Randall C. Budge, ISB #1949
Candice M. McHugh, ISB #5908
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ATTORNEYS FOR THE GROUND WATER DISTRICTS

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-4103A, 36-4103B and 36-7148 (Snake River Farm)	Docket No. CM-MP-2009-004 **AFFIDAVIT OF CANDICE M. MCHUGH IN SUPPORT OF MOTION TO COMPEL** **(Over-the-Rim Mitigation Plan)**
IN THE MATTER OF THE THIRD MITIGATION PLAN (OVER-THE-RIM) OF THE NORTH SNAKE AND MAGIC VALLEY GROUND WATER DISTRICTS TO PROVIDE REPLACEMENT WATER FOR CLEAR SPRINGS SNAKE RIVER FARM (Water District Nos. 130 and 140)	

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

Candice M. McHugh, having been duly sworn upon oath, deposes and states as follows:

1. I am one of the attorneys providing legal representation to Magic Valley Ground Water District and North Snake Ground Water District ("Ground Water Districts").

2. I have knowledge of the facts in this matter and I make this affidavit based upon personal knowledge.

3. I make this affidavit in support of the Ground Water Districts' Motion to Compel and Motion to Strike.

4. On September 11, 2009, the Ground Water Districts served expert reports and testimony of their respective experts. At the time of this expert exchange, it was understood by counsel that the underlying data and documents for the expert testimony and reports would be produced within a reasonably short period of time following production of the reports. The Ground Water Districts complied and produced its underlying data on or about September 18, 2009.

5. On September 18, 2009 the Ground Water Districts served their First Set of Discovery. Attached hereto as Exhibit A is a true and correct copy of the First Set of Discovery.

6. On October 19, 2009 Clear Springs filed its Response to the First Set of Discovery. Attached hereto as Exhibit B is a true and correct copy of Clear Springs' Response.

7. On October 30, 2009 Clear Springs filed its expert report and testimony. On November 3, 2009, the Ground Water Districts sent Notices of Deposition *Duces Tecum* to Clear Springs, which are attached hereto as Exhibits C and D through Clear Springs' counsel. Because the Ground Water Districts did not have Clear Springs expert reports and testimony at the time of its First Discovery Requests, requests for additional documents were included in the Notices of Deposition.

8. The Ground Water Districts took the Depositions of Larry W. Cope and Larry R. MacMillan on November 10 and 11, 2009. However, Clear Springs refused to produce the information and documents requested in the Notices of Deposition, yet Mr. Cope and Mr.

MacMillan both testified that such information and documents exists. Exhibit E is a copy of the rough draft of the transcript from the depositions. Clear Springs' Counsel stated that Clear Springs would not produce these documents because they were requested improperly through the Notices of Deposition rather than a Rule 34 Production Request and that the documents were not relevant or discoverable under the discovery order in the separate Delivery Call case proceeding.

9. The Ground Water Districts are prejudiced by Clear Springs' objection to the over the rim mitigation plan that claim that the water delivered via the wells will devalue the company, affect its profitability, sales, image and brand without the ability to test whether those objections can be supported or substantiated.

Further your affiant sayeth naught.

CANDICE M. MCHUGH

SUBSCRIBED AND SWORN to before me this 12 day of November, 2009.

NOTARY PUBLIC FOR IDAHO
Residing at Idaho Falls
My Commission Expires: 11-12-2010

BRENT L. WHITING
NOTARY PUBLIC
STATE OF IDAHO

CERTIFICATE OF MAILING

I hereby certify that on this 12th day of November, 2009, the foregoing, was served by email to those with emails and by U.S. Mail postage prepaid to the following:

Candice McHugh
Signature of person mailing form

Gary Spackman, Interim
Director
c/o Victoria Wigle
Idaho Dept of Water Resources
PO Box 83720
Boise ID 83720-0098
Gary.spackman@idwr.idaho.gov
Phil.rassier@idwr.idaho.gov
Chris.Bromley@idwr.idaho.gov

Gerald F. Schroeder
Hearing Officer
Home address
Boise ID 83704
fcjschroeder@gmail.com

John Simpson
Barker Rosholt & Simpson
1010 W Jefferson, Ste 102
PO Box 2139
Boise, ID 83701-2139
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mcc@givenspursley.com
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Exhibit “A”

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ATTORNEYS FOR THE IDAHO GROUND WATER APPROPRIATORS

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-4103A, 36-4013B and 36-7148 (Snake River Farm)	**GROUND WATER DISTRICTS' FIRST SET OF DISCOVERY (Over-the-Rim Mitigation Plan)**
IN THE MATTER OF THE THIRD MITIGATION PLAN (OVER-THE-RIM) OF THE NORTH SNAKE AND MAGIC VALLEY GROUND WATER DISTRICTS TO PROVIDE REPLACEMENT WATER FOR CLEAR SPRINGS SNAKE RIVER FARM (Water District Nos. 130 and 140)	

TO: CLEAR SPRINGS FOODS, INC., SNAKE RIVER FARMS.

COME NOW Magic Valley Ground Water District, and North Snake Ground Water District (collectively "Ground Water Users"), by and through counsel, pursuant IDAPA 37.01.01 Rules 521 and 522 of the Rules of Practice and Procedure of IDWR, and the oral order at the August 26, 2009 Scheduling Conference authorizing discovery

and hereby submit the following Discovery Requests to Clear Springs Foods, Inc., Snake River Farms (Clear Springs). These discovery requests are continuing so as to require supplemental answers as additional information becomes known.

INSTRUCTIONS AND DEFINITIONS

Request Nos. 1-13 below include all available documentation and data since completion of the new facility in March of 1987 to the present.

The term "water quality" includes both water quality and temperature.

INTERROGATORY NO. 1: For each person answering these interrogatories, state:

a. the person's complete name and age;

b. the person's residence;

c. the person's business address;

d. whether the person is an employee or agent for defendant; and

e. any position held by the person with defendant.

INTERROGATORY NO. 2: State whether the person answering these interrogatories is using firsthand information to answer, and, if not, state:

a. the name of every person who supplied information for answers to these interrogatories; and

b. specify for which interrogatories that person has supplied information.

INTERROGATORY NO. 3 Please describe precisely and in detail each objection you have to the Over the Rim Mitigation Plan, including the factual basis for each objection and all evidence you intend to present at the hearing in support of your objections.

INTERROGATORY NO. 4 Please list the entity or business names, operator's names, entity or business addresses, description of location, source of water supply and water rights for all fish rearing, hatchery, processing, brooding or any other such type of facility owned in whole or in part or operated or managed by Clear Springs Foods, Inc. Please include for each facility the date it was constructed and describe its present operation and use.

INTERROGATORY NO. 5 For Clear Springs' Snake River Farms Facility water supply, please describe precisely and in detail:

a) all flow of water at point of intake from the spring(s) to point of discharge;

b) location of all measuring devices;

c) location of where all water quality sampling and measurements are taken;

d) describe the parameters sampled and measured; and

e) describe the methods used for such sampling and measurement.

Identify the agencies that the above information is reported including the method and frequency of reports. Indicate which measurements and water quality samples were taken for purposes of reporting to the Idaho Department of Environmental Quality. All locations should be identified on a map and the years in which these locations have been used should also be provided.

INTERROGATORY NO. 6 For Clear Springs' other facilities identified in response to Interrogatory No. 4, please describe precisely and in detail what water quality and temperature samples are taken, frequency of such samples and who the samples are provided to.

INTERROGATORY NO. 7 Please describe all water treatment performed, the location of the water treatment, frequency and reason for the treatment of water for the Snake River Farm facility and those facilities identified in response to Interrogatory No. 4.

INTERROGATORY NO. 8 Please describe all treatment processes, chemicals, and antibiotics used to treat the water prior to and during conveyance through and discharge from the research facilities, hatchery, and raceways or used and/or applied within the Snake River Farm Facility and the other facilities identified in response to Interrogatory No. 4.

INTERROGATORY NO. 10 Do you believe the source of the water supply for Snake River Farm is different than the source of supply for the water rights included in the Over the Rim Mitigation Plan? If your answer is yes, please describe precisely and in detail the reason for your belief that the source of supply is not the same and all evidence you plan to present at the hearing to support your belief.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1 Please produce a current or set(s) of drawings and maps of the entire Snake River Farm facility.

