

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF )	
WATER TO WATER RIGHTS NOS. 36-02356A, )	
36-07210, AND 36-07427 )	
)	
)	<b>ORDER APPROVING</b>
)	<b>DAIRYMEN'S AND IGWA'S</b>
)	<b>2007 REPLACEMENT WATER</b>
)	<b>PLANS, RESCINDING 2007</b>
)	<b>CURTAILMENT, AND SETTING</b>
)	<b>HEARING AND PREHEARING</b>
)	<b>SCHEDULE</b>
)	
)	<b>(Blue Lakes Delivery Call)</b>
)	

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**Background**

On April 9, 2007, the Idaho Ground Water Appropriators, Inc., on behalf of its member ground water districts, North Snake Ground Water District and Magic Valley Ground Water District (collectively referred to herein as "IGWA"), submitted its 2007 replacement water plan ("Replacement Plan"). The Replacement Plan was submitted in response to the Director of the Department of Water Resources' ("Director" or "Department") May 19, 2005 order ("May 2005 Order"), which was issued in response to the March 22, 2005 call for delivery of senior water rights by Blue Lakes Trout Farm, Inc. ("Blue Lakes"). Because the Replacement Plan was deemed insufficient by the Director to mitigate for estimated material injury to Blue Lakes, the Director, on April 30, 2007, sent letters to junior ground water users in the Thousand Springs Area of his intention to issue notices of curtailment on May 14, 2007.

The Director was temporarily enjoined from taking action when the Honorable John K. Butler of the Fifth Judicial District in and for the County of Jerome granted IGWA's request for a temporary restraining order. The temporary restraining order was later dissolved and IGWA's additional requests for judicial relief were denied by the Honorable John M. Melanson. *Order Dismissing Application for Temporary Restraining Order, Complaint for Declaratory Relief, Writ of Prohibition and Preliminary Injunction*, Case No. CV 2007-526 (Fifth Jud. Dist. Jerome Co. June 12, 2007) (hereinafter *Melanson Order*).

On June 15, 2007, the Director issued his order curtailing junior priority ground water rights effective July 6, 2007 in portions of Water District Nos. 34 and 130 unless acceptable mitigation was provided by June 29, 2007. *Order Curtailing Junior Priority Ground Water Rights (Blue Lakes Delivery Call)* (hereinafter "June 2007 Order"). Based on the Director's calculations using the Eastern Snake Plain Aquifer ("ESPA") ground water model, the June 2007 Order found that IGWA had provided 19.6 of the required 30.0 cubic feet per second ("cfs") of substitute curtailment water to the Devil's Washbowl to Buhl Gage spring reach in 2007.

IGWA's estimated shortage of 10.4 cfs was reduced to 7.1 cfs based on the Director's conditional acceptance of the mitigation plan submitted by the Idaho Dairymen's Association ("IDA"), which was estimated to provide 3.3 cfs to the Devil's Washbowl to Buhl Gage spring reach in 2007.

Based on the Director's calculations using the ESPA ground water model, the Director ordered that the curtailment of ground water rights on an ongoing basis within Water District Nos. 34 and 130 that have priority dates junior to December 9, 1990, totaling 5,389 acres, would mitigate the estimated deficiency of 7.1 cfs to the Devil's Washbowl to Buhl Gage spring reach.

To avoid curtailment on July 6, 2007, ground water districts and individual junior priority ground water right holders were given until June 29, 2007 to file plans for replacement water, mitigation, or substitute curtailment. "To the extent that the plan is deemed acceptable by the Director, in whole or in part, the Director shall modify the identified priority date and reduce the number of curtailed junior priority ground water rights, or possibly rescind the ordered curtailment." *June 2007 Order* at 16.

On June 18, 2007, IGWA filed its *Sixth Request for Hearing, Request for Expedited Hearing, Request for Stay, and Request for Consolidation* with the Department.

On June 29, 2007, IGWA filed its *North Snake Ground Water District and Magic Valley Ground Water District Joint Supplemental Replacement Water Plan* with the Department ("Supplemental Plan"). The 2007 Supplemental Plan pledged an additional 10,000 acre-feet of water to be run through the North Side Canal and its associated laterals for purposes of recharge after irrigation of lands serviced by the North Side Canal Company is complete.

