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

AMERICAN FALLS RESERVOIR DISTRICT)	
#2, A&B IRRIGATION DISTRICT, BURLEY)	Case No. CV-2005-600
IRRIGATION DISTRICT, MINIDOKA)	
IRRIGATION DISTRICT, and TWIN FALLS)	CLEAR SPRINGS FOODS, INC.'S
CANAL COMPANY,)	JOINDER IN PLAINTIFFS'
)	RESPONSE TO DEFENDANTS'
Plaintiffs,)	MOTION FOR STAY
)	
vs.)	
)	
THE IDAHO DEPARTMENT OF WATER)	
RESOURCES and KARL J. DREHER, its)	
director,)	
)	
Defendants.)	
)	

COMES NOW, Plaintiff-Intervenor CLEAR SPRINGS FOODS, INC. ("Clear Springs"), by and through counsel of record, and hereby joins in the *Plaintiffs' Response to Defendants' Motion for Stay*. Clear Springs joins in the response submitted by the Plaintiffs and further opposes the Defendants' efforts to stay the Court's June 2nd Order and June 30th Judgment for the additional points set forth below.

Clear Springs holds numerous decreed water rights to springs that emanate from the northern rim of the Snake River Canyon in the area known as the “Thousand Springs reach” north of Buhl, Idaho.¹ See Ex. A to *Affidavit of John K. Simpson in Support of Clear Springs Foods, Inc.’s Motion for Summary Judgment* (hereinafter “*Simpson Aff.*”).² Clear Springs’ decreed water rights provide for year-round diversion at specified rates. See *id.*

On May 2, 2005, Clear Springs requested water right administration and delivery of water to its Snake River Farm and Crystal Springs Farm pursuant to Idaho Code § 42-607. See Exs. B, C to *Simpson Aff.* The Director of the Idaho Department of Water Resources (“Department”) deemed Clear Springs’ request to be a “delivery call” under the conjunctive management rules (“Rules”), and responded by issuing an order on July 8, 2005 (“*July Order*”). See Ex. D to *Simpson Aff.* Since Clear Springs originally requested administration in May 2005, the spring flows that supply Clear Springs’ senior surface water rights have not increased, and Clear Springs’ water rights are still not being satisfied. See Ex. A to *Linda L. Lemmon* (demonstrating the decreed amounts versus the recorded low spring flows for 2003 and 2006 and the percentage loss). The injury to Clear Springs’ water rights is continuing and likely to continue for the rest of this year and beyond. See *id.*

This Court declared the Department’s Rules unconstitutional on June 2, 2006 Order. A judgment was issued on June 30, 2006 and later certified as final on July 11, 2006 pursuant to the Defendants’ representations that they would honor and follow the judgment. The Director’s prior orders responding to Clear Springs’ requests for water right administration, based upon the Rules, are now void as a matter of law. See *Clemens v. Pinehurst Water Dist.*, 81 Idaho 213,

¹ Clear Springs’ water rights in Basin 36 are listed as follows: 36-2048, 36-2703, 36-4013A, 36-4013B, 36-4013C, 36-7040, 36-7083, 36-7148, 36-7201, 36-7218, and 36-7568.

² Mr. Simpson’s affidavit was submitted in this case on November 1, 2005 in support of Clear Springs’ motion for summary judgment.

218-19 (1959). Accordingly, by letter of July 21, 2006, Clear Springs requested the Director to reconsider his prior orders and proceed with water right administration that complies with Idaho's constitution and water distribution statutes. *See Ex. I to Third Thompson Aff.* The Director responded to Clear Springs' letter with an order requesting "briefing" on how the Director should continue with administration, if any, at this time in light of this Court's judgment and the Defendants' appeal and present motion for stay. *See Ex. J to Third Thompson Aff.*

Rather than honor this Court's judgment, the Defendants are continuing on a path that ignores the constitution and further delays proper water right administration. In the meantime, Clear Springs, a senior water right holder, is left to suffer the shortages in the water supply. The Defendants' procedural "gamesmanship" over the two months since this Court issued its June 2nd Order has gone on long enough and must come to an end.

In the face of shortages to senior water rights throughout Water District 130, the Defendants' claim that the "public interest" weighs in favor of a stay are meritless. Moreover, the Defendants' allegation that "the current good water year minimizes the potential injury" during the appeal is similarly flawed. The so-called "good water year" has not alleviated the injury to Clear Springs and other spring users in the Thousand Springs reach as evidenced by recent measurements of the spring flows that supply those various senior rights. *See Ex. A to Affidavit of Linda L. Lemmon.*

The Defendants have not met their burden to show that a stay of this Court's judgment is necessary. The Defendants should not be permitted to shrug off their constitutional and statutory duties for yet another year. Staying the judgment in this case will ensure no lawful administration is performed this year, and will effectively give the Defendants the "green light" to continue to use the Rules in 2007. Whereas the Court has declared the Department's Rules to

be unconstitutional, there is no basis to stay that decision and allow the Director to proceed with unlawful administration to the detriment of Clear Springs and other senior surface water users. Clear Springs requests this Court deny the Defendants' motion.

DATED this 1st day of August 2006.

BARKER ROSHOLT & SIMPSON LLP



John K. Simpson

Attorneys for Clear Springs Foods, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 1st day of August, 2006, I served a true and correct copy of the foregoing document(s) on the person(s) listed below, in the manner indicated:

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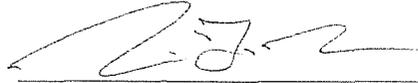
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