STATE OF IDAHO
WATER DISTRICT 140
C/O IDAHO DEPARTMENT OF WATER RESOURCES
1341 FILLMORE ST., STE. 200
TWIN FALLS, ID 83301-3380
TELEPHONE NUMBER (208) 736-3033
FACSIMILE NUMBER (208) 736-3037

IDWR DIRECTOR
DAVID R TUTHILL, JR

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

March 6, 2009

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

Water Rights: «rights»

RE: Notice of Pending Curtailment of Water Rights

Dear Water User:

On October 22, 2008, the Director of the Idaho Department of Water Resources (Director) sent you a Notice of Potential Curtailment of Ground Water Rights in the Eastern Snake Plain Aquifer. The notice informed you that "you are the water right holder of record for one or more water rights that could be subject to curtailment during 2009." The notice discussed several petitions for delivery call by senior surface right holders against junior ground water rights.

One of the petitions for delivery call was filed by Clear Springs Foods, Inc. (Clear Springs). The following is text from the notice explaining the delivery call and required response from the ground water right holders:

> Clear Springs Foods, Inc. (Clear Springs) holds several water rights for fish propagation at its Snake River Farm facility near Buhl. These rights authorize the diversion of water from springs tributary to Clear Lakes located in the Buhl Gage to Thousand Springs reach east of Buhl. An order issued on July 8, 2005, determined that diversion and use of ground water under water rights with junior priority dates causes material injury to Clear Springs' water right no. 36-04013B (February 4, 1964).
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> The 2005 Clear Springs order provides that replacement water in the amount of 38 cubic feet per second (cfs) shall be delivered during year five, 2009, to the Buhl Gage to Thousand Springs reach. This amount has since been updated to 38.9 cfs based on the inclusion of ground water rights from the Clear Springs curtailment area in Water District No. 140. Without additional mitigation or replacement water being provided, year five of phased curtailment shall require the curtailment of ground water rights having a priority date later than (junior to) January 4, 1973. This date could be adjusted based on the submittal of an acceptable mitigation plan, and it assumes continuation of existing conversion acres and Conservation Reserve Enhancement Program (CREP) acres.

On February 17, 2009, the Magic Valley and North Snake ground water districts, which were responsible for providing replacement water for the Clear Springs call, notified the Department that

previous mitigation plans providing direct replacement water to Clear Springs were withdrawn. On March 5, 2009, the Director issued an order and notice of curtailment concluding that the failure to provide replacement water requires curtailment of diversion and use of ground water by holders of junior priority ground water rights. **The March 5, 2009 notice of curtailment states that holders of ground water rights bearing priority dates junior to November 16, 1972 will be ordered to curtail or refrain from diverting ground water under those rights as of March 16, 2009, unless appropriate action is taken by March 12, 2009. You are a holder of one or more of the junior priority ground water rights.**

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 forthcoming curtailment order will affect the eligibility of land enrollment in the Conservation Reserve Enhancement Program (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." Upon the issuance of a curtailment order requiring curtailment on March 16, 2009, 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 Director dated March 5, 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. 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 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 J Yenter

Cindy Yenter, Watermaster

cc: David R. Tuthill, Jr., Director, IDWR
North Snake Ground Water District
Magic Valley Ground Water District