

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) **ORDER ON SCHEDULING**
FARM)) **AND HOLDING NOTICE OF**
) **CURTAILMENT IN ABEYANCE**
)
)
(Water District Nos. 130 and 140))
_____)

On March 5, 2009, the Director of the Department of Water Resources (“Director” or “Department”) issued a *Final Order Accepting Ground Water Districts’ Withdrawal of Amended Mitigation Plan, Denying Motion to Strike, Denying Second Mitigation Plan and Amended Second Mitigation Plan in Part; and Notice of Curtailment* (“Notice of Curtailment”). The Notice of Curtailment stated that because there was no longer an acceptable mitigation plan before the Director, it would be necessary to order curtailment of junior ground water rights, starting on March 16, 2009, unless a plan to replace depletions to Clear Springs Foods, Inc. (“Clear Springs”) was received by March 12, 2009. *Notice of Curtailment at 14.*

In order to provide the required 28.87 cfs to the Buhl Gage to Thousand Springs spring reach, or 1.99 cfs directly to Clear Springs (6.9% of 28.87 cfs), the Notice of Curtailment stated that it would be necessary to curtail ground water rights junior to November 16, 1972. *Id.* The resulting curtailment would impact approximately 860 ground water rights located in Cassia, Gooding, Jerome, Lincoln, Minidoka, and Twin Falls counties. *Id.* The curtailment would impact approximately 41,000 acres of land irrigated by ground water. *Id.*

On March 12, 2009, the Director received the Magic Valley Ground Water District and the North Snake Ground Water District (collectively referred to herein as “Ground Water Districts”) *2009 Replacement Water Plan and Third Mitigation Plan (Over-the-Rim) of North Snake Ground Water District and Magic Valley Ground Water District* (“2009 Plan”).

The 2009 Plan proposes two actions to make up the 1.99 cfs direct deficit to Clear Springs. First, the Plan proposes to provide ground water to Clear Springs from irrigation wells that are situated directly above Clear Springs’ facility. The Plan proposes the construction of a piping system that would integrate numerous irrigation wells and pipe the water down the canyon wall to Clear Springs. The amount of water that the Ground Water Districts propose to provide Clear Springs is between 1.99 cfs and 3.0 cfs. “The Ground Water Districts intend to design and implement the over-the-rim delivery to provide as much as possible above the 1.99 cfs requirement . . . in order to make up for any previous year shortfalls and in recognition of the fact that some further delay in delivering this replacement water will be incurred until the necessary construction of the facilities has been completed.” *Id.* The Ground Water Districts estimate that installation cost of the over-the-rim proposal will be approximately \$500,000.

The second proposal, to convey water right no. 36-4076 directly to Clear Springs, would be implemented if the over-the-rim proposal “is rejected or conditioned, or . . . inadequate” *Id.* at 9. Water right no. 36-4076 is a partially decreed spring right held by the Idaho Department of Fish and Game. The Ground Water Districts estimate that it would cost approximately \$50,000 to implement this proposal.

The 2009 Plan requests that the Director treat it both as a temporary replacement water plan to allow junior ground water users to continue to divert during the 2009 irrigation season, as well as a mitigation plan under Rule 43 of the Department’s Rules for Conjunctive Management of Ground and Surface Water Sources, IDAPA 37.03.11 *et seq.*

After receiving the 2009 Plan, the Director noticed a status conference to occur on March 13, 2009, “to discuss the status of these proceedings.” *Notice Setting Status Conference.* At the March 13 status conference, the Director stated that the Plan could be approvable, but identified four core concerns that were not fully addressed in the Plan: water quality, temperature, reliability of the system, and the time it will take the Ground Water Districts to implement the proposal(s). Verbal responses were given to the Director’s concerns by attorneys for the Ground Water Districts. Additional concerns were raised by attorneys representing Clear Springs and other interested parties.

The Director notified parties that the Department would host a technical review working group, to begin on Tuesday, March 17, 2009, at the Department’s main office in Boise. The Director invited the parties’ technical consultants to attend and discuss the issues identified by the Director with Department staff. The Director solicited written responses from the parties, which could be in the form of bullet points, to be submitted to the Director by March 17, 2009. The working group will also address those concerns.

Because the 2009 Plan could be approvable if concerns can be addressed, the Director provided time to allow for augmentation of the Plan. The Director stated that the working group should endeavor to provide information to the Director by Thursday, March 19, 2009.

As the senior, Clear Springs is entitled to assurance that the Ground Water Districts intend to follow through with their 2009 Plan. The Director discussed the need for the Ground Water Districts to secure a bond equal to the estimated cost of the over-the-rim proposal. Attorneys for the Ground Water Districts did not object to this process.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED as follows:

1. Because further actions were taken by the Ground Water Districts by the March 12, 2009 deadline established in the Notice of Curtailment, curtailment will not be ordered to begin on March 16, 2009.

2. Initial responses to the 2009 Plan are to be submitted to the Director by Tuesday, March 17, 2009.

3. Starting at 9:00 a.m. on Tuesday, March 17, 2009, the parties' technical consultants are invited to the Department's offices, located at 322 East Front Street, Boise, Idaho, to discuss the 2009 Plan. The working group will meet in the Director's conference room. The working group should submit its information on augmentation of the 2009 Plan to the Director by Thursday, March 19, 2009.

4. Telephonic participation in the working group is permitted. The following numbers should be used to participate telephonically:

Dial-in number: (713) 577-1201
Participant code: 260503

5. If the 2009 Plan is found to be acceptable, the Ground Water Districts will be required to post a bond equal to the estimated cost of installation of the over-the-rim proposal.

6. The Director will review the information presented by the working group on the 2009 Plan and issue an order on the Plan no later than Thursday, March 26, 2009. If the Plan is not acceptable, curtailment will be ordered. The Notice of Curtailment shall therefore be held in abeyance until the Director issues his order on the 2009 Plan.

DATED this 16th day of March 2009.



DAVID R. TUTHILL, JR.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 16th day of March 2009, the above and foregoing, was served by the method indicated below, and addressed to the following:

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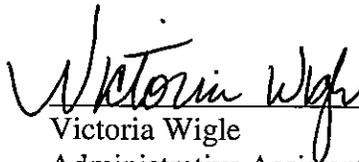
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