

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE SECOND
MITIGATION PLAN FILED BY THE
COALITION OF CITIES FOR THE
DISTRIBUTION OF WATER TO WATER
RIGHT NOS. 36-02551, 36-07694 & 36-
15501, IN THE NAME OF RANGEN, INC.

CM-MP-2014-007
CM-DC-2011-004
CM-DC-2014-004

**ORDER CONFIRMING
FINAL ORDER CONDITIONALLY
APPROVING CITIES SECOND
MITIGATION PLAN**

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

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS.
36-00134B, 36-00135A, AND 36-15501
(RANGEN, INC.)

BACKGROUND PROCEDURAL FACTS

1. On January 29, 2014, the Director (“Director”) of the Idaho Department of Water Resources (“Department”) issued the *Final Order Regarding Rangen, Inc’s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* (“Curtailment Order”). The Curtailment Order recognizes that holders of junior-priority ground water rights may avoid curtailment if they participate in a mitigation plan which provides “simulated steady state benefits of 9.1 cfs to Curren Tunnel [sometimes referred to as the “Martin-Curren Tunnel”] or direct flow of 9.1 cfs to [Rangen, Inc. (“Rangen”).” *Curtailment Order* at 42. The modeled depletions from ground water pumping calculated to determine the mitigation obligations of the ground water users only included depletions resulting from diversions of ground water for irrigation purposes. The Department did not calculate additional depletions caused by diversion of ground water by the Cities or other industrial or commercial uses. As a result, the mitigation obligations of the ground water users were lower, by some small number, because the comprehensive depletionary effects of all diversions were not calculated. The omission in the

calculation of the depletive effects of other ground water pumping did not eliminate the true and actual depletive effect of the additional pumping by the Cities, industries, and commercial users.

2. The Curtailment Order explains that mitigation provided by direct flow to Rangen “may be phased-in over not more than a five-year period pursuant to CM Rule 40 as follows: 3.4 cfs the first year, 5.2 cfs the second year, 6.0 cfs the third year, 6.6 cfs the fourth year, and 9.1 cfs the fifth year.” *Curtailment Order* at 42. The Curtailment Order did not establish the starting and ending dates for each year of the five year “phase-in” period.

3. The cities of Bliss, Burley, Carey, Declo, Dietrich, Gooding, Hazelton, Heyburn, Jerome, Paul, Richfield, Rupert, and Wendell (hereafter referred to as the “Coalition of Cities” or as “Cities”) hold water rights bearing priority dates junior to July 13, 1962. Watermasters for water districts within the area of common ground water, located west of the Great Rift, issued written notices to holders of consumptive ground water rights bearing priority dates junior or equal to July 13, 1962, including the Cities, advising them their rights were subject to curtailment in accordance with terms of the Curtailment Order.

4. Counsel for the Cities represents that the Cities are members of the Idaho Ground Water Appropriators, Inc. (“IGWA”), an umbrella organization for ground water users. Cities’ Brief at 2. The membership of IGWA includes several ground water districts of which the Cities are also members. Any IGWA mitigation plan approved by the Director would also provide mitigation for the Cities’ depletions to Rangen’s water rights.

5. On April 11, 2014, the Director issued the *Order Approving In Part and Rejecting In Part IGWA’s Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order* (“Amended Curtailment Order”). The Amended Curtailment Order established a starting date of April 1 and ending date of March 31 for each year of the five year “phase-in” period. *Amended Curtailment Order* at 20. The first year of the mitigation “phase-in” was April 1, 2014 through March 31, 2015. *Id.*

6. On May 16, 2014, the Director issued the *Amended Order Approving in Part and Rejecting in Part IGWA’s Mitigation Plan; Order Lifting Stay issued February 21, 2014; Amended Curtailment Order* (“Second Amended Curtailment Order”). The Second Amended Curtailment Order changed the curtailment date, ordering curtailment of ground water rights junior or equal to July 1, 1983. Watermasters for the water districts within the area of common ground water, located west of the Great Rift, issued written notices to holders of consumptive ground water rights bearing priority dates junior or equal to July 1, 1983, including the Cities, except Gooding, whose water rights were senior to 1983, advising them their rights were subject to curtailment beginning May 5, 2014.

