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DEPARTMENT OF  
WATER RESOURCES

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*Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)*

**BEFORE DEPARTMENT OF WATER RESOURCES  
STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF  
WATER TO WATER RIGHT NOS. 36-  
02551 & 36-07694

(RANGEN, INC.)

Docket No. CM-DC-2011-004

**IGWA'S OPPOSITION TO SWC'S  
PETITION TO INTERVENE**

Idaho Ground Water Appropriators, Inc., ("IGWA"), acting for and on behalf of its members, through its attorneys, respectfully submits this memorandum pursuant to Procedure Rule 354 opposing the Surface Water Coalition's ("SWC") *Petition for Limited Intervention* ("Petition") filed July 19, 2012. The Petition should be denied for the reasons that follow.

The Rules of Procedure of the Idaho Department of Water Resources ("Department") allow a party to intervene only if the petitioner "shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties." (Procedure Rule 353.)

Idaho Ground Water Appropriator's, Inc. ("IGWA") is an intervening party in this proceeding pursuant to the *Order Granting IGWA's Petition to Intervene* issued by Director Gary Spackman on January 13, 2012. That Order finds that IGWA has a direct and substantial interest in the subject matter of this proceeding because its members own water rights that are hydraulically connected to the source of Rangen's water rights, and in many instances junior in priority to Rangen's water rights. The Order further finds that IGWA's participation will not unduly

broaden the issues and that IGWA's interest is not adequately represented by existing parties.

In contrast, the Director denied a petition to intervene filed by Idaho Power in the SWC delivery call case because it did not "identify in its petition any water rights it holds that are the subject of this proceeding" and did not "state in its petition that it holds ground water rights that are potentially subject to the actions and relief requested." *Order on Petitions to Intervene, and Denying Motion for Summary Judgment; Renewed Request for Information* at 2 (April 6, 2005.) The Director also noted that Idaho Power had "other forms of relief available, such as the filing of a separate delivery call." *Id.*

The SWC Petition seeks intervention to address the application of the Eastern Snake Plain Aquifer Model 2.0 ("ESPAM 2.0") to its water rights in future administrative proceedings. This proceeding is not about the future application of ESPAM 2.0, nor is it about the SWC's water rights. It involves specifically the application of ESPAM 2.0 to the springs that supply Rangen's water rights, and junior-priority water rights that may be subject to curtailment if material injury is found to the Rangen's water rights. The SWC's water rights are not diverted from the springs that supply Rangen's water rights, and they are not at risk of curtailment in response to Rangen's delivery call. While the SWC may have some generalized interest in ESPAM 2.0, it does not have a direct and substantial interest as required by Procedure Rule 354.

If the SWC is allowed to intervene in this delivery call, the issues will be unduly broadened. The SWC admits in its Petition that it is working through its own delivery call and has been since 2005. The proper place for the SWC to raise its own issues is in the context of its delivery call where it has a direct and substantial interest, not in this contested case. Like Idaho Power in the SWC delivery call case, the SWC has other forms of relief available to contest the application of ESPAM 2.0 to its water rights.

Finally, the interests of the SWC pertaining to the application of ESPAM 2.0 are adequately represented by existing parties. Rangen has hired its own experts to prepare reports and testify regarding the application of ESPAM 2.0, and the Director can reasonably determine the potential application of ESPAM 2.0 to future administrative proceedings to the extent that is relevant to the Director's decision. This delivery call should not turn into a state-wide referendum on ESPAM 2.0 for which any person with a water right that is hydraulically connected to the ESPA is allowed to participate.

For these reasons, the SWC should not be permitted to intervene in this proceeding.

DATED this 26<sup>th</sup> day of July, 2012.

RACINE, OLSON, NYE, BUDGE &  
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By: Thomas J. Budge  
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**CERTIFICATE OF MAILING**

I hereby certify that on this 26<sup>th</sup> day of July, 2012, **IGWA's Opposition to the SWC's Petition to Intervene** was served upon the following persons in the manner(s) indicated.

Becky Harway  
Signature of person mailing form

**Original:**

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AMENDED CERTIFICATE OF MAILING

I hereby certify that on this 26<sup>th</sup> day of July, 2012, IGWA'S OPPOSITION TO SWC'S PETITION TO INTERVENE, was served by U.S. Mail postage prepaid to the following:

Becky Hawley  
Signature of person mailing form

Original:

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