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Idaho Statewide Water Rights Project

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FILED
TWIN FALLS CO., IDAHO

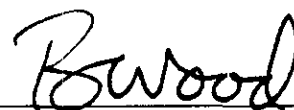
IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	ORDER OF PARTIAL DECREE
	)	
Case No. 39576	)	For Water Right 36-07218
_____	)	

The Notice of Challenge filed in the above subcase having been heard and ruled upon, IT IS
THEREFORE ORDERED that water right 36-07218 is hereby **decreed** as set forth in the attached
Partial Decree Pursuant to I.R.C.P. 54(b).

IT IS SO ORDERED.

DATED APR 10 2000



BARRY WOOD
Administrative District Judge and
Presiding Judge of the
Snake River Basin Adjudication

MICROFILMED

APR 10 2000

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

200 APR 10 AM 10:20

In Re SRBA)
) PARTIAL DECREE PURSUANT TO
) I.R.C.P. 54(b) FOR
Case No. 39576)
) Water Right 36-07218

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED

NAME & ADDRESS: CLEAR SPRINGS FOODS INC
THE PROSPECT CO
PO BOX 712
BUHL ID 83316

SOURCE: SPRINGS TRIBUTARY: CLEAR LAKES

SOURCE IS ALSO KNOWN AS CLEAR SPRINGS.

QUANTITY: 51.55 CFS

FACILITY VOLUME 335,504 CU. FT.

PRIORITY DATE: 01/24/1972

POINT OF DIVERSION: T09S R14E S02 SESWNE Within GOODING County
LOT 5 (SWSENE)
NENWSE

MULTIPLE POINTS OF DIVERSION LOCATED IN T09S, R14E, S02,
LOT 5 (SWSENE), SESWNE, NENWSE.

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	FISH PROPAGATION	01-01 12-31	51.55 CFS

PLACE OF USE: FISH PROPAGATION Within GOODING County
T09S R14E S02 NWSE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

A MEASURING DEVICE OF A TYPE APPROVED BY IDWR SHALL BE
MAINTAINED AS A PART OF THE DIVERTING WORKS.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE
ENTRY OF A FINAL UNIFIED DECREE. SECTION 42-1412(6), IDAHO CODE.

THE REMARK ADDRESSING FACILITY VOLUME IS INCLUDED IN THIS
WATER RIGHT ONLY BECAUSE THE REMARK APPEARED ON THE LICENSE. THE
REMARK ADDRESSING FACILITY VOLUME DOES NOT DEFINE THE EXTENT OF
BENEFICIAL USE AND CANNOT BE USED TO LIMIT ANY ELEMENT OF THIS
WATER RIGHT. THE REMARK SHALL NOT PREVENT THE OWNER OF THE
LICENSE FROM EXPANDING FACILITY VOLUME.

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance
with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a
final judgment and that the court has and does hereby direct that the above judgment or order shall be a final
judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

B Wood

BARRY WOOD
Administrative District Judge
Presiding Judge of the
Snake River Basin Adjudication

SRBA PARTIAL DECREE PURSUANT TO I.R.C.P. 54(b)
Water Right 36-07218

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PAGE 1
MAR-31-2000

DANIEL V. STEENSON (ISB #4332)
CHARLES L. HONSINGER (ISB #5240)
S. BRYCE FARRIS (ISB #5636)
RINGERT CLARK CHARTERED
455 S. Third, P. O. Box 2773
Boise, Idaho 83701-2773
Telephone: (208) 342-4591
Facsimile: (208) 342-4657
Attorneys for Petitioner

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AUG 15 2003

Department of Water Resources

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

IN THE MATTER OF PROPOSED	)	
AMENDMENTS TO JUNE 13, 2002	)	
AMENDED WATERMASTER	)	PETITION TO INITIATE CONTESTED
INSTRUCTIONS FOR DISTRIBUTION OF	)	CASE
WATER AMONG RIGHT NOS. 36-02659,	)	
36-02708, 36-7004, 36-7201 AND 36-7218	)	
IN WATER DISTRICT NO. 130	)	
	)	

COMES NOW, Petitioner, Clear Lakes Trout Company, Inc., (hereinafter "Clear Lakes") by and through its attorneys, Ringert Clark, Chartered, and files this petition for initiation of an administrative contested case for the following relief and upon the following facts and authorities.

