



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098
Phone: (208) 287-4800 • Fax: (208) 287-6700 • Web Site: www.idwr.idaho.gov

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

March 31, 2008

Sent Electronically and via U.S. Mail

John R. MacMillan
Vice President
Clear Springs Foods, Inc.
P.O. Box 712
Buhl, Idaho 83316

Randall C. Budge, Esq.
Racine Olson
P.O. Box 1391
Pocatello, Idaho 83204-1391

Re: Clear Springs Foods, Inc.'s Snake River Farm Request for 2008 Conjunctive Administration

Gentlemen:

This letter is prepared in response to the letter from Dr. MacMillan dated March 28, 2008 (copy enclosed). The letter outlines the expectation by Clear Springs Foods, Inc. for timely and lawful action by the Water District 130 Watermaster to implement the requirements of the July 8, 2005 Order in this matter so as to protect Clear Springs' senior water rights in 2008.

The Clear Springs request is based on the failure of the ground water users to submit an acceptable mitigation or replacement plan for 2008. Consistent with the July 8, 2005 Order, either acceptable mitigation or a replacement plan is required prior to the diversion from ground water of junior water rights in an area computed by the ground water model in this area.

In accordance with the provisions of the July 8, 2005 Order, involuntary curtailment will be ordered if ground water users fail to provide to this office an acceptable mitigation or replacement plan by **5:00 pm on Monday, April 7, 2008** for the consideration and approval of the Director.

Sincerely,



David R. Tuthill, Jr.
Director

Enclosure: Letter from John R. MacMillan dated March 28, 2008



**CLEAR
SPRINGS
FOODS®**

JOHN R. MACMILLAN
VICE PRESIDENT

CLEAR SPRINGS FOODS, INC.
P.O. Box 712, Buhl, Idaho 83316
Phone 208 543-3456
Fax 208 543-4146

March 28, 2008

Director David K. Tuthill, Jr.
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

RECEIVED

MAR 31 2008

DEPARTMENT OF
WATER RESOURCES

Re: Clear Springs Foods, Inc.'s Snake River Farm (2008 Conjunctive Administration)

Dear Director:

I am writing in regards to Clear Springs Foods, Inc.'s ("Clear Springs") request for water right administration to satisfy Clear Springs' senior surface water rights at its Snake River Farm facility. As you are aware, the former Director entered an order on July 8, 2005 ("July 8 Order") that allowed for a 5-year phased-in curtailment program for purposes of administration of hydraulically connected junior priority ground water rights that are injuring Clear Springs' water rights. 2008 is the fourth year of that 5-year phased-in regime.

While the Director's July 8 Order was the subject of an administrative hearing last December before the Honorable Gerald F. Schroeder, and the Hearing Officer has issued recommended orders that must still go through the administrative process for final order by the agency, Idaho law still requires that you administer water rights pending final resolution of that contested case. You apparently recognized this fact last fall when you mailed letters to junior priority ground water right holders warning of potential curtailment in 2008. *See Exhibit A (encl.)*. With respect to Clear Springs' Snake River Farms call you stated:

The 2005 Clear Springs order provides that replacement water in the amount of 31 cfs shall be delivered during year four (2008) to the Buhl Gage to Thousand Springs reach. Without additional mitigation or replacement water being provided, year four of phased in curtailment shall require the curtailment of ground water rights having a priority date later than (junior to) December 10, 1973. This date could be adjusted based on the submittal of an acceptable mitigation plan, and it assumes continuation of existing conversion acres and CREP acres. *Director Tuthill October 17, 2007 Letter at 2. See Exhibit A (encl.)*.

