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RECEIVED
MAY 28 2014
DEPARTMENT OF
WATER RESOURCES

Attorneys for Little Sky Farms

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

Docket No. CM-DC-2011-004

**PETITION FOR STAY OF
CURTAILMENT ORDER AND
DETERMINATION OF
PROPORTIONATE SHARE OF
MITIGATION COSTS**

COMES NOW Little Sky Farms, holder of Water Right No. 37-7480, by and through its counsel of record, C. Tom Arkoosh of Arkoosh Law Offices, and hereby petitions the Idaho Department of Water Resources as follows:

1. Little Sky Farms is a holder of Water Right No. 37-7480.
2. The point of diversion and place of use of Water Right No. 37-7480 is within the territorial boundaries of North Snake Ground Water District ("NSGWD"), but Little Sky Farms is not a member of NSGWD.
3. That on or about May 8, 2014, the Idaho Department of Water Resources ("IDWR") caused notification to be given to Little Sky Farms that Water Right No. 37-7480 would be curtailed under the Rangen Call ("Call") unless Little Sky Farms was able to provide

to the watermaster of Water District 130 written proof of mitigation participation with one of the Idaho Ground Water Appropriators, Inc. ("IGWA") participating ground water districts. *See* Exhibit 1 attached hereto.

4. NSGWD is an IGWA participating ground water district.
5. On or about May 19, 2014, Little Sky Farms caused a statutory request for participation in the Rangen mitigation plan of NSGWD to be given to the counsel of NSGWD. *See* Exhibit 2 attached hereto.
6. As set out in Exhibit 2, Idaho Code § 42-5259 provides as follows:
 - (c) Before the contract may be effective, the board may collect from the nonmember a payment adequate to compensate the district for the nonmember's proportional share of the costs the district already has incurred in developing and implementing the mitigation plan;
 - (d) The board may include in the contract a provision requiring the nonmember to pay a reasonable surcharge, either annually or on some other basis, to reimburse the district for such nonmember's proportional share of those past or future costs of operating the district attributable to formulating or implementing the mitigation plan or plans in which the nonmember is participating.
7. Further, HB737 provides that in the event that a water right holder does not either join a ground water district for mitigation purposes or does not have an approved mitigation plan, "the Director of the Department of Water Resources may proceed with any appropriate remedy or take any other action within his authority that he deems appropriate."
8. That pursuant to IDAPA 37.01.01.780, as an appropriate remedy, the Director "may grant, or the reviewing court may order, a stay upon appropriate terms."
9. NSGWD has advised Little Sky Farms, by and through its attorney of record, that it declines and refuses to either provide the proportionate amount of cost Little Sky Farms has responsibility in the Rangen Call, or will consider allowing Little Sky Farms to join

the NSGWD mitigation plan or plans unless or until Little Sky Farms has paid to NSGWD all of the assessments that would have been paid had Little Sky Farms been a member of NSGWD from the year 2011 through the year 2014. Stated otherwise and summarized, NSGWD will not accept Little Sky Farms for mitigation as mandated by Idaho Code § 42-5259, unless and until Little Sky Farms pays full assessments to NSGWD for the last four years.

10. The behavior and refusal of NSGWD to allow Little Sky Farms to participate in the Rangen mitigation plan or plans is directly contrary to the expressed direction of Idaho Code § 42-5259 and HB737.

11. Little Sky Farms has no obligation to participate in NSGWD prior mitigation costs, and NSGWD has no right or authority to demand such participation in order to participate in the current Rangen mitigation plan or plans, because Little Sky Farms was, and at all times herein relevant remains, outside the “clip” for prior calls against ground water in the Water District 130, such that the diversion of Water Right No. 37-7480, when conjunctively managed, did not injure the calling water rights.

12. Little Sky Farms remains ready and able to tender to NSGWD its proportionate share of costs of mitigation for the Rangen order or orders.

WHEREFORE, your Petitioner herein requests that pursuant to I.C. § 42-5259, HB737, and IPADA 37.01.01.780, the Director stay the Rangen curtailment order or orders referenced in Exhibit 1, unless and until NSGWD provides a calculation and accounting for Little Sky Farms’ proportionate share of the mitigation in the Rangen order or orders; and, by administrative action or administrative hearing, that IDWR require NSGWD to provide, disclose, and account for Little

Sky Farms' proportionate share of the costs of mitigation for the pending Rangen orders referenced in Exhibit 1.

