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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Rangen, Inc.

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

IN THE MATTER OF THE COALITION OF
CITIES MITIGATION PLAN FOR MANAGED
RECHARGE AND OTHER AQUIFER
ENHANCEMENT ACTIVITIES FOR THE
DISTRIBUTION OF WATER TO WATER
RIGHT NOS. 36-2551 AND 36-7694 HELD
BY RANGEN INC.

Docket No. CM-MP-2014-004

**RANGEN, INC.'S PROTEST TO
COALITION OF CITIES
MITIGATION PLAN**

COMES NOW, Rangen, Inc. and protests the Coalition of Cities CM Rule 43 Mitigation Plan for Managed Recharge and Other Aquifer Enhancement Activities filed with the Idaho Department of Water Resources on April 25, 2014 ("Cities Mitigation Plan") pursuant to the

provisions of Rule 43 of the Conjunctive Management Rules, Rule 250 of the Rules of Procedure of the Idaho Department of Water Resources and other applicable law.

Rangen has the right to oppose the Cities Mitigation Plan. The Cities Mitigation Plan proposes that two members of the Coalition of Cities continue junior-priority ground water pumping despite the Director's order that such junior ground water pumping causes material injury to Rangen's water rights.

The initial bases for Rangen's Protest are as follows:

1. The Cities Mitigation Plan does not contain the information necessary for the Director to evaluate the factors set forth in Rule 43.03 of the Conjunctive Management Rules.

2. The Cities Mitigation Plan contains two proposals: 1) limiting pumping to water rights senior to July 1, 1983, and 2) recharge at the Sandy Ponds during 2014.

3. The first of the Cities' two proposals is to limit pumping to water rights senior to July 1, 1983, the priority date specified in the April 11, 2014 *Order Approving in Part and Rejecting in Part IGWA's Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order* ("April Curtailment Order"). It appears from the Cities Mitigation Plan that only two of the cities utilize water rights with priority dates junior to July 1, 1983. According to the plan, "city members have historically stayed within the volumes of their senior water rights and will only divert volumes authorized under water rights that are senior to July 1, 1983 for the annual period from April 1, 2014 through March 31, 2015." *Cities Mitigation Plan*, p. 6. Rangen understands from the Cities Mitigation Plan that no changes are needed to the Cities' water rights that are senior to 1983 and that those water rights are sufficient for the Cities' needs. Essentially the Cities propose that they will comply with the April Curtailment Order by not pumping water under water rights junior to July 1, 1983. This is not a mitigation plan, but

Rangen does not oppose the Cities Mitigation Plan to the extent that it simply provides that the Cities will comply with the April Curtailment Order.¹

4. The Cities' second proposal is recharge. The only cities that propose to continue out-of-priority diversions are Heyburn and Richfield. Thus, the Cities' second proposal to provide aquifer recharge is limited to mitigation of the impact from Heyburn and Richfield's out-of-priority diversions. There are several issues with the Cities' second proposal:

- a. The Cities Mitigation Plan only proposes to provide mitigation in 2014.
- b. The Cities Mitigation Plan does not propose any mitigation outside of the irrigation season.
- c. The Cities Mitigation Plan proposes to provide recharge water in the Sandy Ponds. The Sandy Ponds are not a designated and approved recharge site for providing mitigation to Rangen's water rights.
- d. The Cities Mitigation Plan does not make any attempt to determine the actual impact of Heyburn and Richfield's out-of-priority diversions. That impact is not merely a portion of one year of the direct flow obligation set out in the April Curtailment Order, which is all that the Cities have attempted to determine. It appears that this impact may not have been included by the Department in calculating the impact of junior ground water pumping on Rangen's water rights. That impact will need to be calculated before the Cities Mitigation Plan can be evaluated.

¹ Rangen does not waive the right to petition for review, or otherwise challenge, the April Curtailment Order. Similarly, Rangen has already filed a petition for review of the Director's January Curtailment Order and is not waiving any arguments that may be raised in that proceeding. However, until further modified by the Director or overturned following a petition for review, Rangen acknowledges that the Cities Mitigation Plan must be evaluated based upon the January Curtailment Order as modified by April Curtailment Order.

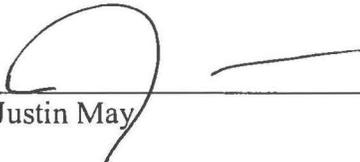
Consequently, the Cities Mitigation Plan does not provide sufficient information to evaluate whether it will provide replacement water, at the time and place required by Rangen's senior priority water rights, sufficient to offset the depletive effect of junior-priority ground water withdrawals by Heyburn and Richfield.

5. Rangen further objects to the Cities Mitigation Plan for such other and further reasons as may be discovered or offered at the hearing on this matter.

DATED this 27th day of May, 2014.

MAY, BROWNING & MAY

By

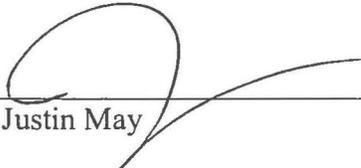


J. Justin May

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 27th day of May, 2014 he caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

<p>Original:</p> <p>Director Gary Spackman IDAHO DEPARTMENT OF WATER RESOURCES P.O. Box 83720 Boise, ID 83720-0098 deborah.gibson@idwr.idaho.gov</p>	<p>Hand Delivery <input checked="" type="checkbox"/></p> <p>U.S. Mail <input type="checkbox"/></p> <p>Facsimile <input type="checkbox"/></p> <p>Federal Express <input type="checkbox"/></p> <p>E-Mail <input checked="" type="checkbox"/></p>
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