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 AND 36-07694 IN THE NAME OF RANGEN, INC.	)	**CM-MP-2014-001** **CM-DC-2011-004**
IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 AND 36-07694 (RANGEN, INC.)	)	**ORDER APPROVING IN PART AND REJECTING IN PART IGWA'S MITIGATION PLAN; ORDER LIFTING STAY ISSUED FEBRUARY 21, 2014; AMENDED CURTAILMENT ORDER**

PROCEDURAL BACKGROUND

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." *Curtailment Order* at 42. 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." *Id.*

On February 11, 2014, the Idaho Ground Water Appropriators, Inc. ("IGWA") filed with the Department *IGWA's Mitigation Plan and Request for Hearing* ("Mitigation Plan") to avoid curtailment imposed by the Curtailment Order. The Mitigation Plan sets forth nine proposals for junior-priority ground water pumpers to meet mitigation obligations: 1) credit for current and ongoing mitigation activities; 2) mitigation via the Sandy Pipe; 3) assignment of water right no. 36-16976; 4) fish replacement; 5) monetary compensation; 6) improvements to the Curren Tunnel diversion; 7) drilling a horizontal well in the vicinity of the Curren Tunnel; 8) drilling new groundwater wells or utilizing existing wells with delivery over-the-rim; and 9) construction of a direct pump-back and aeration system within the Rangen facility.

On March 14, 2014, Rangen, Inc. ("Rangen") filed three documents with the Department: *Rangen's Motion in Limine to Exclude Evidence of Tucker Springs Project; Rangen's Motion to Dismiss Proposals 3-9 of IGWA 's Mitigation Plan and Limit Scope of Hearing;* and *Rangen, Inc. 's Petition to Intervene to Become a Party Protestant and Rangen 's Motion for Reconsideration Re: Denial of Participation in Mitigation Plan Hearing.* At the commencement of the hearing on IGWA's Mitigation Plan, which was held on March 17-19, 2014 at the Department's State office in Boise, Idaho, the Director verbally ruled on Rangen's motions and petition to intervene. Specifically, the Director granted Rangen's motion to exclude evidence of the Tucker Springs Project; dismissed proposals four and five of IGWA's Mitigation Plan, and granted Rangen's petition to intervene. On March 26, 2014, the Director issued the following to reflect those verbal rulings: *Order Granting Rangen's Motion in Limine to Exclude Evidence of Tucker Springs Project; Order Granting in Part and Denying in Part Rangen's Motion to Dismiss Proposals 3-9 of IGWA's Mitigation Plan and Limit Scope of Hearing;* and *Order Granting Rangen, Inc.'s Petition to Intervene and Denying Motion for Reconsideration.*

APPLICABLE LAW

Conjunctive Management Rule 43.03 ("Rule 43.03") establishes the following 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.

IDAPA 37.03.11.043.03(a-o).

A proposed mitigation plan must contain information that allows the Director to evaluate these factors. IDAPA 37.03.11.043.01(d).

While Rule 43.03 lists factors that "may be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights," factors 43.03(a) through 43.03(c) are necessary components of mitigation plans that call for the direct delivery of mitigation water. A junior water right holder seeking to directly deliver mitigation water bears the burden of proving that (a) the "delivery, storage and use of water pursuant to the mitigation plan is in compliance with Idaho law," (b) "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," and (c) "the mitigation plan provides replacement water supplies or other appropriate compensation to the senior-priority water right when needed during a time of shortage." IDAPA 37.03.11.043.03(a-c) These three inquiries are threshold factors against which IGWA's mitigation plan proposal must be measured.

To satisfy its burden of proof, IGWA must present sufficient factual evidence at the hearing to prove that (1) the proposal is legal, and will generally provide the quantity of water required by the curtailment order; (2) the components of the proposed mitigation plan can be implemented to timely provide mitigation water as required by the curtailment order; and (3)(a) the proposal has been geographically located and engineered, and (b) necessary agreements or option contracts are executed, or legal proceedings to acquire land or easements have been initiated.

Consideration of the first three factors in Rule 43.03 requires that the water be provided in the season of use.

ANALYSIS

This decision approves portions of IGWA's Mitigation Plan, but determines that the quantities of mitigation water available to Rangen during the time of need are insufficient to fully mitigate as required by the Curtailment Order. As a result, curtailment of the use of water by a segment of the ground water holders whose use was curtailed in the Curtailment Order is required.

This decision recognizes credit for only two components of IGWA's proposed mitigation plan: (1) Aquifer enhancement activities (conversions, recharge, and voluntary curtailments), and (2) Exchange of irrigation water diverted from the Curren Tunnel with operational spill water from the North Side Canal Company. The Director rejects the remaining components (proposals 3, 6- 9) of IGWA's mitigation plan. The primary reason for rejection of the other proposed components of IGWA's mitigation plan is the lack of evidence in the record to determine how the proposal could be implemented, either legally or physically. IGWA did not address and carry its evidentiary burden by: (1) Establishing the legality of the proposal, (2) Presenting details about how the proposed physical infrastructure could be physically located, constructed and operated, and (3) Predicting when the proposal could be completed to provide

the required mitigation. The only evidence that IGWA presented about proposed physical infrastructure was testimony that the proposals requiring infrastructure would be feasible or that there is no reason why IGWA couldn't implement sections its mitigation proposals. Brendeke, Tr., Vol. II, pp. 483-85, 494-95, 501, 504, 511, 515, 519, 522-23, 525-27. Testimony that IGWA has an optimistic vision of successfully completing proposals 3 and 6-9 of its mitigation plan is not a substitute for presenting actual activities or written plans demonstrating that it has initiated and at least completed preliminary tasks in implementing its mitigation plan.

