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

IN THE MATTER OF THE NORTH SNAKE	)	
AND MAGIC VALLEY GROUND WATER	)	<b>Docket Nos. CM-MP-2009-01</b>
DISTRICTS' 2009 JOINT MITIGATION PLAN	)	<b>CM-MP-2009-02</b>
TO COMPENSATE BLUE LAKES TROUT	)	<b>CM-MP-2009-03</b>
FARM, INC.	)	
_____	)	<b>CLEAR SPRINGS FOODS, INC.'S</b>
	)	<b>RESPONSE TO GROUND WATER</b>
IN THE MATTER OF THE A&B	)	<b>DISTRICTS' MOTION TO LIMIT</b>
IRRIGATION DISTRICTS'S 2009	)	<b>SCOPE OF HEARING AND</b>
MITIGATION PLAN TO COMPENSATE	)	<b>PROPOSED SCHEDULE</b>
BLUE LAKES TROUT FARM, INC.	)	
	)	
(Water Right NOs. 36-02356A, 36-07210, and	)	
36-07247)	)	
	)	
_____	)	

COMES NOW, Clear Springs Foods, Inc. ("Clear Springs"), by and through its attorneys of record, Barker, Rosholt & Simpson, LLP, and herby submits this *Response* to the North Snake and Magic Valley Ground Water Districts' *Motion to Limit Scope of Hearing and Proposed Schedule* filed on December 4, 2009.

## MITIGATION PLAN CASES

The Districts assert that the contested cases concerning their joint mitigation plan (CM-MP-2009-01), A&B's mitigation plan (CM-MP-2009-02), and Southwest and Goose Creek Irrigation Districts' mitigation plan (CM-MP-2009-03) have been "consolidated". *See Districts' Motion* at 1, n.1. To the contrary, although a joint scheduling conference was held on November 24, 2009, and the Director indicated the plans that have similar components may need to be considered by him at the same time, no formal "consolidation" has taken place. Accordingly, although the plans may eventually follow the same schedule and be heard consecutively before IDWR in March, 2010, the Districts' characterization that these proceedings are formally "consolidated" is erroneous.

## RESPONSE

Clear Springs joins in *Blue Lakes Trout Farm, Inc.'s Brief in Opposition* to the Districts' motion. In addition, Clear Springs disputes the Districts' characterization of the scope of the hearing before Justice Schroeder in the "Over-the-Rim" Mitigation Plan proceeding and further submits that additional issues raised (e.g. validity of the trimline, spring percentages, mitigation owed) are not to be evaluated once some "appeal relating to those issues is final". *See Districts' Motion* at 2. No "appeal" of these issues exists to support the Districts' theory. Similar to Blue Lakes, Clear Springs does not intend to appeal the District Court's decision on the trimline or spring percentage issues. Notwithstanding that separate proceeding, the Districts' plan for Blue Lakes must be reviewed pursuant to the CM Rules, including the Rule 43 factors.

The issues raised in Blue Lakes' protest (e.g. estimation of depletions, benefits of CREP and conversions, trimline, spring percentages) are relevant and should be considered by the Director. Indeed, those issues are important to Clear Springs since the Districts have proposed


similar measures in their mitigation for Snake River Farms. How IDWR reviews those issues and estimates the claimed benefits from those mitigation actions is relevant and is the reason Clear Springs filed the protest to the Districts' plan here in the first place. Contrary to the Districts' arguments, IDWR is required to use the best available information for purposes of water right administration and the purpose of an administrative hearing is to develop a complete record and provide the Director with that information.

Since the Districts can file pre-hearing motions pursuant to the Department's procedural rules, there is no basis to restrict the scope of the hearing. If the Districts believe there are legal issues that can be decided up front, and that a decision will narrow the issues for hearing, they can file their motions at any time.

For the above reasons Clear Springs opposes the Districts' *Motion to Limit Scope of Hearing* and joins in the schedule proposed by Blue Lakes.

DATED this 16<sup>th</sup> day of December, 2009.

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## CERTIFICATE OF MAILING

I hereby certify that on December 16, 2009, the above and foregoing, was sent to the following by U.S. Mail proper postage prepaid and by email:

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