

DISTRICT COURT  
GOODING CO. IDAHO  
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DEPARTMENT OF  
WATER RESOURCES

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GOODING COUNTY CLERK  
JULIE GOLD

BY: \_\_\_\_\_  
DEPUTY

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. )

BLUE LAKES TROUT FARM, INC., )

Cross-Petitioner, )

vs. )

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

Cross-Petitioner, )

vs. )

IDAHO DAIRYMEN'S ASSOCIATION, )  
INC. )

Cross-Petitioner, )

vs. )

RANGEN, INC. )

Case No. 2008-0000444

ORDER GRANTING IN PART  
MOTION TO ENFORCE  
ORDERS; ORDER SETTING  
STATUS CONFERENCE

<sup>1</sup> Director David Tuthill retired as Director of Idaho Department of Water Resources effective June 30, 2009. Gary Spackman was appointed as Interim Director. I.R.C.P. 25 (d) and (e).

Cross-Petitioner, )  
 )  
 vs. )  
 )  
 GARY SPACKMAN,<sup>1</sup> in his capacity as )  
 Director of the Idaho Department of Water )  
 Resources, and THE DEPARTMENT OF )  
 WATER RESOURCES, )  
 )  
 Respondents. )  
 )  
 )  
 IN THE MATTER OF DISTRIBUTION )  
 OF WATER TO WATER RIGHTS NOS. )  
 36-0413A, 36-04013B, and 36-07148. )  
 )  
 (Clear Springs Delivery Call) )  
 )  
 )  
 )  
 IN THE MATTER OF DISTRIBUTION )  
 OF WATER TO WATER RIGHTS NOS. )  
 36-02356A, 36-07210, and 36-07427. )  
 )  
 (Blue Lakes Delivery Call) )  
 )  
 \_\_\_\_\_ )

I.  
**PROCEDURAL BACKGROUND AND FACTS**

On June 19, 2009, this Court issued its *Order on Petition for Judicial Review* ("June 19, 2009 *Order*") in the above-captioned matter. In the June 19, 2009 *Order*, this Court concluded:

This case is **remanded** so that the Director may apply the appropriate burdens of proof and evidentiary standards when considering seasonal variations as part of a material injury analysis.

The remand applied to Blue Lakes' water right no. 36-7210 and Clear Springs' water right no. 36-4013A. The parties to this matter filed petitions for rehearing and this Court

issued its *Order on Petitions for Rehearing* on December 4, 2009 (“December 4, 2009 *Order*”). This Court again ordered that the case be remanded to the Director to apply the appropriate burdens of proof and evidentiary standards when considering seasonal variations as part of a material injury analysis of water rights 36-7210 and 36-4013A.

On December 22, 2009, during proceedings on mitigation plans filed by ground water users in this case, the Director issued an *Order Granting Motion to Limit Scope of Hearing*. In this *Order*, the Director precluded Blue Lakes from presenting evidence during the mitigation plan hearing relating to the Director’s previous determination of material injury. The Director summarily denied Blue Lakes’ *Petition for Reconsideration*.

On April 12, 2010, Blue Lakes filed a *Motion to Enforce Orders* in the above-captioned matter, seeking enforcement of this Court’s December 4, 2009 *Order* and June 19, 2009 *Order*. In its *Motion*, Blue Lakes asserted that the Director has not complied with this Court’s previous *Orders* on remand. Further, Blue Lakes argued that the Director has a duty to utilize the best available science and consider the information presented by Blue Lakes during the mitigation plan hearing. On April 22, 2010, IDWR filed a *Response to Blue Lakes Trout Farms Inc.’s Motion to Enforce Orders*. On April 26, 2010, the Idaho Ground Water Appropriators, Inc., North Snake Ground Water District and Magic Valley Ground Water District also filed a *Response to Blue Lake Trout Farm, Inc.’s Motion to Enforce Orders*. On May 6, 2009, Clear Springs filed a *Reply in Support of Blue Lakes Trout Farm, Inc.’s Motion to Enforce Orders*.

