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DEPARTMENT OF  
WATER RESOURCES

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IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING

CLEAR SPRINGS FOODS, INC.,

Petitioner,

vs.

IDAHO GROUND WATER  
APPROPRIATORS, INC., NORTH SNAKE  
GROUND WATER DISTRICT and MAGIC  
VALLEY GROUND WATER DISTRICT,

Cross-Petitioners

vs.

IDAHO DAIRYMEN'S ASSOCIATION, INC.,

Cross-Petitioner

vs.

RANGEN, INC.,

Cross-Petitioner

and

DAVID K. TUTHILL, JR., in his capacity as  
Director of the Idaho Department of Water  
Resources; and the IDAHO DEPARTMENT  
OF WATER RESOURCES,

Respondents

Case No.: CV-2008-0000444

**GROUND WATER USERS' RESPONSE  
TO BLUE LAKES TROUT FARMS, INC.'S  
MOTION TO ENFORCE ORDERS**

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHTS NOS. 36-  
02356A, 36-07210 AND 36-07427  
(Blue Lakes Delivery Call)

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHT NOS. 36-  
04013A, 36-04013B AND 36-07148  
(Clear Springs Delivery Call)

COME NOW the IDAHO GROUND WATER APPROPRIATORS, INC., NORTH SNAKE GROUND WATER DISTRICT and MAGIC VALLEY GROUND WATER DISTRICT acting for and on behalf of their members (collectively the “Ground Water Users”) through counsel and files this response to *Blue Lakes Trout Farm, Inc.’s Motion to Enforce Order* (“Motion”) filed with this Court on April 12, 2010. Blue Lakes Trout Farm, Inc.’s (“Blue Lakes”) Motion requests that the Court issue an order and require the Director to comply “properly and completely with this Court’s Remand Order ...” Motion at 4. Blue Lakes wants the Court to direct the Director to determine material injury to its water right no. 36-7210 and to require the Director to consider “updated, improved and/or new data, analysis and methods for determining the impact of junior groundwater diversion on Blue Lakes’ water rights, and to allow Blue Lakes to present such evidence in any proceeding before IDWR related to the Blue Lakes Water Delivery Call.” Id. at 4-5 (emphasis added).

As this Court is aware, Blue Lakes filed a delivery call in 2005 requesting that junior-priority ground water users be curtailed in order to supply water to Blue Lakes’ senior water rights. The Director found injury to Blue Lakes’ water right no. 36-7427 but did not find injury to water right no. 36-7210. The Ground Water Users and Blue Lakes objected to the Director’s 2005 orders and requested a hearing. A hearing was held in late fall, in 2007 with Blue Lakes and the Ground Water Users participating; the hearing was one of the central issues at hearing

was to what extent, if any, are Blue Lakes' water rights injured by junior ground water pumping? After the 2007 hearing, the Director issued a Final Order that found that Blue Lakes' water right no. 36-7427 was injured and again found no injury to water right no. 36-7210. R. Vol. 16, p. 3958.

Subsequent to that hearing and issuance of the final order, the Ground Water Users filed an appeal to the District Court and have now appealed the District Court's decision to the Supreme Court raising several issues which are:

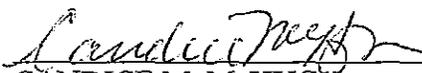
- a. Whether Due Process requires the Director to hold a hearing before ordering and enforcing curtailment in the context of conjunctive water administration.
- b. Whether the Director erred by failing to administer the Eastern Snake Plain Aquifer in compliance with the Swan Falls Agreement and State Water Plan.
- c. Whether the Director erred by guaranteeing Blue Lakes and Clear Springs an artificially inflated aquifer level.
- d. Whether the Director erred in his application of the law of full economic development of groundwater resources (Idaho Code § 42-226) by ordering the curtailment of more than 70,000 groundwater irrigated acres, when nearly all (98-99%) of the curtailed water is sacrificed to provide only 1-2 percent of the curtailed water to Blue Lakes and Clear Springs.
- e. Whether the Director erred by denying the Ground Water Users' discovery of the evidence necessary to prove futile call.
- f. Whether the Director erred by failing to apply the futile call doctrine.
- g. Whether the Director erred by accepting testimony that curtailment will enable the Spring Users to produce more, larger or healthier fish, over the Ground Water Users' objection and contrary to the Order re Discovery.
- h. Whether there is substantial evidence in the record to support the Director's conclusion that additional water that will accrue to Blue Lakes and Clear Springs from curtailment will actually be put to beneficial use.
- i. Whether the Director erred by refusing to account for known uncertainties in the Eastern Snake Plain Aquifer Model.

