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Attorneys for Respondents

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.)

Case No. No. 2008-444

BLUE LAKES TROUT FARM, INC.,)
)
Cross-Petitioner,)

AFFIDAVIT OF CHRIS M. BROMLEY

vs.)

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

Cross-Petitioners,)

vs.)

GARY SPACKMAN, in his capacity as Interim)
Director of the Idaho Department of Water Resources,)
and **THE DEPARTMENT OF WATER**)
RESOURCES,)

Respondents.)

IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHTS NOS. 36-0413A,)
36-04013B, and 36-07148.)

(Clear Springs Delivery Call))

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

(Blue Lakes Delivery Call))
_____)

STATE OF IDAHO)
County of Ada) ss.

CHRIS M. BROMLEY, being first duly sworn upon oath, deposes and says:

1. I am one of the Deputy Attorneys General of record for the Respondent, Idaho Department of Water Resources. I am over the age of 18 and state the following based upon my own personal knowledge.

2. Attached hereto as **Attachment A** is a true and correct copy of excerpts taken from the November 13, 2009 deposition of Allan Haines Wylie, Ph.D.

3. Attached hereto as **Attachment B** is a true and correct copy of the *Notice of Cross-Appeal* filed by Blue Lakes Trout Farm, Inc. and Clear Springs Foods, Inc.

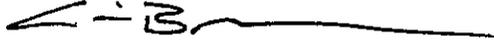
4. Attached hereto as **Attachment C** is a true and correct copy of the Ground Water Users' *Notice of Appeal*.

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Further your Affiant sayeth naught.

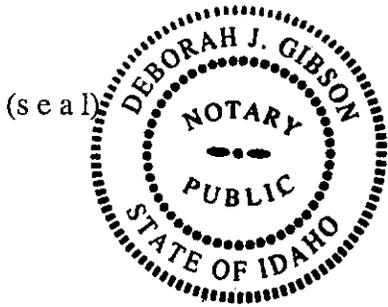
DATED this 22nd day of April, 2010.



CHRIS M. BROMLEY
Deputy Attorney General
Idaho Department of Water Resources

SUBSCRIBED AND SWORN TO BEFORE ME this 22nd day of April, 2010.


NOTARY PUBLIC for Idaho
Residing at: Parma, Idaho
My Commission Expires: 8/10/2015



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am a duly licensed attorney in the state of Idaho, employed by the Attorney General of the state of Idaho and residing in Boise, Idaho; and that I served a true and correct copy of the following described document on the persons listed below by mailing in the United States mail, first class, with the correct postage affixed thereto on this 22nd day of April, 2010.

Document Served: **AFFIDAVIT OF CHRIS M. BROMLEY**

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|---|--|
| Deputy Clerk Gooding County District Court 624 Main St. P.O. Box 27 Gooding, ID 83330 | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Email |
| John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON, LLP P.O. Box 485 Twin Falls, ID 83303 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email |
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| <p>Michael C. Creamer Jeffrey C. Fereday GIVENS PURSLEY LLP P.O. Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com jcf@givenspursley.com</p> | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email |
| <p>Michael S. Gilmore Attorney General's Office P.O. Box 83720 Boise ID 83720-0010 mike.gilmore@ag.idaho.gov</p> | <input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email |
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CHRIS M. BROMLEY
Deputy Attorney General

ATTACHMENT A

0001

1 BEFORE THE DEPARTMENT OF WATER RESOURCES
2 OF THE STATE OF IDAHO
3
4 IN THE MATTER OF DISTRIBUTION OF)
5 WATER TO WATER RIGHTS)
6 NOS. 36-04013A, 36-04013B, AND)
7 36-07148) Docket No.
8 (SNAKE RIVER FARM)) CM-MP-2009-004
9 (Water District Nos. 130 and 140)
10 Third Mitigation Plan)
11 _____)

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DEPOSITION OF ALLAN HAINES WYLIE, PH.D.
NOVEMBER 13, 2009

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public

0002

1 THE DEPOSITION OF ALLAN HAINES WYLIE, PH.D.,
2 was taken on behalf of Clear Springs Foods, Inc.,
3 at the offices of Barker, Rosholt & Simpson,
4 1010 West Jefferson Street, Suite 102, Boise,
5 Idaho, commencing at 10:35 a.m. on November 13,
6 2009, before Jeff LaMar, Certified Shorthand
7 Reporter and Notary Public within and for the
8 State of Idaho, in the above-entitled matter.
9