Use of ESPAM 2.1

The Eastern Snake Plain Aquifer Model ("ESPAM") is a calibrated regional ground water model representing the Eastern Snake Plain Aquifer ("ESPA"). In the Curtailment Order the Director adopted ESPAM 2.1 to model the stresses to the ESPA related to Rangen's renewed delivery call. In this decision, the Director uses ESPAM 2.1 to determine the simulated benefits of aquifer enhancement activities conducted by IGWA and other private entities and to determine a curtailment date because of a mitigation deficiency.

Benefits of Aquifer Enhancement Activities

ESPAM 2.1 can simulate the equilibrium, steady-state impacts resulting from a constant stress, or, alternatively, it can simulate the impacts of constant or time-variable stresses during a specific period of time. Model simulations that analyze impacts over a specific time period are called "transient runs." The length of the simulation is dependent on the time period of interest. Curtailment of ground water pumping was simulated over a period of five years representing the five-year curtailment phase-in period from April 2014 through March 2019. Aquifer enhancement activities by IGWA and other private entities were simulated over a period of 14 years representing April 2005 through March 2019. In both simulations, the volume of benefit to the aquifer during each year was averaged over a one-year "stress period." For example, the volume of aquifer enhancement activities during 2005 was input into the model at a constant rate from April 2005 through March 2006.

For purposes of both the Curtailment Order and analyzing the mitigation required in response to a delivery call, the Department employed an annual stress period in ESPAM 2.1, predicted the annual volume accruing to the Curren Tunnel within each year of the five-year phase-in period, and calculated an average annual mitigation flow requirement for each year from the annual volume . The mitigation requirement was calculated by dividing the total volume predicted to accrue over a one year period by 365 days and converting the units to cubic feet per second. The use of the average annual mitigation requirement promotes annual planning and is a reasonable time period for model prediction and analysis.[1]

[1] The Director notes that Rangen also evaluated IGWA's aquifer enhancement activities using an annual stress period approach. *See* Rangen Ex. 2071. Rangen's evaluation neglected aquifer enhancement activities performed by Southwest Irrigation District and the ongoing transient effects of aquifer enhancement activities performed by IGWA in prior years, thus Rangen's evaluation did not include all of the transient benefits predicted to accrue to the Curren Tunnel after April 2014.

Benefits of Mitigation Using Senior Irrigation Water Rights

Ground water pumping for irrigation causes depletions of Curren Tunnel flows during the non-irrigation season after ground water pumping ceases. As stated above, however, predicted accretions to flows in the Curren Tunnel from curtailment were modeled over one year stress periods to determine the obligations of the ground water users to mitigate for their ground water diversions. Predicted accretions to the Curren Tunnel resulting from aquifer enhancement activities were also modeled over one year stress periods.

In this decision, the Director also employs an annual time period to evaluate the average benefit of IGWA's proposal to deliver water to Rangen that would have been diverted pursuant to irrigation water rights held by Howard (Butch) and Rhonda Morris (hereafter referred to in the singular as "Morris"). The Curtailment Order allowed staged mitigation, requiring incremental increases in mitigation for each of the first five years of implementation. Each of the incremental mitigation requirements assumed an average obligation within each year. For each of the first four years, the determination of the annual obligation was computed by applying annual stresses and computing an average annual obligation. Because the conjunctive management rules limit the staged mitigation period to five years, the mitigation obligation for the fifth year increased to the full 9.1 cfs obligation. Similarly, an annual averaging of delivery of irrigation water can be employed determine whether the junior water right holder has satisfied the mitigation obligation. Averaging IGWA's mitigation activities over a period of one year will establish consistent time periods for combining delivery of the Morris water for mitigation and the average annual benefit provided by aquifer enhancement activities, and for direct comparison to the annual mitigation requirement. If the proposed mitigation falls short of the annual mitigation requirement, the deficiency can be calculated at the beginning of the irrigation season. Diversion of water by junior water right holders will be curtailed to address the deficiency. The senior water right holder will be assured of a water supply, particularly during periods of low spring flow, as the low flow periods occur during the irrigation season in recent years. *See* Rangen Ex. 2045, 2073.

Time Period for Mitigation

The first year mitigation requirement of 3.4 cfs will begin on April 1, 2014, and continue through March 31, 2015. On April 1, 2015, the ground water users must have sufficient mitigation in place to deliver 5.2 cfs to Rangen, either by direct delivery or by transient modeled accretions.

FINDINGS OF FACT

Eastern Snake Plain Aquifer Model Version No. 2.1

1. ESPAM is a calibrated regional ground water model representing the ESPA. In the Curtailment Order the Director adopted ESPAM 2.1 to model the stresses to the ESPA related to Rangen's renewed delivery call. IDWR will use ESPAM 2.1 to determine the simulated benefits of aquifer enhancement activities conducted by IGWA and other private

entities, and, if there is a deficiency in the mitigation plan, to determine a curtailment date to provide for the deficiency.

Proposal No. 1: Aquifer Enhancement Activities

2. Proposal No. 1 requests mitigation credit for the following ongoing and future activities by IGWA: (a) conversions from ground water irrigation to surface water irrigation, (b) voluntary "dry-ups" of acreage irrigated with ground water through the Conservation Reserve Enhanced Program ("CREP") or other cessation of irrigation with ground water, and (c) ground water recharge. This order will subsequently refer to these activities as "aquifer enhancement activities."

3. Exhibit 3001 in the hearing record contains data compiled by IDWR that quantifies the aquifer enhancement activities of IGWA and other private entities during the time period beginning in 2005 through 2010. Data for 2011-2013 private aquifer enhancement activities were received into evidence as Exhibits 1022, 1023, 1082 and 1083.

4. In the past, the Department input data for aquifer enhancement activities into ESPAM as a stress in the model to simulate benefits accruing to spring/Snake River reaches from the aquifer enhancement activities that benefit spring/Snake River reaches that supply water to senior surface water right holders who called for delivery of water pursuant to their senior surface water rights against junior ground water right holders. These data have been recognized by the Department in other conjunctive management contested cases as a reliable representation of previous aquifer enhancement activities of IGWA. *See Final Order Approving Mitigation Credits Regarding SWC Delivery Call*, In the Matter of the Idaho Ground Water Appropriators, Inc.'s Mitigation Plan for Conversions, Dry-ups, and Recharge, Doc. No. CM-MP-2009-006 (July 19, 2010), aff'd on appeal in *Memorandum Decision and Order on Petition for Judicial Review,* CV-2010-3822 (Fifth Jud. Dist., Twin Falls County, April 22, 2011).

