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*Attorneys for the Appellants – Idaho Ground Water Appropriators, Inc., North Snake Ground Water District, and Magic Valley Ground Water District (collectively, the "Ground Water Users")*

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

CLEAR SPRINGS FOODS, INC.,  
Petitioner/Respondent,

vs.

BLUE LAKES TROUT FARM, INC.,  
Cross-Petitioner/Respondent,

vs.

IDAHO GROUND WATER APPROPRIATORS,  
INC., NORTH SNAKE GROUND WATER  
DISTRICT, and MAGIC VALLEY GROUND  
WATER DISTRICT,

Cross-Petitioners/Appellants,

vs.

IDAHO DAIRYMEN'S ASSOCIATION, INC.,  
Cross-Petitioner/Respondent,

vs.

RANGEN, INC.,  
Cross-Petitioner/Respondent,

Case No. CV-2008-0000444

**GROUND WATER USERS'  
NOTICE OF APPEAL**

Fee Category: L-4  
Fee Amount: \$101.00

vs.

GARY SPACKMAN., in his capacity as Director of the Idaho Department of Water Resources; and the IDAHO DEPARTMENT OF WATER RESOURCES,

Respondents/Respondents.

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02356A, 36-07210, AND 36-07427

(Blue Lakes Delivery Call)

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-04013A, 36-04013B, AND 36-07148

(Clear Springs Delivery Call)

TO: THE ABOVE NAMED RESPONDENTS, CLEAR SPRINGS FOODS, INC., BLUE LAKES TROUT FARM, INC., IDAHO DAIRYMEN'S ASSOCIATION, INC., RANGEN, INC., GARY SPACKMAN, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES, AND THE IDAHO DEPARTMENT OF WATER RESOURCES; AND THE PARTIES' ATTORNEYS AS IDENTIFIED ON THE CERTIFICATE OF SERVICE BELOW; AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, IDAHO GROUND WATER APPROPRIATORS, INC., NORTH SNAKE GROUND WATER DISTRICT, and MAGIC VALLEY GROUND WATER DISTRICT (collectively, the "Ground Water Users") appeal against the above named respondents to the Idaho Supreme Court from the District Court's final *Order on Petition for Rehearing*, entered in the above entitled action on the 4<sup>th</sup> day of December, 2009, the Honorable John M. Melanson presiding.

2. The Appellants have the right to appeal to the Idaho Supreme Court, and the *Order on Petition for Rehearing* is appealable under and pursuant to Rule 11(f) of the Idaho Appellate Rules.

3. The Appellants intend to assert the following issues on appeal:
  - a. Whether Due Process requires the Director to hold a hearing before ordering and enforcing curtailment in the context of conjunctive water administration.
  - b. Whether the Director erred by failing to administer the Eastern Snake Plain Aquifer in compliance with the Swan Falls Agreement and State Water Plan.
  - c. Whether the Director erred by guaranteeing Blue Lakes and Clear Springs an artificially inflated aquifer level.
  - d. Whether the Director erred in his application of the law of full economic development of groundwater resources (Idaho Code § 42-226) by ordering the curtailment of more than 70,000 groundwater irrigated acres, when nearly all (98-99%) of the curtailed water is sacrificed to provide only 1-2 percent of the curtailed water to Blue Lakes and Clear Springs.
  - e. Whether the Director erred by denying the Ground Water Users' discovery of the evidence necessary to prove futile call.
  - f. Whether the Director erred by failing to apply the futile call doctrine.
  - g. Whether the Director erred by accepting testimony that curtailment will enable the Spring Users to produce more, larger or healthier fish, over the Ground Water Users' objection and contrary to the *Order re Discovery*.
  - h. Whether there is substantial evidence in the record to support the Director's conclusion that additional water that will accrue to Blue Lakes and Clear Springs from curtailment will actually be put to beneficial use.
  - i. Whether the Director erred by refusing to account for known uncertainties in the Eastern Snake Plain Aquifer Model.
4. No order has been entered sealing any portion of the record.
5. The Appellants request that the transcript of the administrative proceedings held before the Idaho Department of Water Resources be made a part of the record on appeal. The Appellants currently possess a copy of the transcript, as it was previously prepared in conjunction with the District Court's judicial review of this action. A copy of the transcript may be obtained from Burnham Habel & Associates, phone number 1-800-867-5701.
6. The Appellants do not request that any documents be included in the clerk's record other than those automatically included under Rule 28 of the Idaho Appellate Rules.


7. The Appellants request that all of the exhibits included in the agency record be copied and sent to the Supreme Court.

8. I certify:

- a. That a copy of this notice of appeal has been served on the reporter.
- b. That the fee required for the preparation of the reporter's transcript was paid in conjunction with the District Court's judicial review of this action.
- c. That the estimated fee for preparation of the clerk's record has been paid.
- d. That the appellant filing fee has been paid.
- e. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 15<sup>th</sup> day of January, 2010.

RACINE OLSON NYE BUDGE &  
BAILEY, CHARTERED

  
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Randall C. Budge

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15<sup>th</sup> day of January, 2010, the above document was served upon the persons below in the manner indicated:

### DOCUMENT SERVED: Ground Water Users' Notice of Appeal

Deputy Clerk Gooding County District Court P.O. Box 417 Gooding, Idaho 83330	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Hand Delivery
Daniel V. Steenson Charles L. Honsinger RINGERT CLARK P.O. Box 2773 Boise, Idaho 83701-2773 <a href="mailto:dvs@ringertclark.com">dvs@ringertclark.com</a> <a href="mailto:clh@ringertclark.com">clh@ringertclark.com</a>	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
Phillip J. Rassier Chris Bromley IDAHO DEPT. OF WATER RESOURCES P.O. Box 83720 Boise, Idaho 83720-0098 <a href="mailto:phil.rassier@idwr.idaho.gov">phil.rassier@idwr.idaho.gov</a> <a href="mailto:chris.bromley@idwr.idaho.gov">chris.bromley@idwr.idaho.gov</a>	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
Michael S. Gilmore IDAHO ATTORNEY GENERAL'S OFFICE P.O. Box 83720 Boise, Idaho 83720-0010 <a href="mailto:mike.gilmore@ag.idaho.gov">mike.gilmore@ag.idaho.gov</a>	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
Jeff Fereday Mike Creamer GIVENS PURSLEY P.O. Box 2720 Boise, Idaho 83701-2720 <a href="mailto:jcf@givenspursley.com">jcf@givenspursley.com</a> <a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a>	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
J. Justin May MAY SUDWEEKS & BROWNING P.O. Box 6091 Boise, Idaho 83707 <a href="mailto:jmay@may-law.com">jmay@may-law.com</a>	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail

<p>John Simpson  Travis L. Thompson  BARKER ROSHOLD  P.O. Box 2139  Boise, Idaho 83701-2139  <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a>  <a href="mailto:flt@idahowaters.com">flt@idahowaters.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> E-Mail</p>
<p>Josephine P. Beeman  BEEMAN &amp; ASSOCIATES  409 W. Jefferson  Boise, Idaho 83702  <a href="mailto:jo.beeman@beemanlaw.com">jo.beeman@beemanlaw.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> E-Mail</p>
<p>Robert E. Williams  FREDRICKSEN WILLIAMS MESERVY  P.O. Box 168  153 E. Main Street  Jerome, Idaho 83338-0168  <a href="mailto:rewilliams@cableone.net">rewilliams@cableone.net</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> E-mail</p>

  
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RANDALL C. BUDGE