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Attorneys for North Snake and Magic Valley Ground Water Districts

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

IN THE MATTER OF THE MITIGATION
PLAN OF THE NORTH SNAKE AND MAGIC
VALLEY GROUND WATER DISTRICTS
IMPLEMENTED BY APPLICATIONS FOR
PERMIT NOS. 02-10405 AND 36-16645 AND
APPLICATION FOR TRANSFER NO. 74904
TO PROVIDE REPLACEMENT WATER FOR
CLEAR SPRINGS SNAKE RIVER FARM

(Water District Nos. 130 and 140)

**JOSHUA D. JOHNSON'S
AFFIDAVIT IN SUPPORT OF
MEMORANDUM AND
MOTION TO COMPEL**

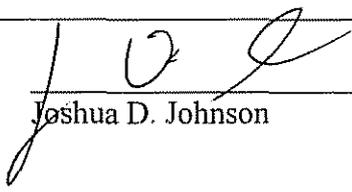
I, JOSHUA D. JOHNSON, being first duly sworn, do hereby depose and state under penalty of perjury that:

1. I am one of the attorneys representing the North Snake Ground Water District and Magic Valley Ground Water District ("GWD") in the above-captioned matter.
2. Attached hereto as Exhibit "A" is a true and correct copy of Clear Springs' Responses to GWD's First Discovery Requests.
3. Attached hereto as Exhibit "B" is a true and correct copy of the Proposed Protective Agreement sent to counsel for Clear Springs on or about October 2, 2008.
4. Attached hereto as Exhibit "C" is a true and correct copy of the September 13, 2007, Order Regarding Discovery.

CERTIFICATE OF MAILING

I hereby certify that on this 18th day of November, 2008, the above and foregoing was sent to the following by U.S. Mail, proper postage prepaid and by e-mail for those with listed e-mail addresses:

David R. Tuthill, Director Idaho Department of Water Resources 322 E. Front Street P.O. Box 83720 Boise, Idaho 83720-0098 dave.tuthill@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail <input checked="" type="checkbox"/> Hand Delivery
John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON LLP 1010 W. Jefferson, Suite 102 P.O. Box 2139 Boise, Idaho 83701 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail
Daniel V. Steenson Charles L. Honsinger S. Bryce Farris RINGERT CLARK P.O. Box 2773 Boise, Idaho 83701-2773 dvs@ringertclark.com clh@ringertclark.com	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-Mail
Tracy Harr, President Clear Lake Country Club 403 Clear Lake Lane Buhl, Idaho 83316	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> E-Mail
Stephen P. Kaatz, V.P. Clear Lake Homeowners Assoc. 223 Clear Lake Lane Buhl, Idaho 83316	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> E-Mail



 Joshua D. Johnson

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Attorneys for Clear Springs Foods, Inc.

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

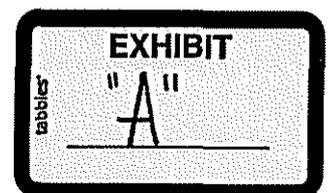
IN THE MATTER OF THE MITIGATION
PLAN OF THE NORTH SNAKE AND MAGIC
VALLEY GROUND WATER DISTRICTS
IMPLEMENTED BY APPLICATIONS FOR
PERMIT NOS. 02-10405 AND 36-16645 AND
APPLICATION FOR TRANSFER NO. 74904
TO PROVIDE REPLACEMENT WATER FOR
CLEAR SPRINGS SNAKE RIVER FARM

(Water District Nos. 130 and 140)

**CLEAR SPRINGS' RESPONSES
TO GROUND WATER
DISTRICTS' FIRST
DISCOVERY REQUESTS**

COMES NOW, CLEAR SPRINGS FOODS, INC. ("Clear Springs"), by and through its
counsel of record, pursuant to the Department's Rules of Procedure (IDAPA 37.01.01 *et seq.*)
and the Idaho Rules of Civil Procedure, and hereby responds to the Ground Water Districts'
First Discovery Requests ("Discovery Requests") as follows:

CLEAR SPRINGS' RESPONSES TO GWDS' FIRST DISCOVERY REQUESTS



GENERAL OBJECTIONS:

1. Clear Springs objects to the Discovery Requests and to the definitions and instructions to the extent they purport to require discovery responses beyond that required under the Department's Rules of Procedure, the Idaho Rules of Civil Procedure, and the Hearing Officer's and Director's prior orders in this case. These responses are provided in accordance with the Department's Rules of Procedure and the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany the discovery requests.

2. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided were made by witness present and testifying at hearing. All such objections are reserved and may be interposed at the time of hearing.

