

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE NORTH SNAKE )  
AND MAGIC VALLEY GROUND WATER ) **CM-MP-2009-001**  
IRRIGATION DISTRICTS' 2009 JOINT )  
MITIGATION PLAN TO COMPENSATE )  
BLUE LAKES TROUT FARM, INC. ) **ORDER AUTHORIZING**  
 ) **LIMITED DISCOVERY**  
(Water Right Nos. 36-02356a, 36-07210, )  
and 36-07427) )  
\_\_\_\_\_ )

On July 6, 2009, the North Snake and Magic Valley Ground Water Districts (“Ground Water Users”) filed a mitigation plan with the Director of the Department of Water Resources (“Director” or “Department”) in accordance with IDAPA 37.03.11.043. The mitigation plan was filed in response to the Director’s prior determination that Blue Lakes Trout Farm, Inc. (“Blue Lakes”) was suffering material injury to certain senior surface water rights as a result of junior ground water diversions. The Ground Water Users’ mitigation plan was published and protests to the plan were filed by Blue Lakes and Clear Springs Foods, Inc. (“Clear Springs”).

On October 7, 2009, Blue Lakes filed a *Motion for Order Authorizing Limited Discovery* (“Limited Discovery Motion”) “so that Blue Lakes’ depositions of Department employees may be coordinated with depositions of Department employees on the same or similar issues in the contested case proceeding before the Department on the *Third Mitigation Plan of the North Snake and Magic Valley Ground Water Districts to Provide Replacement Water for Clear Springs Snake River Farm.*” *Limited Discovery Motion* at 1. Blue Lakes states that “[c]ommon issues in the consolidated proceedings included the Director’s determination of model uncertainty (10%), the Director’s use of a ‘10% trim line’ to exclude certain junior ground water rights from administration in response to the Spring Users’ water delivery calls, and the director’s method of allocating spring flow within a reach to determine injury to the Spring Users’ facilities.” *Id.* at 2.

On October 13, 2009, the Ground Water Users filed an *Objection to Blue Lakes Trout Farm Inc.’s Motion for Order Authorizing Limited Discovery and Request for Hearing and Scheduling Conference* (“Limited Discovery Objection”). “The Ground Water Users object to the scope of discovery sought by Blue Lakes and believe that those matters are outside the scope of any hearing relating to the 2009 Mitigation Plan and are the subject of the pending appeal in *Clear Springs Foods, Inc. v. Tuthill*, Case No. 2008-444 (Fifth Jud. Dist. Gooding County).” *Limited Discovery Objection* at 2.

In proceedings regarding the Ground Water Users' mitigation plan to satisfy material injury to certain senior surface water rights held by Clear Springs at its Snake River Farm facility, independent hearing officer Gerald F. Schroeder stated that Clear Springs was authorized to conduct discovery on many of the issues now being raised by Blue Lakes in its Limited Discovery Motion. *Scheduling Order* (August 28, 2009). According to the independent hearing officer, these issues "shall be addressed *as and if they become relevant to a final determination.*" *Id.* (emphasis added).

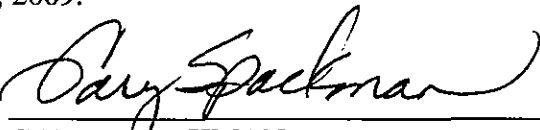
The Director has reviewed and considered the Ground Water Users' Limited Discovery Objection. The Director agrees with the above-cited reasoning of the independent hearing officer. Blue Lakes should be authorized to conduct limited discovery on the certain topics raised in its Limited Discovery Motion. The question of whether any of the information obtained in the depositions is relevant and admissible may be addressed by the parties in the hearing process on the Ground Water Users' mitigation plan for Blue Lakes.

### ORDER

Based upon the foregoing, IT IS HEREBY ORDERED as follows:

Blue Lakes' *Motion for Limited Discovery* is GRANTED; the Ground Water Users' *Objection to Limited Discovery* is DENIED.

Dated this 2<sup>nd</sup> day of November, 2009.

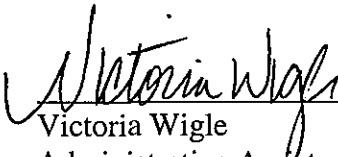


GARY SPACKMAN  
Interim Director

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 2nd day of November 2009, 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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 Victoria Wigle  
 Administrative Assistant to the Director  
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