

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

IN THE MATTER OF THE NORTH SNAKE )	
AND MAGIC VALLEY GROUND WATER )	<b>CM-MP-2009-001</b>
IRRIGATION DISTRICTS' 2009 JOINT )	
MITIGATION PLAN TO COMPENSATE )	
BLUE LAKES TROUT FARM, INC. )	
_____ )	
IN THE MATTER OF THE A & B IRRIGATION )	
DISTRICT'S 2009 MITIGATION PLAN TO )	<b>CM-MP-2009-002</b>
COMPENSATE BLUE LAKES TROUT )	
FARM, INC. )	
_____ )	
IN THE MATTER OF SOUTHWEST AND )	
GOOSECREEK IRRIGATION DISTRICT )	<b>CM-MP-2009-003</b>
MITIGATION PLAN )	
)	
)	<b>PREHEARING ORDER</b>
(Water Right Nos. 36-02356a, 36-07210, )	
and 36-07427) )	
_____ )	

The parties to the above contested cases for proposed mitigation plans have filed various documents related to the status of the protests to the mitigation plan and the interim director has issued orders related to the scope of issues that may be addressed by the parties at the hearing. These documents include, in chronological order:

- *Order Granting Motion to Limit Scope of Hearing*, December 22, 2009
- *Stipulation and Joint Motion for Approval of A & B irrigation District's Rule 43 Mitigation Plan*, February 1, 2010
- *Motion to Reconsider Order Limiting Scope of Hearing*, February 9, 2010
- *Notice of Partial Withdrawal of Protest to Ground Water Users' Joint Mitigation Plan*, February 9, 2010
- *Motion for Summary Judgment*, February 19, 2010
- *Order Denying Unit A Association's Motion for Summary Judgment*, March 31, 2010
- *Order denying Blue Lakes petition for reconsideration*, April 2, 2010

- *Blue Lakes' Memorandum re: Hearing Scheduled for April 7-8, April 5, 2010*
- *Parties' Joint Motion to Modify Notice of Hearing, April 6, 2010*
- *Motion for Order Approving Mitigation Plan for Blue Lakes, April 6, 2010*

In the December 22, 2009 order limiting the scope of discovery and the April 2, 2010 order denying Blue Lakes' petition for reconsideration, the interim director limited the presentation of evidence at the hearing to the question of whether the plans submitted by the various parties satisfy the standard for material injury determinations established by a former director of the Idaho Department of Water Resources ("IDWR") in a previously issued order, now on appeal. In other words, the order limiting scope issued by the interim director does not allow Blue Lakes to present evidence "related to the extent of injury to" Blue Lakes' water rights. The interim director's order coupled with Blue Lake's partial withdrawal of protest, the stipulation with A & B, the joint motion for amendment to the hearing notice, and the memorandum from Blue Lakes establishes the following:

- Blue Lakes agrees each of the mitigation plans submitted by the ground water districts, Southwest Irrigation District, and A&B Irrigation District satisfy, both cumulatively and individually, the current mitigation standards established in previous IDWR determinations of the parties' obligations to mitigation for material injury.
- By agreeing the current mitigation standard is satisfied, Blue Lakes does not waive its right to challenge the determinations related to the extent of its injury.
- Blue Lakes agrees that, despite a dispute between A&B Irrigation District and the Unit A Association about the validity of the mitigation plan offered by A&B Irrigation District, the outcome of the dispute will not change the agreed-to obligations of the ground water districts and Southwest Irrigation District.
- Proponents and parties to the mitigation plans filed by the ground water districts and Southwest Irrigation District have fully resolved any issues related to whether the plans mitigate for material injury as defined by current standards.
- The hearing scheduled for April 7-8, 2010 should be limited to the validity of the A&B plan to mitigate material injury to Blue Lakes.
- Blue Lakes may choose to participate in the hearing on the A&B plan. Should Blue Lakes choose not to participate in the hearing, Blue Lakes will only receive the quantity of water for mitigation found to be legitimately and legally offered for mitigation.

The interim director's April 1, 2010 *Order Denying Unit A Association's Motion for Summary Judgment* further limits the scope of evidence by prohibiting Unit A from presenting evidence about whether "an individual patron within an irrigation district is receiving the patron's entitlement under the trust relationship with the district." *Order Denying Unit A Association's Motion for Summary Judgment* at 6. The interim director will prohibit presentation of information on this subject at the April 7-8, 2010 hearing. There is a possibility of additional evidence of A&B's right to divert the storage water, physical limitations that would prevent the use of storage water as described in the mitigation plan, or other issues unrelated to the trust relationship, but these issues should be narrow and focused.

## ORDER

IT IS HEREBY ORDERED that Blue Lakes has withdrawn any objections, express or implied to the mitigation plans submitted by the ground water districts, Southwest Irrigation District, and A&B Irrigation District under the current IDWR determination of material injury to Blue Lakes.

IT IS FURTHER ORDERED that Blue Lakes accepts, both cumulatively and individually, the quantities of water offered in the mitigation plans as fully satisfying the obligations for mitigation under the current IDWR determination of material injury to Blue Lakes.

IT IS FURTHER ORDERED that Blue Lakes reserves, and has not waived, any right to challenge the interim director's refusal to allow Blue Lakes to present evidence about the extent of Blue Lake's injury in these mitigation proceedings.

IT IS FURTHER ORDERED that evidence at the hearing scheduled for April 7-8, 2010 will be limited to the ability of A&B's plan to meet the requirements of the conjunctive management rules. As established in the *Order Denying Unit A Association's Motion for Summary Judgment*, issues concerning the trust relationship between A&B and its patrons shall not be addressed.

Dated this 6<sup>th</sup> day of April, 2010.



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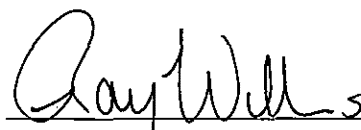
GARY SPACKMAN  
Interim Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6<sup>th</sup> day of April, 2010, the above and foregoing document was served to the following by electronic mail:

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