

Daniel V. Steenson, ISB #4332  
 Charles L. Honsinger, ISB #5240  
 S. Bryce Farris, ISB #5636  
 Jon Gould, ISB #6709  
 RINGERT LAW CHTD.  
 455 S. Third St.  
 P.O. Box 2773  
 Boise, Idaho 83701-2773  
 Telephone: (208) 342-4591  
 Facsimile: (208) 342-4657  
*Attorneys for Blue Lakes Trout Farm, Inc.*

John K. Simpson, ISB #4242  
 Travis L. Thompson, ISB #6168  
 Paul L. Arrington, ISB #7198  
 BARKER ROSHOLT & SIMPSON LLP  
 1010 W. Jefferson St., Suite 102  
 P.O. Box 2139  
 Boise, Idaho 83701-2139  
 Telephone: (208) 336-0700  
 Facsimile: (208) 344-6034  
*Attorneys for Clear Springs Foods, Inc.*

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

IN THE MATTER OF DISTRIBUTION OF ) WATER TO WATER RIGHTS NOS. 36-02356A, ) 36-07210, AND 36-07427 )	<b>Docket Nos.      CM-DC-2010-02</b> <b>                                 CM-DC-2010-03</b>
<b>(Blue Lakes Delivery Call)</b> )	<b>SPRING USERS' RESPONSE TO</b>
IN THE MATTER OF DISTRIBUTION OF ) WATER TO WATER RIGHTS NOS. 36-04013A, ) 36-04013B, AND 36-07148. )	<b>GROUND WATER DISTRICTS'</b>
<b>(Clear Springs Delivery Call)</b> )	<b>MOTION FOR CONTINUANCE</b>
_____ )	

COME NOW, Blue Lakes Trout Farm, Inc. (“Blue Lakes”) and Clear Springs Foods, Inc. (“Clear Springs”), through their respective attorneys of record, and hereby respond to the *Motion to Continue Administrative Hearing* filed by the Ground Water Districts on October 15, 2010.

## RESPONSE

On October 1, 2010, the Director issued an interlocutory *Order Setting Hearing Schedule and Order Limiting Scope of Hearing* (“*Hearing Order*”). The Director precluded the presentation of evidence related to the 10% model uncertainty, the trim-line, or the use or application of the ground water model because the “issues are within the jurisdiction of the Idaho Supreme Court and it is not appropriate to address in this proceeding.” *Hearing Order* at 3. Although the Director purported to allow the Ground Water Users to present testimony on their legal issues, he also recognized that “the legal arguments raised by the Ground Water Users are on appeal to the Idaho Supreme Court.” *Id.* Recently, Judge Wildman determined that “the subject matter of the peremptory writ of mandate, namely evidence relating to the use of the trimline, the margin of error in the ground water model and other issues related to the application of the ground water model are intertwined with, or are the same issues raised in Gooding County Case 2008-444, which is currently on appeal to the Idaho Supreme Court.” *Order Denying Application for Peremptory Writ of Mandate* at 4 (*Blue Lakes v. Spackman*, Ada County Dist. Ct., Fourth Jud. Dist., Case No. CV-WA-2010-19823).

On October 15, 2010 the Ground Water Districts moved for a continuance of the hearing on the basis that the appeal “could materially affect the Director’s decision in this proceeding.” *Motion* at 1. Given the Director’s, the District Court’s, and the Ground Water Districts’ positions that the pending appeal before the Idaho Supreme Court precludes a full hearing on the issues raised in the petitions challenging the Director’s July 19, 2010 *Final Order*, the Spring Users agree the contested case should now be continued until a final decision from the Idaho

Supreme Court is issued. Continuing the hearing at this stage will preclude costly discovery and administrative proceedings that may need to be revisited following the decision on appeal. Once the Supreme Court issues its decision the Director should schedule a status conference as soon as possible.

Although all parties dispute the Director's new injury decision and intend to challenge that decision in this proceeding, the Ground Water Districts represent they can and will meet the mitigation requirements in the July 19, 2010 *Final Order. Motion* at 2. Since administration is not stayed, the Director must continue to implement the July 19, 2010 *Final Order* for purposes of requiring adequate mitigation or ordering curtailment. As recognized in the Ground Water Districts' *Motion*, continuing the contested case does not relieve them from complying with the Director's orders requiring curtailment or adequate mitigation for 2011. How the Ground Water Districts will meet the new mitigation requirements is not yet fully known or identified in specific filings with the Department. Therefore, the Spring Users dispute the assertion that prior mitigation plans provide sufficient mitigation for the new injury findings, and reserve the right to protest any new mitigation plans that are filed.

