

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

IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHTS NOS. 36-15501,)
36-02551, AND 36-07694)
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**ORDER REGARDING
PARTY STATUS
(Rangen Delivery Call)**

Background

On February 25, 2004, the Director of the Department of Water Resources (“Director” or “Department”) issued an *Order* in response to a water delivery call made by Rangen, Inc. in the above captioned matter. The Director issued an *Amended Order* on March 10, 2004, which required holders of certain consumptive ground water rights subject to administration in Water District No. 130 not to divert ground water beginning April 1, 2004, unless sufficient replacement water could be provided as set forth in the amended order.

On March 11, 2004, in response to receipt of requests for a hearing pursuant to Idaho Code § 42-1701A(3), the Director issued a *Notice of Contested Case and Notice of Status Conference*. Numerous petitions were filed with the Department contesting the *Order* or the *Amended Order*, and requesting a hearing and/or intervention.

On March 20, 2004, the State of Idaho, spring users in the Thousand Springs Area of the Snake River Basin, and the North Snake Ground Water District and the Magic Valley Ground Water District entered into *The Eastern Snake Plain Aquifer Mitigation, Recovery and Restoration Agreement for 2004* (“Agreement”). On March 24, 2004, the Director entered his *Order Approving Interim Mitigation*, which approved the interim mitigation provided for under the Agreement for the period March 15, 2004, through March 15, 2005.

In accordance with the *Order Approving Interim Mitigation*, the Director entered an *Order Staying Proceedings*. The Director stated that “the persons and entities identified above who have filed petitions contesting the *Order* or the *Amended Order*, or who have filed petitions to intervene in the proceeding, are hereby recognized as full parties to this contested case proceeding.” *Order Approving Interim Mitigation* at p. 4.

The following persons and entities were recognized as parties by the *Order Approving Interim Mitigation*:

Jerry and Patty Nance; Wallace Neal and Nancy Lee Bowman; Delbert Kohtz; Idaho Dairymen’s Association; Gene and Judy Fredericksen; City of Burley; Clear Lakes Trout

Company, Inc.; Fisheries Development Company, Inc.; Rim View Trout Company, Inc.; Estate of Earl M. Hardy; Carey Water and Sewer District; Carey Valley Ground Water Users; Hubert and Rita Shaw; Shaw Land & Livestock; Idaho Ground Water Appropriators, Inc.; Ed and Alpha Mahler; Vernon Ravenscroft; Donley Farm, Inc.; Twin Falls Canal Company; Clear Springs Foods, Inc.; Bob and Kathleen Krucker; Zippora Stahl; Longview Dairy; Blue Sky Ranch; Rangen, Inc.; U.S. Fish and Wildlife Service; Idaho Power Company; and the U.S. Bureau of Reclamation.

On March 14, 2005, the Director rescinded the March 10, 2004 *Amended Order*. The Director issued a *Seconded Amended Order* on May 19, 2005.

DeMoss Petition to Intervene

On April 16, 2004, shortly after entry of the *Order Approving Interim Mitigation*, Gary and Helen DeMoss petitioned to intervene in the above captioned matter. According to the petition, DeMosses hold an irrigation ground water right that was subject to curtailment. Citing compliance with the Department's Rules of Procedure as they relate to intervention, DeMosses assert a direct and substantial interest in the proceedings. Furthermore, DeMosses state that their participation as a party will not unduly broaden the issues before the Director.

According to IDAPA 37.01.01.353,

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

Because the DeMosses own a water right that is subject to curtailment in accordance with the *Order* of February 25, 2004, the DeMosses have a direct and substantial interest in the subject of the proceeding that is not adequately represented by the present parties. Because the interests of the DeMosses will not unduly broaden the issues, the DeMosses should be granted intervention.

Status and Scheduling Conference

On August 16, 2005, the Director conducted a status and scheduling conference in the above captioned matter. During the status and scheduling conference, not all persons and entities that were made party to the above captioned proceeding on March 24, 2004, were present. As indicated by participants at the status and scheduling conference, there was some confusion regarding who remained a party after the matter was stayed. The Director also stated that the Department would provide a partial agency record on CD-ROM to all interested persons and entities.

A copy of the partial agency record in this matter on CD-ROM disk will be served upon any person or entity presently identified as a party in this proceeding who indicates in writing to the Department in accordance with this Order an intent to continue as a party in this matter.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED as follows:

1. The petition to intervene filed on April 13, 2004, by Gary and Helen DeMoss is GRANTED.

2. In order to remain a party in the above captioned matter, an affirmative statement of intent to remain a party must be filed with the Department within fourteen (14) days of the date of this Order. Failure to respond affirmatively in writing to the Director within fourteen (14) days of the date of this Order shall be deemed an intent not to continue as a party in this matter.

3. A copy of the partial agency record in this matter on CD-ROM disk will be served upon any person or entity presently identified as a party in this proceeding who indicates in writing to the Department in accordance with this Order an intent to continue as a party in this matter.

4. The Director will issue a Scheduling Order following a determination of those parties desiring to continue their party status in this matter.

DATED this 13th day of September 2005.



KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 2005, the above and foregoing document was served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

J DEE MAY
MAY SUDWEEKS
PO BOX 1846
TWIN FALLS ID 83303-1846
jdee@tflaw.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

MIKE CREAMER
JEFF FEREDAY
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701-2720
mcc@givenspursley.com
cf@givenspursley.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

DANIEL STEENSON
CHARLES HONSINGER
RINGERT CLARK
PO BOX 2773
BOISE ID 83701-2773
dvs@ringertclark.com
clh@ringertclark.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JOSEPHINE BEEMAN
BEEMAN & ASSOCIATES
409 W JEFFERSON ST
BOISE ID 83702-6049
jo.beeman@beemanlaw.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

MAGIC VALLEY GWD
809 E 1000 N
RUPERT ID 83350-9537

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

NORTH SNAKE GWD
152 E MAIN ST
JEROME ID 83338

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JOHN A ROSHOLT
TRAVIS THOMPSON
BARKER ROSHOLT & SIMPSON
113 MAIN AVE W STE 303
TWIN FALLS ID 83301-6167
jar@idahowaters.com
tlt@idahowaters.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JOHN K SIMPSON
BARKER ROSHOLT & SIMPSON
PO BOX 2139
BOISE ID 83701-2139
jks@idahowaters.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

KATHLEEN CARR
US DEPT OF THE INTERIOR
OFFICE OF THE SOLICITOR
550 W FORT ST MSC 020
BOISE ID 83724
(208) 334-1378

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

FRITZ WONDERLICH
WONDERLICH & WAKEFIELD
PO BOX 1812
TWIN FALLS ID 83303-1812
fritz@tfdlaw.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JAMES LOCKHEAD
ADAM DEVOE
BROWNSTEIN HYATT
410 17TH ST 22ND FLR
DENVER CO 80202
jlochhead@bhf-law.com
adevoe@bhf-law.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

FRANK ERWIN
WATERMASTER
WATER DIST 36
2628 S 975 E
HAGERMAN ID 83332

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

CINDY YENTER
WATERMASTER - WD 130
IDWR – SOUTHERN REGION
1341 FILLMORE ST STE 200
TWIN FALLS ID 83301-3380
cindy.yenter@idwr.idaho.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

MATT HOWARD
US BUREAU OF RECLAMATION
1150 N CURTIS ROAD
BOISE ID 83706-1234
mhoward@pn.usbr.gov

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JAMES TUCKER
IDAHO POWER CO
1221 W IDAHO ST
BOISE ID 83702
jamestucker@idahopower.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

FRITZ HAEMMERLE
HAEMMERLE HAEMMERLE
PO BOX 1800
HAILEY ID 83333
fxh@haemlaw.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ROGER D. LING
LING ROBINSON
PO BOX 396
RUPERT ID 83350-0396
lnrlaw@pmt.org

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

SCOTT CAMPBELL
MOFFATT THOMAS
PO BOX 829
BOISE ID 83701
slc@moffatt.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

RC STONE
PARSONS SMITH
PO BOX 910
BURLEY ID 83318

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

DANA HOFSTETTER
HOFSTETTER LAW OFFICE
608 W FRANKLIN
BOISE ID 83702
dana@idahowaterlaw.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

BARBARA SCOTT BRIER
US FISH & WILDLIFE SVC
500 NE MULTNOMAH STE 607
PORTLAND OR 97232

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

GENE & JUDY FREDERICKSEN
200 N 349 E
JEROME ID 83338

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

NEAL & NANCY BOWMAN
402 S 750 E
DIETRICH ID 83324

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JERRY & PATTY NANCE
814 HWY 24
DIETRICH ID 83324

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

DELBERT KOHTZ
1135 VALLEY ROAD SOUTH
EDEN ID 83325

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

HUBERT & RITA SHAW
SHAW LAND & LIVESTOCK
411 S 750 E
DIETRICH ID 83324

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

ED & ALPHA MAHLER
366 N MERIDIAN
RUPERT ID 83350

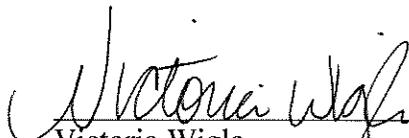
U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

VERNON RAVENSCROFT
1328 B SHOESTRING RD
BLISS ID 83314

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

DONALD & BEVERLY TABER
DONLEY FARMS
501 E 20 N
SHOSHONE ID 83352

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail


Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources