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Attorneys for Fremont Madison Irrigation District, Madison Ground Water District, Brigham Cook and Clark Hamilton, all as representative clients designated as "Upper Valley Pumpers"

BEFORE THE DEPARTMENT OF WATER RESOURCES  
 OF THE STATE OF IDAHO

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IN THE MATTER OF DISTRIBUTION	)	Docket No. CM-DC-2014-004
OF WATER TO WATER RIGHT NOS.	)	
36-00134B, 36-00135A, AND 36-15501	)	<b>UPPER VALLEY PUMPERS PETITION TO</b>
	)	<b>BE DESIGNATED A RESPONDENT OR</b>
(RANGEN, INC.)	)	<b>ALTERNATIVELY TO INTERVENE</b>
	)	
_____	)	

TO: IDAHO DEPARTMENT OF WATER RESOURCES AND ALL INTERESTED PARTIES.

Fremont Madison Irrigation District, Madison Ground Water District, Brigham Cook and Clark Hamilton, all as representative clients designated as "Upper Valley Pumpers", by and through their counsel, Jerry R. Rigby, of Rigby, Andrus & Rigby Law, PLLC, hereby petitions to be designated as a "respondent," or alternatively to intervene in the above-captioned proceeding, pursuant to Rules of Procedure of the Idaho Department of Water Resources ("Department Rules") 154, 156, and 350 through 354. IDAPA 37.01.01.

On June 27, 2014 the Director of the Idaho Department of Water Resources received *Rangen, Inc.'s Petition for Delivery Call* requesting the deliver of water by administration of

their water rights alleging material injury by diversions of water by junior priority ground water rights.

Rule 154 of the Department's Rules defines "respondents" as "[p]ersons against whom complaints are filed or about whom investigations are initiated." IDAPA 37-01.01.154. Rule 156 defines "intervenors" as "[p]ersons, not applicants or claimants or appellants, complainants, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354." IDAPA 37.01.01.156. Rule 350 states that

[p]ersons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding.

IDAPA 37.01.01.350. Under Rule 352 petitions to intervene are timely if they are filed at least fourteen (14) days before the date set for a formal hearing or prior to a prehearing conference.

IDAPA 37.01.01.352. A hearing is currently set for March 2-6, 2015 at 9:00 a.m. No hearing has been set in this matter. As such Upper Valley Pumpers' petition is timely.

Pursuant to the Department's Rules, a timely filed petition to intervene shall be granted if the petitioner "shows [a] direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues . . . unless the applicant's interest is adequately represented by exiting parties." IDAPA 37.01.01.353.

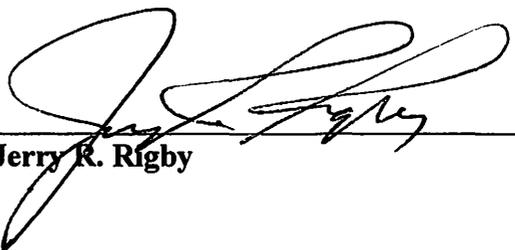
Upper Valley Pumpers divert ground water from wells located in the upper Eastern Snake Plan Aquifer ("ESPA"). Furthermore, Fremont Madison Irrigation District also owns and operates associated rights to water stored in Island Park & Grassy Reservoirs. Some of its rights

are among those which Rangen, Inc. asserts are causing it injury in the current proceeding. As a result all of the Upper Valley Pumpers are parties “about whom investigation are initiated” under Rule 154. Fremont Madison Irrigation District participated in Rangen’s previous delivery call, Docket No. CM-DC-2011-004. Furthermore, Upper Valley Pumpers have filed a notice of appearance in the current proceeding and have a direct and substantial interest in future water use and development of hydraulically-connected reaches of the Snake River and ESPA. Upper Valley Pumpers participation will not unduly broaden the issues in this proceeding.

Further, Upper Valley Pumper’s interests are specific and localized in nature, and cannot be adequately protected by the existing parties in these proceedings. IDAPA 37.01.01.353. Upper Valley Pumpers’ water rights are separate and distinct property rights that can only be adequately represented by Upper Valley Pumpers. If Upper Valley Pumpers are not allowed to participate in this proceeding, it would be deprived the opportunity to defend their water rights before the department.

Upper Valley Pumpers meet the definition of a respondent, and should be designated and permitted to participate as such. Alternatively, Upper Valley Pumpers have met the standards set forth under Rules 352 and 353 of the Department’s Rules and should be allowed to intervene in the above captioned action.

DATED This 24<sup>th</sup> day of November, 2014.

  
Jerry R. Rigby

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY  
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 24<sup>th</sup> day of November, 2014.

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