

**WRIGHT BROTHERS
LAW OFFICE, PLLC**

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OCT 12 2005

Department of Water Resources

October 11, 2005

David R. Tuthill, Jr.
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

Re: Preliminary Order – In the Matter of Request for Recovery and Re-Use of
Water Diverted Under Right 36-7201 in the Name of Clear Springs Foods
Inc.

Dear David,

We have reviewed the October 3, 2005 proposed amendments by Clear Springs Foods, Inc. ("Clear Springs") to the above-referenced preliminary order ("Preliminary Order"). As previously discussed, we are seeking assurances that the pump-back system will not negatively affect the water quality or water quantity flowing to my parents' property from Kanaka Creek.

We believe that the additional testing proposed by Clear Springs will, subject to a few minor modifications, address our water quality concerns. However, we respectfully request that the Department of Water Resources (the "Department") maintain the water quantity protections set forth in the original Preliminary Order without the extensive changes proposed by Clear Springs. Accordingly, we request that the Preliminary Order remain unchanged other than the addition of the new paragraph dealing with water quality testing.

A. Water Quality.

We appreciate the additional testing that Clear Springs is willing to provide in their new Condition No. 6, and believe that with a few minor modifications, this additional testing will address our water quality concerns. The following is a marked copy of Clear Springs' proposed language showing the minor modifications we request:

Kanaka Creek water quality will be tested quarterly at the weir exiting Clear Springs Foods property. Testing will consist of dissolved oxygen, temperature, total suspended solids (TSS), pH, and total ammonia nitrogen (TAN). Un-ionized ammonia nitrogen will be calculated using standard methods on the basis of pH, temperature and TAN. Water quality reports containing the results of such tests and calculations will be provided to the Wrights (water right no. 36-7248) and to

the watermaster of Water District 130 on a quarterly basis until such time the parties Wrights, the watermaster and Clear Springs unanimously determine such reports are not needed. Water exiting the Clear Springs Foods property across the Kanaka Creek weir must meet Idaho State water quality standards. In addition, should dissolved oxygen concentrations indicate water exiting the weir is not likely-saturated with oxygen, the parties will meet to determine an appropriate action. If the un-ionized ammonia concentrations exceed 2x the current mean (0.0033 mg/L N), the parties will meet to determine the appropriate action. Appropriate action may include modification or termination of the pump-back operation as determined by the watermaster. Clear Springs Foods shall copy the Idaho Department of Water Resources with any and all documentation reporting as required under existing NPDES permit associated with discharges into Kanaka Creek ~~of waste water (holding pond) effluent.~~

We understand from Randy MacMillan that we would still be able to raise fish commercially with un-ionized ammonia concentrations at 2x the current mean (0.0033 mg/L N). Accordingly, the addition of the new language (with the minor modifications highlighted above) would satisfy our water quality concerns.

B. Water Quantity.

We respectfully request that the Department maintain the water quantity protections set forth in the original Preliminary Order. Specifically, we have the following concerns with Clear Springs' proposed changes:

1. Description of Clear Springs' Water Right. The Preliminary Order should not inadvertently restrict Clear Springs' existing water right. However, it should not inadvertently expand this water right either. Specifically, we note the following:
 - a). Clear Spring's 2.0 cfs water right is for Industrial use, not Commercial use. Attached as Exhibit A is a copy of Clear Springs' water right license containing these designations. We respectfully request that the descriptions set forth in the Findings of Fact be updated accordingly.
 - b). Clear Springs does not have the right to *consume* 2.0 cfs of water for industrial use, as suggested by their proposed addition to Conclusion of Law No. 5. Clear Springs' water right does not state that it is for "consumptive industrial purposes." In addition, Clear Springs is contractually bound to return all but 0.5 cfs of water that they divert to Kanaka Creek (see previous submission). A letter from Clear Springs' counsel further referencing this agreement is attached as Exhibit B. Accordingly, we respectfully request that Clear Springs' proposed addition of the word "consumptive" to Conclusion of Law No. 5 be omitted.

2. Pump-Back Limits. We request that the pump-back limits remain as set forth in the Preliminary Order. Our concerns with Clear Springs' proposed changes are as follows:
 - a). Clear Springs has attempted to remove the 4.0 cfs cap on the pump-back. We request that this cap remain.
 - b). Clear Springs has attempted to use 10.0 cfs as the appropriate limit for pump-back calculations. However, because the prospective use of the pump-backed water is for fish propagation (as opposed to industrial use), the relevant number for purposes of calculating the pump-back limit is 8.0 cfs.
 - c). Clear Springs' proposed limits are based on the amount of water "diverted to the holding ponds." However, the appropriate measurement is the amount of water returning to Kanaka Creek for downstream users. As set forth in the Idaho Code 42-105, "... in reclaiming 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 relevant issue is insuring that flows to Kanaka Creek for downstream users do not decrease as a result of the pump-back system.
3. Ramp-Up. We request that if the "operating plan" or "operating procedure" be used to determine the ramp-up procedure, that this plan or procedure be attached to or incorporated into the Preliminary Order. Attached as Exhibit C is a copy of the Ramping Procedure that we have received from Clear Springs. Our primary concern with the ramp-up is that we be notified and coordinated with to avoid potential injury. Accordingly, we request that language to this effect remain in the Preliminary Order.
4. Measurements. There appears to be some confusion as to whether the current measuring devices are satisfactory to the watermaster and the Department. We note that under Idaho Code 42-105, "The amounts of water turned into or diverted from all natural waterways are subject to the requirement of measurement and reporting." We request that to the extent not already completed, the weir be upgraded to standard weir conditions and that Clear Springs install such other measuring devices as the Department deems necessary.
5. Control. We object to Clear Springs' proposed addition of the word "physical" before "control of effluent" under Conclusion of Law No. 3. "Physical" control is meaningless in this context, and we believe it circumscribes the Department's intent that Clear Springs be responsible for the effluent flowing from its facility.
6. Risk of Injury. We request that the Department keep the provision of the Preliminary Order that Clear Springs assumes all risk should the use of the pump-

back system injure other water rights. We believe this to be a correct statement of law.

