



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

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C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

June 30, 2009

Randy Budge  
Racine Olson  
PO Box 1391  
Pocatello, ID 83204-1391

Sent by U.S. Mail and by Electronic Mail

RE: Implementation of Non-Stayed Portion of Ground Water Districts' Snake River  
Farm Replacement Plan for 2009 and 2010

Dear Mr. Budge:

Thank you for your letter in this matter dated June 25, 2009, which you characterized as an initial response. As you noted, my letter dated June 19, 2009 did not allow much time for response, and I appreciate your timely action. As you are aware, this is my last day as Director, and I want to take another step toward the review of this matter prior to my departure. On one hand, as all of the recipients of this letter are aware, this letter represents my understanding of the matter, and this entire contested case will be subject to review and modification by my replacement. On the other hand, this letter also represents the combined view of the legal and technical staff of the agency – it is not solely the view of one individual.

This response letter is sent in light of *Clear Spring Foods, Inc.'s Response to Ground Water Districts' June 25, 2009 Letter*, dated June 29, 2009. In this response, Clear Springs Foods, Inc. highlights the concerns in this matter of the calling party and underscores the importance of full compliance with the non-stayed portion of the 2009 Plan.

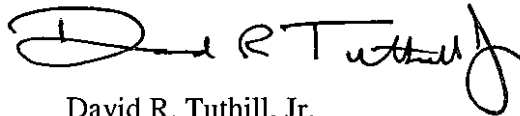
Regarding the number of acres to be converted from ground water to surface water above the rim, the agency understanding has been that under the approved replacement plan this number should be at least 1,060. You have taken the approach of identifying the historic ground water diversions of the original acres as compared with those of the replacement acres. The quantifications should be fully clarified in your follow-up response for review by all parties. The agency is seeking as-built specifications that conclusively demonstrate that as much conversion has taken place as had been proposed in the 2009 Plan.

In your letter you have indicated that if your response is not acceptable and the Director determines to remove the two-year partial stay, the Ground Water Districts are prepared to proceed with construction of the over-the-rim portion of the 2009 Plan. This remedy would not address the fact that too few acres above the rim have been converted. Even if the over-the-rim portion were to be completed, the Ground Water Districts would not be in compliance with the 2009 Plan. Thus, the Ground Water Districts need to pursue compliance with the plan that they have proffered and the Director has accepted. Compliance with this plan is urgent. It will not be acceptable to simply wait until next year to convert additional acres. While the Districts have made a good-faith effort to comply with the provisions of the 2009 Plan, we need to ensure that compliance with the accepted plan is complete.

Regarding the number of acres within the North Snake Ground Water District previously converted from ground water to surface water, you have provided some reasons why the number is expected to be less than 9,300 this year. In your follow-up report in this matter, please provide specific information that can be shared among the parties to enable the necessary oversight of this factor as well.

Thank you for your ongoing responsiveness, and for sharing information to enable this agency and the parties to become satisfied that the 2009 Plan is being fully implemented. We look forward to reviewing the follow-up information in this regard. I anticipate that a reasonable amount of time will have been provided if the time for this submittal is extended to July 10, 2009.

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Tuthill, Jr.", with a stylized flourish at the end.

David R. Tuthill, Jr.  
Director

cf: Candice McHugh  
Daniel Steenson  
J. Justin May  
Jon Simpson  
Mike Creamer  
Jeff Fereday  
Robert Williams  
Travis Thompson  
Michael Gilmore  
Lynn Carlquist  
Dean Stevenson  
Cindy Yenter  
Allen Merritt