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DEPARTMENT OF  
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF THE FOURTH  
MITIGATION PLAN FILED BY THE  
IDAHO GROUND WATER APPROPRIA-  
TORS FOR THE DISTRIBUTION OF  
WATER TO WATER RIGHT NOS. 36-  
02551 & 35-07694 IN THE NAME OF  
RANGEN, INC.

FOURTH MITIGATION PLAN –  
“MAGIC SPRINGS PROJECT”

Docket No. CM-MP-2014-006

IGWA’s Response to  
Rangen’s Motion in Limine

Idaho Ground Water Appropriators, Inc. (“IGWA”), acting for and on behalf of its’ members and non-member participants, through counsel, hereby responds to Rangen, Inc.’s Motion In Limine to Exclude Evidence of IgWA’s Unfiled Fifth Mitigation Plan (“Rangen’s Motion”) filed October 1, 2014.

Background

IGWA’s Fourth Mitigation Plan (“Plan”) and Request for Expedited Hearing was filed on August 27, 2014. The Plan describes the Magic Springs Project pursuant to which IGWA will deliver to Rangen up to 10 cfs of first use water from SeaPac water right nos. 36-7072 and 36-8356, via a pump and pipeline project to provide mitigation water to Rangen in response to Rangen’s delivery call and the Director’s curtailment orders. At-

tached to the Plan as Exhibit 1 is the Letter of Intent between IGWA and SeaPac describing their agreement for IGWA to secure first use water from Magic Springs for delivery to Rangen for mitigation purposes. Attached as Exhibit 2 to the Plan is SPF Water Engineering Technical Memorandum dated August 26, 2014 providing a “10% Preliminary Submittal” (“First Report”) of engineering design for the Magic Springs Project. This engineering report including a project overview, water rights and project design, including a preliminary pipeline alignment, points of diversion, pump station, delivery to Rangen, estimated costs and various maps and engineering drawings.

On September 26, 2014, SPF provided more detail and updated engineering information in a “60% Magic Springs Project Report” (“Second Report”) which was immediately filed and served upon the parties on the same day, some 13 days prior to the hearing scheduled to commence October 8, 2014. The Second Report, as one would expect, contained significantly more information and engineering detail, including in Part 4 (pages 4-5) a description of temporary pumping and piping facilities to enable delivery of 0.5 cfs of direct flow from Magic Springs to Rangen prior to the January 19, 2015 deadline and continuing until April 1, 2015 when the permanent pump station pipeline is scheduled to be completed and operational.

On September 30, 2014, Rangen deposed SPF Engineer Bob Hardgrove regarding the Magic Springs Project and the Second Report, including the temporary pumping and pipeline facilities.

#### Motion in Limine

On October 1, 2014 Rangen’s motion was filed seeking to preclude testimony and evidence concerning the temporary pumping and pipeline facilities to deliver 0.5 cfs of mitigation water to Rangen from January 19, 2015 until April 1, 2015. Rangen’s Motion asserts that the temporary pumping and pipeline facilities constitute “an entirely new proposal,” and that the updated engineering report is an effort “to sneak in an entirely new Fifth Mitigation Plan.”<sup>1</sup>

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<sup>1</sup> Motion Paragraphs 5, 7.

## IGWA's Response

Rangen's Motion and arguments are baseless and and disingenuous, at best. For Rangen to contend it is somehow surprised or that the Second Report somehow constitutes a "Fifth Mitigation Plan" ignores the facts and record.

From even a cursory review of IGWA's Fourth Mitigation Plan, the Letter of Intent with SeaPac attached as Exhibit 1 and the SPF First Report attached as Exhibit 2, is abundantly clear that the Magic Springs Project is to provide first use mitigation water to Rangen from SeaPac's Magic Springs via the construction of pump and pipeline facilities. It was certainly well known and expected that SPF's First Report dated August 26, 2014 provided a preliminary concept and would be updated to 60% engineering drawing prior to the hearing. SPF's Second Report was completed on September 26, 2014, some 13 days prior to the hearing, and immediately filed and served the same day on the parties.

It should come of no surprise to Rangen that the Second Report with 60% design contained considerably more engineering details and specifics than the First Report's 10% concept design attached to the Plan when it was filed August 27, 2014. Part 4 of the 60% design report describing the temporary pump and pipeline component, simply identifies the timing and quantity of water delivered from Magic Springs to Rangen on a temporary basis from January 19, 2015 to April 1, 2015 when the permanent pump station and pipeline is scheduled to be completed. Rangen's argument that the temporary delivery facilities somehow constitute a new Fifth Mitigation Plan lack merit.

Rangen's arguments suggest it never read or ignored IGWA's Plan and attached exhibits. Regardless, any claim of surprise or prejudice regarding the temporary pumping and piping facilities is undermined by the fact that on September 30, 2014 Rangen deposed SPF engineer Bob Hardgrove regarding the entire Magic Springs Project, including the Second Report and the temporary pumping and piping facilities.

Rangen's Motion in Paragraph 8 argues that IGWA's Plan and the SPF Second Report does not contain information needed to evaluate IGWA's Plan and then goes on to detail nine items claimed to be missing. One only needs to review the Second Report to conclude that each of the detailed items Rangen complains about are in fact provided.

Rangen's Motion continues its rather ironic yet consistent pattern of complaining about the lack of water from junior ground water users on one hand, while on the other objecting and obstructing every effort of IGWA to

provide water. Unfortunately, these proceedings continue to mirror the fact that Rangen has no real interest in receiving water or raising fish. Notwithstanding, IGWA has and will continue to persistently pursue mitigation plan approval and to timely implement approve projects to deliver mitigation water to Rangen and avoid any curtailment. Based on the foregoing, Rangen's Motion should be denied.

Respectfully submitted October 7, 2014.

RACINE OLSON NYE BUDGE  
& BAILEY, CHARTERED

By: Randall C. Budge

Randall C. Budge  
T.J. Budge

October 7, 2014  
Date

#### CERTIFICATE OF MAILING

I certify that on this 7th day of October, 2014, the foregoing document was served on the following persons in the manner indicated.

Randall C. Budge  
Signature of person mailing form

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