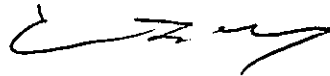
7. Termination of Pump-Back. We request that the Department keep the provision that the Department may cancel this approval at any time upon the Department's determination that the operation of the pump-back system injures other water rights. This condition is consistent with the requirements of Idaho Code 42-105.

We are seeking assurances that the pump-back system will not negatively affect the water quality or the water quantity flowing to my parents' property from Kanaka Creek. We believe that subject to a few minor modifications, the water quality issue has been addressed. However for the reasons mentioned above, we respectfully request that the Department maintain the water quantity protections set forth in the original Preliminary Order.

Please feel free to call me (208-733-3107) with any questions or comments.

Thank you.

Sincerely,



Charles F. Wright

cc: R. Gary & Catherine Wright
3675 Canyon Lane
Buhl, ID 83316

Randy MacMillan
Clear Springs Foods, Inc.
P.O. Box 712
Buhl, ID 83316

John Simpson
Barker, Rosholt & Simpson, LLP
P.O. Box 2139
Boise, ID 83701

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State of Idaho
Department of Water Resources

NOV 5 1985

WATER RIGHT LICENSE

Department of Water Resources
Salem, Oregon

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 $\frac{1}{4}$,
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

January 24, 1972

Exhibit B

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

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36-7201

January 24, 1972

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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 A
January 24, 1972

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this water will be
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Encl.

Dept. of Water Administration

January 24, 1972

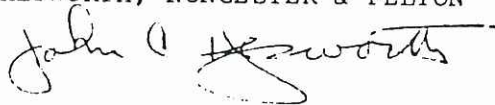
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this water will be returned by us to the stream bed which flows on his land. My rough drawing is enclosed for whatever purpose it may serve. I think you will at least say that I am a better lawyer than artist. If something further is needed for the 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

A handwritten signature in cursive script, appearing to read "John C. Hepworth", with a horizontal line extending from the end of the signature.

John C. Hepworth

JCH:bh

Encl.

Cleir Springs Trout

Cleir Lake Road

Developed property

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

East country Club Road

return to stream

point of
use

Cleir Springs Trout
facility

CLEAR SPRINGS FOODS, INC. PUMP-BACK OPERATION

RAMPING PROCEDURE

General:

The pump-back operation is designed to provide a supplementary flow of water, from Kanaka Creek, to commingle and enhance the natural spring flow to trout holding ponds within the Clear Springs' Processing Plant. This ramping procedure is designed to minimize spring flow disruptions and fully return the commingled spring flows to down stream user(s). The pump-back operation's supplementary flow cannot exceed four (4) cubic feet per second. Safeguards and redundancies have been engineered into the operation to avoid unscheduled system shut-downs and/or start-ups that might disrupt the Kanaka Creek flow.

A. Startup: Empty Pipe

- Notify Watermaster and downstream water users of pending ramp-up as far in advance as practical.
- Initial startup to occur during chlorination tank bypass.
- Start 30 horsepower pump using the variable-frequency-drive (VFD). Initially adjust VFD to pump 40-50 gallons per minute (approximately 35-36 hertz), filling the pipe slowly to avoid disruption of stream (Kanaka Creek) flow. Monitor the flow meter and adjust VFD to maintain fill rate of 40-50 gallons per minute as head increases in piping.
- A filling rate of 40-50 gallons per minute will require about one hour to fully complete a continuous circulation loop through the Spring Collection Box.

B. Startup: Full Pipe

- Notify Watermaster and downstream water users of pending ramp-up as far in advance as practical.
- Initial startup to occur during chlorination tank bypass.
- Start 30 horsepower pump using the VFD to a flow rate of 75-85 gallons per minute (approximately 37 hertz).
- Allow 75-85 gallon per minute flow rate to persist for fifteen minutes to assure a balanced flow within the Kanaka Creek system.
- Begin standard ramping procedure.

C. Standard Ramping Following Startup

- Take initial reading of Kanaka Creek discharge weir, at highest point, during chlorination bypass cycle.
- Begin ramping following two consecutive chlorination bypass cycles.
- Adjust the 30 horsepower pump flow upwards, via VFD, not to exceed 200 gallons per minute above stable flow rate achieved in startup procedure referenced above. Verify via pump back flow meter.
- Repeat VFD adjustments as described above as often as necessary to achieve desired flow rate.
- Repeated VFD adjustments to occur only following two consecutive chlorination bypass cycles.
- Increases of less than 200 gallons per minute may be necessary, during ramp up, if base flow in Creek declines or downstream activities demand such.
- Creek flow to be monitored visually following each ramping event to assure system balance is satisfactorily maintained.
- Ramp down events to follow above procedures in reverse to avoid surges and to maintain Creek system balance.
- Ongoing operational adjustments of less than 200 gallons per minute, to maintain a balanced flow rate through the Spring Collection Box, may occur without further notification.

Water Flow at Weir

