

Daniel V. Steenson, ISB #4332  
 Charles L. Honsinger, ISB #5240  
 S. Bryce Farris, ISB #5636  
 Jon Gould, ISB #6709  
 RINGERT LAW, CHTD.  
 455 S. Third St.  
 P.O. Box 2773  
 Boise, Idaho 83701-2773  
 Telephone: (208) 342-4591  
 Facsimile: (208) 342-4657

*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 )	<b>Docket Nos. CM-MP-2009-001</b>
AND MAGIC VALLEY GROUND WATER )	<b>CM-MP-2009-002</b>
DISTRICTS' 2009 JOINT MITIGATION )	<b>CM-MP-2009-003</b>
PLAN FOR 2009 (Blue Lakes) )	
_____ )	<b>BLUE LAKES' MEMORANDUM</b>
)	<b>RE. HEARING SCHEDULED</b>
IN THE MATTER OF A&B IRRIGATION )	<b>FOR APRIL 7-8</b>
DISTRICT'S RULE 43 MITIGATION PLAN )	
_____ )	
)	
IN THE MATTER OF SOUTHWEST AND )	
GOOSECREEK IRRIGATION DISTRICT )	
MITIGATION PLAN )	
)	
(Water Right Nos. 36-0235a, 36-07210, )	
and 36-07427) )	
_____ )	

COMES NOW Blue Lakes Trout Farm, Inc. ("Blue Lakes"), by and through its attorneys, Ringert Law Chartered, and files this *Memorandum Re. Hearing Scheduled for April 7-8*. This *Memorandum* is based, in part, on the *Affidavit of Daniel V. Steenson*, filed herewith.

The Director's December 22, 2009 *Order Granting Motion to Limit Scope of Hearing* ("*Order Limiting Scope*"), limits the scope of the hearing on the above-captioned mitigation plans to the issue of "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)." In the *Order Limiting Scope*, the Director precludes Blue Lakes from presenting information and analysis related to the extent of injury to its water rights, and refuses to address the issue of injury to Blue Lakes' water right no. 36-7210, which was remanded to the Director by the District Court in its *Order on Petitions for Rehearing* ("*Rehearing Order*") in the *Clear Springs v. Tuthill* appeal.

On February 1, 2010, Blue Lakes and A&B Irrigation District filed a *Stipulation and Joint Motion For Approval of A&B Irrigation District's Rule 43 Mitigation Plan*, based on Dr. Allan Wylie's use of the Eastern Snake Plain Aquifer Model ("ESPAM") directly (i.e. without the Director's 20% spring percentage post-modeling administrative adjustment) to show that the use of A&B's junior "Enlargement Rights" depletes Blue Lakes' spring source by 0.51 cfs, and that A&B's proposed mitigation plan will deliver 0.77 cfs to Blue Lakes spring source.

Dr. Allan Wylie also used the ESPAM directly to show that junior ground withdrawals within Southwest Irrigation District and Goose Creek Irrigation District deplete Blue Lakes' spring source by 4.20 cfs, and that these Irrigation Districts' proposed mitigation plan will deliver 4.60 cfs to Blue Lakes spring source. *Affidavit of Daniel V. Steenson*, Ex. A. On the basis of this analysis, Blue Lakes does not object to the Southwest Irrigation District and Goose Creed Irrigation District mitigation plan, subject to future modification to reflect the best available data and analysis.

On February 9, 2010, Blue Lakes filed a *Motion to Reconsider* the Director's *Order Limiting Scope*, and also filed a *Notice of Partial Withdrawal of Protest to Ground Water Users' Joint Mitigation Plan (Notice of Partial Withdrawal)*. Recognizing that the Ground Water Districts' direct delivery would meet the mitigation obligation as defined by the Director, Blue Lakes partially withdrew 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 with respect to the Director's determinations of the extent of injury to Blue Lakes' water rights, of 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 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.

During the February 11, 2010 status conference, the parties discussed the status of the mitigation plans and the scope of a hearing. Counsel for the Ground Water Districts represented that their plan included only direct delivery of 10 cfs to Blue Lakes, and would not include any mitigation from above the rim activities. Subsequent to the hearing, the Director provided an analysis to the parties showing that the Ground Water Districts would meet their mitigation obligation as defined

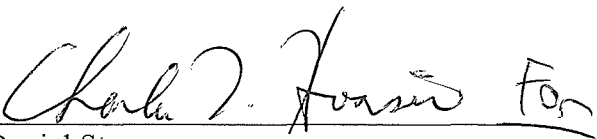
by the Director.