REQUEST FOR PRODUCTION NO. 2 Please produce all water quality permits and related documentation issued to Snake River Farm by a regulatory agency and of all inspections and infractions under each permit since March of 1987.

REQUEST FOR PRODUCTION NO. 3 Please produce all documents and data related to measured flows on the Snake River Farm facility. This information should

include the timing of when the measurements were taken, location of measurements, and recorded flows.

REQUEST FOR PRODUCTION NO. 4 Please produce all documents and water quality data taken on the Snake River Farm facility. This information should include all water quality data obtained and the location and date of when the samples and/or measurements were taken. Please clearly label all sampling locations on a map. Specific water quality data should include, but are not limited to, records of sampling and measurement of temperature, dissolved oxygen, pH, total ammonia, un-ionized ammonia, nitrite, nitrate, carbon dioxide, Kjeldahl Nitrogen, total alkalinity, suspended solids, total dissolved solids, and all additional water quality data recorded.

REQUEST FOR PRODUCTION NO. 5 For the facilities listed in response to Interrogatory No. 4 above please produce all documents and water quality data taken at such facility. This information should include by facility all water quality data obtained and the location and date of when the samples and/or measurements were taken. Please clearly label all sampling locations on a map. Specific water quality data should include, but are not limited to, records of sampling and measurement of temperature, dissolved oxygen, pH, total ammonia, un-ionized ammonia, nitrite, nitrate, carbon dioxide, Kjeldahl Nitrogen, total alkalinity, suspended solids, total dissolved solids, and all additional water quality data recorded.

REQUEST FOR PRODUCTION NO. 6 Please produce all documentation of treatment processes, chemicals, and antibiotics used to treat the water prior to and during conveyance through the research facilities, hatchery, and raceways or used and/or applied within the Snake River Farm Facility and the other facilities identified in response to

Interrogatory No. 4 above. All available records of chemicals and antibiotics (specific type and quantity) applied with the associated date(s) of use should be provided.

REQUEST FOR PRODUCTION NO. 7 Please produce all documentation of treatment processes and chemicals used to treat water discharged from the research facilities, hatchery, and raceways for the Snake River Farm Facility and the other facilities identified in response to Interrogatory No. 4 above. All available records of chemicals (specific type and quantity) with the associated date(s) of use should be provided.

REQUEST FOR PRODUCTION NO. 8 Please provide all studies, analysis and reports relating to water quality and temperature of the water supply at Snake River Farm and those facilities indentified in response to Interrogatory No. 4 above. This includes all such studies, analysis and reports relating to water quality and temperature at the spring source(s) as well as at discharge.

REQUEST FOR PRODUCTION NO. 9 Please produce records of all fish disease incidents and pathology records for the Snake River Farm Facility and the other facilities identified in response to Interrogatory No. 4 above including date of incident, cause of incident, incident response, treatment methods used, numbers of fish lost or destroyed and future corrective actions developed as a result of the incident.

REQUEST FOR PRODUCTION NO. 10 Please produce all records and documents you have associated with any wells, well pumps, groundwater production, and groundwater quality located within one mile of Snake River Farms.

REQUEST FOR PRODUCTION NO. 11 Please produce all documents and records you have associated with hydrogeologic investigations in the vicinity of Snake River Farms.

REQUEST FOR PRODUCTION NO. 12 Please produce all documents and records you have associated with geologic and hydrologic investigations of springs located within one mile of Snake River Farms.

REQUEST FOR PRODUCTION NO. 13 Please produce all documents reviewed or relied upon in answering any of the interrogatories or requests above.

REQUEST FOR PRODUCTION NO. 14 Please produce all documents you believe support your objection to the mitigation plan and related applications.

DATED this 18th day of September, 2009.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

CANDICE M. MCHUGH
Attorneys for Idaho Ground Water Appropriators and Ground Water Districts

CERTIFICATE OF MAILING

I hereby certify that on this 18th day of September, 2009, the foregoing, was served by hand delivery to the following:

Signature of person mailing form

John Simpson
Barker Rosholt & Simpson
1010 W Jefferson, Ste 102
PO Box 2139
Boise, ID 83701-2139
jks@idahowaters.com

Exhibit “B”

John K. Simpson, ISB #4242
Travis L. Thompson, ISB #6168
Paul L. Arrington, ISB #7198
BARKER ROSHOLT & SIMPSON LLP
1010 W. Jefferson St., Suite 102
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Boise, Idaho 83701-2139
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 DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-4013A, 36-4013B AND 36-7148 (Snake River Farm)	**CLEAR SPRINGS' RESPONSES TO GROUND WATER DISTRICTS' FIRST SET OF DISCOVERY (Over-the-Rim Mitigation Plan)**
IN THE MATTER OF THE THIRD MITIGATION PLAN (OVER THE RIM) OF THE NORTH SNAKE AND MAGIC VALLEY GROUND WATER DISTRICTS TO PROVIDE REPLACEMENT WATER FOR CLEAR SPRINGS' SNAKE RIVER FARM (Water District Nos. 130 and 140)	

COMES NOW, CLEAR SPRINGS FOODS, INC. ("Clear Springs"), by and through its counsel of record, pursuant to the Department's Rules of Procedure (IDAPA 37.01.01 *et seq.*), the Idaho Rules of Civil Procedure and the Hearing Officer's oral order at the August 26, 2009 Scheduling Conference authorizing discovery, and hereby responds to the Ground Water Districts' *First Set of Discovery* ("Discovery Requests") as follows:

GENERAL OBJECTIONS

1. Clear Springs objects to the Discovery Requests and to the definitions and instructions to the extent they purport to require discovery responses beyond that required under the Department's Rules of Procedure, the Idaho Rules of Civil Procedure, and the Hearing Officer's August 26, 2009 Scheduling Conference oral order in this case. These responses are provided in accordance with the Department's Rules of Procedure and the Idaho Rules of Civil Procedure irrespective of any definitions and instructions that may accompany the discovery requests.

2. These responses are made subject to all objections as to competence, relevance, materiality, and admissibility. These responses are subject to all objections that would require the exclusion of any statement, material, or information herein provided if such requests were asked of, or any statement, material, or information provided were made by witness present and testifying at hearing. All such objections are reserved and may be interposed at the time of hearing.

3. Clear Springs specifically objects to these Requests for Production to the extent they seek information protected by the attorney-client privilege, the accountant-client privilege, the work product doctrine, and the rules governing the discovery relating to experts as set forth in Rule 26(b)(4). The objection is intended to apply to all the discovery requests that seek such information and will not be repeated specifically for each request to which it applies. Clear Springs, to the extent possible, construed each request as requesting only information and/or documents not subject to any applicable protection.

4. No incidental or implied admissions are intended. The fact that Clear Springs has responded to any discovery request or part thereof should not be taken as an admission that Clear

Springs accepts that the discovery request or the response or objection thereto constitutes admissible evidence. Similarly, the fact that Clear Springs has responded to all or part of a request is not intended to and shall not be construed to be a waiver by Clear Springs of all or part of any objection to other requests. Clear Springs' answers to any discovery requests herein do not constitute a waiver of Clear Springs' right to object to any future additional, or supplemental discovery requests regarding the same or similar matters.

5. Clear Springs objects to the Discovery Requests directed to documents and transactions that are outside the scope of the hearing on the Ground Water Districts' Over-the-Rim Mitigation Plan. These Requests are irrelevant and not calculated to lead to the discovery of admissible evidence.

6. Each of these objections is incorporated into the response to each of the Requests for Production as though set forth verbatim therein.

INTERROGATORIES

INTERROGATORY NO. 1: For each person answering these interrogatories, state:

a. the person's complete name and age;

b. the person's residence;

c. the person's business address;

d. whether the person is an employee or agent for defendant; and

e. any position held by the person with defendant.

RESPONSE: John R. MacMillan (57 years old), Vice-President, Clear Springs Foods, Buhl, Idaho.

Residence: 1172 Hankins Rd. N., Twin Falls, Idaho 83301.

Business: Clear Springs Foods, Inc., P.O. Box 712, Buhl, Idaho 83316

Counsel John Simpson, Travis Thompson and Paul Arrington also assisted in these responses.

INTERROGATORY NO. 2: State whether the person answering these interrogatories is using firsthand information to answer, and, if not, state:

a. the name of every person who supplied information for answers to these interrogatories; and

b. specify for which interrogatories that person has supplied information.

