

ORIGINAL

Robyn M. Brody (ISB No. 5678)  
BRODY LAW OFFICE, PLLC  
P.O. Box 554  
Rupert, ID 83350  
Telephone: (208) 420-4573  
Facsimile: (208) 260-5482  
robynbrody@hotmail.com

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

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Eastern Region

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

*Attorneys for Rangen, Inc.*

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF THE  
APPLICATION FOR PERMIT NO. 36-  
17002

RANGEN, INC.'S CLOSING BRIEF  
(Response to City of Gooding)

COMES NOW the Applicant, Rangen, Inc. ("Rangen"), by and through its attorneys, Fritz X. Haemmerle, of Haemmerle & Haemmerle, P.L.L.C., Justin May of May, Browning and May, P.L.L.C., and Robyn M. Brody of Brody Law, and submits this Response Brief to the *City of Gooding's Argument in Opposition to Granting the Water Right Permit* filed on December 2, 2014 ("Brief"), in reference to Rangen's Application for Permit No. 36-17002.

## **I. OVERVIEW**

The City filed a Protest to Rangen's Application dated March 4, 2014

("Protest"). The Protest raised the following issues:

1. Since Rangen alleges [sic] it is not getting water it is currently entitled to this spring must be over appropriated.
2. The application is speculative in nature as there is not 59 cfs of unappropriated water available.
3. Granting this right would injure ground water users, specifically [sic] & the cities, including Gooding & the ESDA [sic].

*Protest.*

On September 17, 2014, the Idaho Department of Water Resources ("Department") held a hearing on the Ground Water Districts' ("GWD") Application for Permit No. 36-16976. The Department was scheduled to hold a hearing on Rangen's Permit Application immediately following the close of evidence in the GWDs' case, but prior to doing so, the GWDs stipulated and agreed that Rangen's Permit Application meets the criteria of Idaho Code Section 42-203(a) and should be issued.

The parties agreed to submit a Closing Brief addressing whether the GWD Application should be granted and whether the permit issued to Rangen should contain subordination language (the parties agreed that this was the only issue that needed to be decided by the Department).

The City of Gooding was not present when all the parties stipulated that Rangen's Permit Application satisfies the requirements of 42-203(a). Accordingly, the City of Gooding was allowed to file a Brief on the local public interest issue. The Brief filed by Gooding goes well beyond the local public interest, and address other specific issues.

## **II. REPLY**

### **A. THE SOURCE IS NOT OVER APPROPRIATED.**

The purpose of Rangen's Application is to allow for it to appropriate the same water it had been appropriating under water rights 39-02551 and 36-7694 for the last 50 years, with the full knowledge and acquiescence of the Department. During Rangen's water call, the Director held that Rangen was not entitled to divert water outside of the Martin Curren Tunnel, which includes water flowing from the talus slope. Rangen appealed that Decision, and a resolution of that Decision is currently in the Courts.

However, to the extent that the Department held that Rangen was not entitled to the talus slope water, the water is not over appropriated as alleged by the City. The only evidence in the record is that the source is available for appropriation.

### **B. THE APPLICATION IS NOT SPECULATIVE.**

The City alleges that the quantity of 59 cfs is speculative. During the hearing, Rangen amended its Application to 21.8 cfs. That quantity of water was available during a five (5) year look-back period. To the extent that the water has been available according to the records kept by the Department, the amount of water is not speculative. All the evidence in the record is that the Application is not speculative.

### **C. GRANTING THIS RIGHT WILL NOT INJURE OTHER USERS.**

The water right is non-consumptive. All parties, except for Gooding, agree that the water is non-consumptive, and as such, the use of the water will not, and cannot, injure other water users.

Somehow, Gooding argues that the possibility of Rangen filing a water call is reason to deny the Application. This is not a reason to deny a water right application.

Under the Idaho Constitution, [t]he right to and appropriate the unappropriated waters of any natural stream to beneficial uses, shall never be denied, except that the state may regulate and limit the use thereof for power purposes.” IDAHO CONS., Art XV, Sec. 3.

