BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR PERMIT NO. 37-21136 IN THE NAME OF GLANBIA FOODS, INC	))))	**PRELIMINARY ORDER**

This matter having come before the Idaho Department of Water Resources ("Department") in the form of a protested application for permit and the Department having held a conference and a hearing in the matter, the hearing officer enters the following Findings of Fact, Conclusions of Law and Preliminary Order:

FINDINGS OF FACT

1. On July 3, 2003, Glanbia Foods, Inc. ("applicant") submitted Application for Permit No. 37-21136 ("application") to the Department proposing the diversion of 8.0 cubic feet per second ("cfs") of ground water to be used for the irrigation of 400 acres within a 1,422.7 acre permissible place of use within parts of Section 26, T4S, R19E, B.M. and Sections 7, 8, 17 and 18, T4S, R20E, B.M. The applicant proposes two new wells to be located in NW1/4NE1/4 and NE1/4NE1/4 Section 18, T4S, R20E, B.M. The irrigation use is associated with land application of waste water from the applicant's cheese processing facility ("processing facility") near Richfield, Idaho.

(Note: The "1/4" designations will be omitted from subsequent legal descriptions in this order).

As a part of the application for permit, the applicant proposes to mitigate its use of water by drying up 400 acres authorized for irrigation under water right nos. 36-16111, 36-16112, 36-16115 and 36-16123 located as follows:

T8S, R21E, B.M.
- Section 24
  - NESW 40 acres
  - SESW40
  - NESE 35.8
  - SESE 8.2
- Section 25
  - NENE 40
  - NWNE 40
  - SWNE 31
  - SENE 20
  - NENW 40
  - SENW 14

Section 30

NWNW	40	
SWNW	35	
NWSW	16	
Total	400	acres

This acreage is generally located about 26 miles south and 9 miles east of the place of use proposed in the application.

2. The Department published notice of the application that was subsequently protested by the city of Richfield, Ralph Riley, Jr. Rodney Riley, Marvin J. Jones, Ronald W. and Juanita Thompson, Robert J. Furtado, Michael Telford, Gail E. Loynd, Tonette Kennison, Eric Jensen, Heather L. Saunders, West Side Water Ass'n, Dallas Ward, Chad Ward, Allen S. and Diana L. King, Guy Bonnivier and Bob and Kay Billington ("protestants").

3. At a pre-hearing conference conducted by the Department on December 10, 2003, the protestants agreed that the interests of all the protestants would be adequately represented by full party participation by the city of Richfield, Rodney Riley, Gail Loynd and Heather Saunders in any future hearing scheduled by the Department.

4. On January 26, 2004, the Department conducted a hearing in the matter. The applicant was present and was represented by William G. Meyers III. Craig Hobdey represented protestant city of Richfield. Protestant Rodney Riley was present and represented himself and other protestants. Protestants Gail Loynd and Heather Saunders did not appear at the hearing.

5. Issues the Department can consider in this matter are as follows:

a. Whether the appropriation will reduce the quantity of water under existing water rights;
b. Whether the water supply itself is insufficient for the purpose for which it is sought to be appropriated;
c. Whether the application is made in good faith, or is made for delay or speculative purposes;
d. Whether the applicant has sufficient financial resources with which to complete the work involved therein;
e. Whether the proposed appropriation will conflict with the local public interest; and
f. Whether the proposed appropriation is contrary to conservation of water resources within the state of Idaho.

At the hearing, the protestants stipulated that issues c and d above are not issues that the protestants are concerned about.

6. Exhibits premarked, offered or accepted as a part of the record are as follows:

Applicant's Exhibits:

