

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

GARRICK L. BAXTER, ISB #6301
CHRIS M. BROMLEY, ISB #6530
Deputy Attorneys General
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
Garrick.Baxter@idwr.idaho.gov
Chris.Bromley@idwr.idaho.gov

Attorneys for the Respondents/Defendants

IN THE DISTRICT COURT FOR THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BLUE LAKES TROUT FARM,)
INC.,)
)
Petitioner/Plaintiff,)
)
vs.)
)
GARY SPACKMAN, in his official)
capacity as Interim Director of the Idaho)
Department of Water Resources,)
and the IDAHO DEPARTMENT)
OF WATER RESOURCES,)
)
Respondents/Defendants.)
_____)

Case No. CV-WA-2010-19823

ANSWER

COME NOW, Respondents/Defendants, Idaho Department of Water Resources,
("IDWR" or "Department"), and Gary Spackman, Interim Director of the Idaho Department of

Water Resources (“Director”), (collectively referred to herein as the “State Defendants”), and as their answer to the Blue Lakes Trout Farm, Inc., (“Plaintiff”) *Verified Complaint, Declaratory Judgment Action and Petition for Writ of Mandate* (“Plaintiff’s Complaint”) admit, deny and allege as follows:

1. State Defendants deny each and every allegation contained in Plaintiff’s Complaint except as hereinafter expressly admitted.

2. State Defendants admit the allegation in Paragraph 1 of Plaintiff’s Complaint that Blue Lakes is an Idaho corporation. State Defendants are without sufficient knowledge to admit or deny the location of Blue Lakes’ principal office.

3. State Defendants admit the allegations in Paragraph 2 of Plaintiff’s Complaint.

4. State Defendants admit the allegation in Paragraph 3 of Plaintiff’s Complaint that the Snake River Basin Adjudication District Court of the Fifth Judicial District has original jurisdiction over the issuance of writs of mandamus pursuant to Idaho Code §§ 1-705 and 7-301, *et seq.* State Defendants affirmatively allege that the Idaho Supreme Court issued an Administrative Order dated December 9, 2009, declaring that all petitions for judicial review made pursuant to Idaho Code § 42-1701A of any decision from the Department of Water Resources shall be assigned to the presiding judge of the Snake River Basin Adjudication District Court of the Fifth Judicial District. State Defendants deny that the Administrative Order requires that the matter be reassigned to the presiding judge of the Snake River Basin Adjudication District Court because an application for peremptory writ of mandate is not a petition for judicial review made pursuant to Idaho Code § 42-1701A.

5. State Defendants admit the allegation in Paragraph 4 of Plaintiff's complaint that the Director of the Idaho Department of Water Resources entered the Order attached as Exhibit A to Plaintiff's Complaint but otherwise assert that the Order speaks for itself and therefore denies any characterization of the Order contained in the Plaintiff's complaint.

6. State Defendants admit the allegations in Paragraph 5 of Plaintiff's complaint that a pre-hearing conference was held on September 14, 2010 and that Plaintiff asserted "that it intended to present evidence of updated, improved and/or new data, analysis, and methods for determining impact...on Plaintiff's water rights." State Defendant's deny Plaintiff's allegation that the Director has or is precluding it from presenting new evidence and affirmatively allege that Plaintiff is seeking the right through this action to relitigate issues already decided and on appeal to the Idaho Supreme Court. State Defendants also affirmatively alleged that IDWR and District Judge Melanson have previously issued orders denying Plaintiff's attempts to relitigate these matters in the pending action. The State Defendants affirmatively allege that decisions of the Hearing Officer, the Director, and Judge Melanson preclude the relitigation of matters already decided by the Hearing Officer, the Director, and Judge Melanson, during the pendency of the appeal before the Idaho Supreme Court. State Defendants deny all other allegation in Paragraph 5.