5. The Curtailment Order stated that, to avoid curtailment, IGWA must either provide mitigation of 9.1 cfs in combined direct flows and steady state simulated flows to Rangen during 2014, or must provide 3.4 cfs of direct flows to Rangen during the first year of the curtailment order. To predict the benefit of aquifer enhancement activities in a steady state and also to predict transient benefits of aquifer enhancement activities in year 2014, ESPAM Model 2.1 must be run (a) once to determine the steady state benefits assuming constant implementation of fixed aquifer enhancement activities; and (b) once in transient mode with a stress period for each year of aquifer enhancement activities (2005 – 2013 plus projected future activities) to determine the benefits of past and projected future activities predicted to accrue to the Curren Tunnel during each year of the five-year phase-in period.

6. Exhibit no. 1025 summarizes model runs predicting benefits to Rangen resulting from steady state simulations of activities in 2011, 2012, and 2013. The predicted flow benefits to Rangen in Exhibit 1025 were accepted and referred to by all parties in the presentation of evidence.

7. For comparison with the phased-in requirement of 3.4 cfs during the first year of the curtailment order, it is necessary to predict the benefits of aquifer enhancement that would accrue during the first year. Rangen used ESPAM 2.1 to evaluate the transient benefits of aquifer enhancement activities beginning in 2014 in Exhibit 2071, but neglected to include ongoing transient benefits of prior IGWA aquifer enhancement projects that occurred between 2005 and 2013 and neglected to include aquifer enhancement activities performed by Southwest Irrigation District. *See* Brockway, Tr. Vol. III, p. 681-685.Using the data entered into evidence at the hearing, the Department input data into the model for each year of private party aquifer enhancement activities from 2005 through 2014. The 2005 through 2013 data were compiled from previously documented activities. IDWR Ex. 3001; IGWA Ex. 1025. For 2014, conversions, CREP, and voluntary curtailment projects were assumed to be identical to 2013, and private party managed recharge was assumed to be zero. The Department determined the average annual benefit from aquifer enhancement activities predicted to accrue to the Curren Tunnel between April 2014 and March 2015 is 871 acre feet, which is equivalent to an average rate of 1.2 cfs for 365 days. The modeling files and a summary table of the model results are included on a CD accompanying this order.

Proposal No. 2: Mitigation Using Senior Irrigation Water Rights Diverted from the Curren Tunnel

8. IGWA proposes to mitigate using water from Morris, who holds certain senior irrigation water rights from the Curren Tunnel. Specifically, IGWA and Morris agreed that IGWA would deliver Snake River water discharging from the North Side Canal Co. system into the Sandy Pond as operational spill to Morris through the Sandy Pipeline, and, in exchange, Morris would forego diversion of water from Curren Tunnel pursuant to water right numbers 36-123D, 36-134E, 36-135D, 36-135E, 36-10141A, and 36-10141B that bear priority dates senior to Rangen's fish propagation water rights. The foregone diversion of water by Morris will result in discharge and capture of water from the Curren Tunnel by Rangen that would have been diverted and used by Morris but for the agreement with IGWA.

9. It is necessary to apply the first three threshold factors of Rule 43.03.

Legality of Use of North Side Canal Company Water Spilled into the Sandy Ponds

10. Morris is presently irrigating approximately 205 acres of his own land with wastewater from the Sandy Ponds. Morris, Tr. Vol. II, p. 371-72. Morris testified that he also irrigates adjacent land owned by Musser and Candy with water from the Sandy Ponds. Morris, Tr. Vol. II, pp. 363, 372.

11. Morris holds a water right to irrigate 125 acres of his own land with water from the Sandy Pond. Department records do not identify any water rights in the name of Musser or Candy to irrigate their lands with water from the Sandy Pond.

12. The lands of Musser, Candy, and Morris are all within the water right place of use service area of the North Side Canal Company. *See* Exhibit 3000. The Sandy Pond was originally constructed by North Side Canal Company to capture its operational spill for water

quality purposes. When North Snake Ground Water District acquired the Sandy Pond, it enlarged the size of the pond. The enlargement of the pond did not change the character or assumed ownership of the water in the pond, however. Until other water rights are established authorizing diversion and use of water from the pond, the Department will presume the water in the pond is North Side Canal Company operational spill water that is being captured and may be applied to North Side Canal Company lands. *Reynolds Irr. Dist. v. Sproat*, 70 Idaho 217, 222, 214 P.2d 880, 883 (1950).

Quantity of Water Delivered to Rangen

13. The quantity of water available for diversion by Morris pursuant to water right numbers 36-123D, 36-134E, 36-135D, 36-135E, 36-10141A, and 36-10141B is limited by the discharge of the Curren Tunnel and by diversions of other water users pursuant to other senior water rights.

14. The Morris water rights authorize a beneficial use of irrigation. The contribution of water to Rangen by leaving water in the Curren Tunnel that normally would have been diverted by Morris only benefits Rangen during the irrigation season. In contrast, as identified in the Curtailment Order, the modeled 2014 **year-round** average Curren Tunnel depletion resulting from junior ground water pumping is 3.4 cfs. *Curtailment Order* at 42. The benefit to Rangen of Morris' nondiversion of water from Curren Tunnel to Rangen must be estimated and then compared to the year-round depletion average. The calculation of the average first year depletion of 3.4 cfs starts April 1. IGWA needs to compensate for depletions of water for the entire 365 days from April 15 to March 31.

