

LAWRENCE G. WASDEN
ATTORNEY GENERAL

CLIVE J. STRONG
Deputy Attorney General
Chief, Natural Resources Division

GARRICK L. BAXTER, ISB #6301
EMMI L. BLADES, ISB #8682
Deputy Attorneys General
Idaho Department of Water Resources
P. O. Box 83720
Boise, Idaho 83720-0098
Telephone: (208) 287-4800
Facsimile: (208) 287-6700
garrick.baxter@idwr.idaho.gov
emmi.blades@idwr.idaho.gov

Attorneys for Respondents

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

RANGEN, INC.,

Petitioner,

vs.

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

Respondents,

IDAHO GROUND WATER
APPROPRIATORS, INC., FREMONT
MADISON IRRIGATION DISTRICT, A&B
IRRIGATION DISTRICT, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,
MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY, TWIN

Case No. CV-2014-1338

(consolidated for purposes of the agency
record only with Gooding County
Case No. CV-2014-179)

**ORDER SETTLING THE
CONSOLIDATED AGENCY
RECORD AND TRANSCRIPT**

FALLS CANAL COMPANY, AND THE
CITY OF POCA TELLO,

Intervenors.

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS. 36-02551
& 36-07694 (RANGEN, INC.), IDWR
DOCKET NO. CM-DC-2011-004

Pursuant to I.R.C.P. 84(j), on April 30, 2014, the Idaho Department of Water Resources (“Department”) served upon the parties its *Notice of Lodging Consolidated Agency Record and Transcript with the Agency* (“Notice”). The Notice gave the parties fourteen (14) days from the date of the Notice to file any objections to the agency transcript or record. On May 13, 2014, the City of Pocatello (“Pocatello”) filed *City of Pocatello’s Objection to the Record*. On May 14, 2014, the Idaho Ground Water Appropriators, Inc. (“IGWA”) filed *IGWA’s Objection to the Consolidated Agency Record and Transcript*. On May 19, 2014, Rangen, Inc. (“Rangen”) filed *Rangen, Inc.’s Response to IGWA’S Objection to the Consolidated Agency Record and Transcript*.

A. Pocatello’s Objection

Pocatello requests that several documents submitted to the Department in Docket No. CM-DC-2011-004 be included in the agency record on appeal for Twin Falls County Case No. CV-2014-1338 and Gooding County Case No. CV-2014-179.

The Department has no objection to inclusion of the following documents as requested:

- Ray Williams (IDWR) Letter to Becky Harvey (IGWA) providing additional information (in response to IGWA’s July 9, 2012 email), dated 7/11/12.
- Fritz Haemmerle (Rangen) Letter to Randall Budge (IGWA) re: IGWA’s July 25, 2012 Letter to Director Spackman, dated 7/31/12.
- Randall Budge (IGWA) Letter to Fritz Haemmerle (Rangen) (in response to Rangen’s July 31, 2012 letter) re: ESPAM, dated 8/13/12.
- Candice McHugh (IGWA) Letter to Director Spackman re: Supplemental Authority (IDWR’s Response to Petitioners’ First Requests for Admission, Case No. 39576, July 15, 1993 attached), dated 4/11/13.
- Exhibit 2205, Hinckley Fig. 18 – Curren Tunnel Discharge and Aquifer Water Level Elevation (This exhibit is listed on the record’s admitted hearing exhibit list but is not included in the record set of exhibits).

The record at the time of filing with the District Court will reflect inclusion of these documents.

Pocatello requests inclusion of the following document: Sarah Klahn (Pocatello) Letter to Director Spackman requesting copies of documents produced in response to IGWA's May 14, 2012 request and Rangen's May 21, 2012 request, dated 6/20/12. The Department located this letter. However, it was signed by Mitra Pemberton, not Sarah Klahn. The Department has no objection to the inclusion of the letter signed by Mitra Pemberton and the record at the time of filing with the District Court will reflect inclusion of this document.

