

Randall C. Budge (ISB #1949)
Candice M. McHugh (ISB #5908)
Scott J. Smith (ISB #6014)
Thomas J. Budge (ISB #7465)
RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED
201 E. Center Street
P.O. Box 1391
Pocatello, ID 83201
Telephone: (208) 232-6101
Facsimile: (208) 232-6109

RECEIVED
SEP 20 2007
DEPARTMENT OF
WATER RESOURCES

Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

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

In Re: SRBA	)	Subcases 01-01J, <i>et al.</i> (See Attachment A)
	)	
	)	IGWA'S BRIEF IN SUPPORT OF
Case No. 39576	)	MOTION FOR RECONSIDERATION
	)	
_____	)	

COMES NOW Idaho Ground Water Appropriators, Inc. ("IGWA"), acting for on and behalf of its members, through counsel, and hereby submit this brief in support of IGWA's *Motion for Reconsideration of Order Denying IGWA's Motion to Participate* filed September 6, 2007.

INTRODUCTION

On March 30, 2007, IGWA filed a *Motion to Participate and Memorandum in Support* in the above-captioned subcases. IGWA represents collectively the common interests of seven ground water districts and their members, along with various irrigation districts, cities and businesses, all of whom own vested ground water rights diverted from the East Snake Plain Aquifer. The parties presented oral argument on the Motion at a hearing held before the designated Special Master on

May 31, 2007. The hearing was recommenced August 23, 2007, wherein the parties presented further oral argument on the Motion. The Special Master issued an *Order Denying Motion to Participate* dated August 28, 2007. The Order recognized that IGWA represents a large number of water right holders who are directly affected by these subcases. (Order at 2.) Notwithstanding, the Order denied IGWA participation on the basis that IGWA was deemed to not be a “party to the adjudication.” (Order at 3.) IGWA moved the Special Master to reconsider IGWA’s standing to participate via the *Motion for Reconsideration of Order Denying IGWA’s Motion to Participate* filed September 6, 2007. This Brief sets forth the legal basis supporting IGWA’s standing to participate in these subcases.

ARGUMENT

IGWA has standing to participate in these subcases on two independent bases; namely, (1) IGWA was previously served or joined in the Snake River Basin Adjudication (SRBA), and (2) IGWA has standing under Idaho law to represent its members who indisputably have standing to participate in these subcases.

I. IGWA HAS STANDING TO PARTICIPATE BECAUSE IGWA WAS PREVIOUSLY SERVED OR JOINED IN THE SRBA.

SRBA rules of procedure provide that “[a]ny party to the adjudication ... may seek leave to participate in a subcase by filing a timely *Motion to Participate*.” Rule 10.k, *SRBA Administrative Order 1* (Amended 10/16/97) (“*AOI*”). The Rules define “party to the adjudication” to mean “[a]ny claimant as defined in Idaho Code §§ 42-1401A(1) and (6).” Rule 2.q, *AOI* (emphasis added). Idaho Code § 42-1401A(6) creates a statutory right in “any person served or joined” to participate in a general water rights adjudication. *Administrative Order 1* affirms that right by specifically defining

“party to the adjudication” to include I.C. §42-1402A(6). The right of a “person served or joined” to participate in the SRBA is clear:

The rule is that persons 1) who assert ownership of water rights in Idaho, or 2) on whose behalf ownership of rights to the use of water is asserted or 3) who are served or joined, are claimants (hence, parties to the adjudication) and may become parties to a subcase merely by filing an objection or response to a claim.