1. Curriculum Vitae - Charles E. Brockway
2. Application for Drilling Permit - Glanbia Foods, Inc.
3. Drilling Permit - Glanbia Foods, Inc.
4. Well Schematic for Glanbia Foods, Inc.
5. Well Driller's Report
6. Letter dated October 20, 2003, to Rick Warren from Charles E. Brockway together with Groundwater Well Pumping Test Data
7. Well Driller Reports
8. Glanbia Foods Irrigation Wells, Area Well Location Analysis
9. Map - Eastern Snake River Plain Aquifer, Glanbia Foods, Inc. Proposed Water Permit and Mitigation Site
10. USGS Hydrographs (2 pages)
11. Letter dated July 3, 2003, to Allen Merritt from Charles E. Brockway together with attachments
12. Water shut off dates from Magic Reservoir by year
13. Billings to Glanbia Foods Inc. from Big Wood Canal Company and American Falls Reservoir District No. 2
14. Wastewater-Land Application Permit
15. Application for Wastewater Land Application Permit
16. Idaho Water Company - Agreement for Purchase and Sale of Water Right
17. Project Overview Statement - Glanbia
18. Capital Expenditure Request Form 2003 - Glanbia
19. Memo dated May 1, 2003 - Capital Approvals 2003
20. Copy of check from Glanbia Foods to Idaho Water Company
21. Glanbia Foods, Inc. A/P Invoice Register - Lincoln County Tax Collector (7 pages)
22. Glanbia Foods, Inc. A/P Invoice Register - City of Richfield (3 pages)
23. 2001 Charitable Contribution Log.xls
24. Richfield Consumptive Use from Allen and Brockway 1983

Protestant's Exhibits:

The protestants did not offer any exhibits.

In addition to the exhibits identified above, the hearing officer also officially noticed the Department's application for permit file including the application, amended application, the advertisement, the protests, correspondence related to the application, and other information typically included in a water right file of the Department. Also noticed were water right records in Department files, well driller

reports, and holdings in past decisions and orders of the Department as the holdings and orders may relate to the above captioned matter.

7. The applicant has drilled an 18 inch diameter well ("applicant's well") to a depth of 500 feet pursuant to Drilling Permit No. 804401 issued by the Department and has conducted a pump test on the well with stepped discharges from the well ranging from 650 gallons per minute ("gpm") to 2,340 gpm. At a discharge of 2,340 gpm, the drawdown in the applicant's well was 0.6 feet after pumping for about 8 hours. Measurements taken during the pumping test at a domestic well located about ½ mile from the applicant's well did not show any drawdown in the domestic well. (See applicant's Exhibits 5 and 6).

8. Based on information obtained from the pumping test, the applicant has calculated drawdowns at a rate of diversion of 8 cfs at different distances from the applicant's well. The calculations show that after 100 days of pumping, the drawdown in the applicant's well would be about 1.26 feet and the drawdown in a well located a ½ mile away would be about 0.31 feet. (See Applicant's Exhibit 6).

9. Using the Eastern Snake River Plain Ground Water Model developed by the University of Idaho, the applicant has calculated the hydrologic impact of pumping the applicant's well upon reaches of the Snake River. The analysis shows that the applicant can pump up to 1,600 acre feet per year until the year 2022 and then must reduce the volume pumped at the Richfield site to 1,488 acre feet per year to assure there is no additional hydrologic impact to the Snake River. (See Applicant's Exhibit 11).

10. The applicant holds 495 shares of water provided by the Big Wood Canal Company "BWCC"). The amount of water actually available each year varies and is not consistently available throughout the irrigation season to insure adequate water for land application of wastewater from the applicant's processing facility near Richfield. (See Applicant's Exhibit 12).

11. The applicant has entered into an agreement with the Idaho Water Company to purchase the water rights that have been proposed for mitigation. (See Applicant's Exhibit 16).

12. The irrigation use of water proposed by the applicant in connection with land application of waste water is an environmentally sound practice that is generally recognized in Idaho as a beneficial use of water.

13. Approval of the application will result in an increase in the number of employees at the applicant's Richfield processing plant from 55 employees in 2002 to about 65 employees in 2004. The annual payroll for the processing plant is estimated to change from about 1.8 million dollars in 2002 to about 2.65 million dollars in 2004.

14. Capital expenditures associated with the application, including acquisition of water rights, construction of the well and installation of the pump are estimated to be in excess of $747,000. (See Applicant's Exhibit 18).

15. The written protests to the application describe that the protestants' primary concern is that the proposed appropriation will lower the water table and will result in existing domestic well going dry.

16. At the hearing, the protestants did not call any witnesses, did not present any testimony and did not offer any exhibits.

CONCLUSIONS OF LAW

1. Section 42-203A, Idaho Code, provides in pertinent part as follows:

> In all applications whether protested or not protested where the proposed use is such (a) that it will reduce the quantity of water under existing water rights, or (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (c) where it appears to the satisfaction of the director that such application is not made in good faith, is made for delay or speculative purposes, or (d) that the applicant has not sufficient financial resources with which to complete the work involved therein, or (e) that it will conflict with the local public interest, where the local public interest is defined as the affairs of the people in the area directly affected by the proposed use, or (f) that it is contrary to conservation of water resources within the state of Idaho; the director of the department of water resources may reject such application and refuse issuance of a permit therefor... .