RESPONSE: The responses to these discovery requests are based on firsthand information from Mr. MacMillan. Water flows are measured by Clear Springs staff members. Mr. MacMillan reviews the data and ensures that the measurements are accurate. Cindy Yenter, Water Master for Water District 130, also reviews the flow measurements for accuracy.

Mr. MacMillan has over-sight over all water quality data and signs laboratory reports attesting to their accuracy and compliance with the QA/QC plan. As part of the NPDES permit, Clear Springs is required to have a Quality Assurance plan. That plan was previously provided to the Districts. Mr. MacMillan reviews and signs all Discharge Monitoring Reports ("DMR") and/or reviews them prior to their signature. Mr. MacMillan is Clear Springs' contact point for all environmental regulatory issues.

INTERROGATORY NO. 3: Please describe precisely and in detail each objection you have to the Over-the-Rim Mitigation Plan, including the factual basis for each objection and all evidence you intend to present at the hearing in support of your objections.

RESPONSE: *See Clear Springs Foods, Inc.'s Protest of the 2009 Replacement Water Plan and Mitigation Plan of North Snake Ground Water District and Magic Valley Ground Water District*, and Clear Springs' March 17, 2009 letter to the Director of the Idaho Department of Water Resources. The bases for Clear Springs' protests are set forth in detail in those filings.

In addition, Clears Springs' Expert Rebuttal Reports filed pursuant to the existing case schedule will provide additional information about Clear Springs' objection to the Over the Rim Mitigation Plan.

The Over the Rim Mitigation Plan would deliver water adverse to the survival and optimum performance and quality of intensively reared rainbow trout, would be adverse to ongoing and future research efforts, and water flows and quality would be inconsistent, unreliable and would reduce the production capacity of Clear Springs' Snake River Farm. In addition, the Director's *July 8, 2005 Order* did not accurately identify the injury being suffered by Clear Springs' senior water rights. Since Clear Springs' 1955 water right was found to have been injured (by the Hearing Officer, not adopted in the final order), the level of mitigation has yet to be properly identified by the Director. The issue is presently on appeal to the Gooding County District Court (Fifth Jud. Dist., Case No. CV-2008-444). To the extent further basis are discovered or identified during the course of this proceeding they will be identified and set forth.

INTERROGATORY NO. 4: Please list the entity or business names, operator's names, entity or business addresses, description of location, source of water supply and water rights for all fish rearing, hatchery, processing, brooding or any other such type of facility owned in whole or in part or operated or managed by Clear Springs Foods, Inc. Please include for each facility the date it was constructed and describe its present operation and use.

RESPONSE: Objection. To the extent that this request seeks information about water rights owned by Clear Springs, such information is a matter of public record and can be readily obtained from the public domain at the Idaho Department of Water Resources. Notwithstanding this objection, in addition to Snake River Farms, Clear Springs operates fish production facilities at Clear Lake Farm, Box Canyon, Crystal Springs, Briggs Creek West and Briggs Creek East.

Brood stations are located at the Snake River Farm complex and at Soda Springs. Clear Springs operates a research center at the Snake River Farm complex.

INTERROGATORY NO. 5: For Clear Springs' Snake River Farms Facility water supply, please describe precisely and in detail:

a) all flow of water at point of intake from the spring(s) to point of discharge;

b) location of all measuring devices;

c) location of where all water quality sampling and measurements are taken;

d) describe the parameters sampled and measured; and

e) describe the methods used for such sampling and measurement.

Identify the agencies that the above information is reported including the method and frequency of reports. Indicate which measurements and water quality samples were taken for purposes of reporting to the Idaho Department of Environmental Quality. All locations should be identified on a map and the years in which these locations have been used should also be provided.

RESPONSE: Objection. The request is vague, overly broad and overly burdensome. The exact location of flow measurements for Clear Springs' Snake River Farm was previously provided to the Ground Water Districts at the hearing in the Spring Users' Delivery Call matter before IDWR and with the *Clear Springs' Responses to GWD's First Discovery Requests*, dated October 30, 2008 in the case involving the Ground Water Districts' First Mitigation Plan. Water flow measurements are reported to Water District 130 on an annual basis and are a matter of public record. Notwithstanding this objection, Clear Springs only submits NPDES reports to EPA and IDEQ. Clear Springs has already provided the Districts with a copy of its Quality

Assurance Plan. Clear Springs maintains records of water quality testing at all of its facilities and will make that information available to the Districts for review.

INTERROGATORY NO. 6 For Clear Springs' other facilities identified in response to Interrogatory No. 4, please describe precisely and in detail what water quality and temperature samples are taken, frequency of such samples and who the samples are provided to.

RESPONSE: Clear Springs maintains records of water quality, which includes temperature, testing at all of its facilities as part of the NPDES permitting program and will make that information available to the Districts for review.

INTERROGATORY NO. 7 Please describe all water treatment performed, the location of the water treatment, frequency and reason for the treatment of water for the Snake River Farm facility and those facilities identified in response to Interrogatory No. 4.

RESPONSE: Objection. The request is vague and overly broad. The term "water treatment" is not defined with particularity. To the extent the term refers to "waste treatment", Clear Springs' waste treatment program is to settle biosolids in quiescent zones, harvest this manure weekly into an off-line settling pond. The off-line settling pond is harvested monthly. Clear Springs applies potassium permanganate to the water attempting to control bacterial gill disease. This information is reported in Clear Springs' monthly discharge montitoring reports ("DMR"). Clear Springs will provide a copy of the Snake River Farms DMR from 2008 through 2009 to the Ground Water Districts. Previous Snake River Farms DMR were made available to the Districts in *Clear Springs' Responses to GWD's First Discovery Requests*, filed October 30, 2008. In addition, although the previous Snake River Farms DMR and the DMR for Clear Springs' other facilities are a matter of public record, Clear Springs will make them available to

the Ground Water Districts for review. No other "water treatments" are made by Clear Springs as it understands that term used in this request.

INTERROGATORY NO. 8 Please describe all treatment processes, chemicals, and antibiotics used to treat the water prior to and during conveyance through and discharge from the research facilities, hatchery, and raceways or used and/or applied within the Snake River Farm Facility and the other facilities identified in response to Interrogatory No. 4.

RESPONSE: *See* Response to Interrogatory No. 7.

INTERROGATORY NO. 10: Do you believe the source of the water supply for Snake River Farm is different than the source of supply for the water rights included in the Over the Rim Mitigation Plan? If your answer is yes, please describe precisely and in detail the reason for your belief that the source of supply is not the same and all evidence you plan to present at the hearing to support your belief.

RESPONSE: Yes. The source of water on the decrees for the Snake River Farm water rights is listed as "Springs." However, the source of water on the water rights included in the Over the Rim Mitigation Plan is listed as "Ground water."

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1 Please produce a current or set(s) of drawings and maps of the entire Snake River Farm facility.

RESPONSE: Clear Springs has already provided schematic drawings of its Snake River Farm facility at hearing in the Spring Users Delivery Call Case and made blue prints available for inspection and review in *Clear Springs' Responses to GWD's First Discovery Requests*, filed October 30, 2008. That information represents the most current available.

REQUEST FOR PRODUCTION NO. 2 Please produce all water quality permits and related documentation issued to Snake River Farm by a regulatory agency and of all inspections and infractions under each permit since March of 1987.

RESPONSE: Objection. The documents requested are readily available in the public domain and can be readily obtained from IDEQ or EPA. In addition, Clear Springs made copies of its 1999 and 2007 NPDES permits available for inspection and review in *Clear Springs' Responses to GWD's First Discovery Requests*, dated October 30, 2008. That information represents the most current available.

REQUEST FOR PRODUCTION NO. 3 Please produce all documents and data related to measured flows on the Snake River Farm facility. This information should include the timing of when the measurements were taken, location of measurements, and recorded flows.

RESPONSE: Objection, this request is repetitive and unduly burdensome. Clears Springs already provided relevant water measurement data through 2008 in response to previous discovery requests and throughout the Springs Users administrative proceedings. Clear Springs has no obligation to reproduce or make that information available again. Measured flows from 2009 can be made available for review and inspection.

