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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 Respondents.

Case No. CV- 14-4970

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 The Director entered an order of curtailment requiring that the holders of junior-priority
18 groundwater rights deliver specified quantities of water at specified times or be curtailed. See
19 *Final Order re: Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights*
20 *Junior to July 13, 1962 ("Curtailment Order").*
21

22 4. Thereafter, Idaho Ground Water Appropriators, Inc. ("IGWA") filed a series of
23 "mitigation plans." The Director subsequently approved three of the four mitigation plans,
24 giving mitigation credit for "Morris Exchange Water" based upon a prediction of anticipated
25

1 flows at the Martin-Curren Tunnel for the irrigation season using an average of historical flow
2 measurements from the years 2002 to 2013.

3 5. The Martin Curren Tunnel measurements from April 15, 2014 through October
4 15, 2014 later became available and established that the actual average flows are substantially
5 less than the historic average.

6 6. On October 31, 2014, Rangen filed a motion requesting that the Director calculate
7 the Morris Exchange Water Credit for 2014 utilizing the actual Martin-Curren Tunnel flows and
8 curtail out-of-priority ground water pumping as necessary to address the material injury
9 acknowledged in the January 29, 2014 Curtailment Order. See *Rangen, Inc.'s Motion to*
10 *Determine Morris Exchange Water Credit and Enforce Curtailment* in Department Case Nos.
11 CM-DC-2011-004, CM-MP-2014-001 and CM-MP-2014-006 ("*Motion to Enforce*").
12

13 7. On November 21, 2014, the Director issued its decision on Rangen's Motion to
14 Enforce. The Director "concur[s] with Rangen's calculations that the Morris Exchange
15 Agreement credit has expired and that the Director must order curtailment to address the
16 shortfall." See *Order Granting Rangen's Motion to Determine Morris Exchange Water Credit;*
17 *Second Amended Curtailment Order* (hereinafter the "*Order*"), at p.4 para. 4. Despite finding
18 that Rangen is being materially injured, the Morris Exchange Water would not provide the
19 required mitigation, and curtailment must be ordered to address this shortfall, the Director
20 decided that a sixty (60) day delay in curtailment "is reasonable because instantaneous
21 curtailment will not immediately increase water supplies to Rangen. The flow from the Martin-
22 Curren Tunnel has been gradually declining over a number of years. Curtailment will not
23 quickly restore the tunnel flows." *Id.*, at p. 4, para. 5. The Director adopted January 19, 2015 as
24 the curtailment date.
25

1 8. No Motions for Reconsideration were filed on the *Order*.

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

5 10. The Petition is taken to the District Court of the Fifth Judicial District, County of
6 Twin Falls.

7 11. Decisions being appealed: The *Order*.

8 12. A transcript of all proceedings in Case No. CM-DC-2011-004 is requested. The
9 Petitioner believes a transcript of that proceeding has been prepared, and to the extent it has not
10 been prepared, that transcript is requested. The Petitioner also requests a transcript of all
11 proceedings in CM-MP-2014-001 and CM-MP-2014-006. All other proceedings, including
12 status conferences, were recorded by the Department.

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

15 8. The Petitioner's substantial rights have been prejudiced by the *Order* including, but
16 not necessarily limited to, the diminishment of water rights 36-02551 and 36-07694, as those
17 rights were Decreed by the Snake River Basin Water Adjudication and permitted and licensed by
18 the Department, and the Order denies the Petitioner’s right to receive its legally entitled water
19 under water rights duly perfected under Idaho law. Furthermore, the Petitioner’s substantial
20 rights have been further prejudiced by the failure of the Director and Department to deliver that
21 amount of water necessary to address the Petitioner’s injury caused by junior-priority
22 groundwater pumping.
23
24
25

1 9. Under the standards of evaluation as set forth under Idaho Code Section 67-5279,
2 the *Order*:

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

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

- 11 a. Whether the Director erred or exceeded his authority by delaying curtailment for
12 sixty (60) days.
- 13 b. Whether the Director erred or exceeded his authority by allowing continued out-
14 of-priority ground water pumping despite finding that curtailment must be ordered
15 to address the shortfall in mitigation credit.
- 16 c. Whether the *Order* and/or the Director's application of the Conjunctive
17 Management Rules deprives Rangen of its Constitutionally-protected property
18 rights and its right to have its water right administered and protected under the
19 prior appropriation doctrine.
- 20 d. Whether the application of the CM Rules to Rangen's delivery call, including the
21 subsequent mitigation plans submitted by IGWA, is contrary to law,
22 unconstitutional, and impairs or threatens to interfere with Rangen's legal rights
23 and privileges.
- 24
- 25

1 b. is in excess of the statutory authority or administrative rules of the
2 Department;

3 c. was made upon unlawful procedures; and

4 d. was arbitrary, capricious, and/or an abuse of the agency discretion.

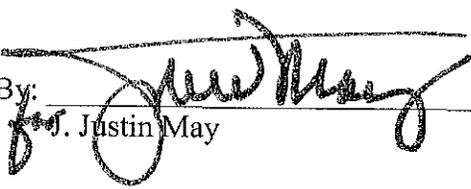
5 B. That the Court set aside the *Order*, in whole or part, and/or remand the *Order*
6 back for further proceedings;

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

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

11 RESPECTFULLY SUBMITTED this 19th day of December, 2014.

12
13 MAY BROWNING & MAY. P.L.L.C.

14
15 By: 
16 for Justin May

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 19th day of December, 2014 he caused a true and correct copy of the foregoing document to be served by email and first class U.S. Mail, postage prepaid upon the following:

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for J. Justin May

