

STATE OF IDAHO



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
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IDWR INTERIM DIRECTOR
GARY SPACKMAN

WATERMASTER
CINDY YENTER
Cindy.Yenter@idwr.idaho.gov

July 23, 2009

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

Water Rights: «rights»

RE: Notice of Pending Curtailment of Water Rights with Priority Date Junior to January 8, 1981

Dear Water User:

On July 22, 2009, the Interim Director of the Idaho Department of Water Resources (Director or Department) issued an order of curtailment concluding that the failure to provide adequate replacement water in response to a petition for delivery call by Clear Springs Foods requires curtailment of diversion and use of ground water by holders of junior priority ground water rights. **The July 22, 2009 curtailment order states that holders of ground water rights bearing priority dates junior to January 8, 1981 shall curtail or refrain from diverting ground water under those rights beginning at 12:01 a.m. on July 31, 2009, unless appropriate action is taken prior to that date. You are a holder of one or more of the junior priority ground water rights. At 12:01 a.m. on July 31, 2009, you must cease diversion and use of water pursuant to the junior priority ground water right(s) unless notified of action as described in the order.**

Procedural Background

On March 6, 2009, the Watermaster of Water Districts 130 and 140 (Watermaster) sent you a Notice of Pending Curtailment of Ground Water, pursuant to an Order signed by the Director on March 5, 2009. The March 6 notice informed you that you were the holder of one or more ground water rights with a priority date junior to November 16, 1972, and that diversion under those rights would be curtailed unless appropriate action was taken by the ground water districts responsible for providing mitigation for junior ground water rights.

On March 12, 2009, the Idaho Ground Water Appropriators, Inc. (IGWA), submitted its *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). The 2009 Plan proposed to mitigate injury to the Clear Springs water rights by providing “direct delivery of ground water from existing wells to Snake River Farm’s intake”, along with ongoing mitigation activities as approved in the March 5 Order. Ongoing mitigation by the Districts is comprised of delivery of surface water to 9,300 acres which have been converted from ground water irrigation, and idling of lands enrolled in the Conservation Reserve Enhancement Program (CREP). The receipt of the 2009 Plan caused the Director to set aside the March 5, 2009 curtailment order.

On March 26, 2009, the Director approved the 2009 Plan, which required IGWA to construct an over-the-rim pipeline to deliver replacement flow to Clear Springs Foods, and to convert an additional 1,060 irrigated acres from ground water to surface water supply (see *Order Approving Ground Water Districts’ Replacement Water Plan for 2009*, dated March 26, 2009). The construction of the pipeline and new conversion acres was required no later than June 1, 2009. On April 27, 2009, Clear Springs Foods filed a *Motion for Partial Stay of Implementation of Directors’ March 26, 2009 Order Approving Ground Water Districts’ Replacement Water Plan for 2009* (Clear Springs Motion or Motion). For several legal and practical reasons, Clear Springs

requested that the Director set aside a portion of the March 26 Order “so as not to require construction and installation of the GWD’s ‘over-the-rim’ project at this time.” Clear Springs agreed to accept the remainder of the 2009 Plan (i.e., existing conversion acres, new conversion acres and CREP acres) as acceptable mitigation for years 2009 and 2010. The Director approved the Clear Springs Motion on May 15, 2009.

Nothing in the March 26 Order or the May 15 approval of the Clear Springs Motion altered the requirements of the March 5 Order that IGWA continue to supply replacement water to 9,300 existing conversion acres, and to maintain enrollment of lands in CREP. However, the Director and the Watermaster had determined by mid-June 2009 that the Districts were not in compliance with the non-stayed portion, or the remainder of the 2009 Plan. Specifically, only about 4,200 of the existing 9,300 conversion acres have received or will receive some replacement water during 2009. The reduction of water deliveries to existing conversion acres has been found to have caused a shortfall of 5.19 cfs in the Buhl to Thousand Springs reach of the Snake River.

As a result of the shortfall in replacement water, on July 22, 2009, the Director issued the order and notice of curtailment described above. Curtailment can be avoided if the North Snake and Magic Valley Ground Water Districts provide adequate replacement water as described in the order.

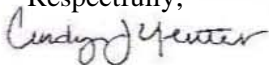
Previous orders for the Clear Springs delivery call required that holders of junior ground water rights provide mitigation through ground water districts of which the ground water right holders were members or in which they participated for mitigation. The Department will not accept individual mitigation plans from individual ground water right holders. The ground water district that was providing mitigation for your ground water rights could respond to inquiries about the status of mitigation plans.

Issuance of the curtailment order will affect the eligibility of new land enrollment in CREP. The United States Department of Agriculture (USDA) Farm Service Agency’s rules for CREP require that “the cropland must be physically and legally capable of being irrigated in a normal manner when offered for enrollment.” Cropland irrigated with curtailed water rights will no longer be legally capable of being irrigated and will therefore no longer be eligible for CREP. For further CREP eligibility requirements, producers should seek advice from their local USDA Farm Service Agency office.

A copy of the order signed by the Interim Director dated July 22, 2009 and a list of water rights subject to curtailment can be found on the Department’s website at: www.idwr.idaho.gov under the “Major Issues” heading and the “2009 Potential Curtailment Information” subheading. Also available on the website are maps showing the area where ground water rights must be curtailed and boundaries of the ground water districts, as well as addresses and phone numbers for the ground water districts. 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.

If further negotiations and agreements provide the necessary mitigation to Clear Springs, you will be notified of any change in the notice of curtailment.

Respectfully,



Cindy Yenter, Watermaster

cc: Gary Spackman, IDWR Interim Director
North Snake Ground Water District
Magic Valley Ground Water District