3. Clear Springs specifically objects to these Requests for Production to the extent they seek information protected by the attorney-client privilege, the accountant-client privilege, the work product doctrine, and the rules governing the discovery relating to experts as set forth in Rule 26(b)(4). The objection is intended to apply to all of the discovery requests that seek such information and will not be repeated specifically for each request to which it applies. Clear Springs, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

4. No incidental or implied admissions are intended. The fact that Clear Springs has responded to any discovery request or part thereof should not be taken as an admission that Clear Springs accepts that the discovery request or the response or objection thereto constitutes

admissible evidence. Similarly, the fact that Clear Springs has responded to all or part of a request is not intended to and shall not be construed to be a waiver by Clear Springs of all or part of any objection to other requests. Clear Springs' answers to any discovery requests herein do not constitute a waiver of Clear Springs' right to object to any future additional, or supplemental discovery requests regarding the same or similar matters.

5. Clear Springs objects to the Discovery Requests directed to documents and transactions that are outside the scope of the hearing on the Ground Water Districts' Mitigation Plan and applications for permit and transfer, and/or Clear Springs' initial request for water right administration. These Requests are irrelevant and not calculated to lead to the discovery of admissible evidence.

6. Each of these objections is incorporated into the response to each of the Requests for Production as though set forth verbatim therein.

INTERROGATORIES

INTERROGATORY NO. 1: For each person answering these interrogatories, state:

- a. the person's complete name and age;
- b. the person's residence;
- c. the person's business address;
- d. whether the person is an employee or agent for defendant; and
- e. any position held by the person with defendant.

RESPONSE: John R. MacMillan (56 years old), Vice-President, Clear Springs Foods, Buhl, Idaho.

Residence: 1172 Hankins Rd. N., Twin Falls, Idaho 83301.

Business: Clear Springs Foods, Inc., P.O. Box 712, Buhl, Idaho 83316

Counsel John Simpson and Travis Thompson also assisted in these responses.

INTERROGATORY NO. 2: State whether the person answering these interrogatories is using firsthand information to answer, and, if not, state:

- a. the name of every person who supplied information for answers to these interrogatories; and
- b. specify for which interrogatories that person has supplied information.

RESPONSE: The responses to these discovery requests are based on firsthand information from Mr. MacMillan.

INTERROGATORY NO. 3 Please explain the basis of your objection to the mitigation plan and related applications.

RESPONSE: *See generally, Clear Springs Foods, Inc. 's Protest to Ground Water District's Mitigation Plan and Protests* to the various applications filed on August 4, 2008, as well as *Clear Springs Motion to Dismiss and/or for Protective Order* filed on October 24, 2008. The bases for Clear Springs' protests are set forth in detail in those filings. The proposals would deliver water adverse to the survival and optimum performance of intensively reared rainbow trout, water flows would be inconsistent, unreliable and would reduce the production capacity of Clear Springs' Snake River Farm. In addition, the Director's *July 8, 2005 Order* did not accurately identify the injury being suffered by Clear Springs' senior water rights. Since Clear Springs' 1955 water right was found to have been injured (by the Hearing Officer, not adopted in the final order), the level of mitigation has yet to be properly identified by the Director. The issue is presently on appeal to the Gooding County District Court (Fifth Jud. Dist., Case No. CV-2008-444). To the extent further basis are discovered or identified during the course of this proceeding they will be identified and set forth.

INTERROGATORY NO. 4 What are the constraints preventing implementation of a recirculation project? Do you use recirculation, in any form at any of your facilities and if so, to what extent? If you do not use recirculation, why not?

RESPONSE: Objection. The term “recirculation” is vague and undefined. *See also, Clear Springs’ Motion to Dismiss and/or for Protective Order* filed October 24, 2008.

Notwithstanding the objection, to the extent the term “recirculation” includes or connotes a process to collect water from the end of a raceway after it has been used for aquaculture and then “pump the water back” to the top of the raceway to be introduced with spring water for fish propagation purposes again, the answer as to whether Clear Springs uses “recirculation” for fish propagation is “no”. As to the reasons for not using “recirculation”, the Hearing Officer and Director have already determined that Clear Springs is not obligated to pursue such a system and that it is not acceptable mitigation for the injury caused to Clear Springs’ senior surface water rights. *See January 11, 2008 Opinion* at 12; *July 11, 2008 Final Order* at 10; *July 8, 2005 Order* at 37-38; *see also, Clear Springs’ Motion to Dismiss* filed October 24, 2008.

