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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
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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:

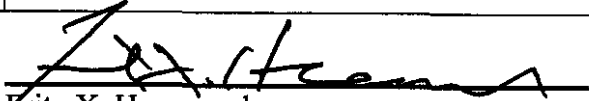
<p>Original: Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 deborah.gibson@idwr.idaho.gov</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> 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>
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<p>John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson, L.L.P. 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 tlt@idahowaters.com jks@idahowaters.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>W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, ID 83318 wkf@pmt.org</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>
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<p>Almer Huntley, Jr., President Big Bend Irrigation & Mining Co., Ltd. 2721 South 900 East Hagerman, Idaho 83332 plspe@hotmail.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>
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<p>Michael J. Henslee</p>	<p>Hand Delivery <input type="checkbox"/></p>

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Salmon Falls Land & Livestock Co. 95-A Bell Rapids Road Hagerman, ID 83332 mjhenslee@gmail.com	U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
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Fritz X. Haemmerle