REQUESTED RELIEF

By this petition, Clear Lakes seeks:

- 1) review and rescission of the modifications to IDWR's June 13, 2002 Amended Watermaster Instructions for Distribution of Water Among Water Rights Nos. 36-02659, 36-02708, 36-07004, 36-7201 and 36-07218 that are proposed by Watermaster Cindy Yenter's July 31, 2003 Memorandum to Tim Luke;

FACTS

Clear Lakes diverts water from springs commonly known as "Clear Lakes Springs" pursuant to water right nos. 36-02708 and 36-07004, to operate its fish hatchery. Water right no. 36-02659, for 100 cfs, is the most senior right to the springs and water right no. 36-07004, for 75 cfs, is the third priority right to the springs. The second priority water right to the springs, no. 36-02708 for 200 cfs, is owned by Clear Springs Foods, Inc. ("Foods") to rear fish in its hatchery, located adjacent to Clear Lakes' hatchery.

The Director issued Amended Watermaster Instructions for Distribution of Water Among Water Rights Nos. 36-02659, 36-02708, 36-07004, 36-7201 and 36-07218 on June 13, 2002. Those Amended Watermaster Instructions provide in relevant part that:

9. If the total flow is less than 375 cfs ($\pm$ 5 cfs), then the watermaster is to adjust the 6-ft adjustable weir such that the first 100 cfs of spring flows goes to Clear Lakes, the next 200 cfs of spring flows or part thereof goes to Clear Springs, and any remaining flow goes to Clear Lakes.
10. If an adjustment to the 6-ft adjustable weir is required, the watermaster should do the following (subject to further confirmation):
 - (a) Determine the required increase or decrease in flows to Clear Lakes to provide the flows to Clear Lakes and Clear Springs set forth in 9. above.
 - (b) Measure the height in feet of the gate stem above the adjusting wheel nut on the 6-ft adjustable weir discharging from the west diversion pool and subtract 0.64 (datum adjustment) from the measured gate stem height.
 - (c) Subtract (b) from the gage reading (in feet) from the staff gage in west diversion pool above Clear Springs' 22-ft weir.
 - (d) Determine discharge through the 6-ft adjustable weir using the attached table for the 6-ft adjustable weir.
 - (e) Add or subtract the required change in flows to Clear Lakes from (a) above to the measured discharge through the 6-ft adjustable weir determined from

(d) and determine what the change in height for the gate stem measured from the adjusting wheel nut on the 6-ft adjustable weir should be to provide the changed flow to Clear Lakes.

- (f) Adjust the 6-ft adjustable weir up or down with the handwheel to achieve the required gate stem height as determined in (e).
- (g) Repeat (a) through (f), if necessary, after allowing sufficient time for the change in flows to stabilize through the hatcheries.

On June 19, 2002 the watermaster sent a "Notice of Intent to Redistribute Flows" to Clear Lakes and to Foods. The watermaster's letter gave notice that the watermaster would reduce Clear Lakes' diversions by 27 cfs in 14 days, on July 3, 2002. The letter also advised Clear Lakes that it "may file a petition with the Director of IDWR within 15 days of receipt of this notice seeking a hearing pursuant to Idaho Code § 42-1701A(3)." On July 5th, 2002, pursuant to the Director's instructions, the watermaster adjusted the headgate for Clear Lakes' senior water right no. 36-02659 in accordance with her June 19, 2002 Notice of Intent to Redistribute Flows.

On June 20, 2003, the watermaster issued a Notice of Intent to Resume Administration of Clear Lakes Area Water Rights. The Notice states that the watermaster intended to reduce the distribution of water to Clear Lakes in the amount of 14 cfs by adjusting "the elevation of the 6-foot weir in order that the Clear Springs right no. 36-2708 is satisfied." As explained by the Director's July 23, 2003 letter to Clear Lakes' attorney Charles Honsinger, the watermaster's "adjustments to the 6-ft adjustable weir at the joint diversion structure" on July 23, 2003 "did not provide the full amount of water to which Clear Springs is entitled to receive and apply to beneficial use under its water right no. 36-02708." On July 29, 2003, Tim Luke, IDWR Water Distribution Section Manager sent a Memorandum to Watermaster Cindy Yenter authorizing her,

pursuant to Idaho Code § 42-607, to investigate alternative or additional steps necessary to "shut or fasten" the diversion for Clear Lakes water right no. 36-07004 in such manner as may be necessary to accomplish the distribution of water set forth in instruction no. 9.

The issue of whether the Watermaster is authorized to investigate and implement "alternative or additional steps necessary to "shut or fasten" the diversion for Clear Lakes water right no. 36-07004" is not an issue that has previously been raised before IDWR.

On July 31, 2003, in a Memorandum to Tim Luke, Watermaster Cindy Yenter set forth the additional steps required to redistribute flows at the Clear Lakes and Clear Springs joint diversion under the present spring flow conditions:

If total spring flows are less than 375 cfs *and* discharge at the joint diversion (west pool) falls to less than about 225 cfs, additional steps are required in order to distribute the full 200 cfs to the Clear Springs right no. 36-2708. Those steps are:

- 1) Insert dam boards in the channel slots located immediately behind the

water over the 8-ft weir. Since this is not an official measuring point, dam boards do not have to completely seal.