In addition, recirculation aquaculture is cost prohibitive, subject to catastrophic failure, a cause of bioamplification of drugs and pathogens, and incompatible with Clear Springs Foods’ historic marketing program. Recirculation of waste water does not occur at any of Clear Springs Foods’ grow-out facilities. Fish delivered to Clear Springs’ processing plant may be exposed to re-circulated water while awaiting processing. Fish awaiting processing at the processing plant are not fed and generally held for less than 24 hours (average 4 hours).

INTERROGATORY NO. 5 Please list each instance of a raceway taken out of use for a period longer than one day since March 1987 and explain the reason why the raceway(s) was taken out of use, when this occurred, and the duration of time the raceway(s) was out of use.

RESPONSE: Objection. The request is vague, irrelevant, and not calculated to lead to the discovery of admissible evidence. To the extent the request seeks information pre-dating Clear Springs' partial decrees issued by the SRBA Court in 2000, the request is barred by the Hearing Officer's *Order Re: Discovery* issued on September 11, 2007 in the Spring Users Case. *See also, July 11, 2008 Final Order* at 10. Notwithstanding the objection, Clear Springs has been forced to close one complete series (1) of raceways (5 raceways) since March 2004. This set remains closed. Pond 1A in the series is rarely used for fish health management purposes. Under these conditions the amount of water delivered is less than 0.5 cfs and is only temporary. Otherwise the pond is dry. A second set (2) was closed from March 2005 until December 2006- it is currently open. In all instances the closure was due to reduced water flows.

INTERROGATORY NO. 6 Please describe all locations of flow and water quality sampling and measurement, the parameters sampled and measured, and the methods used for such sampling and measurement. Indicated which measurements and water quality samples were taken for purposes of reporting to the Idaho Department of Environmental Quality. All locations should be identified on a map and the years in which these locations have been used should also be provided.

RESPONSE: Objection. The request is vague and overly broad. The location of flow measurements for Clear Springs' Snake River Farm was previously provided at the hearing in this matter. Water flow measurements are reported to Water District 130 on an annual basis. With respect to "water quality sampling and measurement", the request is overly broad.

Notwithstanding this objection, Clear Springs only submits NPDES reports to EPA and IDEQ. Clear Springs can again provide information about the sample locations. In addition, Clear Springs can also provide its Quality Assurance Plan which describes how the company samples, where it samples, and what it samples for all in accordance with the NPDES permit.

Clear Springs has sampled one particular spring providing water to the Snake River Farm due to concerns about nitrate-nitrite nitrogen. This data has been delivered to EPA and IDEQ as well. One of those springs has a particularly high concentration (latest 13 mg/L which is 3 mg/L above drinking water limits). This data can be made available for inspection and review. IDEQ has become concerned about this situation and the ramifications for those pumping ground water from the ESPA for drinking water purposes.

INTERROGATORY NO. 7 Please describe all water treatment you or your agents perform, the location of the water treatment, frequency and reason for the treatment.

RESPONSE: Objection. The request is vague and overly broad. The term “water treatment” is not defined with particularity. To the extent the term refers to “waste treatment”, Clear Springs’ waste treatment program is to settle biosolids in quiescent zones, harvest this manure weekly into an off-line settling pond. The off-line settling pond is harvested monthly. Clear Springs applies potassium permanganate to the water attempting to control bacterial gill disease. This is frequent but is also reported in our monthly discharge monitoring reports (DMRs). It is Clear Springs’ understanding that IDEQ has already delivered the DMRs to counsel for IGWA. No other “water treatments” are made by Clear Springs as it understands that term used in the request.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1 Please produce all as-built drawings of the SRF facility including all civil, architectural, mechanical, structural, electrical, fish rearing and water conveyance systems since completion of the new facility in March of 1987 and any subsequent improvements. This includes, but is not limited to the following: intake structures at the spring source, water division and measurement structures in the research buildings, visitor center pond, off-line settling ponds, the hatchery building, and the raceways; pipelines conveying discharge, reuse water, and spring water for fish production and research purposes; and pipeline connections to irrigation systems and to the neighboring golf course and housing development. As-built drawings of the electrical power delivery lines on the facility should also be provided.

RESPONSE: Objection. The request is overly broad and burdensome. Clear Springs has already provided schematic drawings of its Snake River Farm facility at hearing in the Spring Users Case. To the extent the request seeks information pre-dating Clear Springs' partial decrees issued by the SRBA Court in 2000, the request is barred by the Hearing Officer's *Order Re: Discovery* issued on September 11, 2007 in the Spring Users Case. *See also, July 11, 2008 Final Order* at 10. Notwithstanding this objection, Clear Springs has certain blue prints that can be made available for inspection and review.

