

Daniel V. Steenson, ISB #4332
 Charles L. Honsinger, ISB #5240
 S. Bryce Farris, ISB #5636
 Jon Gould, ISB #6709
 RINGERT LAW CHTD.
 455 S. Third St.
 P.O. Box 2773
 Boise, Idaho 83701-2773
 Telephone: (208) 342-4591
 Facsimile: (208) 342-4657
Attorneys for Blue Lakes Trout Farm, Inc.

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 DISTRIBUTION OF) WATER TO WATER RIGHTS NOS. 36-02356A,) 36-07210, AND 36-07427)) (Blue Lakes Delivery Call))) IN THE MATTER OF DISTRIBUTION OF) WATER TO WATER RIGHTS NOS. 36-04013A,) 36-04013B, AND 36-07148.)) (Clear Springs Delivery Call))) _____)	Docket Nos. CM-DC-2010-02 CM-DC-2010-03 SPRING USERS’ RESPONSE TO GROUND WATER DISTRICTS’ MOTION FOR CONTINUANCE
--	--

COME NOW, Blue Lakes Trout Farm, Inc. (“Blue Lakes”) and Clear Springs Foods, Inc. (“Clear Springs”), through their respective attorneys of record, and hereby respond to the *Motion to Continue Administrative Hearing* filed by the Ground Water Districts on October 15, 2010.

RESPONSE

On October 1, 2010, the Director issued an interlocutory *Order Setting Hearing Schedule and Order Limiting Scope of Hearing* (“*Hearing Order*”). The Director precluded the presentation of evidence related to the 10% model uncertainty, the trim-line, or the use or application of the ground water model because the “issues are within the jurisdiction of the Idaho Supreme Court and it is not appropriate to address in this proceeding.” *Hearing Order* at 3. Although the Director purported to allow the Ground Water Users to present testimony on their legal issues, he also recognized that “the legal arguments raised by the Ground Water Users are on appeal to the Idaho Supreme Court.” *Id.* Recently, Judge Wildman determined that “the subject matter of the peremptory writ of mandate, namely evidence relating to the use of the trimline, the margin of error in the ground water model and other issues related to the application of the ground water model are intertwined with, or are the same issues raised in Gooding County Case 2008-444, which is currently on appeal to the Idaho Supreme Court.” *Order Denying Application for Peremptory Writ of Mandate* at 4 (*Blue Lakes v. Spackman*, Ada County Dist. Ct., Fourth Jud. Dist., Case No. CV-WA-2010-19823).

On October 15, 2010 the Ground Water Districts moved for a continuance of the hearing on the basis that the appeal “could materially affect the Director’s decision in this proceeding.” *Motion* at 1. Given the Director’s, the District Court’s, and the Ground Water Districts’ positions that the pending appeal before the Idaho Supreme Court precludes a full hearing on the issues raised in the petitions challenging the Director’s July 19, 2010 *Final Order*, the Spring Users agree the contested case should now be continued until a final decision from the Idaho

Supreme Court is issued. Continuing the hearing at this stage will preclude costly discovery and administrative proceedings that may need to be revisited following the decision on appeal. Once the Supreme Court issues its decision the Director should schedule a status conference as soon as possible.

Although all parties dispute the Director's new injury decision and intend to challenge that decision in this proceeding, the Ground Water Districts represent they can and will meet the mitigation requirements in the July 19, 2010 *Final Order. Motion* at 2. Since administration is not stayed, the Director must continue to implement the July 19, 2010 *Final Order* for purposes of requiring adequate mitigation or ordering curtailment. As recognized in the Ground Water Districts' *Motion*, continuing the contested case does not relieve them from complying with the Director's orders requiring curtailment or adequate mitigation for 2011. How the Ground Water Districts will meet the new mitigation requirements is not yet fully known or identified in specific filings with the Department. Therefore, the Spring Users dispute the assertion that prior mitigation plans provide sufficient mitigation for the new injury findings, and reserve the right to protest any new mitigation plans that are filed.

Regardless of any outstanding mitigation questions, which have yet to be determined, the Director should continue the present contested case regarding the July 19, 2010 *Final Order* until a decision is issued by the Idaho Supreme Court.

DATED this 1st day of November, 2010.

RINGERT LAW CHARTERED

By: *Daniel Steenson*
Daniel V. Steenson

BARKER, ROSHOLT & SIMPSON

By: *Daniel Steenson (for)*
John K. Simpson

CERTIFICATE OF SERVICE

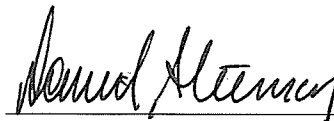
I hereby certify that on this 15th day of November, 2010, I served a true and correct copy of the foregoing **SPRING USERS' RESPONSE TO GROUND WATER DISTRICTS' MOTION FOR CONTINUANCE** by delivering it to the following individuals by the method indicated below, addressed as stated.

Director Gary Spackman.
 c/o Victoria Wigle
 Idaho Department of Water Resources
 322 East Front Street
 P.O. Box 83720
 Boise, ID 83720-0098
victoria.wigle@idwr.idaho.gov

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

<p>Randy Budge Candice M. McHugh RACINE OLSON P.O. Box 1391 Pocatello, Idaho 83204-1391 rcb@racinelaw.net cmm@racinelaw.net</p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
<p>John Simpson Travis Thompson BARKER ROSHOLT P.O. BOX 2139 BOISE ID 83701-2139 (208) 244-6034 jks@idahowaters.com tlt@idahowaters.com</p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
<p>Mike Creamer Jeff Fereday GIVENS PURSLEY P.O. Box 2720 Boise, Idaho 83701-2720 mcc@givenspursley.com jeffereday@givenspursley.com</p>	<ul style="list-style-type: none"> <input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail

<p>Michael S. Gilmore Attorney General's Office P.O. Box 83720 Boise, Idaho 83720-0010 mike.gilmore@ag.idaho.gov</p>	<p>(x) US Mail, Postage Prepaid () Facsimile (x) E-mail</p>
<p>Justin May May Sudweeks & Browning LLP 1419 W. Washington Boise, Idaho 83702 jmay@may-law.com</p>	<p>(x) US Mail, Postage Prepaid () Facsimile (x) E-mail</p>
<p>Robert E. Williams Fredericksen Williams Meservy P.O. Box 168 Jerome, Idaho 83338-0168 rewilliams@cableone.net</p>	<p>(x) US Mail, Postage Prepaid () Facsimile (x) E-mail</p>
<p>Allen Merritt Cindy Yenter Watermaster - Water District 130 IDWR – Southern Region 1341 Fillmore St., Ste 200 Twin Falls, Idaho 83301-3380 allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov</p>	<p>(x) US Mail, Postage Prepaid () Facsimile (x) E-mail</p>



Daniel V. Steenson