7. On June 20, 2014, the Director issued an *Order Approving IGWA’s Second Mitigation Plan; Order Lifting Stay Issued April 28, 2014; Second Amended Curtailment Order* (“Second Mitigation Plan Order”). The Director approved mitigation required by the Curtailment Order through January 18, 2015. *Second Mitigation Plan Order* at 18. The Director also stated that water rights bearing priority dates junior or equal to August 12, 1973, would be curtailed on January 19, 2015, if further mitigation was not provided by junior ground

water right holders. *Id.* Watermasters for the water districts within the area of common ground water, located west of the Great Rift, issued written notices to holders of consumptive ground water rights bearing priority dates junior or equal to August 12, 1973, including the Cities, advising them their rights were subject to curtailment in accordance with terms of the Second Mitigation Plan Order.

8. On October 29, 2014, the Director issued an *Order Approving IGWA's Fourth Mitigation Plan* ("Fourth Mitigation Plan Order"). The Fourth Mitigation Plan Order again established that ground water right holders junior or equal to August 12, 1973, must provide mitigation by January 19, 2015, or they will be curtailed. *Fourth Mitigation Plan Order* at 21.

9. On October 31, Rangen filed Rangen's Motion to Determine Morris Exchange Water Credit. Thereafter, the Director issued an *Order Granting Rangen's Motion to Determine Morris Exchange Water Credit; Second Amended Curtailment Order* ("Morris Exchange Order"). The Director determined that credit computed for the Morris Exchange Agreement only extended through October 1, 2014. *Morris Exchange Order* at 3. To forestall curtailment on January 19, 2015, the Director informed junior ground water users they must provide additional mitigation to make up the shortfall in the Morris Exchange Agreement credit. *Id.* at 4. Watermasters for the water districts within the area of common ground water, located west of the Great Rift, issued written notices to holders of consumptive ground water rights bearing priority dates junior or equal to August 12, 1973, including the Cities, advising them their rights were subject to curtailment in accordance with terms of the Morris Exchange Order.

10. Rangen has appealed orders approving the first, second, and fourth mitigation plans. Rangen has consistently argued that the Director's orders have not supplied mitigation water to Rangen in the time of need. On December 3, 2014, the Fifth Judicial District Court, in and for the County of Twin Falls, issued its *Memorandum Decision and Order on Petition for Judicial Review* ("Memorandum Decision") in CV 2014-2446, the appeal of the first mitigation plan. The district court reversed and remanded the Director's Second Amended Curtailment Order on two grounds: (1) the Director could only approve mitigation for aquifer enhancement activities that have already happened, or future aquifer enhancement activities that are compulsory, not voluntary, and (2) for direct delivery of mitigation water, the Director cannot recognize mitigation during periods of time when water is not physically delivered to the holder of the senior water right. The district court implicitly affirmed that the benefits of the aquifer recharge should be modeled, and the modeled benefits should be credited to the junior ground water right holder as mitigation to the senior water right holder. The Court stated "[t]he benefits of [aquifer enhancement activities] accrue . . . on an annual time period, and so it reasonable to grant . . . year-round mitigation credit for those activities." *Memorandum Decision* at 14. This statement assumes the aquifer recharge activities and the associated modeled accrual of mitigation credit happen over an annual period similar to the annual period of time that mitigation is required.

11. On November 20, 2014, the Coalition of Cities filed with the Director I ("Cities' Second Mitigation Plan"). The Cities hold water rights junior in priority to water rights of Rangen, and therefore subject to curtailment pursuant to orders of the Director in the above captioned delivery call proceedings. *Cities' Second Mitigation Plan* at 2.

