

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION  
DELIVERY CALL OF RANGEN, INC.'S  
WATER RIGHT NOS. 36-02551 & 36-  
7694

Docket No. CM-DC-2011-004

**PROTECTIVE ORDER**

The Director of the Idaho Department of Water Resources having reviewed and approved the Stipulation for Entry of Protective Order and Modification of Subpoenas, and good cause appearing therefore;

IT IS HEREBY ORDERED AND THIS DOES ORDER as follows:

1) This Order applies to any document production, responses to subpoenas, deposition or other sworn statement or testimony produced or elicited from Rangen or its employees in the above-entitled action (the "Rangen Call") that have been designated as "Confidential Information" pursuant to the terms of this Protective Order.

2) Rangen may designate information as "Confidential Information." Such Confidential Information shall be furnished subject to this Protective Order. Except as otherwise provided, confidential documents or information shall be so designated by means of a stamp bearing the legend "Confidential Information" on each page containing such information, or by producing documents to be protected under this order on a disk with the label "Confidential Information".

3) In addition to documents marked as Confidential Information, documents that rely on Confidential Information for their content shall also be designated "Confidential Information" and subject to this Protective Order. Such materials include, but are not limited to, materials developed by testifying experts in reliance on Confidential Information, and exhibits that recite portions or excerpts of Confidential Information. When in doubt, counsel intending to submit or file such documents with the Hearing

Officer or to otherwise disclose such materials during trial shall consult with Rangen, Inc.'s counsel in advance to determine whether such materials should be designated Confidential Information.

4) Any Person other than Rangen in receipt of documents or information designated as Confidential Information by Rangen shall not disclose the existence or contents of the Confidential Information, or any portion thereof, to any person, firm or entity other than: (a) Counsel of record for IGWA or the City of Pocatello; (b) litigation support personnel or copy services who need access to such Confidential Information to assist IGWA and the City of Pocatello's counsel of record; (c) IGWA and the City of Pocatello's consulting experts; (d) experts whom counsel of record for IGWA or the City of Pocatello intend to call to testify concerning the issues in any trial or proceeding held in the Action; (e) court reporters; or (f) other counsel, support personnel, or consulting and testifying experts appearing or participating in the captioned matter on behalf of other parties to this action (collectively, "Authorized Recipients"). Prior to disclosure of Confidential Information to any person listed in this paragraph, other than Authorized Recipients, such persons must execute a copy of the "**AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**" attached hereto as "**Exhibit A-1,**" which is to be retained by counsel of record.

5) Documents or information designated Confidential Information shall not be disclosed or provided to any person other than Authorized Recipients, except as expressly provided herein. Except as provided herein, Authorized Recipients shall not use, provide, or otherwise make available to any non-Authorized Recipient any Confidential Information in connection with (a) any other pending or future litigation, judicial, and/or administrative proceedings, and/or (b) any other purpose, except as set forth herein. Authorized Recipients may only use Confidential Information in connection with the Rangen Call subject to the provisions contained herein.

6) Each Authorized Recipient given access to Confidential Information shall be advised that the Confidential Information is being disclosed and is subject to the terms of this Protective Order, may not be disclosed other than pursuant to the terms hereof, and may not be used other than in connection with the Rangen Call.

7) With respect to testimony sought or elicited during any deposition or hearing, whenever counsel deems that any question or line of questioning calls for or may result in the disclosure of Confidential Information, said counsel may designate on the record prior to such disclosure, or within seven (7) business days of receipt of the deposition transcript, that such testimony is Confidential Information. Any portion of a deposition or other transcript that has been designated as including Confidential Information shall be so marked, shall be separately bound, and shall be subject to the provisions of this Protective Order pertaining to Confidential Information. Until the lapse of seven (7) business days from receipt of the deposition transcript, all deposition testimony shall be deemed Confidential Information. However, at the lapse of 7 business days, sworn testimony from deposition or hearing shall not be subject to this Protective Order unless it has been designated Confidential Information.

