

ARGUMENT

On February 27, 2013 IDWR staff filed its Staff Memorandum which summarized and responded to the expert reports in this case. The parties were required to file their responses to the Staff Memorandum by April 5, 2013. Fifth Amended Scheduling Order, Mar. 20, 2013. Instead, on April 5, 2013 Rangen filed a “Notice of No Written Response to Staff Memorandum.” Given the presence of the qualifier “written” in Rangen’s notice, City of Pocatello is concerned that Rangen’s failure to file a response to the Staff Memorandum could be an attempt to put on live testimony at the hearing regarding IDWR’s Staff Memorandum. Pocatello requests that the Director exclude such testimony for the reasons described below.

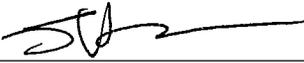
If Rangen were to present new evidence in response to the Staff Memorandum at trial, Pocatello, and other junior water users in this matter would be unfairly prejudiced. Granting this Motion will not result in prejudice to Rangen because it had an opportunity to file a report responding to the Staff Memorandum, yet chose not to. However, if Rangen were allowed to put on responsive evidence regarding the Staff Memorandum, Pocatello and other juniors will almost certainly be prejudiced by an inability to adequately defend against such evidence. The Director should use his broad discretion to prevent this potential prejudice from occurring. *Puckett v. Verska*, 144 Idaho 161, 167, 158 P.3d 937, 943 (2007) (“Trial courts have broad discretion when ruling on a motion in limine”); *see also Perry v. Magic Valley Reg’l Med. Ctr.*, 134 Idaho 46, 52–53, 995 P.2d 816, 822–23 (2000) (upholding trial court’s exclusion of “ambush” evidence not disclosed prior to trial).

PRAYER FOR RELIEF

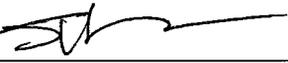
For the foregoing reasons, Pocatello respectfully requests that the Director enter an Order prohibiting Rangen from putting on any new testimony or evidence which responds to the IDWR Staff Memorandum at the hearing in this matter.

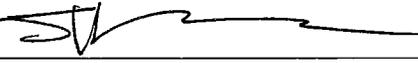
Respectfully submitted this 25th day of April, 2013.

CITY OF POCATELLO ATTORNEY'S OFFICE

By  *for*
A. Dean Tranmer

WHITE & JANKOWSKI

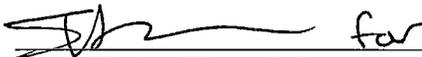
By  *for*
Sarah A. Klahn

By 
J. Ryland Hutchins

ATTORNEYS FOR CITY OF POCATELLO

CERTIFICATE OF SERVICE

I hereby certify that on this 25TH day of April, 2013, I caused to be served a true and correct copy of the foregoing **City of Pocatello's Motion in Limine to Preclude Rangen, Inc. from Offering Testimony or Evidence in Response to the IDWR Staff Memorandum for Docket No. CM-DC-2011-004** upon the following by the method indicated:


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