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July 21, 2006

BY EMAIL & U.S. MAIL

Director Karl J. Dreher
Idaho Department of Water Resources
322 E. Front St.
P.O. Box 83720
Boise, Idaho 83720-0098

Re: NSGWD and MVGWD May 30, 2006 Joint Plan for Providing Replacement Water for 2006 filed *In the Matter of Distribution of Water to Water Rights Nos. 36-02356A, 36-07210 and 36-07427 (Blue Lakes)*

Dear Director Dreher:

We are submitting this letter and enclosures in the administrative proceeding entitled *In the Matter of Distribution of Water to Water Rights Nos. 36-02356A, 36-07210 and 36-07427 (Blue Lakes)*. The enclosed letter from Lynn Tominaga to you on behalf of the Idaho Ground Water Appropriators, Inc. ("IGWA "), at page 2 authorizes you to deliver to Twin Falls Canal Company the same water the North Snake Ground Water District and the Magic Valley Ground Water District identified as the basis for their *Joint Plan for Providing Replacement Water for 2006*, at page 3. The Ground Water Districts submitted the *Joint Plan* as an alternative to curtailment of connected junior ground water rights pursuant to your May 19, 2005 *Order* in response to Blue Lakes' March 22, 2005 demand for delivery of water.

Since the Ground Water Districts cannot provide the mitigation they proposed junior ground water rights must be curtailed as required by your May 19, 2005 Order.[1] Counsel for the Ground Water Districts has advised us that the Ground Water Districts are pursuing additional water to make up for the shortage. However, your May 30, 2006 deadline for submitting a plan for substitute curtailment has long passed, while Blue Lakes continues to suffer serious water shortages, and junior ground water users continue to deplete Blue Lakes' water supply. At this late date, an assurance that the Ground Water Districts are trying to acquire water for mitigation cannot meet your standard that mitigation must be as "real" and certain as turning off junior pumps. Transcript of June 5, 2006 Hearing, p. 224, lns. 5-15, copy enclosed.

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[1]Although the administrative proceedings on the water delivery demands submitted by Blue Lakes and Clear Springs Foods, Inc. are separate, the Ground Water Districts submitted their *Joint Plan* in both proceedings in the same pleading. We are therefore providing Clear Springs with a copy of this letter and we concur with the comments in Clear Springs' July 21, 2006 letter concerning the *Joint Plan* and IGWA's July 10, 2006 letter.

Beyond the persistent uncertainties regarding the Ground Water District's mitigation activities, more fundamental problems plague the current administration by mitigation under the Conjunctive Management Rules. Blue Lakes Trout Farm, Inc. ("Blue Lakes") is entitled to divert 197.06 cfs under the above-referenced water rights. *See* SRBA *Order of Partial Decree for Connected Sources in Basin 36 (Conjunctive Management General Provision.* Blue Lakes is able to put all of its water rights to beneficial use, however, currently, Blue Lakes receives only 119.76 cfs. The dramatic involuntary curtailment of Blue Lakes' water rights caused by junior ground water pumping continues to significantly injure Blue Lakes. No connected junior water rights can lawfully divert water until Blue Lakes' water rights are satisfied, or Blue Lakes has agreed to some other remedy.

As you know, Blue Lakes has not agreed, and does not agree, to the so-called "mitigation" activities which you have allowed junior ground water users to undertake to avoid curtailment. Those activities have done nothing to remedy Blue Lakes' injury. Blue Lakes has seen no improvement in its water supply since submitting its March 22, 2005 water delivery demand. As it has done in its prior filings, Blue Lakes continues to demand that you perform your statutory and constitutional duties to curtail connected junior ground water diversions. The Conjunctive Management Rules are void *ab initio. See American Falls Reservoir District #2 et al. v. IDWR et al.* (Gooding County Dist. Ct., Fifth Jud. Dist., Case No. CV-2005-600), June 2, 2005 *Order on Plaintiffs' Motion for Summary Judgment*, and *June 30, 2006 Judgment Granting Partial Summary Judgment.* Therefore, all past and continuing actions under those rules are also unconstitutional, unlawful and void.

At a hearing on the defendants' motion to certify the *Judgment*, your counsel represented that you would abide by the Court's *Judgment.* This requires, at a minimum, that you formally acknowledge that your past and continuing actions, orders and proceedings based upon the Conjunctive Management rules are void, and that you are acting illegally in your continued refusal to curtail connected junior ground water rights in Basin 36 as required by the Idaho Constitution and Title 42, Chapter 6 of the Idaho Code.

Sincerely,

Daniel V. Steenson

Enc.

cc: Blue Lakes Trout Farm, Inc.
John Simpson / Travis Thompson
Jeff Fereday / Mike Creamer