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AUG 01 2005
Department of Water Resources
Southern Region

Attorneys for Protestant Clear Springs Foods, Inc.

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

IN THE MATTER OF APPLICATION)
FOR PERMIT NO. 37-21278)
(in the name of MOUNTAIN VIEW)
WATER CORPORATION))
_____)

**MOTION TO DISMISS APPLICATION
FOR PERMIT / SUPPORTING LEGAL
MEMORANDUM**

CLEAR SPRINGS FOODS, INC. (hereinafter "Clear Springs"), by and through its attorneys of record, BARKER ROSHOLT & SIMPSON LLP, and pursuant to Rule 260 of the Department's Rules of Procedure (IDAPA 37.01.01.01 et seq.), hereby files this *Motion to Dismiss Application for Permit / Supporting Legal Memorandum* and requests the Hearing Officer to enter an order dismissing the application for permit filed by Mountain View Water Corporation ("Mountain View") in the above captioned matter.

INTRODUCTION

The Department issued a moratorium on the processing and approval of "new applications for permit to appropriate water from all surface and ground water sources within the Eastern Snake River Plain Area and all tributaries thereto" on April 30, 1993 (hereinafter "April 1993 Moratorium"). The moratorium applies to "all applications proposing a consumptive use of

water.” The moratorium was reaffirmed by the Governor last year through Executive Order 2002-02, issued on March 26, 2004.¹

Mountain View seeks to appropriate 1.86 cfs of groundwater from a location in the ESPA and the Department’s hydrologic basin number 37.² Mountain View seeks to appropriate the water for “domestic” use in a multiple-ownership subdivision. The application for permit includes a “consumptive use” component since Mountain View will presumably provide water for outside irrigation of lawns and other landscaping. Mountain View did not propose any mitigation for the “irrigation” component of its application for permit.

Given the water shortages Clear Springs has experienced over the past decade, the state of the ESPA and declining aquifer levels, and the prohibition of new “consumptive use” water rights, the Hearing Officer should dismiss Mountain View’s application. As explained in greater detail below, the application does not meet the definition of a “domestic” use as defined in Idaho Code § 42-111, the moratorium exception impermissibly expands the definition of a “domestic” use to “multiple-ownership subdivisions”, and the intent and purpose behind the moratorium precludes approval of the application without mitigation.

Finally, in light of extreme water shortages in the Thousand Springs area, evidenced by several water right delivery calls issued over the past two years, the Department must dismiss any new applications for permit that propose a new “consumptive use”, whether that use proposes to irrigate residential lawns or an alfalfa crop. The State of Idaho and Water District No. 130 cannot implement an effective aquifer management plan or proper conjunctive administration if new “consumptive uses”, by way of multiple-ownership subdivisions or other

¹ As part of The Eastern Snake Plain Aquifer Mitigation, Recovery and Restoration Agreement for 2004, the Department committed to “take such actions as necessary to ensure compliance with the moratorium.” See Agreement at 4, ¶ 2.F. The Agreement can be found at http://www.idwr.idaho.gov/Calls/ESPA_Agreement.

² The April 1993 Moratorium states that “to further define the western boundary of this area, department designated hydrologic basin nos. 37 and 47, among other basins, are included in the area . . .”

means, continue to be approved without realizing the consequences for the water source. The stresses on the ESPA have been ever increasing since the moratorium was issued in 1993, adding new depletive effects will not help restore spring flows or aquifer levels to a sustainable level, let alone protect existing water rights such as Clear Springs’.

FACTUAL BACKGROUND

Procedural History

Mountain View filed a new “domestic” water right application with the Department on March 22, 2004. The application seeks water for both “in-house” domestic use and associated “irrigation” of 39 residential lots in Gooding County. The application seeks to appropriate 1.86 cfs of groundwater, with no maximum volume restriction, from a point of diversion within the boundaries of the ESPA and Water District No. 130. See Exhibit A. Clear Springs, an Idaho corporation, owns and operates an aquaculture facility approximately 15 miles south of Mountain View’s well. Clear Springs protested Mountain View’s application on October 25, 2004 for various reasons, primarily to protect the spring flows and water source that supplies its prior water rights necessary to operate its aquaculture facility.

ESPA / Thousand Springs

The ESPA is defined as the aquifer underlying the Eastern Snake River Plain as delineated in the report “Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake Plain, Idaho.” USGS Professional Paper 1408-F, 1992. The recalibrated ESPA ground water model, completed by the Idaho Water Resource Research Institute (IWWRI), has further refined the boundaries of the regional aquifer also known as the ESPA. See Exhibit B.³ The water supply in the ESPA is hydraulically connected to the Snake River and tributary water

³ The map of the ESPA, as depicted by the recalibrated ground water model, was retrieved from the following website <http://www.if.uidaho.edu/~johnson/ifiwri/projects.html>, “Model Details – Allan Wylie.”

sources at various places and to varying degrees. See August 3, 2001 Order Designating the Thousand Springs Ground Water Management Area at 1, July 8, 2005 Order In the Matter of Distribution of Water to Water Rights Nos. 36-04013A, 36-04013B and 36-07148 (Snake River Farm); and to Water Rights Nos. 36-07083 and 36-07568 (Crystal Springs Farm) at 2.⁴ Clear Springs' water rights depend upon spring flows tributary to the Snake River that occur in two sub-reaches, the Devil's Washbowl to Buhl Gage spring reach, and the Buhl gage to Thousand Springs spring reach. July 8, 2005 Order at 5. Spring flows in the referenced sub-reaches have been in steady decline over the past decade resulting in inadequate water supplies to satisfy Clear Springs', as well as other surface water users' water rights.⁵ See Exhibit C; fn. 12. Recent spring flow measurements conducted at Clear Springs' facilities reveal unprecedented low flow levels.

The history of various actions taken by the Department with respect to the ESPA dates back to at least 1992, when the Director issued a moratorium on the processing and approval of all applications for permit to appropriate water from all surface and ground water sources in the non-trust water area upstream of Milner Dam. See May 15, 1992 Moratorium Order; January 6, 1993 Moratorium Order; and April 30, 1993 Amended Moratorium Order. In the April 1993 Moratorium, issued over twelve years ago, the Director expressly recognized that ground water levels had fallen in the ESPA due to a number of factors including the "increased volume of pumping." See April 1993 Moratorium at 1. The moratorium was issued, in part, to "protect existing water rights." See id. at 4.

⁴ Clear Springs recently filed a petition requesting a hearing on the July 8, 2005 Order. Accordingly, Clear Springs reserves all rights to contest the factual and legal findings made in that order. However, for purposes of this proceeding, the July 8, 2005 Order provides an example of the Department's recognition of the interconnection between ground water rights in the ESPA and the spring flows that supply Clear Springs' water rights, as well as the decline in those spring flows witnessed in recent years.

⁵ See discussion infra Part III.

Despite the moratorium, the ESPA has continued to suffer deleterious effects from drought and withdrawals of groundwater for consumptive uses over the past decade. Recent ground water measurements performed by the United States Geological Survey detail the declining ground water levels in the ESPA, both from 1980 to 2002, including specific declines occurring from 2001 to 2002. See Exhibit D. The declining ground water levels have resulted in declining spring flows as witnessed at Clear Springs' facilities. See Exhibit C.

The Department acknowledged the declining aquifer and spring discharge levels in 2001 wherein the Director designated the Thousand Springs Ground Water Management Area (GWMA). The Director made the following findings of fact, among others, in that August 3, 2001 Order:

3. Simulations using the Department's calibrated computer model of the ESPA show that ground water withdrawals from the ESPA for irrigation and other consumptive purposes, which occur in relatively close proximity to the Thousand Springs area, cause significant reductions in spring flows tributary to Kimberly to King Hill, or Thousand Springs, reach of the Snake River within six (6) months or less from the time withdrawals occur.

4. Although all consumptive ground water diversions from the ESPA eventually affect surface flows to varying degrees, the Department's model simulations and other analytical calculations demonstrate that ground water diversions occurring within a five (5) to ten (10) kilometer band from the canyon wall along the north side of the Snake River in the Thousand Springs reach result in seasonal spring flow reductions equal to fifty percent (50 percent) or more of the amount of water diverted and consumptively used, and such reductions occur within six (6) months of the diversions.

* * *

7. The water supply available for use under senior surface water rights from spring sources in the Thousand Springs area is expected to be further diminished because of the drought and inadequate to fully satisfy all senior surface water rights during the next irrigation season. This water supply is also expected to be reduced as a result of ground water withdrawals from the ESPA for irrigation and other consumptive purposes that are diverted in close proximity to the area of the springs without mitigating the effects of the associated ground water depletions.

8. Based upon the depletionary effects of ground water withdrawals on the flow of water from springs tributary to the Snake River in the Thousand Springs area and the inadequate water supply expected to be available for senior surface water rights, that portion of the ESPA along the Thousand Springs area may be approaching the conditions of a critical ground water area. The Director also bases this finding, in part, upon flow measurements showing a pronounced diminishment in spring flows in the Thousand Springs area during the current drought period.

2001 Thousand Springs GWMA Order at 1-3.⁶

The conditions resulting in the designation of the Thousand Springs GWMA in 2001 have continued into 2005. See Exhibit C (graphs depicting declines in springs at Clear Springs' facilities). For example, aquifer and spring levels are still declining, much of the State of Idaho is still in a drought cycle, and there is insufficient water to fulfill senior surface water rights, such as Clear Springs', in the Thousand Springs reach.

