

Docket No. 42772-2015

IN THE SUPREME COURT FOR THE STATE OF IDAHO

IN THE MATTER OF THE DISTRIBUTION OF WATER TO WATER RIGHT NOS.
36-02551 & 36-07694 (RANGEN, INC.) IDWR DOCKET CM-DC-2011-004

RANGEN, INC.,
Petitioner-Appellant on Appeal

v.

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

and

IDAHO GROUND WATER APPROPRIATORS, INC., FREMONT MADISON IRRIGATION
DISTRICT, A&B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2, MINIDOKA
IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, TWIN FALLS CANAL
COMPANY, and CITY OF POCA TELLO,
Intervenors-Respondents on Appeal.

**INTERVENOR-RESPONDENT ON APPEAL CITY OF POCA TELLO'S
PETITION TO INTERVENE AND BE DESIGNATED A RESPONDENT AND
CERTIFICATION UNDER I.A.R. 32(D) OF UNCONTESTED MOTION**

Appeal from the District Court of the Fifth Judicial District of the State of Idaho,
in and for the County of Twin Falls, Case No. CV-2014-1338
(Consolidated Gooding County Case No. CV-2014-179)

Honorable Eric J. Wildman, Presiding

INTERVENOR-RESPONDENT CITY OF POCA TELLO'S PETITION TO INTERVENE AND BE
DESIGNATED A RESPONDENT AND CERTIFICATION UNDER I.A.R 32(D) OF UNCONTESTED
MOTION

COMES NOW, the City of Pocatello (“City” or “Pocatello”), and petitions this Court for leave to intervene as a Respondent to the appeal in Idaho Supreme Court Docket No. 42772-2015. The grounds in support thereof are found below.

The above captioned case stems from an appeal of a decision entered by the district court in Case No. CV-2014-1338 (Twin Falls). Appeals of this decision were filed by Rangen, Inc. (“Rangen”) (Idaho Supreme Court Docket No. 42772), Pocatello (Idaho Supreme Court Docket No. 42836), and Idaho Ground Water Appropriators (Idaho Supreme Court Docket No. 42775). These dockets were consolidated by this Court for record purposes only, and not for briefing. *Order to Consolidate with Docket Nos. 42772 and 42775*, No. 42836-2015 (filed February 3, 2015).

Idaho Appellate Rule (“I.A.R.”) 17(d) requires that an appellant identify in a notice of appeal “the name of [an] adverse party and that party’s attorney.” In Docket No. 42772, Rangen identified the Idaho Department of Water Resources (“IDWR”) as the only respondent to its appeal. On May 27, 2015 Pocatello filed *Intervenor-Respondent on Appeal City of Pocatello’s Response Brief* in Docket No. 42772 (“Pocatello’s Respondent Brief”). Pocatello was notified on May 28, 2015 that the Clerk of the Court has renumbered this brief so as to be filed in Docket no. 42775, because Pocatello was designated as an intervenor and not a respondent by Rangen.

To facilitate the lodging of its response brief in Case No. 42772, Pocatello requests that the Court designate it a Respondent in Idaho Supreme Court Docket No. 42772 pursuant to I.A.R. 7.1. The Rule states that

INTERVENOR-RESPONDENT ON APPEAL CITY OF POCA TELLO’S PETITION TO INTERVENE AND BE DESIGNATED A RESPONDENT AND CERTIFICATION OF UNCONTESTED MOTION PURSUANT TO I.A.R. 32(D)

[a]ny person or entity who is a real party in interest to an appeal or proceeding governed by these rules or whose interest would be affected by the outcome of an appeal or proceeding under these rules may file a verified petition with the Supreme Court asking for leave to intervene as a party to the appeal or proceeding...

(emphasis added). Pocatello was an adverse party respondent to Rangen in the Rangen Delivery Call, an administrative proceeding before IDWR that was the subject of the administrative appeal (IDWR Docket CM-DC-2011-004) and was a party to the district court proceeding (Case No. CV-2014-1338) as well. The Rangen Delivery Call involved inquiry into alleged injury that Rangen claimed was caused by junior water users, including Pocatello. The result of this appeal will materially affect Pocatello, as Pocatello's water rights may be curtailed and/or its mitigation water requirement increased if Rangen prevails in this appeal. Therefore the City is a real party in interest that would be affected by the outcome of this appeal. *See, e.g. Sec. Pac. Bank of Idaho, F.S.B. v. Curtis*, 123 Idaho 320, 327, 847 P.2d 1181, 1188 (Ct. App. 1993) ("an appellate court will not grant relief to an appellant as against another party who is not properly brought before the court as a respondent.")

I.A.R. 32(D) CERTIFICATE OF UNCONTESTED MOTION

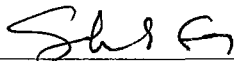
Pursuant to I.A.R. 32(d), the undersigned does hereby certify that she has contacted opposing counsel for Rangen and is authorized to represent that Rangen's counsel has no objection to Intervenor- Respondent Pocatello's **Petition to Intervene and Be Designated a Respondent** in the captioned matter.

INTERVENOR-RESPONDENT ON APPEAL CITY OF POCATELLO'S PETITION TO INTERVENE AND BE DESIGNATED A RESPONDENT AND CERTIFICATION OF UNCONTESTED MOTION PURSUANT TO I.A.R. 32(D)

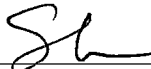
For the foregoing reasons, Pocatello respectfully requests that the Court grant this Petition and allow Pocatello to participate as a respondent in this matter; accept Pocatello's Respondent's Brief in Docket No. 42772; and amend the caption in this case to indicate Pocatello is an Intervenor-Respondent.

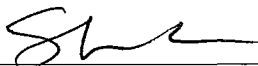
Respectfully submitted this 29th day of May, 2015.

CITY OF POCATELLO ATTORNEY'S OFFICE

By 
A. Dean Tranmer

WHITE & JANKOWSKI, LLP

By 
Sarah A. Klahn

By 
Mitra M. Pemberton

ATTORNEYS FOR CITY OF POCATELLO

INTERVENOR-RESPONDENT ON APPEAL CITY OF POCATELLO'S PETITION TO INTERVENE
AND BE DESIGNATED A RESPONDENT AND CERTIFICATION OF UNCONTESTED MOTION
PURSUANT TO I.A.R. 32(D)

VERIFICATION

STATE OF COLORADO)
) ss
COUNTY OF DENVER)

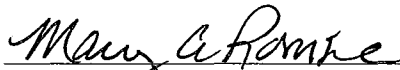
I, Sarah A. Klahn, being first duly sworn upon oath, deposes and states that I am an attorney with White & Jankowski, LLP, in Denver, a member of the Idaho Bar, and counsel of record for Petitioner, City of Pocatello. I have read the contents of the Petition and to the best of my knowledge and belief all of allegations in the Petition are true and derived from public records of the Idaho Supreme Court, District Court, or the Idaho Department of Water Resources or my own personal knowledge.

Dated this 29th day of May, 2015.

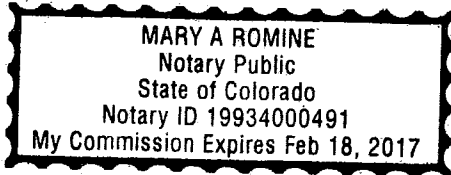


Sarah A. Klahn

SUBSCRIBED AND SWORN to before me this 29 day of May, 2015.



