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May 25, 2011

Richard Rigby
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098

RE: Proposed Amendment to CMR 50

Dear Mr. Rigby:

This comment is filed on behalf the Minidoka Irrigation District, a surface water delivery district consisting of approximately 77,000 irrigated acres located in Cassia and Minidoka Counties.

CMR 50 defines the boundary of the Eastern Snake River Plain Aquifer (ESPA) based upon a 1992 USGS report. The intent of the Conjunctive Management Rules is to prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply. *See* CMR 1.

In the seventeen years since the adoption of the Conjunctive Management Rules, significant work has been done by the Idaho Department of Water Resources (IDWR), the modeling committee and others to determine a hydrological boundary of common ground water supply. The 1992 USGS report relied upon in 1994 is out of date and does not accurately define the ESPA boundary as described in the model currently used by IDWR. As a result, the Conjunctive Management Rules create a legal fiction - the ESPA definition in the rules does not conform to the model used by IDWR to define the ESPA boundary.

The Idaho Supreme Court has upheld the use of the model by the Director, and quoting the Director and the Hearing Officer in the Spring Users Call, stated:

The hearing officer found that “[t]he limitations of the model are identifiable and important but they do not preclude reliance upon it. It has an acceptable level of reliability based on peer reviewed science.” The Director adopted those findings, and found that the model “represents the best available science for determining the effects of ground water diversions and surface water uses on the [Aquifer] and hydraulically-connected reaches of the Snake River and its tributaries.” He also found, “There currently is no other technical basis as reliable as the simulations from the [Aquifer] ground water model that can be used to determine the effects

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of ground water diversions and surface water uses on the [Aquifer] and hydraulically connected reaches of the Snake River and its tributaries.” Those findings are not challenged on appeal. In fact, the Groundwater Users state, “The Model is the best science available for administering hydraulically connected surface and groundwater rights on the [Aquifer], but the Model is not perfect.” They have failed to show that the Director abused his discretion in relying upon the model. He perceived the issue of utilizing the model as discretionary, he acted within the outer limits of his discretion and consistently with the legal standards applicable to the available choices, and he reached his decision through an exercise of reason. The district court did not err in upholding the Director's reliance upon the model.

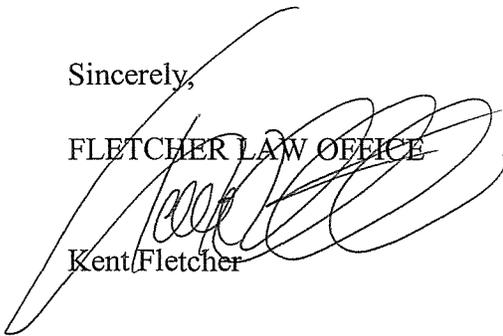
Clear Springs Foods, Inc. v. Spackman, 37308-2010, 2011 WL 907115 (Idaho Mar. 17, 2011)

It is the position of the Minidoka Irrigation District that, based upon the intent of the Conjunctive Management Rules, the statements of the Director and the holding of the Idaho Supreme Court, IDWR has a duty to amend CMR 50 to conform to the ESPA boundary as determined by the model, currently the best available science. Some ground water users currently outside of the ESPA boundary as defined by CMR 50 who would be brought in using the model boundary have voiced concern that the model does not accurately set forth the ESPA boundary. CMR 50 should be amended to conform to the model, and the concerns that are being expressed should be handled in the same manner as other adjustments to the model boundary are made - through the modeling committee, IDWR's resources and other inputs.

Consideration should also be given to additional changes to the rule that would allow adjustment to the ESPA boundary based upon the most current information available to IDWR. As more data is generated in the future, further adjustments are inevitable, and the rules should take those changes into account.

Sincerely,

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Kent Fletcher

KF/brd
pc: Minidoka Irrigation District