

**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))

IN THE MATTER OF MITIGATION PLAN)
 OF THE NORTH SNAKE AND MAGIC)
 VALLEY GROUND WATER DISTRICTS)
 IMPLEMENTED BY APPLICATIONS FOR)
 PERMIT NOS. 02-10405 AND 36-16645 AND)
 APPLICATION FOR TRANSFER NO. 74904)
 TO PROVIDE REPLACEMENT WATER FOR)
 CLEAR SPRINGS SNAKE RIVER FARM)
)
 (Water District Nos. 130 and 140))

**ORDER DENYING CLEAR
 SPRINGS FOODS, INC.’S
 PETITION FOR
 RECONSIDERATION; AND
 GRANTING REQUEST
 FOR HEARING**

On March 5, 2009, the Director of the Department of Water Resources (“Director” or “Department”) issued an order in this proceeding deciding five separate matters. *Final Order Accepting Ground Water Districts’ Withdrawal of Amended Mitigation Plan, Denying Motion to Strike, Denying Second Mitigation Plan and Amended Second Mitigation Plan in Part; and Notice of Curtailment* (hereinafter “March 5 Order”). The March 5 Order was a final order of the Department issued without a prior hearing. It provided that any party could file a petition for reconsideration within fourteen (14) days.

On March 19, 2009, Clear Springs Foods, Inc. (“Clear Springs”) filed a *Petition for Reconsideration and Request for Hearing* (“Petition”) on the Director’s March 5 Order. The request for hearing was filed pursuant to Idaho Code § 42-1701A(3), which provides that any person not previously afforded an opportunity for a hearing who is aggrieved by a final order may request a hearing before the Director to contest the action taken provided the request is filed within fifteen (15) days from service or notice of the order.

Clear Springs’ *Petition* identifies four matters or issues for which reconsideration is requested:

1. Post-Audit of Ground Water Districts’ prior mitigation actions (Findings of Fact 22 and 23; Conclusion of Law 6). *Petition* at 2.

2. The Director does not have authority to approve a mitigation plan over the objection of the holder of the senior water right (Conclusions of Law 10-11). *Id.* at 3.
3. The First Amended Mitigation Plan should be dismissed with prejudice (Conclusion of Law 12). *Id.* at 4.
4. Clear Springs' Request for Costs and Attorneys' Fees in its Protest (Conclusions of Law 21-24). *Id.* at 4-5.

In addition, Clear Spring's states in its *Petition* that "Clear Springs request[s] a hearing, pursuant to I.C. 42-1701A(3), on IDWR's 'post-audit' of the GWDs' prior mitigation actions. Such a hearing could be consolidated and included in any hearing to be held on the GWDs' Third Mitigation Plan."

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that Clear Spring's petition for reconsideration is DENIED and Clear Springs' request for hearing is GRANTED. The requested hearing on the Department's "post-audit" of the Ground Water Districts' prior mitigation actions shall be consolidated with any hearing to be held on the Ground Water Districts' Third Mitigation Plan.

DATED this 9th day of April 2009.



DAVID R. TUTHILL, JR.
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April 2009, a true and correct copy of the foregoing document was served upon the following by the indicated method:

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

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

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

U.S. Mail, Postage Prepaid
 Facsimile
 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

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

DANIEL V. STEENSON
CHARLES L. HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701-2773
dan@ringertlaw.com
clh@ringertlaw.com

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

MIKE CREAMER
JEFFREY FEREDAY
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701
mcc@givenspursley.com
jcf@givenspursley.com

U.S. Mail, Postage Prepaid
 Facsimile
 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
PO BOX 1846
TWIN FALLS ID 83303-1846
jmay@may-law.com
jdee@tflaw.com

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

ROBERT E. WILLIAMS
FREDERICKSEN WILLIAMS MESERVY
PO BOX 168
JEROME ID 83338-0168
rewilliams@cableone.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
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov

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

STEPHEN P. KAATZ, VICE PRESIDENT
CLEAR LAKE HOMEOWNERS ASSOC
223 CLEAR LAKE LANE
BUHL ID 83316

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

JOHN W. JONES, JR., PRESIDENT
THOUSAND SPRINGS WATER USERS
PO BOX 178
HAGERMAN ID 83332

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

MARK DAILY, PRESIDENT
IDAHO AQUACULTURE
PO BOX 767
HAGERMAN ID 83332

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



Camille Mitchell
Legal Assistant
Idaho Department of Water Resources