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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 FOR
RECONSIDERATION RE: DENIAL
OF PARTICIPATION IN
MITIGATION PLAN HEARING**

Rangen, Inc. ("Rangen"), by and through its attorneys, hereby moves Director Spackman to reconsider the decision to deny Rangen the right to participate in the hearing on IGWA's Mitigation Plan for failing to pay the \$25.00 filing fee associated with a protest. As grounds, Rangen states the following:

1. Rangen is the holder of the senior water rights at issue in IGWA's proposed Mitigation Plan.

As the holder of the senior water rights, Rangen is a "party" to this action and was not required to file a protest or pay the \$25.00 filing fee charged by IDWR as a condition of participating in this action.

2. The term "Party" is defined in Rule of Procedure 5.16 as: "Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party."
See IDAPA 37.01.01.005.016. There is no doubt that Rangen is a party to this action.
3. On February 11, 2014, IGWA filed the Mitigation Plan that is at issue.
4. On February 21, 2014, the Director sent Rangen and all of the other entities who participated in Rangen's Delivery Call (e.g., City of Pocatello, the Surface Water Coalition) written notice of the hearing on IGWA's Mitigation Plan. The Notice advised Rangen of the date and time of the hearing and reminded Rangen that if it planned to offer exhibits at the hearing it needed to provide copies to the Director and all of the parties. The notice stated in relevant part:

The Director of the Department hereby provides notice that a hearing on IGWA's Mitigation Plan is set for **March 17 & 18, 2014, beginning at 9:00 a.m.**, at the Department's State Office, located at 322 E. Front Street, 6th Floor Conference Rooms B, C and D, Boise, Idaho. The presiding officer at the hearing will be Director Gary Spackman.

If you plan to offer exhibits for the record at the hearing, note that Rule 606 of the Department's Rules of Procedure requires that a copy be provided to each party and the presiding officer whose mailing address is P.O. Box 83720, Boise, Idaho 83720-0098.

5. The Notice also advised Rangen that it had the opportunity to present information, examine witnesses and provide argument on issues related to IGWA's Mitigation Plan. The Notice stated:

All parties appearing in this matter will have the opportunity to present information, to examine witnesses, and provide argument on issues related to IGWA's Mitigation Plan during the course of this hearing.

6. Shortly after receiving notice of the hearing, Rangen and IGWA reached an agreement concerning discovery and actually filed a Stipulation and Joint Motion to Allow Discovery in Connection with IGWA's Mitigation Plan under Rule of Procedure 521. Rule 521

states in relevant part: “No party before the agency is entitled to engage in discovery unless the party moves for an order authorizing discovery and the agency issues an order authorizing the requested discovery” *See* IDAPA 37.01.01.521 (emphasis added). The Director issued an Order granting Rangen and IGWA the authority to engage in discovery and approved the discovery schedule promulgated by the parties. The Director’s Order recognizes Rangen’s status as a party to this matter:

The Department agrees that authorizing discovery should be granted under the Department’s Rule of Procedure 521. Pursuant to IDAPA 37.01.01.521, it is proper that upon agreement of all parties to the discovery that discovery may be conducted.

ORDER

IT IS THEREFORE ORDERED, that the time for the stipulating parties in this matter to conduct discovery is as follows:

7. The Director recognized Rangen’s status as a party to this matter from the moment IGWA filed its Mitigation Plan. The Director’s Notice of Hearing expressly stated that Rangen would have the opportunity to participate fully in the hearing on March 17-18, 2014 without further conditions being attached to its participation.
8. Unlike Blind Canyon Aquaranch, Inc. which had to file a protest to obtain status to participate in this matter, Rangen, as the senior water rights holder at issue, has been a recognized party from the outset.
9. Rangen filed its “Protest” to outline the objections it has to IGWA’s Mitigation Plan, but it was not required to do so because of its status as a party. At best, IDWR’s rules concerning the procedural steps that the senior water rights holder must follow are ambiguous. CM Rule 43.03.02 simply states in relevant part: “Upon receipt of a proposed mitigation plan the Director will . . . consider the plan under the procedural provisions of Section 42-222,

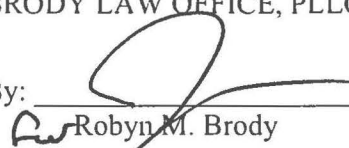
Idaho Code, in the same manner as applications to transfer water rights.” This rule provides little guidance to water right holders and the ambiguity should be construed in favor of Rangen’s participation in this matter. The Department’s procedural rules are supposed to be liberally construed to secure a just, speedy and economical determination of all issues. See Rule of Procedure 52 (IDAPA 37.01.01.052). It would be unjust to prohibit Rangen from participating in this matter for the failure to pay a \$25.00 filing fee even though it is a recognized party as the senior water rights holder and has been actively litigating this matter since the filing of the Director’s Notice.

WHEREFORE, Rangen respectfully requests that the Director reconsider his decision to preclude Rangen from participating in this matter for failure to pay the \$25.00 fee associated with a protest.

DATED this 14 day of March, 2014.

BRODY LAW OFFICE, PLLC

By: _____


Robyn M. Brody

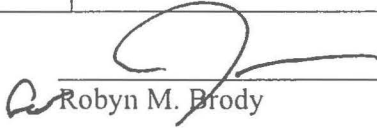
CERTIFICATE OF SERVICE

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 Deborah.Gibson@idwr.idaho.gov	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"/>
Garrick Baxter Idaho Department of Water	Hand Delivery	<input checked="" type="checkbox"/>
	U.S. Mail	<input type="checkbox"/>

Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov	Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
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"/>
Sarah Klahn Mitra Pemberton WHITE & JANKOWSKI Kittredge Building, 511 16th Street, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.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"/>
Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us	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"/>
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"/>
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, ID 83318 wkf@pmt.org	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"/>
Jerry R. Rigby Hyrum Erickson Robert H. Wood Rigby, Andrus & Rigby, Chartered 25 North Second East	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"/>

Rexburg, ID 83440 jrigby@rex-law.com herickson@rex-law.com rwood@rex-law.com	
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