REQUEST FOR PRODUCTION NO. 4 Please produce all documents and water quality data taken on the Snake River Farm facility. This information should include all water quality data obtained and the location and date of when the samples and/or measurements were taken. Please clearly label all sampling locations on a map. Specific water quality data should include, but are not limited to, records of sampling and measurement of temperature, dissolved oxygen, pH, total ammonia, un-ionized ammonia, nitrite, nitrate, carbon dioxide, Kjeldahl

Nitrogen, total alkalinity, suspended solids, total dissolved solids, and all additional water quality data recorded.

RESPONSE: *See* Response to Interrogatory Nos. 5 & 7.

REQUEST FOR PRODUCTION NO. 5 For the facilities listed in response to Interrogatory No. 4 above please produce all documents and water quality data taken at such facility. This information should include by facility all water quality data obtained and the location and date of when the samples and/or measurements were taken. Please clearly label all sampling locations on a map. Specific water quality data should include, but are not limited to, records of sampling and measurement of temperature, dissolved oxygen, pH, total ammonia, un-ionized ammonia, nitrite, nitrate, carbon dioxide, Kjeldahl Nitrogen, total alkalinity, suspended solids, total dissolved solids, and all additional water quality data recorded.

RESPONSE: *See* Response to Interrogatory Nos. 6 & 7.

REQUEST FOR PRODUCTION NO. 6 Please produce all documentation of treatment processes, chemicals, and antibiotics used to treat the water prior to and during conveyance through the research facilities, hatchery, and raceways or used and/or applied within the Snake River Farm Facility and the other facilities identified in response to Interrogatory No. 4 above. All available records of chemicals and antibiotics (specific type and quantity) applied with the associated date(s) of use should be provided.

RESPONSE: *See* Response to Interrogatory No. 7. All treatments are identified in the relevant DMRs.

REQUEST FOR PRODUCTION NO. 7 Please produce all documentation of treatment processes and chemicals used to treat water discharged from the research facilities, hatchery, and raceways for the Snake River Farm Facility and the other facilities identified in

response to Interrogatory No. 4 above. All available records of chemicals (specific type and quantity) with the associated date(s) of use should be provided.

RESPONSE: *See* Response to interrogatory No. 7. The information requested is part of the DMR submitted monthly to IDEQ and EPA. Clear Springs uses primary settling to capture solids. Clear Springs does use sodium thiosulfate to dechlorinate small volumes of water when it disinfects a hauling tank or potentially a hatch-house raceway.

REQUEST FOR PRODUCTION NO. 8 Please provide all studies, analysis and reports relating to water quality and temperature of the water supply at Snake River Farm and those facilities indentified in response to Interrogatory No. 4 above. This includes all such studies, analysis and reports relating to water quality and temperature at the spring source(s) as well as at discharge.

RESPONSE: *See* Response to Interrogatory No. 5-7. Clear Springs will produce any additional information as it becomes available.

REQUEST FOR PRODUCTION NO. 9 Please produce records of all fish disease incidents and pathology records for the Snake River Farm Facility and the other facilities identified in response to Interrogatory No. 4 above including date of incident, cause of incident, incident response, treatment methods used, numbers of fish lost or destroyed and future corrective actions developed as a result of the incident.

RESPONSE: *See* Response to Interrogatory Nos. 5-8.

REQUEST FOR PRODUCTION NO. 10 Please produce all records and documents you have associated with any wells, well pumps, groundwater production, and groundwater quality located within one mile of Snake River Farms.

RESPONSE: Clear Springs made the analysis by Brockway Engineering regarding a proposed well for the processing plant available in *Clear Springs' Responses to GWD's First Discovery Requests*, filed October 30, 2008.

REQUEST FOR PRODUCTION NO. 11 Please produce all documents and records you have associated with hydrogeologic investigations in the vicinity of Snake River Farms.

RESPONSE: Objection. This request is vague. The term "vicinity" is undefined. Notwithstanding this objection, Clear Springs will produce any document and records as they become available.

REQUEST FOR PRODUCTION NO. 12 Please produce all documents and records you have associated with geologic and hydrologic investigations of springs located within one mile of Snake River Farms.

RESPONSE: Clear Springs will produce any document and records as they become available.

REQUEST FOR PRODUCTION NO. 13 Please produce all documents reviewed or relied upon in answering any of the interrogatories or requests above.

RESPONSE: *See* above responses.

REQUEST FOR PRODUCTION NO. 14 Please produce all documents you believe support your objection to the mitigation plan and related applications.

RESPONSE: *See* above responses. Clear Springs will produce additional documents as they are discovered.

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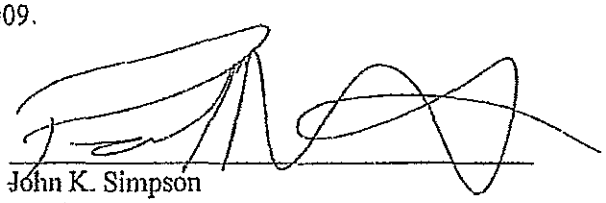
DATED this 19th day of October, 2009.



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

Attorneys for Clear Springs Foods, Inc.

Exhibit “C”

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NOV 05 2009
DEPARTMENT OF
WATER RESOURCES

Randall C. Budge, ISB #1949
Candice M. McHugh, ISB #5908
RACINE OLSON NYE
BUDGE & BAILEY, CHARTERED
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ATTORNEYS FOR THE GROUND WATER DISTRICTS

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-4103A, 36-4103B and 36-7148 (Snake River Farm)	Docket No. CM-MP-2009-004 **NOTICE OF TAKING DEPOSITION DUCES TECUM OF LARRY W. COPE**
IN THE MATTER OF THE THIRD MITIGATION PLAN (OVER-THE-RIM) OF THE NORTH SNAKE AND MAGIC VALLEY GROUND WATER DISTRICTS TO PROVIDE REPLACEMENT WATER FOR CLEAR SPRINGS SNAKE RIVER FARM (Water District Nos. 130 and 140)	**(Over-the-Rim Mitigation Plan)**

To: Clear Springs Foods, Inc., and their attorney of record:

YOU WILL PLEASE TAKE NOTICE, that the Magic Valley Ground Water District and North Snake Ground Water District will take the testimony pursuant to Rules 26, 30(a) and 30(b)(6) of the Idaho Rules of Civil Procedure, on oral examination of Larry W. Cope. Said deposition shall take place before a court reporter, a notary public, or before some other officer

authorized to administer oaths, to commence on **Tuesday, November 10, 2009, at 8:30 a.m.** or as soon thereafter as possible on said day at the offices of **Barker, Rosholt and Simpson located at 101 W Jefferson, Ste. 102, Boise Idaho**. Oral examination will continue from time to time until completed and you are hereby notified to appear and take part in the examinations. The deponent is also requested to have the following documents available for inspections and copy:

1. All documents and data relied upon, incorporated, produced or utilized by you in connection with preparation of any testimony or reports in regard to or in relation to the above-captioned matter. This includes, but is not limited to all the information, data, drafts of documents and exhibits prepared, relied on or filed as a part of your *Testimony* submitted October 30, 2009.

2. All documents, data, studies, information or reports that support Clear Springs' position that Clear Springs' Rainbow Trout are only grown in fresh, pure, pristine water that flows from the Snake River Canyon.

3. All documents you have reviewed and will review in preparation for this deposition.

4. All Federal and State tax returns of Clear Springs Foods, Inc. and/or Snake River Farm and any of its related facilities identified in Clear Springs' Responses to Interrogatory No. 4 of the Ground Water Districts' First Set of Discovery dated October 19, 2009 for the last 5 years, together with and all financial statements and balance sheets relating to the same.

5. All documents, data and information relating to or reflecting fish production, sales, expenses, profit margin, and profitability of Clear Springs Foods, Inc. on a consolidated basis and separately for each rainbow trout farm including Snake River Farm and any others in operation.

6. All documents, data and information relating to the value of Clear Springs Foods, Inc. including but not limited to information that would support Clear Springs' position that it is the world's largest rainbow trout producer and the value of the CLEAR SPRINGS brand. (See your testimony, pages 3, 4 and 7.)

It is requested that the documents and data requested herein be produced to counsel for the

Ground Water Districts by **Thursday, November 5, 2009** in order to accommodate preparation for your deposition.

