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RECEIVED  
NOV 24 2014  
DEPARTMENT OF  
WATER RESOURCES

*Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)*

**IDAHO DEPARTMENT OF WATER RESOURCES**

IN THE MATTER OF THE FOURTH  
MITIGATION PLAN FILED BY THE  
IDAHO GROUND WATER APPROPRIA-  
TORS FOR THE DISTRIBUTION OF WA-  
TER TO WATER RIGHT NOS. 36-  
02551 & 35-07694 IN THE NAME OF  
RANGEN, INC.

“MAGIC SPRINGS PROJECT”

Docket No. CM-MP-2014-006

**Certificate of Mailing**

I certify that on this the 21<sup>st</sup> day of November, 2014, the attached letter dated November 12, 2014 was served on the following persons in the manner indicated. The letter was previously emailed to all parties on November 12, 2014 excepting Protestant Kathy McKenzie who was inadvertently omitted. This additional service is made as requested by Director Gary Spackman’s letter dated November 17, 2014.

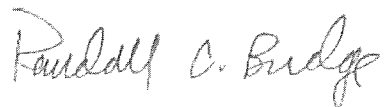
**Original:**  
Director, Gary Spackman  
Idaho Department of Water Resources  
P. O. Box 83720  
Boise, Idaho 83720-0098  
Attn: Deborah Gibson  
[Deborah.Gibson@idwr.idaho.gov](mailto:Deborah.Gibson@idwr.idaho.gov)  
[Kimi.white@idwr.idaho.gov](mailto:Kimi.white@idwr.idaho.gov)

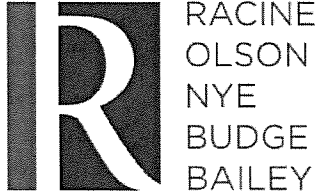
- U.S. Mail/Postage Prepaid
- Facsimile
- Overnight Mail
- Hand Delivery
- E-mail

Robyn Brody Brody Law Office, PLLC P. O. Box 554 Rupert, Idaho 83350-0554 <u>robynbrody@hotmail.com</u>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
J. Justin May May Browning & May PLLC 1419 W Washington Boise, Idaho 83702-5039 <u>jmay@maybrowning.com</u>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
Fritz X. Haemmerle Haemmerle Haemmerle P. O. Box 1800 Hailey, Idaho 83333-1800 <u>fxh@haemlaw.com</u>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
Kathleen McKenzie P. O. Box 109 Hagerman, Idaho 83332 <u>knbmac@q.com</u>	<input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail

RESPECTFULLY SUBMITTED November 21, 2014.

RACINE OLSON NYE BUDGE  
& BAILEY, CHARTERED

By:   
 Randall C. Budge  
 T.J. Budge



RACINE  
OLSON  
NYE  
BUDGE  
BAILEY

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RANDALL C. BUDGE  
rcb@racinelaw.net

November 12, 2014

**CONFIDENTIAL SETTLEMENT OFFER – SUBJECT TO IRE 408**

Robyn Brody  
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P.O. Box 554  
Rupert, Idaho 83350-0554  
[robynbrody@hotmail.com](mailto:robynbrody@hotmail.com)

*Sent Via Email*

Justin May  
May Browning & May PLLC  
1419 W. Washington  
Boise, Idaho 83702-5039  
[jmay@maybrowning.com](mailto:jmay@maybrowning.com)

Fritz X. Haemmerle  
Haemmerle Haemmerle  
P.O. Box 1800  
Hailey, Idaho 83333-1800  
[fxh@haemlaw.com](mailto:fxh@haemlaw.com)

**Re: IGWA's Fourth Mitigation Plan**

Dear Robyn, Justin and Fritz:

As you know, on August 25, 2014, the Districts gave *Notice of Intent to Exercise Eminent Domain and Summary of Rights of Property Owner* ("Notice") to Rangen, Inc. and each of you as its' attorneys. Pursuant to the Notice, the Districts, among other things, gave "notice of their desire to enter into negotiations to purchase easements, rights-of-way, and other rights of access," over Rangen's property to enable the Districts to meet their mitigation obligations; and, further that "If the easements...cannot be acquired through good faith negotiation, the Districts intend to exercise their power of eminent domain pursuant to Idaho Code sections 42-5224 and 43-304..." The Notice further stated that "The Districts hereby offer to pay Rangen damages for the easements in the amount equal to the greater of the assessed value for property tax purposes or the highest pre-litigation appraisal by an MIA appraiser chosen by Rangen..."

