

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

<b>IN THE MATTER OF DISTRIBUTION OF</b>	)	<b>CM-DC-2011-004</b>
<b>WATER TO WATER RIGHT NOS. 36-02551</b>	)	
<b>AND 36-07694</b>	)	<b>ORDER SETTING BRIEFING</b>
	)	<b>DEADLINES</b>
<b>(RANGEN, INC.)</b>	)	
	)	
	)	
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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 was appealed in *Rangen, Inc., v. IDWR*, Twin Falls County Case No. CV-2014-1338 (consolidated Gooding County Case No. CV-2014-179). The Court issued its *Memorandum Decision and Order on Petitions for Judicial Review* (“Memorandum Decision”) on October 24, 2014, which affirmed the Director on a number of issues, but held the Director erred by applying a trim line to reduce the zone of curtailment. *Memorandum Decision* at 28.<sup>1</sup>

On December 5, 2014, the Court issued its *Order Denying Petitions for Rehearing* (“Order Denying Rehearing”), clarifying that, “in rejecting the Director’s justifications [for the implementation of the trim line], the Court deemed it necessary to qualify that its ruling was not addressing the futile call doctrine which may take into account the disparity in conjunction with other factors such as timing.” *Order Denying Rehearing* at 3. The Court explained “[what further proceedings are necessary on remand in this case can be determined by the Director on remand.”

On January 27, 2015, the Director held a status conference at the Department’s state office to discuss how the Department should proceed following issuance of the Court’s Memorandum Decision and Order Denying Rehearing. Given this discussion, the Director requested that the parties submit briefing on the following issues:

- 1) The Director’s authority to supplement the record in this matter with additional evidence on remand.

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<sup>1</sup> The Memorandum Decision has been appealed to the Idaho Supreme Court (Docket No. 42772-2015).

- 2) Identification of what additional evidence parties would seek to supplement the record with on remand.
- 3) The standard for reviewing a conjunctive management delivery call in light of the definition of the term “futile call” set forth in IDAPA 37.03.11.010.08 and discussion of the futile call doctrine in IDAPA 37.03.11.020.04.

The Director adopts the following schedule for the above-described briefing:

- Deadline for submission of initial briefs February 10, 2015
- Deadline for responses February 24, 2015
- Deadline for replies February 27, 2015

Dated this 3<sup>rd</sup> day of February, 2015.

  
GARY SHACKMAN  
Director

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3<sup>rd</sup> day of February 2015, the above and foregoing document was served on the following by providing a copy in the manner selected:

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