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

IN THE MATTER OF DISTRIBUTION)
OF WATER TO WATER RIGHTS NOS.)
36-07210, 36-07427, AND 36-02356A)
Blue Lakes Delivery Call)
_____)

**JOINT MOTION FOR
SUMMARY JUDGMENT**

IN THE MATTER OF DISTRIBUTION)
OF WATER TO WATER RIGHTS NOS.)
36-04013A, 36-04013B, AND 36-07148)
(SNAKE RIVER FARM))
Clear Springs, Snake River Farm)
Delivery Call)
_____)

COME NOW, BLUE LAKES TROUT FARM, INC. (“Blue Lakes”), and CLEAR SPRINGS FOODS, INC. (“Clear Springs”), by and through counsel of record, and pursuant to Idaho Rule of Civil Procedure 56 and the Department’s Rules of Procedure (IDAPA 37.01.01 *et seq.*), and hereby jointly move for summary judgment in the above-entitled contested case. Blue

Lakes and Clear Springs submit that there are no genuine issues of material fact and that they are entitled to judgment as a matter of law on the issues identified below.

Through this motion, Blue Lakes and Clear Springs seek summary judgment that:

1) Blue Lakes' and Clear Springs' decreed water rights entitle them to diversion, use and delivery of the decreed quantities, at all times during the decreed periods of use, subject only to a finding of forfeiture or that the water is not presently needed for the decreed beneficial use.

The Director is required, as a matter of law, to administer water rights in accordance with the decreed elements of Blue Lakes' and Clear Springs' water rights. Accordingly:

a) The Director is precluded, as a matter of law, from interpreting Blue Lakes' and Clear Springs' decrees to entitle them to diversion, use or delivery of less than the decreed quantities of water during the decreed periods of use.

b) The Director is precluded, as a matter of law, from examining Blue Lakes' and Clear Springs' diversion and use of water prior to the issuance of their decrees to determine the quantities of water to which they are entitled by their decreed water rights for purposes of administering water rights in response to Blue Lakes' and Clear Springs' water delivery calls.

c) The Director is precluded, as a matter of law, from finding or concluding that Blue Lakes is entitled to an "average monthly seasonal maximum [of] 183 cfs when Pristine Springs is diverting less than 25.3 cfs" (Blue Lakes' Order, p 27, ¶ 31). The aggregate decreed quantity of Blue Lakes' water rights is 197.06 cfs, without such qualifications or conditions. The Director is precluded, as a matter of law, from finding or concluding that Clear Springs is only entitled to 117.67 cfs at "the seasonal maximum spring discharge" (Clear Springs' Order, p. 34, ¶ 33).

d) The Director is precluded, as a matter of law, from finding or concluding that the quantities of water to which Blue Lakes and Clear Springs are entitled under their decreed water rights are limited to “seasonal,” “intra-year” variations in water flows that the Director believes existed “at the time such rights were established” (e.g. Blue Lakes’ Order, p 11, ¶¶ 50, Clear Springs’ Order, p. 13, ¶ 55). No such qualification or condition appears in any of Blue Lakes’ or Clear Springs’ water rights.

e) The Director is precluded, as a matter of law, from finding or concluding that any of Blue Lakes’ and Clear Springs’ water rights is being filled by the temporary presence of “seasonal high flows” during a portion of the year (e.g. during one month, see Blue Lakes’ Order, p 14, ¶ 64, Clear Springs’ Order, p. 14-15 ¶¶ 61, 62).

2) The Director’s exclusion of hydraulically connected, junior priority ground water rights from administration based on uncertainty in ESPA ground water model simulations is erroneous as a matter of law; and

3) The five-year, “phased-in” administration of hydraulically connected junior priority ground water rights and associated mitigation by the Director’s Orders is untimely, inadequate, and contrary to Idaho law.

4) The identification of the water sources in the decrees for Blue Lakes’ water rights (“Alpheus Creek”) and Clear Spring’s water rights (“springs”) is binding on the Director. The Director is precluded, as matter of law, from finding that the source for either of these water rights is “ground water” or further finding that the rights are subject to the legal requirements applicable to ground water rights. (See IGWA’s *Petition for Reconsideration, Request for Hearing, and Motion for Stay*, p. 3, ¶ 4, dated June 2, 2005).

5) The priorities of Blue Lakes' and Clear Springs' water rights apply to all connected water sources, including the Eastern Snake Plain Aquifer (ESPA). Blue Lakes' and Clear Springs' entitlement to priority delivery of water from the ESPA is not affected by the fact that ESPA is recharged by seepage water from canals (*See IGWA's Petition for Reconsideration, Request for Hearing, and Motion for Stay*, p. 3, ¶ 4, dated June 2, 2005).

6) The Swan Falls Agreement entered into between the State of Idaho and Idaho Power Company does not preclude administration of hydraulically connected junior priority ground water rights to satisfy Blue Lakes' and Clear Springs' decreed senior surface water rights (*See IGWA's Summary of Positions on Director's Orders Ex. 400A and 400B, Affirmative Defense #1 – Subordination, Testimony of Ronald D. Carlson*, pp. 17-23).

Blue Lakes and Clear Springs will file an affidavit(s) and memorandum in support of this motion, and request oral argument on this motion.

Dated this 28th day of September, 2007.

RINGERT CLARK, CHTD.



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For

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of September, 2007, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

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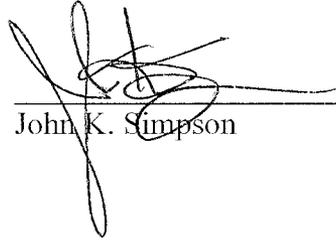
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