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DEPARTMENT OF
WATER RESOURCES

Attorneys for Rangen, Inc.

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

IN THE MATTER OF THE MITIGATION
PLAN FILED BY THE IDAHO GROUND
WATER APPROPRIATORS FOR THE
DISTRIBUTION OF WATER TO
WATER RIGHT NOS. 36-02551 & 36-
07694 IN THE NAME OF RANGEN,
INC.

Docket No. CM-MP-2014-001

**RANGEN, INC.'S RESPONSE TO
IGWA'S PETITION FOR
RECONSIDERATION AND
CLARIFICATION**

COMES NOW, Rangen, Inc. ("Rangen"), by and through its attorneys, and hereby submits the following response to *IGWA's Petition for Reconsideration and Clarification* filed with the Idaho Department of Water Resources on April 25, 2014 ("Petition") of the *Order*

Approving in Part and Rejecting in Part IGWA's Mitigation Plan issued April 11, 2014 (“Mitigation Plan Order”), by the Director.

A. IGWA Mischaracterizes both the Curtailment Order and Rangen's position regarding steady state credits.

IGWA's Petition for Reconsideration indicates that the “Curtailment Order states that the mitigation credit for recharge, conversions, and dry-ups would be calculated on a steady-state basis . . .” *IGWA's Petition for Reconsideration and Clarification*, p. 2. This mischaracterizes the Curtailment Order. The Curtailment Order provides two distinct alternative means for evaluating the sufficiency of mitigation: 1) “simulated steady state benefits of 9.1 cfs to [the] Curren Tunnel”, or 2) “direct flow of 9.1 cfs to Rangen.” (Exhibit 2042 p.42). Mitigation activities such as recharge, conversion, and dry-ups can provide credit against either or both of these alternatives. The long-term effects of continuing recharge, conversions, and dry-ups can be evaluated on a steady state basis to provide credit against the steady state alternative. The direct flow benefit of past recharge, conversions, and dry-ups can also be evaluated, but must be evaluated using something other than a steady state simulation. Rangen proposed the use of ESPAM 2.1 in transient mode for this type of calculation. (Exhibit 2071). The Director performed a similar analysis. The recharge, conversions, and dry-ups IGWA proposes do not meet either the steady state or direct flow mitigation obligation in the Curtailment Order.

IGWA's Petition for Reconsideration also indicates that “both IGWA and Rangen agreed with the calculation on a steady-state basis . . .” *IGWA's Petition for Reconsideration and Clarification*, p. 2. This is a simplification and mischaracterization of Rangen's position regarding credits against the steady state alternative. Rangen did not take issue with the calculations performed by Jennifer Sukow utilizing ESPAM 2.1. However, Ms. Sukow's analysis assumes that the modeled activities continue indefinitely. Rangen's position remains that “IGWA should only receive steady state credit for activities that will continue while any order approving a mitigation plan remains in place. The specific activities for which IGWA is given credit should be identified in the order and the order should provide that the activities


continue.” *Rangen Inc.’s Closing Brief RE: Mitigation Plan*, p. 3. As noted above, a steady state simulation is only appropriate for calculating credits related to the steady state alternative specified in the Curtailment Order. Rangen has never taken the position that a steady state simulation is appropriate for evaluating the direct flow benefit from past mitigation activities.

CONCLUSION

For the reasons stated in Rangen’s closing briefing in this matter, Rangen respectfully requests that *IGWA’ Petition for Reconsideration* be denied.

DATED this 9th day of May, 2014.

MAY, BROWNING & MAY

By  _____
J. Justin May

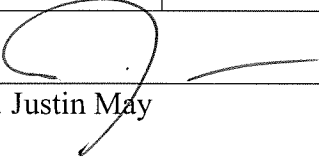
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 9th day of May, 2014 he caused a true and correct copy of the foregoing document to be served by email and first class U.S. Mail, postage prepaid upon the following:

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