

Randall C. Budge (ISB# 1949)
Thomas J. Budge (ISB# 7465)
Joseph G. Ballstaedt (ISB# 9426)
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
201 E. Center St. / P.O. Box 1391
Pocatello, Idaho 83204
(208) 232-6101 - phone
(208) 232-6109 - fax
rcb@racinelaw.net
tjb@racinelaw.net
Attorneys for IGWA

**DISTRICT COURT OF THE STATE OF IDAHO
FIFTH JUDICIAL DISTRICT
TWIN FALLS COUNTY**

RANGEN, INC.,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES, and GARY SPACKMAN
in his official capacity as Director of
the Idaho Department of Water Re-
sources.

Respondent,

vs.

IDAHO GROUND WATER APPRO-
PRIATORS, INC.,

Intervenors.

Case No. CV-2014-4633

Affidavit of Thomas J. Budge

STATE OF IDAHO)
 ss.
County of Bannock)

THOMAS J. BUDGE, being first duly sworn under oath, deposes and
states as follows:

1. I am an attorney for Idaho Ground Water Appropriators, Inc. (IGWA).

2. I participated in developing IGWA's Fourth Mitigation Plan filed with the Idaho Department of Water Resources (IDWR) in IDWR Docket No. CM-MP-2014-006.
3. I represented IGWA in all administrative hearings before IDWR concerning IGWA's Fourth Mitigation Plan.
4. I am familiar with the *Order Approving IGWA's Fourth Mitigation Plan* (the "Order") issued by IDWR on October 29, 2014, which is the subject of the above-captioned case.
5. The Order required IGWA to obtain approval of IGWA's pending transfer application no. 79560 to enable IGWA to transport up to 10 cfs under water right number 36-7072 from Magic Springs to the Rangen fish hatchery adjacent to Billingsley Creek, or to obtain an authorized rental through the water supply bank.
6. Anticipating that IGWA's transfer application may not be approved prior to the January 19, 2015, curtailment date. IGWA obtained an authorized rental through the water supply bank as a stop-gap measure. IDWR approved IGWA's water supply bank application, and IGWA entered into a Water Supply Bank Rental Agreement for 5.5 cfs with the Idaho Water Resource Board on January 15, 2015. This Agreement was amended on January 27, 2015, to increase the diversion rate to 7.81 cfs. A copy of this Agreement is attached hereto as Exhibit A.
7. On February 19, 2015, IDWR approved IGWA's transfer application no. 79560, authorizing the delivery of a 10 cfs portion of water right number 36-7072 from Magic Springs to the Rangen fish hatchery. This order was amended March 18, 2015. A copy of the amended order is attached hereto as Exhibit B.
8. The Order requires IGWA to obtain all necessary agreements or option contracts in writing. These agreements were submitted to IDWR on January 18, 2015, and included the Pipeline License Agreement with Rangen attached hereto as Exhibit C.

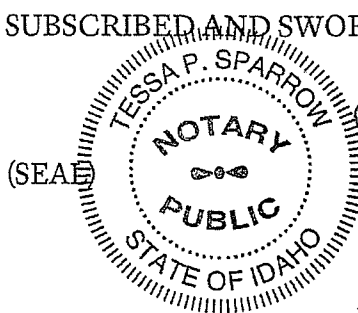
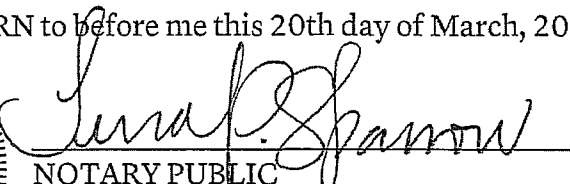
9. Working as IGWA's attorney, I was involved with the construction of the pipe from Magic Springs to Rangen. Following a stay issued by this Court that extended the curtailment date to February 7, 2015, the pipe was fully installed with new, permanent pipe. The pipe began delivering water to Rangen on February 6, 2015, and has continuously delivered 7.81 cfs or more to Rangen since that date.
10. The Order requires IGWA to take remedial measures should dissolved oxygen or gas supersaturation become an issue once the pipe system is operating. SPF Water Engineering took dissolved oxygen and gas saturation measurements shortly after the pipe began operating, and neither were elevated. Rangen has not notified IGWA's counsel of any concerns with the water being delivered to it from Magic Springs.
11. The Order requires IGWA to measure water temperature if temporary pipe is used. As mentioned above, the project was completed with all new, permanent pipe.
12. The Order requires IGWA to purchase an insurance policy for the benefit of Rangen to cover any losses of fish attributable to the failure of the pipe from Magic Springs to Rangen. IGWA members North Snake Ground Water District, Magic Valley Ground Water District, and Southwest Irrigation District obtained insurance for this purpose. Copies of the certificates of insurance are attached hereto as Exhibit D.
13. The Order requires IGWA to provide 100 percent engineering drawings to IDWR and Rangen upon completion of the design. These drawings were submitted to both parties without objection prior to completion of the pipe system.

FURTHER YOUR AFFIANT SAITH NAUGHT.

Dated this 20th day of March, 2015.


THOMAS J. BUDGE

SUBSCRIBED AND SWORN to before me this 20th day of March, 2015.

 (SEAL)

NOTARY PUBLIC
Residing at Pocatello, Idaho
My Commission Expires 10/05/2015

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2015, a true and correct copy of the foregoing document was served on the persons listed below by the method(s) indicated.



Randall C. Budge

Thomas J. Budge

Clerk of the Court Snake River Basin Adjudication 427 Shoshone Street N Twin Falls, ID 83303	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Email
Idaho Dept. of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov emmi.blades@idwr.idaho.gov deborah.gibson@idwr.idaho.gov kimi.white@idwr.idaho.gov	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Robyn M. Brody Brody Law Office, PLLC P.O. Box 554 Rupert, ID 83350 robynbrody@hotmail.com	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
Fritz X. Haemmerle Haemmerle & Haemmerle, PLLC P.O. Box 1800 Hailey, ID 83333 fxh@haemlaw.com	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email
J. Justin May May, Browning & May, PLLC 1419 West Washington Boise, ID 83702 jmay@maybrowning.com	<input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> Email

Exhibit A

AMENDED

filed an application to rent water from the Water Supply Bank ("Bank"). The Idaho Water Resource Board ("Board"), being authorized to operate a Bank and to contract by and through the Director of the Idaho Department of Water Resources ("Director, Department") for rental of water from the Bank, agrees to rent water as follows:

Water Right	Priority Date	Source	Tributary	Rented Rate	Annual Rented Volume	Acre Limit	Total Rented Acres
36-7072	09/05/1969	Thousand Springs	Snake River	7.8 cfs	5654.2 af	N/A	N/A

Term of Rental: January 1, 2015 to December 31, 2016
Annual Rental Fee: \$9612.48

Detailed water right conditions are attached.