7. The State Defendants deny the allegation in Paragraph 6 that they have a duty to conduct a new hearing in the remand of the Thousand Springs Calls (IDWR Docket Nos. CM-DC-2010-002 and CM-DC-2010-003) on the issues of the 10% model uncertainty, the trim line and the modeling of reach gains. These issues were decided by the Hearing Officer, the Director, and Judge John Melanson and the issues of model uncertainty and the trim line are

currently on appeal to the Idaho Supreme Court. State Defendants admit the Director issued an Order precluding Plaintiff from addressing issues related to the 10% model uncertainty, the timeline and modeling of reach gains. State Defendants admit that it entered an Order limiting testimony but assert that the Order speaks for itself. State Defendant's deny the remainder of the allegations in Paragraph 6 of Plaintiff's complaint.

8. State Defendants admit the allegations contained in the first two sentences of Paragraph 7 of Plaintiff's Complaint. The balance of the allegations in Paragraph 7 consists of Plaintiff's speculation and legal conclusions and therefore State Defendants deny the remaining allegations contained in Paragraph 7.

9. Paragraph 8 of Plaintiff's Complaint is a statement of intent to restate the prior allegations, to which no response is required. If a response is required, State Defendants restate and incorporate by reference their answers to all prior paragraphs of Plaintiff's Complaint as set forth above.

10. State Defendants deny the allegation in Paragraph 9 of the Plaintiff's complaint that the Director has a duty to "adjust his decisions and action" in the Thousand Springs Call. State Defendants affirmatively allege that, as applied to the Thousand Springs Call, the Hearing Officer, the Director and Judge Melanson have held that IDWR's use of the model represents the best available science. State Defendants deny all remaining allegations contained in Paragraph 9 of Plaintiff's Complaint

11. State Defendants deny the allegations in Paragraph 10 of Plaintiff's Complaint.

12. Paragraph 11 of Plaintiff's Complaint is a statement of intent to restate the prior allegations, and therefore State Defendants restate and incorporate by reference their answers to all prior paragraphs of Plaintiff's Complaint as set forth above.

13. State Defendants deny the allegations in Paragraphs 12, 13 and 14 of Plaintiff's Complaint.

14. State Defendants deny that Plaintiff is entitled to any relief prayed for in its prayer for relief under numbered paragraphs (1), (2), (3), (4) and (5) of Plaintiff's Complaint.

AFFIRMATIVE DEFENSES

Res judicata

Plaintiffs' pending action is precluded under the doctrine of *res judicata*.

Law of the Case

Plaintiffs' pending action is precluded under the doctrine of law of the case.

Jurisdiction

The State Defendants and this Court lack jurisdiction to revisit the issues related to the use of the Eastern Snake Plain Aquifer model that have been appealed in the Thousand Spring Call because of the pending appeal in Supreme Court Docket No. 37308-2010.

Plaintiff has Not Established a Clear Legal Right to the Relief Sought And Has Failed to Avail Itself of a Plain, Speedy And Adequate Remedy In the Ordinary Course of Law

If Plaintiff objects to the way State Defendants responded to Judge Melanson's remand order in the Thousand Springs Call, Plaintiffs can seek review of the order through an appeal. Therefore, a writ should not issue under Idaho Code § 7-303 because of Plaintiff's failure to

avail itself of this plain, speedy and adequate remedy in the ordinary course of law. Plaintiff's Complaint should be dismissed in its entirety.

**Failure to Exhaust Administrative Remedies
Lack of Subject Matter Jurisdiction**

The Idaho Administrative Procedure Act provides that “[a] person is not entitled to judicial review of an agency action until that person has exhausted all administrative remedies required in this chapter.” Idaho Code § 67-5271. Until administrative remedies are exhausted, a district court is without subject matter jurisdiction to consider the matter. *See American Falls Reservoir Dist. No. 2 v. Idaho Dept. of Water Resources*, 143 Idaho 862, 154 P.3d 433, 453-54 (2007); *White v. Bannock County Comm’rs*, 139 Idaho 396, 401, 80 P.3d 332, 337 (2003). As Plaintiff has not exhausted the administrative remedies provided by Idaho Code §§ 42-1701A(3) and (4), the Complaint should be dismissed for lack of subject matter jurisdiction under Idaho Rule of Civil Procedure 12(b)(1).

