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*Attorneys for Rangen, Inc.*

RECEIVED
MAR 14 2014
DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

| | |
|---|---|
| **IN THE MATTER OF THE MITIGATION PLAN FILED BY THE IDAHO GROUND WATER APPROPRIATORS FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 AND 36-07694 IN THE NAME OF RANGEN, INC.** | Docket No. CM-MP-2014-001<br><br>**RANGEN, INC.'S PETITION TO INTERVENE TO BECOME A PARTY PROTESTANT** |

COMES NOW, Rangen, Inc., P.O. Box 706, Buhl, Idaho 83316, by and through its attorneys, files this Petition to Intervene to Become a Party Protestant ("Petition") pursuant to IDAPA Rules 156 and 350 through 354. The basis of this Petition is that Rangen claims a direct and substantial interest in the Mitigation Plan ("Plan") filed by the Idaho Ground Water Appropriators Inc. ("IGWA"). The Plan addresses the Director's *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13,* 1962 ("Final Order"). The Final Order requires ground water users, including IGWA, to provide Rangen a certain amount of water. Rangen's interest in the case is to insure that the Plan filed by

IGWA, as a matter of fact and law, satisfies the terms of the Final Order. Rangen filed a Protest setting out the basis of its objection to the Plan. The Protest is attached hereto as Exhibit A and incorporated herein by reference. The relief sought by Rangen, based on the face of the Plan and for other factual and legal issues set forth in Exhibit A, is to have the Department deny the plan. Other than paying the filing fee on the date of filing, the Protest was otherwise provided to the Department and upon IGWA in a timely fashion.

Rangen does not believe that granting the Petition will prejudice any party. Rangen's interest is not being represented by any other party, and Rangen would be prejudiced by its inability to participate in the Mitigation Hearing on the Plan set for March 17-18, 2014. Granting Rangen's Petition will not disrupt any proceeding, will not prejudice any party and will not cause any undue broadening of the issues

This Motion is supported by the Affidavit of J. Justin May.

DATED this 14 day of March, 2014.

MAY, BROWNING & MAY, PLLC

By: _____
J. Justin May

## CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 14 day of March, 2014 he caused a true and correct copy of the foregoing document to be served by email and first class U.S. Mail, postage prepaid upon the following:

| | |
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RECEIVED
MAR 10 2014
DEPARTMENT OF
WATER RESOURCES

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

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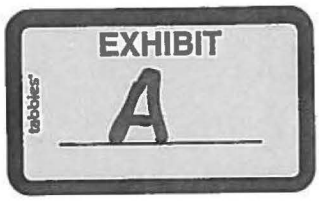
| IN THE MATTER OF THE MITIGATION PLAN FILED BY THE IDAHO GROUND WATER APPROPRIATORS FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 & 36-07694 IN THE NAME OF RANGEN, INC. | Docket No. CM-MP-2014-001<br><br>**RANGEN, INC.'S PROTEST TO IGWA'S MITIGATION PLAN** |

COMES NOW, Rangen, Inc. and protests IGWA's Mitigation Plan filed with the Idaho Department of Water Resources on February 11, 2014 ("Mitigation Plan") pursuant to the provisions of Rule 43 of the Conjunctive Management Rules, Rule 250 of the Rules of Procedure of the Idaho Department of Water Resources and other applicable law.





Rangen has the right to oppose IGWA's mitigation plan. The Mitigation Plan proposes that IGWA's members be allowed to continue junior ground water pumping despite the Director's order that such junior ground water pumping causes material injury to Rangen's water rights.

The initial bases for Rangen's Protest are as follows:

1. The Mitigation Plan is facially unapprovable because it does not comply with Rule 43.01 of the Conjunctive Management Rules:

a. The Mitigation Plan does not contain the mailing address of the person or persons submitting the plan.

b. The Mitigation Plan does not identify the water rights benefiting from the Mitigation Plan.

c. The Mitigation Plan does not identify the water supplies proposed to be used for mitigation and any circumstances or limitations on the availability of such supplies.

d. The Mitigation Plan does not contain the information necessary for the Director to evaluate the factors set forth in Rule 43.03 of the Conjunctive Management Rules.

2. The Final Order Regarding Rangen, Inc.'s Petition for Delivery Call found that Rangen has suffered material injury. The injury is ongoing and significant. IGWA has submitted a mitigation plan that is incomplete at best. Based upon the arguments in its Petition for Stay, the lack of detail in its Mitigation Plan, and its failure to provide that detail, IGWA seems prepared to argue that the Mitigation Plan should be approved even though incomplete because IGWA claims that its members will suffer irreparable injury if curtailed. It must be recognized as an initial matter that injury to a junior as a result of curtailment is not a factor that

the Director may consider when considering a mitigation plan. As the Director has acknowledged, Rangen has suffered material injury due to junior ground water pumping for years. Because of junior ground water pumping Rangen's rights have been effectively curtailed because the junior ground water users have been withdrawing water that would otherwise have flown from the Martin-Curren Tunnel. If junior ground water pumping is allowed to continue Rangen will continue to suffer material injury. Rangen's water rights, just like the water rights of others in the State of Idaho, are property rights entitled to protection.

3. In order to protect senior water rights, Rule 40 of the Conjunctive Management Rules requires curtailment upon a finding of material injury. IDAPA 37.03.11.040.01.a. Out-of-priority pumping may be allowed only "pursuant to a mitigation plan that **has been approved** by the Director." IDAPA 37.03.11.040.01.b (emphasis added). Approval is not a formality and must occur before out-of-priority pumping can be allowed. The Director cannot allow out-of-priority pumping to continue while junior ground water pumpers investigate whether mitigation is feasible. The Idaho Supreme Court has recently ruled that the practice of allowing pumping under a "replacement water" plan in the hope, or expectation, that a mitigation plan may get approved at some future time is not authorized. *In the Matter of Distribution of Water to Various Water Rights*, ____ Idaho ____ P.3d ___ (Idaho Supreme Court 2013 Opinion No. 134). Out-of-priority pumping must be curtailed until a mitigation plan has been approved.

4. Pursuant to the Conjunctive Management Rules, in the Final Order Regarding Rangen Inc.'s Petition for Delivery Call, the Director concluded that "[b]ecause Rangen has suffered material injury, the Director will curtail ground water rights bearing dates of priority earlier than July 13, 1962, with points of diversion located both within the area of common

ground water supply and west of the Great Rift." *Final Order Regarding Rangen Inc.'s Petition for Delivery Call* (January 29, 2014), *Conclusion of Law 60.*

5. The Final Order Regarding Rangen Inc.'s Petition for Delivery Call provides that a "mitigation plan must provide simulated steady state benefits of 9.1 cfs to Curren Tunnel or direct flow of 9.1 cfs to Rangen." *Final Order Regarding Rangen Inc.'s Petition for Delivery Call* (January 29, 2014), p. 42. The IGWA's Mitigation Plan does not provide either a steady state benefit of 9.1 cfs to the Curren Tunnel or a direct flow of 9.1 cfs to Rangen.

6. The Final Order Regarding Rangen Inc.'s Petition for Delivery Call further provides that "**[i]f mitigation is provided by direct flow to Rangen**, the mitigation may be phased-in over not more than a five-year period pursuant to CM Rule 40 as follows: 3.4 cfs the first year, 5.2 cfs the second year, 6.0 cfs the third year, 6.6 cfs the fourth year, and 9.1 cfs the fifth year." *Final Order Regarding Rangen Inc.'s Petition for Delivery Call* (January 29, 2014), p. 42 (emphasis added). The Mitigation Plan does not provide direct flow to Rangen of 3.4 cfs in the first year. The Mitigation plan does not provide the required quantity of direct flow to Rangen for any of the years after the first year.

7. The Mitigation Plan is vague and ambiguous and provides no opportunity to evaluate the reliability of the source of replacement water over the term in which it is proposed to be used under the Mitigation Plan. The precise source of replacement water is not specified.