- 2) Simultaneously, lower the adjustable weir until the staff gage in the joint diversion pool reads 1.52'

On August 1, 2003, Clear Lakes' counsel's wrote to the Watermaster expressing concerns that the proposed implementation of additional steps did not give Clear Lakes adequate time to evaluate impacts of the additional steps, and that Clear Lakes was entitled to administrative remedies because the Watermaster's proposed additional steps amended "final" Watermaster instructions. The Director replied to Clear Lakes' counsel's correspondence in his letter of August 4, 2003, stating that he believed the steps identified by the Watermaster were consistent with his prior instructions and that he did not intend to issue further instructions.

BASIS FOR PETITION

IDWR's July 3, 2003 Order Denying Petition to Initiate Contested Case issued In the Matter of June 20, 2003 Notice of Intent to Resume Administration of Clear Lakes Area Water Rights states that Idaho Code § 42-1701A(3)

applies where the aggrieved person has not previously been afforded an opportunity for a hearing on the matter. If petitioner believes there are new or different actions by IDWR or new or different issues before the agency that have not been previously raised or decided, petitioner may file a petition that clearly identifies the new issues and the grounds for review.

The issues of whether the Watermaster can investigate or implement "alternative or additional steps necessary to "shut or fasten" the diversion for Clear Lakes water right no. 36-07004" and whether the June 13, 2002 Amended Watermaster Instructions should be modified so as to provide for additional steps under different conditions clearly raises "new or different" issues that have "not been previously raised or decided." Accordingly, Clear Lakes is entitled to a hearing on these issues.

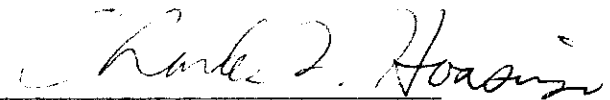
AUTHORITIES FOR THIS PETITION

This petition is filed pursuant to the following:

1. Idaho Code, Title 42, Chapter 6, and the Director's February 19, 2002 Final Order Creating Water District 130, under which IDWR has ongoing responsibility to administer water rights in Water District 130.
2. I.C. § 42-1701A(3);
3. IDAPA 37.01.01.104, which provides that a formal proceeding must be initiated by a pleading listed in IDWR Rules 210-280;
4. IDAPA 37.01.01.230.01(c), which provides for petitions initiating contested cases;

Dated this 15th day of August, 2003.

RINGERT CLARK, CHARTERED

By: 
Charles L. Honsinger
Ringert Clark Chartered
Attorneys for Petitioner

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Department of Water Resources

MEMORANDUM

TO: THE FILES 36-2708, 36-7004, 36-7201 AND 36-7218

FROM: Deborah Gibson

DATED: August 5, 2003

Refer to Water Right File No. 36-2659 for documentation filed in the matter of Petition to Modify Amended Watermaster Instructions for Distribution of Water Among Water Right Nos. 36-2659, 36-2708, 36-7004, 36-7201 and 36-7218 in Water District No. 130. Petitioner: Clear Lakes Trout Company, Inc. & Respondent: Clear Springs Foods, Inc.

Note: This matter was appealed to the Fourth Judicial District Court in Ada County, No. CV-OC-0304746D, on June 19, 2003.

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AUG 12 2003



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

April 11, 2002

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

Larry Cope
Clear Springs Foods, Inc.
P. O. Box 712
Buhl, ID 83316

Kay Hardy
Clear Lakes Trout Co.
1301 South Vista
Boise, ID 83705

Fax: (208) 543-5608

Fax: (208) 342-4252

VIA FIRST CLASS MAIL AND FACSIMILE

Re: Administration of Water Rights Nos. 36-020708, 36-07004, and 36-07218

Dear Larry and Kay:

Thank you for meeting with me at the shared diversion works for your facilities last Tuesday, April 2. Based on the location of the shared diversion works in relationship to the locations for the various springs discharging into the pool regulated by the diversion works, I believe that Water Rights Nos. 36-020708, 36-07004, and 36-07218 will be subject to administration through the watermaster for the new Water District No. 130.

