



News Release

IDAHO DEPARTMENT OF WATER RESOURCES

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IDWR Director Issues A Notice of Curtailment to Ground Water Users in the Magic Valley

Idaho Department of Water Resources (IDWR) Director David Tuthill today issued a notice of curtailment to holders of 865 junior water rights in the Magic Valley of south-central Idaho. The notice of curtailment is part of a continuing response to a water delivery call made in 2005 by senior water right holder Clear Springs Foods. The curtailment is scheduled to take effect on March 16, 2009.

The notice of curtailment affects holders of certain ground water rights in Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties that have a water right priority date junior to November 16, 1972. The affected water rights include agricultural, commercial, industrial, municipal, stockwater, non-exempt domestic and other consumptive uses. The notice of curtailment impacts approximately 41,000 acres of land irrigated by ground water.

“The ground water users withdrew their plan to provide mitigation water, leaving only a plan to provide money or fish,” said IDWR Director Tuthill. “I have acted quickly to inform the parties that this mitigation is not legally acceptable. I encourage the ground water users to locate mitigation water quickly, so that the curtailment order will not be required,” he added.

Curtailment orders are necessary to satisfy the director’s duty under Idaho law to administer water rights in accordance with the Idaho Constitution and statutes in times of shortage. When a water right is filed, it is assigned a priority date which determines whether it is junior or senior to another water right. The older the priority date, the more senior and the more valuable the water right is.

A delivery call is made when the holder of a senior water right experiences a shortfall in water the right holder is beneficially using and is authorized to receive. The call is made on the water source. Under the State of Idaho’s conjunctive management rules, IDWR requires the holders of junior water rights to either mitigate the effects of their diversions or stop diverting water in order to help satisfy the senior right.

On February 17, 2009 attorneys representing junior ground water rights holders in the North Snake and Magic Valley Ground Water Districts filed a notice of withdrawal of an earlier filed mitigation plan that proposed to provide water directly to injured senior water right holder Clear Springs Foods.

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In the notice of withdrawal the ground water districts stated their intent to proceed with an earlier filed mitigation plan dated December 18, 2008, which proposed to provide only monetary compensation instead of water to Clear Springs Foods. That mitigation plan and a subsequent amended mitigation plan seeking to provide replacement fish instead of water were both denied by Director Tuthill.

Had the Ground Water Districts and Clear Springs agreed that either monetary compensation or replacement fish was an appropriate form of mitigation, the Director could have approved the plan. However, to force Clear Springs Foods to accept monetary compensation or replacement fish instead of water would be beyond the administrative powers of IDWR and in the Director's view would be akin to an unauthorized taking of a senior water right.

Because the monetary compensation and replacement fish plans were denied by the Director, and in the absence of any other offered or agreed upon plan to consider, Director Tuthill was forced to issue a notice of curtailment. The curtailment is set to commence on March 16, 2009, unless acceptable mitigation is provided by March 12, 2009.

On October 22, 2008 Director Tuthill sent letters to 1,700 water right holders warning that they could be subject to curtailment in 2009. The recipients included water rights holders that could be affected by the Clear Springs Foods delivery call. On January 29, 2009 the Director ordered the Ground Water Districts and Clear Springs Foods to attempt to settle their dispute over the acceptability of the ground water district's proposed mitigation plan through alternative dispute resolution, but no settlement was reached.

Information on the curtailment order can be found on the Idaho Department of Water Resources' web site at www.idwr.idaho.gov under the heading "Major Issues" and 2009 Potential Curtailment Information Page. The web site features a map of the affected areas, copies of the letters issued to water rights holders, legal documents, and related links.

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