8. The Mitigation Plan does not identify that it will provide replacement water, at the time and place required by Rangen's senior priority water rights, sufficient to offset the depletive effect of junior ground water withdrawals within the area of curtailment at such time and place necessary to satisfy the Rangen's senior priority water rights.

9. The Mitigation Plan contains no "contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable" and therefore violates Rule 43.03.c. *In the Matter of Distribution of Water to Various Water Rights*, ____ Idaho ____, ____ P.3d ____ (Idaho Supreme Court 2013 Opinion No. 134).

10. The Mitigation Plan requests credit for current and ongoing mitigation activities. Section I A-C of the Mitigation Plan identifies these activities as conversions, voluntary dry-ups, and groundwater recharge. The Mitigation Plan does not provide any details regarding these activities. The Mitigation Plan does not specify how much mitigation credit IGWA contends it is entitled to for these activities. The Mitigation Plan does not provide any proposal for calculating the amount of any such credit. Rangen acknowledges that, with appropriate proof, IGWA's members may be entitled to some credit for certain activities resulting in reduced aquifer depletions and replacement water for Rangen's water rights. These activities do not provide direct flow replacement water to Rangen. Therefore, in order to be approved as a mitigation plan, these types of activities must provide steady state benefits of 9.1 cfs to the Martin-Curren Tunnel. *Final Order Regarding Rangen Inc.'s Petition for Delivery Call* (January 29, 2014), p. 42. It is Rangen's understanding that the amount of simulated steady state benefits at the Martin-Curren Tunnel from the activities specified in Section I A-C of the Mitigation Plan would be significantly less than 9.1 cfs.

With regard to the activities specified in I A-C of the Mitigation Plan, Rangen specifically objects to any credit for the following: 1) activities outside the area of curtailment, 2) non-permanent changes, 3) activities already taken into account in the Director's determination of material injury, 4) the credits sought are not accounted for or are too uncertain to be given credit, and 5) credits that do not provide for year-around benefits or mitigation.

Credit should only be given in conjunction with an order from the Director making all changes for which credit is given permanent. Such order must be enforced by the Director in the same manner as other illegal uses of water. Should the Director give credits for the activities sought in 1 A-C of the Mitigation Plan, the Director should craft an Order on Curtailment specifying the exact acres covered by the Order and that no groundwater pumping from the acres covered by the conversions or dry-ups shall be allowed during the pendency of the curtailment.

11. The Mitigation Plan requests credit for water provided to other water users through the Sandy Pipeline. Rangen objects to any mitigation credit for the Sandy Pipeline against IGWA's mitigation obligations under the Rangen curtailment order. The Sandy Pipeline does not provide any replacement water to Rangen's water rights. IGWA's simplistic argument that providing water through the Sandy Pipeline to other users allows Rangen to use water that would otherwise be unavailable is incorrect. To the extent that any water is provided in the Sandy Pipeline, that water mitigates against more senior calls for water than Rangen's, but does not provide any additional water for Rangen's water rights. Even if IGWA were entitled to any credit for the Sandy Pipeline, the Mitigation Plan does not provide sufficient information to calculate any such credit. Furthermore, other than small shares from the North Side Canal Company, there are no water rights currently available to the Sandy Pipeline to satisfy any Mitigation Plan. On February 28, 2014, IGWA, through its member District, filed for a water permit for the Sandy Pipeline under Water Application 36-17011. It does not appear that the Application has been advertised, and there will be Protests to the Application when it is advertised. Finally, the Sandy Pipeline would not deliver year-around rights to mitigate against losses suffered by Rangen for its year-around water rights.

12. Rangen objects to any credit for IGWA's stated intent to assign Application for Water Permit No. 36-16976. IGWA's application is speculative and should not be approved. Rangen has filed an objection to IGWA's application. Rangen has filed a Protest to the Application, see Exhibit 1 incorporated herein by reference. Application for Water Permit No. 36-16976, even if approved (Rangen contends it will not be approved), would not provide Rangen with any water that it would not otherwise be entitled to use either pursuant to its current water rights or pursuant to Application for Water Permit No. 36-17002. Rangen has been using the water IGWA seeks to appropriate for mitigation for more than 50 years.

