



COMES NOW, CLEAR SPRINGS FOODS, INC. ("Clear Springs"), by and through its attorneys of record, and petitions this Court for an Order clarifying its *Order Conditionally Granting Motion for Stay Upon Compliance with Proposed Alternative*, dated August 24, 2009 ("*Stay Order*"). In the *Stay Order*, the Court conditionally stayed the *Amended Curtailment Order* issued by the Director of the Idaho Department of Water Resources ("Department") based upon the Ground Water Districts' ("Ground Water Users") promise, as stated in their *Second Plan of Action*, to: 1) convert 7,745 acres to surface water for 2009; 2) provide 10,000 acre-feet for late season recharge through the North Side Canal Company ("NSCC") System; and 3) add "new conversion acres" in 2010 "in an effort to bring the total to over 9,000 acres". *Second Plan* at 3; Ex. 18 to Budge Aff.

The circumstances which led to the Court's ruling staying administration and approving this plan outside of the Department's rules are clear. The Ground Water Users failed to fulfill the obligations identified in the Director's May 15, 2009 Order, the Department then failed to require sufficient security or certainty as to the measures proposed by the Ground Water Users, and no timely remedy was provided. Therefore, the Court stayed the order "pending further order of the court contingent upon the District's providing security as described in their 'Second Plan of Action' . . . with additional requirement that the recharge be 'targeted' to the area of the rim immediately above Clear Springs' facility in accordance with the representations made in the Brendecke Affidavit". *Stay Order* at 5.

In entering this order, and conditionally approving the "Second Plan of Action" as sufficient mitigation for out-of-priority pumping in 2009, Clear Springs requests the Court to clarify the necessary elements and conditions for implementation of the terms of the Ground Water Users' "security", or *Second Plan or Action*. In particular, the Court should clarify the

following issues not specifically addressed in either the Ground Water Users' *Second Plan* or the Court's *Stay Order*:

1. The *Second Plan* does not identify specific agreements to perform the proposed late season recharge. Although the Ground Water Users allege they have obtained the water and a verbal agreement with NSCC, the Court should require the Ground Water Users to provide evidence of their ability to use NSCC's facilities this fall (i.e. a written agreement) and evidence of the storage water they have leased that will be available to use for that purpose. While copies of the storage water lease agreements may be "on file" with IDWR, the Ground Water Users should be required to provide the Court with leases for the period 2009 and 2010 as described in the Department's August 25, 2009 letter (attached as Exhibit A), and account for and verify the amount of water that has already been used for conversions and the amount of water that is remaining for the late season recharge to ensure compliance with the *Stay Order*.

2. The *Second Plan* does not identify the area where recharge will occur. The *Second Plan* generally states that the Ground Water Users intend to recharge "areas nearest the rim above Clear Springs, and then to other areas within the system to where late season recharge was performed in previous years". *Second Plan* at 4; Ex. 18 to Budge Aff. Further, the Brendecke Affidavit only generally states that "it is his understanding that the 10,000 AF of recharge could and would be targeted to the area of the rim immediately above Clear Springs." *Brendecke Aff.* at 4. The affidavit does not identify specifically where the recharge will occur. The Court should require the Ground Water Users to specifically identify (with a map or other documentation) where the recharge will occur within NSCC's system so that it complies with the Court's order that it be "targeted" to the "area of the rim immediately above Clear Springs' facility" in order to accomplish the results (0.14 cfs), as alleged in the Brendecke Affidavit. The

Ground Water Users should further provide verification that the “areas” they intend to recharge are sufficiently permeable to accommodate the recharge proposed, and that this can be measured and verified. Clear Springs understands the Court’s order as prohibiting recharge “in other areas within the system to where late season recharge was performed in previous years” as offered in the *Second Plan*.

3. The *Second Plan* fails to identify the measures that will be taken by the Ground Water Users to measure, monitor, and report on the efficacy of the late season recharge. Monitoring should include measurement of the volume of water actually recharged within the specific part of the NSCC canal system and the resulting benefits to spring flows. The Court should require documentation to ensure the plan, as conditionally approved by the Court, is effectively operating.

4. The *Second Plan* fails to identify specific agreements with landowners, including Robert Meyers, Loren Wert, and McReits LLC, to convert “an additional 2,989 acres . . . back to surface water” for the rest of 2009. *Second Plan* at 3, Ex. 18 to Budge Aff. Although Exhibit A to the plan lists names and addresses of those who have “agreed to immediately discontinue all ground water pumping and fully convert back to surface water”, the Court has no evidence of specific agreements verifying this claim. The Court should require the Ground Water Users to verify these conversions and identify when and how much surface water has been, or will be, delivered to these acres in 2009. The Court should require further evidence to verify that pumping has been discontinued at these acres as of August 3, 2009, as stated in the *Second Plan*.

5. The *Second Plan* fails to identify specific agreements with landowners to “add new conversion acres in 2010 in an effort to provide at over 9,000 acres in 2010”. *Second Plan* at 4, Ex. 18 to Budge Aff. The Court should require evidence of agreements, the specific acres

to be converted, and provisions so that those agreements may be enforceable by IDWR, either through an agreement or by this Court's *Stay Order* to ensure future compliance.

