

IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHT NOS. 36-02251)
& 36-07674 (RANGEN, INC.))
_____)

IN THE MATTER OF DISTRIBUTION OF)
WATER TO RANGEN, INC.'S WATER)
RIGHT NOS. 36-15501, 36-135B, AND 36-)
135A (RANGEN, INC.))
_____)

COME NOW, American Falls Reservoir District #2, A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company (hereinafter “Surface Water Coalition” or “Coalition”), by and through their attorneys of record and pursuant to I.R.C.P. 84(r) and I.A.R. 8 hereby seek leave to participate in this proceeding as amicus curiae in support of the Petitioners.

The Director’s decision in this case represents an unprecedented and unlawful approach to handling stipulated mitigation plans between senior and junior water right holders. Since the Coalition has existing stipulations regarding mitigation with certain junior water right holders for its own water right delivery call, the Coalition has a significant interest in the outcome of this case. The Coalition respectfully requests the Court to allow amicus curiae participation in this case.

ARGUMENT

Idaho Appellate Rule 8 allows an entity to make application and appear in an appellate proceeding. The entity must state its interest and the name of the party in whose support the amicus curiae would appear. Here, the Coalition has an interest in this appeal due to the Director’s order refusing to accept a stipulated mitigation agreement between Rangen, Inc., the senior water right holder, and the Coalition of Cities (“Cities”), junior water right holders. The

Director has no legal basis for such refusal, and his order threatens the Coalition's stipulated agreements that it currently has with Southwest Irrigation District and the Water Mitigation Coalition. Further, the Coalition is currently in negotiations with other junior ground water right holders and the Director's action threatens future agreements with those water users.

Accordingly, the Coalition seeks to appear in support of the Cities.

The Surface Water Coalition participated in the underlying Rangen delivery call case, the proceeding that led to the filing of the Cities' mitigation plan. *See Memorandum Decision and Order on Petitions for Judicial Review* at 5-6 (Twin Falls County Dist. Court, Fifth Jud. Dist., Case No CV-2014-1338, Oct. 24, 2014). The Coalition participated on issues related to the Director's use of version 2.1 of the Eastern Snake Plain Aquifer Model ("ESPAM") for conjunctive administration. As senior surface water right holders, the Coalition members have significant interests in the Director's application of the CM Rules, including how stipulated mitigation plans are accepted and implemented.

Since the Cities and Rangen stipulated to the mitigation plan, and there were no novel legal issues or issues related to ESPAM 2.1 presented, there was no reason for the Coalition to seek leave to participate in the administrative proceeding. *See Coalition of Cities' Second Mitigation Plan*. However, following a hearing, the Director ultimately refused to accept the parties' agreement for various reasons. *See Order Confirming Final Order Conditionally Approving Cities' Second Mitigation Plan* at 9-11. The Director's refusal is not supported by Idaho law and sets a dangerous precedent for stipulated agreements in conjunctive water right administration. The Director's action on that point is part of the reason for the Cities' appeal in the first place. *See Notice of Appeal and Petition for Judicial Review of Final Agency Action* at 7-8.

Since the Coalition has an outstanding delivery call, as well as ongoing stipulated mitigation agreements and negotiations, it supports the Cities' appeal and the issues related to the Director's "conditional" approval of the second mitigation plan. The Coalition respectfully seeks leave to participate as amicus curiae in this judicial review proceeding.

Pursuant to I.A.R. 8, the Coalition further seeks leave to file a brief and participate in oral argument in this matter.

Respectfully submitted this 9th day of April, 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9th day of April 2015, I served true and correct copies of the foregoing upon the following by the method indicated:

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