The recent "water delivery calls" made by senior water right holders who rely upon spring flows in the Thousand Springs reach provides further evidence that the water supply in the ESPA is not sufficient to supply all existing water rights, let alone new water rights that propose an additional consumptive use that would further deplete the water supply. See infra Part III. For example, since May 2003, over ten separate water delivery calls have been made by senior surface water right holders that rely upon spring flows in the Thousand Springs reach against junior ground water right holders that rely upon groundwater in the ESPA.⁷ Clear Springs also requested water right administration and delivery of water to its Crystal Springs and Snake River Farms facilities on May 2, 2005. See Exhibit C. The Director's July 8, 2005 Order responding

⁶ Although the Director issued an order dissolving the Thousand Spring GWMA in August 2003, that order is the subject of a pending contested case based upon petitions filed by Clear Springs and others. Regardless of the order dissolving the GWMA, the factual conditions resulting in the original designation, declining aquifer levels and diminished spring flows, remain today in 2005.

⁷ See infra Part III.

to those calls acknowledges the dwindling water supply in the ESPA and the consequences for Clear Springs' water rights:

60. The time history of spring discharge and diversions to the Snake River Farm depicted in Attachment C shows that spring discharge and diversions have declined. The seasonal maximum spring discharge and diversion in 2004 was 93.18 cfs at the time of the monthly measurement on October 20, 2004, which is 24.5 cfs less, or about 21 percent less, than the total authorized diversion under Clear Springs' water rights nos. 36-02703, 36-02048, 36-04013A, 36-04013B, 36-04013C, and 36-07148.

* * *

81. The time history of spring discharge and diversions to the Crystal Springs Farm depicted in Attachment D shows that spring discharge and diversions have declined since peaking in 1987. The seasonal maximum spring discharge and diversion in 2004 was 259.81 cfs at the time of the monthly measurement on September 21, 2004, which is 75.3 cfs less, or about 22 percent less, than the total authorized diversion under Clear Springs' water rights nos. 36-07083 and 36-07568. *See* IDAPA 37.02.11.042.01.a

July 8, 2005 Order at 14, 19 (emphasis added).

Other spring users in the Thousand Springs reach have witnessed similar declines in water supplies, resulting in further business loss for senior water right holders in Water District No. 130. See discussion *infra* Part III.

Finally, compounding the effects of ground water depletions in the ESPA is the fact that much of the State of Idaho, particularly southern Idaho, continues to experience devastating drought conditions, despite above average spring precipitation this year. Notably, the Director has issued drought declarations for the following counties in 2005: Lincoln, Ada, Jerome, Gooding, Lemhi, Jefferson, Blaine, Caribou, Twin Falls, Elmore, Clark, Bannock, Power, Fremont, Madison, Canyon, Bingham, Bonneville, Custer, and Butte. The drought declarations recognize that a lack of precipitation will cause water shortages for water right holders in 2005.

As set forth above, water supply conditions in the ESPA continue to suffer due to drought and consumptive use ground water withdrawals. Since the April 1993 Moratorium remains in place, water supplies are insufficient to fill senior surface water rights, and ground water levels have continued to decline in the ESPA, the facts plainly demonstrate that approval of new “consumptive use” water rights from the ESPA is prohibited and would only stand to further exacerbate an already pending water crisis.

LEGAL ARGUMENT

I. Mountain View’s Proposed “Domestic” Use is Not Exempt From the Mandatory Application and Permit Process Under Chapter 2 Title 42.

Idaho law defines “domestic” uses or purposes as follows:

(1) For purposes of sections 42-221, 42-227, 42-230, 42-235, 42-237a, 42-242, 42-243 and 42-1401A, Idaho Code, the phrase “domestic purposes” or “domestic uses” means:

(a) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or

(b) Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.

I.C. § 42-111(1).

The definition specifically limits a “domestic” use of water as “water for homes, organization camps, public campgrounds, livestock and for any purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land.” Id. In addition to defining what a “domestic” use is, the statute further defines what uses are not considered “domestic”:

(2) For purposes of the sections listed in subsection (1) of this section, domestic purposes or domestic uses shall not include water for multiple ownership subdivisions, mobile home parks, or commercial or business establishments, unless the use meets the diversion rate and volume limitations set forth in subsection (1)(b) of this section.

I.C. § 42-111(2)(emphasis added).

The statute plainly states that water for “multiple ownership subdivisions” is not a “domestic” use or purpose, unless that use meets the diversion rate limitation of 0.04 cfs and the total volume limitation of 2,500 gallons per day. This interpretation of the statute was confirmed by the Department through Norm Young’s (administrator of the water management division at the time) May 16, 1994 letter to Norm Semanko which stated:

Similarly, a multiple-ownership subdivision can drill a single well and use up to 2500 gallons per day for the entire subdivision for use within the homes and associated with the homes as described in the previous paragraph. While this seems inconsistent to divide only 2500 gpd between several homes, the last paragraph of Section 42-111, Idaho Code, specifically prevents the application of the single family domestic exemption to multiple ownership subdivisions unless the use is restricted to 2500 gpd. It is tempting to argue that the 2500 gpd can be taken without a permit for each home, but a reading of the entire section indicates that this paragraph would not have a separate meaning unless the use referred to is the subdivision, mobile home park or business establishment as a whole.

Young May 16, 1994 letter to Semanko at 1 (emphasis in original). See Exhibit E.

Finally, the statute prohibits a person from using “multiple” domestic water rights to satisfy a single use that would not meet the exemption set forth in Idaho Code § 42-227:

(3) Multiple water rights for domestic uses or domestic purposes, as defined in this section, shall not be established or exercised in a manner to satisfy a single combined water use or purpose that would not itself come within the definition of a domestic use or purpose under this section. The purpose of this limitation is to prohibit the diversion and use of water, under a combination of domestic purposes or domestic uses as defined in this section, to provide a supply of water for a use that does not meet the exemption of section 42-227, Idaho Code, and is required to comply with the mandatory application and permit process for developing a right to the use of water pursuant to chapter 2, title 42, Idaho Code.

I.C. § 42-111(3).

Clearly, based upon the above statute, Mountain View’s proposed “domestic” use is not exempt from Idaho’s mandatory application and permitting process. Although this premise is

obvious, i.e. Mountain View filed an application for permit, it is important to review the intent and purpose behind Idaho Code § 42-111 in order to determine whether or not Mountain View's application can proceed under the existing moratorium.

II. The Moratorium Prohibits All New Consumptive Use Water Rights Absent Mitigation

A. The Moratorium Cannot Amend the Definition of "Domestic" Use Set Forth In Idaho Code § 42-111.

The April 1993 Moratorium was recently reaffirmed by Executive Order No. 2004-02 and continues in full force and effect to prohibit "all applications proposing a consumptive use of water filed after the date of the order . . ." April 1993 Moratorium at 4-5. Despite the blanket prohibition of approval of new consumptive water rights from the ESPA, the moratorium does list a few limited exceptions. The exception for "applications for domestic purposes" reads as follows:

5. The moratorium does not apply to any application for domestic purposes as such term is defined in Section 42-111, Idaho Code. For the purposes of this exception, applications for ground water permits seeking water for multiple ownership subdivisions or mobile home parks will be considered provided each unit satisfies the definition for the exception of requirement to file an application for permit as described in said section.

April 1993 Moratorium at 5 (emphasis added).

The first sentence of the exception states that the moratorium does not apply to applications for "domestic" purposes as that term is defined in I.C. § 42-111. As explained above, I.C. § 42-111 specifically defines "domestic" purposes not to include water "for multiple ownership" subdivisions such as Mountain View's proposed development. It is clear the legislature did not intend that water used for "multiple-home subdivisions" would be considered

a “domestic” use.⁸ See Idaho State Tax Comm’n v. Haener Bros., Inc., 121 Idaho 741, 743 (1992)(a statute must be construed so as to “give effect to the intent of the legislature.”); George W. Watkins Family v. Messenger, 118 Idaho 537, 540 (1990)(“[s]tatutes must be construed as a whole without separating one provision from another. The primary function of the court in construing a statute is to determine legislative intent and give effect thereto.”). Accordingly, the exception plainly excludes “multiple home subdivisions” from qualifying as a “domestic” use that is free from the moratorium’s prohibition of new consumptive use water rights. Despite the plain language in the first sentence, the moratorium performs an “about face” in the second sentence and attempts to circumvent the plain definition of “domestic” purposes in I.C. § 42-111. As noted above, the exception states that applications for permit seeking ground water for “multiple ownership subdivisions” would apparently be “considered” on the condition that each home satisfied the definition of “domestic” use in I.C. § 42-111(a) or (b).

Whereas the plain language of I.C. § 42-111(1)(a) states that water use for “multiple ownership subdivisions” is not a “domestic” use, the moratorium exception purports to amend that definition on the theory that each home within a subdivision can be characterized as a permitted “domestic” use that is limited to a diversion rate of 0.02 cfs and 13,000 gallons per day. Stated another way, the moratorium excepts applications from qualifying as a “domestic” use even though those water rights do not qualify as a “domestic” use or purpose under that

⁸ Indeed, a June 4, 1980 Administrator’s Memorandum from Norm Young explains how “domestic” applications for multiple-ownership subdivisions were to be handled by the Department:

“Domestic” has in the past been interpreted to include a variety of uses for multi-household water systems. Henceforth this term should be used to identify only the in-house or culinary aspect for these systems. For example, the water right description for a housing subdivision should identify irrigation, recreation, and fire protection in addition to domestic use. In this way acre-foot values can be assigned to each parameter for an accurate volumetric description of the water right.

June 4, 1980 Memorandum at 2. It is unknown whether this memorandum has been superceded or remains in effect. If followed, the stated process would presumably allow the Department to evaluate multiple ownership subdivision water right applications in a manner to identify the relevant “consumptive use” portion of such water rights for identifying how much mitigation needed to be provided by an applicant such as Mountain View. See Exhibit F.

statute. The Department cannot change the terms and meaning of a statute by administrative rule or order, and thus, the moratorium exception cannot enlarge the definition of a “domestic” use to include water for “multiple ownership” subdivisions such as Mountain View’s. See Roeder Holdings, LLC v. Board of Equalization of Ada County, 136 Idaho 809, 813 (2002), citing Roberts v. Transportation Dep’t, 121 Idaho 727 (Ct. App. 1991), aff’d, 121 Idaho 723 (1992)(“an administrative agency may not, under the guise of a regulation, substitute its judgment for that of the legislature or exercise its sublegislative powers to modify, alter, enlarge or diminish provisions of a legislative act that is being administered.”).

Therefore, since the “multiple ownership subdivision” exception to the moratorium impermissibly redefines what qualifies as a “domestic” use under I.C. § 42-111, Mountain View’s application must be dismissed.

B. The “Multiple Ownership Subdivision” Exception Contradicts the Intent and Purpose of the Moratorium.

In addition to violating the definition of “domestic” use as defined in I.C. § 42-111, the “multiple ownership subdivision” exception also contradicts the intent and purpose behind the moratorium. Whereas the moratorium was issued to protect “existing water rights” and prevent further depletions to the ESPA, the exception effectively eviscerates that intent by allowing new “consumptive uses” to be approved to the detriment of existing water rights as well as those applicants who have had their water right applications stayed because of the moratorium.⁹

The April 1993 Moratorium gives the following reasons for issuing the moratorium in the first place:

2. The Snake River Basin in Idaho has experienced six consecutive years of drought, and while the snowpack and precipitation are now near or above

⁹ It is Clear Springs’ understanding, based upon counsel’s contact with the Department, that there are at least over 100 applications for permit that have not been processed because they propose a new consumptive use that is prohibited by the moratorium.

average across much of southern Idaho, residual effects of the drought are still evident in ground water levels, spring flows and anticipated stream flows.

3. Ground water aquifers have become stressed by the reduction in natural recharge due to changes in diversion and use of surface waters throughout the basin and by the increased volume of pumping occurring to augment scarce surface water supplies during the drought period. The lowered aquifers across much of the Snake River Basin in southern Idaho have resulted in numerous wells, often used for domestic and municipal water supply purposes becoming unusable. Lowered ground water levels also reduce spring and base flow discharge needed to maintain stream and river flows.

* * *

7. Even though water supplies in the state are approaching normal for the 1993 irrigation season, ground water levels which have been declining will not fully recover in 1993.

April 1993 Moratorium at 1-2 (emphasis added).

As set forth in the Factual Background above, the conditions that prompted the moratorium in 1992 and 1993 continue to exist today in 2005 as aquifer levels are still dropping and spring discharge levels continue to fall. In reaffirming the moratorium just last year, the Governor recognized the continued water supply problems in the ESPA: “discharges from the Thousand Springs area have diminished and are expected to be further diminished because of significant reductions in incidental recharge of the ESPA and the last four consecutive years of drought.” Executive Order 2004-02 at 1. Accordingly, there is no question that the basis for the moratorium, the crisis in water supply for existing water rights, continues today and that the intent and purpose behind the moratorium to halt the devastating water decline by prohibiting new “consumptive uses” in the ESPA, must be recognized and followed.

The Department’s prior orders have acknowledged the intent and purpose of the moratorium in denying previous applications for permit and transfer within the ESPA. For example, the Department has denied prior transfer applications where the result of the transfer

would essentially constitute a new consumptive appropriation of water to the detriment of existing water rights. For example, the Department denied a proposed transfer of a ground water right in the ESPA where the applicant sought to change the point of diversion and nature of use of an irrigation water right to a dairy facility approximately 90 miles downgradient:

3. The moratorium designated by the Department on May 15, 1992 for the Snake Plain Aquifer was issued to prevent further development of water sources on the plain in order to protect prior water rights and to ensure compliance with provisions of chapter 2, title 42, Idaho Code.

* * *

6. The majority of water not pumped at the Hincks well is tributary to springs which enter the Snake River in the Blackfoot to Neeley reach or below Neeley. Some of the unpumped water will go west in the aquifer but ground water reaching the Snake River will not again be available as ground water in the Snake Plain Aquifer.

* * *

4. . . . Since only a small unquantified portion of ground water which would not be pumped at the Hincks well would reach the proposed new well located about 90 miles to the southwest, the diversion of 0.30 cfs or the majority thereof at the proposed new well would have the same physical effect as a new appropriation of ground water and would cause injury because it would have a senior priority over validly established water rights held by junior appropriators.

5. It is not in the local public interest to approve a transfer that would essentially be a new appropriation of water which would otherwise be prevented by the moratorium.

6. The Department should deny the application.

In the Matter of Application for Transfer No. 5435 in the Name of Steve and Darla Wybenga, May 25, 2000 Preliminary Order (became a final order) at 2-3 (emphasis added).

Since the transfer of the 0.30 cfs water right from Power County to a location 90 miles west in Gooding County would have resulted in a new depletion to the ESPA similar to a new

appropriation, the Department acknowledged the purpose behind the moratorium and denied the transfer.¹⁰

The Department has similarly denied transfers proposing the change a point of diversion from outside the ESPA to a water source within the ESPA. Again, the rationale for the denial was based on the intent and purpose of the moratorium, and the prohibition on new consumptive uses in the ESPA:

5. The protestant established that there will be some water withdrawn from the Eastern Snake Plain Area if water is diverted from the proposed point of diversion. Other water rights, such as those diverted from the Snake River above American Falls Reservoir, may also be affected by diversion of water from the proposed point of diversion.

6. The purpose of the April 30, 1993 moratorium was to prevent further water withdrawals from the Eastern Snake Plain Area. Approval of this application transfer, even though the proposed point of diversion is outside the moratorium area, would authorize withdrawal of some water from the Eastern Snake River Plain Area, and would violate the intent of the moratorium order.

In the Matter of Application for Transfer No. 4729 (Water Right No. 29-02426B and 29-07122 in the Name of Bradley Peterson) March 31, 1997 Final Order (emphasis added).

As set forth in the Peterson Transfer order, the moratorium's intent and purpose is to prohibit new consumptive uses that would affect existing water rights. Protecting prior water rights by denying applications that essentially result in a new appropriation in an overappropriated system is well-established precedent with the Department. For example, In the Matter of Applications for Transfer No. 5174 in the Name of Dennis M. Baker and No. 5175 in the Name of Huf-N-Puf Trust, the Department denied the transfer of a ground water right because of the effect it would have on senior water rights that were already being curtailed. In commenting on the proposed ground water use and the effect on the Big Wood River and prior water rights, the Director stated the following:

¹⁰ Although the Department referenced the May 15, 1902 moratorium order it also recognized that "the Director subsequently amended the moratorium order on January 6, 1993 and April 30, 1993." See id. at 2.

If the two applications for transfer are approved as submitted, the annual volume of water depleted from the Big Wood River could total nearly 25 acre-feet. This volume of water is not insignificant.

The depletion and resulting injury are real and can be determined. The watermaster records for the past 27 years clearly show that water rights with priority dates later in time than the priority date for the water right sought to be transferred by the applicants are curtailed for all or part of the irrigation season in each and every year. The applications, if approved, would have the same effect on other water rights from the Big Wood River as approving an additional (new) appropriation of water and would reduce water availability during times of scarcity. Approving the transfers and allowing groundwater to be pumped under a junior priority from an adjacent aquifer hydraulically connected to the Big Wood River during times when downstream water rights from the Big Wood River are curtailed, many of which have senior priority dates, would cause real and actual injury and would be wholly inconsistent with Idaho law.

Baker Transfer Order at 16 (emphasis added).

Analogous to the facts in the Baker Transfer proceeding, here, Mountain View proposes a new appropriation of water from the ESPA that will reduce “water availability during times of scarcity.” Approval of Mountain View’s application will result in additional depletions to the ESPA and further exacerbate the reduced spring flows in the Thousand Springs area. Based on prior Department orders interpreting the moratorium order and denying applications that would result in new appropriations that would deplete an already scarce resource, it is clear that the moratorium prohibits new “consumptive use” water rights and that Mountain View’s application, which proposes no mitigation, should be dismissed.

