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 BAILEY, CHARTERED  
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**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, )  
 )  
 ) -vs- )  
 )  
 ) IDAHO GROUND WATER APPROPRIATORS, )  
 ) INC., NORTH SNAKE GROUND WATER )  
 ) DISTRICT, and MAGIC VALLEY GROUND )  
 ) WATER DISTRICT, )  
 )  
 ) Cross-Petitioners, )  
 )  
 ) -vs- )  
 )  
 ) DAVID K. TUTHILL, JR., in his capacity as Director )  
 ) of the Idaho Department of Water Resources; and the )  
 ) IDAHO DEPARTMENT OF WATER RESOURCES, )  
 )  
 ) Respondents. )  
 )

Case No. CV-2008-444

**CROSS-PETITION FOR  
 JUDICIAL REVIEW**

Fee Category: R-2  
 Fee Amount: \$78.00

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)**

IDAHO GROUND WATER APPROPRIATORS, INC., NORTH SNAKE GROUND WATER DISTRICT, and MAGIC VALLEY GROUND WATER DISTRICT, acting for and on behalf of their members, through counsel, respectfully submit this Cross-Petition for Judicial Review pursuant to Idaho Code § 67-5270 and Rule 84 of the Idaho Rules of Civil Procedure.

### **CROSS-PETITION FOR JUDICIAL REVIEW**

1. This Petition requests judicial review of actions taken by the Idaho Department of Water Resources.
2. This Petition is taken to the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Gooding. Venue is proper pursuant to Idaho Code § 67-5272.
3. This Petition seeks judicial review of the *Final Order Regarding Blue Lakes and Clear Springs Delivery Calls* issued by the Director of the Idaho Department of Water Resources (“IDWR”) on July 11, 2008, including prior agency action incorporated therein.
4. A hearing was held before IDWR from November 28 through December 13, 2007. Hearing proceedings were recorded by tape recording which is in the custody of IDWR.
5. The Petitioners request judicial review of the following issues:
  - a. Whether the laws of optimum beneficial use of water, full economic development of ground water resources, reasonable use of water, or futile call preclude the curtailment of junior-priority water use where less than 1-2% of the quantity curtailed will be made available to the calling senior water user.
  - b. Whether the Director erred in ruling that the amount of time required for the effect of curtailment to be realized has no bearing on whether a delivery call for the curtailment of ground water is deemed futile.
  - c. Whether the Director erred in failing to account for uncertainty in the East Snake Plain Aquifer Model attributable to factors other than stream gauge error.

- d. Whether the Director erred in ruling that the ordered curtailment does not result in an unreasonable waste of water resources.
- e. Whether the Director erred in failing to constrict the location of the “trim line” to insure that a significant portion of the curtailed water use will be made available to Blue Lakes Trout Farm, Inc. (“Blue Lakes”) and Clear Springs Foods, Inc. (“Clear Springs”) (collectively the “Spring Users”) within a reasonable time.
- f. Whether the Director erred in finding material injury to Blue Lakes and Clear Springs without supporting evidence that more water would produce more or larger or healthier fish.
- g. Whether the Director erred in finding that the ordered curtailment will result in a usable quantity to Blue Lakes and Clear Springs that will be applied to beneficial use.
- h. Whether the Director erred in failing to implement the protections of ground water development provided for in the 1986 Idaho State Water Plan.
- i. Whether the Director erred in failing to implement the protections of ground water development provided for in the Swan Falls Settlement.
- j. Whether the Director erred in ruling that the Spring Users’ are absolutely protected in their means of diversion and appropriation which rely upon inflated overflows from the ESPA.
- k. Whether the Director erred in failing to consider his authority under CM Rule 42.01. h. to compel a decreed surface water right to convert to a ground water source.
- l. Whether the Director has authority to require the Spring Users’ to comply with the reasonable pumping level mandate of Idaho Code § 42-226.
- m. Whether the Director exceeded his authority in issuing the curtailment orders on an emergency basis without a prior hearing.

n. Whether the Director exceeded his authority in issuing the curtailment orders without written statements from Blue Lakes and Clear Springs made under oath as required by Idaho Code § 42-237b.

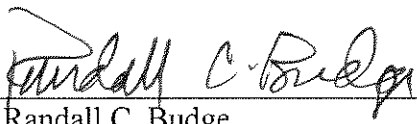
The Petitioners reserve the right to assert other issues as allowed by Rule 84 of the Idaho Rules of Civil Procedure.

6. The Petitioners request that a transcript of the hearing be made a part of the agency record for judicial review. The undersigned certifies that a transcript of the hearing has been paid for by the Petitioners and other parties seeking judicial review. A copy of the transcript may be obtained from Victoria Wigle, Administrative Assistant to the Director, Idaho Department of Water Resources, 322 E. Front St., P.O. Box 83720, Boise, Idaho 83720-0098, Telephone: (208) 287-4803; Facsimile: (208) 287-6700; Email: victoria.wigle@idwr.idaho.gov.

7. The undersigned certifies that the Petitioners have contacted IDWR and agreed to pay their share of the cost of preparing the agency record for judicial review. IDWR has not at this time estimated the cost of preparing the agency record for judicial review.

DATED this 7th day of August, 2008.

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED

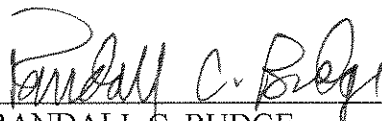
By:   
Randall C. Budge

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7<sup>th</sup> day of August, 2008, the above and foregoing document was served in the following manner:

Deputy Clerk Jerome County District Court 233 W. Main Jerome, Idaho 83338	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Overnight Mail <input 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 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 Department 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 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 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 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 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 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 Rosholt  P.O. Box 2139  Boise, Idaho 83701-2139  <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a>  <a href="mailto:ilt@idahowaters.com">ilt@idahowaters.com</a></p>	<p><input 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 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 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