

DANIEL V. STEENSON (ISB #4332)  
 CHARLES L. HONSINGER (ISB #5240)  
 S. BRYCE FARRIS (ISB #5636)  
 RINGERT CLARK CHARTERED  
 455 S. Third, P. O. Box 2773  
 Boise, Idaho 83701-2773  
 Telephone: (208) 342-4591  
 Facsimile: (208) 342-4657

RECEIVED  
 AUG 07 2006  
 DEPARTMENT OF  
 WATER RESOURCES

Attorneys for Blue Lakes Trout Farm, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES OF  
 THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF )  
 WATER TO WATER RIGHT NOS. 36-02356A, )  
 36-07210, AND 36-07427 )  
 )  
 and )  
 )  
 IN THE MATTER OF DISTRIBUTION OF )  
 WATER TO WATER RIGHT NOS. 36-04013A, )  
 36-04013B, AND 36-07148 (SNAKE RIVER )  
 FARM); AND TO WATER RIGHT NOS. )  
 36-07083 AND 36-07568 (CRYSTAL SPRINGS )  
 FARM) )  
 \_\_\_\_\_ )

**BLUE LAKES TROUT FARM,  
 INC.'S RESPONSE TO  
 JULY 28, 2006 ORDER**

COMES NOW Blue Lakes Trout Farm, Inc. ("Blue Lakes"), by and through its counsel, Ringert Clark, Chartered, and hereby submits this *Response* to the Director's July 28, 2006 *Order Requesting Briefing on Nature of Further Proceedings (Blue Lakes Delivery Call)*.

As the Director and IDWR recognized in *Musser v. Higginson*, they have a duty to promptly comply with court orders and judgments. *Bayes v. State*, 117 Idaho 96, 99-101, 785 P.2d 660, 663-664 (Ct. App. 1989). In briefing in *American Falls Reservoir District #2 et al. v. IDWR*, CV-2005-600, the Director and IDWR acknowledge that the Fifth Judicial District

ORIGINAL

Court's summary judgment bars them from continuing to apply the unconstitutional, void Conjunctive Management Rules ("CMRs"). In oral argument, the Director and IDWR advised the District Court that they would comply with the Court's judgment.

As explained in Blue Lakes' July 21, 2006 letter, in order to comply with the District Court's *Order and Judgment*, the Director must promptly acknowledge that, like the CMRs, his actions under the CMRs are unconstitutional and void, and take action to curtail junior ESPA ground water rights that are hydraulically connected to Blue Lakes Trout Farm's ("Blue Lakes") water rights, as is required by the Idaho Constitution, Title 42 of the Idaho Code, the SRBA Court's connected sources partial decrees, and the District Court's *Order and Judgment*. Until the Director takes such action, these proceedings will continue to be unconstitutional, contrary to law and District Court orders, and will continue to violate and result in a taking of Blue Lakes' water rights. Asking the parties for their opinions as to the "nature of further proceedings" does not constitute, or justify further delay in, prompt compliance with the District Court's *Order and Judgment*.

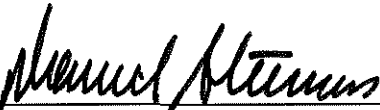
The timing of the Director's order to file briefs on the "nature of further proceedings" by August 7th appears strategically coordinated with the August 8th hearing on the *Motion for Stay* in the pending litigation. The apparent coordination between the Director's litigation efforts to avoid compliance with the District Court's *Order and Judgment*, and his actions as Director and as the hearing officer in the Blue Lakes water delivery demand proceeding, raise serious concerns about his objectivity in this proceeding. It does not appear that the Director can objectively perform his duties as a hearing officer at the same time that he is a defendant in the pending litigation. To the extent that proceedings on the Director's 2005 *Order* on Blue Lakes' water

delivery demand continue, Blue Lakes renews its request that the Director recuse himself as the hearing officer, and appoint an independent hearing officer.

The Director's consideration of the parties' views of the "nature" of these proceedings is both conspicuously late, coming two months after the District Court issued its *Order* which invalidated the CMRs, and premature in asking the parties to speculate upon the District Court's resolution of the Director's *Motion to Stay*. After the District Court decides the *Motion for Stay*, it is likely that the new hearing officer will hold a status conference to discuss these proceedings.

Dated this 7<sup>th</sup> day of August, 2006

RINGERT CLARK, CHARTERED

By:   
Daniel V. Steenson  
Attorneys for Blue Lakes Trout Farm,  
Inc.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of August, 2006, the above and foregoing document was served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

Jeffrey C. Fereday  
Michael C. Creamer  
GIVENS PURSLEY  
P.O. Box 2720  
Boise, Idaho 83701-2720  
Fax: (208) 388-1200

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

John K. Simpson, ISB #4242  
Travis L. Thompson, ISB #6168  
BARKER ROSHOLT & SIMPSON LLP  
205 N. 10<sup>th</sup> St., Suite 520  
P.O. Box 2139  
Boise, Idaho 83701-2139  
Fax: (208) 344-6034

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

Michael Gilmore  
ATTORNEY GENERAL'S OFFICE  
P.O. Box 83720  
Boise, Idaho 83720-0010  
Fax: (208) 334-2830

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

Scott Cambell  
MOFFATT THOMAS  
P.O. Box 829  
Boise, Idaho 83701  
Fax: (208) 385-5384

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

James Tucker  
IDAHO POWER COMPANY  
1221 W. Idaho Street  
Boise, Idaho 83702  
Fax: (208) 388-6935

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail

James Lochhead  
Adam Devoe  
BROWNSTEIN HYATT  
410 17<sup>th</sup> Street, 22<sup>nd</sup> Floor  
Denver, CO 80202  
Fax: (303) 223-1111

U.S. Mail, Postage Prepaid  
 Facsimile  
 E-mail



---

Daniel V. Steenson