12. The Cities' Second Mitigation Plan states the Coalition of Cities entered into an agreement with Rangen to undertake a pilot managed recharge program. The Cities' Second Mitigation Plan proposes delivery of 1,500 acre feet of storage water held by Clear Springs Foods ("Clear Springs") through the American Falls Reservoir District No. 2 ("AFRD2") delivery and conveyance system to an approved managed recharge site for a term commencing on the date of the Second Mitigation Plan through March 31, 2016. *Cities' Second Mitigation Plan* at 2-3. A copy of the Memorandum Agreement between the Coalition of Cities, Clear Springs, and Rangen is attached as Exhibit 2 of the Second Mitigation Plan.¹

13. The recharge site near Gooding is the "preferred location." Surface water will be delivered to the Gooding site for recharge unless necessary approvals cannot be obtained. *Cities' Second Mitigation Plan* at 3. Subsequent to the submission of the plan to the Department, the Coalition of Cities received approval from the Idaho Department of Environmental Quality ("IDEQ") for recharge at the Gooding recharge site. Letter from Brian Reed, Technical Engineer for IDEQ, to Rob Williams, attorney for the Coalition of Cities, Re: Ground Water Monitoring Plan for the City Coalition Use of the City of Gooding Recharge Site, Gooding County (Dec. 5, 2014). The Coalition of Cities also received approval from the United States Bureau of Land Management ("BLM") to use the Gooding recharge site. Letter from Codie Martin, BLM Field Manager, to Rob Williams, attorney for the Coalition of Cities (Dec. 12, 2014).

14. Recharge is scheduled to begin "as soon as possible, continuing through the winter, to the extent AFRD2 and the requisite storage volume authorize such activity." *Cities' Second Mitigation Plan* at 4. Recharge has not started but is expected to begin in late February or early March.

15. On January 16, 2015, the Director conditionally approved the *Cities' Second Mitigation Plan in the Final Order Conditionally Approving Cities Second Mitigation Plan*.

16. On January 16, 2015, the Cities filed *Coalition of Cities' Petition for Reconsideration and/or Clarification of the Final Order Conditionally Approving Cities' Second Mitigation Plan and Request for Stay* and *Coalition of Cities' Request for Hearing on First and Second Mitigation Plans and Request for Stay of Curtailment*.

17. On January 17, 2015, the Director issued an *Order Denying Petition for Reconsideration and/or Clarification and an Order Denying Request for Stay of Curtailment; Granting Request for Hearing*. A pre-hearing conference was held on January 22, 2015, a staff memorandum requested by the Director was disseminated to the parties on January 23, 2015, and a hearing was held on the Cities' Second Mitigation Plan on January 30, 2015, at the Department's state office in Boise, Idaho. On February 4, 2015, Rangen submitted *Rangen*,

¹ The Memorandum Agreement also states the parties shall seek approval from the Idaho Water Resource Board ("IWRB") for permission to use the IWRB recharge water right at the Gooding recharge site. Approval of the Second Mitigation Plan does not authorize the use of the IWRB's recharge water right nor does it authorize mitigation credit for the use of the IWRB's recharge water right.

Inc.'s Closing Brief Regarding Coalition of Cities' Second Mitigation Plan and the Cities submitted Coalition of Cities' Petition Post-Hearing Brief ("Cities' Brief").

18. The following is quoted from the Cities' Brief, and accurately summarizes the Director's *Final Order Conditionally Approving Cities Second Mitigation Plan*:

The Director found that "the mitigation plan does not 'provide replacement water, at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal.'" The Director stated that the first year that mitigation is required runs from April 1, 2014 through March 31, 2015. The Director also found that Rangen "has accepted, by agreement the Cities' Second Mitigation Plan as mitigation for depletions to Rangen's water supply from the Curren Tunnel." However, the Director found that Rangen's acceptance of the Cities' Second Mitigation plan "is not grounds to justify the mitigation plan's non-delivery of replacement water to Rangen during the first 'phase-in' year." The Director found, however, that he would recognize mitigation "at the earlier of (a) the date the modeled transient benefits of the recharge activities to the Curren Tunnel equal the model depletions to the Curren Tunnel caused by the Cities' diversions, or (b) April 1, 2015, the beginning of the next mitigation 'phase in' year as established in previous orders."

Cities' Brief at 10 (citations omitted).

FINDINGS OF FACT

1. The Cities' Second Mitigation Plan did not deliver mitigation water to Rangen by January 19, 2015. At best, the mitigation water will only be delivered to the recharge site for approximately one month of the first year in which mitigation was required.

