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DEPARTMENT OF
WATER RESOURCES

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**DISTRICT COURT OF THE STATE OF IDAHO
FIFTH JUDICIAL DISTRICT
TWIN FALLS COUNTY**

In Re SRBA
Case No. 39576

Subcase No. 36-7694
Subcase No. 36-2551

**IGWA'S RESPONSE TO
RANGEN'S MOTION TO SET
ASIDE PARTIAL DECREES**

I. INTRODUCTION

Idaho Ground Water Appropriators, Inc. (IGWA), acting for and on behalf of its members, hereby responds to *Rangen Inc.'s Motion to Set Aside Partial Decrees* (the "Motion") filed January 16, 2015. The Motion

seeks to set aside water rights 36-07694 and 36-02551, and to add to those water rights: (1) a source of water as: Martin-Curren Tunnel, Curran Springs, flows from a concrete box, as well as from various seeps, rivulets, and springs originating and located on the talus slope, or other springs or seeps which are the headwaters of Billingsley Creek; and (2) an additional

point of diversion: Township 78, Range 14E, SW1/4 SW1/4 NW1/4 Sec. 32.¹

For the reasons stated below, IGWA respectfully asks this Court deny the Motion and award attorney fees to IGWA.

II. LEGAL STANDARD

A party seeking to modify an SRBA partial decree must comply with I.R.C.P. 60(a) or 60(b).² Rangen's Motion relies on Rules 60(b)(5) and 60(b)(6).³ Under 60(b)(5) a party may be relieved from a final judgment if "it is no longer equitable that the judgment should have prospective application." Under 60(b)(6) a party may be relieved for "any other reason justifying relief from the operation of the judgment." In both cases, relief may be granted only if the motion is made "within a reasonable time."⁴

The Idaho Supreme Court has ruled that relief under Rule 60(b) "requires that good cause be shown in order that a trial court grant the requested relief."⁵ A primary consideration in the good cause analysis is prejudice to the opponent.⁶ This Court, in denying Rangen's 2013 motion for late claim, stated that "when undertaking a Rule 55(c) good cause analysis, 'prejudice to the other parties is the factor on which the court places significant emphasis.'"⁷ Notably, the good cause analysis under Rule

¹ *Memo. in Supp. of Rangen Inc.'s Mot. to Set Aside Partial Decrees* at 1.

² AO1 § 14(d).

³ *Motion* at 1.

⁴ I.R.C.P. 60(b).

⁵ *Watson v. Navistar Int'l Transp. Corp.*, 121 Idaho 643, 650-51 (Idaho 1992).

⁶ *See Dorion v. Keane*, 153 Idaho 371, 374 (Ct. App. 2012).

⁷ *Order Denying Mot. to File Amended Notice of Claim* at 10, Subcase No. 36-16977 (Oct. 2, 2013) (quoting another source).

55(c) is more lenient than the good cause analysis under Rule 60(b).⁸ Thus, prejudice to other parties should be given greater weight here.

III. ARGUMENT

Rangen's Motion is very appealing to IGWA. If Rangen's water right decrees can be set aside and amended simply because they are being administered differently than Rangen anticipated, IGWA will undoubtedly seek to amend certain elements of Rangen's water rights in its favor, and to set aside and amend a host of other senior surface water right decrees as well. For nearly a decade, IGWA's members have been put to extreme effort, expense, and heartache to avoid having their water rights shut off because historic water right administration practices were not memorialized in the water right decrees of senior surface water rights making delivery calls. The opportunity to rectify this tragic omission would be welcomed with open arms indeed.

Of course, IGWA would have long ago moved this Court to set aside and amend senior water right decrees if there was a reasonable basis for doing so. IGWA has not made such an effort because I.R.C.P. 60(b) does not allow it.

IGWA is consigned to agree with the State of Idaho that Rangen's water right decrees may not be set aside and amended under I.R.C.P. 60(b). In the interest of efficiency, IGWA hereby adopts and incorporates by reference the arguments set forth in the *State of Idaho's Response to Motion to Set Aside Partial Decrees* filed March 6, 2015. In addition, IGWA wishes to highlight the prejudice it would suffer if Rangen is permitted to set aside and amend its partial decrees as proposed.

