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Attorneys for Respondent

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

NORTH SNAKE GROUND WATER )  
DISTRICT and MAGIC VALLEY )  
GROUND WATER DISTRICT )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
GARY SPACKMAN, in his capacity as )  
Interim Director of the Idaho Department )  
of Water Resources; and the IDAHO )  
DEPARTMENT OF WATER RESOURCES, )  
 )  
Respondents. )  
 )  
vs. )  
 )  
CLEAR SPRINGS FOODS, INC., )  
 )  
IN THE MATTER OF DISTRIBUTION OF )  
WATER TO WATER RIGHTS NOS. )  
36-0413A, 36-04013B, AND 36-07148. )  
 )  
(Clear Springs Delivery Call) )  
 )  
 )  
 )

Case No. CV 2009-0000431

AFFIDAVIT OF  
PHILLIP J. RASSIER

STATE OF IDAHO            )  
  ) ss  
COUNTY OF ADA            )

**PHILLIP J. RASSIER**, being first duly sworn upon his oath, deposes and states that:

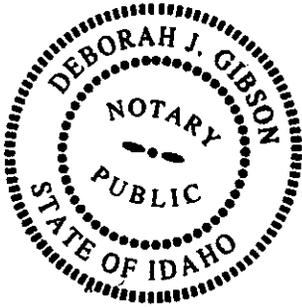
1. I am a Deputy Attorney General and one of the attorneys of record for the respondent Idaho Department of Water Resources in the above-caption case.
2. The following is based upon my personal knowledge.
3. Attached hereto as **Exhibit A** is a true and correct copy of a letter, dated September 23, 2009, from Gary Spackman, Interim Director of the Idaho Department of Water Resources, to Randall Budge, attorney for the North Snake Ground Water District and the Magic Valley Ground Water District (“Spackman Letter”).
4. The Spackman Letter provides the Department’s current assessment of the implementation, through September 15, of the Ground Water Districts’ Second Plan of Action for 2009 filed with the Department on August 3, 2009 and referenced in the Court’s August 24, 2009 *Order Conditionally Granting Motion for Stay Upon Compliance with Proposed Alternative* at page 5.
5. This affidavit is submitted for the purpose of informing the parties and the Court of the implementation status of the Second Plan of Action for 2009 prior to the hearing set for Tuesday, September 29, 2009 at 3:00 p.m. at the Gooding County Courthouse on a *Petition for Clarification of the Court’s Order Conditionally Granting Motion for Stay Upon Compliance with Proposed Alternative* filed by Clear Springs Foods, Inc. on August 31, 2009.

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Dated this 25<sup>th</sup> day of September, 2009.

Phillip J. Rassier  
Phillip J. Rassier  
Deputy Attorney General

SUBSCRIBED AND SWORN to before me this 25<sup>th</sup> day of September, 2009.



Deborah J. Gibson  
Notary Public for Idaho  
Residing at: Boise, Idaho  
Commission Expires: 8/10/2015

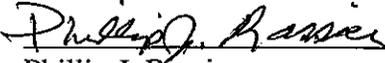
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a duly licensed attorney in the state of Idaho, employed by the Attorney General of the state of Idaho and residing in Boise, Idaho; and that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 25<sup>th</sup> day of September, 2009.

Document Served:           **AFFIDAVIT OF PHILLIP J. RASSIER**

Deputy Clerk Gooding County District Court 624 Main St P.O. Box 27 Gooding, ID 83330	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Judge Melanson (courtesy copy) SRBA District Court 253 3rd Ave. N P.O. Box 2707 Twin Falls, Idaho 83303-2707 Facsimile: (208) 736-2121	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Email
Randy C. Budge Candice M. McHugh RACINE OLSON NYE BUDGE BAILEY P.O. Box 1391 Pocatello, ID 83201 <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a> <a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON, LLP P.O. Box 2139 Boise, ID 83701-2139 <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a> <a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a> <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

<p>Michael Creamer GIVENS PURSLEY P.O. Box 2720 Boise, ID 83701-2720 <a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a></p>	<table><tr><td><input checked="" type="checkbox"/></td><td>U.S. Mail, postage prepaid</td></tr><tr><td><input type="checkbox"/></td><td>Hand Delivery</td></tr><tr><td><input type="checkbox"/></td><td>Overnight Mail</td></tr><tr><td><input type="checkbox"/></td><td>Facsimile</td></tr><tr><td><input checked="" type="checkbox"/></td><td>Email</td></tr></table>	<input checked="" type="checkbox"/>	U.S. Mail, postage prepaid	<input type="checkbox"/>	Hand Delivery	<input type="checkbox"/>	Overnight Mail	<input type="checkbox"/>	Facsimile	<input checked="" type="checkbox"/>	Email
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Phillip J. Rassier



