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District Court - SRBA
Fifth Judicial District
In Re: Administrative Appeals
County of Twin Falls - State of Idaho

DEC - 5 2014

By _____ Clerk
_____ Deputy Clerk

Attorneys for Rangen, Inc.

Supreme Court No. 42772

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

RANGEN, INC.,

Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES and GARY SPACKMAN, in
his capacity as Director of the Idaho
Department of Water Resources,

Respondents.

IDAHO GROUND WATER
APPROPRIATORS, INC.; FREMONT
MADISON IRRIGATION DISTRICT;
A&B IRRIGATION DISTRICT, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, TWIN FALLS
CANAL COMPANY; AMERICAN FALLS

Case No. CV-2014-1338

(Consolidated Gooding County Case No.
CV-2014-179)

NOTICE OF APPEAL

Fee: L(4) - \$129.00

NOTICE OF APPEAL - 1

FILED - ORIGINAL

DEC - 8 2014

Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

**RESERVOIR DISTRICT #2, MINIDOKA
IRRIGATION DISTRICT; AND THE
CITY OF POCA TELLO,**

Intervenors.

**IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS. 36-
02551 & 36-07694 (RANGEN, INC.), IDWR
DOCKET CM-DC-2011-004**

TO: THE ABOVE-NAMED RESPONDENT, THE IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN , AND ITS ATTORNEY, GARRICK BAXTER, DEPUTY ATTORNEY GENERAL, IDAHO ATTORNEY GENERAL'S OFFICES, 322 E. FRONT STREET, BOISE, ID 83702-7374;

AND INTERVENORS: IDAHO GROUND WATER APPROPRIATORS, INC., RANDALL C. BUDGE, RACINE, OLSON, NYE & BAILEY; FREMONT MADISON IRRIGATION DISTRICT, JERRY RIGBY, RIGBY, ANDRUS & RIGBY LAW, PLLC, P.O. BOX 250, REXBURG, ID 83440-0250; A&B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, TWIN FALLS CANAL COMPANY; JOHN SIMPSON AND TRAVIS THOMPSON, 195 RIVER VISTA PL., STE. 204, TWIN FALLS, ID., 83301-3029, BARKER ROSHOLT & SIMPSON, P.O. BOX 2139, BOISE, ID 83701-2139; AMERICAN FALLS RESERVOIR DISTRICT #2, MINIDOKA IRRIGATION DISTRICT , W. KENT FLETCHER, P.O. BOX 248, BURLEY, ID 83318-0248; CITY OF POCA TELLO, A. DEAN TRANMER, P.O. BOX 4169, POCA TELLO, ID 83205, AND SARAH A. KLAHN, WHITE & JANKOWSKI, LLP, 511 SIXTEENTH STREET, SUITE 500, DENVER, CO 80202.

AND THE CLERK OF THE ABOVE-ENTITLED COURT

1. The above-named Appellant, RANGEN, INC., appeals the Court's Decision on October 24, 2014, and the resulting Judgment dated October 24, 2014, entered in accordance with the Court's Decision, Honorable Eric J. Wildman, District Judge for the Fifth Judicial District, in and for the County of Twin Falls, presiding.

2. That the party has a right to appeal to the Supreme Court, and the judgment

described in paragraph 1 is appealable pursuant to I.A.R. 11(a)(2).

3. Issues on Appeal: Whether the trial court erred in denying Plaintiff/Appellant's Petition for Judicial Review, which ruling raises the following issues:

- a. Whether the rulings are in violation of constitutional, statutory provisions or administrative rules of the Department;
- b. Whether the rulings are in excess of the statutory authority or authority of the Department under the administrative rules of the Department;
- c. Whether the rulings were made upon unlawful procedures;
- d. Whether the rulings were arbitrary, capricious, and/or an abuse of the agency discretion.
- e. Whether as a matter of fact or law Rangen's decreed source under water rights 36-02551 and 36-07694 , the "Martin Curren Tunnel," encompasses the entire spring complex that forms the headwaters of Billingsley Creek, as opposed to just water emanating from the Martin Curren Tunnel;
- f. Whether as a matter of fact or law Rangen's Partial Decrees under 36-02551 and 36-07694 allow the diversion of the springs that form the headwaters of Billingsley Creek, as opposed to just water emanating from the Martin Curren Tunnel;
- g. Whether the Department is estopped from concluding Rangen in not entitled to divert from the entire spring complex that forms the headwaters of Billingsley Creek , as opposed to just the water emanating from the Martin Curren Tunnel, based on prior decisions by the Director of the Idaho Department of Water Resources and prior inactions and conclusions of the Department;

