

THE EASTERN SNAKE PLAIN AQUIFER MITIGATION, RECOVERY AND RESTORATION AGREEMENT FOR 2004

This agreement is entered into between the State of Idaho, spring users in the Thousand Springs Reach of the Snake River, and the Magic Valley Ground Water District (MVGWD) and the North Snake Ground Water District (NSGWD). The term of this Agreement shall extend from March 15, 2004 until March 15, 2005.

1. Legislative Commitments

- A. The Legislature will direct the Natural Resource Issues Interim Committee to do the following prior to the First Regular Session of the 58th Idaho Legislature:
 1. Oversee and ensure that all State commitments set forth herein are fulfilled;
 2. Develop short-term and long-term Eastern Snake Plain Aquifer (ESPA) management goals and objectives together with standards to determine whether the goals are being met, all of which are consistent with the prior appropriation doctrine and state law.
 3. Investigate and make recommendations regarding water supply measures or projects that should be implemented to achieve the short-term and long-term goals and objectives, including but not limited to the following:
 - a. Review the study by the Idaho Department of Water Resources (IDWR) on the "Feasibility of Large-Scale Managed Recharge of the Eastern Snake Plain Aquifer System," (December 1999) and any other applicable studies and do the following:
 - i. Reach agreement on what portions of the plans should be pursued;
 - ii. Develop a process and time frame for resolving any impediments to implementation of those portions of the recharge plans to be pursued;
 - iii. Develop recommendations for securing necessary funds for those portions of the recharge plans to be pursued; and
 - iv. Develop and implement steps necessary to obtain access to federal sites and facilities necessary for the portions of the recharge plans to be pursued.
 - b. Investigate and make recommendations on the feasibility of construction or acquisition of additional storage space, including but not limited to the State becoming a cooperating partner in the rebuilding of Minidoka Dam.
 4. Investigate the extent of ground water depletions, which occur and have occurred in the ESPA and make recommendations for reducing or curtailing certain ground water depletions, including but not limited to the following:
 - a. Develop recommendations to facilitate reductions or curtailments of certain ground water pumping by providing a permanent

- alternative surface water supply;
 - b. Develop recommendations for an enhanced Conservation Reserve Program (CRP) set aside program;
 - c. Develop recommendations for purchase or acquisition of lands having the most significant impact on spring flows;
 - d. Develop a common database of facts and model runs which shall serve as the basis for future discussions; and
 - e. Other issues identified by the Committee.
 5. Investigate and make recommendations for augmenting spring flows, including but not limited to a study of constructing a pump back facility from Clear Lake for providing water of requisite quality to Clear Lakes springs acceptable to Clear Lakes and Clear Springs for fish production.
 6. Study and recommend a method for funding implementation of the short-term ESPA management goals and objectives, including but not limited to a water use fee and use of state bonding authority.
 7. Evaluate and make recommendations regarding legal mechanisms for implementing administration of surface and ground water rights, including but not limited to use of ground water management areas. Recognizing that this agreement may protect ground water pumping by ground water users who are neither signatories to this agreement nor members of the signatory ground water districts and who have not provided mitigation, the committee will develop methods for ensuring full future participation of all ground water users in any mitigation efforts.
 8. The Committee shall meet on a monthly basis beginning on or before April 15, 2004. The Committee shall establish milestones and establish and oversee technical committees and stakeholder committees as necessary to effectuate the duties of the Committee. The Committee shall maintain a record of each meeting and create quarterly reports available to the public.
- B. The Legislature will enact legislation during the 2004 Legislative Session to create an Aquaculture Commission.
- C. The Legislature will provide an FTE within the Department of Commerce in 2004 to assist agencies of the State of Idaho and water users affected by the decline in the ESPA and spring flows to identify and obtain funding for programs and projects for the recovery of the ESPA and restoration of spring flows. The responsibilities of this position will include the following:
 1. providing support and assistance to the Natural Resource Issues Interim Committee as requested;
 2. providing support and assistance to the Aquaculture Commission in carrying out its powers and duties; and
 3. providing assistance to water users and agencies of the state in identifying and obtaining funding for:
 - a. financial relief for affected spring water users;
 - b. aquifer recharge projects;
 - c. projects to reduce ground water withdrawals; and

