

Randall C. Budge (ISB# 1949)  
Thomas J. Budge (ISB# 7465)  
RACINE OLSON NYE BUDGE  
& BAILEY, CHARTERED  
201 E. Center St. / P.O. Box 1391  
Pocatello, Idaho 83204  
(208) 232-6101 – phone  
(208) 232-6109 – fax  
rcb@racinelaw.net  
tjb@racinelaw.net

*Attorneys for IGWA*

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

IN RE IGWA’S THIRD PLAN TO  
MITIGATE MATERIAL INJURY TO  
WATER RIGHT NOS. 36-02551 &  
36-07694 HELD BY RANGEN, INC.

Docket No. CM-MP-2014-005

**Clarification of Scope of Third  
Plan; Notice of Withdrawal; and  
Request for Orders**

Idaho Ground Water Appropriators, Inc. (IGWA) acting for and behalf of its members, submits this statement of clarification of the scope of IGWA’s Third Mitigation Plan (referred to herein as the “Third Plan”) as requested by Director Spackman at the status and scheduling conference held January 27, 2015. In addition to clarifying the scope of the Third Plan, IGWA hereby provides notice of withdrawal of certain components of the Third Plan, and requests certain orders related to the Third Plan.

**Background**

The Third Plan initially contained five components: (1) Sandy Ponds recharge and Sandy Pipe delivery, (2) improvements to Curren Tunnel diversion, (3) direct delivery of water right no. 36-16976, (4) recirculation of Rangen water rights, and (5) Aqualife Project.

On July 25, 2014, the Director issued an *Order Limiting Scope of Mitigation Plan; Limiting Scope of Hearing; Setting Deadlines to Submit Engineering Plans*, which (a) limited the applicability of the Third Mitigation Plan to Rangen only (i.e. it does not apply to other water users in Water District 36A), (b) declined to consider direct delivery of water right no. 36-

16976, (c) bifurcated the Curren Tunnel diversion component to be scheduled for hearing at a later date, and (d) limited the scope of the hearing scheduled at that time to the Sandy Ponds recharge and Sandy Pipe delivery component, recirculation component, and Aqualife Project.

### **Notice of Withdrawal**

IGWA hereby provides notice pursuant to rule 305 of the Idaho Department of Water Resources' (IDWR) Rules of Procedure of its withdrawal of the following components of the Third Plan: (a) Sandy Pipe delivery, (b) improvements to Curren Tunnel diversion, (c) direct delivery of water right no. 36-16976, (d) recirculation of Rangen water rights, and (e) Aqualife Project.

Concerning the Sandy Pipe delivery, this withdrawal does not affect the mitigation credit granted under IGWA's First Mitigation Plan for the benefit to Rangen from the exchange of water through the Sandy Pipe. The scope of the Sandy Pipe delivery component of the Third Plan was limited to mitigation of other water users via the delivery of water through the Sandy Pipe. Accordingly, this withdrawal is limited to the issue of mitigation credit for the direct delivery of water to other water users via the Sandy Pipe.

IGWA is presently working cooperatively with other Water District 36A water users to define the scope and extent of mitigation provided via the Sandy Pipe. IGWA will file a separate mitigation plan should it seek credit for water delivered via the Sandy Pipe or other components of the Third Plan withdrawn hereby.

This notice of withdrawal should resolve many of the protests filed against the Third Plan; therefore, IGWA requests an order requiring each protestant to notify IDWR whether they plan to participate in the hearing on the remaining aspects of the Third Plan, discussed below.

### **Scope of Third Plan**

In light of the foregoing, the Third Plan now consists solely of IGWA's request for mitigation credit to Rangen for recharge that occurs via the Sandy Ponds. As stated in *IGWA's Amended Third Mitigation Plan and Request for Hearing*, "IGWA and the Coalition of Cities are collaborating to install new measuring devices on the Sandy Pipeline to accurately determine the amount of recharge through the Sandy Ponds," and IGWA requests IDWR approval of: (1) "the proposed measuring devices," and (2) "once the measuring devices are installed, mitigation credit for recharge

that occurs via the Sandy Ponds and direct delivery to other senior water users via the Sandy Pipeline.”

Concerning the measuring devices, the parties to this matter signed a Stipulation filed with IDWR on January 9, 2015, agreeing to the devices outlined in SPF Water Engineering’s July 28, 2014, technical memo and January 9, 2015, supplement thereto, provided they are constructed and maintained in accordance with industry standards and are approved by IDWR and the Water District 36A watermaster. Thus, the suitability of measuring devices is not proceeding to hearing on this matter.

IGWA requests an order from the Director approving the measuring devices in accordance with the Stipulation. Should the Director have questions or concerns about the measuring devices, IDWR personnel may work directly with SPF Water Engineering to address such questions and concerns before the Director issues an order. Should the Director desire modification of the measuring devices approved by the Stipulation, an order should be issued specifying the modifications and providing all parties an opportunity to respond or request a hearing if desired.

Concerning IGWA’s request for mitigation credit for recharge conducted via the Sandy Ponds, the Stipulation agrees the measuring devices developed by SPF Water Engineering “should be capable of calculating to a reasonable degree of certainty: (1) how much water enters the Sandy Ponds; and (2) how much water exits the Sandy Ponds,” and “the amount of water that seeps into the ground through the Sandy Ponds can be calculated to a reasonable degree of certainty by deducting evapotranspiration and outflows from the Sandy Ponds from inflows to the Sandy Ponds.”

