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Attorneys for Blue Lakes Trout Farm, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
THE STATE OF IDAHO

_____)	
IN THE MATTER OF THE NORTH SNAKE)	CM-MP-2009-001
AND MAGIC VALLEY GROUND WATER)	
IRRIGATION DISTRICTS' 2009 JOINT)	NOTICE OF PARTIAL WITHDRAWAL
MITIGATION PLAN TO COMPENSATE)	OF PROTEST TO GROUND WATER
BLUE LAKES TROUT FARM, INC.)	USERS' JOINT MITIGATION PLAN
_____)	

COMES NOW, Blue Lakes Trout Farm, Inc. ("Blue Lakes"), by and through its attorneys, Ringert Law Chartered, and files this *Notice of Partial Withdrawal of Protest To Ground Water Users' Joint Mitigation Plan* filed by North Snake Ground Water District (NSGWD) and Magic Valley Ground Water District (MVGWD). Blue Lakes maintains its protest with respect to the errors it has asserted in the Director's determinations of injury to Blue Lakes' water rights and the mitigation required to mitigate Blue Lakes' injury.

The Director limited the scope of the hearing on the mitigation plans that have been filed with the Department "to the ability of the plans, either individually or collectively, to satisfy the mitigation requirement of 59.3 cfs to the Devil's Washbowl to Buhl Gage spring reach or 11.9 cfs directly to Blue Lakes (20% of 59.3 cfs)." *Order Granting Motion to Limit Scope of Hearing;*

Denying Motion to Strike Clear Springs' Protest; and Scheduling Order, December 22, 2009 (“*Order Limiting Scope*”). It appears that the Ground Water Users’ mitigation plan, individually or in conjunction with other mitigation plans, will satisfy this year’s 11.9 cfs mitigation requirement, with performance to be determined through monitoring and accounting. Accordingly, Blue Lakes withdraws its *Protest* with respect to the narrow issue set for hearing in the Director’s *Order Limiting Scope*.

Blue Lakes maintains its *Protest* with respect to issues it has identified in the pleadings in this matter regarding the Director’s determinations of the extent of injury to Blue Lakes’ water rights and the junior ground water rights that are subject to administration, and the mitigation required to address Blue Lakes’ injury. These issues include, but are not limited to, the issue of injury to Blue Lakes’ 1971 priority water right no. 36-7210 that has been remanded to the Director by the District Court, and analysis demonstrating that there are more scientifically defensible methods to account for model uncertainty and to determine the impact of junior ground water diversions on Blue Lakes’ spring source than the Director’s “trimline” and “spring percentage” determinations. Blue Lakes also retains its right to assert that, as a matter of law, above-the-rim activities do not meet the Director’s direct delivery requirement. Finally, Blue Lakes maintains its *Protest* to the extent necessary to ensure that junior ground water right holders are not relieved from any obligation to meet any mitigation shortfall found to have occurred in any year, including 2010.

Blue Lakes maintains its *Protest* with respect to these issues so that the Director may consider them as soon as it is determined that he has authority to do so. In this regard, Blue Lakes files concurrently herewith a *Motion for Reconsideration* of the Director’s *Order Limiting Scope*.

Dated this 9th day of February, 2010.

RINGERT LAW CHARTERED

By: 
Daniel Steenson
Attorneys for Blue Lakes Trout Farm, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of February, 2010, I served a true and correct copy of the foregoing **NOTICE OF WITHDRAWAL OF PROTEST TO GROUND WATER USERS' JOINT MITIGATION PLAN** by delivering it to the following individuals by the method indicated below, addressed as stated.

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