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DEPARTMENT OF
WATER RESOURCES

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

IN THE MATTER OF NORTH SNAKE
AND MAGIC VALLEY GROUND
WATER DISTRICTS' 2009 JOINT
MITIGATION PLAN TO COMPENSATE
BLUE LAKES TROUT FARM, INC.

**Docket No. CM-MP-2009-001
CM-MP-2009-002
(CM-MP-2009-003)¹**

**GROUND WATER DISTRICTS'
MOTION TO LIMIT SCOPE OF
HEARING AND PROPOSED
SCHEDULE**

IN THE MATTER OF THE A&B
IRRIGATION DISTRICT'S 2009
MITIGATION PLAN TO COMPENSATE
BLUE LAKES TROUT FARM, INC.

(Water Right Nos. 36-02356A, 36-07210,
and 36-07427)

COME NOW North Snake Ground Water District (NSGWD) and Magic Valley Ground
Water District (MVGWD) (collectively "Ground Water Districts"), for and on behalf of their

¹ The Ground Water Districts are not parties to South West Irrigation District's mitigation plan, however, because these matters are consolidated at the moment, the docket number for that plan is included here.

respective members and those groundwater users who are non-member participants their mitigation activities, and file this *Motion to Limit the Scope of the Hearing and Proposed Schedule* in this matter, requesting that the Director issue an order limiting the hearing to only those issues relating to the proposed mitigation plans, and excluding the remaining issues raised in the protest filed by Blue Lakes as outside the scope of the purpose of the hearing. The purpose of the hearing is to determine whether the Ground Water District's (and other applicant's) Mitigation Plan is sufficient to meet the obligations under the previously issued orders and includes acceptable methods of mitigation.

Attached hereto is a copy of the Scheduling Order entered in the matter relating to the *Ground Water Districts' Third Mitigation Plan (Over-the-Rim)* ("*Over the Rim Plan*") filed in response to the finding of material injury to Clear Springs Foods, Inc.'s water right at its Snake River Farm facility, IDWR Docket No. CM-MP-2009-004. Many of the objections to the Ground Water Districts' mitigation plan proposed for Blue Lakes are similar to the issues raised by Clear Springs in response to the Ground Water Districts' Over the Rim Plan. In the Over the Rim case, the Hearing Officer limited the scope of the initial hearing to those matters dealing with the method of mitigation. For example, the Hearing Officer left matters relating to the trimline, ESPA model uncertainty, spring percentages, the amount of mitigation owed, the amount of material injury and the like to be evaluated once the appeal relating to those issues is final and the outcome of the earlier conclusions revisited. While the Hearing Officer allowed discovery against IDWR to go forward on the broader issues raised in Clear Springs' protest, the hearing itself was properly limited to whether the direct delivery of water under the Over the Rim Plan is an acceptable method of mitigation.

Similarly, in this case, the Ground Water Districts' Mitigation Plan for Blue Lakes involves a straight forward concept of direct delivery of Alpheus Creek water to Blue Lakes with some use of CREP and conversion acres. The adequacy of the mitigation and method is the purpose of the mitigation plan hearing. In order to proceed, the hearing on the proposed mitigation plans must be in accordance with the prior orders already issued in this case as to the amount of material injury and the amount of mitigation owed and should not revisit those issues or the other broader issues pending on appeal. The mitigation plan hearing should decide the matter of the sufficiency of the mitigation proposed, as such, the broader issues raised in response by Blue Lakes (relating to the use of the trimline, the spring percentages, the mitigation amount owed, the amount of material injury found, etc.) should not be addressed in the hearing until the appeals involving those issues has been finalized, because considering those matters at the mitigation hearing is barred by the doctrine of *res judicata* and would be premature and inefficient until the outcome of the pending appeals is known.