10 APPEARANCES:
11 For Clear Springs Foods, Inc.:
12 BARKER, ROSHALT & SIMPSON LLP
13 BY MR. JOHN K. SIMPSON
14 1010 West Jefferson Street, Suite 102
15 P.O. Box 2139
16 Boise, Idaho 83701-2139
17 For North Snake Ground Water District and Magic
18 Valley Ground Water District:
19 RACINE, OLSON, NYE, BUDGE & BAILEY, CHTD.
20 BY MS. CANDICE M. MCHUGH
21 101 Capitol Boulevard, Suite 208
22 Boise, Idaho 83702

23 ///
24 ///
25 ///

0003

1 APPEARANCES (Continued)
2
3 For Blue Lakes Trout Farm:
4 RINGERT LAW CHARTERED
5 BY MR. DANIEL V. STEENSON
6 455 South Third Street
7 P.O. Box 2773
8 Boise, Idaho 83701
9 For Idaho Department of Water Resources:
10 OFFICE OF ATTORNEY GENERAL

wylie PhD Allan Haines.txt

11 BY MR. CHRIS M. BROMLEY
12 322 East Front Street
13 P.O. Box 83720
14 Boise, Idaho 83720-0098
15 Also Present:
16 John Koreny
17 Charles E. Brockway
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I N D E X

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|----|---|---------|
| 1 | | |
| 2 | | |
| 3 | TESTIMONY OF ALLAN HAINES WYLIE, PH.D. | PAGE |
| 4 | Examination by Mr. Simpson | 6,141 |
| 5 | Examination by Mr. Steenson | 93,146 |
| 6 | Examination by Mr. Bromley | 129,148 |
| 7 | Examination by Ms. McHugh | 135 |
| 8 | | |
| 9 | EXHIBITS | |
| 10 | 39 - Notice of Taking Deposition of Allan | 6 |
| 11 | Wylie, no Bates numbers | |
| 12 | 40 - White Paper Technical Evaluation of | 77 |
| 13 | Trim Line, dated 06/05/2009, no Bates | |
| 14 | numbers | |
| 15 | 41 - Administrator's Memorandum from | 90 |
| 16 | G. Spackman to Water Management | |
| 17 | Division Staff, dated 01/21/2009, no | |
| 18 | Bates numbers | |
| 19 | 42 - Model uncertainty outline, Bates | 94 |
| 20 | No. SRF 475 | |
| 21 | 43 - Definition of scientific method, no | 94 |
| 22 | Bates numbers | |
| 23 | 44 - Blue Lakes discharge graph, no Bates | 112 |
| 24 | number | |
| 25 | /// | |

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I N D E X (Continued)

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|----|---|------|
| 1 | | |
| 2 | | |
| 3 | EXHIBITS | PAGE |
| 4 | 45 - Various discharge graphs, no Bates | 120 |
| 5 | numbers | |
| 6 | 46 - ESHMC Calibration Targets, dated | 123 |
| 7 | September 21-22, 2009, no Bates numbers | |
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1 ALLAN HAINES WYLIE, PH.D.,
2 first duly sworn to tell the truth relating to
3 said cause, testified as follows:

4
5 EXAMINATION

6 BY MR. SIMPSON:

7 Q. Good morning, Mr. Wylie.

8 A. Good morning.

9 Q. My name is John Simpson, and I'm here
10 today representing Clear Springs Foods in regards
11 to the third mitigation plan filed by the ground
12 water districts.

13 And we're going to mark as an exhibit,
14 the notice, if we could. I believe that will be
15 39.

16 (Exhibit 39 marked.)

17 Q. (BY MR. SIMPSON): And for the record,
18 Mr. Wylie, can you spell your last name for the
19 record, please.

20 A. W-y-l-i-e.

21 Q. And, Mr. Wylie, you've had your
22 deposition taken in a number of proceedings
23 regarding the delivery calls in the Thousand
24 Springs reach; correct?