On October 29, 2014, the Director entered an *Order Approving IGWA's Fourth Mitigation Plan* ("Order"). The Order stated on page 21 as follows:

“IT IS FURTHER ORDERED that, within seven (7) days from the date of this order, Rangen must state, in writing, whether it will accept water delivered pursuant to the Magic Springs Project. Rangen must submit its written acceptance/rejection to the Department and IGWA. The written acceptance/rejection must state whether Rangen will accept the Magic Springs water and whether Rangen will allow construction on its land related to placement of the delivery pipe. If the Fourth Mitigation Plan is rejected by Rangen or Rangen refuses to allow construction in accordance with an approved plan, IGWA’s mitigation obligation is suspended.”

*Rangen, Inc.’s Notice of Acceptance of Delivery of Water Under IGWA’s Fourth Mitigation Plan* (“Rangen’s Acceptance”) filed November 5, 2014, gave notice that Rangen, Inc. will comply with the Director’s Order, and accept the water to be delivered under the Fourth Mitigation Plan and allow construction on its land related to the placement of the delivery pipe. Based upon the Order and Rangen’s Acceptance, the Districts final engineering of the project is nearing completion and will be filed shortly, pipe and equipment has been ordered, bids will be let with construction contractors on November 14, 2014, after which construction will commence.

Based on the foregoing, it is the Districts’ position that it is not necessary for them to acquire or condemn an easement through Rangen’s property for the pipeline and related equipment and facilities necessary to complete the delivery of water from Magic Springs to Rangen. However, the Districts note the statement made in Rangen’s Acceptance that Rangen “does not waive any cause of action it may have,” for “compensation for the condemnation of its property...” Due to the short distance of 510’ and only 0.24 acres needed for the pipeline from the north boundary of the Candy property to the discharge on Rangen’s property as depicted on the enclosed plat map, instead of squabbling with Rangen over whether it is necessary to acquire or condemn an easement and to avoid the costs of a condemnation action, the Districts offer to purchase an easement from Rangen at the price of \$5,000 per acre in accordance with the enclosed Pipeline Agreement.

The \$5,000 per acre price is the same amount offered and accepted by each landowner through which the Magic Springs Project pipeline runs. The price was based upon 50% of the estimated maximum value of \$10,000 per acre for irrigated farm land. The same price was paid across the board for the irrigated farm land as well as for waste land and other less valued land.

If this offer is acceptable, please execute and return the Buried Pipeline Agreement. The Districts will then issue a check for the purchase price, following which, the Agreement will be recorded and a copy returned.

Your prompt response is requested and will be appreciated. If you have any questions or wish to discuss this matter please give me a call.

Sincerely,

A handwritten signature in cursive script that reads "Randall C. Budge".

RANDALL C. BUDGE

RCB:ts

Enclosures

c: North Snake Ground Water District  
Magic Valley Ground Water District  
Southwest Irrigation District  
Director Gary Spackman

# PIPELINE AGREEMENT

**RANGEN, INC.**  
**Southwest Irrigation District**  
**North Snake Ground Water District**  
**Magic Valley Ground Water District**

AGREEMENT effective this \_\_\_\_\_ day of November, 2014, between RANGEN, INC., (“RANGEN”), and Southwest Irrigation District, North Snake Ground Water District and Magic Valley Ground Water District (hereinafter “Districts”), collectively referred to as the “parties.”

