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DISTRICT COURT
TWIN FALLS CO., IDAHO
FILED
28 MAY 10 PM 3:50
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CLERK
DEPUTY

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,

Respondents.

IN THE MATTER OF THE
APPLICATION FOR PERMIT NO. 36-
17002 IN THE NAME OF RANGEN,
INC.

Case No. CV- 15-1450

**PETITION FOR JUDICIAL
REVIEW**

L(3): \$221.00

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

PETITION FOR JUDICIAL REVIEW

1. On February 3, 2014, Rangen filed its Application for Permit No. 36-17002 In the Name of Rangen, Inc. (Permit Application No. 36-17002).

2. Permit Application No. 36-17002 sought to secure points of diversion for water emanating from springs, seeps, talus slopes, and from the Martin-Curren Tunnel for Fish Propagation.

3. On January 2, 2015, the Director issued *Preliminary Order Issuing Permit ("Order")*.

4. The Order contained the following Permit Condition No. 7:

This right shall be junior and subordinate to all future water rights, other than those for fish propagation, wildlife, recreation, aesthetic, or hydropower uses, within the state of Idaho that are initiated later in time than the priority date of this right and shall not give rise to any claim against any future rights for the use of water, other than those for fish propagation, wildlife, recreation, aesthetic, or hydropower uses, within the state of Idaho initiated later in time than the priority date of this right.

5. Name of agency from which judicial review is sought: Idaho Department of Water Resources, an agency of the State of Idaho, and its Director Gary Spackman ("Respondents").

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

7. Decisions being appealed: The *Preliminary Order Issuing Permit*, specifically Permit Condition No. 7.

8. The administrative record and a transcript of all proceedings in the Permit Application No. 36-17002 proceedings is requested. The Petitioner believes a transcript of that proceeding has been prepared, and to the extent it has not been prepared, that transcript is requested.

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

10. The Petitioner's substantial rights have been prejudiced by the *Order* including, but not necessarily limited to, placing a subordination clause on the permit which eliminates the essence of a water gift by taking away Rangen's ability to have the water right administered under the Prior Appropriation Doctrine.

11. Under the standards of evaluation as set forth under Idaho Code Section 67-5279, the *Order*:

- a. is in violation of constitutional, statutory provisions or administrative rules of the Department;
- b. is in excess of the statutory authority or authority of the Department under the administrative rules of the Department;
- c. was made upon unlawful procedures; and
- d. was arbitrary, capricious, and/or an abuse of the agency discretion.

12. The issues presented for the appeal, as identified in paragraph 11, and as more specifically identified in this paragraph include, but are not necessarily limited to, the following:

- a. Whether the Director erred or exceeded his authority by making the approval of the Permit Application No. 36-17002 conditional upon the right being junior and subordinate to all future water rights.

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

14. Other parties to this case include the Idaho Ground Water Appropriators, Inc. ("IGWA") and the City of Gooding.

15. Service of this Petition has been made on the Department, and notice of this filing has been made on parties to the contested case in the Permit Application No. 36-17002.

DEMAND FOR ATTORNEY FEES AND COSTS

As a result of the Department's actions, Petitioner has had to retain counsel. For services rendered, the Petitioner is entitled to attorney fees and costs should they prevail in this action pursuant to IAR 40 and 41, Idaho Code Section 12-117 and pursuant to Rule 54 of the Idaho Rules of Civil Procedure.

RIGHT TO AMEND

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

WHEREFORE, the Petitioner prays for the following relief:

- A. A finding that Permit Condition No. 7 of the *Order* is:
 - 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. was made upon unlawful procedures; and
- d. was arbitrary, capricious, and/or an abuse of the agency discretion.
- B. That the Court set aside Permit Condition No. 7 of the *Order*, and/or remand the *Order* 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 10th day of April, 2015.

MAY BROWNING & MAY, P.L.L.C.

By: 
for J. Justin May

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 10th day of April, 2015 he caused a true and correct copy of the foregoing document to be served upon the following as indicated:

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 201 E. Center Street P.O. Box 1391 Pocatello, ID 83204 rcb@racinelaw.net tjb@racinelaw.net bjh@racinelaw.net	Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Federal Express ☐ E-Mail ☒
City of Gooding c/o Craig Hobdey P.O. Box 176 Gooding, ID 83330 hobdeycraig@gmail.com	Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Federal Express ☐ E-Mail ☒


for J. Justin May