

RECEIVED  
SEP 19 2014  
DEPARTMENT OF  
WATER RESOURCES

Robyn M. Brody (ISB No. 5678)  
Brody Law Office, PLLC  
P.O. Box 554  
Rupert, ID 83350  
Telephone: (208) 420-4573  
Facsimile: (208)260-5482  
rbrody@cableone.net  
robynbrody@hotmail.com

J. Justin May (ISB No. 5818)  
May, Browning & May  
1419 W. Washington  
Boise, Idaho 83702  
Telephone: (208) 429-0905  
Facsimile: (208) 342-7278  
jmay@maybrowning.com

Fritz X. Haemmerle (ISB No. 3862)  
Haemmerle & Haemmerle, PLLC  
P.O. Box 1800  
Hailey, ID 83333  
Telephone: (208) 578-0520  
Facsimile: (208) 578-0564  
fxh@haemlaw.com

*Attorneys for Rangen, Inc.*

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

IN THE MATTER OF THE FOURTH  
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.

“MAGIC SPRINGS PROJECT”

Docket No. CM-MP-2014-006

**RANGEN, INC.’S PROTEST TO  
IGWA’S FOURTH MITIGATION  
PLAN**

COMES NOW, Rangen, Inc. 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 and protests IGWA's Fourth Mitigation Plan filed with the Idaho Department of Water Resources on August 27, 2014 ("Fourth Mitigation Plan").

Rangen has the right to oppose IGWA's mitigation plan. The Fourth 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 Fourth Mitigation Plan is facially unapprovable because it does not comply with Rule 43.01 of the Conjunctive Management Rules:

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

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

c. The Fourth 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. IGWA has not obtained all necessary easements for the proposal.

3. IGWA's proposal does not adequately address critical factors such as: project feasibility, necessary access easements and rights-of-way, monitoring, maintenance and repair of the delivery system, delivery system security, potential injury to other water users, water quality, disease, water temperature, delivery system reliability, compensation and insurance or bonding for losses sustained by Rangen in the event of a delivery system failure, compensation and insurance or bonding for losses sustained by others in the event of a delivery system failure, and

indemnification and hold harmless provisions to protect Rangen against any claims for losses sustained by others in the event of a delivery system failure.

4. The Fourth 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*, 155 Idaho 640, 315 P.3d 828 (2013).


5. The Fourth Mitigation Plan will not 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 Rangen’s senior priority water rights.

6. The current use for the water rights that IGWA proposes to pump is non-consumptive. The proposed transfer of the water rights to Billingsley Creek will result in the water being consumed.

Wherefore, for these reasons and for such other and further reasons as may be discovered or offered at the hearing on this matter Rangen requests that the Director deny and dismiss the Fourth Mitigation Plan, and for such other relief as the Director deems proper.

DATED this 19 day of September, 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 19 day of September, 2014 he caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

<p><b>Original:</b>                  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 checked="" type="checkbox"/>                  U.S. Mail <input type="checkbox"/>                  Facsimile <input type="checkbox"/>                  Federal Express <input type="checkbox"/>                  E-Mail <input checked="" type="checkbox"/></p>
<p>Garrick Baxter                  Emmi Blades                  IDAHO DEPARTMENT OF                  WATER RESOURCES                  P.O. Box 83720                  Boise, Idaho 83720-0098                  garrick.baxter@idwr.idaho.gov                  emmi.blades@idwr.idaho.gov                  kimi.white@idwr.idaho.gov</p>	<p>Hand Delivery <input type="checkbox"/>                  U.S. Mail <input type="checkbox"/>                  Facsimile <input type="checkbox"/>                  Federal Express <input type="checkbox"/>                  E-Mail <input checked="" type="checkbox"/></p>
<p>Randall C. Budge                  Thomas J. Budge                  RACINE, OLSON, NYE, BUDGE                  &amp; BAILEY, CHARTERED                  P.O. Box 1391                  101 South Capitol Blvd, Ste 300                  Boise, ID 83704-1391                  Fax: 208-433-0167                  rcb@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>Idaho Ground Water Appropriators,                  Inc.                  c/o Randy C. Budge                  RACINE, OLSON NYE BUDGE                  &amp; BAILEY                  P.O. Box 1391                  Pocatello, ID 83204-1391</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