

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

**IN THE MATTER OF THE  
MITIGATION PLAN FILED BY THE  
IDAHO GROUND WATER  
APPROPRIATORS FOR THE  
DISTRIBUTION OF WATER TO  
WATER RIGHT NOS. 36-02551, 36-  
07694, AND 36-15501**

Docket No. CM-MP-2018-001  
Docket No. CM-DC-2011-004

**ORDER APPROVING IGWA'S 2018  
MITIGATION PLAN**

The Director ("Director") of the Idaho Department of Water Resources ("Department") finds, concludes and orders as follows:

**FINDINGS OF FACT**

1. On April 5, 2018, the Idaho Ground Water Appropriators, Inc. ("IGWA"), on behalf of American Falls-Aberdeen Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Carey Valley Ground Water District, Henry's Fork Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, Magic Valley Ground Water District, North Snake Ground Water District, and Southwest Irrigation District (collectively, "Districts"), submitted to the Department a *Stipulated Mitigation Plan and Request for Order* ("Mitigation Plan").
2. The Department published notice of the Mitigation Plan in the Idaho Mountain Express and Mountain Home News on April 25<sup>th</sup> and May 2<sup>nd</sup>, 2018; and the Times News on April 26<sup>th</sup> and May 3<sup>rd</sup>, 2018. No protests were filed.
3. The Mitigation Plan states: "The Districts own Idaho water right nos. 36-15501, 36-02551 and 36-07694 (referred to herein as the 'Rangen Rights')." *Mitigation Plan* at 1. The Mitigation Plan also states that the "Districts acquired the Rangen Rights from Rangen, Inc. ('Rangen') in 2017 in connection with the Districts' purchase of the fish hatchery to which the Rangen Rights are appurtenant." *Id.*
4. The Mitigation Plan explains that, "[p]rior to the Districts' acquisition of the Rangen Rights," Rangen filed delivery calls with the Department pursuant to its Rules for Conjunctive Management of Surface and Ground Water Resources ("CM Rules"), "based on water supply shortages to the Rangen Rights." *Id.* at 2.

5. Rangen's 2011 delivery call (CM-DC-2011-004) was based on Rangen's water right numbers 36-02551 and 36-07694 and resulted in the Director's order curtailing ground water rights junior to July 13, 1962. *See Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* (Jan. 29, 2014) ("Curtailment Order").

6. In response to the Curtailment Order, on February 11, 2014, IGWA submitted *IGWA's Mitigation Plan and Request for Hearing* ("IGWA's First Mitigation Plan"), describing nine proposals for junior-priority ground water pumpers in the Districts to satisfy their mitigation obligation required by the Curtailment Order. The Director partially approved and partially denied IGWA's First Mitigation Plan, leaving junior-priority ground water pumpers with a mitigation shortfall and at risk of curtailment unless they proposed additional mitigation the Director could approve.

7. On August 27, 2014, IGWA submitted another mitigation plan to the Director consisting of the "Magic Springs Project" to satisfy the Districts' junior-priority ground water pumpers' mitigation obligation. *See IGWA's Fourth Mitigation Plan and Request for Expedited Hearing* (CM-MP-2014-006) ("IGWA's Fourth Mitigation Plan") at 2. The Director conditionally approved IGWA's Fourth Mitigation Plan. *See Order Approving IGWA's Fourth Mitigation Plan* (CM-MP-2014-006) (Oct. 29, 2014) at 20-22.

8. Rangen's 2014 delivery call (CM-DC-2014-004) was based on Rangen's water right number 36-15501. The Mitigation Plan states that, in response to Rangen's 2014 delivery call, "the Districts acknowledged injury to [water right number 36-15501] and stipulated to provide mitigation using the same means approved under IGWA's First Mitigation Plan and IGWA's Fourth Mitigation Plan." *Mitigation Plan* at 2.

9. The Mitigation Plan states the "Districts purchased the Rangen fish hatchery and the Rangen Rights in 2017 as an alternative to providing mitigation under IGWA's First Mitigation Plan and IGWA's Fourth Mitigation Plan." *Id.* at 2.

10. The Department's water right records contain notices of change in water right ownership pertaining to the Rangen Rights. These notices demonstrate that the Districts now own the Rangen Rights.

11. "The Districts desire to have their ownership of the Rangen Rights approved as a mitigation plan under the CM Rules to protect the water rights of the 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." *Mitigation Plan* at 2.

12. The Districts request that the Director approve the Mitigation Plan "pursuant to CM Rule 43.03.o." *Id.*

## CONCLUSIONS OF LAW

1. CM Rule 43.01 establishes criteria for submitting a mitigation plan to the Director. IDAPA 37.03.11.043.01. The Mitigation Plan satisfies the requirements of CM Rule 43.01. The Mitigation Plan contains the names and address of the Mitigation Plan's proponents. The Mitigation Plan identifies water rights for which the benefit of mitigation is proposed. The Mitigation Plan states that the Rangen Rights have been purchased by the Districts. *Mitigation Plan* at 1. The Department's water right records demonstrate that the Districts now own the Rangen Rights.

2. The Director published notice of the Mitigation Plan as required by CM Rule 43.02. IDAPA 37.03.00.043.02. No protests were filed. No hearing on the Mitigation Plan is necessary. *See id.*

3. The Mitigation Plan includes sufficient information for the Director to evaluate the Mitigation Plan pursuant to CM Rule 43.03. *See* IDAPA 37.03.11.043.01(d). CM Rule 43.03 establishes factors the Director may consider in determining whether a proposed mitigation plan will prevent injury to senior rights. One of those factors is: "Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not be fully in compliance with these provisions." IDAPA 37.03.11.03(o). The purchase of the Rangen Rights by the Districts mitigates against any material injury caused by junior-priority ground water rights of District members who are in good standing with the Districts.

## ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Mitigation Plan submitted by IGWA is APPROVED.

Dated this 11<sup>th</sup> day of March 2019.



GARY SPACKMAN  
Director

### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11<sup>th</sup> day of March 2019, I caused to be served the above and foregoing document on the following by the method(s) indicated:

RANDY BUDGE  
T J BUDGE  
RACINE OLSON NYE & BUDGE CHTD  
PO BOX 1391  
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- ☒ U.S. Mail, postage prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile
- ☒ Email

  
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Kimberle English



## **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.