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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

RANGEN, INC.,

Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES and GARY SPACKMAN, in
his capacity as Director of the Idaho
Department of Water Resources,

Respondents,

and

IDAHO GROUND WATER
APPROPRIATORS, INC., A&B
IRRIGATION DISTRICT, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,

Case No. CV-2014-2446

**RESPONSE TO RANGEN, INC.'S
MOTION TO AUGMENT THE
AGENCY RECORD AND REQUEST
FOR THE COURT TO TAKE
JUDICIAL NOTICE**

MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY, and
TWIN FALLS CANAL COMPANY,

Intervenors.

COME NOW, Respondents Gary R. Spackman, in his official capacity as Director (“Director”) of the Idaho Department of Water Resources (“Department”), and the Department, an executive agency of the State of Idaho, by and through their attorneys of record, and request this Court deny *Rangen, Inc.’s Motion to Augment the Agency Record and Request for the Court to Take Judicial Notice* (“Motion”).

BACKGROUND

Rangen, Inc. (“Rangen”), filed its petition for judicial review in this matter on June 13, 2014. In accordance with Idaho Rule of Civil Procedure (“IRCP”) 84, a *Notice of Lodging Agency Record and Transcript with the Agency* was filed on July 9, 2014. An *Order Settling the Agency Record and Transcript* was filed on August 1, 2014. A *Notice of Lodging the Agency Record and Transcript with the District Court* was filed on August 6, 2014. After opening, responsive, and reply briefs were filed, oral argument was heard by this Court on November 13, 2014. Rangen filed its Motion on December 2, 2014.

Rangen asks the Court “pursuant to Idaho Rule of Evidence 201 for an Order augmenting the agency record, and requests for the Court to take judicial notice,” of the following documents in the above-captioned case:

1. *Rangen, Inc.’s Motion to Determine Morris Exchange Water Credit and Enforce Curtailment*, dated October 31, 2014, IDWR Docket Nos. CM-DC-2011-004, CM-MP-2014-001, and CM-MP-2014-006.

2. *Affidavit of J. Justin May in Support of Rangen, Inc.’s Motion to Determine Morris Exchange Water Credit and Enforce Curtailment*, dated October 31, 2014, IDWR Docket Nos. CM-DC-2011-004, CM-MP-2014-001, and CM-MP-2014-006.
3. *Order Granting Rangen’s Motion to Determine Morris Exchange Water Credit; Second Amended Curtailment Order*, dated November 21, 2014, IDWR Docket Nos. CM-DC-2011-004, CM-MP-2014-001, and CM-MP-2014-006, without its attachments.

Motion at 2.

ARGUMENT

The only authority cited by Rangen in support of its Motion is Idaho Rule of Evidence (“IRE”) 201. That rule “governs only judicial notice of adjudicative facts,” IRE 201(a), and does not address augmentation of the agency record. IRCP 84(l) allows for the augmentation of the agency record in certain circumstances, but the request must be made “within twenty-one (21) days of the filing of the settled transcript and record” As explained above, the settled transcript and record were filed with the district court in this matter on August 6, 2014. Rangen’s Motion was not filed until December 2, 2014. Because Rangen’s request for augmentation of the agency record comes well after the time period allowed for by IRE 84(l), the Court should deny this request.

With respect to Rangen’s request pursuant to IRE 201(d), that rule provides:

When a party makes an oral or written request that a court take judicial notice of records, exhibits or transcripts *from the court file* in the same or a separate case, the party shall identify the specific documents or items for which the judicial notice is requested or shall proffer to the court and serve on all parties copies of such documents or items. A court shall take judicial notice if requested by a party and supplied with the necessary information.

(emphasis added). The documents Rangen asks the Court to take judicial notice of are not “from the court file in the same or a separate case. . . .” The documents exist only in records of

administrative proceedings before the Department. Accordingly, the Court should deny Rangen’s request to take judicial notice of the documents identified in the Motion.

In addition, this judicial review proceeding only concerns orders issued by the Director in response to the first mitigation plan filed by the Idaho Ground Water Appropriators, Inc. (“IGWA”).¹ In its Motion, Rangen’s refers to the fact the Director “determined that the Morris Exchange Agreement provided mitigation credit to IGWA through January 19, 2015 based on predicted Martin-Curren Tunnel flows.” *Motion* at 3. However, this determination was not made until proceedings related to IGWA’s second mitigation plan, and was then carried over in proceedings related to IGWA’s fourth mitigation plan. The orders Rangen asks the Court to take judicial notice of are irrelevant to this proceeding, which deals only with orders issued by the Director in response to IGWA’s first mitigation plan. Finally, this Court entered its *Memorandum Decision and Order on Petition for Judicial Review and Judgment* on December 3, 2014, making Rangen’s request moot. The Court should deny Rangen’s Motion.

CONCLUSION

Based on the foregoing, Respondents respectfully request the Court enter an order denying Rangen’s Motion.

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¹ Those orders are: 1) 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*; 2) the May 16, 2014, *Final Order on Reconsideration*; and 3) the May 16, 2014, *Amended Order Approving in Part and Rejecting in Part IGWA’s Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order*.

DATED this 5th day of December 2014.

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Chief, Natural Resources Division
Deputy Attorney General

Handwritten signatures of Garrick L. Baxter and Emmi L. Blades in black ink, positioned above a horizontal line.

Garrick L. Baxter
Emmi L. Blades
Deputy Attorneys General
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of December 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated, to the following:

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