Apart from the Department’s prior orders, a simple example of the actual impact of approving “multiple ownership subdivision” applications, as compared to other applications for permit that are being held by the moratorium, reveals that Mountain View’s application should be dismissed because of its depletive effect on the ESPA and other prior water rights. For example, assume that Landowner A has 40 acres in Gooding County that he decides to subdivide into 1 acre lots, with each lot having ½ acre of lawn and landscaping to irrigate. Landowner A

would provide water to the development, both for in-house and irrigation purposes, through a new ground water right. Accordingly, the subdivision would irrigate 20 acres and consume approximately 50 acre-feet of water each year from the ESPA (using a 2.5 acre-feet per acre consumptive use calculation). Next door, Landowner B has 10 acres and decides that he would like to farm 5 acres through a new ground water right. Accordingly, Landowner B's farm would consume approximately 12.5 acre-feet of water each year from the ESPA (again using a 2.5 acre-feet per acre consumptive use calculation). Pursuant to the moratorium, Landowner B's proposed water right would be stayed because it proposes a new "consumptive use"; in this case irrigation. Landowner A's "domestic" water right, on the other hand, under the purported "multiple ownership subdivision" would apparently not be stayed. Despite the actual effect of Landowner B's proposed irrigation water right being 37.5 acre-feet less depletion to the ESPA than Landowner A's proposed "domestic" water right, the exception attempts to provide different treatment for the two applications. Such a result is contrary to the intent and purpose of the moratorium, which is to prohibit new "consumptive uses" and protect existing water rights. Moreover, the example further illustrates the inequity in such an exception and how those who develop property for "multiple ownership subdivisions" or "mobile home parks" are rewarded as opposed to those who seek other "consumptive use" water rights from the ESPA, such as irrigation.¹¹ As demonstrated, since there is no difference in the actual effect of a "multiple ownership subdivision" domestic water right that irrigates 20 acres as opposed to an irrigation water right for 20 acres, the intent and purpose of the moratorium should be upheld in dismissing

¹¹ A review of existing water right applications that have been stayed provides a perfect example similar to the hypothetical. For instance, the following applications have all been held due to the irrigation component: 1) water right application no. 37-8708 seeking .09 cfs for irrigation of three acres and .04 cfs for domestic purposes; 2) water right no. 37-8552 seeking .09 cfs for irrigation three acres and .04 cfs for domestic purposes; and 3) water right no. 37-8680 seeking .09 cfs for irrigation of three acres, .02 cfs for stockwater, and .04 cfs for domestic purposes. This is just a sampling of the applications that have been held. Although Mountain View seeks to divert much more water, 1.86 cfs, which would have more of a depletive effect on the ESPA than these three applications combined, the exception impermissibly attempts to allow its application to proceed.

those “domestic” applications that would result in a new depletion to the ESPA, such as Mountain View’s.

III. Recent Water Right Delivery Calls in the Thousand Springs Area Demonstrate the ESPA is Overappropriated and New Consumptive Use Water Rights Without Adequate Mitigation Must be Denied.

In addition to the calls filed by Clear Springs earlier this year, several other spring users with senior surface water rights have filed water delivery calls on junior ground water right holders who pump groundwater from the ESPA. As set forth in the Department’s Thousand Springs GWMA Order, springs in the Thousand Springs area have declined due to “groundwater pumping” as well as other factors. The following list of water right delivery calls¹² and their examples of diminished spring flows and resulting injury to senior surface water rights is further reason to dismiss new “consumptive use” applications that stand to further deplete the water supplies for these rights.

1) Rim View Trout / Estate of Earl M. Hardy

Rim View Trout (Rim View) and the Estate of Earl M. Hardy (Hardy) filed water right delivery calls with the Department in May 2003. See May 15, 2003 Letters to Dreher. See fn. 12. The letters from Rim View and Hardy requested the Director to administer water rights in Water District No. 130 by priority. The calls were made on the basis that Rim View’s water rights, which totaled a diversion rate of 150 cfs, were not being fulfilled and were witnessing shortages in the range “from 10 cfs during October to 60 cfs during March and April”; and Hardy’s water right, with a diversion rate of 38.8 cfs, was only receiving 29.9 cfs from its source. See id.

¹² As listed on the Department’s website at <http://www.idwr.idaho.gov/calls>, current as of June 27, 2005.

2) Rangen, Inc.

On September 23, 2003, Rangen, Inc. filed a water right delivery call for water rights at its facilities located in the Thousand Springs reach. The Director issued an amended order in March 2004 stating the following with respect to observed flows at the respective springs:

Comparing same-month maximum daily and average daily flows representing the water supply available to the Rangen hatchery facilities . . . between years for the years shown above demonstrates that there have been significant decreases in the water supply available to the Rangen hatchery facilities between 1987 and 2003. Flow measurements for the other years between 1987 and 2003 not shown above demonstrate that the water supply available to the Rangen hatchery facilities generally decreased from 1990 through 1996, rebounded in 1997 and 1998, and then significantly decreased again after 1998 to record lows by 2002 and 2003 for the post-1981 time period.

* * *

. . . the quantity of water available at the source for water right no. 36-02551 with the priority date of July 13, 1962, is currently insufficient to fill this right.

In the Matter of Distribution of Water to Water Right Nos. 36-15501, 36-02551, and 36-07694 March 10, 2004 Amended Order at 15-16.

Although the Director recently issued a second amended order in this proceeding on May 19, 2005, denying Rangen's call (which is the subject of a petition for hearing), the facts are still relevant to demonstrate the shortages being experienced by Rangen and how water supplies in the ESPA are insufficient to fill all existing water rights.

3) Babington / Jensen / Lynclif Farms

In December 2003, Lynn Babington and Cliff Jensen filed a water right delivery call for their water right on Billingsley Creek and requested the Director to "curtail any upstream diversions" of their water supply that were junior to their water right. The call was filed for the following stated reasons:

Our understanding is that Senior water rights downstream were unable to full fill their water rights and expensive sturgeon being cultured died due to the lack of

water available in the lower reaches of Billingsley Creek. According to the Idaho Department of Environmental Quality and others Billingsley Creek had a flow of “0” c.f.s. into the Snake River at times during the summer of 2003.

Babington / Jensen December 18, 2003 Letter to Dreher. See fn. 12.

4) Pristine Springs / SeaPac of Idaho / William Jones

In January 2004, Pristine Springs, Inc., SeaPac of Idaho, Inc. and William D. Jones, Jr., all filed water right delivery calls against junior priority ground water rights in Water District No. 130. The call was filed on the basis that their senior water rights were being “severely diminished while junior groundwater users” continued to pump “at all time highs.” See fn. 12.

5) Billingsley Creek Ranch

On March 16, 2005, Billingsley Creek Ranch (BCR) filed a water right delivery call for its senior surface water rights relying upon springs in the Thousand Springs reach. In its letter to the Director, BCR stated its reasons for filing a water right delivery call and elaborated on the history of the water supply issues dating back to the institution of the April 1993 moratorium:

My water rights are 36-02379 for 5 cfs with a priority of 3/19/59, 36-02465 for 4 cfs with a priority of 1/18/61 and 36-10870 for .36 cfs with a priority of 5/1/33. All of these springs have dried up. Water right 36-02379 had recorded flows of over 10 cfs in the winter months in the 1980’s so you can see how rapidly things changed. I wrote my first letter to Keith Higginson on October 19, 1993 advising him that this particular spring was starting to dry up in the summer months.

McFadden March 16, 2005 Letter to Dreher. See fn. 12.

6) Blue Lakes Trout Farm, Inc.

Blue Lakes Trout Farm filed a water right delivery call with the Director on March 22, 2005. In the letter, Blue Lakes states that it is “entitled to delivery of 197.06 cfs” under its water rights and that as of March 2005 Blue Lakes was only receiving “137.7 cfs.” See fn. 12. Furthermore, Blue Lakes identified that it only received “111 cfs” at a low point in 2003 and that “even greater shortages” were likely to be suffered during 2005. Id.

7) John W. Jones, Jr.

Mr. Jones filed a water right delivery call with the Director on April 12, 2005. The letter identifies Mr. Jones' water rights as entitled to a delivery of 73.05 cfs from Weatherby Springs, Three Springs, and the Hoagland Tunnel. See fn. 12. With respect to the water supply conditions Mr. Jones notes that he is "now receiving 30 cfs", or a reduction of 43.05 cfs, and that the "shortage has significantly reduced our production." Id.

As demonstrated by the "injuries" and "water shortages" suffered by senior water right holders above, it is obvious there are insufficient water supplies in the ESPA and Water District No. 130 to satisfy existing water rights. Given the extreme shortages suffered by Clear Springs and others, there is no legal or factual reason to approve additional water rights that will further deplete the source and that would all but guarantee continued shortages into the future. Stated another way, Mountain View's application for permit, which proposes a new "consumptive use" water right and further depletion of the aquifer, cannot be approved absent mitigation to ensure that existing water rights are protected.

CONCLUSION

Mountain View's application for permit, seeking 1.86 cfs for "domestic" and associated "consumptive uses" in a multiple-ownership subdivision, will result in an additional depletion to the ESPA, contrary to the April 1993 Moratorium and the definition of a "domestic" water use set forth in Idaho Code § 42-111. The water shortages suffered by Clear Springs and other existing water right holders in Water District No. 130 plainly demonstrate that additional "consumptive use" water right applications should be denied. For the reasons set forth above, Clear Springs respectfully requests the Hearing Officer to grant its motion to dismiss Mountain View's application for permit.

DATED this 29th day of July 2005.

