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

In Re SRBA	)	
	)	Subcase Nos. 36-2551 and 36-7694
	)	
Case No. 39576	)	AFFIDAVIT OF MICHAEL C. ORR
	)	
_____	)	

STATE OF IDAHO	)	
	)	ss.
COUNTY OF ADA	)	

MICHAEL C. ORR, being first duly sworn upon his oath, deposes and states that:

1. I am a Deputy Attorney General in the Idaho Office of the Attorney General and one of the attorneys of record for the State of Idaho in the above-entitled proceedings.

2. The following is based upon my own personal knowledge.
3. Attached hereto as the individual exhibits identified below are true and correct copies of the following:
 - a. **Exhibit 1:** a true and correct copy of this Court's *Order Denying Motion To File Late Claim; Order Denying Motion To File Amended Notice Of Claim, In Re SRBA Case No. 39576, Subcase No. 36-16977* (Oct. 2, 2013);
 - b. **Exhibit 2:** a true and correct copy of Rangen, Inc.'s *Petition For Judicial Review* filed in this Court on March 24, 2014 in Twin Falls County Case No. CV-2014-1338;
 - c. **Exhibit 3:** true and correct copies of pages 1-15 of this Court's *Final Unified Decree, In Re SRBA Case No. 39576* (Aug. 26, 2014);
 - d. **Exhibit 4:** a true and correct copy of Rangen, Inc.'s *Notice Of Appeal* filed in this Court on December 5, 2014 in Twin Falls County Case No. CV-2014-1338 (Consolidated Gooding County Case No. CV-2014-179);
 - e. **Exhibit 5:** a true and correct copy of this Court's *Order Regarding Subcases Pending Upon Entry Of Final Unified Decree, In Re SRBA Case No. 39576, Subcase Nos. 01-00219 et al.* (Aug. 26, 2014)
 - f. **Exhibit 6:** a true and correct copy of *Rangen, Inc.'s Supplemental Post-Hearing Brief In Support Of Motion To File Late Claim*, filed in this Court on August 26, 2013 in the Snake River Basin Adjudication, Twin Falls County Case No. 39576, Subcase No. 36-16977;
 - g. **Exhibit 7:** true and correct copies of pages 1-4 of this Court's *Order Closing Claims Taking Basins 01, 02, 03,31, 34, 35, 36, 37, 41, 45, 47, and 63, And*

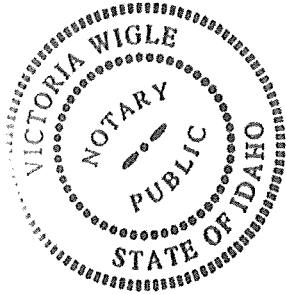
Disallowal Of Unclaimed Water Rights, In Re SRBA Case No. 39576, Basin-Wide Issue 16, Subcase No. 00-92099 (Feb. 13, 2013).

Further your affiant sayeth naught.

DATED this 6th day of March, 2015.

Michael C. Orr
MICHAEL C. ORR

SUBSCRIBED AND SWORN to before me this 6th day of March, 2015.



Victoria Wigle
Notary Public for Idaho
Residing at: Boise
My commission expires: 6/22/16

CERTIFICATE OF SERVICE

I certify that on this 6th day of March, 2015, I caused the foregoing to be filed with the Court and copies served on the following by the methods indicated:

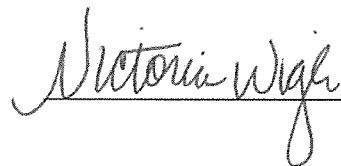
1. Original to:

CLERK OF THE DISTRICT COURT SNAKE RIVER BASIN ADJUDICATION 253 THIRD AVENUE NORTH PO BOX 2707 TWIN FALLS, ID 83303-2707	☒ U.S. Mail, postage prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile: (208) 736-2121
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2. Copies to the following:

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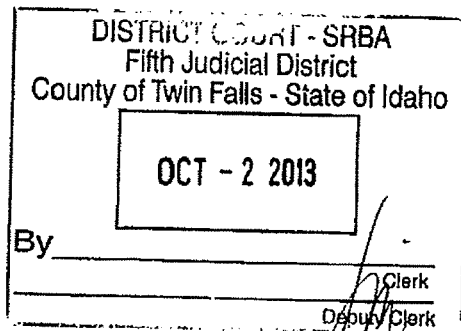
DIRECTOR OF IDWR STATEHOUSE MAIL PO BOX 83720 BOISE ID 83720-0098	☐ U.S. Mail, Postage Prepaid ☐ Hand Delivery ☐ Federal Express ☐ Facsimile ☒ E-Mail: deborah.gibson@idwr.idaho.gov ☒ Statehouse Mail
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_____

AFFIDAVIT OF MICHAEL C. ORR
In Re SRBA Case No. 39576, Subcase Nos. 36-02551 and 36-7694
(Mar. 6th, 2015)

EXHIBIT 1:

Order Denying Motion To File Late Claim;
Order Denying Motion To File Amended Notice Of Claim,
In Re SRBA Case No. 39576, Subcase No. 36-16977
(Idaho 5th Jud. Dist., Twin Falls County Dist. Ct.)
(Oct. 2, 2013)



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

In Re SRBA) Subcase Nos. 36-16977
)
Case No. 39576)
)
) ORDER DENYING MOTION TO FILE
) LATE CLAIM
)
) ORDER DENYING MOTION TO FILE
) AMENDED NOTICE OF CLAIM
)
)
)
)

I.

PROCEDURAL BACKGROUND

1. On October 12, 2012, this Court entered its *Order Establishing Deadline for Late Claim Filings* in basin 36 (“*Deadline Order*”).¹ It directed that except for *de minimis* domestic and stockwater uses and late claims required to resolve litigation pending in the SRBA, the last date to file a *Motion to File Late Claim* in basin 36 “shall be January 31, 2013.”

2. The Court subsequently entered an *Order Closing Claims Taking* in basin 36, closing the basin to the filing of late claims in accordance with the *Deadline Order* (“*Closure Order*”).²

3. On April 19, 2013, Rangen, Inc. (“Rangen”) filed a *Motion to File Late Claim* in the above-captioned matter. The claim asserts the right to divert 50 cfs for fish propagation from the “Martin-Curren Tunnel, Curran Springs, flows from a concrete box as well as from various seeps, rivulets, and springs originating and located on the talus slope, or other springs or seeps

¹ *Order Establishing Deadline for Late Claim Filings in Basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63*, SRBA main case no. 39576, SRBA subcase no. 00-92099 (Oct. 12, 2012).

² *Order Closing Claims Taking Basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63, and Disallowal of Unclaimed Water Rights*, SRBA main case no. 39576, SRBA subcase no. 00-92099 (Feb. 13, 2013).

which are the headwaters to Billingsley creek.” The claimed point of diversion is T7S R14E S32 SWSWNW in Gooding County, Idaho. The claim is based on beneficial use and seeks a priority date of July 13, 1962.

4. On April 26, 2013, Rangen filed a *Motion to File Amended Notice of Claim*, seeking to amend its late claim to add the following point of diversion: T7S R14E S32 SESWNW in Gooding County, Idaho.

5. On May 15, 2013, *Responses* in opposition to the *Motion to File Late Claim* were filed by the City of Pocatello and the Ground Water Districts.³ Rangen filed a *Reply* on June 28, 2013, and the Ground Water Districts subsequently filed a *Response* to the *Reply*.

6. A hearing on the *Motion to File Late Claim* and the *Motion to File Amended Notice of Claim* was held on August 19, 2013. At the hearing, counsel for Rangen requested the opportunity to file a post-hearing brief, which the Court granted. Rangen’s post-hearing brief was filed on August 26, 2013. Responses were subsequently filed by the City of Pocatello and the Ground Water Districts. The last of the post-hearing briefing was received on September 3, 2013. Therefore, this matter is deemed fully submitted for decision on the next business day or September 4, 2013.

II.

HISTORICAL BACKGROUND

Consideration of the legal issues and arguments presented in this matter requires a brief history of certain of Rangen’s water rights.

A. Prior licenses.

Prior to the commencement of the SRBA, Rangen held water right license numbers 30654 and 36-7694. Under license 30654, Rangen was authorized to divert 50 cfs from “underground springs, a tributary to Billingsley Creek” for fish cultural and domestic use with a priority date of July 31, 1962. Under license 36-7694, Rangen was authorized to divert 26 cfs from “springs tributary to Billingsley Creek” for fish propagation with a priority date of April 12,

³ The term “Ground Water Districts” refers collectively to the following parties: Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Madison Ground Water District, Magic Valley Ground Water District and North Snake Ground Water District

1977. The point of diversion under both licenses was identified as the following forty acre tract located in Gooding County, Idaho: T7S R14E S32 SWNW (hereinafter, "Forty Acre Tract").

B. SRBA claims, recommendations and *Partial Decrees*.

Rangen timely filed claim numbers 36-2551 and 36-7694 in the SRBA. The bases for the claims were prior license numbers 30654 and 36-7694 respectively. The elements claimed by Rangen in its SRBA claims matched the elements of the prior licenses except with respect to source, which Rangen identified in the claims as "Curran Tunnel." On November 2, 1992, the Director of the Idaho Department of Water Resources ("IDWR" or "Department") issued his *Director's Report, Part I, Reporting Area 3 (Basin 36)*, which included recommendations for the claims. The claims were recommended with the following elements:

Right	Source	Purpose and Period of Use	Quantity	Priority	Point of Diversion
36-2551	Martin-Curren Tunnel	Fish Propagation (01/01 – 12/31) Domestic (01/01 – 12/31)	50.0 cfs	07/13/1962	T07S R14E S32 SESWNW
36-7694	Martin-Curren Tunnel	Fish Propagation (01/01 – 12/31)	26.0 cfs	04/12/1977	T07S R14E S32 SESWNW

A review of the recommendations shows that they diverged from the claims in two material respects. First, the Director recommended the source of the claims as "Martin-Curren Tunnel," as opposed to the claimed source of "Curran Tunnel." Second, the Director recommended the point of diversion as the following ten acre tract located in Gooding County, Idaho: "T07S R14E S32 SESWNW" (hereinafter, "Ten Acre Tract"), as opposed to the Forty Acre Tract claimed by Rangen. No objections to the recommendations were filed by any party. However, because of proceedings in related contested subcase numbers 36-134B and 36-135A, water right claims 36-2551 and 36-7694 were initially withheld from partial decree.

As part of the settlement process in subcase numbers 36-134B and 36-135A, the Department filed an *Amended Director's Report* with respect to water right claim 36-2551. In the *Amended Director's Report*, the Department recommended that part of water right claim 36-2551 be partially decreed separately in the SRBA as beneficial use claim 36-15501. Specifically, the Director recommended that 1.46 cfs of claim 36-2551 be decreed as beneficial use claim 36-15501, with a priority date of July 1, 1957. Thus, the recommended quantity for water right claim 36-2551 was reduced to 48.54 cfs. However, the source of the claims remained recommended as "Martin-Curren Tunnel" and the point of diversion remained recommended as the Ten Acre Tract. No objections were filed to the *Amended Director's Report*.

In December of 1997, *Partial Decrees* were issued for water rights 36-2551, 36-15501, and 36-7694. The *Partial Decrees* were entered in the name of Rangen with the following elements:

Right	Source	Purpose and Period of Use	Quantity	Priority	Point of Diversion
36-2551	Martin-Curren Tunnel	Fish Propagation (01/01 – 12/31) Domestic (01/01 – 12/31)	48.54 cfs	07/13/1962	T07S R14E S32 SESWNW
36-15501	Martin-Curren Tunnel	Fish Propagation (01/01 – 12/31)	1.46 cfs	07/01/1957	T07S R14E S32 SESWNW
36-7694	Martin-Curren Tunnel	Fish Propagation (01/01 – 12/31)	26.0 cfs	04/12/1977	T07S R14E S32 SESWNW

Since the recommendations for claims were unopposed, the elements of the *Partial Decrees* matched recommendations for the claims. Rangen did not appeal from the issuance of any of the *Partial Decrees* and the time for appeal has long expired.

