

RECEIVED

JUL 24 2012

John K. Simpson, ISB #4242  
Travis L. Thompson, ISB #6168  
Paul L. Arrington, ISB #7198

DEPARTMENT OF  
WATER RESOURCES

**BARKER ROSHOLT & SIMPSON LLP**  
195 RIVER VISTA PLACE, SUITE 204  
Twin Falls, Idaho 83303-485  
Telephone: (208) 733-0700  
Facsimile: (208) 735-2444

*Attorneys for A&B Irrigation District, Burley  
Irrigation District, Twin Falls Canal Company,  
North Side Canal Company and Milner  
Irrigation District*

W. Kent Fletcher, ISB #2248  
**FLETCHER LAW OFFICE**  
P.O. Box 248  
Burley, Idaho 83318  
Telephone: (208) 678-3250  
Facsimile: (208) 878-2548  
*Attorneys for Minidoka Irrigation  
District*

C. Thomas Arkoosh, ISB #2253  
**CAPITOL LAW GROUP PLLC**  
P.O. Box 32  
Gooding, Idaho 83330  
Telephone: (208) 934-8872  
Facsimile: (208) 934-8873

*Attorneys for American Falls  
Reservoir District #2*

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

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

**PETITION FOR LIMITED  
INTERVENTION**

COMES NOW, A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company (collectively, the "Surface Water Coalition," "Coalition" or "SWC"), by and through their undersigned attorneys of record, and move the Hearing Officer for an order granting intervention into the above-captioned proceedings. This motion is filed pursuant to Department Rules of Procedure 350 to 354 (IDAPA 37.01.01).

The Coalition seeks to intervene in these proceedings for the limited purpose of addressing the application of the Eastern Snake Plain Aquifer Model 2.0 ("ESPAM 2.0").

## INTRODUCTION

For several years, the Idaho Department of Water Resources (“IDWR” or “Department”) has worked to prepare ESPAM 2.0. Presently, the Department is holding public meetings and accepting comments on the new model, with anticipated roll-out later this year (2012).

On December 13, 2011, Rangen, Inc. filed a *Petition for Delivery Call* with the Department, seeking priority administration of its senior surface water rights. During a status conference held on May 22, 2012, the parties discussed the need for review of ESPAM 2.0 prior to any hearing and recognized that aspects of ESPAM 2.0, including the application of any “trim line” to limit the scope of administration, would be at issue in these proceedings. The parties further represented that their expert reports, due on October 3, 2012, would likely discuss the application of ESPAM 2.0 to conjunctive administration, including the extent of any “trim line” that may be applied to the modeling results.

Since 2005, the Coalition has been working through its own delivery call. Although the Director applied the prior version of the model in that call, any future conjunctive administration of Coalition water rights will utilize ESPAM 2.0.

Since any decision regarding the application of ESPAM 2.0 in these proceedings will likely become precedent for future administrative proceedings throughout the Snake River Plain, the Coalition has an interest that warrants intervention.

Accordingly, the Coalition seeks leave to intervene in these proceedings for the limited purpose of addressing the application of ESPAM 2.0 in conjunctive administration.

## ARGUMENT

Department Rules of Procedure 350 to 354 govern intervention in administrative proceedings. The Rules establish the following elements for intervention. In particular, the Petition must:

- State the name and address of the proposed intervenor (Rule 351);
- State the “direct and substantial interest of the potential intervenor” (Rule 351);
- Be timely, including that the Petition be filed within 14 days of the hearing or the prehearing conference (Rule 352); and
- Not “unduly broaden the issue” (Rule 343).

As discussed below, the Coalition meets this standard and intervention should be granted.

**I. Name and Address of the Proposed Intervenors.**

The members of the Coalition are: A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company. Any communications with the Coalition should be conducted through their respective counsel, identified above.

**II. The Coalition has a “Direct and Substantial Interest” in the Application of ESPAM 2.0 in Conjunctive Administration.**

The Director, who is acting as Hearing Officer in these proceedings, is well aware of the Coalition Call proceedings that have been ongoing since 2005. In those proceedings, the Director applied the prior version of the model to determine the material injury to the Coalition’s senior surface water rights and the scope of administration of junior ground water rights determined to be contributing to that material injury.

Presently, the Director utilizes a methodology to determine material injury to the Coalition’s senior water rights. *See Amended Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (June

10, 2010). The Director continues to apply the model to determine the scope of any curtailment required when material injury is determined.

ESPAM 2.0 will replace all prior versions of the model and future conjunctive administration involving the Coalition's senior water rights will involve ESPAM 2.0. Accordingly, the Coalition has a "direct and substantial" interest in the use of the model.

The Rangen Call proceedings will address the application of ESPAM 2.0 in conjunctive administration. In fact, the hearing on the Rangen Call has been delayed until February, 2013 in order to give the Department sufficient time to release ESPAM 2.0 and for the parties to consider and address its potential application. The Director's final decision as to the application of ESPAM 2.0 in the Rangen Call will establish a precedent for future administrative proceedings – including any proceedings involving the Coalition and its senior water rights.

In the Coalition Call proceedings, significant time and expense was spent addressing the prior versions of the model. For example, a significant amount of time was spent discussing the application of a "trim line" to the results of the model, including the extent of any applicable "trim line" – i.e. should it be 10% or higher.

Similar disputes will likely arise over the application of ESPAM 2.0 in future administration. In fact, during a recent status conference the parties openly recognized that the "trim line" will be an issue that will be discussed during the Rangen Call proceedings. Given that any decision as to the application of ESPAM 2.0 in the Rangen Call will have an impact on its application in future administrative proceedings, the Coalition should be permitted to intervene for the limited purpose of addressing the application of ESPAM 2.0 in conjunctive administration.

**III. The Coalition’s Petition is Timely.**

The Department’s Rules of Procedure require the Petition to Intervene be filed no later than 14 days before the hearing or pre-hearing conference, whichever is first. Rule 352. According to the June 12, 2012 *Scheduling Order*, the hearing in this matter is not set to begin until January 28, 2013. Pursuant to the June 25, 2012 *Order Rescheduling Pre-Hearing Conference*, the pre-hearing conference is scheduled for August 14, 2012. Since both of these dates are more than 14-days away, this Petition is timely.

Furthermore, granting this Petition will not cause any delay to the ongoing proceedings. The Coalition is aware of the June 12, 2012 *Scheduling Order* and will abide by its deadlines – including the October 3, 2012 deadline for submitting an opening expert report.

**IV. Intervention Will Not Unduly Broaden the Issues.**

Finally, the Coalition’s involvement in these proceedings will not broaden the issues. To the contrary, the Coalition seeks intervention to address an issue that the Hearing Officer and parties recognize is already pending in these proceedings – namely, the application of ESPAM 2.0 in conjunctive administration.

**CONCLUSION**

The Coalition has a direct and substantial interest in the application of ESPAM 2.0 in future administrative proceedings. As such, since the motion is timely and the Coalition will not broaden the issues before the Hearing Officer, the Coalition should be permitted to intervene in these proceedings.

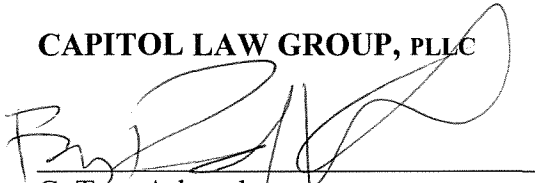
///

///

///

DATED THIS 19<sup>th</sup> day of July, 2012.

**CAPITOL LAW GROUP, PLLC**

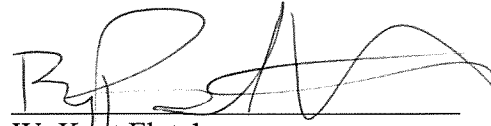


---

C. Tom Arkoosh

*Attorneys for American Falls Reservoir  
District #2*

**FLETCHER LAW OFFICE**

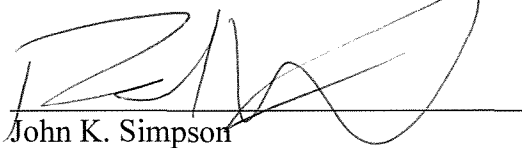


---

W. Kent Fletcher

*Attorneys for Minidoka Irrigation District*

**BARKER ROSHOLT & SIMPSON LLP**



---

John K. Simpson

Travis L. Thompson

Paul L. Arrington

*Attorneys for A&B Irrigation District, Burley  
Irrigation District, Milner Irrigation District,  
North Side Canal Company, Twin Falls Canal  
Company*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 19<sup>th</sup> day of July, 2012, the above and foregoing document was served on the following via email and first class mail, postage prepaid:

Gary Spackman, Director  
Idaho Department of Water Resources  
322 E. Front Street  
Boise, ID 83720-0098

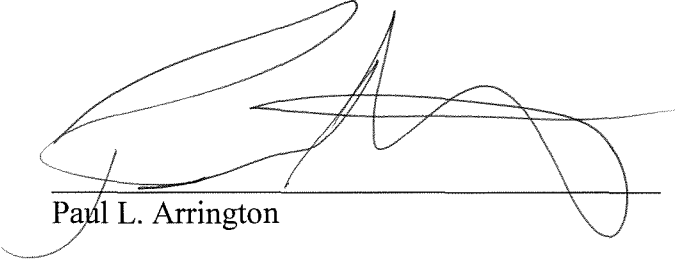
J. Justin May  
MAY BROWNING  
1419 W. Washington  
Boise, ID 83702  
jmay@maybrowning.com

Robyn Brody  
BRODY LAW OFFICE  
P.O. Box 554  
Rupert, ID 83350  
rbrody@cableone.net  
robynbrody@hotmail.com

Fritz Haemmerle  
HAEMMERLE HAEMMERLE  
P.O. Box 1800  
Hailey, ID 83333  
fxh@haemlaw.com

Randy Budge  
Candice McHugh  
RACINE OLSON  
P.O. Box 1391  
Pocatello, ID 83204-1391  
rcb@racinelaw.net  
cmm@racinelaw.net

Sarah Klahn  
Mitra Pemberton  
WHITE & JANKOWSKI  
511 16<sup>th</sup> St., Suite 500  
Denver, CO 80202  
sarahk@white-jankowski.com  
mitrap@white-jankowski.com



Paul L. Arrington