

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

IN THE MATTER OF DISTRIBUTION OF)	CM-DC-2011-004
WATER TO WATER RIGHT NOS. 36-02551)	
AND 36-07694)	ORDER REAFFIRMING
)	CURTAILMENT OF GROUND
(RANGEN, INC.)¹)	WATER RIGHTS JUNIOR TO
)	JULY 13, 1962
_____)	

BACKGROUND

On January 29, 2014, the Director of the Idaho Department of Water Resources (“Department”) issued a *Final Order Regarding Rangen, Inc.’s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* (“Final Order”) in the above captioned matter. In the Final Order, the Director concluded that water rights nos. 36-02551 and 36-07694, then held by Rangen, Inc. (“Rangen”), were being materially injured by ground water pumping and ordered the curtailment of holders of ground water rights junior to July 13, 1962, within the Eastern Snake Plain Aquifer (“ESPA”) area of common ground water supply and west of the Great Rift. *Final Order* at 36, 42.²

To avoid curtailment imposed by the Final Order, the Idaho Ground Water Appropriators, Inc. (“IGWA”), filed mitigation plans that proposed multiple mitigation activities. *See Amended Order Approving in Part and Rejecting in Part IGWA’s Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order* (“First Mitigation Plan Order”)(May 16, 2014); *Order Approving IGWA’s Second Mitigation Plan; Order Lifting Stay Issued April 28, 2014; Second Amended Curtailment Order* (“Second Mitigation Plan Order”)(June 20, 2014); *Order Approving IGWA’s Fourth Mitigation Plan* (“Fourth Mitigation Plan Order”)(Oct. 29, 2014).

¹ As discussed later in this order, water right nos. 36-02551 and 36-07694 were purchased from Rangen, Inc., by a group of ground water districts. However, for purposes of this order, the Director will maintain the original caption in this matter.

² On March 23, 2016, the Idaho Supreme Court affirmed the scope of curtailment in the case *Idaho Ground Water Assoc. v. Idaho Dep’t of Water Res.*, 160 Idaho 119, 369 P.3d 897 (2016).

The Director's First Mitigation Plan Order revised the curtailment date to July 1, 1983, based on IGWA completing certain mitigation activities. *First Mitigation Plan Order* at 21. The Director's Second Mitigation Plan Order revised the curtailment date to August 12, 1973, due to updated information regarding flows at the Curren Tunnel. *Second Mitigation Plan Order* at 4. The Director's Fourth Mitigation Plan Order maintained the August 12, 1973 curtailment date contingent on delivery of additional water directly to Rangen. *Fourth Mitigation Plan Order* at 21.

In 2017, various ground water districts and irrigation districts (collectively the "Districts") purchased the Rangen water rights and fish hatchery.³ On April 5, 2018, IGWA, on behalf of the Districts, requested the Director approve the Districts' ownership of the Rangen water rights "as a mitigation plan to protect the ground water rights of District members from curtailment, with the Rangen delivery calls remaining in place as against water rights that do not belong to or are not in good standing with the Districts." *Stipulated Mitigation Plan and Request for Order* ("2018 Mitigation Plan") at 2. Thereafter, the Director approved the 2018 Mitigation Plan. *Order Approving IGWA's 2018 Mitigation* (Mar. 11, 2019).

ANALYSIS

Water right nos. 36-02551 and 36-07694, now owned by the Districts, continue to be materially injured due to ground water pumping by junior priority ground water rights within the ESPA area of common ground water supply and west of the Great Rift. The 2018 Mitigation Plan was intended to replace the earlier mitigation plans. *2018 Mitigation Plan* at 2. IGWA has ceased mitigation activities under the First, Second and Fourth Mitigation Plans and junior-priority ground water rights are no longer entitled to mitigation protection under the First, Second and Fourth Mitigation Plans. Accordingly, the amended curtailment dates in these orders are no longer in effect. Because the First Mitigation Plan Order and the Second Mitigation Plan Order modified the original July 13, 1962 curtailment date, the Director concludes an order reaffirming curtailment of ground water rights junior to July 13, 1962, is necessary.

