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DEPARTMENT OF WATER RESOURCES

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

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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 7th 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:

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