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DEPARTMENT OF
WATER RESOURCES

**REBUTTAL RESPONSE TO BROCKWAY'S EXPERT REPORT
AND NARRATIVE RELATIVE TO WATER RIGHT TRANSFER
No. 79560**

Prepared for

**THE IDAHO GROUND WATER APPROPRIATORS, INC
NORTH SNAKE GROUND WATER DISTRICT
MAGIC VALLEY GROUND WATER DISTRICT
SOUTHWEST IRRIGATION DISTRICT**

Prepared by

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December 12, 2014



**SPF WATER
ENGINEERING**

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1. OVERVIEW

Idaho Ground Water Appropriators, Inc. (IGWA) has filed Application for Transfer No. 79560 (the "Application") seeking to change the place of use of a ten (10) cfs portion of water right 36-7072 from the SeaPac fish hatchery at Magic Springs to the Rangen fish hatchery on Billingsley Creek, and to reflect mitigation as a nature of use. Water will be delivered from Magic Springs to the Rangen hatchery per engineering details submitted in the Fourth Mitigation Plan, CM-MP-2014-006.

Charles E. Brockway, Ph.D., P.E., submitted an expert report and narrative relative to water right transfer no. 79560. This rebuttal report addresses items asserted in Brockway's expert report.

2. WATER SOURCE AND POINTS OF DIVERSION

Brockway's report indicates that water right 36-7072 lists six (6) points of diversion from Thousand Springs and appears to request clarification on which diversion points will be used for the Transfer. Further review by SPF indicates right 36-7072 lists nine (9) points of diversion (see Table 1). IDWR's Geographic Information System (GIS) depicts four points of diversion. The Recommendation of Watermaster for Transfer Application 79560 clarifies the number of diversion points and confirms the ambiguity of the GIS information (see Appendix A). Brockway's Figure 2 is a schematic of Magic Springs Aquaculture Facility that can also be found attached to the 36-7072 water right license issued October 28, 1988.

Diversion points 1 & 2, located in T08S R14E Section 6 SESESE (lot 8), are the current sources of supply for the pump station SPF designed to deliver water to Rangen. Infrastructure changes could be made in the future to divert water from any of the remaining seven (7) points of diversion, if diversion points #1 or #2 become unavailable or the water flow at such diversion points are unable to meet mitigation obligations.

Table 1. Authorized Points of Diversion for Water Right 36-7072

Location					Number of Diversions
Township	Range	Section	QQQ	Lot	
08S	14E	6	SESESE	8	2
08S	14E	8	NENWNW	1	1
08S	14E	8	NWNWNW	1	2
08S	14E	8	SENWNW	1	4

3. EVALUATION OF TRANSFER APPLICATION CRITERIA

3.1. The Change Will Not Injure Other Rights

Brockway's report contemplates injury to other irrigation water right holders in the Magic Springs to Murphy gage reach of the Snake River in the event of a violation of the 3,900 cfs or 5,600 cfs minimum flow at Murphy Gage. If a violation were to occur, the Applicant's contribution to any injury would be limited to that portion of water right 36-7072 that is depleted as a result of the transfer, which can be no greater than 10 cfs and, by shepherding the transferred water directly to the Snake River, would be less than 0.1 cfs, as explained in our prior report. In a correspondence dated December 12, 2014, AMEC demonstrates that the sum of IGWA's multiple mitigation activities results in significantly more than a 10 cfs improvement to spring flows tributary to the Snake River (see Appendix B). Given the ongoing nature of the delayed effects of IGWA's recharge, conversion, and CREP mitigation activities, these benefits can reasonably be expected to continue indefinitely in quantities adequate to mitigate for depletion. Nonetheless, it would be reasonable to include in the approval of the Application a condition that requires mitigation be provided sufficient to offset depletion of water right 36-7072 in the event of a violation of the Swan Falls minimums.

3.2. The Change Will Not Result in Enlargement of the Right

Brockway's report claims that additional flow in Billingsley Creek resulting from this transfer will result in increases in historical irrigation flow, enhancement of priority flows, and expansion of historical consumptive use.

The purpose of the Application is to continue using water for fish propagation as it has historically been used. Water right 36-7072 currently authorizes a beneficial use of fish propagation at the SeaPac fish hatchery. At the Rangen facility, the right will also be used for fish propagation. There is no enlargement of the right's diversion rate, diversion volume, beneficial use, or period of use.

Enlargement is determined by the use made by the appropriator and not what becomes of discharged water after beneficial use is complete. IDWR's Transfer Processing Memorandum No. 24 does not contemplate subsequent use of water after beneficial use has been completed under the transferred right when evaluating enlargement.

We are unaware of any transfer situation where IDWR determined an enlargement of the transferred right due to potential use of unconsumed water after the water has left the control of the water right holder.

3.3. The Change is Not Contrary to the Eastern Snake Plain Moratorium

The amended moratorium order for the Eastern Snake River Plain area is applicable to applications for permits proposing to divert surface or ground water within the area. IGWA's application transfers an existing right. The application does not propose a new appropriation. Therefore, the moratorium order is not applicable.

3.4. Spring Flows

Brockway's report asserts that the transfer application will not improve spring flows. Neither will the transfer diminish spring flows. IGWA's transfer application is not intended to prevent injury through increasing aquifer ground water levels or improving spring flows. It simply changes the place of use of a portion of water right 36-7072. The Director approved this as suitable mitigation by providing water directly to Rangen in the Order Approving IGWA's Fourth Mitigation Plan issued October 29, 2014.

