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Attorneys for Clear Springs Foods, Inc.

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

)	
IN THE MATTER OF DISTRIBUTION OF)	
WATER TO WATER RIGHTS NOS. 36-04013A,)	
36-04013B, AND 36-07148 (SNAKE RIVER)	
FARM))	CLEAR SPRINGS FOODS, INC.'S
)	PROPOSED STIPULATION IN
)	RESPONSE TO THE AUGUST 7,
(Water District Nos. 130 and 140))	2009 AMENDED CURTAILMENT
)	ORDER
)	
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)	
_____)	
)	

COMES NOW, Clear Springs Foods, Inc. ("Clear Springs") by and through its counsel of record,
 and hereby submits the Proposed Stipulation for consideration by the Idaho Department of Water
 Resources ("IDWR") and the Groundwater Districts in the above-captioned matter.

**CLEAR SPRINGS FOODS, INC.'S PROPOSED STIPULATION IN RESPONSE TO
 AUGUST 7, 2009 AMENDED CURTAILMENT ORDER**

Introduction

On or about August 7, 2009, the Director of IDWR issued an Amended Curtailment Order (“Amended Order”), again identifying the Groundwater Districts’ failure to satisfy the Director’s May 15, 2009 *Partial Stay Order*. The *Partial Stay Order*, in part, required the Groundwater Districts to: 1) continue conversion of approximately 9,300 acres; 2) continue existing enrollment of acres in the Conservation Reserve Enhancement Program (“CREP”); and 3) convert 1,060 new acres from groundwater to surface water as described in the Groundwater Districts’ Replacement Water Plan for 2009. The Amended Order followed a July 22, 2009 Curtailment Order wherein the Director found that the Groundwater Districts have failed to comply with the above requirements of the May 15, 2009 *Partial Stay Order*. Curtailment was ordered and the Groundwater Districts submitted a “plan of action” on July 28, 2009, for which no basis is found in the Conjunctive Management Rules. On August 3, 2009 a “Second Plan of Action” was filed. On August 5, 2009 the Director held a status conference to discuss the Second Plan of Action. While there is no provision in rule for consideration of a “plan of action,” the Director issued the August 7, 2009 Amended Order. The Amended Order identifies the continued failure of the Groundwater Districts to comply with the May 15, 2009 *Partial Stay* requirements. Curtailment appears eminent without the parties continued efforts to reach resolution. At the status conference, Clear Springs came forward with a proposal to resolve the Groundwater Districts’ failure for 2009. That proposal was rejected by the Groundwater Districts.

Proposed Stipulation

Clear Springs now submits the following Proposed Stipulation in writing for the parties and the IDWR to consider, which, if adopted, would avoid curtailment at this critical point in the 2009 irrigation season. Further, counsel has contacted attorneys for IDWR regarding the scope of the Proposed Stipulation. Generally, the matters contained in the Stipulation were previously identified and no objection was offered by IDWR. This Stipulation is made recognizing the failures recited in the orders

identified above and the lack of administration that has brought the water users to this critical juncture in the present irrigation season.

- 1) **Groundwater Districts** would commit to additional above the rim conversion projects in 2010 to make up for conversion deficiencies and pumping in 2009. Clear Springs and IDWR would require written assurances submitted prior to the 2010 irrigation season, subject to water master review and approval. Such actions would be quantified in the hearing and subsequent order identified below.
- 2) **Groundwater Districts** agree to a full hearing this fall on issues raised by Clear Springs' protest to the Groundwater Districts' 2009 Replacement Water Plan and Third Mitigation Plan. Given the contested nature of the issues raised in the Plans filed, the technical nature of the issues and protests raised, and the critical nature of the timing of resolution of the protests raised prior to the commencement of the 2010 irrigation season, Clear Springs would request the re-assignment of the hearing from Justice Schroeder to Director Spackman. Such re-assignment would expedite the resolution of the issues raised and allow final resolution of the amount of additional conversions necessary to satisfy condition #1 of this Proposed Stipulation (increased conversions to mitigate for 2009 deficiencies).¹ In order for mitigation to be meaningful in 2010, the mistakes of 2009 must not be repeated. The parties must have the necessary assurances for timely mitigation.
- 3) **Clear Springs, the Groundwater Districts, and the IDWR** collectively agree to pursue, subject to Judge Melanson's availability, expediting the resolution of the issues timely filed for re-hearing, in Gooding County Case No. 2008-444.

¹ Initial review by Dr Charles Brockway of IDWR's figures contained in the Amended Order, questions the accuracy of the "shortfall" identified. Additionally, IDWR has previously recognized the necessity to reconcile shortfalls which have occurred over the five-year phased-in curtailment period.

This Proposed Stipulation is specifically intended to address the mitigation measures for 2009 and is not intended to modify any other aspect of the May 15, 2009 Order. Nor does this Proposed Stipulation prevent any party from pursuing any other remedies potentially available as a result of the IDWR actions. This offer of Stipulation shall remain effective until 5:00 pm Wednesday, August 19, 2009 until which time Clear Springs shall deem said Proposal withdrawn.

DATED this 13th day of August, 2009.

BARKER ROSHOLT & SIMPSON LLP



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CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of August, 2009, the foregoing was sent to the following by the method indicated:

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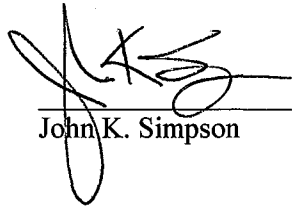
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