25 A. That's correct.

0007

1 Q. Okay. And you're still an employee of
2 the Department of Water Resources today?

3 A. That's correct.

4 Q. Okay. And have been continuously
5 since your last deposition?

6 A. That's correct.

7 Q. Okay. And you recall your last
8 deposition was taken October of 2008? Does that
9 sound right?

10 A. That's plausible, yes. I didn't look
11 it up.

12 Q. Okay. But last year you recall having
13 your deposition taken?

14 A. That's correct.

15 Q. Okay. And that was in regards to
16 another mitigation plan filed in the delivery
17 calls in the Thousand Springs reach; correct?

18 A. That's correct.

19 Q. Okay. And if you could look at
20 Exhibit No. 39, if you would, please. And that's
21 the Notice of Deposition.

22 Have you seen that notice before?

23 A. Yes.

24 Q. And you've then reviewed that notice?

25 A. Yes.

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1 Q. And on the second page of that notice,
2 it identifies certain matters for which you're
3 here today to testify on?

4 A. Yes.

5 Q. Okay. And with respect to that list
6 of matters, are you presently able to testify as

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1 how to go about that. We've talked about various
2 sources of uncertainty, and we've talked about two
3 different techniques. And one possibility would
4 be using both of the techniques, which would be a
5 third alternative.

6 One alternative is that instead of
7 coming out of the modeling process with a model,
8 you come out with a suite of models, one of them
9 being the favorite, and the other models are used
10 to get a picture of what the uncertainty looks
11 like.

12 So maybe you have six, one is your
13 favorite, the others are used as -- to get a
14 picture of what the uncertainty distribution might
15 look like.

16 Another technique is to do kind of
17 what I did before, which is to stretch the model
18 every which way you can and see what the extremes
19 of the predictions might look like. And by
20 stretching it, you still force it to be
21 calibrated.

22 And so it's possible to see how you
23 can merge those two. You would stretch every one
24 of the perhaps six models, and that would give you
25 a broader picture of what the uncertainty might

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1 look like.

2 Q. What's the time frame for that work?

3 A. Well, version 2 is supposed to be done
4 in July of 2009.

5 Q. Yeah. Okay. Beyond that facetious
6 response, Allan, what really is your --

7 A. I think the uncertainty analysis would
8 certainly take three modeling committee meetings,
9 so that would be six months after we finish
10 version 2.

11 Q. Which may be when?

12 A. Well, when we pushed it back in July,
13 we were going to get done in December. But I
14 haven't got a calibration dataset yet. So I don't
15 think there's any hope of being done in December.

16 Q. So in the meantime, if your concerns
17 about I guess what you are thinking is an
18 incomplete dataset for the other springs in the
19 Devil's Washbowl to Buhl reach can be resolved,
20 then I take it you would be certainly willing to
21 talk with Blue Lakes' expert or others about the
22 possibility of using the model directly here,
23 given the calibration of the model? You're a
24 scientist?

25 A. Uh-huh.

0129

1 Q. Is that a "yes"?

2 A. Uh-huh.

3 MR. STEENSON: I think that's all I have.
4 Thank you, Allan. I appreciate it.

5 MR. BROMLEY: So the question becomes, now
6 what do we do? I've got some questions I want to
7 ask. But Candice, I'm sure, has some questions
8 that she wants to ask. So --

9 MR. STEENSON: I'm going to have to go get
10 a daughter here, I think, pretty soon.

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(Recess.)
(Mr. Simpson present.)
MR. BROMLEY: Back on.

EXAMINATION

BY MR. BROMLEY:

Q. Allan, Chris Bromley for the Department of Water Resources, I guess to start off with.

Allan, we've sat through discussions with John Simpson and Dan Steenson primarily about methods concerning the 10 percent uncertainty and then spring apportionment to Blue Lakes and Clear Springs respectively.

Was any of the information presented to you today new to you?

A. No.

Q. Was the information presented today discussed at the 2007 hearing?

A. Most of it, yes.

Q. Do you know what wasn't?

A. There were different expert reports presented, but much of the information in the expert -- the new expert reports were in previous expert reports.

Q. The information that was in Dr. Brockway's expert report concerning spring apportionment to Clear Springs that was discussed this morning, was that in an expert report or discussed at the prior hearing in 2007?

A. Yes. In Eric Harmon's report there was -- a very similar sort of analysis was presented. I believe Dr. Brockway used some different -- different wells. And my recollection is that Mr. Harmon did not use Clear Lakes Spring as one of his springs.

