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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- 2014-2935**

) **PETITION FOR JUDICIAL REVIEW**

) **L(3): \$221.00**

24 COMES NOW the Petitioner, RANGEN, INC. ("Petitioner" or "Rangen"), by and  
25 through 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,

1 PLLC, and pursuant to Idaho Code Sections 67-5270 through 67-5279 and I.R.C.P. 84 files this  
2 Petition for 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 possesses under water rights 36-  
10 02551 and 36-07694, Rangen filed a water call under Idaho's Constitution, statutes, and rules  
11 adopted by the Respondent, Idaho Department of Water Resources (hereinafter "Respondent" or  
12 "Department"), seeking 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. On January 29, 2014, Gary R. Spackman, the Director of the Department, entered  
16 an order finding that Rangen is being materially injured by junior-priority groundwater pumping  
17 within the Eastern Snake Plain Aquifer and west of the Great Rift. The Director entered an order  
18 of curtailment requiring that the holders of junior-priority groundwater rights deliver specified  
19 quantities of water at specified times or be curtailed.  
20

21 4. Thereafter, Idaho Ground Water Appropriators, Inc.'s ("IGWA") filed its Second  
22 Mitigation Plan ("Tucker Springs Plan"). Rangen timely filed a Protest to the Tucker Springs  
23 Plan. On June 20, 2014, after hearing, the Director issued his *Order Approving IGWA's Second*  
24  
25

1 *Mitigation Plan; Order Lifting Stay Issued April 28, 2014; Second Amended Curtailment Order,*  
2 issued in Case Nos. CM-MP-2014-003 and CM-DC-2011-004 (“*Order*”).

3 5. No Motions for Reconsideration were filed on the *Order*.

4 6. Name of agency from which judicial review is sought: Idaho Department of  
5 Water Resources, an agency of the State of Idaho, and its Director Gary Spackman  
6 (“Respondents”). .

7 7. The Petition is taken to the District Court of the Fifth Judicial District, County of  
8 Twin Falls.

9 8. Decisions being appealed: The *Order*.

10 9. A transcript of all proceedings in Case No. CM-DC-2011-004 is requested. The  
11 Petitioner believes a transcript of that proceeding has been prepared, and to the extent it has not  
12 been prepared, that transcript is requested. The Petitioner also requests a transcript of all  
13 proceedings in CM-MP-2014-003. The contested hearing held between June 4-6, 2014, was  
14 believed to have been recorded by the Department. Also, there was a transcript prepared by  
15 M&M Court Reporters, Boise, Idaho. All other proceedings, including status conferences, were  
16 recorded by the Department.  
17

18 10. Petitioner has requested an estimate for preparation of the transcript and record,  
19 and Petitioner has tendered an estimated fee for same.

20 11. The Petitioner's substantial rights have been prejudiced by the *Order* including,  
21 but not necessarily limited to, the diminishment of water rights, 36-02551 and 36-07694, as those  
22 rights were Decreed by the Snake River Basin Water Adjudication and permitted and licensed by  
23 the Department, and the failure of the Department to account for all water available to supply  
24 Rangen’s water rights pursuant to its 2011 water delivery call analyzed using the Department's  
25

1 ground water model, ESPAM2.1, and the *Order* denies the Petitioner's right to receive its legally  
2 entitled water under water rights duly perfected under Idaho law. Furthermore, the Petitioner's  
3 substantial rights have been further prejudiced by the failure of the Director and Department to  
4 deliver that amount of water necessary to address the Petitioner's injury caused by junior-priority  
5 groundwater pumping.

6 12. Under the standards of evaluation as set forth under Idaho Code Section 67-5279,  
7 the *Order*:

- 8 a. is in violation of constitutional, statutory provisions or administrative rules of  
9 the Department;
- 10 b. is in excess of the statutory authority or authority of the Department under the  
11 administrative rules of the Department;
- 12 c. was made upon unlawful procedures; and
- 13 d. was arbitrary, capricious, and/or an abuse of the agency discretion.

14 13. The issues presented for the appeal, as identified in paragraph 12, and as more  
15 specifically identified in this paragraph include, but are not necessarily limited to, the following:

- 16 a. Whether the Director erred or exceeded his authority by approving a mitigation  
17 plan that does not provide replacement water, at the time and place required by  
18 Rangen, sufficient to offset the on-going depletive effect of ground water  
19 withdrawals by junior-priority groundwater pumping.
- 20 b. Whether the Director erred or exceeded his authority by failing to require a  
21 contingency plan and adequate conditions and provisions to assure protection of  
22 Rangen's water rights in the event the conditions of the Second Mitigation Plan  
23 are not satisfied or if the proposed mitigation water becomes unavailable or is not  
24  
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1 otherwise delivered for any reason, including the failure to satisfy the conditions  
2 set forth in the *Order* and other requirements of State and Federal law.