While your letter identified the fourth year requirement from the July 8 Order, it failed to identify the outstanding obligations that ground water users still have to make up due to shortfalls in their "mitigation" actions for 2005, 2006, and 2007. First, IGWA's

Mr. David Tuthill
March 28, 2008
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2005 Replacement Water Plan was subject to a hearing before the Director on June 5, 2006. No order has been issued to address the problems with the 2005 plan that were raised at that hearing. Second, no order has been issued to identify what actions were actually implemented from IGWA's 2006 Replacement Water Plan, and what outstanding obligation remains from that year. Finally, last July you found IGWA's 2007 Replacement Water Plan to be 10.7 cfs short for the third year's required mitigation. See *Order Approving Dairymen's and IGWA's 2007 Replacement Water Plans* at 5, ¶ 11.

Despite the obvious shortfalls in meeting the ordered mitigation requirements the last few years, ground water right holders have been authorized to divert and use water out-of-priority. This conflicts with Idaho law and perpetuates the injury to Clear Springs' senior surface water rights.

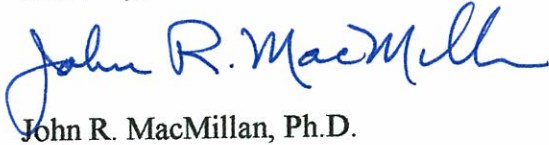
To Clear Springs' knowledge, no "replacement water plans" or "mitigation plans" have been submitted for 2008. Given the time needed for review of any such plan, and the process required by the conjunctive management rules (Rule 43), junior priority ground water right holders have admittedly failed to submit a plan in a timely manner this year. This is despite knowledge of the fourth year required mitigation since 2005 and the warning that you provided last fall. The failure to submit a plan and provide for a meaningful process to review that plan threatens to place junior priority ground water users in the same predicament as last year, a potential mid-season curtailment. Such a scenario provides no certainty to either junior priority ground water users or Clear Springs.

Accordingly, since the irrigation season is set to begin in the next few weeks a curtailment order should be issued promptly to prevent out-of-priority ground water diversions this year. Moreover, the projected priority date for curtailment should be adjusted as well to account for the additional obligations that need to be carried over from past shortfalls.

In sum, Clear Springs expects timely and lawful action by the Water District 130 Watermaster to implement the requirements of the July 8 Order so as to protect Clear Springs' senior water rights in 2008. Please respond and advise us as to the proposed action for 2008 within five (5) business days so that Clear Springs may pursue other legal options if necessary to protect its senior water rights this year.

Mr. David Tuthill
March 28, 2008
Page 3 of 3

Sincerely,

A handwritten signature in blue ink that reads "John R. MacMillan". The signature is fluid and cursive, with the first name "John" and last name "MacMillan" clearly legible.

John R. MacMillan, Ph.D.
Vice-President

Encl: Exhibit A

cc: Mr. John Chatburn
Mr. David Hensley
Ms. Cindy Yenter



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

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October 17, 2007

C. L. "BUTCH" OTTER
Governor

DAVID R. TUTHILL, JR.
Director

TO: Water Right Holder in the Eastern Snake Plain Aquifer

Re: Notice of Potential Curtailment of Ground Water Rights in the Eastern Snake Plain Aquifer

Dear Water Right Holder:

This letter is provided to inform you that you are the water right holder of record for one or more water rights that could **potentially** be subject to curtailment during 2008. The enclosed map depicts areas of potential curtailment based on three water right calls, described below. The delivery calls were made under the Department's Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11). The calls include ground water rights for irrigation, commercial, industrial, municipal, non-exempt domestic use, and other consumptive uses. Non-consumptive uses and culinary in-house uses of water will not be subject to curtailment under the orders.

Hearings

Information in this letter might be modified as a result of hearings on the existing orders, scheduled to begin on November 28, 2007, for the Blue Lakes call and the Clear Springs call, and on January 16, 2008, for the Surface Water Coalition call. Information related to the hearings is posted on the IDWR website at www.idwr.idaho.gov.

Blue Lakes Call

The Blue Lakes water rights authorize the diversion of water from Alpheus Creek located in the Devil's Washbowl to Buhl Gage spring reach north of Twin Falls. An order issued on May 19, 2005 determined that diversion and use of ground water under water rights with junior priority dates causes material injury to Blue Lakes' water right no. 36-07427. A copy of the order can be found on IDWR's website at: <http://www.idwr.idaho.gov/Calls/Spring%20Users%20Calls/Blue%20Lakes%20Order%2005-19-05.pdf>.