13. Rangen objects to IGWA's proposals to provide fish or monetary compensation instead of replacement water. There is no legal basis for the approval of such an alternative to mitigation over the senior water right holder objection. Approval would also exceed the Director's statutory authority. *Final Order Accepting Ground Water Districts' Withdrawal of Amended Mitigation Plan, Denying Motion to Strike, Denying Second Mitigation Plan and Amended Second Mitigation Plan in Part; and Notice of Curtailment* (March 5, 2009) ("Snake River Farm Mitigation"). Approval of such a mitigation plan would amount to the private condemnation of Rangen's water rights

14. IGWA is not entitled to any mitigation credit for suggesting that the Martin-Curren Tunnel could be cleaned and maintained. Rangen does cleaning and maintenance as necessary and to the extent that such activities result in more water at the Martin-Curren Tunnel. IGWA has no basis to claim credit for such an increase. The Mitigation Plan provides no information regarding what further maintenance and cleaning could be done to enhance flows from the tunnel.

15. IGWA's proposals numbered 7, 8, and 9 are simply speculation without any information or detail. Rangen has previously considered and rejected similar projects for a variety of reasons including feasibility. Rangen objects to the approval of these proposals. Rangen further objects to the consideration of these proposals at the hearing scheduled on the Mitigation Plan currently scheduled for March 17 & 18. If IGWA eventually submits a mitigation plan that is more than a statement that certain activities are conceptually possible, that plan can be heard by the Director. However, until such a plan is both submitted and approved following a hearing, the junior out-of-priority ground water pumping must be curtailed.

16. In general, the Mitigation Plan is vague and ambiguous, does not provide for adequate mitigation, provides no certainty that replacement water will be delivered to prevent injury, is contrary to existing findings and determinations of the Director and the District Court, is not in compliance with Idaho law, does not provide a reliable source of replacement water, and otherwise fails to adequately mitigate for injury caused by junior ground water users that are members of IGWA.

17. Rangen further objects to the Mitigation Plan for such other and further reasons as may be discovered or offered at the hearing on this matter.

Wherefore, Rangen requests that the Director deny and dismiss the Mitigation Plan, and for such other relief as the Director deems proper.

DATED this 10 day of March, 2014.

MAY, BROWNING & MAY

By _____
J. Justin May

## CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 10 day of March, 2014 he caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

| | | |
|---|---|---|
| **Original:**<br><br>Director Gary Spackman<br>IDAHO DEPARTMENT OF<br>WATER RESOURCES<br>P.O. Box 83720<br>Boise, ID 83720-0098<br>deborah.gibson@idwr.idaho.gov | Hand Delivery<br>U.S. Mail<br>Facsimile<br>Federal Express<br>E-Mail | ✓<br>☐<br>☐<br>☐<br>✓ |
| Garrick Baxter<br>IDAHO DEPARTMENT OF<br>WATER RESOURCES<br>P.O. Box 83720<br>Boise, Idaho 83720-0098<br>garrick.baxter@idwr.idaho.gov<br>kimi.white@idwr.idaho.gov | Hand Delivery<br>U.S. Mail<br>Facsimile<br>Federal Express<br>E-Mail | ✓<br>☐<br>☐<br>☐<br>✓ |
| Randall C. Budge<br>Thomas J. Budge<br>RACINE, OLSON, NYE, BUDGE<br>& BAILEY, CHARTERED<br>P.O. Box 1391<br>101 South Capitol Blvd. Ste 300<br>Boise, ID 83704-1391<br>Fax: 208-433-0167<br>reb@racinelaw.net<br>tjb@racinelaw.net<br>bjh@racinelaw.net | Hand Delivery<br>U.S. Mail<br>Facsimile<br>Federal Express<br>E-Mail | ☐<br>☐<br>☐<br>☐<br>✓ |
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J. Justin May

# EXHIBIT 1

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*Attorneys for Rangen, Inc.*

