**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

| | | |
|---|---|---|
| IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHTS NOS. 36-4013A, 36- 04013B, AND 36-07148 IN THE NAME OF CLEAR SPRINGS FOODS, INC. | ) | **ORDER DENYING REQUEST FOR STAY AND SCHEDULING HEARING ON PETITION FOR RECONSIDERATION OF ORDER APPROVING IGWA's 2005 SUBSTITUTE CURTAILMENTS (Clear Springs Delivery Call, Snake River Farm)** |

On April 29, 2006, the Director of the Department of Water Resources ("Director" or "Department") issued *Order Approving IGWA's Substitute Curtailments (Clear Springs Delivery Call, Snake River Farm)* ("April 29 Order") in this matter involving a water delivery call by Clear Springs Foods, Inc. ("Clear Springs") against the holders of junior-priority ground water rights from the Eastern Snake River Plain Aquifer. The Director's April 29 Order approved substitute ground water curtailments undertaken in 2005 by water users within member ground water districts represented by the Idaho Ground Water Appropriators, Inc. ("IGWA"). The April 29 Order also required that on or before May 30, 2006, the North Snake Ground Water District and the Magic Valley Ground Water District ("Ground Water Districts") must submit plans for substitute curtailments to the Director that will provide 16 cfs of steady state gain to the Buhl Gage to Thousand Springs spring reach tributary to the Snake River, or otherwise provide replacement water as required in the Director's Order dated July 8, 2005.

The April 29 Order recognized a total credit of 8.2 cfs in steady state gain to the Buhl Gage to Thousand Springs spring reach tributary to the Snake River for conversions from ground water irrigation to surface water irrigation and for voluntary curtailments in ground water irrigation. On May 8, 2006, in response to a request from IGWA, the Department served upon IGWA and the other parties to this matter certain spreadsheets and other materials related to the Department's review and conclusions concerning IGWA's 2005 Substitute Curtailments for the Clear Springs Delivery Call, Snake River Farm.

On May 12, 2006, IGWA filed *IGWA's Petition For Reconsideration Of Order Approving IGWA's 2005 Substitute Curtailments (Clear Springs Delivery Call, Snake River Farm)* ("Petition for Reconsideration"). IGWA asserts in its Petition for Reconsideration that the April 29 Order improperly underestimates the credits the Ground Water Districts should receive for their 2005 substitute curtailments. In addition, IGWA requests a stay of the Director's April 29 Order until such time as the Director convenes a hearing regarding this matter. On May 19, 2006, Clear Springs filed its *Response To IGWA'S Petition For Reconsideration (Clear Springs Delivery Call, Snake River Farm* ("Objection") arguing that the facts in this case do not justify entry of a stay "while junior ground water pumping continues to deplete Clear Springs' water rights." Objection at p. 2.

## ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

1. The request for a stay of the Director's *Order Approving IGWA's Substitute Curtailments (Clear Springs Delivery Call, Snake River Farm)* issued on April 29, 2006, is DENIED.

2. IGWA's request for a hearing on its Petition for Reconsideration of *Order Approving IGWA's 2005 Substitute Curtailments (Clear Springs Delivery Call, Snake River Farm)* is GRANTED. A hearing on reconsideration of the Department's order approving IGWA's 2005 substitute curtailments is scheduled to commence on Monday, June 5, 2006 at 9:00 a.m. at the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho.

3. For purposes of expediting the hearing scheduled for June 5, 2006, designated Department of Water Resources staff shall be made available to the parties upon appropriate arrangement on either May 24, 2006, or on May 30, 2006, or other mutually agreeable date, to discuss the spreadsheets and other materials related to the Department's review and conclusions concerning IGWA's 2005 substitute curtailments for the Clear Springs Delivery Call, Snake River Farm.

4. The requirement under the Order of April 29, 2006, that the North Snake Ground Water District and the Magic Valley Ground Water District submit plans for 2006 substitute curtailments on or before May 30, 2006, shall remain in effect.

5. Following the scheduled hearing on June 5, 2006, the Director will rule further upon IGWA's Petition for Reconsideration of the Order Approving IGWA's 2005 Substitute Curtailments by June 15, 2006.

6. The Director will issue a scheduling order in this matter in due course soon after June 15, 2006, designating a date for hearing on the Director's Order of July 8, 2005, in this matter finding that ground water diversions under junior priority rights are materially injuring water rights held by the Clear Springs Foods, Inc. for its Snake River Farm.

DATED this 19th day of May, 2006.

KARL J. DREHER
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of May, 2006, the above and foregoing document was served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

| | |
|---|---|
| LARRY COPE<br>CLEAR SPRINGS FOODS<br>PO BOX 712<br>BUHL ID 83303-1237 | (x) U.S. Mail, Postage Prepaid<br>( ) Facsimile<br>( ) E-mail |
| MIKE CREAMER<br>JEFF FEREDAY<br>GIVENS PURSLEY<br>PO BOX 2720<br>BOISE ID 83701-2720<br>(208) 388-1200<br>cf@givenspursley.com<br>mcc@givenspursley.com | (x) U.S. Mail, Postage Prepaid<br>( ) Facsimile<br>(x) E-mail |
| MAGIC VALLEY GWD<br>809 E 1000 N<br>RUPERT ID 83350-9537 | (x) U.S. Mail, Postage Prepaid<br>( ) Facsimile<br>( ) E-mail |
| NORTH SNAKE GWD<br>152 E MAIN ST<br>JEROME ID 83338<br>(208) 388-1300 | (x) U.S. Mail, Postage Prepaid<br>( ) Facsimile<br>( ) E-mail |
| ALLEN MERRITT<br>CINDY YENTER<br>IDWR-SOUTHERN REGION<br>1341 FILLMORE ST STE 200<br>TWIN FALLS ID 83301-3380<br>allen merritt@idwr.idaho.gov<br>cindy.yenter@idwr.idaho.gov | (x) U.S. Mail, Postage Prepaid<br>( ) Facsimile<br>(x) E-mail |
| FRANK ERWIN | (x) U.S. Mail, Postage Prepaid |

WATERMASTER
WATER DIST 36
2628 S 975 E
HAGERMAN ID 83332

( ) Facsimile
( ) E-mail

JOHN SIMPSON
BARKER ROSHOLT
PO BOX 2139
BOISE ID 83701-2139
jks@idahowaters.com

(x) U.S. Mail, Postage Prepaid
( ) Facsimile
(x) E-mail

SCOTT CAMPBELL
MOFFATT THOMAS
PO BOX 829
BOISE ID 83701
slc@moffatt.com

(x) U.S. Mail, Postage Prepaid
( ) Facsimile
(x) E-mail

Victoria Wigle

Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources