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ISB # 4242

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF REQUEST)
FOR RECOVERY AND RE-USE OF)
WATER DIVERTED UNDER RIGHT)
36-7201 IN THE NAME OF) MOTION FOR
CLEAR SPRINGS FOODS INC) RECONSIDERATION
_____)

COMES NOW, Clear Springs Foods, Inc. ("Clear Springs") by and through its attorneys of record, Barker Rosholt & Simpson LLP, and hereby moves the Idaho Department of Water Resources ("IDWR") to reconsider the Preliminary Order dated July 1, 2005 issued in the above captioned matter. Specifically, for the following reasons, Clear Springs requests that Findings of Fact No. 2, No. 3, No. 11, No. 12, No. 13 and No. 15 be eliminated or revised. Further, Clear Springs requests that Conclusions of Law Nos. 5 and 6 be eliminated or revised. Finally, Clear Springs requests that conditions of approval listed in the Order as Nos. 1, 2, 3, 4, 5, 6, 7, 8, and 9 be eliminated or revised.

ARGUMENT

On March 15, 2004, the State of Idaho and certain water users within Water District 130 reached an agreement which was subsequently memorialized as the "Eastern Snake Plain Aquifer Mitigation, Recovery and Restoration Agreement for 2004". This one year agreement provided that spring water users would stay pending delivery calls against ground water users diverting from the Eastern Snake Plain Aquifer ("ESPA") in exchange for implementation of a suite of short term mitigation measures and other actions. The State of Idaho funded a total of \$500,000 in grant funds for mitigation projects in the Thousand Springs Reach of the Snake River Basin.

On May 29, 2004 Clear Springs submitted a mitigation assistance grant application entitled "Processing Plant Mitigation Well and Pump-Back System". The Economic Development division of the Idaho Department of Commerce acknowledged this application on June 8, 2004. Pursuant to that notice the State identified that the grant applications were receiving a technical and legal review by IDWR. That review was an integral part of the working group of the legislative natural resource interim committee, which reviewed and prioritized all applications. Further, said review substantiated the technical feasibility of the project, the amounts and plans submitted.

Following review by the State of Idaho, Clear Springs was awarded a grant for partial funding of the pump back mitigation project. The awarding of the grant constituted approval by the State of Idaho and reviewing agencies of the proposed project and its benefits to the intent of the program. Following the notice of award, Clear Springs submitted and sought approval of construction and operation drawings and plans consistent with the previous submittals to the Department of Commerce and the Idaho

Department of Water Resources. While Clear Springs viewed the original approval of IDWR of the mitigation project as sufficient, IDWR has chosen to memorialize its prior approval in the July 1, 2005 Preliminary Order for which this Motion seeks reconsideration.

With respect to Findings of Facts Nos. 2 and 3, Clear Springs objects to IDWR's intent to redefine the partially decreed water right 36-7201. A review of 36-7201 and its elements indicates that Clear Springs is authorized to divert a total of 10 cfs through the points of diversion identified in the partial decree. The partially decreed water right does not identify a limitation on how much water can be diverted through either spring. The source of water for the springs is a common source. Water from the upper spring can be diverted to either the "holding ponds" or into the "processing plant", which utilizes a fresh water storage tank. The diversions from the lower spring are, in fact, limited to diversions into the "processing plant". Clear Springs objects to any effort to limit or redefine the uses and diversion of water under this water right.

With respect to Finding of Fact No. 11, Clear Springs objects to a finding that it proposed a maximum ramping rate that would not reduce the existing flow of Kanaka Creek by more than 29 gallons per minute. Instead, Clear Springs would propose that prior to operation of the pump back system an operating plan be submitted to the Watermaster and approved by the Watermaster, which would govern operations of the pump back system.

With respect to Finding of Fact No. 13, Clear Springs would object to the wording of Finding of Fact No. 13 with respect to the word "control" and the implicit meaning from the use of the word. Diversions, including those on Kanaka Creek are under the regulation and supervision of IDWR and the watermaster in Water District 130. Again,

Clear Springs would propose that operation of the pump back system would fall under an operating plan that would be reviewed and approved by the IDWR and watermaster.

With respect to Finding of Fact No. 15 Clear Springs would object to the same use of the word “control” for the reasons previously identified.

With respect to Conclusions of Law No. 5, Clear Springs objects to the quantity limitation of 8 cfs provided in this Conclusion of Law, as opposed to the licensed right of 10 cfs. Conclusion of Law No. 5, as depicted, is inconsistent with the partial decree for water right no. 36-7201.

With respect to Conclusion of Law No. 6, Clear Springs again objects to the limitation provided.

With respect to the Conditions of Approval depicted in the Order, Clear Springs would object as follows:

With respect to Condition No. 1, Clear Springs objects to the pump back system being under the “control” of the watermaster. Clear Springs would request that an operating plan subject to the approval of IDWR and the Watermaster be the controlling document in the operation of the pump back system.

With respect to Condition No. 2, Clear Springs objects on the basis that the standard weir has been upgraded to the watermaster’s approval and the wording regarding control removed.

With respect to Condition No. 3, the flow meters have been installed. Further, Clear Springs objects to lockable valves under the control of the watermaster being placed on this system. The system requires intermittent adjustments, which should be the subject of the operating plan, approved by the watermaster and IDWR. Given the

availability of flows and the needs of Clear Springs, immediate flexibility in operating said pump back system is necessary for the efficient operation.

With respect to Condition No. 4, Clear Springs objects to the pump back ramping rate and instead would request that a ramping rate be integrated into the operating plan, which would be subject to the watermaster and IDWR approval prior to operation. Further, IDWR has allowed initial ramping of the project and that information is pertinent to developing the operation plan.

With respect to Condition No. 5, Clear Springs would request it simply contact the watermaster prior to any ramping event. The watermaster could in turn notify any other users in Kanaka Creek to ensure full disclosure.

With respect to Condition No. 6, Clear Springs objects to the language contained in said condition and would propose the following language “operation of the pump back system in accordance with the approved operating plan and in conjunction with diversion of water pursuant to water right no. 36-7201 shall not result in more than 8 cfs diverted to the holding pond.”

With respect to Condition No. 7, Clear Springs objects to said condition given IDWR’s previous finding that there is no injury.

With respect to Condition No. 8, Clear Springs would request that the condition read, “pump back under this order shall occur only to the extent that Clear Springs retains control of the effluent from their facilities described in the operating plan.”

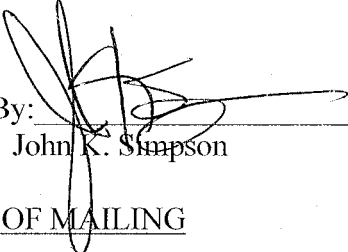
With respect to Condition No. 9, Clear Springs objects to this condition given IDWR’s previous finding that operation of the pump back system does not injure any other water rights. If an approved operating plan is in place, operations consistent with the plan should suffice.

CONCLUSION

For the foregoing reasons, Clear Springs requests that IDWR revise the Findings and Facts, Conclusions of Law and Conditions identified above. Additionally, Clear Springs respectfully requests a hearing on this motion. Furthermore, Clear Springs requests that a status conference be scheduled in this matter.

DATED this 18th day of July, 2005.

BARKER ROSHOLT & SIMPSON

By: 
John K. Simpson

CERTIFICATE OF MAILING

I hereby certify that on this 18th day of July, 2005, I served a copy of the foregoing *Motion for Reconsideration/Request for Hearing*, by depositing same in the United States mail, postage prepaid, in an envelope, addressed to the following:

Hand Delivered: Karl Dreher
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