RECEIVED
MAR 07 2014
DEPT. OF WATER RESOURCES
SOUTHERN REGION

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

| | |
|---|---|
| IN THE MATTER OF WATER RIGHT PERMIT 36-16976 | Water Permit No. 36-16976<br><br>**PROTEST FILED BY RANGEN, INC.** |

Rangen, Inc. ("Rangen"), P.O. Box 706, 115 13th Avenue South, Buhl, Idaho 83316, by and through its attorneys, and pursuant to Idaho Code Section 42-203A, or as otherwise allowed by statues, and under IDAPA 37.03.08.03, or as otherwise provide by administrative rules, hereby files its protest to Water Right Application No. 36-16976. As defined herein, the "Application" refers all applications for water right 36-16976 including the original Application for Permit filed on or about April 3, 2013; the First Amended Application filed on or about February 10, 2014; and the Second Amended Application for Permit filed on or about February 11, 2014.

## PROTEST

1. The Application will cause injury to Rangen in that the Application is for places of use (POU) and points of diversion (POD) located on Rangen's property. As more fully stated herein, Rangen does not grant the Applicants any authority to enter or use Rangen's property for the purposes stated in the Application. The Applicants do not own the property where the POU's and POD's are located and no just compensation has been paid to Rangen for said property. Accordingly, the Applicants have not fully stated how it intends to gain lawful access and use of Rangen's property as that use is sought in the Application.

2. Section 3 of the Application lists two, 10 acre tracts as the location of the points of diversion (POD's). Those POD's are specifically described as follows: Sec. 32 SESWNW and Sec 32 SWSWNW. No specific structure or local names or tags are listed as POD's. These two tracts include the Martin Curren Tunnel and the Bridge Diversion from Billingsley Creek. The POD's are on land owned by Rangen. See. attached Deed as Exhibit 1.

3. All the requested uses imply that the diverted water will be applied to specific places of use for the specified purposes. The place of use (POU) for the requested purpose is listed in Section 8 of the Amended Application as Sec. 31, SWNE and SENE, and Sec. 32, SWNW. These requested POU's in the Application are, in fact, the place of use for Rangen's fish propagation water rights. This implies that the water applied for will be diverted, applied to and beneficially used on Rangen's hatchery facilities. Again, the Applicants have no authority to use the property owned by Rangen for the purposes and places of use cited in the Application.

4. The proposed diverting works listed in the Application are the "Hydraulic pump(s) (size TBD); screw-operated head gate on Billingsley Creek." The intent appears to be that water under the proposed permit will be diverted by pumping from the source "Springs;

Billingsley Creek" and/or a diversion structure on Billingsley Creek. Again, the diverting works would all be on land owned by Rangen Inc.

5. As indicated herein, the POD's and POU's cited in the Application are on land owned by Rangen. Rangen has not granted the Applicants any permission to enter upon lands owned by Rangen to perfect any POD's or POU's cited in the Application. Rangen denies that the Applicants have any Constitutional or statutory authority to file an eminent domain action against Rangen to gain accesses to Rangen's property to prefect any POD's or POU's. Specifically, Idaho Code Section 42-5224(13) authorized Ground Water Districts to use eminent domain powers for "mitigating" purposes. "Fish propagation" as cited in the Application is not for mitigation purposes.

6. Furthermore, Rangen does not concede that Idaho Code Section 42-5224 is consistent with the Constitutional enabling provisions which allow condemnation for water purposes. See, Idaho Cons, Art 1, Sec. 14; Art XV, Sec. 3. Even if Section 42-5224 is consistent with enabling Constitutional provisions addressing commendation and rights of eminent domain, the Applicants have not paid Rangen any just compensation, and therefore, is not entitled to access Rangen's property until such just compensation has been paid. "Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid." Idaho Cons, Art. 1, Section 14. Furthermore, the interest covered by IGWA and its representative Ground Water Districts do not represent the type of "public uses" necessary to support any type of eminent domain proceeding.

7. Under IDAPA 37.03.08.40.05.e.i (Rule 40.05),

> The Applicants shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or **if such interest can be obtained by eminent domain proceedings the Applicants must show**

> **<u>that appropriate actions are being taken to obtain the interest.</u>** Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code. (7-1-93) ii. The Applicants shall submit copies of applications for other needed permits, licenses.

