

DISTRICT COURT  
TWIN FALLS CO., IDAHO  
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12 **Attorneys for Petitioner, Rangen, Inc.**

13  
14 **IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE**  
15 **STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

16 **RANGEN, INC., an Idaho Corporation,**

17 **Petitioner,**

18 **vs.**

19 **IDAHO DEPARTMENT OF WATER**  
20 **RESOURCES and Gary Spackman, in his**  
21 **official capacity as Director of the Idaho**  
22 **Department of Water Resources,**

23 **Respondent.**

) **Case No. CV- 2014-1338**  
)  
) **PETITION FOR JUDICIAL REVIEW**  
) **L(3): \$96.00**

24 **COME NOW** the Petitioner, RANGEN, INC. ("Petitioner" or "Rangen"), by and through  
25 its attorneys of record, Fritz X. Haemmerle of Haemmerle & Haemmerle, P.L.L.C.; Robyn M.  
Brody of Brody Law Office, PLLC; and J. Justin May of May Browning & May, PLLC, and

1 pursuant to Idaho Code Sections 67-5270 through 67-5279 and I.R.C.P. 84 files this Petition for  
2 Judicial Review as follows:

3 **PETITION FOR JUDICIAL REVIEW**

4 1. Petitioner owns and operates a fish research and propagation facility in the  
5 Thousand Springs area near Hagerman, Gooding County, State of Idaho. The Petitioner  
6 Corporation is located and generally operates its business out of Buhl, Twin Falls County, State  
7 of Idaho

8 2. The Petitioner operates the facility with several water rights. Because the  
9 Petitioner was not receiving the amount of water it rightfully possess under water rights 36-  
10 02551 and 36-07694, Rangen filed a water call under the Idaho's Constitution, statutes and rules  
11 adopted by the Respondent, Idaho Department of Water Resources (hereinafter "Respondent" or  
12 "Department"), for conjunctive administration of water rights. The water call was filed on  
13 December 13, 2011. This matter came before the Department based on a contested case ("water  
14 call") in Department Case No. CM-DC-2011-004.

15 3. Name of agency from which judicial review is sought: Idaho Department of  
16 Water Resources ("Respondent") and its Director Gary Spackman, an agency of the State of  
17 Idaho.  
18 Idaho.

19 4. The Petition is taken to the District Court of the Fifth Judicial District, County of  
20 Twin Falls.

21 5. Decision being appealed: Between May 1 through the 16 of May, 2013, the  
22 Department, by and through its Director, Gary Spackman, held a contested hearing on Rangen's  
23 water call. On January 29, 2014, the Director issued his "Final Order Regarding Rangen, Inc.'s  
24 Petition for Delivery Call; Curtailing Ground Water Junior to July 13, 1962" (hereinafter "Final  
25

1 Order"). Thereafter, parties to the contested case filed Motions for Reconsideration of the Final  
2 Order. On March 4, 2014, the Director issued his "Order on Reconsideration." The Petitioner is  
3 appealing both Orders, all in Department of Water Resources Case No. CM-DC-2011-004.

4 6. A transcript of all proceedings in Case No. CM-DC-2011 is requested. The  
5 contested hearing between May 1 through 16, May, 2013, was believed to have been recorded by  
6 the Department. Also, there was a transcript prepared by M&M Court Reporters, Boise, Idaho.  
7 All other proceedings, including monthly status conferences, were recorded by the Department.

8 7. Petitioner has requested an estimate for preparation of the transcript and record,  
9 and Petitioner has tendered an estimated fee for same.

10 8. The Petitioner's substantial rights have been prejudiced by the Department's Orders  
11 including, but not necessarily limited to the diminishment of water rights, 36-02551 and 36-  
12 07694, as those rights were Decreed by the Snake River Basin Water Adjudication and permitted  
13 and licensed by the Department, and the failure of the Department to account for all water  
14 available to it from this water call under the operation of the Department's ground water model,  
15 ESPAM2.1, and the Director's Final Order and Order on Reconsideration have denied the  
16 Petitioner's rights to receive its legally entitled water under water rights duly perfected under  
17 Idaho law.  
18

19 9. Under the standards of evaluation as set forth under Idaho Code Section 67-5279,  
20 the Final Order and Order on Reconsideration:

- 21 a. are in violation of constitutional, statutory provisions or administrative rules  
22 of the Department;  
23 b. are in excess of the statutory authority or authority of the Department under  
24 the administrative rules of the Department;  
25

1 c. were made upon unlawful procedures; and

2 d. were arbitrary, capricious, and/or an abuse of the agency discretion.

3 10. The issues presented for the appeal, as identified in paragraph 9, and as more  
4 specifically identified in this paragraph include, but are not necessarily limited to, the following:

5 a. Whether as a matter of fact or law that Rangen's decreed source under water  
6 rights 36-02551 and 36-07694, the "Martin Curren Tunnel," encompasses the  
7 entire spring complex that forms the headwaters of Billingsley Creek, as opposed  
8 to just water emanating from the Martin Curren Tunnel.

9 b. Whether as a matter of fact and law that Rangen's Partial Decrees under 36-02551  
10 and 36-07694 allow the diversion of the springs that form the headwaters of  
11 Billingsley Creek, as opposed to just water emanating from the Martin Curren  
12 Tunnel.