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

WATER SUPPLY BANK RENTAL AGREEMENT

The undersigned renter agrees to use the water rented under this agreement in accordance with the Water Supply Bank rules and in compliance with the limitations and conditions of use described in this agreement:

[Signature] Thomas J. Ridge, Attorney for IDWA 1-25-15
Signature of Renter Printed Name and Title* Date

*Please provide title of signatory if signing on behalf of a company or organization or with power of attorney

Having determined that this agreement satisfied the provisions of Idaho Code § 42-1763 and IDAPA 37.02.03.030 (Water Supply Bank Rule 20), for the rental and use of water under the terms and condition herein provided, and none other, I hereby execute this Rental Agreement on behalf of the Idaho Water Resource Board:

[Signature]
By
BRIAN PATTON, Acting Administrator
Idaho Water Resource Board

Date January 27, 2015

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
WATER SUPPLY BANK RENTAL AGREEMENT

WATER USE DETAILS

LOCATION OF POINT(S) OF DIVERSION

THOUSAND SPRINGS SE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 6 Twp 08S Rge 14E GOODING County
TWO POINTS OF DIVERSION LOCATED IN T08S, R14E, S06, LOT 8 SESESE

BENEFICIAL USE

FISH PROPAGATION

SEASON OF USE

01/01 TO 12/31

RENTER'S PLACE OF USE: FISH PROPAGATION

			NE				NW				SW				SE				Totals
Twp	Rng	Sec	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
07S	14E	31			H	H													
07S	14E	32							H										

Total Acres:

CONDITIONS APPLICABLE TO ALL RENTED WATER RIGHTS

1. The use of water under this agreement shall be subject to the provisions of Idaho Code § 42-1766.
2. Rental of the specified right from the bank does not, in itself, confirm the validity of the right or any elements of the water right, or improve the status of the right including the notion of resumption of use. It does not preclude the opportunity for review of the validity of this water right in any other department application process.
3. Use of water under this agreement does not constitute a dedication of the water to renter's place of use, and upon expiration of this agreement, the points of diversion and place of use of the water shall revert to those authorized under the water right and/or again be available to rent from the bank.
4. This rental does not grant any right-of-way or easement to use the diversion works or conveyance works of another party.
5. Use of water under this agreement shall not prejudice any action of the Department in its consideration of an application for transfer or permit filed by the applicant for this same use.
6. Renter agrees to comply with all applicable state and federal laws while using water under this agreement.
7. Renter agrees to hold the Board, the Director and the state of Idaho harmless from all liability on account of negligent acts of the renter while using water.
8. Renter acknowledges and agrees that the Director may terminate diversion of water if the Director determines there is not a sufficient water supply for the priority of the right or portion thereof being rented.
9. Failure of the renter to comply with the conditions of this agreement is cause for the Director to rescind approval of the rental agreement.
10. The water right(s) referenced above is accepted into the bank and rented in accordance with a private agreement formulated between the lessor and the renter. Administrative fees will be paid based on the current rental rate.

11. All conditions specified and ordered by the Director of Water Resources in the Order Approving IGWA's Fourth Mitigation Plan are relevant and apply to this rental agreement.
12. Use of water under this right will be regulated by a watermaster with responsibility for the distribution of water among appropriators within a water district. At the time of this approval, this water right is within State Water District No. 130.
13. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the pipeline delivering water to the Rangen Facility.

Exhibit B

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

IN THE MATTER OF APPLICATION)	
FOR TRANSFER NO. 79560 IN THE NAME)	
OF NORTH SNAKE GROUND WATER DIST.,)	AMENDED FINAL ORDER
MAGIC VALLEY GROUND WATER DIST.,)	APPROVING APPLICATION
AND SOUTHWEST IRRIGATION DIST.)	FOR TRANSFER
)	

BACKGROUND

On January 29, 2014, the Director ("Director") of the Idaho Department of Water Resources ("Department") issued the *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* ("Curtailment Order").¹ The Curtailment Order recognizes that holders of junior-priority ground water rights may avoid curtailment if they participate in a mitigation plan which provides "simulated steady state benefits of 9.1 cfs to Curren Tunnel [sometimes referred to as the "Martin-Curren Tunnel"] or direct flow of 9.1 cfs to Rangen." Ex. 1018 at 42.² The Curtailment Order explains that mitigation provided by direct flow to Rangen, Inc. ("Rangen") "may be phased-in over not more than a five-year period pursuant to Rule 40 of the CM Rules 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." *Id.*³

On August 27, 2014, the Idaho Ground Water Appropriators, Inc. ("IGWA") filed IGWA's *Fourth Mitigation Plan and Request for Expedited Hearing* ("Fourth Mitigation Plan") "to provide additional ways of satisfying the mitigation obligation imposed by the [Curtailment Order] and

¹ The Curtailment Order was appealed in *Rangen, Inc., v. IDWR*, Twin Falls County Case No. CV-2014-1338. Judge Wildman issued his *Memorandum Decision and Order on Petitions for Judicial Review* ("Decision") on October 24, 2014, which affirmed the Director on a number of issues, but held the Director erred by applying a trim line to reduce the zone of curtailment. *Decision* at 28. The Decision has been appealed to the Idaho Supreme Court, Docket No. 42772-2015.

² Exhibits in the 1000s referenced in this order are from the administrative record in CM-MP-2014-006. At the commencement of the hearing in this matter, the parties stipulated to admission of the entire record in CM-MP-2014-006. All other exhibits referenced herein were admitted at the hearing.

³ The term "CM Rules" refers to Idaho's *Rules for Conjunctive Management of Surface and Ground Water Resources*, IDAPA 37.03.11.

thereby prevent curtailment of junior-priority groundwater use.”⁴ Ex. 1000 at 2. The Fourth Mitigation Plan proposed the “Magic Springs Project.” Ex. 1000 at 3. The Magic Springs Project is comprised of multiple components including approval of a transfer application to change the place of use of a portion of water right no. 36-7072 from the SeaPac fish hatchery at Magic Springs to the Rangen fish hatchery on Billingsley Creek. *Id.* at 3-4. The Director held a hearing for the Fourth Mitigation Plan on October 8, 2014, at the Department’s State office in Boise, Idaho. The Director issued the *Order Approving IGWA’s Fourth Mitigation Plan* (“Fourth Mitigation Plan Order”) on October 29, 2014.⁵

On September 12, 2014, North Snake Ground Water District, Magic Valley Ground Water District, and Southwest Irrigation District filed with the Department, through counsel for IGWA, Application for Transfer No. 79560 (“Application”). Ex. 4000. Notice of the Application was published beginning October 2, 2014. Rangen filed a *Notice of Protest by Rangen, Inc. to Water Right Transfer Application No. 79560* (“Protest”).⁶ The Director held a hearing on December 18, 2014, at the Idaho Department of Environmental Quality office in Twin Falls, Idaho. The parties offered testimony, expert reports, and other documents into the administrative record.

