

3. I am a licensed professional engineer in the State of Idaho and senior member of Brockway Engineering PLLC. A copy of my current curriculum vitae is attached hereto as Exhibit A.

4. I have testified as an expert witness on various water right and hydrologic matters in several contested cases before the Idaho Department of Water Resources.

5. I was and am currently a member of the Eastern Snake Hydrologic Modeling Committee (ESHMC).

6. I was active in the ESHMC when development of the Eastern Snake Plain Aquifer (ESPA) Model Version 1 was being developed. The Garabedian model boundary is outlined in the report: (Garabedian, S.P.,1992. Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho. U.S. Geological Survey Professional paper 1408-F), The boundary in the Garabedian report outlines the current "Area of Common Groundwater" for the ESPA in the Conjunctive Management Rules (IDAPA 37.03.11.050).

7. One of the first tasks for the ESHMC Committee was to evaluate the Garabedian model boundary and research and develop, if necessary, a justifiable boundary for the enhanced model which would identify the areas which are hydraulically connected and can be considered to be part of the ESPA. Evaluation of the boundaries considered all available data and the interface of tributary valleys with the regional aquifer system as well as any hydrologic barriers.

8. A design report on the model boundary determination was prepared by the Idaho Water Resources Research Institute. (Model Boundary, Alan Wylie, November 15, 2004, Idaho Water Resources Research Institute, Technical Report 04-016, Eastern Snake Plain Aquifer Model Enhancement Project, Scenario Document Number DDM-002)

9. The Model Boundary report was reviewed and approved by the ESHMC Committee and the boundary incorporated in the ESPAM Version 1. This boundary was also incorporated in the ESPAM Version 1.1 (Enhanced Snake Plain Aquifer Model Final Report dated July 2006, Idaho Water Resources Research Institute Technical Report 06-002).

10. The boundary for the USGS ground water model developed by Garabedian did not include significant areas of tributary valleys and irrigated areas which are necessary for administration of ground water on the ESPA.

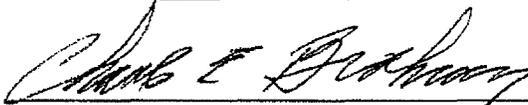
11. The effect of including all justifiable tributary areas is to reduce water balance errors because water flow into the ESPA area can be measured rather than estimated and boundaries are extended to known bedrock which are more justifiable no-flow boundaries.

12. To the best of my knowledge the aquifer boundary adopted by Garabedian was not reviewed by the ESHMC or any other Idaho peer group. It was likely reviewed in-house by USGS.

13. The ESPAM Version 1.1 model boundary is a better representation of the hydraulically connected areas of the Eastern Snake River Plain and should be considered as the Area of Common Groundwater for administration under the Conjunctive Management Rules. IDWR should amend Rule 50 consistent with Clear Springs' petition filed November 10, 2010.

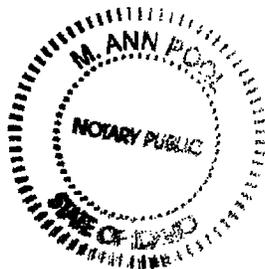
Further you affiant sayeth naught.

DATED this 27th day of May 2011.



Charles E. Brockway, P.E., Ph.D.

SUBSCRIBED AND SWORN to before me this 31 day of May 2011.

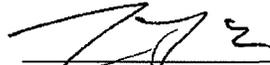


M. Ann Pugh
Notary Public for State of Idaho
Residing at Twin Falls, Idaho.
Commission Expires: April 5, 2016

CERTIFICATE OF MAILING

I hereby certify that on May 31st, 2011, the above and foregoing, was sent to the following by U.S. Mail proper postage prepaid and by email for those with listed email addresses:

Rich Rigby Idaho Department of Water Resources 322 E. Front Street P.O. Box 83720 Boise, Idaho 83720-0098 rich.rigby@idwr.idaho.gov	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
---	--



Travis L. Thompson

Exhibit A

Charles E. Brockway, P.E., Ph.D.

**Brockway Engineering
2016 North Washington St. Suite 4
Twin Falls, ID 83301**

(208) 736-8543

(208) 736-8506 FAX

E-mail: charles.e.brockway@brockwayeng.com

Present title:

Senior Member – Brockway Engineering P.L.L.C

Formerly-Research Professor – Civil and Agricultural Engineering: Supervision of research conducted by the University Water Resources Research Institute and the College of Engineering at Kimberly, Idaho. Graduate student supervision and directed studies instruction in Water Management and Water Resources related subjects.

Associate Director – Idaho Water Resources Research Institute

Summary of education beyond high school:

Institution, Degree, Year

University of Idaho 1955-1959, B.S.-Civil Engineering, 1959

California Institute of Technology 1959-1960, M.S. – Civil Engineering, 1960

University of Colorado, Denver, Colorado, Management, 1963

University of Denver; Denver, Colorado, Civil Engineering, 1964

Utah State University, Ph.D.-Water Resources Engineering, 1977

Number of years service on U of I faculty: 32

Date of original appointment: 1965

Dates of advancement in rank:

Associate Research Professor: 1974

Professor – 50% Agricultural Engineering, 50% Civil Engineering: 1978

Subjects and courses taught:

CE 500, CE 600, CE 502

Summary of academic experience:

University of Idaho – Research Professor–Civil and Agricultural Engineering, 1978

University of Idaho – Associate Research Professor, Civil Engineering, 1974-1978

University of Idaho – Assistant Research Professor, Civil Engineering, 1965-1974

Boise College – Instructor in Engineering, 1961-1963

Summary of other experience:

Senior Member, Brockway Engineering P.L.L.C. Water Resources Engineering

University of Idaho – USAID Pakistan Project on Irrigation Systems Management Research, 1984

U.S. Bureau of Reclamation – Hydraulic Research Laboratory, Denver, Colorado – Hydraulic Research Engineer, 1963-1965

U.S. Bureau of Reclamation – Boise, Idaho – Hydraulic Engineer, 1961-1963

Converse Foundation Engineering, Inc. – Pasadena, California – Foundation Engineer, 1960-1961

California Institute of Technology – Pasadena, California – Assistant Project Engineer,
U.S. Public Health Services Research Project, 1959-1960

Partial Client List:

Twin Falls Canal Company – Twin Falls, Idaho – Hydrology and water use
North Side Canal Company – Jerome, Idaho – Hydrology and water use
Micron Technology – Ground water and water supply
J.R. Simplot Company – Land disposal of processing waste, water supply, water rights
City of Twin Falls – Water supply and hydrology
Idaho Trout Processors – Hydraulics and water supply
Cedar Mesa Reservoir and Canal Co– Water Management Consultant
Clear Springs Trout Company, Buhl, Idaho – Water supply and distribution systems
Idaho Power Company, Boise, Idaho – Relationships of groundwater and surface water
– Upper Snake River Basin – water right adjudication
Idaho Department of Fish and Game – Evaluation of groundwater stream relationship for
litigation – Parma vicinity
Blaine County, Idaho – Waste disposal systems for high-density rural subdivisions
City of Mountain Home, ID. Water Rights, hydrologic analysis
Rinker Company, Long Beach, CA Hydrology, water rights
U.S. Bureau of Reclamation (was Maricopa County Water District) – Arizona Flood
Study
Office of Technology Assessment – U.S. Congress – Irrigation Distribution Systems
U.S. Department of Justice – Indian Water Rights
Montgomery Engineers – Ground water quality evaluations
J.U.B. Engineers, Twin Falls, Idaho – Groundwater and hydraulics
Amalgamated Sugar Company, Idaho – Hydrology and waste disposal
Pioneer Irrigation District, Idaho Water rights and hydrology
Aries Development Co. Subdivision water rights
Eagle View Farms, Castleford ID-Water rights and irrigation system
Rim View Trout Company, Wendell ID- Hydraulics

Registered Professional Engineer:

Idaho, Colorado and Washington

Special Awards or Honors:

Honorary Membership ASTM, 1959
U.S. Army National Defense Transportation Award, 1958
Distinguished Military Graduate – University of Idaho
Top Ten Graduating Senior – University of Idaho, 1959
No. 2 in graduating class of 889, University of Idaho, 1959
Representative of USBR Division of Research at 1963 Intergovernmental Training
Program, Denver, 1964
Scholarship – University of Denver, Graduate School of Management, 1964
National Science Foundation Fellowship – Utah State University, 1967-1968
Outstanding Young Engineer Award for Idaho, National Society of Professional
Engineers, 1968
Engineer of the Year, 1997 American Society of Agricultural Engineers
Idaho Water Users Hall of Fame - 1998

Membership in professional and scholarly organizations:

National Society of Professional Engineers, 1967- present

Idaho Society of Professional Engineers, 1967- present: President 1978

American Society of Civil Engineers – Irrigation & Drainage Division Committee

Chairman:

- 1.) Operation and Maintenance of Irrigation and Drainage Systems, 1975-1981
- 2.) Water Quality Committee, 1980-1984, Chairman
- 3.) Task Committee on Guidelines for Erosion and Sediment Control in Irrigated Agriculture, 1980-1983, Chairman
- 4.) Publications Committee, 1985-1992

Research Society of America

National Council of Examiners for Engineering and Surveying, 1981-1991

Idaho Board of Professional Engineers and Professional Land Surveyors, 1981-1991, Chairman

American Water Resources Association

Offices held in such organizations:

National Society of Professional Engineers

Member – Young Engineers Committee, 1973-1974

Chairman – Young Engineers Committee, 1975-1977

Member – President's Committee on Board of Directors Organization, 1977

Member – Registration and Qualification for Practice Committee, 1979-1981

Chairman – Registration and Qualification for Practice Committee, 1982-1984

Member – Participating Organizations Liaison Committee to NCEE, 1982-1984

Idaho Society of Professional Engineers, President 1978

President - Magic Valley Chapter, 1970-1971

Member – State Ethical Practices Committee, 1966-1977

Member – State Intersociety Relations Committee, 1968

Member – State Nominating Committee, 1975-1976

Member – Board of Directors, 1972-1973

Member – Board of Directors, Past President Chairman – Nominating Committee 1979

State Director – Representative for Idaho NSPE, 1982-1983

Nominating Committee for Idaho Board of Professional Engineers & Land Surveyors Member

American Society of Civil Engineers

Member – Operation and Maintenance of Distribution Systems Committee Irrigation and Drainage Division, 1975-1981

Chairman – Irrigation and Drainage Division, Operations and Maintenance Committee, 1977-1979

Member – Water Quality Committee, Irrigation and Drainage Division, 1980-1984

Chairman – Water Quality Committee, Irrigation and Drainage Division, 1982-1984

Member – Task Committee on Water Measurement, 1980-1983

Chairman – Task Committee on Guidelines for Erosion and Sediment Control in Irrigated Agriculture, 1984 – Present

Member – Publications Committee, 1985 – Present

Corresponding Member – ASCE Irrigation and Drainage Division Committee on Operation and Maintenance of Irrigation Systems

Reviewer – ASCE Irrigation and Drainage Division Committee on Publications
Idaho Board of Professional Engineers and Land Surveyors Member, 1981
Vice Chairman, 1983-1984
Chairman, 1984-1986, 11990-1992
National Council of Engineering Examiners
Assistant Vice President, Western Zone
Member, Professional Examinations Advisory Committee
Member, Committee on Uniform Procedure and Legislative Guidelines, 1984
Member, Communications and Publications Committee, 1983
Member, Uniform Examinations and Qualifications Committee, 1984 – 1986
Member, Committee on Examination Policies and Procedures, 1987 – 1989
Member, Advisory Committee on Council Activities, 1986-1987
Assistant Vice President – Western Zone, 1986-1987
Member, Fundamentals Examination Review Committee, 1986 1988

Scholarly and creative activity:

Research:

Development of systems analysis procedures for optimization of irrigation system designs with environmental, physical, and social constrains.
Evaluation of crop consumptive use, irrigation requirements, and methods of determining basin depletion from agricultural development
Systems analysis of water use to develop mathematical methods for studying complex ground water-surface water systems – mathematical modeling of aquifers,
Ground water quality and river system water quality evaluations for nutrient load determination and river system modeling.
Development of guidelines for design of sediment removal facilities for on-farm and irrigation distribution system waste ways
Evaluation of attainable impacts on water quality of irrigation return flows due to implementation of best management practices for sediment and nutrient control.
Evaluation of alternate energy sources for irrigation and municipal needs in Idaho.
Analysis of operation and maintenance cost of water distribution systems and determination of the relationship of costs to known physical and organizational parameters and water use efficiency.
Evaluation of the economic potential for use of geothermal hot water and steam in Idaho,
Study of the movement of water from canals to local water tables under saturated and partially saturated conditions.
Studies of the mechanisms of microbial action, sedimentation and soil-water-chemical interactions involved in natural sealing phenomenon in canals and reservoirs,
Evaluation of irrigation management practices for sustained land disposal of geothermal fluids.
Evaluation of practices and systems for controlling sediment and other pollutant losses from irrigated lands.
Investigation of the response of aquifer systems to changes in recharge or withdrawal due to change in land use.
Evaluation of procedures for estimating crop water requirements,

