

COPY

Robyn M. Brody (ISB No. 5678)
Brody Law Office, PLLC
P.O. Box 554
Rupert, ID 83350
Telephone: (208) 434-2778
Facsimile: (208) 434-2780
robynbrody@hotmail.com

Fritz X. Haemmerle (ISB No. 3862)
Haemmerle Law, PLLC
P.O. Box 1800
Hailey, ID 83333
Telephone: (208) 578-0520
Facsimile: (208) 578-0564
fxh@haemlaw.com

Attorneys for Petitioner Rangen, Inc.

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED
MAR 19 PM 4:50
J. Justin May (ISB No. 5818)
May, Browning & May, PLLC
1419 W. Washington
Boise, ID 83702
Telephone: (208) 429-0905
Facsimile: (208) 342-7278
jmayer@maybrowning.com
CLERK
DEPUTY

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

RANGEN, INC., an Idaho Corporation,

Petitioner,

vs.

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

Respondents.

Case No. CV- 15-1170

**PETITION FOR JUDICIAL
REVIEW**

L(3): \$221.00

IN THE MATTER OF THE
APPLICATION FOR TRANSFER 79560
IN THE NAME OF NORTH SNAKE
GWD, MAGIC VALLEY GWD,
SOUTHWEST IRRIGATION DISTRICT

COMES NOW the Petitioner, RANGEN, INC. ("Petitioner" or "Rangen"), by and 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, PLLC, and pursuant to Idaho Code Sections 67-5270 through 67-5279 and I.R.C.P. 84 files this Petition for Judicial Review as follows:

PETITION FOR JUDICIAL REVIEW

1. On September 12, 2014, the Idaho Groundwater Appropriators ("IGWA") filed its Application for Transfer of Water Right No. 36-7072 (Transfer Application No. 79560) In the Name of IGWA for North Snake Ground Water District, Magic Valley Ground Water District, and Southwest Irrigation District filed on Behalf of Owner, SeaPac of Idaho, Inc. ("Transfer Application 79560").
2. The Transfer Application sought to change the characteristics of Water Right No. 36-7072 including the purpose and place of use.
3. Rangen timely filed a Protest to the approval of the Transfer Application ("Rangen's Protest").
4. On December 18, 2014, the Director held a hearing on the Transfer Application.
5. On February 19, 2015, the Director issued *Final Order Approving Application for Transfer*.
6. On February 25, 2015, IGWA filed a Petition for Reconsideration and on February 25, 2014, IGWA filed a Corrected Petition for Reconsideration on that order.
7. On March 18, 2015, the Director issued an *Order on Reconsideration* and an *Amended Final Order Approving Application ("Order")*.

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

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

10. Decisions being appealed: The Amended Final Order Approving Application for Transfer.

11. A transcript of all proceedings in the Transfer Application proceedings is requested. The Petitioner believes a transcript of that proceeding has been prepared, and to the extent it has not been prepared, that transcript is requested. The Petitioner also requests the administrative record and a transcript of all proceedings in CM-MP-2014-006, which was prepared and lodged in the judicial review proceedings in CV-2014-4633.

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

13. The Petitioner's substantial rights have been prejudiced by the *Order* including, but not necessarily limited to, the diminishment of Rangen’s water rights, as those rights were Decreed by the Snake River Basin Water Adjudication and permitted and licensed by the Department, and the *Order* denies the Petitioner’s right to receive its legally entitled water under water rights duly perfected under Idaho law. Furthermore, the Petitioner’s substantial rights have been further prejudiced by the failure of the Director and Department to deliver that amount of water necessary to address the Petitioner’s injury caused by junior-priority groundwater pumping.

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

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

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

- a. Whether the Director erred or exceeded his authority by approving a transfer application that causes injury to both junior and senior water rights including trust water rights.
- b. Whether the Director erred, exceeded his authority, or abused his discretion by finding that any such injury is, or can be, adequately mitigated.
- c. Whether the Director erred, exceeded his authority, or abused his discretion by allowing partial future mitigation to be determined on an annual basis.
- d. Whether the Director erred or exceeded his authority by approving a transfer that results in an enlargement of the original right.
- e. Whether the Director erred or exceeded his authority by approving a transfer application that is speculative.
- f. Whether the Director erred or exceeded his authority by approving a transfer application that is not consistent with the public's interest.
- g. Whether the approval of the Transfer Application is consistent with the conservation of water resources, the public interest or seeks to prevent injuries to

other water users, the environmental resources of the state, and wildlife, given that the Magic Springs water source is over allocated.