C. Administrative proceeding before the IDWR concerning Rangen's delivery call.

On December 13, 2011, Rangen filed a *Petition for Delivery Call* with the Department in IDWR Docket No. CM-DC-2011-004. The *Petition* seeks the curtailment of certain junior water right users who Rangen asserts are causing material injury to its *Partial Decrees* for water rights 36-2551 and 36-7694. In the context of the delivery call, issues have arisen regarding the proper interpretation of the source and point of diversion elements of Rangen's *Partial Decrees*. As set forth above, Rangen's *Partial Decrees* identify their source as "Martin-Curren Tunnel," and their point of diversion as the Ten Acre Tract. Rangen alleges that the Martin-Curren Tunnel is part of a greater springs complex that supplies water to its facilities. The source issue presently before the Director is whether Rangen's ability to call for delivery of water under its *Partial Decrees* is limited only to water from the greater springs complex that flows through the mouth of the Martin-Curren Tunnel. The point of diversion issue presently before the Director is whether Rangen's ability to call for delivery of water under its *Partial Decrees* is limited to water from the greater springs complex diverted in the Ten Acre Tract.

It is undisputed in this matter that Rangen's *Motion for Late Claim* is being filed as a result of certain findings and anticipated findings of the Director in the administrative proceeding. Rangen admits that the *Motion for Late Claim* is an attempt to protect its alleged historic water use by supplementing the use identified in its *Partial Decrees* in the event the Director interprets their source and point of diversion elements in an unfavorable way. As of the

date of the issuance of this *Order*, Rangen's *Petition for Delivery Call* is pending unresolved before the Department.⁴

III. ANALYSIS

Pursuant to *SRBA Administrative Order 1, Rules of Procedure*, § 4d(2)(d), motions to file a late notice of claim are reviewed under the criteria set forth in Idaho Rule of Civil Procedure 55(c). Rule 55(c) provides that the entry of a default can be set aside for good cause shown. The primary considerations in determining good cause are: (1) whether the default was willful; (2) whether a meritorious defense has been presented; and (3) whether setting aside the default would prejudice the opponent. *McFarland v. Curtis*, 123 Idaho 931, 936, 854 P.2d 274, 279 (Ct. App. 1993). For the reasons set forth below, the Court finds that Rangen has failed to present a meritorious defense and has also failed to establish a lack of prejudice to other parties resulting from the *Motion*.

A. Rangen has failed to establish a meritorious defense.

The Court finds that Rangen has failed to establish a meritorious defense in support of its *Motion to File Late Claim* because (1) Rangen has failed to comply with this Court's *Deadline* and *Closure Orders*, and (2) Rangen's late claim is an impermissible collateral attack on its *Partial Decrees*. Each will be address in turn.

i. Rangen has failed to comply with this Court's *Deadline* and *Closure Orders*.

Recognizing that the taking of claims in basin 36 must at some point come to an end, this Court closed the basin to the filing of late claims as of January 31, 2013. *See infra*, *Deadline Order* and *Closure Order*. The only exceptions are: (1) late claims for deferrable *de minimis* domestic and stockwater uses; and (2) late claims required to resolve litigation pending in the SRBA at the time of basin closure. *Id.* Rangen's *Motion to File Late Claim* was filed on April 19, 2013, and does not fall into one of the two recognized exceptions to the *Deadline* and

⁴ The parties have informed the Court that hearing on Rangen's *Petition for Delivery Call* took place before the Director from May 1, 2013 through May 16, 2013. The Director has not issued his final order in the administrative proceeding as of the issuance date of this *Order*.

Closure Orders.⁵ Notwithstanding, Rangen argues that it has a meritorious defense in support of its *Motion*. This Court disagrees.

The record reflects that Rangen had more than ample opportunity to file the instant beneficial use late claim in the SRBA. The *Director's Report* for claims timely filed in basin 36 was issued on November 2, 1992. Therefore, Rangen had from November 2, 1992 until January 31, 2013 to file a late claim for the beneficial use at issue here had it so desired. Rangen also had ample notice of the requirement to file its claims in the SRBA. The *Deadline Order* found that the claimants in basin 36 "received extensive first-round and second-round *Notice of Filing Requirements* in the SRBA." *Deadline Order*, p.2; I.C. § 42-1408. In addition, the *Deadline Order* itself was issued and served by standard docket procedure as an additional courtesy to the parties, and gave notice that January 31, 2013 would be the last date on which to file late claims in basin 36. Therefore, the Court finds that had Rangen wished to file the instant beneficial use claim in the SRBA it certainly had the notice and opportunity to do so before this Court closed the basin to late claims.

Rangen acknowledges the plain language of the *Deadline* and *Closure Orders*, but asserts that it should be relieved from those *Orders* pursuant to Idaho Rule of Civil Procedure 60(b)(1)(2) & (5) in the event it receives an unfavorable interpretation of its *Partial Decrees* from the Director in the delivery call proceeding.⁶ The decision to grant or deny a request for relief from an order or judgment under Rule 60(b) is committed to the sound discretion of the trial court. *Waller v. State, Dept. of Health and Welfare*, 146 Idaho 234, 237–38, 192 P.3d 1058, 1061–62 (2008).

Rule 60(b)(1) applies in cases of "mistake, inadvertence, surprise, or excusable neglect." Rangen argues that if the Director finds that its *Partial Decrees* for water right numbers 36-2551,

⁵ The *Deadline* and *Closure Orders* provided a claims taking deadline of January 31, 2013 "except for *de minimis* domestic and stockwater uses and late claims required to resolve pending litigation on the date of this *Order* in the SRBA." *Deadline Order*, p.4; *Closure Order*, p.3. The term "pending litigation was further defined to mean "an active, related subcase(s) pending at the time of the basin closure deadline wherein an additional late claim(s) is required to resolve the related water right(s)." *Id.* The administrative proceeding before the Department does not satisfy or qualify for the pending litigation exception set forth in the Court's *Deadline* and *Closure Orders*.

⁶ Rangen's *Motion to File Late Claim* states that it is "filed pursuant to I.R.C.P. 60(b)(1)(2)(3)(5) and (6)." However, Rangen's briefing and oral argument only addresses Rule 60(b)(1)(2) and (5). Therefore, the Court does not address Rule 60(b)(3) and (6). See e.g., *KEB Enterprises, L.P. v. Smedley*, 140 Idaho 746, 754, 101 P.3d 690, 698 (2004) (providing that courts will not address issues cited that "are not supported by propositions of law, authority or argument").

36-7694 and 36-15501 do not authorize Rangen to call for delivery of (1) water from the greater springs complex that does not flow into the Martin-Curren tunnel and/or (2) water originating in the greater springs complex diverted outside of the Ten Acre Tract, the ruling would constitute surprise. The fact that Rangen is bound by the terms of its *Partial Decrees* in the present delivery call proceeding before the Department should not be a surprise to Rangen. A partial decree entered in the SRBA is conclusive as to the nature and extent of that water right. I.C. § 42-1401A(5) and I.C. § 42-1420. In 2002, this Court authorized the interim administration of water in basin 36 in accordance with the *Director's Reports* and the *Partial Decrees* that have superseded the *Director's Reports* in that basin.⁷ Therefore, it is of no surprise that the Department has and will continue to administer water in basin 36 pursuant to the terms of the *Partial Decrees* entered in that basin. If a dispute exists between Rangen and the Department regarding the proper interpretation of the terms of its *Partial Decrees*, Rangen is not without remedy. To the contrary, it may seek judicial relief at the appropriate time in the form of judicial review.

Rule 60(b)(2) applies in cases of “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” The Idaho Supreme Court has directed that under the rule, “a motion for newly discovered evidence will not be granted if the evidence was not in existence at the time of trial.” *Vanderwal v. Albar, Inc.*, 154 Idaho 816, 823, 303 P.3d 175, 182 (2013). Further that “facts which occur subsequent to trial are not considered newly discovered evidence.” *Id.* Rangen argues that the dispute between itself and the Department regarding the proper interpretation of its *Partial Decrees* constitutes newly discovered evidence. Specifically, Rangen relies upon (1) the Director's *Order Granting in Part and Denying in Part Rangen Inc.'s Motion for Partial Summary Judgment Re: Source* issued in the administrative proceeding on April 22, 2013, and (2) an anticipated unfavorable final order of the Director in that proceeding. Since this alleged newly discovered evidence was not in existence at the time the *Deadline* and *Closure Orders* were entered by this Court, it does not satisfy Rule 60(b)(2). Rangen's argument for relief under Rule 60(b)(2) is therefore unavailing.

⁷ *Order Granting State of Idaho's Motion for Order of Interim Administration*, SRBA subcase no. 92-00021 (Jan. 8, 2002).

Rule 60(b)(5) applies when the judgment or order at issue "has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." Rangen argues that if the Department interprets its *Partial Decrees* in an unfavorable manner in the delivery call proceeding, it will essentially reverse or vacate the way in which it has historically administered and/or treated Rangen's water rights. However, Rangen fails to point to the reversal of any "prior judgment" on which the *Deadline* or *Closure Orders* are based which would justify relief from those orders. Furthermore, the Idaho Supreme Court has directed that for the purposes of Rule 60(b)(5), "there is a reversal only when an appellate court overturns a lower court's decision in the same case." *Stuart v. State*, 128 Idaho 436, 437, 914 P.2d 933, 934 (1996). Such is not the case here. Therefore, Rangen has failed to satisfy Rule 60(b)(5).

This Court in an exercise of its discretion finds that Rangen has failed to set forth grounds justifying relief from this Court's *Deadline* and *Closure Orders* under Rule 60(b)(1), (2) or (5). It follows that those *Orders* preclude the filing of Rangen's instant late claims. Given the plain language of the *Deadline* and *Closure Orders*, and the fact that the record shows that Rangen had both ample notice of the requirements to file its claims in the SRBA and ample opportunity to file a late claim in the SRBA, this Court finds that Rangen has failed to establish a meritorious position under Rule 55(c) in support of its *Motion*.

ii. Rangen's late claim is an impermissible collateral attack on its *Partial Decrees*.

It is important to note that Rangen has not moved to set aside the *Partial Decrees* for the water rights it fears the Director may interpret unfavorably. Instead, Rangen has chosen to file a new beneficial use claim to supplement its water use under those *Partial Decrees* in the event the Director finds they do not already authorize that use. Rangen's late claim seeks the authorization to divert water from sources located in the Forty Acre Tract. Rangen previously claimed the same Forty Acre Tract point of diversion in the SRBA in conjunction with its claims for water rights 36-2551 and 36-7694. Ultimately, the Forty Acre Tract point of diversion was not recommended by the Department and the two rights were decreed with the Ten Acre Tract point of diversion. Rangen asserts its late claim is not a collateral attack on the *Partial Decrees* previously entered for water rights 36-2551 and 36-7694 because the late claim is based on a

beneficial use theory whereas the decreed rights are both based on prior licenses. For reasons explained below, this Court disagrees.

Generally, “final judgments, whether right or wrong, are not subject to collateral attack.” *Cuevas v. Barraza*, 152 Idaho 890, 894, 277 P.3d 337, 341 (2012). Rangen’s claims for 36-2551 and 36-7694 were both based on prior licenses. Both licenses authorized the right to divert from sources located in the Forty Acre Tract, which includes the Ten Acre Tract in its entirety. Rangen’s SRBA claims also claimed the Forty Acre Tract as the point of diversion. The Department fully examined both of Rangen’s claims. As a result of examination, although not claimed as such, a portion of water right claim 36-2551 was split and recommended as a separate beneficial use claim with an earlier priority date under water right claim number 36-15501. Further, despite Rangen’s claims for the Forty Acre Tract point of diversion, the Department only recommended the Ten Acre Tract point of diversion. The same Ten Acre Tract was also recommended for 36-15501. Rangen did not object to the recommendations. Because objections were not filed, the basis for the Department’s recommendations with respect to point of diversion is unknown. Ultimately, the rights were all partially decreed as recommended and the *Partial Decrees* were Rule 54(b) certified as final judgments.

Rangen admits that the instant late claim is a second attempt in the SRBA to claim the right to divert water from a point of diversion and source it asserts it already claimed when it filed claim numbers 36-2551 and 36-7694. In fact, Rangen has represented in this proceeding, and takes the position in the administrative proceeding currently pending before the Department, that the *Partial Decrees* entered for water rights 36-2551 and 36-7694 already include the right to divert water from the sources and point of diversion it now seeks in the instant late claim. Rangen is only filing the late claim as a precautionary measure in the event the Director disagrees. Accordingly, this Court finds Rangen’s water right claims associated with its fish propagation facilities were already adjudicated in full in the SRBA. The late claim procedure was not intended to give claimants a second bite at the apple.