Development of cost effective procedures and equipment for measurement of irrigation diversions and power use in open and closed systems

Community services and other relevant activities:

Member – Intermountain District Church of the Nazarene; Camps Board – 1976-1984,
Board of Church Properties – 1976-1979
Member and Vice President, Twin Falls Reformed Church Consistory 2000-Present
Member – Twin Falls City Planning and Zoning Commission 12/1978-9/1979
Member – College of Southern Idaho Geothermal Energy Commission
Member – Governor's Committee on Energy Use – 1980-1981
Member – Idaho Technical Advisory Committee for Sediment in Surface Water
Chairman – Snake River Technical Advisory Committee – Idaho Legislative Council,
1983-1985
Advisor – Governor's Snake River Advisory Committee – 1985
Member – Water Resources Foundation Board of Directors – 1985
Chairman – Idaho Technical Committee of Hydrology
Member – Idaho Department of Health & Welfare Sediment Criteria Committee
Member – Snake Plain Advisory Committee of Idaho Department of Health & Welfare
Member – Idaho Water Users Water Quality Committee – 1980
Member – INEL Dose Evaluation and Risk Assessment Committee
Member – Columbia River System Operations Review
Member – Mid Snake River Nutrient Management Advisory Committee
Member – Mid Snake River Irrigation Water Quality Coordination Committee
Technical Advisor – Middle Snake River Committee
Member – Liaison Committee, U.S. Geological Survey National Water Quality
Assessment Program, Snake River Basin
Member – Snake River Studies Committee, Idaho Department of Water Resources
Member – City of Twin Falls Wellhead Protection Committee
Member-Eastern Snake River Plain Groundwater Modeling Committee

Publications:

Dr. Brockway is the author of over 100 technical publications in the water resources engineering field. A full list of publications can be provided at request.

John K. Simpson, ISB #4242
 Travis L. Thompson, ISB #6168
 Paul L. Arrington, ISB #7198
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 Twin Falls, Idaho 83303-0485
 Telephone: (208) 733-0700
 Facsimile: (208) 735-2444

*Attorneys for A&B Irrigation District, Burley Irrigation District,
 Milner Irrigation District, North Side Canal Company and
 Twin Falls Canal Company*

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

IN THE MATTER OF PETITION TO AMEND)	
RULE 50.01 OF THE CONJUNCTIVE)	Docket No.
MANAGEMENT RULES (37.03.11))	
)	COMMENTS IN SUPPORT OF
)	PETITION TO AMEND RULE 50
)	
)	
)	

COME NOW, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company (“Surface Water Coalition”)¹, by and through its attorneys of record, Barker, Rosholt & Simpson, LLP, and hereby submit these comments in support of Clear Springs’ petition to modify and amend Rule 50 of the Conjunctive Management Rules (37.03.11 *et seq.*).

¹ Minidoka Irrigation District is submitting its own comments.

COMMENTS

The boundary of the Eastern Snake Plain Aquifer (ESPA) as defined in Rule 50 should reflect the best scientific information. As Rule 50 currently stands, that is not the case. To date, IDWR has relied upon the boundary identified in a 1992 USGS report to exclude certain ground water rights from conjunctive administration. For example, last year the Interim Director predicted material injury for certain SWC members in 2010 and then reduced the ground water districts' mitigation obligations because of the antiquated boundary in CM Rule 50.² *See Order Regarding April 2010 Forecast Supply (Methodology Steps 3 and 4) ("April Order")* (dated April 29, 2010) at 3-4. Although the Director predicted an injury of 84,300 acre-feet, in the event the ground water districts did not provide mitigation, the resulting curtailment was estimated to only produce 77,985 acre-feet in reach gains in the Snake River. The resulting 6,000 acre-feet shortfall in mitigation was due solely to the Interim Director's failure to administer hydraulically connected ground water rights located outside the Rule 50 ESPA boundary. These ground water rights, however, were included as part of the ESPA defined by the ESPAM Model, the tool the Interim Director uses for conjunctive administration.

Although these ground water rights were contributing to the Coalition's predicted material injury, the Interim Director excused that injury due to the Rule's boundary. This type of error in administration, based upon an outdated definition of the ESPA, should be corrected by amendment to the Rule. IDWR has no basis to continue to rely upon outdated information, particularly when that reliance prejudices senior water right holders in administration.

