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DEPARTMENT OF
WATER RESOURCES

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

COPY

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

**MOTION FOR ORDER APPROVING
MITIGATION PLAN FOR BLUE
LAKES**

(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 respective members and those groundwater users who are non-member participants in their mitigation activities for Blue Lakes, and file this Motion for Order Approving Mitigation Plan.

The GWU's Mitigation Plan for Blue Lakes was provided in response to the Director's May 19, 2005 *Order in the Matter of Distribution of Water to Water Rights Nos. 36-2356A, 36-7210 and 36-7427 (Blue Lakes Trout)* and subsequent orders relating thereto. The GWU's Mitigation Plan for Blue Lakes was submitted either as a replacement water plan or as a

mitigation plan under Conjunctive Management Rule 43, IDAPA 37.03.11.043. (“CM Rules”).
GWU's Mitigation Plan for Blue Lakes at 2.

The GWU’s Mitigation Plan for Blue Lakes was accepted and treated as a mitigation plan submitted under CM Rule 43. Notice of the GWU’s Mitigation Plan for Blue Lakes was published in accordance with CMR Rules on July 30 and August 6, 2009. Protests were received to the Mitigation Plan by Blue Lakes and Clear Springs Foods, Inc.

The GWU’s Mitigation Plan for Blue Lakes proposed to address material injury to Blue Lakes Trout’s Water Right Nos. 36-2356A and 36-7427 by providing direct delivery of replacement water to Blue Lakes Trout of 10 cfs of springs flowing from Alpheus Creek under the Ground Water District’s Water Right No. 36-2603C. The GWU’s Mitigation Plan for Blue Lakes also proposed to provide mitigation to Blue Lakes Trout through the conversion of lands from groundwater irrigation to surface water irrigation and through voluntary curtailment of acres enrolled in the CREP program.

On January 11, 2010, the Ground Water Districts submitted the *Ground Water Districts’ Statement Regarding Mitigation Activities Under Mitigation Plan for Blue Lakes* (“Statement”). In that Statement, the Ground Water Districts stated that they “intend to provide only direct delivery of water to Blue Lakes Trout Company, Inc. (“Blue Lakes”) to mitigate for the material injury to Blue Lakes’ water rights.” *Statement at 1-2.* The Ground Water Districts Statement indicated that the direct delivery of Alpheus Creek water fully mitigates their obligation under current orders and that any CREP and conversion activities will be pursued under IGWA’s *Mitigation Plan for Conversions, Dry-Ups, and Recharge* which is a mitigation plan pending before the Department, Docket No. CM-MP-2009-6.

On February 9, 2010, Blue Lakes filed a *Notice of Partial Withdrawal of Protest to Ground Water Users' Joint Mitigation Plan*. ("Partial Withdrawal") In that *Partial Withdrawal*, Blue Lakes stated that "[i]t appears that the Ground Water Users' Mitigation Plan, individually or in conjunction with other mitigation plans, will satisfy this year's 11.9 cfs mitigation requirement . . . Accordingly Blue Lakes withdraws its protest with respect to the narrow issues set for hearing in the Director's *Order Limiting Scope*." *Partial Withdrawal* at 2. No action was taken on Blue Lakes' Motion for Reconsideration of that Order.

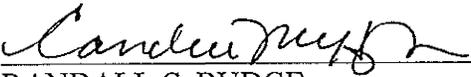
On February 10, 2010, a status conference was held in this matter. At that status conference, counsel for the Ground Water Districts indicated that the *Statement* filed on January 11, 2010, modified the GWU's Mitigation Plan for Blue Lakes and withdraws from consideration the mitigation activities of conversion, dry-ups and CREP from the GWU's Mitigation Plan for Blue Lakes.

On April 5, 2010, the parties submitted a *Joint Motion to Modify Notice of Hearing* which supports the fact that no hearing is intended or necessary on the GWU's Mitigation Plan for Blue Lakes.

Based on the foregoing the Ground Water Districts request that the Department enter an Order Approving the GWU's Mitigation Plan for Blue Lakes as modified by the *Statement* submitted by them on January 11, 2010 and their representation on the record at the February 10, 2010 status conference. In order to assist the Department in entering an order approving the GWU's Mitigation Plan for Blue Lakes, the Ground Water Districts have provided a proposed order along with this motion.

