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

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

Petitioners,

vs.

GARY SPACKMAN, in his capacity as
 Interim Director of the Idaho Department of
 Water Resources; and the IDAHO
 DEPARTMENT OF WATER RESOURCES,
 Respondents.

vs.

CLEAR SPRINGS FOODS, INC.

IN THE MATTER OF DISTRIBUTION OF
 WATER TO WATER RIGHT NOS. 36-
 04103A, 36-04013B AND 36-7148 (Snake
 River Farm)

(Water District Nos. 130 and 140)

Case No.

**AFFIDAVIT OF
 R. LYNN CARLQUIST**

**North Snake Ground Water District, and
 Magic Valley Ground Water District**

STATE OF IDAHO)
) ss:
 County of Bannock)

I, R. LYNN CARLQUIST, having been first duly sworn hereby make the following

1. I am the Chairman of the North Snake Ground Water District. In that capacity, I am familiar with all operations of the North Snake Ground Water District including operations of its various members. I am also a farmer. I have been farming for thirty years and own 900 acres all of which is irrigated and lies within North Snake Ground Water District's boundary. I raise sugar beets, wheat, alfalfa, and beans. Half of my farm is irrigated with deep water wells and the other half is irrigated with surface water shares from North Side Canal Company which diverts water from the Snake River. I also have a degree from Brigham Young University in accounting and practiced as a certified public accountant in public accounting and private industry for approximately 10 years. I am familiar with all aspects of farming, including the value of various agricultural crops and land generally.

2. This Affidavit is submitted in support of the Ground Water Districts' Motion to Stay. The following statements are based upon my own personal knowledge.

3. North Snake Water District is made up of approximately 400 members with approximately 1,050 wells that supply ground water for the irrigation of roughly 106,589 irrigated acres with a total of 1,629 cfs. In addition, North Snake Ground Water District has members who own ground water rights for commercial, industrial, dairy, and stock which divert approximately 95.79 cfs. This number includes approximately 150 dairies and stock yards. North Snake Ground Water District also has nine cities within its boundaries which divert roughly 44.93 cfs of ground water.

4. I am familiar with the new Interim Director's July 22, 2009 Order, July 29, 2009 Order and August 7, 2009 Amended Curtailment Order (Exhibits 14,17 and 20 to the R. Budge Supporting Affidavit) requiring the curtailment of ground water rights in Water Districts Nos.

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130 and 140 junior to April 12, 1990. This will result in the curtailment of approximately 153 ground water rights that irrigate approximately 4,154 acres in portions of Cassia, Gooding, Jerome and Lincoln Counties. The curtailment will shut down water rights for include irrigation, heating, domestic, municipal, stock water, fire protection and commercial water rights that fall within the map of the curtailment area and as listed in the attachment to the August 7, 2009 Amended Order of Curtailment, Exhibit 18.

5. According to the August 7, 2009 Amended Curtailment Order, Finding of Fact No. 9 and Conclusion of Law No., 4, based upon the Eastern Snake Plain Aquifer Model, the Order of Curtailment will result in a 2.41 cfs benefit to the Buhl Gage to Thousand Springs reach, or 0.17 cfs directly to Clear Springs since it is estimated that Clear Springs may get 6.9% of the reach gain.

6. I am also familiar with the District Court's Order on Petition for Judicial Review dated June 19, 2009 in Gooding County Case No. CV-2008-444. Exhibit 9, Affidavit of R. Budge. To put the effect of this curtailment in perspective using the same inch per acre (.02 cfs) standard by the Court on page 31 of the June 19, 2009 Order on Petition for Judicial Review, approximately 83.09 cfs is required to irrigate the 4,154 curtailed acres. Accordingly, the Director ordered to immediately curtail the diversion of 83.08 cfs to provide Clear Springs with 0.17 cfs at steady state, a mere .019 percent benefit to Clear Springs.

7. The agricultural land within North Snake Ground Water District subject to curtailment was all previously planted in beets, wheat, potatoes, corn, alfalfa and beans, which are nearing maturity and require continuous irrigation at this time, being in the heat of the summer. Eliminating irrigation water at this time will cause substantial crop loss and immediate and irreparable harm to all of these crops, except for grain which is near maturity. Such a result

would also be extremely unfair, unjust and inequitable to these farmers who reasonably relied upon the former Director's March 26, 2009 Order Approving Ground Water Districts' Replacement Water Plan for 2009, together with the May 15, 2009 Order Granting Partial Stay of Ground Water Districts' Replacement Water Plan for 2009. Exhibits 3, 6 to Affidavit of R. Budge. These farmers reasonably relied upon these Orders from the Director in planting and raising their crops and had no reason to expect, nor any control over the subsequent curtailment orders issued by the Interim Director in July and August.

8. Since the 2005 Curtailment Order was issued by the Director, North Snake Ground Water District and Magic Valley Ground Water District members have avoided any curtailment operating under Replacement Plans approved by the Director. Prior to 2009 these plans involved the drying up of certain acres under the CREP Program, together with the delivery of surface water through the North Side Canal Company canal system to approximately 9,300 acres of land that converted from ground water to surface water, commonly referred to as "old conversion acres" and recharge. We characterize these conversions as "soft" conversions because they are voluntary by the participants who still own and control their ground water diversion systems. The Ground Water Districts shared with the owners the cost of converting to surface water irrigation systems and have paid the costs of acquiring and delivering surface water, which cost was to be shifted over to the landowners within a five-year period. No contracts or Department Orders exist that would preclude the landowners from using their wells to supplement surface water irrigation or shifting back to ground water.

9. In the years 2005, 2006 and 2007, the Ground Water Districts provided replacement water to the Buhl Gage to Thousand Springs reach, benefiting Clear Springs mainly in the form of conversions from ground water to surface water, voluntary fallowing of acres

irrigated by ground water through the federal government's Conservation Reserve Enhancement Program (CREP), and conveyance of leased water through the North Side Canal Company's delivery system to allow incidental recharge of the aquifer. In 2007 we also provided late season recharge which was closely monitored by IDWR and successful. 10. Beginning in 2008, these mitigation efforts would not be sufficient under the July 2005 Order which required simulated cumulative increases in the average discharge from the springs, with 31 cfs of gain required in the Buhl Gage to Thousand Springs reach for 2008 and 38 cfs of increase to the reach required in 2009 and for each year thereafter. Accordingly, the Ground Water Districts' Mitigation Plan filed June 13, 2008, proposed to meet the additional obligation by providing replacement water directly to Clear Springs from adjacent spring water leased from the Idaho Department of Fish & Game under Water Right No. 36-4036. As a result of objections and opposition to this plan by Clear Springs, the Ground Water District filed on December 18, 2008, their Second Mitigation Plan amended on February 23, 2009, which proposed to provide Clear Springs monetary compensation in an amount equal to the lost profits from any diminished fish production attributable to the water shortage based upon Clear Springs' records; or, in the alternative, the "direct delivery of fish consisting of rainbow trout of the same type, size and timing" as could be produced by Clear Spring's Snake River Farm to replace the lost fish production associated with the 1.99 cfs of reduced flow calculated based upon the actual production records of Clear Springs. These plans were filed based upon CM Rule 43.03.c which provided for a plan utilizing "replacement water" or "other compensation". By Order dated March 5, 2009, the Director summarily dismissed the Ground Water Districts' Second Mitigation plan proposal to provide monetary compensation or replacement fish. As a result, the Director ordered curtailment before the beginning of the irrigation season. In response, the Ground Water

