

John K. Simpson, ISB #4242  
 Travis L. Thompson, ISB #6168  
 Paul L. Arrington, ISB #7198  
**BARKER ROSHOLT & SIMPSON LLP**  
 1010 W. Jefferson, Suite 102  
 P.O. Box 2139  
 Boise, Idaho 83701-21239  
 Telephone: (208) 336-0700  
 Facsimile: (208) 344-6034

*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-  
 02356A, 36-07210, 36-07427 (BLUE LAKES)  
 36-04013A, 36-04013B, AND 36-07148  
 (SNAKE RIVER FARM)

\_\_\_\_\_  
 IN THE MATTER OF SOUTHWEST AND  
 GOOSE CREEK IRRIGATION DISTRICT  
 MITIGATION PLAN 2010  
 (Water District No. 140)

)  
 ) Docket No. CM-MP-2009-03  
 ) CM-MP-2009-05  
 )  
 ) **CLEAR SPRINGS FOODS, INC.’S**  
 ) **PROTEST**  
 )  
 )  
 )  
 )  
 )  
 )  
 )

COMES NOW, Clear Springs Foods, Inc. (“Clear Springs”), by and through its attorneys of record, Barker, Rosholt & Simpson, LLP, and submits this protest to the Mitigation Plan (“Plan”) filed in the above-captioned matter by Southwest and Goose Creek Irrigation Districts (hereinafter collectively referred to as “SWID”).

## INTRODUCTION

SWID filed its Mitigation Plan on October 23, 2009 under a caption that included both water rights held by Blue Lakes Trout Farm, Inc. and Clear Springs Food, Inc. However, SWID further stated that the plan was filed “in response to the Idaho Department of Water Resources (IDWR) Director’s May 19, 2005 Order . . .” *Plan* at 1. The Plan identifies various actions taken by SWID for mitigation purposes and presents specific analyses related to those actions and their claimed affect on the Devil’s Washbowl to Buhl reach. The Plan also references that “ESPAM model runs determined the apportioned amount of obligation of SWID and GC, for both the Blue Lakes, Inc., and Snake River Farms water calls, a total of 10.2 cfs to the river, 9.8 cfs obliged by SWID and 0.4 obliged by GC.” *Plan* at 2. Notice of the Plan was then published on November 5<sup>th</sup> and 12<sup>th</sup> and the deadline for filing Protests is November 23, 2009.

## PROTEST

Clear Springs protests the SWID Plan for the following initial reasons:

1. The Plan does not provide any specific analysis of ground water rights subject to curtailment and the depletive effect on the springs that provide water to Clear Springs’ Snake River Farm facility.
2. The Plan apparently relies upon a “10% trim line” to exclude certain ground junior priority ground water rights in the ESPA from the analyses and from any obligation to provide mitigation to Clear Springs.
3. The Plan is apparently incomplete as it identifies an “as yet undetermined an amount of mitigation obligation by the non district landowner users in WD 140 that are included in this mitigation plan”.

4. The proposal to submit a mitigation plan at the “end of the water year in order to determine the total amount of mitigation” is speculative, does not mitigate the injury to Clear Springs’ senior water rights, and therefore violates the CM Rules.
5. The Plan states that “[e]fforts delineated in this plan include but are not limited to surface water replacement (soft conversions), voluntarily curtailed acres with valid water rights (CREP and individual voluntary curtailment), and recharge by injection and infiltration”. *Plan* at 3. If other actions are to be “included” beyond those identified in the *Plan*, they should be described.
6. The Plan states that “mitigation by SWID above the obligated volume would be allowed to accrue at 25% for 15.5 years”. *Plan* at 10. The Plan is unclear relative to this analyses and apparently “mitigation” to be credited today for the effects of actions that may occur later in time. Clear Springs objects to the “credit” concept.
7. The determination of injury to senior water rights held by Clear Springs should incorporate the evaluation of temporal effects on the historically available flow. Individual spring flow from the ESPA is not uniform over the entire year and fluctuates, usually with lows in March or April and peaks in September or October. The impact of junior groundwater pumping also has a temporal pattern. The time pattern of impact of junior ground water pumping when superimposed on the hydrograph of historical spring flow can have significantly different net effects than is depicted by steady state analysis of impact. This concept is recognized in the amended IDWR Transfer Guidelines which require that the transient impact of a proposed transfer with mitigation must not exceed 5% of the historical transient impact. In other words, the impact from the proposed

transfer with mitigation must follow or match the historical impact over the full time from inception to steady state. Incorporation of this type of analysis, consistent with the Transfer Guidelines, could result in a determination of injury to earlier priority water rights (as opposed to those that a steady state analysis would otherwise provide). This requirement is not specified in a mitigation plan for which the net mitigation required is computed only at steady state and should be incorporated into all future determinations of IDWR on mitigation plans.

8. For such other reasons as are discovered or determined in this matter.

Clear Springs reserves the right to amend this Protest as necessary throughout the course of this proceeding.

DATED this 23<sup>rd</sup> day of November, 2009.

**BARKER ROSHOLT & SIMPSON LLP**



---

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

*Attorneys for Clear Springs Foods, Inc.*

### CERTIFICATE OF MAILING

I hereby certify that on this 23<sup>rd</sup> day of November, 2009, the foregoing, was sent to the following by U.S. Mail proper postage prepaid and by email for those with listed email addresses:

Gary Spackman, Interim Director Idaho Department of Water Resources 322 E. Front Street P.O. Box 83720 Boise, Idaho 83720-0098 <a href="mailto:gary.spackman@idwr.idaho.gov">gary.spackman@idwr.idaho.gov</a> <a href="mailto:victoria.wigle@idwr.idaho.gov">victoria.wigle@idwr.idaho.gov</a>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
William Parsons Parsons, Smith & Stone LLP 137 W 13 <sup>th</sup> St. P.O. Box 910 Burley, Idaho 83318 <a href="mailto:wparsons@pmt.org">wparsons@pmt.org</a>	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
Allen Merritt Cindy Yenter Watermaster – WD 140 IDWR – Southern Region 1341 Fillmore St., Suite 200 Twin Falls, Idaho 83301-3380 <a href="mailto:allen.merritt@idwr.idaho.gov">allen.merritt@idwr.idaho.gov</a> <a href="mailto:cindy.yenter.@idwr.idaho.gov">cindy.yenter.@idwr.idaho.gov</a>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Hand Delivery

  
\_\_\_\_\_  
Travis L. Thompson