Based upon the Director's consideration of this matter, the Director enters the following Findings of Fact, Conclusions of Law, and Order.

## FINDINGS OF FACT

1. Findings of Fact set forth in the May 2005 Order and June 2007 Order, as well as all orders related thereto, as applicable, are incorporated into this order by reference.

### **IGWA's June 18, 2007 Request for Hearing**

2. In its *Sixth Request for Hearing, Request for Expedited Hearing, Request for Stay, and Request for Consolidation* ("Request for Hearing"), IGWA states that the Director, by issuing the June 2007 Order without an opportunity for hearing, violated its constitutional right to due process; accordingly, the matter should be stayed until a hearing has been held:

The Spring Users have been provided due process by the Department acting expeditiously on issuing the 2005 Orders, making findings of fact and conclusions of law as to the nature and extent of material injury to the Spring Users' water

rights because of alleged ground water withdrawal from the Eastern Snake Plain Aquifer.

....

Because of the complex nature of the administration of the Spring Users' water rights and the potential permanency of curtailment ordered, it is reasonable to allow the junior water users an opportunity to assert affirmative defenses before being physically curtailed.

....

This case presents very different issues than a normal water delivery call that occurs between surface water users and even in the parallel case involving the Surface Water Coalition. . . . Unlike in normal water delivery call situations where the watermaster has a century's worth of knowledge about which water users are junior and which ones are senior, the issues raised in this matter are not tested. Certainly the junior water users should not bear the unreasonable weight of having their property rights destroyed and the economic devastation to the region occur when there are very real and unresolved legal questions concerning the severity of the calling water rights. Prudent, deliberate and judicious action is warranted and this includes the opportunity for the junior water users to assert their affirmative, legal defenses prior to suffering complete, physical curtailment.

....

Given the gravity of this situation and the questions of the validity of the Spring Users' Delivery Calls, it is appropriate that the Department exercise its discretion . . . and stay physical curtailment under the 2005 Orders and subsequent orders until such time as the Ground Water Districts have been afforded an opportunity to present their legal defenses and get final answers to these important questions.

*Request for Hearing at 4-6.*

### **IGWA Supplemental Plan**

3. The Supplemental Plan states that the "Ground Water Districts propose to provide an additional 10,000 acre-feet of water through the North Side Canal Company delivery system for late season recharge. . . . This brings the total amount of water to be conveyed to Wilson Lake or other locations for recharge purposes to 20,000 acre-feet. Delivery of this surface water to Wilson Lake will result in recharge to the aquifer from seepage or conveyance loss through the canal itself and seepage from the lake itself." *Supplemental Plan at 2.* "This Supplemental Replacement Water Plan and the proposed activities are contingent upon approval of the Joint Replacement Water Plans for 2007, resulting in no curtailment of ground water users for the 2007 calendar year." *Id.*

### Gains to the Devil's Washbowl to Buhl Gage Spring Reach

4. The IDA has pledged 9,500 acre-feet of water to be run through the North Side Canal and associated laterals for purposes of recharge after irrigation of lands serviced by the North Side Canal Company is complete.<sup>1</sup> The 9,500 acre-feet of recharge water pledged by IDA is in lieu of mitigation measures that were estimated using the ESPA ground water model to provide 3.3 cfs to the Devil's Washbowl to Buhl Gage spring reach in the June 2007 Order.

5. In its Replacement Plan, IGWA devoted 10,000 acre-feet of water to recharge to be run through the North Side Canal and associated laterals for purposes of recharge after irrigation of lands serviced by the North Side Canal Company is complete. As stated in the June 2007 Order, the amount of water credited to IGWA for purposes of recharge was 1.6 cfs.

6. In its Supplemental Plan, IGWA has pledged an additional 10,000 acre-feet of water for purposes of recharge to be run through the North Side Canal and associated laterals for purposes of recharge after irrigation of lands serviced by the North Side Canal Company is complete.

7. The total amount of water committed for recharge by IGWA and IDA for 2007 is 29,500 acre-feet. The estimated maximum capacity of the North Side Canal and associated laterals for purposes of recharge after irrigation of lands serviced by the North Side Canal Company is complete is about 30,000 acre-feet, depending on climatic conditions.