## RECITALS

A. WHEREAS, RANGEN, owns certain real property located in Gooding County, Idaho located in SW ¼ NW ¼, Section 32, Township 7S, Range 14E, B.M., Gooding County, Idaho (“Rangen Property”) and;

B. WHEREAS, the Districts desire to acquire from RANGEN an easement 20’ in width as described in Exhibit “A” attached for the purpose of constructing, owning and operating buried and above grade pipelines through the Rangen Property with necessary equipment and facilities to convey water from Magic Springs to Rangen; and

C. WHEREAS, RANGEN is willing to provide the Districts the requested easement for the pipelines and permanent access to the easement area pursuant to this Agreement.

## AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Installation of Pipelines and Appurtenances.** RANGEN agrees that the Districts may install, at their expense, buried pipelines and discharge facilities for the conveyance of water from Magic Springs to Rangen’s hatchery within the easements described in Exhibit “A” attached. The Districts shall install said pipelines and appurtenances within the easement in accordance with standard specifications for pipe, materials, installation, and backfill, as set forth in the Idaho standards for public works construction or the respective projects’ construction drawings.

2. **Pipeline Ownership and Maintenance.** The Districts shall own the pipelines and be responsible for their installation, maintenance, repair and replacement.

3. **Easement and Access.** RANGEN hereby grants to the Districts an easement on, over, under and through a portion of the Rangen Property, approximately

510' in length, 20' in width as described in Exhibit "A" attached hereto, to construct, operate, maintain and replace as necessary buried pipelines, related equipment, and facilities to deliver water from Magic Springs to Rangen. It is understood and agreed that the final description of the easement and location of the pipelines are subject to amendment by the Districts based upon the final survey and installed pipe locations.

4. **Indemnification.** The Districts agree to indemnify and hold RANGEN harmless from any and all claims arising out of the construction, operation, maintenance, repair or replacement of the pipeline, or the use of the easement for any purpose.

5. **The Districts' Representative.** The Districts agree to designate one person to represent the Districts in all dealings with RANGEN and to act as a liaison between the parties. The Districts shall communicate to RANGEN in writing the name, address and telephone number of such person.

6. **Additional Documents.** The parties will execute such additional documents and instruments as may be required to carry out the purpose and intent of the foregoing Agreement.

7. **Cooperation.** The parties will cooperate, communicate and act in good faith with each other as may be reasonable and necessary in exercising their rights and performing their responsibilities pursuant to this Agreement.

8. **Default.** In the event any party fails to perform any of the terms, conditions or provisions of this Agreement, and fails to cure such default within thirty (30) days of receipt of written notice of default, the non-defaulting party may elect any one of the following remedies, which are the sole and exclusive remedies available:

- (a) to terminate this Agreement;
- (b) file an action to obtain specific performance of this Agreement; or
- (c) pursue any other remedy to which they may be entitled under the laws of the state of Idaho.

9. **Legal Fees.** In the event legal action is undertaken to enforce this Agreement, the prevailing party in such action shall be entitled to recover reasonable attorney fees and costs, in addition to whatever other relief that party may be entitled to.

10. **Binding Effect.** All of the terms, conditions and covenants of this Agreement shall be binding upon the parties and shall inure to the benefits of all successors and assigns of the parties hereto.

11. **Assignment of this Agreement.** The Districts may assign their interest in this Agreement to a third party, subject to the prior written consent of RANGEN, which consent shall not be unreasonably withheld. Provided, that the Districts may assign their

interest in this Agreement to one or more of their member groundwater districts without the consent of RANGEN.

12. **Modification or Revocation.** This Agreement may be modified or revoked by a writing executed by all parties.

