



## INTRODUCTION

This matter is before the Director on remand from the District Court. In his June 19, 2009 *Order on Petitions for Judicial Review* and December 4, 2009 *Order on Petitions for Rehearing*, the Honorable John M. Melanson held that the Director improperly shifted the burden of proof to Clear Springs when he determined, without any supporting information, that Clear Springs' water right 36-4013A was not historically filled due to seasonal variations. The matter was remanded to the Director to apply the proper burdens of proof in making a material injury determination. Although certain issues were subsequently appealed to the Idaho Supreme Court, the remand order, and the associated discussion regarding burdens of proof, was not appealed.

On July, 19, 2010, the Interim Director issued the *2010 Order* relating to the issues on remand. In that order, the Interim Director created an analysis that, he asserts, will determine the impact of seasonal variability on Clear Springs' water right. Using that analysis, the Interim Director found material injury to water right no. 36-4013A.

Notwithstanding a finding of material injury, the Interim Director applied a plus or minus 10% margin of error, or "trim line," to exclude certain hydraulically-connected junior ground water rights found to be contributing to the material injury. In addition, the Interim Director refuses to administer the water rights causing material injury or to require a mitigation plan as required by the Rules for the Conjunctive Management of Surface and Ground Water Resources ("CM Rules"). Rather, he stated that "[c]urtailment in 2010 would not provide any significant water to the senior water right holders, and it would not be reasonable to order curtailment this year."

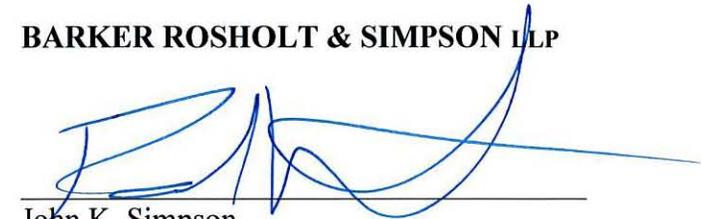
## INITIAL GROUNDS FOR CONTESTING THE 2010 ORDER

1. The *2010 Order* ignores the best scientific evidence, inappropriately calculates and applies a plus or minus 10% margin of error, or “trim line,” to exclude hydraulically-connected junior ground water rights causing injury to Clear Springs’ senior water right from priority administration and fails to accurately consider the impact of ground water depletions on Clear Springs’ senior water rights.
2. Contrary to the CM Rules and Snake River Basin Adjudication (“SRBA”) Orders, the *2010 Order* fails to administer those hydraulically connected ground water rights that lie outside the “trim line” even though they were found to contribute to the material injury to Clear Springs’ senior water right.
3. The *2010 Order* violates the established burdens of proof, *e.g. American Falls Reservoir Dist. #2 v. Idaho Dept. of Water Resources*, 143 Idaho 8621 (2007), by failing to shift the burden to the holders of the junior ground water rights to establish a defense to the call by clear and convincing evidence and thereby forcing Clear Springs to prove that the junior ground water rights outside the 10% trim line should be subject to administration.
4. Contrary to the CM Rules and the SRBA Orders, the *2010 Order* fails to require curtailment or a CM Rule 43 mitigation plan during the 2010 irrigation season.
5. The *2010 Order* is not supported by substantial evidence when it concluded that “[c]urtailment in 2010 would not provide any significant water to the senior water right holders, and it would not be reasonable to order curtailment this year.”
6. The *2010 Order* fails to use current available data/information to determine hydraulically-connected junior ground water diversions causing injury to Clear Springs, and inappropriately relies on insufficient and outdated data/information contained in CM Rule 50;

thus resulting in a failure to require all junior ground water rights that are contributing to the material injury of Clear Springs' senior water right to provide mitigation for their depletions to the aquifer.

Dated this 30<sup>th</sup> day of July, 2010.

**BARKER ROSHOLT & SIMPSON LLP**

A handwritten signature in blue ink, appearing to be "John K. Simpson", written over a horizontal line.

John K. Simpson  
Travis L. Thompson  
Paul L. Arrington

*Attorneys for Clear Springs Foods, Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of July, 2010, I served a true and correct copy of the foregoing **PETITION REQUESTING HEARING ON JULY 19, 2010 FINAL ORDER** by delivering it to the following individuals by the method indicated below, addressed as stated.

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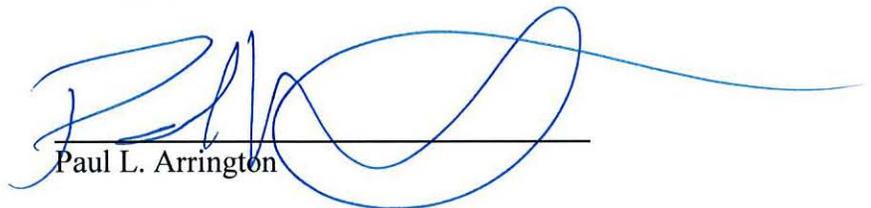
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