6. The Court's *Stay Order* should require IDWR to evaluate the impacts of groundwater pumping that occurred in 2009 on acres the Ground Water Users previously represented would be converted to a surface water supply. Unless there is an alternative approach, IDWR should use the updated ESPAM to evaluate these impacts. Whereas not all 9,300 acres were converted in 2009, out-of-priority pumping occurred on "roughly 5,000 acres" by the Ground Water Users' representations. The Court should require IDWR to evaluate the impact resulting from this pumping and whether or not it affects the estimates of the benefits of late season recharge that were offered in the Brendecke Affidavit. It appears that the estimates in the Brendecke Affidavit did not take into account the depletion and impacts from the 2009 groundwater pumping on the acres that did not convert to surface water (i.e. approximately 5,000 acres).

7. Finally, the Court should identify a remedy in the event the mitigation, as conditionally approved in the *Stay Order* is not implemented as ordered. Whereas the irrigation season is nearing an end, there is likely no alternative for administration of out-of-priority groundwater rights if the approved mitigation actions are not performed or are determined to be ineffective as ordered. Clear Springs, as opposed to the Ground Water Users that irrigate, utilizes water on a year-round basis and therefore the injury will continue to increase if the actions and results are not realized.

Accordingly, Clear Springs requests an order clarifying the Court's *Stay Order* so that the above concerns can be addressed in a timely manner to ensure the Ground Water Users comply with the mitigation conditionally approved by the Court.

DATED this 31<sup>st</sup> day of August, 2009.

**BARKER ROSHOLT & SIMPSON LLP**



John K. Simpson

Travis L. Thompson

Paul L. Arrington

*Attorneys for Clear Springs Foods, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 31<sup>st</sup> day of August, 2009, I served true and correct copies of the foregoing document upon the following by the method indicated:

Deputy Clerk  
Gooding County District Court  
P.O. Box 27  
Gooding, Idaho 83330  
Facsimile: 208-934-5085

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Overnight Mail  
 Facsimile  
 Email

Phillip J. Rassier  
Chris M. Bromley  
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Idaho Department of Water Resources  
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Travis Thompson

# Exhibit A



STATE OF IDAHO  
**WATER DISTRICT 130**  
C/O IDAHO DEPARTMENT OF WATER RESOURCES  
1341 FILLMORE ST, STE 200  
TWIN FALLS, ID 83301-3380  
TELEPHONE NUMBER (208) 736-3033  
FACSIMILE NUMBER (208) 736-3037



IDWR INTERIM DIRECTOR  
GARY SPACKMAN

WATERMASTER  
CINDY YENTER  
[CIndy.Yenter@idwr.idaho.gov](mailto:CIndy.Yenter@idwr.idaho.gov)

August 25, 2009

RECEIVED  
AUG 20 2009

«CurrentOwner»  
«StreetAddress»  
«City», «StateCode» «PostalCode»

**RE: Notice of Order Conditionally Granting Motion for Stay of Curtailment**

Dear Water User:

On August 7, 2009, the Interim Director of the Idaho Department of Water Resources (Director or Department) issued an amended order of curtailment for ground water rights junior to April 11, 1990. You are a holder of one or more ground water rights that are junior to April 11, 1990 and subject to the curtailment order. On August 11, 2009, North Snake and Magic Valley Ground Water Districts filed a *Motion for Stay* in Gooding County District Court, seeking to stay enforcement of the curtailment order.

On August 24, 2009, the court granted a *Conditional Order* that enforcement of the Director's 2009 curtailment orders are stayed, or halted, contingent upon certain actions by the Ground Water Districts. **You are hereby notified that the Watermaster of Water District 130 will discontinue enforcement of the Director's curtailment order pursuant to the court order.**

The court's August 24, 2009 Conditional Order has stopped curtailment at this time, but it did not cancel or revoke the Director's August 7, 2009 curtailment order. You may resume use of any ground water rights that were subject to the Director's amended curtailment order. It is important to note, however, that the Ground Water Districts are required to provide security for the stay by conducting additional mitigation activities during 2009 and 2010. The curtailment order will remain in place pending the actions of the Ground Water Districts.

A copy of the order signed by District Court Judge John Melanson, dated August 24, 2009, and all supporting documents can be found on the Department's website at: [www.idwr.idaho.gov](http://www.idwr.idaho.gov) under the "Major Issues" heading and the "2009 Curtailment Information" subheading. If you do not have internet access and would like copies of any of these documents, please contact my office at 208-736-3033, or the Idaho Department of Water Resources in Boise at 208-287-4800.

Respectfully,

Cindy Yenter, Watermaster

cc: Gary Spackman, IDWR Interim Director  
North Snake Ground Water District  
Magic Valley Ground Water District  
Randy Budge, Attorney, North Snake & Magic Valley Ground Water Districts  
John Simpson, Attorney, Clear Springs Foods, Inc.