DATED this 3rd day of November, 2009.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

By: _____
RANDALL C. BUDGE
CANDICE M. MCHUGH
Attorneys for North Snake and Magic Valley Ground Water Districts

CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of November, 2009, the foregoing, was served by email to those with emails and by U.S. Mail postage prepaid to the following:

Signature of person mailing form

Gary Spackman, Interim
Director
c/o Victoria Wigle
Idaho Dept of Water Resources
PO Box 83720
Boise ID 83720-0098
Gary.spackman@idwr.idaho.gov
Phil.rassier@idwr.idaho.gov
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Gerald F. Schroeder
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Exhibit “D”

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DEPARTMENT OF
WATER RESOURCES

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ATTORNEYS FOR THE GROUND WATER DISTRICTS

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-4103A, 36-4103B and 36-7148 (Snake River Farm)	Docket No. CM-MP-2009-004 **NOTICE OF TAKING DEPOSITION DUCES TECUM OF JOHN R. MACMILLAN**
IN THE MATTER OF THE THIRD MITIGATION PLAN (OVER-THE-RIM) OF THE NORTH SNAKE AND MAGIC VALLEY GROUND WATER DISTRICTS TO PROVIDE REPLACEMENT WATER FOR CLEAR SPRINGS SNAKE RIVER FARM (Water District Nos. 130 and 140)	**(Over-the-Rim Mitigation Plan)**

To: Clear Springs Foods, Inc., and their attorney of record:

YOU WILL PLEASE TAKE NOTICE, that the Magic Valley Ground Water District and North Snake Ground Water District will take the testimony pursuant to Rules 26, 30(a) and 30(b)(6) of the Idaho Rules of Civil Procedure, on oral examination of John R. MacMillan. Said deposition shall take place before a court reporter, a notary public, or before some other officer

authorized to administer oaths, to commence on **Tuesday, November 10, 2009, at 1:30 p.m.** or as soon thereafter as possible on said day at the offices of Barker, Rosholt and Simpson located at 101 W Jefferson, Ste 102, Boise Idaho. Oral examination will continue from time to time until completed and you are hereby notified to appear and take part in the examinations. The deponent is also requested to have the following documents available for inspection and copy if they have not already been previously provided.

1. All diversion and spring discharge records relating to spring discharges including spot measurements at the Clear Springs Foods, Inc. Snake River Farm facility not previously produced;

2. All records relating to spring construction and improvements, collection systems, diversion facilities, measurement devices, including maps, construction plans and designs, drilling records, contractor information, calendars, notes, memoranda, relating to the same at the Clear Springs Foods, Inc. Snake River Farm facility not previously produced;

3. All water rights utilized at the facilities identified in Clear Springs' Responses to Interrogatory No. 4 (hereinafter referred to as "Clear Springs' Facilities") in the Ground Water Districts' First Set of Discovery together with all files and records pertaining thereto, including but not limited to all applications for permits, transfers, Snake River Basin Adjudication claims, field reports, proof of beneficial use, engineering reports and all agreements pertaining to the same, exchanges, subordinations and all engineering reports or studies relating to the same, not previously produced;

4. All documents relating to the production and marketing of commercial Rainbow Trout by Clear Springs Foods, Inc. at Snake River Farm and all other Clear Springs' Facilities including share of the market, sales, profits, revenue, income, expenses and annual fish production records;

5. All documents not previously produced relating to Clear Springs' Facilities' capacities by year, records of disposal of fish by sale or other means, including destruction of fish;

6. All expert reports including economic, business and engineering reports relating to the construction, improvement, operation and use of the water rights at Clear Springs' Snake River Farm facility;

7. All records and data relating to effluent and influent water quality, quantity, and temperature at Clear Springs Foods Inc.'s Snake River Farms facility;

8. All investigations, analysis or studies done on the effects on Clear Springs Facilities' springs from a particular well or groups of wells or surface water management practices or changes of those practices such as lining canals and all records or documents showing the effects that such wells or activities have on said springs;

9. All reports, documents, publications or literature referenced references cited on pages 36 and 37 of the *Expert Report of John R. MacMillan, Ph.D., Vice President of Research and Environmental Affairs, Clear Springs Foods, Inc.*, dated October 30, 2009;

10. All documents and data relied upon, incorporated, produced or utilized by you in connection with preparation of any expert reports in regard to or in relation to the above-captioned matter. This includes, but is not limited to all the drafts of documents and pre-filed expert reports and testimony filed on October 30, 2009 by Dr. MacMillan, Mr. Larry Cope and Dr. Charles Brockway;

11. All documents you have reviewed and will review in preparation for this deposition;

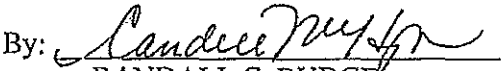
12. All data, documents or information relating to Clear Springs' Responses to the Ground Water Districts' Request for Production Nos. 8, 9, 11, 12 and 14 that were propounded on Clear Springs October 19, 2009;

13. All documents, data, studies, information or reports that support Clear Springs' position that Clear Springs' Rainbow Trout are only grown in fresh, pure pristine water that flows from the Snake River Canyon.

It is requested that all documents and data requested herein be provided to counsel for the Ground Water Districts no later than **Thursday, November 5, 2009** in order to accommodate preparation for your deposition.

DATED this 3rd day of November, 2009.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

By: 
RANDALL C. BUDGE
CANDICE M. MCHUGH
Attorneys for North Snake and Magic Valley Ground Water Districts

CERTIFICATE OF MAILING

I hereby certify that on this 3rd day of November, 2009, the foregoing, was served by email to those with emails and by U.S. Mail postage prepaid to the following:

Signature of person mailing form

Gary Spackman, Interim
Director
c/o Victoria Wigle
Idaho Dept of Water Resources
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Exhibit “E”

Cope Testimony
p. 9:22-25; p. p. 10 -17, 18:1-21, 19: 15-22; p. 20:5-15; p. 21:8-12; 23-25; p. 22:1-15; 20-25; p. 23:1-9

Page 9 22 Q. There was a deposition duces tecum
23 notice that was served as a part of the -- of your
24 deposition. Did you have an opportunity to review
25 that?
Rough Draft - 10

1 A. I did.
2 Q. And are those documents been supplied
3 (have) as part of your deposition?
4 A. The only document that I have is my
5 testimony.
6 Q. Okay. So with respect to the items
7 listed in that deposition notice, is it the intent
8 of Clear Springs not to produce or to produce
9 those requested documents?
10 A. Well, our intent will be to produce
11 anything relevant to this situation.
12 Q. Okay. Let me ask you about those.
13 When -- what could you deem to be relevant and
14 when do you intend to produce those?
15 A. Well, in my view what is relevant is
16 this particular case of the over-the-rim project
17 and how that impacts our company and how it
18 impacts the image of our brand, our products,
19 those are the relevant issues.
20 Q. Okay. And what documents do you

21 believe of those -- if you'd like, let me give you
22 a copy of that deposition notice so we can inquire
23 with it. So for the record, nothing's been
24 produced for purposes of this deposition?
25 MR. SIMPSON: Counsel, if I may.

1 MR. BUDGE: Certainly.
2 MR. SIMPSON: First of all, duces tecum on
3 a party is not the proper production of records
4 pursuant to the rule. You can make a request for
5 production to a party to a matter. And so we
6 don't dome a duces tecum in this matter proper
7 procedure.
8 MR. BUDGE: So is it your position then
9 that the president and CEO an chairman of the
10 board is not able to respond to a duces tecum
11 request of the company?
12 MR. SIMPSON: No, that's not what I said.
13 What I said is that the rules and procedure
14 identify the proper procedure for requesting
15 production of documents from a party. And that's
16 through Rule 304.
17 MR. BUDGE: Let's go through this
18 deposition notice, Larry. You have a copy there.
19 The first item that was requested on No. 1 was
20 various documents and data used in connection with

21 the preparation of your testimony, including
22 anything that you relied on in filing this
23 testimony. So is it your testimony that no
24 documents were relied upon you in the preparation
25 of your testimony?

1 THE WITNESS: That's correct, actually,
2 that testimony is from my knowledge and my memory.
3 Q. So --
4 A. There's not any real hardcore data in
5 that testimony that I recall.
6 Q. So when you testified, for example, of
7 the dates of the various property acquisitions of
8 the company that you testified to on page 2, the
9 dates of Box Canyon acquisition and the various
10 other construction projects referred to on page 2,
11 all that have is from memory, not from review of
12 any documents or records?
13 A. I think that generally from memory.
14 It's possible that we had kind of a historical
15 record that I just referred to to make sure I was
16 accurate in it. But just -- I think you're
17 referring to my testimony where I speak toward the
18 development of the company and the timing of
19 various significant steps that the company made
20 during that time. And of course I was very
21 involved during that period of time. For the most

22 part, that's all in my memory bank.