The interpretation of the previously issued *Partial Decrees* for water right claims 36-2551, 36-7694 and 36-2551 is the real issue. To the extent Rangen receives an unfavorable interpretation from the Director, the appropriate course of action should it choose to pursue one within the confines of the SRBA would be to attempt to move to set aside those *Partial Decrees* and file late objections to the Department’s recommendations regarding source and point of

diversion.⁸ Simply permitting the filing of a new late claim for the additional sources and points of diversion based on a new legal theory circumvents the I.R.C.P. 60(b) standard for setting aside a partial decree as well as undermines any finality in a partial decree. Therefore, the Court finds Rangen has failed to establish a meritorious position under Rule 55(c) in support of its *Motion* because its late claim is an impermissible collateral attack on its previously issued *Partial Decrees*.

B. Rangen has failed to establish a lack of prejudice to other parties.

The Court has previously noted that when undertaking a Rule 55(c) good cause analysis, “prejudice to other parties is the factor on which the court places significant emphasis.” *Order Denying Motion to File Late Notice of Claim*, SRBA subcase no. 27-12216, p.6 (March 29, 2011). In determining prejudice to other parties the Court weighs several factors. *Id.* The factors that are of particular importance to this case include: (1) whether the particular basin in which the late claim is asserted is a completed basin; (2) the extent to which existing users have relied upon the basin being completed; and (3) if interim administration according to decreed rights is in effect.

The single most important factor here is that basin 36 has been closed to the type of late claim Rangen seeks to file via Court order. Additionally, basin 36 is a completed basin, meaning that all claims that were timely filed in the basin have been fully adjudicated. Allowing the instant late claim to come in at this point in time, in contravention of the *Deadline and Closure Orders*, would seriously disrupt the finality of process intended by those *Orders*. Basin 36 was one of the earliest basins to be reported on by the Director, with the *Director's Report* for claims timely filed being filed on November 2, 1992. The vast majority of the timely filed claims in the basin were adjudicated, and resulting *Partial Decrees* issued, in the 1990's. And interim administration has been authorized in basin 36 according to decreed rights since 2002. Thus, at the time Rangen filed its *Motion for Late Claim* on April 13, 2013, water users certainly were justified in relying upon the basin being completed. To allow the instant late claim to proceed at this stage, in an area of basin 36 that is highly contested, and which currently is and historically

⁸ Of course outside the confines of the SRBA, Rangen will have the opportunity to seek judicial review of any final order issued by the Director in IDWR Docket No. CM-DC-2011-004.

has been the subject of water shortages and contested delivery calls, would prejudice other parties to the SRBA.

Additionally, permitting the late claim to proceed at this stage may potentially require setting aside the *Partial Decrees* for Rangen's overlapping water rights 36-134B, 36-135A, 36-2551, 36-7694 and 36-15501 and reopening those subcases to further litigation to the prejudice of the objecting parties in this case. Consideration of Rangen's instant late claim by the Department may require changes to the *Partial Decrees* entered for Rangen's other water rights, including but not limited to changes in the elements of those rights and/or the inclusion of a combined use remark in those rights. Further, the Court notes that objections to 36-134A and 36-134B were settled pursuant to the *Standard Form 5* stipulation process. Any necessary changes to these rights have the potential to undo the settlements entered on those subcases. Given the foregoing, the Court finds that Rangen has failed to establish a lack of prejudice to other parties resulting from its *Motion for Late Claim*.

C. Rangen's request that this Court interpret its *Partial Decrees*.

As an alternative to ruling that Rangen is entitled to proceed with its late claim, Rangen asserts that the Court should interpret its *Partial Decrees* for water right numbers 36-2551 and 36-7694 "to allow for the diversion and use of all of the spring waters that form the headwaters of Billingsley Creek, not just the water that emanates from the mouth of the Martin-Curren Tunnel itself and not just the water coming from the ten (10) acre tract described as the point of diversion in the Partial Decree." *Rangen's Reply Brief in Support of Motion for Late Claim*, p.29. The Court finds that issue is not properly before this Court in this proceeding.

Rangen has already invoked the administrative process in IDWR Docket No. CM-DC-2011-004. As part of that process, a dispute has arisen between Rangen and the Department regarding the correct interpretation of certain terms in Rangen's *Partial Decrees*. However, the Director has not issued a final order in that matter, and Rangen has yet to exhaust its administrative remedies to the point where it can seek judicial review. Additionally, Idaho Code § 42-1401D places jurisdictional limitations on this Court's ability to review, in the SRBA, an agency action of the Department which is subject to judicial review or declaratory judgment under the provisions of chapter 52, title 67, Idaho Code. Therefore, this Court is precluded from

reviewing any interpretation made by the Director in the delivery call proceeding in this SRBA proceeding.

With respect to subcases number 36-2551 and 36-7694, final judgments in the form of Rule 54(b) Certificates were entered in SRBA in 1997. Rangen has made no motion to the Court to reopen those subcases for further consideration of any kind. Therefore, the sole issue presently before the Court in this subcase is whether Rangen should be allowed to proceed with its late claim in the above-captioned matter.

D. *Motion to File Amended Notice of Claim.*

Since Rangen's *Motion to File Late Claim* is denied for the reasons set forth above, its subsequent *Motion to File Amended Notice of Claim* is likewise denied.

IV.

ORDER

THEREFORE, BASED ON THE FORGOING, THE FOLLOWING ARE ORDERED:

1. Rangen's *Motion to File Late Claim* is hereby denied.
2. Rangen's *Motion to File Amended Notice of Claim* is hereby denied.

DATED: October 2, 2013


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

DATED: October 2, 2013


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER DENYING MOTION TO FILE LATE CLAIM / ORDER DENYING MOTION TO FILE AMENDED NOTICE OF CLAIM was mailed on October 02, 2013, with sufficient first-class postage to the following:

RANGEN INC

Represented by:
FRITZ X. HAEMMERLE
PO BOX 1800
HAILEY, ID 83333
Phone: 208-578-0520

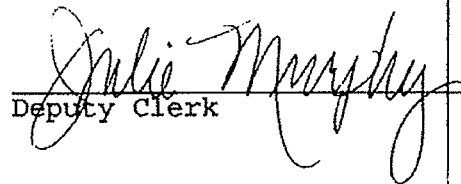
CITY OF POCATELLO

Represented by:
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WHITE & JANKOWSKI LLP
511 16TH ST STE 500
DENVER, CO 80202
Phone: 303-595-9441

ABERDEEN-AMERICAN FALLS GROUND
BINGHAM GROUND WATER DISTRICT
BONNEVILLE-JEFFERSON GROUND
MADISON GROUND WATER DISTRICT
MAGIC VALLEY GROUND WATER
NORTH SNAKE GROUND WATER

Represented by:
RANDALL C BUDGE
201 E CENTER ST STE A2
PO BOX 1391
POCATELLO, ID 83204-1391
Phone: 208-232-6101

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

A handwritten signature in cursive script, appearing to read "Julie Murphy", is written over a horizontal line. The signature is in dark ink and is positioned to the right of the "Deputy Clerk" text.

AFFIDAVIT OF MICHAEL C. ORR
In Re SRBA Case No. 39576, Subcase Nos. 36-02551 and 36-7694
(Mar. 6th, 2015)

EXHIBIT 2:

Petition For Judicial Review,
Rangen, Inc. v. IDWR
(In The Matter Of Distribution Of Water To
Water Right Nos. 36-2551 & 36-7694 (Rangen, Inc.),
IDWR Docket CM-DC-2011-004)
Case No. CV-2014-1338
(Idaho 5th Jud. Dist., Twin Falls County Dist. Ct.)
(Mar. 24, 2014)

ORIGINAL

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Attorneys for Petitioner, Rangen, Inc.

DISTRICT COURT
TWIN FALLS CO., IDAHO
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jmay@maybrowning.com
MAR 24 AM 11:36
CLERK

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

RANGEN, INC., an Idaho Corporation,

Petitioner,

vs.

IDAHO DEPARTMENT OF WATER
RESOURCES and Gary Spackman, in his
official capacity as Director of the Idaho
Department of Water Resources,

Respondent.

Case No. CV-2014-1338

PETITION FOR JUDICIAL REVIEW

L(3): \$96.00

COME NOW the Petitioner, RANGEN, INC. ("Petitioner" or "Rangen"), by and through
its attorneys of record, Fritz X. Haemmerle of Haemmerle & Haemmerle, P.L.L.C.; Robyn M.
Brody of Brody Law Office, PLLC; and J. Justin May of May Browning & May, PLLC, and

1 pursuant to Idaho Code Sections 67-5270 through 67-5279 and I.R.C.P. 84 files this Petition for
2 Judicial Review as follows:

3 **PETITION FOR JUDICIAL REVIEW**

4 1. Petitioner owns and operates a fish research and propagation facility in the
5 Thousand Springs area near Hagerman, Gooding County, State of Idaho. The Petitioner
6 Corporation is located and generally operates its business out of Buhl, Twin Falls County, State
7 of Idaho

8 2. The Petitioner operates the facility with several water rights. Because the
9 Petitioner was not receiving the amount of water it rightfully possess under water rights 36-
10 02551 and 36-07694, Rangen filed a water call under the Idaho's Constitution, statutes and rules
11 adopted by the Respondent, Idaho Department of Water Resources (hereinafter "Respondent" or
12 "Department"), for conjunctive administration of water rights. The water call was filed on
13 December 13, 2011. This matter came before the Department based on a contested case ("water
14 call") in Department Case No. CM-DC-2011-004.

15 3. Name of agency from which judicial review is sought: Idaho Department of
16 Water Resources ("Respondent") and its Director Gary Spackman, an agency of the State of
17 Idaho.
18 Idaho.

19 4. The Petition is taken to the District Court of the Fifth Judicial District, County of
20 Twin Falls.

21 5. Decision being appealed: Between May 1 through the 16 of May, 2013, the
22 Department, by and through its Director, Gary Spackman, held a contested hearing on Rangen's
23 water call. On January 29, 2014, the Director issued his "Final Order Regarding Rangen, Inc.'s
24 Petition for Delivery Call; Curtailing Ground Water Junior to July 13, 1962" (hereinafter "Final
25

1 Order"). Thereafter, parties to the contested case filed Motions for Reconsideration of the Final
2 Order. On March 4, 2014, the Director issued his "Order on Reconsideration." The Petitioner is
3 appealing both Orders, all in Department of Water Resources Case No. CM-DC-2011-004.

4 6. A transcript of all proceedings in Case No. CM-DC-2011 is requested. The
5 contested hearing between May 1 through 16, May, 2013, was believed to have been recorded by
6 the Department. Also, there was a transcript prepared by M&M Court Reporters, Boise, Idaho.
7 All other proceedings, including monthly status conferences, were recorded by the Department.

8 7. Petitioner has requested an estimate for preparation of the transcript and record,
9 and Petitioner has tendered an estimated fee for same.

10 8. The Petitioner's substantial rights have been prejudiced by the Department's Orders
11 including, but not necessarily limited to the diminishment of water rights, 36-02551 and 36-
12 07694, as those rights were Decreed by the Snake River Basin Water Adjudication and permitted
13 and licensed by the Department, and the failure of the Department to account for all water
14 available to it from this water call under the operation of the Department's ground water model,
15 ESPAM2.1, and the Director's Final Order and Order on Reconsideration have denied the
16 Petitioner's rights to receive its legally entitled water under water rights duly perfected under
17 Idaho law.
18

19 9. Under the standards of evaluation as set forth under Idaho Code Section 67-5279,
20 the Final Order and Order on Reconsideration:

- 21 a. are in violation of constitutional, statutory provisions or administrative rules
22 of the Department;
23 b. are in excess of the statutory authority or authority of the Department under
24 the administrative rules of the Department;
25

1 c. were made upon unlawful procedures; and

2 d. were arbitrary, capricious, and/or an abuse of the agency discretion.

