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DEPARTMENT OF
WATER RESOURCES

Attorneys for Rangen, Inc.

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

IN RE: WATER SUPPLY BANK RENTAL
AGREEMENT WITH IDAHO GROUND WATER
APPROPRIATORS, INC. DATED JANUARY 27,
2015

**RANGEN, INC.'S PETITION TO
REVOKE RENTAL AGREEMENT**

COMES NOW, Rangen, Inc. ("Rangen"), by and through its attorneys, and hereby petitions the Director of the Idaho Department of Water Resources pursuant to I.C. § 42-1766 to revoke the Rental Agreement issued to Idaho Ground Water Appropriators, Inc. ("IGWA") on January 27, 2015. As grounds, Rangen states the following:

1. On January 27, 2015, Brian Patton, in his capacity as Acting Administrator of the Idaho Water Resource Board, approved and issued a rental agreement in favor of IGWA for 7.81 cfs of water from Water Right No. 36-7072 which is owned by SeaPac of Idaho, Inc.

2. The rented water is to be piped from Magic Springs to the Rangen Research Hatchery as part of IGWA's Fourth Mitigation Plan (CM-MP-2014-006) approved by the Director.

3. Rangen protested IGWA's Fourth Mitigation Plan because, among other things, the implementation of the plan would constitute an enlargement of Water Right No. 36-7072 and cause material injury to other water rights.

4. Despite the evidence put on by Rangen during the hearing on IGWA's Fourth Mitigation Plan and contrary to the requirements of CM Rule 43, Director Spackman did not consider enlargement or material injury when he approved IGWA's plan. Instead, he expressly deferred ruling on the issue and held that issues of potential injury would be addressed in the transfer proceeding (Transfer Application No. 79560 – for Water Right 36-7072) that was initiated by a number of IGWA's Ground Water Districts:

12. The Fourth Mitigation Plan should be approved conditioned upon the approval of the IGWA's September 10, 2014, Application for Transfer of Water Right to add the Rangen facility as a new place of use for up to 10 cfs from water right number 36-7072 or an authorized lease through the water supply bank. *The consideration of a transfer application is a separate administrative contested case evaluated pursuant to the legal standards provided in Idaho Code §§ 42-108 and 42-222. Issues of potential injury to other water users due to a transfer are most appropriately addressed in the transfer contested case proceeding.*

See Order Approving IGWA's Fourth Mitigation Plan, p. 19.

5. On or about December 19, 2014, Director Spackman held a hearing on Transfer Application No. 79560 to determine, among other things, issues of enlargement and material injury. Director Spackman has not yet issued a decision on the Transfer Application.

6. The Rental Agreement and Transfer Application No. 79560 involve the exact same water and use and have been filed as part of the implementation of IGWA's Fourth Mitigation Plan. Both the Rental Agreement and Transfer Application involve water right 36-7072.

7. Section 42-1763 of the Idaho Code requires the Director to evaluate whether use of the rented water will enlarge the water right being rented and whether it will reduce the quantity

of water available to other users (i.e., cause material injury). The Director's determination of those issues is still pending in the proceeding on Transfer Application No. 79560.

8. Under I.C. § 42-1763, the Director has express jurisdiction over the terms and conditions of a water rental and the decisions as to whether a proposed rental might cause material injury to other users, or enlarge the right sought to be rented, or whether the issuance of the rental is in the local public interest. Despite the Director's statutory jurisdiction and his express decision to decide these issues in Transfer Application No. 79560, other agents of the State of Idaho determined that the issuance of the Rental Agreement for water right 36-7072 would not cause injury or enlarge the right. To date, the Director has not decided these issues.

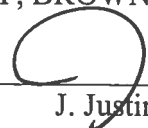
9. The Rental Agreement should be revoked pursuant to I.C. § 42-1763 because the use of the water will enlarge Water Right No. 36-7072 and result in material injury to other water rights, including, but not limited to a reduction of the quantity of water available and water quality. The approval of the Rental Agreement prior to the evaluation and determination of enlargement and material injury issues allows IGWA to implement the Fourth Mitigation Plan in contravention of Idaho law.

10. Rangen respectfully requests that the Director investigate this matter, convene a hearing pursuant to I.C. § 42-1766, and revoke the rental agreement.

11. Rangen is a party which possesses water rights, which will be damaged by the transfer of water from Magic Springs.

DATED this 17th day of February, 2015.

MAY, BROWNING & MAY, PLLC.

By: 

J. Justin May

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 17th day of February, 2015 he caused a true and correct copy of the foregoing document to be served upon the following as indicated:

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