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July 9, 2009

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

Dear Acting Director Spackman:

On behalf of North Snake Ground Water District and Magic Valley Ground Water District (collectively "Ground Water Districts"), this letter will further respond to Director Tuthill's June 19, 2009 letter, supplement my initial response dated June 25, 2009, respond to Director Tuthill's June 30, 2009 letter and related issues subsequently raised.

**INTRODUCTION**

At the outset, emphasis must be made that the purpose and primary focus of the Ground Water Districts' 2009 Replacement Water Plan and Third Mitigation Plan (Over-the-Rim) of North Snake Ground Water District and Magic Valley Ground Water District (2009 Plan) is to supply by direct delivery the full replacement water requirement to Snake River Farms on a continuous year-round basis. Pursuant to Lease and Conversion Agreements entered into between the Ground Water Districts and Heida, Box Canyon and Van Dyk (the "Landowners"), the Ground Water Districts leased the Landowners' water rights, wells, pumps and delivery facilities. This allows their wells to be pumped and provide for the direct delivery of mitigation water over-the-rim to Clear Springs Snake River Farm facility. The objective was not to simply convert land from ground water to surface water irrigation. The conversions were incidental and

became necessary to provide irrigation water to lands that would no longer have ground water supply for irrigation.

The design and construction of the over-the-rim facilities were underway, on schedule and would have met the Director's June 1, 2009 deadline under previous Orders, but for Clear Springs. Work on the over-the-rim delivery project was stopped at the request of Clear Springs, not the Ground Water Districts. Furthermore, it was pursuant to Clear Springs' Motion to Stay that the construction of the over-the-rim delivery facilities was stayed pursuant to the Director's Order. While the Ground Water Districts did not object to Clear Springs' Motion to Stay, nor did they stipulate to the same, largely because Clear Springs stated it did not wish to receive and would not accept any direct delivery of water.

Had the Ground Water Districts proceeded to complete the construction of the over-the-rim delivery facilities, which they remain willing to do, any issues relative to the conversion acres would be rendered entirely moot. This is simply because the Ground Water Districts would deliver the full mitigation requirement directly to Snake River Farm by pumping the leased water rights and operating the wells as needed to directly deliver the necessary quantities. It was noteworthy that the over-the-rim project was over-designed with the ability to deliver excess amounts to Snake River Farms as necessary should conversion acres or court orders alter the quantities needed to fully mitigate any injury to Clear Springs.

To date the Ground Water Districts have acted in good faith with due diligence to fully perform all of their obligations under their 2009 Plan. The Ground Water Districts have expended between \$500,000 and \$600,000 for design, engineering, new irrigation equipment and the lease and delivery of surface water pertaining to the Landowners new conversion acres under the 2009 Plan. The costs of leasing and delivering surface water remains an ongoing obligation and continuing annual expense to the Ground Water Districts.

By reason of the foregoing, the Ground Water Districts are extremely frustrated by the disingenuous complaints from Clear Springs and extensive scrutiny of the new conversion acres.

### **2009 CONVERSION ACRES**

The Director's June 30 letter states: "The Agency understanding has been that under the approved Replacement Plan this number should be at least 1060." That understanding is incorrect. As stated on page 7 of the 2009 Plan, "the total acreage proposed to be converted is approximately 1,060 acres." When the 2009 Plan was filed, the exact number of acres to be converted was unknown and it was contemplated that Landowners Heida, Box Canyon and Brown would be converted as depicted in Exhibit 3 based upon verbal commitments. Subsequently Brown refused to sign a Lease and Conversion Agreement. Therefore, the Van Dyk property and their Water Right Nos. 36-7319 and 36-7454 were substituted to meet the supply requirement for direct delivery to Snake River Farm, not to meet a specific acreage of conversions. The Van Dyk

conversions were reflected in the Ground Water Districts' Weekly Progress Reports to the Director for Weeks 8, 9 and 10.

While the Van Dyk authorized acreage is somewhat less, pumping records obtained from Ms. Yenter indicate that their historic average pumping was something slightly greater than Browns (255 AF/year vs. 238 AF/year). For that reason, the substitution of Van Dyk did not compromise the objective of the 2009 Plan, being the delivery of pumped ground water to Snake River Farm. Also, the water right quantities were approximately the same as under the Brown right resulting in a similar reduction of ground water depletion when converted to surface water.

