

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF GOODING**

RANGEN, INC.)	Case No. CV 2014-272
)	
Petitioner,)	ORDER DENYING
)	APPLICATION FOR
vs.)	ALTERNATIVE WRIT OF
)	MANDATE
)	
GARY SPACKMAN in his official capacity as)	
Director of the Idaho Department of Water)	
Resources, and THE IDAHO DEPARTMENT)	
OF WATER RESOURCES,)	
)	
Respondents.)	
_____)	

I.

PROCEDURAL BACKGROUND

On May 22, 2014, the Petitioner filed an *Application for Alternative Writ of Mandate* (“*Application*”) in the above captioned matter. On that same date, the case was reassigned to this Court. The *Application* is supported by the Petitioner’s *Verified Petition for Peremptory Writ of Mandate* and the *Affidavit of J. Wayne Courtney*, both of which were also filed in the above-captioned matter on May 22, 2014. In its *Application*, the Petitioner asks that this Court issue an alternative writ of mandate directing Gary Spackman in his official capacity as Director of the Idaho Department of Water Resources to rescind his *Order Granting IGWA’ Second Petition to Stay Curtailment* entered on April 28, 2014, in IDWR Docket No. CM-DC-2011-004 and comply with the conjunctive management rules.

II. ANALYSIS

A. Underlying administrative proceeding.

On December 13, 2011, Rangen, Inc. (“Rangen”) filed a *Petition for Delivery Call* with the Department alleging that certain of its water rights are being materially injured by junior priority groundwater use in the Eastern Snake Plain Aquifer (“ESPA”). The matter was assigned IDWR docket no. CM-DC-2011-004 (hereinafter, “the underlying administrative proceeding”). On January 29, 2014, the Director issued a *Final Order* in the underlying administrative proceeding, wherein he found junior priority groundwater use in the ESPA is materially injuring Rangen’s senior water rights. As a result, the *Final Order* provided that the Director would curtail certain groundwater rights in the ESPA on or before March 14, 2014. The *Final Order* further provided that affected junior users may avoid curtailment if they participate in a mitigation plan which provides “simulated steady state benefits of 9.1 cfs to Curren Tunnel or direct flow of 9.1 cfs to Rangen.” *Final Order*, p.42. Additionally, that mitigation provided by direct flow to Rangen “may be phased-in over not more than a five-year period pursuant to CM Rule 40 as follows: 3.4 cfs the first year, 5.2 cfs the second year, 6.0 cfs the third year, 6.6 cfs the fourth year, and 9.1 cfs the fifth year.” *Final Order*, p.42. Rangen and IGWA¹ subsequently filed *Petitions* seeking judicial review of the Director’s *Final Order*. Those *Petitions* are presently pending before this Court in Twin Falls County Case No. CV-2014-1338 and Gooding County Case No. CV-2014-179 respectively.

Meanwhile, on February 11, 2014, IGWA filed a *Petition to Stay Curtailment* along with a proposed *Mitigation Plan* in the underlying administrative proceeding. IGWA asked the Director to stay curtailment under his *Final Order* until he made a decision on its *Mitigation Plan*. The Director granted IGWA’s stay request on February 21, 2014, over Rangen’s objection. On April 11, 2014, the Director issued an *Order Approving in Part and Rejecting In Part IGWA’s Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order* (“*Order*”). In that *Order*, the Director approved IGWA’s mitigation plan in part, but found that the approved mitigation provided Rangen some but not all of the water to which it is entitled under his *Final Order*. As a result, the *Order* lifted the previously entered

¹ The term “IGWA” refers to the Idaho Ground Water Appropriators, Inc.

curtailment stay, and provided that the Director would curtail certain groundwater rights in the ESPA on or before May 5, 2014.

