



State of Idaho

DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

May 13, 2008

Sent Electronically and via U.S. Mail

John R. MacMillan
Vice President
Clear Springs Foods, Inc.
P.O. Box 712
Buhl, Idaho 83316

Randall C. Budge, Esq.
Racine Olson
P.O. Box 1391
Pocatello, Idaho 83204-1391

Re: Clear Springs Foods, Inc.'s Snake River Farm Request for 2008 Conjunctive Administration

Gentlemen:

This letter is prepared as follow-up to (1) my letter dated March 31, 2008 in this matter, and (2) the status conference held on Wednesday, May 7, 2008. This letter and the documents referenced herein are posted to the IDWR website at <http://www.idwr.idaho.gov/>.

My letter dated March 31, 2008 warned that "in accordance with the provisions of the July 8, 2005 Order, involuntary curtailment will be ordered if ground water users fail to provide to this office an acceptable mitigation or replacement plan by **5:00 pm on Monday, April 7, 2008** for the consideration and approval of the Director." Subsequently, on April 1, 2008, North Snake Ground Water District and Magic Valley Ground Water District (Ground Water Districts) filed a "Joint Replacement Water Plan for 2008." A response to this plan was subsequently filed on April 7, 2008 by Clear Springs Food, Inc. (Clear Springs). The response requested denial of the plan or a hearing on the plan prior to action by the Director.

On April 17, 2008, Ms. Cindy Yenter, Watermaster of Water District 130, conducted a field examination to measure springs located to the east of Snake River Farm. The results of this field examination, and a discussion of certain water rights in the area of Snake River Farm, are discussed in the enclosed memorandum dated May 12, 2008, entitled "Summary of IDFG and Clear Lakes County Club Water Rights near Clear Lakes."

On May 1, 2008, I issued a Notice of Status and Scheduling Conference. The conference was conducted on May 7, 2008, as noticed, and the website contains the recording of this conference in .mp3 format, for ease of remote review. As discussed at this status conference, it is my understanding that the following steps will occur:

1. Representatives from the Ground Water Districts will be meeting with the Board of Clear Lakes Country Club on May 14th to discuss a proposal to use an alternative supply for irrigation of the golf course, to allow clean spring water to be used at Snake River Farm.
2. Clear Springs will allow the Ground Water Districts to visit their lands, after making arrangements with Dr. MacMillan, for the purpose of preparing engineering estimates for conveyance of additional water to Clear Springs.
3. The Ground Water Districts will file an Amended Plan, which might be in the form of a formal mitigation proposal as defined in the Conjunctive Management Rules.

As you are aware, the "Opinion Constituting Findings of Fact, Conclusions of Law and Recommendation" submitted by Hearing Office Gerald F. Schroeder in this matter was considered as of April 24, 2008 to be fully submitted for review by the Director. Consistent with my statements in a variety of forums, as the review of the July 8, 2005 Order (Order) proceeds through the post-hearing process, we will continue to use the Order in the administration of the water rights for 2008. According to the Order, the Buhl to Thousand Springs reach, which includes Snake River Farm, is due 31 cfs in 2008 and 38 cfs in 2009. The 2008 Conservation Reserve Enhancement Program (CREP) lands and conversions are anticipated to provide 9.7cfs to the Buhl to Thousand Springs reach, if the conversions remain the same as in past years. The Order indicates that Snake River Farm is computed to receive seven percent of the flow in the Buhl to Thousand Springs reach. Taking into account the 9.7 cfs of benefit to the Buhl to Thousand Springs reach, which reduces the Ground Water Districts' replacement obligation for 2008 from 31 cfs in 2008 to 21.3 cfs, and from 38 cfs to 28.3 cfs for 2009, the computed shortfall of direct replacement water owed to Snake River Farm in 2008 is 1.5 cfs ($21.3 \times .07$) and 2 cfs ($28.3 \text{ cfs} \times .07$) in 2009.

Clear Springs has appropriately pointed out that we are now well into the irrigation season, the junior ground water rights are being diverted, and the Snake River Farm has not yet been provided sufficient mitigation or replacement water. That is a problem. On the other hand, the Ground Water Districts are diligently taking actions to remedy the shortfall – to provide additional water directly to Clear Springs. If successful, these efforts could provide water to Clear Springs much faster than curtailment of junior ground water users. Thus, for now, curtailment is not ordered. The Ground Water

Districts are reminded that the need to provide additional water to Clear Springs is urgent, and this agency will continue to maintain a close watch on progress in this regard. The Ground Water Districts have committed to provide the amended plan within two weeks after the May 14, 2008 meeting with the Board of Clear Lakes County Club. Significant progress needs to be made in this regard by May 28, 2008, to prevent a curtailment order.

Sincerely,

A handwritten signature in blue ink that reads "David R. Tuthill, Jr." with a stylized flourish at the end.

David R. Tuthill, Jr.
Director

Enclosure: Memorandum entitled "Summary of IDFG and Clear lakes County Club Water Rights near Clear Lakes", prepared by Cindy Yenter

Electronic cc: Participants in the Status Conference conducted on May 7, 2008