Failure to State a Claim Upon Which Relief Can be Granted

Plaintiff has failed to state a claim upon which relief can be granted. I.R.C.P. 12(b)(6) and 74(b). Plaintiff's Complaint should be dismissed in its entirety.

REQUEST FOR ATTORNEY FEES

The State, in order to defend against this action, which is without reasonable basis in fact or law, has been required to incur attorney fees and various costs. Therefore, State Defendants request attorneys fees and costs under I.C. §§ 12-117 and -121 in an amount to be later proven.


PRAYER FOR RELIEF

WHEREFORE, State Defendants pray for an order of this Court as follows:

1. That the Plaintiff's Complaint be dismissed in its entirety.
2. That the Plaintiff's request for a Writ of Mandate be denied.
3. That the Plaintiff's request for declaratory order be denied.
4. That the Plaintiff's request for attorney's fees and costs be denied.
5. That the Plaintiff's request for additional or alternative relief be denied.
6. That State Defendants be awarded their attorney fees and costs under I.C. § 12-117 and -121.
7. For such other and further relief as the Court may deem equitable and just.

DATED this 27th day of October, 2010.

LAWRENCE G. WASDEN
Attorney General
CLIVE J. STRONG
Deputy Attorney General
CHIEF, NATURAL RESOURCES DIVISION




GARRICK L. BAXTER
Deputy Attorney General
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27 day of October, 2010, I caused a true and correct copy of the foregoing ANSWER to be filed with the Court and served on the following parties by the indicated methods:

<p><i>Original to:</i> SRBA Court 253 3rd Ave. North P.O. Box 2707 Twin Falls, ID 83303-2707</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Daniel V. Steenson Charles L. Honsinger S. Bryce Farris RINGERT LAW CHARTERED 455 South 3rd P.O. Box 2773 Boise, ID 83701-2773 dan@ringertclark.com clh@ringertclark.com bryce@ringertclark.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>Randall C. Budge Candice M. McHugh Thomas J. Budge RACINE OLSON P.O. Box 1391 Pocatello, ID 83204-1391 rbc@racinelaw.net cmm@racinelaw.net tjb@racinelaw.net</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>
<p>John K. Simpson Travis L. Thompson BARKER ROSHOLT & SIMPSON, LLP P.O. Box 485 Twin Falls, ID 83303 jks@idahowaters.com tlt@idahowaters.com</p>	<p><input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email</p>

<p>Jeffrey C. Fereday Michael C. Creamer Michael P. Lawrence GIVENS PURSLEY LLP P.O. Box 2720 Boise, ID 83701-2720 mcc@givenspursley.com jeffereday@givenspursley.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Michael S. Gilmore Deputy Attorney General Idaho Attorney General's Office P.O. Box 83720 Boise, ID 83720-0010 (208) 334-2830 mike.gilmore@ag.idaho.gov</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Justin May MAY SUDWEEKS & BROWNING LLP 1419 W. Washington Boise, ID 83702 jmay&may-law.com</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Robert E. Williams WILLIAMS MESERVY LOTHSPREICH LLP 153 E. Main St. P.O. Box 168 Jerome, ID 83338-0168 rewilliams@cableone.net</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email
<p>Allen Merritt Cindy Yenter IDWR –Western Region 1341 Fillmore St., Ste 200 Twin Falls, Id 83301-3033 allen.merritt@idwr.idaho.gov cindy.yenter@idwr.idaho.gov</p>	<input checked="" type="checkbox"/> U.S. Mail, postage prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Email



GARRICK L. BAXTER
Deputy Attorney General