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

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DEPARTMENT OF
WATER RESOURCES

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

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

Docket No. CM-DC-2011-004

**IGWA's Mitigation Plan
and Request for Hearing**

Idaho Ground Water Appropriators, Inc. (IGWA), acting for and on behalf of its members and non-member participants in IGWA-sponsored mitigation activities, submits this Mitigation Plan pursuant to rule 43 of the Rules for Conjunctive Management of Surface and Ground Water Resources (CM Rules) to avoid curtailment under the *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights junior to July 13, 1962* entered January 29, 2014 (the "Curtailment Order"), as amended from time to time.

The Curtailment Order presently requires junior-priority groundwater rights to provide simulated steady state benefits of 9.1 cfs to Curren Tunnel or direct flow of 9.1 cfs to Rangen. The mitigation may be phased in over a five-year period pursuant to CM Rule 40 as follows: 3.4 cfs in the first year, 5.2 cfs in the second year, 6.0 cfs the third year, 6.6 cfs the fourth year, and 9.1 cfs the fifth year.¹ IGWA has filed a Petition for Reconsideration that, if granted, is expected to reduce the mitigation obligations.

Proposals 1, 2 and 3 below are immediately available to deliver water directly to Rangen. Proposals 4 through 9 require engineering, technical analysis, land and/or water right acquisition, and facilities construction. Given the short time between issuance of the Curtailment Order on January 29, 2014, and the physical curtailment scheduled to commence March 14, 2014, it is impractical to include

¹ Curtailment Order p. 42.

the specific details, engineering, hydrogeological analysis, technical data, and necessary acquisitions for alternatives 4 through 9 at this time. IGWA asks the Director to review and conditionally approve these solutions in concept, providing necessary guidance for IGWA to proceed with the acquisitions, engineering, technical support, financial plans, and construction commitments necessary to implement these alternatives.

Each of the following proposals is designed to offset the depletive effects of junior-priority ground water withdrawals.

1. Request for credit for current and ongoing mitigation activities.

IGWA has for a number of years carried out a range of activities that augment the groundwater supply in the Eastern Snake Plain Aquifer (ESPA), which in turn increases ESPA discharge to springs in the Hagerman area. IGWA has been given mitigation credit for these actions in other delivery call settings. IGWA requests that it likewise be given credit toward the mitigation obligations imposed by the Curtailment Order. IGWA will continue to cooperate with the Department to enable prompt and accurate calculation of such mitigation credits.

A. Conversions.

IGWA's members have converted thousands of acres of irrigated lands from groundwater to surface water within Water Districts 120 and 130. IGWA plans to continue to deliver surface water to conversion acres in the future as required to prevent material injury to holders of senior water rights, including Rangen. These conversions decrease in the amount of groundwater withdrawn from the ESPA, while simultaneously increasing incidental recharge.

B. Voluntary Dry-Ups

IGWA's members have voluntarily dried up irrigated farmland via the Conservation Reserve Enhancement Program (CREP), Agricultural Water Enhancement Program (AWEP), and other programs, reducing groundwater withdrawals from the ESPA.

C. Groundwater Recharge

IGWA's members deliver surface water to the North Side Canal Company (NSCC) system for recharge when water and delivery capacity allow. This water recharges the ESPA through canal seepage, conveyance loss, and recharge sites such as Wilson Lake. Recharge enhances groundwater levels and hydraulically connected surface water sources.

2. Mitigation via Sandy Pipe.

IGWA's member North Snake Ground Water District (NSGWD) constructed the Sandy Pipe in 2003 to provide an alternate supply of water to irrigation water

rights from the Curren Tunnel. The Sandy Pipe has and will continue to deliver water to Butch Morris in lieu of water from the Curren Tunnel pursuant to the Memorandum Agreement between NSGWD and Morris attached hereto as **Exhibit A**. As shown in the Memorandum Agreement, Morris owns water right numbers 36-123D, 36-134E, 36-135D, 36-135E, 36-10141A and 36-10141B—all of which are senior in priority in Rangen’s water right 36-2551. The Morris water rights collectively authorize the diversion of 6.05 cfs. Morris will continue to be provided irrigation water through the Sandy Pipe, providing water from the Curren Tunnel to mitigate injury to Rangen.

Therefore, IGWA requests and is entitled to full credit for this direct delivery of water to Rangen of 6.05 cfs that could otherwise be diverted from the Curren Tunnel under Morris’s prior rights.

3. Assignment of water right no. 36-16976.

IGWA’s members have pending before the Department an Application for Water Right Permit no. 36-16976, a copy of which is attached as **Exhibit B**, to appropriate 12 cfs from Springs and Billingsley Creek for aquaculture and mitigation purposes. The sole purpose of this Application is to mitigate injury to Rangen. And, given the non-consumptive nature of this water right, it is certain to be approved.