REQUEST FOR PRODUCTION NO. 2 Please produce all documents and data containing information on sales, profits, revenue, income, annual fish production records, and records of disposal of fish from sale or other means, including destruction of fish. This should also include all recorded fish production data for each individual raceway.

RESPONSE: Objection. The request is barred by the Hearing Officer's *Order Re: Discovery* issued on September 11, 2007 in the Spring Users Case. This decision has been affirmed by the Director. *See also, July 11, 2008 Final Order* at 10.

REQUEST FOR PRODUCTION NO. 3 Please produce records of raceways taken out of use for a period longer than one day. This should include the reason why the raceway(s) was taken out of use, when this occurred, and the duration of time the raceway(s) was out of use.

RESPONSE: *See* Response to Interrogatory No. 5.

REQUEST FOR PRODUCTION NO. 4 Please produce documentation of all water quality permits issued to Snake River Farm by a regulatory agency and of all inspections and infractions under each permit since March of 1987.

RESPONSE: Objection. The documents requested are readily available in the public domain and can be readily obtained from IDEQ or EPA. Notwithstanding this objection, Clear Springs has copies of the 1999 and the 2007 NPDES permits and inspections available for review.

REQUEST FOR PRODUCTION NO. 5 Please produce all documents and data related to measured flows on the Snake River Farm facility. This information should include the timing of when the measurements were taken, location of measurements, and recorded flows.

RESPONSE: Objection. The request is repetitive and unduly burdensome. Clear Springs already provided any relevant water measurement data to the Ground Water Districts in response to discovery requests and through the course of the Spring Users Case. Clear Springs

has no obligation to reproduce or make that information available again. Measured flows from 2008 can be made available for review and inspection.

REQUEST FOR PRODUCTION NO. 6 Please produce all documents and water quality data taken on the Snake River Farm facility. This information should include all water quality data obtained and the location and date of when the samples and/or measurements were taken. Please clearly label all sampling locations on a map. Specific water quality data should include, but are not limited to, records of sampling and measurement of temperature, dissolved oxygen, pH, total ammonia, un-ionized ammonia, nitrite, nitrate, carbon dioxide, Kjeldahl Nitrogen, total alkalinity, suspended solids, total dissolved solids, and all additional water quality data recorded.

RESPONSE: *See Responses to Interrogatory Nos. 6 & 7, see Response to Request for Production No. 4.* The information requested is part of data that has been previously submitted to EPA and IDEQ. Accordingly, it is readily available in the public domain. A prior NPDES permit required certain monitoring for 12 months, this data is available for review and inspection. In addition, the prior NPDES permit required Clear Springs to conduct an effluent characterization study. That data was supplied with the Discharge Monitoring Reports and can be made available for review and inspection.

REQUEST FOR PRODUCTION NO. 7 Please produce all documentation of treatment processes, chemicals, and antibiotics used to treat the water prior to during conveyance through the research facilities, hatchery, and raceways or used and/or applied within the facility. All available records of chemicals and antibiotics (specific type and quantity) applied with the associated date(s) of use should be provided.

RESPONSE: See Response to Interrogatory No. 7. The information requested is part of the DMR submitted monthly to IDEQ and EPA. Clear Springs uses primary settling to capture solids. Clear Springs does use sodium thiosulfate to dechlorinate small volumes of water when it disinfects a hauling tank or potentially a hatch-house raceway.

REQUEST FOR PRODUCTION NO. 8 Please produce all documentation of treatment processes and chemicals used to treat water discharged from the research facilities, hatchery, and raceways. All available records of chemicals (specific type and quantity) with the associated date(s) of use should be provided.

RESPONSE: The only treatment Clear Springs provides is primary settling. There are no chemicals used to treat the water since chemicals are not approved for such use in aquaculture. Clear Springs does use sodium thiosulfate to dechlorinate small volumes of water when it disinfects a hauling tank or potentially a hatch-house raceway.

REQUEST FOR PRODUCTION NO. 9 Please produce records of all fish disease incidents and pathology records for the facility including date of incident, cause of incident, incident response, treatment methods used, numbers of fish lost or destroyed and future corrective actions developed as a result of the incident.

RESPONSE: Objection. The information requested is proprietary to Clear Springs. In addition, the request is overly broad and unduly burdensome.

REQUEST FOR PRODUCTION NO. 10 Please produce all records of fish production from the SRF facility including pounds of fish produced (on an annual and monthly basis) and the corresponding amounts of food fed on a daily basis to achieve the production. Please include type and manufacturer of all feed.

