

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

IN THE MATTER OF DISTRIBUTION)
OF WATER TO WATER RIGHTS NOS.)
36-07210, 36-07427, AND 36-0236a)

Blue Lakes Delivery Call)

ORDER RE DISCOVERY

IN THE MATTER OF DISTRIBUTION)
OF WATER TO WATER RIGHTS NOS.)
36-04013A, 36-04013B, AND 36-07148)
(SNAKE RIVER FARM))

Clear Springs, Snake River Farm)
Blue Lakes Delivery Call)

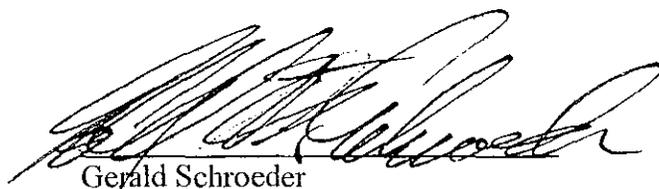
This matter was heard on August 28, 2007, on the Joint Motion for Protective Order filed by Blue Lakes Trout Farm, Inc. (Blue Lakes) and Clear Springs Food, Inc. (Clear Springs). The Joint Motion was in response to Notices of Taking Rule 30 (b) (6) Depositions *Duces Tecum* submitted by IBWA which listed ten matters for oral examination and document production. Blue Lakes and Clear Springs objected to information related to 1) the development and use of their facilities and water rights prior to the partial decree adjudicating the water rights, sought in requests numbers 1, 2, 3, 4, 6, and 9; 2) construction and improvement and operation of their facilities, sought in requests 2 and 6; 3) production, revenues, financial conditions and tax returns, sought in requests 2 and 6; 4) prior litigation, sought in request 7; 5) facility water effluent, sought in request 9. Prior to hearing IGWA submitted a Motion to Compel. The issues in the Motion to Compel overlap those in dispute concerning the scope of the discovery allowed in the depositions. Oral rulings were made on the objections and counsel for Blue Lakes was requested to submit a proposed order memorializing the rulings. IGWA objected to provisions in the proposed order and moved for partial reconsideration of the rulings made at hearing. This order memorializes the rulings at hearing as modified in part in response to the motion for partial reconsideration.

1. The parties stipulated concerning the disposition of discovery requests 4 and 5 and request 6 with respect to economic, business reports. Consequently no ruling is necessary on these requests.
2. The ultimate question of whether production records must be produced remained open following the hearing. Prior authority from the SRBA District Court indicates that such information is not discoverable. That determination is binding in these proceedings. However, if that information is not produced in discovery Blue Lakes and Blue Springs may not introduce information from the records to support any position they assert, e.g. more water allows the production of more or larger healthy fish.
3. Request 1 seeks, "All diversion and spring discharge records relating to spring discharges including spot measurements." At hearing that request was deemed too broad and discovery was limited to such records following entry of the decrees establishing the rights. Upon reconsideration that ruling is too restrictive. The historical background as to the discharge records might lead to relevant information concerning issues that may arise in this litigation. Consequently, the prior oral ruling is modified to provide that Blue Lakes and Clear Springs shall provide the discharge records from the time of initial licensing.
4. Request 2 seeks, "All records relating to spring construction and improvements, collection systems, diversion facilities, measurement devices, including maps, construction plans and designs, drilling records, contractor information, calendars, notes, memoranda, relating to the same." At hearing discovery was limited to information at the time of and following the adjudication. The decrees were entered based upon facilities and improvements in place. The likelihood of any relevant information developing from production of information of this nature prior to that time is slight and the burden significant. Discovery is limited to information at the time of and following adjudication.
5. Request 3 seeks, "All water rights utilized at the facilities together with all files and records pertaining thereto, including but not limited to all applications for

permits, transfers, Snake River Basin Adjudication claims, field reports, proof of beneficial use, engineering reports and all agreements pertaining to the same, exchanges, subordinations and all engineering reports or studies relating to the same. The relevance of pre-adjudication information of this nature is not apparent. Discovery is limited to post-adjudication information.

6. Request 7 for "All documents relating to previous litigation that the facility/corporation was involved in" is overbroad.
7. Request 8 seeks, "All documents relating to any prior decrees or court decisions relating to the water rights, including the decrees or court decisions." The discovery request is overbroad, except as it relates to court decisions and decrees concerning the water rights of Blue Lakes and Clear Springs.
8. Request 9 seeks, "All records relating to effluent and influent water quality, quantity, temperature. " There was no objection to the information concerning influent. Information concerning effluent may be relevant. The request for discovery is allowed.
9. There was no objection to Request 10.

Dated September 10, 2007.



Gerald Schroeder
Hearing Officer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of September, 2007, the above and foregoing, was served by the method indicated below, and addressed to the following:

RANDY BUDGE
CANDICE M. MCHUGH
RACINE OLSON
PO BOX 1391
POCATELLO ID 83204-1391
reb@racinelaw.net
cmm@racinelaw.net

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JOHN SIMPSON
BARKER ROSHOLT
PO BOX 2139
BOISE ID 83701-2139
(208) 344-6034
jks@idahowaters.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

DANIEL V. STEENSON
CHARLES L. HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701-2773
(208) 342-4657
dvs@ringertclark.com
clh@ringertclark.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

MIKE CREAMER
JEFF FEREDAY
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701-2720
(208) 388-1300
mcc@givenspursley.com
jeffereday@givenspursley.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

MICHAEL S. GILMORE
ATTORNEY GENERAL'S OFFICE
PO BOX 83720
BOISE ID 83720-0010
(208) 334-2830
mike.gilmore@ag.idaho.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

J. JUSTIN MAY
MAY SUDWEEKS & BROWNING
1419 W. WASHINGTON
BOISE ID 83702
(208) 429-0905
jmay@may-law.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

COURTESY COPIES:

LARRY COPE
CLEAR SPRINGS FOODS, INC.
PO BOX 712
BUHL ID 83303-1237
(208) 543-5608

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

GREGORY KASLO
BLUE LAKES TROUT FARM
PO BOX 72
BUHL ID 83316-0072
(208) 543-8476
gkaslo@rmci.net

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

NORTH SNAKE GWD
152 EAST MAIN STREET
JEROME ID 83338
(208) 388-1300

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

MAGIC VALLEY GWD
809 EAST 1000 NORTH
RUPERT ID 83350-9537

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

FRANK ERWIN
WATERMASTER
WATER DIST 36
2628 SOUTH 975 EAST
HAGERMAN ID 83332

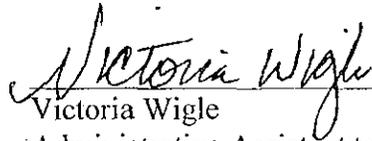
U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

BOB SHAFFER
WATERMASTER
WATER DIST 34
PO BOX 53
MACKAY ID 83251

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ALLEN MERRITT
CINDY YENTER
WATERMASTER - WD 130
IDWR – SOUTHERN REGION
1341 FILLMORE STREET SUITE 200
TWIN FALLS ID 83301-3380
(208) 736-3037
allen.merritt@idwr.idaho.gov
cindy.yenter@idwr.idaho.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail


Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources