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DEC 17 2008  
DEPARTMENT OF  
WATER RESOURCES

Attorneys for North Snake and Magic Valley Ground Water Districts

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

IN THE MATTER OF THE MITIGATION  
PLAN OF THE NORTH SNAKE AND MAGIC  
VALLEY GROUND WATER DISTRICTS  
IMPLEMENTED BY APPLICATIONS FOR  
PERMIT NOS. 02-10405 AND 36-16645 AND  
APPLICATION FOR TRANSFER NO. 74904  
TO PROVIDE REPLACEMENT WATER FOR  
CLEAR SPRINGS SNAKE RIVER FARM

(Water District Nos. 130 and 140)

**MOTION FOR ORDER  
COMPELLING ALTERNATIVE  
DISPUTE RESOLUTION**

**MOTION**

COMES NOW North Snake Ground Water District and Magic Valley Ground Water District ("Ground Water Districts"), through their respective counsel, and hereby move the Director for the entry of an Order mandating that the Ground Water Districts and Clear Springs Foods, Inc., d/b/a Snake River Farm ("Snake River Farm") meet informally to conduct settlement negotiations and or mediation as an informal means of alternative dispute resolution ("ADR") of the issues in dispute scheduled for hearing before the Director set to commence on February 3, 2009, pursuant to Rule 500 and Rule 610 of the Rules of Procedure of the Idaho Department of Water Resources, IDAPA 37.01.01 on the following terms:

MOTION FOR ORDER COMPELLING ALTERNATIVE DISPUTE RESOLUTION

COPY

1. That the parties meet for the purpose of mediation and or settlement negotiations during January 2009, at such date, time and place to be mutually agreed upon, to make a good faith effort to settle or narrow some or all of the issues presently scheduled for hearing before the Director on February 3, 2009, on the Ground Water Districts' Mitigation Plans.
2. That the parties appear for said ADR with one or more representatives with authority to enter into a binding settlement agreement.
3. That Justice Gerald F. Schroeder be the designated Mediator as he has indicated a willingness to do so and has available time in January 2009.
4. That the parties report to the Director the results of the Mediation.
5. The ADR shall be conducted, is deemed confidential and not part of the record pursuant to Rule 500 and Rule 610 of the Rules of Procedure at the Idaho Department of Water Resources, IDAPA 37.01.01.

#### **SUPPORTING BRIEF**

This Motion is upon the grounds and for the reasons as follows:

1. The Idaho legislature and Rule 500 of the Departments Rules of Procedure encourage informal means of ADR. For contested cases the means of ADR include settlement negotiations and mediation. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be obtained under formal contested case procedures and are appropriate under the circumstances of this case to attempt to settle or narrow some or all of the issues.
2. The Ground Water Districts have in the past and continue to make good faith efforts to fully comply with the Director's July 5, 2005, and subsequent orders (collectively referred to as the "Director's Orders") in lieu of involuntary curtailment of ground water rights

located in water district 130. The Director's Orders establish a mitigation obligation of 2.62 cfs to Snake River Farm for 2009.

3. The Ground Water Districts' Amended Mitigation Plan filed on September 5, 2008, pursuant to CM Rule 43 sets forth alternative mitigation proposals. On December 5, 2008, the Ground Water Districts' submitted pre-filed direct testimony exhibits in support of their mitigation plan.

4. Snake River Farm submitted pre-filed direct testimony and exhibits on December 5, 2008, raising objections to each mitigation proposal submitted by the Ground Water Districts.

5. A contested case hearing is scheduled to commence before the Director on February 3, 2009. The hearing is expected to be contentious and will last several days if not one or more weeks. Prior to the hearing the parties are expected to file rebuttal testimony and take the depositions of witnesses, all of which will result in considerable expense to both parties.

6. In the next several days and prior to the requested ADR the Ground Water Districts contemplate filing one or more additional mitigation plans presenting other alternatives.

7. The Ground Water Districts have been and remain willing to meet face to face with representatives of Snake River Farm for the purpose of conducting mediation and or settlement negotiations. However, Snake River Farm to date has refused, rejecting the Ground Water Districts' Stipulation proposing ADR, a copy of which is attached.

8. The proposed ADR will establish lacking yet needed dialogue and communications directly between the parties to focus upon the issues and attempt to negotiate a narrowing or settlement of some or all of the issues presented. If successful to this end, considerable time and expense may be saved to the parties, the Director and the Department.

9. The proposed mediator, Justice Gerald F. Schroeder, has expressed a willingness to serve as a mediator, has time available in January 2009 and is most likely to be effective

because of his respect, experience and general knowledge of the issues and parties' circumstances.

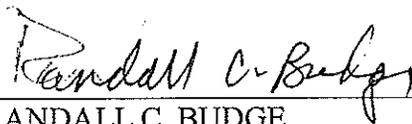
10. The Ground Water Districts' proposed Order for Alternative Dispute Resolution is attached.

WHEREFOR, the Ground Water Districts respectfully request that the Director enter an Order for ADR.

Respectfully Submitted.

DATED this 17<sup>th</sup> day of December, 2008.