15. Morris irrigates crops from approximately April through mid-October. Tr. Vol. II, p 392-93. The number of days he would have irrigated with water from the Curren Tunnel is approximately 184 days (April 15 through October 15). This means that IGWA can claim credit only for that volume of water available to Morris for 184 days between April 15 and October 15.

16. Flows discharging from Curren Tunnel have been measured for approximately 20 years. The Curren Tunnel discharge is the sum of the average monthly flow measured at the mouth of the tunnel by IDWR (Exhibit 2045) and the average monthly flow diverted into Rangen's 6-inch PVC pipe (Exhibit 3000). The magnitude of discharges from the Curren Tunnel varies annually and seasonally depending on hydrologic conditions, related water uses, and other activities on the ESPA.

17. Table 1 lists the average irrigation season (April 15 through October 15) flow from Curren Tunnel for years 1996 through 2013. There is a distinct change in the magnitude of average irrigation season flow values starting in 2002. It is likely that the average discharge from the Curren Tunnel during the 2014 irrigation season will be within the range represented by the 2002-2013 conditions. From 2002 through 2013, the average irrigation season flow has varied between 2.3 cfs and 5.7 cfs. The years of 2002 through 2013 will be used as a historical data set to predict the flows from Curren Tunnel for 2014. The average of the average irrigation season values for each year from 2002 through 2013 is 3.7 cfs.

Year	Average Curren Tunnel discharge, April 15 - October 15
1996	12.4
1997	17.9
1998	17.0
1999	15.2
2000	13.9
2001	8.0
2002	4.5
2003	3.9
2004	4.4
2005	2.3
2006	5.7
2007	4.9
2008	3.2
2009	2.8
2010	2.3
2011	3.4
2012	4.1
2013	2.8
2002-2013 average	3.7

Table 1. Average Curren Tunnel discharge during Morris' irrigation season.

18. Rangen holds water rights for irrigation and domestic purposes that identify Curren Tunnel as the source of water. Water right no. 36-00134B authorizes diversion of 0.09 cfs from Curren Tunnel and bears a priority date of October 9, 1884.

19. Morris holds water rights for irrigation and stockwater purposes that identify Curren Tunnel as the source of water. Water right no. 36-134D authorizes diversion of 1.58 cfs of water from Curren Tunnel. Water right no. 36-134E also authorizes diversion of 0.82 cfs for water from Curren Tunnel. Both water right no. 36-134D and water right no. 36-134E bear a priority date of October 9, 1884 (identical to the priority date for Rangen's water right no. 36-00134B identified above). Morris is entitled to divert a total of 2.4 cfs from Curren Tunnel under water right nos. 36-134D and 36-134E. Morris currently diverts up to 15 miner's inches of water from the Curren Tunnel for maintenance of his irrigation pipe. Morris, Tr. Vol. II, p. 390. Because Morris currently diverts up to 15 miner's inches of water from the Curren Tunnel, the Director will subtract 15 miner's inches (0.3 cfs) from the available supply for mitigation.

20. Walter and Margaret Candy (hereafter referred to in the singular as "Candy") hold water right no. 36-134A, a water right authorizing diversion for domestic use of 0.04 cfs and irrigation of 36 acres with water from the Curren Tunnel. Water right no. 36-134A authorizes a total diversion of 0.49 cfs from the Curren Tunnel for both the domestic and irrigation uses and bears a priority date of October 9, 1884 (identical to the priority date for Rangen's water right

no. 36-00134B identified above). Water right 36-134A authorizes a diversion rate of 0.014 cfs per acre. Candy uses water from the Curren Tunnel for domestic use and to irrigate land around their home. The land irrigated with water from the tunnel is approximately one half acre. Morris, Tr. Vol. II, p. 382. As stated above, the remainder of Candy's land is irrigated from the Sandy Pipeline. Candy domestic water use would be 0.04 cfs. Because irrigation is included in a small domestic use of one-half acre or less, the total use by Candy is limited to 0.04 cfs.

21. Alvin and Hope Musser Living Trust (hereafter referred to in the singular as "Musser") hold water right no. 36-102. Water right no. 36-102 authorizes the diversion of 4.1 cfs for irrigation purposes on Musser's property, and bears a priority date of April 1, 1892. Morris is farming Musser's property but Morris does not irrigate Musser's property with water right no. 36-102. Instead, Morris is irrigating the Musser's property with water from the Sandy Pipeline,

22. Rangen holds water right no. 36-135A. Water right no. 36-135A authorizes diversion of 0.05 cfs for irrigation and domestic purposes, and bears a priority date of April 1, 1908.

23. Candy holds water right no. 36-135B. Water right no. 36-135B authorizes diversion of 0.51 cfs for irrigation purposes and bears a priority date of April 1, 1908. Morris is farming Candy's property but Morris does not irrigate Candy's property with water right no. 36-135B. Instead, Morris is irrigating the land with water from the Sandy Pipeline,

24. Morris holds water right nos. 36-135D and 36-135E. Water right no. 36-135D authorizes the diversion of 1.58 cfs for irrigation and stockwater purposes. Water right no. 36-135E authorizes the diversion of 0.82 cfs for irrigation and stockwater purposes. Both water rights bear a priority date of April 1, 1908.

25. The following spreadsheet quantifies the allocation of water according to the priority dates of water rights offered for mitigation. Water right nos. 36-134A, 36-134B, 36-134D, and 36-134E are the earliest priority date (October 9, 1884) water rights authorizing diversion of water from the Curren Tunnel. The total flow rate authorized for diversion pursuant to these water rights is 2.98 cfs. A flow rate of 3.7 cfs exceeds the 2.98 cfs maximum diversion rate authorized by water rights held by Morris, Candy, and Rangen bearing an 1884 priority date. Morris will divert 0.3 cfs of Curren Tunnel water into his irrigation pipeline. Candy will divert 0.04 cfs, and because his lands are being irrigated with water from the Sandy Pipeline, he will not divert the remaining 0.45 cfs pursuant to water right no. 36-134A. Rangen will divert 0.09 cfs pursuant to water right no. 36-134B.

