

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)*

## IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE FIRST  
MITIGATION PLAN FILED BY IDAHO  
GROUND WATER APPROPRIATORS,  
INC. FOR THE DISTRIBUTION OF  
WATER TO WATER RIGHT NOS. 36-  
02551 AND 36-07694 IN THE NAME  
OF RANGEN, INC.

Docket No. CM-MP-2014-001

### **IGWA's Motion for Mitigation Credit for Morris Exchange (2015)**

Idaho Ground Water Appropriators, Inc. (IGWA), acting for and on behalf of its members, hereby moves the Director for an order granting credit toward its mitigation obligation to Rangen, Inc., from April 1, 2015, through March 31, 2016, for the Morris Exchange.

The *Amended Order Approving in Part and Rejecting in Part IGWA's Mitigation Plan* issued in this matter on May 16, 2014, approves mitigation credit for water available to Rangen as a result of IGWA delivering water from the Sandy Pipe to holders of senior irrigation rights from the Tunnel (commonly referred to the "Morris Exchange"). The credit was calculated using the average Curren Tunnel discharge between April 15 and October 15 for the years 2002-2013 (3.7 cfs), deducting 0.3 cfs for irrigation water diverted from the Curren Tunnel by Morris,<sup>1</sup> deducting 0.18 cfs for certain senior rights, then spreading the resulting 3.2 cfs credit over the entire year, which produced a 1.6 cfs year-round mitigation credit.<sup>2</sup>

<sup>1</sup> Morris subsequently agreed to not divert any irrigation water from the Curren Tunnel, resulting in the 0.3 cfs figure being added back in.

<sup>2</sup> Am. Order Approv. in Part and Reject. in Part IGWA's Mit. Plan at 12 (May 16, 2014).

The mitigation credit for the Morris Exchange was subsequently appealed to Judge Wildman who upheld the Morris Exchange as an appropriate source of mitigation water to Rangen, but remanded the manner in which the mitigation credit is calculated.<sup>3</sup> Specifically, Judge Wildman ruled that the Director does have authority to use a “predictive baseline methodology,” but objected to the use of an average year to calculate the credit because it results in equality in sharing the risk between the senior and juniors.<sup>4</sup> The Judge cited the Surface Water Coalition methodology where a statistical mechanism is used to favor the senior by under-predicting the future water supply.<sup>5</sup> Judge Wildman also reversed the spreading of the mitigation credit over an annual time period, ruling that it must be confined to the irrigation season.<sup>6</sup>

In light of the foregoing, IGWA proposes the Morris Exchange mitigation credit be calculated using a 90% exceedance value to favor Rangen, as explained in the memo attached hereto as Exhibit A.

Using flow data for an average year would produce a Morris exchange credit for the 2015 irrigation season of 3.1 cfs. Using a 50% exceedance factor would likewise produce a credit of 3.1 cfs. Judge Wildman’s decision does not allow either approach because they result in equal sharing of risk that average irrigation season flows from the Tunnel will be greater or lesser than 3.1 cfs.

By contrast, a 90% exceedance figure produces a 2.1 cfs credit for the 2015 irrigation season. This means there is a 90% chance that actual Curren Tunnel flows during the irrigation season will be greater than 2.1 cfs, and a 10% chance they will be less than 2.1 cfs. This places a greater risk on junior water users. In the long-term it means Rangen will receive more mitigation water than it is entitled to.

Accordingly, IGWA requests an order granting a mitigation credit of 2.1 cfs to IGWA for mitigation obligations owed to Rangen for the period April 15, 2015, through October 15, 2015.

---

<sup>3</sup> Memo. Decision and Order on Pet. for Jud. Rev., *Rangen, Inc. v. Idaho Dept. of Water Resources et al.*, Twin Falls County Case No. CV-2014-2446 (Dec. 3, 2014), p. 11.

<sup>4</sup> *Id.* at 13.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* at 14-15.

DATED this 12<sup>th</sup> day of March, 2015.

RACINE OLSON NYE BUDGE &  
BAILEY, CHARTERED

By:   
Thomas J. Budge  
*Attorney for IGWA*

## CERTIFICATE OF MAILING

I certify that on this 12<sup>th</sup> day of March, 2015, the foregoing document was served on the following persons in the manner indicated.