3 10. The issues presented for the appeal, as identified in paragraph 9, and as more
4 specifically identified in this paragraph include, but are not necessarily limited to, the following:

5 a. Whether as a matter of fact or law that Rangen's decreed source under water
6 rights 36-02551 and 36-07694, the "Martin Curren Tunnel," encompasses the
7 entire spring complex that forms the headwaters of Billingsley Creek, as opposed
8 to just water emanating from the Martin Curren Tunnel.

9 b. Whether as a matter of fact and law that Rangen's Partial Decrees under 36-02551
10 and 36-07694 allow the diversion of the springs that form the headwaters of
11 Billingsley Creek, as opposed to just water emanating from the Martin Curren
12 Tunnel.

13 c. Whether the Department is estopped from concluding Rangen is not entitled to
14 divert from entire talus slope, as opposed to just the water emanating from the
15 Martin Curren Tunnel, based on prior decisions of Director and prior inactions
16 and conclusions of Department staff

17 d. Whether under a curtailment run made under ESPAM2.1, the conclusion that
18 Rangen is entitled to 63% of the spring flow in the Rangen Cell is supported by
19 substantial evidence in the record as a whole and, based on Rangen's Decrees, is
20 supported as a matter of law.

21 e. Whether as a matter of fact or law that the junior user parties failed to
22 demonstrate their own efficient use of water without waste.

23 f. Whether Finding 51 of the Final Order is supported by substantial evidence in the
24 record as a whole (Weir Coefficient).
25

1 g. Whether the use of a trim line is supported by agency rules, justified by on
2 substantial evidence in the record, or does the use of a trim line constitute an
3 arbitrary and capacious decision.

4 h. Whether, if a trim line is not an arbitrary or capacious decision, the citation to
5 prior trim lines as set forth in Conclusions 42 through 46 of the Final Order are
6 entirely unrelated to the operation of ESPAM2.1 in this water call.

7
8 11. Petitioner reserves the right to file a separate statement of the issues within
9 fourteen (14) days after the filing of this Petition.

10 12. Other parties to the Case included the City of Pocatello, the Idaho Ground Water
11 Appropriators, Inc. ("IGWA"), and the A&B Irrigation District, American Falls Reservoir
12 District # 2, Burley Irrigation District, Miller Irrigation District, Minidoka Irrigation District,
13 North Side Canal Company and Twin Falls Canal Company (collectively, the "Surface Water
14 Coalition" or "SWC").

15 13. Service of this Petition has been made on the Department, and notice of this filing
16 has been made on parties to the contested case in CM-DC-2011-004.

17 **DEMAND FOR ATTORNEY FEES AND COSTS**

18 As a result of the Department's actions, Petitioner has had to retain counsel. For services
19 rendered, the Petitioner is entitled to attorney fees and costs should they prevail in this action
20 pursuant to Idaho Code Section 12-117 and pursuant to Rule 54 of the Idaho Rules of Civil
21 Procedure.
22

23 **RIGHT TO AMEND**

24 The Petitioner reserve the right to amend this Petition in any respect as motion practice
25 and discovery proceed in this matter.

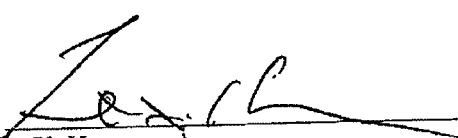
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WHEREFORE, the Petitioner prays for the following relief:

- A. A finding that the Final Order and Order on Motion for Reconsideration was:
- a. is in violation of constitutional, statutory provisions or current administrative rules of the Department;
 - b. is in excess of the statutory authority or administrative rules of the Department;
 - c. were made upon unlawful procedures; and
 - d. were arbitrary, capricious, and/or an abuse of the agency discretion.
- B. That the Court set aside the Orders, in whole or part, and/or remand the Orders back for further proceedings;
- C. For an award of reasonable costs and attorneys' fees pursuant to applicable law, including but not limited to Idaho Code Section 12-117, and Idaho Rule of Civil Procedure 54; and
- D. For such other and further relief as the Court deems just and equitable.

RESPECTFULLY SUBMITTED this 25 day of March, 2014.

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

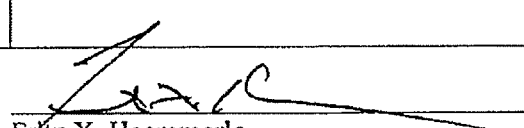
By: 
Fritz X. Haemmerle

CERTIFICATE OF SERVICE

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

Original: 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 ☒
Garrick Baxter Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov chris.bromley@idwr.idaho.gov kimi.white@idwr.idaho.gov	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☒
Randall C. Budge TJ Budge RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED 201 E. Center Street P.O. Box 1391 Pocatello, ID 83204 reb@racinelaw.net tjb@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 ☒

1	John K. Simpson	Hand Delivery	☐
2	Travis L. Thompson	U.S. Mail	☒
3	Paul L. Arrington	Facsimile	☐
4	Barker Rosholt & Simpson, L.L.P.	Federal Express	☐
5	195 River Vista Place, Suite 204	E-Mail	☒
6	Twin Falls, ID 83301-3029		
	Facsimile: (208) 735-2444		
	tlr@idahowaters.com		
	jks@idahowaters.com		
7	C. Thomas Arkoosh	Hand Delivery	☐
8	ARKOOSH LAW OFFICES	U.S. Mail	☒
9	802 West Bannock, Suite 900	Facsimile	☐
	Boise, ID 83701	Federal Express	☐
	<u>Tom.arkoosh@arkoosh.com</u>	E-Mail	☒
10	W. Kent Fletcher	Hand Delivery	☐
11	Fletcher Law Office	U.S. Mail	☒
12	P.O. Box 248	Facsimile	☐
	Burley, ID 83318	Federal Express	☐
	wkf@pmt.org	E-Mail	☒
13	Jerry R. Rigby	Hand Delivery	☐
14	Hyrum Erickson	U.S. Mail	☒
15	Robert H. Wood	Facsimile	☐
16	Rigby, Andrus & Rigby, Chartered	Federal Express	☐
17	25 North Second East	E-Mail	☒
18	Rexburg, ID 83440		
	jrigby@rex-law.com		
	herickson@rex-law.com		
	rwood@rex-law.com		


Fritz X. Haemmerle

AFFIDAVIT OF MICHAEL C. ORR
In Re SRBA Case No. 39576, Subcase Nos. 36-02551 and 36-7694
(Mar. 6th, 2015)

EXHIBIT 3:

Pages 1-15,
Final Unified Decree,
In Re SRBA Case No. 39576
(Idaho 5th Jud. Dist., Twin Falls County Dist. Ct.)
(Aug. 26, 2014)

ORIGINAL

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief Natural Resources Division
Office of the Attorney General
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment & Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho	
AUG 26 2014	
By _____	Clerk
_____	Deputy Clerk

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

In Re SRBA	)	
	)	
	)	FINAL UNIFIED DECREE
Case No. 39576	)	
	)	
_____	)	

I. PROCEDURE

On June 17, 1987, the State of Idaho, ex rel. A. Kenneth Dunn in his official capacity as Director of the Idaho Department of Water Resources, filed a petition in the above-entitled Court seeking commencement of a "general adjudication inter se of all rights arising under state or federal law to the use of surface and ground waters from the Snake River basin water system and for the administration of such rights." *Petition* at 2. On November 19, 1987, this Court issued its *Commencement Order* thereby initiating the above-entitled general stream adjudication of all rights to the use of the waters of the Snake River Basin within the State of

Idaho pursuant to Idaho Code § 42-1406A (Supp. 1987).¹ The *Commencement Order* adopted by reference this Court's October 14, 1987, *Memorandum Opinion on Commencement of Adjudication* as "further findings of fact and further conclusions of law as permitted by I.R.C.P. 52(a)." *Commencement Order* at 4.

As set forth in the *Memorandum Opinion on Commencement of Adjudication*, Idaho Code § 42-1406A (Supp. 1987) required that the adjudication be commenced within the terms of the McCarran Amendment, 43 U.S.C. § 666. This Court determined that for the adjudication to come within the terms of the McCarran Amendment the entire Snake River Basin water system within the State of Idaho had to be adjudicated. This Court defined the entire Snake River Basin water system within Idaho as follows:

Beginning at the point where the southern boundary line of the state of Idaho meets the western boundary line of the state of Idaho, then following the western boundary of the state north to the northern boundary of the Clearwater Basin, in Idaho, in section 36, T. 36 N., R. 6 W., B.M., then following the northern watershed divide of the Clearwater River Basin north and east to the eastern boundary of the state of Idaho in section 4, T. 42 N., R. 11 E., B.M., then following the eastern boundary of the state southeast to the northern boundary of the Bear River Basin in section 35, T. 10 S., R. 46 E., B.M., then following the northern watershed divide of the Bear River Basin, in Idaho, southwest to the southern boundary of the state of Idaho in section 26, T. 16 S., R. 28 E., B.M., then following the southern boundary line of the state of Idaho west to the point of beginning.

Commencement Order at 5. A map showing the boundaries of the Snake River Basin water system is attached for illustrative purposes as Attachment 1, as required by Idaho Code § 42-1413 (2003). The following counties are wholly located within the boundaries of the Snake River Basin water system:

Ada	Canyon	Idaho	Owyhee
Adams	Clark	Jefferson	Payette

¹ Idaho Code § 42-1406A was added by section 1 of chapter 18, 1985 Idaho Sess. L. at 28. Section 42-1406A was subsequently amended by section 11 of chapter 454, 1994 Idaho Sess. L. at 1452-53, and now appears as an uncodified law in the 1994 Idaho Session Laws.

Bingham	Clearwater	Jerome	Teton
Blaine	Custer	Lemhi	Twin Falls
Boise	Elmore	Lewis	Valley
Bonneville	Fremont	Lincoln	Washington
Butte	Gem	Madison	
Camas	Gooding	Minidoka	

Commencement Order at 5. The following counties are partly located within the boundaries of the Snake River Basin water system:

Bannock	Nez Perce
Caribou	Oneida
Cassia	Power
Latah	Shoshone

Id. at 6.

The *Commencement Order* also determined that “all classes of water uses . . . within the water system [must] be adjudicated as part of the Snake River Basin adjudication.” *Id.* At 6. On January 17, 1989, however, this Court entered its *Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses* that allowed claimants of *de minimis* domestic and stock water rights, as defined in Idaho Code § 42-1401A(5) and (12) (Supp. 1988), to elect to defer adjudication of their claims; provided, all such claimants “shall be joined as parties in this proceeding and will be bound by all decrees entered in this case, including the final decree.” *Findings of Fact* at 3.

The *Commencement Order* directed the Director of the Idaho Department of Water Resources (“Director”): 1) to investigate the water system as provided in Idaho Code § 42-1410 (Supp. 1987); 2) to prepare the notice of order commencing a general adjudication containing that information required by Idaho Code § 42-1408A(1) (Supp. 1987); 3) to serve notice of the order commencing a general adjudication in accordance with chapter 14, title 42, Idaho Code; and 4) to file with this Court affidavits and other documents stating the

persons served with a notice of order commencing the adjudication. *Commencement Order* at 7-8.

Based upon the claims submitted; the files and records of the Idaho Department of Water Resources and the Court; the examination of the ditches, diversions, lands irrigated, and other uses of water within the water system; the Director's Reports and evidence herein, this Court enters the following findings of fact and conclusions of law:

II. FINDINGS OF FACT

1. All requirements for joinder of the United States as a party under state and federal law, including but not limited to 43 U.S.C. § 666, have been satisfied.
2. The Nez Perce Tribe participated in this proceeding by filing notices of claim for water rights reserved under federal law and by filing a general notice of appearance with the Court. *Notice of Claim to a Water Right Reserved Under Federal Law* (filed with Dept. of Water Res. March 25, 1993); *Notice of Appearance* (March 18, 1993).
3. The Northwestern Band of the Shoshoni Nation participated in this proceeding by filing notices of claim for water rights reserved under federal law and by filing a general notice of appearance with the Court. *Partial Protective Filing by the Northwestern Band of the Shoshoni Nation of Notices of Claim for Water Rights Reserved Under Federal Law* (filed with Dept. of Water Res. March 25, 1993); *Notice of Appearance on Behalf of the Northwestern Band of the Shoshoni Nation* (March 22, 1993).
4. The Shoshone-Bannock Tribes sought and were granted intervention in this proceeding. *Order Granting Permissive Intervention by the Shoshone-Bannock Tribes* (April 12, 1993).

