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APR 13 2010
DEPARTMENT OF
WATER RESOURCES

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING**

CLEAR SPRINGS FOODS, INC.,)

Case No. 2008-0000444

Petitioner,)

vs.)

BLUE LAKES TROUT FARM, INC.,)

**BLUE LAKES TROUT FARM,
INC.'S MOTION TO ENFORCE
ORDERS**

Cross-Petitioner,)

vs.)

IDAHO GROUND WATER)

APPROPRIATORS, INC., NORTH SNAKE)

GROUND WATER DISTRICT and MAGIC)

VALLEY GROUND WATER DISTRICT,)

Cross-Petitioner,)

vs.)

IDAHO DAIRYMEN'S ASSOCIATION,)

INC.,)

Cross-Petitioner,)

COPY

vs.)
)
 RANGEN, INC.,)
)
 Cross-Petitioner,)
)
 vs.)
)
 DAVID R. TUTHILL, JR., in his capacity as)
 Director of the Idaho Department of Water)
 Resources, and THE DEPARTMENT OF)
 WATER RESOURCES,)
)
 Respondents.)
)
 IN THE MATTER OF DISTRIBUTION)
 OF WATER TO WATER RIGHTS NOS.)
 36-0413A, 36-04013B, and 36-07148,)
)
 (Clear Springs Delivery Call))
)
 IN THE MATTER OF DISTRIBUTION OF)
 WATER TO WATER RIGHTS NOS. 36-)
 02356A, 36-07210, and 36-07427,)
)
 (Blue Lakes Delivery Call))
)

COMES NOW, Cross-Petitioner Blue Lakes Trout Farm, Inc., (“Blue Lakes”) and, pursuant to I.A.R. 13(b)(13), files this *Motion to Enforce Orders*. This motion is supported by the *Affidavit of Daniel V. Steenson* and the *Memorandum in Support of Motion to Enforce Orders*, filed concurrently herewith.

Blue Lakes seeks enforcement of the Court’s December 4, 2009 *Order on Petitions for Rehearing* and the Court’s June 19, 2009 *Order on Petition for Judicial Review* in two respects.

First, the Director of the Idaho Department of Water Resources has failed and refused to take any action or conduct any proceedings related to injury caused by junior ground water diversions to Blue Lakes' 1971 water right no. 36-7210 in accordance with this Court's remand order, which provides:

1. The case is **remanded** so that the Director may apply the appropriate burdens of proof and evidentiary standards when considering seasonal variations as part of a material injury determination as explained herein. Although the CMR do not specify timing for the filing of mitigation plans, in order to avoid prejudice to either side, it is imperative that any mitigation plan submitted in response to a material injury determination be approved (after a hearing, in accordance with the CMR and this Court's decisions) prior to allowing juniors subject to administration to commence water use.

Order on Petitions for Rehearing, at 12-13; *see also*, *Order on Petition for Judicial Review* at 58.

This Court held that lack of data concerning seasonal flows at the times of appropriation does not deprive the Blue Lakes' decree of its presumptive weight. *Order on Petition for Judicial Review* at 22-24; *Rehearing Order* at 7-8. In other words, the lack of data cannot be construed against Blue Lakes. The Court held that the burden is on junior ground water users to show that their diversions do not cause material injury to Blue Lakes' water right.

On December 22, 2009 the Director issued an *Order Granting Motion to Limit Scope of Hearing; Denying Motion to Strike Clear Springs' Protest; and Scheduling Order* ("*Order Limiting Scope*"), in which he determined that he has no jurisdiction to respond to this Court's remand order. On April 2, 2010, the Director issued an *Order* which summarily denied Blue Lakes' *Motion for Reconsideration of the Order Limiting Scope*.

The Director is required to comply with the District Court's remand order promptly and completely. Hydraulically connected junior ground water right holders have the burden to show that their diversions do not cause material injury to the Blue Lakes' 1971 water right. If they fail

to meet this burden, they must be curtailed or receive approval for a plan that mitigates the injury they cause to the Blue Lakes' 1971 right. A mitigation plan submitted in response to a material injury determination must be approved prior to allowing juniors subject to administration to commence water use. *Order on Petitions for Rehearing* at 13.

Second, the Director's *Order Limiting Scope* violates this Court's Orders by precluding Blue Lakes from presenting evidence of updated, improved and/or new data, analysis and methods for determining the impact of junior ground water diversions on Blue Lakes' water rights. Blue Lakes' evidence provides a better technical basis for determining the extent of injury and mitigation obligation than the Director's flawed "trimline" and "spring allocation" determinations. The Hearing Officer found that: "Continuing efforts should be made to improve the accuracy of all scientific conclusions." "If that produces more reliable results, those results should be used in the future." *Responses to Petitions for Reconsideration and Clarification and Dairymen's Stipulated Agreement ("Reconsideration Order")* at R. Vol 3845-3846. This finding was adopted by the Director's Final Order and affirmed by this Court. This Court also found that when better methods are developed to determine the impact of ground water diversions on spring flows and to deal with model uncertainty in administration, those better methods should be used. *Order on Petition for Judicial Review* at 25-29.

Accordingly, Blue Lakes requests that the Court issue an order and/or writ of mandate requiring the Director to comply promptly and completely with this Court's remand order to determine injury to Blue Lakes' water right no. 36-7210 as required by the order. Blue Lakes also requests that the Court issue an order and/or writ of mandate to make it clear that the Director has a present and ongoing duty to consider updated, improved and/or new data, analysis and methods

for determining the impact of junior ground water diversions on Blue Lakes' water rights, and to allow Blue Lakes to present such evidence in any proceeding before IDWR related to Blue Lakes' water delivery call.

Blue Lakes requests expedited consideration and hearing on this motion, because junior ground water diversions causing injury to Blue Lakes' water rights have commenced or will commence soon.

Dated this 12th day of April, 2010.



Daniel V. Steenson

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of April, 2010, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

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