- d. projects for spring users to augment spring flows and water deliveries.
 - D. The Legislature will provide an Engineer Tech 1 FTE within the Department of Water Resources in 2004 to assist the water masters for Water District Nos. 36A and Water District 130 and to assist with the identification and evaluation of alternatives to enhance the available spring flows.
 - E. State and federal funding will be provided to conduct an independent study during the 2004 calendar year to determine the feasibility of projects augmenting spring flows for spring dependent sources. The study will include but not be limited to determining whether currently unappropriated spring flows can be made available to spring dependent water users and whether other surface supplies can be made available to non-spring dependent water users to increase the availability of spring flows for spring dependent water users.
 - F. The State will commit \$300,000 during 2004 for development and implementation of a long-term aquifer management plan. The State also will seek federal cooperation and assistance in development of a long-term aquifer management plan through the 2025 Grant Program and other funding sources.
 - G. The Legislature will create a fund within the Department of Commerce to be used for providing grant money to affected spring users to implement infrastructure improvements to address spring water supply problems. Among other sources, this fund will be authorized to receive monies from water users causing depletions to the ESPA. The Legislature will appropriate \$500,000 during FY 2005 to this fund. Upon request of the permit holder, one of the projects to be funded is the drilling of test wells to determine the feasibility of augmenting the water supply for aquaculture uses in the Clear Springs area. If the project is pursued, the test wells will be drilled on or before December 31, 2004, if protests to the pending applications are resolved in a timely fashion and the permits are developed in accordance with the filings. The State agrees to expedite the resolution of all protests. Clear Lakes and Clear Springs agree to withdraw their respective protests to the applications filed.
 - H. The Legislature will appropriate \$520,000 to the Idaho Water Resource Board in FY 2004 to lease 40,000 acre-feet of storage water for providing replacement water for delivery in Water District 130.
 - I. The Legislature will appropriate \$500,000 to the Idaho Water Resource Board loan fund. The Board will be authorized to loan up to \$500,000 to the North Snake Ground Water District and the Magic Valley Ground Water District for undertaking mitigation measures.
 - J. During the 2005 legislative session, the Legislature will review and take action on recommendations from the Natural Resource Issues Interim Committee that are the most beneficial and feasible.
2. Executive Branch Commitments
- A. The State will provide up to \$300,000 in 2004 and \$500,000 in 2005 consisting of 20 percent grants and 80 percent loans to ground water users to be used in reducing ground water pumping through conversion to surface water supplies.
 - B. In a collaborative effort with the existing technical advisory committee, IDWR

will complete simulated runs of management scenarios with the reformulated/recalibrated ESPA ground water model by December 2004.

- C. IDWR will initiate a negotiated rulemaking process for review and modification of the existing conjunctive management rules, as determined to be needed and appropriate.
- D. The Department of Commerce will provide business assistance related to water users in the Thousand Springs Reach. The main objective will be to seek business solutions for water users impacted by the declining aquifer level and spring flows.
- E. The Department of Agriculture will provide technical assistance to aquaculture interests in development of marketing strategies for aquaculture products.
- F. The Governor, by executive order, will reaffirm the amended moratorium on ground water development dated April 30, 1993 as it applies to the ESPA. IDWR will take such actions as necessary to ensure compliance with the moratorium.
- G. State agencies will provide technical and legal support for the Natural Resource Issues Interim Committee and any subcommittees as requested.
- H. The Executive Branch will cooperate as necessary to implement the congressional commitments set forth below.

3. State Congressional Commitments

Based upon conversations with staff of the Congressional delegation, the Congressional delegation is prepared to undertake the following actions, with the understanding that they can only guarantee best efforts and not the actual outcome of the efforts listed below.

- A. The Congressional delegation will seek to facilitate active federal participation and assistance in resolving the ESPA crisis.
- B. The Congressional delegation will assign staff to work with the Natural Resource Issues Interim Committee.
- C. The Congressional delegation will pursue the following:
 - 1. Enactment of the Agriculture Assistance Act of 2004 to provide drought relief funds for aquaculture facilities affected by reduced ESPA and spring water supplies;
 - 2. Identifying other available federal funding sources and programs to facilitate implementation of projects to protect, maintain, and increase the ESPA water supply, increase aquifer levels, reach gains and springs flows. Funding for the following activities will be explored:
 - a. an enhanced CRP set aside program;
 - b. recharge projects;
 - c. incentives for permanent conversions from ground water irrigation systems to surface water irrigation systems; and
 - d. other measures identified by the Interim Natural Resource Issues Committee.
 - 3. Facilitate access to or acquisition of federal lands and facilities necessary for managed recharge.
 - 4. Encourage the Bureau of Reclamation (BOR) to facilitate and expedite efforts to implement a managed recharge program, including but not limited to providing access to federal facilities for recharge.

5. Encourage the BOR to study the feasibility of opening its Pilot Leasing Program to ESPA ground water users.
 6. Assist in obtaining ESA assurances through issuance of a new biological opinion for the operation of Upper Snake River BOR Projects.
 7. Encourage the BOR to add additional storage space as part of the reconstruction of the Minidoka Dam.
4. Ground Water User Commitments
- A. Encourage and participate in Idaho legislative and executive commitments.
 - B. Coordinate distribution of 2004-2005 state funds described in section 2.A above to convert current ground water irrigated lands to surface water supply.
 1. 2004 conversions estimated to be 4,700 acres in areas intended to benefit Clear Lakes/Clear Springs spring and Billingsley Creek.
 2. 2005 conversion goal of 3,000 acres.
 - C. Continue to provide technical participation and support to Technical Advisory Committee.
 - D. Encourage and participate as appropriate in state/federal initiatives to facilitate aquifer management, including but not limited to:
 1. Access to federal facilities for water distribution;
 2. Use of storage water for management/mitigation activities;
 3. Aquifer recharge;
 4. Drought relief legislation/funds to qualifying spring users; and
 5. Acreage reduction/conservation reserve legislation/funds for ground water irrigated acres.
 - E. Implement the following mitigation measures:
 1. Provide up to 10,000 acre-feet of substitute surface water supply received from the rental of storage water to Billingsley Creek water users via Sandy Project/Pipeline to be documented through an IDWR approved measuring device(s);
 2. Use best efforts to convey Northside Canal Company operational spills to the Sandy project into the Sandy pipeline;
 3. Continue to provide surface water as substitute supply to 4,300 acres of previously converted ground water irrigated acres in NSGWD;
 4. Curtail ground water diversions on up to 3,000 acres in MVGWD and an additional 4,700 acres in NSGWD in 2004;
 5. Provide permanent alternate water supply to satisfy the Osborne delivery call; and
 6. Restrict the season of use for irrigation diversions by ground water district members from April 10 to October 31.
 - F. Provide \$ 1 million to spring user entity no later than July 15, 2004 for the benefit of affected spring users subject to the following conditions:
 1. This payment shall not create any expectation or precedent that the ground water districts will make any future payments;
 2. State provides a \$500,000 loan to the North Snake Ground Water District and the Magic Valley Ground Water District;

3. Spring user entity shall be responsible for allocating money among spring users;
 4. All pending delivery calls against the aquifer and conjunctive management litigation are stayed and no further delivery calls against the aquifer will be made from March 15, 2004 to March 15, 2005;
 5. Payment or receipt of these funds shall not be deemed a waiver of any future claims or defenses, or be deemed an admission against interest nor shall it be used as evidence in any other proceeding;
 6. No curtailments, conversions or reductions in pumping beyond those set forth above shall be required or sought from ground water users during the term of this agreement; and
 7. Approval of the ground water commitments and the state commitment to rent 40,000 acre-feet of storage water as an effectively operating mitigation plan.
- H. Provide quarterly updates on actions taken throughout the term of the Agreement.
5. Spring User Commitments
 - A. Encourage and participate in Idaho legislative and executive commitments.
 - B. Agree to: stay all pending delivery calls against the aquifer; to not make any delivery calls against the aquifer or between water users from a single spring source based upon the amount of water available from the spring source; to stay Civil Case No. CV OC 0307551D; and to stay the administrative challenge of IDWR's Order Dissolving the Thousand Springs Ground Water Management Area from March 15, 2004 to March 15, 2005. This shall not preclude the historical or agreed upon administration of water rights in accordance with state law.
 - C. The present setting of the adjustable weir structure distributing water between Clear Lakes and Clear Springs will remain in place, as determined by the weir stem height on March 15, 2004, until March 15, 2005, except that as spring flow into the Western Pool increases Clear Springs shall not be entitled to receive more than 200 cfs, and as spring flow into the Western Pool decreases Clear Springs shall continue to be entitled to receive a maximum of 200 cfs until the adjustable weir is raised to the weir stem height existing on March 15, 2004. On March 15, 2005 the watermaster shall recommence delivery of water in accordance with the applicable watermaster instructions. This weir setting agreement shall not create any precedent for distribution of water from Clear Lakes Springs after March 15, 2005.
 - D. Spring users will form a legal entity to receive the payment from the ground water districts. This entity shall be empowered to perform all duties required by this agreement. Membership in the legal entity shall be open to all affected spring users.
 - E. Acceptance of payment under this agreement shall not preclude making a claim for future payments.
 6. General Provisions
 - A. The legal rights of all parties are preserved without limitation except as