Orders on Motions for Summary Judgment and Motions to Strike and Order Setting Scheduling Conference, In re SRBA Case No. 39576, Consolidated Subcase No. 67-13701 (Feb. 18 2003) at 15.^{1, 2}

IGWA is a party to the adjudication under the definition set forth in Idaho Code § 42-1401A(6) as a “person served or joined.” IGWA certainly falls within the statutory definition of “person,” which includes “any ... public or private entity.” I.C. § 42-1402A(7). That IGWA has been joined in the SRBA is likewise beyond dispute. IGWA presented oral argument referencing the following exhibits attached hereto, each of which independently demonstrates that IGWA has been joined in the SRBA:

Exhibit B is a true and correct copy of a portion of the SRBA Subcase Summary Report for subcase no. 03-10022 wherein Idaho Ground Water Appropriators is listed as an objector making it a party to the Adjudication. IGWA’s participation in that subcase included responding to discovery.

Exhibit C is a true and correct copy of the SRBA Subcase Summary Report for subcase no. 92-00021 wherein Idaho Ground Water Appropriators is listed as an objector making it a party to the Adjudication. IGWA’s participation in that subcase

¹ The court affirmed the rule by later holding that, “there is no record that . . . the Associations . . . were served or joined as parties to the SRBA.” *I.R.C.P. Rule 7(b)(3) Notice, Order Denying Motion for Clarification and Motion for Reconsideration and Order Setting Pretrial/Scheduling Conference*, Consolidated Subcases 67-13701 at 5 (June 18, 2003).

² That other cases considering standing to participate in the SRBA have turned on Idaho Code § 42-1401A(1) does not negate the applicability of § 42-1401A(6). For example, the *Fort Hall Water Users Ass’n* case presumably focused on § 42-1401A(1) because, unlike IGWA, the Fort Hall Water Users Association had not been previously joined in the SRBA. *Fort Hall Water Users Ass’n v. United States, et al.*, 129 Idaho 39, 41-42 (1996). The definition of “party to the adjudication” must not be read to ignore or exclude “any person served or joined” simply because the provision was inapplicable in other cases involving standing issues.

included oral argument at the hearing on the *Motion to Enforce Interim Administration* held October 14, 2005.

Exhibit D is a true and correct copy of the Court Minutes from the hearing on the *Motion to Enforce Interim Administration* in subcase 92-00021.

Exhibit E is a true and correct copy of the first page of SRBA *Order Granting Motion of Interim Administration for Basin 37 Part 1 Surface Water, Order Denying Request for Clarification*, Subcase No. 92-21-37 SW dated November 17, 2005 with an appearance by Jeff Fereday representing IGWA in that matter.

Further, IGWA was listed as a party to the SRBA by the Idaho Supreme Court in several SRBA appeals, including *Nez Perce Tribe v. State of Idaho, et al.* (In re SRBA Case No. 39676, Subcase No. 03-10022), 137 Idaho 654 (2002); *Fish and Wildlife Service v. State of Idaho, et al.* (In re SRBA Case No. 39576, Subcase No. 02-10063), 135 Idaho 655 (2001); and *A&B Irrigation Dist. v. Idaho Conservation League* (In re SRBA Case No. 39576, Subcase No. 91-00005), 131 Idaho 411 (1998). Thus, IGWA clearly has standing to participate in the SRBA because it is a private entity that has been joined in the Adjudication on multiple occasions and has been recognized and participated in a multitude of administrative proceedings, SRBA and District Court cases, and Idaho Supreme Court appeals, served and joined as a party.

II. IGWA HAS STANDING TO PARTICIPATE IN THESE SUBCASES ON BEHALF OF ITS MEMBERS UNDER IDAHO LAW.

Under Idaho law, “[i]t is clear that an organization whose members are injured may represent those members in a proceeding for judicial review.” *Glengary-Gamlin Protective Association, Inc. v. Bonner County Board of Commissioners*, 106 Idaho 84, 87 (Ct. App. 1983) (citing *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972)). The *Glengary-Gamlin* decision firmly settled the question of whether an organization has standing to represent its members in Idaho courts.³ That case

³ The SRBA Court does not appear to have directly addressed associational standing and the *Glengary-Gamlin* rule. However, the SRBA Court has permitted associations who are not technically claimants to participate when authorized

specifically considered when an association had standing to represent its members in a proceeding governed by the Local Land Planning Act. The Act expressly limited standing to “affected person[s],” defined as “[those] having an interest in real property which may be adversely affected” *Id.* (citing Idaho Code § 67-5215(b)). The association clearly did not have standing under the statutory definition. Nevertheless, the Court granted standing to the association by adopting the United States Supreme Court rule for organizational standing:

an association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization’s purpose; and (c) neither the claim asserted, nor the relief requested, requires the participation of individual members in the lawsuit.