8. Based on simulations using the ESPA ground water model, if curtailment of the rights that were identified in the June 2007 Order occurred on or about July 1, 2007,<sup>2</sup> the following gains, expressed in cfs, are predicted to appear in the Devil's Washbowl to Buhl Gage spring reach:<sup>3</sup>

1st yr	3.9	6th yr	0.4	11th yr	0.2	16th yr	0.1
2nd yr	1.6	7th yr	0.3	12th yr	0.2	17th yr	0.1
3rd yr	0.8	8th yr	0.3	13th yr	0.1	18th yr	0.1
4th yr	0.6	9th yr	0.2	14th yr	0.1	19th yr	0.1
5th yr	0.4	10th yr	0.2	15th yr	0.1	20th yr	0.1

9. Based on simulations using the ESPA ground water model, the 10,000 acre-feet of water pledged by IGWA in its Supplemental Plan, if run through the North Side Canal and

<sup>1</sup> For purposes of prediction using the ESPA ground water model, water provided by IDA for recharge has been simulated as if the commitment were for 9,000 acre-feet.

<sup>2</sup> For purposes of prediction using the ESPA ground water model, July 1 was used instead of July 6.

<sup>3</sup> The reduction in crop consumptive use and the benefit to the aquifer due to a partial year curtailment were computed using METRIC and the ESPA ground water model. METRIC stands for Mapping EvapoTranspiration at high Resolution with Internalized Calibration. METRIC is a satellite-based image-processing model that computes and maps evapotranspiration at the earth's surface using digital images collected by remote-sensing satellites measuring visible, near-infrared, and thermal infrared radiation.

associated laterals after irrigation of lands serviced by the North Side Canal Company is complete, will result in the following predicted gains, expressed in cfs, in the Devil’s Washbowl to Buhl Gage spring reach:

1st yr	1.9	6th yr	0.2	11th yr	0.1	16th yr	0.1
2nd yr	0.8	7th yr	0.2	12th yr	0.1	17th yr	0.1
3rd yr	0.5	8th yr	0.1	13th yr	0.1	18th yr	0.0
4th yr	0.3	9th yr	0.1	14th yr	0.1	19th yr	0.0
5th yr	0.2	10th yr	0.1	15th yr	0.1	20th yr	0.0

10. Based on simulations using the ESPA ground water model, the 20,000 acre-feet of water pledged by IGWA (10,000 acre-feet from the Replacement Plan and 10,000 acre-feet from the Supplemental Plan), combined with the 9,500 acre-feet pledged by IDA, totaling 29,500 acre-feet, if run through the North Side Canal and its associated laterals after irrigation of lands serviced by the North Side Canal Company is complete, will result in the following predicted gains, expressed in cfs, in the Devil’s Washbowl to Buhl Gage spring reach:

1st yr	5.4	6th yr	0.6	11th yr	0.3	16th yr	0.2
2nd yr	2.4	7th yr	0.5	12th yr	0.2	17th yr	0.1
3rd yr	1.4	8th yr	0.4	13th yr	0.2	18th yr	0.1
4th yr	0.9	9th yr	0.3	14th yr	0.2	19th yr	0.1
5th yr	0.7	10th yr	0.3	15th yr	0.2	20th yr	0.1

11. The currently estimated shortfall to the Devil’s Washbowl to Buhl Gage spring reach is 6.6 cfs:

Recharge <sup>4</sup>	Voluntary Reductions	Conveyance Loss <sup>5</sup>	Conversions <sup>5</sup>	CREP	Total Provided	Required	Shortfall
5.4	0.0	3.7	11.0	3.3	23.4	30.0	6.6

12. Comparing curtailment of 5,389 acres on or about July 1, 2007 for the remainder of the 2007 irrigation season, *Finding of Fact 8*, with an additional 10,000 acre-feet of recharge for 2007, *Finding of Fact 9*, results in a deficit of 2.0 cfs to the Devil’s Washbowl to Buhl Gage spring reach.

<sup>4</sup> In the June 2007 Order, it was estimated that, based on simulations using the ESPA ground water model, gain to the Devil’s Washbowl to Buhl gage spring reach in the first year of recharge using 10,000 acre-feet of water would be 1.6 cfs. That estimation was based on delivery of 10,000 acre-feet of water for recharge over a period of six months, then withdrawn for the following six months. *June 2007 Order* at 8, fn 3. The current estimation, also based on simulations using the ESPA ground water model, is computed by simulating recharge in the North Side Canal at a rate of approximately 409 cfs.

