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DEPARTMENT OF
WATER RESOURCES

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Attorneys for Rangen, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE
MITIGATION PLAN FILED BY THE
IDAHO GROUND WATER
APPROPRIATORS FOR THE
DISTRIBUTION OF WATER TO
WATER RIGHT NOS. 36-02551
& 36-07694

Docket No. CM-MP-2014-001

**RANGEN, INC.'S MEMORANDUM
IN OPPOSITION TO THE IDAHO
CITIES' PETITION FOR LIMITED
INTERVENTION**

Rangen, Inc. ("Rangen"), by and through its attorneys, and pursuant to Rule of Procedure 353, opposes the Idaho Cities' Petition for Limited Intervention. As grounds, Rangen states the following:

1. Rule 353 of the Rules of Procedure of the Idaho Department of Water Resources ("Procedural Rules") sets forth the criteria to use when considering a Petition to Intervene.

Rule 353 states:

If a timely-filed petition to intervene shows *direct and substantial interest* in any part of the subject matter of a proceeding and *does not unduly broaden the*

the issues, the presiding officer will grant intervention, *subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties*. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

Procedural Rule 354 (IDAPA 37.01.01.354) (emphasis added).

2. The Idaho Cities seek to intervene in this matter for three stated reasons: (1) they support the mitigation plan proposed by IGWA; (2) they intend to submit their own mitigation plan in the near future; and (3) the scope of the mitigation plan proposed by IGWA will have a “substantial influence” on the mitigation plan to be proposed by the cities. See Idaho Cities’ Petition at ¶¶ 1-4.

3. **The Idaho Cities Do Not Have a Substantial and Direct Interest in IGWA’s Mitigation**

Plan. While it is true that the Idaho Cities have water rights that will be impacted by Rangen’s Delivery Call, they have not articulated a direct and substantial interest in IGWA’s Mitigation Plan that is any different than IGWA’s interests. The Idaho Cities have the legal ability to submit their own Mitigation Plan and a separate hearing will be held. IGWA’s Mitigation Plan has no effect on the Idaho Cities’ ability to file their own plan. This situation is similar to Buckeye Farms, Inc.’s Petition for Limited Intervention which was denied during Rangen’s delivery call. In denying Buckeye’s Petition, the Director explained:

This matter is similar to a previous proceeding involving the Idaho Power Company (“Idaho Power”). In that proceeding, Idaho Power sought intervention into a conjunctive management delivery call proceeding, notwithstanding the fact that Idaho Power had no water rights that were subject to the proceeding and it had “other forms of relief available, such as the filing of a separate delivery call.” *Order on Petition to Intervene and Denying Motion for Summary Judgment* at 2 (April 6, 2005). Like Idaho Power, Buckeye holds water rights, but unlike the SWC, has not initiated its own delivery call. Given this, the Director finds Buckeye does not have a direct and substantial interest in application of ESPAM2.0 in this proceeding.

Order Denying Buckeye Farms, Inc.'s Petition for Limited Intervention, p. 2-3. The Idaho Cities can pursue their own legal remedy when they have finally formulated their own Mitigation Plan. Because the Idaho Cities' do not have a direct and substantial interest in the outcome of IGWA's Mitigation Plan that is any different than IGWA, they do not have standing to intervene and their Petition should be denied.

4. **IGWA Adequately Represents the Interests of the Idaho Cities.** The Idaho Cities acknowledge in their Petition that three of the Idaho Cities are actually represented by IGWA. See Petition at p. 6. IGWA has been representing these three cities for the past two years during Rangen's delivery call and there is no indication from the Idaho Cities' Petition that IGWA does not, or cannot, continue to represent their interests and even the interests of those cities who are not members.

IGWA has demonstrated its ability over the years to represent the interests of junior-priority groundwater pumpers in situations identical to this. Intervening to simply demonstrate "support" for IGWA's Mitigation Plan is not helpful to the evaluative process and may actually hinder the process since discovery and depositions are now underway under a very tight time schedule. Participation by the Idaho Cities at this point in time is unduly burdensome and will undoubtedly lead to the expansion of issues.

5. **Intervention Should be Limited to the Attorney for the Steering Committee if the Idaho Cities' Petition is Granted.** If the Director is inclined to grant the Idaho Cities' Petition, their participation in this proceeding should be limited to the attorney for the Steering Committee that is discussed on page 5 of the Petition. Procedural Rule 353 expressly allows the Director to place reasonable conditions upon intervention. In this case, the Idaho Cities' Petition has been signed and filed by 8 separate attorneys. Adding eight attorneys to this

process will be unduly burdensome and unwarranted. The Idaho Cities reference the fact that they have created a Steering Committee to consolidate representation. Any decision to allow Intervention should be limited to the attorney for the Steering Committee.

Wherefore, the Idaho Cities' Petition for Limited Intervention to support IGWA's Mitigation Plan should be denied because they do not have a direct and substantial interest in IGWA's Mitigation Plan that is any different than IGWA and their interests are adequately represented by IGWA. If Intervention is allowed, it should be limited to the attorney for the Steering Committee referenced on page 5 of the Idaho Cities' Petition.

DATED this 5 day of March, 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 5 day of March, 2014, he caused a true and correct copy of the foregoing document to be served upon the following as indicated:

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