Pocatello requests inclusion of the following document: Petition for Limited Intervention, Surface Water Coalition, dated 7/19/12. This document was included in the agency record at the time it was lodged with the agency, however, it was listed in the Table of Contents and saved in PDF format on the DVD provided to the parties by the date it was received by the Department, July 24, 2012. No changes to the record will be made concerning this document.

Pocatello requests inclusion of the following documents:

- IDWR Staff Memorandum in Response to Expert Reports Submitted Rangen Delivery Call, dated 2/27/13.
- Exhibit 1319, IDWR Memo dated Feb. 27, 2013 (This exhibit was admitted but is not included on the record's admitted hearing exhibit list nor is it included in the record's set of exhibits).

The Staff Memorandum referenced in these requests is already included in the record as Exhibit No. 3203. Exhibit 1319 is not included in the record because, at the hearing in this matter on May 9, 2013, an oral motion to substitute previously admitted Exhibit 1319 with Exhibit 3203 was granted without objection. Exhibit 1319 will not be added to the record.

Pocatello requests inclusion of the following document: Fremont Madison Irrigation District Response to IDWR Staff Memorandum in the Matter of Rangen Delivery Call, dated 4/5/13. This document was included in the agency record at the time it was lodged with the agency as admitted Exhibit No. 4003. This document will remain in the agency record as an admitted exhibit. No changes to the record will be made concerning this document.

Pocatello requests inclusion of the following document: Robyn Brody (Rangen) Letter to Garrick Baxter (IDWR) requesting all water measurements taken at Martin-Curren Tunnel by IDWR over past 5 years, dated 2/24/14. The Department has no objection to inclusion of the letter as requested and the record at the time of filing with the District Court will reflect inclusion of the letter. The Department will also include its response to the letter transmitted by email from Kimi White on March 4, 2014. The data attached to the email will only be provided on the agency record DVD.

B. IGWA's Objection

IGWA requests that the agency record on appeal for Twin Falls County Case No. CV-2014-1338 and Gooding County Case No. CV-2014-179 include the *Notice of Violation and Cease and Desist Order* dated January 31, 2014, *In the Matter of the Diversion Of Water Without a Valid Water Right From Billingsley Creek By Rangen, Inc.*

The *Notice of Violation and Cease and Desist Order* requested by IGWA is part of a separate administrative proceeding. The document was not admitted into the record at the hearing in this proceeding. The document does not fall within documents listed in I.R.C.P. 84(f)(3). The document will not be included in the agency record on appeal in this matter at the time of filing with the District Court.

IGWA also requests that the following documents be removed from the consolidated agency record in this matter:

- a. Order Approving in Part and Rejecting in Part IGWA's Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order, dated April 11, 2014, BATES Nos. 4464-4520.
- b. Disk of Data with Order Approving In Part and Rejecting In Part IGWA's Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order, dated April 11, 2014, BATES No. 4521.

The Order referenced in IGWA's request was docketed in this administrative proceeding and amended the first curtailment order issued in this matter, *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962*. Idaho Rule of Civil Procedure 84(f)(3)(G) requires that the agency's record contain the first curtailment order. Because the Order referenced in IGWA's request amended the first curtailment order, it too should be included in the agency's record. Neither the Order referenced in IGWA's request nor the Disk of Data including the Order will be removed from the consolidated agency record and will be included at the time of filing with the District Court.

C. Omissions Identified by the Department

The following exhibits were erroneously omitted from the consolidated agency record:

- 1) Exhibit No. 1276 was not provided on the DVD which was served to the parties.
- 2) Exhibit No. 1279 was not provided on the DVD which was served to the parties.
- 3) Exhibit No. 1280 was not provided on the DVD which was served to the parties.
- 4) Exhibit No. 1282 was not provided on the DVD which was served to the parties.
- 5) Exhibit No. 1283 was not provided on the DVD which was served to the parties.