Q. Has anyone previously used Clear Lakes Springs with this regression analysis that was talked about?

A. I suspect that Laura Janczak did.

Q. And are you aware approximately when the Janczak paper or thesis was published or known to people?

A. 2001.

Q. So that was before the hearing, then?

A. Yes.

Q. The information in the white paper -- I can't remember what exhibit it was tagged at.

MR. STEENSON: 40.

MR. BROMLEY: 40. Okay.

Q. Exhibit 40, the white paper that was submitted to the modeling committee by Koreny and Brockway, what's your opinion of the white paper?

A. I felt it was a waste of committee time. The -- in my opinion, the trim line is a policy. And I don't believe that that's committee business. Much of the material there is already presented in -- between Ms. McHugh's examination of me and Mr. Simpson's examination of me in the hearing.

(Ms. McHugh rejoins the proceedings.)

22 Q. (BY MR. BROMLEY): The 2007 hearing?
23 A. The 2007 hearing, much of that
24 information was covered there. The new thing in
25 there is the -- that they present the results of a

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1 1 percent, the -- Mr. Simpson and I discussed the
2 errors in there, so if we exclude those errors of
3 trimming the data to the Water District 130,
4 then -- and we exclude what was covered in the
5 2007 hearing, then the 1 percent information is
6 what is new.

7 Q. This is the 1 percent uncertainty that
8 the white paper assigns to the model?

9 A. Well, the 1 percent trim line.

10 Q. The 1 percent trim line. Is that
11 getting at what a de minimis impact would be; is
12 that your understanding?

13 A. It could be. I -- I'm uncomfortable
14 with what a true definition of "de minimis" might
15 be.

16 Q. Do you have any opinion as to where
17 that 1 percent may have come from?

18 A. I believe that what Mr. Koreny was
19 trying to do was split the difference between the
20 10 percent and what's used in Colorado.

21 Q. And do you know what's used in
22 Colorado?

23 A. No. I did read Dr. Scheüder's expert
24 report, but I don't remember.

25 Q. Somewhere in the neighborhood of

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1 1 percent?

2 A. It's less than 1 percent.

3 Q. Okay. Mr. Steenson provided you with
4 Exhibit 43, which was a definition of the
5 scientific method.

6 A. Yes.

7 Q. And I believe you read that and agreed
8 with what it stated.

9 Was the information presented to you
10 in Exhibits 44 and 45 consistent with the
11 scientific method as Mr. Steenson was asking you
12 to apply them?

13 A. Exhibit 44 and 45 were taken from the
14 report, the final report that IWRI published on
15 calibration of version 1.1 of the model. And we
16 tried to be very scientific and rigorous in
17 calibration of the model.

18 What Mr. Steenson was trying to drive
19 at was using the model to calculate what the --
20 directly determined the flux at Blue Lakes
21 Springs. That may or may not be scientifically
22 defensible. I will -- I would want to look at
23 quite a bit more data, much more carefully.

24 Q. For what reasons would it not be
25 defensible?

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1 A. I would want to make sure that enough
2 of the flux in that reach is accounted for with
3 viable calibration targets before I would be
4 comfortable using the model to predict flow at the
5 Blue Lakes Spring. Without sufficient data, the
6 model could be stealing water from up or

7 downstream springs to help it match Blue Lakes so
8 shockingly well.

9 Q. By that do you mean that there aren't
10 any other parameters that these other springs that
11 the model tries to replicate what's measured at
12 Blue Lakes Spring, and could take water from a
13 different location that doesn't necessarily match
14 reality?

15 A. That's right. It could be doing
16 unspeakable things to match this so well. And the
17 fact that it matches it so shockingly well, it's
18 seductive to a nonmodeler. To modelers, it makes
19 you suspicious that you're joining the liar's
20 club.

21 Q. The measurements in Exhibits 44 and
22 45, did you say that these were from IWRRI?

23 A. IWRRI's report on the -- final report
24 on the model calibration.

25 Q. Okay. And that, again, was available

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1 prior to the 2007 hearing?

2 A. That's correct.

3 Q. And was any of this information
4 presented at the 2007 hearing?

5 A. The final report is in the record. I
6 don't recall talking about these graphs.

7 MR. BROMLEY: Okay. I have nothing
8 further.

9 MS. MCHUGH: Okay.

10

11 EXAMINATION

12 BY MS. MCHUGH:

13 Q. I just have a few questions for you,
14 Dr. wylie. I'm Candice McHugh, representing the
15 ground water districts.

16 Could I have you look at Exhibit 41, I
17 believe it is. It would be the transfer
18 guideline.

19 A. Yes.

20 Q. Okay. And if you'd turn to page 12,
21 paragraph 12.

22 A. Okay. I'm there.

23 Q. And it deals with changing the points
24 of diversion, is that correct, on a proposed
25 transfer?

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1 A. Yes.