23 Q. So information that you have on page 3

24 regarding the payroll of the company, the

25 projected revenue for the year, the current value

1 of the employee ownership interest, all of that

2 information was based upon your personal

3 knowledge, not based upon any records of the

4 company that you reviewed?

5 A. Well, it's my personal knowledge of

6 what those records are. But I live very close to

7 those.

8 Q. Sure?

9 A. Those numbers. So I'm very aware of

10 what they are.

11 Q. And I suppose that knowledge would be

12 obtained based on your review of sales and profits

13 and inventory records and financial statements

14 that the company generates on a regular basis?

15 A. Over time, yes.

16 Q. And you review those carefully and

17 that's how you developed your memory?

18 A. Right.

19 Q. So to that extent you would have

20 relied on those documents in coming up with that

21 financial testimony you presented; correct?

22 A. Yes, I think there's nothing very
23 specific in those top line numbers that type of
24 thing which any CEO would have knowledge of what
25 that is at any given time, I believe.

1 Q. Part of the information then that we
2 did request on that particular issue was tax
3 returns and financial statements an balance
4 statements that was item 4. So to the extent that
5 you relied on those but are not producing these
6 documents, is it your position those are not
7 relevant?
8 A. I didn't rely on any tax information.
9 MR. SIMPSON: And counsel, that's been
10 addressed in the prior hearing that we had in this
11 matter.
12 MR. BUDGE: Just so the record's clear,
13 then, with respect to all of the documents that
14 were requested to be produced in this list,
15 item 1, I just reviewed, two, documents data study
16 information and reports at that support Clear
17 Springs position that Clear Springs rainbow trout
18 is grown only in fresh pure Pristine water that
19 froze from the Snake River Canyon. No documents
20 were relied upon in that -- that relate to that.
21 THE WITNESS: Just my knowledge of what our
22 operations are and where those fish come from?

23 Q. But there are no Clear Springs
24 documents that relate directly or indirectly to
25 the assertion that only fresh pure Pristine water

1 is used to go rainbow trout?
2 A. Well, one can refer back to our water
3 rights, the pertinent water rights we're talking
4 about.
5 Q. And item 3 was documents you reviewed
6 in the preparation for the deposition. I
7 understand you didn't review any other than some
8 of your general knowledge that we've discussed
9 before?
10 A. That's correct, yes.
11 Q. Item 4 requested federal and state tax
12 returns for a five year period, including
13 financial statements and balance sheets. I
14 suppose that Clear Springs has all of those
15 documents?
16 A. We do, yes.
17 Q. And is it your position that none of
18 that financial information is relevant to the
19 testimony that you presented?
20 A. That's my position, yes.
21 Q. Okay. And on item 5, requested
22 documents data information relating to fish

23 production, sales, expenses, profit margin, and
24 profitability of Clear Springs Food on a
25 consolidated basis as separately for Snake River

1 Farms. Is it your testimony that none of that
2 sales production and the like data is relevant?
3 A. That's correct.
4 Q. And all that information is part of
5 the Clear Springs records?
6 A. It is, yes.
7 Q. Okay. And you had testimony, you as
8 well as Dr. MacMillan about the impacts of this
9 plan on revenues on sales, on profit margins and
10 profitability. So you provided testimony on all
11 of these items; is that correct?
12 MR. SIMPSON: Well, counsel, if you could
13 point to his testimony so that he can.
14 MR. BUDGE: I'll do that as I go through
15 it.
16 Q. You can answer that if you're able to.
17 You provided testimony relative to the value of
18 the company; correct?
19 A. Of what impacts to the value of the
20 company, yes.
21 Q. And I believe you provided testimony
22 regarding what impact you perceived at that time
23 plan might have on the sales of the company;

24 correct?

25 A. That's correct, yes.

1 Q. And also on the revenues of the

2 company?

3 A. Yes.

4 Q. Okay. Item 6 requested documents data

5 and information relating to the value of Clear

6 Springs Food and you provided testimony on pages 3

7 and four and seven about the value of the company.

8 What is the source of the information that you

9 relied upon to derive the estimates of value that

10 you testified to?

11 A. Well, I think the only value I gave on

12 the company in my testimony was just I think I

13 referred to the purchase price by the employee

14 stock ownership trust back in August of 2000. And

15 that was a $30 million purchase.

16 Q. You had some sales -- excuse me, on

17 page 3, line '97, you do indicate that the value

18 of the employee ownership is about $30 million?

19 A. That's correct, yes. That's the value

20 in the trust. Well, the value in the -- I don't

21 have my testimony in front of me, but I referred

22 to the total value, I believe, of the two trusts

23 that are employee owned and that's

24 approximately -- approximately $30 million today.

25 Q. And what -- are their records or

1 information, appraisals of the like that you

2 relied upon in coming to that statement in your

3 testimony of value of $30 million?

4 A. Well, that's the net asset value of

5 the two trusts. I'm very familiar with that. We

6 just completed a banquet with our employees where

7 I made a presentation with a that value is for

8 them.

9 Q. And so you relied on some records of

10 the company to come up with the value of

11 $30 million?

12 A. The records of the trusts.

13 Q. The records of the trusts?

14 A. That's the value in the trusts, yes.

15 Q. So you would have relied on those

16 trust records in deriving the $30 million number

17 that's in your testimony?

18 A. That's correct, yes.

19 Q. Well, let's go ahead and make an

20 exhibit, I think the next one is 16 of the exhibit

21 notice (mark 19).

14 projecting that 2010 would be 56 million. So
15 would you agree that it would be helpful to you
16 and Mr. MacMillan to be able to look at those
17 documents in order to reconcile what either is a
18 typographical error or misunderstanding between
19 you as to what the actual revenue is this year
20 versus projected revenue?
21 A. Well, from the comments you made, I
22 don't see where there was an inconsistency. The

Rough Draft - 20

5 page 16 said the value was 34 million. So I guess
6 my question is, is how am I to substantiate based
7 on records of the company the differences between
8 Mr. MacMillan's testimony and yours if the records
9 that you relied upon in developing your respective
10 testimonies aren't available?
11 A. Okay.
12 Q. You say that's not relevant?
13 A. Well, the 30 million isn't an exact
14 number on mine. You have to understand that it is
15 approximately that. And it is approximately that.

Rough Draft - 21

8 So I guess my question is, are there documentation
9 that you relied upon in deriving at your value of
10 $30 million?

11 A. Well, I believe that it's the total of
12 the two trusts. So my memory is approximately

23 Q. And would the company or the trust
24 have records that one could examine to reconcile
25 the discrepancy between what your testimony might

1 say and what Mr. MacMillan's might say.
2 A. Well, we could confirm the exact
3 amount if that's what you would need.
4 Q. And still you contend that those
5 records would not be relevant for purposes of this
6 issue that's addressed in your testimony?
7 A. I really don't think in my view it is
8 not relevant to what this issue's about.
9 Q. Well, is is the testimony concerning
10 what the trust's interest relevant at all to the
11 over-the-rim delivery plan of water?
12 A. I think its relevant in the fact that
13 there's very substantial value owned by the Clear
14 Springs employees that's at stake. That's why
15 it's relevant. Whether that's a No. $30 million

20 Q. And so it's relevant to the extent
21 that your later testimony and some of the
22 Mr. MacMillan's expresses concern that that value
23 might be jeopardized by this delivery of well

24 water to the extent that it could impact your

25 marketing of the products?

1 A. That's basically what my testimony is

2 communicating.

3 Q. Okay. Are there any publications or

4 papers that you have written relevant to any of

5 the issues in your testimony, the operation of the

6 business, the production of fish, sales, revenues,

7 marketing that you have authored your sex? Have

8 you produced any publications or articles?

