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

NORTH SNAKE GROUND WATER  
DISTRICT, and MAGIC VALLEY GROUND  
WATER DISTRICT,

Petitioners,

vs.

GARY SPACKMAN, in his capacity as  
Interim Director of the Idaho Department of  
Water Resources; and the IDAHO  
DEPARTMENT OF WATER RESOURCES,  
Respondents.

vs.

CLEAR SPRINGS FOODS, INC.

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHT NOS. 36-  
04103A, 36-04013B AND 36-7148 (Snake  
River Farm)

(Water District Nos. 130 and 140)

Case No.

**PETITION FOR  
JUDICIAL REVIEW**

Fee Category: R-2  
Fee Amount: \$88.00

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

COME NOW, NORTH SNAKE GROUND WATER DISTRICT, and MAGIC VALLEY  
GROUND WATER DISTRICT, acting for and on behalf of their members, through counsel,  
respectfully submit this Petition for Judicial Review pursuant to Idaho Code § 67-5270 and Rule  
84 of the Idaho Rules of Civil Procedure.

## PETITION FOR JUDICIAL REVIEW

1. This Petition requests judicial review of actions taken by the Idaho Department of Water Resources (“IDWR” or “Department”).

2. This Petition is taken to the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Gooding. Venue is proper pursuant to Idaho Code § 67-5272.

3. This Petition seeks judicial review of the *Order Curtailing Ground Water Rights in Water District Nos. 130 and 140 Junior to January 8, 1981* dated July 22, and the *Order Regarding Ground Water Districts’ Plan of Action* dated July 29, 2009 and the *Amended Curtailment Order* dated August 7, 2009 issued by the Director of IDWR. These orders are collectively referred to as the 2009 Curtailment Orders.

4. With respect to the Petition for Judicial Review filed herein by the North Snake Ground Water District and Magic Valley Ground Water District (collectively the “Ground Water Districts”) the following initial statement of issues on appeal is submitted, to-wit:

- a) Did the Director wrongfully refuse to allow the Ground Water Districts to do late season recharge for mitigation credit that would eliminate most, if not all, of the 0.17 cfs shortfall to Clear Springs?
- b) Did the Director err in refusing to recognize and honor the March 26, 2009 Order approving the Ground Water Districts’ 2009 Mitigation Plan?
- c) Did the Director err by failing and refusing to vacate the May 15, 2009 Stay Order and allow the Ground Water Districts to resume and complete their 2009 Mitigation Plan, thereby providing direct delivery of replacement water of 3.0 cfs to Clear Springs, which amount would substantially exceed the full 2.67 mitigation obligation to Clear Springs, even without any conversion acres or CREP benefits.

- d) Did the Director err in issuing Final Orders of Curtailment on July 22, 2009 and August 7, 2009 without following the procedures mandated by this Court in the June 19, 2009 *Order on Petition for Judicial Review* in Gooding County Case No. 2008-444, to-wit:
- i. “The delay in holding a hearing as required by the CMR was unreasonable, in light of the ‘emergency’ nature of all delivery calls. Under the CMR, a more appropriate course of action for the Director to follow would have been to issue the initial Curtailment Order, provide the junior ground water users time to submit a mitigation plan before making that Order final, and then hold a hearing on the Order of Curtailment and Material Injury (as discussed in the previous section) and the Mitigation Plan at the same time.” *Order* at p. 51.
- e) Did the Director err in determining that the Ground Water Districts entered into an “Agreement” which guaranteed 9,300 acres of voluntary conversions from ground water to surface water?
- f) Did the Director err in ordering the curtailment of 153 ground water rights including domestic, stock water, fire protection, commercial and heating, together with irrigation water rights that irrigate approximately 4,154 acres to provide 0.17 cfs to Clear Springs without giving any consideration and without entering any Findings of Fact or Conclusions of Law whether the curtailment will unreasonably interfere with full economic development of the resource pursuant to I.C. §42-226, an issue that remains pending on rehearing before the Court in Case No. CV-2008-444?
- g) Did the Director err by failing to consider or enter any Findings of Fact or Conclusions of Law whether the statutory mandate for full economic development of ground water resources set forth in I.C. §42-226 requires the Director consider the extent to which curtailment would enable Clear Springs to produce more, larger or healthier fish, an issue pending before this Court for reconsideration in Case No. CV-2008-444?

The Ground Water Districts reserve the right to timely amend and supplement the foregoing issues presented on appeal.

5. No hearing has been held on the 2009 Curtailment Orders (the July 22 Order, the July 29 Order and August 7 Order). However, a hearing was held before IDWR from November 28 through December 13, 2007 on Clear Springs Foods, Inc. delivery call filed in 2005 upon which the 2009 Curtailment Orders are based. Two status conferences have been held relating to the 2009 Curtailment Orders, one on May 4, 2009 and one on August 5, 2009 and both were recorded, a copy of which can be obtained from IDWR.

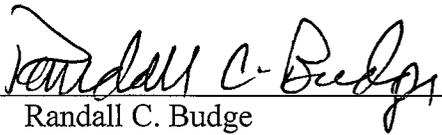
6. The Petitioners request that a transcript of the May 4, 2009 status conference and the August 5, 2009 status conference be made a part of the agency record for judicial review. The Petitioners certify that they will pay for a copy of the transcript of the status conferences once that amount has been determined by the agency. A copy of the transcript may be obtained from Victoria Wigle, Administrative Assistant to the Director, Idaho Department of Water Resources, 322 E. Front St., P.O. Box 83720, Boise, Idaho 83720-0098, Telephone: (208) 287-4803; Facsimile: (208) 287-6700; Email: victoria.wigle@idwr.idaho.gov.

7. The Petitioners also request that IDWR prepare the agency record in accordance with Rule 84(f) and the undersigned certifies that the Petitioners have contacted IDWR and there is no fee for the agency to prepare record for judicial review. Petitioners request that the record in this matter consist of the July 8, 2005 Order in *The Matter of Distribution of Water to Water Rights Nos. 36-04013A, 36-04013B, and 36-07148* (Snake River Farm), the July 11, 2008 *Final Order on Spring Users' Delivery Call*, the March 12, 2009 *2009 Replacement Water Plan and Third Mitigation Plan (Over-The-Rim) of North Snake Ground Water District and Magic Valley*

*Ground Water District* and all subsequent pleadings, filings and documents relating thereto, up to and including the August 7, 2009 *Amended Curtailment Order*.

DATED this 11<sup>th</sup> day of August, 2008.

RACINE, OLSON, NYE, BUDGE  
& BAILEY, CHARTERED

By:   
Randall C. Budge