5. The Shoshone-Paiute Tribes of the Duck Valley Indian Reservation sought and were granted intervention in this proceeding. *Motion to Intervene and Request for Expedited Hearing* (SRBA Consolidated Subcase No. 51-12756, Jan. 12, 1999); *Order Granting Tribes' Motion to Intervene, Order Requiring Written Status Reports and Order for Scheduling Conference Reports* (SRBA Subcases Nos. 51-12756 et al., Dec. 6, 1999).

6. The Director served notice of the commencement of the Snake River Basin Adjudication ("SRBA") in accordance with chapter 14, title 42, Idaho Code and the orders of this Court. This included service of the notice of commencement on the State of Idaho and the United States; service of the notice of commencement on all other persons by publication; service of the notice of commencement by posting in each county courthouse, county recorder's office and county assessor's office in which any part of the water system is located; service of the notice of commencement by mail on each person listed as owning real property on the real property assessment roll within the boundaries of the Snake River Basin water system; and filing of a copy of the notice of commencement in the office of the county recorder in each county in which any part of the water system is located.

7. In addition to the steps taken in paragraph 6, the Idaho Department of Water Resources also served notices of commencement on persons who may have used water within the water system, but were not listed as owners of real property. The sources of information the Idaho Department of Water Resources reviewed for this purpose were: 1) water right records of the Idaho Department of Water Resources for each basin wholly or partly within the water system; 2) cooperating farm/ranch operator records of the United States Department of Agriculture, Agricultural Stabilization and Conservation Service for each basin wholly or partly within the water system; and 3) mining claim records on federal

land of the United States Department of Interior, Bureau of Land Management for each basin wholly or partly within the water system.

8. The Director has completed an examination of the Snake River Basin water system and submitted Director's Reports to this Court in conformance with the requirements of chapter 14, title 42, Idaho Code and the orders of this Court.

9. As required by title 42, chapter 14, Idaho Code and this Court's orders, claims to water rights arising under state or federal law to the use of the surface and ground waters from the Snake River Basin water system have been adjudicated resulting in the issuance of partial decrees that have been certified as final pursuant to I.R.C.P. 54(b).²

10. Idaho Code § 42-1412(8) (2003) provides that: "Upon resolution of all objections to water rights acquired under state law, to water rights established under federal law, and to general provisions, and after entry of partial decree(s), the district court shall combine all partial decrees and the general provisions into a final decree." The Court finds that the conditions of Idaho Code § 42-1412(8) (2003) have been met with respect to the water rights identified in Attachments 2, 4, 5 and 6 and the general provisions in Attachment 3, enabling the Court to issue this Final Unified Decree.

III. CONCLUSIONS OF LAW

1. The SRBA is a general stream adjudication *inter se* of all water rights arising under state or federal law to the use of surface and ground waters from the Snake River Basin water system and for the administration of such rights.

2. The State of Idaho is a party to this proceeding.

² At the time of entry of this Final Unified Decree there are a total of 103 subcases pending final resolution. A separate *Order Regarding Subcases Pending Upon Entry of Final Unified Decree* is being entered contemporaneously herewith, which provides for the continued processing of the subcases listed therein.

3. The Director was withdrawn as a party to this proceeding in 1994. Idaho Code § 42-1401B (2003); *State of Idaho, ex rel. Higginson v. United States*, 128 Idaho 246, 256-57, 912 P.2d 614, 624-25 (1995).

4. The United States is a party to this proceeding under 43 U.S.C. § 666.

5. This Final Unified Decree is conclusive as to the nature and extent of all rights of the United States to the use of the waters of the Snake River Basin water system within the State of Idaho with a priority date before November 19, 1987, including, but not limited to, water rights held by the United States in trust for any Indian tribe, except for those water rights expressly exempted by Idaho Code § 42-1420 (2003) or by order of this Court.

6. The Nez Perce Tribe, the Northwestern Band of the Shoshoni Nation, the Shoshone-Bannock Tribes, and the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation are parties to this proceeding.

7. The *Consent Decree Approving Entry of Partial Final Decrees Determining the Rights of the United States as Trustee for the Benefit of the Nez Perce Tribe and the Nez Perce Tribe to the Use of Water in the Snake River Basin within Idaho and Partial Final Decrees Determining Minimum Stream Flow Water Rights Held by the Idaho Water Resources Board* with its six attachments dated January 30, 2007 ("*Nez Perce Consent Decree*"), is included in Attachment 4 and is hereby incorporated into this Final Unified Decree by reference. The *Nez Perce Consent Decree* is conclusive as to the nature and extent of all rights of the Nez Perce Tribe to the use of the waters of the Snake River Basin water system within the State of Idaho with a priority date before November 19, 1987, except for those water rights expressly exempted by Idaho Code § 42-1420 (2003) or by order of this Court.

8. The *Revised Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin*, dated August 13, 2014 ("*Shoshone-Bannock Consent Decree*"), is included in Attachment 4 and is hereby incorporated into this Final Unified Decree by reference. The *Shoshone-Bannock Consent Decree* is conclusive as to the nature and extent of all rights of the Shoshone-Bannock Tribes to the use of the waters of the Snake River Basin water system within the State of Idaho with a priority date before November 19, 1987, except for those water rights expressly exempted by Idaho Code § 42-1420 (2003) or by order of this Court.

9. The *Revised Consent Decree Approving Entry of Partial Decrees Determining the Rights of the United States as Trustee for the benefit of the Shoshone-Paiute Tribes to the Use of Water in the Snake River Basin within Idaho* with its three attachments, dated December 12, 2006 ("*Shoshone-Paiute Consent Decree*"), is included in Attachment 4 and is hereby incorporated into this Final Unified Decree by reference. The *Shoshone-Paiute Consent Decree* is conclusive as to the nature and extent of all rights of the Shoshone-Paiute Tribes of the Duck Valley Indian Reservation to the use of the waters of the Snake River Basin water system within the State of Idaho with a priority date before November 19, 1987, except for those water rights expressly exempted by Idaho Code § 42-1420 (2003) or by order of this Court.

10. This Final Unified Decree is conclusive as to the nature and extent of all rights of the Northwestern Band of the Shoshoni Nation to the use of the waters of the Snake River Basin water system within the State of Idaho with a priority date before November 19, 1987, except for those water rights expressly exempted by Idaho Code § 42-1420 (2003) or by order of this Court.

11. Claimants in each of the SRBA basins received notice of the commencement of the SRBA in accordance with chapter 14, title 42, Idaho Code and orders of this Court. These notice procedures satisfy constitutional due process requirements. *LU Ranching Co. v. U.S.*, 138 Idaho 606 (2003).

IV. ORDER

NOW THEREFORE this Court ORDERS, ADJUDGES AND DECREES as follows:

1. This Final Unified Decree is conclusive as to the nature and extent of all water rights within the Snake River Basin within the State of Idaho with a priority date prior to November 19, 1987, except the following described water rights shall not be lost by failure to file a notice of claim, as provided in Idaho Code § 42-1420 (2003):
 - a. Any domestic and stock water right, as defined in Idaho Code § 42-111 (1990), Idaho Code § 42-1401A(5) (1990), and Idaho Code § 42-1401A(12) (1990), the adjudication of which was deferred in accordance with this Court's June 28, 2012, *Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims*;
 - b. A water right application for permit filed under chapters 2 or 15, title 42, Idaho Code;
 - c. A water right permit issued under chapters 2 or 15, title 42, Idaho Code, unless the Director required the permit holder to file a notice of claim in accordance with subsection (7) of section 42-1409, Idaho Code;
 - d. A water right license issued under chapters 2 or 15, title 42, Idaho Code, if proof of beneficial use was not filed with the Department of Water Resources

before November 19, 1987, unless the Director required the license holder to file a notice of claim in accordance with subsection (7) of section 42-1409, Idaho Code; and

- e. A claim to a water right under federal law, if the priority of the right claimed is later than November 18, 1987.

All other water rights with a priority before November 19, 1987, not expressly set forth in this Final Unified Decree are hereby decreed as disallowed.³ Any water rights with a priority date subsequent to November 18, 1987, were not required to be claimed in the SRBA, but to the extent any such water rights were claimed in the SRBA and a partial decree issued, the partial decree is conclusive as to the nature and extent of the right.

2. All partial decrees issued by this Court are set forth in Attachments 2 and 4 to this Final Unified Decree and are incorporated herein by reference.

3. Attachment 2 consists of a name index and a copy of all partial decrees issued by this Court.

4. General provisions decreed by this Court are set forth in Attachment 3 to this Final Unified Decree and are incorporated herein by reference.

5. Attachment 4 consists of the federal and tribal reserved water rights partially decreed and/or otherwise memorialized in a consent decree issued in conjunction with the approval of a federal reserved water right settlement, including all consent decrees and all attachments thereto; all partial decrees issued by this Court as part of the respective settlements; and all Federal, State and/or Tribal legislation necessary to enact and approve the water right settlements. In the case of any conflict between this Final Unified Decree and the partial

³ Excepting those claim numbers listed in the *Order Regarding Subcases Pending Upon Entry of Final Unified Decree* entered contemporaneously herewith.

consent decrees approving reserved water right settlements, the partial consent decrees approving the reserved water right settlements as set forth in Attachment 4 shall control.

6. All claims to water rights filed in this proceeding that were decreed disallowed by this Court are set forth in Attachment 5 to this Final Unified Decree and are incorporated herein by reference.

7. The water right numbers for those water rights of record with the Idaho Department of Water Resources that were required to be claimed but were not claimed in this proceeding and therefore were decreed disallowed by this Court are set forth in Attachment 6 and are incorporated herein by reference. The portion of any disallowed water right that was deferrable pursuant to this Court's June 28, 2012, *Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims* is not affected by this paragraph.

8. This Final Unified Decree is binding against all persons including any persons that deferred filing of domestic and/or stock water claims pursuant to this Court's June 28, 2012, *Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims*, which is set forth in Attachment 7 to this Final Unified Decree and is incorporated herein by reference.

9. The adjudication of deferred domestic and stock water claims and the administration of such rights prior to their adjudication shall be governed by this Court's June 28, 2012, *Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims* and applicable state law.

10. All water rights based on beneficial uses, licenses, permits, posted notices, and statutory claims required to be claimed in this proceeding are superseded by this Final

Unified Decree. Provided, however, this Final Unified Decree does not supercede the third-party beneficiary contractual rights conferred on certain classes of water rights pursuant to the "Contract to Implement Chapter 259, Sess. Law 1983" as authorized by 1983 Idaho Sess. Laws 689 and codified as Idaho Code § 61-540 (2002). The scope of third-party beneficiaries and contract rights are defined in this Court's *Order on State of Idaho's Motion for Partial Summary Judgment on Issue No. 2*. Subcase No. 00-91013 (Basin-Wide Issue 13) (July 12, 2011) included as Attachment 9.

11. All prior water right decrees and general provisions within the Snake River Basin water system are superseded by this Final Unified Decree except as expressly provided otherwise by partial decree or general provisions of this Court.

12. This Final Unified Decree shall not be construed to define, limit or otherwise affect the apportionment of benefits to lands within an irrigation district pursuant to chapter 7, title 43, Idaho Code.

13. This Final Unified Decree shall not be construed to supersede or affect otherwise the following: 1) any administrative changes to the elements of a water right completed after the entry of a partial decree but prior to the entry of this Final Unified Decree; or 2) elements of a water right defined by a license where, in accordance with Idaho Code § 42-1421(3) (2003), a partial decree was issued based on a permit prior to the issuance of the license.

14. The time period for determining forfeiture of a partial decree based upon state law shall be measured from the date of issuance of the partial decree by this Court and not from the date of this Final Unified Decree. State law regarding forfeiture does not apply to partial decrees based upon federal law.

15. The decreed water rights shall be administered in the Snake River Basin water system in accordance with this Final Unified Decree and applicable federal, state and tribal law, including the administrative provisions set forth in the federal reserved water right settlement agreements in Attachment 4.

16. Nothing in this Final Unified Decree shall be interpreted or construed as exempting the holder of a decreed water right based on state law from exercising or changing such right in compliance with applicable Idaho law.

17. This Court retains jurisdiction of this proceeding to: a) resolve any issues related to the Final Unified Decree that are not reviewable under the Idaho Administrative Procedures Act and/or the rules of the Idaho Department of Water Resources; b) adjudicate any domestic or stock water rights deferred under this Court's June 28, 2012, *Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims*; and c) enter partial decrees, orders of disallowance, or other final determination for the pending subcases listed in the *Order Regarding Subcases Pending Upon Entry of Final Unified Decree* entered contemporaneously herewith. Any order amending or modifying this Final Unified Decree, including the attachments hereto, will be entered on the register of action for Civil Case No. 39576 in the District Court of the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls, and will be filed with the Idaho Department of Water Resources in lieu of issuing an Amended Final Unified Decree. Attachment 8 contains instructions on how to access any orders amending this Final Unified Decree.

18. The incorporation by reference of partial decrees and orders of this Court contained in the Attachments to this Final Unified Decree does not constitute a reissuance of such partial decrees and orders.

19. This Final Unified Decree, including the entirety of Attachments 1 through 10 listed below, shall be entered in the records of the clerk of the District Court for the Fifth Judicial District of the State of Idaho, in and for the County of Twin Falls.

Attachment 1	Snake River Basin Water System Map.
Attachment 2	Partially Decreed Water Rights, including a name index, consisting of 770 pages.
Attachment 3	General Provisions, consisting of 113 pages.
Attachment 4	Federal and Tribal Reserved Water Right Settlements, including all Consent Decrees and all Attachments thereto, all Partial Decrees issued by this Court as part of the Respective Settlements, and all Federal, State and/or Tribal Legislation Necessary to Enact and Approve the Water Right Settlements consisting of 2,857 pages.
Attachment 5	List of Water Right Numbers for Filed Water Right Claims Decreed as Disallowed consisting of 66 pages.
Attachment 6	List of Water Right Numbers for Unclaimed Water Rights Decreed as Disallowed consisting of 24 pages.
Attachment 7	June 28, 2012, <i>Order Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims</i> consisting of 6 pages.
Attachment 8	Instructions on Searching the Final Unified Decree consisting of 5 pages.
Attachment 9	<i>Order on State of Idaho's Motion for Partial Summary Judgment on Issue No. 2.</i> Subcase No. 00-91013 (Basin-Wide Issue 13) (July 12, 2011).
Attachment 10	<i>Register of Actions</i> , Twin Falls County Case No. 39576 (i.e., SRBA Main Case).

20. A certified paper and electronic copy of the entire Final Unified Decree shall be provided to the Director. The Director shall record the Final Unified Decree excluding all

Attachments other than Attachments 7 and 8 in the office of the county recorder of each county in which the place of use or point of diversion of any individual decreed water right in the Final Unified Decree is located. The Director shall maintain a copy of the Final Unified Decree for public inspection.

DATED this 25th day of August, 2014.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

AFFIDAVIT OF MICHAEL C. ORR
In Re SRBA Case No. 39576, Subcase Nos. 36-02551 and 36-7694
(Mar. 6th, 2015)

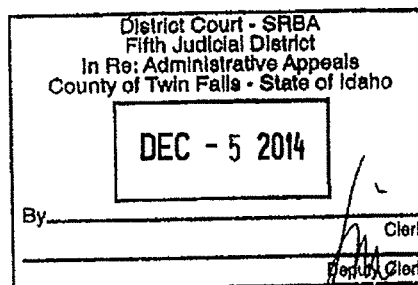
EXHIBIT 4:

Notice Of Appeal,
Rangen, Inc. v. IDWR
(In The Matter Of Distribution Of Water To
Water Right Nos. 36-2551 & 36-7694 (Rangen, Inc.),
IDWR Docket CM-DC-2011-004)
Case No. CV-2014-1338
(Consolidated Gooding County Case No. CV-2014-179)
(Idaho 5th Jud. Dist., Twin Falls County Dist. Ct.)
(Dec. 5, 2014)

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Attorneys for Rangen, Inc.

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

RANGEN, INC.,

Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER
RESOURCES and GARY SPACKMAN, in
his capacity as Director of the Idaho
Department of Water Resources,

Respondents.

IDAHO GROUND WATER
APPROPRIATORS, INC.; FREMONT
MADISON IRRIGATION DISTRICT;
A&B IRRIGATION DISTRICT, BURLEY
IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, NORTH SIDE
CANAL COMPANY, TWIN FALLS
CANAL COMPANY; AMERICAN FALLS

Case No. CV-2014-1338

(Consolidated Gooding County Case No.
CV-2014-179)

NOTICE OF APPEAL

Fee: L(4) - \$129.00

**RESERVOIR DISTRICT #2, MINIDOKA
IRRIGATION DISTRICT; AND THE
CITY OF POCATELLO,**

Intervenors.

**IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS. 36-
02551 & 36-07694 (RANGEN, INC.), IDWR
DOCKET CM-DC-2011-004**

TO: THE ABOVE-NAMED RESPONDENT, THE IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN, AND ITS ATTORNEY, GARRICK BAXTER, DEPUTY ATTORNEY GENERAL, IDAHO ATTORNEY GENERAL'S OFFICES, 322 E. FRONT STREET, BOISE, ID 83702-7374;

AND INTERVENORS: IDAHO GROUND WATER APPROPRIATORS, INC., RANDALL C. BUDGE, RACINE, OLSON, NYE & BAILEY; FREMONT MADISON IRRIGATION DISTRICT, JERRY RIGBY, RIGBY, ANDRUS & RIGBY LAW, PLLC, P.O. BOX 250, REXBURG, ID 83440-0250; A&B IRRIGATION DISTRICT, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY, TWIN FALLS CANAL COMPANY; JOHN SIMPSON AND TRAVIS THOMPSON, 195 RIVER VISTA PL., STE. 204, TWIN FALLS, ID., 83301-3029, BARKER ROSHOLT & SIMPSON, P.O. BOX 2139, BOISE, ID 83701-2139; AMERICAN FALLS RESERVOIR DISTRICT #2, MINIDOKA IRRIGATION DISTRICT, W. KENT FLETCHER, P.O. BOX 248, BURLEY, ID 83318-0248; CITY OF POCATELLO, A. DEAN TRANMER, P.O. BOX 4169, POCATELLO, ID 83205, AND SARAH A. KLAHN, WHITE & JANKOWSKI, LLP, 511 SIXTEENTH STREET, SUITE 500, DENVER, CO 80202.

AND THE CLERK OF THE ABOVE-ENTITLED COURT

1. The above-named Appellant, RANGEN, INC., appeals the Court's Decision on October 24, 2014, and the resulting Judgment dated October 24, 2014, entered in accordance with the Court's Decision, Honorable Eric J. Wildman, District Judge for the Fifth Judicial District, in and for the County of Twin Falls, presiding.

2. That the party has a right to appeal to the Supreme Court, and the judgment

described in paragraph 1 is appealable pursuant to I.A.R. 11(a)(2).

3. Issues on Appeal: Whether the trial court erred in denying Plaintiff/Appellant's Petition for Judicial Review, which ruling raises the following issues:

- a. Whether the rulings are in violation of constitutional, statutory provisions or administrative rules of the Department;
- b. Whether the rulings are in excess of the statutory authority or authority of the Department under the administrative rules of the Department;
- c. Whether the rulings were made upon unlawful procedures;
- d. Whether the rulings were arbitrary, capricious, and/or an abuse of the agency discretion.
- e. Whether as a matter of fact or law Rangen's decreed source under water rights 36-02551 and 36-07694 , the "Martin Curren Tunnel," encompasses the entire spring complex that forms the headwaters of Billingsley Creek, as opposed to just water emanating from the Martin Curren Tunnel;
- f. Whether as a matter of fact or law Rangen's Partial Decrees under 36-02551 and 36-07694 allow the diversion of the springs that form the headwaters of Billingsley Creek, as opposed to just water emanating from the Martin Curren Tunnel;
- g. Whether the Department is estopped from concluding Rangen is not entitled to divert from the entire spring complex that forms the headwaters of Billingsley Creek , as opposed to just the water emanating from the Martin Curren Tunnel, based on prior decisions by the Director of the Idaho Department of Water Resources and prior inactions and conclusions of the Department;

- h. Whether under a curtailment run made under ESPAM2.1, the conclusion that Rangen is entitled to 63% of the spring flow in the Rangen Cell is supported by substantial evidence in the record as a whole and, based on Rangen's Decrees, is supported as a matter of law;
 - i. Whether as a matter of fact or law the junior user parties failed to demonstrate their own efficient use of water without waste;
 - j. Whether the decision regarding the weir coefficient is supported by substantial evidence in the record as a whole; and
 - k. Whether Rangen Inc. is entitled to attorney's fees and costs.
4. No order has been issued sealing all or any portion of the record.
5. a. Is a reporter's transcript requested? Yes.
- b. The Appellant requests the preparation of the following portions of the reporter's transcript: The oral argument from the hearing on the Petition for Judicial Review, dated August 28, 2014.
- c. The Appellant requests preparation of the transcript in a compressed format.
6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R., including the entire administrative record and transcripts from the administrative proceedings, filed by the Idaho Department of Water Resources (IDWR or Department) in its Notice of Lodging the Consolidated Agency Record and Transcript with the District Court in Docket No. 2011-004, consolidated Gooding County Case No. CV-2014-179:
7. I certify:
- (a) That a copy of this notice of appeal has been served on the reporter;

(b) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript, to-wit: \$300.00;

(c) That the estimated fee for preparation of the clerk's or agency's record has been paid, to-wit: \$200.00;

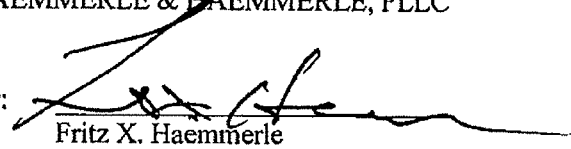
(d) That the appellate filing fee has been paid; and

(e) That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 5th day of December, 2014.

HAEMMERLE & HAEMMERLE, PLLC

By:

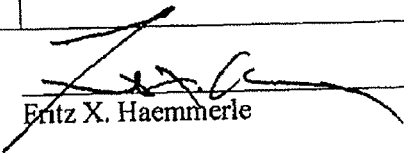

Fritz X. Haemmerle

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 5th day of December, 2014 he caused a true and correct copy of the foregoing document to be served by the method indicated upon the following:

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 ☒
Garrick Baxter Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov kimi.white@idwr.idaho.gov emmi.blades@idwr.idaho.gov	Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Federal Express ☐ E-Mail ☒
Randall C. Budge TJ Budge RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED PO Box 1391 Pocatello, ID 83204-1391 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 ☒

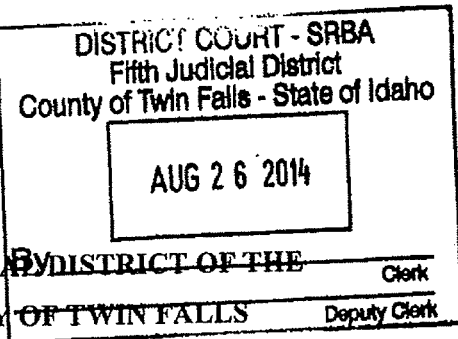
John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson, L.L.P. 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 tlr@idahowaters.com jks@idahowaters.com	Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Federal Express ☐ E-Mail ☒
W. Kent Fletcher Fletcher 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 ☒
William A. Parsons Parsons, Smith, Stone, Loveland & Shirley, LLP PO Box 910 Burley, ID 83318 wparsons@pmt.org	Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Federal Express ☐ E-Mail ☒
Informational copy only Sabrina Vasquez Court Reporter P.O. Box 2707 Twin Falls, ID 83303-2707	Hand Delivery ☒ U.S. Mail ☒ Facsimile ☐ Federal Express ☐ E-Mail ☐


Fritz X. Haemmerle

AFFIDAVIT OF MICHAEL C. ORR
In Re SRBA Case No. 39576, Subcase Nos. 36-02551 and 36-7694
(Mar. 6th, 2015)

EXHIBIT 5:

Order Regarding Subcases Pending
Upon Entry Of Final Unified Decree,
In Re SRBA Case No. 39576, Subcase Nos. 01-00219 et. al.
(Idaho 5th Jud. Dist., Twin Falls County Dist. Ct.)
(Aug. 26, 2014)



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

In Re SRBA) Subcase Nos. 01-00219 et al., (see
Case No. 39576) attached list)
)
) ORDER REGARDING SUBCASES
) PENDING UPON ENTRY OF FINAL
) UNIFIED DECREE

This *Order Regarding Subcases Pending Upon Entry of Final Unified Decree* is being entered for the purpose providing direction as to the continued processing of the presently pending subcases listed on the attachment to this *Order*. With respect to those subcases the following are HEREBY ORDERED:

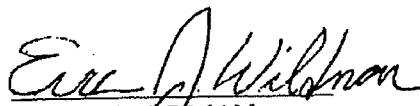
(1) This Court retains jurisdiction over those subcases until such time as a final determination is made and the time for appeal has run, and thereafter retains jurisdiction pursuant to the Final Unified Decree, Section IV, paragraph 17.

