

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

IN THE MATTER OF DISTRIBUTION OF)	
WATER TO WATER RIGHTS NOS. 36-15501,)	ORDER STAYING
36-02551, AND 36-07694)	PROCEEDINGS
_____)	

On February 25, 2004, the Director of the Idaho Department of Water Resources (“Director” or “Department”) issued an *Order* in response to a water delivery call by Rangen, Inc. in the above-captioned matter. The Director issued an *Amended Order* on March 10, 2004. The *Amended Order* requires the holders of certain consumptive ground water rights subject to administration in Water District 130 not to divert ground water beginning April 1, 2004, unless sufficient replacement water is provided as set forth in the *Amended Order*.

The *Order* and the *Amended Order* both provided that:

“[A]ny person aggrieved by the decision shall be entitled to a hearing before the Director to contest the action taken provided the person files with the Director, within fifteen (15) days after receipt of written notice of the order, or receipt of actual notice, a written petition stating the grounds for contesting the action and requesting a hearing. Any hearing conducted shall be in accordance with the provisions of chapter 52, title 67, Idaho Code, and the Rules of Procedure of the Department, IDAPA 37.01.01. Judicial review of any final order of the Director issued following the hearing may be had pursuant to Section 42-1701A(4), Idaho Code.

On March 11, 2004, in response to the receipt of requests for a hearing pursuant to Idaho Code § 42-1701A(3), the Director issued a *Notice of Contested Case and Notice of Status Conference*. The *Notice* provided:

Any person or entity desiring to participate as a party in this contested case proceeding shall file a petition requesting a hearing, pursuant to Idaho Code § 42-1701A(3), or a petition to intervene in this proceeding, on or before March 25, 2004, with the Director, Idaho Department of Water Resources, 1301 North Orchard St., Boise, Idaho 83706-2237, showing service upon all parties to the

proceeding. The petition to intervene should be in conformance with Rules 351 and 352 of the Department's Rules of Procedure.

The following persons and entities filed timely petitions with the Department contesting the *Order* or the *Amended Order* and requesting a hearing pursuant to section 42-1701A(3), Idaho Code, or requesting intervention in this proceeding:

Jerry and Patty Nance, 814 Hwy 24, Dietrich, ID 83324;
Wallace Neal and Nancy Lee Bowman, 402 South 750 East, Dietrich, ID 83324;
Delbert Kohtz, 1135 Valley Road South, Eden, ID 83325;
Idaho Dairymen's Association, c/o Scott L. Campbell; Moffatt, Thomas, Barrett, Rock & Fields, Chartered, P.O. Box 829, Boise, ID 83701;
Gene and Judy Fredericksen, 200 North 349 East, Jerome, ID 83338;
City of Burley c/o R.C. Stone, Parsons, Smith & Stone, P.O. Box 910, Burley, ID 83318;
Clear Lakes Trout Company, Inc., Fisheries Development Company, Inc., Rim View Trout Company, Inc., and Estate of Earl M. Hardy, c/o Daniel V. Steenson, Charles L. Honsinger of Ringert Clark Chartered, P.O. Box 2773, Boise, ID 83701-2773;
Carey Water and Sewer District, c/o Dana Hofstetter, Hofstetter Law Office, 608 West Franklin, Boise, ID 83702;
Carey Valley Ground Water Users, c/o Dana Hofstetter, Hofstetter Law Office, 608 West Franklin, Boise, ID 83702;
Hubert and Rita Shaw, Shaw Land & Livestock, 411 South 750 East, Dietrich, ID 83324;
Idaho Ground Water Appropriators, Inc., c/o Jeff C. Fereday, Mike C. Creamer, John M. Marshall, c/o Givens Pursley LLP, P.O. Box 2720, Boise, ID 83701-2720;
Ed and Alpha Mahler, 366 N Meridian, Rupert, ID 83350;
Vernon Ravenscroft, 1328-B Shoestring Rd, Bliss, ID 83314;
Donley Farms, Inc., Donald and Beverly Taber, 501 East 20 North, Shoshone, ID 83352;
Twin Falls Canal Company, c/o John A. Rosholt, Travis L. Thompson, Barker Rosholt & Simpson LLP, 233 2nd St North, Ste D, Twin Falls, ID 83301;
Clear Springs Foods, Inc., John Simpson, Barker Rosholt & Simpson LLP, P.O. Box 2139, Boise, ID 83701-2139;
Bob and Kathleen Krucker, Zippora Stahl, Long View Dairy and Blue Sky Ranch, c/o Mike C. Creamer, Christopher H. Meyer, Givens Pursley LLP, P.O. Box 2720. Boise, ID 83701-2720;
Rangen, Inc., c/o J. Dee May, J. Justine May of May, Sudweeks & Browning, LLP, P.O. Box 1846, Twin Falls, ID 83303-1846;
U.S. Fish and Wildlife Service, c/o Barbara Scott Brier, Office of the Solicitor, U.S. Dept. of the Interior, 500 N.E. Multnomah St., Ste 607, Portland, OR 97232;
Idaho Power Company, c/o James S. Lochhead, Wayne F. Forman, Adam T. DeVoe, Brownstein Hyatt & Farber, P.C., 410 17th St., 22nd Floor, Denver, CO 80202; and John Simpson, Barker Rosholt & Simpson LLP, P.O. Box 2139, Boise, ID 83701-2139; and
U.S. Bureau of Reclamation, c/o Alexandra M Viscusi, U.S. Dept of the Interior, Office of the Solicitor, 550 W Fort St., Msc 020, Boise, ID 83724.

Approximately fifteen other persons and entities filed letters or pleadings in response to the *Amended Order* stating why their water rights should not be subject to the curtailment provisions of the order, or proposing a plan to offset the depletions to the Eastern Snake Plain Aquifer caused by the diversion and use of ground water under their respective water rights. These persons and entities did not request party status in this proceeding. The Department will separately respond on an individual basis to each of these requests for exclusion from any mitigation requirement or for approval of an individual mitigation plan.

On March 20, 2004, the State of Idaho, spring users in the Thousand Springs Area of the Snake River Basin, and the North Snake Ground Water District and the Magic Valley Ground Water District (the "Ground Water Districts") entered into *The Eastern Snake Plain Aquifer Mitigation, Recovery and Restoration Agreement for 2004* (the "Agreement"). On March 24, 2004, the Director entered *Order Approving Interim Mitigation*, which approved the interim mitigation provided for under the Agreement for the period March 15, 2004, through March 15, 2005.

The Agreement provides that the Ground Water Districts agree to implement specific mitigation and compensatory measures for the benefit of the spring users, and the State of Idaho agrees to undertake specific funding and implementation measures to address decreasing spring flows and provide other benefits for the spring users. In return, the signatory spring users agreed to stay all pending delivery calls against the holders of ground water rights from the ESPA and to not make additional delivery calls against the aquifer for the period from March 15, 2004, through March 15, 2005.

In consideration of the foregoing, the Director enters the following order staying further administrative proceedings in this matter.

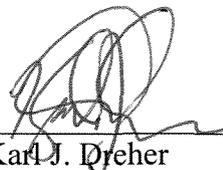
ORDER

IT IS THEREFORE ORDERED that the persons and entities identified above who have filed petitions contesting the *Order* or the *Amended Order*, or who have filed petitions to intervene in the proceeding, are hereby recognized as full parties in this contested case proceeding.

IT IS FURTHER ORDERED that all further proceedings in this matter shall be stayed until March 15, 2005, and until further order of the Director, provided however, that the *Amended Order* shall remain in effect through March 15, 2005.

IT IS FURTHER ORDERED that pursuant to Department Rule of Procedure 710, IDAPA 37.01.01.710, this is an interlocutory order that does not decide substantive issues presented in the above-captioned matters and is not subject to review by reconsideration or appeal. The Director may review this interlocutory order pursuant to Rule 711, IDAPA 37.01.01.711.

Dated this 30th day of March 2004.



Karl J. Dreher
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 30th day of March, 2004, the above and foregoing, was served on the following via facsimile and by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

J DEE MAY
MAY SUDWEEKS
PO BOX 1846
TWIN FALLS ID 83303-1846

MIKE CREAMER
JEFF FEREDAY
GIVENS PURSLEY
PO BOX 2720
BOISE ID 83701-2720

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DIETRICH ID 83324

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RUPERT ID 83350

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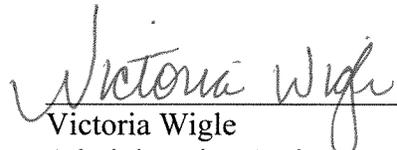
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BUREAU OF RECLAMATION
1150 N CURTIS ROAD
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HUBERT & RITA SHAW
SHAW LAND & LIVESTOCK
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ED & ALPHA MAHLER
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DONLEY FARMS
DONALD & BEVERLY TABER
501 EAST 20 NORTH
SHOSHONE ID 83352

BRYAN KENWORTHY
HAGERMAN FISH HATCHERY
3059-D NAT'L FISH HATCHERY
HAGERMAN ID 83332


Victoria Wigle
Administrative Assistant to the Director
Idaho Department of Water Resources