  
 \_\_\_\_\_  
 Signature of person mailing form

Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 <a href="mailto:deborah.gibson@idwr.idaho.gov">deborah.gibson@idwr.idaho.gov</a> <a href="mailto:kimi.white@idwr.idaho.gov">kimi.white@idwr.idaho.gov</a> <a href="mailto:garrickbaxter@idwr.idaho.gov">garrickbaxter@idwr.idaho.gov</a> <a href="mailto:emmi.blades@idwr.idaho.gov">emmi.blades@idwr.idaho.gov</a>	<input checked="" 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 PO Box 554 Rupert, ID 83350 <a href="mailto:robynbrody@hotmail.com">robynbrody@hotmail.com</a>	<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 PO Box 1800 Hailey, ID 83333 <a href="mailto:fxh@haemlaw.com">fxh@haemlaw.com</a>	<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 1419 West Washington Boise, ID 83702 <a href="mailto:jmay@maybrowning.com">jmay@maybrowning.com</a>	<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
John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 <a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a> <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a> <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a>	<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>W. Kent Fletcher  FLETCHER LAW OFFICE  PO Box 248  Burley, ID 83318  <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></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>Jerry R. Rigby  Hyrum Erickson  Robert H. Wood  RIGBY ANDRUS &amp; RIGBY  25 North Second East  Rexburg, ID 83440  <a href="mailto:jrigby@rex-law.com">jrigby@rex-law.com</a>  <a href="mailto:herickson@rex-law.com">herickson@rex-law.com</a>  <a href="mailto:rwood@rex-law.com">rwood@rex-law.com</a></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>Gary &amp; Linda Lemmon  BLIND CANYON AQUARANCH  2757 South 1050 East  Hagerman, ID 83332  <a href="mailto:glemmon@northrim.net">glemmon@northrim.net</a></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**



## MEMORANDUM

**To:** TJ Budge

**From:** Charles M Brendecke and Sophia Sigstedt

**Subject:** Morris Mitigation Credit Analysis

**Date:** March 12, 2015

---

This memo presents an analysis of the average annual mitigation benefit over the irrigation season provided by the Morris agreement. The analysis follows the method used by the Idaho Department of Water Resources (“the Department”) in the 2014 Amended Order<sup>1</sup>.

Table 1 presents the average Curren Tunnel discharge from April 15<sup>th</sup>-October 15<sup>th</sup> from 2002 to 2014. Curren Tunnel discharge is the sum of the daily flow measured at the mouth of the tunnel by the Department and the interpolated daily diversion into Rangen’s six-inch PVC pipe. The average Morris Mitigation Credit is calculated as the lesser of the foregone diversion by Morris and the daily Curren Tunnel discharge remaining after the more senior water rights are applied. The foregone diversion by Morris in total is 6.05 cfs; the total diversion amount for 36-134D&E (1.58 cfs + 0.82 cfs), 36-135D&E (1.58 cfs + 0.82 cfs), and 36-10141A&B (0.82 cfs + 0.43 cfs). The discount for the more senior water rights of Candy (36-134A) and Rangen (36-134B & 36-135A) is 0.18 cfs as determined from Department’s analysis presented in the 2014 Amended Order. The 0.3 cfs the Department discounted for the Morris 36-134D & 36-134E water right was not discounted in this analysis as it is our understanding that this diversion by Morris no longer takes place (per April 23, 2014 letter to the Department).

Table 1 also presents statistics including the average, minimum, 50% probability of exceedance, and 90% probability of exceedance, as well as the average over the last three irrigation seasons to bracket the range of expected values. Please call if you have any questions.

---

<sup>1</sup> Amended Order Approving in Part and Rejecting in Part IGWA’s Mitigation Plan-Order Lifting Stay-Amended Curtailment Order (February 21, 2014)

**Table 1. Morris Mitigation Credit Analysis**

<b>Year</b>	<b>Average Current Tunnel Discharge, April 15-October 15 (cfs)</b>	<b>Average Current Tunnel Remaining after Senior Rights Applied, April 15-October 15 (cfs)</b>	<b>Average Morris Mitigation Credit, April 15-October 15 (cfs)</b>
2002	4.5	4.3	3.9
2003	3.9	3.7	3.4
2004	4.4	4.2	4.2
2005	2.3	2.1	2.1
2006	5.7	5.5	4.8
2007	4.9	4.8	3.8
2008	3.2	3.1	2.9
2009	2.8	2.6	2.4
2010	2.3	2.1	2.1
2011	3.4	3.3	3.1
2012	4.1	3.9	3.6
2013	2.8	2.6	2.3
2014	2.4	2.2	2.2
Average 2002-2014	3.6	3.4	3.1
Min 2002-2014	2.3	2.1	2.1
50% Exceedence	3.4	3.3	3.1
90% Exceedence	2.3	2.1	2.1
Average 2012-2014	3.1	2.9	2.7