

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

**IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHT NOS. 36-02551) CM-DC-2011-004
AND 36-07694)
RANGEN, INC.) ORDER SUSPENDING
HEARING AND SETTING
STATUS CONFERENCE
)
)
)
_____)**

On October 4, 2012, the Director of the Department of Water Resources (“Director” or “Department”) was notified by Department staff of a data error in the Eastern Snake Plain Aquifer Model 2.0 (“ESPAM 2.0”). On October 4, 2012, by electronic mail, Department staff notified the Eastern Snake Plain Aquifer modeling committee of the error:

During review of ESPAM2 model data, [Department staff] noticed that aquifer recharge from seepage at Mud Lake was significantly higher in ESPAM2 than was calculated and used for ESPAM1.1 (approx. 140,000 vs. 9,000 Acre Feet/Year). Recall that Camas Creek inflows to Mud Lake are applied as perched river seepage, and along with other inputs, are used to determine recharge to the aquifer at the same model cells as the lake. Subsequently, a conversion error was found in the ESPAM2 spreadsheet that calculates the seepage based on the water balance for the lake.

In order to ensure that the Department is utilizing the best available science, the Director is compelled to suspend the hearing until further notice.

The Director recognizes that the Idaho Ground Water Appropriators, Inc. (“IGWA”) filed a *Motion to Continue Hearing and Request for Expedited Decision* (“Motion”) with the Department on September 26, 2012. In the Motion, IGWA sought to move the hearing date from January 28, 2013 to March 11, 2013. On October 1, 2012, Rangen, Inc. (“Rangen”) filed a *Response in Opposition to IGWA’s Motion to Continue Hearing and Request for Expedited Decision* (“Response”). On October 4, 2012, IGWA filed a *Reply to Rangen’s Response in Opposition to IGWA’s Motion to Continue*. In its Response, Rangen stated as follows:

IGWA is looking for any way to delay the hearing of this matter because even a slight delay will probably mean that curtailment will not be ordered in 2013 even if Rangen prevails on its material injury claim. The Director has made it clear

that April 1 is the “drop dead” date for ordering curtailment and that he must have time to issue a decision before that date or curtailment will not be ordered.

Response at 18.

While it would be favorable for the parties to know their obligations entering the irrigation season, the Director is receptive to Rangen’s concern. There is no provision in the conjunctive management rules, Idaho Code, or Idaho case law that prevents the Director from curtailing junior-priority ground water users during the irrigation season. *See e.g. North Snake Ground Water District et al. v. Idaho Dept. of Water Resources et al.*, Case No. 2009-0000431 (Gooding County, Aug. 11, 2009) (petition for judicial review by North Snake Ground Water District and Magic Valley Ground Water District challenging the Director’s decision to curtail junior-priority ground water users during the 2009 irrigation season).

The Director must use the best available science, and at the same time must also protect senior-priority rights by enforcing an order finding material injury. Therefore, the parties should be fully aware that if material injury is found, the order finding material injury will be enforced, regardless of the time of year in which it is issued.

ORDER

Based on the foregoing, IT IS HEREBY ORDERED that the hearing in the Rangen, Inc. conjunctive management delivery call is **SUSPENDED** until further order of the Director.

IT IS FURTHER ORDERED that a status conference in this matter shall be held on October 10, 2012 at 1:30 p.m. Parties may participate in-person, or by telephone. If participating by telephone, dial 215-446-0193 and provide participant code 275568#.

Dated this 4th day of October, 2012.

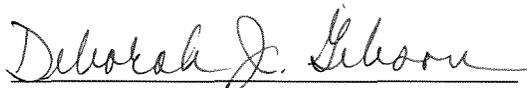


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 4th day of October, 2012, the above and foregoing document was served on the following by providing US mail, postage prepaid, and email:

<p>J JUSTIN MAY MAY BROWNING & MAY PLLC 1419 W WASHINGTON BOISE ID 83702-5039 jmay@maybrowning.com</p>	<p>FRITZ X HAEMMERLE HAEMMERLE HAEMMERLE PO BOX 1800 HAILEY ID 83333-1800 fxh@haemlaw.com</p>
<p>ROBYN BRODY BRODY LAW OFFICE PLLC PO BOX 554 RUPERT ID 83350-0554 robynbrody@hotmail.com</p>	<p>A DEAN TRANMER CITY OF POCATELLO PO BOX 4169 POCATELLO ID 83205 dtranmer@pocatello.us</p>
<p>SARAH KLAHN MITRA PEMBERTON J RYLAND HUTCHINS WHITE & JANKOWSKI 511 16TH ST STE 500 DENVER CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com rylandh@white-jankowski.com</p>	<p>JOHN K SIMPSON TRAVIS L THOMPSON PAUL L ARRINGTON BARKER ROSHOLT & SIMPSON LLP 195 RIVER VISTA PL STE 204 TWIN FALLS ID 83301-3029 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com</p>
<p>C THOMAS ARKOOSH CAPITOL LAW GROUP PLLC PO BOX 32 GOODING ID 83330-0032 tarkoosh@capitollawgroup.net</p>	<p>W KENT FLETCHER, FLETCHER LAW OFFICE PO BOX 248 BURLEY ID 83318 wkf@pmt.org</p>
<p>RANDY BUDGE CANDICE MCHUGH T J BUDGE RACINE OLSON PO BOX 1391 POCATELLO ID 83204-1391 rcb@racinelaw.net cmm@racinelaw.net tjb@racinelaw.net</p>	<p>JERRY R RIGBY HYRUM ERICKSON ROBERT H WOOD RIGBY ANDRUS & RIGBY CHTD PO BOX 250 REXBURG ID 83440 jrigby@rex-law.com herickson@rex-law.com rwood@rex-law.com</p>



Deborah J. Gibson
Administrative Assistant to the Director