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Department of Water Resources
Eastern Region

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Attorney for City of Gooding, Idaho

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF APPLICATION FOR)
PERMIT NO. 36-17002)

**CITY OF GOODING'S ARGUMENT IN
OPPOSITION TO GRANTING THE
WATER RIGHT PERMIT**

COMES NOW, the CITY OF GOODING, IDAHO, By and through its attorney of record, Craig D. Hobdey, and submits the following in support of the City's opposition and protest to the granting of the above Application.

INTRODUCTION

The purpose of this submission is to obviate the need of holding a hearing on Rangen's Application For Permit No. 36-17002. By way of background, the hearing on the Application was to be held in conjunction with Application for Permit No. 36-16976 on September 17 through 19, 2014. The hearing on Application No. 36-16976 took place on September 17, 2014. It was the City of Gooding's understanding that on September 18, 2014 the hearing on Application No. 36-17002 would commence. The City of Gooding's representatives arrived at the designated hearing site, only

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to discover that no hearing officer nor applicant was present. Upon contacting counsel for Rangen (Fritz Haemmerle), the City was advised that the matter had been settled. It in fact had not been settled, as the City of Gooding, as a Protestant, had not agreed to any type of settlement. The other parties and the hearing officer had merely forgotten that the City of Gooding was a protestant and the hearing was vacated without notifying the City. It is somewhat understandable, as the City had maintained a relatively low key and passive approach, preferring to let Rangen, and the Applicant for Permit No. 36-16976, carry their respective burdens.

ARGUMENT

Rangen has filed an Application for 59 cfs. The Application is facially unclear as to whether the water is to come from Billingsley Creek, the talus slopes, springs, or some combination of the three. Item number 2 of the Application indicates the source is springs. However item number 6 of the Application indicates that the diverting works are not only “springs” emanating from the basalt, but consist of a “tunnel in the basalt”, concrete collectors, gates, 36 inch diameter concrete pipeline, all forming the headwaters at Billingsley Creek which is collected (at?) a pipeline to the large raceways. Item number 11 indicates the purpose of the Application is to secure points of diversion...from springs, seeps, Talus Slopes, and from the Martin-Curren Tunnel. The true point of diversion is actually Billingsley Creek. Otherwise the source would be springs collected and diverted to the headwaters of Billingsley Creek. Obviously the headwaters of Billingsley Creek are part of Billingsley Creek. Therefore the source of water as springs is incorrect.

The reference to diverting from the Martin-Curren Tunnel is also perplexing. Rangen has made a water call on Eastern Snake River Plain Ground Water Users including the City of Gooding. The water call asserts that Rangen is not able to divert their senior water rights from the Martin-Curren Tunnel because there is no water to divert. (See Rangen Exhibit No. 2006). If there is no water to divert from the Martin-Curren Tunnel it would be physically impossible to divert any water with a 2014 or junior priority date. The flow in Billingsley Creek has, at times, exceeded 12 cfs at

the bridge diversion over the last decade (Exhibits 1021; Exhibit 1022; Exhibit 1040 page 1; Exhibit 2017). It is plain that the water supply is not sufficient. The Applicant has the burden to show that the water is sufficient.

The proposed use directly conflicts with the local public interest. Water calls on junior water rights by Rangen have resulted in the Director of the Idaho Department of Water Resources ordering curtailment of the use of groundwater. Such curtailment would adversely effect as many as fourteen cities, anywhere from 750 to over 400,000 acres of irrigated farm land; many commercial and industrial users, as well as hundreds of dairy users located in the effected area. The granting of this right would only serve to allow Rangen to divert more (junior priority) water without effecting their ability to call on up gradient groundwater users that would have senior priorities to this right. There is either enough water available now to supply all of Rangen's senior rights, from its existing diversions; or the granting of this right would devastate the local economy. Rangen cannot have it both ways. To grant this Application would allow Rangen to call on junior upstream groundwater users while at the same time Rangen would be using a 2014 right to satisfy its needs. This the Department cannot allow, either by law or equity.

APPLICABLE LAW

Idaho Code §42-203A(5) states, in part, as follows:

In all applications whether protested or not protested, where the proposed use is such: (b) that the water supply itself is insufficient for the purpose for which it is sought to be appropriated, or (e) that it will conflict with the local public interest as defined in section 42-202B, Idaho Code; or (g) that it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates...; the director of the department of water resources may reject such application and refuse issuance of a permit therefor.

The Applicant bears the burden of proof regarding all factors set forth in Idaho Code §42-203A(5). In regards to local interest, the initial burden lies with both applicant and protestant,

applicant has the ultimate burden of persuasion.

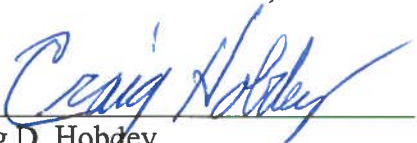
CONCLUSION

Water Right Application No. 36-17002 should be denied for the following reasons.

1. The water supply is not sufficient for the purpose it is sought to be appropriated.
2. The proposed use will conflict with the local public interest. There are over 14 cities and 150,000 acres have been subject to curtailment, and only through mitigation has absolute curtailment been avoided.
3. The granting of the permit will adversely affect the local economy of the watershed, it being understood that the watershed includes all groundwater in the Eastern Snake River Plain Aquifer.
4. The proposed use would be contrary to the conservation of upstream groundwater resources within the State of Idaho. The granting of this Application while allowing Rangen to continue their call on existing upstream users for less than 12 cfs is contrary to the conservation of water and would be nothing but a waste of the natural resources of the State of Idaho.

DATED THIS 2 day of December, 2014.

HOBDEY LAW OFFICE, PLLC



Craig D. Hobdey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of December, 2014, I served a true and correct copy of the foregoing CITY OF GOODING'S ARGUMENT IN OPPOSITION TO GRANTING THE WATER RIGHT by the method indicated below and addressed to the following:

Original:

James Cefalo
Idaho Department of Water Resources
900 North Skyline Drive, Ste. A
Idaho Falls ID 83402-1718

U.S. Mail

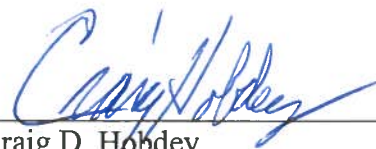
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