Pursuant to Rule 40.01.b of the Department's Rules for Conjunctive Management of Surface and Ground Water Resources, ground water rights junior to July 13, 1962, located in the ESPA area of common ground water supply and west of the Great Rift, that are not protected by an approved mitigation plan should be curtailed and should remain curtailed until further notice. IDAPA 37.03.11.40. Only junior priority ground water right holders that are in good standing with the Districts are entitled to claim protection from curtailment under the 2018 Mitigation Plan. According to records of the Department and information obtained from the Districts, the ground water rights listed in Attachment A of this order are located in the ESPA area of common ground water supply and west of the Great Rift, and are not protected by the Districts' 2018 Mitigation Plan or any other approved mitigation plan.

³ The entities that participated in the purchase are: American Falls-Aberdeen Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey Valley Ground Water District, Jefferson-Clark Groundwater District, Madison Ground Water District, Magic Valley Ground Water District, North Snake Ground Water District, Fremont-Madison Irrigation District and Southwest Irrigation District.

ORDER

IT IS HEREBY ORDERED that, at 12:01 a.m. on or before May 13, 2020, users of ground water holding consumptive water rights bearing priority dates junior to July 13, 1962, listed in Attachment A to this order, located within the ESPA area of common ground water supply, west of the Great Rift, and within a water district that regulates ground water, shall curtail/refrain from diversion and use of ground water pursuant to those water rights unless notified by the Department that the order of curtailment has been modified or rescinded as to their water rights. This order shall apply to all consumptive ground water rights, including agricultural, commercial, industrial, and municipal uses, but excluding ground water rights used for *de minimis* domestic purposes where such domestic use is within the limits of the definition set forth in Idaho Code § 42-111 and ground water rights used for *de minimis* stock watering where such stock watering use is within the limits of the definitions set forth in Idaho Code § 42-1401A(11), pursuant to IDAPA 37.03.11.020.11.

IT IS FURTHER ORDERED that the watermasters for the water districts that regulate ground water use within the ESPA area of common ground water supply and west of the Great Rift are directed to issue written notices to the holders of the consumptive ground water rights listed in Attachment A to this order. The written notices shall advise the holders of the identified ground water rights that their rights are curtailed in accordance with the terms of this order.

Dated this 29th day of April, 2020.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of April, 2020, I served a true and correct copy of the foregoing document on the following parties by the methods indicated:

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Kimberle English
Idaho Department of Water Resources

ATTACHMENT A

Attachment A

Curtailed Ground Water Rights with Priority Dates Junior to July 13, 1962 and Not Covered by a Mitigation Plan – Rangen Delivery Call