DATED this 5th day of April, 2010.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

A handwritten signature in cursive script, appearing to read "Randall C. Budge", is written over a horizontal line.

RANDALL C. BUDGE

CANDICE M. MCHUGH

Attorneys for Ground Water Districts

CERTIFICATE OF MAILING

I hereby certify that on this 6th day of April, 2010, 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**

Docket No. CM-MP-2009-001

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

**Order Approving Ground Water Users'
Mitigation Plan for Blue Lakes**

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

On July 6, 2009, the Idaho Department of Water Resources ("Department") received the *Ground Water Users' Joint Mitigation Plan for 2009 (Blue Lakes)* ("GWU's Mitigation Plan for Blue Lakes"). The GWU's Mitigation Plan for Blue Lakes was submitted on behalf of North Snake Ground Water District and Magic Valley Ground Water District and their respective members and those groundwater users who are non-member participants in their mitigation activities. *GWU's Mitigation Plan for Blue Lakes* at 1. The GWU's Mitigation Plan for Blue Lakes was also provided on behalf of Southwest Irrigation District, Goose Creek Irrigation District and Carey Ground Water District through agreements with the North Snake Ground Water District and Magic Valley Ground Water District. Southwest Irrigation District filed its own mitigation plan on October 21, 2009.

FINDINGS

The GWU's Mitigation Plan for Blue Lakes was provided in response to the Director's May 19, 2005 *Order in the Matter of Distribution of Water to Water Rights Nos. 36-2356A, 36-*

7210 and 36-7427 (*Blue Lakes Trout*) and subsequent orders relating thereto. The GWU's Mitigation Plan for Blue Lakes was submitted either as a replacement water plan or as a mitigation plan under Conjunctive Management Rule 43, IDAPA 37.03.11.043. ("CM Rules"). GWU's Mitigation Plan for Blue Lakes at 2.

The GWU's Mitigation Plan for Blue Lakes was accepted and treated as a mitigation plan submitted under CM Rule 43. Notice of the GWU's Mitigation Plan for Blue Lakes was published in accordance with CMR Rules on July 30 and August 6, 2009. Protests were received to the Mitigation Plan by Blue Lakes and Clear Springs Foods, Inc.

The GWU's Mitigation Plan for Blue Lakes proposed to address material injury to Blue Lakes Trout's Water Right Nos. 36-2356A and 36-7427 by providing direct delivery of replacement water to Blue Lakes Trout of 10 cfs of springs flowing from Alpheus Creek under the Ground Water District's Water Right No. 36-2603C. The GWU's Mitigation Plan for Blue Lakes also proposed to provide mitigation to Blue Lakes Trout through the conversion of lands from groundwater irrigation to surface water irrigation and through voluntary curtailment of acres enrolled in the CREP program.

On January 11, the Ground Water Districts submitted the *Ground Water Districts' Statement Regarding Mitigation Activities Under Mitigation Plan for Blue Lakes*. ("Statement"). In that Statement the Ground Water Districts stated that the Ground Water Districts "intend to provide only direct delivery of water to Blue Lakes Trout Company, Inc. ("Blue Lakes") to mitigate for the material injury to Blue Lakes' water rights." *Statement* at 1-2. The Ground Water Districts' Statement indicated that the direct delivery of Alpheus Creek water fully mitigates their obligation under current orders and that any CREP and conversion activities will

be pursued under IGWA's *Mitigation Plan for Conversions, Dry-Ups, and Recharge* which is a mitigation plan pending before the Department, Docket No. CM-MP-2009-6.

On February 9, 2010, Blue Lakes filed a *Notice of Partial Withdrawal of Protest to Ground Water Users' Joint Mitigation Plan*. ("Partial Withdrawal") In that *Partial Withdrawal*, Blue Lakes stated that "[i]t appears that the Ground Water Users' Mitigation Plan, individually or in conjunction with other mitigation plans, will satisfy this year's 11.9 cfs mitigation requirement . . . Accordingly Blue Lakes withdraws its protest with respect to the narrow issues set for hearing in the Director's *Order Limiting Scope*." *Partial Withdrawal* at 2.