Glengary-Gamlin, 106 Idaho at 87-88 (citing *Hunt v. Washington Apple Advertising Commission*, 432 U.S. 333, 343 (1977)). The Court made clear that “even in the absence of injury to itself, an association may have standing solely as the representative of its members.” *Id.* at 87. IGWA has organizational standing under Idaho law to represent its members in these subcases pursuant to the three-part rule set forth in *Glengary-Gamlin*, demonstrated as follows.

A. IGWA’s members have standing to sue in their own right.

IGWA comprises a seven Ground Water Districts whose members are individual water right owners, together with Irrigation Districts, municipalities and business who also own water rights. It is not disputed that the individual water right owners qualify as “claimants” under Idaho Code § 42-1401A(1) and, therefore, as a “party to the adjudication” under SRBA rules 10.k and 2.q. *AO1*. Thus, there is no question that individual members of the Ground Water Districts have standing to participate in these subcases in their own right.

by law. *Memorandum Decision and Order on Challenge*, Subcase Nos. 34-12, 34-13, 34-2507 and 34-10873 at 7 (April 27, 1999). The issue was also raised, but not finally decided in *I.R.C.P. Rule 7(b)(3) Notice, Order Denying*

Ground Water Districts are political subdivisions statutorily authorized “[t]o represent district members, with respect to their individual water rights, in general water rights adjudications and other legal and administrative proceedings or before political bodies.” Idaho Code § 42-5224(6). Thus, it is likewise beyond question that IGWA’s member Ground Water Districts have standing to participate in these subcases on behalf of their members. In fact, the Special Master’s Order *Denying Motion to Participate* acknowledged that “[n]o one disputes” the fact that these subcases “directly affect IGWA’s members.” (Order at 2.) IGWA clearly meets the first requirement for organizational standing that its members have standing to sue in their own right.⁴

B. IGWA seeks to protect interests that are germane to IGWA’s purpose.

IGWA’s express organizational purpose set forth in its Articles of Incorporation is “[t]o represent the interests of Idaho’s ground water users and promote the efficient use and economic development of water resources.” *Second Amended and Restated Articles of Incorporation of Idaho Ground Water Appropriators, Inc.* at 1 (attached hereto as Exhibit F). IGWA exists to protect its members’ collective interest in the East Snake Plain Aquifer (“ESPA”) from which their water rights are all dependent and interdependent. That shared interest is particularly cognizable on a collective level. The complex interrelationship between the ESPA and surface water flows in the Snake River, as well as the considerable scientific and legal expenses involved in analyzing and administering hydraulically connected surface and ground water rights, create a practical necessity that IGWA’s members act collectively to protect against injury to their shared water source.

Motion for Clarification and Motion for Reconsideration, Consolidated Subcase 67-13701 (June 18, 2003).

⁴ The decision in *Fort Hall Water Users Ass’n* is consistent with IGWA’s standing to participate in these subcases. 129 Idaho 39 (1996). In *Fort Hall* neither the Association nor its members held an ownership interest in the subject water rights but had only a contractual right to use the water. *Id.* at 42. Had the members of Fort Hall Water Association owned the subject water rights, as do IGWA’s members, the result would have certainly differed.