Owner	Water Right No.	Basis	Priority Date	Div Rate (cfs)	Volume (acre-feet)	Uses	Total Acres	Water District
ABC AGRA LLC	36-8484	License	12/11/1989	0.08	2.2	COMMERCIAL, DOMESTIC		130
ADAMS, CHERYL L; ADAMS, H LYLE; ADAMS, RODDY L	37-7078	Decreed	10/12/1970	0.077		STOCKWATER, COMMERCIAL, DOMESTIC		130
ADKINS, GINA; ADKINS, RICK	36-8525	License	3/2/1990	0.06	4.6	IRRIGATION, DOMESTIC	1	130
AMERICAN FALLS RESERVOIR DISTRICT #2	36-11120	Decreed	11/27/1962	0.07	6	IRRIGATION, DOMESTIC	1.5	130
ASTLE, MICHELE	37-8125	License	6/23/1983	0.04	13.2	STOCKWATER, COMMERCIAL, DOMESTIC		130
BINGHAM, BOYD A; BINGHAM, SHERRY R	36-8425	License	6/23/1989	0.88	374	IRRIGATION	105	130
BLAINE COUNTY SCHOOL DISTRICT #61	37-22931	Decreed	11/25/1962	0.05	8	IRRIGATION	2.3	130
BONAWITZ, DANI; BONAWITZ, DUKE	36-8065	Decreed	2/17/1982	0.12	20.6	IRRIGATION, DOMESTIC	5	130
CARTER, KEVIN OWEN; CARTER, RHONDA L; NELSON, JOSEPH R; NELSON, SANDRA A	36-7921	Decreed	6/4/1980	0.08	2.4	DOMESTIC		130
CASA DEL NORTE LP	37-7081	Decreed	12/8/1970	1.67	404	IRRIGATION	840	130
CHRISTENSEN, ADAM W; NELSON, DIANE K	37-23133	Decreed	9/20/1974	0.02	3.2	IRRIGATION	0.8	130
COUNTRY CLUB ESTATES WATER ASSN INC	36-8607	License	11/18/1991	0.5	27.1	STOCKWATER, DOMESTIC, FIRE PROTECTION		130
COUNTY OF MINIDOKA	36-13721	Decreed	10/2/1962	0.12	1.3	COMMERCIAL, DOMESTIC		130
DE JONG, RENEE E; DE JONG, WILLIAM J	36-17016	License	11/7/1989	0.05	6.4	IRRIGATION	1.6	130
DE MOSS, GARY A; DE MOSS, HELEN	37-22168	Decreed	9/20/1974	1.73	338.7	IRRIGATION, STOCKWATER	808	130
DE VRIES, KRISTY; DE VRIES, WIETZE	36-17047	Decreed	10/29/1964	0.06	30	STOCKWATER, COMMERCIAL		130
DE VRIES, KRISTY; DE VRIES, WIETZE	36-13629	Decreed	8/2/1972	0.04	11.5	DOMESTIC		130
DURAND, DANIEL G; DURAND, VICKY S	37-8410	License	10/4/1988	0.03	5.7	STOCKWATER, COMMERCIAL, DOMESTIC		130
ELIASON APARTMENTS; ELIASON, DOROTHY; ELIASON, IVAN L	36-12911	Decreed	12/31/1962	0.1	2	COMMERCIAL		130
ESTATE OF RAY CHUGG	36-8266	License	3/18/1985	0.12	16.6	STOCKWATER, COMMERCIAL, DOMESTIC		130
FARFAN-CEJA, CASTULO; JAUREZ, ARTEMIO; JUAREZ, GAUDALUPE	36-15565	License	2/5/2001	0.08	3.2	DOMESTIC		130
GALLEGOS, MARCELINO; PEREZ, MARIA; PEREZ, MARIO	36-8638	License	1/7/1992	0.04	5.2	IRRIGATION, DOMESTIC	1	130
GILTNER, HOLLY L; GILTNER, SCOTT R; MCCOY, LUKE; MCCOY, TANI; PITTOCK, BRIAN M; PITTOCK, SANDY L	36-14988	Decreed	12/31/1983	0.07	14.6	STOCKWATER, COMMERCIAL, DOMESTIC		130
GILTNER, HOLLY L; GILTNER, SCOTT R; MCCOY, LUKE; MCCOY, TANI; PITTOCK, BRIAN M; PITTOCK, SANDY L	36-7460AG	Decreed	3/25/1974	0.18	30	STOCKWATER, COMMERCIAL		130
GOEDHART, HUGO; GOEDHART, MARY	36-8774	License	3/10/1998	0.13	23.5	STOCKWATER, DOMESTIC		130
HELSLEY HENDRIX, JEANINE P; HELSLEY, BRIAN T	36-16561	Decreed	2/8/1971	0.03	7.6	IRRIGATION	3	130
J & MS PARKS LLC	36-8233	License	12/17/1991	0.06	29.8	HEATING, RECREATION		130

