

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
P.O. Box 2139
Boise, Idaho 83701-2139
Telephone: (208) 733-0700
Facsimile: (208) 735-2444

Attorneys for Petitioner Clear Springs Foods, Inc.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHT NOS. 36-)
02356A, 36-07210, AND 36-07427.)
(Blue Lakes Delivery Call)) **PETITION REQUESTING**
) **HEARING ON JULY 19, 2010**
) **FINAL ORDER**
IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHTS NOS. 36-)
0413A, 36-04013B, AND 36-07148.)
(Clear Springs Delivery Call))
_____))

COMES NOW, Clear Springs Foods, Inc. ("Clear Springs"), by and through its attorneys of record, and files this *Petition Requesting Hearing on July 19, 2010 Final Order* ("Petition"), in the above-captioned matter.

This *Petition* states the initial grounds Clear Springs has identified to date for contesting the *July 19, 2010 Final Order* ("2010 Order"). Clear Springs reserves the rights to amend these grounds, and present additional grounds and to submit briefing and present argument on all issues that are raised during hearing. Clear Springs reserves the right to file with a district court an original action or actions to contest the *2010 Order*.

INTRODUCTION

This matter is before the Director on remand from the District Court. In his June 19, 2009 *Order on Petitions for Judicial Review* and December 4, 2009 *Order on Petitions for Rehearing*, the Honorable John M. Melanson held that the Director improperly shifted the burden of proof to Clear Springs when he determined, without any supporting information, that Clear Springs' water right 36-4013A was not historically filled due to seasonal variations. The matter was remanded to the Director to apply the proper burdens of proof in making a material injury determination. Although certain issues were subsequently appealed to the Idaho Supreme Court, the remand order, and the associated discussion regarding burdens of proof, was not appealed.

On July, 19, 2010, the Interim Director issued the *2010 Order* relating to the issues on remand. In that order, the Interim Director created an analysis that, he asserts, will determine the impact of seasonal variability on Clear Springs' water right. Using that analysis, the Interim Director found material injury to water right no. 36-4013A.

Notwithstanding a finding of material injury, the Interim Director applied a plus or minus 10% margin of error, or "trim line," to exclude certain hydraulically-connected junior ground water rights found to be contributing to the material injury. In addition, the Interim Director refuses to administer the water rights causing material injury or to require a mitigation plan as required by the Rules for the Conjunctive Management of Surface and Ground Water Resources ("CM Rules"). Rather, he stated that "[c]urtailment in 2010 would not provide any significant water to the senior water right holders, and it would not be reasonable to order curtailment this year."

INITIAL GROUNDS FOR CONTESTING THE *2010 ORDER*

1. The *2010 Order* ignores the best scientific evidence, inappropriately calculates and applies a plus or minus 10% margin of error, or “trim line,” to exclude hydraulically-connected junior ground water rights causing injury to Clear Springs’ senior water right from priority administration and fails to accurately consider the impact of ground water depletions on Clear Springs’ senior water rights.

2. Contrary to the CM Rules and Snake River Basin Adjudication (“SRBA”) Orders, the *2010 Order* fails to administer those hydraulically connected ground water rights that lie outside the “trim line” even though they were found to contribute to the material injury to Clear Springs’ senior water right.

3. The *2010 Order* violates the established burdens of proof, *e.g. American Falls Reservoir Dist. #2 v. Idaho Dept. of Water Resources*, 143 Idaho 8621 (2007), by failing to shift the burden to the holders of the junior ground water rights to establish a defense to the call by clear and convincing evidence and thereby forcing Clear Springs to prove that the junior ground water rights outside the 10% trim line should be subject to administration.

4. Contrary to the CM Rules and the SRBA Orders, the *2010 Order* fails to require curtailment or a CM Rule 43 mitigation plan during the 2010 irrigation season.

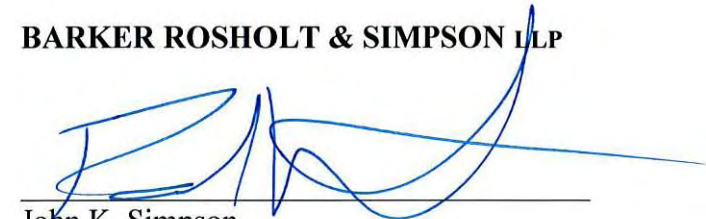
5. The *2010 Order* is not supported by substantial evidence when it concluded that “[c]urtailment in 2010 would not provide any significant water to the senior water right holders, and it would not be reasonable to order curtailment this year.”

6. The *2010 Order* fails to use current available data/information to determine hydraulically-connected junior ground water diversions causing injury to Clear Springs, and inappropriately relies on insufficient and outdated data/information contained in CM Rule 50;

thus resulting in a failure to require all junior ground water rights that are contributing to the material injury of Clear Springs' senior water right to provide mitigation for their depletions to the aquifer.

Dated this 30th day of July, 2010.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in blue ink, appearing to be "John K. Simpson", written over a horizontal line.

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

Attorneys for Clear Springs Foods, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of July, 2010, I served a true and correct copy of the foregoing **PETITION REQUESTING HEARING ON JULY 19, 2010 FINAL ORDER** 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
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Randy Budge
Candice M. McHugh
RACINE OLSON
P.O. Box 1391
Pocatello, Idaho 83204-1391
rcb@racinelaw.net
cmm@racinelaw.net

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Mike Creamer
Jeff Fereday
GIVENS PURSLEY
P.O. Box 2720
Boise, Idaho 83701-2720
jcf@givenspursley.com
mcc@givenspursley.com

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Michael S. Gilmore
Attorney General's Office
P.O. Box 83720
Boise, Idaho 83720-0010
Mike.gilmore@ag.idaho.gov

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Justin May
May Sudweeks & Browning LLP
1419 W. Washington
Boise, Idaho 83702
jmay@may-law.com

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Robert E. Williams
Fredericksen Williams Meservy
P.O. Box 168
Jerome, Idaho 83338-0168
rewilliams@cableone.net

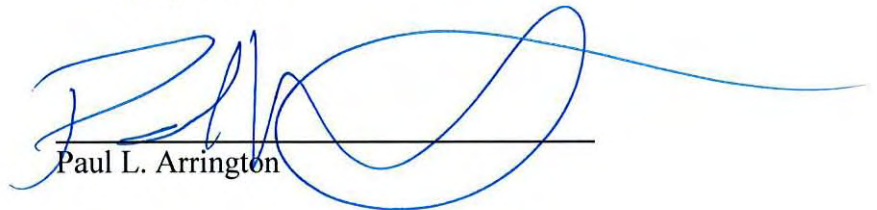
U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Allen Merritt
Cindy Yenter
Watermaster – Water District 130
IDWR – Southern Region
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3380
Allen.merritt@idwr.idaho.gov
Cindy.yenter@idwr.idaho.gov

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email

Dan Steenson
Ringert Law Chtd.
P.O. Box 2773
Boise, Idaho 83701-2773
dan@ringertlaw.com

U.S. Mail, Postage Prepaid
 Hand Delivery
 Overnight Mail
 Facsimile
 Email



Paul L. Arrington