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15 **Attorneys for Petitioner, Rangen, Inc.**

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

18 **IN THE MATTER OF APPLICATION)**
19 **FOR PERMIT NO. 36-17011 IN THE)**
20 **NAME OF NORTH SNAKE GROUND)**
21 **WATER DISTRICT, ET AL.)**

22 **Case No. CV42-15-3355**
23 **PETITION FOR JUDICIAL REVIEW**
24 **L(3): \$221.00**

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

Petitioner,

vs.

26 **IDAHO DEPARTMENT OF WATER)**
27 **RESOURCES and Gary Spackman, in his)**
28 **official capacity as Director of the Idaho)**
29 **Department of Water Resources,)**

30 **Respondents.**

DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED
2015 SEP -2 PM 3:03

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BY
CLERK
DEPUTY

1 COMES NOW the Petitioner, RANGEN, INC. ("Petitioner" or "Rangen"), by and through
2 its attorneys of record, Fritz X. Haemmerle of Haemmerle Law, P.L.L.C.; Robyn M. Brody of
3 Brody Law Office, PLLC; and J. Justin May of May Browning & May, PLLC, and pursuant to
4 Idaho Code Sections 67-5270 through 67-5279 and I.R.C.P. 84 files this Petition for Judicial
5 Review as follows:

6 **PETITION FOR JUDICIAL REVIEW**

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

11 2. The Petitioner operates the facility with several water rights. Because the Petitioner
12 was not receiving the amount of water it rightfully possesses under water rights 36-02551 and 36-
13 07694, Rangen filed a water call under Idaho's Constitution, statutes, and rules adopted by the
14 Respondent, Idaho Department of Water Resources (hereinafter "Respondent" or "Department"),
15 seeking conjunctive administration of water rights. The water call was filed on December 13,
16 2011.

17 3. This Petition for Judicial Review relates to application for Water Right No. 36-
18 17011, which is one of several water right applications and transfers sought for the purpose of
19 obtaining mitigation credit in the Rangen's water call, calls made by other senior water users, and
20 potential future calls.
21

22 4. The application for Water Right No. 36-17011 was approved by the Department of
23 Water Resources Hearing Officer following an evidentiary hearing held on February 5, 2015. On
24 August 5, 2015, Gary R. Spackman, the Director of the Department, entered his Final Order
25

1 Denying Exceptions (Water Right No. 36-17011) (hereinafter "*Order*"). The result of the *Order*
2 was the approval of the Permit for water right 36-17011.

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 Water
5 Resources, an agency of the State of Idaho, and its Director Gary Spackman ("Respondents").

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

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

9 9. A contested hearing was heard on February 5, 2015, and is believed to have been
10 recorded by the Department. The Petitioner believes a transcript of that proceeding has been
11 prepared, and to the extent it has not been prepared, that transcript is requested.

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

14 11. The Petitioner's substantial rights have been prejudiced by the *Order*. Granting the
15 Application will or may result in injury to Rangen as well other water users.

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

- 17 a. Is in violation of constitutional, statutory provisions or administrative rules of
18 the Department;
19 b. Is in excess of the statutory authority or authority of the Department under the
20 administrative rules of the Department;
21 c. Was made upon unlawful procedures; and
22 d. Was arbitrary, capricious, and/or an abuse of the agency discretion.

23 13. The issues presented for the appeal, as identified in paragraph 11, and as more
24 specifically identified in this paragraph include, but are not necessarily limited to, the following:
25

