipulation is needed. The actual pump test indicated the sustainable pumping amount was 1.34 cfs. Further, we demonstrated no change in Kanaka Creek surface water flows as a consequence of pumping 1.34 cfs ground water.

Please review these responses. Clear Springs believes that the responses reflect the scope of the discussions with the parties and the IDWR.

Sincerely,



John K. Simpson

**Yenter, Cindy**

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**From:** Randy MacMillan [randy@clearsprings.com]  
**Sent:** Tuesday, November 13, 2007 1:11 PM  
**To:** Yenter, Cindy  
**Cc:** jks@idahowaters.com  
**Subject:** Clear Springs Processing Plant Well

Cindy- we have received the following conditions from Kathryn and Gary Wright via their legal counsel (it was in an e-mail to John Simpson) for which they would drop their protest to our processing plant well:

1. The original Agreement dated May 25, 1972 would be acknowledged as remaining in force. A copy would be attached to the new agreement as an exhibit.
2. All water from the springs and the new well, except for .5 cfs, would return to Kanaka Creek to be delivered to the Wright's property. Your client would provide a revised map demonstrating how this will be accomplished.
3. Appropriate measurement devices approved by my clients would be installed at agreed upon locations to demonstrate ongoing compliance with the provisions of paragraph 2. The data would be freely available to my clients.
4. There would be a remark on the approved transfer indicating that the water right as modified by the transfer is subject to the terms of the new agreement.
5. The new agreement would be in a form allowing it to be recorded in the records of Gooding County.

We are interested in your thoughts relative to these stipulations? It may be time to reconvene our pre-hearing conference. There are items here that are not acceptable to Clear Springs Foods. Randy

**Randy MacMillan, Ph.D.**  
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12/14/2007