RESPONSE: Objection. The request is barred by the Hearing Officer's *Order Re: Discovery* issued on September 11, 2007 in the Spring Users Case. *See also, July 11, 2008 Final Order* at 10.

REQUEST FOR PRODUCTION NO. 11 Please produce all records and documents you have associated with any wells, well pumps, groundwater production, and groundwater quality located within one mile of Snake River Farms.

RESPONSE: Clear Springs has analyses from Brockway Engineering regarding a proposed well for the processing plant available for review and inspection.

REQUEST FOR PRODUCTION NO. 12 Please produce all documents and records you have associated with hydrogeologic investigations in the vicinity of Snake River Farms.

RESPONSE: Clear Springs will produce any documents and records as they become available.

REQUEST FOR PRODUCTION NO. 13 Please produce all documents and records you have associated with geologic and hydrologic investigations of springs located within one mile of Snake River Farms.

RESPONSE: *See* Response to Request for Production No. 12.

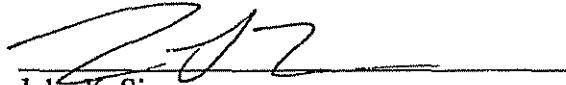
REQUEST FOR PRODUCTION NO. 14 Please produce all documents reviewed or relied upon in answering any of the interrogatories or requests above.

RESPONSE: *See* above responses.

REQUEST FOR PRODUCTION NO. 15 Please produce all documents you believe support your objection to the mitigation plan and related applications.

RESPONSE: See above responses. Clear Springs will produce additional documents as they are discovered.

DATED this 30th day of October, 2008.



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

Attorneys for Clear Springs Foods, Inc.

**PROTECTIVE AGREEMENT
BETWEEN
MAGIC VALLEY GROUND WATER DISTRICT AND NORTH SNAKE GROUND
WATER DISTRICTS, CLEAR SPRINGS FOODS, INC. SNAKE RIVER FARM, CLEAR
LAKES TROUT COMPANY INC., CLEAR LAKE COUNTRY CLUB and
IDAHO DEPARTMENT OF WATER RESOURCES STAFF**

This Protective Agreement is entered into this _____ day of October, 2008 by Magic Valley Ground Water District and North Snake Ground Water District (“Ground Water Districts”), Clear Springs Foods, Inc. Snake River Farm, (“Snake River Farm”) Clear Lakes Trout Company, Inc. (“Clear Lakes Trout), Clear Lake Country Club (“Country Club”) (collectively referred to herein as “Parties”) and the Idaho Department of Water Resources Staff and Hearing Officer (IDWR) .

Recitals:

1. **WHEREAS**, Snake River Farm anticipates that it may provide, or make available for review, certain information, considered by its custodian to be of a trade secret, privileged or confidential nature (as defined in *Idaho Code* § 9-340 *et seq.* and § 48-801 *et seq.*).

2. **WHEREAS**, the Ground Water Districts, Snake River Farm, Clear Lakes Trout, Country Club and Staff agree that entering into a Protective Agreement will expedite the production of documents; will afford the necessary protection to the undersigned parties’ employees and/or representatives in this proceeding who might review the information and subsequently be requested to reveal its contents by setting forth clear cut parameters for use of Confidential Information; and will protect Confidential Information which might be provided hereafter.

IT IS HEREBY STIPULATED AND AGREED AS FOLLOWS:

1. (a) **Confidential Information.**

All documents, data, information, studies and other materials furnished that are claimed to be of trade secret, proprietary or confidential nature (herein referred to as “Confidential Information”) shall be so marked by the Applicants or party providing the information by stamping the same with a designation indicating its trade secret, proprietary or confidential nature and printed on “colored” paper. Any claim of confidentiality must be accompanied by an attorney’s certificate that the material is protected by law from public disclosure and cite the specific legal authority to support the claim. IDAPA 31.01.01.067 and 31.01.01.233. Access to and review of Confidential Information shall be strictly controlled by the terms of this Agreement.

(b) **Use of Confidential Information**



All persons who may be entitled to review, or who are afforded access to any Confidential Information by reason of this Agreement shall neither use nor disclose the Confidential Information for purposes of business or competition, or any purpose other than the purpose of preparation for and conduct of the proceeding before the IDWR and then solely as contemplated herein, and shall keep the Confidential Information secure as trade secret, confidential or proprietary information in accordance with the purposes and intent of this Agreement.

(c) Persons Entitled to Review.

Access to Confidential Information shall be limited to counsel of the undersigned parties, employees, experts, agents or representatives of the undersigned parties who have executed an Exhibit "A" to this Agreement. Confidential information will be clearly marked and protected from unauthorized public disclosure.