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Owner	Water Right No.	Basis	Priority Date	Div Rate (cfs)	Volume (acre-feet)	Uses	Total Acres	Water District
J R SIMPLOT CO	36-7636	Decreed	7/27/1976	0.49	1.8	INDUSTRIAL		130
J R SIMPLOT CO	36-8471	License	10/4/1989	0.18	3.6	COMMERCIAL		130
JACKSON, JAMES EARL	36-8605	License	5/23/1991	0.04		IRRIGATION	1.4	130
JANSS FARMS	37-7351	Decreed	4/12/1974	0.14	8.1	STOCKWATER		130
JEROME COUNTY ROD & GUN CLUB	36-8620	License	11/14/1991	0.02	2.2	IRRIGATION, COMMERCIAL	0.5	130
KENNETH E RUBY	37-7442	Permit	7/11/1975	6.47		IRRIGATION, STOCKWATER, DOMESTIC	320	130
KRETSCHMAN, JENNIFER; KRETSCHMAN, SCOTT	37-23132	Decreed	9/23/1977	0.1	20	IRRIGATION	5	130
KULHANEK, DENNIS; KULHANEK, MAXINE	36-8503	License	2/21/1990	0.04	8	IRRIGATION	2	130
LIMA, GUADALUPE	36-17128	Decreed	9/20/1973	0.02	4.8	IRRIGATION	1.2	130
LYNCH, LESLIE R	36-7154	Decreed	1/25/1971	0.02	14.5	INDUSTRIAL		130
MC KEAN, EDWARD; MC KEAN, LYNETTE	36-8186	Decreed	5/17/1983	0.04	28	COMMERCIAL, DOMESTIC		130
MC MINN, DALE M	36-16109	Decreed	11/19/1979	0.06	9.2	IRRIGATION, DOMESTIC	2	130
MEYERS, ROBERT J	37-8801	License	10/20/1992	0.1	12	DOMESTIC		130
MOLYNEUX, CLYDE L; MOLYNEUX, TERESA L	37-8065	Decreed	1/14/1983	0.09	5.1	IRRIGATION, DOMESTIC	1.5	130
NAPIER, DIANNA K	36-8521	License	12/19/1991	0.03	4.6	IRRIGATION, DOMESTIC	1	130
NORTHSIDE RANCH CO LLC	36-13986	Decreed	3/1/1978	0.2	13	STOCKWATER, DOMESTIC		130
OLSON, CHRISTIAN CHAD	37-8377	License	8/19/1988	0.03	4	IRRIGATION	1	130
PARNELL, KEVIN	36-15653	Decreed	12/3/1966	0.04	5.6	STOCKWATER, COMMERCIAL		130
PARNELL, KEVIN	36-15651	Decreed	10/18/1968	0.05	10	STOCKWATER, COMMERCIAL		130
PETERSON, DONNA; PETERSON, LARRY E	37-23002	Decreed	6/24/1980	0.05	10	IRRIGATION	2.5	130
PETERSON, MONTIE; PETERSON, PAULA	36-17150	Decreed	5/7/1975	0.01	3.7	IRRIGATION	25	130
PETTA, DANIEL FREDRICK	36-16144	Decreed	11/25/1977	0.02	4	IRRIGATION	1	130
PILKINTON, C R; PILKINTON, THOMAS R	36-7650B	Decreed	7/30/1976	0.08	16	IRRIGATION	4	130
RICHARD L GRAVES	37-7371	Permit	7/31/1974	6.49		IRRIGATION, STOCKWATER, DOMESTIC	320	130
ROBINSON, TIMOTHY L	36-17115	Decreed	3/15/1963	0.02	4	IRRIGATION	1	130
ROYCE, DAN; ROYCE, JO ANNE	36-8609	License	10/21/1991	0.02	9.2	IRRIGATION, STOCKWATER, DOMESTIC	2.5	130
RUSSELL, CATHERINE L; RUSSELL, LELAND D	36-16560	Decreed	2/8/1971	0.01	3.8	IRRIGATION	2	130
SILVER SPUR DEVELOPMENT CORP	37-22930	Decreed	11/25/1962	0.05	8	IRRIGATION	2.3	130
SPENCER, GLEN D	36-8536	License	4/12/1990	0.03	4.6	IRRIGATION, DOMESTIC	1	130
STATE OF IDAHO	36-17147	Decreed	8/7/1973	0.06	20	IRRIGATION	5	130
TED MILLER DAIRY	36-16189	Decreed	8/10/1973	0.04		IRRIGATION	3	130