<sup>5</sup> In the June 2007 Order, 11.0 cfs and 3.7 cfs were estimated to accrue to the Devil’s Washbowl to Buhl Gage spring reach as the result of Conveyance Loss and Conversions, respectively. *June 2007 Order* at 9, ¶ 15. Those columns were inadvertently reversed. The correct gains to the Devil’s Washbowl to Buhl Gage spring reach for Conveyance Loss and Conversions are 3.7 cfs and 11.0 cfs, respectively.

13. As stated in the May 2005 Order:

The segment that includes the water supply for Alpheus Creek, from which Blue Lakes diverts surface water, is the Devil's Washbowl to Buhl Gage spring reach. Based on measurements by the USGS, flows at the head of Alpheus Creek accounted for 20 percent of the reach gains in the Devil's Washbowl to Buhl Gage spring reach for the steady state conditions used to calibrate the ESPA ground water model.

*May 2005 Order* at 4-5, ¶ 15.

14. The ESPA ground water model simulates gains and depletions to particular reaches of the Snake River under a range of conditions. Site specific characteristics are not identified in the ESPA ground water model and therefore the model does not simulate gains and depletions to discrete springs. In order to arrive at a predicted gain or depletion to a discrete spring, historical spring flow measurements are used to develop a proportionate share of reach gain for each individual spring. There is uncertainty associated with individual spring gain and depletion predictions because of the lack of homogeneity in the aquifer. The actual gain or depletion to a particular spring will be affected by the specific geologic characteristics above the spring.

15. The reach of the Snake River in which the Devil's Washbowl to Buhl Gage spring reach is located is approximately 24 miles long.

16. Twenty percent of the 2.0 cfs difference expressed in *Finding of Fact 8* and *Finding of Fact 9* is 0.4 cfs.

## CONCLUSIONS OF LAW

1. Conclusions of Law set forth in the May 2005 Order and June 2007 Order, as well as all orders related thereto, as applicable, are incorporated into this order by reference. All findings of fact in this order later deemed to be conclusions of law are hereby made as conclusions of law.

2. The Director of the Department of Water Resources is vested with authority to exercise his discretion in supervising water distribution within water districts in the state of Idaho:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The

provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

Idaho Code § 42-602.

3. Over more than a century, administration of surface water rights under the prior appropriation doctrine has evolved. As the Idaho Supreme Court has recently reaffirmed, “While the prior appropriation doctrine certainly gives pre-eminent rights to those who put water to beneficial use first in time, this is not an absolute rule without exception.” *American Falls Reservoir Dist. No. 2 v. Idaho Dept. of Water Resources*, 143 Idaho 862, 880, 154 P.3d 433, 451 (2007) (hereinafter *AFRD#2*). Some notable exceptions include the duty of the senior to use a reasonable means of diversion, *Schodde v. Twin Falls Land & Water Co.*, 224 U.S. 107 (1912), to only divert that amount necessary to achieve the authorized beneficial use, *Washington County Irrigation Dist. v. Talboy*, 55 Idaho 382, 43 P.2d 943 (1935), and the authority of the Director to deny a delivery call based on the futile call doctrine, *Martiny v. Wells*, 91 Idaho 215, 419 P.2d 470 (1966). These unexclusive exceptions to the first in time first in right principle seek to resolve the tension between the two management objectives of the prior appropriation doctrine: providing security of right to the senior water user while precluding waste or less than optimum use of the resource.

4. In large part, administration of surface water rights has been aided by the simple fact that surface water is visible, which allows the Director and his water masters to monitor water supplies during times of scarcity.

When water is diverted from a surface stream, the flow is directly reduced, and the reduction is soon felt by downstream users unless the distances involved are great. When water is withdrawn from an aquifer, however, the impact elsewhere in the basin or on a hydrologically connected stream is typically much slower.

*AFRD#2* at 877, 154 P.3d at 448 citing Douglas L. Grant, *The Complexities of Managing Connected Surface and Ground Water Under the Appropriation Doctrine*, 22 Land & Water L. Rev. 63, 73 (1987).