Regardless of any outstanding mitigation questions, which have yet to be determined, the Director should continue the present contested case regarding the July 19, 2010 *Final Order* until a decision is issued by the Idaho Supreme Court.

DATED this 1<sup>st</sup> day of November, 2010.

RINGERT LAW CHARTERED

By: *Daniel Steenson*  
Daniel V. Steenson

BARKER, ROSHOLT & SIMPSON

By: *Daniel Steenson (for)*  
John K. Simpson

**CERTIFICATE OF SERVICE**

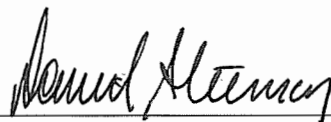
I hereby certify that on this 15<sup>th</sup> day of November, 2010, I served a true and correct copy of the foregoing **SPRING USERS' RESPONSE TO GROUND WATER DISTRICTS' MOTION FOR CONTINUANCE** by delivering it to the following individuals by the method indicated below, addressed as stated.

Director Gary Spackman.  
 c/o Victoria Wigle  
 Idaho Department of Water Resources  
 322 East Front Street  
 P.O. Box 83720  
 Boise, ID 83720-0098  
[victoria.wigle@idwr.idaho.gov](mailto:victoria.wigle@idwr.idaho.gov)

- U.S. Mail, Postage Prepaid
- Facsimile
- Hand Delivery
- E-Mail

<p>Randy Budge          Candice M. McHugh          RACINE OLSON          P.O. Box 1391          Pocatello, Idaho 83204-1391  <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a>  <a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a></p>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> US Mail, Postage Prepaid</li> <li><input type="checkbox"/> Facsimile</li> <li><input checked="" type="checkbox"/> E-mail</li> </ul>
<p>John Simpson          Travis Thompson          BARKER ROSHOLT          P.O. BOX 2139          BOISE ID 83701-2139          (208) 244-6034  <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a>  <a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a></p>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> US Mail, Postage Prepaid</li> <li><input type="checkbox"/> Facsimile</li> <li><input checked="" type="checkbox"/> E-mail</li> </ul>
<p>Mike Creamer          Jeff Fereday          GIVENS PURSLEY          P.O. Box 2720          Boise, Idaho 83701-2720  <a href="mailto:mcc@givernspursley.com">mcc@givernspursley.com</a>  <a href="mailto:jeffereday@givernspursley.com">jeffereday@givernspursley.com</a></p>	<ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> US Mail, Postage Prepaid</li> <li><input type="checkbox"/> Facsimile</li> <li><input checked="" type="checkbox"/> E-mail</li> </ul>

<p>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></p>	<p>(x) US Mail, Postage Prepaid  ( ) Facsimile  (x) E-mail</p>
<p>Justin May  May Sudweeks &amp; Browning LLP  1419 W. Washington  Boise, Idaho 83702  <a href="mailto:jmay@may-law.com">jmay@may-law.com</a></p>	<p>(x) US Mail, Postage Prepaid  ( ) Facsimile  (x) E-mail</p>
<p>Robert E. Williams  Fredericksen Williams Meservy  P.O. Box 168  Jerome, Idaho 83338-0168  <a href="mailto:rewilliams@cableone.net">rewilliams@cableone.net</a></p>	<p>(x) US Mail, Postage Prepaid  ( ) Facsimile  (x) E-mail</p>
<p>Allen Merritt  Cindy Yenter  Watermaster - Water District 130  IDWR – Southern Region  1341 Fillmore St., Ste 200  Twin Falls, Idaho 83301-3380  <a href="mailto:allen.merritt@idwr.idaho.gov">allen.merritt@idwr.idaho.gov</a>  <a href="mailto:cindy.yenter@idwr.idaho.gov">cindy.yenter@idwr.idaho.gov</a></p>	<p>(x) US Mail, Postage Prepaid  ( ) Facsimile  (x) E-mail</p>



Daniel V. Steenson