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DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION
FOR DELIVERY CALL OF RANGEN,
INC.'S WATER RIGHT NOS. 36-02551
& 36-07694

Docket No. CM-DC-2011-004

**RANGEN, INC.'S MEMORANDUM
IN OPPOSITION TO IGWA'S
PETITION FOR
RECONSIDERATION**

Rangen, Inc. ("Rangen"), by and through its attorneys, submits the following Memorandum in Opposition to IGWA's Petition for Reconsideration.

I. INTRODUCTION

IGWA has filed a Petition for Reconsideration asking that the Director: (1) delay curtailment until the Director rules on IGWA's Mitigation Plan; (2) apply the same 10% trimline that was used in connection with ESPAM1.1; and (3) phase-in the number of acres subject to curtailment. On February 21, 2014, the Director entered an order staying the curtailment order so the first part

of IGWA's Petition for Reconsideration is moot. Rangen responds as follows to the remaining two parts of IGWA's Petition.

II. ARGUMENT

A. **The Ten Percent Trimline Should Not Be Applied with ESPAM2.1.**

In its post-hearing briefing, Rangen set forth in detail why the ten percent trimline applied with ESPAM1.1 should not be when using ESPAM2.1 to evaluate a delivery call. Rangen will not repeat those arguments here, but instead, incorporates them by reference. Rangen also joins the Surface Water Coalition in the arguments set forth in its Response to IGWA's Petition for Reconsideration.

B. **The Director's Mitigation Order Appears to Track the Accrual of Water to the Martin-Curren Tunnel over the Five-Year Phase-in Period Allowed by the Conjunctive Management Rules.**

IGWA contends that the Director should amend his Final Order to phase-in the number of acres affected by the curtailment order each year. There is nothing in CM Rule 20, the Rule cited by IGWA, that requires the Director to phase-in the number of acres subject to curtailment over a five-year period. The fact that this was done in prior delivery calls does not mean that it must be done the same way in this case.

Although the basis for the Director's five-year phase-in is not clear in the Final Order and Rangen has requested clarification, the graph on page 9 of IGWA's Petition for Reconsideration, **if it is correct**¹, demonstrates that the Director's mitigation order tracks the accrual of water to the Martin-Curren Tunnel when junior-priority groundwater pumping is curtailed. IGWA states on p. 9 of its Petition that "[t]he Order presently requires juniors to deliver 9.1 cfs in mitigation to avoid curtailment, even though ESPAM2.1 predicts that Rangen will receive less than 7 cfs

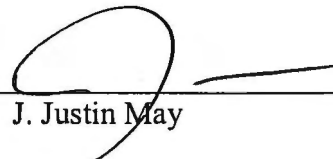
¹ Rangen has not yet verified whether IGWA's graph is accurate.

under full curtailment.” This statement is inaccurate. ESPAM2.1 predicts, and IGWA’s graph demonstrates, that Rangen will receive 9.1 cfs in the Martin-Curren Tunnel if junior-priority groundwater pumping is curtailed. IGWA’s graph also shows that there is an immediate and direct benefit of curtailment in the first year – nearly 4.0 cfs of water will return to the Martin-Curren Tunnel. This is the amount of water that the Director has determined the junior ground water pumpers must supply during the first year to avoid curtailment. The mitigation obligation appears to increase each year by the same amount of water that is expected to accrue. The Director has not required junior-priority groundwater pumpers to supply Rangen with 9.1 cfs of water or be subject to curtailment. He has tailored the mitigation obligation to match how water is expected accrue to the Martin-Curren Tunnel. This gives the groundwater pumpers time to develop mitigation plans to address the shortage of water and is consistent with CM Rule 40.01.a.

DATED this 26 day of February, 2014.

MAY, BROWNING & MAY, PLLC

By: _____

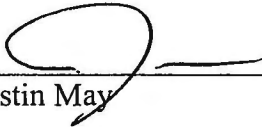

J. Justin May

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 26 day of February, 2014, he caused a true and correct copy of the foregoing document to be served upon the following as indicated:

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