The Curtailment Order provides that the source of Rangen’s water rights is limited to the Curren Tunnel only.² Consequently, the Director issued an order on January 31, 2014, directing Rangen to cease and desist illegal diversion of water from Billingsley Creek at its Bridge Diversion located in the SWSWNW Section 32, T7S R14E. The Bridge Diversion will no longer be available for Rangen’s use after February 24, 2014, since Rangen does not possess a water right for this point of diversion.

Permit 36-16976 includes the Bridge Diversion as an authorized point of diversion. IGWA will make a direct delivery to Rangen, to the extent needed to meet the full mitigation obligation not satisfied by the credits requested above, by assigning water right no. 36-16976 to Rangen.

4. Fish Replacement.

The Curtailment Order found that Rangen’s inability to exercise its water rights from the Curren Tunnel due to declining groundwater discharge from the ESPA has caused a reduction in the number of fish Rangen is able to raise.³ IGWA proposes to deliver to Rangen the number, size, and quality of fish Rangen could raise with the water it would receive from curtailment, at appropriate times and locations. IGWA will cooperate with Rangen to reasonably determine the number of additional fish that could be raised.

² Curtailment Order p. 32.

³ Curtailment Order, pp. 34-35.

5. Monetary Compensation.

As an alternative to fish replacement, IGWA proposes to pay to Rangen in cash the profits Rangen could otherwise obtain from the sale of fish raised with the water it would receive from curtailment. IGWA will cooperate with Rangen to reasonably determine lost profits from reduced fish sales.

6. Improvements to Curren Tunnel diversion.

IGWA recently learned that the Curren Tunnel was regularly cleaned in years past to remove obstructions and sustain ESPA discharge, but that such activities ceases some time ago. There is reason to believe that flow from the Tunnel can be enhanced by proper cleaning and maintenance and improving the Tunnel and other diversion and delivery facilities. This proposal requires that IGWA be allowed access to evaluate the Tunnel and other diversion facilities to determine the nature and scope of maintenance and improvements that would enhance flows therefrom.

7. Horizontal well.

SPF Engineering advised Rangen go that drilling a horizontal well in the vicinity of the Curren Tunnel would likely increase the supply of water available to Rangen. SPF's documents were admitted as exhibits at the hearing and are part of the agency record. IGWA proposes to pay for the cost of engineering and constructing a second horizontal tunnel to increase the flow of water to Rangen. Work will proceed on an "as-needed" basis upon approval of the Director.

8. Vertical well(s) with delivery over-the-rim.

IGWA proposes to drill new groundwater wells or utilize existing wells to deliver water directly to Rangen. This would function similar to IGWA's over-the-rim mitigation plan approved for Clear Springs Foods. The design, engineering and construction components will be proceed as needed upon approval of the Director.

9. Direct Pump-Back.

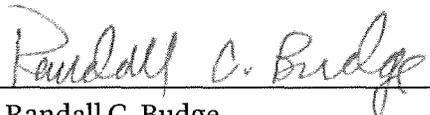
IGWA will pay the costs to engineer, construct, and operate a direct pump-back and aeration system within the Rangen facility to secure sufficient flows to meet mitigation obligations, to the extent of any shortfall to the previously described mitigation alternatives. Pursuant to evidence and testimony at the administrative hearing, to alleviate concerns, redundant power sources and pumps will be included in the pump-back design plan as remediation for power or pump failure.

REQUEST FOR HEARING

Pursuant to CM Rule 43.02, IGWA requests that a Status/Scheduling Conference be set for hearing with notice given to the parties to discuss the mitigation alternatives identified in this plan; and, to schedule necessary hearings.

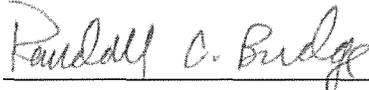
RESPECTFULLY SUBMITTED this 12th day of February, 2014.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

By: 
Randall C. Budge
T.J. Budge
Attorneys for IGWA

CERTIFICATE OF MAILING

I certify that on this 12th day of February, 2014, the foregoing document was served on the following persons in the manner indicated.



