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RECEIVED
MAR 14 2014
DEPARTMENT OF
WATER RESOURCES

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 AND 36-07694 IN
THE NAME OF RANGEN, INC.**

Docket No. CM-MP-2014-001

**RANGEN'S MOTION IN LIMINE
TO EXCLUDE EVIDENCE OF
TUCKER SPRINGS PROJECT**

Rangen, Inc. ("Rangen"), by and through its attorneys, hereby moves the Director to enter an Order prohibiting IGWA from introducing any evidence or eliciting any testimony concerning what it calls the "Tucker Springs Project" described in IGWA's Second Mitigation Plan. As grounds, Rangen states the following:

1. On March 10, 2014, a week before the hearing of this matter is scheduled to start, IGWA filed a Second Mitigation Plan and Request for Hearing.
2. In the Second Mitigation Plan, IGWA gives a brief outline of what it calls the "Tucker Springs Project".

3. IDWR has not yet had the opportunity to provide public notice of IGWA's Second Proposed Mitigation Plan or set the matter for hearing.
4. Nonetheless, IGWA requests that it be allowed to introduce evidence pertaining to the Tucker Springs Project at the hearing that is set for March 17-18, 2014 on IGWA's Mitigation Plan.
5. In fact, IGWA is planning to introduce evidence pertaining to the Tucker Springs Project at the hearing of its first Mitigation Plan as evidenced by the Exhibit List it filed on March 12, 2014.
6. IGWA's Second Mitigation Plan is incomplete at best and does not contain the information necessary to evaluate the factors outlined in CM Rule 43.03. At this point in time the Tucker Springs Project is merely another "concept" without technical support. As set forth in *Rangen's Motion to Dismiss Proposals 3-9 of IGWA's Mitigation Plan*, there is no mechanism in the Conjunctive Management Rules for the Director to provide an advisory opinion regarding a "concept." Other hearing officers for IDWR have refused to consider "concepts" without technical support. See *Opinion and Recommendation Concerning the Over-the-Rim Mitigation Plan* at ¶¶ 5 and 6 (Exhibit 2047). Rangen intends to file a Motion to Dismiss the Second Mitigation Plan on this basis when IDWR gives notice of the Second Mitigation Plan and sets the matter for hearing.
7. Rangen would be deprived of procedural and substantive due process if it were required to address the Tucker Springs Project at the hearing on March 17-18, 2014. There is a process for providing notice of proposed mitigation plans and setting them for hearing. See CM Rule 43.03.02. There is a process for obtaining discovery and

information pertaining to mitigation plans. IGWA is asking IDWR to ignore these processes, and to do so would be unfairly prejudicial to Rangen and potentially other water users who may have objections to IGWA's Tucker Springs Project. Rangen is not prepared to address IGWA's Second Mitigation Plan in any manner with seven days notice of a mere concept and without the opportunity to conduct adequate discovery and engage experts. Other water users may also wish to protest IGWA's Second Mitigation Plan and should be given the opportunity to participate in any hearing of this matter. In fact, other water users have objected to the Mitigation Plan that is at issue in this matter. *See Notice of Protest filed by Blind Canyon Aquaranch, Inc.* filed on March 10, 2014.

WHEREFORE, Rangen respectfully requests that the Director enter an Order prohibiting IGWA from introducing any evidence or eliciting any evidence pertaining to the Tucker Springs Project at the hearing on March 17-18, 2014.

DATED this 14 day of March, 2014.

BRODY LAW OFFICE, PLLC

By: 

Robyn M. Brody

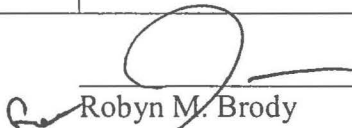
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 14 day of March, 2014, I caused a true and correct copy of the foregoing document to be served using the method indicated upon the following:

Original: Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098	Hand Delivery <input checked="" 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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Randall C. Budge Thomas J. Budge RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P.O. Box 1391 101 South Capitol Blvd, Ste 300 Boise, ID 83704-1391 Fax: 208-433-0167 rcb@racinelaw.net tjb@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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John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson, L.L.P. 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 tlt@idahowaters.com jks@idahowaters.com	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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