

RECEIVED

MAR 26 2007

Department of Water Resources
Eastern Region

March 24, 2007

Department of Water Resources
900 N. Skyline Drive Suite A
Idaho Falls, Idaho 83402

Re: Protest to DKJ Farms LLC application for exchange of water within
Madison County

Sir:

The past history of Jeppesens' removal of water from Moody Creek demands that this application be denied.

On October 28, 2002 Norman C. Young and on September 8, 2006 Gary Spackman documented that the Department of Water Resources recognized Jeppesens breached the terms of Water Transfer No. 2034 and Water Transfer No. 3002 by employing no acceptable measuring device, by irrigating more than 200 acres yearly with Moody Creek water, and by pumping Moody Creek water into a common irrigation system to their farm. In August of 2001 Ron Carlson of the department, Jamie Wood, Carol Brown, and I witnessed more than 200 acres irrigated solely by Moody Creek water on Jeppesens' farm. I pointed out to Ron Carlson that this was a clear violation of the terms of Jeppesens' water transfers. I wrote to the department in Boise about this first in 2001 and again in 2005.

Unfortunately, the creek has been pumped dry in the past using existing water rights and wildlife has suffered.. To allow an additional 300 acre feet yearly to be removed from Moody Creek would be devastating. Already cutthroat trout became extinct in about an eight mile segment below Jeppesens' creek pumps. The Fish and Game Department recognizes the loss of this invaluable spawning habit. That the extinction of the cutthroat trout fishery is contrary to public interests is obvious.

Because of this breach, I ask that the department perform its duty to the public by declaring Water Transfers Nos. 2034 and 3002 null and void.

The department placed the 200 acre yearly restriction terms in the contracts to protect public interests in the creek, such as the cutthroat trout. The acreage restriction are clearly and straight-forwardly stated. The consequences of the department not adequately monitoring Jeppesens over the last 23 years speaks for itself. The department failed to protect the public interest in the past, as it is clearly charged to do. You would be totally irresponsible to the public to allow the above application.

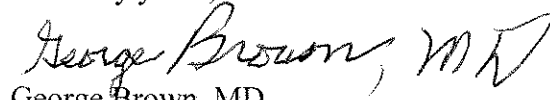
Receipt
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Based on Senior Priority, wildlife and fish claim an instream water appropriation right that requires a sufficient flow to protect them. The Idaho Supreme Court upheld this statute in Dept. of Parks v. Dept of Water Administration (Idaho 1974) Why do you not enforce this law?

What flow exists in Moody Creek just above Jeppesens' pumps in July, August, September, and October ?

Since Moody Creek is a public creek, the public possesses the right to enjoy this pristine area with its life-giving stream simply because it exists! The department hopefully reacts to public interests rather than what is good for two individual families.

Sincerely yours,


George Brown, MD
1439 Cambridge Drive
Idaho Falls, Idaho 83401

Copy DKJ Farms, 6655 Centennial Loop, Rexburg, Idaho 83440
Gary Spackman and Director Tuthill of Dept. of Water Resources.

**IDAHO DEPARTMENT OF FISH AND GAME**

600 S. Walnut/P.O. Box 25
Boise, Idaho 83707

February 13, 2007

C.L. "Butch" Otter/Governor
Cal Groen/Director

Mr. George Brown, M.D.
814 Northpoint Drive
Salt Lake City, UT 84103

Dear Dr. Brown:

The Idaho Department of Fish and Game (Department) received your e-mail on February 5th regarding Moody Creek, and the intent of the Friends of Moody Creek to restore a minimum stream flow.

Moody Creek was a historically important spawning and rearing stream for Yellowstone cutthroat trout (YCT) in the lower Teton River. Yellowstone cutthroat trout have experienced reductions in their historic range and the Idaho Comprehensive Wildlife Conservation Strategy (CWCS, IDFG 2005) currently lists YCT as a species of greatest conservation need. The CWCS identifies habitat fragmentation and isolation of existing populations as principle issues facing YCT. We noted in our February 2, 2006 letter to you that we understand Mr. Jeppesen's existing water right may result in complete dewatering of the stream at his diversion during drought conditions. Depending on the timing and duration of the dewatering event, the upstream and/or downstream migration of fish may be adversely impacted. We believe the Department's original efforts in 1984 to develop a Memorandum of Understanding (MOU) with Mr. Jeppesen and our recent efforts to find a collaborative solution through the Henrys Fork Watershed Council demonstrate our recognition of the value of the cutthroat trout population in Moody Creek and the impacts dewatering the stream has on the population.

We believe establishment of a minimum flow in Moody Creek to allow fish passage is crucial to protect the existing Yellowstone cutthroat trout and restore spawning runs to their historical habitat, particularly during periods of drought. The Department is the

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state agency entrusted with the statutory authority to preserve, protect, and perpetuate the wildlife and fisheries resources of the State of Idaho (IC §36-103). We remain committed to work with all parties, within the framework of existing statutes, to develop an agreement to establish a minimum flow regime that will provide adequate passage for Yellowstone cutthroat trout in Moody Creek.

Sincerely,



Cal Groen
Director

Literature Cited

Idaho Department of Fish and Game. 2005. Idaho Comprehensive Wildlife Conservation Strategy. Idaho Conservation Data Center, Idaho Department of Fish and Game, Boise, ID. <http://fishandgame.idaho.gov/cms/tech/CDC/cwcs.cfm>