

John K. Simpson, ISB #4242  
Travis L. Thompson, ISB #6168  
Paul L. Arrington, ISB #7198  
**BARKER ROSHOLT & SIMPSON LLP**  
1010 W. Jefferson, Suite 102  
P.O. Box 2139  
Boise, Idaho 83701-21239  
Telephone (208) 336-0700  
Facsimile (208) 344-6034

*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 ) **CLEAR SPRINGS FOODS, INC.'S**  
VALLEY GROUND WATER DISTRICTS ) **MOTION TO VACATE HEARING**  
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) )  
\_\_\_\_\_)

COMES NOW, Clear Springs Foods, Inc., by and through its counsel of record, and files this Motion to Vacate and Reset the hearing. This Motion is supported by the associated statements referred to herein.

The matter of the adequacy of the Groundwater Districts ("Districts") Amended Mitigation plan dated July 15, 2008, was scheduled to come before the hearing officer on February 3, 2009. Also pending before this hearing officer is the Districts motion for

reconsideration following the dismissal of the pumpback alternative on November 26, 2008. Associated with the hearing were a number of deadlines set by the hearing officer. On or about January 5, 2009, counsel for Clear Springs learned that Charles Brockway, one of the experts previously identified by Clear Springs, incurred serious health problems which required immediate surgery. Clear Springs immediately notified the parties and the Idaho Department of Water Resources (IDWR) of Dr Brockway's condition and the likely need to reset the hearing and associated schedules. Possible alternative dates were explored at that time. Further, the parties were informed that it maybe necessary to retain an expert to either replace or assist Dr. Brockway given his health issues. In anticipation of Dr Brockway's limited availability and in recognition of the time constraints associated with the consideration of the mitigation alternatives prior to the 2009 irrigation season, Clear Springs has retained HDR Engineering to assist Dr. Brockway or to the extent necessary replace Dr. Brockway. It is unclear as to whether HDR will provide testimony on matters related to either direct testimony or rebuttal, or simply provide Dr. Brockway technical support. In either case those individuals responsible for said work will be made available for deposition pursuant to a scheduling agreement between Clear Springs and the Districts.

Given these facts, Clear Springs requests that the February 3, 2009 hearing be reset to March 10, 2009 to present evidence on the adequacy of the groundwater well and Fish & Game alternatives of the before-mentioned Amended Mitigation Plan. Counsel for the Districts has identified specifically that this is solely Clear Springs' motion, but that they do not oppose the motion. Further, the Districts have not identified whether the

identification of HDR is objectionable. The parties will separately agree to the other deadlines associated with the schedule and forward said dates to IDWR.

DATED this 21st day of January, 2009.

BARKER ROSHOLT & SIMPSON LLP



---

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

Attorneys for Clear Springs Foods, Inc.

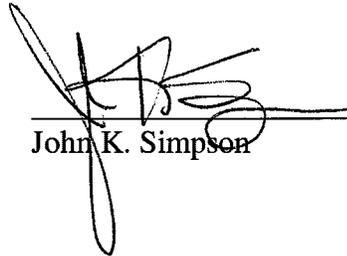
## CERTIFICATE OF MAILING

I hereby certify that on this 21<sup>st</sup> day of January, 2009, 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:

|   |   |
|---|---|
| David R. Tuthill, Director<br>Idaho Department of Water<br>Resources<br>322 E. Front Street<br>PO Box 83720<br>Boise, ID 83720-0098<br><u>Dave.tuthill@idwr.idaho.gov</u>           | (X) U.S. Mail, Postage Prepaid<br>( ) Facsimile<br>(X) E-mail |
| Randall C. Budge<br>Candice M. McHugh<br>Racine Olson<br>201 E. Center St.<br>PO Box 1391<br>Pocatello, ID 83204-1391<br><u>rcb@racinelaw.net</u><br><u>cmm@racinelaw.net</u>       | (X) U.S. Mail, Postage Prepaid<br>( ) Facsimile<br>(X) E-mail |
| Daniel V. Steenson<br>Charles L. Honsinger<br>S. Bryce Farris<br>Ringert Clark<br>PO Box 2773<br>Boise, ID 83701-2773<br><u>dvs@ringertclark.com</u><br><u>clh@ringertclark.com</u> | (X) U.S. Mail, Postage Prepaid<br>( ) Facsimile<br>(X) E-mail |
| Tracy Harr, President<br>Clear Lake Country Club<br>403 Clear Lake Lane<br>Buhl, ID 83316   | (X) U.S. Mail, Postage Prepaid<br>( ) Facsimile<br>( ) E-mail |
| Stephen P. Kaatz, V.P.<br>Clear Lake Homeowners<br>Assoc.<br>223 Clear Lake Lane<br>Buhl, ID 83316  | (X) U.S. Mail, Postage Prepaid<br>( ) Facsimile<br>( ) E-mail |

Allen Merritt  
Cindy Yenter  
Watermaster – WD 130  
IDWR – Southern Region  
1341 Fillmore St., Suite 200  
Twin Falls, ID 83301-3380  
[allen.merritt@idwr.idaho.gov](mailto:allen.merritt@idwr.idaho.gov)  
[cindy.yenter.@idwr.idaho.gov](mailto:cindy.yenter.@idwr.idaho.gov)

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail



---

John K. Simpson