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Owner	Water Right No.	Basis	Priority Date	Div Rate (cfs)	Volume (acre-feet)	Uses	Total Acres	Water District
TED MILLER DAIRY	36-16187	Decreed	10/28/1977	0.01		IRRIGATION	3	130
UNITED STATES OF AMERICA ACTING THROUGH	37-20839	Decreed	2/6/1974	0.19	94.5	IRRIGATION	64	130
VAN EVERY, BRENT; VAN EVERY, EMMA	36-17113	License	5/31/1983	0.08		IRRIGATION	3.9	130
WARTLUFT, HAROLD; WARTLUFT, LOIS	37-8375	License	8/11/1988	0.15	15.2	IRRIGATION, DOMESTIC	3.5	130
WAYSIDE ESTATES INC	36-7970	Decreed	3/10/1981	0.2	27.6	DOMESTIC		130
WEL IDAHO REAL ESTATE LLC	37-8289	Decreed	2/23/1987	0.11	14.4	COMMERCIAL		130
WILD WEST INC	37-21719	License	3/22/2006	0.11	11	DOMESTIC		130
CLAYSON, CASEY; CLAYSON, SHANE	45-7496	Decreed	1/27/1982	0.06	3.4	IRRIGATION, DOMESTIC	0.7	140
CRANE, CALVIN C	45-7303	Decreed	5/10/1977	1.28	248.8	IRRIGATION, STOCKWATER	62	140
CRANE, KARI L; CRANE, TROY W	45-4067B	Decreed	8/1/1962	1.46	292	IRRIGATION	73	140
CRANER, DAVID A; CRANER, HELEN B	45-7442	Decreed	4/4/1980	0.12	16	IRRIGATION	4	140
J R SIMPLOT CO	45-2746	Decreed	5/9/1966	2	798.5	IRRIGATION	1874	140
JOSEF & RITA EHRLER TRUST	45-7377	Decreed	5/26/1979	0.15	20	IRRIGATION	12	140
MC CAIN FOODS USA INC	45-2749	Decreed	8/13/1965	2.85	734.7	INDUSTRIAL		140
MC CAIN FOODS USA INC	45-7137	Decreed	5/24/1973	3.43	884.5	INDUSTRIAL		140
MC CAIN FOODS USA INC	45-7241	Decreed	5/27/1975	0.25	72	COMMERCIAL, FIRE PROTECTION		140
MITCHELL, RALPH M	45-7640	License	5/23/1989	0.07	6.6	IRRIGATION, DOMESTIC	1.5	140
OLIVER, JIMMY R	45-7650	License	6/21/1989	0.06		IRRIGATION, DOMESTIC	1	140
WHITWORTH, BOYD	45-7638	License	3/10/1989	0.06	1.6	INDUSTRIAL		140

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(To be used in connection with actions when a hearing was **not** held)

(Required by Rule of Procedure 740.02)

The accompanying order is a "Final Order" issued by the department pursuant to section 67-5246, Idaho Code.

PETITION FOR RECONSIDERATION

Any party may file a petition for reconsideration of a final order within fourteen (14) days of the service date of this order as shown on the certificate of service. **Note: The petition must be received by the Department within this fourteen (14) day period.** The department will act on a petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See section 67-5246(4), Idaho Code.

REQUEST FOR HEARING

Unless the right to a hearing before the director or the water resource board is otherwise provided by statute, any person who is aggrieved by the action of the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the action. The person shall file with the director, within fifteen (15) days after receipt of written notice of the action issued by the director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the director and requesting a hearing. See section 42-1701A(3), Idaho Code. **Note: The request must be received by the Department within this fifteen (15) day period.**

APPEAL OF FINAL ORDER TO DISTRICT COURT

Pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by a final order or orders previously issued in a matter before the department may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which:

- i. A hearing was held,
- ii. The final agency action was taken,
- iii. The party seeking review of the order resides, or
- iv. The real property or personal property that was the subject of the agency action is located.

The appeal must be filed within twenty-eight (28) days of: a) the service date of the final order, b) the service date of an order denying petition for reconsideration, or c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See section 67-5273, Idaho Code. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.