On January 27, 2015, the Director issued a *Notice of Taking Official Notice of Staff Memorandum* (“Notice”). The Notice explained that, after the hearing, the Director asked Department staff to review and analyze technical information contained in expert reports submitted in this matter, expert testimony offered at the hearing, and data and information in possession of the Department. The Director also asked staff to prepare a memorandum regarding the Application. *Notice* at 1-2. In response to the request, Department staff prepared and submitted a memorandum, a copy of which was attached to the Notice.⁷ The Director informed the parties that official notice would be taken of facts and material contained in the staff memorandum and granted the parties two weeks to contest and rebut the facts or material officially noticed. *Id.* at 2. On February 10,

⁴ To date, IGWA has submitted five mitigation plans to address mitigation obligations imposed by the Curtailment Order. On May 16, 2014, the Director approved some mitigation credit for certain components of IGWA’s first mitigation plan. See *Amended Order Approving in Part and Rejecting in Part IGWA’s Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order* (CM-MP-2014-001). While the Director approved IGWA’s second mitigation plan on June 20, 2014, in the *Order Approving IGWA’s Second Mitigation Plan; Order Lifting Stay Issued April 28, 2014; Second Amended Curtailment Order* (CM-MP-2014-003), IGWA subsequently withdrew the plan. On December 18, 2014, IGWA filed *IGWA’s Fifth Mitigation Plan and Request for Hearing* (CM-MP-2014-008). A status conference was held for IGWA’s third mitigation plan (CM-MP-2014-005) on March 17, 2015, at the Department’s state office in Boise, Idaho.

⁵ The Fourth Mitigation Plan Order was not admitted as an exhibit at the transfer hearing. However, that order is part of the Department’s administrative record and will be referenced herein.

⁶ The Protest was not admitted as an exhibit at the transfer hearing. However, the Protest is part of the Department’s administrative record and will be referenced herein.

⁷ By mistake, the staff memorandum attached to the Notice did not contain Table 1 and Table 2. Counsel for the Department emailed Table 1 and Table 2 to the parties on February 9, 2015, explaining the tables were intended to be incorporated into the staff memorandum. The staff memorandum attached to this order as Attachment A contains Table 1 and Table 2.

2015, Rangen submitted *Rangen, Inc.'s Expert Report in Response to Staff Memorandum* ("Expert Response") and *Rangen, Inc.'s Response to Staff Memorandum*.

After carefully considering all of the evidence in the administrative record, the Director finds, concludes, and orders as follows:

FINDINGS OF FACT

1. Water right no. 36-7072 bears a priority date of September 5, 1969, and authorizes the diversion of 148.2 cfs of water from Thousand Springs for fish propagation purposes. Ex. 1001 at 21-22.⁸ "[A]ll water diverted under water right no. 36-7072 flows from the SeaPac fish hatchery to the Snake River over a distance of less than one mile." Ex. 4002 at 5.
2. The Application proposes to change the place of use of 10 cfs of water right no. 36-7072 from the SeaPac fish hatchery at Magic Springs to the Rangen fish hatchery located in the SWNE and SENE of Section 31, T07S, R14E and the SWNW of Section 32, T07S, R14E and to reflect "Fish Propagation/Mitig" as a nature of use. Ex. 4000 at 2-5. The Application does not propose any change in the point of diversion for water right no. 36-7072.
3. IGWA proposes that, if the Application is approved, up to 10 cfs of water right no. 36-7072 "will be delivered from Magic Springs to the Rangen hatchery per engineering details submitted in the Fourth Mitigation Plan, CM-MP-2014-006." Ex. 4002 at 4. These engineering details were admitted as Exhibit 1009 in CM-MP-2014-006 and were described in detail, along with conditions of approval, in the Fourth Mitigation Plan Order. In short, "spring water discharged from the [Eastern Snake Plain Aquifer] at Magic Springs [will] be pumped via buried pipeline approximately 2.5 miles to Rangen's place of use near the head of Billingsley Creek." Ex. 4000 at 14.
4. Water delivered to Rangen pursuant to the proposed transfer will be discharged into Billingsley Creek after leaving the Rangen fish hatchery. *Protest* at 2; Ex. 4002 at 5; Tr. at p. 11.
5. Expert witness reports and testimony presented at the hearing discuss potential impacts resulting from evaporation of water conveyed through Billingsley Creek pursuant to the proposed transfer, and from consumptive use by irrigators who divert from Billingsley Creek.
6. IGWA's expert reports estimate that, if 10 cfs of water from Magic Springs is conveyed to the Snake River via Billingsley Creek, approximately 0.039 cfs will be lost to evaporation prior to reaching the Snake River. Ex. 4002 at 11; Ex. 4003 at 15. Rangen's expert report criticizes the assumptions used by IGWA's expert in calculating evaporation from Billingsley Creek, but acknowledges "[t]he magnitude of additional evaporation is small and will be small, however it is calculated." Ex. 5019 at 7.

⁸ SeaPac also owns water right no. 36-8356 for fish propagation at Magic Springs which authorizes the diversion of 45 cfs from springs with a priority date of May 9, 1988. Rights 36-7072 and 36-8356 combined shall not exceed a total diversion rate of 148.2 cfs.

7. Neither IGWA nor Rangen attempted to quantify the percentage of the 10 cfs lost to consumptive use by water users once water leaves the Rangen facility. Frank Erwin, Watermaster for Water District 36A, testified regarding the complexity of water distribution in Water District 36A and explained that, given the complexity along with insufficient measuring devices and gauging stations and the possibility of diversions by downstream irrigators, it would “be a very difficult task to actually track that water.” Tr. p. 21-35.

8. IGWA’s expert acknowledged that “[w]ater delivered to the Rangen facility pursuant to the Application could, after leaving the Rangen facility, be consumptively used by other Billingsley Creek water users or evaporate from Billingsley Creek.” Ex. 4002 at 5. IGWA’s expert explained that, “[i]f this occurred at a time when minimum stream flows at the Murphy Gage are violated, it could contribute to enforcement of the Swan Falls Agreement, which may include curtailment of other water rights.” Ex. 4002 at 5. However, IGWA’s expert concluded that “the transfer does not present risk to the minimum flows called for in the Swan Falls agreement” because “ongoing IGWA mitigation activities substantially exceed the potential consumption of water added to Billingsley Creek from the Magic Springs transfer.” Ex. 4003 at 14. IGWA’s expert also concluded “it would be reasonable to include in the approval of the Application a condition that requires mitigation be provided sufficient to offset depletion of water right 36-7072 in the event of a violation of the Swan Falls minimums.” *Id.* at 5.

