

RECEIVED

JUN 02 2021

DEPARTMENT OF
WATER RESOURCES

LAWRENCE G. WASDEN
Attorney General

DARRELL G. EARLY
Deputy Attorney General
Chief, Natural Resources Division

ANN Y. VONDE (ISB #8406)
OWEN MORONEY (ISB # 9553)
Deputy Attorneys General
P.O. Box 83720
Boise, Idaho 83720-0010
Telephone: 208-334-2400
Facsimile: 208-854-8072

Attorneys for the Idaho Department of Fish and Game

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

**IN THE MATTER OF BASIN 37
ADMINISTRATIVE PROCEEDING**

) Docket No. AA-WRA-2021-001
)
) **AFFIDAVIT OF GREGG**
) **ANDERSON IN SUPPORT OF IDFG**
) **MOTION TO EXCLUDE**
)

STATE OF IDAHO)
) ss
COUNTY OF ADA)

GREGG ANDERSON, being first duly sworn upon his oath, deposes and states
that:

1. I am employed by the Idaho Department of Fish and Game (“IDFG”) as the Magic Valley Fish Hatchery Complex Manager. I supervise five fish hatcheries in the Magic Valley, including Hayspur State Fish Hatchery.
2. The following facts are based on my education in fish production and management (AAS Fish Hatchery Management, BS Project Management).
3. The following facts are also based on my expertise and experience as the Hayspur State Fish Hatchery Manager 2015–2018 and the Magic Valley Complex Hatchery Manager 2019–present.
4. Water for the Hayspur State Fish Hatchery is supplied by water rights 37-7038, 37-8271, 37-8331, 37-2695, and 37-2489.
5. Water Rights 37-2695 and 37-2489 are from surface water sources, Loving Creek and Butte Spring respectively.
6. The Loving Creek water right 37-2695 (24 cfs) is not suitable for use in the main hatchery operations because it is not pathogen free. Instead, water right 37-2695 is used in Gavers Lagoon a recreational fish pond located adjacent to the main hatchery complex.
7. The Butte Spring water right 37-2489 authorizes diversion of 15 cfs, but currently produces approximately 5.5 cfs.
8. Water Rights 37-7038, 37-8271, 37-8331 (collectively “IDFG’s Ground Water Rights”) are pump assisted artesian ground water rights totaling 5 cfs. However, they are currently only producing between 2 to 3 cfs.
9. Water Rights 37-8271 and 37-8331 contain conditions stating: “Use of water under this right shall be non-consumptive.” Water Right 37-7038 does not contain

this condition but, as described below this water right is comingled with and used in the same manner as water rights 37-8271 and 37-8331.


10. Total inflow into the hatchery from IDFG's Ground Water Rights and water right 37-2489 was 7.06 cfs as measured on May 19, 2021.
11. IDFG's Ground Water Rights and water right 37-2489 are piped to a common headbox where they run through a degassing tower and then out to the heath racks, tray, and rearing pots in the incubation building, to concrete vats in the hatchery building, to small covered concrete raceways, and to covered concrete round ponds. Water from these areas flows either to the large uncovered concrete raceways for second use or discharges directly to the settling basin
12. The settling basin is situated within the natural channel formed by Butte Creek.
13. There are seven outfalls into the settling basin, two from the round pounds, one from the hatchery building, one from the egg incubation building, two from the small raceways, and one from the large raceways.
14. Due to the small size of the settling basins (approximately 1 acre) and the volume of flow-through water there is very little retention time (< 24 hours) and the water quickly exits the property.
15. Total outflow of hatchery discharge into Butte Creek Springs was approximately 7.45 cfs as measured on May 19, 2021.
16. There are no other water rights diversions between where the water discharges from the hatchery into the settling basin.
17. Butte Creek Spring flows off of the Hatchery property and into Loving Creek. Loving Creek is tributary to Silver Creek.

18. The Haypsur Strain of Rainbow Trout have been developed and habituated to spawn throughout the year due to photo period manipulation. This allows hatchery staff to provide eyed eggs to the resident fish hatchery programs throughout Idaho for the purpose of providing recreational fishing.
19. Hayspur Fish Hatchery also raises 40,000 of its own 10"-12" Rainbow Trout for stocking North of Ketchum, ID. If our hatchery water was curtailed we could lose all our brood-stock (parent fish) and catchable fish for stocking and it would take four to six years to re-develop our hatchery Rainbow Trout program.
20. Hayspur State Fish Hatchery has developed the YY Trojan Brook Trout, which is an all-male population of Brook Trout that is only capable of producing male offspring. These fish are used to control feral populations of Brook Trout in Idaho waters. The YY program is a research project and test platform to base the possible control of unwanted invasive species of fish into public waters. Currently, Hayspur provides eyed-eggs to six other States to assist in further research on this application. Loss of these fish due to water right curtailment would set IDFG back 6 to 8 years to rebuild this valuable and successful Native Trout Conservation program.
21. The Hayspur State Fish Hatchery has developed an all-female strain of Rainbow Trout which began in 2017 and successfully completed the first spawn of this strain in late 2020. All-female hatchery fish have a tendency to grow more uniform and faster than males, providing an efficient product for anglers. Loss of this strain due to water right curtailment would set the department back 4 to 6 years.


Further your affiant sayeth naught.

DATED this 2nd day of June, 2021.




