BEFORE THE IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF THE DISTRIBUTION OF WATER TO WATER RIGHT NO. 36-15501 HELD BY RANGEN, INC.

Docket No. CM-DC-2014-004

Stipulation Between Rangen, IGWA, UVP, Pocatello, and Coalition of Cities

WHEREAS, Rangen, Inc. ("Rangen") has placed delivery calls for its water right nos. 36-2551, 36-7694, and 36-15501;

WHEREAS, Idaho Ground Water Appropriators, Inc. ("IGWA"), City of Pocatello ("Pocatello"), Upper Valley Pumpers ("UVP"), and Coalition of Cities ("Cities") have formally resisted these delivery calls;

WHEREAS, IGWA and Cities have obtained approved mitigation plans;

WHEREAS, other junior water users have sought or are in the process of seeking approved mitigation plans;

WHEREAS, there are pending appeals related to legal and factual issues in the above referenced matters:

WHEREAS, despite the ongoing appeals, the Parties desire to create certainty regarding the application of mitigation supplies in the context of physical flows at the Curren Tunnel;

Rangen, Pocatello, IGWA, UVP, and Cities (together "Parties") stipulate as follows:

1. The Parties agree that beginning April 1, 2015, this Stipulation is intended to control the allocation and accounting of IDWR approved mitigation supplies in the following matters:

   a. Rangen 1957 Delivery Call (IDWR Docket No. CM-DC-2014-004)

   b. Rangen 1962 Delivery Call (IDWR Docket No. CM-DC-2011-004)

   c. IGWA's First Mitigation Plan (IDWR Docket No. CM-MP-2014-001)

   d. IGWA's Fourth Mitigation Plan (IDWR Docket No. CM-MP-2014-006)

2. Exhibit A sets forth the Mitigation Formula that the Parties agree will be used to allocate and account for mitigation provided to water right nos. 36-15501, 36-2551, and
36-7694 in the matters identified above. Should additional or alternative mitigation be approved to mitigate material injury to water right nos. 36-15501, 36-2551, or 36-7694, the “Mitigation Provided” section of the Mitigation Formula will be revised to account for such additional or alternative mitigation.¹ If the parties cannot agree to how the Mitigation Formula should be revised to account for any additional or alternative mitigation, the issue will be submitted to IDWR for decision.

3. Exhibit B is an Excel spreadsheet (“Mitigation Spreadsheet”) that the Parties agree should be used to implement the Mitigation Formula attached as Exhibit A. To the extent the Mitigation Spreadsheet fails to reflect the concepts embodied in the Mitigation Formula or is otherwise inconsistent with the Mitigation Formula, the Mitigation Formula controls. If the Mitigation Formula is revised to account for additional or alternative mitigation, the Mitigation Spreadsheet will be revised accordingly.

4. So long as the Rangen fish hatchery is actively being used to raise fish, Rangen water right no. 36-15501 will be deemed to suffer material injury during times when the “1957 Obligation” as calculated in paragraph 2.c.iii of the Mitigation Formula and column S of Mitigation Spreadsheet is greater than zero. Column S of the Mitigation Spreadsheet shows the daily mitigation obligation to water right no. 36-15501.

5. Exhibit C is an illustration of the operation of the Mitigation Formula on a daily basis, assuming reported Martin-Curren Tunnel flows for the year 2014 and a 5.3 cfs mitigation obligation to water right nos. 36-2551 and 36-7694. It is attached for illustrative purposes only.

6. The Mitigation Formula calculates mitigation obligations and mitigation provided on a daily basis. The rate at which mitigation water will be delivered from Magic Springs will be adjusted less frequently. To reconcile daily mitigation obligations with actual Magic Springs deliveries, the Mitigation Formula provides for a running tabulation of mitigation surpluses and deficits. Magic Springs deliveries will be adjusted periodically to offset such surpluses and deficits over the course of each year. Exhibit D is an illustration, based on the data reflected in Exhibit C, of how this may occur. It is attached for illustrative purposes only.

¹ Exhibit A does not address mitigation approved under the Cities’ Second Mitigation Plan, IDWR Docket No. CM-MP-2014-007.
Delivery of Mitigation and Measurement Issues:

7. Beginning April 1, 2015, IGWA will deliver 5 cfs from Magic Springs.

8. From April 1 through March 30 of the following year the quantity of water delivered from Magic Springs may be adjusted up to 6 times. The quantity and timing of such adjustments shall be determined by Rangen. Rangen shall provide two weeks advance written notice to IGWA and the Water Masters of Water Districts 36A and 130 of the adjustments. Adjustments that will result in either a surplus or deficit of mitigation may be made, provided that adjustments shall be made in a manner that aims in good faith to minimize cumulative mitigation surpluses and deficits under part 8 of the Mitigation Formula on March 30 of each year. The Parties acknowledge that the current practical operational limits of the Magic Springs pipeline are a maximum of 10 cfs and a minimum of 2 cfs. Should IGWA object to an adjustment, it will notify Rangen and IDWR of its objection at least one week prior to the adjustment date, and IDWR will determine an appropriate adjustment.

9. No later than August 1, 2015, Rangen will install at its own expense a measuring device on the “White Pipe” capable of measuring to a reasonable degree of certainty how much water discharges from the White Pipe. Such device must be pre-approved by IDWR and constructed and maintained in accordance with industry and IDWR standards.

10. No later than April 1, 2016, a measuring device will be installed to measure flows to Rangen from the Current Tunnel that has been pre-approved by IDWR, that the Parties agree will measure flows to a reasonable degree of certainty, and which will be maintained in accordance with industry and IDWR standards.

11. Notwithstanding the forgoing, the parties reserve all arguments raised in pending appeals and ongoing related actions before the IDWR, including inter alia:

   a. The Parties specifically reserve all challenges, arguments, and appeals related to the approval of the Fourth Mitigation Plan and its associated transfers and leases.

   b. The Parties also agree that nothing in this Stipulation shall be interpreted to decide the issue of futile call, trimline, or related issues of which junior ground water users are obligated to replace depletions associated with a finding of injury by the Director under the Mitigation Formula agreed to under this Stipulation.
MAY BROWNING & MAY, CHTD

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Stipulation – 4
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Stipulation – 4
CERTIFICATE OF SERVICE

I certify that on this 8th day of April, 2015, “Stipulation Between Rangen, IGWA, UVP, Pocatello and Cities” was served on the following persons in the manner indicated.

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