BARKER ROSHOLT & SIMPSON LLP


Travis L. Thompson

Attorneys for Clear Springs Foods, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of July, 2005, I served a true and correct copy of the foregoing *Motion to Dismiss Application for Permit / Supporting Legal Memorandum*, by email and by depositing same in the United States mail, postage prepaid, addressed to the following:

Gary Spackman, Hearing Officer
1341 Fillmore St., Suite 200
Twin Falls, Idaho 83301-3380

Email: gary.spackman@idwr.idaho.gov

Phil Brown / Joseph James
Brown & James
130 4th Ave. West
Gooding, Idaho 83330

Email: jfjames@earthlink.net

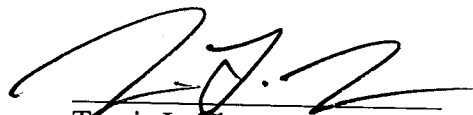
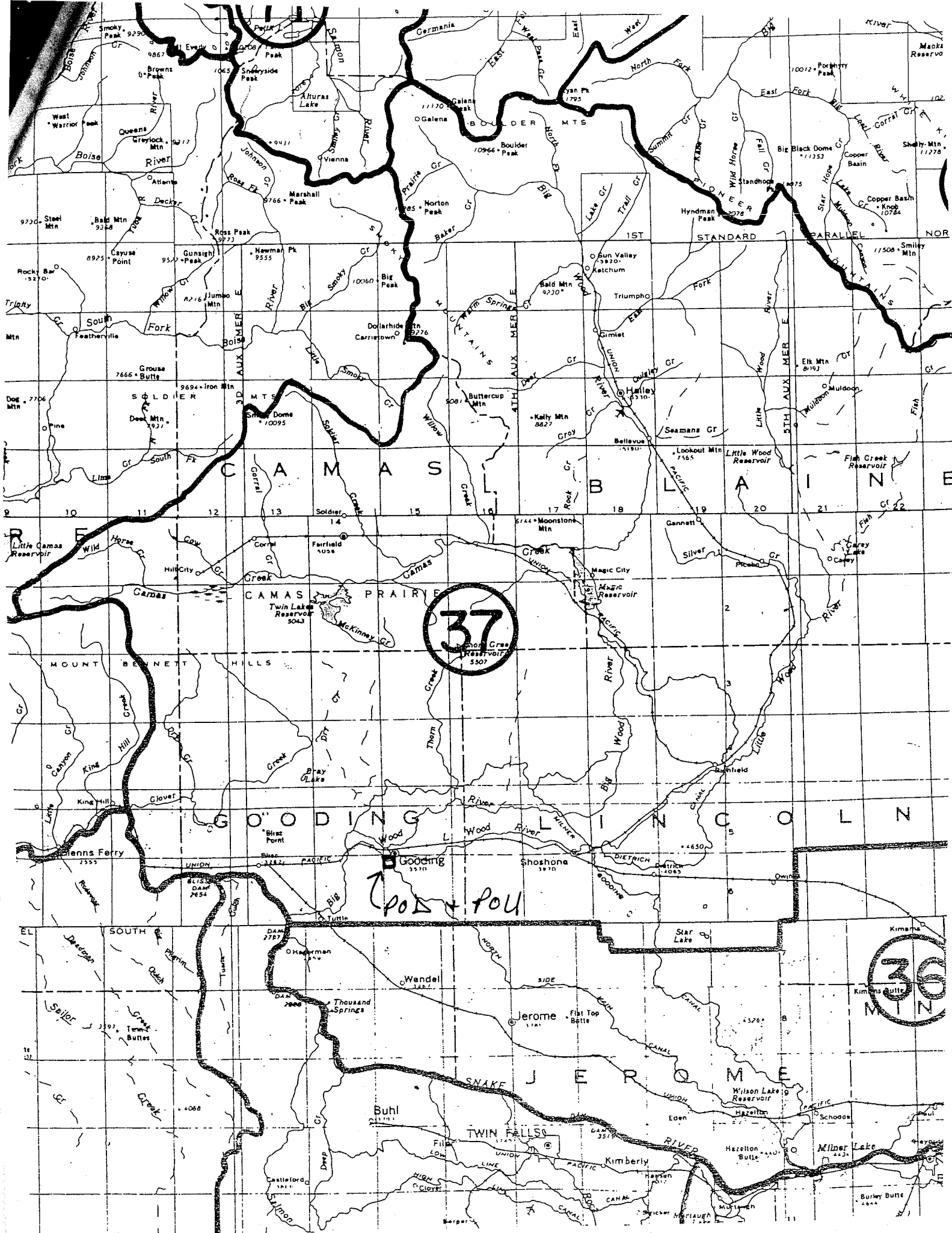

Travis L. Thompson

EXHIBIT “A”



37

36 MIN

POD + POU

Water District No. 130

-  Eastern Snake Plain Aquifer
-  IDWR Administrative Basins
-  Townships
-  Water District No. 130
-  Water District No. 36-A

10 0 10 20 Miles

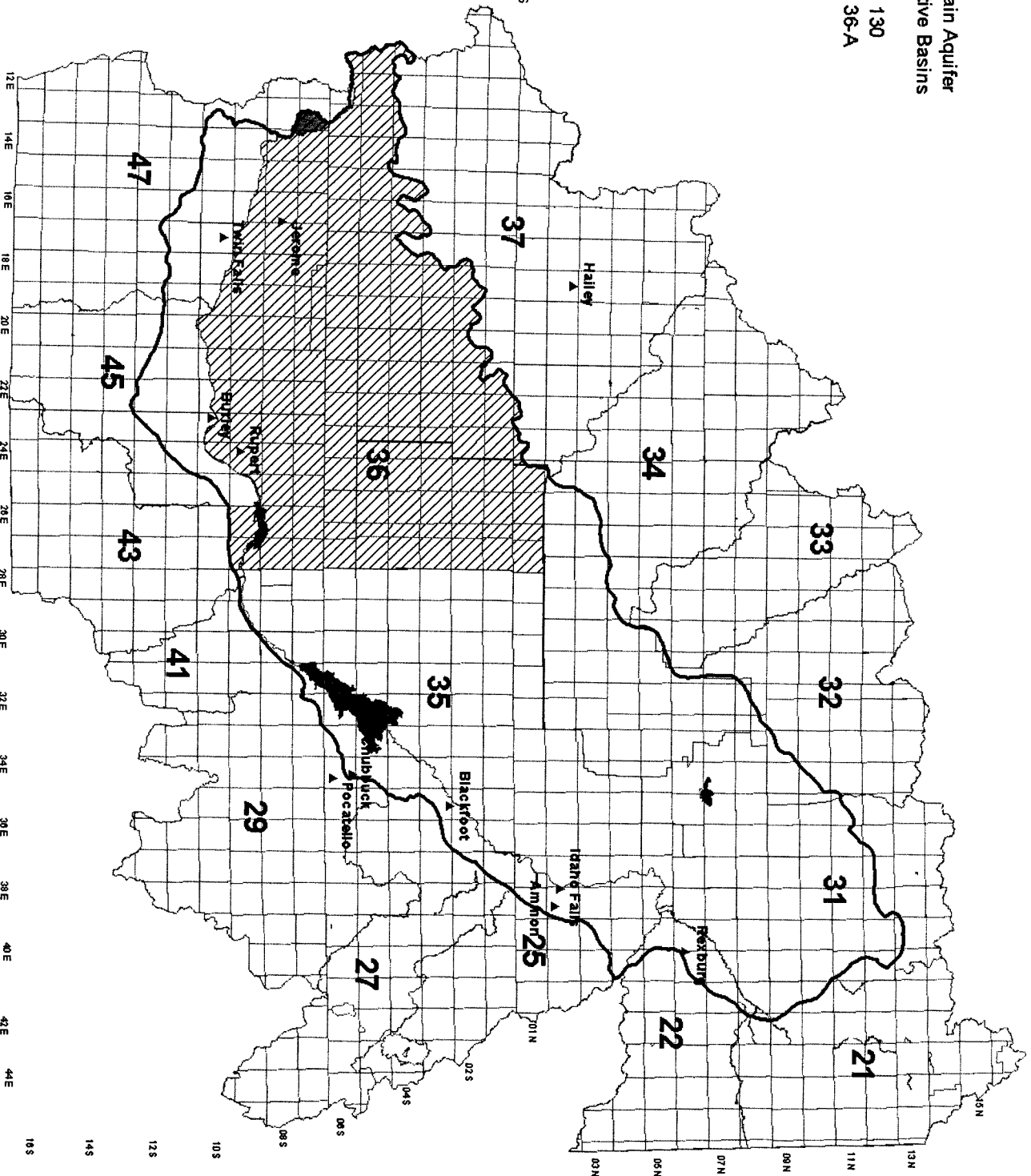
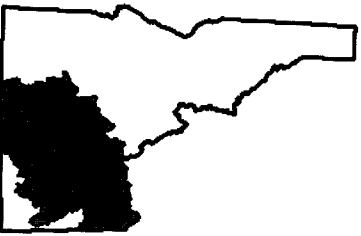


EXHIBIT “B”

Springs

- 6 Spring reaches
 - Devils Washbowl – Buhl
 - Buhl – Thousand Springs
 - Thousand Springs
 - Thousand Springs – Malad
 - Malad
 - Malad – Bancroft
- 45 drain cells

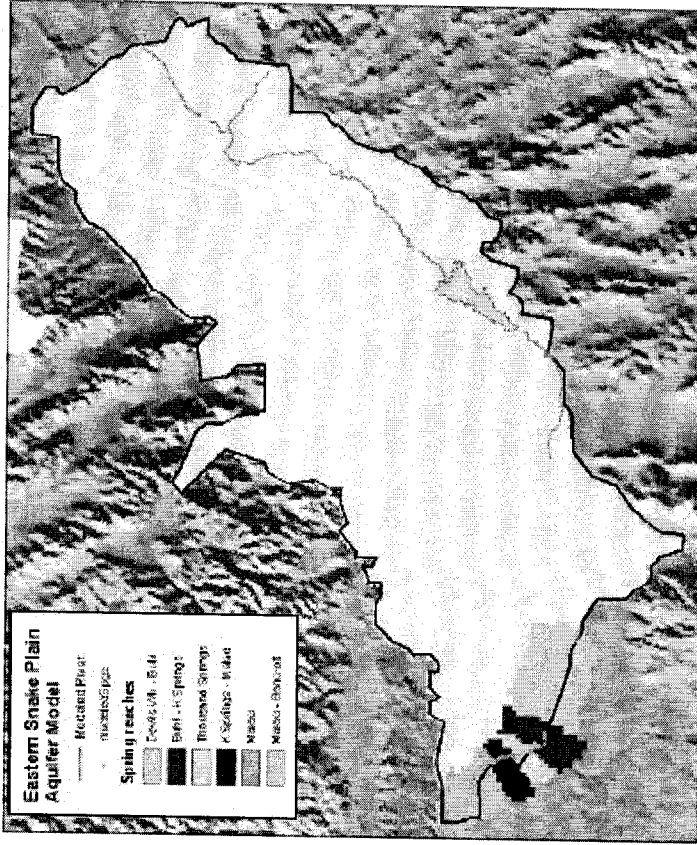
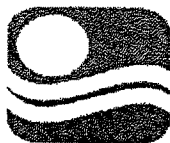


EXHIBIT “C”



**CLEAR
SPRINGS
FOODS®**

Clear Springs Foods, Inc.
General Office P. O. Box 712, Buhl, Idaho 83316
Phone 208-543-4316
Sales 800 635-8211
Fax 208-543-5608
www.clearsprings.com

May 2, 2005

Karl Dreher, Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

RE: Clear Springs Foods, Inc. Delivery Call - Snake River Farm

Dear Mr. Dreher:

Please consider this letter a formal request for water rights administration in Water District 130 pursuant to I.C. Section 42-607 in order to effectuate the delivery of Clear Springs Foods, Inc., a/k/a Clear Springs, water rights number 36-04013A, 36-0413B, and 36-07148 (Snake River Farm). As supported by the enclosed graphs and tables, these water rights have not and are presently not being delivered to the partial decree elements provided in the Snake River Basin Adjudication. Water delivered through proper administration of junior surface and ground water rights within Water District 130 will be put to beneficial use by Clear Springs. Any further delay in the administration of water rights to effectuate said deliveries will only further injure Clear Springs' operations. Clear Springs respectfully requests these matters be acted upon in an expedited fashion.

Sincerely,

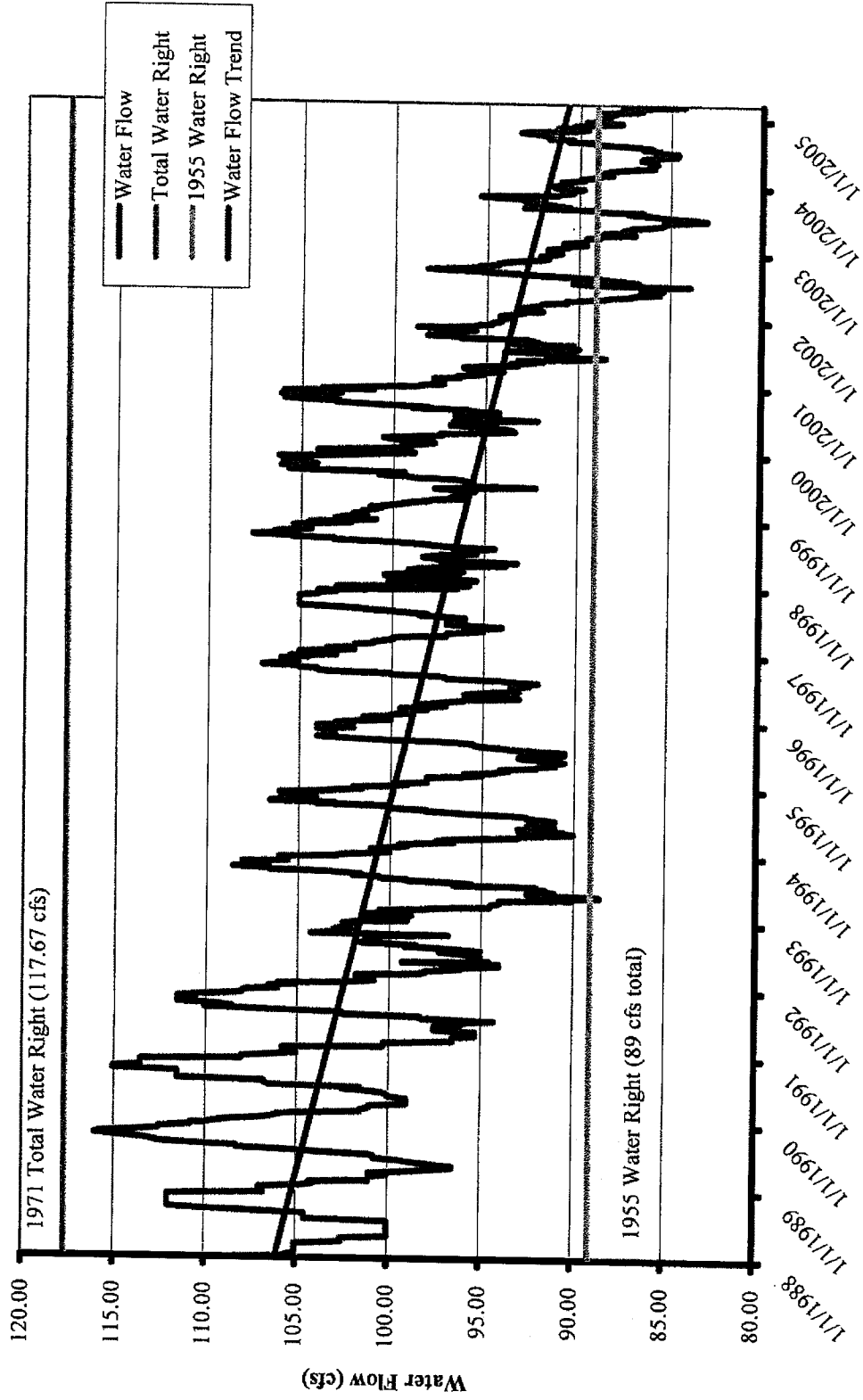
CLEAR SPRINGS FOODS, INC.

Larry Cope
President and CEO

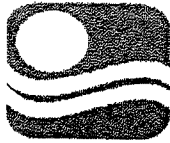
Enclosure

Snake River Farm Water Flow (cfs)

Water Right Numbers 36- 02703 (1933; 40 cfs), 36-002048 (1938; 20 cfs), 36-04013C (1940; 14 cfs), 36-04013A (1955; 15 cfs), 36-04013B (1964; 27 cfs) and 36-97148 (1971; 1.67 cfs)



Measurement Date (Jan. 1988 - March 2005)



**CLEAR
SPRINGS
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www.clearsprings.com

May 2, 2005

Karl Dreher, Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720-0098

RE: Clear Springs Foods, Inc. Delivery Call – Crystal Springs Farm

Dear Mr. Dreher:

Please consider this letter a formal request for water rights administration in Water District 130 pursuant to I.C. Section 42-607 in order to effectuate the delivery of Clear Springs Foods, Inc., a/k/a Clear Springs, water rights number 36-07083 and 36-07568 (Crystal Springs Farm). As supported by the enclosed graphs and tables, these water rights have not and are presently not being delivered to the partial decree elements provided in the Snake River Basin Adjudication. Water delivered through proper administration of junior surface and ground water rights within Water District 130 will be put to beneficial use by Clear Springs. Any further delay in the administration of water rights to effectuate said deliveries will only further injure Clear Springs' operations. Clear Springs respectfully requests these matters be acted upon in an expedited fashion.

