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*Attorneys for Rangen, Inc.*

District Court - SRBA Fifth Judicial District In Re: Administrative Appeals County of Twin Falls - State of Idaho	
<b>APR 24 2015</b>	
By _____	Clerk
_____	Deputy Clerk

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

CITIES OF BLISS, BURLEY, CAREY, DECLO,  
 DEITRICH, GOODING, HAZELTON, HEYBURN,  
 JEROME, PAUL, RICHFIELD, RUPERT,  
 SHOSHONE, AND WENDELL,

Petitioner,

vs.

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

Respondents.

**IN THE MATTER OF THE COALITION OF CITIES'  
 SECOND MITIGATION PLAN FOR THE  
 DISTRIBUTION OF WATER TO WATER RIGHT  
 NOS. 36-15501, 36-02551, AND 36-07694 HELD BY  
 RANGEN, INC.**

Case No. CV-2015-172

**RANGEN, INC.'S RESPONSE TO  
 ASSOCIATION OF IDAHO CITIES'  
 PETITION TO APPEAR AS AMICUS  
 CURIAE**

Rangen, Inc. (“Rangen”), by and through its attorneys, and pursuant to Idaho Appellate Rules 8 and 32, hereby responds to the *Association of Idaho Cities’ Petition to Appear as Amicus Curiae* (“Petition”), filed in this matter by the Association of Idaho Cities (“AIC” or “Association”) on April 13, 2015.

Idaho Appellate Rule 8 allows for an attorney, or person or entity through an attorney, to appear as amicus curiae by leave of the court. The decision on whether to allow and/or limit amicus curiae is in the discretion of the court. *State v. United States (In re SRBA Case No. 39576, Minidoka National Wildlife Refuge, SRBA Subcase No. 36-15452)*, 134 Idaho 106, 111, 996 P.2d 806, 811 (2000). A crucial factor in exercising its discretion is whether the amicus is “helpful” in investigating the facts and advising the court on its position on the issues. *See Hoptowitz v. Ray*, 682 F.2d 1237, 1259 (1982) (9<sup>th</sup> Circuit Court of Appeals). An amicus may not frame the issues on appeal or raise new issues. *Sanchez-Trujillo v. INS*, 801 F. 2d 1571, 1581 n.9 (9<sup>th</sup> Cir. 1986); *Preservation Coalition, Inc. v. Pierce*, 667 F.2d 851, 862 (9<sup>th</sup> Cir. 1982).

Rangen does not object to AIC’s participation in this matter as amicus. Such participation should be appropriately limited. The Association was not a party in the underlying agency action before the Department of Water Resources and has not filed a Petition to Intervene. This Court has discretion to determine whether AIC’s participation would be “helpful” regarding the issues that are on appeal. However, as an amicus, AIC may not be allowed to frame the issues for appeal or raise new issues.

AIC seeks to participate in this matter on two issues. The first of these issues is the “proper standards to be applied by the Director in the event a stipulated mitigation plan is presented to IDWR under Rule 43 of the Rules for Conjunctive Management of Surface and Ground Water

Resources (IDAPA 37.03.11.043).” Rangen does not object to AIC’s participation on this issue if the Court determines that such participation would be helpful. AIC also intends to argue that “curtailment as the remedy against junior municipal water rights is arbitrary and capricious in light of the fact that ESPAM curtailment runs do not include municipal pumping, nor are the operations of municipal ground water rights accurately reflected in the ESPAM.” *Association of Idaho Cities’ Petition to Appear as Amicus Curiae*, p. 3. This issue was not raised before the Director and would inappropriately broaden the scope of this appeal. The Association should not be allowed to raise this, or any other, new issues in this appeal.

Rangen requests that the Association of Idaho Cities’ participation in this matter be limited to the issue of the “proper standards to be applied by the Director in the event a stipulated mitigation plan is presented to IDWR under Rule 43 of the Rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11.043).”

DATED this 24th day of April, 2015.

MAY, BROWNING & MAY, PLLC

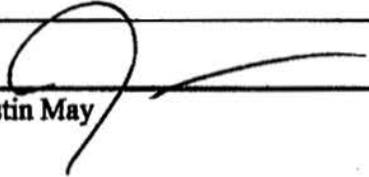
By:   
J. Justin May

### CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 24th day of April, 2015 he caused a true and correct copy of the foregoing document to be served upon the following as indicated:

<b>Original:</b> SRBA District Court 253 3 <sup>rd</sup> Avenue North P.O. Box 2707 Twin Falls, ID 83303-2707	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input type="checkbox"/>
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Randall C. Budge Thomas J. Budge RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED 201 E. Center Street P.O. Box 1391 Pocatello, ID 83204 rcb@racinelaw.net tjb@racinelaw.net bjh@racinelaw.net	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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<p>A. Dean Tranmer  City of Pocatello  P.O. Box 4169  Pocatello, ID 83201  dtranmer@pocatello.us</p>	<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>
<p>Sarah A. Klahn  Mitra M. Pemberton  White &amp; Jankowski, LLP  511 Sixteenth Street, Suite 500  Denver, CO 80202  sarahk@white-jankowski.com  mitrap@white-jankowski.com</p>	<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>

  
J. Justin May