(d) Nondisclosure Agreement.

Confidential Information shall not be disclosed to any person who has not signed a nondisclosure agreement on this form, which is attached hereto as Exhibit "A" and incorporated herein. The nondisclosure agreement or Exhibit "A" shall require the person to whom disclosure is to be made to read a copy of this Protective Agreement and to certify in writing that he or she has reviewed the same and has consented to be bound by its terms. The nondisclosure agreement (Exhibit "A") shall contain the signatory's full name, permanent address and employer. Such agreement shall be delivered to counsel for the providing party before disclosure is made.

(e) Highly Confidential Documents.

In the case of documents or information designated by a party as highly confidential, the providing party may decline to provide copies to counsel for other parties or to their employees, experts, agents or representatives. (The "highly confidential" designation is reserved for information the dissemination of which imposes a highly significant risk of competitive harm to the disclosing party without enhanced protections.) The providing party shall instead make such documents or information available for inspection and review by parties' representatives who have executed an Exhibit "A" to this Protective Agreement at a place and time mutually agreed upon by the parties. The individuals reviewing the highly confidential information may make limited notes regarding such information for reference purposes only. Such notes shall not constitute a verbatim or substantive transcript of the highly confidential information. For purposes hereof, notes made

pertaining to or as the result of a review of highly confidential information shall be considered Confidential Information and subject to the terms of this Protective Agreement.

2. (a) Copies.

No copies or transcriptions of the Confidential Information shall be made by the recipient party except as necessary to make the information available to individuals who have executed an Exhibit "A" to this Protective Agreement.

(b) Return of Confidential Information.

Upon request of the providing party, all original documents and copies of the Confidential Information shall be: (1) returned to the providing party, or (2) shredded by the holder of such documents.

Unless otherwise ordered, Confidential Information, including depositions containing information to which a claim of confidentiality is made, shall remain under seal, shall continue to be subject to the protective requirements of this Agreement, and shall likewise, be returned to counsel for the providing party within thirty (30) days after final settlement or conclusion of the proceedings, including administrative or judicial review thereof. After return of documents pursuant to this paragraph, and upon request, a written receipt verifying return shall be provided by counsel.

(c) Return of Notes.

Any notes maintained by a recipient party of Confidential Information which embody or reflect any of the Confidential Information provided under this Agreement shall, upon request of the providing party, be either returned to the providing party or, at the option of the recipient party, destroyed by shredding.

3. Non-waiver of Objection to Admissibility.

The furnishing of any document, information, data, study or other materials pursuant to this Protective Agreement shall in no way limit or waive the right of the providing party to object to its relevance or admissibility in any proceedings before this Commission.

4. Challenge to Confidentiality.

(a) Initial Challenge.

This Protective Agreement establishes a procedure for the expeditious handling of information that the Applicants claim is confidential. In any proceeding before IDWR, Staff or Parties may challenge the characterization of any information, document, data or study claimed by the providing party to be a trade secret, proprietary or confidential information. If seeking to

challenge the confidentiality of any information Staff or Parties shall first contact counsel for the providing party and attempt to resolve any difference by stipulation. Resolution may include removing the confidential classifications, creating a non-confidential summary, reformatting the information, etc.

(b) Subsequent Challenge.

In the event that the parties cannot agree as to the character of the information challenged, Staff or Parties may challenge the confidentiality of the information by petitioning IDWR to rule upon the disputed information in any proceeding in which the information is relevant. The Petition shall be served upon IDWR and all parties to the proceeding who have signed an Exhibit "A" as provided in this Protective Agreement. The Petition shall designate with specificity the document or material challenged and state the grounds upon which the subject materials are deemed to be non-confidential.

(c) Challenge Hearing.

The challenging party shall request that IDWR conduct an *in camera* proceeding where only those persons duly authorized to have access to such challenged materials under this Protective Agreement shall be present. IDAPA 31.01.01.243.01. This hearing shall be commenced no earlier than five (5) business days after serving the Petition on IDWR and all parties who have signed an Exhibit "A." The record of the *in camera* hearing shall be marked "CONFIDENTIAL -- Subject to Protective Agreement." To the extent necessary, the transcript of such hearing shall be separately bound, segregated, sealed, and withheld from public inspection by any person not bound by the terms of this Agreement. IDAPA 31.01.01.287.

(d) Determination.