GREGG ANDERSON
Idaho Department of Fish and Game
Magic Valley Region
Magic Valley Hatcheries Supervisor

SUBSCRIBED AND SWORN to before me this 2nd day of June 2021.


Notary Public for Idaho
Residing at: Jerome, ID
My commission expires: 9/28/2023

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of June 2021, I caused to be served a true and correct copy of the foregoing AFFIDAVIT OF GREGG ANDERSON IN SUPPORT OF IDFG MOTION TO EXCLUDE by placing a copy thereof in the manner listed below:

1. Original to:

Idaho Department of Water Resources Director Spackman PO Box 83720 Boise ID 83720-0098	<input type="checkbox"/> U.S. Mail, postage prepaid <input checked="" type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile: _____ <input checked="" type="checkbox"/> Email: megan.jenkins@idwr.idaho.gov
---	---

1. Copies to:

James R. Laski Heather E. O'Leary Lawson Laski Clark, PLLC 675 Sun Valley Rd., Ste. A P.O. Box 3310 jrl@lawsonlaski.com heo@lawsonlaski.com efiling@lawsonlaski.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Matthew A. Johnson Brian T. O'Bannon White, Peterson, Gigray & Nichols, P.A. 5700 East Franklin Road, Suite 200 Nampa, Idaho 83687-7901 mjohnson@whitepeterson.com bobannon@whitepeterson.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Laird B. Stone Stephan, Kvanvig, Stone, & Trainor P.O. Box 83 Twin Falls, Idaho 83303-0083 skst@idaho-law.com cynthia@idaho-law.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Jerry R. Rigby Rigby, Andrus & Rigby, Chartered 25 North Second East Rexburg, ID 83440 jrigby@rex-law.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

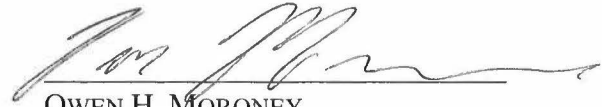
Joseph F. James James Law Office, PLLC 125 5th Ave. West Gooding, ID 83330 joe@jamesmvlaw.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Robert L. Harris Holden, Kidwell, Hahn & Crapo, P.L.L.C. P.O. Box 50130 1000 Riverwalk Drive, Suite 200 Idaho Falls, ID 83405 rharris@holdenlegal.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Rusty Kramer, Secretary PO Box 507 Fairfield, ID 83327 waterdistrict37b@outlook.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Brendan L. Ash James Law Office, PLLC 125 5th Ave. West Gooding, ID 83330 efile@jamesmvlaw.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Richard T. Roats Lincoln County Prosecuting Attorney P.O. Box 860 Shoshone, ID 83352 rtr@roatslaw.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Paul Bennett 114 Calypso Lane Bellevue, ID 83313 info@swiftsureranch.org	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
J. Evan Robertson Robertson & Slette, PLLC P.O. Box 1906 Twin Falls, Idaho 83303-1906 erobertson@rsidaholaw.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

James P. Speck Speck & Aanestad P.O. Box 987 Ketchum, ID 83340 jim@speckandaanestad.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
John K. Simpson Barker Rosholt & Simpson LLP 1010 Jefferson St., Ste. 102 P.O. Box 2139 Boise Idaho 83701-2139 jks@idahowaters.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Lawrence Schoen Napuisunaih 18351 U.S. Highway 20 Bellevue, ID 83313 lschoen@naramail.net	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Idaho Ranch Hands Property Management 218 Meadowbrook Hailey, ID 83333 idahoranchhands@gmail.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Southern Comfort Homeowner's Association P.O. Box 2739 Ketchum, ID 83340	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, Idaho 83318 wkf@pmt.org	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
Albert P. Barker Travis L. Thompson Barker Rosholt & Simpson LLP 1010 W. Jefferson St., Ste. 102 PO Box 2139 Boise, ID 83701-2139 apb@idahowaters.com tlr@idahowaters.com	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

<p>Candice McHugh McHugh Bromley, PLLC 380 S. 4th St., Ste. 103 Boise, ID 83702 cmchugh@mchughbromley.com</p>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Chris M. Bromley McHugh Bromley, PLLC 380 S. 4th St., Ste. 103 Boise, ID 83702 cbromley@mchughbromley.com</p>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Norman M. Semanko Parsons Behle & Latimer 800 West Main Street, Ste 1300 Boise, ID 83702 NSemanko@parsonsbehle.com</p>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Sarah A. Klahn Somach Simmons & Dunn 2033 11th St., Suite 5 Boulder, CO 80302 sklahn@somachlaw.com</p>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Randall C. Budge Thomas J. Budge Racine Olson, PLLP 201 E. Center St. P.O. Box 1391 Pocatello, Idaho 83204 randy@racineolson.com tj@racineolson.com</p>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Michael C. Creamer Michael P. Lawrence Charlie S. Baser Givens Pursley LLP 601 W. Bannock St. P.O. Box 2720 Boise, Idaho 83701-2720 mpl@givenspursley.com mcc@givenspursley.com csb@givenspursley.com</p>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

Gary D. Slette
Robertson & Slette PLLC
PO Box 1906
Twin Falls, Idaho 83303
gslette@rsidaholaw.com

<input type="checkbox"/>	U.S. Mail, postage prepaid
<input type="checkbox"/>	Hand Delivery
<input type="checkbox"/>	Overnight Mail
<input type="checkbox"/>	Facsimile
<input checked="" type="checkbox"/>	Email



OWEN H. MORONEY
Deputy Attorney General