

Daniel V. Steenson, ISB #4332
 Charles L. Honsinger, ISB #5240
 S. Bryce Farris, ISB #5636
 Jon Gould, ISB #6709
 RINGERT LAW, CHTD.
 455 S. Third St.
 P.O. Box 2773
 Boise, Idaho 83701-2773
 Telephone: (208) 342-4591
 Facsimile: (208) 342-4657

Attorneys for Blue Lakes Trout Farm, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES OF
 THE STATE OF IDAHO

_____)	
IN THE MATTER OF THE NORTH SNAKE)	Docket Nos. CM-MP-2009-001
AND MAGIC VALLEY GROUND WATER)	CM-MP-2009-002
DISTRICTS' 2009 JOINT MITIGATION)	CM-MP-2009-003
PLAN FOR 2009 (Blue Lakes))	
_____)	BLUE LAKES' MEMORANDUM
)	RE. HEARING SCHEDULED
IN THE MATTER OF A&B IRRIGATION)	FOR APRIL 7-8
DISTRICT'S RULE 43 MITIGATION PLAN)	
_____)	
)	
IN THE MATTER OF SOUTHWEST AND)	
GOOSECREEK IRRIGATION DISTRICT)	
MITIGATION PLAN)	
)	
(Water Right Nos. 36-0235a, 36-07210,)	
and 36-07427))	
_____)	

COMES NOW Blue Lakes Trout Farm, Inc. ("Blue Lakes"), by and through its attorneys, Ringert Law Chartered, and files this *Memorandum Re. Hearing Scheduled for April 7-8*. This *Memorandum* is based, in part, on the *Affidavit of Daniel V. Steenson*, filed herewith.

The Director's December 22, 2009 *Order Granting Motion to Limit Scope of Hearing* ("*Order Limiting Scope*"), limits the scope of the hearing on the above-captioned mitigation plans to the issue of "the ability of the plans, either individually or collectively, to satisfy the mitigation requirement of 59.3 cfs to the Devil's Washbowl to Buhl Gage spring reach or 11.9 cfs directly to Blue Lakes (20% of 59.3 cfs)." In the *Order Limiting Scope*, the Director precludes Blue Lakes from presenting information and analysis related to the extent of injury to its water rights, and refuses to address the issue of injury to Blue Lakes' water right no. 36-7210, which was remanded to the Director by the District Court in its *Order on Petitions for Rehearing* ("*Rehearing Order*") in the *Clear Springs v. Tuthill* appeal.

On February 1, 2010, Blue Lakes and A&B Irrigation District filed a *Stipulation and Joint Motion For Approval of A&B Irrigation District's Rule 43 Mitigation Plan*, based on Dr. Allan Wylie's use of the Eastern Snake Plain Aquifer Model ("ESPAM") directly (i.e. without the Director's 20% spring percentage post-modeling administrative adjustment) to show that the use of A&B's junior "Enlargement Rights" depletes Blue Lakes' spring source by 0.51 cfs, and that A&B's proposed mitigation plan will deliver 0.77 cfs to Blue Lakes spring source.

Dr. Allan Wylie also used the ESPAM directly to show that junior ground withdrawals within Southwest Irrigation District and Goose Creek Irrigation District deplete Blue Lakes' spring source by 4.20 cfs, and that these Irrigation Districts' proposed mitigation plan will deliver 4.60 cfs to Blue Lakes spring source. *Affidavit of Daniel V. Steenson*, Ex. A. On the basis of this analysis, Blue Lakes does not object to the Southwest Irrigation District and Goose Creed Irrigation District mitigation plan, subject to future modification to reflect the best available data and analysis.

On February 9, 2010, Blue Lakes filed a *Motion to Reconsider* the Director's *Order Limiting Scope*, and also filed a *Notice of Partial Withdrawal of Protest to Ground Water Users' Joint Mitigation Plan (Notice of Partial Withdrawal)*. Recognizing that the Ground Water Districts' direct delivery would meet the mitigation obligation as defined by the Director, Blue Lakes partially withdrew its *Protest* with respect to the narrow issue set for hearing in the Director's *Order Limiting Scope*. Blue Lakes maintains its *Protest* with respect to issues it has identified in the pleadings in this matter with respect to the Director's determinations of the extent of injury to Blue Lakes' water rights, of the junior ground water rights that are subject to administration, and the mitigation required to address Blue Lakes' injury. These issues include, but are not limited to, the issue of injury to Blue Lakes' 1971 priority water right no. 36-7210 that has been remanded to the Director by the District Court, and analysis demonstrating that there are more scientifically defensible methods to account for model uncertainty and determine the impact of junior ground water diversions on Blue Lakes' spring source than the Director's "trimline" and "spring percentage" determinations. Blue Lakes also retains its right to assert that, as a matter of law, above the rim activities do not meet the Director's direct delivery requirement. Finally, Blue Lakes maintains its *Protest* to the extent necessary to ensure that junior ground water right holders are not relieved from any obligation to meet any mitigation shortfall found to have occurred in any year, including 2010.

During the February 11, 2010 status conference, the parties discussed the status of the mitigation plans and the scope of a hearing. Counsel for the Ground Water Districts represented that their plan included only direct delivery of 10 cfs to Blue Lakes, and would not include any mitigation from above the rim activities. Subsequent to the hearing, the Director provided an analysis to the parties showing that the Ground Water Districts would meet their mitigation obligation as defined

by the Director.

On April 2, 2010, the Director issued an *Order* denying Blue Lakes' *Motion for Reconsideration*.

Based on the foregoing, Blue Lakes understands that the scope of the hearing scheduled for April 7-8, 2010 in the above-captioned contested cases pursuant to the Director's February 17, 2010 *Notice of Hearing*, does not include the unresolved issues raised by Blue Lakes' in these proceedings.

Dated this 5th day of April, 2010.

RINGERT LAW CHARTERED

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

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of April, 2010, I served a true and correct copy of **BLUE LAKES' MEMORANDUM RE. HEARING** by delivering it to the following individuals by the method indicated below, addressed as stated.

Gary Spackman, Interim Director
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, ID 83720-0098
victoria.wigle@idwr.idaho.gov
phil.rassier@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

U.S. First Class Mail, Postage Prepaid
 Federal Express
 Hand Delivery
 Facsimile
 Electronic Mail

Randall C. Budge
Racine, Olson, Nye, Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, ID 83204
rcb@racinelaw.net

U.S. First Class Mail, Postage Prepaid
 Federal Express
 Hand Delivery
 Facsimile
 Electronic Mail

Candice M. McHugh
Racine, Olson, Nye, Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, ID 83204
cmm@rainelaw.net

U.S. First Class Mail, Postage Prepaid
 Federal Express
 Hand Delivery
 Facsimile
 Electronic Mail

John K. Simpson
Barker Rosholt & Simpson, LLP
1010 West Jefferson, Ste. 102
PO Box 2139
Boise, ID 83701-2139
jks@idahowaters.com

U.S. First Class Mail, Postage Prepaid
 Federal Express
 Hand Delivery
 Facsimile
 Electronic Mail

Sarah A. Klahn
White & Jankowski
511 Sixteenth Street, Ste. 500
Denver, CO 80202
sarahk@white-jankowski.com

U.S. First Class Mail, Postage Prepaid
 Federal Express
 Hand Delivery
 Facsimile
 Electronic Mail

Robert A. Maynard
Erica E. Malmen
Perkins Coie, LLP
1111 West Jefferson Street, Ste. 500
Boise, ID 83702-5391
rmaynard@perkinscoie.com
emalmen@perkinscoie.com

- U.S. First Class Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail

Travis L. Thompson
Paul L. Arrington
Sarah W. Higer
Barker Rosholt & Simpson, LLP
113 Main Avenue West, Ste. 303
PO Box 485
Twin Falls, ID 83303-0485
tlt@idahowaters.com
pla@idahowaters.com
swh@idahowaters.com

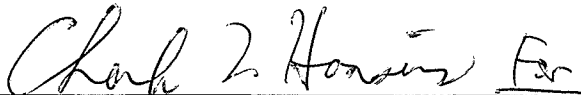
- U.S. First Class Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail

William Parsons
Parsons Smith & Stone
137 West 13th Street
Burley, ID 83318
wparsons@pmt.org

- U.S. First Class Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail

Dean Tranmer
City of Pocatello
PO Box 4169
Pocatello, ID 83201
dtranmer@pocatello.us

- U.S. First Class Mail, Postage Prepaid
- Federal Express
- Hand Delivery
- Facsimile
- Electronic Mail



Daniel V. Steenson