2. The Eastern Snake Plain Aquifer ("ESPA") ground water model ("ESPAM 2.1") predicts that the Curren Tunnel, the source for Rangen's water rights, will accrue little or no benefit from the recharge activities during the approximate one month time period between the beginning of the recharge and March 31, the end of the first year of mitigation. The delivery of the recharge water will have contributed no water to mitigate for depletions caused by the Cities' pumping during the 11 months (approximately) of the first mitigation year (April 1, 2014 through March 31, 2015) when mitigation was required.

3. The Gooding recharge site is located within ESPAM 2.1's area of common ground water supply. The Coalition of Cities' "[d]elivery of surface water though the AFRD2 delivery and conveyance system will result in recharge to the aquifer in two ways: 1) from seepage or conveyance lost through the canal itself; and 2) seepage from the Recharge Site and surrounding area." *Cities' Second Mitigation Plan* at 4.

4. The Cities' Second Mitigation Plan states: "Rangen stipulates to the Mitigation Plan with the Cities, agreeing that the Plan shall be deemed to mitigate the Cities' out-of-priority

ground water pumping in CM-DC-2011-004 and CM-DC-2014-004 for the term of the mitigation plan.” *Cities’ Second Mitigation Plan* at 4.

5. Notice of the Cities’ Second Mitigation Plan was published in the Idaho Mountain Express and the Mountain Home News beginning on December 3, 2014, and ending on December 10, 2014. It was also advertised in the Time News beginning on December 4, 2014, and ending on December 11, 2014. The deadline to file protests to the Cities’ Second Mitigation Plan was December 22, 2014. No protests were filed with the Department on or before the deadline.

6. At the January 30, 2015, hearing the Cities established that the cities of Carey, Heyburn, and Richfield are the only cities whose senior priority water rights earlier than July 13, 1962, if any, are insufficient to satisfy the average annual diversion volumes exceeding the annual volume authorized by water rights senior to July 13, 1962. No evidence was presented to determine whether diversion of ground water by the cities of Carey, Heyburn, and Richfield or any of the other Cities would exceed the flow rates authorized by water rights bearing priority dates earlier than July 13, 1962.

CONCLUSIONS OF LAW

1. Idaho Code § 42-602, addressing the authority of the Director over the supervision of water distribution within water districts, provides:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

2. Idaho Code § 42-1805(8) provides the Director with authority to "promulgate, adopt, modify, repeal and enforce rules implementing or effectuating the powers and duties of the department."

3. Idaho Code § 42-603 grants the Director authority to adopt rules governing water distribution. In accordance with chapter 52, title 67, Idaho Code, the Department adopted rules regarding the conjunctive management of surface and ground water effective October 7, 1994. CM Rule 0.² The CM Rules prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against junior-priority ground water rights in an area having a common ground water supply. CM Rule 1.

² The term "CM Rule" refers to Idaho's *Rules for Conjunctive Management of Surface and Ground Water Resources*, IDAPA 37.03.11.

4. CM Rule 42.02 states: "The holder of a senior-priority surface or ground water right will be prevented from making a delivery call for curtailment of pumping of any well used by the holder of a junior-priority ground water right where use of water under the junior-priority right is covered by an approved and effectively operating mitigation plan."

5. CM Rule 43.01 sets forth the criteria for submission of a mitigation plan to the Director. The Cities' Second Mitigation Plan satisfies the criteria of CM Rule 43.01.

6. CM Rule 43.03 establishes multiple factors that **may** be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights:

a. Whether delivery, storage and use of water pursuant to the mitigation plan is in compliance with Idaho law.

b. Whether the mitigation plan will provide replacement water, at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and place as necessary to satisfy the rights of diversion from the surface or ground water source. Consideration will be given to the history and seasonal availability of water for diversion so as not to require replacement water at times when the surface right historically has not received a full supply, such as during annual low-flow periods and extended drought periods.

c. Whether the mitigation plan provides replacement water supplies or other appropriate compensation to the senior-priority water right when needed during a time of shortage even if the effect of pumping is spread over many years and will continue for years after pumping is curtailed. A mitigation plan may allow for multi-season accounting of ground water withdrawals and provide for replacement water to take advantage of variability in seasonal water supply. The mitigation plan must include contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable.

d. Whether the mitigation plan proposes artificial recharge of an area of common ground water supply as a means of protecting ground water pumping levels, compensating senior-priority water rights, or providing aquifer storage for exchange or other purposes related to the mitigation plan.

e. Where a mitigation plan is based upon computer simulations and calculations, whether such plan uses generally accepted and appropriate engineering and hydrogeologic formulae for calculating the depletive effect of the ground water withdrawal.

f. Whether the mitigation plan uses generally accepted and appropriate values for aquifer characteristics such as transmissivity, specific yield, and other relevant factors.

g. Whether the mitigation plan reasonably calculates the consumptive use component of ground water diversion and use.

h. The reliability of the source of replacement water over the term in which it is proposed to be used under the mitigation plan.

i. Whether the mitigation plan proposes enlargement of the rate of diversion, seasonal quantity or time of diversion under any water right being proposed for use in the mitigation plan.

j. Whether the mitigation plan is consistent with the conservation of water resources, the public interest or injures other water rights, or would result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge.

k. Whether the mitigation plan provides for monitoring and adjustment as necessary to protect senior-priority water rights from material injury.

l. Whether the plan provides for mitigation of the effects of pumping of existing wells and the effects of pumping of any new wells which may be proposed to take water from the areas of common ground water supply.

m. Whether the mitigation plan provides for future participation on an equitable basis by ground water pumpers who divert water under junior-priority rights but who do not initially participate in such mitigation plan.

n. A mitigation plan may propose division of the area of common ground water supply into zones or segments for the purpose of consideration of local impacts, timing of depletions, and replacement supplies.

o. Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions.

7. Delivery and use of the mitigation water complies with Idaho law.

8. The Cities received recognition for mitigation until October 1, 2014, the same day that mitigation credit for the Morris Exchange Agreement expired for IGWA and members of IGWA.

9. The Cities were required to provide mitigation on January 19, 2015, either independently or through approved IGWA mitigation plans, or be curtailed, just like any other water user belonging to IGWA.

10. The Cities established that water rights held by each of the cities of Carey, Heyburn, and Richfield bearing priority dates senior to July 13, 1962, if any, are insufficient to supply the average annual volumes diverted individually by the cities of Carey, Heyburn, and Richfield. The record does not contain information about diversions by each of the individual cities that might exceed a flow rate limitation. Exceeding the cumulative authorized flow rate for all pre-July 13, 1962 water rights held by each individual city could result in curtailment.

11. The Cities established that Rangen and the Cities agreed to the Cities' Second Mitigation Plan as mitigation for depletions to Rangen's water supply from Curren Tunnel for the term of the mitigation plan. The Director is not bound to accept an agreement.

12. A 2009 Department order, cited by the Cities, accepting a mitigation plan based on an agreement between Clear Springs Foods and IGWA that called for monetary compensation instead of water, was recognition of mitigation that addressed the entire mitigation obligation of the ground water users. In contrast, in this instance, Rangen and the Cities are carving out special consideration for one group of junior users, and not the other junior users. The disparity could be reconciled if the Cities were timely mitigating. They are not. Furthermore, in 2009, the Director did not have the benefit of the subsequent court decisions requiring mitigation in both quantity and time of need.

13. The Cities were notified of the mitigation obligation along with all other junior ground water right holders. The Cities were subject to the same obligation as other junior ground water right holders to provide their portion of the mitigation phase-in flow rates in the mitigation years established by the Director's Amended Curtailment Order. The Cities were under the same obligation as IGWA and the participants in IGWA to provide mitigation on or before January 18, 2015.

14. Judge Wildman's January 22, 2015, *Order Granting Motion to Stay Curtailment* ("Order Granting Stay") entered in case nos. CV-2014-4970 and CV-2015-237 stayed curtailment until February 7, 2015. Judge Wildman's Order Granting Stay did not change the Cities' obligation for mitigation.