9. IGWA’s expert compiled results from ESPAM2.1 model runs performed by the Department in support of the order approving IGWA’s first mitigation plan. Ex. 4003 at 13-17. Those model runs simulated aquifer enhancement activities (conversions, voluntary “dry-ups” through the Conservation Reserve Enhanced Program (“CREP”), voluntary curtailment, and recharge) performed by IGWA and Southwest Irrigation District between 2005 and 2013, with the assumption that 2013 conversions, CREP, and voluntary curtailment were continued in future years. Ex. 1020 at 8. IGWA’s expert presented the total model-predicted benefit of the mitigation accruing to springs tributary to the Snake River between Kimberly and King Hill. Ex. 4003 at 17. IGWA’s expert reported an average benefit of 48.6 cfs between April 2014 and March 2015, and an average benefit of 58.1 cfs between April 2018 and March 2019. *Id.*

10. The Department also compiled results of the ESPAM2.1 model runs of IGWA and Southwest Irrigation District’s aquifer enhancement activities. *See Attachment A* at 2. The Department’s results are slightly different from those reported by IGWA’s expert in Ex. 4003 at 17. *See Attachment A* at 2. The Department’s analysis concludes the average model-predicted benefit to springs tributary to the Snake River between Kimberly and King Hill is 48.5 cfs between April 2014 and March 2015, and 67.5 cfs at steady state. *Id.* at 3. These values are projections based on continuation of 2013 aquifer enhancement activities by IGWA and Southwest Irrigation District. *Id.*

11. On December 3, 2014, the Fifth Judicial District Court, in and for the County of Twin Falls, issued its *Memorandum Decision and Order on Petition for Judicial Review* (“Memorandum Decision”) in CV-2014-2446. The court held the Department cannot recognize mitigation credit for future aquifer enhancement activities without sufficient contingency provisions to protect the senior water user in the event the assumed future aquifer enhancement activities do

not occur. *Memorandum Decision* at 6-10. Because of this decision, the memorandum prepared by staff also evaluated the aquifer enhancement activities of IGWA and Southwest Irrigation District without assuming a continuation of 2013 aquifer enhancement activities into 2014.⁹ Specifically, the Department performed “an ESPAM2.1 simulation of 2005 through 2013 aquifer enhancement activities . . . to determine the minimum benefit provided by documented past activities” assuming no such activities occurred in 2014 and future years. *Attachment A* at 4. The simulation determined “[t]he model-predicted benefit to springs tributary to the Snake River between Kimberly and King Hill is 40.6 cfs between April 2014 and March 2015.” *Id.*

12. Neither IGWA’s nor Rangen’s experts attempted to quantify the portion of the model-predicted benefit from IGWA and Southwest Irrigation District’s aquifer enhancement activities that would actually reach the Snake River. In contrast, the Department analyzed data and information in possession of the Department to evaluate whether at least 10 cfs of the model-predicted benefits from IGWA and Southwest Irrigation District’s past aquifer enhancement activities would reach the Snake River.

13. Baseflow represented by general head boundaries in ESPAM2.1 is subsurface discharge to the Snake River and can be assumed to be unavailable to surface water users. *Attachment A* at 3. The Department’s modeled simulation of documented past aquifer enhancement activities through 2013 predicts an increase in baseflow between April 2014 and March 2015 of 2.4 cfs. *Id.* at Table 2.

14. “Increases in spring discharge have the potential to be intercepted by surface water users before discharging to the Snake River. If the increase in spring discharge is diverted for a consumptive use, such as irrigation, only a portion of the increase in discharge will reach the Snake River.” *Attachment A* at 3. Many of the fifty spring reaches represented in ESPAM2.1 include springs diverted for irrigation use. *Id.* Some spring cells without irrigation use are predicted by ESPAM2.1 to benefit significantly from IGWA and Southwest Irrigation District’s past aquifer enhancement activities. For example, “[t]he Box Canyon reach consists of two model cells without spring diversions for irrigation use.” *Id.* “The Devil’s Washbowl and Devil’s Corral spring cells also do not contain springs diverted for irrigation use.” *Id.*

15. “The average model-predicted benefit [of documented past aquifer enhancement activities] to the Box Canyon reach, the Devil’s Washbowl and Devil’s Corral spring cells, and the baseflow represented by general head boundaries is 11.1 cfs between April 2014 and March 2015.” *Attachment A* at 4.¹⁰ “Additional water is also expected to accrue to the Snake River from increases in spring discharge at spring cells with irrigation use, but cannot be quantified without a detailed analysis of irrigation demand and water availability at each spring source.” *Id.* at 3. The portion of the average model-predicted benefit of documented past aquifer enhancement activities that can be

⁹ Documentation of 2014 IGWA and Southwest Irrigation District aquifer enhancement activities is not available as of the date of this order. *Attachment A* at 4.

¹⁰ The Department also performed a steady-state analysis assuming the continuation of 2013 aquifer enhancement activities. This results in a model-predicted increase of 18.3 cfs at steady state. *Attachment A* at 3.

Amended Final Order Approving Application for Transfer, Page 5

expected to reach the Snake River between April 2014 and March 2015 is between 11.1 cfs and 40.6 cfs. *Id.* at 4.

16. Even without including estimated benefits from 2014 and future activities, the benefits of IGWA and Southwest Irrigation District's past aquifer enhancement activities to the Snake River between Kimberly and King Hill are predicted to exceed the potential impact of the proposed transfer on flow in the Snake River between April 2014 and March 2015. *Id.* at 4-5.

CONCLUSIONS OF LAW

1. Idaho Code § 42-222 sets forth the criteria used to evaluate transfer applications:

The director of the department of water resources shall examine all the evidence and available information and shall approve the change in whole, or in part, or upon conditions, provided no other water rights are injured thereby, the change does not constitute an enlargement in use of the original right, the change is consistent with the conservation of water resources within the state of Idaho and is in the local public interest as defined in section 42-202B, Idaho Code, the change will not adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates, and the new use is a beneficial use, which in the case of a municipal provider shall be satisfied if the water right is necessary to serve reasonably anticipated future needs as provided in this chapter.

2. The applicant bears the burden of proof for all of the factors listed in Section 42-222.

Injury to Other Water Rights

3. Rangen argues that "[o]ther water rights will be injured by the transfer." *Protest* at 2. Rangen's expert asserts that, "[i]f a decrease in Snake River flow results in a violation of the 3900 or 5600 cfs minimum flow at Murphy as outlined in the Swan Falls Trust Water agreement, then other irrigation water right holders in the Magic Springs/Murphy gauge reach could be negatively impacted." *Ex.* 5015 at 4.

4. While the only evidence regarding injury is speculative suggesting a potential for injury to water users that may be curtailed in the event of a violation of the Swan Falls minimums, as noted above, IGWA's expert concluded "it would be reasonable to include in the approval of the Application a condition that requires mitigation be provided sufficient to offset depletion of water right 36-7072 in the event of a violation of the Swan Falls minimums." *Ex.* 4003 at 5.

5. The Department's analysis demonstrates that benefits of IGWA and Southwest Irrigation District's past aquifer enhancement activities to the Snake River between Kimberly and King Hill are predicted to exceed 10 cfs between April 2014 and March 2015. *Attachment A* at 4-5.¹¹

6. As a condition of approval, IGWA and Southwest Irrigation District will be required to continue into the future aquifer enhancement activities sufficient to offset any depletion of flow in the Snake River between Kimberly and King Hill due to the transfer. Prior to the start of each irrigation season, IGWA must submit documentation of the rate of flow to be diverted from Magic Springs for the upcoming year and documentation of past aquifer enhancement activities to establish sufficient mitigation for the upcoming year.

