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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. 36-02356A, ) **PETITION REQUESTING**  
36-07210, AND 36-07427 ) **HEARING ON JANUARY 10, 2011**  
) **AMENDED FINAL ORDER**  
**(Blue Lakes Delivery Call)** ) **REGARDING SEASONAL**  
) **VARIABILITY**  
IN THE MATTER OF DISTRIBUTION OF )  
WATER TO WATER RIGHTS NOS. 36-04013A, )  
36-04013B, AND 36-07148. )  
)  
**(Clear Springs Delivery Call)** )  
)  
\_\_\_\_\_ )

Blue Lakes Trout Farm, Inc. (Blue Lakes), by and through its counsel, files this *Petition Requesting Hearing on January 10, 2011 Amended Final Order Regarding Seasonal Variability* (“*Petition*”) in the above-captioned matter.

**INTRODUCTION**

As indicated in the *January 10, 2011 Amended Final Order Regarding Seasonal Variability* (“*Amended Final Order*”), the Director previously issued his Final Order regarding seasonal variability and injury on July 19, 2010 (“*July 19, 2010 Final Order*”), and the *Amended Final Order* is intended to be an amended order to correct errors in the *July 19, 2010 Final*

*Order*. As further indicated by the *Amended Final Order*, Blue Lakes previously filed a request for hearing on the *July 19, 2010 Final Order* and the hearing has been continued pending a decision by the Idaho Supreme Court in the Thousand Springs delivery call case, Supreme Court Docket Number 37308-2010. This *Petition* requests a hearing on the *Amended Final Order* and any additional issues or grounds raised by the *Amended Final Order*. Blue Lakes requests that the hearing on the *Amended Final Order* be consolidated and heard at the same time as the hearing on the *July 19, 2010 Final Order* and that the hearing date remain continued until a decision from the Idaho Supreme Court in the Thousand Springs delivery call case.

Blue Lakes reserves its rights to amend these grounds, and present additional grounds, for contesting the *Amended Final Order* through the customary pre-hearing opportunities to submit statements of issues, and to present argument and submit briefing on all issues that are raised during hearing.

Blue Lakes reserves the right to file with a district court an original action or actions to contest the *Amended Final Order*.

#### **Initial Grounds For Contesting the Amended Final Order**

The initial grounds for contesting the *Amended Final Order* are the same as those previously set forth by Blue Lakes in its petition requesting hearing on the *July 9, 2010 Final Order* and in order to preserve such grounds as they may relate to the *Amended Final Order* are set forth as follows:

1. The *Amended Final Order* does not require all water rights that are junior to Blue Lakes' water right no. 36-7210 to provide mitigation for their depletions to the Eastern Snake Plain Aquifer (ESPA), and the resultant injury to Blue Lakes' water right.

2. The *Amended Final Order* inappropriately applies a plus or minus 10% margin of error “trim line” to exclude hydraulically-connected junior ground water rights causing injury to Blue Lakes’ water right no. 36-7210 from priority administration.

3. The *Amended Final Order* unconstitutionally shifts the burden of proof to Blue Lakes through exclusion of certain junior water rights causing injury to Blue Lakes from priority administration.

4. Available information concerning water supplies indicates that the Director has underestimated the impact of junior ground water diversions on Alpheus Creek and/or that such diversions are greater than those anticipated by IDWR.

5. The *Amended Final Order* fails to use current available data/information to determine hydraulically-connected junior ground water diversions causing injury to Blue Lakes, and inappropriately relies on insufficient and outdated data/information contained in Rule 50 of the Conjunctive Management Rules.

6. The *Amended Final Order* inappropriately concludes that “[c]urtailment in 2010 would not provide any significant water to the senior water right holders, and it would not be reasonable to order curtailment this year.”

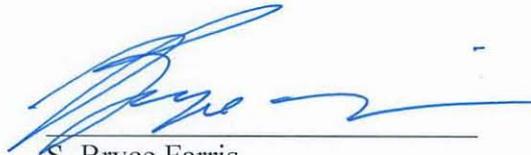
### **Independent Hearing Officer**

Blue Lakes requests that the Director appoint an independent hearing officer to preside over these proceedings as provided in I.C. § 42-1701A(2). Blue Lakes is entitled to a hearing conducted by a hearing officer that is objective and unbiased, and will hear the evidence and arguments with an open mind. The Director cannot be objective or unbiased, or have an open mind, in a hearing in which his own findings of fact, conclusions of law, and actions are contested. The Director’s direct personal involvement in the development of the factual and

legal basis for his Order precludes his objective review of the evidence and arguments that will be presented. The independence and objectivity required for this hearing cannot be provided by Department employees. Blue Lakes therefore requests appointment of a sufficiently qualified hearing officer that is not an employee of the Department and has no contractual relationship with the Department other than as a hearing officer. Blue Lakes requests former Chief Justice Gerald F. Schroeder as a hearing officer because of his prior familiarity and involvement in the issues presented by this *Petition*.

Dated this 20<sup>th</sup> day of January, 2011.

RINGERT LAW, CHTD.



S. Bryce Farris  
Attorneys for Blue Lakes Trout Farm, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of January, 2011, I served a true and correct copy of the foregoing **PETITION REQUESTING HEARING ON JANUARY 10, 2011 AMENDED FINAL ORDER REGARDING SEASONAL VARIABILITY** by delivering it to the following individuals by the method indicated below, addressed as stated.

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