

**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,)	ORDER APPROVING
AND 36-07427)	IGWA 2008 REPLACEMENT
(Blue Lakes Delivery Call))	WATER PLAN
(Water District Nos. 130 and 140))	
_____)	

FINDINGS OF FACT

1. Findings of Fact set forth in the Director of the Department of Water Resources' ("Director" or "Department") May 19, 2005 order in the above-captioned matter, as well as all other related orders, as applicable, are incorporated into this order by reference.

2. On May 19, 2005, the Director issued his order ("May 2005 Order") in response to the delivery call filed by the Blue Lakes Trout Farm, Inc. ("Blue Lakes"). The May 2005 Order found that Blue Lakes' December 28, 1973 water right (36-07427), for the authorized maximum diversion rate of 52.23 cfs from Alpheus Creek, was injured by diversions from junior priority ground water users. Based on his finding of injury to water right no. 36-07427, the Director ordered curtailment of certain ground water rights junior to December 28, 1973. In accordance with the Department's Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11 ("CM Rules"), the Director phased-in curtailment over a period of five years "to lessen the economic impact of immediate and complete curtailment pursuant to IDAPA 37.03.11.040.01.a." *May 2005 Order* at 27.

3. According to the order, junior ground water rights would be subject to curtailment if suitable replacement water plans for providing 51 cfs to the Devil's Washbowl to Buhl Gage spring reach, or 10 cfs of direct replacement water to Blue Lakes of suitable water quality (20 percent of 51 cfs, *see May 2005 Order* at 4-5), or a combination thereof, over the phased-in period of five years was not submitted. Therefore, in each year of the five-year phase-in period, IGWA was required to provide an added 10 cfs of replacement water to the reach, or an additional 2 cfs of direct replacement water of suitable quality to Blue Lakes, or a combination thereof; ultimately totaling 51 cfs to the reach, or 10 cfs directly to Blue Lakes, or a combination thereof. Because Water District No. 140 had not been created at the time of the issuance of the May 2005 Order, the Director only took into consideration impacts to the aquifer caused by junior ground water withdrawals in Water District No. 130. *May 2005 Order* at 17.

4. Based on measurements by the United States Geologic Survey, flows at the head of Alpheus Creek account for 20 percent of the reach gains in the Devil's Washbowl to Buhl Gage spring reach at steady state conditions. *May 2005 Order* at 4-5.

5. On December 28, 2006, Water District No. 140 was created by the Director.

6. Consistent with the approach described in Findings of Fact 76 through 81 in the May 2005 Order, the Eastern Snake Plain Aquifer ("ESPA") ground water model was used to simulate the effects of curtailing the diversion and use of ground water for the irrigation of 18,751 equivalent¹ acres within Water District No. 140 that (1) authorize the diversion and use of ground water for consumptive uses from the area of common ground water supply described in Finding 1 in the May 2005 Order; (2) have priority dates later than the priority date for water right no. 36-07427 (December 28, 1973); and (3) based on model simulations reduce spring discharge in the Devil's Washbowl to Buhl Gage spring reach by more than 10 percent of the amount of depletion to the ESPA resulting from those ground water diversions (10 percent is the uncertainty in model simulations). The results of the simulation show that curtailing the diversion and use of ground water for the irrigation of these lands would increase the discharge of springs in the Devil's Washbowl to Buhl Gage spring reach, which includes the source for Alpheus Creek from which Blue Lakes diverts surface water, by an average of 14 cfs at steady state conditions.

7. Consistent with the approach described in Findings of Fact 76 through 81 in the May 2005 Order, the ESPA ground water model was used to simulate the effects of curtailing the diversion and use of ground water for the irrigation of 55,641 equivalent¹ acres within Water District No. 130 that (1) authorize the diversion and use of ground water for consumptive uses from the area of common ground water supply described in Finding 1 in the May 2005 Order; (2) have priority dates later than the priority date for water right no. 36-07427 (December 28, 1973); and (3) based on model simulations reduce spring discharge in the Devil's Washbowl to Buhl Gage spring reach by more than 10 percent of the amount of depletion to the ESPA resulting from those ground water diversions (10 percent is the uncertainty in model simulations). The results of the simulation show that curtailing the diversion and use of ground water for the irrigation of these lands would increase the discharge of springs in the Devil's Washbowl to Buhl Gage spring reach, which includes the source for Alpheus Creek from which Blue Lakes diverts surface water, by an average of 47 cfs at steady state conditions.