IGWA's interest in protecting its members unique property interest in the ESPA is certainly not "of a generalized nature held in common with the general public." *In re SRBA Case No. 39576, Consolidated Subcase No. 75-13316*. Indeed, any SRBA proceedings affecting the ESPA are germane to IGWA's purpose. That these subcases "directly affect IGWA's members" and facially involve the use and development of ground water resources plainly verifies that IGWA's interest in participating in these subcases is germane to IGWA's organizational purpose.

C. Neither the claim asserted, nor relief requested, requires the participation of IGWA's individual members in these subcases.

Finally, an organization has standing to represent its members so long as any damages the organization seeks on behalf of its members are not "peculiar to the individual member" such that "both the fact and extent of injury would require individualized proof." *Glengary-Gamlin*, 106 Idaho at 89 (citing *Hunt*, 422 U.S. at 515-516). In *Glengary-Gamlin* the court held that the association had standing because the action "did not require particularized proof of injuries claimed by individual members of the Association." *Id.* Similarly, IGWA has not sought any damages in these subcases, let alone damages that would require particularized proof of injuries claimed by individual members. While these subcases certainly affect IGWA's members, the affect is common among IGWA's members and any evidence presented would be collective rather than individualized.

IGWA clearly meets the requirements for standing to represent its members in the SRBA. That IGWA has been recognized and participated in a multitude of administrative proceedings, SRBA and other District Court cases, and appeals to the Idaho Supreme Court surely validates IGWA's standing to represent its members in Idaho court proceedings. Finally, the SRBA District Court should not eliminate associational standing in the SRBA when, as in this case, the protection of common interests among the association's members practically require collective effort and judicial

economy will be served by allowing the organization to represent the collective interests of its members.

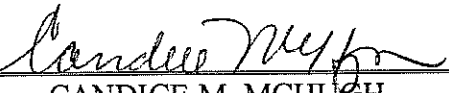
CONCLUSION

IGWA has standing to participate in these subcases because IGWA has been joined in the SRBA on numerous occasions, and, additionally, because IGWA is legally authorized to represent its members in these subcases. Practicality and judicial efficiency further advocate IGWA's standing to participate. Therefore, IGWA requests that an Order be entered granting IGWA's *Motion to Participate* in these subcases.

RESPECTFULLY SUBMITTED.

DATED this 19th day of September, 2007.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By 
CANDICE M. MCHUGH

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of September, 2007, the above and foregoing document was served in the following manner:

Snake River Basin Adjudication
253 3rd Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

- ☐ U.S. Mail/Postage Prepaid
- ☐ Hand Delivery
- ☒ Overnight Mail
- ☐ Facsimile

Milner Irrigation District
North Side Canal Company
Twin Falls Canal Company

Represented by:
BARKER, ROSHOLT & SIMPSON, LLP
113 Main Ave. W., Suite 303
P.O. Box 485
Twin Falls, ID 83303-0485
Phone: 208-733-0700

- ☒ U.S. Mail/Postage Prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile

American Falls Reservoir

Represented by:
C. THOMAS ARKOOSH
301 Main Street
P.O. Box 32
Gooding, ID 83330
Phone: 208-934-8872

- ☒ U.S. Mail/Postage Prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile

Blackfoot Irrigation Co.

Represented by:
JERRY R. RIGBY
25 N. 2nd East
P.O. Box 250
Rexburg, ID 83440-0250
Phone: 208-356-3633

- ☒ U.S. Mail/Postage Prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile

A & B Irrigation District
Burley Irrigation District
Falls Irrigation District

Represented by:
ROGER D. LING
615 H. Street
P.O. Box 396
Rupert, ID 83350-0396
Phone: 208-436-4717

- ☒ U.S. Mail/Postage Prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile

United States of American
USDI Bureau of Reclamation

Represented by:
U.S. DEPARTMENT OF JUSTICE
ENVIRONMENT & NATURAL RESOURCES
550 West Fort Street, MSC 033
Boise, ID 83724

- ☒ U.S. Mail/Postage Prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile

Minidoka Irrigation District

Represented by:
W. KENT FLETCHER
1200 Overland Avenue
P.O. Box 248
Burley, ID 83318
Phone: 208-678-3250