- h. Whether the Director erred, exceeded his authority or otherwise abused his discretion by approving a Transfer Application that damages other water users, and allows continued mining of the ESPA.

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

17. Other parties to this case include the Idaho Ground Water Appropriators, Inc. ("IGWA"), the North Snake Ground Water District, Magic Valley Ground Water District, Southwest Irrigation District, and Kathy McKenzie.

18. Service of this Petition has been made on the Department, and notice of this filing has been made on parties to the contested case in the Transfer Application No. 79560.

DEMAND FOR ATTORNEY FEES AND COSTS

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

RIGHT TO AMEND

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

WHEREFORE, the Petitioner prays for the following relief:

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

- a. is in violation of constitutional, statutory provisions or current administrative rules of the Department;
 - b. is in excess of the statutory authority or administrative rules of the Department;
 - c. was made upon unlawful procedures; and
 - d. was arbitrary, capricious, and/or an abuse of the agency discretion.
- B. That the Court set aside the *Order*, in whole or part, and/or remand the *Order* back for further proceedings;
- C. For an award of reasonable costs and attorneys' fees pursuant to applicable law, including but not limited to Idaho Code Section 12-117, and Idaho Rule of Civil Procedure 54; and
- D. For such other and further relief as the Court deems just and equitable.

RESPECTFULLY SUBMITTED this 19th day of March, 2015.

MAY BROWNING & MAY. P.L.L.C.

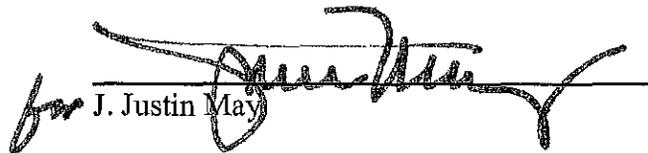
By: 
J. Justin May

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 15th day of March, 2015 he caused a true and correct copy of the foregoing document to be served upon the following as indicated:

<p>Original: 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 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 emmi.blades@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 & BAILEY, CHARTERED 201 E. Center Street P.O. Box 1391 Pocatello, ID 83204 rcb@racinelaw.net tjb@racinelaw.net bjh@racinelaw.net</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>North Snake Ground Water District Lyn Carlquist, Chairman c/o Joyce Moreno, Secretary 152 East Main Street Jerome, ID 83338 nsgwd@safelink.net</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>Magic Valley Ground Water District Dean Stevenson, Chairman c/o Emily Haynes, Secretary P.O. Box 430</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/></p>

Paul, ID 83347 desteve@pmt.org mvgwd@hotmail.com	E-Mail <input checked="" type="checkbox"/>
Southwest Irrigation District c/o William A. Parsons 137 W. 13 th St. P.O. Box 910 Burley, ID 83318 wparsons@pmt.org	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"/>
Kathy McKenzie P.O. Box 109 Hagerman, ID 83332 knbmac@q.com	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"/>

for J. Justin May 

Date: 3/19/2015

Fifth Judicial District Court - Twin Falls County

NO. 1507350

Time: 04:52 PM

Receipt

Page 1 of 1

Received of: May, Browning & may \$ 221.00

Two Hundred Twenty-One and 00/100 Dollars

Case: CV-2015-0001130	Plaintiff: Rangen, Inc., A Idaho Corporation vs. Idaho Department O	Amount
L3 - Appeal or petition for judicial review or cross appeal or cross-petition from commission, board, or bc		221.00

For: Rangen, Inc., A Idaho Corporation (plaintiff)

Total: **221.00**

Judge Bevan

Check: 23976 Bank: DLEvans

Payment Method: Check

Amount Tendered: 221.00

Clerk: SCHULZ

Kristina Glascock , Clerk of the District Court

By: _____
Deputy Clerk