

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

IN THE MATTER OF DISTRIBUTION OF )	
WATER TO WATER RIGHTS NOS. 36-02356A, )	<b>ORDER REGARDING</b>
36-07210, AND 36-07427 )	<b>PETITION FOR</b>
)	<b>CLARIFICATION AND</b>
)	<b>FINALIZING REPLACEMENT</b>
<b>(Blue Lakes Delivery Call)</b> )	<b>PLAN ORDER</b>
)	

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On July 31, 2008, Blue Lakes Trout Farm, Inc. (“Blue Lakes”) filed with the Director of the Department of Water Resources (“Director” or “Department”) its *Petition for Clarification of Order Approving 2008 Replacement Water Plan* (“Petition”). The Petition sought clarification of two issues: (1) whether the Director’s *Order Approving IGWA’s 2008 Replacement Water Plan* (July 1, 2008) (“Replacement Plan Order”) is effective since it approved a replacement water plan as opposed to a mitigation plan; and (2) the status of the Replacement Plan Order (i.e., interlocutory, final, or other).

On April 4, 2008, the Idaho Ground Water Appropriators, Inc. (“IGWA”) submitted the *North Snake Ground Water District and Magic Valley Ground Water District Joint Replacement Water Plan for 2008 (Blue Lakes)* (“2008 Replacement Plan”). The 2008 Replacement Plan proposed to increase reach gains in the Devil’s Washbowl to Buhl Gage reach of the Snake River by delivery of surface water to conversion acres and conveyance of up to 10.0 cfs of direct delivery replacement water to Blue Lakes under water right no. 36-2603C. The 2008 Replacement Plan was approved by the Director in his Replacement Plan Order. The 2008 Replacement Plan was filed as a replacement water plan and did not invoke the requirements of Rule 43 of the Rules for Conjunctive Management of Surface and Ground Water Sources, IDAPA 37.03.11 *et seq.* (“CM Rules”). Therefore, the Director did not treat the 2008 Replacement Plan as a mitigation plan. IGWA’s 2008 Replacement Water Plan may be contrasted with its June 13, 2008 *Mitigation Plan of North Snake Ground Water District and Magic Valley Ground Water District (Snake River Farm)*, which was filed under CM Rule 43 and is being processed by the Department as a mitigation plan.

Blue Lakes is correct that the Replacement Plan Order did not identify the status of the order. The Replacement Plan Order did not contain the necessary language or accompanying statement of available procedures for it to be a final order. IDAPA 37.01.01.740. Therefore, the Replacement Water Order is an interlocutory order: “Unless an order contains or is accompanied by a document containing one (1) of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, *the order is interlocutory.*” IDAPA 37.01.01.710 (emphasis added).

## ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that the *Order Approving IGWA's 2008 Replacement Water Plan* is now deemed a FINAL ORDER of the agency effective as of the date of this order.

IT IS FURTHER ORDER that the following procedures are available for seeking further relief:

Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law pursuant to Idaho Code § 67-5246.

Any person aggrieved by the final order shall be entitled to a hearing before the Director pursuant to Idaho Code § 42-1701A(3) to contest the action taken provided the person files with the Director, within fifteen (15) days after receipt of written notice of this order, or receipt of actual notice, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Idaho Code § 42-1701A(4).

Pursuant to Idaho Code §§ 67-5270 and 67-5272, any party aggrieved may appeal the final order to district court by filing a petition in the district court of the county in which a hearing was held, the final agency action was taken, the party seeking review of the order resides, or the real property or personal property that was the subject of the agency action is located. The appeal must be filed within twenty-eight (28) days: (a) of the service date of the final order; (b) of an order denying petition for reconsideration; or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

DATED this 5<sup>th</sup> day of August 2008.

  
DAVID R. TUTHILL, JR.  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of August 2008, the above and foregoing, was served by the method indicated below, and addressed to the following:

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