Enlargement in Use of the Original Right

7. Rangen argues the proposed transfer "constitutes" an enlargement in use of the original right, in violation of the criteria of Idaho Code § 42-222. *Protest* at 2. Rangen's expert asserts the proposed transfer results in an enlargement of water right no. 36-7072 because the application included mitigation in addition to fish propagation as a nature of use. *Ex. 5015* at 5. Rangen's expert also notes that water right no. 36-7072 authorizes the non-consumptive use of fish propagation and asserts that, because downstream irrigators will divert any additional flow added to Billingsley Creek from Magic Springs, the transfer "will result in expansion of historical consumptive use from water right no. 36-7072." *Ex. 5015* at 5. IGWA's expert asserts the proposed transfer will not result in an enlargement because "[e]nlargement is determined by the use made by the appropriator and not what becomes of discharged water after beneficial use is complete." *Ex. 4003* at 5.

8. The Director concludes IGWA has sufficiently demonstrated that approval of the proposed transfer will not result in enlargement of water right no. 36-7072. Water right no. 36-7072 authorizes the diversion of water for fish propagation purposes. *Ex. 1001* at 21-22. The application proposes to change the nature of use of water right no. 36-7072 to "Fish Propagation/Mitig." *Ex. 4000* at 3. Because the reason for the proposed transfer is to mitigate material injury to Rangen, the nature of use will be described in the transfer documents as "Mitigation."¹² The Application's proposed change in nature of use does not alter that water right

¹¹ Rangen argues that, as part of this transfer proceeding, IGWA must mitigate for all the impacts of ground water pumping junior to July 13, 1962, on flow in the Snake River. *See Expert Response* at 6-8. The impact at issue in this transfer proceeding is the impact on flow in the Snake River resulting from the transfer of 10 cfs of water from Magic Springs to Rangen, not the impacts of all ground water pumping junior to July 13, 1962, on flow in the Snake River. Rangen also appears to assert the proposed transfer will have some negative impact on non-consumptive water rights at Box Canyon and Devil's Corral. *See id.* at 9. But the proposed transfer will have no depletive impact on flow available for those water rights. Instead, the Box Canyon reach and Devil's Corral spring cell benefit significantly from the aquifer enhancement activities of IGWA and Southwest Irrigation District.

¹² The application for transfer proposes diversion and delivery of water to satisfy a mitigation obligation to benefit a separate water user. Mitigation by diversion and delivery of water is distinguishable from mitigation by nonuse of water under a valid water right as contemplated by Idaho Code § 42-223(10). While not necessary in this order, the Department may issue additional guidance in the future explaining how the different types of mitigation will be described in the Department's records.

no. 36-7072 will be used for non-consumptive fish propagation purposes, but only reflects that water delivered to Rangen pursuant to the transfer will help satisfy mitigation obligations imposed by the Curtailment Order. The proposal to change the nature of use of water right no. 36-7072 from "Fish Propagation" to "Mitigation" does not constitute an "enlargement in use of the original right" as prohibited by Idaho Code § 42-222. Rangen's argument regarding expansion of historical consumptive use is mooted by the condition of approval requiring IGWA and Southwest Irrigation District to continue into the future aquifer enhancement activities sufficient to offset any depletion of flow in the Snake River between Kimberly and King Hill due to the transfer.¹³

Conservation of Water Resources

9. Rangen asserts "[t]he transfer is not consistent with the conservation of water resources within the state, in violation of the criteria of I.C. § 42-222." *Protest* at 2. Rangen provided no evidence to support this blanket assertion.

10. IGWA's expert report and testimony assert the proposed transfer is consistent with the conservation of water resources within Idaho because water right no. 36-7072 is currently used for the beneficial use of fish propagation in the state and will continue to be used for fish propagation within Idaho and not wasted if the transfer is approved. Ex. 4002 at 6; Tr. p. 79-80. The Director agrees. The proposed transfer is consistent with the conservation of water resources within the state of Idaho.

Local Public Interest

11. Local public interest is defined as "the interests that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resource." Idaho Code § 42-202B(3).

12. Rangen asserts "[t]he transfer is not in the local public interest as defined in section 42-202B, Idaho Code, in violation of the criteria of I.C. § 42-222." *Protest* at 2. Rangen also asserts "[t]he transfer will be detrimental to fish and wildlife, fish rearing and spawning habitat, fish passage, waterfowl habitat, and aesthetic beauty and therefore is not in the best interest of the general public of the state of Idaho." *Protest* at 2. Rangen offered no evidence to support these assertions.

¹³ Rangen's expert also argues "[t]he proposed use of water right 37-7072 in the manner proposed in Transfer 79560 will result in additional consumptive use under this water right and is therefore in violation of the [Eastern Snake River Plain] moratorium." Ex. 5019 at 6. 29. However, the referenced moratorium clearly states that it does not apply to the transfer of existing water rights. Ex. 5007 at 5. Even if the moratorium did apply to the Application, the moratorium states the Director may approve relevant applications proposing consumptive use of water if "[t]he Director determines that the development and use of the water pursuant to an application will have no effect on prior surface and ground water rights because of . . . mitigation provided by the applicant to offset injury to other rights." *Id.* at 4-5. Because as a condition of approval IGWA and Southwest Irrigation District must continue into the future aquifer enhancement activities sufficient to offset any depletion of flow in the Snake River between Kimberly and King Hill due to the transfer, the referenced moratorium would not be violated.

13. IGWA's expert argued the proposed transfer is in the local public interest because "Rangen will benefit from a significant increase in water available for fish production . . . and . . . [a]dditional flow in Billingsley Creek is expected to improve conditions for fish and wildlife." Ex. 4002 at 6. IGWA's expert also argued the proposed transfer is in the local public interest because "[improved] economic conditions at Rangen and increased flows in Billingsley Creek will benefit the people in the Hagerman area." *Id.* IGWA's expert testified that "the mitigation aspect of this to allow the groundwater pumpers to continue their beneficial uses of water is very much in the local public interest to keep the economy of the area more intact." Tr. p. 80.

14. The proposed transfer will deliver mitigation water to Rangen as required by the Curtailment Order and will contribute additional flow to Billingsley Creek. IGWA and Southwest Irrigation District will be required to continue into the future aquifer enhancement activities sufficient to offset any depletion of flow in the Snake River between Kimberly and King Hill due to the transfer. There is no evidence in the record to support Rangen's contention that the proposed transfer will be detrimental to fish and wildlife, fish rearing and spawning habitat, fish passage, waterfowl habitat, and aesthetic beauty. There is no evidence establishing that people in the area directly affected by the proposed transfer will suffer any negative impacts. The proposed transfer is in the local public interest.

Local Economy

15. Rangen does not argue that the proposed transfer "will adversely affect the local economy" in violation of Idaho Code § 42-222 or assert that fish propagation and mitigation are not beneficial uses.

16. IGWA's expert argues the proposed transfer will not adversely affect the local economy because instead "[t]he transfer will have significant benefits to the local economy. Additional water provided to Rangen allows the facility to improve its economic output. In addition, the proposed transfer provides mitigation needed to prevent the curtailment of ground water rights." Ex. 4002 at 7. The Director agrees. The proposed transfer will not adversely affect the local economy and fish propagation and mitigation are established beneficial uses of water in Idaho in accordance with the criteria set forth in Idaho Code § 42-222.