Rangen is exercising its Constitutional rights to file for unappropriated water. To deny Rangen the right to appropriate water because of the possibly of it filing a water call would be a deprivation of Rangen’s rights under the Idaho Constitution to appropriate water. *See e.g., Speer v. Stephenson*, 16 Idaho 707, 102 P. 365 (1909).

**D. THE LOCAL PUBLIC INTEREST IS NOT AFFECTED BY THE GRANTING OF RANGEN WATER RIGHT.**

Gooding did not raise the local public interest as a basis in its protest. Rangen objects to the City of Gooding making this argument in its briefing. Without waiving any objection, the Application does not implicate the local public interest. The “local public interest” is defined “as the interest that the people in the area directly affected by a proposed water use have in the effects of such use on the public water resources.” I.C. § 42-202B.

On the “local public interest, Idaho Code Section 42-203(5)(e), the “protestant shall bear the initial burden of coming forward with evidence for those factors relevant to criterion (e) of Section 42-203A(5), Idaho Code, of which the protestant can reasonably be expected to be more cognizant than the applicant.” IDAPA 37.03.08.040.04.b.ii. In this case, Gooding did not present any evidence on how Rangen's Application affects the “local public interest.” Also, the City also did not raise the issue in its Protest.

For these reasons, the Hearing Officer should disregard and strike Conclusions 3 and 4 raised in Gooding's briefing.

### III. CONCLUSION

The City has not raised any valid issues for the Hearing Officer to Deny Rangen's Application.

DATED this 12 day of December, 2014.

  
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FRITZ X. HAEMMERLE  
Attorney for Rangen, Inc.

## CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 12 day of December, 2014 he caused a true and correct copy of the foregoing document to be served upon the following by the method indicated:

|                                                                                                                                                                                                                                             |                                                                                                                                                                                                                                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Original:<br/>James Cefalo<br/>Idaho Department of Water<br/>Resources<br/>900 N. Skyline Dr., Ste. A<br/>Idaho Falls, ID 83402-1718<br/>james.cefalo@idwr.idaho.gov<br/>sharla.cox@idwr.idaho.gov</p>                                   | <p>Hand Delivery <input type="checkbox"/><br/>U.S. Mail <input checked="" type="checkbox"/><br/>Facsimile <input type="checkbox"/><br/>Federal Express <input type="checkbox"/><br/>E-Mail <input checked="" type="checkbox"/></p> |
| <p>Randall C. Budge<br/>Thomas J. Budge<br/>RACINE, OLSON, NYE, BUDGE<br/>&amp; BAILEY, CHARTERED<br/>201 E. Center St.<br/>P.O. Box 1391<br/>Pocatello, ID 83304-1391<br/>rcb@racinelaw.ne<br/>tjb@racinelaw.net<br/>bjh@racinelaw.net</p> | <p>Hand Delivery <input type="checkbox"/><br/>U.S. Mail <input type="checkbox"/><br/>Facsimile <input type="checkbox"/><br/>Federal Express <input type="checkbox"/><br/>E-Mail <input checked="" type="checkbox"/></p>            |
| <p>Blind Canyon Aquaranch, Inc.<br/>c/o Gary Lemmon<br/>2757 South 1050 East<br/>Hagerman, ID 83332<br/>glemmon@northrim.net</p>                                                                                                            | <p>Hand Delivery <input type="checkbox"/><br/>U.S. Mail <input type="checkbox"/><br/>Facsimile <input type="checkbox"/><br/>Federal Express <input type="checkbox"/><br/>E-Mail <input checked="" type="checkbox"/></p>            |
| <p>City of Gooding<br/>c/o Craig Hobdey<br/>P.O. Box 176<br/>Gooding, ID 83330<br/>hobdeycraig@gmail.com</p>                                                                                                                                | <p>Hand Delivery <input type="checkbox"/><br/>U.S. Mail <input checked="" type="checkbox"/><br/>Facsimile <input type="checkbox"/><br/>Federal Express <input type="checkbox"/><br/>E-Mail <input checked="" type="checkbox"/></p> |

  
Fritz X. Haemmerle