

1-1-2005

## Clear Lakes Trout Co. v. Clear Springs Foods, Inc., 106 P.3d 443 (Idaho 2005)

Jennifer Suh

Follow this and additional works at: <https://digitalcommons.du.edu/wlr>

---

### Custom Citation

Jennifer Suh, Court Report, Clear Lakes Trout Co. v. Clear Springs Foods, Inc., 106 P.3d 443 (Idaho 2005), 8 U. Denv. Water L. Rev. 684 (2005).

This Court Report is brought to you for free and open access by the University of Denver Sturm College of Law at Digital Commons @ DU. It has been accepted for inclusion in Water Law Review by an authorized editor of Digital Commons @ DU. For more information, please contact [jennifer.cox@du.edu](mailto:jennifer.cox@du.edu), [dig-commons@du.edu](mailto:dig-commons@du.edu).

County intervened. At the first hearing, the administrative law judge ("ALJ") ruled in favor of the EPD and Gwinnett County. The Georgia Superior Court subsequently reversed the ALJ's decision. The Supreme Court of Georgia granted a writ of certiorari after the Court of Appeals of Georgia reversed the superior court's decision.

On appeal, Hughey contended (1) the court of appeals did not have proper jurisdiction, (2) the court of appeals erred by placing the burden of proof on Hughey, (3) the permit did not meet substantive requirements under antidegradation rules, and (4) the EPD failed to comply with required public notice and comment rules.

First, the court determined the court of appeals had proper jurisdiction and the order on remand was final and appealable. Next, the court concluded the court of appeals was correct in placing the burden of proof on Hughey. The court reasoned the burden of proof shifted to Hughey under the Georgia Administrative Rules of Procedure, and noted a party challenging the issuance of a license who was not the licensee bore the burden of proof.

On the third issue, the court held the court of appeals correctly found evidence to support the ALJ's ruling on degradation of water quality and reasoned the evidence was justifiable due to social and economic development. Furthermore, the court held the court of appeals erred in reversing the superior court's determination the permit did not require the highest and best level of treatment practicable under existing technology. On the final issue, the court concluded the court of appeals erred in reversing the superior court's finding of a notice and comment rules violation because the ALJ did not have the authority to summarily dispose of the issue and required more specificity for the public to have meaningful participation.

The court thus affirmed in part and reversed in part the court of appeal's decision.

*Alexandra Farkouh*

## IDAHO

**Clear Lakes Trout Co. v. Clear Springs Foods, Inc., 106 P.3d 443 (Idaho 2005)** (holding that the Interim Stipulated Agreement between ground and surface water users provided safe harbor protection only to junior ground water users).

Clear Lakes Trout Company ("Lakes") and Clear Springs Food, Inc. ("Springs") operated fish hatcheries on adjacent parcels below the rim of the Snake River Canyon near Buhl, Idaho. Following litigation, Lakes obtained senior surface water rights and Springs obtained junior surface water rights. In 2001, due to severe drought conditions, the Idaho Department of Water Resources ("IDWR") informed groundwater users that they intended to curtail water use above the canyon rim. This notice motivated groundwater users and surface water users to

negotiate an Interim Stipulated Agreement (“Agreement”), providing additional water to enhance the flows. Both Lakes and Springs signed the Agreement.

In 2002 Springs submitted a call intended to curtail Lakes’ water rights. Lakes filed suit in Fifth Judicial District Court of Idaho against IDWR to enjoin the curtailment. After a motion for a preliminary injunction failed to stop the curtailment, Lakes removed approximately 17 percent of the trout in its hatchery. Later that year, Lakes responded by filing a complaint against Springs for breach of the Agreement. After numerous motions from each party, the trial court held that the Agreement did not prohibit Springs from seeking curtailment of Lakes’ water rights. Lakes appealed to the Idaho Supreme Court.

The hatcheries disputed the Agreement’s safe harbor provision, limiting the rights of parties to pursue actions against other parties for curtailment of water. Lakes believed the Agreement’s language protecting junior water rights protected Lakes as surface water right holders. However, Springs argued the provision protected only junior *groundwater* right holders, not junior *surface* water rights holders.

After examining the plain language of the Agreement and finding no ambiguity, the court affirmed, granting Clear Springs’ motion for summary judgment. The Agreement provided protection against senior *surface* water rights holders seeking curtailment of the rights of junior *groundwater* users. Nothing in the applicable sections of the Agreement discussed a commitment made to junior surface water right holders. Further, Lakes failed to take advantage of a provision that may have provided added safe harbor protection in exchange for an agreement to pay a proportionate share of the water replacement costs. In conclusion, the court affirmed the trial court’s decision.

*Jennifer Suh*

## INDIANA

***In re Change to the Established Water Level of Lake of the Woods in Marshall County, 822 N.E.2d 1032 (Ind. Ct. App. 2005)*** (affirming the trial court’s dismissal of petition by property owners to raise water level of lake on grounds that (1) the trial court committed no error on remand in appointing the viewers from the original action to determine whether lake level change was necessary, (2) case law established procedures, which when followed on remand, satisfied due process, and (3) the property owners failed to establish any of the viewers’ factual findings were arbitrary and capricious).

A group of property owners surrounding the Lake of the Woods (“Property Owners”) filed a petition in the Marshall Circuit Court seeking an order to raise the water level of the lake. The Property Owners alleged that changes in the local sewer system, increases in the prop-