



additional issues raised, and requests the hearing be consolidated and heard at the same time as the hearing on the *2010 Order*. The hearing on the *2010 Order* is currently stayed pending a decision from the Idaho Supreme Court (Docket No. 37308-2010).

Clear Springs further reserves the right to amend these grounds, and present additional grounds and to submit briefing and present argument on all issues that are raised during hearing. Finally, Clear Springs reserves the right to file with a district court an original action or actions to contest the *2010 Order* and *Amended Order*.

### **INITIAL GROUNDS FOR CONTESTING THE *AMENDED ORDER***

The initial grounds for contesting the *Amended Order* are the same as those previously set forth by Clear Springs in its petition requesting hearing on the *2010 Order* and in order to preserve such grounds as they may relate to the *Amended Order* are set forth as follows:

1. The *Amended Order* ignores the best scientific evidence, inappropriately calculates and applies a plus or minus 10% margin of error, or “trim line,” to exclude hydraulically-connected junior ground water rights causing injury to Clear Springs’ senior water right from priority administration and fails to accurately consider the impact of ground water depletions on Clear Springs’ senior water rights.
2. Contrary to the CM Rules and Snake River Basin Adjudication (“SRBA”) Orders, the *Amended Order* fails to administer those hydraulically connected ground water rights that lie outside the “trim line” even though they were found to contribute to the material injury to Clear Springs’ senior water rights.
3. The *Amended Order* violates the established burdens of proof, *e.g. American Falls Reservoir Dist. #2 v. Idaho Dept. of Water Resources*, 143 Idaho 8621 (2007), by failing to shift the burden to the holders of the junior ground water rights to establish a defense to the call

by clear and convincing evidence and thereby forcing Clear Springs to prove that the junior ground water rights outside the 10% trim line should be subject to administration.

4. Contrary to the CM Rules and the SRBA Orders, the *Amended Order* failed to require curtailment or a CM Rule 43 mitigation plan during the 2010 irrigation season.

5. The *Amended Order* is not supported by substantial evidence when it concluded that “[c]urtailment in 2010 would not provide any significant water to the senior water right holders, and it would not be reasonable to order curtailment this year.”

6. The *Amended Order* fails to use current available data/information to determine hydraulically-connected junior ground water diversions causing injury to Clear Springs, and inappropriately relies on insufficient and outdated data/information contained in CM Rule 50; thus resulting in a failure to require all junior ground water rights that are contributing to the material injury of Clear Springs’ senior water right to provide mitigation for their depletions to the aquifer.

#### **REQUEST FOR INDEPENDENT HEARING OFFICER**

Clear Springs requests the Director to appoint an independent hearing officer, not an employee of IDWR, to preside over these proceedings as provided in I.C. § 42-1701A(2).

Dated this 21<sup>st</sup> day of January, 2011.

**BARKER ROSHOLT & SIMPSON LLP**



John K. Simpson  
Travis L. Thompson  
Paul L. Arrington

*Attorneys for Clear Springs Foods, Inc.*

## CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of January, 2011, I served a true and correct copy of the foregoing **PETITION REQUESTING HEARING ON JANUARY 10, 2011 AMENDED FINAL ORDER REGARDING SEASONAL VARIABILITY** by delivering it to the following individuals by the method indicated below, addressed as stated.

Interim 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)  
[garrick.baxter@idwr.idaho.gov](mailto:garrick.baxter@idwr.idaho.gov)  
[chris.bromley@idwr.idaho.gov](mailto:chris.bromley@idwr.idaho.gov)

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

Randy Budge  
Candice M. McHugh  
**RACINE OLSON**  
P.O. Box 1391  
Pocatello, Idaho 83204-1391  
[rbc@racinelaw.net](mailto:rbc@racinelaw.net)  
[cmm@racinelaw.net](mailto:cmm@racinelaw.net)

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

Mike Creamer  
Jeff Fereday  
**GIVENS PURSLEY**  
P.O. Box 2720  
Boise, Idaho 83701-2720  
[jcf@givenspursley.com](mailto:jcf@givenspursley.com)  
[mcc@givenspursley.com](mailto:mcc@givenspursley.com)

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

Michael S. Gilmore  
Attorney General's Office  
P.O. Box 83720  
Boise, Idaho 83720-0010  
[Mike.gilmore@ag.idaho.gov](mailto:Mike.gilmore@ag.idaho.gov)

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

Justin May  
**May Sudweeks & Browning LLP**  
1419 W. Washington  
Boise, Idaho 83702  
[jmay@may-law.com](mailto:jmay@may-law.com)

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

Robert E. Williams  
**Fredericksen Williams Meservy**  
P.O. Box 168  
Jerome, Idaho 83338-0168  
[rewilliams@cableone.net](mailto:rewilliams@cableone.net)

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

Allen Merritt  
Cindy Yenter  
Watermaster – Water District 130  
IDWR – Southern Region  
1341 Fillmore St., Ste. 200  
Twin Falls, ID 83301-3380  
[Allen.merritt@idwr.idaho.gov](mailto:Allen.merritt@idwr.idaho.gov)  
[Cindy.yenter@idwr.idaho.gov](mailto:Cindy.yenter@idwr.idaho.gov)

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

Dan Steenson  
**Ringert Law Chtd.**  
P.O. Box 2773  
Boise, Idaho 83701-2773  
[dan@ringertlaw.com](mailto:dan@ringertlaw.com)

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email



Travis L. Thompson