Again, the fundamental purpose and objective of the 2009 Plan was not simply to convert lands from ground water to surface water, instead to pump the wells and directly supply the full replacement water requirement to Snake River Farm on a continuous year-round basis. The conversions were incidental byproducts of the direct water delivery plan and necessary only to provide irrigation water to the lands that no longer have ground water for irrigation because that ground water was going to be redirected to Snake River Farm.

It is noteworthy that the Ground Water Districts in their 2009 Plan did not even calculate or include any mitigation benefits derived from the conversion acres. Accordingly, no expectation was created for the Department or Clear Springs.

The conversion of additional acres is not necessary to supply the full mitigation requirement over-the-rim to Snake River Farm because the existing water rights of the Landowners is more than adequate. The Ground Water Districts know of no other landowners in the vicinity that would be willing to convert to surface water.

The converted acres are those identified as the place of use under each of the Landowner's identified water rights. There are no "as-built" specifications with respect to the conversion work which was performed by contractors as described in the Weekly Status Reports submitted by the Ground Water Districts to the Director.

### **9,300 ACRES OF PRIOR CONVERSIONS**

In previous years the Ground Water Districts paid the costs of converting approximately 9,300 acres within North Snake Ground Water District from ground water to surface water and have since paid the costs of leasing and delivering surface water to converted acres. Because the Ground Water Districts contemplated meeting their mitigation obligation to Snake River Farm by direct delivery of water over-the-rim pursuant to their 2009 Plan, the Modeled mitigation credit for conversion acres became less significant. Further, the 9,300 acres of conversion were rendered far less cost-effective than the 2009 Plan. Accordingly, the Ground Water Districts decided that the Districts could no longer afford the cost of leasing and delivering surface water

and would pass those costs on to the landowners.<sup>1</sup> When the 2009 Plan was filed, the Ground Water Districts had no reason to believe that passing the costs on to the landowners would have any significant effect on the number of converted acres because the added water costs to the landowners would still be considerably less than the avoided pumping costs. To the Ground Water Districts' surprise and for reasons not yet fully known, a number of the landowners appear to have discontinued use of surface water and have reverted to ground water. The current estimate is that surface water is being delivered to approximately 3,500 of the 9,300 previously converted acres, as well as to the new conversions under the 2009 Plan.

Thus far, the Ground Water Districts have leased 15,000 AF of water from their usual lessors and have a ready supply of additional water available to lease as needed. On the 15,000 AF which is currently being delivered through the North Side Canal Company system, the rent, Water District 01 Rental Pool fees and State Water Bank fees have previously been paid in full by the Ground Water Districts.

A number of other members of North Snake Ground Water District have expressed an interest and desire to convert to surface water in order to reduce their deep well pumping costs. It is anticipated that additional lands will be converted from ground water to surface water in the future, although no further details are known at this time. To facilitate these additional conversions, the Ground Water Districts have agreed to act as a broker and secure the necessary storage water from existing lessors and arrange for delivery through the canal systems, with the water acquisition and delivery costs paid by the landowner.

#### **CORRECTION OF INADVERTENT MINOR PUMPING OF LEASED WATER RIGHTS**

The Department brought to the Ground Water Districts' attention that there occurred some minimal pumping of certain ground water wells that were subject to the Lease and Conversion Agreements entered into with the Landowners. This problem was immediately investigated, has been corrected and is not expected to recur.

The water rights of each Landowner which converted to surface water pursuant to the Ground Water Districts' 2009 Plan were leased along with their pumps, motors, wells and facilities. The Ground Water Districts were given the sole and exclusive right to use the same to

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<sup>1</sup>During direct discussions between Ground Water District Representatives Lynn Carlquist and Dean Stevenson and Clear Springs representatives Larry Cope and Randy MacMillan in April 2009, Clear Springs was advised that conversion water acquisition and delivery costs previously incurred by the Ground Water Districts would no longer be paid by the Ground Water Districts, which costs were being transferred to the conversion landowners which could impact conversion acres.

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deliver the water over the rim to Snake River Farm for mitigation purposes. The Landowners have no right to use these water rights and facilities for irrigation purposes pursuant to the Lease and Conversion Agreements entered into. There was and remains no misunderstanding between the Ground Water Districts and the Landowners that their wells could not be pumped for irrigation purposes.

Immediately upon being informed by the Department that some unauthorized pumping of the converted wells had occurred, the matter was investigated by the Ground Water Districts. It was discovered that Ron Ambrose, a custom farmer who operates the Box Canyon and Heida irrigated land, experienced a problem and delay in getting surface water delivered to his pumps through the North Side Canal Company S Coulee. Mr. Ambrose apparently had received misinformation and/or had an erroneous belief that he could pump the converted wells if there was a problem getting surface water through the canal system. Mr. Ambrose acknowledged that he pumped a small well, believed to be Well No. 2, on two occasions, once for 8 to 10 hours and on another occasion for 2 hours. He also pumped a larger well believed to be Well No. 4 for a short period of time.

Information provided indicates that this occurred due to a lack of communication and misunderstanding between landowners Heida and Box Canyon and Mr. Ambrose concerning his responsibility for ordering surface water in through the canal system. When inadequate water was available, Mr. Ambrose thought it was acceptable to turn on the pumps and did so for a short period of time to avoid crop losses. The problem has now been corrected and is not expected to recur. Mr. Ambrose has met with representatives of North Side Canal Company and delivery problems have been resolved with no problems anticipated in the future. It has also been confirmed that there are no problems with the design and operation of the conversion facilities which are properly functioning. The minor amount of water pumped for a very short period is insignificant and is not expected to have any measurable impact upon spring discharge to Clear Springs.

Contact information has been provided to the Landowners for North Snake Ground Water District representatives. This is in an effort to improve communications, avoid further problems and further ensure that the conversions under the 2009 Plan work as contemplated,

Had the construction of the over-the-rim delivery facilities been completed, the landowners' water rights, wells and facilities leased to the Ground Water Districts would be used for direct delivery to Snake River Farm, thus eliminating any possibility of use for irrigation purposes on the converted acres. Should the Department desire, the Ground Water Districts have no objection to the watermaster pulling the fuses or locking these wells so they cannot be pumped for irrigation purposes. Those efforts should be coordinated directly between the watermaster, Ms. Yenter, and the landowners.

With respect to the reference in Ms. Yenter's report of expansions of use and of a "cross-

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connected" well in the NW NE of Section 36, such would appear to be a matter of water rights administration which the Department has authority and responsibility to address. The Ground Water Districts have no authority to address any such "self transfer" that may have occurred by a water right holder without Department approval. Regardless, the Ground Water Districts have received assurance from the Landowners that their Lease and Conversion Agreements will be honored and that their wells will not be pumped to irrigate converted acres.

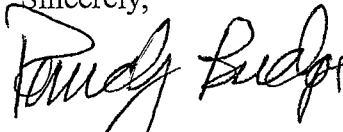
Ms. Yenter also raised the question concerning the Van Dyk property electric use records. It is our understanding that Van Dyk is using the same meter for his deep well pump leased to the Districts as is used for the new conversion acres pump. Arrangements need to be made to separate this and supply a new meter. Ms. Yenter can coordinate this with the Ground Water Districts which will pay any necessary costs.

### CONCLUSION

It is the Ground Water Districts' belief that the foregoing response sufficiently addresses the issues raised by the Department and Clear Springs. If additional information is desired, please advise and we will promptly respond.

As indicated previously, if the foregoing and the prior information submitted is not acceptable and the Director determines to remove the two-year partial stay, the Ground Water Districts are prepared to immediately proceed with the construction of the over-the-rim delivery portion of the 2009 Plan. Should that be necessary, the Ground Water Districts request assurance from Clear Springs that it will accept the direct delivery of water pursuant to the over-the-rim facilities in light of previous indications given by Clear Springs that it would not do so. Alternatively, if the Director directs construction of the over-the-rim facilities without assurance from Clear Springs that it will accept the water, the Ground Water Districts request assurance from the Director that if they go to the expense of constructing the over-the-rim delivery facilities and Clear Springs refuses to accept the delivery of water, that the Ground Water Districts will be deemed to have satisfied their mitigation obligations.

Sincerely,



RANDALL C. BUDGE

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cc: Candice McHugh  
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J. Justin May  
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