

INTRODUCTION

On March 12, 2009 the North Snake Groundwater District and Magic Valley Groundwater District (GWDs) filed the 2009 Replacement Water Plan and Third Mitigation Plan (Plan) in response to the Director's March 5, 2009 Curtailment Order. On March 13, 2009, the Director held a Status Conference wherein the Director ordered a March 17, 2009 "Technical Meeting" to discuss certain issues identified with the Plan. On March 16, 2009 the Director issued a supplemental order on scheduling. *See Order on Scheduling and Holding Notice of Curtailment in Abeyance.* The Order provides opportunity to submit responses to the Plan, but fails to identify the procedure or rule under which consideration of the Plan is now proceeding. Hence, in order to protect the water rights of the senior, Clear Springs identified in the above-captioned matter and other senior rights held by Clear Springs, Clear Springs files this protest.

PROTEST

The following grounds are identified:

1. On March 17, 2009 Clear Springs filed by letter to the Director issues #1-13 as specific issues Clear Springs identified in response to the Plan. Clear Springs hereby adopts and incorporates each and every issue identified by the letter into this protest as requiring evaluation, discovery and resolution prior to any portion of the Plan being subject to an order. Clear Springs further requests that the March 17, 2009 letter be made a part of the record.
2. The lack of Water Quality data available for the wells identified in the Plan raise questions regarding the viability of the mitigation water for delivery and beneficial use at Snake River Farms. The standard of water quality acceptability as to the constituents identified and required for aquacultural use should be equal to the ambient water quality

at the spring source identified by the water rights.

3. The Plan fails to provide Clear Springs with adequate protection from contaminants or other harmful, detrimental or lethal material transported in the water being delivered through the Plan.
4. The Plan fails to provide an opportunity for timely consideration and due processing of the Plan in accordance with rule or law. Although the Ground Water Districts have previously submitted CM Rule 43 Mitigation Plans, both in the Clear Springs and Blue Lakes delivery call matters, and the Director has processed those plans pursuant to the rules and statutes, the new plan is apparently not being noticed for protest or any hearing in accordance with the Idaho Code § 42-222 and the CM Rules. The process to “pre-approve” a transfer and/or mitigation plan for the purposes of avoiding conjunctive administration is not supported by Idaho law.
5. The seven wells proposed for pumping to provide replacement water are apparently pumping under 26 different water rights as outlined in Exhibit 3 to the IGWA mitigation plan. These water rights have decreed priority dates ranging from 1950 to 1985. Twelve (12) of the wells have priority dates junior to the required curtailment date of November 16, 1972. The proposed replacement water plan assumes that the nature of use of the irrigation water rights would be converted to ‘mitigation’ and that an average discharge, sufficient to supply the required mitigation flow to SRF, would be pumped continuously. The wells which are junior to the curtailment date would, if continued to be used as irrigation wells, be curtailed under the present Order if no replacement plan or mitigation plan were approved. Therefore, absent an approved replacement or mitigation plan, the junior wells could not continue to be pumped for irrigation

purposes. Likewise, those wells should not be available for full credit if used to provide replacement water under the junior water rights. Absent an approved replacement or mitigation plan, these 14 wells would be curtailed and there would be a net benefit to the SRF spring of some percentage of the total forgone depletion. The remainder of the forgone depletion would benefit springs other than SRF. If a replacement plan is approved and the junior wells pump their full right directly to SRF, then the net benefit from pumping as replacement wells may be only that portion of the forgone depletion which would have gone to springs other than SRF. For instance, suppose the historical consumptive use from a single junior well has been 10 acre feet per time-step and curtailment of that well results in a benefit to SRF through the aquifer of 8 acre feet. Pumping of 10 acre feet or direct replacement from this well results in a full 10 acre feet benefit to SRF. However, since that well would be curtailed absent a replacement plan, the new credit which should be allocated to that well is 2 acre feet. This concept should be evaluated and incorporated in the procedure for determining credit for direct ground water pumping for replacement water, if approved.

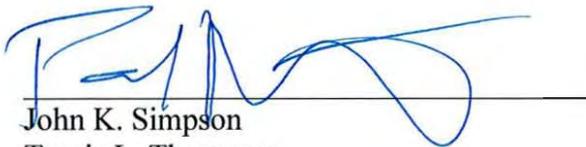
6. The determination of injury to senior spring rights should incorporate the evaluation of temporal effects on the historically available flow. Individual spring flow from the ESPA is not uniform over the entire year and fluctuates, usually with lows in March or April and peaks in September or October. The impact of junior groundwater pumping also has a temporal pattern. The time pattern of impact of junior ground water pumping when superimposed on the hydrograph of historical spring flow can have significantly different net effects than is depicted by steady state analysis of impact.

that the transient impact of a proposed transfer with mitigation must not exceed 5% of the historical transient impact. In other words, the impact from the proposed transfer with mitigation must follow or match the historical impact over the full time from inception to steady state. Incorporation of this type of analysis, consistent with the Transfer Guidelines, could result in a determination of injury to earlier priority water rights, than a steady state analysis would otherwise provide. This requirement is not specified in a mitigation plan for which the net mitigation required is computed only at steady state and should be incorporated into all future determinations of IDWR on replacement or mitigation plans.

Clear Springs reserves the right to amend this Protest as necessary throughout the course of this proceeding.

DATED this 19th day of March, 2009.

BARKER ROSHOLT & SIMPSON LLP

A handwritten signature in blue ink, appearing to be "John K. Simpson", is written over a horizontal line.

John K. Simpson
Travis L. Thompson
Paul L. Arrington

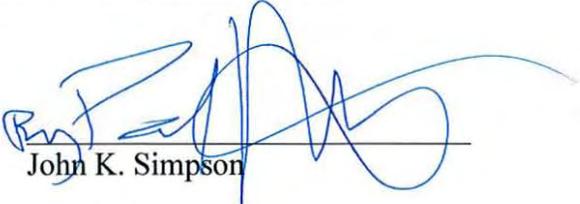
Attorneys for Clear Springs Foods, Inc.

CERTIFICATE OF MAILING

I hereby certify that on this 19th day of March, 2009, the foregoing, was sent to the following by U.S. Mail proper postage prepaid and by email for those with listed email addresses:

David R. Tuthill, Director Idaho Department of Water Resources 322 E. Front Street PO Box 83720 Boise, ID 83720-0098 <u>Dave.tuthill@idwr.idaho.gov</u>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
Randall C. Budge Candice M. McHugh Racine Olson 201 E. Center St. PO Box 1391 Pocatello, ID 83204-1391 <u>rcb@racinelaw.net</u> <u>cmm@racinelaw.net</u>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
Daniel V. Steenson Charles L. Honsinger S. Bryce Farris Ringert Clark PO Box 2773 Boise, ID 83701-2773 <u>dvs@ringertclark.com</u> <u>clh@ringertclark.com</u>	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
Tracy Harr, President Clear Lake Country Club 403 Clear Lake Lane Buhl, ID 83316	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail
Stephen P. Kaatz, V.P. Clear Lake Homeowners Assoc. 223 Clear Lake Lane Buhl, ID 83316	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> E-mail

Allen Merritt Cindy Yenter Watermaster – WD 130 IDWR – Southern Region 1341 Fillmore St., Suite 200 Twin Falls, ID 83301-3380 allen.merritt@idwr.idaho.gov cindy.yenter.@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> E-mail
--	---



John K. Simpson