

04013A, 36-04013B, and 36-07148 (Snake River Farm); and subsequent Orders relating thereto. These orders are referred to herein collectively as the Director's Orders.

I. RESERVATION OF DEFENSES

By submitting this 2008 Replacement Water Plan, the Ground Water Districts do not waive and expressly reserve any and all objections and defenses they have made to the Director's Orders.

II. INTRODUCTION

The Director's July 8, 2005 and subsequent Orders require that the Ground Water Districts provide mitigation in lieu of involuntary curtailment of ground water rights located in Water District 130. The Director's Orders provided for an accelerated schedule of curtailment or mitigation over a five year period.¹ The Director's Order further provided that Snake River Farm gets 7 percent of the Buhl Gauge to Thousand Springs reach gain.² Accordingly, the 2008 delivery requirement to Snake River Farms to comply with the Director's Order is 2.17 cfs.³

III. 2005, 2006 AND 2007 REPLACEMENT WATER PLANS

The Ground Water Districts previously submitted Replacement Water Plans for 2005, 2006 and 2007. Orders were entered approving the 2005 and 2007 Replacement Water Plans. Because of litigation and appeal relating to the constitutionality of the Conjunctive Management Rules, in *American Falls Reservoir Dist. No. 2 v. Idaho Dept. of Water Resources*, the Director did not issue any order approving or disapproving the Ground Water Districts' 2006 Replacement Water Plan.

¹ The July 8, 2005 Order at page 37 provided that "involuntary curtailment and substitute curtailment together must be implemented in 2005, 2006, 2007, 2008 and 2009, such that based on simulations using the Department's Ground Water Model for the ESPA, phased curtailment will result in simulated cumulative increases to the average discharge of springs in the Buhl Gauge to Thousand Springs Reach . . . for the water rights held by Clear Springs for Snake River Farm, at steady state conditions of at least 8 cfs, 16 cfs, 23 cfs, 31 cfs, and 38 cfs, for each year respectively."

² Finding of Fact 15 at page 5 of the July 8, 2005 Order provided that "the maximum authorized amount of water diverted by Clear Springs for its Snake River Farm . . . accounted for 7 percent of the measured reach gains in the Buhl Gauge to Thousand Springs reach."

³ The 2008 reach gain requirement for the Buhl to Thousand Springs Reach of 31 cfs multiplied by 7% equals 2.17 cfs.

The Ground Water Districts nevertheless continued to implement portions of their proposed 2006 Replacement Water Plan.⁴

The Ground Water Districts' 2005 and 2007 Replacement Water Plans were fully implemented. The Ground Water Districts have provided delivery and diversion data regarding their Replacement Water Plan efforts in each of these previous years to the Department and Ms. Cindy Yenter, watermaster for Water District 130.

IV. 2008 REPLACEMENT WATER PLAN ACTIVITIES

This 2008 Replacement Water Plan and the supporting data and documents previously filed in support of the 2005 and 2006 Replacement Water Plans demonstrate how the Ground Water Districts located within Water District 130 will respond to the Director's Orders and increase aggregate aquifer discharge in the Devil's Washbowl to Buhl and the Buhl to Thousand Springs subreaches.

This 2008 Replacement Water Plan addresses alleged material injury to Clear Springs Foods Snake River Farm spring-dependent water supplies located in the Buhl to Thousand Springs subreach in two ways. First, this 2008 Replacement Water Plan will increase gains to the subreach by the delivery of 35,000 acre-feet via the North Side Canal Company's delivery system to approximately 9,300 acres that have been converted from ground water irrigation to surface water irrigation within the North Snake Ground Water District (conversion deliveries). Second, mitigation will be provided through the direct delivery to Snake River Farm of an estimated 2.0 cfs

⁴ The entire proposal in the Ground Water Districts' 2006 Replacement Water Plan, specifically, late-season recharge, was not implemented because the Department could not guarantee any mitigation credit for that effort in light of the pending appeal to the Supreme Court. Therefore, the Ground Water Districts could not afford to pursue that program last fall. This also resulted in no early-season recharge program in 2007.

of spring flow from Clear Lake Spring under Water Right No. 36-4076 owned by the Idaho Department of Fish and Game (IDFG).

1. Conversion Deliveries

Approximately 9,300 acres within the NSGWD have been converted from ground water irrigation to surface water irrigation to increase incidental recharge to the aquifer and spring discharge. Surface water deliveries to these lands in 2006 and 2007 through the efforts of the Ground Water Districts consisted of a total of approximately 35,000 acre feet each year of actual deliveries to converted acres with charged conveyance losses through the North Side Canal Company delivery system. Under the agreement with North Side Canal Company, a conveyance charge of 30% was added to the delivery amounts.

Projected deliveries for 2008 are 35,000 acre-feet at the North Side Canal Company's point of diversion at Milner Dam, with conveyance losses of approximately 10,000 acre-feet and headgate delivery to converted acres approximately 25,000 acre-feet. For purposes of the Department's analysis, the pattern of deliveries in 2008 should be assumed to be the same as the actual deliveries in 2006 and 2007. All water delivered to the conversion acres should also be assumed to offset consumption of ground water, with any excess water percolating to the aquifer at the location of the converted acres. In addition, North Side Canal Company conveyance charges should be assumed to percolate to the aquifer beneath the pertinent portions of the main canal and laterals used to make the conversion deliveries.

