

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

IN THE MATTER OF DISTRIBUTION OF
WATER TO THE WATER RIGHT NOS. 36-
02551 AND 36-07694 (RANGEN, INC.)

Docket No. CM-DC-2011-004
Docket No. CM-MP-2014-001
Docket No. CM-MP-2014-006

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.

**ORDER DENYING IGWA'S
MOTION TO VACATE
CURTAILMENT ORDER**

IN THE MATTER OF THE FOURTH
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.

On January 20, 2015, the Idaho Ground Water Appropriators, Inc. ("IGWA"), filed *IGWA's Motion to Vacate Curtailment Order, and Request for Expedited Decision* ("Motion to Vacate") requesting the Director ("Director") of the Idaho Department of Water Resources ("Department") vacate the curtailment ordered by the Director in Docket Nos. CM-DC-2011-004, CM-MP-2014-001 and CM-MP-2014-006. *Motion to Vacate* at 1. IGWA asserts that District Court Judge Eric Wildman reversed the Director's application of the Great Rift trim line and remanded the proceeding to the Director for failure to apply the futile call doctrine. *Motion to Vacate* at 2. IGWA argues the Director's curtailment orders are "ineffective" because the Director has not completed the remand proceeding and has not applied the futile call doctrine. *Id.*

IGWA is correct that, on October 24, 2014, District Court Judge Eric Wildman reversed and remanded the Director's application of the Great Rift trim line in the Rangen delivery call proceeding. *Memorandum Decision and Order on Petitions for Judicial Review* ("Memorandum Decision"), Twin Falls County Case No. CV-2014-1338. However, contrary to IGWA's suggestion, the Court did not hold that the Director is required to apply the futile call doctrine on remand. IGWA sought clarification from Judge Wildman on this specific issue, asking the District Court to clarify whether or not it intended that the Director apply the futile call doctrine on remand. In his *Order Denying Petitions for Rehearing*, Judge Wildman specifically stated

“the Court did not order that the Director apply the futile call doctrine on remand.” *Order Denying Petition for Rehearing* at 2.

In the Memorandum Decision, the District Court held the Director should not have reduced the zone of curtailment, thereby excluding from curtailment water uses with points of diversion located east of the Great Rift. *Memorandum Decision* at 40. The Court stated, “[T]he Director’s application of the trim line in this matter is set aside and remanded for further proceedings as necessary.” *Id.* IGWA asserts the Director cannot curtail water uses authorized by water rights with water diversions located west of the Great Rift, as required by the curtailment orders, because the District Court reversed the Director’s exclusion of junior priority water uses east of the Great Rift from curtailment. The Court’s directive that water uses with diversions east of the Great Rift may be subject to curtailment is not grounds for the Director to excuse from curtailment water uses with diversions west of the Great Rift. What is key in this proceeding is what the Court’s Memorandum Decision did not do. The Memorandum Decision did not reverse the Director’s order of curtailment of water uses west of the Great Rift. The Memorandum Decision did not stay implementation of curtailment of water uses west of the Great Rift. Because the Court did not reverse the Director’s order of curtailment of water uses west of the Great Rift and no stay has been issued, the Director concludes it is not necessary to complete the remand proceeding before enforcing curtailment orders issued in these proceedings.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that IGWA’s motion to vacate the curtailment order is DENIED.

Dated this 23rd day of January 2015.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on January 23rd, 2015, I served a true and correct copy of the foregoing document on the following parties by the method(s) indicated.

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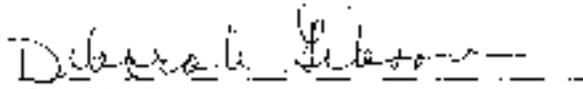
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