9 A. Not any publications.

MacMillan excerpts

p. 5:7-25; p. 6- 8, p. 9:1-12; p. 11:19-25; p. 12:1-24; p. 13:13-21; p. 14:5-7, 12-25; p. 15 - 17, p. 18, 19, 20, 21, p. 22:1-4; p. 24:18-25; p. 26:1-22, p. 27:2-21; p. 28:3-17; p. 57:5-25; p. 58:1-4

7 MR. BUDGE: Just for the record, before we
8 proceed with the deposition of Dr. MacMillan,
9 Mr. Simpson and I had a discussion off the record
10 relative to Exhibit 19, the notice of taking
11 deposition duces tecum pertaining to Larry W. cope
12 regarding whether or not those documents which
13 exist or are available which were not produced for
14 purposes of the deposition would be produced if an
15 I.R.C. P. Rule 3040 motion to compel were filed.
16 And as I understand it, Mr. Simpson it's your
17 position that under no circumstances short of an
18 order from the Hearing Officer will any of the
19 records requested in Mr. Cope's deposition notice
20 be produced?
21 MR. SIMPSON: Well, Counsel, as you went
22 through the Notice of Deposition with Mr. Cope,
23 and went through your list of six items, my
24 recollection is that Mr. Cope answer the No. 1
25 that he didn't have any documents or data relied

1 upon.
2 MR. BUDGE: I'm not here to --
3 MR. SIMPSON: I understand that. But you

4 had your opportunity to put it on the record so-so
5 do I. And that you went through the questions
6 with him. And as he answered those questions, he
7 answered them in regards to the documents he had
8 reviewed. And relied upon.
9 MR. BUDGE: I think his testimony is in the
10 record.
11 MR. SIMPSON: Right. And that with respect
12 to a party, the normal course of manner if you
13 have a request for production is to go through
14 Rule 304 and there is no duces tecum per se for a
15 party to a proceeding and instead you go through
16 the formal discovery process under Rule 30 for the
17 for a request for production of documents.
18 MR. BUDGE: My question was simply if we
19 file a Rule 304 request for production that would
20 satisfy your interpretation of the rules and
21 correct the procedural defect at that you see, my
22 question was simply whether or not Clear Springs
23 will continue to refuse to produce any of the
24 documents requested. And my understanding was off
25 the record that you said we will not produce any

1 records, you will need to file your motion to
2 compel and obtain an order from the Hearing
3 Officer. So is that your position or not?
4 MR. SIMPSON: Well, you can file your

5 motion to compel and you can file your motion for
6 request for production of documents and we'll
7 respond accordingly. And how we respond?
8 MR. BUDGE: What's had a I plan to do?
9 MR. SIMPSON: Sure.
10 MR. BUDGE: I was just asking if you were
11 willing to informally produce the documents. If
12 the answer is yes. I will file the motion to
13 compel check check check I want ton the record
14 here that even if we were to file a Rule 304
15 request for production of documents.
16 MR. SIMPSON: Well,.
17 MR. BUDGE: I think that's pretty much a
18 yes-or-no answer and the answer you gave me in the
19 hall is no, we will not produce.
20 MR. SIMPSON: And my answer can be based
21 upon my perception of what your request is. And
22 when I see it in writing, then I can respond to
23 it.
24 MR. BUDGE: Well, it is in writing on
25 Exhibit 19.

1 MR. SIMPSON: As a duces tecum.
2 MR. BUDGE: That's right. Assuming that
3 exact same information is requested in a motion to
4 compel, will it be produced or not. That was a

5 rather simple question.

6 MR. SIMPSON: Well, file it and found out.

7 MR. BUDGE: The answer you gave me verbally

8 in the hall is no we will not produce it and on

9 the record I wanted to simply document that so we

10 could proceed accordingly. Are you not willing to

11 give me an answer on the record at that you did

12 informally?

13 MR. SIMPSON: Outside in the hall I said

14 there was two basis for it not producing those

15 records one is procedural and the second was that

16 we didn't believe those documents were relevant to

17 Mr. Cope's testimony. And whether I meant all of

18 those documents or not, I would simply rely upon

19 his testimony that he provided earlier in response

20 to your questions on each of the items 1 through

21 six. And I further would rely upon the previous

22 rulings by the Hearing Officer in this matter

23 regarding the scope of discovery vis-à-vis tax

24 returns.

25 MR. BUDGE: You mean in the other

1 proceeding that's on appeal in the court.

2 MR. SIMPSON: It's the same proceeding.

3 All this is based upon the delivery call.

4 MR. BUDGE: But am I correct to interpret

5 at that response as a no, you will not produce any

6 of the documents requested?

7 MR. SIMPSON: I think in part my response

8 is based upon that there aren't any documents

9 pursuant to your question request on several of

10 those items.

11 MR. BUDGE: Well, we'll move on. I'll

12 accept that as a no.

13

19 Q. Did you have an opportunity to review

20 the notice of taking deposition duces tecum that I

21 think now has been marked as Exhibit 24?

22 A. Yes.

23 Q. Are there any of the documents that

24 would be responsive to that request that you

25 brought with you today?

1 A. No. But in response to that, there

2 was an item -- item 11, all documents you reviewed

3 and will review in preparation for this

4 deposition. There is an additional document that

5 I reviewed yesterday -- this morning. Sorry. And

6 that was a question with regard to NPDES permits

7 and requirements for NPDES permits, given that

8 time ground water districts are proposing to pump

9 through a pipe and deliver water to us water that

10 is polluted, I felt a series of questions or in

11 discovery so to speak, investigation would be
12 appropriate to see if an NPDES permit would be
13 required for the ground water districts to do
14 that. That was conducted at about 2:30 this
15 morning and it was simply a review, a brief review
16 of 40 C. (f) R. 121, I believe, part -- or it's
17 either 121 or bun 22. And I have no conclusions
18 as a result of that investigation.
19 Q. So what was the result of that
20 investigation?
21 A. I have no conclusions.
22 Q. You haven't reached a conclusion?
23 A. No, it's -- it's very conceivable that
24 an NPDES permit would be required. Whenever you
25 deliver water through a pipe, you become a point

13 Q. That would simply be one additional
14 document that you reviewed to prepare for your
15 deposition?
16 A. That is corrects.
17 Q. In addition to -- did you bring some
18 documents with you that you did review?
19 A. Other that be my expert report and the
20 other reports that I've reviewed, I may those
21 available on Friday.

4 documents that I provided Friday afternoon. But I
5 believe I also provided the document that recently
6 published by the Monterey bay aquarium and right
7 now the name of that document escapes me. But

11 Q. Did you go through the other items
12 that were requested? Can you tell me, let's just
13 go one at a time down those items requested in the
14 deposition notice, tell me first whether or not
15 the requested item exists or not and if it does
16 exist, whether or not it will be produced?
17 A. To my knowledge, all of the -- our
18 discharge -- our diversions and spring discharge
19 records, including spot measurements have been
20 provided -- with regard to the Snake River Farm
21 facility had earlier been produced. And we did
22 get a call from Candice, from Ms. McHugh,
23 Ms. McHugh, sorry, and asking I think particularly
24 whether or not we had produced any of -- well, I
25 think maybe it was related to that question. I'm

1 not sure. But we did ask that if there's
2 something she was aware of that we had not
3 included, we'd certainly be glad to do that. I
4 did inquire of staff whether we had provided all
5 that information. As far as they knew, we had.
6 Q. So item No. 1, as far as you know, has

7 been produced?

8 A. That's right.

9 Q. Item No. 2?

10 A. I think that's true as well.

11 Q. Okay. True that that's been -- that's

12 been produced?

13 A. That's been provided is all that we

14 have. Certainly to my knowledge.

15 Q. And No. 3?

16 A. I think that's all been produced as

17 well. And part of this of course would be

18 relative to the administrative hearing we had on

19 the appeal of the 2005 water delivery order in

20 front of Justice Schroeder.

21 Q. Okay. And item No. 4, there's some

22 marketing information that you made exhibits of.

23 Is there other marketing information that Clear

24 Springs has available that has not been produced?

25 A. Boy, I'm not in the marketing part of

1 Clear Springs so I can't say that everything has

2 been produced. I can say that we did rely on

3 legal counsel to answer these questions of these.

4 Q. It also requests information regarding

5 information on share of the market, sales, profit,

6 revenue, income, expenses and fish production

7 records. I assume those records exist?

8 A. They do exist.

9 Q. And I don't believe any of those have

10 been produced?

11 A. That's correct.

12 Q. Okay. And is it the intent to produce

13 those or not?

14 A. I think that's relative to the

15 discussion you and Mr. Simpson just had.

16 Q. Okay. Five requests information

17 relative to fish disposal on a year-to-year basis.

18 Does that information exist, do you keep records

19 of fish at that die in the facility?

