

RECEIVED

JAN 20 2015

DEPARTMENT OF
WATER RESOURCES

Randall C. Budge (ISB# 1949)
Thomas J. Budge (ISB# 7465)
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
201 E. Center St. / P.O. Box 1391
Pocatello, Idaho 83204
(208) 232-6101 – phone
(208) 232-6109 – fax
rcb@racinelaw.net
tjb@racinelaw.net

Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

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

Docket No. CM-DC-2011-004
Docket No. CM-MP-2014-001
Docket No. CM-MP-2014-006

IN THE MATTER OF THE FIRST MITIGATION PLAN FILED BY IGWA FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 & 36-07694

**IGWA's Motion to Vacate
Curtailment Order, and Request
for Expedited Decision**

IN THE MATTER OF THE FOURTH MITIGATION PLAN FILED BY IGWA FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 & 36-07694

Idaho Ground Water Appropriators, Inc. (IGWA), acting for and on behalf of its members, hereby moves the Director to vacate the curtailment ordered by the *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights junior to July 13, 1962* ("Curtailment Order") issued January 29, 2014 in IDWR Docket No. CM-DC-2011-004, as amended by the *Second Amended Curtailment Order* issued November 21, 2014 in IDWR Docket Nos. CM-DC-2011-004, CM-MP-2014-001, and CM-MP-2014-006.

The Curtailment Order imposes curtailment based on the implementation of a trim line at the Great Rift. It states:

users of ground water holding consumptive water rights bearing priority dates junior to July 13, 1962, listed in Attachment C to this order, within the area of common ground water, located west of the Great Rift, and within a water district that regulates ground water, shall curtail/refrain from diversion and use of ground water pursuant to those water rights¹

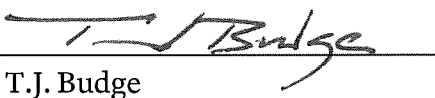
On October 24, 2014, Judge Wildman reversed the Director's decision concerning the Great Rift trim line.² In addition, he ruled that the Director failed to apply the futile call doctrine.³ Accordingly, he set aside the Curtailment Order and remanded it for further proceedings.⁴ Judge Wildman's decision became effective January 16, 2015—42 days after his rehearing decision was entered—pursuant to I.R.C.P. 84(t)(2)(b).

With the Great Rift trim line gone, and with no futile call decision, the *Second Amended Curtailment Order* is ineffective. Until the Director completes remand proceedings and makes a futile call decision, the junior groundwater users identified in Attachment C to the *Second Amended Curtailment Order* no longer know whether they are subject to curtailment, junior groundwater users east of the Great Rift do not know whether they are subject to curtailment, IGWA does not know how much mitigation credit its members have (since shrinking or enlarging the zone of curtailment may affect their mitigation credit for recharge, conversions, and CREP), and IGWA does not know its current mitigation obligation to Rangen (which will also change with a change in the zone of curtailment).

Accordingly, IGWA respectfully asks the Director to vacate the *Second Amended Curtailment Order*. Since the January 19th curtailment date was yesterday, IGWA requests an expedited decision on this motion.

RESPECTFULLY SUBMITTED this 20th day of January, 2015

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

By: 
T.J. Budge

¹ Curtailment Order p. 42.

² *Memo. Decision and Order on Petitions for Judicial Review*, Twin Falls County case no. CV-2014-1338 (consolidated Gooding County case no. CV-2014-179) (Oct. 24, 2014) p. 40.

³ *Id.* at 36.

⁴ *Id.* at 42.

CERTIFICATE OF MAILING

I certify that on this 20th day of January, 2015, the foregoing document was served on the following persons in the manner indicated.



Signature of person serving document

Idaho Department of Water Resources PO Box 83720 Boise, ID 83720-0098 Deborah.Gibson@idwr.idaho.gov garrick.baxter@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Robyn M. Brody Brody Law Office, PLLC PO Box 554 Rupert, ID 83350 robynbrody@hotmail.com	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Fritz X. Haemmerle Haemmerle & Haemmerle, PLLC PO Box 1800 Hailey, ID 83333 fxh@haemlaw.com	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
J. Justin May May, Browning & May, PLLC 1419 West Washington Boise, ID 83702 jmay@maybrowning.com	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Sarah Klahn Mitra Pemberton WHITE JANKOWSKI, LLP 511 16 th St., Suite 500 Denver, Colorado 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail

<p>Dean Tranmer City of Pocatello PO Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us</p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail</p>
<p>John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 tlt@idahowaters.com jks@idahowaters.com pla@idahowaters.com</p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail</p>
<p>W. Kent Fletcher Fletcher Law Office PO Box 248 Burley, ID 83318 wkf@pmt.org</p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail</p>