

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Suite 102
P.O. Box 2139
Boise, Idaho 83701-2139
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 THE NORTH SNAKE) AND MAGIC VALLEY GROUND WATER) DISTRICTS' 2009 JOINT MITIGATION PLAN) TO COMPENSATE BLUE LAKES TROUT) FARM, INC.) _____)	Docket Nos. CM-MP-2009-01 CM-MP-2009-02 CM-MP-2009-03
IN THE MATTER OF THE A&B) IRRIGATION DISTRICTS'S 2009) MITIGATION PLAN TO COMPENSATE) BLUE LAKES TROUT FARM, INC.))) (Water Right NOs. 36-02356A, 36-07210, and) 36-07247)) _____)	CLEAR SPRINGS FOODS, INC.'S RESPONSE TO GROUND WATER DISTRICTS' MOTION TO LIMIT SCOPE OF HEARING AND PROPOSED SCHEDULE

COMES NOW, Clear Springs Foods, Inc. ("Clear Springs"), by and through its attorneys of record, Barker, Rosholt & Simpson, LLP, and hereby submits this *Response* to the North Snake and Magic Valley Ground Water Districts' *Motion to Limit Scope of Hearing and Proposed Schedule* filed on December 4, 2009.

MITIGATION PLAN CASES

The Districts assert that the contested cases concerning their joint mitigation plan (CM-MP-2009-01), A&B's mitigation plan (CM-MP-2009-02), and Southwest and Goose Creek Irrigation Districts' mitigation plan (CM-MP-2009-03) have been "consolidated". See *Districts' Motion* at 1, n.1. To the contrary, although a joint scheduling conference was held on November 24, 2009, and the Director indicated the plans that have similar components may need to be considered by him at the same time, no formal "consolidation" has taken place. Accordingly, although the plans may eventually follow the same schedule and be heard consecutively before IDWR in March, 2010, the Districts' characterization that these proceedings are formally "consolidated" is erroneous.

RESPONSE

Clear Springs joins in *Blue Lakes Trout Farm, Inc.'s Brief in Opposition* to the Districts' motion. In addition, Clear Springs disputes the Districts' characterization of the scope of the hearing before Justice Schroeder in the "Over-the-Rim" Mitigation Plan proceeding and further submits that additional issues raised (e.g. validity of the trimline, spring percentages, mitigation owed) are not to be evaluated once some "appeal relating to those issues is final". See *Districts' Motion* at 2. No "appeal" of these issues exists to support the Districts' theory. Similar to Blue Lakes, Clear Springs does not intend to appeal the District Court's decision on the trimline or spring percentage issues. Notwithstanding that separate proceeding, the Districts' plan for Blue Lakes must be reviewed pursuant to the CM Rules, including the Rule 43 factors.

The issues raised in Blue Lakes' protest (e.g. estimation of depletions, benefits of CREP and conversions, trimline, spring percentages) are relevant and should be considered by the Director. Indeed, those issues are important to Clear Springs since the Districts have proposed

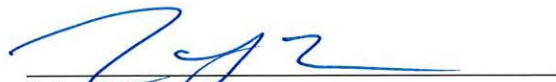
similar measures in their mitigation for Snake River Farms. How IDWR reviews those issues and estimates the claimed benefits from those mitigation actions is relevant and is the reason Clear Springs filed the protest to the Districts' plan here in the first place. Contrary to the Districts' arguments, IDWR is required to use the best available information for purposes of water right administration and the purpose of an administrative hearing is to develop a complete record and provide the Director with that information.

Since the Districts can file pre-hearing motions pursuant to the Department's procedural rules, there is no basis to restrict the scope of the hearing. If the Districts believe there are legal issues that can be decided up front, and that a decision will narrow the issues for hearing, they can file their motions at any time.

For the above reasons Clear Springs opposes the Districts' *Motion to Limit Scope of Hearing* and joins in the schedule proposed by Blue Lakes.

DATED this 16th day of December, 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 December 16, 2009, the above and foregoing, was sent to the following by U.S. Mail proper postage prepaid and by email:

Gary Spackman, Interim Director
IDWR
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098
gary.spackman@idwr.idaho.gov
victoria.wigle@idwr.idaho.gov
phil.rassier@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

- U.S. Mail, Postage Prepaid
- Facsimile
- E-mail
- Hand Delivery

Daniel V. Steenson
Charles L. Honsinger
S. Bryce Farris
Jon Gould
Ringert Law, Chtd.
P.O. Box 2773
Boise, Idaho 83701-2773
dan@ringertlaw.com

- U.S. Mail, Postage Prepaid
- Facsimile
- E-mail
- Hand Delivery

Randy Budge
Candice McHugh
Racine Olson
P.O. Box 1391
Pocatello, Idaho 83204-1391
rbc@racinelaw.net
cmm@racinelaw.net

- U.S. Mail, Postage Prepaid
- Facsimile
- E-mail
- Hand Delivery

Robert A. Maynard
Erica Malmen
Perkins Coie LLP
1111 W. Jefferson St., Suite 500
Boise, Idaho 83702-5391
rmaynard@perkinscoie.com
emalmen@perkinscoie.com

- U.S. Mail, Postage Prepaid
- Facsimile
- E-mail
- Hand Delivery

William Parsons
Parsons Smith & Stone
137 W. 13th Street
P.O. Box 910
Burley, Idaho 83318
wparsons@pmt.org

- U.S. Mail, Postage Prepaid
- Facsimile
- E-mail
- Hand Delivery

Sarah A. Klahn
White & Jankowski LLP
511 Sixteenth St., Suite 500
Denver, Colorado 80202
sarak@white-jankowski.com

- U.S. Mail, Postage Prepaid
- Facsimile
- E-mail
- Hand Delivery

A. Dean Tranmer
City of Pocatello
P.O. Box 4169
Pocatello, Idaho 83201
dtranmer@pocatello.us

- U.S. Mail, Postage Prepaid
- Facsimile
- E-mail
- Hand Delivery



Travis L. Thompson