Many of these issues, if found in the favor of the Ground Water Users, would result in a no injury finding to Blue Lakes or could modify the injury finding. While these key issues are pending on appeal, it would be a waste of judicial resources as well as the parties' time and resources to allow an additional hearing on whether water right no. 36-7210 is materially injured when in fact the Supreme Court could determine they have no right to make the delivery call in the first place or that any curtailment was improper and the delivery call futile. As such, the Ground Water Users request that the Court deny the relief sought by Blue Lakes.

The Ground Water Users agree with the Idaho Department of Water Resources' ("IDWR" or "Department") arguments contained in Section II. on page 5 and Sections III. and IV. on pages 6 through 11 of *IDWR Response to Blue Lakes Trout Farm, Inc.'s Motion to Enforce Orders* that states if the Supreme Court determines the Director has properly accounted for the uncertainty in the ESPA Model then the decision is binding on the parties, that certain information and evidence that Blue Lakes is attempting to insert into subsequent proceedings is barred by the doctrine of *res judicata* and that Blue Lakes' attempts to introduce new information about injury to its water right in the proceedings on the Ground Water Districts' mitigation plan(s) is improper.

Based on the foregoing, the Ground Water Users respectfully request that the Court deny the relief sought by Blue Lakes and that while the appeal is pending at the Supreme Court, that the Court find that the Orders entered by the Department finding no material injury to 36-7210 are proper and should not be altered, until the Supreme Court has decided all material issues raised on appeal and remanded the matter back to the Department for further action or has or vacated the existing Orders.

Dated this 23<sup>rd</sup> day of April, 2010.

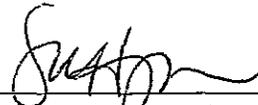
  
CANDICE M. McHUGH

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23<sup>rd</sup> day of April, 2010, the above and foregoing document was served in the following manner.

|  |   |
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| Daniel V. Steenson<br>Charles L. Honsinger<br>RINGERT CLARK<br>P.O. Box 2773<br>Boise, Idaho 83701-2773<br><a href="mailto:dvs@ringertclark.com">dvs@ringertclark.com</a><br><a href="mailto:clh@ringertclark.com">clh@ringertclark.com</a>  | <input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> E-mail |
| ✓ Garrick L. Baxter<br>Chris Bromley<br>Idaho Department of Water Resources<br>P.O. Box 83720<br>Boise, Idaho 83720-0098<br><a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a><br><a href="mailto:chris.bromley@idwr.idaho.gov">chris.bromley@idwr.idaho.gov</a> | <input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> E-mail |
| Jeff Fereday<br>Mike Creamer<br>Givens, Pursley<br>P.O. Box 2720<br>Boise, Idaho 83701-2720<br><a href="mailto:jcf@givenspursley.com">jcf@givenspursley.com</a><br><a href="mailto:mcc@givenspursley.com">mcc@givenspursley.com</a>  | <input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> E-Mail |
| J. Justin May<br>May, Sudweeks & Browning<br>1419 W. Washington<br>Boise, Idaho 83702<br><a href="mailto:jmay@may-law.com">jmay@may-law.com</a>  | <input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> E-Mail |
| John Simpson<br>Travis L. Thompson<br>Barker Rosholt<br>P.O. Box 485<br>Twin Falls, ID 83303<br><a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a>   | <input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> E-Mail |

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| Robert E. Williams<br>Fredricksen Williams Meservy<br>P.O. Box 168<br>153 E. Main Street<br>Jerome, Idaho 83338-0168<br><u>rewilliams@cableone.net</u> | <input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid<br><input type="checkbox"/> Facsimile<br><input type="checkbox"/> Overnight Mail<br><input type="checkbox"/> Hand Delivery<br><input type="checkbox"/> E-mail |



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