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ATTORNEYS FOR THE IDAHO GROUND WATER APPROPRIATORS

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

**IN THE MATTER OF THE IDAHO
GROUND WATER
APPROPRIATORS, INC.' S
MITIGATION PLAN FOR
CONVERSIONS, DRY-UPS, AND
RECHARGE**

Docket No.: CM-MP-2009-06

**IGWA'S REQUEST FOR
MITIGATION CREDIT FOR BLUE
LAKES' DELIVERY CALL**

COME NOW THE IDAHO GROUND WATER APPROPRIATORS, INC. ("IGWA"), through counsel and on behalf of its Ground Water District Members and other water user members for and on behalf of their respective members and those ground water users who are non-member participants in their mitigation activities and hereby submit this *Request for Mitigation Credit for the Blue Lakes' Delivery Call* under the *Mitigation Plan for Conversions, Dry-Ups and Recharge* ("Mitigation Plan") for use in response to the material injury finding to Blue Lakes Trout Farm, Inc. ("Blue Lakes") water right no. 36-07427 and to any additional or future finding of material injury to Blue Lakes' water rights.

On May 19, 2005, the Director of the Idaho Department of Water Resources ("IDWR" or "Department") issued an order ("May 2005 Order") in response to a delivery call filed by Blue Lakes. The May 2005 Order found material injury to Blue Lakes' water right no. 36-07427 bearing a priority date of December 28, 1973.

On July 2, 2009, the Ground Water Users filed the *Ground Water Users' Joint Mitigation Plan* ("Joint Mitigation Plan") for Blue Lakes under Rule 43 of the Rules for the Conjunctive Administration of Surface and Ground Water Resources, IDAPA 37.03.11. On January 11, 2010, the Ground Water Users filed a *Groundwater Districts' Statement Regarding Mitigation Activities under Mitigation Plan for Blue Lakes* ("Statement") indicating that the direct delivery of 10.0 cfs of water to Blue Lakes fully mitigates Blue Lakes' injury and as such, the Ground Water Users only intend to pursue the direct delivery component to address the material injury to Blue Lakes under their Joint Mitigation Plan and further stated:

As such, while accounting for the CREP and conversion acres that exist as part of other mitigation activities and plans will be ongoing, continuing CREP and conversion acres to compensate Blue Lakes for its material injury is unnecessary and would obligate the Ground Water Districts to more mitigation than is required. Therefore, Ground Water Districts do not intend to continue, under this *Mitigation Plan*, to perform any CREP or conversion activities. However, approval of the use of these mitigation activities is still being sought in order to allow for their use, if any increased mitigation obligation to Blue Lakes should occur under a changed or future order.

Statement at 2. On May 7, 2010, the Director of the Department approved the Joint Mitigation Plan for Blue Lakes. On May 14, 2010, the Director of the Department approved the Mitigation Plan filed by IGWA and stated that "IGWA's *Mitigation Plan for Conversions, Dry-Ups and Recharge* is GRANTED. If mitigation credit is sought by IGWA, the Director shall

determine the appropriate credit, if any, to provide.” Order at 4. (emphasis original). This Request for Mitigation Credit for Blue Lakes’ Delivery Call is pursuant to the May 14, 2010, Order approving IGWA’s Mitigation Plan.

The Ground Water Users have been providing mitigation water to Blue Lakes in the form of direct delivery of water since April, 2008, plus improved spring discharge through conversion, CREP and recharge activities since 2005. The direct delivery of water to Blue Lakes is a simple determination and the Ground Water Users have been given credit for that activity in the May 7, 2010 Order approving their Joint Mitigation Plan for Blue Lakes. However, no credit has yet been sought, nor given, for other mitigation activities that have increased the spring water supply to Blue Lakes.

On June 10, 2010, the Ground Water Users requested a stay from the District Court in *Clear Springs v. Idaho Ground Water Appropriators, Inc.*, Civil Case No. 2008-444 (Fifth Jud. Dist., Gooding County), because the Director agreed to re-evaluate material injury to Blue Lakes’ water right no. 36-7210 bearing a priority date of 1971. In light of the Ground Water Users’ request for stay pending before the District Court and in order to avoid possible curtailment upon an increased finding of material injury, the Ground Water Users are now requesting mitigation credit for their conversion, CREP and recharge activities that have increased the water supply to Blue Lakes.

Below is a table that summarizes, to the best of our knowledge, the benefit to Blue Lakes from previous and ongoing mitigation activities of the Ground Water Users and other parties.

**Estimated* Gains to Blue Lakes Spring
From Existing Mitigation Activities**

Mitigation Plan/Component	Spring Gain (cfs)
Delivery of Pristine Springs water right	10
Ongoing Conversions**	2.5
CREP	1.0
Managed Recharge***	1.3
Snake River Farm conversions	0.4
SWID/Goose Cr. Blue Lakes Plan	
J Canal conversions	0.9
Cassia Pipeline	1.4
 Idaho Dairymen	 Not known
Processors	Not known

* From existing information (previous Department model runs, 2009 recharge data, Department water administration records). Some estimates may need slight adjustment for trim line differences.

** Prorated to reflect 2010 acreage

*** Based on 2009 recharge of 13,687 acre-feet

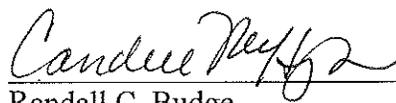
The Ground Water Users request that the Director consider the above benefits to Blue Lakes and consider the entire water supply that is provided through these activities. The information contained in the above table comes from Department modeling of mitigation plans for North Snake Ground Water, Magic Valley Ground Water District and South West Irrigation District and recharge information presented to the Eastern Snake Hydrologic Modeling Committee. See accompanying *Affidavit of Charles M. Brendecke*.

Specifically, the Ground Water Users request credit for their actions in addition to the already approved 10 cfs of direct delivery to Blue Lakes that have resulted in an estimated 5.2 cfs of gain to Blue Lakes spring, the spring that the Director has determined supplies water to Blue Lakes. Because this Mitigation Plan has already been approved, credit for the activities set

forth in the table above should be given and the Director should approve mitigation credit for IGWA's activities and use that credit to reduce the direct delivery obligation to Blue Lakes and use it to reduce or eliminate any additional or future mitigation obligations of the Ground Water Users in the ongoing administration of the Blue Lakes' Delivery Call.

A courtesy copy of this document is being sent to Mr. Steenson, counsel for Blue Lakes.

Submitted this 18th day of June, 2010.



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