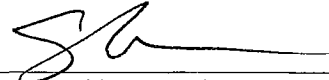
Notary Public in and for the State of Colorado
My Commission Expires: 2/18/12



INTERVENOR-RESPONDENT ON APPEAL CITY OF POCATELLO'S PETITION TO INTERVENE
AND BE DESIGNATED A RESPONDENT AND CERTIFICATION OF UNCONTESTED MOTION
PURSUANT TO I.A.R. 32(D)

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of May, 2015, I caused to be served a true and correct copy of the foregoing **Intervenor-Respondent on Appeal City of Pocatello's Petition to Intervene and be Designated a Respondent in Case No. 42772** (SRBA Case No. CV-2014-1338 (Consolidated Gooding County Case No. CV-2014-179)) upon the following by the method indicated:



Sarah Klahn, White & Jankowski, LLP

Idaho Supreme Court 451 W State St Boise ID 83702 sctbriefs@idcourts.net	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Federal Express (Phone 208-736-2210) <input type="checkbox"/> Facsimile 208-736-2121 <input checked="" type="checkbox"/> Email
SRBA District Court 253 3rd Ave North P.O. Box 2707 Twin Falls ID 83303-2707	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express (Phone 208-736-3011) <input type="checkbox"/> Facsimile 208-736-2121 <input type="checkbox"/> Email
J. Justin May May Browning 1419 W Washington Boise ID 83702 jmay@maybrowning.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile 208-342-7278 <input checked="" type="checkbox"/> Email
Robyn Brody Brody Law Office P.O. Box 554 Rupert ID 83350 robynbrody@hotmail.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile 208-434-2780 <input checked="" type="checkbox"/> Email
Fritz Haemmerle Haemmerle & Haemmerle P.O. Box 1800 Hailey ID 83333 fxh@haemlaw.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile 208-578-0564 <input checked="" type="checkbox"/> Email

INTERVENOR-RESPONDENT ON APPEAL CITY OF POCATELLO'S PETITION TO INTERVENE AND BE DESIGNATED A RESPONDENT AND CERTIFICATION OF UNCONTESTED MOTION PURSUANT TO I.A.R. 32(D)

<p>Randall C. Budge Thomas J. Budge Racine Olson Nye Budge & Bailey 201 E Center St P.O. Box 1391 Pocatello ID 83204-1391 rcb@racinelaw.net tjb@racinelaw.net bjh@racinelaw.net</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile 208-232-6109 <input checked="" type="checkbox"/> Email</p>
<p>Garrick L. Baxter Emmi L. Blades Deputy Attorneys General – IDWR P.O. Box 83720 Boise ID 83720-0098 garrick.baxter@idwr.idaho.gov emmi.blades@idwr.idaho.gov kimi.white@idwr.idaho.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile 208-287-6700 <input checked="" type="checkbox"/> Email</p>
<p>Gary Spackman Director Idaho Department of Water Resources 322 E Front St P.O. Box 83720 Boise ID 83720-0098 deborah.gibson@idwr.idaho.gov</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile 208-287-6700 <input checked="" type="checkbox"/> Email</p>
<p>Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello ID 83201 dtranmer@pocatello.us</p>	<p><input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile 208-234-6297 <input checked="" type="checkbox"/> Email</p>
<p>Jerry Rigby Rigby Andrus & Rigby Law Attorneys at Law 25 North Second East Rexburg ID 83440 jrigby@rex-law.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile 208-356-0768 <input checked="" type="checkbox"/> Email</p>
<p>John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson 195 River Vista Place Ste 204 Twin Falls ID 83301-3029 jks@idahowaters.com tlt@idahowaters.com pla@idahowaters.com jf@idahowaters.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile 208-735-2444 <input checked="" type="checkbox"/> Email</p>

INTERVENOR-RESPONDENT ON APPEAL CITY OF POCA TELLO'S PETITION TO INTERVENE AND BE DESIGNATED A RESPONDENT AND CERTIFICATION OF UNCONTESTED MOTION PURSUANT TO I.A.R. 32(D)

W. Kent Fletcher Fletcher Law Office PO Box 248 Burley, ID 83318 wkf@pmt.org	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Federal Express <input type="checkbox"/> Facsimile 208-878-2548 <input checked="" type="checkbox"/> Email
--	---

INTERVENOR-RESPONDENT ON APPEAL CITY OF POCA TELLO'S PETITION TO INTERVENE
AND BE DESIGNATED A RESPONDENT AND CERTIFICATION OF UNCONTESTED MOTION
PURSUANT TO I.A.R. 32(D)