- h. Whether under a curtailment run made under ESPAM2.1, the conclusion that Rangen is entitled to 63% of the spring flow in the Rangen Cell is supported by substantial evidence in the record as a whole and, based on Rangen's Decrees, is supported as a matter of law;
 - i. Whether as a matter of fact or law the junior user parties failed to demonstrate their own efficient use of water without waste;
 - j. Whether the decision regarding the weir coefficient is supported by substantial evidence in the record as a whole; and
 - k. Whether Rangen Inc. is entitled to attorney's fees and costs.
4. No order has been issued sealing all or any portion of the record.
5. a. Is a reporter's transcript requested? Yes.
- b. The Appellant requests the preparation of the following portions of the reporter's transcript: The oral argument from the hearing on the Petition for Judicial Review, dated August 28, 2014.
- c. The Appellant requests preparation of the transcript in a compressed format.
6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R., including the entire administrative record and transcripts from the administrative proceedings, filed by the Idaho Department of Water Resources (IDWR or Department) in its Notice of Lodging the Consolidated Agency Record and Transcript with the District Court in Docket No. 2011-004, consolidated Gooding County Case No. CV-2014-179:
7. I certify:
- (a) That a copy of this notice of appeal has been served on the reporter;

(b) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript, to-wit: \$300.00;

(c) That the estimated fee for preparation of the clerk's or agency's record has been paid, to-wit: \$200.00;

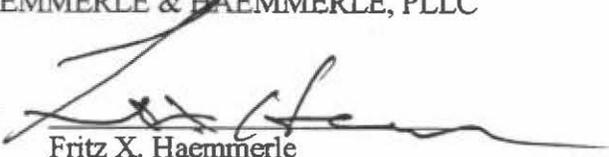
(d) That the appellate filing fee has been paid; and

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 5th day of December, 2014.

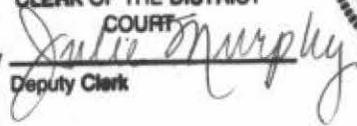
HAEMMERLE & HAEMMERLE, PLLC

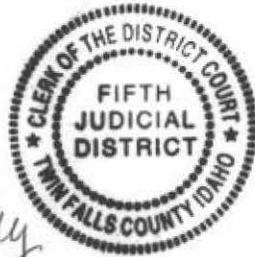
By:


Fritz X. Haemmerle

State of Idaho
County of Twin Falls ss.
I hereby certify the foregoing to be a
full, true and correct copy of the
original on file in the above entitled
action.

KRISTINA GLASCOCK
CLERK OF THE DISTRICT
COURT

By 
Deputy Clerk

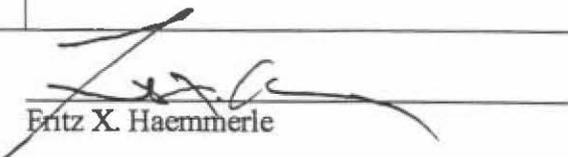


CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 5th day of December, 2014 he caused a true and correct copy of the foregoing document to be served by the method indicated upon the following:

Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 deborah.gibson@idwr.idaho.gov	Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
Garrick Baxter Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov kimi.white@idwr.idaho.gov emmi.blades@idwr.idaho.gov	Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
Randall C. Budge TJ Budge RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED PO Box 1391 Pocatello, ID 83204-1391 rcb@racinelaw.net tjb@racinelaw.net bjh@racinelaw.net	Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
Sarah Klahn Mitra Pemberton WHITE & JANKOWSKI Kittredge Building, 511 16th Street, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com	Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us	Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>

<p>John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson, L.L.P. 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 tlt@idahowaters.com jks@idahowaters.com</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, ID 83318 wkf@pmt.org</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Jerry R. Rigby Hyrum Erickson Robert H. Wood Rigby, Andrus & Rigby, Chartered 25 North Second East Rexburg, ID 83440 jrigby@rex-law.com herickson@rex-law.com rwood@rex-law.com</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>William A. Parsons Parsons, Smith, Stone, Loveland & Shirley, LLP PO Box 910 Burley, ID 83318 wparsons@pmt.org</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Informational copy only</p>	
<p>Sabrina Vasquez Court Reporter P.O. Box 2707 Twin Falls, ID 83303-2707</p>	<p>Hand Delivery <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input type="checkbox"/></p>


Fritz X. Haemmerle