- specifically provided in this Agreement.
- B. This Agreement has been reached as the result of good faith negotiations for the purpose of resolving legal disputes, including pending litigation, and all parties agree that no offers and/or compromises made in the course thereof shall be construed as admissions against interest or be used in any legal proceedings, except for the purpose of implementation and enforcement of this Agreement.
 - C. The Agreement shall bind and inure to the benefit of the parties and their respective successors.
 - D. This Agreement sets forth all the covenants, promises, provisions, agreements, conditions, and understandings between the parties and there are no covenants, provisions, promises, agreements, conditions, or understandings, either oral or written between them other than are herein set forth.
 - E. The provisions of this Agreement are not severable.
 - F. Headings appearing in this Agreement are inserted for convenience and reference and shall not be construed as interpretations of the text.
 - G. This Agreement shall not be extended or treated as an approved mitigation plan after March 15, 2005, without agreement of all the parties to this Agreement.
 - H. This Agreement shall be effective until March 15, 2005.
 - I. The parties represent and acknowledge that each of the undersigned is authorized to execute this Agreement on behalf of the party or parties they represent.

The parties have executed this Agreement on the date following their respective signatures.

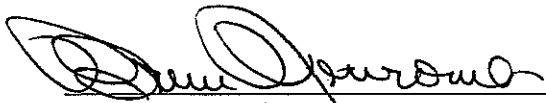
FOR THE STATE OF IDAHO:



DIRK KEMPTHORNE,
GOVERNOR

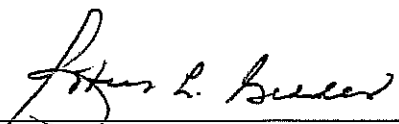
Date:

March 20, 2004



BRUCE NEWCOMB,
SPEAKER,
IDAHO HOUSE OF
REPRESENTATIVES

Date: 3/20/04



ROBERT L. GEDDES,
PRESIDENT PRO TEM,
IDAHO STATE SENATE

Date: 3/20/2004

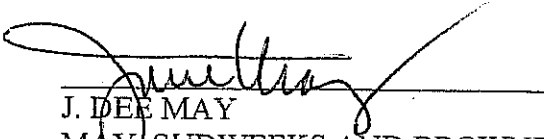
FOR CLEAR LAKES TROUT COMPANY, RIMVIEW TROUT COMPANY, FISHERIES
DEVELOPMENT CORPORATION AND THE ESTATE OF EARL M. HARDY:

Daniel Steenson

Date: 3-20-04

DANIEL V. STEENSON
RINGERT CLARK CHARTERED
P.O. Box 2773
Boise, ID 83701-2773
(208) 342-4591

FOR RANGEN INC.:



J. DEE MAY
MAY, SUDWEEKS AND BROWNING
P.O. Box 1846
Twin Fall , ID 83301
(208) 733-7180

Date: 3/20/04

FOR NORTH SNAKE GROUND WATER DISTRICT:



MICHAEL C. CREAMER
Givens Pursley LLP
P.O. Box 2720
Boise, ID 83701-2720
(208) 388-1200

Date: March 20, 2004

FOR MAGIC VALLEY GROUND WATER DISTRICT:

Orlo H. Maughan
ORLO H. MAUGHAN,
Chairman

Date: 3-20-04

FOR THOUSAND SPRINGS WATER USERS ASSOCIATION, INC.

J. W. Jones Jr.

Date: 3-25-04

J. W. (BILL) JONES, JR.
P. O. Box 265
Hagerman, ID 83332
(208) 837-4580

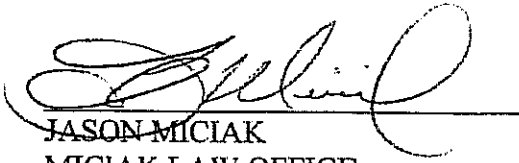
FOR CLEAR SPRINGS FOODS INC.:



JOHN SIMPSON
BARKER, ROSHOLT & SIMPSON LLP
P.O. Box 2139
Boise, ID 83701-2139
(208) 336-0700

Date: 3 / 20 / 04

FOR PRISTINE SPRINGS, SEAPAC OF IDAHO INC., AND BILL JONES:



JASON MICIAK
MICIAK LAW OFFICE
P.O. Box 2632
Twin Falls, ID 83303
(208) 734-5444

Date: 3/24/04