Summary

17. IGWA satisfied its burden of proof for the review of criteria set forth in Idaho Code § 42-222. The proposed transfer will not result in injury to other water rights or an enlargement in use of the original right, is consistent with the conservation of water resources within the state of Idaho, is in the local public interest as defined in Idaho Code § 42-202B, and will not adversely affect the local economy.

ORDER

IT IS HEREBY ORDERED that Application for Transfer No. 79560 in the name of North Snake Ground Water District, Magic Valley Ground Water District, and Southwest Irrigation District is APPROVED.

IT IS FURTHER ORDERED that, as a condition of approval, IGWA and Southwest Irrigation District will continue into the future aquifer enhancement activities equal to the rate of flow to be diverted from Magic Springs due to the transfer. Prior to the start of each irrigation season, IGWA must submit documentation to the State Office of the Department stating: (a) the rate of flow to be diverted from Magic Springs for the upcoming year (April 1 through March 31), and (b) past aquifer enhancement activities to sufficiently mitigate for water diverted from Magic Springs the upcoming year. For example, if 8 cfs will be diverted from Magic Springs pursuant to the transfer, IGWA and Southwest Irrigation District must submit documentation establishing mitigation from aquifer enhancement activities of 8 cfs to the Snake River between Kimberly and King Hill. If IGWA fails to document sufficient mitigation through aquifer enhancement activities as required, diversions from Magic Springs will not be authorized pursuant to this transfer for the year in which documentation is lacking.

Dated this 18th day of March 2015.



Gary Spackman
Director

Exhibit C

PIPELINE LICENSE AGREEMENT

RANGEN, INC.
Southwest Irrigation District
North Snake Ground Water District
Magic Valley Ground Water District

LICENSE AGREEMENT ("Agreement") effective this ____ day of January, 2015, between RANGEN, INC., ("Rangen"), and Southwest Irrigation District, North Snake Ground Water District and Magic Valley Ground Water District (hereinafter "Districts"), collectively referred to as the "parties."

RECITALS

- A. WHEREAS, Rangen, owns certain real property located in Gooding County, Idaho located in SW ¼ NW ¼, Section 32, Township 7S, Range 14E, B.M., Gooding County, Idaho ("Rangen Property");
- B. WHEREAS, the Idaho Department of Water Resources (IDWR) recently approved IGWA's Fourth Mitigation Plan in IDWR Docket No. CM-MP-2014-006 ("Order"), authorizing IGWA to deliver mitigation water to Rangen from Magic Springs;
- C. WHEREAS, over Rangen's objection to the Districts Fourth Mitigation Plan, the Director Ordered Rangen to accept the water and allow construction on its land related to placements of the delivery pipe, and if not accepted, the Districts mitigation obligation would be suspended ;
- D. WHEREAS, on November 6, 2014, pursuant to the Order, Rangen conditionally accepted delivery of the water;
- E. WHEREAS, pursuant to Rangen's conditional acceptance of delivery of water under the Order, the Districts desire to obtain from Rangen a license for a right-of-way 20' in width as described in Exhibit "A" attached for the purpose of constructing, owning and operating buried and above grade pipelines through the Rangen Property with necessary equipment and facilities to convey water from Magic Springs to Rangen; and
- F. WHEREAS, pursuant to the Order, Rangen hereby provides the Districts with a license for a right-of-way as set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Access License for Pipelines and Appurtenances.** Rangen grants the Districts a license to install, operate, maintain, and replace as needed, at their expense, buried pipelines for the conveyance of water from Magic Springs to Rangen's hatchery as described in Exhibit "A" attached. The license includes the right to deliver water to Rangen's existing facility and gives the districts authority to convey water to Rangen's existing diversions and pipes. Other than as necessary to attach to Rangen's existing facility, Rangen does not grant any license to the districts to use any of Rangen's pipes, diversions or existing structures owned or otherwise used by Rangen. The Districts shall install said pipelines and appurtenances within the licensed area in accordance with standard specifications for pipe, materials, installation, and backfill, as set forth in the Idaho standards for public works construction or the respective projects' construction drawings. The final description of the license and location of the pipelines are subject to amendment by the Districts based upon the final survey and installed pipe locations. This license covers the delivery of water only under the Fourth Mitigation Plan, and water delivered under transfer 79560 (water right 36-7072). This license does not cover the delivery of water under any other mitigation plan, right, license or permit.

2. **Pipeline Ownership and Maintenance.** The Districts shall own the pipelines and be responsible for their installation, maintenance, repair and replacement.

3. **Indemnification.** The Districts agree to indemnify and hold Rangen harmless from any and all claims arising out of the construction, operation, maintenance, repair or replacement of the pipeline, or the use of the easement for any purpose.

4. **The Districts' Representative.** The Districts agree to designate one person to represent the Districts in all dealings with Rangen and to act as a liaison between the parties. The Districts shall communicate to Rangen in writing the name, address and telephone number of such person.

5. **Additional Documents.** The parties will execute such additional documents and instruments as may be required to carry out the purpose and intent of this Agreement.

6. **Revocation.** Rangen may elect to terminate this Agreement upon not less than thirty (30) days written notice.

7. **Default.** This Agreement may be revoked by Rangen as set forth in paragraph 6, or in the event any party fails to perform any of the terms, conditions or provisions of this Agreement, and fails to cure such default within thirty (30) days of receipt of written notice of default, the non-defaulting party may elect any one of the following remedies, which are the sole and exclusive remedies available:

- (a) to terminate this Agreement;
- (b) file an action to obtain specific performance of this Agreement; or

- (c) pursue any other remedy to which they may be entitled under the laws of the state of Idaho.

8. **Attorney's Fees.** In the event that either party hereto retains an attorney to enforce any right or duty arising out of this Agreement, the prevailing party in such dispute shall be entitled to be paid reasonable attorney's fees by the non-prevailing party, whether or not litigation is actually instituted.

9. **Assignment of this Agreement.** The Districts may assign their interest in this Agreement to a third party, subject to the prior written consent of Rangen, which consent shall not be unreasonably withheld. Provided, that the Districts may assign their interest in this Agreement to one or more of their member groundwater districts without the consent of Rangen.

10. **Non-waiver:** By entering into this Agreement, Rangen does not waive any right to seek judicial review of the Order; Rangen does not waive any cause of action it may have against IGWA, its member Districts, its Directors, the Department, or the State of Idaho including, but not limited to, compensation for the condemnation of its real property, damages resulting from the implementation of the Fourth Mitigation Plan such as the loss of fish or the introduction of disease, pathogens, parasites, or other organisms harmful to Rangen's operation, or damages resulting from the failure to deliver water for any reason whatsoever; and Rangen also reserves the right to reject the water in the event it determines the delivery of water is causing harm to Rangen's operation. Furthermore, Rangen does not waive its right to avail itself of any and all administrative and legal remedies with respect to challenging or appealing transfer 79560 (water right 36-7072), or any other administrative or legal proceeding currently pending before the Parties, or any or any other administrative or legal proceeding which may arise between or involve the Parties.

11. **Dispute Resolution.** Any dispute between the parties shall be resolved in any court, or otherwise agreed by the parties.

12. **Choice of Law.** This Agreement and the validity, interpretation and performance thereof shall be governed by and construed in accordance with the laws of the State of Idaho.

13. **Merger.** Except for the terms of this Agreement, the Parties agree that the terms, covenants and conditions of this Agreement shall supersede all such prior negotiations and agreements, and that there are no other agreements not contained in this Agreement, and that this Agreement shall be and is the final expression of the agreement of the Parties and shall control. No modification of this Agreement shall be valid unless in writing and executed by the Parties to the Agreement.

14. **Notices.** All notices required to be given pursuant to this Agreement shall be served upon the parties by certified mail, return receipt requested, at the following addresses:

Rangen, Inc.
c/o Christopher T. Rangen, President
P.O. Box 706
Buhl, Idaho 83316


Southwest Irrigation District
P.O. Box 910
Burley, Idaho 83318

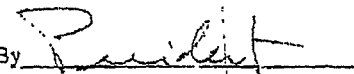
North Snake Ground Water District
152 E. Main St.
Jerome, Idaho 83338

Magic Valley Ground Water District
P.O. Box 430
Paul, Idaho 83347

IN WITNESS WHEREOF, the parties have executed this Agreement effective on
the date recited above.

RANGEN, INC.

By 
01/14/2015

By 

SOUTHWEST IRRIGATION
DISTRICT

By _____
RANDY BROWN, Chairman

NORTH SNAKE GROUND WATER
DISTRICT

By _____
LYNN CARLQUIST, Chairman

MAGIC VALLEY GROUND WATER
DISTRICT

By _____
DEAN STEVENSON, Chairman

Rangen, Inc.
c/o Christopher T. Rangen, President
P.O. Box 706
Buhl, Idaho 83316

Southwest Irrigation District
P.O. Box 910
Burley, Idaho 83318

North Snake Ground Water District
152 E. Main St.
Jerome, Idaho 83338

Magic Valley Ground Water District
P.O. Box 430
Paul, Idaho 83347

IN WITNESS WHEREOF, the parties have executed this Agreement effective on
the date recited above.

RANGEN, INC.

By _____

**SOUTHWEST IRRIGATION
DISTRICT**

By _____
RANDY BROWN, Chairman

By _____

**NORTH SNAKE GROUND WATER
DISTRICT**

By  _____
LYNN CARLQUIST, Chairman

**MAGIC VALLEY GROUND WATER
DISTRICT**

By _____
DEAN STEVENSON, Chairman

Rangen, Inc.
c/o Christopher T. Rangen, President
P.O. Box 706
Buhl, Idaho 83316

Southwest Irrigation District
P.O. Box 910
Burley, Idaho 83318

North Snake Ground Water District
152 E. Main St.
Jerome, Idaho 83338

Magic Valley Ground Water District
P.O. Box 430
Paul, Idaho 83347

IN WITNESS WHEREOF, the parties have executed this Agreement effective on
the date recited above.

RANGEN, INC.

By _____

SOUTHWEST IRRIGATION
DISTRICT

By Craig E. Searl
Craig E. Searl, Chairman

By _____

NORTH SNAKE GROUND WATER
DISTRICT

By _____
LYNN CARLQUIST, Chairman

MAGIC VALLEY GROUND WATER
DISTRICT

By _____
DEAN STEVENSON, Chairman

Rangen, Inc.
c/o Christopher T. Rangen, President
P.O. Box 706
Buhl, Idaho 83316

Southwest Irrigation District
P.O. Box 910
Burley, Idaho 83318

North Snake Ground Water District
152 E. Main St.
Jerome, Idaho 83338

Magic Valley Ground Water District
P.O. Box 430
Paul, Idaho 83347

IN WITNESS WHEREOF, the parties have executed this Agreement effective on
the date recited above.

RANGEN, INC.

By _____

By _____

**SOUTHWEST IRRIGATION
DISTRICT**

By _____
RANDY BROWN, Chairman

**NORTH SNAKE GROUND WATER
DISTRICT**

By _____
LYNN CARLQUIST, Chairman

**MAGIC VALLEY GROUND WATER
DISTRICT**

By Dean H. Maughan - Board Member
DEAN STEVENSON, Chairman

STATE OF IDAHO)

County of Twin Falls)

ss.

On this 14th day of January, 2015, before me, a Notary Public for the State of Idaho, personally appeared Christopher T. Rangan known or identified to me to be the President, of RANGEN, INC., that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

CINDY KOEPPLIN
NOTARY PUBLIC
STATE OF IDAHO

(SEAL)

Cindy Koepplin
NOTARY PUBLIC FOR IDAHO
Residing at: Filer Idaho
My Commission Expires: 09-05-15

STATE OF IDAHO)

County of _____)

ss.

On this ____ day of January, 2015, before me, a Notary Public for the State of Idaho, personally appeared RANDY BROWN, known or identified to me to be the Chairman, of SOUTHWEST IRRIGATION DISTRICT, that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing at:
My Commission Expires:

STATE OF IDAHO)
 : ss.
County of _____)

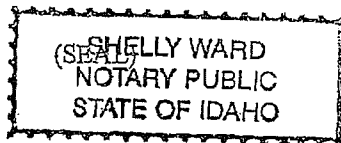
On this ____ day of January, 2015, before me, a Notary Public for the State of Idaho, personally appeared _____, known or identified to me to be the _____, of RANGEN, INC., that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing at:
My Commission Expires:

STATE OF IDAHO)
 : ss.
County of Cassia)

On this 14th day of January, 2015, before me, a Notary Public for the State of Idaho, personally appeared Craig E. Seay, known or identified to me to be the Chairman, of SOUTHWEST IRRIGATION DISTRICT, that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

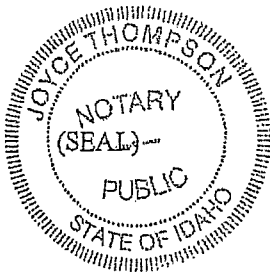


Shelly Ward

NOTARY PUBLIC FOR IDAHO
Residing at: _____
My Commission Expires: 05/30/16

STATE OF IDAHO)
 : ss.
County of JEROME)

On this 14TH day of January, 2015, before me, a Notary Public for the State of Idaho, personally appeared LYNN CARLQUIST, known or identified to me to be the Chairman, of NORTH SNAKE GROUND WATER DISTRICT, that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.