(2) After entry of final orders, decrees, or other final determination in the pending subcases listed on the attachment hereto the SRBA Court will, if necessary, issue an order amending the Final Unified Decree for the purpose of incorporating such final orders, decrees, or other final determination into the Final Unified Decree. Any such order amending the Final Unified Decree will be made pursuant to the directives set forth in Section IV, paragraph 17, therein.

(3) The Clerk of the Court is instructed to docket this *Order* in each subcase listed on the attachment hereto.

IT IS SO ORDERED;

Dated Aug 25, 2014


ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication

PENDINGSUBCASES

01-219	24-10711	55-13897
01-2064	24-10712	55-13898
01-2068	24-10727	55-13899
01-4055	24-10787	55-13900
01-10042	24-10790	55-13901
01-10043	24-10791	55-13902
01-10044	24-10792	55-13903
01-10045	24-10793	
01-10614	24-10794	63-301A
01-10615	24-10795	63-301B
01-10616	24-10796	63-301C
01-10617	24-10797	63-302A
01-10618	24-10798	63-302B
01-10620		63-302C
01-10621	25-7004	63-373A
01-10622	25-14413	63-373B
01-10623		63-373C
01-10630	31-11228	63-33707
	31-12314	63-33732
21-94C		63-33733
21-96C	37-22806	63-33734
21-97D		63-33737
21-2038	47-17578	63-33738
21-2062	47-17579	
21-2156		65-23531
21-4155	51-13089	65-23532
21-10560	51-13090	
21-13161	51-13091	74-1615
21-13193	51-13092	74-2351
	51-13093	74-15911
22-14112	51-13094	
22-14115	51-13095	75-10117
	51-13096	
24-10668	51-13097	

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I certify that a true and correct copy of the ORDER REGARDING SUBCASES PENDING UPON ENTRY OF FINAL UNIFIED DECREE was mailed on August 27, 2014, with sufficient first-class postage to the following:

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Page 2
8/27/14

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Page 4
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Page 5
8/27/14

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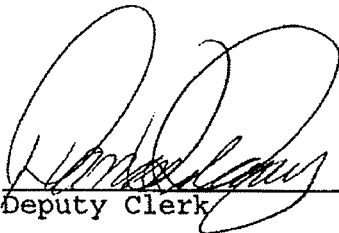
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Page 6 8/27/14

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Deputy Clerk

AFFIDAVIT OF MICHAEL C. ORR
In Re SRBA Case No. 39576, Subcase Nos. 36-02551 and 36-7694
(Mar. 6th, 2015)

EXHIBIT 6:

Rangen, Inc. 's Supplemental Post-Hearing Brief
In Support Of Motion To File Late Claim,
In Re SRBA Case No. 39576, Subcase No. 36-16977
(Idaho 5th Jud. Dist., Twin Falls County Dist. Ct.)
(Aug. 26, 2013)

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LODGED

DISTRICT COURT - SRBA Fifth Judicial District County of Twin Falls - State of Idaho
AUG 26 2013
By _____ Clerk
_____ Deputy Clerk

IN THE 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. 36-16977

**RANGEN, INC.'S SUPPLEMENTAL
POST-HEARING BRIEF IN
SUPPORT OF MOTION FOR LATE
CLAIM**

COMES NOW, Rangen, Inc. ("Petitioner" or "Rangen"), by and through its attorneys of record, Robyn M. Brody of Brody Law Office, P.L.L.C.; J. Justin May of May, Browning & May, P.L.L.C.; and Fritz X. Haemmerle of Haemmerle & Haemmerle, P.L.L.C., and pursuant to the Court's permission granted at the close of oral argument on August 19, 2013, hereby submits this Supplemental Post-Hearing Brief in Support of Rangen's Motion for Late Claim.

**RANGEN INC.'S SUPPLEMENTAL POST-HEARING BRIEF IN SUPPORT OF MOTION TO
FILE LATE CLAIM- 1**

I. ARGUMENT

A. The Court's Decision on A&B Irrigation District's Motion for Late Claim Does Not Apply to this Case.

On June 4, 2013, the Court issued an Order Denying Motion to File Notice of Late Claim in In Re SRBA Case No. 39576, Subcase 01-10619 filed by A&B Irrigation District and others. Shortly before the hearing on Rangen's present Motion, the Groundwater Districts submitted a surrebuttal brief citing the Court's June 4th opinion as the basis for denying Rangen's claim. The Groundwater Districts' reliance on the Court's opinion is misplaced, and the decision should not be used to deny Rangen's Motion.

In denying A&B's Motion to File Notice of Late Claim, the Court ruled that A&B failed to satisfy Rule 55(b) criteria because the claimants had not presented a meritorious defense. Specifically, the Court found that all of the water available under the prior licenses at issue was already claimed, and in the case of one of the licenses, was partially decreed in the SRBA. This may not be the situation in this case. As explained in Rangen's prior briefing and during oral argument, Rangen filed the Motion to File Notice of Late Claim to protect its actual beneficial and historical use of water based on two licenses. No one disputes that Rangen has used all of the spring water that forms the headwaters of Billingsley Creek for 50+ years to raise fish. Rangen's usage includes the spring water that flows from the mouth of the Martin Curren Tunnel itself as well as the spring water at the head of Rangen's facility. Rangen appropriated the water in accordance with Idaho law and was issued two licenses covering its usage.

On April 3, 2013, shortly after the deadline for filing a late claim, Rangen learned for the first time in its 50+ years of use that there are genuine issues of material fact as to whether its claims, and the resulting partial decrees, cover the water that Rangen was granted the right to appropriate under its licenses. Rangen learned that its claims may not have included the spring

water outside the mouth of the Martin Curren Tunnel itself. This decision flies in the face of 50+ years of use, more than a decade of IDWR scrutiny, and specific Departmental findings that Rangen's water measurements (which include all of the spring water) are representative of the flows available under its decreed rights. *Unlike the situation in A&B where all of the licensed water was claimed and decreed, if Director Spackman rules that Rangen's decrees do not cover the spring flows outside the mouth of the Martin Curren Tunnel itself, then Rangen's licensed use of water was not fully claimed in the SRBA and it should be allowed to submit an additional claim to protect its actual beneficial and historical use.*

The Groundwater Districts immediately recognized the potential existence of unclaimed water and jumped at the opportunity to file their own claim. The Groundwater Districts now threaten to condemn Rangen's property to obtain the right to access it. One of the uses proposed by the Groundwater Districts is to allow the water to be used as it has been for 50+ years and call it mitigation. The Groundwater Districts also propose to use the water for irrigation. It would be unjust to allow the Groundwater Districts to file a claim for water historically used by Rangen and deny Rangen the right to file a late claim for that water.

The Court also ruled in its June 4th decision, that A&B had not demonstrated a lack of prejudice to other parties. The Court noted that there was a settlement agreement in one of the A&B subcases that might be upset if a late claim were allowed. In this case, there is no evidence in the record of any party being prejudiced by Rangen's Motion. In fact, as pointed out during oral argument, the only party that may be prejudiced is Rangen if its Motion is denied. The Groundwater Districts did not present evidence of prejudice. The City of Pocatello did not present evidence of prejudice. IDWR did not present any evidence of prejudice.

While Rangen certainly understands the Court's concern about the time and effort that has gone into resolve claims in the SRBA, that concern alone is not sufficient justification for denying Rangen's late claim given the injustice that will be done. So long as there is water in Idaho, there is a need for the SRBA. Even when the Court is able to enter the final decree, the adjudication will not be over since there will always be disputes to resolve and claims to adjudicate. In fact, the legislature recognized when it created the SRBA that there will always be claims to adjudicate and has built a process into the system to address these issues even after a final decree is entered. See I.C. 42-1424(2) and (3) for a description of Summary Supplemental Adjudication of Rights.¹

B. The Principle of *Res Judicata* Does Not Bar Rangen's Late Claim.

1. Res Judicata Does Not Apply Because the SRBA Allows Claimants to Split Claims.

After Rangen presented its oral argument, the Court asked why Rangen's late claim did not constitute a collateral attack on the partial decrees that have been entered. The Idaho Supreme Court has explained the doctrine of *res judicata* as follows:

Res judicata denotes a thing or matter settled by judgment. The doctrine of *res judicata* precludes the relitigation of a matter previously adjudicated. Functionally the doctrine has two components – claim preclusion and issue preclusion.

Claim preclusion, or true *res judicata* treats a judgment, once rendered, as the full measure of relief to be accorded between the same parties on the same claim or cause of action. When the plaintiff obtains a judgment in his favor, his claim merges in the judgment; he may seek no further relief on that claim in a separate action. Conversely, when a judgment is rendered for a defendant, the plaintiff's claim is extinguished; the judgment then acts as a bar. Under these rules of claim preclusion, the effect of a judgment extends to the litigation of all

¹ Even without the express Adjudication Statutes, water right owners may always invoke the jurisdiction of the Courts to determine their rights. Art. 5, § 13, Idaho Constitution; Mays v. District Court of the Sixth Judicial District, Butte County, 34 Idaho 200, 200 P. 115 (1921).

issues relevant to the same claim between the same parties, whether or not raised at trial.

Aldape v. Akins, 105 Idaho 254, 257, 668 P.2d 131, 132 (citations and quotation marks omitted).

The Idaho Supreme Court also recognized in Aldape that it has been inconsistent in its application of the *res judicata* doctrine and expressly adopted the Restatement (Second) of Judgments' formulation of claim preclusion. See Adalpe, 105 Idaho at 259, 668 P.2d at 136.

While the phrases "*res judicata*" and "collateral attack" are often used by lawyers, it is less widely known that there are many exceptions to the application of the doctrine. The Restatement (Second) of Judgments sets forth those exceptions in section 26. See Adalpe, 105 Idaho at 259, 668 P.2d at 135 and Restatement (Second) of Judgments, §26. Section 26 states in relevant part:

(1) When any of the following circumstances exists, the general rule of § 24 does not apply to extinguish the claim, and part or all of the claim subsists as a possible basis for a second action by the plaintiff against the defendant:

* * *

(d) the judgment in the first action was plainly inconsistent with the fair and equitable implementation of a statutory or constitutional scheme, or it is the sense of the scheme that the plaintiff should be permitted to split his claim; or

Restatement (Second) of Judgments, § 26 (emphasis added).

Unlike traditional litigation, the SRBA does not limit a claimant to a single claim. The adjudication process envisions a system where a single claimant may make numerous claims – even on the same source of water. In fact, this Court has entered multiple partial decrees in favor of Rangen. See Exhibit 1 attached hereto for a printout showing the partial decrees entered in favor of Rangen.

The Groundwater Districts (through IGWA) and the City of Pocatello took the position during Rangen's delivery call that Rangen has two distinct sources of water – the Martin Curren

Tunnel and the other springwater that feeds the head of its facility. While Rangen disputes that assertion, if it is true then the filing of another claim to separately identify the other springwater that Rangen appropriated and licensed 50+ years ago makes sense to allow for administration of the rights and to protect Rangen's actual historical and beneficial use.² The SRBA embodies a process that permits a claimant to split claims into as many claims as needed to administer the water. As such, there is an express exception to the *res judicata* doctrine that allows Rangen to split its claim. Rangen's proposed late claim is not barred by the doctrine, and the Court should grant Rangen's Motion.

2. Res Judicata Does Not Bar Rangen's Claim Because the Partial Decrees at Issue Failed to Yield a Coherent Disposition of the Controversy.