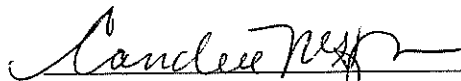
- ☒ U.S. Mail/Postage Prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile

DIRECTOR OF IDWR
P.O. Box 83720
Boise, ID 83720-0098

- ☒ U.S. Mail/Postage Prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile

Blackfoot Irrigation Co.
108 E. 200 N.
Blackfoot, ID 83221
Phone: (208) 785-6992

- ☒ U.S. Mail/Postage Prepaid
- ☐ Hand Delivery
- ☐ Overnight Mail
- ☐ Facsimile


CANDICE M. MCHUGH

ATTACHMENT A

Subcase Nos:

01-00001J	01-10046
01-00002A	01-10048
01-00047E	01-10049
01-00048	01-10050
01-00052A	01-10057
01-00052B	01-10060
01-00053A	01-10062
01-00092A	01-10091
01-00092B	01-10092
01-00116BB	01-10471
01-00131A	01-10472
01-00132A	01-10474
01-00133A	01-10475
01-00141	01-10476
01-00146A	01-10477
01-00146B	
01-00147	
01-00148	
01-00157A	
01-00157B	
01-00158B	
01-00193A	
01-00193B	
01-00232	
01-00247	
01-00259	
01-00260	
01-00261	
01-00263	
01-00264	
01-00266	
01-00298	
01-00304	
01-00306	
01-00324	
01-04061	

EXHIBIT B

SRBA

SUBCASE SUMMARY REPORT 03-10022

Return to SRBA Home Page

SRBA
09-19-2007

SUBCASE SUMMARY REPORT

HTML12

SUBCASE: 03-10022 FILE#: 00059
CLAIMANT: NEZ PERCE TRIBE
USA, TRUSTEE
911 NE 11TH AVE

PORTLAND OR 97232
STATUS: DECREED DISALLOWED SPECIAL MASTER: MELANSON, JOHN M
WATER SOURCE: VARIOUS SURF. WATER SOURCES
ISSUES: SOURCE OF WATER
QUANTITY OF WATER USED
PRIORITY DATE
INSTREAM FLOW BEGINNING AND ENDING
PURPOSE OF USE DESCRIPTION
PERIOD OF YEAR WHEN WATER IS USED
PLACE OF USE OR IRRIGATED ACRES IN EACH 40 A.
11
12
0
NAME AND ADDRESS DESCRIPTION
WATER RIGHT RECOMMENDATION
POINT(S) OF DIVERSION DESCRIPTION

**** PARTIES INVOLVED ****

NEZ PERCE TRIBE	C ATTY: K. HEIDI GUDGELL
PIONEER IRRIGATION DISTRICT	O ATTY: SCOTT L CAMPBELL
PAYETTE RIVER WATER USERS	O ATTY: SCOTT L CAMPBELL
SETTLERS IRRIGATION DISTRICT	O ATTY: SCOTT L CAMPBELL
RIVERSIDE IRRIGATION DISTRICT	O ATTY: ALBERT P BARKER
BARR S JACOBS	O PRO SE
LITTLE SALMON WATER USERS	O ATTY: SCOTT L CAMPBELL
LOST VALLEY RESERVOIR CO	O PRO SE
ROBERTSON-SEVEY DITCH CO	O PRO SE
STATE OF IDAHO	O ATTY: NATURAL RESOURCES DIV CHIEF
BLACK CANYON IRRIGATION DISTRICT	O ATTY: CRAIG R. ZAISS
IDAHO GROUND WATER APPROPRIATION	O ATTY: JEFFREY C FEREDAY
SINCLAIR OIL CORPORATION	O ATTY: SCOTT L CAMPBELL
LITTLE WEISER IRRIGATION DISTRICT	O PRO SE
THOUSAND SPRINGS RANCH	O ATTY: SCOTT L CAMPBELL
BOGUS BASIN REC ASSOC INC	O ATTY: SCOTT L CAMPBELL
NEWFOUNDLAND PARTNERS	O ATTY: SCOTT L CAMPBELL
IDAHO POWER COMPANY	O ATTY: TRAVIS L THOMPSON
TED K BLACKSTOCK	O PRO SE
JERRY L HOAGLAND	O PRO SE
LAKE RESERVOIR COMPANY	O ATTY: SCOTT L CAMPBELL
KIM BODILY	O PRO SE
H P BILYEU	O PRO SE

EXHIBIT C

	RESPONSIVE BRIEFING DUE 09/23/05	RB	09-23-2005 0500
	REPLY BRIEFING DUE 10/07/05	BB	10-07-2005 0500
08-25-2005	EXPEDITED HEARING SET 10/14/05	HS	10-14-2005 0130
08-31-2005	IDAHO GROUND WATER APPROPRIATORS INC.'S NOTICE OF APPEARANCE AND INTENT TO PARTICIPATE (GIVENS PURSLEY)		
09-21-2005	RESPONSE TO MOTION TO ENFORCE ORDER F/B MINIDOKA IRRIGATION DISTRICT		09-21-2005
09-23-2005	RESPONSE TO RANGEN, INC.'S MOTION TO ENFORCE ORDER GRANTING STATE OF IDAHO'S MOTION FOR INTERIM ADMINISTRATION/NOTICE OF JOINDER F/B TWIN FALLS CANAL COMPANY		09-23-2005
09-23-2005	CLEAR SPRINGS FOODS, INC. RESPONSE AND JOINDER TO THE MOTION TO ENFORCE ORDER FILED BY RANGEN, INC.		09-23-2005
09-23-2005	IDAHO GROUND WATER APPROPRIATORS, INC.'S RESPONSE TO AND MOTION TO DISMISS RANGEN, INC.'S MOTION TO ENFORCE ORDER GRANTING STATE OF IDAHO'S MOTION FOR ORDER OF INTERIM ADMINISTRATION		09-23-2005
09-23-2005	(FAX FILED) RESPONSE OF THE UNITED STATES TO MOTION TO ENFORCE ORDER GRANTING STATE OF IDAHO'S MOTION FOR ORDER OF INTERIM ADMINISTRATION		09-23-2005
09-23-2005	STATE OF IDAHO'S RESPONSE TO CLAIMANT'S MOTION TO ENFORCE ORDER		09-23-2005
09-23-2005	(LODGED) SPRING USERS' BRIEF IN SUPPORT OF RANGEN, INC.'S MOTION TO ENFORCE ORDER GRANTING STATE OF IDAHO'S MOTION FOR ORDER OF INTERIM ADMINISTRATION		
09-23-2005	AFFIDAVIT OF DANIEL V. STEENSON		
09-26-2005	AMENDED CERTIFICATE OF SERVICE TO STATE OF IDAHO'S RESPONSE TO CLAIMANT'S MOTION TO ENFORCE ORDER		
09-27-2005	ERRATA RE: IDAHO GROUND WATER APPROPRIATORS, INC.'S RESPONSE TO AND MOTION TO DISMISS RANGEN, INC.'S MOTION TO ENFORCE ORDER GRANTING STATE OF IDAHO'S MOTION FOR ORDER OF INTERIM ADMINISTRATION		09-27-2005
10-07-2005	LODGED: SPRING USERS' REPLY BRIEF IN SUPPORT OF RANGEN, INC.'S MOTION TO ENFORCE ORDER GRANTING STATE OF IDAHO'S MOTION FOR ORDER OF INTERIM ADMINISTRATION		
10-07-2005	(FAX FILED) LODGED: STATE OF IDAHO'S REPLY TO SPRING USERS' BRIEF, TWIN FALLS CANAL COMPANY'S RESPONSE, IDAHO GROUND WATER APPROPRIATORS, INC.'S RESPONSE AND THE UNITED STATES' RESPONSE		
10-07-2005	MOTION FOR LIMITED PRACTICE F/B IDAHO POWER	MG	10-13-2005
10-07-2005	LODGED: ORDER FOR LIMITED PRACTICE		
10-07-2005	LODGED: IDAHO POWER COMPANY'S BRIEF		
10-07-2005	LODGED: REPLY TO STATE OF IDAHO'S RESPONSE TO CLAIMANT'S MOTION TO ENFORCE ORDER		
10-07-2005	AFFIDAVIT OF JOHN K. SIMPSON		
10-07-2005	REPLY TO STATE OF IDAHO'S RESPONSE TO CLAIMANT'S MOTION TO ENFORCE ORDER & REPLY TO IGWA'S RESPONSE TO AND MOTION TO DISMISS RANGEN'S MOTION TO ENFORCE ORDER GRANTING STATE OF IDAHO'S MOTION FOR ORDER OF INTERIM ADMINISTRATION F/B RANGEN		10-07-2005