The hydrologic complexity of administering surface to ground water calls is simply not the same as administering solely surface water delivery calls. *Id.* “While the Constitution, statutes and case law in Idaho set forth the principles of the prior appropriation doctrine, those principles are more easily stated than applied” in the context of surface to ground water calls. *Id.* at 869, 154 P.3d at 440.

5. Relative to surface water administration, Idaho, like other western states, has only recently begun to conjunctively administer surface water and ground water. In 1951, Idaho’s legislature passed the Idaho Ground Water Act, which has been amended over time and is currently codified, in part, at Idaho Code § 42-226. Idaho Code § 42-226 states in pertinent part:

The traditional policy of the state of Idaho, requiring the water resources of this state to be devoted to beneficial use in reasonable amounts through appropriation,

is affirmed with respect to the ground water resources of this state as said term is hereinafter defined and, while the doctrine of “first in time is first in right” is recognized, a reasonable exercise of this right shall not block full economic development of underground water resources.

*See Baker v. Ore-Ida Foods, Inc.*, 95 Idaho 575, 584, 513 P.2d 627, 636 (1973) (“We hold that the Ground Water Act is consistent with the constitutionally enunciated policy of promoting optimum development of water resources in the public interest.”).

6. The issue of how to integrate the administration of surface and ground water rights diverting from a common water source in the Eastern Snake Plain area has been a continuing point of controversy for more than two decades. To date, no Idaho court has fully addressed the issue of how to integrate the administration of surface and ground water rights that were historically administered as separate sources. The progress made in adjudicating ground water rights in the Snake River Basin Adjudication and development of the ESPA ground water model to simulate the effects of ground water depletions on hydraulically-connected tributaries and reaches of the Snake River now allows the State to address this issue during this period of unprecedented drought. Further progress has been made with the creation and adoption of the Department’s Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11 *et seq.* While progress has been made, conjunctive administration of water rights remains in its infancy and the Department and water right holders continue to grow in their understanding of how best to conjunctively manage the resource, particularly in the context of a delivery call by a spring user where water must arrive at a discrete point of diversion within a multi-mile river reach.

7. In regard to conjunctive administration, the Director must balance the principle of “first in time is first in right” with “full economic development of underground water resources” to allow for “optimum development of water resources.” “Reasonableness” of use must also guide the Director in administration. *AFRD#2* at 875, 154 P.3d at 446. Recognizing the difficulty in administering water rights, the Idaho Supreme Court recently reaffirmed that “Given the nature of the decisions which must be made in determining how to respond to a delivery call, there must be some exercise of discretion by the Director.” *Id.*

8. This matter was originally commenced on March 22, 2005 following a delivery call by Blue Lakes. While IGWA correctly notes in its Request for Hearing that it has made repeated requests for a hearing, the first of which was filed on June 2, 2005, at no time has the Director denied a request for hearing. Instead, because of legal maneuvering by the parties, requests by the parties for schedule changes, and matters wholly unrelated to the delivery call proceeding initiated by Blue Lakes, *see AFRD#2*, the hearing schedule has been delayed. Blue Lakes has also called for a hearing in this matter since the Director issued his May 2005 Order. *Petition Requesting: Hearing on May 19, 2005 Order, Independent Hearing Officer and Discovery* (June 3, 2005).

9. While junior water right holders are entitled to a hearing to contest a determination by the Director that such rights are causing material injury to a senior water right holder, under Idaho law such hearing traditionally occurs after the notice of curtailment in order



to avoid further injury to the rights of the senior water right holder. *AFRD#2* at 875, 154 P.3d at 446.

10. The circumstances presented in this matter are unique. As noted in Conclusions of Law 3 through 7, and in *AFRD #2* at 877, 154 P.3d at 448, the application of the prior appropriation doctrine in the context of conjunctive administration of hydraulically connected surface and ground water rights is presently uncertain. Only through completion of an administrative proceeding and subsequent appeals will application of the prior appropriation doctrine in the context of conjunctive administration of surface and ground water rights become more clear.