26. Water right no. 36-102 (Musser) is the next water right in priority bearing a priority date of April 1, 1892 and authorizing diversion of 4.1 cfs.. Because Musser lands are being irrigated by water from the Sandy Pipeline, Musser will not divert water from Curren Tunnel, and the next in line priority holders must be considered until the total quantity of use or mitigation equals 3.7 cfs.

27. Water right nos. 135A (Rangen), 36-135B (Candy), 36-135D (Morris) , and 36-135E (Morris) all bear a priority date of April 1, 1892. Rangen will divert 0.05 cfs. Candy will not divert water authorized by water right no. 36-135B because his lands are being irrigated with water from the Sandy Pipeline. Morris's water right nos. 36-135D and 36-135E are available for additional mitigation.

Water Right Holder	Water Right Number	Water Right Quantity (cfs)	Diverted for beneficial use, not available for mitigation (cfs)	Non-diversion of Morris water, available for mitigation (cfs)
Morris	36-134D & 36-134E	2.4	0.3	2.1
Candy	36-134A	0.49	0.04	
Rangen	36-134B	0.09	0.09	
Musser	36-102	4.1	0.00	
Rangen	36-135A	0.05	0.05	
Candy	36-135B	0.51	0.00	
Morris	36-135D	1.58	0.0	1.12
Morris	36-135E	0.82	0.00	
Total			0.5[2]	3.2

As a result of the above summary, IGWA would be entitled to the following for mitigation:

3.7 cfs - 0.3 cfs (Morris) - 0.14 cfs (Rangen) – 0.04 cfs (Candy) = 3.2 cfs (approximately)

The average annual benefit provided by the Morris water portion mitigation plan for comparison with the annual requirement (3.4 cfs for April 1, 2014 through March 31, 2015, 5.2 cfs for April 1, 2015 through March 31, 2106, etc.) is computed as follows:

$$\frac{184 \text{ days}}{365 \text{ days}} \times 3.2 \text{ cfs} = \text{annual average of } 1.6 \text{ cfs provided}$$

If Morris foregoes diversion of the 0.3 cfs from the Curren Tunnel, additional water would be available for IGWA as follows:

3.7 cfs - 0.14 cfs (Rangen) – 0.04 cfs (Candy) = 3.5 cfs (approximately)

[2] Number reflects rounding to the nearest 1/10 of a cfs.

If Morris foregoes diversion of the 0.3 cfs from the Curren Tunnel, the average annual benefit provided would be as follows:

$$\frac{184 \text{ days}}{365\text{ys}} \times 3.5 \text{ cfs} = \text{annual average of } 1.8 \text{ cfs provided}$$

Proposal No. 3: Assignment of IGWA's Water Right Application to Rangen

28. IGWA proposes to assign pending application to appropriate water no. 36-16976 to Rangen as mitigation. Application no. 36-16976 proposes to appropriate 12 cfs from Springs and Billingsley Creek at Rangen's existing physical diversion from Billingsley Creek known as the "bridge diversion."

29. IGWA filed application to appropriate water no. 36-16976 on April 3, 2013, shortly after the Director ruled in the contested case for Rangen's delivery call that Rangen's water rights only authorized diversion of water from the Curren Tunnel. This ruling was the basis for a determination in the Director's Curtailment Order that Rangen does not hold a water right authorizing diversion of water from Billingsley Creek at the bridge diversion.

30. IGWA's water right application could be characterized as a preemptive strike against Rangen to establish a prospective priority date earlier than any later prospective priority date borne by a Rangen application.

Legality of Assigning Application to Appropriate Water no. 36-16976 to Rangen

31. Pursuant to Rule 43, the Director can approve proposal no. 3 only if the Director believes that the application can provide water to Rangen in the time of need, i.e. this year. The pending application cannot be prejudged in this proceeding. IGWA essentially asked the Director to prejudge the application. The Director declines to do so. The application seeks authorization to divert 12 cfs from a point of diversion on the Rangen property. IGWA Ex. 1018 at 1. A map attached to the application shows the general area of the planned point of diversion. *Id.* at 4. The Department published notice of the application and the application was protested by Rangen. Rangen also filed a competing application and a transfer to address the point of diversion issue. The facts behind IGWA's application and the competing application and transfer are unique. Given the uncertainty of the application given the specific facts which have developed in this case, the Director concludes that it is too speculative to consider.

Quantity of Water Delivered to Rangen

32. As stated above, the facts behind IGWA's application and the competing application and transfer are unique. Given the uncertainty of the application given the specific facts of this case, the Director concludes that it is too speculative to determine that Rangen will deliver water in its time of need pursuant to this application.

Proposal Nos. 4 and 5: Mitigation with Money or Fish

33. IGWA proposed fish replacement or monetary compensation to mitigate injury caused to Rangen by junior-priority ground water pumpers. These proposals will not be evaluated in this decision because proposal nos. 4 and 5 were dismissed as part of IGWA's Mitigation Plan in the *Order Granting in Part and Denying in Part Rangen's Motion to Dismiss Proposals 3-9 of IGWA's Mitigation Plan and Limit Scope of Hearing* issued March 26, 2014.

Proposal No. 6: Cleaning, Deepening, or Enlarging Curren Tunnel

34. IGWA suggests that cleaning, maintaining, and improving the Curren Tunnel will increase the flows from Curren Tunnel. IGWA implies that the Director should require that Rangen grant IGWA access to the tunnel to remove debris and rock from the tunnel and to assess whether the tunnel can be deepened or enlarged.

Quantity of Water Delivered to Rangen from Proposed Tunnel Cleaning

35. Morris testified that cleaning out fallen rock and dirt that collected at the mouth of the Hoagland Tunnel resulted in additional water discharging from the Hoagland Tunnel. Morris Tr. Vol. II, p. 384-85. However, there is no evidence that the rock-fall in any tunnel changed the hydraulic conditions in the tunnel itself. Morris' testimony suggests the rock at the mouth of the Hoagland tunnel likely blocked collection works and created diffuse flow channels around or underneath the collection works that prevented collection of the water into the associated diversion works.