The Ground Water Districts will secure 35,000 acre-feet of water for delivery to the North Side Canal Company's point of diversion at Milner Dam for delivery to the conversion acres in 2008 in the same manner as prior years.⁵

2. Snake River Farm Mitigation Project

An estimated 2 cfs of spring flow under Water Right No. 36-4076 will deliver spring flows directly to Snake River Farm. This water is made available pursuant to agreement with IDFG, which is the owner of Water Right No. 36-4076. IDFG has provided verbal consent for the use of this water right for mitigation purposes. This water right's source is "springs tributary to Clear Lakes." Water Right No. 36-4076 captures a this spring and presently supplies approximately 2 cfs of spring water to IDFG constructed wetlands as mitigation for the construction of the Clear Lakes Grade by the Idaho Department of Transportation. The flow is currently routed through the golf course and under the highway grade to the constructed wetlands. The flow is then discharged into the Snake River.

As part of this 2008 Replacement Water Plan, the spring flow available under Water Right No. 36-4076 will be re-routed to the head of the Snake River Farm raceways. At the bottom of the raceways the flow will be recaptured and pumped back up into the ditch that currently conveys it to the constructed wetlands. Two relatively small pumping plants and two pipelines will be required. These facilities will be designed, installed, operated and maintained at the expense of the Ground Water Districts. The facilities will be located on Clear Springs Food property at such reasonable location as they may direct. The pump stations and pipelines are depicted on the attached

⁵ The Ground Water Districts have contacted Upper Snake River storage contract holders who have leased water in 2007 and prior years to the Ground Water Districts for mitigation purposes and have received verbal commitments to lease sufficient water again in 2008 for in excess of the 35,000 AF needed for conversions. It is anticipated that existing lease agreements with these storage right holders will be extended or new lease agreements entered into with each Lessor within the next several weeks. As in the past, copies of these lease agreements will be provided to the Department along with the necessary Rental Pool and Water Bank Agreements.

preliminary layout. The pump lift for pump station number 1 is about 10 feet, while the pump lift for pump station number 2 is about 20 feet.

Because the proposed pump stations and pipeline will be located in part upon Clear Springs Foods property and will supply spring water directly to Snake River Farm, the Ground Water Districts would propose that: (1) Clear Springs Foods and the Ground Water Districts collaborate and cooperate in the design, installation, operation and maintenance of the facilities; or (2) that Clear Springs Foods design the facilities and upon approval of the estimated costs by the Ground Water Districts, proceed with the prompt installation; or (3) if Clear Springs Foods rejects both of the previous options, then the Ground Water Districts will proceed to design and install the facilities providing the design and specifications to Clear Springs for advance review.

3. Ground Water Districts' Accounting and Monitoring.

The Ground Water Districts will continue to maintain documentation and accounting of its Replacement Water Plan activities and will monitor its activities in cooperation with the Department and the Water District 130 watermaster to verify and monitor compliance with the 2008 Replacement Water Plan.

V. 2008 REPLACEMENT WATER PLAN EFFECTS

The above 2008 Replacement Water Plan Activities are expected to have positive effects on reach gains in the Buhl to Thousand Springs subreach. Based upon the 2008 reach gain requirements for the Buhl to Thousand Springs Reach of 31 cfs and the 7 percent of the subreach gain that inures to the benefit of Snake River Farm, the Ground Water Districts' delivery requirement to Snake River Farm is 2.17 cfs.

Based on the previous analysis of the reach gains benefits of irrigation conversions in Water District 31 and the 35,000 AF of water delivered through the North Side Canal Company system, a

steady state reach gain of 10 cfs will result to the Buhl to Thousand Springs reach. Of this amount, 0.7 cfs will accrue to Snake River Farm. The estimated 2.0 cfs of water right delivered directly from the IDFG Water Right will make up any shortfall and exceed the delivery requirement of 2.17 cfs to Snake River Farm. To aid in the Department's analysis and approval process, the Ground Water Districts rely upon the same data that was submitted in support of the 2007 Replacement Water Plan and the 2007 actual delivery information for the North Snake Ground Water District conversion acres previously submitted to Cindy Yenter.

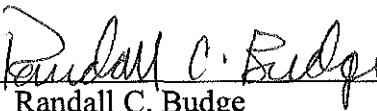
CONCLUSION

The Ground Water Districts request that the 2008 Replacement Water Plan be approved and that the Director make a determination that the 2008 Replacement Water Plan alleviates any need for additional mitigation or curtailment. The Ground Water Districts reserve the right to modify or withdraw the 2008 Replacement Water Plan if not approved by the Director.

DATED this 1st day of April, 2008.

RACINE OLSON NYE BUDGE & BAILEY
CHARTERED

By:



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Attorneys for
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April, 2008, the above and foregoing document was served in the following manner:

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NORTH SNAKE GROUND WATER DISTRICT AND MAGIC VALLEY GROUND WATER DISTRICT JOINT
REPLACEMENT WATER PLAN FOR 2007 - Page 8

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David C. Bulger

Preliminary Layout for Snake River Farm Mitigation Project