(Emphasis added). Here, the Applicants have failed to show any actions taken to obtain any property interest through eminent domain.

8. Section 10 of the Application indicates that Rangen owns the property at the point of diversion and that Rangen and members of Applicant Ground Water Districts own the land to be irrigated. This is incorrect. The Applicant Ground Water Districts do not own the land at the listed place of use. This statement may mean that the Applicants fully intend to exercise eminent domain powers to gain ownership of the facilities as indicated in Section 10c of the application. Again, the Applicants have failed to take any action to condemn Rangen's property.

9. Billingsley Creek is completely appropriated, and adding another irrigation use will cause injury to other users.

> It is a fundamental concept that under our constitution, water which has already been appropriated is not subject to appropriation by another, unless it has been abandoned by the original appropriator or his successor in interest. Idaho Const. Art. 15, §§ 3, 4, 5. Before any permit to appropriate water to a beneficial use can ripen into a right to use the water, it is basic that the permit holder must show a supply of unappropriated water. Idaho Const. Art. 15, § 3.

*Cantlin v. Carter (State of Idaho)*, 88 Idaho 180, 397 P.2d 761 (1964). Here, there is nothing in the file indicating that the Applicant has shown that there is water available to appropriate, particularly true for the mitigation for irrigation purpose.

10. Water emanating from the Martin Current Tunnel forms the headwaters of Billingsley Creek. To the extent that the mitigation for irrigation would be used to provide water for other users out of the Martin Curren Tunnel, the taking and diversion of water out of Billingsley Creek would cause injury to senior water users in Billingsley Creek.

11. Consistent with the requirements of showing steps towards condemning Rangen's property, the Applicants are generally required to provide information relative to financial resources. See. Rule 40.50.f. Included with this information, the Applicants are required to provide a "current financial statement certified to show accuracy of the information" or a financial commitment letter in order to establish that it is "reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed." Because the Applicants must construct new facilities and buy Rangen's property to put in use the Application, the Applicants must produce the items requested under the rules.

12. The source of water is listed as "Springs: Billingsley Creek." This Description is not specific and does not include the Marin Curren Tunnel. The aerial photograph accompanying the application does not show the specific location of the source.

13. The Application is not specific enough to satisfy the filing requirements of a permit. Under Idaho Code Section 42-202(4),

> [t]he application shall be accompanied by a plan and map of the proposed works for the diversion and application of the water to a beneficial use, showing the character, location and dimensions of the proposed reservoirs, dams, canals, ditches, pipelines, wells and all other works proposed to be used by them in the diversion of the water, and the area and location of the lands proposed to be irrigated, or location of place of other use.

Here, the Application is deficient in satisfying the requirements of Section 42-202(4).

14. Section 3 of the Application lists the purposes for the application as follows: 12 cfs for "mitigation for irrigation" and 12 cfs for "fish propagation." Both uses are year-around. The discharge rate is for 12 cfs. The Applicants have failed to describe the information as to the supply of the 12 cfs as requested by the Department in a Memo from Corey Skinner, dated February 11, 2014. The Applicants have filed to justify the need, availability and volume as required by IDAPA 37.03.08.d.i-ii.

15. The Applicant lists three (3) quarter-quarter sections as the place of use of the mitigation for irrigation. Three (3) quarter-quarter sections equals 120 acres. With a duty of water of 0.02 cfs per acre (see. Idaho Code Section 42-202(6)), even if this Applicant had access to the listed place of use, the Applicant would only need 2.4 cfs. Here, the Applicant is seeking 12 cfs of water, which far exceeds the duty of water necessary to irrigate 120 acres.

16. The requested purpose of use "mitigation for irrigation" is not an approved purpose of use, and irrigation cannot be claimed for a year around use.

17. The map provided with the Application is an aerial photo with an oval area shaded which includes parts of the SWNW Sec 32 with a note that the "Point of diversion to be located in in(sic) this area." This depiction of the POD is not consistent with the listed POD in Section 3 of the Application and is not specific as to the 10 acre tracts listed in Section 3.