- 1 a. Whether granting the Application violated the provisions of Idaho Code Section
2 42-234, prohibiting Applications based on incidental recharge.
- 3 b. Whether granting the Application violates Idaho trust water provisions by
4 reducing flows over the Murphy Gauge by more than two (2) acre-feet per day.
- 5 c. Whether granting the Application is in the Local Public Interest or Public Interest
6 as defined by Idaho law.
- 7 d. Whether granting the Application violates Idaho's Moratorium against the
8 development of new consumptive use water rights.
- 9 e. Whether granting the Application, with respect to mitigation uses, is lawful
10 because there are no identifiable uses or users for which the water right was
11 associated with or approved; or stated differently, may a water right be approved
12 without a specific and identifiable beneficial use associated with the water right.
- 13 f. Whether a "mitigation" use of water can be approved as a diversion of water,
14 without an identifiable use or users associated with the "mitigation" use.
- 15 g. Whether the Application is speculative and results in a violation of the anti-
16 speculation doctrine and other portions of the Idaho law, which guarantees the
17 right to appropriate, not the right to speculate, in the development of water
18 resources.
19

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

22 15. Other protests to the Application were resolved. The only remaining other parties
23 to the contested case are the Applicants, which are North Snake Ground Water District (GWD),
24
25

1 Magic Valley GWD, and Southwest Irrigation District. The Applicants are all represented by
2 Randy Budge and T.J., Budge

3 16. Service of this Petition has been made on the Department, and notice of this filing
4 has been made on the parties to the contested case.

5 **RIGHT TO AMEND**

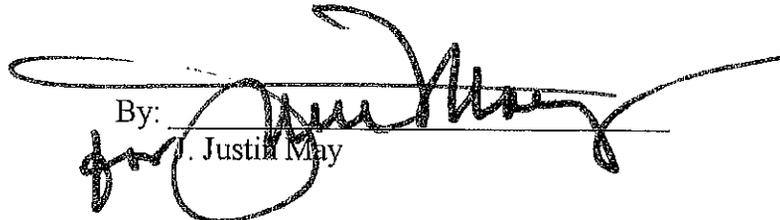
6 The Petitioner reserve the right to amend this Petition in any respect as motion practice
7 and discovery proceed in this matter.

8 WHEREFORE, the Petitioner prays for the following relief:

- 9 A. A finding that the *Order* is:
- 10 a. is in violation of constitutional, statutory provisions or current administrative
 - 11 rules of the Department;
 - 12 b. is in excess of the statutory authority or administrative rules of the Department;
 - 13 c. was made upon unlawful procedures; and
 - 14 d. was arbitrary, capricious, and/or an abuse of the agency discretion.
- 15
- 16 B. That the Court set aside the *Order*, in whole or part, and/or remand the *Order* back
- 17 for further proceedings; and
- 18 C. For such other and further relief as the Court deems just and equitable.

19 RESPECTFULLY SUBMITTED this 2nd day of September, 2015.

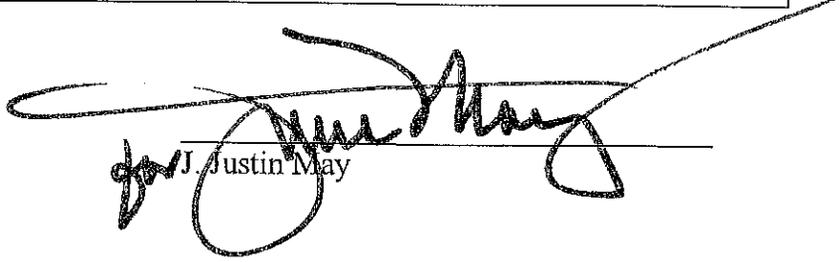
20 MAY BROWNING & MAY, P.L.L.C.

21
22 
23 By: _____
24 J. Justin May
25

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 2nd day of September, 2015, he caused a true and correct copy of the foregoing document to be served upon the following as indicated:

<p><i>Courtesy Copy to:</i> Snake River Basin Adjudication 427 Shoshone Street N Twin Falls, ID 83303 ddelaney@idcourts.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>Garrick Baxter IDAHO DEPARTMENT OF WATER RESOURCES P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov emmi.blades@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>Gary Spackman 322 East Front Street 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>Randall C. Budge Thomas J. Budge RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P.O. Box 1391 201 E. Center St Pocatello, ID 83204-1391 Fax: 208-433-0167 rcb@racinelaw.ne 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>


Justin May