⁸ See *id.* at 375.

Water rights 36-2551 and 36-7695 are the centerpiece of the *Final Order Regarding Rangen, Inc.’s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* (the “Rangen Curtailment Order”) issued by the Idaho Department of Water Resources (IDWR) on January 29, 2014, *In the Matter of Distribution of Water to Water Right Nos. 36-02551 and 36-07694 (Rangen, Inc.)*, IDWR docket no. CM-DC-2011-004, which this Court is familiar with. The source and point of diversion elements of the water rights, as presently decreed, are integral to several multiple heavily contested aspects of the Order. Moreover, the Order spawned numerous administrative and judicial cases—all based on water rights 36-2551 and 36-7659 as presently decreed—including:

- *Rangen, Inc. v. Spackman, et al.*, Twin Falls County case no. CV-2014-1338 (Consolidated Gooding County case no. CV-2014-179).
- *Idaho Ground Water Appropriators, Inc., v. Idaho Department of Water Resources, et al.*, Gooding County case no. CV-2014-179 (Consolidated with Twin Falls County case no. CV-2014-1338).
- *Rangen, Inc. v. Spackman, et al.*, Twin Falls County case no. CV-2014-1338 (Consolidated Gooding County Case No. CV-2014-1479)
- *Rangen, Inc. v. Spackman, et al.*, Supreme Court Docket Nos. 42772-2015, 42775-2015, and 42863-2015.
- *Idaho Ground Water Appropriators, Inc. v. Spackman, et al.*, Twin Falls County case no. CV-2015-237.
- *In the Matter of the First Mitigation Plan Filed by the Idaho Ground Water Appropriators, Inc. for the Distribution of Water to Water Right Nos. 36-02551 and 36-07694 in the Name of Rangen, Inc.*, IDWR docket no. CM-MP-2014-001.
- *Rangen, Inc. v. Spackman, et al.*, Twin Falls County case no. CV-2014-4970.
- *Rangen, Inc. v. Spackman, e al.*, Twin Falls, County case no. CV-2014-2446.
- *In the Matter of the Second Mitigation Plan Filed by the Idaho Ground Water Appropriators for the Distribution of Water to Water*

Right Nos. 36-02551 and 36-07694 in the Name of Rangen, Inc., IDWR docket no. CM-MP-2014-003.

- *Rangen, Inc. v. Spackman, et al., Twin Falls County case no. CV-2014-2935.*
- *In the Matter of the Application for Transfer of Water Right No. 36-2055 (Transfer Application #79330) in the Name of North Snake GWD, Magic Valley GWD, Southwest ID on Behalf of the Owner, State of Idaho, Dept. of Fish and Game, IDWR Transfer Application No. 79330.*
- *In the Matter of the Third Mitigation Plan filed by the Idaho Ground Water Appropriators for the distribution of water to water right nos. 36-02551 & 36-07694 in the name of Rangen, Inc., docket no. IDWR CM-MP-2014-005.*
- *In the Matter of Application for Permit No. 36-17011 (in the mane of NSGWD et al.), IDWR Application for Permit No. 36-17011.*
- *In the Matter of Application for Transfer No. 79498 (in the name of IGWA), IDWR Transfer Application No. 79498.*
- *In the Matter of the Fourth Mitigation Plan Filed by the Idaho Ground Water Appropriators for the Distribution of Water to Water Right Nos. 36-02551 & 36-07694 in the Name of Rangen, Inc. "Magic Springs Project", IDWR docket no. CM-MP-2014-006.*
- *Rangen, Inc. v. Spackman, Twin Falls County case no. CV-2014-4633.*
- *In the Matter of Application for Transfer No. 79560, IDWR Transfer Application No. 79560.*
- *In Re: Water Supply Bank Rental Agreement with Idaho Ground Water Appropriators, Inc. Dated January 27, 2015, IDWR Water Right No. 36-7072.*
- *In the Matter of the Fifth Mitigation Plan Filed by IGWA to Provide Mitigation to Rangen, Inc., IDWR docket no. CM-MP-2014-008.*
- *In the Matter of Application for Permit No.. 36-16976, IDWR Application for Permit No. 36-16976.*
- *North Snake Ground Water District, et al. v. Spackman, et al., Gooding County case no. CV-2015-083.*
- *In the Matters of the Coalition of Cities' Mitigation Plan for Managed Recharge and Other Aquifer Enhancement Activities for the Distribution of Water To Water Right Nos. 36-02551 & 36-07694, In the Name of Rangen, Inc., et al., IDWR Docket Nos. CM-MP-*

2014-004, CM-MP-2014-007, CM-DC-2011-004 and CM-DC-2014-004.

- *In the Matter of the Second Mitigation Plan Filed by the Coalition of Cities for the Distribution of Water to Water Right Nos. 36-02551, 36-07694 and 36-15501, in the Name of Rangen, Inc., et al.*, IDWR Docket Nos. CM-MP-2014-007, CM-DC-2011-004 and CM-DC-2014-004.
- *Cities of Bliss, et al. v. Spackman, et al.*, Minidoka County case no. CV-2015-172.
- *Motion to File Late Claim*, In Re SRBA Case No. 39576, Subcase Nos. 36-16977.
- *In the Matter of the Application for Permit Nos. 36-16976 in the Name of North Snake Ground Water District et al. and Application for Permit No. 36-17002 in the Name of Rangen, Inc.*, IDWR Application for Permit Nos. 36-16796 & 36-17002.
- *In the Matter of Application for Transfer No. 79135 in the Name of Rangen, Inc.*, IDWR Transfer Application No. 79135.
- *Rangen, Inc. v. Spackman, et al.*, Gooding County case no. CV-2014-272.

The source and point of diversion of water rights 36-2551 and 36-7694 materially affects the judgments that have been or will be entered in all of these cases.

Importantly, IGWA has relied on these judgments in myriad ways, not the least of which was to construct a multi-million dollar pipeline to convey mitigation water to Rangen. If Rangen is permitted to change the source and point of diversion of water rights 36-2551 and 36-7694, the pipeline will instantaneously become undersized, and other agreements that made the pipeline possible will become inadequate. Needless to say, the prejudice to IGWA would be extreme.

Rangen is obviously aware of this. Indeed, the very purpose of the Motion is to upend all that has been done to date.

As explained in the *State of Idaho's Response to Motion to Set Aside Partial Decrees*, the Motion was filed some 22 months after Rangen moved for summary judgment concerning the source and point of diversion of

water rights 36-2551 and 36-7694 in its delivery call hearing (i.e. Rangen discovered the problem with its source and point of diversion nearly two years ago), and 15 months after this Court informed Rangen that the appropriate SRBA filing would be a motion to set aside its partial decrees.⁹ This alone demonstrates the Motion was not filed within a reasonable time.

Adding the fact that more than two dozen administrative and judicial proceedings have been initiated, and in most cases completed, in reliance on the existing partial decrees of water rights 36-2551 and 36-7694, plus IGWA's additional reliance in constructing a multi-million dollar pipe, the Motion cannot be deemed to have been filed within a "reasonable time" as I.R.C.P. 60(b) requires.

Therefore, IGWA respectfully asks this Court to deny the Motion.

IV. REQUEST FOR ATTORNEY FEES

Pursuant to Idaho Code § 12-121, I.R.C.P. 54(e)(1), and I.R.C.P. 11(a)(11), IGWA asks this Court to require Rangen to pay its attorney fees incurred in responding to the Motion because the Motion was filed unreasonably.

Idaho Code § 12-121 provides that "[i]n any civil action, the judge may award reasonable attorney's fees to the prevailing party or parties." Rule 54(e)(1) explains that attorney fees under Idaho Code § 12-121 are warranted when "the case was brought, pursued or defended frivolously, unreasonably or without foundation."¹⁰

Rule 11(1)(a) is similar to Idaho Code § 12-121. It requires that every pleading, motion or other paper submitted to the court

is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or

⁹ *State of Idaho's Response to Motion to Set Aside Partial Decrees* (Mar. 6, 2015) p. 5.