On April 17, 2014, IGWA filed its *Second Petition to Stay Curtailment* in the underlying administrative proceeding, requesting that the Director stay curtailment under his *Final Order* “until the judiciary completes its review of the Curtailment Order.” IGWA also filed a *Second Mitigation Plan* for the Director’s consideration. The Director issued his *Order Granting IGWA’s Second Petition to Stay Curtailment* on April 28, 2014, granting IGWA’s second stay request over Rangen’s objection. In that *Order*, the Director provided that he would “revisit the stay at the time a decision on IGWA’s Second Mitigation Plan is issued.” At this time, no decision on IGWA’s *Second Mitigation Plan* has been issued.² It is the *Order Granting IGWA’s Second Petition to Stay Curtailment* that Rangen asks this Court to direct the Director to rescind in its *Application for Alternative Writ of Mandate*.

B. Rangen is not entitled to an alternative writ of mandate under the circumstances.

Under Idaho law, a writ of mandamus may be issued by a district court to any inferior tribunal, corporation, board or person, “to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station.” I.C. § 7-302. The Idaho Supreme Court has directed that mandamus will lie only “if the officer against whom the writ is brought has a ‘clear legal duty’ to perform the desired act, and if the act sought to be compelled is ministerial or executive in nature.” *Idaho Falls Redevelopment Agency v. Countryman*, 118 Idaho 43, 44, 794 P.2d 632, 633 (1990). As such, the Court has further directed that “[w]rits of mandate are not tools to control matters of discretion.” *Total Success Investments, LLC v. Ada County Highway Dist.*, 148 Idaho 688, 691, 227 P.3d 942, 945 (2010). The decision to grant or deny an application for alternative writ of mandate is left to the sound discretion of the court. *Idaho Falls Redevelopment Agency*, 118 Idaho at 44, 794 P.2d at 633.

In this case, the Court in an exercise of its discretion finds that Rangen is not entitled to the alternative writ it seeks. As set forth above, *Petitions for Judicial Review* have been filed asking this Court to review the Director’s *Final Order*. Idaho Code § 67-5274 grants the Director the discretion, upon the filing of a petition for judicial review, to stay the effectiveness or enforcement of his agency action upon appropriate terms. Idaho Rule of Civil Procedure

² The Director has scheduled a hearing on IGWA’s *Second Mitigation Plan* for June 4-6, 2014. *Application*, Ex. M.

84(m) further confirms the Director's discretion in this respect. Since the Director has the discretion to enter an order granting or denying a request for stay under Idaho law, a writ of mandate is not available to compel the issuance, or revoke the issuance, of such an order. Therefore, the Court in an exercise of its discretion finds that Rangen is not entitled to an alternative writ of mandate directing the Director to rescind his April 28, 2014, *Order Granting IGWA' Second Petition to Stay Curtailment*.

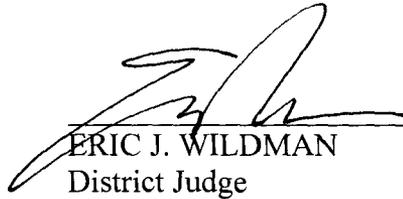
III.

ORDER

THEREFORE, THE FOLLOWING ARE HEREBY ORDERED:

1. The Petitioner's *Application for Alternative Writ of Mandate* **is hereby denied.**
2. The Petitioner, should it desire, may notice up a hearing on its *Verified Petition for Peremptory Writ of Mandate* following proper service and notice of the Respondents.

Dated May 23, 2014.


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I hereby certify that true and correct copies of the **ORDER DENYING APPLICATION FOR ALTERNATIVE WRIT OF MANDATE**, were mailed on May 23, 2014, 2014, by first-class mail to the following:

RANGEN, INC.

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RANGEN, INC.

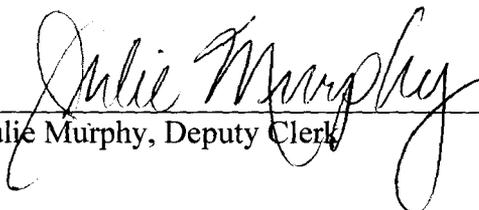
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Julie Murphy, Deputy Clerk