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Attorneys for Respondents

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

NORTH SNAKE GROUND WATER)	
DISTRICT and MAGIC VALLEY)	Case No. CV 2009-0000431
GROUND WATER DISTRICT)	
)	
Petitioner,)	
)	SECOND AFFIDAVIT OF
vs.)	PHILLIP J. RASSIER
)	
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 RIGHTS NOS.)	
36-0413A, 36-04013B, AND 36-07148.)	
)	
(Clear Springs Delivery Call))	
)	
)	

STATE OF IDAHO)
) ss
COUNTY OF ADA)

PHILLIP J. RASSIER, being first duly sworn upon his oath, deposes and states that:

1. I am a Deputy Attorney General and one of the attorneys of record for the respondents Gary Spackman, Interim Director, and the Idaho Department of Water Resources in the above-caption case.

2. The following is based upon my personal knowledge.

3. Attached hereto as **Exhibit A** is a true and correct copy of a memorandum, dated January 11, 2009, from Tim Luke, IDWR Water Distribution Section Manager to Gary Spackman, Interim Director of the Idaho Department of Water Resources. The memorandum summarizes the shortfall calculations for the reach gain benefits to the Buhl to Thousand Springs reach resulting from mitigation activities implemented by the North Snake and Magic Valley Ground Water Districts (“Ground Water Districts”) during 2009 in response to the Snake River Farm delivery call (“Calculations Memo”).

4. The *Calculations Memo* is filed pursuant to paragraph 2 of the Court’s *Order Setting Deadlines for Filing of Verification of Conversion Acres and Shortfall Calculation*, entered November 9, 2009, for the purpose of setting forth the shortfall calculations for the Ground Water Districts’ Second Plan of Action for 2009 following the application of late season recharge.

5. Attached to the *Calculations Memo* are three memoranda from Allan Wylie, IDWR Hydrologist, entitled: 1) 2009 Conversion Post Audit for Snake River Farm; dated 6

January 2010; 2) North Side Canal Co 2009 Recharge Post Audit, dated 6 January 2010; and 3) 2009 CREP Post Audit, dated 18 December 2009.

6. The three Wylie memoranda document reach gain benefits to the Buhl to Thousand Springs reach resulting from 2009 mitigation activities by the Ground Water Districts comprised of existing and new conversion projects, CREP, and recharge.

7. Summarizing the Wylie memoranda, the *Calculations Memo* shows a projected shortfall of 3.18 cfs to the Buhl to Thousand Springs reach which equates to a shortage of 0.22 cfs to Clear Springs' Snake River Farm facility. This shortfall is higher than the 0.17 shortfall projected in the Department's Amended Curtailment Order of August 7, 2009.

Dated this 11th day of January, 2010.

Phillip J. Rassier

Phillip J. Rassier
Deputy Attorney General

SUBSCRIBED AND SWORN to before me this 11th day of January, 2010.

Deborah J. Gibson

Notary Public for Idaho

Residing at: Parma, Idaho

Commission Expires: 8/10/2015



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a duly licensed attorney in the state of Idaho, employed by the Attorney General of the state of Idaho and residing in Boise, Idaho; and that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 11th day of January, 2010.

Document Served: **SECOND AFFIDAVIT OF PHILLIP J. RASSIER**

Deputy Clerk Gooding County District Court 624 Main St P.O. Box 27 Gooding, ID 83330	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Judge Eric Wildman (courtesy copy) SRBA District Court 253 3rd Ave. N P.O. Box 2707 Twin Falls, Idaho 83303-2707 Facsimile: (208) 736-2121	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email
Randy C. Budge Candice M. McHugh RACINE OLSON NYE BUDGE BAILEY P.O. Box 1391 Pocatello, ID 83201 rcb@racinelaw.net cmm@racinelaw.net	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON, LLP P.O. Box 2139 Boise, ID 83701-2139 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email

<p>Michael Creamer GIVENS PURSLEY P.O. Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
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Phillip J. Rassier