The 2005 Blue Lakes order provides that replacement water in the amount of 40 cubic feet per second (cfs) shall be delivered during year four (2008) to the Devil's Washbowl to Buhl reach. Without additional mitigation or replacement water being provided, year four of phased curtailment shall require the curtailment of ground water rights having a priority date later than (junior to) March 3, 1982. This date could be adjusted based on the submittal of an acceptable mitigation plan, and it assumes continuation of existing conversion acres and CREP acres.

Clear Springs Call

The Clear Springs water rights for use at its Snake River Farm authorize the diversion of water from springs tributary to Clear Lakes located in the Buhl Gage to Thousand Springs reach east of Buhl. An order issued on July 8, 2005 determined that diversion and use of ground water under water rights with junior priority dates causes material injury to Clear Springs' water right no. 36-04013B. A copy of the order can be found on IDWR's website at: <http://www.idwr.idaho.gov/Calls/Spring%20Users%20Calls/Clear%20Springs%20Order%2007-08-05.pdf>.

The 2005 Clear Springs order provides that replacement water in the amount of 31 cfs shall be delivered during year four (2008) to the Buhl Gage to Thousand Springs reach. Without additional mitigation or replacement water being provided, year four of phased curtailment shall require the curtailment of ground water rights having a priority date later than (junior to) December 10, 1973. This date could be adjusted based on the submittal of an acceptable mitigation plan, and it assumes continuation of existing conversion acres and CREP acres.

Surface Water Coalition Call

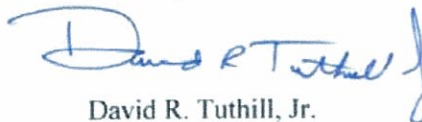
The Surface Water Coalition call applies to ground water rights that impact the Snake River in the American Falls area where the aquifer and river are hydraulically connected. This priority administration of water rights is occurring as required by the order of May 2, 2005, issued in response to the water delivery call made by members of the Surface Water Coalition, comprised of A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company. A copy of the order can be found on the IDWR website at:
<http://www.idwr.idaho.gov/Calls/Surface%20Coalition%20Call/default.htm>.

Under the 2005 order, I am required to make a determination of the extent of material injury reasonably likely to occur to members of the Surface Water Coalition during the 2008 irrigation season as a result of depletions caused by the diversion of water under junior priority ground water rights. This determination will be made with forecasts of the expected runoff based on the snow survey conducted on April 1, 2008. Depending on the expected snow pack, the determination could result in the curtailment of consumptive ground water rights during the 2008 irrigation season. IDWR computations predict that if the expected runoff is 105% of normal, no curtailment will be required. If the predicted runoff is the same as in 2007, curtailment could impact priority dates as early as September 19, 1960. If the predicted runoff is the same as in 1977, the lowest runoff year on record, curtailment could impact priority dates as early as September 4, 1950. The submittal of acceptable mitigation plans could protect specified water rights from curtailment.

CREP

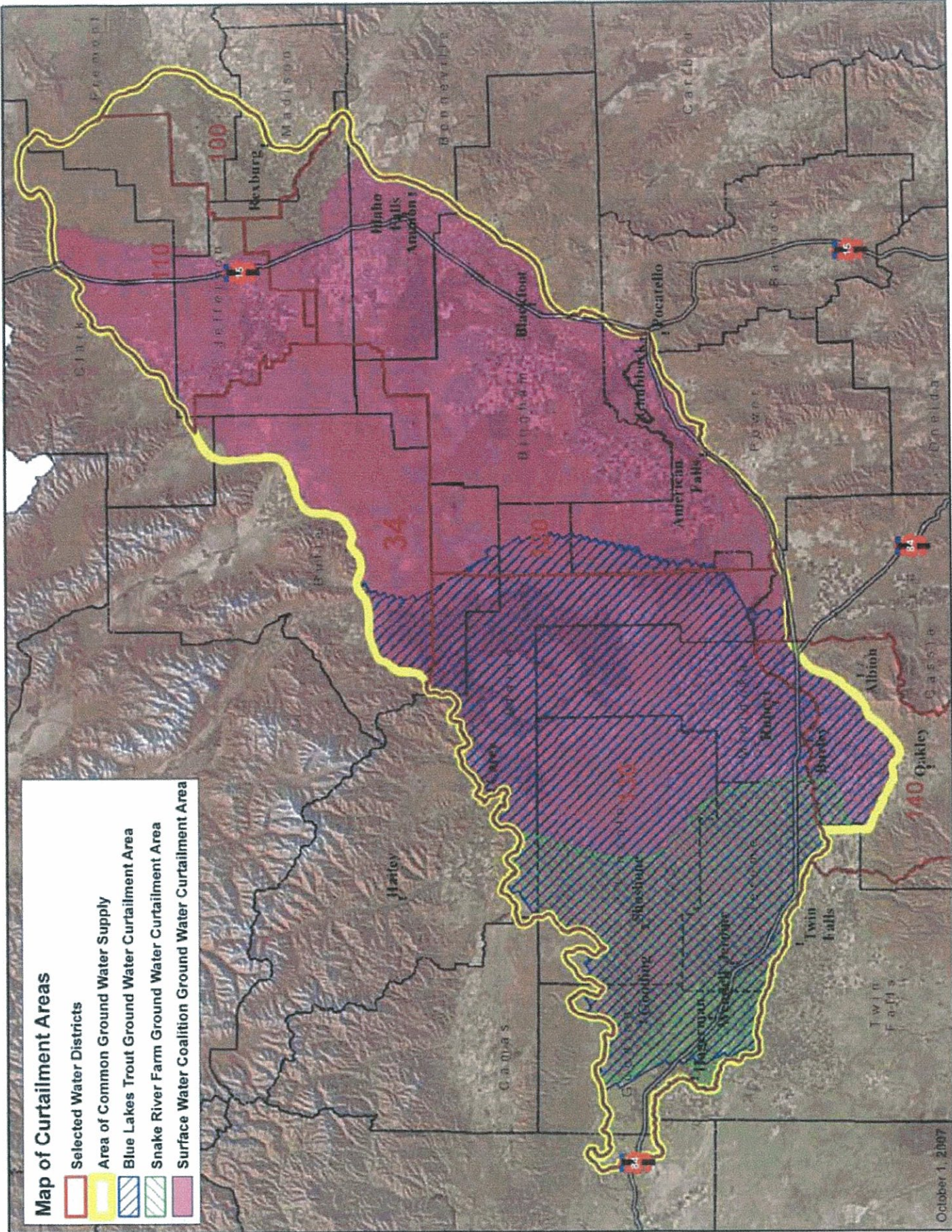
Issuance of a curtailment order will affect the eligibility of land to be enrolled in the Conservation Reserve Enhancement Program (CREP). The United States Department of Agriculture (USDA) Farm Service Agency's rules for CREP require that "the cropland must be physically and legally capable of being irrigated in a normal manner when offered for enrollment." Upon the issuance of a curtailment order, cropland irrigated with curtailed water rights is no longer "legally capable of being irrigated" and is therefore no longer eligible for CREP. Producers should also be aware that CREP is limited to an enrollment of 100,000 acres. For further CREP eligibility requirements, producers should seek advice from their local USDA Farm Service Agency office.

Sincerely,



David R. Tuthill, Jr.
Director

Enclosure: Location Map of Curtailment Areas



Map of Curtailment Areas

- Selected Water Districts
- Area of Common Ground Water Supply
- Blue Lakes Trout Ground Water Curtailment Area
- Snake River Farm Ground Water Curtailment Area
- Surface Water Coalition Ground Water Curtailment Area