18. On February 11, 2014, the Department requested additional information as required by IDAPA 37.03.08.40.05 (Rule 40.50) of the Water Appropriation Rules. Based on information and belief, this additional information has not been submitted but the Application has been advertised.

19. The Additional Information Requirements outlined in Rule 40.05 include, but are not limited to the following:

- (ciii). Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights. The information provided thus far does not address this requirement.
- (di). Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate, during the peak

use period and the average use period, the volume to be diverted per year , the period of year that water is required, and the volume of water that will be consumptively used per year. This information has not been provided.

- (dii). Information shall be submitted on the quantity of water available from the source applied for. This information has not been provided.
- (e) Information relative to good faith, delay or speculative purposes of the Applicants. The request for delay in processing, even though it was addressed by IDWR in evaluating the request, speculated on even the need for a permit since the hearing was not complete and is even speculative as the ability of the Applicants to secure easements and/or ownership of facilities.
- (eii) The Applicants shall submit copies of applications for other needed permits, licenses, and approvals. The Department of Environmental Quality (DEQ) and Idaho Fish and Game Department (IFGD) are normally required to provide input on a permit application of this magnitude.
- (fii) The Applicants shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications. This information has not been provided.
- (g) Information Relative to Conflict with the Local Public Interest. Nothing was submitted as required.

20. The Application is signed by Thomas J. Budge, Attorney. There is no power of attorney authorizing the signing of the application by Thomas J. Budge in the backfile of the IDWR water right database for this application. See. IDAPA 37.03.08.03.(xii) through (xiv).

21. If there is more than one Applicant, each Applicant must sign the Application. The Application was not signed by all Applicants. See, IDAPA 37.03.08.03.(xii). Furthermore, the Applicants fail to include the addresses of the Applicant Ground Water Districts.

22. For all the reasons contained herein, the Application is speculative and there is no showing how the purposes of use can be fulfilled or how the Applicant will be able to appropriate the water and put it to a beneficial use.

**Right to Amend**

Rangen reserves the right to amend this protest as further information is obtained. See, IDAPA 37.01.01.305.

WHEREFORE, the Protestant prays for the following relief:

1. That the Permit be denied in all respects.
2. For attorney's fees and costs as may be allowed by law.
3. For any other relief as deemed just and equitable.

RESPECTFULLY SUBMITTED this 7th day of March, 2014.

HAEMMERLE & HAEMMERLE, P.L.L.C.

By: _____

Fritz X. Haemmerle

## CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 7th day of March, 2014, he caused a true and correct copy of the foregoing document to be served upon the following as indicated:

| | |
|---|---|
| **Original:** | |
| Director Gary Spackman<br>IDAHO DEPARTMENT OF WATER RESOURCES<br>P.O. Box 83720<br>Boise, ID 83720-0098<br>deborah.gibson@idwr.idaho.gov | Hand Delivery ☐<br>U.S. Mail ☑<br>Facsimile ☐<br>Federal Express ☐<br>E-Mail ☑ |
| Garrick Baxter<br>IDAHO DEPARTMENT OF WATER RESOURCES<br>P.O. Box 83720<br>Boise, Idaho 83720-0098<br>garrick.baxter@idwr.idaho.gov<br>kimi.white@idwr.idaho.gov | Hand Delivery ☐<br>U.S. Mail ☐<br>Facsimile ☐<br>Federal Express ☐<br>E-Mail ☑ |
| Randall C. Budge<br>TJ Budge<br>RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED<br>201 E. Center Street<br>P.O. Box 1391<br>Pocatello, ID 83204<br>rcb@racinelaw.net<br>tjb@racinelaw.net | Hand Delivery ☐<br>U.S. Mail ☑<br>Facsimile ☐<br>Federal Express ☐<br>E-Mail ☑ |

