

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

IN THE MATTER OF THE COALITION OF CITIES MITIGATION PLAN FOR MANAGED RECHARGE AND OTHER AQUIFER ENHANCEMENT ACTIVITIES FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551, 36-07694 & 36-15501, IN THE NAME OF RANGEN, INC.

CM-MP-2014-004
CM-MP-2014-007
CM-DC-2011-004
CM-DC-2014-004

IN THE MATTER OF THE SECOND MITIGATION PLAN FILED BY THE COALITION OF CITIES FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551, 36-07694 & 36-15501, IN THE NAME OF RANGEN, INC.

ORDER DENYING PETITION FOR RECONSIDERATION AND/OR CLARIFICATION

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

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-00134B, 36-00135A, AND 36-15501 (RANGEN, INC.)

BACKGROUND

On January 16, 2015, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued a *Final Order Conditionally Approving Cities’ Second Mitigation Plan* (“Order”) in CM-MP-2014-007.

On the same day, the Coalition of Cities (“Cities”) filed with Director *Coalition of Cities’ Petition for Reconsideration and/or Clarification of the Final Order Conditionally Approving Cities’ Second Mitigation Plan and Request for Stay* (“Petition for Reconsideration”). The Cities seek clarification on two points. First, the Cities seek clarification of a finding in the order that “the Curren Tunnel ... will accrue little or no benefit from the recharge activities . . .” *Petition for Reconsideration* at 2. Second the Cities ask the Director to immediately recognize mitigation

for recharge, arguing the planned recharge “far exceeds the known benefit to Rangen” and “the benefits of curtailing the Cities’ junior-priority water rights will not immediately accrue to the Curren Tunnel.” *Id.*

Little or No Accrual of Benefits from Recharge

The Cities focus on the phrase “little or no benefit” in Finding of Fact no. 11, and question the basis for the finding that “little or no benefit” will accrue to Rangen as a result of the proposed recharge project. *Petition for Reconsideration* at 2. The finding states the “the Curren Tunnel . . . will accrue little or no benefit from the recharge activities during the approximate one month time period between the beginning of the recharge and March 31, the end of the first year of mitigation.” Reading the entire passage, it is clear that because the planned recharge will not occur until the very end of the year in which mitigation is required to be provided, it will accrue little or no benefit to Rangen in the first year of required mitigation (April 1, 2014 through March 31, 2015) and will not deliver water to Rangen when relief from curtailment is sought. Stated another way, the mitigation water will not be timely delivered to Rangen as the required benefits of recharge will not express themselves at Curren Tunnel during the approximate one month period remaining in the first year of obligation.

Immediate Mitigation Recognition

The Cities seek immediate recognition of mitigation for delayed recharge activities because (1) the Cities’ depletions to Curren Tunnel flows caused by diversions authorized by junior priority ground water rights were “not included in the model run that developed the January 19, 2015 curtailment deadline,” and (2) curtailment will not immediately accrue water to the Curren Tunnel, and (3) when the additional water resulting from recharge fully accrues to the Curren Tunnel, it “will greatly exceed the depletive effect of the Cities’ junior-priority groundwater pumping during that same time period.”

The Cities are correct that the Cities’ depletions to Curren Tunnel were not included in the model run that quantified depletions and mitigation requirements. Inclusion would have increased the mitigation obligation and would have contributed to an earlier curtailment date and a larger mitigation requirement. The Cities cannot argue that because the precision of the curtailment model run did not include their increment of real depletion, they should receive special treatment or should be excluded from curtailment.

The *Final Order Regarding Rangen, Inc.’s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* (“Curtailment Order”) issued on January 29, 2014 established a “phased-in” mitigation requirement. Each of the first four yearly mitigation values was based on the benefits that would accrue to Rangen from full curtailment. The consequence of failure to mitigate would be full curtailment. Almost one year later, the Cities ask the Director to reset the curtailment clock for just the Cities. Unfortunately, the Cities were required to mitigate for the amount of modeled benefits to Rangen accruing in the first year from April 1, 2014 through March 31, 2015. They cannot now ask for a reset.

Finally, the Cities ask the Director to ignore the depletions caused by continued diversion for some promised or expected greater benefit in the future. Approval of the Cities request would not provide water to Rangen in the time of need.