13. **Dispute Resolution.** Any substantial dispute between the parties shall be resolved in accordance with the following provisions:

- (a) **Mediation.** The parties shall designate a mediator and appear before the mediator and attempt to mediate a settlement of the dispute.
- (b) **Arbitration.** In the event the dispute between the parties cannot be settled as a result of mediation as above described, the dispute shall be arbitrated in accordance with the Uniform Arbitration Act, Title 7, Chapter 9, Idaho Code. The parties shall elect a mutually agreeable arbitrator and the dispute shall be submitted to that arbitrator for decision. The arbitrator shall be authorized to enter a decision to resolve the dispute that is binding on the parties. The arbitrator's decision shall be non-appealable.
- (c) **Litigation.** Litigation is allowed between the parties only for the purpose of enforcing a settlement agreement entered into between the parties as a result of mediation, or an arbitrator's decision resulting from arbitration.
- (d) **Injunctive Relief.** Either party may request a Court to issue such temporary or interim relief (including temporary restraining orders and preliminary injunctions) as may be appropriate, either before or after mediation or arbitration is commenced. The temporary or interim relief shall remain in effect pending the outcome of the mediation or arbitration. No such request shall be a waiver of the right to submit any dispute to mediation or arbitration.
- (e) **Arbitration and Mediation Costs.** The parties shall share equally in all expenses and costs and fees of the mediator and arbitrator. Each party shall be responsible for its own costs, attorney fees and witness fees, if any. However, the arbitrator may award reasonable attorney fees to the prevailing party.
- (f) **Choice of Law.** This Agreement and the validity, interpretation and performance thereof shall be governed by and construed in accordance with the laws of the State of Idaho.



14. **Notices.** All notices required to be given pursuant to this Agreement shall be served upon the parties by certified mail, return receipt requested, at the following addresses:

Rangen, Inc.  
P.O. Box 706  
Buhl, Idaho 83311

Southwest Irrigation District  
P.O. Box 910  
Burley, Idaho 83318

North Snake Ground Water District  
152 E. Main St.  
Jerome, Idaho 83338

Magic Valley Ground Water District  
P.O. Box 430  
Paul, Idaho 83347

IN WITNESS WHEREOF, the parties have executed this Agreement effective on the date recited above.

**RANGEN, INC.**

By \_\_\_\_\_

By \_\_\_\_\_

**SOUTHWEST IRRIGATION  
DISTRICT**

By \_\_\_\_\_  
RANDY BROWN, Chairman

**NORTH SNAKE GROUND WATER  
DISTRICT**

By \_\_\_\_\_  
LYNN CARLQUIST, Chairman

**MAGIC VALLEY GROUND WATER  
DISTRICT**

By \_\_\_\_\_  
DEAN STEVENSON, Chairman

STATE OF IDAHO            )  
  : ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of November, 2014, before me, a Notary Public for the State of Idaho, personally appeared \_\_\_\_\_, known or identified to me to be the \_\_\_\_\_, of RANGEN, INC., that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

(SEAL)

---

NOTARY PUBLIC FOR IDAHO  
Residing at:  
My Commission Expires:

STATE OF IDAHO            )  
  : ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of November, 2014, before me, a Notary Public for the State of Idaho, personally appeared RANDY BROWN, known or identified to me to be the Chairman, of SOUTHWEST IRRIGATION DISTRICT, that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

(SEAL)

---

NOTARY PUBLIC FOR IDAHO  
Residing at:  
My Commission Expires:

STATE OF IDAHO            )  
  : ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of November, 2014, before me, a Notary Public for the State of Idaho, personally appeared LYNN CARLQUIST, known or identified to me to be the Chairman, of NORTH SNAKE GROUND WATER DISTRICT, that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

(SEAL)

---

NOTARY PUBLIC FOR IDAHO  
Residing at:  
My Commission Expires:

STATE OF IDAHO            )  
  : ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_ day of November, 2014, before me, a Notary Public for the State of Idaho, personally appeared DEAN STEVENSON, known or identified to me to be the Chairman, of MAGIC VALLEY IRRIGATION DISTRICT, that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

(SEAL)

---

NOTARY PUBLIC FOR IDAHO  
Residing at:  
My Commission Expires:

**EXHIBIT A**  
**Attached to Pipeline Agreement**

SW ¼ NW ¼, Section 32, Township 7S, Range 14E, B.M., Gooding County, Idaho:

Easement approximately 510' feet in length and 20' in width running from south boundary line of described Rangen Property in a northerly direction to a point between the small raceway and hatch house as depicted in Exhibit A-1 attached, with 4", 12" and 16" lines running from there to small raceway and hatch house per attached engineering drawings Exhibit A-2. Final description of the easement and location of the pipelines to be provided by amendment to this Exhibit A upon final survey and installed pipe locations.

