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Attorneys for Rangen, Inc.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF MITIGATION
PLAN FOR MCCAIN FOODS USA, INC.

Docket No. CM-MP-2015-002

**RANGEN, INC.'S PROTEST TO
McCAIN FOODS USA, INC., RULE
43 MITIGATION PLAN FOR PRE-
APPROVED MITIGATION
ACTIVITIES**

COMES NOW Rangen, Inc. ("Rangen") 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 Resources and other applicable law and protests McCain Foods USA, Inc.'s Rule 43 Mitigation Plan for Pre-Approved Mitigation Activities (the "Plan").

Rangen has the right to oppose the Plan. The initial bases for Rangen's Protest are as follows:

1. The McCain Mitigation Plan is unapprovable because it does not comply with Rule 43 of the Conjunctive Management Rules because the plan is vague and speculative.

2. The Plan does not set forth the amount of water that the Plan it is mitigating for or for whose benefit.

3. The Plan does not describe with any particularity how direct delivery would be accomplished, and what source of water would be used for direct delivery.

4. The Plan does not describe what storage water might be available for direct delivery.

5. The Plan does not describe what groundwater might be used for direct delivery.

6. The Plan does not describe how reduced groundwater water pumping would be accomplished, or how much credits would be obtained from reduced groundwater pumping.

7. The Plan does not describe with any particularity how groundwater recharge would be accomplished; does not describe the source of water used for groundwater water recharge; or what credit might be obtained from groundwater recharge.

8. The lack of any meaningful specificity in the Plan deprives Rangen of its procedural due process rights of notice and opportunity to be heard. Accordingly, there is no way to evaluate all the criteria under CM Rule 43, including:

a. Whether delivery, storage and use of water pursuant to the mitigation plan is in compliance with Idaho law.

b. Whether the mitigation plan will provide replacement water, at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and

place as necessary to satisfy the rights of diversion from the surface or ground water source. Consideration will be given to the history and seasonal availability of water for diversion so as not to require replacement water at times when the surface right historically has not received a full supply, such as during annual low-flow periods and extended drought periods.

c. Whether the mitigation plan provides replacement water supplies or other appropriate compensation to the senior-priority water right when needed during a time of shortage even if the effect of pumping is spread over many years and will continue for years after pumping is curtailed. A mitigation plan may allow for multi-season accounting of ground water withdrawals and provide for replacement water to take advantage of variability in seasonal water supply. The mitigation plan must include contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable.

d. Whether the mitigation plan proposes artificial recharge of an area of common ground water supply as a means of protecting ground water pumping levels, compensating senior-priority water rights, or providing aquifer storage for exchange or other purposes related to the mitigation plan.

e. Where a mitigation plan is based upon computer simulations and calculations, whether such plan uses generally accepted and appropriate engineering and hydrogeologic formulae for calculating the depletive effect of the ground water withdrawal.

f. Whether the mitigation plan uses generally accepted and appropriate values for aquifer characteristics such as transmissivity, specific yield, and other relevant factors.

g. Whether the mitigation plan reasonably calculates the consumptive use component of ground water diversion and use.

h. The reliability of the source of replacement water over the term in which it is proposed to be used under the mitigation plan.

i. Whether the mitigation plan proposes enlargement of the rate of diversion, seasonal quantity or time of diversion under any water right being proposed for use in the mitigation plan.

j. Whether the mitigation plan is consistent with the conservation of water resources, the public interest or injures other water rights, or would result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge.

k. Whether the mitigation plan provides for monitoring and adjustment as necessary to protect senior-priority water rights from material injury.

l. Whether the plan provides for mitigation of the effects of pumping of existing wells and the effects of pumping of any new wells which may be proposed to take water from the areas of common ground water supply.

m. Whether the mitigation plan provides for future participation on an equitable basis by ground water pumpers who divert water under junior-priority rights but who do not initially participate in such mitigation plan.

n. A mitigation plan may propose division of the area of common ground water supply into zones or segments for the purpose of consideration of local impacts, timing of depletions, and replacement supplies.

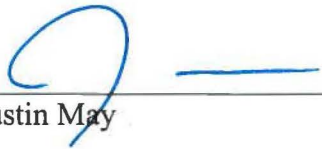
o. Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions.

9. To the extent that this Plan provides no information, Rangen is entitled to presume injury, and the Director should likewise presume injury unless any other information on this Plan can be submitted satisfying the criteria of CM Rule 43 and fundamental notions of procedural due process.

10. Rangen reserves the right to amend this Protest as more is learned about the Plan through discovery, or otherwise.

DATED this 1st day of June, 2015.

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 1st day of June, 2015 he caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

<p>Original: Director Gary Spackman IDAHO DEPARTMENT OF WATER RESOURCES P.O. Box 83720 Boise, ID 83720-0098 deborah.gibson@idwr.idaho.gov</p>	<p>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"/></p>
<p>Garrick Baxter Emmi Blades IDAHO DEPARTMENT OF WATER RESOURCES P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov emmi.blades@idwr.idaho.gov kimi.white@idwr.idaho.gov</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>
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 J. Justin May