2 Q. And --

3 A. Within the Eastern Snake Plain
4 Aquifer.

5 Q. Right. If a transfer proposed to not
6 actually move a point of diversion, would
7 paragraph 12 be applicable?

8 A. Could you ask that again, please?

9 Q. If the transfer was only proposing to
10 change the season of use or the nature of use but
11 not to actually change points of diversion, would
12 paragraph 12 be applicable?

13 A. I don't know. I know a lot about the
14 model. I don't know anything about transfers,
15 really.

16 Q. Okay. And you may have covered some
17 of this with Mr. Bromley. I apologize for walking

ATTACHMENT B

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Attorneys for Clear Springs Foods, Inc.

Attorneys for Blue Lakes Trout Farm, Inc.

**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/Respondent/Cross-Appellant, |) | CASE NO. CV-2008-444 |
| |) | |
| vs. |) | |
| |) | |
| BLUE LAKES TROUT FARM, INC., |) | NOTICE OF CROSS- |
| |) | APPEAL |
| Cross-Petitioner/Respondent/Cross-Appellant, |) | |
| |) | |
| vs. |) | |
| |) | |
| IDAHO GROUND WATER APPROPRIATORS, INC., |) | |
| NORTH SNAKE GROUND WATER DISTRICT, and |) | |
| MAGIC VALLEY GROUND WATER DISTRICT, |) | |
| |) | |
| Cross-Petitioners/Appellants/Cross-Respondents |) | |
| |) | |
| vs. |) | |
| |) | |
| IDAHO DAIRYMEN'S ASSOCIATION, INC., |) | |
| |) | |
| Cross-Petitioner/Respondent/Cross-Respondent, |) | |
| |) | |
| vs. |) | |
| |) | |

RANGEN, INC.,)
Cross-Petitioner/respondent/Cross-Respondent,)
vs.)

GARY SPACKMAN, in his capacity as Director of the)
Idaho Department of Water Resources; and the IDAHO)
DEPARTMENT OF WATER RESOURCES,)
Respondents/Respondents/Cross-Respondents)

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))

TO: THE ABOVE NAMED CROSS-RESPONDENTS, IDAHO GROUND WATER APPROPRIATORS, INC., NORTH SNAKE GROUND WATER DISTRICT, MAGIC VALLEY GROUND WATER DISTRICT, IDAHO DAIRYMEN'S ASSOCIATION, INC., RANGEN, INC., GARY SPACKMAN, IN HIS CAPACITY AS DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES, AND THE IDAHO DEPARTMENT OF WATER RESOURCES; AND THE PARTIES' ATTORNEYS OF RECORD AS IDENTIFIED ON THE CERTIFICATE OF SERVICE BELOW; AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named Cross-Appellants, CLEAR SPRINGS FOODS, INC. and BLUE LAKES TROUT FARM, INC., cross-appeal against the above named cross-respondents to the Idaho Supreme Court from the District Court's final *Order on Petition for Rehearing*, entered in

the above entitled action on December 4, 2009, Honorable District Judge John M. Melanson, presiding.

2. The Cross-Appellants have a right to cross-appeal to the Idaho Supreme Court, and the *Order on Petition for Rehearing* described in paragraph 1 above is an appealable order under and pursuant to Rule 11(g), Idaho Appellate Rules.

3. Cross-Appellants intend to assert the following issue(s) on appeal:

- a. Whether, as a matter of law, a "plus or minus" uncertainty factor is a nullity for purposes of conjunctive administration, or may instead be applied by the Director to exclude certain junior ground water right holders from administration.
- b. Whether the Director unconstitutionally applied the conjunctive management rules by shifting the burden of proof to injured senior surface water right holders through exclusion of certain junior ground water rights from administration based upon model uncertainty.

4. Cross-Appellants join in Appellants' request that the transcript of the administrative proceedings held before the Idaho Department of Water Resources be made a part of the record on appeal.

