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Department of Water Resources

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Attorneys for Idaho Dairymen's Association

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

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS.
36-15501, 36-02551, AND 36-07694.

**IDAHO DAIRYMEN'S
ASSOCIATION'S REPLY RE:
MOTION FOR ORDER
AUTHORIZING LIMITED
DISCOVERY**

The Idaho Dairymen's Association ("IDA"), by and through its counsel of record MOFFATT, THOMAS, BARRETT, ROCK & FIELDS, CHTD., hereby replies to Rangen, Inc.'s Motion for Order Authorizing Limited Discovery ("Motion") and responds to IGWA's Response to Motion for Order Authorizing Limited Discovery ("IGWA Response"). IDA did not initially respond to the Motion because it did not, as a general proposition, disagree with the proposals set forth therein. However, IGWA's Response raised issues which IDA feels it must address.

**IDAHO DAIRYMEN'S ASSOCIATION'S REPLY RE:
MOTION FOR ORDER AUTHORIZING LIMITED DISCOVERY - 1**

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First, IGWA asserts that “[a] discovery period of two to three months seems more than adequate to cover discovery of all facts in this case.” IGWA Response, p. 3. IDA disagrees. This matter is factually complicated, and its resolution depends in large part on complex analyses involving groundwater modeling and expert testimony. Moreover, many of the potential expert witnesses in this matter are involved in the Surface Water Coalition’s delivery call, making the scheduling of expert depositions (and potentially those of fact witnesses) complicated at best. Therefore, IDA concurs with Rangen that a minimum of six months will be necessary to conduct meaningful discovery.

Second, IDA shares IGWA’s concern about its members’ continued ability to divert and use groundwater. However, nothing will be gained by an overly-hasty and inappropriately truncated discovery process. Placing a time limit of two to three months on discovery is not workable.

Third, IGWA asserts that much of the background information regarding the Department’s groundwater model is available publicly. IDA notes that in the Surface Water Coalition Delivery Call matter, the Director recently stated that:

It has come to the Director’s attention that in some instances parties have requested information relating to this contested case from the Department pursuant to the Idaho Public Records Act. The Director has previously described to the parties the procedure to be followed by the Department in responding to information requests. Such requests will not be treated as requests under the Public Records Act because the requirement to serve all parties with copies of the information provided is inconsistent with the principles of confidentiality inherent in the processing of an information request made under the Public Records Act.

Correspondence from Karl Dreher to Surface Water Coalition delivery call parties dated August 26, 2005.

IDA opposes any effort to impede its right to conduct full discovery in accordance with the Department's Rules of Practice and Procedure and the Idaho Rules of Civil Procedure. Therefore, for the reasons set forth herein, the IDA respectfully requests that any discovery period be set for a minimum of six months, in order to allow comprehensive discovery to take place.

DATED this 2nd day of September, 2005.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By Scott L. Campbell
Scott L. Campbell – Of the Firm

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10th day of September, 2005, I caused a true and correct copy of the foregoing **IDAHO DAIRYMEN'S ASSOCIATION'S REPLY RE: MOTION FOR ORDER AUTHORIZING LIMITED DISCOVERY** to be served by the method indicated below, and addressed to the following:

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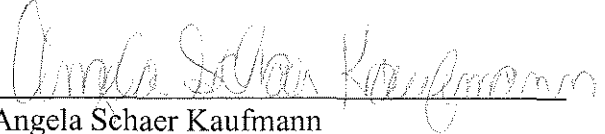
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