State of Idaho
DEPARTMENT OF WATER RESOURCES
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C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

April 11, 2014

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

Dear Water Users,

You are receiving this letter because you previously asked to be included in the mailing list for the Department's negotiated rulemaking activities related to Rule 50 of the Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11).

On November 2, 2010, Clear Springs Foods ("Clear Springs") filed a petition to amend the Rules for Conjunctive Management of Surface and Ground Water Resources in order to expand the Area of Common Ground Water Supply as set forth in part 37.03.050 of the rule. Various developments have taken place relating to the petition:

1. After consideration of the technical issues raised by Clear Springs' Petition, this Department initiated negotiated rulemaking. Meetings were held in Arco, Boise, Burley, and Chubbuck. Some 180 comments were received.
2. On August 9, 2011 I issued a letter to participants in the process temporarily suspending further action on the petition pending availability of the next generation of the computer model (ESPAM 2) covering the ground water within the Eastern Snake Plain Aquifer.
3. ESPAM 2.1[1] was adopted for use in early 2013.
4. However, a call for priority delivery of water had been filed in December 2011 by Rangen, Inc., a fish hatchery operation in the Hagerman area. Like the negotiated rulemaking on the Area of Common Ground Water Supply, the parties agreed that action on the Rangen call should await the availability of ESPAM version 2.0 (now ESPAM version 2.1).
5. I determined that the information developed in the Rangen administrative process might be helpful to the Department in considering the Area of Common Ground Water Supply (letter to Paul Arrington of September 26, 2013) and in determining if there are any deficiencies in ESPAM 2.1.
6. The final order on the Rangen call was issued on January 29, 2014.

Accordingly, it is appropriate to reinitiate action on Clear Springs' petition. For information on activities under the negotiated rulemaking, interested parties are referred to the Department's web page: http://www.idwr.idaho.gov/WaterInformation/GroundWaterManagement/Petition/default.htm.

Interested parties are particularly invited to read the Director's letter of August 9, 2011 for a summary of the issues raised in the original round of information gathering and analysis.

Information on the ESPAM can be found at:
http://www.idwr.idaho.gov/WaterInformation/Projects/espam/.

The Conjunctive Management Rules, adopted in 1994, address the manner in which the Director will respond to delivery calls where groundwater use may impact the exercise of surface water rights. Several calls have been made and addressed through the Administrative process in accordance with the Rules. Ground

[1] Version 2.0 was a short-lived version of the model. Shortly after role out of 2.0, Department staff discovered some of the data was invalid. The invalid data was corrected and the revision was designated Version 2.1.

water rights within the Area of Common Ground Water Supply are subject to administration to meet a delivery call. Clear Springs Foods petitioned to amend the rule as follows:

> **Eastern Snake Plain Aquifer.** The area of coverage of this rule is the aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, ~~Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408-F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian~~ Enhanced Snake Plain Aquifer Model Final Report dated July 2006, Idaho Water Resources Research Institute Technical Report 06-002.

Currently there are two major active calls under the Conjunctive Management Rules; the Rangen Inc. call and the Surface Water Coalition:

http://www.idwr.idaho.gov/news/curtailment/Curtailment.htm#rngn (Rangen)

http://www.idwr.idaho.gov/News/WaterCalls/Surface%20Coalition%20Call/default.htm (Surface Water Coalition).

In compliance with the administrative requirements governing rulemaking, the Department published a Notice of Intent to Promulgate Rules in the Idaho Administrative Bulletin prior to the initial round of negotiated rulemaking. We intend to republish notice to assure that the administrative requirements are properly followed. The earliest it can be published is in the May bulletin.

The Department believes it is important to again meet water users in the areas potentially impacted by this action. A teleconference will be conducted at **1:30 pm on May 29, 2014**, 21 days following the publication of notice in the Administrative Bulletin. The purpose of the meeting will be to hear from water users and address initial questions. Parties are not required to participate in person. The call in number is **1-215-446-0193** and the pass code is **987764#**. Please see the attached sheet for additional details.

The Department intends to hold additional meetings in areas potentially affected by a rule change. At this time we are considering meetings in Arco, Idaho Falls or Rexburg, the Pocatello area, and Burley.

Sincerely,

Gary Spackman
Director

Encl.