The Petition for Reconsideration also includes a brief one sentence request for stay. *Petition for Reconsideration* at 3. The Cities also requested a stay in another filing submitted on January 16, 2015, *Coalition of Cities' Request for Hearing on First and Second Mitigation Plans and Request for Stay of Curtailment* ("Request for Hearing"). The request for stay will be addressed in the order responding to the Request for Hearing.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Cities' Petition for Reconsideration and/or Clarification is **DENIED**.

Dated this 17th day of January 2015.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17TH day of January 2015, the above and foregoing document was served on the following by providing a copy of the *Order Denying Petition for Reconsideration and/or Clarification* in the manner selected:

ROBERT E WILLIAMS () U.S. Mail, Postage Prepaid
WILLIAMS MERSERVY & LOTH SPEICH LLP () Facsimile
153 EAST MAIN STREET (x) E-mail
PO BOX 168
JEROME ID 83338
rewilliams@cableone.net

CANDICE MCHUGH () U.S. Mail, Postage Prepaid
CHRIS M BROMLEY () Facsimile
MCHUGH BROMLEY PLLC (x) E-mail
380 S 4TH STREET STE 103
BOISE ID 83702
cmchugh@mchughbromley.com
cbromley@mchughbromley.com

J JUSTIN MAY () U.S. Mail, Postage Prepaid
MAY BROWNING & MAY PLLC () Facsimile
1419 W WASHINGTON (x) E-mail
BOISE ID 83702-5039
jmay@maybrowning.com

ROBYN BRODY () U.S. Mail, Postage Prepaid
BRODY LAW OFFICE PLLC () Facsimile
PO BOX 554 (x) E-mail
RUPERT ID 83350-0554
robynbrody@hotmail.com

FRITZ X HAEMMERLE () U.S. Mail, Postage Prepaid
HAEMMERLE HAEMMERLE () Facsimile
PO BOX 1800 (x) E-mail
HAILEY ID 83333-1800
fxh@haemlaw.com

RANDALL C BUDGE () U.S. Mail, Postage Prepaid
THOMAS J BUDGE () Facsimile
RACINE OLSON NYE BUDGE & BAILEY (x) E-mail
PO BOX 1391
POCATELLO ID 83204-1391
rcb@racinelaw.net
tjb@racinelaw.net

SARAH KLAHN
MITRA PEMBERTON
WHITE & JANKOWSKI
511 16TH STREET STE 500
DENVER CO 80202
sarahk@whitejankowski.com
mitrap@whitejankowski.com

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

A DEAN TRANMER
CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205
dtranmer@pocatello.us

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

JERRY R RIGBY
RIGBY ANDRUS & RIGBY
25 NORTH SECOND EAST
REXBURG ID 83440
jrigby@rex-law.com

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

JOHN K SIMPSON
TRAVIS L THOMPSON
PAUL L ARRINGTON
BARKER ROSHOLT & SIMPSON LLP
195 RIVER VISTA PL STE 204
TWIN FALLS ID 83301-3029
jks@idahowaters.com
tlt@idahowaters.com
pla@idahowaters.com

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

W KENT FLETCHER,
FLETCHER LAW OFFICE
PO BOX 248
BURLEY ID 83318
wkf@pmt.org

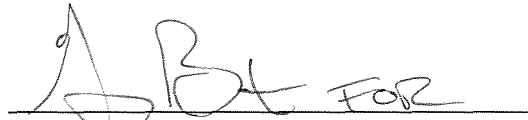
() U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

C THOMAS ARKOOSH
ARKOOSH LAW OFFICES
PO BOX 2900
BOISE ID 83701
Tom.arkoosh@arkoosh.com

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

GARY LEMMON
BLIND CANYON AQUARANCH, INC.
2757 S 1050 EAST
HAGERMAN ID 83332
glemmon@northrim.net

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

A handwritten signature in black ink, appearing to read "D. Gibson FOR", written over a horizontal line.

Deborah J. Gibson
Administrative Assistant to the Director

EXPLANATORY INFORMATION TO ACCOMPANY AN ORDER DENYING PETITION FOR RECONSIDERATION

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is an **Order Denying Petition for Reconsideration** of the "final order" or "amended final order" issued previously in this proceeding by the Idaho Department of Water Resources ("department") pursuant to section 67-5246, Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.