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Districts*

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

IN THE MATTER OF NORTH SNAKE
AND MAGIC VALLEY GROUND
WATER DISTRICTS' 2009 JOINT
MITIGATION PLAN TO COMPENSATE
BLUE LAKES TROUT FARM, INC.

(Water Right Nos. 36-02356A, 36-07210,
and 36-07427)

Docket No. CM-MP-2009-001

**GROUND WATER DISTRICTS'
PETITION FOR RECONSIDERATION
AND/OR CLARIFICATION
AND REQUEST FOR REDUCTION
OF MITIGATION OBLIGATION**

North Snake Ground Water District (NSGWD) and Magic Valley Ground Water District (MVGWD) (collectively, the "Ground Water Districts"), acting for and on behalf of their members and non-member participants in their mitigation activities, file this *Petition for Reconsideration and/or Clarification and Request for Reduction of Mitigation Obligation* pursuant to IDAPA 37.01.01.740.02.a, IDAPA 37.01.10.770 and Idaho Code § 67-5246, requesting reconsideration or clarification on the following matters.

On May 7, 2010, the Director issued his *Final Order Approving Mitigation Plans (Blue Lakes Delivery Call)* (“Mitigation Plan Order”) in this matter with a table attached as Attachment A. The Director stated that the Ground Water Districts argued that the Department should recognize mitigation credits if the mitigation offered is in excess of the quantity required. *Mitigation Plan Order* at 10. However, in conclusion of law number 7 the Director noted that

The Department will not institute a bookkeeping accounting for mitigation in excess of what is required. If additional mitigation is required in the future, or other ground water users must provide mitigation, any junior ground water right holder may propose to the Department that previous activities resulting in simulated reach gains in excess of the mitigation obligation be considered.

Id. The Ground Water Districts request reconsideration or clarification of this statement. Related thereto is the request by the Ground Water Districts that the Director adjust mitigation obligations to account for multiple mitigation plans that would otherwise result in excess mitigation. The Mitigation Plan Order does not adequately address this issue.

The Ground Water Districts’ *Joint Mitigation Plan* provides that the ten (10) cfs of water is available to be delivered “indefinitely in the future as needed to meet the Ground Water Users’ mitigation obligations.” *Id.* at 5 (emphasis added). On January 11, 2010, the Ground Water Districts filed the *Ground Water Districts’ Statement Regarding Mitigation Activities under Mitigation Plan for Blue Lakes* wherein the Ground Water Districts stated that to the extent they have been

overcompensating the Mitigation Obligation to Blue Lakes through direct delivery, CREP, conversion and recharge, the Ground Water Districts request that the over-mitigation be applied to any past short fall that exists to Blue Lakes and to the extent these additional mitigation activities continue into the future, request that mitigation credit should be accounted for and carried forward as a credit against present and future obligation to Blue Lakes.

Ground Water Districts' Statement at 2.

On Friday, February 19, 2010, the Director provided a spreadsheet to the parties containing the results of the ESPA Model runs that were used to compare the mitigation obligations of each of the parties to the simulated benefits of the individual mitigation plans. This is the same table that is contained in Attachment A to the Mitigation Plan Order, titled "Table of Computed Obligation and Mitigation for Blue Lakes Call." (the "Table"). The Table shows total "mitigation plan benefits" of 12.8 cfs which is 0.9 cfs more than the total mitigation obligation to the subject spring. Further, the Table notes that IGWA's obligation is 9.6 cfs and states that the plan benefit is 10 cfs. The Mitigation Plan Order does not address the combined effect of the three mitigation plans submitted by the Ground Water Districts, A&B Irrigation District, and South West Irrigation District, nor does the Order provide for a reduction in any parties' mitigation obligation to Blue Lakes.

The Table also shows that the mitigation obligation to the spring for IGWA includes "non-member participants" who "may not be in either N Snake, Magic V or Carey V." *Id.* The Ground Water Districts do not understand who the Director included in the "non-member participants" category and therefore ask the Director to clarify his Mitigation Plan Order on that point.

Based on the foregoing, the Ground Water Districts ask the Director to grant this *Petition for Reconsideration and/or Clarification and Request for Reduction of Mitigation Obligation* and

- 1) Reduce the Ground Water Districts' mitigation obligation to account for the other mitigation plans approved by the Director in the Mitigation Plan Order.

- 2) Confirm that the Mitigation Plan Order does not preclude a reduction of direct delivery of water to Blue Lakes based on the actual obligation owed by the Ground Water Districts and in light of other mitigation plans that are approved or will be approved.
- 3) Identify the non-member participants contained in the Table.

DATED this 21st day of May, 2010.

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By 
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CERTIFICATE OF MAILING

I hereby certify that on this 21st day of May, 2010, 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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