Along with the *Notice of Partial Withdrawal*, Blue Lakes submitted a *Motion for Reconsideration of the Director's Order Limiting Scope*. On February 23, 2010, the City of Pocatello and the Ground Water Districts filed a response to Blue Lakes' *Petition for Reconsideration*. The Director has reviewed Blue Lakes' *Petition for Reconsideration* and denies the motion.

On February 10, 2010, a status conference was held in this matter. At that status conference, counsel for the Ground Water Districts indicated that their *Statement* filed on January 11, 2010, modified the GWU's Mitigation Plan for Blue Lakes and withdraws from consideration the mitigation activities of conversion, dry-ups and CREP from the GWU's Mitigation Plan for Blue Lakes. The Director hereby finds that the GWU's Mitigation Plan for Blue Lakes is modified by the *Statement* filed on January 11, 2010 and that no further publication is required because the original notice of publication for the GWU's Mitigation Plan for Blue Lakes included all possible activities and as such, the public was put on notice of what was being proposed. The modification simply removes part of the proposed activities.

Also at the status conference, counsel for the Ground Water Users indicated that the direct delivery of Alpheus Creek Water to Blue Lakes Trout under Water Right No. 36-2603C was intended to be a permanent delivery of water and had been ongoing since April 2008. Further, the GWU's Mitigation Plan for Blue Lakes states specifically that the delivery of Alpheus Creek water "[w]ill continue to be delivered indefinitely in the future as needed to meet the Ground Water Users' mitigation obligations." GWU's Mitigation Plan for Blue Lakes at 5. Counsel for Blue Lakes indicated that he believed that Partial Withdrawal was still in effect given this information, but would provide notice to the Department if Blue Lakes intended to modify its Partial Withdrawal. No modification has been received.

Clear Springs Foods, Inc.'s Protest to the GWU's Mitigation Plan is limited to those questions that have been found to be outside the scope of the hearing and issues in this matter as set forth in the *Director's Order Limiting Scope* dated December 22, 2009.

At that status conference, the Director committed to submit information to the parties on February 19, 2010 which provided the obligations of each of the parties. The Director emailed that information to the parties on February 19, 2010 and in that email, the Director indicated that if any of the parties needs "further explanation, IDWR could either write a short narrative or convene another pre-hearing conference." No party has requested further explanation.

The GWU's Mitigation Plan for Blue Lakes provides direct delivery of water to Blue Lakes to offset the material injury to Blue Lakes' senior water rights: Water Rights Nos. 36-2356A and 36-7427 both of which have been found to be suffering material injury by the Director in his prior orders.

The Director's information provided to the parties on February 19, 2010 require North Snake Ground Water District to provide 25.59 cfs to the Devils' Washbowl to Buhl spring reach

or 5.1 cfs to the spring; Magic Valley Ground Water District to provide 17.37 cfs to the reach or 3.5 cfs obligation to the spring; and, Carey Valley Ground Water District to provide 0.97 cfs to the reach or 0.2 cfs to the spring.

The non-members' impact on the reach is 3.91 cfs with a 0.8 cfs obligation to the spring.

Southwest and Goose Creek Irrigation Districts submitted their own plan and are no longer covered under the GWU's Mitigation Plan for Blue Lakes.

The total obligation of North Snake, Magic Valley and Carey Valley Ground Water Districts and the non-member participants is 9.6 cfs.

The GWU's Mitigation Plan for Blue Lakes provides up to 10 cfs directly to Blue Lakes from the same source of supply as Blue Lakes' senior water rights. The direct delivery of water in the amount of 9.6 cfs eliminates material injury to Blue Lakes' senior water rights and is an acceptable mitigation method under the CM Rules and Idaho Law.

ORDER

After reviewing information contained in the GWU's Mitigation Plan for Blue Lakes and good cause appearing therefor, it is ORDERED that the Ground Water Districts' Mitigation Plan for Blue Lakes is APPROVED.

IT IS FURTHER ORDERED that the Ground Water Districts are required to provide direct delivery of water to Blue Lakes of 9.6 cfs on an on-going and permanent basis and that this fully satisfies their obligation to Blue Lakes under the current orders.

Blue Lakes' Motion for Reconsideration of the Order Limiting Scope is DENIED.

DATED this _____ day of _____, 2010.

GARY SPACKMAN
Interim Director, IDWR

CERTIFICATE OF MAILING

I hereby certify that on this ___ day of _____, 2010, 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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