

**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF )  
WATER TO WATER RIGHTS NOS. 36-15501, ) PETITION FOR HEARING  
36-02551, AND 36-07694 )  
\_\_\_\_\_)

Pursuant to the March 10, 2004, Amended Order in the above-captioned proceeding, the U.S. Fish and Wildlife Service (Fish and Wildlife Service or Service), by and through its attorney, Barbara Scott-Brier, hereby contests the March 10, 2004, Amended Order and petitions the Director for a hearing in this matter. The Fish and Wildlife Service's grounds for contesting the action are as follows.

The Amended Order makes findings of fact and conclusions of law concerning a call for water by Rangen, Inc., based on Rangen's claim to surface water to certain spring flows in the Thousand Springs reach of the claim area. The Amended Order sets out a plan for curtailment of certain groundwater uses unless certain conditions are met regarding mitigation and replacement water.

The Fish and Wildlife Service is similarly situated to Rangen, Inc. Like Rangen, the Service holds water rights to spring flows from the Thousand Springs reach of the Snake River basin. Those water rights include decreed water rights (partial decrees) and water right licenses for the Hagerman National Fish Hatchery (decreed: 36-00128, 26-00129, 36-00130, 36-00131, 36-00132, 36-15444, 36-15445, 36-15446, 36-15447, 36-15448a, 36-15448b, 36-15449, 36-15450, 36-15451; licenses: 36-08354, 36-08750, 36-15971) and the Magic Valley Fish Hatchery

(licenses and SRBA claims: 36-7033, 36-7164, 36-7653, 47-8042.). The priority dates for these water rights range in priority from 1889 - 2001.

The Hagerman and Magic Valley hatcheries are in close proximity to the Rangen, Inc. fish hatchery and are similarly experiencing diminished spring flows, so that not all of the hatcheries' water rights are being met. The Service believes that some of its water rights, including certain pre-1962 water rights, are being injured by diversions for uses junior in priority to the Service's rights.

A decision regarding the instant matter and the subsequent administration of ground and surface water in the Eastern Snake River Plain aquifer will affect spring water availability in the Thousand Springs area and the Service's water rights, and may have a precedential bearing on administration of the Service's water rights for the hatcheries. Further, the Amended Order and curtailment/mitigation plan rely on a groundwater model that has been shown to be deficient in accurately identifying groundwater depletions from the aquifer.

Wherefore, for the reasons stated above, the Fish and Wildlife Service respectfully requests a hearing on these matters.

Service on the Fish and Wildlife Service should be made on:

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[e-mail is not allowed, by order of federal court]

In addition, we request that a courtesy copy of all documents be sent to:

Bryan Kenworthy, Hatchery Manger  
Hagerman National Fish Hatchery  
3059-ID National Fish Hatchery Road  
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Respectfully submitted this 25<sup>th</sup> day of March 2004.

FOR THE U.S. FISH AND WILDLIFE SERVICE



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**CERTIFICATE OF SERVICE**

I hereby certify that on March 25, 2004, I filed the original of the **PETITION FOR HEARING**, with Karl J. Dreher, Director, via facsimile and regular mail and served a true and correct copy of the same to the parties to the case, indicated below, by depositing the same in the U.S. Post Office, Portland, Oregon 97232, with first class postage prepaid, as follows:

(BY FAX AND REGULAR MAIL)

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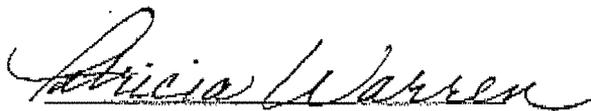
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Dated this 25<sup>th</sup> day of March, 2004.



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