15. The Cities' assert that, given Judge Wildman's Order Granting Stay, "the starting point for examining the Cities' out-of-priority- pumping is February 7, 2015" and there is no basis in law "to conclude that April 1, 2014 is the starting point for evaluating the Cities' Second Mitigation Plan." *Cities' Brief* at 19. The Cities' argument is not convincing. Again, the Cities were notified of the mitigation obligation along with other junior ground water right holders and subject to the same obligation to provide their portion of mitigation phase-in flow rates in mitigation years established by the Director's Amended Curtailment Order.

16. During the first year when mitigation is required (April 1, 2014 through March 31, 2015), the Cities' Second Mitigation Plan **does not** "provide replacement water, at the time

and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal . . .” If delivered during late February and March of 2015, the mitigation plan **will** provide replacement water at the time and place required for the April 1, 2015 through March 31, 2016 “phase-in” year.

17. The mitigation plan is based upon computer simulations and calculations of ESPAM 2.1.

18. The Cities’ Second Mitigation Plan requires numerous activities, such as upgrades to diversion works, payment of wheeling fees, monitoring, and verification of data. The parties to the Cities’ Second Mitigation Plan should be responsible for these activities, not the Department.

19. It is ironic and inconsistent for Rangen to stipulate to a mitigation plan that will not provide mitigation water in the time of need. Unconditional approval of the Cities’ Second Mitigation Plan would have allowed the Coalition of Cities to avoid curtailment on January 19, 2015, without providing timely mitigation. At the same time other junior ground water users might have been curtailed despite efforts to provide mitigation according to the Morris Exchange Order.³

20. The agreement by Rangen to accept the Cities’ Second Mitigation Plan is not grounds to justify the mitigation plan’s non-delivery of replacement water to Rangen during the first “phase-in” year.

21. After reviewing the Cities’ Second Mitigation Plan, the CM Rules, and the proceedings herein, the Cities’ Second Mitigation Plan should be conditionally approved. If the Cities complete the mitigation plan activities in late February and early March of 2015, mitigation will be recognized at the earlier of: (a) the date the modeled transient benefits of the recharge activities to the Curren Tunnel equal the modeled depletions to the Curren Tunnel caused by the Cities’ diversions, or (b) April 1, 2015, the beginning of the next mitigation “phase-in” year as established in previous orders.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED as follows:

The Coalition of Cities’ Second Mitigation Plan is APPROVED upon conditions. The parties to the Cities’ Second Mitigation Plan agreement are responsible for activities required as

³ In a surface water delivery call, the holder of a senior water right cannot agree to allow one junior water right holder to divert water that would have satisfied the senior right while continuing to call for water against the other junior users. The junior user could only divert and avoid curtailment if the quantity of water diverted by the junior right holder is replaced/delivered to the senior water right holder. In this case, the Cities holding junior priority water rights will have provided no mitigation from April 1, 2014 until late February or early March, 2015. Any modeled benefits of recharge to Rangen from late February or early March, 2015 to April 1, 2015 will be miniscule, at best, and were not quantified by the mitigation plan.

part of the mitigation plan, such as upgrades to diversion works, payment of wheeling fees, monitoring and verification of data.

IT IS FURTHER ORDERED that if the Cities complete the mitigation plan activities in late February and early March of 2015, mitigation will be recognized at the earlier of: (a) the date when the modeled transient benefits of the recharge activities to the Curren Tunnel equal the modeled depletions to the Curren Tunnel caused by the Cities' diversions, or (b) April 1, 2015, the beginning of the next mitigation "phase-in" year as established in previous orders.

IT IS FURTHER ORDERED that the Cities' Second Mitigation Plan shall be in effect until March 31, 2016, unless the period of the mitigation plan is amended in writing by the Director.