11. Just like senior surface water rights, junior ground water rights are real property and are entitled to protection under the prior appropriation doctrine. It is imperative that both the senior and junior water right holders have a timely opportunity to be heard and present challenges and defenses to the orders issued in this case: “Clearly it was important to the drafters of our Constitution that there be a timely resolution of disputes relating to water.” *AFRD#2* at 875, 154 P.3d at 446. What is timely will vary from case-to-case: “Given the complexity of the factual determinations that must be made in determining material injury, whether the water sources are interconnected and whether curtailment of a junior’s water right will indeed provide water to the senior, it is difficult to imagine how such a timeframe might be imposed across the board. It is vastly more important that the Director have the necessary pertinent information and the time to make a reasoned decision based on the available facts.” *Id.*

12. While the Director has exercised his best professional judgment in determining how the prior appropriation doctrine should be applied in the context of Blue Lakes’ delivery call against junior ground water right holders, such determination is not free from doubt, as demonstrated by the pleadings that have been filed in this matter by both Blue Lakes and IGWA that dispute the Director’s determinations.

13. The Replacement Plan, Supplemental Plan, and water committed by IDA for recharge do not fully satisfy the June 2007 Order. *Finding of Fact 11*. Based on the Director’s calculations using the ESPA ground water model, the additional 10,000 acre-feet of recharge pledged by IGWA is estimated to produce 1.9 cfs in gain to the Devil’s Washbowl to Buhl Gage spring reach in 2007. *Finding of Fact 9*. If the Director were to order curtailment on July 6, 2007, the ESPA ground water model estimates that gains to the Devil’s Washbowl to Buhl Gage spring reach for 2007 would result in 3.9 cfs. *Finding of Fact 8*. The resulting difference between curtailment and additional recharge in 2007 is 2.0 cfs. *Finding of Fact 12*.

14. Because Alpheus Creek, the location at which Blue Lakes diverts surface water for use at its facility, is located at a discrete point within the 24-mile Devil’s Washbowl to Buhl Gage spring reach, *Finding of Fact 15*, only 20 percent of the predicted difference of 2.0 cfs, *Finding of Fact 13*, resulting in a predicted difference of 0.4 cfs would be expected to appear at Blue Lakes, *Finding of Fact 16*.

15. The predicted difference of 0.4 cfs in gains to Alpheus Creek is insignificant given the uncertainty surrounding the hydraulic relationship between the gain to the Devil’s

Washbowl to Buhl Gage spring reach, as determined by the ESPA ground water model, and actual gains to the spring. Thus, only for calendar year 2007 the Director shall deem that the proposed mitigation measures for Blue Lakes are sufficient.

16. Given the complexity and uncertainty in the application of the prior appropriation doctrine in the context of conjunctive administration; that the ground water users have provided an acceptable level of mitigation for the material injury occurring as a result of depletions in 2007; that junior ground water users have committed to provide nearly as much water for recharging the ESPA through the North Side Canal and its associated laterals as is possible; and that more than two years have passed without a hearing since the initiation of the delivery call, the Director should approve IGWA's Replacement Plan and Supplemental Replacement Plan for 2007.

17. This determination is further bolstered by the fact that the 0.4 cfs in additional water expected to arrive at Blue Lakes' discrete point of diversion in the 24-mile Devil's Washbowl to Buhl Gage spring reach, as a result of curtailment is not a significant enough quantity of water to justify the curtailment of 5,389 acres, especially given that the consequences of curtailment prior to a hearing will result in irreversible consequences to many junior priority ground water users.

18. Based on acceptance of IDA's pledge for 9,500 acre-feet of water to be used for recharge purposes in 2007 and IGWA's Replacement Plan and Supplemental Plan for 2007, the Director should rescind his June 15, 2007 *Order Curtailing Junior Priority Ground Water Rights (Blue Lakes Delivery Call)*.

19. The water rights under which Blue Lakes filed its delivery call are located in the immediate upstream reach of the Snake River from the water rights under which Clear Springs Foods, Inc. filed its delivery call for its Snake River Farm (collectively referred to herein as "Clear Springs"). Because of their relative locations, many impacts to Blue Lakes are felt downstream by Clear Springs. Based on the pleadings filed in those matters, it is the Director's professional judgment that the delivery calls filed by Blue Lakes and Clear Springs are inextricably related in many issues of law and fact. Furthermore, many of IGWA's factual and legal defenses to each delivery call are also related. Therefore, for purposes of economy and the need to provide a timely hearing that will settle the contested issues in the affected reaches before the commencement of the 2008 irrigation season, *AFRD#2* at 875, 154 P.3d at 446, a joint hearing should be held in the Blue Lakes and Clear Springs delivery calls. If issues are identified that are unique to Blue Lakes or Clear Springs, the joint hearing will allow for separate times to put on evidence and make argument on those points.