² The Interim Director's methodology for conjunctive administration is currently on appeal to the Idaho Supreme Court and District Court. The Surface Water Coalition disputes the Interim Director's methodology and in no way acquiesces to the methodology by reference to it for purposes of these comments.

CONCLUSION

IDWR has no justifiable basis to rely upon two different ESPA boundaries for its regulation of water in the State of Idaho (i.e. applications for permit, transfers, administration).

IDWR should therefore grant Clear Springs' *Petition* and amend Rule 50 accordingly.

DATED this 31st day of May, 2011.

BARKER ROSHOLT & SIMPSON LLP



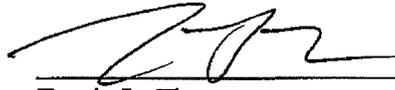
John K. Simpson
Travis L. Thompson
Paul L. Arrington

*Attorneys for A&B Irrigation District, Burley
Irrigation District, Milner Irrigation District, North
Side Canal Company and Twin Falls Canal
Company*

CERTIFICATE OF MAILING

I hereby certify that on May 31st, 2011, the above and foregoing, was sent to the following by U.S. Mail proper postage prepaid and by email for those with listed email addresses:

Rich Rigby Idaho Department of Water Resources 322 E. Front Street P.O. Box 83720 Boise, Idaho 83720-0098 rich.rigby@idwr.idaho.gov	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
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Travis L. Thompson

IDWR must submit a proposed rule for public comment later this summer in order for the rule to be finalized this fall for consideration during the 2012 legislative session. Clear Springs requests IDWR to formally state, preferably by June 30th at the latest, whether it will propose a change to the rule as requested by Clear Springs. Delaying action on Clear Springs' petition through negotiated rulemaking or otherwise is unreasonable if that delay results in no action being taken on the petition and any associated changes for conjunctive administration in 2012.

COMMENTS

Rule 50 of the Conjunctive Management Rules, IDAPA 37.03.11.050.01, provides the following:

Eastern Snake Plain Aquifer. The area of coverage of this rule is the aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408-F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian.

The report referenced in Rule 50 is nearly 20 years old and is not based upon the most recent data and information regarding the proper hydrologic boundary of the ESPA. The definition of the ESPA continues to evolve and the definition has been updated by more recent reports such as the Eastern Snake Plain Aquifer Model Final Report dated July 2006. The *Affidavit of Charles E. Brockway* details the process used by the ESHMC Committee to develop the ESPA boundary used in Versions 1 and 1.1 of the Model. Dr. Brockway's testimony provides additional foundation and reasons for IDWR to amend Rule 50.

Although the ESHMC Committee is currently in the process of developing Version 2 of the Model, it is unknown when that version will be completed. Accordingly, Version 1.1 is the model currently used by IDWR in water right application and transfer proceedings as well as

conjunctive administration. It is not reasonable for IDWR to continue to rely upon an outdated definition of the aquifer when it does not represent the best information available.

Accordingly, Clear Springs' *Petition* requests that Rule 50 be modified and amended as follows:

Eastern Snake Plain Aquifer. The area of coverage of this rule is the aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, ~~Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408 F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian~~ Enhanced Snake Plain Aquifer Model Final Report dated July 2006, Idaho Water Resources Research Institute Technical Report 06-002.

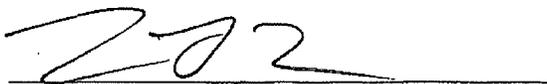
CONCLUSION

IDWR has no justifiable basis to rely upon two different ESPA boundaries for its regulation of water in the State of Idaho (i.e. applications for permit, transfers, administration).

IDWR should therefore grant Clear Springs' *Petition* and amend Rule 50 accordingly.

DATED this 3rd day of May, 2011.

BARKER ROSHOLT & SIMPSON LLP



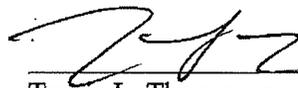
John K. Simpson
Travis L. Thompson
Paul L. Arrington

Attorneys for Clear Springs Foods, Inc.

CERTIFICATE OF MAILING

I hereby certify that on May 7th, 2011, the above and foregoing, was sent to the following by U.S. Mail proper postage prepaid and by email for those with listed email addresses:

Rich Rigby Idaho Department of Water Resources 322 E. Front Street P.O. Box 83720 Boise, Idaho 83720-0098 rich.rigby@idwr.idaho.gov	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
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Travis L. Thompson