

RECEIVED
RECEIVED
JAN 16 2015
DEPARTMENT OF
WATER RESOURCES

Robyn M. Brody (ISB No. 5678)
Brody Law Office, PLLC
P.O. Box 554
Rupert, ID 83350
Telephone: (208) 434-2778
Facsimile: (208) 434-2780
robynbrody@hotmail.com

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

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

Attorneys for Rangen

**DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

Subcase No. 36-07694
Subcase No. 36-02551

**AFFIDAVIT IN SUPPORT OF
RANGEN, INC.'S MOTION TO SET
ASIDE PARTIAL DECREES**

STATE OF IDAHO)
):ss
County of Ada)

J. Justin May, being sworn upon oath deposes and says:

1. My name is J. Justin May. I am an attorney licensed to practice in the State of Idaho. I represent Rangen, Inc. ("Rangen") in the above-captioned matter. The matters contained in this affidavit are based on my personal knowledge.

2. Attached hereto as Exhibit 1 is a true and correct copy of the *Memorandum Decision and Order on Petitions for Judicial Review*, Twin Falls County Case No. CV-2014-1338, Judge Wildman, October 24, 2014.

3. Attached hereto as Exhibit 2 is a true and correct copy of the transcript of Oral Arguments on Petition for Judicial Review of *In the Matter of Distribution of Water to Water Right Nos. 36-02551 and 36-07694*, IDWR Docket No. CM-DC-2011-004, Supreme Court of Idaho Case No. 42772, August 28, 2014

4. Attached hereto as Exhibit 3 is a true and correct copy of excerpts of the transcript of the hearing in *In the Matter of Distribution of Water to Water Right Nos. 36-02551 and 36-07694*, IDWR Docket No. CM-DC-2011-004, Vol. I, May 1, 2013.

5. Attached hereto as Exhibit 4 is a true and correct copy of the IDWR backfile for Water Right No. 36-02551.

6. Attached hereto as Exhibit 5 is a true and correct copy of the IDWR backfile for Water Right No. 36-07694.

7. Attached hereto as Exhibit 6 is a true and correct copy of a measurement summary chart titled "Rangen Research Hatchery, total flow measurements".

8. Attached hereto as Exhibit 7 is a true and correct copy of a Memo from Jennifer Sukow to Gary Spackman, Hearing Officer, dated 2/17/2013, re: Staff Memorandum in response to expert reports submitted for Rangen Delivery Call (In the Matter of Distribution for Water to Water Right Nos. 36-02551 and 36-07694.

9. Attached hereto as Exhibit 8 is a true and correct copy of a diagram showing water measurement points at the Rangen Hatchery Facilities, Hagerman, Idaho.

10. Attached hereto as Exhibit 9 is a true and correct copy of a Memorandum from C. Yenter to K. Dreher, dated 12/15/2003 Re: Water Right Review and Sufficiency of Measuring Devices, Rangen Aquaculture.

11. Attached hereto as Exhibit 10 is a true and correct copy of the *Amended Order* in *In the Matter of Distribution of Water to Water Right Nos. 36-02551 and 36-07694*, IDWR Docket No. CM-DC-2011-004, Director Karl J. Dreher, March 10, 2004.

12. Attached hereto as Exhibit 11 is a true and correct copy of the *Second Amended Order* in *In the Matter of Distribution of Water to Water Right Nos. 36-02551 and 36-07694*, IDWR Docket No. CM-DC-2011-004, Director Karl J. Dreher, May 19, 2005.

13. Attached hereto as Exhibit 12 is a true and correct copy of the Application for Permit No. 36-16976, on behalf of North Snake Ground Water District et al., dated April 3, 2013.

14. Attached hereto as Exhibit 13 is a true and correct copy of the *Preliminary Order Issuing Permit* in *In the Matter of Application for Permit No. 36-16976 in the Name of North Snake Ground Water District, et al.*, Hearing Officer James Cefalo, November 18, 2014.

15. Attached hereto as Exhibit 14 is a true and correct copy of Rangen's *Exceptions to Preliminary Order* in *In the Matter of the Application for Permit Nos. 36-16976*, December 2, 2014.

16. Attached hereto as Exhibit 15 is a true and correct copy of *Rangen's Brief in Support of Exceptions to Preliminary Order* in *In the Matter of the Application for Permit Nos. 36-16976*, December 2, 2014.

