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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 Respondents.

Case No. CV- 2014-4633

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 The Director entered an order of curtailment requiring that the holders of junior-priority
18 groundwater rights deliver specified quantities of water at specified times or be curtailed.

19 4. Thereafter, Idaho Ground Water Appropriators, Inc. ("IGWA") filed its Fourth
20 Mitigation Plan ("Magic Springs"), in Docket No. CM-MP-2014-006. Rangen timely filed a
21 Protest to the Magic Springs Plan. On October 29, 2014, after hearing, the Director issued his
22 *Order Approving IGWA's Fourth Mitigation Plan* (hereinafter the "Order").
23

24 5. No Motions for Reconsideration were filed on the *Order*.
25

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

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

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

7 9. A transcript of all proceedings in Case No. CM-DC-2011-004 is requested. The
8 Petitioner believes a transcript of that proceeding has been prepared, and to the extent it has not
9 been prepared, that transcript is requested. The Petitioner also requests a transcript of all
10 proceedings in CM-MP-2014-006. The contested hearing was held on October 8, 2014, and is
11 believed to have been recorded by the Department. Also, there was a transcript prepared by
12 M&M Court Reporters, Boise, Idaho. All other proceedings, including status conferences, were
13 recorded by the Department. Petitioner also requests the record and transcript from the
14 proceedings in IGWA’s Second Mitigation Plan, CM-MP-2014-003, which was prepared for the
15 judicial review proceedings in Twin Falls Case No. CV-2014-2935.
16

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

19 8. The Petitioner's substantial rights have been prejudiced by the *Order* including, but
20 not necessarily limited to, the diminishment of water rights 36-02551 and 36-07694, as those
21 rights were Decreed by the Snake River Basin Water Adjudication and permitted and licensed by
22 the Department, and the Order denies the Petitioner’s right to receive its legally entitled water
23 under water rights duly perfected under Idaho law. Furthermore, the Petitioner’s substantial
24 rights have been further prejudiced by the failure of the Director and Department to deliver that
25

1 amount of water necessary to address the Petitioner's injury caused by junior-priority
2 groundwater pumping.

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

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

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

- 13
- 14 a. Whether the Director erred or exceeded his authority by approving a mitigation
15 plan that does not provide replacement water, at the time and place required by
16 Rangen, sufficient to offset the on-going depletive effect of ground water
17 withdrawals by junior-priority groundwater pumping.
- 18 b. Whether the Director erred or exceeded his authority by failing to require a
19 contingency plan and adequate conditions and provisions to assure protection of
20 Rangen's water rights in the event the conditions of the Fourth Mitigation Plan
21 are not satisfied or if the proposed mitigation water becomes unavailable or is not
22 otherwise delivered for any reason, including the failure to satisfy the conditions
23 set forth in the Order and other requirements of State and Federal law.
- 24
- 25

- 1 c. Whether the Director erred or exceeded his authority by allowing continued out-
2 of-priority ground water pumping pursuant to a conditionally approved mitigation
3 plan.
- 4 d. Did the Director adequately consider and include in his Order all of the necessary
5 conditions that must be satisfied before IGWA can deliver Magic Springs water to
6 Rangen for mitigation, including, but not limited to, agreements and leases
7 obtained between IGWA, the Idaho State Board of Water Resources, Idaho Fish
8 and Game and SeaPac; and also relevant right-of-way agreements between IGWA
9 and landowners for IGWA to build and construct its pipeline.
- 10 e. Whether the Fourth Mitigation Plan provides for monitoring and adjustments as
11 necessary to protect Rangen's senior-priority water rights and other senior-
12 priority water rights from material injury.
- 13 f. Whether the Director erred, exceeded his authority or otherwise abused his
14 discretion in calculating and/or recalculating the credit given for the Morris/Sandy
15 Pipeline exchange water.
- 16 g. To the extent the Director relied upon the calculation of Morris credit from the
17 Second Mitigation Plan, whether there is insufficient evidence for that calculation.
18 The Second Mitigation Plan was based on historical analyses, but the actual 2014
19 irrigation flows were available when the Fourth Mitigation Plan was approved.
- 20 h. Whether the Director's calculation of mitigation credits is arbitrary and
21 capricious.
- 22 i. Whether the Fourth Mitigation Plan is consistent with the conservation of water
23 resources, the public interest or seeks to prevent injuries to other water users, the
24 environmental resources of the state, and wildlife, given that the Magic Springs
25 water source is over allocated.

- 1 j. Whether the Director erred or exceeded his authority by failing to consider the
2 environmental impacts that will result from the implementation of the Fourth
3 Mitigation Plan.
- 4 k. Whether the Director erred, exceeded his authority or otherwise abused his
5 discretion by approving a mitigation Plan that damages other water users, and
6 allows continued mining of the ESPA without mitigating that continued mining.
- 7 l. Whether the Director erred in concluding that the Fourth Mitigation Plan will
8 provide the water required by the Curtailment Order.
- 9 m. Whether the Director erred or exceeded his authority by requiring Rangen to
10 accept the Magic Springs Plan or forfeit its delivery call rights.
- 11 n. Whether the Director erred or exceeded his authority by requiring Rangen to
12 allow access and/or grant easements over its real property for construction related
13 to the Fourth Mitigation Plan or forfeit its delivery call rights.
- 14 o. Whether the Director's *Order* requiring Rangen to allow access and/or grant
15 easements over its real property for construction related to the Fourth Mitigation
16 Plan or forfeit its delivery call rights constitutes a taking in violation of Rangen's
17 constitutional rights.
- 18 p. Whether the Director had authority to require Rangen, a fish propagator, to accept
19 water which may introduce diseases.
- 20 q. Whether the *Order* and/or the Director's application of the Conjunctive
21 Management Rules deprives Rangen of its Constitutionally-protected property
22 rights and its right to have its water right administered and protected under the
23 prior appropriation doctrine.
- 24 r. Whether the application of the CM Rules to Rangen's delivery call, including the
25 subsequent mitigation plans submitted by IGWA, is contrary to law,

1 b. is in excess of the statutory authority or administrative rules of the
2 Department;

3 c. was made upon unlawful procedures; and

4 d. was arbitrary, capricious, and/or an abuse of the agency discretion.

5 B. That the Court set aside the *Order*, in whole or part, and/or remand the *Order*
6 back for further proceedings;

7 C. For an award of reasonable costs and attorneys' fees pursuant to applicable law,
8 including but not limited to Idaho Code Section 12-117, and Idaho Rule of Civil
9 Procedure 54; and

10 D. For such other and further relief as the Court deems just and equitable.

11 RESPECTFULLY SUBMITTED this 27 day of November, 2014.

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


13
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15 By: 

16 J. Justin May
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CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 25th day of November, 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 emmi.blades@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>Randall C. Budge TJ Budge RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED 201 E. Center Street P.O. Box 1391 Pocatello, ID 83204 reb@racinelaw.net tjb@racinelaw.net bjh@racinelaw.net</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>William A. Parsons 137 W. 13th St. P.O. Box 910 Burley, ID 83318 wparsons@pmt.org</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>Kathy McKenzie P.O. Box 109 Hagerman, ID 83332 knbmac@q.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>


 J. Justin May