5. Cross - Appellants request the following documents to be included in the Clerk's record in addition to those automatically included in the Clerk's record pursuant to I.A.R. 28 :

- a. None.

6. Cross-Appellants join in Appellants' request that all exhibits included in the agency record be copied and sent to the Supreme Court.

7. I certify:

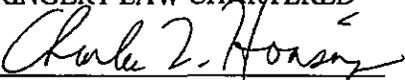
- a. That a copy of this notice of cross-appeal has been served on the reporter.
- b. That the fee required for the preparation of the reporter's transcript was

paid in conjunction with the District Court's review of this matter.

- c. That the estimated fee for preparation of the clerk's record has been paid.
- d. That the cross-appellate filing fee has been paid.
- e. That service has been made upon all parties required to be served pursuant to Rule 20, Idaho Appellate Rules.

Dated this 5th day of February, 2010.

RINGERT LAW CHARTERED

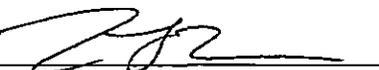
By 

Charles L. Honsinger

Attorneys for Cross-Petitioner/Respondent/
Cross-Appellant Blue Lakes Trout Farm, Inc.

Dated this 5th day of February, 2010.

BARKER, ROSHOLT & SIMPSON, LLP

By 

Travis L. Thompson

Attorneys for Cross-Petitioner/Respondent/
Cross-Appellant Blue Lakes Trout Farm, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of February, 2010, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

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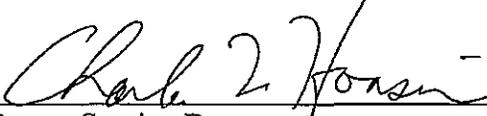
Deputy Clerk
Gooding County District Court
PO Box 417
Gooding, ID 83330

Josephine P. Beeman
Beeman & Associates
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Person Serving Document

ATTACHMENT C

Randall C. Budge (ISB# 1949)
Candice M. McHugh (ISB# 5908)
Thomas J. Budge (ISB# 7465)
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
201 E. Center St.; P.O. Box 1391
Pocatello, Idaho 83201
(208) 232-6101 – Telephone
(208) 232-6109 – Facsimile

Attorneys for the Appellants – Idaho Ground Water Appropriators, Inc., North Snake Ground Water District, and Magic Valley Ground Water District (collectively, 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/Respondent,

vs.

BLUE LAKES TROUT FARM, INC.,
Cross-Petitioner/Respondent,

vs.

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

Cross-Petitioners/Appellants,

vs.

IDAHO DAIRYMEN'S ASSOCIATION, INC.,
Cross-Petitioner/Respondent,

vs.

RANGEN, INC.,
Cross-Petitioner/Respondent,

Case No. CV-2008-0000444

**GROUND WATER USERS'
NOTICE OF APPEAL**

Fee Category: L-4
Fee Amount: \$101.00

vs.

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

Respondents/Respondents.

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)

TO: THE ABOVE NAMED RESPONDENTS, CLEAR SPRINGS FOODS, INC., BLUE LAKES TROUT FARM, INC., IDAHO DAIRYMEN'S ASSOCIATION, INC., RANGEN, INC., GARY SPACKMAN, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE IDAHO DEPARTMENT OF WATER RESOURCES, AND THE IDAHO DEPARTMENT OF WATER RESOURCES; AND THE PARTIES' ATTORNEYS AS IDENTIFIED ON THE CERTIFICATE OF SERVICE BELOW; AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, IDAHO GROUND WATER APPROPRIATORS, INC., NORTH SNAKE GROUND WATER DISTRICT, and MAGIC VALLEY GROUND WATER DISTRICT (collectively, the "Ground Water Users") appeal against the above named respondents to the Idaho Supreme Court from the District Court's final *Order on Petition for Rehearing*, entered in the above entitled action on the 4th day of December, 2009, the Honorable John M. Melanson presiding.

2. The Appellants have the right to appeal to the Idaho Supreme Court, and the *Order on Petition for Rehearing* is appealable under and pursuant to Rule 11(f) of the Idaho Appellate Rules.