17. Attached hereto as Exhibit 16 is a true and correct copy of the *Notice of Violation on Cease and Desist Order, In the Matter of the Diversion of Water Without a Valid Right from Billingsley Creek by Rangen, Inc.*, Director Gary Spackman, January 31, 2014

18. Attached hereto as Exhibit 17 is a true and correct copy of the *Consent Order and Agreement, In the Matter of the Diversion of Water Without a Valid Right from Billingsley Creek by Rangen, Inc.*, Director Gary Spackman, March 7, 2014.

19. Attached hereto as Exhibit 18 is a true and correct copy of the hearing transcript, *In the Matter of Distribution of Water to Water Right Nos. 36-02551 and 36-07694*, IDWR Docket No. CM-DC-2011-004, April 3, 2013.

20. Attached hereto as Exhibit 19 is a true and correct copy of the letter attached to the Application for Permit No. 36-16976, requesting a delay in processing the application, dated April 3, 2013.

21. Attached hereto as Exhibit 20 is a true and correct copy of the *Special Master Report and Recommendation on Motions to Set Aside Partial Decrees ("Weston-Spillett Order")* in the SRBA Subcase No. 41-00013A (Weston) and 41-00008E, 41-00013C and 41-10230 (Spillett) case, dated April 29, 2002.

22. Attached hereto as Exhibit 21 is a true and correct copy of the partial decrees, pleadings and amended partial decrees in SRBA Subcase Nos. 21-00014, 21-00015, 21-02153, 21-02159, 21-04006, 21-04007, 21-04008, and 21-07151 ("*Sand Creek* case").

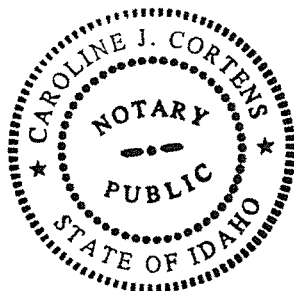
23. Attached hereto as Exhibit 22 is a true and correct copy of the partial decree, pleadings and amended partial decree in SRBA Subcase No. 43-192 ("*Lloyd* case").

DATED this 16 day of January, 2015.

MAY, BROWNING & MAY, PLLC

By: [Signature]
J. Justin May

SUBSCRIBED AND SWORN to before me this 16 day of January, 2015.



[Signature]
Notary Public for the State of Idaho
Residing at: BOISE, ID
My Commission Expires: 6/26/2020

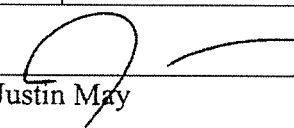
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 16 day of January, 2015 he caused a true and correct copy of the foregoing document to be served upon the following by the method indicated:

Original to: State of Idaho SRBA District Court 253 3 rd Avenue North P.O. Box 2707 Twin Falls, ID 83303-2707 Facsimile: (208) 736-2121	Hand Delivery ☒ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
Director Gary Spackman IDAHO DEPARTMENT OF WATER RESOURCES P.O. Box 83720 Boise, ID 83720-0098 deborah.gibson@idwr.idaho.gov	Hand Delivery ☒ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
Chief, Natural Resources Division Office of the Attorney General State of Idaho P.O. Box 83720 Boise, ID 83720-0010	Hand Delivery ☒ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐

U.S. Department of Justice Environment & Natural Resources Division 550 W. Fort St., MSC 033 Boise, ID 83724	Hand Delivery ☒ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
IDWR Document Depository PO Box 83720 Boise, ID 83720	Hand Delivery ☒ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
Garrick Baxter Emmi L. 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	Hand Delivery ☒ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
Randall C. Budge Thomas J. Budge RACINE, OLSON, NYE, BUDGE & 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	Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Federal Express ☐ E-Mail ☐
Sarah Klahn Mitra Pemberton WHITE & JANKOWSKI Kittredge Building, 511 16th Street, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com	Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Federal Express ☐ E-Mail ☐
Dean Tranmer CITY OF POCATELLO P.O. Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us	Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Federal Express ☐ E-Mail ☐
John K. Simpson Travis L. Thompson Paul L. Arrington	Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐

BARKER ROSHOLT & SIMPSON, L.L.P. 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 tlt@idahowaters.com jks@idahowaters.com pla@idahowaters.com	Federal Express ☐ E-Mail ☐
W. Kent Fletcher FLETCHER LAW OFFICE P.O. Box 248 Burley, ID 83318 wkf@pmt.org	Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Federal Express ☐ E-Mail ☐
Jerry R. Rigby Hyrum Erickson Robert H. Wood RIGBY, ANDRUS & RIGBY, CHARTERED 25 North Second East Rexburg, ID 83440 jrigby@rex-law.com herickson@rex-law.com rwood@rex-law.com	Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Federal Express ☐ E-Mail ☐


J. Justin May