To develop what I determine to be appropriate instructions for the watermaster, I am reviewing the following documents:

1. Agreement between Clear Lakes Trout Company and Clear Springs Trout Company dated March 13, 1980, and signed by Earl M. Hardy and John C. Hepworth, respectively. (Provided by Larry Cope on April 2, 2002)
2. Letter from John C. Hepworth to Randall C. Fredericks dated March 10, 1980. (Provided by Larry Cope on April 2, 2002)
3. Letter from Randall C. Fredericks to John Hepworth dated March 13, 1980. (Provided by Larry Cope on April 2, 2002)
4. Letter from Randall C. Fredericks to John Hepworth dated March 20, 1980, and "approved" by John C. Hepworth on March 20, 1980. (Provided by Larry Cope on April 2, 2002)

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5. Stipulation for Dismissal with Prejudice, Clear Lakes Trout Company v. Clear Springs Trout Company and Clear Springs Trout Company v. Idaho Power Company, Case No. 16626, District Court of the Fifth Judicial District, dated March 20, 1980. (Provided by Larry Cope on April 2, 2002)
6. Report on Water Measurement and Distribution prepared for Clear Lakes Trout Company and Clear Springs Trout Company by C. E. Brockway and Keith E. Anderson, dated December 1988. (Provided by Larry Cope on April 2, 2002)
7. Order on Motion to Alter or Amend Judgment or in the Alternative, Motion to Reconsider Memorandum Decision and Order on Challenge (Clear Lakes v. Clear Springs / Separate Source), Case No. 39576, District Court of the Fifth Judicial District In Re SRBA, dated August 15, 2000.
8. Supreme Court of the State of Idaho 2002 Opinion No. 17, In Re SRBA Case No. 39576; Clear Springs Foods, Inc. v. Clear Lakes Trout Company; Filed January 18, 2002.
9. Memorandum to Terry Huddleston from Butch Fahrenwald, dated February 21, 2002, setting forth tabular listing of measured flows to Clear Springs Foods Clear Lake Farm, Idaho Trout Producers Clear Lake Farm, and total flow on quarterly basis beginning October 13, 1982, through January 16, 2002. (Provided by Larry Cope on April 2, 2002)
10. Table of measured water flows to Clear Springs Foods - Clear Lake Farm, Idaho Trout Producers - Clear Lake Farm, and totals, on approximately weekly basis beginning July 12, 2000, through December 10, 2001.

If either of you have other pertinent information that you believe I should consider in developing my instructions to the watermaster on administering the subject water rights, please submit such information to me, with copies to the other party, by April 25, 2002.

Sincerely



Karl Dreher
Director

c: John Simpson – Facsimile to (208) 344-6034
Dan Steenson – Facsimile to (208) 342-4657

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JUN 05 2002

6-30-72

Upstream conditions will
control this structure. ∴
These conditions should be
properly described to enable
the dept. to determine if they
change.

Ken D.

36-72/8
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JUN 05 2002

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JUN 05 2002

State of Idaho

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Department of Water Resources

FEB - 7 1991

ASSIGNMENT OF PERMIT

Department of Water Resources
Southern Region Office

I, The Prospect Company & Clear Springs Trout Company, hereby assign to Clear Springs Trout Company
of P.O. Box 712, Buhl, ID 83316 Address

All my right, title, and interest in and to Permit Nos. 36-7218, 36-7201 and 36-7568
to appropriate the public waters of the State of Idaho.

The following described portion of my right, title, and interest in and
to Permit No. _____ to appropriate the public waters of the
State of Idaho.

(Describe that portion of the permit being assigned by listing the acreage
within each 40 acre subdivision, the point of diversion and the amount of
water in cubic feet per second for direct diversion, or acre feet for storage)

Made this 25th day of January, 1991.

Clear Springs Trout Company

by: [Signature]
Permit Holder Larry W. Cope,
President

N/A
Spouse of Permit Holder

State of Idaho)
County of Twin Falls) ss

On this 29th day of January, 1991, personally
appeared before me the signer(s) of the above instrument, who duly acknowledged
to me that he (she) (they) executed the same.

[Signature]
Notary Public residing at
Buhl, ID

s e a l

My commission expires:
December 23, 1993

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State of Idaho Department of Water Resources

Department of Water Resources
SOUTHERN DISTRICT OFFICE

WATER RIGHT LICENSE

License of Water Right No. 36-7218 Priority January 24, 1972 Amount 51.55 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. 36-7218 issued pursuant to Application for Permit dated January 24, 1972,
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 251.55 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
FISH Propagation	from <u>January 1</u> to <u>December 31</u>	at <u>51.55</u> cfs and	<u>N/A</u>
	from _____ to _____	at _____ cfs and	
	from _____ to _____	at _____ cfs and	

(both dates inclusive)

Subject, however, to the condition that no more than 51.55 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 $\frac{1}{4}$ 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 _____

56-7218

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.

Facility Volume = 335,504 cubic feet.

A measuring device of a type approved by this Department shall be maintained as a part of the diverting works.

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 19TH day of September, 19 85.

Acting for the Director