Signature of person mailing form

Director, Gary Spackman Idaho Department of Water Resources PO Box 83720 Boise, ID 83720-0098 Deborah.Gibson@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
Garrick Baxter Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov	<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
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

<p>Sarah Klahn Mitra Pemberton WHITE JANKOWSKI, LLP 511 16th St., Suite 500 Denver, Colorado 80202 sarahk@white-jankowski.com mitrap@white-jankowski.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>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>C. Thomas Arkoosh Arkoosh Law Offices PO Box 2900 Boise, ID 83702 tom.arkoosh@arkoosh.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>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>

Exhibit A

FORM 202 11/13

Ident. No. _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

36-16976

AMENDED

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

1. Name of applicant(s) North Snake GWD, Magic Valley GWD, et al. Phone 208-232-6101
 Name connector (check one): and or and/or
 Mailing address c/o Randall C. Budge, T.J. Budge, 201 E Center Street, PO Box 1391 City Pocatello
 State ID Zip 83204 Email rcb@racinelaw.net, tcb@racinelaw.net

2. Source of water supply Springs; Billingsley Creek which is a tributary of Snake River

3. Location of point(s) of diversion:

TWP	RGE	SEC	Govt Lot	¼	¼	¼	County	Source	Local name or tag #
7S	14E	32		SE	SW	NW	Gooding	Springs; Billingsley Creek	
7S	14E	32		SW	SW	NW	Gooding	Springs; Billingsley Creek	

4. Water will be used for the following purposes:

Amount 12 cfs for mitigation for irrigation purposes from 1/1 to 12/31 (both dates inclusive)
 (cfs or acre-feet per year)
 Amount 12 cfs for fish progagation purposes from 1/1 to 12/31 (both dates inclusive)
 (cfs or acre-feet per year)
 Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)
 Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
 (cfs or acre-feet per year)

5. Total quantity to be appropriated is (a) 12 cubic feet per second (cfs) and/or (b) _____ acre feet per year (af).

6. Proposed diverting works:

a. Describe type and size of devices used to divert water from the source. Hydraulic pump(s) (size TBD); screw-operated headgate on Billingsley Creek
 b. Height of storage dam N/A feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 11. For dams 10 feet or more in height OR reservoirs with a total storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? Yes No
 c. Proposed well diameter is N/A inches; proposed depth of well is _____ feet.
 d. Is ground water with a temperature of greater than 85°F being sought? Yes No
 e. If well is already drilled, when? N/A; drilling firm _____; well was drilled for (well owner) _____; Drilling Permit No. _____

7. Description of proposed uses (if irrigation only, go to item 8):

a. Hydropower; show total feet of head and proposed capacity in kW. N/A
 b. Stockwatering; list number and kind of livestock. N/A
 c. Municipal; complete and attach the Municipal Water Right Application Checklist.
 d. Domestic; show number of households N/A
 e. Other; describe fully. mitigation for groundwater irrigation; fish propagation

8. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7S	14E	31			M/F	M/F													
7S	14E	32						M/F											

Total number of acres to be irrigated: N/A

9. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping?

None for mitigation. Water right nos. 36-2551 and 36-7694 are used for fish propagation purposes at Rangen.

- 10. a. Who owns the property at the point of diversion? Rangen, Inc.
- b. Who owns the land to be irrigated or place of use? Rangen, Inc.; members of applicant Ground Water Districts
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: Idaho Code Section 42-5224(13)

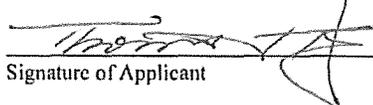
11. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary.

The GW Districts will use this water for mitigation purposes to protect groundwater use on the Eastern Snake Plain to mitigate for Rangen's apparent material injury and to provide mitigation for the curtailment of junior groundwater users as specified in the Director's Final Order dated 1/29/14 for Rangen's delivery call. Mitigation water will be provided to Rangen for its Curren Tunnel rights for fish propagation purposes. If unable to secure proper consent, the GWDs will use their power of eminent domain as set forth in I.C. Sec. 42-5224(13) to secure easements, as necessary.

12. Time required for completion of works and application of water to proposed beneficial use is 5 years (minimum 1 year).

13. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map clearly identifying the proposed point of diversion, place of use, section #, township & range. A photocopy of a USGS 7.5 minute topographic quadrangle map is preferred.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.


Signature of Applicant

Thomas J. Budge, Attorney
Print Name (and title, if applicable)

Signature of Applicant

Print Name (and title, if applicable)

For Department Use:

Received by _____ Date _____ Time _____ Preliminary check by _____
Fee \$ _____ Received by _____ Receipt No. _____ Date _____

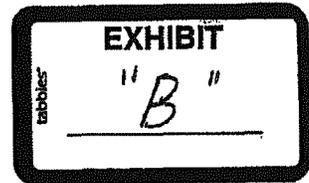


Attachment for Item 1

Name of Applicants
Amended Application for Permit
Submitted 2/5/2014

PERMIT APPLICANTS
GROUND WATER DISTRICTS

Aberdeen American Falls Ground Water District
Bingham Ground Water District
Bonneville-Jefferson Ground Water District
Madison Ground Water District
Magic Valley Ground Water District
North Snake Ground Water District
Clark Jefferson Ground Water District



MEMORANDUM AGREEMENT

This Memorandum Agreement is entered into February 11th, 2014, between North Snake Ground Water District, whose address is 152 E. Main Street, Jerome, Idaho 83338 ("District") and Howard (Butch Morris), whose address is 1101 East 2900 South, Hagerman, Idaho 83332 ("Morris"). The purpose of this Agreement is to provide for the ongoing delivery of irrigation water to Morris through the Sandy Pipeline in consideration for the District's use of certain water rights owned by Morris diverted from the Martin-Curren Tunnel at the head of Billingsley Creek to supply mitigation water to Rangen, Inc.

