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

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

Petitioners,

vs.

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

vs.

CLEAR SPRINGS FOODS, INC.

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS. 36-
04103A, 36-04013B AND 36-7148 (Snake
River Farm)

(Water District Nos. 130 and 140)

Case No.

**GROUND WATER DISTRICTS'
MOTION FOR STAY UNDER I.A.R.
13(b)(14) and I.R.C.P. 84(m)**

**North Snake Ground Water District, and
Magic Valley Ground Water District**

COME NOW, the North Snake Ground Water District, and Magic Valley Ground Water District (collectively the "Ground Water Districts") and hereby move this Court pursuant to Idaho Appellate Rule 13(b)(14) and I.R.C.P. 84(m) to stay the watermaster's curtailment of junior groundwater rights in Water District Nos. 130 and 140 and enforcement of new orders issued by the new interim director Gary Spackman ("Director") of the Idaho Department of Water Resources ("IDWR") which require immediate curtailment of approximately 153 groundwater rights including domestic, stockwater, fire protection, commercial and heating together with irrigation water rights that irrigate approximately 4,154 acres.

The Director's curtailment orders consist of the *Order Curtailing Ground Water Rights in Water District Nos. 130 and 140 Junior to January 8, 1981* dated July 22, 2009 ("July 22 Order"), the *Order Regarding Ground Water Districts' Plan of Action* dated July 29, 2009 ("July 29 Order") and the August 7, 2009 *Amended Curtailment Order* ("August 7 Order"), collectively referred to as the 2009 Curtailment Orders. The 2009 Curtailment Orders arise from the July 8, 2005 Order and July 11, 2008 Final Order in *The Matter of Distribution of Water to Water Rights Nos. 36-04013A, 36-04013B, and 36-07148* (Snake River Farm) pending on appeal to this Court in Gooding County Civil Case No. 2008-444; and, more particularly this Court's June 19, 2009 *Order On Petition For Judicial Review* which the Director has now interpreted to invalidate the former director's March 26, 2009 *Order Approving Ground Water Districts' Plan for 2009*. This sudden and unexpected change of the rules in the middle of the growing season left ground water users with a mitigation plan approved prior to the irrigation season without a hearing that has now been invalidated and with no hearing scheduled. It is not possible to now

gain approval of a mitigation plan this season , thus exposing them suddenly and unexpectedly to curtailment at the peak of the growing season.

By this motion the Ground Water Districts request: (1) immediate issuance of a temporary stay order to avoid immediate and irreparable harm and maintain the status quo until such time as a hearing can be held on a permanent stay; and (2) a permanent stay to remain in effect until such time as the issues raised on this appeal have been determined and/or until this Court has finally decided the issues on appeal in *Clear Springs Foods, Inc. v. Tuthill* Civil Case No. 2008-444 which remains pending before this Court on rehearing.

The Court has broad general discretion to grant the requested stay under Idaho Appellate Rule 13(b)(14) and Idaho Rule of Civil Procedure 84(m). The Ground Water Districts, as quasi-governmental entities are not necessarily required to post security under Idaho Appellate Rule 13(b)(14). However, the Ground Water Districts are continuing to provide mitigation to Clear Springs in the form of water that will accrue to their spring source as a result of conversion acres above the rim consisting of 7,745 acres, voluntarily dried-up acreage enrolled in the CREP program (both of which have been approved by the Director) and have offered and arranged to provide late season recharge of not less than 10,000 acre-feet through the North Side Canal Company canal system which the Director has refused to allow and provide credit for unless Clear Springs consents. Clear Springs has refused to provide this consent. The Director's refusal to accept and provide credit for the proposed late-season recharge is entirely contrary to the

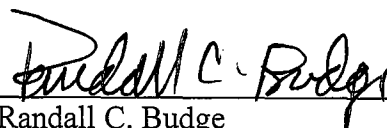
acceptance in 2007 by the prior director and is contrary to well established policy and state law set for in I.C. §42-234.¹

This motion is based upon the record before the Court in Case No. 2008-444 and the Petition for Judicial Review, supporting affidavits of Randall C. Budge, Charles M. Brendecke, and Lynn Carlquist and supporting Memorandum filed herewith.

RESPECTFULLY SUBMITTED.

DATED this 11 day of August, 2009.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED



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¹ Idaho Code § 42-234 states: "Ground Water Recharge Projects . . . It is the policy of the State of Idaho to promote and encourage the optimum development and augmentation of the water resources of this state. The legislature deems it essential, therefore, that water projects designed to advance this policy be given maximum support. The legislature finds that projects to recharge ground water basins in Idaho, may enhance the full realization of our water resource potential by furthering water conservation and increasing the water available for beneficial use."