8. In the fourth year of the five-year phased-in period of substitute curtailment (2008), taking into consideration depletions from Water District Nos. 130 and 140, IGWA must provide 49 cfs of replacement water to the Devil's Washbowl to Buhl Gage spring reach, 9.8 cfs of direct replacement water to Blue Lakes of suitable quality (20 percent of 49 cfs), or a combination thereof. In the fifth and final year of the phased-in substitute curtailment period

¹ For the ESPA ground water model, an algorithm is used to simulate the effects of supplemental ground water irrigation where surface water is deliverable for some portion of the irrigation of those lands. For each model cell, acreages simulated to be irrigated with both surface water and supplemental ground water are replaced with acreages simulated to be irrigated using all ground water such that the simulated consumptive use on the replacement acreage equals the consumptive use on the acreage with the supplemental ground water irrigation. The equivalent acreage consists of the sum of acreages irrigated solely with ground water and the replacement acreages for acreages irrigated with both surface water and ground water.

(2009), taking into consideration depletions from Water District Nos. 130 and 140, IGWA must provide 61 cfs of replacement water to the Devil’s Washbowl to Buhl Gage spring reach, or 12 cfs of direct replacement water to Blue Lakes of suitable quality, or a combination thereof.

9. In 2005, 2006, and 2007, the Idaho Ground Water Appropriators, Inc. (“IGWA”), on behalf of its member ground water districts, submitted replacement water plans to the Director to forego involuntary curtailment by providing water to the Devil’s Washbowl to Buhl Gage spring reach. In its plans, IGWA proposed to increase reach gains, by recharge and conveyance loss through the North Side Canal Company’s delivery system, conversions from ground water to surface water, and enrollment of acres in the Conservation Reserve Enhancement Program (“CREP”). *See Order Approving Dairymen’s and IGWA’s 2007 Replacement Water Plans, Rescinding 2007 Curtailment, and Setting Hearing and Prehearing Schedule (Blue Lakes)* at 5 (July 5, 2007) (“July 2007 Order”).

10. Not taking into account its 2008 Replacement Plan, the total steady state reach gains for the Devil’s Washbowl to Buhl Gage spring reach, following the Department’s post audit of IGWA’s previous replacement water actions, as simulated using the ESPA ground water model, are as follows in cubic feet per second:

Recharge	Conveyance Loss	Conversions ²	CREP	Total Provided
4.9	3.9	9.7	3.3	21.8

11. The North Snake Ground Water District has not reported annual ground water diversions for all conversion wells. A disqualification of acres associated with non-reported wells has resulted in a reduction in reach gain credits for conversion projects. The deduction in reach gain credit totals 4,207 acre-feet. Disqualification of acres will continue in future years in the absence of reporting.

12. The ESPA ground water model represents the best available science for determining the effects of ground water diversions and surface water uses on the ESPA and hydraulically-connected reaches of the Snake River and its tributaries. There currently is no other technical basis as reliable as the simulations from the ESPA ground water model that can be used to determine the effects of ground water diversions and surface water uses on the ESPA and hydraulically-connected reaches of the Snake River and its tributaries.

IGWA’s 2008 Replacement Water Plan

13. On April 4, 2008, IGWA submitted the *North Snake Ground Water District and Magic Valley Ground Water District Joint Replacement Water Plan for 2008* (“2008 Replacement Plan”).

14. IGWA’s 2008 Replacement Water Plan proposes as follows:

² The total reflects 7.1 cfs in Conversions and 2.6 cfs in Deep Percolation. Deep Percolation reflects surface water delivered to conversion acres in excess of four acre-feet per acre.

This 2008 Replacement Water Plan addresses alleged material injury to Blue Lakes Trout spring-dependent water supplies located in the Devil's Washbowl to Buhl subreach in two ways. First, this Replacement Water Plan will increase gains to the subreach by the delivery of 35,000 acre-feet via the North Side Canal Company's delivery system to approximately 9,300 acres that have been converted from ground water irrigation to surface water irrigation within the North Snake Ground Water District ("Conversion Deliveries"). Second, mitigation will be provided through the direct delivery to Blue Lakes Trout of such amount as is required up to 10 cfs of spring flow from Alpheus Creek under Water Right No. 36-2603C which is to be purchased by the Idaho Water Resource Board (the "Board") and held in Trust for the benefit and use by the Ground Water Districts.

Water Right No. 36-2603C

15. As stated in Findings of Fact 52-54 of the May 2005 Order:

52. The water rights held by Blue Lakes Trout, described in Finding 34, authorize the combined or total diversion of 197.06 cfs for fish propagation purposes, with the first right for 99.83 cfs having a priority of May 29, 1958; the second right for 45.00 cfs having a priority date of November 17, 1971; and the last right for 52.23 cfs having a priority date of December 28, 1973.

53. The measured diversions to the Blue Lakes Trout facilities, as reported to the Department, exclude the diversion of 25.3 cfs to Pristine Springs, Inc. Pristine Springs holds water right no. 36-02603C for the diversion of 25.3 cfs from Alpheus Creek for fish propagation purposes under the priority date of April 17, 1964. This right is junior to Blue Lakes' first right but senior in priority to Blue Lakes' second and third rights. The quantity of water authorized for diversion under water right no. 36-02603C, 25.3 cfs, was measured as being diverted and applied to beneficial use by the Department during the field examination confirming the extent of beneficial use under this right conducted by the Department on September 8, 1975.