Water rights at the head of Billingsley Creek diverted from the Martin-Curren Tunnel are reflected in Table 3.1 attached. These include 6.05 cfs under water right numbers 36-134D, 36-134E, 36-135D, 36-135E, 36-10141A and 36-10141B owned by Morris (the "Morris Rights"). The District constructed in 2003 and owns and operates the Sandy Pipeline which delivers irrigation water from the end of the North Side Canal Company system to Morris, with a discharge into Billingsley Creek immediately downstream from Rangen.

The Sandy Pipeline has in the past and will continue in the future to be operated and maintained by the Districts to deliver irrigation water to Morris by reason of which the Morris Rights have not been diverted from the Martin-Curren Tunnel and have instead been delivered to the junior water rights of Rangen. Morris's irrigation diversions from the Sandy Pipeline utilize and replace the full 6.05 cfs available under the Morris Rights. Were it not for the Sandy Pipeline, Morris would take all water available from the Martin-Curren Tunnel under the Morris Rights for irrigation purposes.

The District agrees that Morris may continue to use the Sandy Pipeline without expense to deliver irrigation water to the property he owns. The District and Morris will cooperate with each other and with North Side Canal Company and use their best efforts to continue to supply irrigation water to Morris. In return therefore, Morris agrees that the District may use the Morris Rights as needed to provide mitigation water to Rangen to satisfy the IDWR Director's January 29, 2014 Order curtailing 157,000 acres of ground water rights junior to July 13, 1962.

This Memorandum Agreement is for a period of five (5) years and then will be reviewed by the parties to determine if it should be extended or terminated. By signing this Agreement Morris in no way agrees to any forfeiture or loss of water rights from the Martin-Curren Tunnel.

NORTH SNAKE GROUND WATER DISTRICT

** Signed Copy to be substituted.*

By: /s/
LYNN CARLQUIST, Chairman

/s/
HOWARD (BUTCH) MORRIS

*Privileged and Confidential
Attorney-Client Work Product*

Table 3.1: Water Rights at Head of Billingsley Creek

User Name	Water Right Number	Priority Date	Amount (cfs)	Source*	Use
Candy	36-134A	10/9/1884	0.49	Martin-Curren Tunnel	Domestic, Irrigation
Rangen, Inc.	36-134B	10/9/1884	0.09	Martin-Curren Tunnel	Irrigation and domestic use
Morris	36-134D	10/9/1884	1.58	Martin-Curren Tunnel	Irrigation, Stockwater
Morris	36-134E	10/9/1884	0.82	Martin-Curren Tunnel	Irrigation, Stockwater
Musser	36-102	4/1/1892	4.1	Martin-Curren Tunnel	Domestic, Irrigation, Stockwater
Rangen, Inc.	36-135A	4/1/1908	0.05	Martin-Curren Tunnel	Irrigation and domestic use
Candy	36-135B	4/1/1908	0.51	Martin-Curren Tunnel	Irrigation
Morris	36-135D	4/1/1908	1.58	Martin-Curren Tunnel	Irrigation, Stockwater
Morris	36-135E	4/1/1908	0.82	Martin-Curren Tunnel	Irrigation, Stockwater
Morris	36-10141A	12/1/1908	0.82	Martin-Curren Tunnel	Irrigation, Stockwater
Morris	36-10141B	12/1/1908	0.43	Martin-Curren Tunnel	Irrigation, Stockwater
Rangen, Inc.	36-15501	7/1/1957	1.46	Martin-Curren Tunnel	Fish propagation use at the hatchery and research facility on Billingsley Creek.
Rangen, Inc.	36-2551	7/13/1962	48.54	Martin-Curren Tunnel	Fish propagation use at the hatchery and research facility on Billingsley Creek. (Includes 0.1 cfs for domestic use.)
Rangen, Inc.	36-7694**	4/12/1977	26.00	Martin-Curren Tunnel	Fish propagation use at the hatchery and research facility on Billingsley Creek.

* SRBA Partial Decree.

** According to a memorandum from Cindy Yenter to Karl Dreher dated December 15, 2003, Rangen's submitted historical flow numbers show that flows have not been available to support water right number 36-7694 since October 1972, which predates the priority year of the right by nearly 5 years. Additionally, during the water right development period flows did not exceed 50 cfs, which is the total of water rights 36-15501 and 36-2551.