On April 2, 2010, the Director issued an *Order* denying Blue Lakes' *Motion for Reconsideration*.

Based on the foregoing, Blue Lakes understands that the scope of the hearing scheduled for April 7-8, 2010 in the above-captioned contested cases pursuant to the Director's February 17, 2010 *Notice of Hearing*, does not include the unresolved issues raised by Blue Lakes' in these proceedings.

Dated this 5th day of April, 2010.

RINGERT LAW CHARTERED

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

## CERTIFICATE OF SERVICE

I hereby certify that on this 5<sup>th</sup> day of April, 2010, I served a true and correct copy of **BLUE LAKES' MEMORANDUM RE. HEARING** by delivering it to the following individuals by the method indicated below, addressed as stated.

Gary Spackman, Interim Director  
Idaho Department of Water Resources  
322 East Front Street  
P.O. Box 83720  
Boise, ID 83720-0098  
[victoria.wigle@idwr.idaho.gov](mailto:victoria.wigle@idwr.idaho.gov)  
[phil.rassier@idwr.idaho.gov](mailto:phil.rassier@idwr.idaho.gov)  
[chris.bromley@idwr.idaho.gov](mailto:chris.bromley@idwr.idaho.gov)

U.S. First Class Mail, Postage Prepaid  
 Federal Express  
 Hand Delivery  
 Facsimile  
 Electronic Mail

Randall C. Budge  
Racine, Olson, Nye, Budge & Bailey, Chtd.  
P.O. Box 1391  
Pocatello, ID 83204  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)

U.S. First Class Mail, Postage Prepaid  
 Federal Express  
 Hand Delivery  
 Facsimile  
 Electronic Mail

Candice M. McHugh  
Racine, Olson, Nye, Budge & Bailey, Chtd.  
P.O. Box 1391  
Pocatello, ID 83204  
[cmm@rainelaw.net](mailto:cmm@rainelaw.net)

U.S. First Class Mail, Postage Prepaid  
 Federal Express  
 Hand Delivery  
 Facsimile  
 Electronic Mail

John K. Simpson  
Barker Rosholt & Simpson, LLP  
1010 West Jefferson, Ste. 102  
PO Box 2139  
Boise, ID 83701-2139  
[jks@idahowaters.com](mailto:jks@idahowaters.com)

U.S. First Class Mail, Postage Prepaid  
 Federal Express  
 Hand Delivery  
 Facsimile  
 Electronic Mail

Sarah A. Klahn  
White & Jankowski  
511 Sixteenth Street, Ste. 500  
Denver, CO 80202  
[sarahk@white-jankowski.com](mailto:sarahk@white-jankowski.com)

U.S. First Class Mail, Postage Prepaid  
 Federal Express  
 Hand Delivery  
 Facsimile  
 Electronic Mail

Robert A. Maynard  
Erica E. Malmen  
Perkins Coie, LLP  
1111 West Jefferson Street, Ste. 500  
Boise, ID 83702-5391  
[rmaynard@perkinscoie.com](mailto:rmaynard@perkinscoie.com)  
[emalmen@perkinscoie.com](mailto:emalmen@perkinscoie.com)

- U.S. First Class Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail

Travis L. Thompson  
Paul L. Arrington  
Sarah W. Higer  
Barker Rosholt & Simpson, LLP  
113 Main Avenue West, Ste. 303  
PO Box 485  
Twin Falls, ID 83303-0485  
[tlt@idahowaters.com](mailto:tlt@idahowaters.com)  
[pla@idahowaters.com](mailto:pla@idahowaters.com)  
[swh@idahowaters.com](mailto:swh@idahowaters.com)

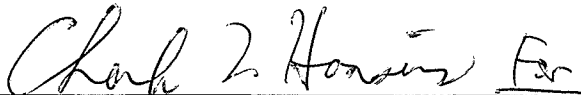
- U.S. First Class Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail

William Parsons  
Parsons Smith & Stone  
137 West 13<sup>th</sup> Street  
Burley, ID 83318  
[wparsons@pmt.org](mailto:wparsons@pmt.org)

- U.S. First Class Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail

Dean Tranmer  
City of Pocatello  
PO Box 4169  
Pocatello, ID 83201  
[dtranmer@pocatello.us](mailto:dtranmer@pocatello.us)

- U.S. First Class Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail

  
Daniel V. Steenson