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OCT 01 2014
DEPARTMENT OF
WATER RESOURCES

Attorneys for Rangen, Inc.

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

IN THE MATTER OF THE FOURTH
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-2014-006

**RANGEN, INC'S MOTION IN
LIMINE TO EXCLUDE EVIDENCE
OF IGWA'S UNFILED FIFTH
MITIGATION PLAN**

“MAGIC SPRINGS PROJECT”

Rangen, Inc. (“Rangen”), by and through its attorneys, hereby moves Director Spackman to enter an Order limiting the scope of the hearing to be conducted on October 8-9, 2014 by precluding IGWA from introducing evidence or eliciting testimony from witnesses concerning a temporary pipeline to provide .50 cfs to Rangen beginning January 19, 2015. As grounds, Rangen states the following:

1. IGWA filed its Fourth Mitigation Plan and Request for Expedited Hearing on

August 27, 2014.

2. The hearing is scheduled to take place on October 8-9, 2014.
3. IGWA did not provide complete plans for the Fourth Mitigation Plan when it was filed.
4. On September 26, 2014, less than two weeks before the hearing, IGWA provided Rangen with a “60% Magic Springs Project Report for the Fourth Mitigation Plan.” (“Updated Magic Springs Report”).
5. The Updated Magic Springs Report contains not only updated drawings and information related to the plan to deliver 10 cfs of water via pipeline from Magic Springs to Rangen’s Research Hatchery which was proposed in the Fourth Mitigation Plan, but it also contains an entirely new proposal to provide Rangen with .50 cfs of water as mitigation for unspecified municipal, commercial and industrial groundwater users. IGWA proposes to deliver the .50 cfs through a temporary above ground pipeline beginning January 19, 2015.
6. IGWA understands that a mitigation plan has to be filed in accordance with CM Rule 43 and that notice of the plan and the opportunity to be heard have to be given to the public. IGWA’s Fourth Mitigation Plan contains no mention of the plan to deliver .50 cfs of mitigation water to Rangen through a temporary above ground pipeline. No such plan has been published and the public has not been given the opportunity to object.
7. IGWA has used an updated engineering report for its Fourth Mitigation Plan to sneak in an entirely new Fifth Mitigation Plan. This is improper because it fails to give notice to the public and denies the public the opportunity to be heard.

8. The Updated Magic Springs Report also does not contain the information needed to evaluate IGWA's Fifth Mitigation Plan under CM Rule 43. IGWA has not provided even basic information such as the commercial, industrial and municipal water rights that will be benefitted by the mitigation plan. The information in the Updated Magic Springs Report consists of three short paragraphs and an aerial view of the proposed pipeline alignment. The Updated Magic Springs Report does not, among other things, provide:

- a. Details pertaining to the design of the pump station to be used.
- b. Details pertaining to the size and type of pipe that will be used.
- c. Definitive plans pertaining to the pipeline alignment and the easements and rights of way necessary to accommodate the pipeline.
- d. Information pertaining to anticipated water temperature and quality once the water reaches the Rangen Hatchery.
- e. Plans to keep the water supply safe and secure especially given the fact that IGWA intends to run the pipeline above ground.
- f. Plans to provide backup power and pumping capacity in the event of an electrical failure.
- g. Plans to provide insurance or bonding in the event of a pipe failure to guard against personal injuries and property damage, including damage to Rangen's fish and facilities.
- h. Details pertaining to how the pipeline will be tied into Rangen's existing box.
- i. Contingency provisions to assure protection of Rangen in the event the

proposed mitigation water becomes unavailable. This is particularly problematic where an aboveground pipeline is proposed.

The list of defects set forth above is not intended to be exhaustive.

9. IGWA's Fifth Mitigation Plan also will not supply Rangen with mitigation water at a time and place sufficient to offset the depletive effect of groundwater withdrawal. Rangen will be filing a separate Motion to Enforce Curtailment Order addressing this issue.

WHEREFORE, Rangen respectfully requests that Director Spackman enter an Order precluding IGWA from eliciting testimony from witnesses or otherwise presenting any evidence concerning the construction of a temporary pipeline to deliver .50 cfs of mitigation water to Rangen.

DATED this 1 day of October, 2014.

MAY, BROWNING & MAY, PLLC

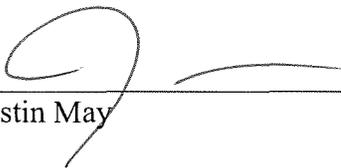
By: 

J. Justin May

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 1 day of October, 2014, I caused a true and correct copy of the foregoing document to be served using the method indicated upon the following:

<p>Original: Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 Deborah.Gibson@idwr.idaho.gov</p>	Hand Delivery <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
<p>Garrick Baxter Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov kimi.white@idwr.idaho.gov</p>	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
<p>Randall C. Budge Thomas J. Budge RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P.O. Box 1391 Pocatello, ID 83204-1391 rcb@racinelaw.net tjb@racinelaw.net bjh@racinelaw.net</p>	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
<p>Kathy McKenzie P.O. Box 109 Hagerman, ID 83332 knbmac@q.com</p>	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>



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