

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

IN THE MATTER OF THE DIVERSION OF)
WATER WITHOUT A VALID RIGHT FROM)
BILLINGSLEY CREEK BY RANGEN, INC.)
_____)

**NOTICE OF VIOLATION AND
CEASE AND DESIST ORDER**

The Director ("Director") of the Idaho Department of Water Resources ("Department"), being charged with the duties of protecting water rights and enforcing specific statutes of the state of Idaho and rules promulgated by the department, and being authorized to order the cessation of violations or attempted violations of the provisions of the law relating to all aspects of the appropriation and distribution of water has caused an investigation of the water diverted from Billingsley Creek at a point known as the Bridge Diversion under the control of Rangen, Inc. ("Rangen").

Based upon the Department's investigation, the Director makes the following Findings of Fact, Conclusions of Law and Orders:

FINDINGS OF FACT

1. On December 13, 2011, Rangen filed a *Petition for Delivery Call* ("Petition") with the Department alleging that it is not receiving all of the water it is entitled to pursuant to water right nos. 36-02551 and 36-07694 and that it is being materially injured by junior ground water pumping. In response to the Petition, the Department designated a contested case proceeding and held a hearing in May 2013.

2. During the course of the contested case proceeding and in its *Final Order Regarding Rangen, Inc.'s Petition For Delivery Call; Curtailing Ground Water Rights Junior To July 13, 1962*, ("Final Order"), the Department found that Rangen's Snake River Basin Adjudication ("SRBA") decrees do not identify Billingsley Creek as a source of water and do not include a point of diversion in the SWSWNW Section 32, T7S, R14E, B.M. The Final Order also found that the SRBA decree was conclusive as to the nature and extent of the water rights.

3. Pursuant to water right nos. 36-15501, 36-02551 and 36-07694, Rangen is authorized to divert 76.0 cfs from the Martin-Curran Tunnel for fish propagation. The Martin-Curran Tunnel is located in the SESWNW Section 32, T7S, R14E, B.M. The Department, upon investigation, finds that Rangen is also diverting water from Billingsley Creek in the SWSWNW Section 32, T7S, R14E, B.M, at a point known as the Bridge Diversion. Rangen does not

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possess a water right to divert water from Billingsley Creek in the SWSWNW Section 32, T7S, R14E, B.M.

CONCLUSIONS OF LAW

1. Idaho Code § 42-201(2) provides as follows:

No person shall divert any water from a natural watercourse or apply water to land without having obtained a valid water right to do so, or apply it to purposes for which no valid water right exists.

2. Idaho Code § 42-351 provides as follows:

- (1) It is unlawful for any person to divert or use water from a natural watercourse or from a ground water source without having obtained a valid water right to do so, or to divert or use water not in conformance with a valid water right.

- (2) It is unlawful for any person to divert or use water in substantial violation of any provision of this title, or any rule, permit, condition of approval or order issued or promulgated pursuant to this title that is related to the diversion or use of water.

- (3) Upon investigation of available information, the director of the department of water resources shall have the discretion to issue a written notice of violation to the person in accordance with the provisions of section 42-1701B, Idaho Code, for the illegal diversion or use of water.

- (4) Notwithstanding the issuance of a notice of violation, the director may also file an action seeking injunctive relief directing the person to cease and desist the activity or activities alleged to be in violation of applicable law or any existing water right.

3. Idaho Code § 42-1701B provides in relevant part:

The director of the department of water resources is authorized and may commence and pursue enforcement actions to remedy the designated violations set out in title 42, Idaho Code.

...

The notice of violation shall identify the alleged violation and shall specify each provision of the designated chapter, rule, permit, condition of approval or order which has been violated. The notice of violation shall state the remedy, including any demand to cease and desist, restoration and mitigation measures, and the amount of any civil penalty the director seeks for redress of the violation.

...

If the person who is the subject of the notice of violation fails to cease and desist the activity or activities constituting the alleged violation within the time limits set in the notice of violation, the director may seek, by and through the attorney

general, injunctive relief in the district court pending the outcome of the administrative enforcement action.

4. The illegal diversion of the public waters of the state of Idaho must be stopped to prevent injury to other water rights, to protect the water resources of the state and to assure that the allocation and use of available water supplies takes place in an orderly manner.

5. The Department should issue a Notice of Violation to Rangen directing Rangen to cease and desist the illegal diversion of water from Billingsley Creek at the Bridge Diversion located at SWSWNW Section 32, T7S, R14E, B.M.

6. The Department should provide a reasonable period of time for Rangen to remove and relocate fish that may be affected by the diminished flow.

ORDER

IT IS HEREBY ORDERED as follows:

1. Rangen shall cease the diversion of water from Billingsley Creek at the Bridge Diversion located within the SWSWNW Section 32, T7S, R14E, B.M. by February 24, 2014. After February 24, 2014, the Bridge Diversion shall be locked or disabled in a manner that will no longer divert water from Billingsley Creek.

2. Rangen is entitled to a compliance conference with Department staff if it files a written request with the Department within fourteen (14) days of receipt of this Notice of Violation.

3. At the conference, Rangen shall have the opportunity to explain the circumstance of the alleged violation and, where appropriate, to present a proposal for remedying the damage caused by the violation and enter into a consent agreement with the Department to resolve the violation and to assure future compliance with the laws of the state of Idaho.

DATED this 31st day of January, 2014



Gary Spackman, Director
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of January, 2014, the above and foregoing document was served on the following by providing a copy in the manner selected:

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Deborah J. Gibson
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