

1 Marjorie M. Mikels, California State Bar #: 101102
2 201 N. First Avenue, Ste. 100
3 Upland, CA 91786
(909) 981-2030; Fax: (909) 981-0910
<m4justice@verizon.net>

4 Attorney for Hope I. Musser, Trustee

6 **IDAHO DEPARTMENT OF WATER RESOURCES**

8 IN RE IGWA'S AMENDED THIRD PLAN) Docket No.: CM-MP-2014-005
9 TO MITIGATE MATERIAL INJURY TO) **MUSSERS' STATEMENT OF INTENT**
10 WATER RIGHT NOS. 36-02551 & 36-07694) **TO PARTICIPATE**
11 HELD BY RANGEN, INC., AND OTHER)
12 WATER RIGHTS IN WATER DISTRICT 36A.)
13

14 Comes now HOPE I. MUSSER, Trustee, ("Mussers") by and through one attorney of
15 record, and pursuant to the Director's *Order Vacating Hearing; Setting Deadlines to Provide*
16 *Statements of Intent and Staff Memorandum; Notice of Status Conference*, dated January 30,
17 2015, hereby states the Mussers' intent to continue to participate in this matter.

18 Mussers further object to the representation made in IGWA's "*Clarification of Scope of*
19 *Third Plan; . . .*" which the Director ordered IGWA to file by February 3, 2015, but which was
20 not served on Mussers until February 12, 2015, giving little time, considering the weekend and
21 holiday in which to respond. The objections pertain to the second paragraph of the section
22 entitled "Notice of Withdrawal" on page 2 of the Clarification document which states as follows:

23 "Concerning the Sandy Pipe delivery, this withdrawal does not affect the
24 mitigation credit granted under IGWA's First Mitigation Plan for the benefit to
25 Rangen from the exchange of water through the Sandy Pipe. The scope of the
26 Sandy Pipe delivery component of the Third Plan was limited to mitigation of
27 other water users via the delivery of water through the Sandy Pipe. Accordingly,
28 this withdrawal is limited to the issue of mitigation credit for the direct delivery of
water to other water users via the Sandy Pipe."

The mitigation credit granted to IGWA in the orders concerning the First Mitigation Plan
remains on the table. That credit was almost entirely granted to IGWA based on Butch Morris'

1 (Mussers' tenant who himself is also a pumper) irrigating Mussers' crops from water derived
2 from the Sandy Pond and Pipeline rather than from the Curren Tunnel (from which Mussers hold
3 water right no. 36-102 authorizing diversion of 4.1 cfs for irrigation purposes on Musser's
4 property, bearing priority date of April 1, 1892). Mussers have senior rights over and above
5 most of Rangen's, yet Mussers' water rights were sacrificed without their participation,
6 knowledge or consent as mitigation for Rangen's injuries. Mussers were neither named as
7 parties nor given actual notice of the proceedings of the First Mitigation Plan, and certainly never
8 agreed to IGWA's credit for using Musser's water rights as mitigation, without any guarantee of
9 substitute water resources. See Director's amended final order dated May 16, 2014.

10 Until such time as reliable substitute irrigation water resources and delivery system have
11 been designed, established, constructed and provided to the Mussers, per agreement with the
12 Mussers and approved by the Department of Water Resources and all other necessary agencies or
13 parties, without prejudice to the Mussers' existing senior water rights, no "exchange of water
14 through the Sandy Pipe" for the benefit of Rangen can be just assumed and glossed over, as
15 IGWA now moves on to the issue of how much mitigation credit they will receive for recharge
16 by reason of measuring devices at the Sandy Pond. Nor should the scope of these proceedings be
17 confined to "objection to measuring devices" or the amount of recharge, merely by IGWA's
18 arbitrary, unilateral withdrawal of issues and attempt to narrow the scope of these proceedings.

19 Mussers again respectfully request that IGWA's Amended Third Mitigation Plan be
20 denied in its entirety and that the Amended First Plan be sustained to provide credit to IGWA
21 only to the extent that an agreement be reached with all affected parties, including Mussers, and
22 that IGWA be required to meet and negotiate with their fellow Idaho land and water right owners
23 to come up with agreed solutions that benefit everyone, while respecting Idaho's Constitutional
24 law.

25 Dated: February 13, 2015

26 Respectfully Submitted:

27 _____
28 Marjorie M. Mikels

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2015, I served a true and correct copy of the **MUSSERS' STATEMENT OF INTENT TO PARTICIPATE** on the persons listed below by the method indicated:

State of Idaho
Department of Water Resources
322 East Front Street
P. O. Box 83720
Boise, ID 83720-0098
Attn.: Gary Spackman, Director
Deborah. Gibson@idwr.idaho.gov

Fed Ex Overnight Mail
Email

Randall C. Budge
RANCINE OLSON NYE BUDGE & BAILEY CHARTERED
201 E. Center Street
P. O. Box 1391
Pocatello, ID 83204
rcb@racinelaw.net

US Mail (postage prepaid) and Email

J. Justin May
MAY BROWNING & MAY, PLLC
1419 W. Washington
Boise, ID 83702-055
jmay@maybrowning.com

US Mail (postage prepaid) and Email

ROBYN BRODY
BRODY LAW OFFICE PLLC
PO BOX 554
RUPERT ID 83350-0554
robynbrody@hotmail.com

() U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

FRITZ X HAEMMERLE
HAEMMERLE HAEMMERLE
PO BOX 1800
HAILEY ID 83333-1800
fxh@haemlaw.com

() U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

John K. Simpson, Travis L Thompson, et al.
BARKER ROSHOLT & N SIMPSON
jks@idahowaters.com

(x) Email

