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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

CLEAR SPRINGS FOODS, INC.,)
)

Petitioner,)

vs.)

BLUE LAKES TROUT FARM, INC.,)
)

Cross-Petitioner,)

vs.)

IDAHO GROUND WATER APPROPRIATORS,)
INC., NORTH SNAKE GROUND WATER)
DISTRICT, and MAGIC VALLEY GROUND)
WATER DISTRICT,)

Cross-Petitioners,)
)

vs.)
)

Case No. No. 2008-444

**STATUS REPORT AND REQUEST
FOR ADDITIONAL TIME TO ISSUE
ORDER ON REMAND**

GARY SPACKMAN, in his capacity as Interim
Director of the Idaho Department of Water Resources,
and **THE DEPARTMENT OF WATER
RESOURCES**,

Respondents.

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

(Clear Springs Delivery Call)

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

(Blue Lakes Delivery Call)

COMES NOW Respondents, the Idaho Department of Water Resources and Interim Director Gary Spackman, to provide the Court a report regarding the status of the Department's investigation into the issue of seasonal variability and injury to Blue Lakes Trout Farm Inc.'s water right no. 36-7210 and Clear Springs Foods Inc.'s water right no. 36-4013A.

At the status conference held on June 14, 2010, counsel for the Department reported that the Department believed an order on remand would be issued by the Department within two or three weeks from the date of the status conference. The Department is providing this status report because the Department did not meet the three week deadline and requests additional time to issue its order on remand.

The Court's remand directing the Department to consider seasonal variability is and has been the highest priority for the Interim Director. Affidavit of Gary Spackman ("Spackman Aff.") ¶ 6. The Interim Director assigned four Department employees to work with him on this

issue. *Id.* In addition to reviewing this Court's orders, the previous orders issued by IDWR in this matter, and the record from the multi-day hearing before the Department, the Department staff and the Interim Director have been busy reviewing and analyzing the data in this matter and evaluating seasonal variability for the two different spring sources using statistical and analytical tools. *Id.* The Department staff briefs the Interim Director multiple times a week about the analysis of the data and the statistical methods employed. *Id.* Collectively, the Interim Director and Department staff have refined the models at both spring sites to better simulate past unrecorded variations in spring flow and water usage. *Id.*

This has been a more complex undertaking than the Interim Director first thought it would be and requires additional time. *Spackman Aff.* ¶ 7. The complexity is created by a sparse historical record of spring flow and diversion data. *Id.*

The Interim Director does not take lightly his responsibility to this Court. *Spackman Aff.* ¶ 8. Compliance with this Court's order on remand has been and remains his first priority. *Id.* However, given the gravity of the determination, which could result in the curtailment of tens of thousands of additional irrigated acres, he believes he has an obligation to ensure that his review is not conducted hastily, and that he thoroughly evaluates the data and the statistical and analytical approaches to address this issue. *Spackman Aff.* ¶ 9. As such, the Department asks the Court to provide the Department additional time to issue its order on remand. The Interim Director anticipates that the order on remand will be issued before this Court's next hearing on July 19, 2010. *Spackman Aff.* ¶ 10.


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DATED this 6TH day of July 2010.

LAWRENCE G. WASDEN
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CLIVE J. STRONG
Deputy Attorney General
CHIEF, NATURAL RESOURCES DIVISION



GARRICK L. BAXTER
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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 6TH day of July, 2010.

Document Served: STATUS REPORT AND REQUEST FOR ADDITIONAL TIME TO ISSUE ORDER ON REMAND

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