BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHTS NOS. 36-15501, 36-02551, AND 36-07694	)	**ORDER REGARDING PARTY STATUS (Rangen Delivery Call)**

Background

On February 25, 2004, the Director of the Department of Water Resources ("Director" or "Department") issued an *Order* in response to a water delivery call made by Rangen, Inc. in the above captioned matter. The Director issued an *Amended Order* on March 10, 2004, which required holders of certain consumptive ground water rights subject to administration in Water District No. 130 not to divert ground water beginning April 1, 2004, unless sufficient replacement water could be provided as set forth in the amended order.

On March 11, 2004, in response to receipt of requests for a hearing pursuant to Idaho Code § 42-1701A(3), the Director issued a *Notice of Contested Case and Notice of Status Conference*. Numerous petitions were filed with the Department contesting the *Order* or the *Amended Order*, and requesting a hearing and/or intervention.

On March 20, 2004, the State of Idaho, spring users in the Thousand Springs Area of the Snake River Basin, and the North Snake Ground Water District and the Magic Valley Ground Water District entered into *The Eastern Snake Plain Aquifer Mitigation, Recovery and Restoration Agreement for 2004* ("Agreement"). On March 24, 2004, the Director entered his *Order Approving Interim Mitigation*, which approved the interim mitigation provided for under the Agreement for the period March 15, 2004, through March 15, 2005.

In accordance with the *Order Approving Interim Mitigation*, the Director entered an *Order Staying Proceedings*. The Director stated that "the persons and entities identified above who have filed petitions contesting the *Order* or the *Amended Order*, or who have filed petitions to intervene in the proceeding, are hereby recognized as full parties to this contested case proceeding." *Order Approving Interim Mitigation* at p. 4.

The following persons and entities were recognized as parties by the *Order Approving Interim Mitigation*:

> Jerry and Patty Nance; Wallace Neal and Nancy Lee Bowman; Delbert Kohtz; Idaho Dairymen's Association; Gene and Judy Fredericksen; City of Burley; Clear Lakes Trout

Company, Inc.; Fisheries Development Company, Inc.; Rim View Trout Company, Inc.; Estate of Earl M. Hardy; Carey Water and Sewer District; Carey Valley Ground Water Users; Hubert and Rita Shaw; Shaw Land & Livestock; Idaho Ground Water Appropriators, Inc.; Ed and Alpha Mahler; Vernon Ravenscroft; Donley Farm, Inc.; Twin Falls Canal Company; Clear Springs Foods, Inc.; Bob and Kathleen Krucker; Zippora Stahl; Longview Dairy; Blue Sky Ranch; Rangen, Inc.; U.S. Fish and Wildlife Service; Idaho Power Company; and the U.S. Bureau of Reclamation.

On March 14, 2005, the Director rescinded the March 10, 2004 *Amended Order*. The Director issued a *Seconded Amended Order* on May 19, 2005.

DeMoss Petition to Intervene

On April 16, 2004, shortly after entry of the *Order Approving Interim Mitigation*, Gary and Helen DeMoss petitioned to intervene in the above captioned matter. According to the petition, DeMosses hold an irrigation ground water right that was subject to curtailment. Citing compliance with the Department's Rules of Procedure as they relate to intervention, DeMosses assert a direct and substantial interest in the proceedings. Furthermore, DeMosses state that their participation as a party will not unduly broaden the issues before the Director.

According to IDAPA 37.01.01.353,

> If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

Because the DeMosses own a water right that is subject to curtailment in accordance with the *Order* of February 25, 2004, the DeMosses have a direct and substantial interest in the subject of the proceeding that is not adequately represented by the present parties. Because the interests of the DeMosses will not unduly broaden the issues, the DeMosses should be granted intervention.

Status and Scheduling Conference

On August 16, 2005, the Director conducted a status and scheduling conference in the above captioned matter. During the status and scheduling conference, not all persons and entities that were made party to the above captioned proceeding on March 24, 2004, were present. As indicated by participants at the status and scheduling conference, there was some confusion regarding who remained a party after the matter was stayed. The Director also stated that the Department would provide a partial agency record on CD-ROM to all interested persons and entities.

A copy of the partial agency record in this matter on CD-ROM disk will be served upon any person or entity presently identified as a party in this proceeding who indicates in writing to the Department in accordance with this Order an intent to continue as a party in this matter.

ORDER

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

1. The petition to intervene filed on April 13, 2004, by Gary and Helen DeMoss is GRANTED.

2. In order to remain a party in the above captioned matter, an affirmative statement of intent to remain a party must be filed with the Department within fourteen (14) days of the date of this Order. Failure to respond affirmatively in writing to the Director within fourteen (14) days of the date of this Order shall be deemed an intent not to continue as a party in this matter.

3. A copy of the partial agency record in this matter on CD-ROM disk will be served upon any person or entity presently identified as a party in this proceeding who indicates in writing to the Department in accordance with this Order an intent to continue as a party in this matter.

4. The Director will issue a Scheduling Order following a determination of those parties desiring to continue their party status in this matter.

DATED this 13th day of September 2005.

KARL J. DREHER
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of September, 2005, the above and foregoing document was served by placing a copy of the same in the United States mail, postage prepaid and properly addressed to the following:

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