

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

IN THE MATTER OF THE COALITION OF CITIES' MITIGATION PLAN FOR MANAGED RECHARGE AND OTHER AQUIFER ENHANCEMENT ACTIVITIES FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551, 36-07694 & 36-15501, IN THE NAME OF RANGEN, INC.

CM-MP-2014-004
CM-MP-2014-007
CM-DC-2011-004
CM-DC-2014-004

IN THE MATTER OF THE SECOND MITIGATION PLAN FILED BY THE COALITION OF CITIES FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551, 36-07694 & 36-15501, IN THE NAME OF RANGEN, INC.

ORDER DENYING REQUEST FOR STAY OF CURTAILMENT; GRANTING REQUEST FOR HEARING

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 & 36-07694 (RANGEN, INC.)

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-00134B, 36-00135A, AND 36-15501 (RANGEN, INC.)

BACKGROUND

On January 16, 2015, the Director ("Director") of the Idaho Department of Water Resources ("Department") issued a *Final Order Conditionally Approving Cities' Second Mitigation Plan* ("Order") in CM-MP-2014-007.

On the same day, the Coalition of Cities ("Cities") filed with Director *Coalition of Cities' Request for Hearing on First and Second Mitigation Plans and Request for Stay of Curtailment* ("Request for Hearing").

Request for Stay

The Cities do not articulate a convincing argument that the curtailment, scheduled for January 19, 2015, should be stayed. The request for stay of curtailment should be denied.

Request for Hearing

Rule 43 of the Department's Conjunctive Management Rules (IDAPA 37.03.11.43) states:

Upon receipt of a proposed mitigation plan the Director will provide notice, hold a hearing as determined necessary, and consider the plan . . .

The Director determines that a hearing for the Cities' first and second mitigation plans is necessary. The hearing will be conducted on Friday, January 30, 2015 in the state office of the Department. The Director will conduct the hearing. A separate, written notice of hearing will follow this order.

ORDER

IT IS HEREBY ORDERED that the Cities' Request for Stay of Curtailment is **DENIED**.

IT IS FURTHER ORDERED that the Cities' Request for Hearing is GRANTED. The hearing will be conducted on Friday, January 30, 2015 in the state office of the Idaho Department of Water Resources. The Director will conduct the hearing. The Director will execute a separate notice of hearing and serve it upon the Cities.

Dated this 17th day of January 2015.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17TH day of January 2015, the above and foregoing document was served on the following by providing a copy of the *Order Denying Request for Stay of Curtailment; Granting Request for Hearing* in the manner selected:

ROBERT E WILLIAMS
WILLIAMS MERSERVY & LOTH SPEICH LLP
153 EAST MAIN STREET
PO BOX 168
JEROME ID 83338
rewilliams@cableone.net

() U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

CANDICE MCHUGH
CHRIS M BROMLEY
MCHUGH BROMLEY PLLC
380 S 4TH STREET STE 103
BOISE ID 83702
cmchugh@mchughbromley.com
cbromley@mchughbromley.com

() U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

J JUSTIN MAY
MAY BROWNING & MAY PLLC
1419 W WASHINGTON
BOISE ID 83702-5039
jmay@maybrowning.com

() U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

ROBYN BRODY
BRODY LAW OFFICE PLLC
PO BOX 554
RUPERT ID 83350-0554
robynbrody@hotmail.com

() U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

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

() U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

RANDALL C BUDGE
THOMAS J BUDGE
RACINE OLSON NYE BUDGE & BAILEY
PO BOX 1391
POCATELLO ID 83204-1391
rcb@racinelaw.net
tjb@racinelaw.net

() U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

SARAH KLAHN
MITRA PEMBERTON
WHITE & JANKOWSKI
511 16TH STREET STE 500
DENVER CO 80202
sarahk@whitejankowski.com
mitrap@whitejankowski.com

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

A DEAN TRANMER
CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205
dtranmer@pocatello.us

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

JERRY R RIGBY
RIGBY ANDRUS & RIGBY
25 NORTH SECOND EAST
REXBURG ID 83440
jrigby@rex-law.com

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

JOHN K SIMPSON
TRAVIS L THOMPSON
PAUL L ARRINGTON
BARKER ROSHOLT & SIMPSON LLP
195 RIVER VISTA PL STE 204
TWIN FALLS ID 83301-3029
jks@idahowaters.com
tlt@idahowaters.com
pla@idahowaters.com

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

W KENT FLETCHER,
FLETCHER LAW OFFICE
PO BOX 248
BURLEY ID 83318
wkf@pmt.org

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

C THOMAS ARKOOSH
ARKOOSH LAW OFFICES
PO BOX 2900
BOISE ID 83701
Tom.arkoosh@arkoosh.com

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

GARY LEMMON
BLIND CANYON AQUARANCH, INC.
2757 S 1050 EAST
HAGERMAN ID 83332
glemmon@northrim.net

() U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

A handwritten signature in black ink, appearing to read "DJG For", written over a horizontal line.

Deborah J. Gibson
Administrative Assistant to the Director

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) The petition for reconsideration is disposed of; or
 - (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.
- (8) The provisions of this section do not preclude an agency from taking immediate

action to protect the public interest in accordance with the provisions of section 67-5247, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: the petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4) Idaho Code.

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days: a) of the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.