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Gary Spackman
Director of IDWR
P.O. Box 83720
Boise, ID 83720

RE: Comments to Petition to Amend Rule 50 filed by Clear Springs Foods, Inc.

Dear Director Spackman,

Pursuant to the notification sent by you to various water users, including Fremont Madison Irrigation District, dated April 11, 2014, together with the further correspondence from Richard M. Rigby, Senior Advisor, dated May 30, 2014, the following is intended to be additional written comments to those previously submitted and to those oral comments made at the meetings recently held by the Department throughout the northern portion of ESPA.

Through the framework of the Conjunctive Management Rules (Rule 0 through Rule 43), a process with rules of operations is set up for conjunctive administration of groundwater and surface water. Rules such as Rule 20 indicate an intent for uniformity of administration (020.01) and affirm the Constitutional provision that priority of right is subject to limitations of reasonableness (020.03). Furthermore, Rule 31 describes the process, relevant information and criterion for “making a finding of an area of common groundwater supply.”

The second part of the Conjunctive Management Rules (Rule 50) lists and describes “Areas Determined to Have a Common Ground Water Supply.” Rule 050.01 identifies the Eastern Snake Plain Aquifer as such an area. It describes the area of coverage as the “aquifer underlying the Eastern Snake River Plain” as defined in a particular scientific report, with some modification. Rule 050.01.a describes the application of general principles to the finding that the

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Eastern Snake Plain Aquifer is an area of Common Ground Water Supply. The wording contained within the Rule defines it as: “The Eastern Snake Plain Aquifer supplies water to and receives water from the Snake River.”

In 2010, Clear Springs Foods, Inc., petitioned that Rule 50 be modified. The Petition accepts the description of the Area of Common Ground Water Supply as the “aquifer underlying the Eastern Snake River Plain” and requests that the definition of the aquifer be derived from a different scientific report. The Petition does not request or propose any change to 050.01.a.

We believe that extending the Area of Common Ground Water Supply to either the ESPAM1.1 model boundary or the very similar ESPAM2.1 model boundary is technically indefensible and administratively arbitrary and unfair. This opinion is based upon the following:

- 1) It is contrary to the intent of uniformity of administration defined in 020.01. Adopting either ESPAM model boundary as the Area of Common Ground Water Supply would cause water users who have qualitatively identical hydraulic relationships with the Snake River to be treated differently. For instance:
 - a) The Big Lost River drainage would be treated differently than the Wood River Valley;
 - b) The southern extent of the Oakley Fan would be treated differently than the Raft River Valley;
 - c) The Rexburg Bench would be treated differently than the Marysville area east of Ashton.
- 2) Because of this arbitrary difference in treatment, changing the boundary in this manner would be inconsistent with the Constitutional provision of reasonableness affirmed in 020.03.
- 3) The areas that would be added do not fit the technical definition adopted for this particular Area of Ground Water Supply, as provided in rule 050.01.a. Whatever the origin of this Rule and its relationship to other Rules, it is clear that the wording of 050.01.a is specific and intentional. Furthermore, it is clear that the Petition does not request that 050.01.a be modified.
- 4) While maps, materials and public discussion indicate that the Petition has been interpreted to mean that the new *model boundary* be used to define the Area of Common Ground Water Supply, the Petition does not propose this. The formal request was that the *definition* of the aquifer be derived from the newer report. Neither the ESPAM1.1 report nor the ESPAM2.1 report change the definition of the aquifer. Both the Geographic Boundary Conditions section of the ESPAM1.1 final report (p. 27) and section IV.B. Model Extent of the ESPAM2.1 final report (p. 18) speak exclusively of changes to the *model boundary*. Neither report mentions, defends nor provides scientific evidence of any change in understanding of the extent of the aquifer. Specific rationales are described for boundary adjustments:

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- a) Inclusion of additional irrigated acres;
- b) Improvement of calculation of tributary-valley underflow;
- c) Inclusion of the King Hill river gauge within the model domain;
- d) Recognition that the Snake River Canyon west of Kimberly truncates the aquifer.

Finally, as recognized by the Director in his recent rulings in the Rangen series of cases, there are natural barriers located within the ESPA (including the barrier known as the “Mud Lake Barrier”) which dictate that certain reaches in the ESPA do not impact other reaches for purposes of conjunctive management.

The literal wording of the Petition is consistent with the current Area of Common Ground Water Supply. The current Area is consistent with the technical definition of the Rule. The current Area honors the principles of uniformity of administration and reasonableness. The ESPAM model boundaries were adopted for modeling reasons, would be arbitrary and technically indefensible if used to define an Area of Common Ground Water Supply and therefore should NOT be used to create the parameters of conjunctive management. We request that the Director reject the Petition, and retain the current rule 50.01.

Sincerely,

Jerry R. Rigby

JRR/md