RACINE OLSON NYE BUDGE  
& BAILEY, CHARTERED



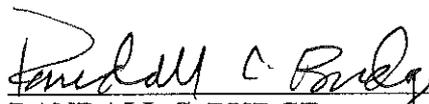
RANDALL C. BUDGE

*Attorneys for Idaho Ground Water Appropriators*

**CERTIFICATE OF MAILING**

I hereby certify that on this 18<sup>th</sup> day of December, 2008, the above and foregoing was sent to the following by U.S. Mail, proper postage prepaid and by e-mail for those with listed e-mail addresses:

David R. Tuthill, Director Idaho Department of Water Resources 322 E. Front Street P.O. Box 83720 Boise, Idaho 83720-0098 <a href="mailto:dave.tuthill@idwr.idaho.gov">dave.tuthill@idwr.idaho.gov</a> <a href="mailto:phil.rassier@idwr.idaho.gov">phil.rassier@idwr.idaho.gov</a>	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail <input checked="" type="checkbox"/> Hand Delivery
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Tracy Harr, President Clear Lake Country Club 403 Clear Lake Lane Buhl, Idaho 83316	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> E-Mail
Stephen P. Kaatz, V.P. Clear Lake Homeowners Assoc. 213 Clear Lake Lane Buhl, Idaho 83316	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> E-Mail

  
 RANDALL C. BUDGE

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IN THE MATTER OF THE MITIGATION  
PLAN OF THE NORTH SNAKE AND MAGIC  
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IMPLEMENTED BY APPLICATIONS FOR  
PERMIT NOS. 02-10405 AND 36-16645 AND  
APPLICATION FOR TRANSFER NO. 74904  
TO PROVIDE REPLACEMENT WATER FOR  
CLEAR SPRINGS SNAKE RIVER FARM

(Water District Nos. 130 and 140)

**STIPULATION FOR ALTERNATIVE  
DISPUTE RESOLUTION**

COMES NOW Clear Springs Foods, Inc., d/b/a Snake River Farm ("Snake River Farm") and North Snake Ground Water District and Magic Valley Ground Water District ("Ground Water Districts"), by and through their respective counsel of record and do hereby stipulate and agree to an informal means of alternative dispute resolution ("ADR") as follows:

1. That the parties meet for the purpose of mediation and or settlement negotiations during January 2009, at such date, time and place to be mutually agreed upon, to make a good faith effort to settle or narrow some or all of the issues presently scheduled for hearing before the Director on February 3, 2009, on the Ground Water Districts' Mitigation Plans.

2. That the parties appear for said ADR with one or more representatives with authority to enter into a binding settlement agreement.

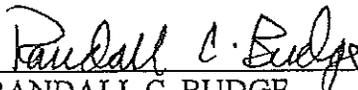
3. That Justice Gerold F. Schroeder be the designated Mediator, if willing. If unwilling the parties shall attempt to mutually agree upon another mediator and otherwise shall meet without a mediator to conduct settlement negotiations.

4. That the parties report to the Director the results of the Mediation.

5. The ADR shall be conducted, is deemed confidential and not part of the record pursuant to Rule 500 and Rule 610 of the Rules of Procedure at the Idaho Department of Water Resources, IDAPA 37.01.01.

DATED this 12<sup>th</sup> day of December, 2008.

RACINE OLSON NYE BUDGE  
& BAILEY, CHARTERED

  
\_\_\_\_\_  
RANDALL C. BUDGE  
*Attorneys for Idaho Ground Water Appropriators*

DATED this \_\_\_\_\_ day of December, 2008.

BARKER ROSHOLT & SIMPSON, LLP

\_\_\_\_\_  
JOHN K. SIMPSON  
*Attorneys for Clear Springs Foods, Inc.  
d/b/a Snake River Farms*

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**ORDER FOR ALTERNATIVE  
DISPUTE RESOLUTION**

This matter came on regularly before the Director pursuant to the Ground Water Districts' Motion for Order Compelling Alternative Dispute Resolution. The Director having reviewed the Motion and good cause appearing therefore,

IT IS HEREBY ORDERED as follows:

1. That the parties meet for the purpose of mediation and or settlement negotiations during January 2009, at such date, time and place to be mutually agreed upon, to make a good faith effort to settle or narrow some or all of the issues presently scheduled for hearing before the Director on February 3, 2009, on the Ground Water Districts' Mitigation Plans.

2. That the parties appear for said ADR with one or more representatives with authority to enter into a binding settlement agreement.
3. That Justice Gerald F. Schroeder be the designated Mediator.
4. That the parties report to the Director the results of the Mediation.
5. The ADR shall be conducted, is deemed confidential and not part of the record pursuant to Rule 500 and Rule 610 of the Rules of Procedure at the Idaho Department of Water Resources, IDAPA 37.01.01.

DATED this \_\_\_\_ day of December, 2008.

---

DAVID R. TUTHILL, JR.  
Director

**CERTIFICATE OF MAILING**

I hereby certify that on this \_\_\_\_\_ day of December, 2008, the above and foregoing was sent to the following by U.S. Mail, proper postage prepaid and by e-mail for those with listed e-mail addresses:

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