¹⁰ *See also Landvik v. Herbert*, 130 Idaho 54, 61 (Ct. App. 1997).

reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

Rule 11(1)(a) focuses on discrete pleadings. It requires attorneys “to perform a prefiling inquiry into both the facts and the law involved.”¹¹ A showing of subjective bad faith is not necessary for the imposition of sanctions under Rule 11(a)(1).¹² Rather, the question turns on whether the claim is warranted based on “the relevant facts and law that reasonably could have been acquired at the time the document was submitted to the court.”¹³

For any filing that does not comply with Rule 11(a)(1), the court “shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney’s fee.”¹⁴

The decision to award attorney fees under Idaho Code § 12-121 and Rule 54(e)(1) or Rule 11(a)(1) is left to the sound discretion of the trial court, and is subject to reversal only if there has been an abuse of discretion by the trial court.¹⁵

For example, in *Landvik* the Idaho Court of Appeals awarded fees on appeal because the court believed that the plaintiffs’ attorneys should have known that its position was not well grounded in fact or law.¹⁶ The Court

¹¹ *Koehn v. Riggins*, 126 Idaho 1017, 1021 (1995).

¹² *Durrant v. Christensen*, 117 Idaho 70, 74 (1990).

¹³ *Landvik*, 130 Idaho at 61.

¹⁴ I.R.C.P. 11(a)(1) (emphasis added.)

¹⁵ *Luce v. Marble*, 142 Idaho 264, 274 (2005); *Landvik*, 130 Idaho at 61.

¹⁶ *Id.* at 63.

explained that “an excess of zeal in the well-intended pursuit of their clients’ interests led counsel beyond the bounds of legitimate appellate advocacy.”¹⁷

The Idaho Supreme Court recently followed suit in *Jim & Maryann Plane Family Trust v. Skinner*, citing Rule 11(a)(1) *sua sponte* to award fees against a represented party who pursued its case without a reasonable basis in law or fact.¹⁸

In this case, the Motion is unreasonable because it cannot reasonably argued that it meets the requirement it be filed within a “reasonable time.” As explained above, Rangen waited for nearly two years after discovering the problem with the source and point of diversion before filing the Motion. What’s more, more than two dozen legal actions occurred and IGWA constructed a multi-million dollar pipeline in the meantime in reliance on the source and point of diversion as presently decreed.

The prejudice to IGWA if the Motion were granted could hardly be more obvious or substantial. Yet the Motion does not even mention prejudice, let alone explain why it doesn’t exist. Instead, Rangen bowls forward with its unending litigation march, requiring the State and IGWA to exert time and expense responding to a motion that has no chance of succeeding.

The Motion might have been excusable if it were the first offense. But Rangen has engaged in an endless carousel of litigation since the Rangen Curtailment Order was issued, aggressively contesting every mitigation plan, water right transfer, and water right permit IGWA has sought, all of which attempt to *deliver more water to Rangen*.

¹⁷ *Id.* at 63-64.

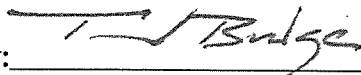
¹⁸ *Jim & Maryann Plane Family Trust v. Skinner*, __ Idaho __, 2015 Ida. LEXIS 11, 21 (2015).

Rangen certainly has the right to assert meritorious positions, and the majority of its positions have surpassed the low threshold imposed by Idaho Code § 12-121, I.R.C.P. 54(e)(1), and I.R.C.P. 11(a)(1). But some have not. Among the debris strewn about the Rangen litigation minefield are its motion to file a late claim in the SRBA,¹⁹ an action for alternative writ of mandate that was summarily denied,²⁰ and an action for declaratory judgment and writ of mandamus that required a motion to dismiss²¹—all consuming resources of the State, IGWA, and this Court with, at best, dubious foundation.

The Motion ultimately fails the threshold imposed by Idaho Code § 12-121, I.R.C.P. 54(e)(1), and I.R.C.P. 11(a)(1). Therefore, IGWA respectfully requests an award of its attorney fees in responding to the Motion.

RESPECTFULLY SUBMITTED this 12th day of March, 2015.

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¹⁹ In re SRBA case no. 39576, Subcase no. 36-16977.

²⁰ *Rangen v. Spackman et al.*, Gooding County case no. CV-2014-272.

²¹ *Id.*

CERTIFICATE OF SERVICE

I certify that on this 12th day of March, 2015, the foregoing document was served on the following persons in the manner indicated.



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