Section 26 of the Restatement (Second) of Judgments contains another express exception to the *res judicata* doctrine which applies to this case. It states in relevant part:

(1) When any of the following circumstances exists, the general rule of § 24 does not apply to extinguish the claim, and part or all of the claim subsists as a possible basis for a second action by the plaintiff against the defendant:

(f) It is clearly and convincingly shown that the policies favoring preclusion of a second action are overcome for an extraordinary reason, such as the apparent invalidity of a continuing restraint or condition having a vital relation to personal liberty or the failure of the prior litigation to yield a coherent disposition of the controversy.

Restatement (Second) of Judgments, § 26(1)(f) (emphasis added). Under this subsection, the plaintiff is required to follow the procedure set forth in §§ 78-82 of the Restatement. Restatement (Second) of Judgments, § 26(2). Section 78 states: "Relief from a judgment must be obtained by means of a motion for that purpose in the court that rendered the judgment unless

² As explained during oral arguments, Rangen's Notice of Late Claim may have to be amended depending upon Director Spackman's final ruling concerning which spring water outside of the Martin Curren Tunnel itself Rangen is entitled to divert and put to beneficial use. The Groundwater Districts have filed a permit to appropriate 12 cfs of spring water. This may warrant staying any decision concerning Rangen's Notice of Late Claim.

relief may be obtained more fully, conveniently or appropriately by some other procedure."

Restatement (Second) of Judgments, § 78 (emphasis added).

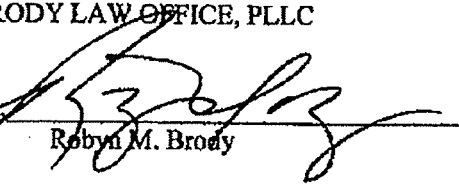
Rangen has provided clear and convincing evidence that the *res judicata* doctrine should not be applied to bar its late claim. There is no dispute that Rangen has been using all of the spring water on its property to raise fish for 50+ years. Its use of the water was licensed and no one has ever told Rangen that its usage was incorrect. In fact, the Department scrutinized Rangen's water usage in 2003 and entered findings that Rangen's measurements are representative of the flows available under its rights. If Rangen's partial decrees are interpreted as the Groundwater Districts and the City of Pocatello advocate (i.e., the springwater outside the Martin Curren Tunnel is not included in the partial decrees), then Rangen's partial decrees have failed to yield a coherent disposition of Rangen's water rights and relief should be granted in the form of permitting Rangen to file Notice of a Late Claim because it is the most convenient, full and appropriate remedy.

II. CONCLUSION

For the foregoing reasons, Rangen respectfully requests that its Motion to File Late Claim be granted.

DATED this 26th day of August, 2013.

BRODY LAW OFFICE, PLLC

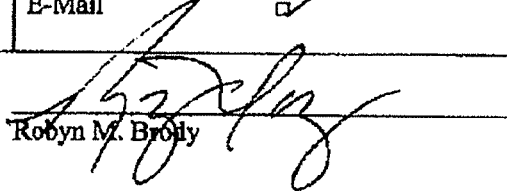
By: 

Robyn M. Brody

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 26th day of August, 2013 she 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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☒ All
☐ Search for a specific Basin, Right or Transfer number

Location of Use or Diversion
☒ All
☐ Search for a specific Location by legal description

Sources
☒ All
☐ Search for Surface Water, Ground Water or a specific Source &/or Tributary

Water Use
☒ All
☐ Search for a specific Water Use

Dates
☒ All
☐ Search for a specific Date Type & range of Dates

Water Right Types
☒ All
☐ Search for one or more specific Water Right Types

Status
☒ All
☐ Search for both Active & Inactive Records

Search Results (11)
(Click to expand or collapse)

Export Results to Excel | Clear All Items | Start Search

Click any column to sort table

13

Options	Basin	Sequence	Suffix	Application Number	Basin	Status	Priority Date	Div. Rate (cfs)	Source	Water Use	Owner	
Details More Options	Water Right	36	134	B		Decreed	Active	10/09/1884	0.09	MARTIN-CURRENT TUNNEL	DOMESTIC, IRRIGATION	RANGEN INC
Details More Options	Water Right	36	135	A		Decreed	Active	04/01/1908	0.05	MARTIN-CURRENT TUNNEL	DOMESTIC, IRRIGATION	RANGEN INC
Details More Options	Water Right	36	2551			Decreed	Active	07/13/1962	48.54	MARTIN-CURRENT TUNNEL	DOMESTIC, FISH PROPAGATION	RANGEN INC
Details More Options	Water Right	36	7594			Decreed	Active	04/12/1977	26	SPRINGS	FISH PROPAGATION	RANGEN INC
Details More Options	Water Right	36	8048			Decreed	Active	12/21/1981	0.41	GROUND WATER	IRRIGATION	RANGEN INC
Details More Options	Water Right	36	10259			Decreed	Active	08/05/1976	0.04	GROUND WATER	DOMESTIC	RANGEN INC
		36	15301			Decreed	Active	07/01/1957	1.46	SPRINGS		RANGEN INC

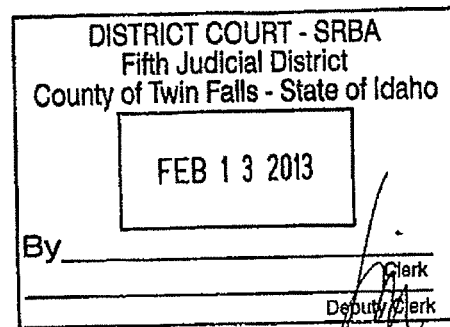
Details More Options	Water Right										FISH PROPAGATION	
Details More Options	Water Right	47	8279			License	Active	07/18/1991	0.18	GROUND WATER	COMMERCIAL	INTERMOUNTAIN FARMERS ASSN INC
Details More Options	Water Right	47	11876			Decreed	Active	03/01/1986	0.04	GROUND WATER	DOMESTIC	RANGEN INC
Details More Options	Water Right	47	19909			Decreed	Active	07/01/1929	0.04	GROUND WATER	INDUSTRIAL	RANGEN INC
12												
Export Results to Excel Clear All Items Start Search												

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AFFIDAVIT OF MICHAEL C. ORR
In Re SRBA Case No. 39576, Subcase Nos. 36-02551 and 36-7694
(Mar. 6th, 2015)

EXHIBIT 7:

Pages 1-4,
Order Closing Claims Taking Basins 01, 02, 03, 31, 34, 35, 36, 37,
41, 45, 47, and 63, And Disallowal Of Unclaimed Water Rights,
In Re SRBA Case No. 39576,
Basin-Wide Issue 16, Subcase No. 00-92099
(Idaho 5th Jud. Dist., Twin Falls County Dist. Ct.)
(Feb. 23, 2013)



IN THE 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

) Basin-Wide Issue 16
) Subcase No: 00-92099
) (In Re: Form and Content of Final Unified
) Decree)
)
) ORDER CLOSING CLAIMS TAKING
) BASINS 01, 02, 03, 31, 34, 35, 36, 37, 41,
) 45, 47, and 63, AND DISALLOWAL OF
) UNCLAIMED WATER RIGHTS
)

I.

PROCEDURAL BACKGROUND

This Court issued an *Order Setting Initial Status Conference Re: Form and Content of Final Decree* on January 13, 2011. On July 15, 2011, this Court entered its *Order Establishing Steering Committee and Notice of First Scheduled Meeting*. "The steering committee ("Committee") is charged with identifying issues and sub-issues pertaining to the form and content of the final decree to be entered upon completion of the SRBA." *Id.* at 1. The Committee is also "charged with recommending a logical order and time frame in which these issues and sub-issues should be decided." *Id.*

In the *State of Idaho's Initial Comments on Form and Content of Final Unified Decree*, filed May 17, 2011, the State of Idaho ("State") recommended the Court "establish a schedule for closing claims taking in each of the reporting basins . . . [i]n order to allow sufficient time for development of general provisions and preparation of the final decree" *Id.* at 6. On July 18, 2011, the State filed its *Supplemental Comments on Form and Content of Final Unified Decree*, in which it proposed a schedule for closure of taking of late claims in the SRBA basins. The proposed schedule divided the SRBA basins into three groups based on the following criteria: (i) the amount

ORDER CLOSING CLAIMS TAKING IN BASINS 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and
63 AND DISALLOWAL OF UNCLAIMED WATER RIGHTS

S:\ORDERS\Basin Wide Issues\Basin-Wide Issue 16\Order Closing Claims Takings and Disallowal (Group III) dr

MAIL 117470

of subcase activity within each basin, (ii) regional distribution of the closures to spread the workload out for IDWR, and (iii) SRBA basins that represented an entire drainage basin. At its initial meeting, the Committee reviewed the State's proposed basin closure procedure and recommended that this Court implement that procedure.

On October 12, 2012, the Court issued its *Order Establishing Deadline for Late Claim Filings in Basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63* ("Deadline Order"). This Court found that the Committee's proposal for closure of taking of late claims within basins based on subcase activity, staging of IDWR's workload, and drainage basins was a logical and necessary step in the completion of the SRBA, and ordered that claims takings in basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63 be closed on January 31, 2013.

II.

DISCUSSION

Completion of claims taking in individual basins is an essential first step to completion of the SRBA. Without it, completion of the SRBA will not occur.

Based on the criteria identified above, the *Deadline Order* provided that "except for *de minimis* domestic and stockwater uses and late claims required to resolve pending litigation on the date of this *Order* in the SRBA, the last date to file a MOTION TO FILE LATE CLAIM in Basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63 shall be January 31, 2013." *Deadline Order* at 4. Exhibit 1 to the *Deadline Order* included a list of *non-de minimis* water rights from IDWR's water rights database that IDWR determined were required to be claimed in the SRBA. The preparation of this list was undertaken as a courtesy to the water users, not as an additional due process requirement. The *Deadline Order* provided that "[i]f unclaimed, these water rights will be decreed as disallowed." *Id.* at 3.

Claimants in each of these basins previously received extensive first-round and second-round *Notice of Filing Requirements* in the SRBA. See Idaho Code § 42-1408. These notice procedures meet constitutional due process requirements. *LU Ranching Co. v. U.S.*, 138 Idaho 606 (2003).

As of January 31, 2013, 69 motions for late claim in basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63 were received by the Court.

III.

CONCLUSION

In accordance with the *Deadline Order*, the Court has determined that except for *de minimis* domestic and stockwater uses and late claims required to resolve pending litigation on the date of this *Order* in the SRBA, that claims taking should be closed in basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63. Further, the Court has determined that unclaimed water rights represented by the water right numbers listed on Exhibit 1 to this *Order*, except for any deferrable domestic and/or stockwater portion of such rights, should be decreed as disallowed.

This *Order* does not alter the deferrable nature of *de minimis* domestic and stockwater rights as provided for in "Findings of Fact, Conclusions of Law, and Order Establishing Procedures for Adjudication of Domestic and Stock Water Uses" (January 17, 1989).

This *Order* does not preclude filing of late claims related to the resolution of litigation pending at the time of this *Order* in basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63.

IV.

ORDER

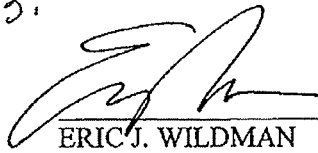
For the reasons stated above, IT IS HEREBY ORDERED that, except for *de minimis* domestic and stockwater uses and late claims required to resolve pending litigation on the date of this *Order* in the SRBA,¹ claims taking in basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47, and 63 is closed. No late claims will be accepted for filing in basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47 and 63, except as expressly provided by this *Order*.

¹ "Pending litigation" refers to an active, related subcase(s) pending at the time of the basin closure deadline wherein an additional late claim(s) is required to resolve the related water right(s).

IT IS FURTHER ORDERED that all unclaimed water rights represented by the water right numbers listed on Exhibit 1, except for any deferrable domestic and/or stockwater portion of such rights, are hereby decreed as disallowed.

The Clerk of the Court is hereby instructed to file a copy of the *Order Closing Claims Taking in Basins 01, 02, 03, 31, 34, 35, 36, 37, 41, 45, 47 and 63 and Disallowal of Unclaimed Water Rights* in the above captioned subcase and in the SRBA main case 00-39576.

Dated February 13, 2013.



ERIC J. WILDMAN
Presiding Judge
Snake River Basin Adjudication