

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

NORTH SNAKE GROUND WATER DISTRICT and MAGIC VALLEY GROUND WATER DISTRICT,)	Case No. 2009-0000431
)	
Petitioners,)	ORDER DENYING MOTION FOR TEMPORARY EX PARTE STAY and ORDER SETTING EXPEDITED HEARING ON MOTION TO STAY
vs.)	
)	
GARY SPACKMAN., in his capacity as Interim Director of the Idaho Department of Water Resources, and THE DEPARTMENT OF WATER RESOURCES,)	
)	
Respondents.)	
vs.)	
)	
CLEAR SPRINGS FOODS, INC.)	
)	
)	
IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHTS NOS. 36-0413A, 36-04013B, and 36-07148.)	
)	
(Clear Springs Delivery Call))	
_____)	

North Snake Groundwater District and Magic Valley Ground Water District ("Ground Water Districts") have filed a *Motion for Stay* pursuant to I.A.R. 13(b)(14) and I.R.C.P. 84(m). The motion seeks a temporary *ex parte* stay of the watermaster's curtailment of junior groundwater rights in Water District Nos. 130 and 140 and enforcement of 2009 curtailment orders issued by the interim director of the Idaho

Department of Water Resources, Gary Spackman ("Director"). In support of the motion, the Ground Water Districts assert that the 2009 curtailment orders arise from the July 8, 2005 Order and July 11, 2008 *Final Order in The Matter of Distribution of Water to Water Rights Nos. 36-04013A, 36-04013B and 36-07148 (Snake River Farm)*, pending on judicial review to this court in Gooding County Case No. CV-2008-444. It is asserted by the Ground Water Districts that the Director has interpreted this court's June 19, 2009 *Order on Petition for Judicial Review* as invalidating the former director's March 26, 2009 *Order Approving Ground Water District's Plan for 2009* upon which the 2009 curtailment orders are based. The Ground Water Districts assert that this has resulted in a "sudden and unexpected change in the rules in the middle of the growing season" which has "left the ground water users with a mitigation plan approved prior to the irrigation season without a hearing that has now been invalidated and with no hearing scheduled." Further, the Ground Water Districts state that they "reasonably relied upon these Orders from the Director in planting and raising their crops and had no reason to expect, nor any control over the subsequent curtailment orders issued by the Interim Director in July and August."

The decision whether to grant a stay pursuant to I.R.C.P. 84(m) is committed to the discretion of the court. The court finds, based upon the motion and affidavits in support thereof:

1. The Ground Water Districts' assertion that the Director has interpreted this court's June 19, 2009 *Order on Petition for Judicial Review* as invalidating the former Director's March 26, 2009 order does not appear to be entirely accurate. Plainly, the current Director continues to rely upon that order. *See Order Regarding Ground Water District's Plan of Action*, July 29, 2009.

2. The Ground Water Districts, by their own admission, have not complied with the March 26, 2009 order which was based upon *their own* mitigation or replacement water plan. The most recent curtailment order results from the Ground Water Districts' non-compliance and, as argued by the Ground Water Districts, the Director's failure to now entertain and conduct proceedings on proposed alternatives.

3. There may be irreparable harm to Clear Springs Foods, Inc. if the court grants a temporary *ex parte* stay.

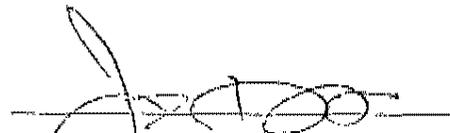
Based upon the foregoing findings, in an exercise of the court's discretion, it is hereby ORDERED as follows:

1. The Ground Water User's *Motion*, to the extent that it seeks a temporary *ex parte* stay is **denied**.

2. The *Motion for Stay* shall be set for an expedited hearing with notice to all parties so that the court may properly determine whether a stay should be entered pending judicial review.

3. A hearing shall be held on the *Motion for Stay* on **Friday, August 21, 2009 at 10:00 a.m. (Mountain Time)**, at the **Snake River Basin Adjudication District Court, 253 - 3rd Avenue North, Twin Falls, Idaho**. Parties may participate by telephone by dialing the number 1-918-583-3445 and when prompted entering code 406128.

Dated August 12, 2009


JOHN M. MELANSON
District Judge