These exhibits consist of voluminous electronic data which the Department has now placed in condensed zipped files on the agency record DVD. The record at the time of filing with the District Court will reflect inclusion of these exhibits.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that, timely objections to the agency record having been filed, and with the additions or changes to the record described above, the agency record and transcript are deemed settled.

IT IS FURTHER ORDERED that, pursuant to Idaho Rule of Civil Procedure 84(j), the City of Pocatello and IGWA's Objections, and this order shall be included in the record on the

petition for judicial review. The Department shall provide the parties with copies of the agency record on seventeen (17) DVDs consistent with modifications made in this order.

DATED this 27th day of May, 2014.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of May, 2014, I caused a true and correct copy of the foregoing **ORDER SETTLING THE CONSOLIDATED AGENCY RECORD AND TRANSCRIPT** to be filed with the Court and served on the following parties by the indicated methods:

Original to:
SRBA District Court
253 3rd Ave. North
P.O. Box 2707
Twin Falls, ID 83303-2707
Facsimile: (208) 736-2121

() U.S. Mail, Postage Prepaid
() Hand Delivery
(x) Facsimile
() E-mail

RANDALL C. BUDGE
T.J. BUDGE
RACINE OLSON
P.O. BOX 1391
POCATELLO, ID 83204-1391
rcb@racinelaw.net
tjb@racinelaw.net

(x) U.S. Mail, Postage Prepaid
() Hand Delivery
() Facsimile
(x) E-mail

J. JUSTIN MAY
MAY BROWNING
1419 W. WASHINGTON
BOISE, ID 83702
jmay@maybrowning.com

(x) U.S. Mail, Postage Prepaid
() Hand Delivery
() Facsimile
(x) E-mail

ROBYN BRODY
BRODY LAW OFFICE
P.O. BOX 554
RUPERT, ID 83350
robynbrody@hotmail.com

(x) U.S. Mail, Postage Prepaid
() Hand Delivery
() Facsimile
(x) E-mail

FRITZ HAEMMERLE
HAEMMERLE & HAEMMERLE
P.O. BOX 1800
HAILEY, ID 83333
fxh@haemlaw.com

(x) U.S. Mail, Postage Prepaid
() Hand Delivery
() Facsimile
(x) E-mail

SARAH KLAHN
MITRA PEMBERTON
WHITE & JANKOWSKI, LLP
511 16TH ST., STE 500
DENVER, CO 80202
sarahk@white-jankowski.com
mitrap@white-jankowski.com

(x) U.S. Mail, Postage Prepaid
() Hand Delivery
() Facsimile
(x) E-mail

JOHN K. SIMPSON
TRAVIS L. THOMPSON
PAUL L. ARRINGTON
BARKER, ROSHOLT & SIMPSON
195 RIVER VISTA PLACE, STE. 204
TWIN FALLS, ID 83301-3029
tlt@idahowaters.com
jks@idahowaters.com
pla@idahowaters.com

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

W. KENT FLETCHER
FLETCHER LAW OFFICE
P.O. BOX 248
BURLEY, ID 83318
wkf@pmt.org

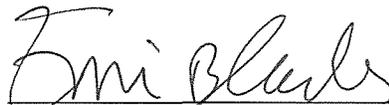
U.S. Mail, Postage Prepaid
 Hand Delivery
 Facsimile
 E-mail

JERRY R. RIGBY
HYRUM ERICKSON
ROBERT H. WOOD
RIGBY, ANDRUS & RIGBY, CHTD
25 NORTH SECOND EAST
REXBURG, ID 83440
jrigby@rex-law.com
herickson@rex-law.com
rwood@rex-law.com

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

A. DEAN TRANMER
CITY OF POCA TELLO
P.O. BOX 4169
POCA TELLO, ID 83205
dtranmer@pocatello.us

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



Emmi L. Blades
Deputy Attorney General