

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHTS NOS.)
36-04013A, 36-04013B, AND 36-07148)
(SNAKE RIVER FARM))
()
(**Water District Nos. 130 and 140**))
()
()
()
_____)

**ORDER GRANTING PARTIAL
STAY OF GROUND WATER
DISTRICTS' REPLACEMENT
WATER PLAN FOR 2009**

On March 26, 2009, the Director of the Department of Water Resources (“Director” or “Department”) issued his *Order Approving Ground Water Districts’ Replacement Water Plan for 2009* (“Replacement Plan Order”). The approved 2009 Replacement Water Plan included as one component a proposal for the Ground Water Districts to pump and deliver ground water to Clear Springs through an “over-the-rim” pipeline project ordered to be completed by June 1, 2009.

On April 27, 2009, Clear Springs Foods, Inc. (“Clear Springs”) filed *Clear Springs Foods, Inc.’s Motion for Partial Stay of Implementation of Director’s March 26, 2009 Order Approving Ground Water Districts’ Replacement Water Plan for 2009* (“Partial Stay Motion”). For several legal and practical reasons Clear Springs requested that the Director partially stay implementation of the Replacement Plan Order for one year “so as not to require construction and installation of the GWD’s ‘over-the-rim’ project at this time.” *Partial Stay Motion* at 9.

Clear Springs stated in its *Partial Stay Motion* that it would “accept the remainder of the 2009 Plan as acceptable mitigation for this year” and that “Clear Springs’ acceptance of this mitigation would be for the sole purpose of proceeding to an immediate hearing on the 2009 Plan on the issues identified by Clear Springs’ protest” to the Ground Water Districts’ Third Mitigation Plan (Over-the-Rim). *Id.* at 6-7. Among the other reasons asserted by Clear Springs in support of the requested partial stay were that the project “should not proceed until a full hearing on the plan is held;” and that the “pipeline project[] could be rendered moot” as a result of the district court’s pending decision on the appeal of the Director’s July 11, 2008 *Final Order*. *Id.* at 4-6.

On May 4, 2009, the Director conducted a status conference with the parties to discuss their positions regarding the requested partial stay. At the status conference, an officer of Clear Springs and the attorney for the Ground Water Districts stated that each party respectively agreed to a two-year partial stay of the requirement for completion of the over-the-rim project, while continuing with the other approved replacement water requirements for the two-year period. The parties were not able to reach agreement at the status conference on the timing for holding a hearing on the Ground Water Districts’ Third Mitigation Plan.

**ORDER GRANTING PARTIAL STAY OF GROUND WATER
DISTRICTS’ REPLACEMENT WATER PLAN FOR 2009 – Page 1**

The Ground Water Districts expressed a preference to conduct the hearing on the mitigation plan after judicial review of the Director's July 11, 2008 *Final Order* was fully completed, including any further appellate review following receipt of an order from the district court. Through its attorney, Clear Springs agreed to communicate to the Director following the status conference its position regarding the timing for a hearing. On May 14, 2009, counsel for Clear Springs informed the Director by letter of Clear Springs' position requesting that the hearing should be held "as soon as possible, but beginning no later than the fall of 2009."

ORDER

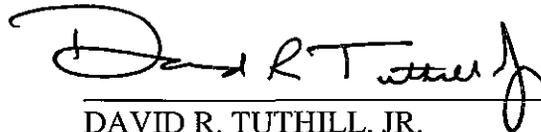
Based upon the foregoing,

IT IS HEREBY ORDERED that the motion for partial stay of implementation of the March 26, 2009 *Order Approving Ground Water Districts' Replacement Water Plan for 2009* is GRANTED for a period of two years so as not to require construction and installation of the authorized "over-the-rim" pipeline project proposed to provide a portion of the replacement water or mitigation that would otherwise be required from the Ground Water Districts for the 2009 and 2010 calendar years.

IT IS FURTHER ORDERED that, based upon Clear Springs' acceptance of the terms of the two-year partial stay, satisfaction of the remainder of the 2009 Plan, approved by the March 26, 2009 Order of the Director, shall constitute acceptable and sufficient replacement water or mitigation by the Ground Water Districts for the 2009 and 2010 calendar years.

IT IS FURTHER ORDERED that concurrent with the entry of this order, the Director shall issue an order appointing Gerald F. Schroeder as Hearing Officer for the Department to conduct a hearing on the *Third Mitigation Plan (Over-the-Rim) of North Snake Ground Water District and Magic Valley Ground Water District*.

Dated this 15th day of May, 2009.



DAVID R. TUTHILL, JR.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of May 2009, the above and foregoing, was served by the method indicated below, and addressed to the following:

RANDY BUDGE
CANDICE M. MCHUGH
RACINE OLSON
PO BOX 1391
POCATELLO ID 83204-1391
rcb@racinelaw.net
cmm@racinelaw.net

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

JOHN SIMPSON
BARKER ROSHOLT
PO BOX 2139
BOISE ID 83701-2139
(208) 344-6034
jks@idahowaters.com

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

TRAVIS THOMPSON
PAUL ARRINGTON
BARKER ROSHOLT
113 MAIN AVE WEST STE 303
TWIN FALLS ID 83301-6167
tlt@idahowaters.com
pla@idahowaters.com

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

DANIEL V. STEENSON
CHARLES L. HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701-2773
(208) 342-4657
dan@ringertclark.com
clh@ringertclark.com

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

MIKE CREAMER
JEFF FEREDAY
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701-2720
(208) 388-1300
mcc@givenspursley.com
jeffereday@givenspursley.com

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

MICHAEL S. GILMORE
ATTORNEY GENERAL'S OFFICE
PO BOX 83720
BOISE ID 83720-0010
(208) 334-2830
mike.gilmore@ag.idaho.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

J. JUSTIN MAY
MAY SUDWEEKS & BROWNING
1419 W. WASHINGTON
BOISE ID 83702
(208) 429-0905
jmay@may-law.com

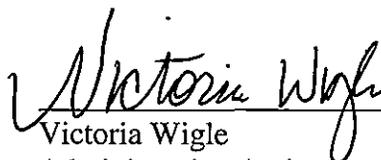
U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ROBERT E. WILLIAMS
FREDERICKSEN WILLIAMS MESERVY
153 E. MAIN ST.
P.O. BOX 168
JEROME, ID 83338-0168
rewilliams@cablone.net

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ALLEN MERRITT
CINDY YENTER
WATERMASTER - WD 130 and 140
IDWR - SOUTHERN REGION
1341 FILLMORE STREET SUITE 200
TWIN FALLS ID 83301-3380
(208) 736-3037
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail



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