

**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 17<sup>th</sup> day of January 2015.

  
GARY SPACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17<sup>TH</sup> 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 ( ) U.S. Mail, Postage Prepaid  
WILLIAMS MERSERVY & LOTH SPEICH LLP ( ) Facsimile  
153 EAST MAIN STREET (x) E-mail  
PO BOX 168  
JEROME ID 83338  
[rewilliams@cableone.net](mailto:rewilliams@cableone.net)

CANDICE MCHUGH ( ) U.S. Mail, Postage Prepaid  
CHRIS M BROMLEY ( ) Facsimile  
MCHUGH BROMLEY PLLC (x) E-mail  
380 S 4<sup>TH</sup> STREET STE 103  
BOISE ID 83702  
[cmchugh@mchughbromley.com](mailto:cmchugh@mchughbromley.com)  
[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)

J JUSTIN MAY ( ) U.S. Mail, Postage Prepaid  
MAY BROWNING & MAY PLLC ( ) Facsimile  
1419 W WASHINGTON (x) E-mail  
BOISE ID 83702-5039  
[jmay@maybrowning.com](mailto:jmay@maybrowning.com)

ROBYN BRODY ( ) U.S. Mail, Postage Prepaid  
BRODY LAW OFFICE PLLC ( ) Facsimile  
PO BOX 554 (x) E-mail  
RUPERT ID 83350-0554  
[robynbrody@hotmail.com](mailto:robynbrody@hotmail.com)

FRITZ X HAEMMERLE ( ) U.S. Mail, Postage Prepaid  
HAEMMERLE HAEMMERLE ( ) Facsimile  
PO BOX 1800 (x) E-mail  
HAILEY ID 83333-1800  
[fxh@haemlaw.com](mailto:fxh@haemlaw.com)

RANDALL C BUDGE ( ) U.S. Mail, Postage Prepaid  
THOMAS J BUDGE ( ) Facsimile  
RACINE OLSON NYE BUDGE & BAILEY (x) E-mail  
PO BOX 1391  
POCATELLO ID 83204-1391  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[tjb@racinelaw.net](mailto:tjb@racinelaw.net)

SARAH KLAHN  
MITRA PEMBERTON  
WHITE & JANKOWSKI  
511 16<sup>TH</sup> STREET STE 500  
DENVER CO 80202  
[sarahk@whitejankowski.com](mailto:sarahk@whitejankowski.com)  
[mitrap@whitejankowski.com](mailto: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](mailto: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](mailto: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](mailto:jks@idahowaters.com)  
[tlt@idahowaters.com](mailto:tlt@idahowaters.com)  
[pla@idahowaters.com](mailto: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](mailto: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](mailto: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](mailto: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.