BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE FOURTH MITIGATION PLAN FILED BY THE IDAHO GROUND WATER APPROPRIATORS FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 & 36-07694 IN THE NAME OF RANGEN, INC. “MAGIC SPRINGS PROJECT”

COMES NOW, Rangen, Inc. pursuant to the provisions of Rule 43 of the Conjunctive Management Rules, Rule 250 of the Rules of Procedure of the Idaho Department of Water

Docket No. CM-MP-2014-006

RANGEN, INC.’S PROTEST TO IGWA’S FOURTH MITIGATION PLAN

Resources and other applicable law and protests IGWA’s Fourth Mitigation Plan filed with the Idaho Department of Water Resources on August 27, 2014 ("Fourth Mitigation Plan").

Rangen has the right to oppose IGWA’s mitigation plan. The Fourth Mitigation Plan proposes that IGWA’s members be allowed to continue junior ground water pumping despite the Director’s order that such junior ground water pumping causes material injury to Rangen’s water rights.

The initial bases for Rangen’s Protest are as follows:

1. The Fourth Mitigation Plan is facially unapprovable because it does not comply with Rule 43.01 of the Conjunctive Management Rules:
   a. The Fourth Mitigation Plan does not contain the mailing address of the person or persons submitting the plan.
   b. The Fourth Mitigation Plan does not identify the water rights benefiting from the Fourth Mitigation Plan.
   c. The Fourth Mitigation Plan does not contain the information necessary for the Director to evaluate the factors set forth in Rule 43.03 of the Conjunctive Management Rules.

2. IGWA has not obtained all necessary easements for the proposal.

3. IGWA’s proposal does not adequately address critical factors such as: project feasibility, necessary access easements and rights-of-way, monitoring, maintenance and repair of the delivery system, delivery system security, potential injury to other water users, water quality, disease, water temperature, delivery system reliability, compensation and insurance or bonding for losses sustained by Rangen in the event of a delivery system failure, compensation and insurance or bonding for losses sustained by others in the event of a delivery system failure, and
indemnification and hold harmless provisions to protect Rangen against any claims for losses sustained by others in the event of a delivery system failure.

4. The Fourth Mitigation Plan contains no "contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable" and therefore violates Rule 43.03.c. *In the Matter of Distribution of Water to Various Water Rights*, 155 Idaho 640, 315 P.3d 828 (2013).

5. The Fourth Mitigation Plan will not provide replacement water, at the time and place required by Rangen's senior priority water rights, sufficient to offset the depletive effect of junior ground water withdrawals within the area of curtailment at such time and place necessary to satisfy Rangen's senior priority water rights.

6. The current use for the water rights that IGWA proposes to pump is non-consumptive. The proposed transfer of the water rights to Billingsley Creek will result in the water being consumed.

Wherefore, for these reasons and for such other and further reasons as may be discovered or offered at the hearing on this matter Rangen requests that the Director deny and dismiss the Fourth Mitigation Plan, and for such other relief as the Director deems proper.

DATED this 19 day of September, 2014.

MAY, BROWNING & MAY

By J. Justin May
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 19 day of September, 2014 he caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

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J. Justin May