

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 IGWA

IDAHO DEPARTMENT OF WATER RESOURCES

IN RE IGWA'S AMENDED THIRD
PLAN TO MITIGATE MATERIAL INJU-
RY TO WATER RIGHT NOS. 36-02551
& 36-07694 HELD BY RANGEN, INC.,
AND OTHER WATER RIGHTS IN WA-
TER DISTRICT 36A.

Docket No. CM-MP-2014-005

IGWA's Response to Rangen's Motion to Dismiss Proposals 1, 2, 3 and 4 of IGWA's Third Mitigation Plan

Idaho Ground Water Appropriators, Inc. (IGWA) submits this response in opposition to the *Motion to Dismiss Proposals 1, 2, 3 and 4 of IGWA's Amended Third Mitigation Plan* ("Motion") filed July 25, 2014, by Rangen, Inc. ("Rangen").

The Motion once again demonstrates that Rangen's objective is not to receive more water, but to prevent groundwater users from providing mitigation water so Rangen will instead be in a position to extract a huge pay day in lieu of curtailment.

1. Sandy Ponds Recharge

Rangen asks the Director to dismiss IGWA's request for mitigation credit for groundwater recharge that occurs via the Sandy Ponds on the basis that installing measuring devices cannot quantify past recharge.¹ This argument mischaracterizes the Third Mitigation Plan, which requests mitigation credit "once the measuring devices are installed . . ."²

Rangen also argues the Sandy Ponds recharge proposal cannot be approved until IGWA's pending application to appropriate waste water is ap-

¹ Motion at 2.

² IGWA's Amended Third Mitigation Plan at 2.

proved.³ This argument is misplaced. IGWA can rent water from Water District 1 or Northside Canal Company water to conduct recharge via the Sandy Ponds regardless of whether it's application for permit is approved.

Instead of embracing and encouraging Sandy Ponds recharge as a way to increase water flows from the Curren Tunnel, Rangen seeks to prohibit recharge via the Sandy Ponds, or perhaps its goal is to continue reaping the benefits of Sandy Ponds recharge without junior users receiving mitigation credit for it.

2. Improvements to Curren Tunnel Diversion

Rangen argues this proposal should be dismissed because the Director "determined that Rangen's means of diversion are reasonable,"⁴ and IGWA's proposal to improve the Curren Tunnel "is very risky."⁵

The Director recently bifurcated IGWA's Third Mitigation Plan, separating the Curren Tunnel component into a separate proceeding that will be scheduled for hearing at a later date. Accordingly, Rangen's motion to dismiss this component of IGWA's Third Mitigation Plan is premature.

Further, the Director's finding that Rangen's means of diversion is reasonable does not preclude him from allowing IGWA to improve Rangen's means of diversion if it will provide additional water to Rangen.

The assertion that this component should be dismissed because it is "risky" is, in effect, a motion for summary judgment on the merits of the proposal to improve the Curren Tunnel. There are obvious issues of fact that preclude the Director from disposing of this proposal without a hearing, including, but not limited to, what types of improvements to the Curren Tunnel will produce more water, where and how the improvements will be made, and their effect on other water users. Given these factual issues, it is not appropriate to dismiss this mitigation proposal.

3. Direct Delivery of Water Right No. 36-16976

Rangen's Motion asks the Director to dismiss this component of the Third Mitigation Plan on the basis that it's implementation is dependent on approval of an outstanding application for permit. The Director already addressed this issue, ruling in the *Order Limiting Scope of Mitigation Plans; Limiting Scope of Hearing; Setting Deadline to Submit Engineering Plans* issued July 25, 2014, that this component of the Third Mitigation Plan will

³ Motion at 2.

⁴ Motion at 3.

⁵ Motion at 4.

not be addressed until the IDWR Southern Region Office decides whether to approve IGWA's application for permit no. 36-16976.

The Director should deny Rangen's request to dismiss this component of the Third Mitigation Plan because the Southern Region Office has yet to decide application for permit no. 36-16976.

4. Recirculation of Rangen Water Rights

Lastly, Rangen's Motion asks the Director to dismiss IGWA's proposal to recirculate Rangen water rights because Rangen has the legal right to recirculate its water on its own, and "IGWA has not provided any authority giving IGWA the right to commander Rangen's right to do so under the guides of mitigation."⁶

IGWA agrees that Rangen should be recirculating its water at its own expense before seeking to curtail juniors, but since the Director declined to impose that obligation on Rangen, IGWA is forced to undertake this improvement at its own expense. The Director's legal authority to allow this is clearly stated in CM Rule 42 and 43.

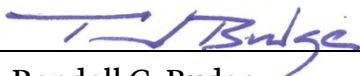
Rangen's argument that the Director does not have legal authority to allow IGWA to improve Rangen's conveyance system to make more water available to Rangen has no legal basis. Therefore, Rangen's request to dismiss this component of IGWA's Third Mitigation Plan should be denied.

CONCLUSION

For the foregoing reasons, IGWA respectfully asks the Director to deny Rangen's Motion entirely.

RESPECTFULLY SUBMITTED this 28th day of July, 2014.

RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED

By: 
Randall C. Budge
Thomas J. Budge

⁶ Motion at 6.

CERTIFICATE OF MAILING

I certify that on this 28th day of July, 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 Emmi Blades Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov emmi.blades@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>John K. Simpson Travis L. Thompson Paul Arrington BARKER ROSHOLT & SIMPSON, LLP 195 River Vista Place, Suite 204 Twin Falls, Idaho 83301-3029 jks@idahowaters.com pla@idahowaters.com jlw@idahowaters.com tlt@idahowaters.com jf@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>Almer Huntley, Jr., President Big Bend Irrigation & Mining Co., Ltd. 2721 South 900 East Hagerman, Idaho 83332 plspe@hotmail.com</p>	<p><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</p>
<p>Majorie M. Mikels 201 N. First Avenue, Ste. 100 Upland, CA 91786 m4justice@verizon.net</p>	<p><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</p>
<p>Tim Mayer, Branch Chief Water Resources Branch U.S. Fish and Wildlife Service 911 NE 11th Ave Portland, OR 97232-4181 tim_mayer@fws.gov</p>	<p><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</p>
<p>Bret McKenzie P.O. Box 472 Hagerman, Idaho 83332 knbmac@q.com</p>	<p><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</p>
<p>Kathleen McKenzie P.O. Box 109 Hagerman, Idaho 83332 knbmac@q.com</p>	<p><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</p>

<p>Vaughn McKnight 18011 N. Hwy 30 Hagerman, Idaho 83332</p>	<p><input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-Mail</p>
<p>Gary Lemmon 2757 South 1050 East Hagerman, Idaho 83332 glemmon@northrim.net</p>	<p><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</p>
<p>Ruth Musser-Lopez 420 East Street Needles, CA 92363 ruth@riveraha.org</p>	<p><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</p>