Fritz X. Haemmerle

# Exhibit

# 1

THIS INDENTURE, Made this 22 day of May

in the year of our Lord one thousand nine hundred and sixty-two

E. H. Bean and Elsie V. Bean, husband & wife,

of Hagerman, County of Gooding, State of Idaho

the parties of the first part, and

Rangen Inc., a corporation,

of Buhl, County of Twin Falls, State of Idaho

the party of the second part

WITNESSETH, That the said parties of the first part, for and in consideration of the sum of

Thirty-five thousand and no/100 ($35,000.00)----------

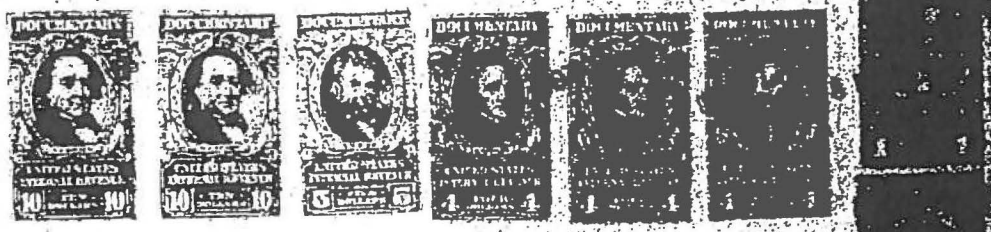
lawful money of the United States of America,

to them in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said party of the second part, and to its/successors and assigns forever, all of the following described real estate situated in , County of Gooding, State of Idaho, to-wit:

A parcel of land in Sections 31 and 32, T. 7 S. R. 14 E. B.M., described as beginning at a point that is East 1321.00 feet along the section line common to Sections 29 and 32, T. 7 S., R. 14 E., B.M., and S 0° 16' E., 1334.55 feet, from the Section corner common to Sections 29, 30, 31, and 32, T. 7 S., R. 14 E., B.M.;

Thence S 0° 02 3/4' W, 1414.80 feet;
Thence N 77° 08 1/4' W, 2738.41 feet;
Thence N 0° 01 3/4' E, 840.82 feet;
Thence S 89° 35 3/4' E, 1159.53 feet;
Thence S 88° 57 3/4' E, 1511.03 feet to the point of beginning; containing 69.358 acres.

Together with water rights, including but not limited to 73 inches of water with a priority of October 9, 1885, developed and diverted from the waters, seeps, springs and rivulets in the rimrock above the headwaters of Billingsley Creek and 8 inches of the waters of said seeps, springs and rivulets with a priority of April 1, 1908, as decreed in the case of the New International Mortgage Bank v. Idaho Power Co., which decree was dated March 22, 1932 and recorded in Book 6 of Judgments, Page 31, records of Gooding County.



TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all estate, right, title and interest in and to the said premises, as well in law as in equity, of the said parties of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises together with the appurtenances, unto the party of the second part, and to its/ heirs and assigns, the said premises in the quiet and peaceable possession of the said party of the second part, its/successors and assigns, against the said parties of the first part, and their heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said part ies of the first part have hereunto set their hands and seals the day and year first above written.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

E. H. Bean [Seal]

Elsie V. Bean [Seal]

[Seal]

[Seal]

STATE OF IDAHO

County of Gooding. } ss.

On this 23 day of May in the year 19 62, Before me the undersigned a Notary Public in and for said State, personally appeared

E. H. Bean and Elsie V. Bean

known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

H. F. Le Moyne

Notary Public for the State of Idaho,
Residing at Hagerman, Idaho

(SEAL)

STATE OF IDAHO

6-8-67

RECORDED

No. 22063

WARRANTY DEED

E. H. BEAN
and
ELSIE V. BEAN
TO
RANGEN, INC.

Dated 19

STATE OF IDAHO
County of GOODING } ss.

I hereby certify that this instrument was filed for record at request of
RANGEN, INC.
at 10:30 o'clock A. M. and duly recorded in Book 6 of Deeds, page
In witness whereof, I have hereunto set my hand and affixed my seal this 8 day of JUNE 1967
SIDNEY S. STEVENS
Ex-Officio Recorder
By Deputy.

Fee $ 3.10 Rec.
Mail to: RANGEN, INC.
P.O. Box