Respectfully submitted,

DATED this 27th day of May, 2014.



C. Tom Arkoosh
E-mail: tom.arkoosh@arkoosh.com

Attorneys for Little Sky Farms

CERTIFICATE OF MAILING

I hereby certify that on the 27 day of May, 2014, I caused to be served the original of the above and foregoing document by the method indicated below, and addressed to the following:

Idaho Department of Water Resources	<u> X </u>	U.S. Mail, postage prepaid
322 East Front Street	<u> </u>	Hand Delivery
P.O. Box 83720	<u> </u>	Overnight Courier
Boise, ID 83720-0098	<u> </u>	Facsimile
	<u> </u>	Email

I hereby also certify that on the ____ day of May, 2014, I caused to be served a true and correct copy of the above and foregoing document by the method indicated below, and addressed to the following:

Robyn M. Brody	<u> </u>	U.S. Mail, postage prepaid
Brody Law Office, PLLC	<u> </u>	Hand Delivery
P.O. Box 554	<u> </u>	Overnight Courier
Rupert, ID 83350	<u> </u>	Facsimile
robynbrody@hotmail.com	<u> X </u>	Email

Fritz X. Haemmerle	<u> </u>	U.S. Mail, postage prepaid
Haemmerle & Haemmerle, PLLC	<u> </u>	Hand Delivery
P.O. Box 1800	<u> </u>	Overnight Courier
Hailey, ID 83333	<u> </u>	Facsimile
fxh@haemmlaw.com	<u> X </u>	Email

J. Justin May	<u> </u>	U.S. Mail, postage prepaid
May, Browning & May, PLLC	<u> </u>	Hand Delivery
1419 W. Washington	<u> </u>	Overnight Courier
Boise, ID 83702	<u> </u>	Facsimile
jmay@maybrowning.com	<u> X </u>	Email

Sarah Klahn	<u> </u>	U.S. Mail, postage prepaid
Mitra Pemberton	<u> </u>	Hand Delivery
White Jankowski, LLP	<u> </u>	Overnight Courier
511 16 th St., Suite 500	<u> </u>	Facsimile
Denver, CO 80202	<u> X </u>	Email
sarahk@white-jankowski.com		
mitrap@whitejankowski.com		

Dean Tranmer
City of Pocatello
P.O. Box 4169
Pocatello, ID 83201
dtranmer@pocatello.us

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Paul L. Arrington
Barker Rosholt & Simpson
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W. Kent Fletcher
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Tim Luke
Cindy Yenter
Idaho Department of Water Resources
322 East Front Street
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cindy.yenter@idwr.idaho.gov

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☐ Facsimile
☒ Email



C. Tom Arkoosh

EXHIBIT 1



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

May 8, 2014

LITTLE SKY FARMS
362 E 1750 S
BLISS ID 83314-5018

RE: Notice of Potential Curtailment of Ground Water Use in Water District 130 for Non-Participation in a Mitigation Plan

Your water right no(s): 37-7480

Dear Water User:

The above referenced ground water right or rights are located in Water District 130 and affected by one or more water delivery call curtailment orders issued by the Director of the Idaho Department of Water Resources ("Department"), including the recent Rangen curtailment order. The Director's orders have required the holders of consumptive ground water rights bearing priority dates junior to the calling right(s) to curtail or refrain from diverting ground water under those junior rights. Mitigation plans filed by the Idaho Ground Water Users Association ("IGWA"), and approved by the Department, have provided relief or settlement under certain calls, and have allowed junior ground water pumping to continue.

Previous notices from the Water District 130 watermaster advised you that **the Director's approval of a mitigation plan does NOT apply to holders of junior ground water rights who are not members of a local ground water district participating in IGWA plans, or who are not otherwise participants in any other mitigation plan.** The watermaster's prior notices advised that curtailment would be enforced against affected rights that are not included in an approved mitigation plan.

According to the assessment rolls of the IGWA participating ground water districts, the above listed water right or water rights are not included for mitigation or membership purposes. Therefore, the above listed water right or water rights will be **CURTAILED** in accordance with the Director's curtailment orders, unless action is taken within fifteen (15) days of receipt of this letter.

Curtailment will be implemented and remain in effect unless you provide, directly to the watermaster of Water District 130, written proof of mitigation participation with one of the IGWA participating ground water districts. In-house culinary uses and uses of ground water which would be considered exempt under Section 42-111, Idaho Code are not subject to curtailment.

If you believe that the above referenced water right or water rights are already part of IGWA's mitigation plans, please contact the ground water districts for written proof of your participation. If your right or rights are not included in or assessed by one of the ground water districts for mitigation purposes, you must contact the ground water district closest to you to enroll your right or rights for mitigation. If you need to know which district is closest to you, please contact this office, or refer to the

Map of Ground Water Districts using the following link:

<http://www.idwr.idaho.gov/WaterManagement/WaterRelatedDistricts/gw-district.htm>

Contact information for the Ground Water Districts is attached to this letter. If you have questions concerning this notice or the water rights identified on this notice, please contact Cindy Yenter, Water District 130 watermaster, at 208-736-3033 or by e-mail at cindy.yenter@idwr.idaho.gov, or contact Tim Luke, IDWR Water Compliance Bureau, at 208-287-4959 or by e-mail at tim.luke@idwr.idaho.gov.

Sincerely,



Tim Luke
Water Compliance Bureau

Encl: Ground Water Districts Contact Information

C: Cindy Yenter, Water District 130 Watermaster
North Snake Ground Water District
Magic Valley Ground Water District
Carey Valley Ground Water District
Randy Budge, Idaho Ground Water Appropriators

GROUND WATER DISTRICT CONTACT INFORMATION

North Snake Ground Water District

Secretary: Joyce Moreno

152 E Main St

Jerome, ID 83338

Phone: 208 324-8995

Fax: 208 324-8033

nsgwd@safelink.net

Magic Valley Ground Water District

Secretary: Emalee Haynes

PO Box 430

Paul, Id 83347

Phone: 208 532-4175

mvgwd@hotmail.com

Carey Valley Ground Water District

Secretary: Lacee Peterson

PO Box 261

Carey, Idaho 83320

Phone: 208 823-4664

Cell: 208 731-4646

Fax: 208 823-4665

EXHIBIT 2

ARKOOSH LAW OFFICES

C. Tom Arkoosh
tom.arkoosh@arkoosh.com

May 19, 2014

Randy Budge
P.O. Box 1391
Pocatello, ID 83204

Re: Little Sky Farms Water Right No. 37-7480

Dear Randy:

As you know, this office represents the above ground water user.

You write in your email to me of May 12, 2013: "As we discussed, it is the District's position that they have a statutory right under I.C. 42-5232 and I.C. 42-5259 to collect from nonmembers who wish to join for mitigation purposes both past and future costs of formulating and implementing mitigation plans." Your email then continues to explain that North Snake Ground Water District ("District") asserts entitlement to collect from non-members seeking mitigation plan coverage under the District's mitigation plan the entire amount of full member assessments from 2011 through the present in order to participate as a non-member in the Rangen call mitigation plan.

Having cited I.C. 42-5259, you are aware it provides in pertinent part regarding payments from non-members as follows:

- (c) Before the contract may be effective, the board may collect from the nonmember a payment adequate to compensate the district for the nonmember's proportional share of the costs the district already has incurred in the developing and implementing **the mitigation plan**.
- (d) The board may include in the contract a provision requiring the nonmember to pay a reasonable surcharge, either annually or on some other basis, to reimburse the district for such nonmember's proportional share of those past or future costs of operating the district attributable to formulating or implementing **the mitigation plan or plans in which the nonmember is participating**.

[Emphasis added.]

To be clear, the referenced ground water user seeks to participate only in the plan or plans responsive to the Rangen call. This is the first call in which the referenced water right falls within the clip line. While it may be possible that some expenditures in past years paid for

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May 19, 2014

measures the District has included as mitigation in the Rangen matter, not all of those expenses have gone toward measures included in the Rangen mitigation plan.

Please consider this written request to by the above water right holder to enter a contract with the District to participate in and obtain all benefits of any mitigation plan or plans concerning the Rangen call pursuant to I.C. 42-5259. Please provide the costs of that plan or those plans and the above water right's proportionate share of those costs.

Sincerely,

ARKOOSH LAW OFFICES

A handwritten signature in black ink, appearing to be 'C. Tom Arkoosh', with a long horizontal line extending from the end of the signature towards the right margin.

C. Tom Arkoosh

CTA/emc