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ATTORNEYS FOR THE NORTH SNAKE AND MAGIC VALLEY GROUND WATER DISTRICTS

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS. 36-
02356A, 36-7210, AND 36-07427,

(Blue Lakes Delivery Call)

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS. 36-
4013A, 36-04013B, AND 36-07148

(Clear Springs Delivery Call)

Docket No. CM-DC-2010-002

**MOTION FOR CLARIFICATION OF
ORDERS AND REQUEST FOR ORDER
CONFIRMING MITIGATION
OBLIGATION TO BLUE LAKES**

Petitioners, the Idaho Ground Water Appropriators, North Snake Ground Water District, and Magic Ground Water District (“Ground Water Users”), pursuant to IDAPA 37.01.01.770, through counsel hereby files this *Motion for Clarification of Orders and Request for Order Confirming Mitigation Obligation to Blue Lakes*.

The Ground Water Users request that the Director set forth the mitigation obligation for the individual junior groundwater entities and issue an order confirming each entity’s obligation under the *Final Order* issued in this matter on July 19, 2010. (“*July 19, 2010 Final Order*”) The

Ground Water Users also request that the Director provide a list of those individuals or entities contained in the “non-member participants” category that is contained in the Table 1 set forth below. The bases for these requests are set forth below.

On July 19, 2010 Interim Director Gary Spackman, Director of the Idaho Department of Water Resources (“IDWR” or “Department”) issued his *July 19, 2010 Final Order* finding injury to Blue Lakes Water Right no. 36-7210. In the *July 19, 2010 Final Order* the Director states on page 23 that:

[P]hased Curtailment must result in simulated cumulative increase over current mitigation activities to the average discharge of the springs in the Devil’s Washbowl to Buhl reach at steady state conditions of at least [...sic] 1.0 cfs, 2.0 cfs, 3.0 cfs, 4.0 cfs, and 5.0 cfs, for each year respectively. Alternatively, the junior ground water users may supply direct delivery of 0.2 cfs, 0.4 cfs, 0.6 cfs, 0.8 cfs, and 1.0 cfs to BLT for each year respectively.

Id. at 23 (emphasis added). The parties filed petitions requesting hearing and reconsideration.

On August 20, 2010, the Director granted the parties’ request for hearing and set a pre-hearing conference. (*Order Granting Request for Hearing and Scheduling Pre-Hearing Conference*.) On September 14, 2010, the pre-hearing conference was held, a hearing schedule discussed and arguments presented regarding the appropriate scope of the hearing. On October 1, 2010, the Director issued his *Order Setting Hearing Schedule and Order Limiting Scope of Hearing*. (“*Hearing Order*”) Following the *Hearing Order*, the parties filed various motions regarding discovery. In addition, on October 15, 2010, the Ground Water Users filed a *Motion to Continue Administrative Hearing*. (“*Motion to Continue*”) On November 1, 2010, Blue Lakes and Clear Springs filed *Spring Users’ Response to Ground Water Districts’ Motion for Continuance* wherein they agreed with the Ground Water Districts’ *Motion for Continuance* and stated that the contested case should be stayed until a decision is issued by the Supreme Court in Docket No. 37308-2010.

On November 4, 2010, the Director issued his *Order Continuing Proceeding Based on Agreement of Parties*. (“Order Granting Continuance”). In the *Order Granting Continuance*, the

Director stated:

[H]owever, it does not appear the Ground Water Users have the required mitigation plans approved as suggested by the Ground Water Users in the Motion to Continue. The Final Order Approving Mitigation Plans (Blue Lakes Delivery Call) ... was approved on May 7, 2010. Under the order, mitigation plan participants have an obligation to Blue Lakes for 11.9 cfs. Final Order Approving Blue Lakes Mitigation Plan, Attachment A. The mitigation plan benefit was calculated to be 12.8 cfs. *Id.* Under the July 19, 2010 Final Order, the Ground Water Users incur an additional 1.0 cfs obligation in 2011.

(*Order Granting Continuance* at 3 citing *July 19, 2010, Final Order* at 23). As stated in the above quoted portion of the *Order Granting Continuance*, on May 7, 2010, the Director approved the *Ground Water Users’ Joint Mitigation Plan for Blue Lakes and Southwest and Goose Creek Irrigation District Mitigation Plan 2010 (Blue Lakes and Snake River Farm)*. In that order, the Director found that the total obligation to Blue Lakes was 11.9 cfs and attached Table 1, set forth below; the order referred to the table as “Attachment A” in the above quote. Table 1 sets forth the obligation of each junior groundwater entity.

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Table 1. Attachment A to *Final Order Approving Mitigation Plans (Blue Lakes Delivery Call)*.

Table of computed obligation and mitigation for Blue Lakes Call

entity	acres	Impact to reach (cfs)	Obligation to spring (cfs)	Mitigation Plan benefit (cfs)
N Snake	23,397	25.59	5.1	^
Magic V*	29,659	17.37	3.5	^
Carey V	1,970	0.97	0.2	^
non-member participants~	3,149	3.91	0.8	^
IGWA Subtotal	58175.2	47.8	9.6	10
A&B	2,063	1.27	0.3	0.40
Southwest+Goose Cr#	13,641	10.20	2.1	2.4
Total	73,879	59.3	11.9	12.8

^ N Snake + Magic V + Carey V = 10 cfs Pristine Spg
 ~ all non-member participants may not be in either N Snake, Magic V, or Carey V
 *About 2,000 junior acres within Magic Valley are in WD 140
 # Includes 0.1 cfs benefit from CREP lands within SWID as evaluated by Department's CREP shapefile (733 ac).
 No evaluation of benefit from voluntary reductions.

Upon review of the various orders and Table 1 above, the Ground Water Users have determined that the approved *Ground Water Users' Joint Mitigation Plan for Blue Lakes*, which provides direct delivery of 10.0 cfs of water to Blue Lakes, is sufficient to meet all current mitigation obligations of those members who are covered by the Ground Water Users' approved Mitigation Plan for Blue Lakes. This conclusion is based on the following discussion.

In the *July 19, 2010 Final Order* the Director determined that an additional 1.0 cfs of direct delivery to Blue Lakes was required over the next five years; however, it is not clear what each individual entity's obligation is. At most, North Snake, Magic Valley and Carey Ground Water Districts' obligation would be 9.8 cfs if the entire new, additional obligation of 1.0 cfs was their responsibility (8.8 cfs + 1.0 cfs); however, the additional 1.0 cfs from the *July 19, 2010 Final Order* should be divided among all junior groundwater users, as should the increments that are required over the five year phase in period. According to the *July 19, 2010 Final Order*, all junior groundwater users must supply an additional 0.2 cfs of water directly to Blue Lakes by

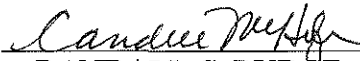
March 1, 2011. *July 19, 2010 Final Order* at 23. As such, the Ground Water Users' approved mitigation plan to Blue Lakes that currently delivers 10 cfs directly to Blue Lakes should be sufficient to meet North Snake, Magic Valley and Carey Ground Water Districts' portion of the new mitigation requirement. The Ground Water Users request clarification as to the amount of water each individual entity owes Blue Lakes.

There also remains a question as to who the "non-member participants" are in Table 1 above. By this motion, the Ground Water Users are requesting a list setting forth the names of the non-member participants so that they are able to evaluate whether any of those individuals or entities are covered by the approved *Ground Water Users' Joint Mitigation Plan for Blue Lakes*

Because of the obligation of the Ground Water Users in the Director's *Order Granting Continuance* and the *July 19, 2010 Final Order* are unclear, the Ground Water Users request an Order confirming the mitigation obligation of the entities contained in Table 1 so that the junior groundwater users know what amount of water must be provided to Blue Lakes by March 1, 2011.

DATED this 7th day of December, 2010.

RACINE, OLSON, NYE, BUDGE &
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By: 
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CERTIFICATE OF MAILING

I hereby certify that on this 7th day of December, 2010, the foregoing was served to those as follows:


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