Joyce Thompson
NOTARY PUBLIC FOR IDAHO
Residing at: JEROME COUNTY
My Commission Expires: 3/4/16

STATE OF IDAHO)
 : ss.
County of _____)

On this ____ day of January, 2015, before me, a Notary Public for the State of Idaho, personally appeared DEAN STEVENSON, known or identified to me to be the Chairman, of MAGIC VALLEY IRRIGATION DISTRICT, that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

(SEAL)

NOTARY PUBLIC FOR IDAHO
Residing at:
My Commission Expires:

EXHIBIT A
Attached to Pipeline Agreement

SW ¼ NW ¼, Section 32, Township 7S, Range 14E, B.M., Gooding County, Idaho:

A licensed right-of-way approximately 510' feet in length and 20' in width running from south boundary line of described Rangen Property in a northerly direction to a point between the small raceway and hatch house as depicted in Exhibit A-1 attached, with 4", 12" and 16" lines running from there to small raceway and hatch house per attached engineering drawings Exhibit A-2. Final description of the right-of-way and location of the pipelines to be provided by amendment to this Exhibit A upon final survey and installed pipe locations.

Exhibit D

CERTIFICATE OF INSURANCE

DATE (MM/DD/YY)
02/05/2015

PRODUCER AND THE NAMED INSURED
Evolution Insurance Brokers, LLC.

8722 S. Harrison St.
Sandy, UT 84070
(801) 304-5500

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE OF INSURANCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE INSURANCE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
North Snake Ground Water District

152 E Main St
Jerome, ID 83338

INSURER A: Prime Insurance Company
INSURER B:
INSURER C:
INSURER D:
INSURER E:

"LIMITS SHOWN ARE THOSE IN
EFFECT AS OF POLICY INCEPTION"

COVERAGES

The policies of insurance listed below have been issued to the insured named above for the policy indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Aggregate limits shown may have been reduced by paid claims.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
<input checked="" type="checkbox"/> Commercial Liability <input checked="" type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Exclude Products <input checked="" type="checkbox"/> Exclude Completed Operations	SC1502202	2/5/2015	2/5/2016	\$2,000,000 Policy Aggregate \$1,000,000 Contractual Legal Liability
<input type="checkbox"/> Commercial Auto Liability Any Auto All Owned Autos Scheduled Autos Hired Autos Non-Owned Autos Drive Away				
<input type="checkbox"/> Commercial Garage Liability G.K.L.L. O.T.R.P.D. D.O.C. Cargo On Hook Employee Dishonesty Wrongful Repossession Claims Made Exclude Products Exclude Completed Operations				
<input type="checkbox"/> Excess Liability <input type="checkbox"/> Claims Made				

OTHER

DESCRIPTION OF OPERATION/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
Coverage is limited to only insured activities or operations identified in the Policy. Contract Services - Water Pump station to supply Spring Water. Policy is to cover losses from Rangen Inc due to failure of the pump system and supply of spring water resulting in loss of fish stock.

☒ **CERTIFICATE HOLDER** ☐ **ADDITIONAL INSURE** ☐ **LOSS PAYEE**

TJ Budge
Racine Olson Nye Budge Bailey
PO Box 1391
Pocatello, ID 83204

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

[Signature]

CERTIFICATE OF INSURANCE

DATE (MM/DD/YY)
02/05/2015

PRODUCER AND THE NAMED INSURED
Evolution Insurance Brokers, LLC.

8722 S. Harrison St.
Sandy, UT 84070
(801) 304-5500

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE OF INSURANCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE INSURANCE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
North Snake Ground Water District

152 E Main St
Jerome, ID 83338

INSURER A: Prime Insurance Company
INSURER B:
INSURER C:
INSURER D:
INSURER E:

"LIMITS SHOWN ARE THOSE IN
EFFECT AS OF POLICY INCEPTION"

COVERAGES

The policies of insurance listed below have been issued to the insured named above for the policy indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Aggregate limits shown may have been reduced by paid claims.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
<input checked="" type="checkbox"/> Commercial Liability <input checked="" type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Exclude Products <input checked="" type="checkbox"/> Exclude Completed Operations	SC1502202	2/5/2015	2/5/2016	\$2,000,000 Policy Aggregate \$1,000,000 Contractual Legal Liability
<input type="checkbox"/> Commercial Auto Liability Any Auto All Owned Autos Scheduled Autos Hired Autos Non-Owned Autos Drive Away				
<input type="checkbox"/> Commercial Garage Liability G.K.L.L. O.T.R.P.D. D.O.C. Cargo On Hook Employee Dishonesty Wrongful Repossession Claims Made Exclude Products Exclude Completed Operations				
<input type="checkbox"/> Excess Liability <input type="checkbox"/> Claims Made				

OTHER

DESCRIPTION OF OPERATION/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
Coverage is limited to only insured activities or operations identified in the Policy. Contract Services - Water Pump station to supply Spring Water. Policy is to cover losses from Rangen Inc due to failure of the pump system and supply of spring water resulting in loss of fish stock.

☒ **CERTIFICATE HOLDER** ☐ **ADDITIONAL INSURE** ☐ **LOSS PAYEE**

Magic Valley Ground Water District

PO Box 430
Paul, ID 83347

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

[Handwritten Signature]

CERTIFICATE OF INSURANCE

DATE (MM/DD/YY)
02/05/2015

PRODUCER AND THE NAMED INSURED
Evolution Insurance Brokers, LLC.

8722 S. Harrison St.
Sandy, UT 84070
(801) 304-5500

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE OF INSURANCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE INSURANCE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
North Snake Ground Water District

152 E Main St
Jerome, ID 83338

INSURER A: Prime Insurance Company
INSURER B:
INSURER C:
INSURER D:
INSURER E:

"LIMITS SHOWN ARE THOSE IN
EFFECT AS OF POLICY INCEPTION"

COVERAGES

The policies of insurance listed below have been issued to the insured named above for the policy indicated. Notwithstanding any requirement, term or condition of any contract or other document with respect to which this certificate may be issued or may pertain, the insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies. Aggregate limits shown may have been reduced by paid claims.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
<input checked="" type="checkbox"/> <u>Commercial Liability</u>	SC1502202	2/5/2015	2/5/2016	
<input checked="" type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Exclude Products <input checked="" type="checkbox"/> Exclude Completed Operations				\$2,000,000 Policy Aggregate \$1,000,000 Contractual Legal Liability
<input type="checkbox"/> <u>Commercial Auto Liability</u>				
Any Auto All Owned Autos Scheduled Autos Hired Autos Non-Owned Autos Drive Away				
<input type="checkbox"/> <u>Commercial Garage Liability</u>				
G.K.L.L. O.T.R.P.D. D.O.C. Cargo On Hook Employee Dishonesty Wrongful Repossession Claims Made Exclude Products Exclude Completed Operations				
<input type="checkbox"/> <u>Excess Liability</u>				
<input type="checkbox"/> Claims Made				

OTHER

DESCRIPTION OF OPERATION/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS
Coverage is limited to only insured activities or operations identified in the Policy. Contract Services - Water Pump station to supply Spring Water. Policy is to cover losses from Rangen Inc due to failure of the pump system and supply of spring water resulting in loss of fish stock.

☒ CERTIFICATE HOLDER ☐ ADDITIONAL INSURE ☐ LOSS PAYEE

South West Irrigation District

137 W. 13th. St.
Burley, ID 83318

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

[Signature]