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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)

**GROUND WATER DISTRICTS'  
MEMORANDUM IN SUPPORT  
OF MOTION TO EXTEND  
DEADLINES AND  
CONSOLIDATE HEARINGS**

COME NOW North Snake Ground Water District (NSGWD) and Magic Valley Ground Water District (MVGWD) (collectively "GWD"), through counsel, and on behalf of their ground water district members and those ground water users who are non-member participants in GWD's mitigation activities, and hereby submit GWD's memorandum in support of its Motion to Extend Deadlines and to Consolidate Hearings.

GROUND WATER DISTRICTS' MEMO IN SUPPORT OF MOTION TO EXTEND DEADLINES AND CONSOLIDATE HEARINGS

## **I. CURRENT SCHEDULING ORDER**

On September 25, 2008, Director Tuthill issued a Scheduling Order which allowed the parties to engage in written discovery. The Scheduling Order further provided that the parties are to file direct testimony by November 21, 2008. The Order also bifurcated the hearings on GWD's proposed pump-back plan and its well plan. The pump-back mitigation hearing is scheduled for January 20, 2009, and the well mitigation hearing is scheduled for February 3, 2009.

## **II. EVENTS OCCURRING SINCE ISSUANCE OF SCHEDULING ORDER**

Since Director Tuthill issued his Scheduling Order, Clear Springs has filed a Motion to Dismiss/ Motion for Protective Order regarding the pump-back plan (*See* Clear Springs' Motion to Dismiss and/or for Protective Order) and has refused to produce certain information relevant to GWD's Mitigation Plan (*See* GWD's Motion to Compel).

Furthermore, as to the documents Clear Springs did agree to produce, they were only produced in a usable fashion on November 18, 2008, three days before GWD's expert direct testimony is due (*See* affidavit of counsel).

## **III. REQUEST FOR EXTENSION OF DEADLINES, CONSOLIDATION OF HEARING DATES AND CONTINUANCE OF HEARING DATES**

Based on the fact that Clear Springs has refused to provide information relevant to the pump-back and well mitigation options, and that it has a Motion to Dismiss and/or for Protective Order, GWD requests a six week extension to file its expert direct testimony and to extend all deadlines in the Scheduling Order by two weeks. GWD also requests the two hearing be consolidated and extended by six weeks to accommodate the extension of deadlines. In addition to the discovery issues and pending Motion to Dismiss, GWD has determined that it will use substantially the same experts to testify on

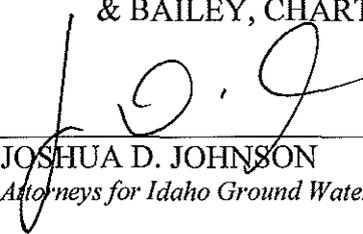
the pump-back option as will be testifying about the well option. Accordingly, it would judicially economic to have one hearing so the experts do not have to appear before the Director twice. GWD would also like to obtain a ruling on Clear Springs Motion to Dismiss prior to expending additional resourced on its pump-back proposal if there is any chance the proposal will be dismissed on motion.

Counsel for GWD further requests the above extensions because a hearing set previously set for three weeks in December (the A & B case) before Hearing Officer Schroeder has now been extended beyond three weeks in December and into January 2009. *See* affidavit of counsel. The A & B hearing was extended after Director Tuthill issued his scheduling Order in this matter. Accordingly, lead counsel for GWD does not have sufficient time to conduct full discovery and prepare for the scheduled hearings without an extension of the deadlines.

WHEREFORE, GWD request Director Tuthill to amend the September 25, 2008, Scheduling Order by extending all deadlines by six weeks and to consolidate the evidentiary hearing into one hearing on or about March 17, 2009.

DATED this 18<sup>th</sup> day of November, 2008.

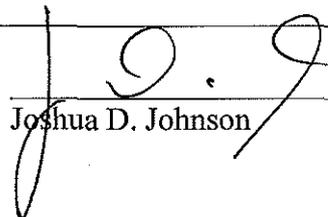
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JOSHUA D. JOHNSON  
*Attorneys for Idaho Ground Water Appropriators*

**CERTIFICATE OF MAILING**

I hereby certify that on this 18<sup>th</sup> 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:

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