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

September 23, 2009

GARY SPACKMAN
Interim Director

Randall Budge
Racine Olson
PO Box 1391
Pocatello, ID 83204-1391

Sent by US Mail
and Electronic Mail

Re: Implementation of Ground Water Districts' Second Plan of Action for 2009

Dear Mr. Budge:

Last week I received updated information from Cindy Yenter, Watermaster for Water Districts No's 130 and 140, regarding the status of delivery of water this irrigation season to both the "old" conversion acres and the new conversions acres as outlined in the Ground Water Districts 2009 Second Plan of Action ("Second Plan of Action") filed with the Idaho Department of Water Resources ("Department") on August 3, 2009. The data reported by Ms. Yenter, based on delivery records provided to her by the North Side Canal Company ("NSCC") through September 15 of this year, indicates that less water has been delivered to the old conversion acres than originally projected in the Second Plan of Action. Specifically, the information provided shows there have been no surface water deliveries by NSCC to a number of the old conversion projects that were expected to resume taking surface water for the remainder of the 2009 irrigation season. Additionally, I understand you provided a spreadsheet to the Department on September 18, 2009 that lists the names, locations, and acres for 2009 conversion projects, excluding the new conversions associated with the Ground Water Districts' over-the-rim mitigation plan. The spreadsheet you provided lists a total of 5,742 acres associated with conversion deliveries, as opposed to the approximate 7,745 acres that the Ground Water Districts identified in their Second Plan of Action.

Based on the information reported by Ms. Yenter and NSCC, Department staff modeled the benefit of actual surface water deliveries to the "old" conversion projects or acres, and updated the resulting benefit to the Buhl to Thousand Springs as follows:

Table with 6 columns: Existing Conversions, New Conversions, CREP, Total Provided, Total Required, Shortfall. Values: 2.76, 2.82, 0.68, 6.26, 12.23, 5.97

Note that the value for Existing Conversions is only 2.76 cfs, versus 6.32 cfs that was projected in a similar analysis and identified in Finding 7 of the Department's Amended Curtailment Order dated August 7, 2009. The 2.76 cfs shown in this updated analysis is based on surface water deliveries to existing conversions through September 15, and deliveries projected through the end of this irrigation season for the same conversions.

Mr. Budge  
September 23, 2009  
Page 2 of 2

Assuming recharge water is delivered in similar proportions to the same canals and laterals as delivered for 2007 late season recharge, the Ground Water Districts would be required to deliver approximately 25,600 acre-feet of recharge water in the fall of 2009 to satisfy the 5.97 cfs shortfall. The current projected shortfall of 5.97 cfs to the reach equates to a shortage of 0.41 cfs directly to Clear Springs. Assuming the Ground Water Districts will conduct late season recharge using 10,000 acre feet of surface water delivered through NSCC facilities, the anticipated benefit directly to Clear Springs will be at least 0.13 cfs<sup>1</sup>. Although late season recharge may reduce the shortfall to Clear Springs to at least 0.28 cfs, this remaining shortfall is still significantly higher than the 0.17 cfs shortfall projected in the Department's Amended Curtailment Order of August 7, 2009. As a result, the Ground Water Districts may need to increase 2009 late season recharge considerably in order to reduce the remaining shortfall. Given the Department's understanding that the Ground Water Districts have only secured a total of 27,500 acre-feet this year for both conversions (old and new) and late season recharge, there is a concern that the Ground Water Districts may have a greater shortfall than projected in either the Amended Curtailment Order or the original Curtailment Order dated July 22, 2009.

I welcome any additional data or information that may clarify the Department's understanding of the Ground Water Districts' implementation of its Second Action Plan.

Sincerely,



Gary Spackman  
Interim Director

cc: North Snake Ground Water District.  
Magic Valley Ground Water District  
Clear Springs Foods, Inc.  
John Simpson, Attorney, Clear Springs Foods, Inc.  
Cindy Yenter, Watermaster, Water Districts 130 and 140  
Allen Merritt, IDWR Southern Region Manager

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<sup>1</sup> See Affidavit of Charles M. Brendecke, North Snake and Magic Valley Ground Water Districts, August 11, 2009, Item 3, page 3.