Upon remand, this Court did not contemplate that the Director would hold a hearing or take new evidence when applying the proper burdens of proof and evidentiary standards. Rather, the scope of the Court’s *Orders* on remand is narrow – the Director must consider the evidence presented below and apply the correct burdens and standards when considering reasonable variations as part of a material injury analysis. At the hearing on the *Motion to Enforce Orders*, IDWR represented that the Director is in the process of moving forward on this issue. As such, the Director shall forthwith comply with this Court’s previous *Orders* on remand, unless a party requests and is granted a stay.

However, the Director is not obligated to take additional evidence in order to apply the correct burdens of proof and evidentiary standards on remand. The evidence Blue Lakes seeks to introduce at the mitigation plan hearing is outside the scope of this Court's previous *Orders* on remand. This Court's *Orders* are currently on appeal to the Idaho Supreme Court and under Idaho Appellate Rule 13(b) (13), this Court has jurisdiction to "take any action or enter any order required for the enforcement of any judgment, order or decree." While this Court has jurisdiction to enforce its *Orders* on remand, this Court does not have jurisdiction to order action be taken outside the scope of the prior *Orders*. The prior *Orders* affirmed the Director's use of the trimline and the spring allocation determinations. Accordingly, neither is within the scope of the prior *Orders* on remand. The determination of what evidence the Director may or may not consider in conjunction with a mitigation plan hearing is also beyond the scope of this Court's prior *Orders*.

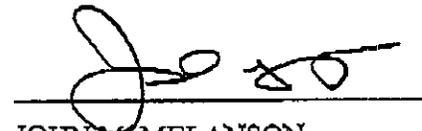
## II. ORDER

Therefore, based on the foregoing, the following are hereby ORDERED:

1. The Director shall forthwith comply with this Court's earlier *Orders* on remand and apply the proper burdens of proof and evidentiary standards when considering seasonable variations as part of a material injury analysis for water right nos. 36-7210 and 36-4013A.
2. A status conference is scheduled for the above-captioned matter at 1:30 p.m. (Mountain Time), Monday, June 14, 2010, at the Idaho Water Center, 322 East Front Street, 6<sup>th</sup> Floor Conference Rooms C & D, and at the Snake River Basin Adjudication Courthouse, 235 - 3<sup>rd</sup> Avenue North, Twin Falls, Idaho. The Court will preside from the Idaho Water Center; however, the two locations will be linked via video teleconferencing allowing full participation from either location. Parties may also participate by telephone by dialing the number 918-583-3445 and when prompted entering the code 406128.

IT IS SO ORDERED.

Dated May 11, 2010

A handwritten signature in black ink, appearing to read 'J. Melanson', is written over a horizontal line.

JOHN M. MELANSON  
District Judge, *Pro Tem.*

**NOTICE OF ORDERS**

I.R.C.P. 77(d)

I, Cynthia R. Eagle-Ervin, Deputy Clerk of Gooding County do hereby certify that on the 11<sup>th</sup> day of May 2010, pursuant to Rule 77(d) I.R.C.P., I have filed this day and caused to be delivered a true and correct copy of the within and foregoing instrument: Order Granting in Part Motion to Enforce Orders to the parties listed below via US Mail postage prepaid:

Garrick Baxter  
Chris Bromley  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, ID 83720-0098

Randy Budge  
Candace McHugh  
RACINE OLSON  
P.O. Box 1391  
Pocatello, ID 83204-1391

Michael Creamer  
GIVENS PURSLEY  
P.O. Box 2720  
Boise, ID 83701-2720

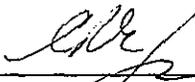
John Simpson  
Travis Thompson  
BARKER ROSHOLT & SIMPSON  
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Daniel Steenson  
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Josephine Beeman  
BEEMAN & ASSOCIATES  
409 W. Jefferson  
Boise, ID 83702

Justin May  
MAY SUDWEEKS & BROWNING  
1419 W. Washington  
Boise, ID 83702

CLERK OF THE DISTRICT COURT

BY   
Deputy Clerk

Notice of Orders  
Certificate of Mailing  
IRCP 77(d)