36. There is no fallen rock at the mouth of Curren Tunnel impeding Rangen's collection of water. Curren Tunnel is lined with a large diameter corrugated pipe from its mouth 50 feet into the tunnel. The remainder of the tunnel is completed in basalt rock. IGWA failed to present evidence demonstrating that cleaning the Curren Tunnel would provide any additional water to Rangen.

Quantity of Water Delivered to Rangen from an Enlargement or Deepening of Curren Tunnel

37. There is evidence in the record that deepening or enlarging the Curren Tunnel could increase flows from the Curren Tunnel. However, there is no evidence quantifying the potential increase. Any physical work to deepen or enlarge the tunnel could not be completed to timely provide water during the 2014 irrigation season.

Proposal No. 7: Construction of a Horizontal Well

38 IGWA proposes to drill a horizontal well in the vicinity of the Curren Tunnel and divert the water from the well to Rangen's facility. IGWA proposes to drill the horizontal well near the Curren Tunnel at an elevation lower than the outlet of the Curren Tunnel.

Legality of Constructing a Horizontal Well

39. Prior to construction of a horizontal well, IGWA would need to obtain a water right to divert and beneficially use water from the horizontal well. IGWA has not filed any applications to appropriate water from a horizontal well. IGWA did not identify a location for construction of the well, and did not present any evidence about land ownership or easements on land where a well could be constructed. The source of water proposed to be diverted is trust water. The Department has issued a moratorium on all appropriations of water from the Eastern Snake Plain Aquifer in the area where the proposed horizontal well would be constructed. Any horizontal well proposal will need to mitigate to address injury to other water users. IGWA failed to satisfy its burden because it failed to present any evidence that it will be able to address the injury to other water users.

Quantity of Water Delivered to Rangen

40. IGWA has failed to present evidence that it could timely deliver water to Rangen when water is needed by Rangen in 2014. No evidence was presented quantifying the available water supply. The lack of information makes the proposal too speculative to approve.

Proposal No. 8: Mitigation With Water from New Wells or Existing Wells

41. IGWA proposes to drill new ground water wells or utilize existing wells to deliver water directly to Rangen. IGWA asserts this plan would be similar to its over-the-rim plan previously approved in the Clear Springs Foods delivery call.

Legality of Diverting Ground Water From New or Existing wells and Delivering the Water to Rangen for Mitigation

42. IGWA has not identified any water rights that could be exercised, through a change in nature of use, to deliver water to Rangen. Because no water rights have been identified, the Director cannot evaluate important components of the water rights such as priority date, flow rate limitations, volume limitations, and periods of use to determine whether water diverted pursuant to the water rights could be delivered for mitigation.

43. IGWA cites the Director's approval of the over-the-rim plan in the Snake River Farms delivery call as support for its argument the Director should conditionally approve Proposal No. 8 and then allow IGWA to provide engineering and other plans at a later date. However, there are important distinctions between the progress IGWA had made in the over-the-rim plan when it was considered by the Department and this plan. At the time the hearing for the over-the-rim plan was heard, IGWA had exerted significant effort to justify the plan, including identifying water rights that would be acquired and wells that could be used, testing of water temperature, quality, and evaluating the reliability and biosecurity of the proposed pumping system. IGWA had also provided preliminary engineering plans. While the Director conditionally approved the over-the-rim plan, IGWA had taken significant steps towards implementation of that plan. Here, IGWA has not taken any steps toward implementation of this proposal.

44. There is no evidence in the record that would allow the Director to recognize mitigation provided through new or existing wells.

Quantity of Water Delivered to Rangen

45. No evidence was presented in the record about how water could physically be delivered to Rangen, and whether IGWA could obtain necessary rights of way. No quantification of available water was presented either. Planning and design for an over the rim project would take at least six months. IGWA could not timely deliver water to Rangen when water is needed in 2014.

Proposal No. 9: Mitigation by Pumping Water in Billingsley Creek Back to Rangen

46. IGWA proposes a direct pump-back and aeration system within the Rangen facility to satisfy mitigation obligations.

Legality of IGWA Providing a direct Pump-Back and Aeration System Within the Rangen Facility

47. There is no evidence in the record that IGWA has the water rights or property access to construct and operate a pump back and aeration system to Rangen. IGWA did not present any evidence about how the water rights or property access would be acquired.

Delivery of Pump-Back Water to Rangen

48. There is no evidence in the record that IGWA could timely deliver water to Rangen when Rangen needs the water in 2014.

Mitigation Shortfall

49. Proposal No. 1 provides an average of 1.2 cfs during the first year (April 1, 2014 through March 31, 2015) through aquifer enhancement activities.

50. Proposal No. 2 provides an average of 1.6 cfs through delivery of water not diverted by Morris. If Morris foregoes diversion of all water from Curren Tunnel, the water available for Proposal No. 2 would increase to an average of 1.8 cfs.

51. There is no evidence in the record establishing that other proposals would provide mitigation during the first year.

52. The mitigation plan provides an average predicted benefit of 2.8 cfs during the first year if Morris continues to divert 0.3 cfs of water from the Curren Tunnel. If Morris foregoes diversion of all water from Curren Tunnel, the average predicted benefit would increase to 3.0 cfs.

53. The mitigation plan fails to provide the required 3.4 cfs during the first year, and the mitigation shortfall is 0.6 cfs if Morris continues to divert 0.3 cfs of water from the Curren Tunnel. If Morris foregoes diversion of all water from Curren Tunnel, the mitigation shortfall would decrease to 0.4 cfs.

54. Curtailment dates coinciding with various priority dates were iteratively entered into ESPAM 2.1 to determine the curtailment date required to provide the mitigation shortfall. A curtailment date of October 13, 1978 is predicted to provide an average benefit of 0.6 cfs to the Curren Tunnel during the first year. A curtailment date of July 1, 1983 is predicted to provide an average benefit of 0.4 cfs during the first year to the Curren Tunnel.

Conclusion

55. IGWA's evidence established that foregone diversion of Curren Tunnel water by Morris is predicted to deliver an average of 1.6 cfs water directly to Rangen from April 1, 2014 through March 31, 2015.I If Morris also foregoes diversion of 15 miner's inches (0.3 cfs) of water diverted from Curren Tunnel through his irrigation pipeline during the 2014 irrigation season, the foregone diversion of Curren Tunnel water by Morris is predicted to deliver an average of 1.8 cfs directly to Rangen from April 1, 2014 through March 31, 2015

56. IGWA's evidence established that it can provide an average of 1.7 cfs water to Rangen through its aquifer enhancement activities, based on steady state ESPAM model runs.

57. IGWA's evidence established that it can provide 1.2 cfs of water from its aquifer enhancement activities, based on transient ESPAM 2.1 model runs, from April 1, 2014 through March 31, 2015.

58. IGWA's evidence established that it can provide a total of 3.3 cfs in steady state benefits to Rangen.

59. Evidence from the hearing establishes that IGWA can provide a total of 2.8 cfs of direct flow benefits to Rangen from April 1, 2014 through March 31, 2015 if Morris continues to divert 15 inches of water (0.3 cfs) from Curren Tunnel through his irrigation pipeline. The mitigation credit of 2.8 cfs is 0.6 cfs less than the 3.4 cfs obligation. ESPAM 2.1 determines that water rights bearing priority dates of October 13, 1978 or later (junior) must be curtailed to provide the 0.6 cfs to Rangen.

60. If Morris discontinues diversion of 15 inches (0.3 cfs) through his irrigation pipeline, IGWA can provide a total of 3.0 cfs of direct flow benefits to Rangen from April 1, 2014 through March 31, 2015. The mitigation credit of 3.0 cfs is 0.4 cfs less than the 3.4 cfs obligation. ESPAM 2.1 determines that water rights bearing priority dates of July 1, 1983 or later (junior) must be curtailed to provide the 0.4 cfs to Rangen.

61. IGWA did not establish that it can provide any steady state benefits or direct delivery of water to Rangen in the current annual period for the following proposals: assignment of a water right application, cleaning and/reconstruction of the Curren Tunnel, drilling a

horizontal well, delivery of water from new or existing wells, or pumping water back through the Rangen facility.

CONCLUSIONS OF LAW

Aquifer Enhancement Activities

1. IGWA is entitled to a mitigation credit of 1.7 cfs toward its steady state obligation of 9.1 cfs because of its aquifer enhancement activities.

2. IGWA is entitled to a mitigation credit of 1.2 cfs toward its from April 1, 2014 through March 31, 2015 direct flow obligation of 3.4 cfs because of its aquifer enhancement activities.

3. The steady state and direct flow obligations are separate alternatives in the Director's Curtailment Order, and the model simulations resulting in the above steady state and direct flow credits are mutually exclusive.

Irrigation Water Not Diverted from the Curren Tunnel

4. IGWA is entitled to a mitigation credit of 1.6 cfs for Curren Tunnel water directly provided to Rangen because of the non diversion of irrigation water from the Curren Tunnel pursuant to water rights held by Morris. Alternatively, if Morris ceases diverting 0.3 cfs from Curren Tunnel through his irrigation pipeline, IGWA is entitled to a mitigation credit of 1.8 cfs for Curren Tunnel water directly provided to Rangen because of the non diversion of irrigation water from the Curren Tunnel pursuant to water rights held by Morris. The quantity of 1.6 cfs or 1.8 cfs counts toward both the steady state and direct flow obligations in the Curtailment Order.

Assignment of IGWA's Water Right Application to Rangen

5. Because all IGWA offered to Rangen at the hearing is assignment of a bare application to appropriate water for mitigation with no supporting evidence about its development and perfection, there is currently no legal basis for the Director to hold that an application to appropriate water can provide mitigation to Rangen. Furthermore, the unique factual situation of this case will likely play an important role in the application proceeding. IGWA is not entitled to any mitigation credit for its proposal to assign application to appropriate water no. 36-16976 to Rangen.

Cleaning, Deepening, or Enlarging Curren Tunnel

6. Rangen is not required to construct a deeper or larger tunnel to enhance the flow of water from the Curren Tunnel. The Director does not have the legal authority to require that Rangen grant access to IGWA to study a proposed enlargement, nor does the Director have the authority to order construction proposed by IGWA after studies are complete.

7. The proposed work is not legally possible without Rangen's consent.

8. Any physical work to deepen or enlarge the tunnel could not be completed to timely provide water during the 2014 irrigation season when the water is needed.

9. There was no evidence presented that IGWA could timely deliver water to Rangen when water is needed by Rangen in 2014.

10. IGWA is not entitled to any mitigation credit for its proposal to clean, deepen, or enlarge the Curren Tunnel.

Construction of a Horizontal Well

11. IGWA did not establish what water rights would be exercised to deliver water to Rangen from a new horizontal well. IGWA did not identify a location for construction of the well, and did not present any evidence about land ownership or easements on land where a well could be constructed. The planning and construction of a delivery system could not be completed in 2014 during the time water is needed by Rangen.

12. IGWA is not entitled to any mitigation credit for its proposal to provide mitigation water directly to Rangen from a newly constructed horizontal well.

Mitigation with Water from New Wells or Existing Wells

13. IGWA did not establish what water rights would be exercised or that there were any commitments by the owners of wells, either by contract or acquisition, authorizing diversion of water to Rangen from new wells or existing wells for mitigation. The planning and construction of a delivery system could not be completed in 2014 during the time water is needed by Rangen.

14. IGWA is not entitled to any mitigation credit for its proposal to provide mitigation water directly to Rangen from new wells or existing wells.