Dated this 13rd day of February 2015.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of February 2015, the above and foregoing document was served on the following by providing a copy of the *ORDER CONFIRMING FINAL ORDER CONDITIONALLY APPROVING CITIES SECOND MITIGATION PLAN* and an *Explanatory Information to Accompany a Final Order* in the manner selected:

ROBERT E WILLIAMS
WILLIAMS MERSERVY & LOTH SPEICH LLP
153 EAST MAIN STREET
PO BOX 168
JEROME ID 83338
rewilliams@cableone.net

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

CANDICE MCHUGH
CHRIS M BROMLEY
MCHUGH BROMLEY PLLC
380 S 4TH STREET STE 103
BOISE ID 83702
cmchugh@mchughbromley.com
cbromley@mchughbromley.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

J JUSTIN MAY
MAY BROWNING & MAY PLLC
1419 W WASHINGTON
BOISE ID 83702-5039
jmay@maybrowning.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

ROBYN BRODY
BRODY LAW OFFICE PLLC
PO BOX 554
RUPERT ID 83350-0554
robynbrody@hotmail.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

FRITZ X HAEMMERLE
HAEMMERLE HAEMMERLE
PO BOX 1800
HAILEY ID 83333-1800
fxh@haemlaw.com

(x) U.S. Mail, Postage Prepaid
() Facsimile
(x) E-mail

RANDALL C BUDGE
THOMAS J BUDGE
RACINE OLSON NYE BUDGE & BAILEY
PO BOX 1391
POCATELLO ID 83204-1391
rcb@racinelaw.net
tjb@racinelaw.net

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

SARAH KLAHN
MITRA PEMBERTON
WHITE & JANKOWSKI
511 16TH STREET STE 500
DENVER CO 80202
sarahk@whitejankowski.com
mitrap@whitejankowski.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

A DEAN TRANMER
CITY OF POCATELLO
PO BOX 4169
POCATELLO ID 83205
dtranmer@pocatello.us

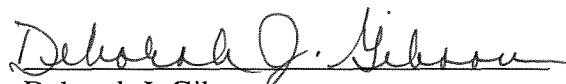
U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JERRY R RIGBY
RIGBY ANDRUS & RIGBY
25 NORTH SECOND EAST
REXBURG ID 83440
jrigby@rex-law.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail

JOHN K SIMPSON
TRAVIS L THOMPSON
PAUL L ARRINGTON
BARKER ROSHOLT & SIMPSON LLP
195 RIVER VISTA PL STE 204
TWIN FALLS ID 83301-3029
jks@idahowaters.com
tlt@idahowaters.com
pla@idahowaters.com

U.S. Mail, Postage Prepaid
 Facsimile
 E-mail



Deborah J. Gibson
Administrative Assistant to the Director

EXPLANATORY INFORMATION TO ACCOMPANY A FINAL ORDER

(Required by Rule of Procedure 740.02)

The accompanying order is a "**Final Order**" issued by the department pursuant to section 67-5246 or 67-5247, Idaho Code.

Section 67-5246 provides as follows:

- (1) If the presiding officer is the agency head, the presiding officer shall issue a final order.
- (2) If the presiding officer issued a recommended order, the agency head shall issue a final order following review of that recommended order.
- (3) If the presiding officer issued a preliminary order, that order becomes a final order unless it is reviewed as required in section 67-5245, Idaho Code. If the preliminary order is reviewed, the agency head shall issue a final order.
- (4) Unless otherwise provided by statute or rule, any party may file a petition for reconsideration of any order issued by the agency head within fourteen (14) days of the service date of that order. The agency head shall issue a written order disposing of the petition. The petition is deemed denied if the agency head does not dispose of it within twenty-one (21) days after the filing of the petition.
- (5) Unless a different date is stated in a final order, the order is effective fourteen (14) days after its service date if a party has not filed a petition for reconsideration. If a party has filed a petition for reconsideration with the agency head, the final order becomes effective when:
 - (a) The petition for reconsideration is disposed of; or
 - (b) The petition is deemed denied because the agency head did not dispose of the petition within twenty-one (21) days.
- (6) A party may not be required to comply with a final order unless the party has been served with or has actual knowledge of the order. If the order is mailed to the last known address of a party, the service is deemed to be sufficient.
- (7) A non-party shall not be required to comply with a final order unless the agency has made the order available for public inspection or the nonparty has actual knowledge of the order.
- (8) The provisions of this section do not preclude an agency from taking immediate

action to protect the public interest in accordance with the provisions of section 67-5247, 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.

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: a) of 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.