2. Use of water as proposed in the application will have minimal effect upon the depth to the water table in the Richfield area, will not adversely impact flows in the Snake River and will not reduce the quantity of water under existing water rights.

3. The water supply itself is sufficient for the purposes intended.

4. The application is made in good faith and not for delay or speculative purposes.

5. The applicant has already drilled the well and has sufficient financial resources with which to complete the project.

6. Use of water as proposed in the application will provide additional economic benefits in the Richfield area and will not conflict with the local public interest.

7. Land application of wastewater is an environmentally sound way to deal

with nutrients in wastewater. The application is not contrary to the conservation of water resources within Idaho.

8. The Department should approve the application with certain conditions.

ORDER

IT IS THEREFORE hereby ORDERED that the protests of Gail Loynd and Heather Saunders are **SET ASIDE** for failure to appear at the hearing and that the protests will not be further considered by the Department.

IT IS FURTHER hereby ORDERED that Application for Permit No. 37-21136 is **APPROVED** subject to the following conditions:

1. Proof of construction of diversion works and application of water to beneficial use shall be submitted to the Department on or before **March 1, 2009**.

2. Use of water under this right is subject to all prior water rights.

3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.

4. Prior to diversion and use of water under this right, the right holder shall install and maintain acceptable measuring device(s), including data logger(s), at the authorized point(s) of diversion, in accordance with Department specifications.

5. This right is limited to the irrigation of 400 acres within the authorized place of use in a single irrigation season whether the water is applied as supplemental water or as primary water. Prior to diversion of water under this right, the right holder shall demonstrate to the satisfaction of the Department how it will comply with this condition.

6. The right holder shall make full beneficial use of all surface water rights available to the right holder for irrigation of the lands authorized for irrigation under this right. The right holder shall limit the diversion of ground water under this right to those times when the surface water supply is not available or the surface water supply is not reasonably sufficient to irrigate the place of use authorized under this right.

7. The water right holder shall maintain control of the necessary portion of rights 36-16111, 36-16112, 36-16115 and 36-16123 for mitigation purposes under this approval. If the necessary portion of the mitigation rights are sold, transferred, leased, used on any other place of use, or are not deliverable due to a priority call, then the amount of water authorized for diversion under this approval shall be

reduced by the same proportion of the amount reduced under the mitigation rights.

8. The right holder shall file change of ownership documents, with associated fees, and provide information to satisfy the Department that 1600 afa appurtenant to 400 acres under water right nos. 36-16111, 36-16112, 36-16115 and 36-16123 has been permanently acquired by the right holder to mitigate flow depletions in the Snake River.

9. Water shall not be diverted under this right until the right holder completes Option A or Option B below:

Option A – The right holder shall obtain an approved water right transfer changing the purpose of use of 400 acres of irrigation under rights 36-16111, 36-16112, 36-16115 and 36-16123 to mitigation use and shall cease the diversion and use of water under the mitigation use.

Option B – The right holder shall assign 1600 afa appurtenant to 400 acres of irrigation under rights 36-16111, 36-16112, 36-16115 and 36-16123 to the water supply bank operated by the Idaho Water Resource Board to be used solely for the purpose of mitigating water use under permit no. 36-21136.

10. Beginning on the date of approval, this water right is limited to the following schedule of allowed diversion volume. The diversion of water shall be evenly distributed throughout the authorized season of use, except that minor variations are allowed for seasonal fluctuations in water requirements.

Years 2004 through 2022 the right is limited to 1600 afa.
Years 2023 and beyond the right is limited to 1488 afa.

11. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the authorized place of use.

12. Right holder shall comply with the drilling permit requirements of Section 42-235, Idaho Code, and applicable Well Construction Rules of the Department.

13. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.

14. Prior to diversion of water under this right, the right holder shall install a lockable device, subject to the approval of the Department, in a manner that will provide the watermaster suitable control of the diversion.

15. Failure of the right holder to comply with these conditions of approval is

cause for the Director to void this permit.

16. Any license issued by IDWR pursuant to the right or portion thereof for the use of trust water is subject to a term review of 20 years after the date of this approval to determine availability of water for the use and to re-evaluate the public interest at the end of the term.

Signed this _9th_ day of February, 2004.

____/Signed____
L. GLEN SAXTON, P.E.
Hearing Officer