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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, 36-07210, AND 36-07427

**(Blue Lakes Delivery Call)**

**GROUND WATER USERS'  
OBJECTION TO BLUE LAKE  
TROUT FARM, INC.'S MOTION  
FOR ORDER AUTHORIZING  
LIMITED DISCOVERY AND  
REQUEST FOR HEARING AND  
SCHEDULING CONFERENCE**

COME NOW North Snake Ground Water District (NSGWD) and Magic Valley Ground Water District (MVGWD) (collectively "Ground Water Users"), by and through their attorneys of record, and files this Request for Status Conference and Response to Blue Lakes Trout Farm, Inc.'s Motion for Order Authorizing Limited Discovery.

**BACKGROUND**

On July 6, 2009, the Ground Water Users filed *Ground Water Users' Joint Mitigation Plan for 2009 (Blue Lakes)* ("2009 Mitigation Plan") with the Idaho Department of Water Resources ("IDWR or Department"). The 2009 Mitigation Plan was provided in response to the Department's May 19, 2005, *Order in Distribution of Water to Water Right Nos. 36-2356A, 36-07210, and 36-7427 (Blue Lakes Trout)*, and subsequent orders relating thereto. These orders are

referred to herein collectively as the Director's Orders. On August 12, 2009, Blue Lakes filed a Protest to the 2009 Mitigation Plan.<sup>1</sup>

On October 7, 2009, Blue Lakes filed its *Motion for Order Authorizing Limited Discovery* ("Motion to Authorize Discovery") requesting that discovery be authorized relating to the 2009 Mitigation Plan. In the Motion to Authorize Discovery, Blue Lakes requests authorization to conduct discovery of Department employees "by the means listed in Rule 520 of the Department's Rules of Procedure relating to the technical basis of the Director's determination of the mitigation obligation for Blue Lakes, including, but not limited to, the Director's determination of model uncertainty (10%), the Director's use of a "10% trim line" to exclude certain junior ground water rights from administration in response to the Spring Users' water delivery calls, and the Director's method of allocating spring flow within a reach to determine injury to the Spring Users' facilities." *Motion for Discovery* at 3-4.

The Ground Water Users object to the scope of discovery sought by Blue Lakes and believe that those matters are outside the scope of any hearing relating to the 2009 Mitigation Plan and are the subject of the pending appeal in *Clear Springs Foods, Inc. v. Tuthill*, Case No. 2008-444 (Fifth Jud. Dist. Gooding County).

### CONCLUSION

The Ground Water Users request a Hearing Officer be assigned to the 2009 Mitigation Plan, a scheduling conference, a hearing on this objection to the scope of discovery, and on their previously filed Motion to Strike Clear Springs' Protest.

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<sup>1</sup> On August 19, 2009, Clear Springs Foods, Inc., also protested the Ground Water Users' Joint Mitigation Plan. However, the Ground Water Users filed a Motion to Strike Clear Springs' Protest on September 3, 2009. The Motion to Strike is still pending.

RESPECTFULLY SUBMITTED dated this 13<sup>th</sup> day of October, 2009.

RACINE OLSON NYE BUDGE  
& BAILEY, CHARTERED

A handwritten signature in black ink, appearing to read "Candice Mchugh", written over a horizontal line.

CANDICE M. MCHUGH

RANDALL C. BUDGE

*Attorneys for Ground Water Users*

**CERTIFICATE OF MAILING**

I hereby certify that on this 13<sup>th</sup> day of October, 2009, the above and foregoing was sent to the following by U.S. Mail, proper postage prepaid and by e-mail for those with listed e-mail addresses:

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