- 3 c. Whether the Director erred or exceeded his authority by allowing continued out-  
4 of-priority ground water pumping pursuant to a conditionally approved mitigation  
5 plan.
- 6 d. Did the Director adequately consider and include in his *Order* all of the necessary  
7 conditions that must be satisfied before IGWA can deliver Tucker Springs water  
8 to Rangen for mitigation, including, but not limited to, the improvements required  
9 to be made to the Aqua Life Facility and the agreement IGWA entered into with  
10 the Idaho State Board of Water Resources and Idaho Fish and Game.
- 11 e. Whether the Second Mitigation Plan provides for monitoring and adjustments as  
12 necessary to protect Rangen's senior-priority water rights and other senior-  
13 priority water rights from material injury.
- 14 f. Whether the Director erred, exceeded his authority or otherwise abused his  
15 discretion in recalculating the credit given for the Morris/Sandy Pipeline  
16 exchange water.
- 17 g. Whether the Director's calculation of mitigation credits is arbitrary and  
18 capricious.
- 19 h. Whether the Second Mitigation Plan is consistent with the conservation of water  
20 resources, the public interest or seeks to prevent injuries to other water users, the  
21 environmental resources of the state, and wildlife, given that the Tucker Springs  
22 water source is over allocated and other environmental impacts.
- 23 i. Whether the Director erred or exceeded his authority by failing to consider the  
24 environmental impacts that will result from the implementation of the Second  
25 Mitigation Plan.

- 1 j. Whether the Director erred in concluding that the Second Mitigation Plan will  
2 provide the water required by the *Curtailment Order*.
- 3 k. Whether the Director erred or exceeded his authority by requiring Rangen to  
4 accept the Tucker Springs Plan or forfeit its delivery call rights
- 5 l. Whether the Director erred or exceeded his authority by requiring Rangen to  
6 allow access and/or grant easements over its real property for construction related  
7 to the Second Mitigation Plan or forfeit its delivery call rights.
- 8 m. Whether the Director's *Order* requiring Rangen to allow access and/or grant  
9 easements over its real property for construction related to the Second Mitigation  
10 Plan or forfeit its delivery call rights constitutes a taking in violation of Rangen's  
11 constitutional rights.
- 12 n. Whether the Director had authority to require Rangen, a fish propagator, to accept  
13 water which will introduce diseases including at least one disease that is not  
14 present at the Rangen Research Hatchery.
- 15 o. Whether the Director erred or exceeded his authority to order a mitigation plan  
16 that physically moves non-consumptive water from one drainage area to another  
17 drainage area and therefore changes the non-consumptive water right to a  
18 consumptive water right.
- 19 p. Whether the Director erred or exceeded his authority by calculating mitigation  
20 water credits which exceed the actual, measured water flow from the specified  
21 source.
- 22 q. Whether the Director erred or exceeded his authority by calculating mitigation  
23 credits that on a daily basis fall short of the daily required direct flow mitigation  
24 requirements.
- 25

1 r. Whether the *Order* and/or the Director's application of the Conjunctive  
2 Management Rules deprives Rangen of its Constitutionally-protected property  
3 rights and its right to have its water right administered and protected under the  
4 prior appropriation doctrine.

5 s. Whether the application of the CM Rules to Rangen's delivery call, including the  
6 subsequent mitigation plans submitted by IGWA, is contrary to law,  
7 unconstitutional, and impairs or threaten to interfere with Rangen's legal rights  
8 and privileges.

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

11 15. Other parties to this case included, the Idaho Ground Water Appropriators, Inc.  
12 ("IGWA"), Buckeye Farms, Inc., Big Bend Trout, Inc. (did not appear at the hearing of this  
13 matter), Big Bend Irrigation & Mining Co., and Salmon Falls Land & Livestock.

14 16. Service of this Petition has been made on the Department, and notice of this filing  
15 has been made on parties to the contested case in CM-DC-2011-004 and CM-MP-2014-001 as  
16 well as William A. Parsons, counsel for Southwest Irrigation District, who has requested  
17 informational copies of all filings.  
18

19 **DEMAND FOR ATTORNEY FEES AND COSTS**

20 As a result of the Department's actions, Petitioner has had to retain counsel. For services  
21 rendered, the Petitioner is entitled to attorney fees and costs should they prevail in this action  
22 pursuant to Idaho Code Section 12-117 and pursuant to Rule 54 of the Idaho Rules of Civil  
23 Procedure.  
24  
25

**RIGHT TO AMEND**

1  
2 The Petitioner reserve the right to amend this Petition in any respect as motion practice  
3 and discovery proceed in this matter.

4 WHEREFORE, the Petitioner prays for the following relief:

5 A. A finding that the *Order* is:

- 6 a. is in violation of constitutional, statutory provisions or current administrative  
7 rules of the Department;  
8 b. is in excess of the statutory authority or administrative rules of the  
9 Department;  
10 c. was made upon unlawful procedures; and  
11 d. was arbitrary, capricious, and/or an abuse of the agency discretion.

12 B. That the Court set aside the *Order*, in whole or part, and/or remand the *Order*  
13 back for further proceedings;

14 C. For an award of reasonable costs and attorneys' fees pursuant to applicable law,  
15 including but not limited to Idaho Code Section 12-117, and Idaho Rule of Civil  
16 Procedure 54; and  
17

18 D. For such other and further relief as the Court deems just and equitable.

19 RESPECTFULLY SUBMITTED this 17 day of July, 2014.

20 HAEMMERLE & HAEMMERLE, P.L.L.C.

21  
22 By:   
23 Fritz X. Haemmerle  
24  
25

**CERTIFICATE OF SERVICE**

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 17 day of July, 2014 he caused a true and correct copy of the foregoing document to be served upon the following as indicated:

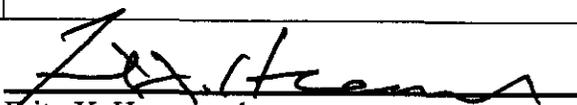
<p><b>Original:</b>          Director Gary Spackman          Idaho Department of Water          Resources          P.O. Box 83720          Boise, ID 83720-0098          deborah.gibson@idwr.idaho.gov</p>	<p>Hand Delivery <input type="checkbox"/>          U.S. Mail <input checked="" type="checkbox"/>          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 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 type="checkbox"/>          Facsimile <input type="checkbox"/>          Federal Express <input type="checkbox"/>          E-Mail <input checked="" type="checkbox"/></p>

1	John K. Simpson	Hand Delivery	<input type="checkbox"/>
2	Travis L. Thompson	U.S. Mail	<input checked="" type="checkbox"/>
3	Paul L. Arrington	Facsimile	<input type="checkbox"/>
4	Barker Rosholt & Simpson, L.L.P.	Federal Express	<input type="checkbox"/>
5	195 River Vista Place, Suite 204	E-Mail	<input checked="" type="checkbox"/>
6	Twin Falls, ID 83301-3029		
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9	P.O. Box 248	Facsimile	<input type="checkbox"/>
	Burley, ID 83318	Federal Express	<input type="checkbox"/>
	wkf@pmt.org	E-Mail	<input checked="" type="checkbox"/>
10	Jerry R. Rigby	Hand Delivery	<input type="checkbox"/>
11	Hyrum Erickson	U.S. Mail	<input checked="" type="checkbox"/>
12	Robert H. Wood	Facsimile	<input type="checkbox"/>
13	Rigby, Andrus & Rigby, Chartered	Federal Express	<input type="checkbox"/>
14	25 North Second East	E-Mail	<input checked="" type="checkbox"/>
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16	Leo E. Ray	Hand Delivery	<input type="checkbox"/>
17	Big Bend Trout, Inc.	U.S. Mail	<input checked="" type="checkbox"/>
18	P.O. Box 479	Facsimile	<input type="checkbox"/>
	Hagerman, Idaho 83330	Federal Express	<input type="checkbox"/>
	fpi@fishbreedersofidaho.com	E-Mail	<input checked="" type="checkbox"/>
19	Almer Huntley, Jr., President	Hand Delivery	<input type="checkbox"/>
20	Big Bend Irrigation & Mining Co.,	U.S. Mail	<input checked="" type="checkbox"/>
21	Ltd.	Facsimile	<input type="checkbox"/>
	2721 South 900 East	Federal Express	<input type="checkbox"/>
	Hagerman, Idaho 83332	E-Mail	<input checked="" type="checkbox"/>
	plspe@hotmail.com		
22	Timothy J. Stover	Hand Delivery	<input type="checkbox"/>
23	WORST FITZGERALD &	U.S. Mail	<input checked="" type="checkbox"/>
24	STOVER PLLC	Facsimile	<input type="checkbox"/>
25	P.O. Box 1428	Federal Express	<input type="checkbox"/>
	Twin Falls, Idaho 83303	E-Mail	<input checked="" type="checkbox"/>
	tjs@magicvalleylaw.com		
	Michael J. Henslee	Hand Delivery	<input type="checkbox"/>

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Salmon Falls Land & Livestock Co.  
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Fritz X. Haemmerle