8) Unless otherwise ordered by the Hearing Officer, only Authorized Recipients may attend any portion of a deposition, hearing or proceeding during which Confidential Information is disclosed. If the response to a question would require the disclosure of Confidential Information, persons or parties who are not Authorized Recipients may be asked to leave the room. Upon the incipient disclosure of Confidential Information, a witness may refuse to answer or counsel may object and instruct the witness not to answer (or complete the answer) until the departure of persons or parties who are not Authorized Recipients. However, the Authorized Recipients, together with the Hearing Officer, will attempt to manage the hearing to avoid unnecessary disruptions associated with the disclosure of Confidential Information.

9) In the event any of the Parties determines to file or submit to the Hearing Officer any Confidential Information or , unless agreed to in writing by the Parties, such documents shall be filed or submitted under seal in accordance with applicable rules and only after disclosure to all Authorized Persons. Where possible, only the portions of filings that contain Confidential Information shall be filed under seal.

10) If a Party in receipt of Confidential Information is subpoenaed, ordered by the Hearing Officer of competent jurisdiction, or otherwise legally required to produce information that another entity designated Confidential Information, the person or entity receiving the subpoena, order, or request shall: (a) immediately notify Rangen of the existence and substance of each such subpoena, order or request; (b) promptly furnish Rangen with a copy of any document(s) that memorialize the subpoena, order, or request; (c) not interfere with Rangen's response or objection to any such subpoena, order, or request; and (d) unless Rangen consents in writing to an earlier production, not produce documents or information designated as Confidential Information until the last day permitted under any valid subpoena, order, or request.

11) Subject to further order of the Hearing Officer, all Confidential Information (and all copies) covered by this Protective Order and obtained by counsel or given to experts shall be destroyed or returned to counsel for the producing Party within thirty (30) days after the entry of a final, non-appealable judgment dispositive of the merits of the Action, and counsel shall certify that Confidential Information (and all copies) have been destroyed or returned. Notwithstanding anything to the contrary contained herein, counsel may retain any Confidential Information contained within, or in support of, their work product for archival purposes, provided that any such Confidential Information remains subject to the terms herein.

12) This Protective Order shall be without prejudice to the right of the Parties (a) to bring before the Hearing Officer at any time the question of whether any particular document or information constitutes Confidential Information, or (b) to present a motion

for a separate or modified Protective Order as to any particular document or information, including restrictions differing from those as specified herein. The Parties, however, agree to seek the resolution of any disputes regarding the propriety of a designation of any particular document or information as Confidential Information through the meet and confer process prior to seeking relief from the Hearing Officer. If the Parties cannot reach agreement through the meet and confer process within three (3) business days of written notice of a dispute as to whether any particular document or information constitutes Confidential Information, the Party challenging the designation may seek resolution of the dispute by the Hearing Officer. If a Party challenges the designation of any information as confidential, the producing Party shall have the burden of proof with respect to such confidentiality. All Confidential Information shall remain confidential and be treated as such under the terms of the Protective Order until any disputes regarding the propriety of the designation are resolved either informally or by the Hearing Officer. A Party's failure to dispute a confidential designation shall not waive that Party's right to assert thereafter that the document or information is not or has ceased to be Confidential Information.

13) This Protective Order shall remain in full force and effect until modified, superseded, or terminated on the record by agreement of the Parties or by Order of the Hearing Officer, and shall extend, to the extent applicable, to subsequent proceedings involving judicial or appellate review of the Hearing Officer's decision.

IT IS SO ORDERED.

DATED this 31<sup>st</sup> day of August, 2012.

  
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Gary Spackman  
Director

**EXHIBIT A-1**

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**AGREEMENT TO BE BOUND BY  
PROTECTIVE ORDER**

- 1) I have read the Protective Order in the above-captioned matter.
- 2) I understand the terms of the Protective Order and agree to be fully bound by them.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2012.

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By \_\_\_\_\_  
\_\_\_\_\_  
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