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Magic Valley GW District
North Snake GW District
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Busch Agricultural Resources, Inc.
Jerome Cheese
United Water, Inc.
City of American Falls
City of Blackfoot
City of Chubbuck
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NEWS RELEASE

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State order to shut off groundwater pumps will lead to economic disaster, dry up 41,000 acres of farmland

Farmers, cities, factories, food processors will face layoffs during severe recession, despite extraordinary offers of compromise

The Idaho Department of Water Resources has ordered over 830 irrigation, industrial, commercial and municipal water rights in Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls counties to shut off their water, so that Clear Springs Food Inc. can continue to receive an mere 2 cubic feet per second of additional water flow.

“This Order is a train wreck which will cause a disaster to the economy of the Magic Valley and the State’s largest industry, the dairies,” said Lynn Carlquist, Chairman of North Snake Ground

Water District. Carlquist pointed to a story in Saturday's Idaho Statesman announcing the Idaho jobless rate is at a 21-year high of nearly 7 percent, with some 53,000 unemployed; the state is expecting a 12 percent drop in tax revenue. Economists say joblessness will continue to rise nationally for the rest of the year and into early 2010, with the unemployment rate reaching 9 to 10 percent before it turns around.

"It's amazing we would inflict this much economic devastation to protect a \$34,000 claim to water," Carlquist said. "To avert this catastrophe, we have offered to immediately pay Clear Springs for their actual lost profits, but IDWR Director Tuthill has rejected multiple mitigation plans which were carefully designed to provide replacement water or fish or monetary compensation for lost profits, any of which would fully prevent any material injury."

Economic studies performed by the State and private experts estimate the economic impact from such a curtailment to be \$24 M in annual crop losses, as well the loss of thousands of jobs and hundred thousands of dollars in tax revenues to the state and local governments. The shutoff will potentially run dairymen out of business, who can no longer meet their waste management obligations through irrigation.

The curtailment order is the latest step in a decade-long dispute between groundwater pumpers on the Snake River Plain aquifer and the aquaculture industry that uses spring flows from the aquifer. In a groundwater system, it is often impossible to point to any one particular user who is reducing flows to others. So spring users, including Clear Springs Food, sought to exercise its senior water rights and have all junior groundwater rights on the Snake River Plain shut down.

Based on Clear Springs' own records, the profits from fish produced is about \$17,000 per cfs if the water was immediately available. The Ground Water Districts proposed to immediately pay Clear Springs in full for its lost profits due to the 1.99 cfs shortage for a total of \$34,000 or to provide fish to replace the lost production, but Director Tuthill flatly rejected both proposals.

"It is ironic now that IDWR, the very state agency that helped establish a viable agricultural economy, is now using its own rules to curtail the ground water rights they issued and it return the region to a desert," said according to Dean Stevenson, a board member with Magic Valley Ground Water District.

Instead, the Director has ordered the curtailment of all agricultural, commercial, industrial and municipal water rights junior to November 16th, 1972 impacting more than 860 water rights in Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls Counties and drying up over 41,000 acres of irrigated land.

"The economic disaster is being done to supply a mere 1.99 cfs of flow to Clear Springs, most of which would not appear for decades," said Lynn Tominaga, Executive Director, IGWA. "All indications are that Clear Springs would not sell more fish due to the depressed markets and surplus supply."

History of compromise

IGWA and Ground Water Districts have worked hard to protect the rights of senior users. In addition, groundwater users have been among the first water users to adopt stringent water conservation technologies.

Recognizing the complexity of ground water use, in 1994, IDWR adopted rules allowing junior ground water right holders to avert a shutdown of their rights, if they submit plans to replace water or provide other compensation to senior water rights holders. IDWR first issued an order in 2005 curtailing surface pumpers' rights. In response, IGWA and the Ground Water Districts submitted annual mitigation plans that prevented injury to Clear Springs and thereby avoided curtailment. Even though the 2005 Order is currently pending on appeal in Gooding County, the Ground Water Districts moved forward in good faith with several alternative mitigation plans, including:

- Funding and supplying surface water for 9,300 acres of land irrigated from ground water to surface water irrigation.
- Spending \$11 M to purchase Pristine Spring aquaculture rights .
- Direct delivery of replacement water below the rim to Clear Springs from nearby springs owned by Idaho Fish and Game.
- Drilling of new wells to supply water.
- Drying up of land above the rim and delivering water from those wells.
- Installing oxygen aeration and pump and filtration facilities to allow re-circulation of existing water supplies.
- Compensate Clear Springs for all their lost profits or to replace their lost fish production.

“Clear Springs Foods have repeatedly rejected all of these proposals and they to want nothing other than curtailment of irrigated land or to hold the Ground Water Districts hostage, extract millions of dollars and force hearings and infrastructure that Clear Springs may or may not use,” said Lynn Tominaga, Executive Director for IGWA. “The Director appears to have a preference for agendas based upon curtailment and has chosen to ignore the plain language of his own rules that specifically allows mitigation plans that provide for either replacement water or other compensation plans.”

Because of Clear Springs repeated protests to every replacement water plan submitted, the Ground Water Districts decided to withdraw their replacement water mitigation plans. But, the Ground Water Districts proposed a viable plan pending before the Director to fully mitigate Clear Springs' injury by providing money to pay Clear Springs for their lost profits or provide replacement fish equivalent to what might have been produced with the lost 2 cfs of water..

The Ground Water District's attorney Randy Budge anticipates an appeal of the Order by the District Court indicating “the Ground Water Districts believe that the Director's Order was arbitrary and capricious and without any sound policy or purpose simply ignored or misinterpreted the Department's own Conjunctive Management Rule 43 which specifically authorizes mitigation plans that provide for ‘other appropriate compensation’ or ‘replacement water.’ “Clearly it would seem that Clear Springs can have no injury if the fish they could have produced from the 2 cfs water are replaced in kind or if they are paid in money the lost profit

from the this small reduction in fish production.”

Tominaga stated that the Director’s Order puts the parties back on the course of continued litigation losing yet another opportunity to help develop both short and long term solutions.