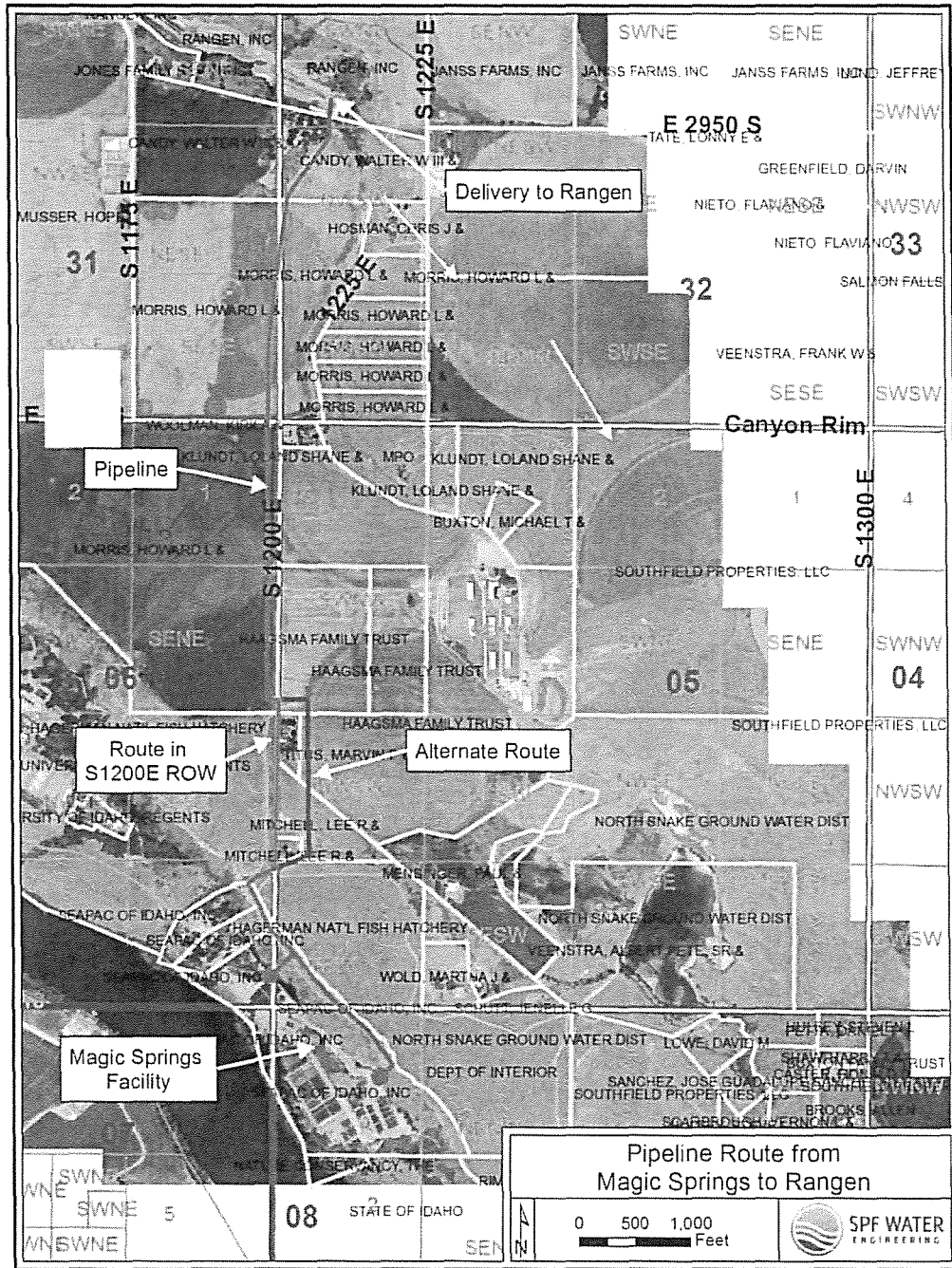
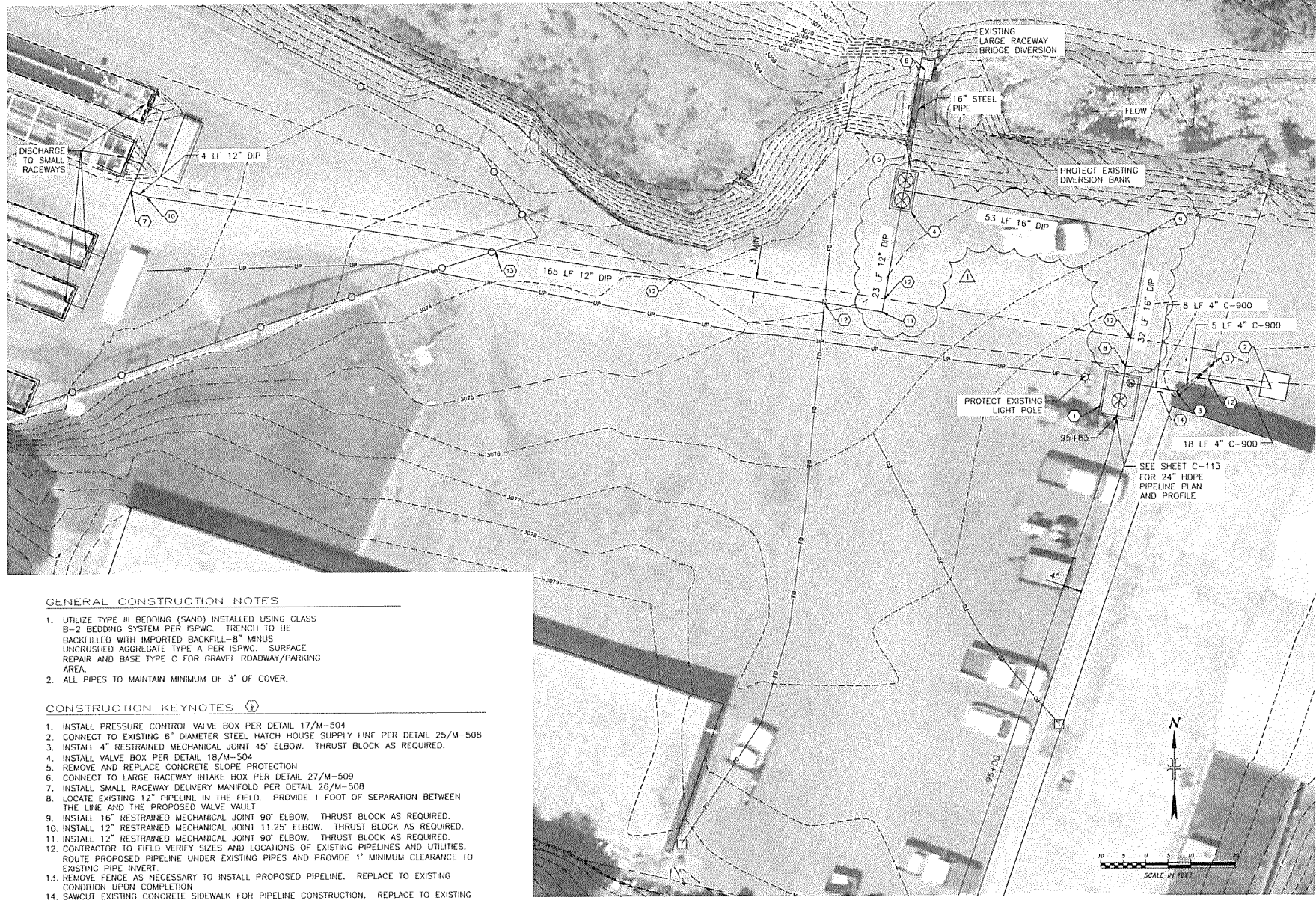


