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Attorneys for the Ground Water Users

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING**

CLEAR SPRINGS FOODS, INC.,

Petitioner,

vs.

BLUE LAKES TROUT FARM, INC.,

Cross-Petitioner,

vs.

IDAHO GROUND WATER APPROPRIATORS,
INC., NORTH SNAKE GROUND WATER
DISTRICT, and MAGIC VALLEY GROUND
WATER DISTRICT,

Cross-Petitioners,

vs.

IDAHO DAIRYMEN'S ASSOCIATION, INC.,

Cross-Petitioner,

vs.

DAVID K. TUTHILL, JR., in his capacity as Director
of the Idaho Department of Water Resources; and the
IDAHO DEPARTMENT OF WATER RESOURCES,

Respondents.

Case No. CV-2008-444

**GROUND WATER USERS'
PETITION FOR REHEARING**

IN THE MATTER OF DISTRIBUTION OF WATER
TO WATER RIGHT NOS. 36-02356A, 36-07210,
AND 36-07427

(Blue Lakes Delivery Call)

IN THE MATTER OF DISTRIBUTION OF WATER
TO WATER RIGHT NOS. 36-04013A, 36-04013B,
AND 36-07148

(Clear Springs Delivery Call)

Idaho Ground Water Appropriators, Inc., North Snake Ground Water District, and Magic Valley Ground Water District, acting for and on behalf of their members (collectively, the "Ground Water Users"), through counsel, respectfully petition the Court for rehearing pursuant to Idaho Appellate Rule 42 in response to the Court's *Order on Petition for Judicial Review* dated June 19, 2009 (the "*Order*"), on the following issues:

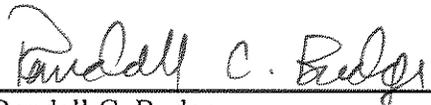
1. Since the Director did not independently apply the law of full economic development of ground water resources set forth in I.C. § 42-226, does the Director have discretion to reconsider that law on remand?
2. Does the *Order* stand for the proposition that the Director can order curtailment without first making a finding that curtailment will not unreasonably interfere with full economic development of the resource pursuant to I.C. 42-226?
3. Does the statutory mandate for full economic development of ground water resources set forth in I.C. § 42-226 require the Director consider the extent to which curtailment will enable the Spring Users to produce more, larger, or healthier fish?
4. Are individual water users entitled to, collectively or individually, preclude the additional development of the ESPA that was secured by the Swan Falls Agreement?
5. Does the *Order* stand for the proposition that the material injury and futile call analyses are one and the same?
6. How does the Director determine material injury without considering evidence about water supply, diversion, and use of water?
7. Can the Director find material injury without evidence being presented that the Spring Users in fact need additional water that can be put to beneficial use?

8. If the *Order* stands for the proposition that the Spring Users have no obligation to support their allegations of material injury, were the Ground Water Users wrongfully precluded from discovering records concerning diversions, fish production, facility design and improvements, etc.?

The Ground Water Users will within 14 days submit a brief in support of this request for rehearing pursuant to Idaho Appellate Rule 42.

DATED this 10th day of July, 2009.

RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED



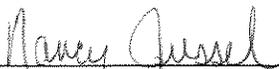
Randall C. Budge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of July, 2009, the above and foregoing document was served in the following manner:

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