10-07-2005	SECOND AFFIDAVIT OF J JUSTIN MAY	
10-13-2005	ORDER CONDITIONALLY ADMITTING COUNSEL PRO HAC VICE	
10-14-2005	HEARING HELD - MOTION TO ENFORCE	HH 10-14-2005 0130
10-14-2005	MINUTES	
10-20-2005	CERTIFICATE OF COMPLIANCE F/B IDAHO POWER	
11-17-2005	ORDER ON MOTION TO ENFORCE ORDER GRANTING STATE OF IDAHO'S MOTION FOR INTERIM ADMINISTRATION	

[Return to SRBA Home Page](#)

EXHIBIT D

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

HONORABLE JOHN M. MELANSON
Presiding Judge
MAUREEN NEWTON
Court Reporter
DIANA DELANEY
Deputy Clerk

10/14/2005
1:30 p.m.

Court Minutes

Case No. 39576

Twin Falls, Idaho

This was the time and place set for hearing on the Motion to Enforce Interim Administration

APPEARANCES:

J Justin May	--	Rangen Inc.
Daniel Steenson	--	Billingsley Creek Ranch Blue Lakes Trout Farm Inc. Buckeye Farms Inc. John W. and Delores D. Jones Western Legends, LLC
Jeffrey Pereday	--	Idaho Ground Water Appropriators
W. Kent Fletcher	--	Minidoka Irrigation District
Travis L. Thompson	--	Twin Falls Canal Company Clear Springs Foods Inc
Gayle McGarry (phone)	--	United States of America
Clive Strong	--	State of Idaho
Adam Devoc	--	Idaho Power Company
Also present by telephone:		
Candice McHugh	--	Idaho Department of Water Resources
Susan Hamlin		
Eric Wildman	--	SRBA Court
Matt Howard	--	United States BOR

TAPE 1

- 1-20 Court convenes. Parties are identified.
- 1-258 Mr. May presents argument supporting Motion for Order to Enforce Interim Administration. Not seeking a review of IDWR administrative decisions. Rangen is seeking review of the Director's treatment of water right 36-07694 and a determination that the treatment violates the Court's Order on Interim Administration and the Partial Decree.
- 1-1232 Court questions Mr. May regarding administrative remedies being sought by Rangen.
- 1-1411 Mr. Steenson argues supporting Rangen's motion.
- 1-2757 Mr. Thompson argues supporting Rangen's motion.
- 1-3158 Mr. Fletcher concurs with comments previously made.
- 1-3165 Mr. Devoe concurs with previous counsel. Adds that Director's order seems to undermine court's authority.
- 1-3237 The United States has no comment.
- 1-3263 Mr. Strong clarifies that he is appearing on behalf of the State of Idaho and does not represent IDWR or the Director of IDWR. Argues in opposition of the motion. Must consider issues of conjunctive management and prior appropriation.
- 1-3707 Court questions Mr. Strong re director's comments in order about water not being available at the time of appropriation and the department erred in issuing license. If motion is denied, does Rangen need to go to IDWR and relitigate water right to prove water was available at the time of appropriation?
- 1-3843 Mr. Strong continues. Director recognized an error and determined what should be done. It is a determination of futile call.
- 1-4183 Court questions state re Director's statement regarding error.
- 1-4239 Mr. Fereday argues in opposition to motion.
- 1-5108 Mr. May responds.
- TAPE 2
- 2-145 Mr. Steenson responds.
- 2-387 Mr. Thompson responds.
- 2-469 No further comment from Mr. Fletcher or Mr. Devoe.
- 2-483 Court considers matter to be fully submitted. A written decision will be issued.

EXHIBIT E

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

In Re SRBA	)	Subcase No.: 92-00021-37 SW (Surface
	)	Water)
Case No. 39576	)	
	)	ORDER GRANTING MOTION FOR
	)	INTERIM ADMINISTRATION FOR
	)	BASIN 37 PART 1 SURFACE WATER
	)	
	)	ORDER DENYING REQUEST FOR
	)	CLARIFICATION

**I.
APPEARANCES**

Clive Strong, Office of the Idaho State Attorney General, appearing on behalf of the State of Idaho

Jeffrey C. Fereday, Givens Pursley LLP, on behalf of the Idaho Ground Water Appropriators, Inc.

Daniel V. Steenson, Charles L. Honsinger, Ringert Clark Chartered, appearing on behalf of John W. Jones, Jr. and Deloris D. Jones, Billingsley Creek Ranch, Blue Lakes Trout Farm, Inc. and Western Legends, LLC ("Spring Users")

John K. Simpson, Travis L. Thompson, Barker Rosholt & Simpson, LLP, appearing on behalf of the Twin Falls Canal Company and Clear Springs Foods, Inc.

J. Dee May, May Sudweeks & Browning LLP, appearing on behalf of Rangen, Inc.

**ORDER GRANTING MOTION FOR INTERIM ADMINISTRATION FOR BASIN 37 PART 1
SURFACE WATER**

Page 1 of 1

EXHIBIT F

JUN 12 8 33 AM '95
SECRETARY OF STATE
STATE OF IDAHO

AMENDED AND RESTATED
ARTICLES OF INCORPORATION
OF
IDAHO GROUND WATER APPROPRIATORS, INC.

Pursuant to unanimous agreement and resolution of the members, the IDAHO GROUND WATER APPROPRIATORS, INC., pursuant to Articles of Incorporation filed and approved by the Secretary of State's Office on April 4, 1994, and Amendment to the Articles of Incorporation dated June 2, 1994, hereby amends said Articles of Incorporation and adopts these Second Amended and Restated Articles of Incorporation pursuant to Idaho Code §30-3-91 and §30-3-94 for the purpose of amending Article X and XI as set forth below. These duly adopted Restated Articles of Incorporation supersede the original Articles of Incorporation and all amendments thereto, to-wit:

ARTICLE I. NAME

The name of the Corporation is IDAHO GROUND WATER APPROPRIATORS, INC.

ARTICLE II. NONPROFIT STATUS

The corporation is a nonprofit corporation.

ARTICLE III. DURATION

The duration of the Corporation is perpetual.

ARTICLE IV. PURPOSES

The Corporation is organized and will be operated for these purposes:

1. To represent the interests of Idaho's ground water users and promote the efficient use and economic development of water resources.
2. To exercise all powers granted by law necessary and proper to carry out the above-stated purposes.

SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION OF
IDAHO GROUND WATER APPROPRIATORS, INC. - 1

IDAHO SECRETARY OF STATE
19950612 0900 96316 2
CK #: 21832 CUST# 1108
CORP
1@ 30.00= 30.00

#: C