The Stipulation further acknowledges that once the measuring devices are installed, “IGWA may file requests for mitigation credit for recharge that occurs at the Sandy Ponds;” however,

The protestants reserve the right to protest and object to any request for mitigation credit for aquifer recharge at the Sandy Ponds, including, but not limited to, whether any mitigation credit should be granted and the method for calculating any mitigation credit, and whether recharge complies with all other agencies’ requirements.

Thus, there are two remaining issues in the Third Plan: (1) whether IGWA should receive credit toward its mitigation obligation to Rangen for recharge conducted at the Sandy Ponds once the measuring devices are installed; and (2) whether recharge at the Sandy Ponds complies with requirements of other agencies.

Concerning the first issue, IGWA requests an order setting a hearing and scheduling pre-hearing deadlines.

Concerning the second issue, IGWA contends the Director does not have jurisdiction to decide whether recharge at the Sandy Ponds complies with requirements of other agencies, though he can condition approval of the Third Plan upon compliance with requirements of other agencies. Therefore, IGWA requests an order limiting the scope of the hearing to whether IGWA should receive mitigation credit for recharge conducted at the Sandy Ponds after measuring devices are installed. Specifically, whether IGWA is entitled to credit for its mitigation obligation to Rangen for recharge conducted at the Sandy Ponds, and the methodology for calculating such credit once the measuring devices are installed.

### **Conclusion**

Based on the foregoing, IGWA requests orders from the Director for the following:

1. Approving the proposed measuring devices as set forth in the January 9, 2015, Stipulation.
2. Scheduling a hearing on the Third Plan.
3. Limiting the scope of the hearing to whether IGWA is entitled to receive credit toward its mitigation obligation to Rangen for recharge IGWA conducts at the Sandy Ponds, and the methodology for calculating such credit.
4. Requiring each protestant to file a notice with IDWR stating whether they plan to participate in the hearing on the Third Plan.

RESPECTFULLY SUBMITTED this 12th day of February, 2015.

RACINE OLSON NYE BUDGE &  
BAILEY, CHARTERED

By:   
Randall C. Budge  
Thomas J. Budge

**CERTIFICATE OF MAILING**

I certify that on this 12<sup>th</sup> day of February, 2015, the foregoing document was served on the following persons in the manner indicated.



Signature of person mailing form

Director, Gary Spackman Idaho Department of Water Resources PO Box 83720 Boise, ID 83720-0098 <a href="mailto:Deborah.Gibson@idwr.idaho.gov">Deborah.Gibson@idwr.idaho.gov</a>	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Garrick Baxter Emmi Blades Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a> <a href="mailto:emmi.blades@idwr.idaho.gov">emmi.blades@idwr.idaho.gov</a>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Robyn M. Brody Brody Law Office, PLLC PO Box 554 Rupert, ID 83350 <a href="mailto:robynbrody@hotmail.com">robynbrody@hotmail.com</a>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
Fritz X. Haemmerle Haemmerle & Haemmerle, PLLC PO Box 1800 Hailey, ID 83333 <a href="mailto:fxh@haemlaw.com">fxh@haemlaw.com</a>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail
J. Justin May May, Browning & May, PLLC 1419 West Washington Boise, ID 83702 <a href="mailto:jmay@maybrowning.com">jmay@maybrowning.com</a>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail

<p>John K. Simpson  Travis L. Thompson  Paul Arrington  BARKER ROSHOLT &amp; SIMPSON, LLP  195 River Vista Place, Suite 204  Twin Falls, Idaho 83301-3029  <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a>  <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a>  <a href="mailto:jlw@idahowaters.com">jlw@idahowaters.com</a>  <a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a>  <a href="mailto:jf@idahowaters.com">jf@idahowaters.com</a></p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> E-mail</p>
<p>Patrick D. Brown  P.O. Box 125  Twin Falls, Idaho 83303  <a href="mailto:pat@pblaw.co">pat@pblaw.co</a></p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> E-Mail</p>
<p>Tim Mayer, Branch Chief  Water Resources Branch  U.S. Fish and Wildlife Service  911 NE 11th Ave  Portland, OR 97232-4181  <a href="mailto:tim_mayer@fws.gov">tim_mayer@fws.gov</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> E-Mail</p>
<p>Bret McKenzie  P.O. Box 472  Hagerman, Idaho 83332  <a href="mailto:knbmac@q.com">knbmac@q.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> E-Mail</p>
<p>Kathleen McKenzie  P.O. Box 109  Hagerman, Idaho 83332  <a href="mailto:knbmac@q.com">knbmac@q.com</a></p>	<p><input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> E-Mail</p>
<p>Jamie &amp; Katherine Martin  2561 Vineyard Alley  Hagerman, ID 83332</p>	<p><input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input type="checkbox"/> E-Mail</p>

Gary & Linda Lemmon 2757 South 1050 East Hagerman, Idaho 83332 <a href="mailto:glemmon@northrim.net">glemmon@northrim.net</a>	<input checked="" type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
Jerry Rigby RIGBY, ANDRUS & RIGBY LAW, PLLC 25 North Second East Rexburg, Idaho 83440 <a href="mailto:jrigby@rex-law.com">jrigby@rex-law.com</a>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail