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Department of Water Resources

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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 35-07694.	**THE GROUND WATER USERS' PETITION FOR INTERVENTION, RECONSIDERATION AND HEARING**

On behalf of their respective members, the Idaho Ground Water Appropriators, the Magic Valley Ground Water District and the North Snake Ground Water District (the "Ground Water Users") hereby petition the Director for intervention in this matter and to reconsider the Amended Order issued on March 10, 2004, after providing the Ground Water Users with a hearing. The Rangen Order responds to two letters, dated September 23, 2003 and October 6, 2003, from counsel for Rangen, Inc. demanding that the Director administer water rights to curtail all junior water uses that interfere with and impact the water rights of Rangen.

The grounds for this Petition are as follows:

1. On February 25, 2004 the Director of the Idaho Department of Water Resources issued an Order in this matter. The Director issued an Amended Order on March 10, 2004 (the "Rangen Order") to correct an error in the February 25th Order. The Rangen Order requires complete curtailment beginning on April 1, 2004, of all consumptive ground water rights in

Water District 130 with priority dates junior to July 13, 1962 unless holders of these rights either 1) provide Rangen with 16,000 AF of replacement water at Rangen's point of diversion, or 2) provide 26,500 AF of replacement water to the Thousand Springs Reach.

2. The individual members of the Ground Water Users hold water rights located within Water District 130 with priority dates junior to July 13, 1962 and therefore are persons "aggrieved" by the Rangen Order pursuant to I.C. § 42-1701A(3) and "who claim a direct and substantial interest" in this proceeding under Rule of Procedure 350 (IDAPA 37.01.01.350). The Ground Water Users' interests are not adequately represented by any other party to this matter.

3. Due process of law requires that the Department provide the Ground Water Users with notice and opportunity for hearing to challenge and defend against a delivery call *before* they are ordered to curtail. Idaho Const., art. XV, § 4 and U.S. Const., amend. V and XIV. A pre-curtailment hearing is required not only as a matter of constitutionally required due process, but also by Idaho Code §§ 42-237c and 67-5240. The Ground Water Users requested, but were denied, a hearing on Rangen's delivery call.

4. Rangen is barred by the legal doctrines of waiver, estoppel and latches from making its delivery call.

5. The Rangen Order fails to adequately consider whether granting Rangen's delivery call would "block the full economic development of underground water resources" as required by Idaho Code § 42-226, or whether curtailment of water development in the ESPA to maintain artificially enhanced spring flows is contrary to Idaho law's general requirement of maximum utilization of Idaho's water resources.

6. The Rangen Order fails to adequately consider whether Rangen is suffering material injury to a senior priority right as required by Conjunctive Management Rule 40.03

(IDAPA 37.03.11.40.03) and other provisions of Idaho water law. Further, the Rangen Order arbitrarily requires the Ground Water Users to provide 16,000 AF of replacement water to Rangen in lieu of curtailment even though the Department's ground water model calculates that depletions associated with pumping by the Ground Water Users decreases the flows at the Rangen facility by less than 1000 AF.

7. The Rangen Order arbitrarily fails to consider whether Rangen's delivery call is an improper attempt to compel continued delivery of seepage water from delivery canals that the North Side Canal Company recently has improved.

8. The Rangen Order arbitrarily requires the Ground Water Users to provide replacement water attributable to calculated depletions from individuals and groups that do not belong to the Ground Water Users.

9. The Rangen Order fails to adequately consider whether Rangen is employing a reasonable means of diversion as required by Conjunctive Management Rule 40.03 and Idaho water law generally, or whether Rangen could exercise its rights by employing alternate reasonable means of diversion.

10. The Rangen Order fails to adequately consider whether Rangen's delivery call is futile call.

DATED this 16th day of March 2004.

GIVENS PURSLEY LLP

By _____
Jeffrey C. Fereday
Michael C. Creamer
John M. Marshall

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of March 2004, I served a true and correct copy of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

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