

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF)
 WATER TO WATER RIGHTS NOS.)
 36-04013A, 36-04013B, AND 36-07148)
 (SNAKE RIVER FARM))

IN THE MATTER OF THE MITIGATION)
 PLAN OF THE NORTH SNAKE AND)
 MAGIC VALLEY GROUND WATER)
 DISTRICTS IMPLEMENTED BY)
 APPLICATIONS FOR PERMIT NOS. 02-)
 10405 AND 36-16645 AND APPLICATION)
 FOR TRANSFER NO. 74904 TO PROVIDE)
 REPLACEMENT WATER FOR CLEAR)
 SPRINGS SNAKE RIVER FARM)

(Water District Nos. 130 and 140))

ORDER ON STATUS CONFERENCE
 AND PROVIDING BRIEFING
 SCHEDULE ON SECOND
 MITIGATION PLAN FOR
 MONETARY COMPENSATION

On February 17, 2009, the North Snake Ground Water District and Magic Valley Ground Water District (“Ground Water Districts”) filed *Notice of Withdrawal of Amended Mitigation Plan* (“Notice of Withdrawal”) stating that the Ground Water Districts

hereby withdraw their Amended Mitigation Plan dated September 5, 2008, and their original Mitigation Plan dated June 13, 2008, and cancel all proceedings thereon. This withdrawal is made by reason of the Objections and Testimony filed herein by Clear Springs Food, Inc., objecting to all below-the-rim deliveries of direct replacement water proposed by the Ground Water Districts in these Mitigation Plans.

It is the Ground Water Districts’ intent to proceed with their Second Mitigation Plan for Monetary Compensation dated December 18, 2008.

Notice of Withdrawal at 1-2.

The *Second Mitigation Plan of North Snake Ground Water District and Magic Valley Ground Water District Providing for Monetary Compensation* (“Second Mitigation Plan”) was filed with the Department of Water Resources (“Department”) on December 18, 2008. The Department published notice of the Second Mitigation Plan in the Twin Falls *Times News* on

February 5 and 12, 2009. The last day to file a protest to the Second Mitigation Plan is February 23, 2009.

If approved, the Second Mitigation Plan would provide monetary compensation to Clear Springs as an alternative to replacement water supplies to offset injury to the senior-priority water rights for the Snake River Farm facility. The Ground Water Districts assert that the Second Mitigation Plan is filed "pursuant to Conjunctive Management Rule 43, IDAPA 37.03.11.043.03.c which specifically authorizes approval of a mitigation plan providing 'other appropriate compensation,' as an alternative to replacement water supplies." *Second Mitigation Plan* at 1.

In response to the filing of the *Notice of Withdrawal*, the Director on February 19, 2009 conducted a telephonic status conference with the parties to discuss the issues presented by the withdrawal of the *Amended Mitigation Plan* previously set for hearing on March 10, 2009 before the Director. The Director expressed his concern that the irrigation season was about to commence and there is no longer a plan under consideration to provide sufficient mitigation water in response to the delivery call. The Director informed the parties that he intended to issue an immediate order addressing the delivery call in light of the changed circumstance. The Director invited the parties to provide briefing, if desired, on the issue of the Director's authority to approve a mitigation plan providing for monetary compensation as an alternative to replacement water supplies in response to a delivery call without approval of the holder of the calling right.

The Director took under consideration a request to provide the parties with additional time to brief the issue prior to an order being issued. Consistent with the Director's informal email communication to the parties, additional time through March 2, 2009 is provided for the parties to submit simultaneous briefing on the identified issue to the Director.

ORDER

IT IS HEREBY ORDERED that in response to the request made at the February 19, 2009 status conference, the parties shall have until March 2, 2009 to submit simultaneous briefing on the legal issue of the Director's authority to approve a mitigation plan providing for monetary compensation as an alternative to replacement water supplies in response to a delivery call without approval of the holder of the calling right.

Dated this 20th day of February, 2009.



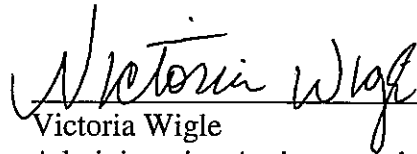
DAVID R. TUTHILL, JR.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of February 2009, the above and foregoing, was served by the method indicated below, and addressed to the following:

<p>RANDY BUDGE CANDICE M. MCHUGH RACINE OLSON PO BOX 1391 POCATELLO ID 83204-1391 rcb@racinelaw.net cmm@racinelaw.net</p>	<p>(x) U.S. Mail, Postage Prepaid () Facsimile (x) E-mail</p>
<p>JOHN SIMPSON TRAVIS L. THOMPSON PAUL L. ARRINGTON BARKER ROSHOLT PO BOX 2139 BOISE ID 83701-2139 (208) 344-6034 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com</p>	<p>(x) U.S. Mail, Postage Prepaid () Facsimile (x) E-mail</p>
<p>DANIEL V. STEENSON RINGERT CLARK PO BOX 2773 BOISE ID 83701-2773 dvs@ringertclark.com</p>	<p>(x) U.S. Mail, Postage Prepaid () Facsimile (x) E-mail</p>
<p>Tracy Harr, President CLEAR LAKE COUNTRY CLUB 403 CLEAR LAKE LANE BUHL, ID 83316</p>	<p>(x) U.S. Mail, Postage Prepaid () Facsimile () E-mail</p>
<p>Stephen P. Kaatz, Vice President CLEAR LAKE HOMEOWNERS ASSOC 223 CLEAR LAKE LANE BUHL, ID 83316</p>	<p>(x) U.S. Mail, Postage Prepaid () Facsimile () E-mail</p>

<p>ALLEN MERRITT CINDY YENTER WATERMASTER - WD 130 IDWR – SOUTHERN REGION 1341 FILLMORE STREET SUITE 200 TWIN FALLS ID 83301-3380 allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail</p>
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Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources