

ARGUMENT

On February 27, 2013 IDWR staff filed its Staff Memorandum which summarized and responded to the expert reports in this case. The parties were required to file their responses to the Staff Memorandum by April 5, 2013. Fifth Amended Scheduling Order, Mar. 20, 2013. Instead, on April 5, 2013 Rangen filed a “Notice of No Written Response to Staff Memorandum.” Given the presence of the qualifier “written” in Rangen’s notice, City of Pocatello is concerned that Rangen’s failure to file a response to the Staff Memorandum could be an attempt to put on live testimony at the hearing regarding IDWR’s Staff Memorandum. Pocatello requests that the Director exclude such testimony for the reasons described below.

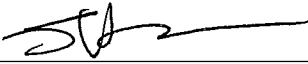
If Rangen were to present new evidence in response to the Staff Memorandum at trial, Pocatello, and other junior water users in this matter would be unfairly prejudiced. Granting this Motion will not result in prejudice to Rangen because it had an opportunity to file a report responding to the Staff Memorandum, yet chose not to. However, if Rangen were allowed to put on responsive evidence regarding the Staff Memorandum, Pocatello and other juniors will almost certainly be prejudiced by an inability to adequately defend against such evidence. The Director should use his broad discretion to prevent this potential prejudice from occurring. *Puckett v. Verska*, 144 Idaho 161, 167, 158 P.3d 937, 943 (2007) (“Trial courts have broad discretion when ruling on a motion in limine”); *see also Perry v. Magic Valley Reg’l Med. Ctr.*, 134 Idaho 46, 52–53, 995 P.2d 816, 822–23 (2000) (upholding trial court’s exclusion of “ambush” evidence not disclosed prior to trial).

PRAYER FOR RELIEF

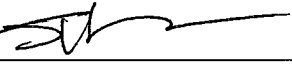
For the foregoing reasons, Pocatello respectfully requests that the Director enter an Order prohibiting Rangen from putting on any new testimony or evidence which responds to the IDWR Staff Memorandum at the hearing in this matter.

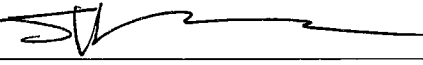
Respectfully submitted this 25th day of April, 2013.

CITY OF POCATELLO ATTORNEY'S OFFICE

By  *for*
A. Dean Tranmer

WHITE & JANKOWSKI

By  *for*
Sarah A. Klahn

By 
J. Ryland Hutchins

ATTORNEYS FOR CITY OF POCATELLO

CERTIFICATE OF SERVICE

I hereby certify that on this 25TH day of April, 2013, I caused to be served a true and correct copy of the foregoing **City of Pocatello's Motion in Limine to Preclude Rangen, Inc. from Offering Testimony or Evidence in Response to the IDWR Staff Memorandum for Docket No. CM-DC-2011-004** upon the following by the method indicated:


 Sarah Klahn, White & Jankowski, LLP

Gary Spackman, Director State of Idaho, Dept of Water Resources 322 E Front St PO Box 83720 Boise ID 83720-0098 deborah.gibson@idwr.idaho.gov	<input checked="" type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail – Federal Express <input type="checkbox"/> Facsimile – 208-287-6700 = Phone -- 208-287-4803 <input checked="" 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"/> Overnight Mail <input type="checkbox"/> Facsimile – 208-342-7278 <input checked="" type="checkbox"/> Email
Robyn Brody Brody Law Office PO Box 554 Rupert ID 83350 robynbrody@hotmail.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile - 208-434-2780 = Phone 208-434-2778 <input checked="" type="checkbox"/> Email
Fritz Haemmerle Haemmerle Haemmerle PO Box 1800 Hailey ID 83333 fxh@haemlaw.com	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile – 208-578-0564 <input checked="" type="checkbox"/> Email
Garrick L. Baxter Chris M. Bromley Deputy Attorneys General – IDWR PO Box 83720 Boise ID 83720-0098 garrick.baxter@idwr.idaho.gov chris.bromley@idwr.idaho.gov kimi.white@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile - 208-287-6700 <input checked="" type="checkbox"/> Email
Randall C. Budge Candice M. McHugh Racine Olson Nye Budge & Bailey 101 S Capitol Blvd Ste 300 Boise ID 83702 rcb@racinelaw.net cmm@racinelaw.net bjh@racinelaw.net	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile – 208-433-0167 <input checked="" type="checkbox"/> Email
Dean Tranmer City of Pocatello PO Box 4169 Pocatello ID 83201 dtranmer@pocatello.us	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile – 208-234-6297 <input checked="" type="checkbox"/> Email

<p>C. Thomas Arkoosh Arkoosh Law Offices PO Box 2900 Boise ID 83701 tom.arkoosh@arkoosh.com erin.cecil@arkoosh.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-343-5456 <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 tlt@idahowaters.com jks@idahowaters.com pla@idahowaters.com jlf@idahowaters.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-735-2444 <input checked="" type="checkbox"/> Email</p>
<p>W. Kent Fletcher Fletcher Law Office PO Box 248 Burley, ID 83318 wkf@pmt.org</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-878-2548 <input checked="" type="checkbox"/> Email</p>
<p>Jerry R. Rigby Hyrum Erickson Robert H Wood Rigby Andrus & Rigby PO Box 250 Rexburg ID 83440-0250 jrigby@rex-law.com herickson@rex-law.com rwood@rex-law.com</p>	<p><input type="checkbox"/> U.S. Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile 208-356-0768 <input checked="" type="checkbox"/> Email</p>