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DEPARTMENT OF WATER RESOURCES

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

CLEAR SPRINGS FOODS, INC.,

Petitioner,

vs.

DAVID K. TUTHILL, JR., in his capacity as
Director of the Idaho Department of Water
Resources, and **THE IDAHO DEPARTMENT
OF WATER RESOURCES,**

Respondents.

CASE NO. CV 2008-444

Fee Category R.2 - \$88.00

**CLEAR SPRINGS FOODS, INC.'S
NOTICE OF APPEAL AND
PETITION FOR JUDICIAL
REVIEW OF AGENCY ACTION**

**IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHTS NOS. 36-
0413A, 36-04013B, AND 36-07148.**

(Clear Springs Delivery Call)

**IN THE MATER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS. 36-
02356A, 36-07210, AND 36-07427.**

(Blue Lakes Delivery Call)

COMES NOW, the Petitioner Clear Springs Foods, Inc. (“Clear Springs”), by and through its undersigned counsel, and hereby files this Petition as follows:

STATEMENT OF THE CASE

1. This is a civil action pursuant to Idaho Code §§ 67-5270 and 67-5279 seeking judicial review of a final order issued by the Director of the Idaho Department of Water Resources, David K. Tuthill, Jr., on July 11, 2008 (“*Final Order*”).

2. A hearing before the agency was held in the matter from November 28, 2007 to December 13, 2007.

3. Clear Springs intends to assert the following issues on judicial review:

a. Whether the Director erred in reevaluating the extent of Clear Springs’ beneficial use of its water rights prior to the date the rights were decreed by the Snake River Basin Adjudication (SRBA) District Court to find that some of Clear Springs’ water rights are not entitled to delivery of water pursuant to its senior water rights as required by Idaho law.

b. Whether the Director erred in determining that junior priority ground water rights do not injure Clear Springs’ 1955 priority senior water right (#36-04013A).

c. Whether the Director erred in using a 10% “trim line” to exclude certain junior priority ground water rights from administration.

d. Whether the Director erred in using a percentage of reach gains to the Snake River to reduce the quantity of water junior priority ground water right holders are required to provide to Clear Springs’ as mitigation for Clear Springs’ water losses in lieu of curtailment.

e. Whether the Director erred in failing to properly account for and require junior priority ground water right holders to perform their outstanding mitigation obligations for the injury they caused to Clear Springs in 2005, 2006, 2007, and 2008.

f. Whether the Director erred in using a “public interest” criteria in the administration of junior priority ground water rights.

g. Whether the Director erred in phasing-in curtailment or mitigation obligations of junior priority ground water rights over a 5-year period.

h. Whether the Director erred in using a “replacement water plan” process not provided for by statute or the Department’s conjunctive management rules in administration of junior priority ground water rights in 2005, 2006, and 2007.

i. Whether the Director erred in approving “replacement water plans” through various orders issued in 2005, 2006, and 2007.

4. Pursuant to I.R.C.P. 84(d)(5), Clear Springs reserves the right to assert additional issues and/or clarify or further specify the issues for judicial review stated in this petition or which become later discovered.

JURISDICTION AND VENUE

5. This petition is authorized by Idaho Code §§ 67-5270 and 67-5279.

6. This Court has jurisdiction over this action pursuant to Idaho Code §§ 42-1701A(4) and 67-5272.

7. Venue lies in this Court pursuant to Idaho Code § 67-5272. Clear Springs’ Snake River Farm aquaculture facility is located in Gooding County and the water rights which are the subject matter of the agency action are appurtenant to lands located in Gooding County.

8. The Director's July 11, 2008 *Final Order Regarding Blue Lakes and Clear Springs Delivery Calls* is a final agency action subject to judicial review pursuant to Idaho Code § 67-5270(3).

PARTIES

9. Petitioner Clear Springs is an employee-owned Idaho general business corporation, with its principal office located in Twin Falls County and aquaculture facilities, including its Snake River Farm facility (subject of the agency action in this case), located in Gooding County.

10. Respondent Idaho Department of Water Resources is a state agency with its main office located at 322 E. Front St., Boise, Idaho. Respondent David K. Tuthill, Jr., is the director of the Idaho Department of Water Resources.

AGENCY RECORD

11. Judicial review is sought of the Director's July 11, 2008 *Final Order Regarding Blue Lakes and Clear Springs Delivery Calls*.

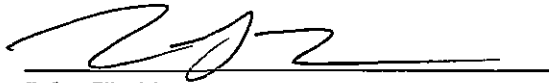
12. The Department held a hearing in this matter from November 28, 2007 to December 13, 2007, which was recorded and a transcript created, which transcript should be made a part of the agency record in this matter. The person who may have a copy of such transcript is Victoria Wigle, Director's Administrative Assistant, Idaho Department of Water Resources, 322 E. Front St., P.O. Box 83720, Boise, Idaho 83720-0098, Telephone: (208) 287-4803, Facsimile: (208) 287-6700, email: victoria.wigle@idwr.idaho.gov. The transcript has already been paid for and prepared at the request of the parties to this matter.

13. Clear Springs anticipates that it can reach a stipulation regarding the agency record with the Respondents and the other parties, and will pay its necessary share of the fee for preparation of the record at such time.

14. Service of this Petition for Judicial Review of Agency Action has been made on the Respondents at the time of the filing of this Petition.

DATED this 28th day of July 2008.

BARKER ROSHOLT & SIMPSON LLP



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

Attorneys for Petitioner Clear Springs Foods, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of July, 2008, I served true and correct copies of the *Notice of Appeal and Petition for Judicial Review of Agency Action* upon the following by the method indicated:

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