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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  
 CITY OF POCA TELLO'S PETITION  
 TO APPEAR AS AMICUS CURIAE**

**RANGEN, INC.'S RESPONSE TO CITY OF POCA TELLO'S PETITION TO APPEAR AS  
 AMICUS CURIAE - 1**

Rangen, Inc. ("Rangen"), by and through its attorneys, and pursuant to Idaho Appellate Rules 8 and 32, hereby responds to the *City of Pocatello's Petition to Appear as Amicus Curiae* ("Petition"), filed in this matter by City of Pocatello ("Pocatello") on April 10, 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 Pocatello's participation in this matter as amicus. Such participation should be appropriately limited. The City of Pocatello 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 Pocatello's participation would be "helpful" regarding the issues that are on appeal. However, as an amicus, Pocatello may not be allowed to frame the issues for appeal or raise new issues.

Pocatello seeks to participate in this matter on two issues. The first of these issues is the "proper legal standards to be applied by the Director when parties present a stipulated mitigation plan." Rangen does not object to Pocatello's participation on this issue if the Court determines that such participation would be helpful. Pocatello also intends to argue that "curtailment of junior

municipal ground water rights in a delivery call 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.” *City of Pocatello’s 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 City of Pocatello should not be allowed to raise this, or any other, new issues in this appeal.

Rangen requests that the City of Pocatello’s participation in this matter be limited to the issue of the “proper legal standards to be applied by the Director when parties present a stipulated mitigation plan.”

DATED this 24th day of April, 2015.

MAY, BROWNING & MAY, PLLC

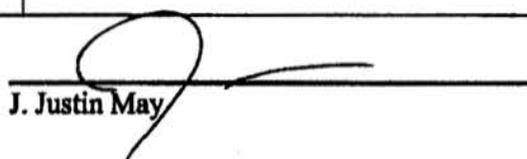
By:   
J. Justin May

### 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