The parties will ask IDWR to issue an Order determining whether any challenged information or material is not properly deemed to be exempt from public disclosure pursuant to the Idaho Public Records Act. (*Idaho Code* §§ 9-337 *et seq.*) If information is found to be not exempt from disclosure, parties shall not disclose such challenged material or use it in the public record, or otherwise outside the proceedings for at least five (5) business days unless the providing party consents to such conduct. This procedure enables the providing party to seek a stay or other relief from IDWR's Order removing the restrictions of this Agreement from material claimed to be confidential. Such relief may be sought from IDWR or a court of competent jurisdiction.

5. (a) Receipt Into Evidence.

Provision is hereby made for receipt into evidence in this proceeding of materials claimed to be confidential in the following manner:

- (1) If a party intends to use Confidential Information or to make substantive reference to Confidential Information supplied to it under this Agreement, it shall give reasonable prior notice of such intention to the providing party, and shall provide copies of the used Confidential Information or substantive reference to Confidential Information only to the providing party, and such other parties, if any, who have executed an Exhibit "A" to this Protective Agreement unless such information use being used for impeachment purposes.
- (2) One (1) copy of the used Confidential Information or substantive reference to Confidential Information described in paragraph 5(a)(1) shall be placed in the sealed record.
- (3) Only one (1) copy of the documents designated to be placed in a sealed record shall be made, which copy shall be supplied by the providing party.
- (4) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to IDWR, and shall be maintained in accordance with the terms of this Protective Agreement.

(b) **Seal.**

While in the custody of IDWR, materials containing Confidential Information shall be marked "CONFIDENTIAL -- SUBJECT TO ATTORNEY'S CERTIFICATE OF CONFIDENTIALITY" and shall not be examined by any person except under the conditions set forth in this Agreement, if applicable.

(c) **In Camera Hearing and Transcripts.**

Any Confidential Information that must be orally disclosed at a hearing in the proceedings shall be offered at an *in camera* hearing, attended only by persons authorized to have access to the information under this Protective Agreement. Similarly, any transcription of any examination or other reference to Confidential Information (or that portion of the record containing Confidential Information) shall be marked and treated as provided herein for Confidential Information. See IDAPA 31.01.01.287.

(d) **Access to Record.**

Access to sealed testimony, records, and information shall be limited to IDWR and persons who have signed an Exhibit "A" as provided in this Protective Agreement, unless such information is released from the restrictions of this Agreement either through agreement of the parties or after notice to the parties and hearing, pursuant to the order of IDWR and/or the final order of a court having final jurisdiction.

(e) Appeal.

Should an appeal from the proceeding be taken, sealed portions of the record may be forwarded to any court of competent jurisdiction for purposes of an appeal, but under seal as designated herein for the information and use of the court. If a portion of the record is forwarded to a court under seal for the purposes of an appeal, the providing party shall be notified which portion of the sealed record has been designated by the appealing party as necessary to the record on appeal.

6. Use in Pleadings.

Where references to Confidential Information in the sealed record or with the custodian is required in pleadings, briefs, arguments, or motions (except as provided in Paragraph 5), it shall be by citation to title or exhibit number or some other description that will not disclose the substantive Confidential Information contained therein. Any use of or substantive references to Confidential Information shall be placed in a separate section of the pleading or brief and submitted to IDWR pursuant to Paragraph 5. This sealed section shall be served only on counsel of record who have signed the nondisclosure agreements set forth in Exhibit "A" attached to this Protective Agreement, and may, in turn, be disclosed by them only to individuals who likewise signed Exhibit "A".

7. Summary of Record.

If deemed necessary by IDWR, the providing party shall prepare a written summary of the Confidential Information referred to in Orders to be issued to the public and the parties.

8. Effective Date.

This Protective Agreement shall become effective on the date hereof.

DATED at Boise, Idaho this _____ day of June, 2006.

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

By _____
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Attorneys for Clear Lakes Trout, Inc.

Clear Lakes Country Club

By _____
Clear Lakes Country Club

Idaho Department of Water Resources

By _____

Phillip J. Rassier
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Boise, ID 83702-0098

Attorney for Idaho Department of Water Resources

EXHIBIT A

I have read the foregoing Protective Agreement dated ___ day of October, 2008, IN THE MATTER OF THE MITIGATION PLAN OF THE NORTH SNAKE AND MAGIC VALLEY GROUND WATER DISTRICTS IMPLEMENTED BY APPLICATIONS FOR PERMIT NOS. 02-10405 AND 36-16645 AND APPLICATION FOR TRANSFER NO. 74904 TO PROVIDE REPLACEMENT WATER FOR CLEAR SPRINGS SNAKE RIVER FARM and agree to be bound by the terms and conditions of such Agreement.