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Districts filed on March 12, 2009, and subsequently augmented on March 19, 2009, their 2009 Replacement Water Plan. Exhibits 1, 2, R. Budge Affidavit. The 2009 Replacement Water Plan proposed to eliminate the 1.99 cfs shortfall to Clear Springs by providing "direct delivery of ground water from existing wells to Snake River Farm's intake." Pursuant to the 2009 Plan, the Ground Water Districts entered into Lease and Conversion Agreements with landowners Heida, Box Canyon and Van Dyk thus obtaining the use of up to 3.0 cfs of their groundwater rights. The owners' wells would pump aquifer water under the leased water rights via a pipeline over the rim and directly to Clear Springs. The lands that were served by the wells that would comprise the over the rim component of direct delivery supply to Clear Springs would be newly converted from ground water irrigation to surface water irrigation. This was considered to be a long-term solution since the over-the-rim direct delivery of up to 3.0 cfs of aquifer water to Clear Springs would substantially exceed the additional 1.99 cfs mitigation requirement by some 50% and even exceeded the full 2.67 cfs obligation to Clear Springs even if there were no CREP or conversion acres at all. It would provide the Ground Water Districts with a cushion or insurance against the risk of an increased mitigation obligation in the future and would permanently solve the ongoing water requirement to Clear Springs.

11. The 2009 Mitigation Plan for the over the rim pipeline and direct delivery was approved by the Director's March 26, 2009 Order. Exhibit 3 to R. Budge Affidavit. The Ground Water Districts immediately proceeded with the design and construction of the project to comply with the Order which established a June 1, 2009 completion date. As required by the Order, the Ground Water Districts provided the Director with weekly status reports on the project, copies of which are Exhibit 4 to the R. Budge Affidavit. Design and construction of both the over-the-rim delivery pipeline and the new conversions proceeded timely and on schedule.

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12. In early April 2009 I was contacted by Clear Springs representatives indicating that construction of the new conversion acres should continue, but the over-the-rim facilities should be stopped since Clear Springs did not want any direct delivery of water.

13. At that time in April 2009 and during direct discussions that Dean Stevenson of Magic Valley Ground Water District and I held with Clear Springs' representatives Larry Cope and Randy MacMillan, we tried to negotiate the terms of a stipulated stay agreement. As part of those discussions, Clear Springs agreed that if we stopped construction of the over-the-rim pipeline that would delay construction Clear Springs would provide additional time to complete the construction of the project if needed. Additionally, we informed Mr. Cope and Mr. MacMillan that conversion water costs paid by the Ground Water Districts in previous years were being transferred to the landowners which could result in some reduction of the old conversion acres. On the other hand, roughly 1,000 acres of new conversion acres would be added as an incidental part of the 2009 Mitigation Plan. These new conversions were considered "hard" conversion acres because the Ground Water Districts entered into Lease and Conversion Agreements pursuant to which the water rights were leased outright to permit the over-the-rim delivery, the Districts paid all costs of converting to surface water, including the lease and delivery of surface water, and the landowners, Heida, Box Canyon and Van Dyke, were contractually precluded from using their ground water rights at all.

14. After we were unable to reach an agreed stipulation with Clear Springs because of other conditions they wanted to add to the two-year stay, we were prepared to proceed with the pipeline project until Clear Springs filed a Motion for Partial Stay of Implementation of Director's March 26, 2009 Order Approving the Ground Water Districts' Replacement Water Plan for 2009. The Ground Water Districts did not oppose this motion, but insisted that any stay

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must be for two years; accordingly on May 15, 2009, the Director issued his Order Granting Partial Stay. Exhibit 6 to R. Budge Affidavit. As a result, the Ground Water Districts proceeded to timely complete the conversions by the June 1, 2009 deadline but stopped all further work on the over-the-rim pipeline delivery.

15. During June and early July 2009, there was correspondence between the Director and counsel for the Ground Water Districts concerning the number of conversions acres. Exhibits 8- 12 to R. Budge Affidavit. Issues concerning the number of new conversion acres were resolved. See July 22, 2009 Order, FF32, Exhibit 14 to R. Budge Affidavit.