20 A. Again, I think that is subject to --

21 to information you and Mr. Simpson just discussed.

22 Q. Subject to objection?

23 A. Yes.

24 Q. Does the information exist?

25 A. I -- well, the records of disposal of

1 fish by sale. They probably do exist, including

2 destruction of fish. I'm not sure I understand

3 what you mean by destruction of fish. We do

4 record mortality.

5 Q. Mortality records exist and none have

6 been produced as far as you know?

7 A. That's correct.

8 Q. On item No. 6, are there economic,
9 business, or engineering reports at that pertain
10 to the construction, improvement, operation, and
11 use of the water rights at the Snake River Farm
12 facility?
13 A. Not that I am familiar with.
14 Q. So non exist as far as you know?
15 A. As far as I know. I've never seen
16 anything relative to Snake River Farm.
17 Q. And as far as No. 7, records and data
18 relating to effluent and influent water quality
19 quantity and temperature?
20 A. We have provided all of that
21 information. That is part of the public record
22 with regard to the EPA and NPDES permitting and
23 that information is provided by way of the
24 discharge monitoring reports.
25 Q. So everything we have relative to

1 influent water has been made available? You seem
2 to distinguish between what's part of the public
3 record that's been reported. Are there other
4 records that are not recorded?
5 A. Yes, there are. And we provided the
6 information on nitrate. Nitrite nitrogen and
7 temperature, influent water temperature. And that

8 was part of the records we provided during
9 discovery.
10 Q. On item No. 8; there any such
11 information? Before you respond to that, back on
12 your response to No. 7, are their records other
13 than the nitrogen and temperature records that you
14 produced for other chemicals?
15 A. Well, we provided records in the past
16 of -- well, let me back up. We provided from the
17 new NPDES permit, we've provided everything,
18 including -- well, we don't test the water for the
19 pesticides that your experts had tested for. In
20 years past, starting about 19 -- I want to say
21 1989, 1990, we did test for those chlorinated
22 hydrocarbons in spring water delivered to Clear
23 Springs facilities. That information I don't know
24 if that was provided to you or not. And that's
25 why we were asking about with Ms. McHugh just what

1 she was after that way. So if that is information
2 you would like, we can certainly provide that.
3 Q. Thank you. Number eight, is that
4 information exist (does)?
5 A. I am not aware of -- well, I think
6 some of our other experts have done some work on
7 wells or groups of wells that could impact Clear
8 Springs. I think Dr. Brockway has done some of

9 the some of that work.

10 Q. So?

11 A. And you have his expert report

12 already.

13 Q. So when you referred to other experts,

14 it would simply be Dr. Brockway?

15 A. I would have to get refreshed memory

16 wise as to whether or not people like Mr. Shaw,

17 David Shaw, or others have done that kind of work.

18 Q. And nine requests various documents

19 publication and literature that was referenced in

20 your testimony on pages 36 and 37. Do you believe

21 that's all been produced?

22 A. That has, with some additional ones.

23 And historically or traditionally or scientists

24 when somebody requests at that kind of information

25 or literature, it's customary to write the

1 compliments, and I neglected to do that. So if

2 you'd like that, I can certainly could that.

3 Q. So explain exactly how we should do

4 that?

5 A. Well, you can bring them in or you

6 know, print them off and I'll put the compliments

7 Randy MacMillan. That's the historic practice,

8 traditional practice with scientists.

9 Q. Okay. We'll make a note of that it.

10 Q. Item 10, basically documents that you

11 relied on the production of your -- or excuse me,

12 in the preparation of your expert report?

13 A. And the literature cited has been --

14 that's available in the public record. So you

15 should have that. And drafts of documents and

16 prefiled expert reports, I don't have any draft

17 documents.

18 Q. I think we covered No. 11?

19 A. No. And I don't know what the

20 production (i don't think) request for production

21 numbers 891112 and 14. I don't know what those

22 are.

23 MR. BUDGE: Do you have your copy of is

24 that available John?

25 MR. SIMPSON: I don't have it with me.

1 MR. BUDGE: I have it on my computer.

2 MS. McHUGH: Off the record for a second.

3 (discussion).

4 Q. (BY MR. BUDGE): I'll just review for

5 you the request for production on those that are

6 listed there in item 12 to the extent they may not

7 have been covered. I think we've covered

8 previously eight which was water quality an

9 temperature data, which you indicated had been

10 supplied. And is the information produced include
11 (does) temperature data at the spring sources?
12 A. The temperature data that we have has
13 been supplied.
14 Q. Am I correct to assume from your
15 testimony on I believe it was page 34 that
16 temperature as no longer an issue with respect to
17 water from the proposed wells based on the
18 information that has been provided?
19 A. No, that would be an incorrect
20 assumption.
21 Q. Okay?
22 A. And the reason for that is in my
23 testimony I state that the temperatures are the
24 same or something to that effect.
25 Q. Yes.

Rough Draft - 22

1 A. That doesn't mean that in the delivery
2 process the temperature would be altered. And
3 I've not done an analysis. I think Dr. Brockway
4 is doing that kind of analysis.

Rough Draft - 24

18 Q. Okay. Back to the request for
19 production of documents that we were reviewing.
20 And we're looking at item 12 and the request for
21 production No. 9 requested records of fish disease

22 incidents and pathology records for the Snake
23 River Farm facilities and other facilities that
24 have been identified as production facilities,
25 including the date of the incident, the cause of

1 the incidents, the response, the treatment method,
2 number of fish lost or destroyed, and future
3 corrective action developed as a result of the
4 incident. Do such records exist?
5 A. We do have records, many of those have
6 been provided to you earlier in our previous
7 hearing, certainly there are new fish diseases and
8 the -- in our view, the request was redundant.
9 Q. You've made reference to production in
10 the previous hearing. Are you simply referring to
11 your memory of what was produced in that earlier
12 proceeding in 2007?
13 A. That's correct.
14 Q. Okay.
15 A. But I know for a fact that we did
16 provide the disease information with -- in an
17 active commercial fish farm, disease is an ever
18 present event daily do we deal with disease. And
19 we deal with treatments. So it really becomes
20 very very redundant. And inconsequential. The
21 question ought to be has anything changed disease

22 wise.

Rough Draft - 27

2 Q. On request No. 11, there's a produced
3 documents and records associated with
4 hydrogeological investigation in the vicinity of
5 Snake River Farms. Are there such studies or
6 records that exist?
7 A. Dr. Brockway would have any of those
8 studies.
9 Q. Okay. None that have been
10 independently done by Clear Springs?
11 A. No. No. We're a commercial fish farm
12 and food company.
13 Q. Okay. Let's go to item 13. And that
14 relates to the position asserted by Clear Springs
15 in your testimony and Mr. Cope's that fish are
16 only grown in fish pure Pristine water at that
17 flows from the canyon. And I believe you'll
18 recall Mr. Cope's testimony that his definition of
19 Pristine was essentially that the water met water
20 quality standards for drinking water?
21 A. I recall that testimony.

Rough Draft - 28

3 Q. Are their documents that exist
4 referring back to this item 13, are their document
5 that's exist that would represent some type of a

6 chemical analysis of water that we've use was used
7 by Clear Springs springs a a basis for making at
8 certification in marketing material that this is,
9 quote, pure Pristine water?
10 A. I can not attest to what was used --
11 what documents if any were used in marketing
12 material. I can attest to the studies that we
13 have done, the data of which has been provided to
14 the ground water districts. With regard to
15 nitrate nitrite nitrogen, the historic
16 concentrations of those -- of that chemical and
17 the item cure data and the total phosphorus data.

Rough Draft - 57

5 projected, your testimony was slightly different
6 than Mr. Cope. Was your testimony based upon
7 financial records of the company?
8 A. No. My -- my testimony is general
9 knowledge about what --
10 Q. What's the source of your general
11 knowledge of company value or company revenues,
12 sales revenues?
13 A. Well, a I attend Clear Springs board
14 meetings.
15 Q. And would it be records that are
16 provided at Clear Springs board meetings?
17 A. There would be a record of the -- an
18 annual budget that would show projected
19 expectation for -- for sales.

20 Q. And so that would be the source of the
21 knowledge that you have that you then relayed and
22 included in your testimony?
23 A. Ultimately.
24 Q. So company records are the source of
25 that information then?

1 A. That's correct.
2 Q. But those are part of the records that
3 haven't been produced under objection?
4 A. That's correct.