Sincerely,

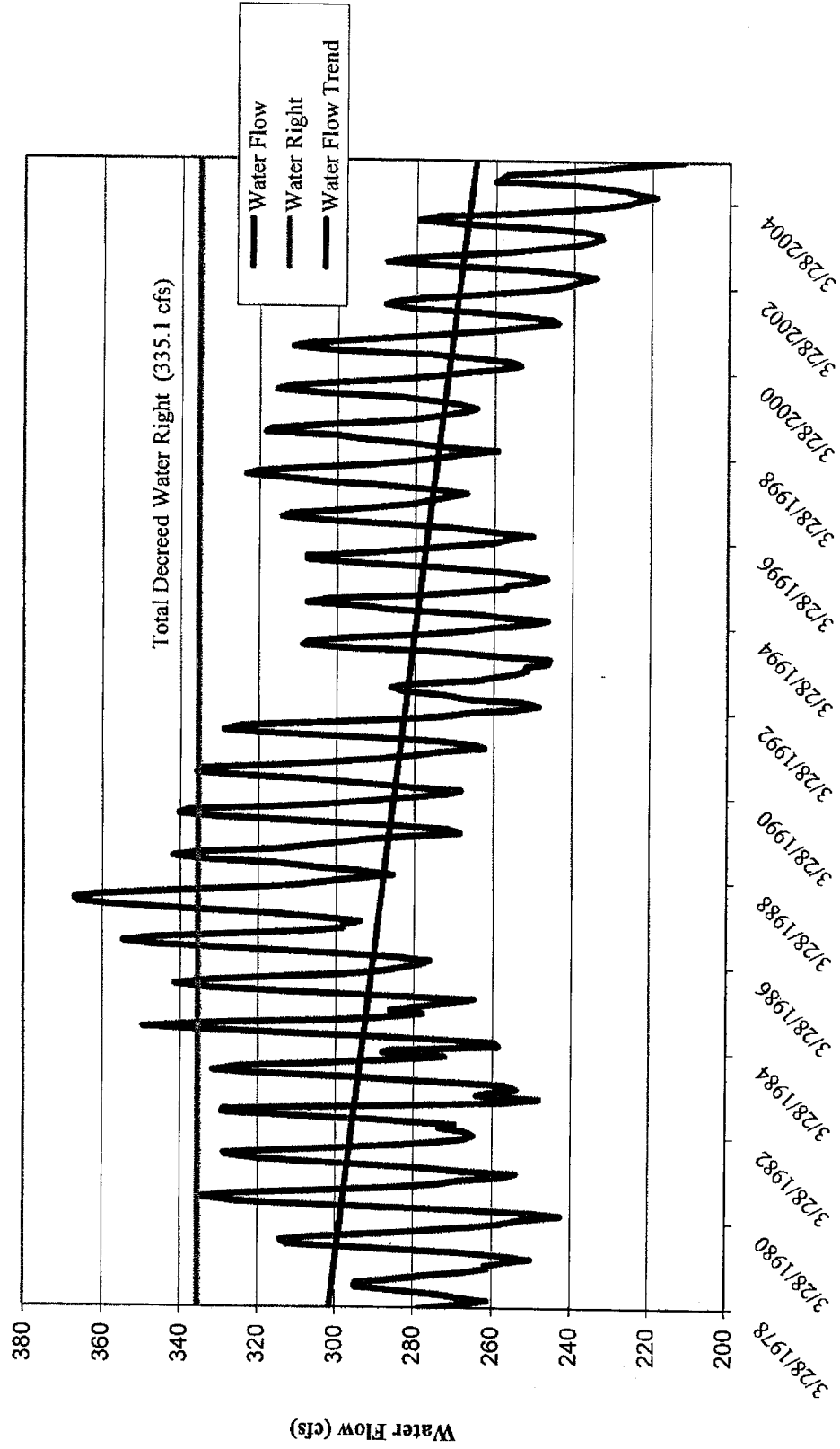
CLEAR SPRINGS FOODS, INC.

Larry Cope
President and CEO

Enclosure

Crystal Springs Farm Water Flow (cfs)

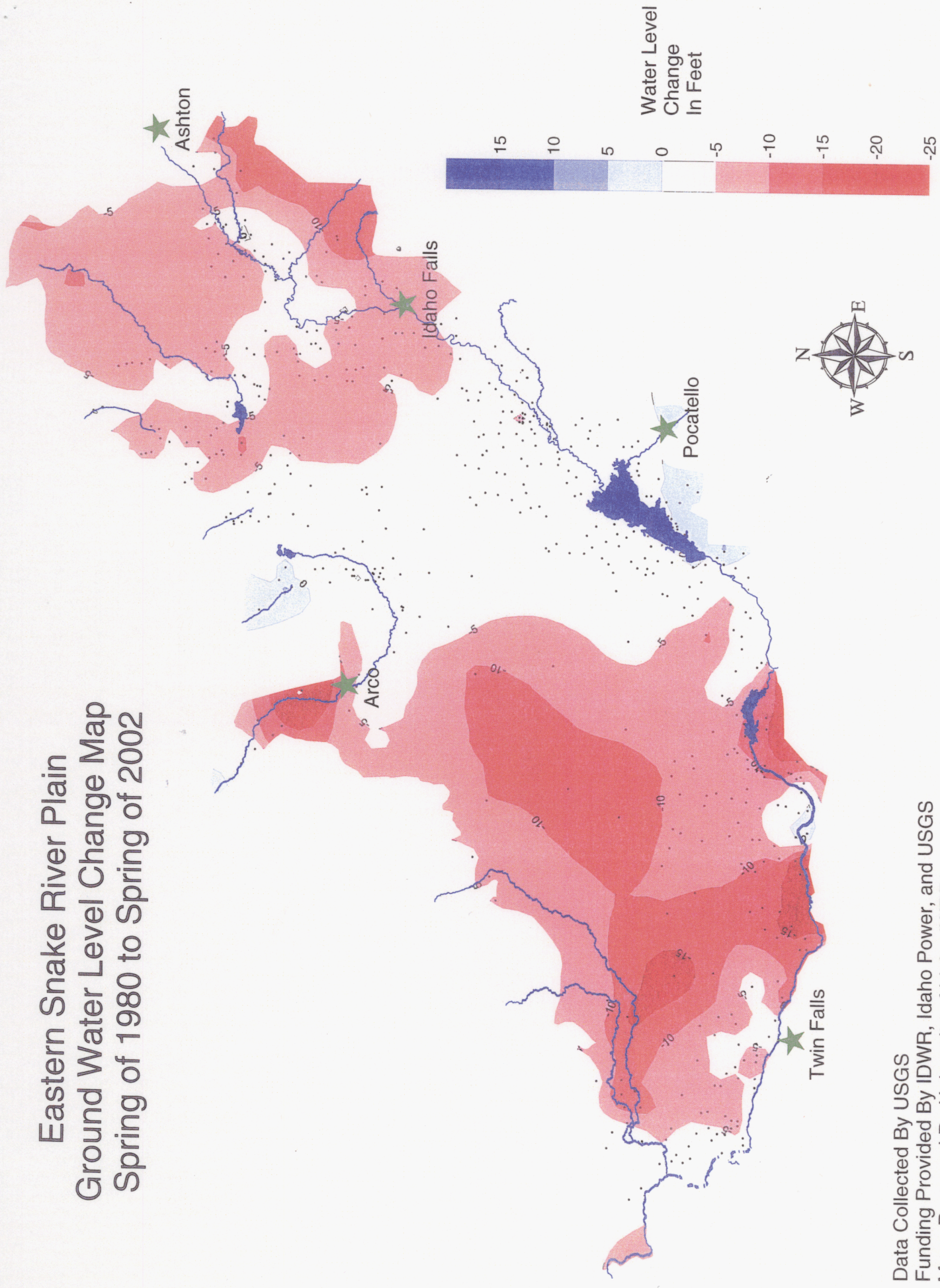
Water Right Numbers 36-07083 (1969: 300 cfs) and 36-07568 (1975: 200 cfs)



Measurement Date (March 1979 - March 2005)

EXHIBIT “D”

Eastern Snake River Plain Ground Water Level Change Map Spring of 1980 to Spring of 2002



Data Collected By USGS
Funding Provided By IDWR, Idaho Power, and USGS
Maps Prepared By University of Idaho IWRI

EXHIBIT “E”



State of Idaho
DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Statehouse Mail, Boise, Idaho 83720-9000
Phone: (208) 327-7900 FAX: (208) 327-7866

CECIL D. ANDRUS
GOVERNOR

R. KEITH HIGGINSON
DIRECTOR

May 16, 1994

Norman M. Semanko
ROSHOLT ROBERTSON & TUCKER
P.O. Box 1906
Twin Falls, Idaho 83303-1906

RE: Multiple Domestic Uses in the Banbury Area

Dear Norm:

Your May 9, 1994, letter to Allen Merritt asks for a clarification on the use of low-temperature geothermal water for multiple domestic uses in the Banbury Ground Water Management Area. IDWR understands the single-family domestic exemption to allow construction and use of a well for a home that meets the limitations of Section 42-111A, Idaho Code, or for any other use that meets the limitations of Section 42-111B, Idaho Code. Under this exemption a home can use up to 13,000 gallons per day for uses within the home, including heating, and uses outside the home associated with living in the home. These uses can include pools and spas, watering of landscaping, lawns and gardens up to one half acre in total area, and watering of livestock associated with the home. None of these uses are to be pursued primarily for commercial purposes. For example, a public swimming pool or a greenhouse producing products primarily for market would not be included in the acceptable uses.

Similarly, a multiple-ownership subdivision can drill a single well and use up to 2500 gallons per day for the entire subdivision for use within the homes and associated with the homes as described in the previous paragraph. While this seems inconsistent to divide only 2500 gpd between several homes, the last paragraph of Section 42-111, Idaho Code, specifically prevents the application of the single family domestic exemption to multiple ownership subdivisions unless the use is restricted to 2500 gpd. It is tempting to argue that the 2500 gpd can be taken without a permit for each home, but a reading of the entire section indicates that this paragraph would not have a separate meaning unless the use referred to is the subdivision, mobile home park or business establishment as a whole.

IDWR interprets Section 42-233, Idaho Code, to apply to domestic uses exempt from the permit statute. This section was added after the exemption from permitting contained in Section 42-227, Idaho Code and relates to protection of the low-temperature geothermal resource through actions unrelated to the need for a water right permit. Section 42-233,

Norman M. Semanko

Page 2

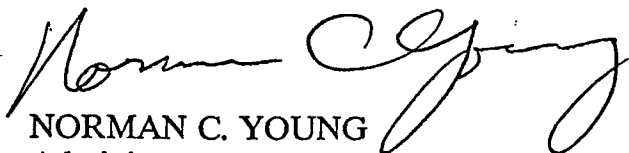
May 16, 1994

Idaho Code, precludes use of the low-temperature geothermal water for uses that do not require the heat unless a waiver is issued. Domestic uses from the BGWMA, even those exempted from acquiring a water appropriation permit, are limited to uses that require heat. Irrigation use of the warm water, even for lawns and gardens associated with a domestic use, is not authorized for any use which began after the effective date of this statute (July 1, 1987).

The creation of the BGWMA indicates that applications to appropriate low-temperature geothermal water will only be processed if the applicant demonstrates that unappropriated water is available and that other rights will not be injured. Another approach would be to demonstrate that the use will be nonconsumptive of the resource or that the water used from the aquifer will be replaced. If such information is provided, IDWR will process an application for the uses you are seeking.

If I can provide additional information on this matter, please give me a call.

Sincerely,



NORMAN C. YOUNG
Administrator
Water Management Division

- c. Loren Holmes
IDWR Water Allocation Bureau

EXHIBIT "F"



State of Idaho

DEPARTMENT OF WATER RESOURCES

STATE OFFICE, 450 W. State Street, Boise, Idaho

22

JOHN V. EVANS

Commissioner

C. STEPHEN ALLRED

Director

Mailing address

Statehouse

Boise, Idaho 83720

(208) 334-4440

ADMINISTRATOR'S MEMORANDUM

TO: Regional Offices and Water Allocations Section

FROM: Norman C. Young *Norman C. Young*

DATE: June 4, 1980

RE: Definition of "Domestic"

The Department's interpretation of "domestic", as defined relative to beneficial use for the establishment of a water right, must be divided into two categories: First, the single household domestic use, and second, the general domestic use.

SINGLE HOUSEHOLD DOMESTIC

Single household domestic use must be accurately defined because many water rights within this category are exempt from recording requirements. The current definition is provided by section 42-230(d), Idaho Code, which states:

"Domestic purposes" is water for household use or livestock and water used for all other purposes including irrigation of up to one half ($\frac{1}{2}$) acre of land in connection with said household where total use is not in excess of thirteen thousand (13,000) gallons per day. For the purposes of the exception in section 42-227, Idaho Code, "domestic purposes" shall not include water for multiple ownership subdivisions, mobile home parks, commercial or business establishments.

All surface and groundwater rights within this category are exempt from the mandatory claim filing requirement. Surface water rights developed for single household domestic use after May 20, 1971, must be represented by an application for permit.

Note that "domestic purposes" is defined as water for household use or livestock, so a stockwater well not connected with a household is considered to be included in the definition. Since range cattle consume about twelve (12) gallons per day per head, about 1000 head can be watered within the 13,000 gallon per day limit of the definition.

TO: Regional Offices and Water Allocations Section
FROM: Norman C. Young
DATE: June 4, 1980
PAGE: 2

An interpretation of the definition must be carefully made when a second hookup is attached to an existing single household domestic system. The resulting two-household system can be considered as either a multiple system or two single household systems, depending on intent. If the system was designed and built for multiple hookups, then it must be considered to be a multiple system and subject to the recording requirement. However, if the system was designed and built for one household, and the second household was added later in time, two distinct single household domestic water rights may have been established from one well.

GENERAL DOMESTIC

"Domestic" has in the past been interpreted to include a variety of uses for multi-household water systems. Henceforth this term should be used to identify only the in-house or culinary aspect for these systems. For example, the water right description for a housing subdivision should identify irrigation, recreation and fire protection in addition to domestic use. In this way acre-foot values can be assigned to each parameter for an accurate volumetric description of the water right.

A reference to section 42-111, Idaho Code, indicates that the heating of dwelling houses comes within the meaning of "domestic purposes". However, since the 1922 court case from which that statement was taken, the interpretation of the domestic use has been narrowed considerably. Heating should be designated as a unique use.

A quantification of the rate of flow necessary for the in-house or culinary use for multi-household systems has been identified in Figure 1, attached. The flow identified on this graph should be used as a guideline in determining and reviewing domestic use rates of flow on applications for permit with more than one hookup. Greater flows can be accepted if justified.

MAXIMUM
INSTANTANEOUS
WATER REQUIREMENTS
FOR
* DOMESTIC USE

Houses Served - Rate of Flow (cfs)

1	.04
2	.06
3	.08
4	.10
5	.11
6	.11
7	.12
8	.13
9	.14
10	.15
15	.18
20	.20
30	.25
40	.30
50	.33

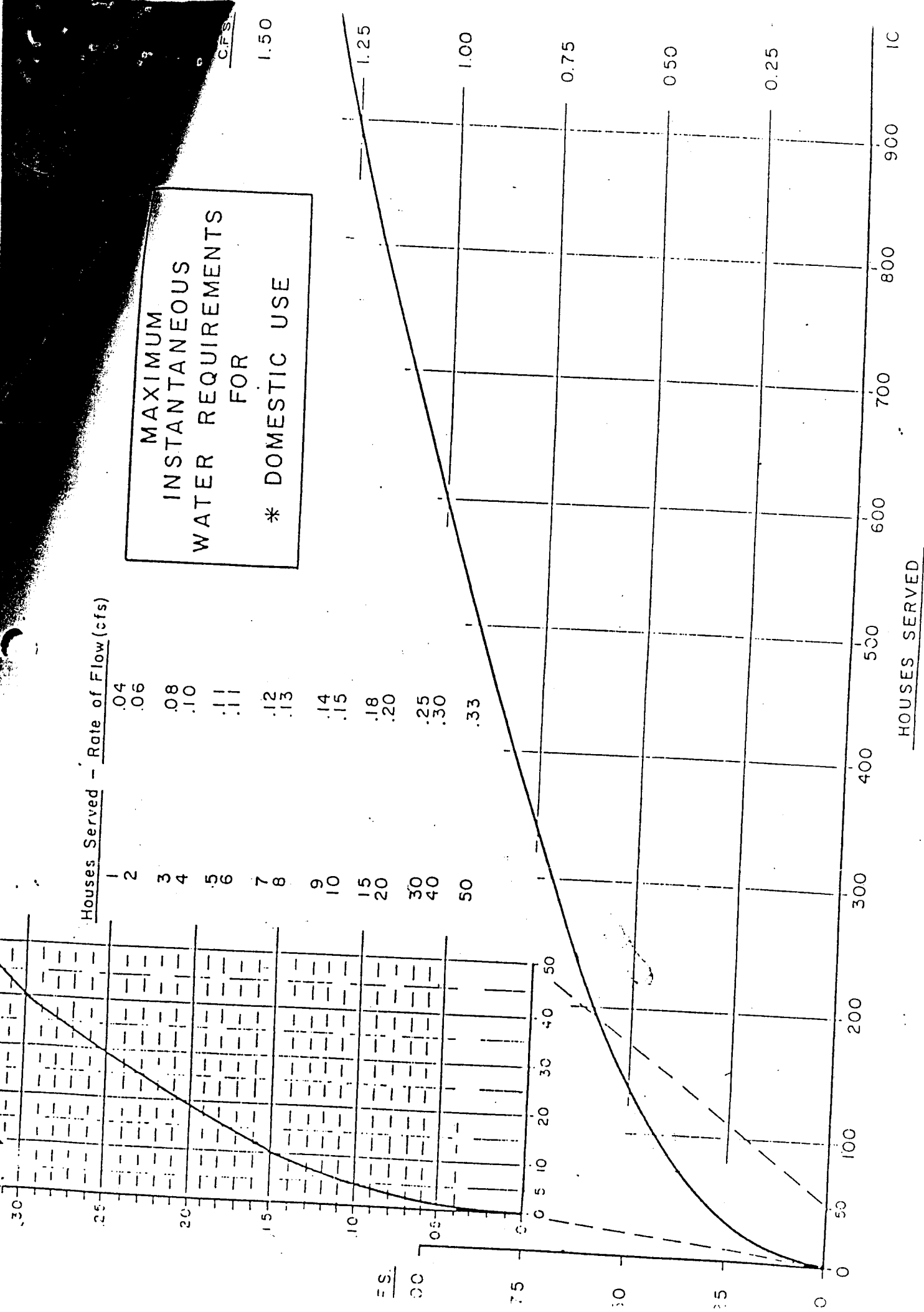


TABLE 1. PLANNING GUIDE FOR WATER USE

Type of Establishment	Gallons per day
Airports (per passenger)	3-5
Apartments, multiple family (per resident)	60
Bath Houses (per bather)	10
Camps:	
Construction, semipermanent (per worker)	50
Day, with no meals served (per camper)	15
Luxury (per camper)	100-150
Resorts, day and night, with limited plumbing (per camper)	50
Tourist with central bath and toilet facilities (per person)	35
Churches (per person)	5
Cottages with seasonal occupancy (per resident)	50
Courts, tourist with individual bath units (per person)	50
Clubs:	
Country (per resident member)	100
Country (per nonresident member present)	25
Dwellings:	
Boardinghouses (per boarder)	50
Additional kitchen requirements for nonresident boarders	10
Luxury (per person)	100-150
Multiple-family apartments (per resident)	40
Rooming houses (per resident)	60
Single family (per resident)	50-75
Estates (per resident)	100-150
Factories (per person per shift)	15-35
Highway rest area (per person)	5
Hotels:	
With private baths (2 persons per room)	60
Without private bath (per person)	50
Hospitals (per bed)	250-400
Institutions other than hospitals (per person)	75-125
Laundries, self-serviced (gallons per washing, i.e., per customer)	50
Motels:	
With bath, toilet and kitchen facilities (per bed space)	50
With bed and toilet (per bed space)	40
Parks:	
Overnight with flush toilets (per camper)	25
Trailers with individual bath units, no sewer connection (per trailer)	25
Trailers with individual bath units, connected to sewer (per person)	50
Picnic:	
With bathhouses, showers and flush toilets (per picknicker)	20
With toilet facilities only (per picknicker)	10