Because the scope of the hearing directly affects the proposed testimony deadlines and the length of the hearing, an order regarding the scope of the hearing is necessary before a final schedule can be issued. Therefore, the Ground Water Districts request that the Director enter an order in this matter limiting the scope of the hearing, as was done in the Over the Rim case, and enter a schedule accordingly.

Provided that the scope of the hearing is limited as requested herein, the Ground Water Districts would propose the following schedule:

12-21-09	Motions and opening briefs
1-8-10	Responses to motions
1-15-10	Replies in support of motions

1-25-10 Hearing on motions
2-3-10 Decision on motions

2-12-10 Opening testimony by applicants
3-3-10 Rebuttal testimony by Blue Lakes (including days for deposition and rebuttal testimony preparation)
3-12-10 Reply testimony (including days for deposition and reply testimony preparation)
3-16-10 Hearing to commence


As part of the consideration of the above hearing schedule, the Ground Water Districts believe it is important to set a motion and briefing schedule upfront because doing so may help to further narrow the issues for hearing. As discussed at the November 24, 2009 scheduling conference, there are some issues both factually and legally that are common to all of the proposed mitigation plans and requiring the parties to identify those issues and file motions and briefing accordingly upfront will likely narrow the issues required at hearing, will assist all parties in preparing for the hearings, and will provide for a more efficient and judicious resolutions of these matters.

In conclusion, the Ground Water Districts request that Director enter an order limiting the scope of the hearing, that the above schedule be set or that if an alternative schedule is set, that it include deadlines for identifying issues through motions and briefing.

RESPECTFULLY SUBMITTED

DATED this 4th day of December, 2009.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED


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CERTIFICATE OF MAILING

I hereby certify that on this 4th day of December, 2009, the above and foregoing was sent to the following by U.S. Mail, proper postage prepaid and by e-mail for those with listed e-mail addresses:

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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. 36-04013A, 36-04013B,)
AND 36-07148) **SCHEDULING ORDER**
(SNAKE RIVER FARM))
_____)

IN THE MATTER OF THE THIRD MITIGATION)
PLAN (OVER-THE-RIM) OF THE NORTH SNAKE)
AND MAGIC VALLEY GROUND WATER)
DISTRICTS TO PROVIDE REPLACEMENT)
WATER FOR CLEAR SPRINGS SNAKE RIVER)
FARM)
(WATER DISTRICT NOS. 130 AND 140))
_____)

A Status Conference was held August 26, 2009, concerning the Ground Water Districts proposed mitigation plan for delivery of water over the rim to the Clear Springs Snake River Farm which has objected to the plan on various grounds. Interested parties appeared through counsel. The following matters were determined:

1. Hearing on the mitigation plan and the objections will be staged, determining first whether the proposal for over the rim delivery is an acceptable method to mitigate the obligations of the junior ground water users. The remaining issues raised by the objections shall be addressed as and if they become relevant to a final determination. Hearing on the proposal for over the rim delivery shall be held from December 7, 2009, through December 11, 2009, commencing at 8:00 a.m. and proceeding at such hours as necessary to complete the presentation of evidence on this phase of the case within the time allocated.

2. Expert testimony on behalf the Ground Water Districts shall be pre-filed by September 11, 2009. Any pre-filed lay testimony on behalf of the Ground Water Districts shall be filed by October 2, 2009.

3. Clear Springs Snake River Farm shall pre-file expert and lay testimony by October 30, 2009.

4. All reply testimony shall be filed by November 25, 2009.

5. Discovery may proceed as to Idaho Department of Water Resources employees on remaining issues beyond those to be addressed at the hearing commencing December 7, 2009.

Dated this 28 day of August, 2009.


GERALD F. SCHROEDER
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28th day of August, 2009, the above and foregoing, was served by the method indicated below, and addressed to the following:

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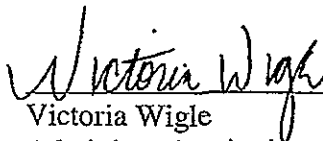
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