



should a consolidation or partial consolidation of more than one contested case arising over water right administration requests in Water District 130 occur.

### **REQUEST FOR INDEPENDENT HEARING OFFICER**

Clear Springs filed a request for an independent hearing officer on June 7, 2007. The Director has yet to issue a decision on that request. Given IGWA's recent filings and Clear Springs' present request for a scheduling conference in this matter, a determination on whether or not an independent hearing officer will be appointed is warranted. Counsel for Clear Springs has discussed its request with IGWA's counsel but they have yet to reach an agreement on whether or not IGWA would stipulate to an independent hearing officer in this matter. Continued discussions between the parties on this issue are expected.

### **DISCUSSIONS WITH IGWA'S COUNSEL SINCE JUNE 8, 2007**

Since June 8, 2007, the date of the last status conference in this matter, counsel for Clear Springs and IGWA, and counsel for other spring users (including Blue Lakes Trout Company, Rangen, Inc., and John W. Jones), have discussed the option of stipulating to a legal briefing schedule to identify legal issues that might be decided in advance of any factual hearings on the Director's orders issued in response to the requests for water right administration in Water District 130. Counsel have continued these negotiations and are still in the process of attempting to identify a complete list of legal issues that could be briefed and heard for decision, as well as a stipulated schedule for that process. It is Clear Springs' understanding that the schedule for responding to IGWA's motion for summary judgment will be reset based upon these discussions and that a hearing will not be held on July 16, 2007, as originally scheduled by IGWA. Counsel have set up a teleconference for July 3, 2007 to continue their discussions on a legal issue briefing schedule and proceeding. Clear Springs expects those discussions with IGWA and the

other parties on this matter, including whether a consensus decision on how to proceed can be reached, would be concluded by at least Friday July 13, 2007.

### **REQUEST FOR STATUS / SCHEDULING CONFERENCE**

Clear Springs requests that a status and scheduling conference be set sometime during the week of July 16-20 to provide the Director with an opportunity to issue a decision on the request for an independent hearing officer and to provide the parties (including other spring users) with an opportunity to conclude their discussions referenced above. In the event the parties cannot agree on a legal briefing schedule (including the scope of the process), the status conference will further provide an opportunity to set response deadlines to the filings made by IGWA on June 18 as well as a complete hearing schedule.

Accordingly, Clear Springs opposes IGWA's "request for an expedited hearing" on IGWA's "legal issues" given the status of the discussions between the parties on this matter and the continued discussions set to occur next week. Clear Springs explained why a reasonable and complete hearing schedule is necessary at the June 8, 2007 status conference, and hereby incorporates those statements by reference. Although IGWA believes an expedited hearing is necessary, it's clear that IGWA only wants an expedited hearing on its "legal issues", not a full evidentiary hearing on the Director's July 8, 2005 Order which IGWA admits is not simple and that "the taking of various depositions of all expert witnesses, fact witnesses, and issues surrounding the model on which the 2005 Orders are based, will be expensive and time consuming." *See IGWA Sixth Request for Hearing* at 7.

Clear Springs further opposes IGWA's characterization that "actual physical curtailment has not been warranted because the Spring Users have been provided adequate replacement water in 2005 and 2006 because of the . . . Replacement Water Plans filed for those years." A

final decision on IGWA's 2005 replacement plan is still pending. Moreover, as admitted at the June 8, 2007 status conference, IGWA did not supply water to satisfy its replacement water obligation in 2006. See June 8, 2007 *Hearing Recording* and Director's June 15, 2007 Curtailment Order at 14, ¶ 6 ("In 2006, IGWA did not meet its obligation under the July 2005 order to provide 16.0 cfs of substitute curtailment water to the Buhl Gage to Thousand Springs reach of the Snake River."). IGWA's inadequate replacement water plan in 2006, its failure to implement the plan, and IDWR's failure to administer in 2006, are subject to challenge.

Clear Springs further opposes the request for a stay of water right administration in 2007 (a request that was previously denied by the Director in April 2006<sup>2</sup> and again denied by Judge Melanson's June 6, 2007 decision in *IGWA et al. v. Tuthill et al.*, Case No. CV-2007-0526, wherein the temporary restraining order was dissolved and IGWA's case was dismissed). The Director and the watermasters have a clear legal duty to administer water rights in Water District 130 as required by the Idaho Constitution and statutes. IGWA's repeated attempts to halt all administration this year should be rejected as they have been by the Director and the Jerome County District Court.

Finally, Clear Springs opposes a unilateral consolidation of proceedings without further input from all of the affected parties to those proceedings. Unless the parties can agree on a briefing schedule and process that is acceptable and would help streamline all of the contested cases in a judicious manner, Clear Springs objects to consolidating its challenge to the Director's July 8, 2005 order with other proceedings. Clear Springs agrees that proceeding in an efficient and timely manner is desirable. However, Clear Springs objects to a process that does not adequately protect the parties' rights to a meaningful hearing.

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<sup>2</sup> See May 19, 2006 *Order Denying Request for Stay and Scheduling Hearing on Petition for Reconsideration of Order Approving IGWA's 2005 Substitute Curtailments* (Clear Springs Delivery Call, Snake River Farm).

Given the issues raised by IGWA and the parties' continued discussions for an efficient process to review and decide various legal issues (including those to be raised by Clear Springs and other spring users), a status and scheduling conference is warranted.

DATED this 28<sup>th</sup> day of June, 2007.

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## CERTIFICATE OF SERVICE

I hereby certify that on this 28<sup>th</sup> day of June, 2007, I served a true and correct copy of the foregoing *Clear Springs Foods, Inc.'s Request for Status / Scheduling Conference* on the following by the method indicated:

Via Email and U.S. Mail

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