

District Court - SRBA
 Fifth Judicial District
 In Re: Administrative Appeals
 County of Twin Falls - State of Idaho

OCT - 8 2010

By _____ Clerk

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

**BLUE LAKES TROUT FARM,
 INC.,**

Petitioner / Plaintiff,

CASE NO.: CV WA 2010-19823

vs.

**ORDER DENYING PETITION FOR
 ALTERNATIVE WRIT OF MANDATE**

**GARY SPACKMAN, in his official
 capacity as Director of the Idaho
 Department of Water Resources,
 and the IDAHO DEPARTMENT
 OF WATER RESOURCES,**

Respondents / Defendants.

**I.
 FACTS AND PROCEDURAL BACKGROUND**

On October 7, 2010, Petitioner Blue Lakes Trout Farm, Inc. filed a *Verified Complaint, Declaratory Judgment Action and Petition for Writ of Mandate* (“*Complaint*”) in the above captioned case. The case was reassigned by the clerk of the court to this Court on October 7, 2010. The *Complaint* seeks relief from an *Order Setting Hearing Schedule and Order Limiting Scope of Hearing* entered by the Director of the Idaho Department of Water Resources (“IDWR” or “the Department”) in IDWR Docket Nos. CM-DC-2010-002 and CM-DC2010-003.

On October 8, 2010, Petitioner filed an *Application for Alternative Writ of Mandate and/or Motion for Order to Show Cause*, requesting that this Court enter an *Alternative Writ of Mandate* compelling the Respondents “to consider updated, improved

and/or new data, analysis and methods for determining the impact of junior ground water diversions on [Petitioner's] water rights, and to allow [Petitioner] to present such evidence in any proceeding before IDWR related to plaintiff's water delivery call." A brief review of the underlying administrative proceedings is necessary to place Petitioner's request in context.

The underlying administrative proceedings in this matter originated before the Department when Petitioner and Clear Springs Foods, Inc. sent letters to the Department in 2005 requesting that the Department administer junior priority water rights to supply Petitioner and Clear Springs' senior water rights. The Department's *Final Order*, which was issued in July 2008, was appealed to district court, the Honorable Judge John Melanson presiding. On June 19, 2009, the district court entered its *Order on Petition for Judicial Review*, holding among other things that the Department did not properly apply the appropriate burdens of proof and evidentiary standards with respect to the issue of seasonal variation. The *Order on Petition for Judicial Review* affirmed the Department on other issues, many of which are currently on appeal to the Idaho Supreme Court in Idaho Supreme Court Docket No. 37308-2010, but remanded the issue of seasonable variability back to the Department for further proceedings.

On July 19, 2010, the Department issued its *Final Order* on remand regarding the issue of seasonal variability and injury to Petitioner's water right no. 36-7210 and Clear Springs' water right no. 36-4013A. The Department subsequently received *Petitions Requesting Hearing* from Petitioner and the Ground Water Users.

On September 14, 2010, the Director conducted a pre-hearing conference. The parties presented argument to the Director regarding the appropriate scope of the hearing. Of concern was the fact that some of the legal issues arising from the delivery calls are already pending on appeal before the Idaho Supreme Court. At the pre-hearing conference, Petitioner asserted that it intended to present evidence of updated, improved and/or new data, analysis and methods for determining the impact of junior ground water diversions on its water rights. Petitioner asserts that certain of the district court's previous orders authorize the presentation of such evidence before the Director, and that its evidence provides a better technical basis for determining the extent of injury and

mitigation obligations than the “trimline” and “spring allocation” determinations of the Director.

In the Director’s October 4, 2010 *Order Setting Hearing Schedule and Order Limiting Scope of Hearing*, the Director ordered that Petitioner is precluded from addressing issues at the hearing related to the 10% model uncertainty, the trim-line, or other issues related to the use or application of the ground water model. Petitioner asserts that the *Order* wrongfully precludes it from presenting the above-mentioned evidence.

II. DISCUSSION

A. Standard of Review.

A decision to issue a writ of mandate is committed to the discretion of the court. I.R.C.P. 74(b). An alternative writ of mandate is issued without notice to the adverse party. I.C. § 7-305. An alternative writ of mandate is accompanied by an order requiring the adverse party to appear and show cause why the party has not complied with the writ. Whether a party is seeking an alternative writ or a peremptory writ the standard is the same: “[T]he party seeking a writ of mandate must establish a ‘clear legal right’ to the relief sought. Additionally, the writ of mandate will not issue where the petitioner has ‘a plain, speedy and adequate remedy in the ordinary course of law.’” *Ackerman v. Bonneville County*, 140 Idaho 307, 311, 92 P.3d 557, 561 (Ct. App. 2004) (citing *Brady v. City of Homedale*, 130 Idaho 569, 571, 944 P.2d 704, 706 (1997)).

B. Alternative Writ of Mandate.

Following a review of the pleadings, the Court finds that because of the existence of many unresolved issues regarding the appropriateness of the issuance of a writ of mandate, it is necessary to allow the Respondents to answer the allegations of the *Complaint* and to present legal argument and/or evidence as may be appropriate prior to the Court deciding whether to issue a writ of mandate. In reaching this decision, the Court has considered the following:

1. There is the threshold question of whether the Petitioner has an adequate remedy at law.

2. Whether there is a jurisdictional issue as to whether this Court has the ability to hear this matter given the pending appeal in Supreme Court Docket No. 37308-2010.

3. Whether there are underlying foundational issues regarding the use or application of the ground water model integral to the relief sought by the Petition that are presently on appeal in Supreme Court Docket No. 37308-2010.

By raising these issues, the Court is in no way prejudging the Petitioner's claims for relief but is only explaining the reasons for not issuing an alternative writ of mandate without proper service of process, notice and opportunity for Respondents to respond to the pleadings and otherwise be meaningfully heard. The issue of whether a peremptory writ is an appropriate remedy will only be determined following a hearing on the merits.

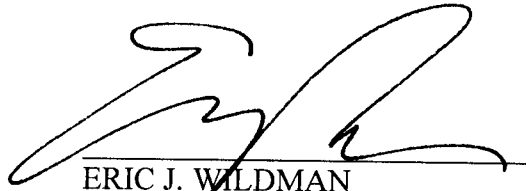
**III.
ORDER**

THEREFORE, THE FOLLOWING ARE HEREBY ORDERED:

1. The *Application for Alternative Writ of Mandate and/or Motion for Order to Show Cause* is **Denied**.

2. The Petitioner, should it so desire, may notice up a hearing on an *Application for Peremptory Writ of Mandate* following proper service and notice to the Respondents.

Dated October 8, 2010.


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING PETITION FOR ALTERNATIVE WRIT OF MANDATE was mailed on October 08, 2010, with sufficient first-class postage to the following:

BLUE LAKES TROUT FARM INC

Represented by:
CHARLES L. HONSINGER
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

BLUE LAKES TROUT FARM INC

Represented by:
DANIEL V. STEENSON
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591

BLUE LAKES TROUT FARM INC

Represented by:
S. BRYCE FARRIS
RINGERT LAW CHARTERED
455 S THIRD ST
PO BOX 2773
BOISE, ID 83701-2773
Phone: 208-342-4591


A handwritten signature in cursive script, reading "Julie Murphy", is written over a horizontal line. The signature is positioned to the right of the printed text "Deputy Clerk".