



## 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](http://www.idwr.idaho.gov)

July 23, 2009

C. L. "BUTCH" OTTER  
Governor

DAVID R. TUTHILL, JR.  
Director

Idaho Power  
Attn: James C. Tucker  
PO Box 70 (83707)  
1221 W. Idaho ST  
Boise, ID 83702

RE: Your Correspondence Dated March 11, 2009 Concerning Water Right 36-8761

Dear Mr. Tucker:

On March 12, 2009, the Idaho Department of Water Resources (Department) received a letter from you in response to your having received a notice of curtailment from the Water District 130 watermaster for the above referenced water right pursuant to the Clear Springs Foods Snake River Farm delivery call. Your letter was forwarded to me for a response and I initially prepared one but did not send it since the pending curtailment in March of this year was avoided due to the Director's acceptance of a plan to mitigate the delivery call from the Idaho Ground Water Appropriators. I apologize for not having responded earlier.

As you may be aware, the current Interim Director signed a second curtailment order in the Snake River delivery call matter on July 22, 2009. The Department has not sent Idaho Power a notice of curtailment relative to this second order and in fact removed the above referenced right from the list of water rights affected by the order. The Department removed the right from the list of affected rights based on the fact that the location of the water right and well is located below the canyon rim. The area below the rim and within both Administrative Basin 36 and Water District 130 will be removed from the next version of the Department's Eastern Snake Plain Aquifer ground water model (ESPAM). The Department therefore has granted the request sought by your March 11, 2009 letter.

For the record, the Department does not particularly agree with your analysis that the use authorized by right 37-8761 meets the domestic exemption provided by Idaho Code § 42-111. However, this point is perhaps not relevant since the Department is removing the right and the area below the rim from the ESPAM. The right should not be subject to future conjunctive management delivery calls in Water District 130. We are happy to further discuss with you the exemption provisions in Idaho Code § 42-111 if necessary.

Respectfully,

Tim Luke  
Water Distribution Section

Cc: Cindy Yenter, Water District 130 Watermaster  
North Snake Ground Water District  
Magic Valley Ground Water District

RECEIVED

MAR 12 2009

DEPARTMENT OF  
WATER RESOURCES



James C. Tucker  
Attorney  
[jtucker2@idahopower.com](mailto:jtucker2@idahopower.com)

March 11, 2009

Cindy Yenter  
Watermaster  
Idaho Department of Water Resources  
1341 Filmore Street, Suite 200  
Twin Falls, Idaho 83301-3380

Re: Notice of Pending Curtailment of Water Rights

Dear Ms. Yenter:

The Idaho Power Company is in receipt of your letter dated March 6, 2009 relative to the potential curtailment of WR # 36-8761, a water right associated with the Company's Niagara Springs steelhead hatchery. This water right provides the domestic water supply for four homes, the hatchery office building and public restrooms at Niagara Springs steelhead hatchery.

Our review of the March 5, 2009 notice of curtailment referenced in your letter indicates that the notice does not apply to "ground water rights use (sic) for *de minimis* domestic purposes where such domestic use is within the limits of the definition set forth in Idaho Code § 42-111...". Idaho Code § 42-111 defines domestic purposes as follows:

- (a) The use of water for homes, organization camps, public campgrounds, livestock and for any other purpose in connection therewith, including irrigation of up to one-half (1/2) acre of land, if the total use is not in excess of thirteen thousand (13,000) gallons per day, or
- (b) Any other uses, if the total use does not exceed a diversion rate of four one-hundredths (0.04) cubic feet per second and a diversion volume of twenty-five hundred (2,500) gallons per day.

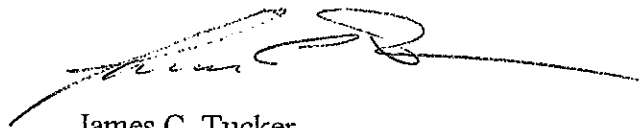
The license that the Company holds for this water right contains the following conditions:

1. The domestic use authorized under this right shall not exceed 13,000 gallons per day per home nor 2,500 gallons per day for the office and restroom facility.
2. Domestic use is for 4 homes, the hatchery office building and public restrooms at Niagara Springs steelhead hatchery and does not include lawn, garden, landscape, or other types of irrigation.

As such, the Company believes that this water right (#36-8761) is excluded from the above referenced curtailment notice. We would appreciate your written confirmation of this fact. In the event that the Department considers that this water right is subject to the curtailment notice, we would appreciate being advised of the basis for that conclusion.

On a more practical note, enclosed is a site-map illustrating that the well location and place of use for this water right is below the canyon rim, in close proximity to the Snake River. From simply the location of this well, it seems clear that the curtailment of this water right would provide no water to the springs from which Clear Springs Foods, Inc. diverts water for its Snake River Farm facility near Buhl, Idaho.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'James C. Tucker', with a long horizontal line extending to the right.

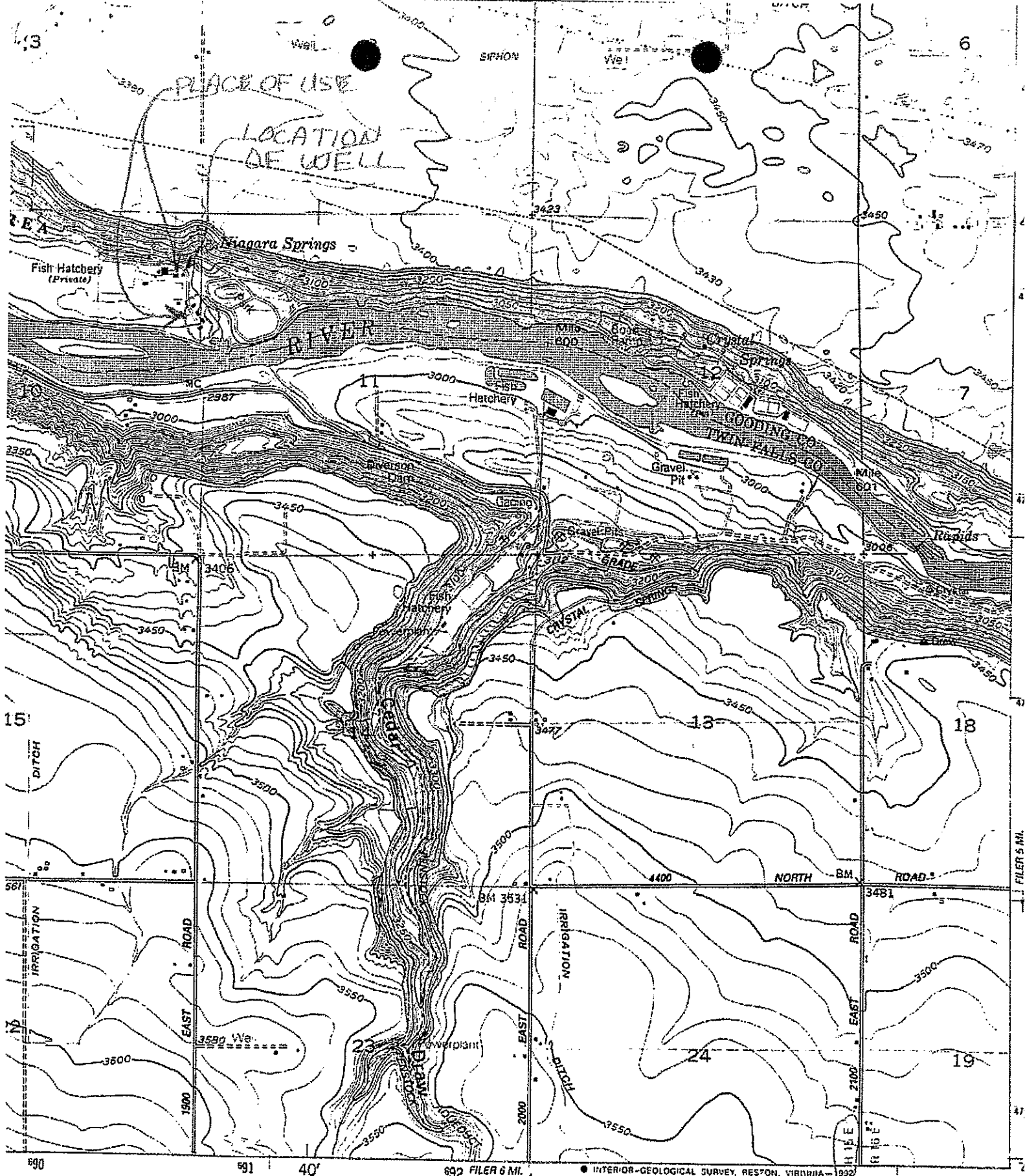
James C. Tucker

JCT:sh

Enclosure

cc: Jon Bowling

✓ David R. Tuthill, Jr. Director, IDWR  
North Snake Ground Water District  
Magic Valley Ground Water District



**TOWNSHIP 09 S  
RANGE 15 E**

1 MILE  
300 500 600 700 FEET  
1 KILOMETER

**ROAD CLASSIFICATION**

Primary highway, hard surface	Light-duty road hard or improved surface
Secondary highway hard surface	Unimproved road
Interstate Route	U S Route
	State Route

APR 10 1997