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Attorneys for Respondents

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

IDAHO GROUND WATER  
APPROPRIATORS, INC.,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER  
RESOURCES, and GARY SPACKMAN, in  
his capacity as Director of the Idaho  
Department of Water Resources,

Respondents.

**Case No. CV-2015-237**

**RESPONSE TO IGWA'S MOTION TO  
STAY CURTAILMENT ORDER**

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHT NOS. 36-02551  
& 36-07694 (RANGEN, INC.), IDWR  
DOCKET NO. CM-DC-2011-004

## BACKGROUND

On January 16, 2015, the Idaho Ground Water Appropriators, Inc. (“IGWA”), submitted *IGWA’s Petition to Amend Order Approving Fourth Mitigation Plan, or, in the Alternative, Temporarily Stay Curtailment; and Request for Expedited Decision* (“Petition to Amend”) to the Idaho Department of Water Resources (“Department”) asking the Director of the Department to amend his *Order Approving IGWA’s Forth Mitigation Plan* or in the alternative to stay implementation of the *Order Granting Rangen’s Motion to Determine Morris Exchange Water Credit; Second Amended Curtailment Order*.

On January 17, 2015, the Director issued his *Order Denying Petition to Amend Fourth Mitigation Plan and Request for Temporary Stay* (“Order Denying Petition”). The Director determined he lacked authority to amend the Fourth Mitigation Plan Order and denied IGWA’s request for a temporary stay of curtailment. *Order Denying Petition* at 3-4.

On January 20, 2015, IGWA filed a petition for judicial review of the Order Denying Petition.<sup>1</sup> That same day, IGWA also filed *IGWA’s Motion to Stay Curtailment Order* (“Motion to Stay”), *IGWA’s Motion to Shorten Time to Hear IGWA’s Motion to Stay Curtailment Order, Notice of Hearing, Affidavit of Thomas J. Budge, Affidavit of Charles M. Brendecke, and Affidavit of Robert Hardgrove*.<sup>2</sup> This response addresses only the argument set forth in IGWA’s Motion to Stay that the Director abused his discretion by denying IGWA’s request for stay of curtailment in the Order Denying Petition. *See Motion to Stay* at 8-9.

## ANALYSIS

IGWA argues that one reason this Court should grant the Motion to Stay is because the Director abused his discretion by denying IGWA’s request for stay of curtailment in the Order Denying Petition. *See Motion to Stay* at 8-9. Specifically, IGWA contends the Director’s denial of the request for stay of curtailment “demonstrates an unreasonable disregard for the circumstances surrounding IGWA’s mitigation efforts; it is arbitrary action that amounts to an abuse of discretion.” *Id.* at 9.

The Director has authority to stay a final order pursuant to the Department’s Rules of Procedure:

Any party or person affected by an order may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion.

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<sup>1</sup> Case no. CV-2015-237 was reassigned to this Court by a *Notice of Reassignment* issued January 21, 2015.

<sup>2</sup> IGWA filed these same entitled documents in Case No. CV-2014-4970. However, only the document entitled *IGWA’s Motion to Stay Curtailment Order* filed in this case (CV-2015-237) contains the argument addressed by Respondents in this response, i.e. that this Court should grant a stay because the Director abused his discretion by denying IGWA’s motion for temporary stay in the Order Denying Petition. The same entitled document filed in CV-2015-4970 does not contain this argument.

IDAPA 37.01.01.780. The authority to stay a final order is also reflected in I.C. § 67-5274 and I.R.C.P. 84(m), which provide that an “agency may grant, or the reviewing court may order, a stay upon appropriate terms.” The use of the word “may” demonstrates the Director’s discretionary authority to stay enforcement of an order. *See Bank of Idaho v. Nesseth*, 104 Idaho 842, 846, 664 P.2d 270, 274 (1983).

In determining whether an agency abused its discretion, the Idaho Supreme Court has held that a court “must determine whether the agency perceived the issue in question as discretionary, acted within the outer limits of its discretion and consistently with the legal standards applicable to the available choices, and reached its own decision through an exercise of reason.” *Clear Springs Foods, Inc. v. Spackman*, 150 Idaho 790, 813, 252 P.3d 71, 94 (2011).

Here, in the Order Denying Petition, the Director expressly recognized IGWA’s request for stay of curtailment raised a discretionary issue. *See Order Denying Petition* at 3. The Director considered circumstances surrounding IGWA’s request, but pointed out that IGWA had been aware of the curtailment deadline since June of 2014—for seven months. *Id.* Given that IGWA had seven months to come up with a solution to mitigate for material injury caused to Rangen by junior-priority ground water pumping as identified in the Curtailment Order, the Director declined to grant IGWA a further extension of time. In this circumstance, the Director acted within the limits of his discretion and consistently with legal standards and reached his decision through an exercise of reason. Accordingly, a stay based upon the argument that the Director abused his discretion by denying IGWA’s request for stay of curtailment in the Order Denying Petition should be rejected by this Court.

### CONCLUSION

Based upon and consistent with the foregoing, Respondents respectfully request that IGWA’s request for stay of curtailment as set forth in the Motion to Stay on the basis that the Director abused his discretion by denying IGWA’s request for stay of curtailment in the Order Denying Petition be denied.

DATED this 21<sup>ST</sup> day of January 2015.

LAWRENCE G. WASDEN  
Attorney General

CLIVE R. J. STRONG  
Chief, Natural Resources Division



GARRICK L. BAXTER  
Deputy Attorney General  
Idaho Department of Water Resources

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 21<sup>st</sup> day of January 2015, I caused a true and correct copy of the foregoing document to be filed with the Court and served on the following parties by the indicated methods:

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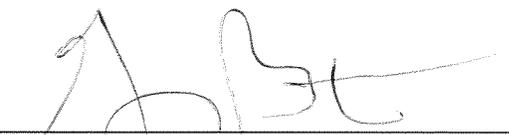
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