



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 17, 2003

J. Dee May
May, Sudweeks & Browning, LLP
516 Second Street East
P. O. Box 1846
Twin Falls, ID 83303

VIA FACSIMILE TO (208) 733-7967 AND FIRST CLASS MAIL

Re: Distribution of Water to Water Rights Nos. 36-02551, 36-07694, and 36-15501

Dear Mr. May:

This is in response to your letter dated October 6, 2003, which was received in my office on October 10, regarding the administration of water rights junior in priority to water rights no. 36-02551 for 48.54 cfs (priority date of July 7, 1962), no. 36-07694 for 26.0 cfs (priority date of April 12, 1977), and no. 36-15501 for 1.46 cfs (priority date of July 1, 1957), used by Rangen, Inc. at its fish propagation facilities. I have been out of town at various meetings and did not see your letter until yesterday, October 16.

The reason I sought additional clarification by my letter dated September 25, 2003, regarding your earlier letter dated September 21, was that in your letter you specifically asked to have "the diversion of water in District 36A" (emphasis added) administered such that Rangen, Inc. "receives its full appropriation of the above-referenced water rights." Because of the specific reference to Water District No. 36A, I did not understand your request to include the clarification provided in your October 6 letter that you had meant for your request to include administration of "all water right diversions junior to ours that are interfering with and impacting our water rights under the water right numbers referenced above."

The spring flow available for water rights nos. 36-02551, 36-07694, and 36-15501, is allocated to the rights in order of priority. To the extent that the more junior right(s) are not receiving the full quantity of water authorized under the right(s), and since there are no surface water rights that are junior in priority to the listed rights that divert from the same sources as the listed rights, your request for water rights administration will be treated as a call for water

delivery under the "Rules for Conjunctive Management of Surface and Ground Water Resources" (IDAPA 37.03.11) ("Conjunctive Management Rules"). The rules are available at the following website:

<http://www2.state.id.us/adm/adminrules/rules/idapa37/0311.pdf>

These rules prescribe how IDWR is to respond to a call for water delivery made by a holder of a senior priority surface or ground water right. Rules 40 and 30 of the Conjunctive Management Rules prescribe procedures for responding to delivery calls against junior priority ground water rights that are and are not within a water district where ground water regulation is included in the function of such districts, respectively.

With this letter, I am initiating a response to your delivery call as against junior priority ground water rights in Water Districts Nos. 120 and 130, the only water districts over the Eastern Snake River Plain Aquifer (ESPA) upgradient from the Thousand Springs area within which ground water regulation is included. If you wish to have your delivery call applied against junior priority water rights from the ESPA that are not in Water Districts Nos. 120 or 130, you will need to follow the process outlined in Rule 30 of the Conjunctive Management Rules.

In responding to your calls for water delivery under Rule 40 of the Conjunctive Management Rules, I must first make findings that material injury is occurring and determinations of reasonableness of water diversions under the listed water rights, as provided in Rule 42 of the Conjunctive Management Rules. I do not have sufficient information to make the findings required by Rules 40 and 42 of the Conjunctive Management Rules. Therefore, I will need certain additional information as follows:

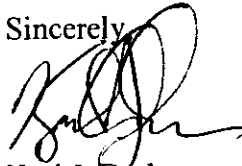
- (1) The amount of water available to supply the listed water rights from the surface water sources from which the right is diverted;
- (2) The configuration of diversion works used to divert water under the listed water rights;
- (3) The amounts of water being diverted at the present time as well as the amounts of water historically diverted under the listed water rights;
- (4) The configuration of water measuring and recording devices used to measure the quantity of water diverted under the listed rights; and
- (5) The potential for supplying water to the listed rights by implementing alternate reasonable means of diversion or alternate points of diversion.

Developing the above information will require site visits by the watermaster for Water District No. 36A, the watermaster for Water District No. 130, and at least one or two other employees of IDWR. Please have a representative of Rangen, Inc. contact Cindy Yenter, the

J. Dee May
October 17, 2003
Page 3 of 3

watermaster for Water District No. 130, at the Department's offices in Twin Falls (telephone no. 208-736-3033) as soon as possible to schedule site visits. In addition, please provide me with all historical records of the amounts of water diverted under the listed rights as soon as practicable.

Sincerely,

A handwritten signature in black ink, appearing to read 'Karl J. Dreher', written over the word 'Sincerely,'.

Karl J. Dreher
Director

- c:
- Cindy Yenter – Water District No. 130 Watermaster
 - Lewis Rounds – Water District No. 120 Watermaster
 - Frank Irwin – Water District No. 36A Watermaster
 - Tim Luke – IDWR
 - North Snake Ground Water District
 - Magic Valley Ground Water District
 - Aberdeen-American Falls Ground Water District
 - Bingham Ground Water District
 - Bonneville-Jefferson Ground Water District