54. The Pristine facilities are located downstream of the Blue Lakes Trout facilities, but Pristine's water right no. 36-02603C is diverted together with the three water rights held by Blue Lakes Trout at the diversion structure on Alpheus Creek. The diversion structure on Alpheus Creek includes a 14-foot wide broad crested weir, stilling well, staff gage, and continuous recorder, and provides the inlet for a pipeline that conveys the combined diversions of Blue Lakes Trout and Pristine Springs for a distance of approximately one-third mile to a concrete control structure located at the Blue Lakes Trout facilities. At this concrete control structure, the flow is divided, and the quantity of water that Pristine Springs is authorized to use under water right no. 36-02603C (25.3 cfs maximum) is distributed to another pipeline, with the remaining water distributed to the Blue Lakes Trout facilities under its water rights.

May 2005 Order at 11-12.

16. The direct replacement water pledged by IGWA under water right no. 36-02603C is senior to Blue Lakes' injured water right, 36-07427, is used for fish propagation, and is diverted from the same source, Alpheus Creek, and point of diversion as the water rights under which Blue Lakes asserts its delivery call.

17. Because the direct replacement water pledged by IGWA under water right no. 36-02603C is from the same source and diverted from the same location as Blue Lakes', the pledged water is ideal for use as direct replacement water to Blue Lakes.

18. On or about April 21, 2008, Blue Lakes began receiving 10.0 cfs from Alpheus Creek under water right no. 02603C for use at its facility.

Impacts of IGWA's 2008 Replacement Plan

19. In reviewing IGWA's 2008 Replacement Plan and in using values that the ESPA ground water model has simulated for conveyance loss through the North Side Canal, conversions from ground water to surface water, and enrollment of acres in CREP, increases to the Devil's Washbowl to Buhl Gage spring reach, *see* Findings of Fact 9 and 10, are simulated as follows in cubic feet per second:

Conveyance Loss	Conversions ²	CREP	Total Provided
3.9	9.7	3.3	16.9

20. As stated in the May 2005 Order, twenty percent of the 16.9 cfs increase to the Devil's Washbowl to Buhl Gage spring reach will directly benefit Blue Lakes. Twenty percent of 16.9 cfs is 3.4 cfs.

21. For 2008, which represents the fourth year of the five-year phased-in period of curtailment, IGWA must provide 49 cfs to the Devil's Washbowl to Buhl Gage spring reach, or 9.8 cfs of direct replacement water of a suitable quality to Blue Lakes, or a combination thereof.

CONCLUSIONS OF LAW

1. Conclusions of Law set forth in the May 2005 Order, as well as all orders related thereto, as applicable, are incorporated into this order by reference. All findings of fact in this order later deemed to be conclusions of law are hereby made as conclusions of law.

2. The best tool for determining reductions in depletions resulting from conversions of ground water irrigation to surface water irrigation and voluntary curtailment, such as enrollment of acres in CREP, is the ESPA ground water model.

3. With the inclusion of Water District No. 140, IGWA's simulated replacement water obligation to the Devil's Washbowl to Buhl Gage spring reach for depletions caused by junior ground water diversions in the fourth year of the five-year phased-in period of substitute curtailment (2008) is 49 cfs. IGWA's obligation in the final year of phased-in substitute curtailment (2009) to the Devil's Washbowl to Buhl Gage spring reach will be 61 cfs.

4. Based on simulations using the ESPA ground water model, IGWA's actions to increase reach gains in the Devil's Washbowl to Buhl Gage spring reach in 2005, 2006, and 2007 have resulted in simulated steady state reach gains of 16.9 cfs.

5. The water obtained by IGWA from Alpheus Creek through water right no. 36-2603C of up to 10.0 cfs is of suitable water quality to be used as a direct replacement water source. Since approximately April 21, 2008, Blue Lakes has been receiving 10.0 cfs from Alpheus Creek under water right no. 02603C for use at its facility.

6. Because 10.0 cfs of direct replacement water is more than IGWA is required to provide to Blue Lakes in the fourth-year of the five-year phased-in period of substitute curtailment, IGWA's 2008 Replacement Water Plan is approved.

ORDER

In response to the water delivery call made by Blue Lakes, and for the reasons stated in the foregoing Findings of Fact and Conclusions of Law, the Director ORDERS as follows:

That IGWA's 2008 Replacement Water Plan is APPROVED. The Watermaster of Water District No. 130 is directed to continue the conveyance of 10.0 cfs under water right no. 36-02603C directly to Blue Lakes.

That any non-reporting of conversions wells to the Watermaster of Water District No. 130 will not be credited for conversions.

Dated this 15th day of July 2008



DAVID R. TUTHILL, JR., Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15th day of July 2008, the above and foregoing, was served by the method indicated below, and addressed to the following:

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