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Attorneys for Clear Springs Foods, Inc.

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Department of Water Resources
Southern Region

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

IN THE MATTER OF APPLICATION)
FOR TRANSFER NO. 71178)
in the name of JOHN DENNIS KOYLE)
(water right no. 37-2663))
_____)

**CONDITIONAL WITHDRAWAL
OF PROTEST**

CLEAR SPRINGS FOODS, INC. (hereinafter "Clear Springs"), by and through its attorneys of record, BARKER ROSHOLT & SIMPSON LLP, hereby files this *Conditional Withdrawal of Protest* to the above-numbered application for transfer filed by John Dennis Koyle ("Applicant"). The reasons for this conditional withdrawal are set forth as follows:

Counsel for Clear Springs and the Applicant met on November 23, 2004 to discuss the application for transfer and the reasons for Clear Springs' protest. One of Clear Springs' primary concerns involved the change of the place of use for the Applicant's water right no. 37-2663. Since the water right contains a remark that states "use of this right is combined with water from the Big Wood Canal Co.", Clear Springs was unsure whether the new place of use had appurtenant surface water rights. The Applicant provided Clear Springs with sufficient information to demonstrate that the new place of use also has appurtenant surface water rights.

Specifically, the Applicant provided Clear Springs with a copy of a document from the Big Wood Canal Company that listed the number of shares appurtenant to the new place of use. *See* Exhibit A. The Applicant's new place of use will have 150 shares of Big Wood Canal Company water appurtenant to 132.3 acres of the 156 total acres relevant to the transfer.

In addition to providing information about appurtenant surface water rights, the Applicant also provided Clear Springs with information that demonstrated reliance on the ground water right has decreased over the past year. Based upon historical power records, the Applicant's reliance on the ground water right decreased from 1500 hours per year in 2002 and 2003 to only 300 hours per year in 2004. The Applicant stated that he can also use wastewater from the old place of use to water the new place of use. Based upon these facts, the Applicant stated that his irrigation system is more efficient and that the new place of use is less dependant upon groundwater from water right no. 37-2663.

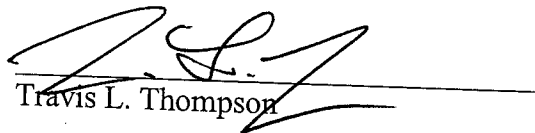
The Applicant's information satisfied Clear Springs' concerns with the transfer application. It is clear that the new place of use will have appurtenant surface water rights to use in combination with water right no. 37-2663. Accordingly, Clear Springs hereby withdraws its previously filed protest to this application subject to the following condition. IDWR's approval of the transfer must contain language restricting the use of water right no. 37-2663 in combination with appurtenant surface water rights at the proposed place of use:

Use of this right is combined with water from the Big Wood Canal Company (BWCC) that is represented by 150 shares of BWCC stock. The shares are appurtenant to 132.3 acres within the 156 acres described in this right's place of use. These shares shall remain appurtenant to 132.3 acres within the total 156 acres that comprise the place of use. If the water right holder's 150 BWCC shares are ever temporarily or permanently transferred from the place of use, use of this right shall be discontinued by IDWR. The water right holder shall not exceed the historical use made under this water right. The water right holder agrees to report all water use under this right as required by the Watermaster in Water District No. 130.

The above condition is necessary to ensure that water right no. 37-2663 is not transformed from a "supplemental" to a "primary" ground water right at some point in the future. The remark clarifies the limitations on the water right. The condition also ensures that use of the water right will not exceed historical practice and that the water right holder will report water use as required by the Watermaster in Water District No. 130. Clear Springs specifically requests such a condition on any approval of the transfer application. If IDWR includes the above condition, Clear Springs hereby agrees to withdraw its protest.

DATED this 10th day of December 2004.

BARKER ROSHOLT & SIMPSON LLP

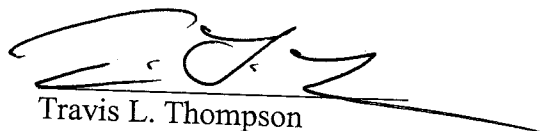

Travis L. Thompson

Attorneys for Clear Springs Foods, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of December, 2004, I served a true and correct copy of the foregoing *Conditional Withdrawal of Protest*, by depositing same in the United States mail, postage prepaid, addressed to the following:

John Dennis Koyle
1550 East 1800 South
Gooding, Idaho 83330


Travis L. Thompson