3. The Appellants intend to assert the following issues on appeal:
 - a. Whether Due Process requires the Director to hold a hearing before ordering and enforcing curtailment in the context of conjunctive water administration.
 - b. Whether the Director erred by failing to administer the Eastern Snake Plain Aquifer in compliance with the Swan Falls Agreement and State Water Plan.
 - c. Whether the Director erred by guaranteeing Blue Lakes and Clear Springs an artificially inflated aquifer level.
 - d. Whether the Director erred in his application of the law of full economic development of groundwater resources (Idaho Code § 42-226) by ordering the curtailment of more than 70,000 groundwater irrigated acres, when nearly all (98-99%) of the curtailed water is sacrificed to provide only 1-2 percent of the curtailed water to Blue Lakes and Clear Springs.
 - e. Whether the Director erred by denying the Ground Water Users' discovery of the evidence necessary to prove futile call.
 - f. Whether the Director erred by failing to apply the futile call doctrine.
 - g. Whether the Director erred by accepting testimony that curtailment will enable the Spring Users to produce more, larger or healthier fish, over the Ground Water Users' objection and contrary to the *Order re Discovery*.
 - h. Whether there is substantial evidence in the record to support the Director's conclusion that additional water that will accrue to Blue Lakes and Clear Springs from curtailment will actually be put to beneficial use.
 - i. Whether the Director erred by refusing to account for known uncertainties in the Eastern Snake Plain Aquifer Model.
4. No order has been entered sealing any portion of the record.
5. The Appellants request that the transcript of the administrative proceedings held before the Idaho Department of Water Resources be made a part of the record on appeal. The Appellants currently possess a copy of the transcript, as it was previously prepared in conjunction with the District Court's judicial review of this action. A copy of the transcript may be obtained from Burnham Habel & Associates, phone number 1-800-867-5701.
6. The Appellants do not request that any documents be included in the clerk's record other than those automatically included under Rule 28 of the Idaho Appellate Rules.

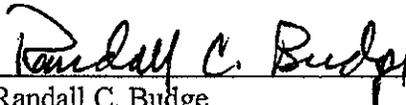
7. The Appellants request that all of the exhibits included in the agency record be copied and sent to the Supreme Court.

8. I certify:

- a. That a copy of this notice of appeal has been served on the reporter.
- b. That the fee required for the preparation of the reporter's transcript was paid in conjunction with the District Court's judicial review of this action.
- c. That the estimated fee for preparation of the clerk's record has been paid.
- d. That the appellant filing fee has been paid.
- e. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 15th day of January, 2010.

RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED



Randall C. Budge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of January, 2010, the above document was served upon the persons below in the manner indicated:

DOCUMENT SERVED: Ground Water Users' Notice of Appeal

| | |
|--|--|
| Deputy Clerk Gooding County District Court P.O. Box 417 Gooding, Idaho 83330 | <input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Hand Delivery |
| Daniel V. Steenson Charles L. Honsinger RINGERT CLARK P.O. Box 2773 Boise, Idaho 83701-2773 dvs@ringertclark.com clh@ringertclark.com | <input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail |
| Phillip J. Rassier Chris Bromley IDAHO DEPT. OF WATER RESOURCES P.O. Box 83720 Boise, Idaho 83720-0098 phil.rassier@idwr.idaho.gov chris.bromley@idwr.idaho.gov | <input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail |
| Michael S. Gilmore IDAHO ATTORNEY GENERAL'S OFFICE P.O. Box 83720 Boise, Idaho 83720-0010 mike.gilmore@ag.idaho.gov | <input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail |
| Jeff Fereday Mike Creamer GIVENS PURSLEY P.O. Box 2720 Boise, Idaho 83701-2720 jcf@givenspursley.com mcc@givenspursley.com | <input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail |
| J. Justin May MAY SUDWEEKS & BROWNING P.O. Box 6091 Boise, Idaho 83707 jmay@may-law.com | <input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail |

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|---|---|
| <p>John Simpson Travis L. Thompson BARKER ROSHOLD P.O. Box 2139 Boise, Idaho 83701-2139 jks@idahowaters.com tlt@idahowaters.com</p> | <p><input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail</p> |
| <p>Josephine P. Beeman BEEMAN & ASSOCIATES 409 W. Jefferson Boise, Idaho 83702 jo.beeman@beemanlaw.com</p> | <p><input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail</p> |
| <p>Robert E. Williams FREDRICKSEN WILLIAMS MESERVY P.O. Box 168 153 E. Main Street Jerome, Idaho 83338-0168 rewilliams@cableone.net</p> | <p><input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail</p> |



RANDALL C. BUDGE