NAME

Employer or Firm

Business Address

Party

Date

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



IN THE MATTER OF DISTRIBUTION)
OF WATER TO WATER RIGHTS NOS.)
36-07210, 36-07427, AND 36-0236a)

Blue Lakes Delivery Call)

IN THE MATTER OF DISTRIBUTION)
OF WATER TO WATER RIGHTS NOS.)
36-04013A, 36-04013B, AND 36-07148.)
(SNAKE RIVER FARM))

Clear Springs, Snake River Farm)
Blue Lakes Delivery Call)

ORDER RE DISCOVERY

This matter was heard on August 28, 2007, on the Joint Motion for Protective Order filed by Blue Lakes Trout Farm, Inc. (Blue Lakes) and Clear Springs Food, Inc. (Clear Springs). The Joint Motion was in response to Notices of Taking Rule 30 (b) (6) Depositions *Duces Tecum* submitted by IBWA which listed ten matters for oral examination and document production. Blue Lakes and Clear Springs objected to information related to 1) the development and use of their facilities and water rights prior to the partial decree adjudicating the water rights, sought in requests numbers 1, 2, 3, 4, 6, and 9; 2) construction and improvement and operation of their facilities, sought in requests 2 and 6; 3) production, revenues, financial conditions and tax returns, sought in requests 2 and 6; 4) prior litigation, sought in request 7; 5) facility water effluent, sought in request 9. Prior to hearing IGWA submitted a Motion to Compel. The issues in the Motion to Compel overlap those in dispute concerning the scope of the discovery allowed in the depositions. Oral rulings were made on the objections and counsel for Blue Lakes was requested to submit a proposed order memorializing the rulings. IGWA objected to provisions in the proposed order and moved for partial reconsideration of the rulings made at hearing. This order memorializes the rulings at hearing as modified in part in response to the motion for partial reconsideration.

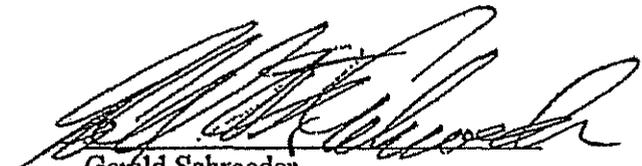


1. The parties stipulated concerning the disposition of discovery requests 4 and 5 and request 6 with respect to economic, business reports. Consequently no ruling is necessary on these requests.
2. The ultimate question of whether production records must be produced remained open following the hearing. Prior authority from the SRBA District Court indicates that such information is not discoverable. That determination is binding in these proceedings. However, if that information is not produced in discovery Blue Lakes and Blue Springs may not introduce information from the records to support any position they assert, e.g. more water allows the production of more or larger healthy fish.
3. Request 1 seeks, "All diversion and spring discharge records relating to spring discharges including spot measurements." At hearing that request was deemed too broad and discovery was limited to such records following entry of the decrees establishing the rights. Upon reconsideration that ruling is too restrictive. The historical background as to the discharge records might lead to relevant information concerning issues that may arise in this litigation. Consequently, the prior oral ruling is modified to provide that Blue Lakes and Clear Springs shall provide the discharge records from the time of initial licensing.
4. Request 2 seeks, "All records relating to spring construction and improvements, collection systems, diversion facilities, measurement devices, including maps, construction plans and designs, drilling records, contractor information, calendars, notes, memoranda, relating to the same." At hearing discovery was limited to information at the time of and following the adjudication. The decrees were entered based upon facilities and improvements in place. The likelihood of any relevant information developing from production of information of this nature prior to that time is slight and the burden significant. Discovery is limited to information at the time of and following adjudication.
5. Request 3 seeks, "All water rights utilized at the facilities together with all files and records pertaining thereto, including but not limited to all applications for

permits, transfers, Snake River Basin Adjudication claims, field reports, proof of beneficial use, engineering reports and all agreements pertaining to the same, exchanges, subordinations and all engineering reports or studies relating to the same. The relevance of pre-adjudication information of this nature is not apparent. Discovery is limited to post-adjudication information.

6. Request 7 for "All documents relating to previous litigation that the facility/corporation was involved in" is overbroad.
7. Request 8 seeks, "All documents relating to any prior decrees or court decisions relating to the water rights, including the decrees or court decisions." The discovery request is overbroad, except as it relates to court decisions and decrees concerning the water rights of Blue Lakes and Clear Springs.
8. Request 9 seeks, "All records relating to effluent and influent water quality, quantity, temperature. " There was no objection to the information concerning influent. Information concerning effluent may be relevant. The request for discovery is allowed.
9. There was no objection to Request 10.

Dated September 10, 2007.



Gerald Schroeder
Hearing Officer