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DEPARTMENT OF
WATER RESOURCES

Randall C. Budge, ISB #1949
Candice M. McHugh, ISB #5908
Thomas J. Budge, ISB #7465
RACINE OLSON NYE
BUDGE & BAILEY, CHARTERED
101 S. Capitol Blvd., Suite 300
Boise, Idaho 83702
Telephone: (208) 395-0011
rcb@racinelaw.net
cmm@racinelaw.net
tjb@racinelaw.net

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

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

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS. 36-
02551 & 36-07694

(RANGEN, INC.)

Docket No. CM-DC-2011-004

**IGWA'S OPPOSITION TO SWC'S
PETITION TO INTERVENE**

Idaho Ground Water Appropriators, Inc., ("IGWA"), acting for and on behalf of its members, through its attorneys, respectfully submits this memorandum pursuant to Procedure Rule 354 opposing the Surface Water Coalition's ("SWC") *Petition for Limited Intervention* ("Petition") filed July 19, 2012. The Petition should be denied for the reasons that follow.

The Rules of Procedure of the Idaho Department of Water Resources ("Department") allow a party to intervene only if the petitioner "shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties." (Procedure Rule 353.)

Idaho Ground Water Appropriator's, Inc. ("IGWA") is an intervening party in this proceeding pursuant to the *Order Granting IGWA's Petition to Intervene* issued by Director Gary Spackman on January 13, 2012. That Order finds that IGWA has a direct and substantial interest in the subject matter of this proceeding because its members own water rights that are hydraulically connected to the source of Rangen's water rights, and in many instances junior in priority to Rangen's water rights. The Order further finds that IGWA's participation will not unduly

broaden the issues and that IGWA's interest is not adequately represented by existing parties.

In contrast, the Director denied a petition to intervene filed by Idaho Power in the SWC delivery call case because it did not "identify in its petition any water rights it holds that are the subject of this proceeding" and did not "state in its petition that it holds ground water rights that are potentially subject to the actions and relief requested." *Order on Petitions to Intervene, and Denying Motion for Summary Judgment; Renewed Request for Information* at 2 (April 6, 2005.) The Director also noted that Idaho Power had "other forms of relief available, such as the filing of a separate delivery call." *Id.*

The SWC Petition seeks intervention to address the application of the Eastern Snake Plain Aquifer Model 2.0 ("ESPAM 2.0") to its water rights in future administrative proceedings. This proceeding is not about the future application of ESPAM 2.0, nor is it about the SWC's water rights. It involves specifically the application of ESPAM 2.0 to the springs that supply Rangen's water rights, and junior-priority water rights that may be subject to curtailment if material injury is found to the Rangen's water rights. The SWC's water rights are not diverted from the springs that supply Rangen's water rights, and they are not at risk of curtailment in response to Rangen's delivery call. While the SWC may have some generalized interest in ESPAM 2.0, it does not have a direct and substantial interest as required by Procedure Rule 354.

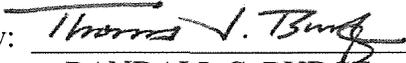
If the SWC is allowed to intervene in this delivery call, the issues will be unduly broadened. The SWC admits in its Petition that it is working through its own delivery call and has been since 2005. The proper place for the SWC to raise its own issues is in the context of its delivery call where it has a direct and substantial interest, not in this contested case. Like Idaho Power in the SWC delivery call case, the SWC has other forms of relief available to contest the application of ESPAM 2.0 to its water rights.

Finally, the interests of the SWC pertaining to the application of ESPAM 2.0 are adequately represented by existing parties. Rangen has hired its own experts to prepare reports and testify regarding the application of ESPAM 2.0, and the Director can reasonably determine the potential application of ESPAM 2.0 to future administrative proceedings to the extent that is relevant to the Director's decision. This delivery call should not turn into a state-wide referendum on ESPAM 2.0 for which any person with a water right that is hydraulically connected to the ESPA is allowed to participate.

For these reasons, the SWC should not be permitted to intervene in this proceeding.

DATED this 26th day of July, 2012.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 

RANDALL C. BUDGE
CANDICE M. McHUGH
THOMAS J. BUDGE
Attorneys for IGWA

CERTIFICATE OF MAILING

I hereby certify that on this 26th day of July, 2012, **IGWA's Opposition to the SWC's Petition to Intervene** was served upon the following persons in the manner(s) indicated.

Becky Harway
Signature of person mailing form

Original:

Interim Director, Gary Spackman
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098
Deborah.Gibson@idwr.idaho.gov

- U.S. Mail/Postage Prepaid
- Facsimile
- Overnight Mail
- Hand Delivery
- E-mail

Copies:

Garrick Baxter
Chris Bromley
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
garrick.baxter@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

- U.S. Mail/Postage Prepaid
- Facsimile
- Overnight Mail
- Hand Delivery
- E-mail

Robyn M. Brody
Brody Law Office, PLLC
PO Box 554
Rupert, ID 83350
rbrody@cableone.net
robynbrody@hotmail.com

- U.S. Mail/Postage Prepaid
- Facsimile
- Overnight Mail
- Hand Delivery
- E-mail

Fritz X. Haemmerle
Haemmerle & Haemmerle, PLLC
PO Box 1800
Hailey, ID 83333
fxh@haemlaw.com

- U.S. Mail/Postage Prepaid
- Facsimile
- Overnight Mail
- Hand Delivery
- E-mail

J. Justin May
May, Browning & May, PLLC
1419 West Washington
Boise, ID 83702
jmay@maybrowning.com

- U.S. Mail/Postage Prepaid
- Facsimile
- Overnight Mail
- Hand Delivery
- E-mail

Sarah Klahn
Mitra Pemberton
WHITE JANKOWSKI, LLP
511 16th St., Suite 500
Denver, Colorado 80202
sarahk@white-jankowski.com
mitrap@white-jankowski.com

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

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AMENDED CERTIFICATE OF MAILING

I hereby certify that on this 26th day of July, 2012, IGWA'S OPPOSITION TO SWC'S PETITION TO INTERVENE, was served by U.S. Mail postage prepaid to the following:

Becky Hawley
Signature of person mailing form

Original:

Director, Gary Spackman
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098
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E-mail

Garrick Baxter
Chris Bromley
Idaho Department of Water Resources
P.O. Box 83720
Boise, Idaho 83720-0098
garrick.baxter@idwr.idaho.gov
chris.bromley@idwr.idaho.gov

- U.S. Mail/Postage Prepaid
Facsimile
Overnight Mail
Hand Delivery
E-mail

Robyn M. Brody
Brody Law Office, PLLC
PO Box 554
Rupert, ID 83350
rbrody@cableone.net
robynbrody@hotmail.com

- U.S. Mail/Postage Prepaid
Facsimile
Overnight Mail
Hand Delivery
E-mail

Fritz X. Haemmerle
Haemmerle & Haemmerle, PLLC
PO Box 1800
Hailey, ID 83333
fxh@haemlaw.com

- U.S. Mail/Postage Prepaid
Facsimile
Overnight Mail
Hand Delivery
E-mail

J. Justin May
May, Browning & May, PLLC
1419 West Washington
Boise, ID 83702
jmay@maybrowning.com

- U.S. Mail/Postage Prepaid
Facsimile
Overnight Mail
Hand Delivery
E-mail

Sarah Klahn
Mitra Pemberton
WHITE JANKOWSKI, LLP
511 16th St., Suite 500
Denver, Colorado 80202
sarahk@white-jankowski.com
mitrap@white-jankowski.com

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

C. Thomas Arkoosh
Capitol Law Group
PO Box 32
Gooding, ID 83330
tarkoosh@capitolawgroup.com

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

John K. Simpson
Travis L. Thompson
Paul L. Arrington
Barker Rosholt & Simpson
195 River Vista Place, Suite 204
Twin Falls, ID 83301-3029
tlt@idahowaters.com
jks@idahowaters.com
pla@idahowaters.com

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

W. Kent Fletcher
Fletcher Law Office
PO Box 248
Burley, ID 83318
wkf@pmt.org

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