20. The determination to approve IGWA's Replacement Plan and Supplemental Plan for the balance of the calendar year is directly linked to the need to hold a joint hearing in these matters, the parties' repeated requests to hold a hearing, and the public interest that a hearing be held and an order issued prior to commencement of the 2008 irrigation season.

21. These points are further underscored by Judge Melanson in the accompanying transcript to his June 12, 2007 ruling that dissolved IGWA's temporary restraining order and

dismissed its other requests for judicial relief when he stated that a hearing should be “conducted with dispatch . . . [so] that the matters are concluded expeditiously . . . .” *Melanson Order*, Transcript at 10-11.

22. Based on the above, the Director should order a joint hearing to commence on October 10, 2007 in the delivery calls filed by Blue Lakes and Clear Springs. No extensions of time will be granted, as timely resolution of these delivery calls before the start of the 2008 irrigation season is paramount. The Director should order the following prehearing schedule:

August 22, 2007—deadline for submitting expert reports;

August 22, 2007—deadline for pre-filed direct testimony (required for retained consultants/optional for others), and all exhibits to be used at hearing with experts;

September 5, 2007—deadline for rebuttal reports;

September 5, 2007—deadline for pre-filed rebuttal testimony and all exhibits to be used in rebuttal;

September 7, 2007—disclose all lay witnesses/identify all exhibits to be used at hearing with lay witnesses (as well as any pre-filed direct testimony for lay witnesses, if desired);

September 26, 2007—deposition deadline/discovery completed deadline;

October 3, 2007—written opening brief/trial brief (if desired);

October 4, 2007—pre-hearing conference and hearing on pre-hearing motions; and

October 10, 2007—hearing commences (with expected hearing to run through October 31, 2007, if necessary).

23. The Director will appoint an independent hearing officer to preside over this matter.

## ORDER

In response to the water delivery call made by Blue Lakes Trout Farm, Inc., and for the reasons stated in the foregoing Findings of Fact and Conclusions of Law, the Director ORDERS as follows:

IT IS HEREBY ORDERED that the pledge of 9,500 acre-feet of water for purposes of recharge in 2007 from the Idaho Dairymen’s Association and the *North Snake Ground Water District and Magic Valley Ground Water District Joint Replacement Water Plan* and the *North Snake Ground Water District and Magic Valley Ground Water District Joint Supplemental*

*Replacement Water Plan*, submitted by the Idaho Ground Water Appropriators, Inc., are APPROVED.

IT IS FURTHER ORDERED that the Director's June 15, 2007 *Order Curtailing Junior Priority Ground Water Rights (Blue Lakes Delivery Call)* is RESCINDED.

IT IS FURTHER ORDERED that a hearing *In the Matter of Distribution of Water to Water Rights Nos. 36-02356A, 36-07210, and 36-07427* shall commence on October 10, 2007 and in accordance with the above prehearing schedule. The hearing shall be presided over by an independent hearing officer.

IT IS FURTHER ORDERED that the watermaster for Water District No. 130 and the Idaho Department of Water Resources' supervisor for water distribution for Water District No. 34 are directed to issue written notices within five (5) days of the date of this order to the holders of certain consumptive ground water rights located in Water District Nos. 34 and 130, listed in the attachment to the June 15, 2007 *Order Curtailing Junior Priority Ground Water Rights (Blue Lakes Delivery Call)*, and bearing priority dates junior to December 9, 1990, that the June 15, 2007 order is rescinded and their rights are no longer subject to curtailment during this irrigation season. Junior water right holders, however, should anticipate that administration of their rights in 2008 will be conducted in accordance with the outcome of the October 10, 2007 hearing, which may result in curtailment.

IT IS FURTHER ORDERED that this is a final order of the agency and all aspects of the order shall be subject to review at the hearing that will take place on October 10, 2007.

Dated this 5<sup>th</sup> day of July, 2007.

  
\_\_\_\_\_  
DAVID R. TUTHILL, JR.  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5<sup>th</sup> day of July, 2007, the above and foregoing document was served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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MAGIC VALLEY GWD  
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