

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 Curren 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*:

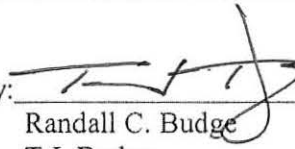
- a. The Parties specifically reserve all challenges, arguments, and appeals related to the approval of the Fourth Mitigation Plan and its associated transfers and leases.
- b. The Parties also agree that nothing in this Stipulation shall be interpreted to decide the issue of futile call, trimline, or 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

By: _____
Justin May
Attorneys for Rangen

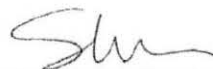
_____ Date

RACINE OLSON NYE BUDGE & BAILEY, CHARTERED

By:  _____
Randall C. Budge
T.J. Budge
Attorneys for IGWA

_____ Date 4.8.15

WHITE & JANKOWSKI, LLP

By:  _____
Sarah Klahn
Mitra Pemberton
Attorneys for Pocatello

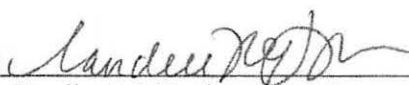
_____ Date 4-8-15

RIGBY, ANDRUS & RIGBY

By: _____
Jerry Rigby
Attorneys for Upper Valley Pumpers

_____ Date

MCHUGH BROMLEY, PLLC

By:  _____
Candice McHugh
Attorneys for Coalition of Cities

_____ Date 4-8-15

MAY BROWNING & MAY, CHTD

By: _____
Justin May
Attorneys for Rangen

_____ Date

RACINE OLSON NYE BUDGE & BAILEY, CHARTERED

By: _____
Randall C. Budge
T.J. Budge
Attorneys for IGWA

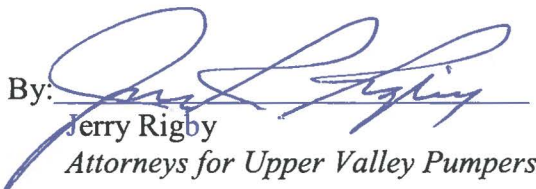
_____ Date

WHITE & JANKOWSKI, LLP

By: _____
Sarah Klahn
Mitra Pemberton
Attorneys for Pocatello

_____ Date

RIGBY, ANDRUS & RIGBY

By:  _____
Jerry Rigby
Attorneys for Upper Valley Pumpers

_____ 4-8-15
Date

MCHUGH BROMLEY, PLLC

By: _____
Candice McHugh
Attorneys for Coalition of Cities

_____ Date

MAY BROWNING & MAY, CHTD

By: Justin May Date 4-8-15
Justin May
Attorneys for Rangen

RACINE OLSON NYE BUDGE & BAILEY, CHARTERED

By: _____ Date _____
Randall C. Budge
T.J. Budge
Attorneys for IGWA

WHITE & JANKOWSKI, LLP

By: _____ Date _____
Sarah Klahn
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Attorneys for Pocatello

RIGBY, ANDRUS & RIGBY

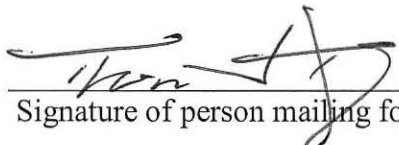
By: _____ Date _____
Jerry Rigby
Attorneys for Upper Valley Pumpers

MCHUGH BROMLEY, PLLC

By: _____ Date _____
Candice McHugh
Attorneys for Coalition of Cities

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.


Signature of person mailing form

Director, Gary Spackman Idaho Department of Water Resources P. O. Box 83720 Boise, Idaho 83720-0098 Deborah.Gibson@idwr.idaho.gov	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Garrick Baxter Idaho Department of Water Resources P. O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov emmie.blades@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Robyn M. Brody Brody Law Office P. O. Box 554 Rupert, Idaho 83350 robynbrody@hotmail.com	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Fritz X. Haemmerle Haemmerle & Haemmerle P. O. Box 1800 Hailey, Idaho 83333 fxh@haemlaw.com	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
J. Justin May May, Browning & May 1419 West Washington Boise, Idaho 83702 jmay@maybrowning.com	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Sarah Klahn Mitra Pemberton White Jankowski, LLP 511 16 th St., Suite 500 Denver, Colorado 80202	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail

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A. Dean Tranmer City of Pocatello P. O. Box 4169 Pocatello, Idaho 83201 dtranmer@pocatello.us	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
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Jerry R. Rigby Hyrum Erickson Robert H. Wood Rigby Andrus & Rigby 25 North Second East Rexburg, Idaho 83440 jrigby@rex-law.com herickson@rex-law.com rwood@rex-law.com	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson 195 River Vista Pl., Ste 204 Twin Falls, Idaho 83301 jks@idahowaters.com tlr@idahowaters.com pla@idahowaters.com	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, Idaho 83318 wkf@pmt.org	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail

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