Figure 3. Pipeline Alignment

Path: Y:\PROJECTS\535.0150\535E File Name: 5350150 C-114 Plot Date: 01/29/2014 03:42:46pm C0 User: P Cooper  
 Plot File Name: 5350150-A1-3D Detail 2 | 5350150-A1-3D Detail 2 | 5350150-A1-3D Detail 2 | 5350150-A1-3D Detail 2 |



**GENERAL CONSTRUCTION NOTES**

1. UTILIZE TYPE III BEDDING (SAND) INSTALLED USING CLASS B-2 BEDDING SYSTEM PER ISPPWC. TRENCH TO BE BACKFILLED WITH IMPORTED BACKFILL-8" MINUS UNCRUSHED AGGREGATE TYPE A PER ISPPWC. SURFACE REPAIR AND BASE TYPE C FOR GRAVEL ROADWAY/PARKING AREA.
2. ALL PIPES TO MAINTAIN MINIMUM OF 3' OF COVER.

**CONSTRUCTION KEYNOTES**

1. INSTALL PRESSURE CONTROL VALVE BOX PER DETAIL 17/M-504
2. CONNECT TO EXISTING 6" DIAMETER STEEL HATCH HOUSE SUPPLY LINE PER DETAIL 25/M-508
3. INSTALL 4" RESTRAINED MECHANICAL JOINT 45° ELBOW. THRUST BLOCK AS REQUIRED.
4. INSTALL VALVE BOX PER DETAIL 18/M-504
5. REMOVE AND REPLACE CONCRETE SLOPE PROTECTION
6. CONNECT TO LARGE RACEWAY INTAKE BOX PER DETAIL 27/M-509
7. INSTALL SMALL RACEWAY DELIVERY MANIFOLD PER DETAIL 26/M-508
8. LOCATE EXISTING 12" PIPELINE IN THE FIELD. PROVIDE 1 FOOT OF SEPARATION BETWEEN THE LINE AND THE PROPOSED VALVE VAULT.
9. INSTALL 16" RESTRAINED MECHANICAL JOINT 90° ELBOW. THRUST BLOCK AS REQUIRED.
10. INSTALL 12" RESTRAINED MECHANICAL JOINT 11.25° ELBOW. THRUST BLOCK AS REQUIRED.
11. INSTALL 12" RESTRAINED MECHANICAL JOINT 90° ELBOW. THRUST BLOCK AS REQUIRED.
12. CONTRACTOR TO FIELD VERIFY SIZES AND LOCATIONS OF EXISTING PIPELINES AND UTILITIES. ROUTE PROPOSED PIPELINE UNDER EXISTING PIPES AND PROVIDE 1' MINIMUM CLEARANCE TO EXISTING PIPE INVERT.
13. REMOVE FENCE AS NECESSARY TO INSTALL PROPOSED PIPELINE. REPLACE TO EXISTING CONDITION UPON COMPLETION
14. SAWCUT EXISTING CONCRETE SIDEWALK FOR PIPELINE CONSTRUCTION. REPLACE TO EXISTING CONDITION UPON COMPLETION.

**SPF WATER**  
ENGINEERING

300 East Mallard Drive, Suite 350  
Boise, Idaho 83706  
Tel (208) 393-4140 Fax (208) 393-4196

MAGIC SPRINGS PROJECT  
PUMP STATION AND PIPELINE  
RANGEN DELIVERY SITE PLAN

REVISIONS	DATE	DESCRIPTION
A	10/26/14	ISSUE DESIGN SUBMITTAL
B	11/10/14	PIPE BEDDING
C	11/23/14	AS-BUILT

VERIFY SCALE: 1" = 10'

OR MEASURE DIMENSIONS ON FULL SIZE DRAWING

PROJECT: 535.0150  
 DESIGNED: PZC  
 DRAWN: PZC  
 CHECKED: RRH

C-114