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Attorneys for North Snake Ground Water District

**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

**NORTH SNAKE GROUND
WATER DISTRICT'S
RESPONSE TO PETITION OF
LITTLE SKY FARMS**

COMES NOW North Snake Ground Water District (“NSGWD” or “District”), through counsel, and hereby responds to the Petition for Stay of Curtailment Order and Determination of Proportionate Share of Mitigation Costs (hereinafter “Petition”) filed by Little Sky Farms (“Petitioner”) dated May 28, 2014 as follows:

ANSWER TO PETITION

1. NSGWD admits the allegations of paragraphs 1-8 of the Petition.
2. NSGWD denies the allegations of paragraphs 9, 10, 11 and 12 of the Petition.
3. In further answer thereto NSGWD has allowed non-member ground water users within the District to join as non-members for mitigation purposes and to participate fully in and receive all protections and benefits of the District’s mitigation plan activities, upon payment of the current year mitigation assessment plus a surcharge equal to three years in back assessments for mitigation purposes as authorized pursuant to Idaho Code § 42-5259(1)(d), (2)(a)(b). Determining the amount of the surcharge is a matter

of the exercise of reasonable discretion by the NSGWD Board of Directors, not IDWR. The amount owing by Little Sky Farms to join NSGWD for mitigation purpose is calculated as follows:

Water Right 37-7480 – 9.83 cfs

<u>YEAR</u>	<u>AMOUNT/CFS</u>	<u>ASSESSMENT</u>
2014	\$807.45	\$7,937.23
2013	\$707.45	\$6,954.23
2012	\$707.45	\$6,954.23
2011	\$557.45	\$5,479.73
Total Due:		\$27,324.43

4. On or about May 12, 2014, Little Sky Farms was advised, through counsel, of the foregoing amounts due to join the District for mitigation purposes. Little Sky Farms has refused to pay any amount, has not joined the District for mitigation purposes and is not entitled to any protection or benefits provided by the District to its members.
5. All NSGWD members are assessed the same amounts per cfs for mitigation purposes as stated above. Numerous other non-members have joined the District for mitigation purposes upon payment of the current year’s assessment and three prior year assessments for mitigation purposes.
6. Mitigation assessments by the Board are established on an annual basis to cover all mitigation activities. Mitigation efforts in Water District 130 have been ongoing for many years and include CREP, recharge, conversions as well as past and pending delivery calls including various approved mitigation plans to Blue Lakes Trout, Clear Lake Trout, Rimview Trout, SeaPac, Jones, Aquarius and Rangen. The District does not separately assess for each mitigation activity.
7. In the event the Director determines that Petitioner is only responsible for mitigation the District’s mitigation expenses pertaining to the Rangen call (*In The Matter of Distribution of Water to Water Right Nos. 36-02551 and 36-07694, Rangen, Inc.*, Docket No. CM-DC-2011-004) and the pending mitigation plans (Docket Nos. CM-MP-2014-001, CM-MP-2014-003, and CM-MP-2014-004), Petitioner would not be entitled to benefits and protections afforded to District members pertaining to the Blue Lakes Trout Mitigation Plan (*In The Matter Of The North Snake and Magic Valley Ground Water Irrigation Districts’ 2009 Joint Mitigation Plan To Compensate Blue Lakes Trout Farm, Inc. - Water Right Nos. 36-02356A, 36-07210, and 36-07427, Docket Number CM-MP-2009-001*) and Rimview Trout Mitigation Plan (*In The Matter Of The Mitigation Plan (Over-The-Rim) Of The North*

Snake and Magic Valley Ground Water Districts To Provide Replacement Water For Clear Springs Snake River Farm - Water Right Nos. 36-04013A, 36-04013B, and 36-07148 - Water District Nos. 130 and 140, Docket No. CM-MP-2009-004) as a result of the delivery calls. Accordingly, as owner of those senior rights NSGWD initiates a delivery call based thereon and requests curtailment of Petition and all other non-member ground water users west of the Great Rift trim line in WD130.

FIRST DEFENSE

Little Sky Farms' petition fails to state a claim against NSGWD upon which relief can be granted.

SECOND DEFENSE

IDWR lacks jurisdiction and authority to require NSGWD to enter into a contract to provide mitigation or to establish the amount of reasonable surcharge for past mitigation activity pursuant to Idaho Code § 42-5259.

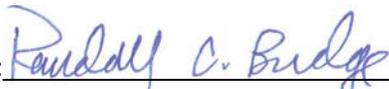
THIRD DEFENSE

The Petition of Little Sky Farms fails to comply with the requirements of Conjunctive Management Rule 43 and therefore is not a qualifying mitigation plan entitled to stay relief.

WHEREFORE, NSGWD hereby requests that the Director dismiss the Petition of Little Sky Farms without further notice or hearing.

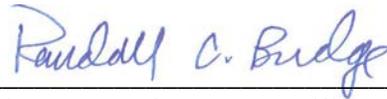
Respectfully submitted this 13th day of June, 2014.

NORTH SNAKE GROUND WATER
DISTRICT

By: 
Randall C. Budge, Attorney

CERTIFICATE OF MAILING

I certify that on this 13th day of June, 2014, the foregoing document was served on the following persons in the manner indicate



Signature of person mailing form

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