13 c. Whether the Department is estopped from concluding Rangen is not entitled to  
14 divert from entire talus slope, as opposed to just the water emanating from the  
15 Martin Curren Tunnel, based on prior decisions of Director and prior inactions  
16 and conclusions of Department staff

17 d. Whether under a curtailment run made under ESPAM2.1, the conclusion that  
18 Rangen is entitled to 63% of the spring flow in the Rangen Cell is supported by  
19 substantial evidence in the record as a whole and, based on Rangen's Decrees, is  
20 supported as a matter of law.

21 e. Whether as a matter of fact or law that the junior user parties failed to  
22 demonstrate their own efficient use of water without waste.

23 f. Whether Finding 51 of the Final Order is supported by substantial evidence in the  
24 record as a whole (Weir Coefficient).  
25

1 g. Whether the use of a trim line is supported by agency rules, justified by on  
2 substantial evidence in the record, or does the use of a trim line constitute an  
3 arbitrary and capacious decision.

4 h. Whether, if a trim line is not an arbitrary or capacious decision, the citation to  
5 prior trim lines as set forth in Conclusions 42 through 46 of the Final Order are  
6 entirely unrelated to the operation of ESPAM2.1 in this water call.

7  
8 11. Petitioner reserves the right to file a separate statement of the issues within  
9 fourteen (14) days after the filing of this Petition.

10 12. Other parties to the Case included the City of Pocatello, the Idaho Ground Water  
11 Appropriators, Inc. ("IGWA"), and the A&B Irrigation District, American Falls Reservoir  
12 District # 2, Burley Irrigation District, Miler Irrigation District, Minidoka Irrigation District,  
13 North Side Canal Company and Twin Falls Canal Company (collectively, the "Surface Water  
14 Coalition" or "SWC").

15 13. Service of this Petition has been made on the Department, and notice of this filing  
16 has been made on parties to the contested case in CM-DC-2011-004.

17 **DEMAND FOR ATTORNEY FEES AND COSTS**

18 As a result of the Department's actions, Petitioner has had to retain counsel. For services  
19 rendered, the Petitioner is entitled to attorney fees and costs should they prevail in this action  
20 pursuant to Idaho Code Section 12-117 and pursuant to Rule 54 of the Idaho Rules of Civil  
21 Procedure.  
22

23 **RIGHT TO AMEND**

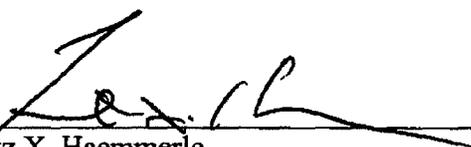
24 The Petitioner reserve the right to amend this Petition in any respect as motion practice  
25 and discovery proceed in this matter.

1 WHEREFORE, the Petitioner prays for the following relief:

- 2 A. A finding that the Final Order and Order on Motion for Reconsideration was:
- 3 a. is in violation of constitutional, statutory provisions or current administrative
- 4 rules of the Department;
- 5 b. is in excess of the statutory authority or administrative rules of the
- 6 Department;
- 7 c. were made upon unlawful procedures; and
- 8 d. were arbitrary, capricious, and/or an abuse of the agency discretion.
- 9 B. That the Court set aside the Orders, in whole or part, and/or remand the Orders
- 10 back for further proceedings;
- 11 C. For an award of reasonable costs and attorneys' fees pursuant to applicable law,
- 12 including but not limited to Idaho Code Section 12-117, and Idaho Rule of Civil
- 13 Procedure 54; and
- 14 D. For such other and further relief as the Court deems just and equitable.

15 RESPECTFULLY SUBMITTED this 25 day of March, 2014.

17 HAEMMERLE & HAEMMERLE, P.L.L.C.

18  
19 By:   
20 Fritz X. Haemmerle

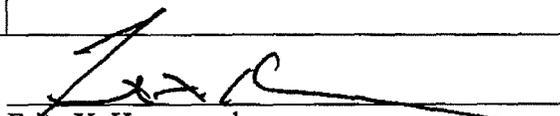
**CERTIFICATE OF SERVICE**

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the \_\_\_\_\_ day of March, 2014 she caused a true and correct copy of the foregoing document to be served upon the following as indicated:

<p><b>Original:</b>                  Director Gary Spackman                  Idaho Department of Water                  Resources                  P.O. Box 83720                  Boise, ID 83720-0098                  deborah.gibson@idwr.idaho.gov</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>Garrick Baxter                  Idaho Department of Water                  Resources                  P.O. Box 83720                  Boise, Idaho 83720-0098                  garrick.baxter@idwr.idaho.gov                  chris.bromley@idwr.idaho.gov                  kimi.white@idwr.idaho.gov</p>	<p>Hand Delivery <input type="checkbox"/>                  U.S. Mail <input type="checkbox"/>                  Facsimile <input type="checkbox"/>                  Federal Express <input type="checkbox"/>                  E-Mail <input checked="" type="checkbox"/></p>
<p>Randall C. Budge                  TJ Budge                  RACINE, OLSON, NYE, BUDGE                  &amp; BAILEY, CHARTERED                  201 E. Center Street                  P.O. Box 1391                  Pocatello, ID 83204                  rcb@racinelaw.net                  tjb@racinelaw.net</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>Sarah Klahn                  Mitra Pemberton                  WHITE &amp; JANKOWSKI                  Kittredge Building,                  511 16th Street, Suite 500                  Denver, CO 80202                  sarahk@white-jankowski.com                  mitrap@white-jankowski.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>Dean Tranmer                  City of Pocatello                  P.O. Box 4169                  Pocatello, ID 83201                  dtranmer@pocatello.us</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>

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Fritz X. Haemmerle