

**LAWRENCE G. WASDEN**  
ATTORNEY GENERAL

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

**GARRICK L. BAXTER, ISB #6301**  
**EMMI L. BLADES, ISB #8682**  
Deputy Attorneys General  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83720-0098  
Telephone: (208) 287-4800  
Facsimile: (208) 287-6700  
[garrick.baxter@idwr.idaho.gov](mailto:garrick.baxter@idwr.idaho.gov)  
[emmi.blades@idwr.idaho.gov](mailto:emmi.blades@idwr.idaho.gov)

Attorneys for Respondents

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

RANGEN, INC.,

Petitioner,

vs.

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

Respondents,

and

THE IDAHO GROUND WATER  
APPROPRIATORS, INC.,

Intervenor.

**Case No. CV-2014-272**

**RESPONSE IN OPPOSITION TO  
DISMISSAL WITHOUT PREJUDICE**

COME NOW, Respondents Gary R. Spackman, in his official capacity as Director of the Idaho Department of Water Resources, and the Department, an executive agency of the State of Idaho (collectively referred to as “Department”), by and through their attorneys of record, and respond in opposition to the *Stipulation to Dismissal Without Prejudice* filed by Rangen, Inc. (“Rangen”).

### ARGUMENT

On January 28, 2015, Rangen filed its *Stipulation to Dismissal Without Prejudice* with the Court. While the filing is captioned as a “stipulation” to dismiss without prejudice, the Department has not stipulated, and opposes, that the case should be dismissed without prejudice.

As set forth in the Department’s *Memorandum in Support of Motion to Dismiss* (“Memorandum”) filed on November 25, 2014, Rangen is not entitled to seek a writ of mandate in this case because Rangen has a plain, speedy, and adequate remedy available that Rangen has already taken advantage of by filing petitions for judicial review. *Memorandum* at 9-10. Rangen is not entitled to seek a declaratory judgment because the challenges raised by Rangen have either already been decided or should be decided by appeals currently pending before this Court. *Id.* at 11-14. Finally, any challenge related to Rangen’s delivery call filed with the Department on June 27, 2014, must be dismissed for Rangen’s failure to exhaust administrative remedies. *Id.* at 14-15. The law on these issues is clear and this case should be dismissed.

While this case should be dismissed, Rangen has no absolute right to dismissal without prejudice. I.R.C.P. 41(a)(2) (“[A]n action shall not be dismissed at the plaintiff’s instance save upon order of the court and upon such terms and conditions as the court deems proper.”). A Court cannot grant a voluntary motion to dismiss if granting the request would “unfairly jeopardize” the Respondents’ interests in the case. *Peterson v. Private Wilderness, LLC*, 152 Idaho 691, 695, 273 P.3d 1284, 1288 (2012). The Department has spent considerable time and

money preparing its Memorandum and Motion to Dismiss and is not willing to stipulate to dismissal without prejudice. Dismissal without prejudice would allow Rangen to raise these same claims again in the future. This unfairly jeopardizes the Department as the Department may be forced to spend more time and money defending against these same claims. In this circumstance, the proper basis for dismissal is dismissal with prejudice. If this matter is not dismissed with prejudice, the Department asks the Court to deny Rangen's request and consider and issue a decision on the Department's Motion to Dismiss.

DATED this 2<sup>ND</sup> day of February 2015.

LAWRENCE G. WASDEN  
ATTORNEY GENERAL  
CLIVE J. STRONG  
Chief, Natural Resources Division  
Deputy Attorney General



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2<sup>nd</sup> day of February 2015, I caused a true and correct copy of the foregoing document to be filed with the Court and served on the following parties by the methods indicated below:

*Original to:*

SRBA District Court  
253 3<sup>rd</sup> Ave. North  
P.O. Box 2707  
Twin Falls, ID 83303-2707  
Facsimile: (208) 736-2121

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Facsimile  
 E-mail

J. JUSTIN MAY  
MAY BROWNING  
1419 W. WASHINGTON  
BOISE, ID 83702  
[jmay@maybrowning.com](mailto:jmay@maybrowning.com)

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Facsimile  
 E-mail

ROBYN BRODY  
BRODY LAW OFFICE  
P.O. BOX 554  
RUPERT, ID 83350  
[robynbrody@hotmail.com](mailto:robynbrody@hotmail.com)


U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Facsimile  
 E-mail

FRITZ HAEMMERLE  
HAEMMERLE & HAEMMERLE  
P.O. BOX 1800  
HAILEY, ID 83333  
[fxh@haemlaw.com](mailto:fxh@haemlaw.com)

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Facsimile  
 E-mail

RANDALL C. BUDGE  
T.J. BUDGE  
RACINE OLSON  
P.O. BOX 1391  
POCATELLO, ID 83204-1391  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[tjb@racinelaw.net](mailto:tjb@racinelaw.net)

U.S. Mail, Postage Prepaid  
 Hand Delivery  
 Facsimile  
 E-mail

  
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Garrick L. Baxter  
Deputy Attorney General