16. The Ground Water Districts intended to fully meet their 2009 mitigation obligation to Snake River Farm on a permanent basis by direct delivery of water over the rim pursuant to their 2009 Mitigation Plan. The new conversion acres were considered incidental and the number of new conversion acres and the Modeled mitigation credit for conversions were not significant or even included in the 2009 Mitigation Plan. The Ground Water Districts always intended to transfer the cost of leasing and delivering surface water on the conversion acres to the landowners. This was not expected to have substantial impact on the old conversion acres because of the reduced pumping costs to the converted landowners. However, to the Ground Water Districts' surprise and for reasons not fully known, it was learned in June 2009 that some of the landowners had discontinued use of surface water and reverted back to their ground water rights. The Ground Water Districts disclosed this to the Department. However, it was not of great concern to the Ground Water Districts since the fundamental purpose and objective of the 2009 Plan was to pump wells and directly supply the full replacement water requirement to Snake River Farm on a continuous year-round basis, not simply to convert lands from ground water to surface water. Notwithstanding, the reduction in old conversion acres from

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approximately 9,300 acres to the now 7,745 acres gave rise to the Director's 2009 Curtailment Orders. As reflected by the Ground Water Districts' Plans of Action dated July 28, 2009 and August 3, 2009, immediate action was taken to reduce and eliminate the impact on Clear Springs caused by the reduced conversion acres in three ways: (1) by immediately increasing the old conversion acres up to 7,745 acres; (2) by late season recharge through the North Side Canal Company canal system in 2009 in the amount of up to 10,000 AF; and (3) by adding new conversion acres in 2010 to in effort bring the total to over 9,000 acres. Exhibits 16, 18 to R. Budge Affidavit. As reflected by the Amended Curtailment Order dated August 7, 2009, the Director accepted the 7,745 old conversion acres; and, using the Model, calculated a 2.41 cfs shortfall to the Buhl Gage to Thousand Springs reach, or 0.17 cfs directly to Clear Springs. Accordingly, the Director then ordered the curtailment of 153 ground water rights that irrigate approximately 4,154 acres in order to make up the shortfall. Exhibit 20, R. Budge Affidavit. However, the Director failed and refused to accept and provide a mitigation credit for the late season recharge of 10,000 AF through the North Side Canal Company system. It is my understanding that the model results from the additional 10,000 AF of late season recharge are being prepared and will eliminate most, if not all of the 0.17 cfs shortfall to Clear Springs. With the proposed late season recharge the total amount of water the Ground Water Districts would be putting on the ground above the rim for old and new conversions plus recharge would be approximately 27,500 AF. This is the exact amount the Ground Water Districts had leased for the irrigation season to provide all of the surface water needs for the full 9,300 acres of old conversion and the new conversions associated with the 2009 Mitigation Plan. The 27,500 AF is also approximately the same amount of surface water the Ground Water Districts had provided to conversions in previous years. As a result, with late season recharge allowed the Ground Water

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Districts would be putting the same amount of water on the rim above Clear Springs to benefit the springs as if there had been no reduction in the old conversion acres. Also, the late season recharge is focused closer to the rim above Clear Springs intended to provide a more immediate benefit. I spoke with the manager of North Side Canal Company, Ted Diehl who indicated that North Side Canal Company would work with us on the late season recharge committing to run 10,000 acre-feet through their their system as they have done in the past and would run additional water if needed and they were able which would depending on the end of the irrigation season.

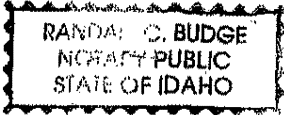
17. In 2007, the Ground Water Districts also provided late season recharge through the North Side Canal Company system for mitigation credit which was approved and allowed by the Director. Aquifer recharge has long been the policy of the State and has been and continues to be actively pursued by the Department, the Idaho Water Resource Board and the CAMP process. I do not understand and it makes no practical sense why the Director now suddenly will not allow late season recharge for mitigation credit without Clear Springs' consent. Nor do I know why Clear Springs will not consent to the proposed late season recharge since it has been allowed in the past and the Department has done extensive calculations to show the benefits. The Ground Water Districts have requested Clear Springs' consent, but they have refused.

Further your affiant saith not.

DATED this 11th day of August, 2009.

/s/ R. Lynn Carlquist
R. LYNN CARLQUIST

SUBSCRIBED AND SWORN to before me this 11th day of August, 2009.



Randal C. Budge
Notary Public for Idaho
Residing at: Pocatello, ID.
My Commission Expires: 10/11/2012