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Department of Water Resources

Jeffrey C. Fereday (Idaho State Bar # 2719)
Michael C. Creamer (Idaho State Bar # 4030)
GIVENS PURSLEY LLP
601 Bannock Street, Suite 200
P.O. Box 2720
Boise, ID 83701-2720
Telephone: (208) 388-1200
Facsimile: (208) 388-1300

Attorneys for Idaho Ground Water Appropriators, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE REQUEST FOR DELIVERY OF WATER TO WATER RIGHT NOS. 36-04013A, 36-04013B AND 36-07148 BY CLEAR SPRINGS FOODS, INC.—SNAKE RIVER FARM	**IDAHO GROUND WATER APPROPRIATORS' PETITION TO INTERVENE IN CLEAR SPRINGS FOODS, INC—SNAKE RIVER FARM'S DELIVERY CALL**

Idaho Ground Water Appropriators, Inc., ("IGWA"), on behalf of its members, including the ground water districts described herein, and through its attorneys Jeffrey C. Fereday and Michael C. Creamer of the law firm of Givens Pursley LLP, and pursuant to Idaho Department of Water Resources ("Department") Rules of Procedure 350, 351 and 352 hereby petition for leave to intervene in the above-captioned matter. The grounds for this Petition are stated below.

INTERESTS OF IGWA AND ITS MEMBERS

1. IGWA is an Idaho non-profit corporation, organized to promote and represent the interests of Idaho ground water users. IGWA's address is P.O. Box 2624, 1109 West Main, Suite 300, Boise, Idaho 83701.

2. IGWA's members include six ground water districts, one irrigation district whose irrigators are reliant on ground water, various municipalities and municipal water providers, and

commercial and industrial entities operating within the State of Idaho. IGWA's members hold water rights authorizing ground water diversions for irrigation of approximately 855,000 acres and for other authorized beneficial uses.

3. Many of IGWA's members' ground water rights are diverted from wells within the Eastern Snake Plain Aquifer ("ESPA"), certain portions of which have been determined to be an interconnected source with the Thousand Springs Reach ("TSR") and American Falls Reach ("AFR") of the Snake River.

4. Magic Valley Ground Water District, North Snake Ground Water District, American Falls-Aberdeen Ground Water District, Bingham Ground Water District and the Bonneville Jefferson Ground Water District are IGWA members that represent ground water users within Water Districts 120 and 130. A small portion of the boundary of the Madison Ground Water District extends within the ESPA. The Madison Ground Water District and the South West Irrigation District are not located within an organized water district. The above-referenced districts are hereinafter referred to as (the "Ground Water Districts").

5. The Ground Water Districts[1] are authorized by Idaho Code § 42-5224(6) to represent their members with respect to their individual water rights in legal and administrative proceedings.

6. The Ground Water Districts' members hold water rights with varying priorities ranging from the early 1900's to the late 1900's, some of which are junior to the various priorities of water rights claimed by Clear Springs Foods, Inc.—Snake River Farm ("Snake River Farm").

[1] With the exception of South West Irrigation District, which is organized under Title 43, Idaho Code.

THE PETITION FOR ADMINISTRATION

7. Snake River Farm has petitioned the Department to administer (i.e., curtail) water rights in Water District 130 to deliver water to water rights 36-04013A, 36-04013B[2] and 36-07148.

8. The Department has at all times prior deemed such petitions "delivery calls" subject to the Department's Conjunctive Management Rules, IDAPA 37.03.11. Under the Conjunctive Management Rules, delivery calls are to proceed under the contested case provisions of the Department's Rules of Procedure. IDAPA 37.03.11.030.02.

9. Snake River Farm's Petition alleges that delay in delivering its water rights will cause injury to Snake River Farm.

10. The Petition seeks action by the Department, including administration of ground water rights located within Water District 130, which administration may impair the ability of IGWA's members to divert ground water under their water rights.

DEPARTMENT INTERVENTION REQUIREMENTS

11. The Department's Rule of Procedure 350 provides that "Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding." IDAPA 37.01.01.350.

12. IGWA's members have such interests.

ISSUES IMPLICATED BY THE PETITION THAT NECESSARILY MUST BE DETERMINED

[2] The Petition requests delivery of water right 36-0413B, but it is presumed that Snake River Farms intended to request delivery of water right 36-04013B.

13. Snake River Farm asserts the priority of its surface water rights, alleges injury to those water rights due to diversions under junior ground water and surface water rights, and seeks administration by curtailment of junior ground water and surface water rights. As such, the Petition necessarily implicates significant legal and factual issues that must be addressed by the Department in any decision on the merits of the Petition, including, but not limited to the following:

A. The extent of historical diversions and actual beneficial use of water that has heretofore been made by Snake River Farm;

B. The extent, if any, to which any water shortage alleged by Snake River Farm actually has impaired, or will impair, the authorized beneficial uses under its senior water rights;

C. Whether material injury to a fish propagation water right exists where sufficient water is available to the right holder to raise adequate numbers of fish;

D. The extent to which a delivery call may be placed or recognized based upon anticipated or speculative injury;

E. Whether a senior right holder seeking administration of junior rights may dictate the geographic scope of such administration;

F. Whether an action brought by a senior surface water user for priority administration of junior ground water rights must be brought pursuant to Idaho Code § 42-237b and resolved by a local ground water board;

G. The extent to which the Petition is barred by equitable doctrines, including waiver, estoppel, laches, or "customary preference"; and

H. The extent to which the Petition is contrary to the State of Idaho's policy of "full economic development of underground water resources" as enunciated in the Ground Water Act, Idaho Code § 42-226 and the doctrine of maximum use of the State's water resources as mandated by the Idaho Constitution and the Idaho Supreme Court.

I. The extent to which the curtailment requested by Snake River Farms is a futile call;

J. The extent to which a senior right holder may be liable for reasonably foreseeable economic harm or other damages to junior right holders resulting from a delivery call based on speculation, harassment, or intimidation;

14. IGWA and IGWA's members, including the Ground Water Districts and their respective members, have a direct and substantial interest in the instant contested case proceeding in that Snake River Farm's delivery call implicates the conjunctive administration of ground water rights of IGWA's members and Snake River Farm's water rights, and raises the possibility that Snake River Farm may impair the Ground Water Districts' members' ability to divert ground water under their water rights. As such, IGWA opposes the Petition.

15. IGWA's participation as a party will not unduly broaden the issues before the Department.

16. The interests of IGWA and its members are not represented by any other party to this proceeding.

17. This Petition to Intervene is timely. No hearing previously has been set or held in this matter.

18. IGWA reserves the right to file an answer to the Petition at such time as intervention is granted, to obtain discovery, to call, examine and cross-examine witnesses, and to state further issues and otherwise participate as a full party in all proceedings.

DATED this 25th day of May 2005.

GIVENS PURSLEY LLP

By: _____
Michael C. Creamer
Attorneys for Idaho Ground Water Appropriators, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of May 2005, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

Mr. Karl J. Dreher Director Idaho Department of Water Resources 322 East Front Street P.O. Box 83720 Boise, ID 83720-0098	_____ U.S. Mail _____ Facsimile _____ Overnight Mail __X__ Hand Delivery _____ E-mail
Clear Springs Foods, Inc. P.O. Box 712 Buhl, ID 83316	__X__ U.S. Mail _____ Facsimile _____ Overnight Mail _____ Hand Delivery _____ E-mail

Michael C. Creamer