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Attorneys for Respondents

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

RANGEN, INC.,

Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES and GARY SPACKMAN, in
his capacity as Director of the Idaho
Department of Water Resources,

Respondents,

and

IDAHO GROUND WATER
APPROPRIATORS, INC. and SALMON
FALLS LAND & LIVESTOCK CO.,

Intervenors.

Case No. CV-2014-2935

MOTION TO DISMISS APPEAL

COME NOW, Respondents Gary R. Spackman, in his official capacity as Director (“Director”) of the Idaho Department of Water Resources (“Department”), and the Department, an executive agency of the State of Idaho, by and through their attorneys of record, and move this Court pursuant to Idaho Rule of Civil Procedure 84(o), 84(r) and Idaho Appellate Rule 32 for an order dismissing the appeal filed by Rangen, Inc. (“Rangen”), in this matter as moot.

Issues raised in this appeal stem from the *Petition for Delivery Call* filed by Rangen with the Department on December 13, 2011, alleging Rangen is not receiving all of the water it is entitled to pursuant to water right nos. 36-2551 and 36-7694, and is being materially injured by junior-priority ground water pumping. In the delivery call proceeding, the Director issued the *Final Order Regarding Rangen, Inc.’s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* (“Curtailment Order”).

On July 17, 2014, Rangen filed a *Petition for Judicial Review* (“Petition”) challenging the Director’s June 20, 2014, *Order Approving IGWA’s Second Mitigation Plan, Order Lifting Stay Issued April 28, 2014; Second Amended Curtailment Order* (“Second Mitigation Plan Order”) which conditionally approved the Second Mitigation Plan filed by the Idaho Ground Water Appropriators, Inc. (“IGWA”), pursuant to the Conjunctive Management Rules (“CM Rules”).¹ The Second Mitigation Plan proposed delivery of 9.1 cfs of Idaho Fish & Game (“Fish & Game”) water right no. 36-2055 from Tucker Springs, a tributary to Riley Creek, through a 1.3 mile pipeline to the fish research and propagation facility owned by Rangen (“Rangen Facility”) to meet mitigation obligations imposed by the Director’s Curtailment Order. To accomplish this delivery of water from Tucker Springs to the Rangen Facility, North Snake Ground Water

¹ The term “Conjunctive Management Rules” or “CM Rules” refers to the *Rules for Conjunctive Management of Surface and Ground Water Resources*, IDAPA 37.03.11.

District, Magic Valley Ground Water District, and Southwest Irrigation District filed an application for water right transfer on behalf of Fish & Game proposing to change the place of use for water right no. 36-2055 to the Rangen Facility.

On October 30, 2014, IGWA filed with the Department *IGWA's Notice of Withdrawal of Second Mitigation Plan* and *IGWA's Notice of Withdrawal of Transfer Application* with respect to water right no. 36-2055. True and correct copies of the notices are included as Exhibit 1 to the Affidavit of Garrick L. Baxter filed with this motion.

Under the mootness doctrine, an appeal may be dismissed “when it appears that the case involves only a moot question.” *Goodson v. Nez Perce Cnty. Bd. of Cnty. Comm'rs*, 133 Idaho 851, 853, 993 P.2d 614, 616 (2000). “A case becomes moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome.” *State v. Manzanares*, 152 Idaho 410, 419, 272 P.3d 382, 391 (2012) (quoting *Goodson v. Nez Perce Cnty. Bd. of Cnty. Comm'rs*, 133 Idaho 851, 853, 993 P.2d 614, 616 (2000)). A case is moot if it presents no justiciable controversy and a judicial determination will have no practical effect upon the outcome. *Id.*

Because IGWA has withdrawn its Second Mitigation Plan and associated transfer application, Rangen's appeal in this matter challenging the Director's approval of the Second Mitigation Plan no longer presents any live issues or justiciable controversy. A judicial determination regarding the appeal will have no practical effect on the outcome. Accordingly, the appeal should be dismissed.

Filed in conjunction with this motion is a notice of hearing setting the hearing on this motion for November 12, 2014 at 1:30 p.m. Respondents and Petitioner have agreed to an

expedited briefing schedule. Petitioner will submit its response brief on or before November 6, 2014. Respondents will submit a reply brief on or before November 10, 2014.

DATED this 31 day of October 2014.

LAWRENCE G. WASDEN
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A handwritten signature in black ink, appearing to read "G. Baxter", written over a horizontal line.

Garrick L. Baxter
Emmi L. Blades
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31 day of October 2014, I caused a true and correct copy of the foregoing document to be filed with the Court and served on the following parties by the methods indicated:

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