Mitigation by Pumping Water in Billingsley Creek Back to Rangen

15. IGWA did not establish what water rights would be exercised or that IGWA owns, or that there are commitments by an owner of land, authorizing construction of a pump back system and delivery of Billingsley Creek water.

16. IGWA is not entitled to any mitigation credit for its proposal to provide mitigation water from Billingsley Creek directly to Rangen through a pump back system.

Conclusion

17. IGWA is entitled to a total steady state mitigation credit of 3.3 cfs toward its steady state obligation of 9.1 cfs.

18. IGWA is entitled to a total direct credit of 2.8 cfs toward its first annual period direct flow obligation of 3.4 cfs. The mitigation credit of 2.8 cfs is 0.6 cfs less than the 3.4 cfs obligation. ESPAM 2.1 determines that water rights bearing priority dates of October 13, 1978 or later must be curtailed to provide the 0.6 cfs to Rangen.

19. Alternatively, upon agreement by Morris that he will not divert 0.3 cfs directly from Curren Tunnel, IGWA is entitled to a total direct credit of 3.0 cfs toward its first annual period direct flow obligation of 3.4 cfs. The mitigation credit of 3.0 cfs is 0.4 cfs less than the 3.4 cfs obligation. ESPAM 2.1 determines that water rights bearing priority dates of July 1, 1983 or later must be curtailed to provide the 0.4 cfs to Rangen.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that the Director APPROVES proposal no. 1 (aquifer enhancement activities) and proposal no. 2 (delivery of Morris Curren Tunnel Water) of IGWA's mitigation plan.

IT IS FURTHER ORDERED that the Director rejects proposals nos. 3 and 6 through 9 of IGWA's mitigation plan.

IT IS FURTHER ORDERED that IGWA is granted 1.2 cfs of transient mitigation credit for the annual period from April 1, 2014 through March 31, 2015, because of its past and ongoing, muti-year aquifer enhancement activities.

IT IS FURTHER ORDERED that IGWA is granted 1.6 cfs of mitigation credit for direct delivery of surface water from Curren Tunnel to Rangen.

IT IS FURTHER ORDERED that IGWA is granted 2.8 cfs of total mitigation credit for the annual period from April 1, 2014 through March 31, 2015.

IT IS FURTHER ORDERED that the 2.8 cfs total annual mitigation credit is 0.6 cfs less that the annual mitigation requirement of 3.4 cfs for the annual period from April 1, 2014 through March 31, 2015.

IT IS FURTHER ORDERED that the stay issued in the February 21, 2014, *Order Granting IGWA's Petition to Stay Curtailment* of the Curtailment Order is hereby lifted.

IT IS FURTHER ORDERED that, at 12:01 a.m. on or before May 5, 2014, users of ground water holding consumptive water rights bearing priority dates junior or equal to October 13, 1978, listed in Attachment A to this order, within the area of common ground water, located 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 this amended 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 within the area of common ground water, located west of the Great Rift, and who regulate ground water, are directed to issue written notices to the holders of the consumptive ground water rights listed in Attachment A to this order. The water rights on the list bear priority dates junior or equal to October 13, 1978. The written notices are to advise the holders of the identified ground water rights that their rights are subject to curtailment in accordance with the terms of this order.

IT IS FURTHER ORDERED that pursuant to Conjunctive Management Rule 37.03.11.040.40, for the water districts within the area of common ground water, located west of the Great Rift, and who regulate ground water, shall permit the diversion and use of ground water by water rights with priority date senior to October 13, 1978 to continue out of priority diversions within the water district provided IGWA's mitigation plan is complied with.

CONTINGENT ALTERNATIVE OBLIGATION

IT IS FURTHER ORDERED that, if Morris agrees to cease diverting 0.3 cfs from Curren Tunnel through his irrigation pipeline, IGWA will be granted 3.0 cfs of total annual mitigation credit for the annual period from April 1, 2014 through March 31, 2015.

IT IS FURTHER ORDERED that the 3.0 cfs total mitigation credit is 0.4 cfs less than the annual mitigation requirement of 3.4 cfs for the annual period from April 1, 2014 through March 31, 2015.

IT IS FURTHER ORDERED that water rights bearing priority dates junior or equal to July 1, 1983 shall be curtailed during the 2014 irrigation season.

IT IS FURTHER ORDERED that, if Morris agrees to cease diverting 0.3 cfs from Curren Tunnel through his irrigation pipeline, at 12:01 a.m. on or before May 5, 2014, users of ground water holding consumptive water rights bearing priority dates junior or equal to July 1, 1983, as may be determined from Attachment A to this order, within the area of common ground water, located 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 this amended 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, if Morris agrees to cease diverting 0.3 cfs from Curren Tunnel through his irrigation pipeline, the watermasters for the water districts within the area of

common ground water, located west of the Great Rift, and who regulate ground water, are directed to issue written notices to the holders of the consumptive ground water rights listed in Attachment A to this order with water rights that bear priority dates junior or equal to July 1, 1983. The written notices are to advise the holders of the identified ground water rights that their rights are subject to curtailment in accordance with the terms of this order.

IT IS FURTHER ORDERED that, if Morris agrees to cease diverting 0.3 cfs from Curren Tunnel through his irrigation pipeline, pursuant to Conjunctive Management Rule 37.03.11.040.40, for the water districts within the area of common ground water, located west of the Great Rift, and who regulate ground water, shall permit the diversion and use of ground water by water rights with priority date senior to July 1, 1983 to continue out of priority diversions within the water district provided IGWA's mitigation plan is complied with.

Dated this 11th day of April, 2014.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 11th day of April, 2014, the above and foregoing document was served on the following by providing a copy of the *ORDER APPROVING IN PART AND REJECTING IN PART IGWA'S MITIGATION PLAN; ORDER LIFTING STAY ISSUED FEBRUARY 21, 2014; AMENDED CURTAILMENT ORDER* in the manner selected:

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Deborah J. Gibson
Deborah J. Gibson
Admin. 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.