3.5. Watermaster Concurrence

Brockway's report discusses the Watermaster's concerns that the Application's inclusion of mitigation use is speculative. IDWR allows mitigation plans to be developed and approved based on reasonably foreseeable curtailment risks. As an example, Kent Kohring's approved water right permit no. 51-13067 includes mitigation as an authorized beneficial use (see Appendix C). Mitigation use under this permit was authorized based on the potential for a future violation of the Swan Falls minimum stream flows.

Brockway's report also notes the Watermaster's concerns that including mitigation as a use constitutes enlargement. This can be addressed with appropriate conditioning of the approved transfer to eliminate the enlargement concern, or by approving the Application for mitigation purposes only, consistent with the Preliminary Order recently issued by IDWR concerning Application for Permit no. 36-16976.

4. CRITERIA FOR IDWR APPLICATION ACCEPTANCE – LEGAL ACCESS

Brockway's report argues that IGWA does not have legal access to Rangen's place of use thus resulting in an un-approvable application. However, Rangen has filed a Notice of Acceptance of delivery of water from Magic Springs under IGWA's fourth mitigation plan (see Appendix D). In addition, IGWA has commenced eminent domain proceedings. IDWR's preliminary order issuing permit no. 36-19676 concluded that the place of use for mitigation is the point where water will be delivered into the Rangen infrastructure, and that IGWA having initiated eminent domain proceedings satisfies the access requirement.

5. WATER RIGHTS FOR MITIGATION

Brockway's report claims that mitigation generally requires giving up, retiring, or leaving behind some water, or modification of a water right to mitigate for a change in use or increase in use. This is more narrow than the definition contained in the Conjunctive Management Rules which define "mitigation" as "actions and measures to prevent, or compensate holders of senior-priority water rights for, material injury caused by the diversion and use of water by the holders of junior-priority ground water rights within an area having a common ground water supply."¹ IDWR's preliminary order issuing permit no. 36-16976 similarly describes mitigation as "...any action taken to *prevent* injury to senior water right holders or to *compensate* senior water right holders for injury caused by the diversion and use of water by junior water right holders" (emphasis added)². IGWA is proposing to divert water from a separate source and inject water into the diminished water source to compensate the senior water user on the diminished source.

Among the examples of compensation mitigation is the direct delivery of storage water IGWA frequently uses to mitigate injury to the Surface Water Coalition, the direct delivery of Pristine Springs water to Blue Lakes Trout, permit no. 36-16976 which enables IGWA to deliver water from Billingsley Creek to Rangen to mitigate for reduced flows from the Curren Tunnel, and permit no. 51-13067 which allows a junior water right holder to divert water in storage which can later be released as mitigation to compensate for reductions to flows in the Snake River at Murphy Gage if at some point in the future the minimum stream flows are violated.

¹ IDAPA 37.03.11.10.15.

² Cefalo, James. 2014. In the Matter of Application for Permit No. 36-16976 in the name of North Snake Ground Water District, et al. Preliminary Order Issuing Permit. November 18, 2014.

APPENDIX A
RECOMMENDATION OF WATERMASTER,
OCTOBER 31, 2014

State of Idaho
Department of Water Resources

RECOMMENDATION OF WATERMASTER

Application No: 79560
Water Right No: 36-7072
Applicant Name: IGWA

Watermaster's Recommendation:

- a) ☐ I do not oppose approval of this application
- b) ☒ I do not oppose approval of this application under the following terms:

Removal of mitigation use

Measurement and control devices required on the pipeline to Rangen.

Measuring device must be of a type approved by IDWR and appearing on the certified flow meter list. Both measurement and control shall be situated at or near the rediversion pumping plant at Sea Pac and be accessible to the watermaster.

- c) ☒ I oppose approval of this application(s) for the following reasons:

The inclusion of mitigation use as proposed is speculative and constitutes an enlargement of use

- d) ☒ Additional comment:

There is no direct injury within Water District 130 which might result from this approval. There might be less obvious injury to the Snake River system downstream from Magic Springs if 10 cfs of this right are delivered into the Billingsley Creek drainage. It is not unreasonable to predict that 10 cfs injected at the head of Billingsley Creek will *not* be returned to the Snake River, but will be consumed by downstream creek diversions. Consequently this proposal is changing a non-consumptive use of water to one which is ultimately consumptive to the original source and tributary. Under normal Snake River operation, the resulting absence of 10 cfs will probably not impact direct diversions from the river, but it could have implications in the administration of the Swan Falls trust water agreement. Trust water conditions could be added to any portion of this right being delivered to Rangen to prevent "consumptive" out-of-basin diversions during those times when Snake River flows are compromised.

Additional comment, continued:

The above water right identifies nine spring pods within 4, 10-acre tracts. (See attached map) The IDWR spatial layer is not completely consistent with the right, representing only one point per QQQ tract. There are maps in the file which clearly identify the location of all 9 springs¹. The location identified by IGWA as the proposed pumping location for the 10 cfs pipeline is in a pool below springs 1 and 2, and in a QQQ *not* identified as a pod on the water right. This appears to be inconsistent with the transfer application which states there will be no change in point of diversion. However I believe this particular pool to be either a man-made or artificially enhanced structure, constructed for the purposes of collecting and re-distributing spring discharges. The pump station may be treated as a re-diversion point. The source of water for the 10 cfs pumping plant does appear to be limited to only springs 1 and 2, and perhaps spring 3, so it might not be appropriate to include all 9 pods on the 10 cfs split right.

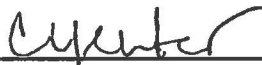
There is a condition on the above right which reads as follows:

THE RATE OF DIVERSION FROM SPRINGS 1, 2 & 3 SHALL NOT EXCEED 38.5 CFS AND FURTHER, THAT OF THE 38.5 CFS, 13.5 CFS LESS THE AMOUNT OF WATER FLOWING IN THE BRAILSFORD PIPELINE, MEASURED AT POINT B, SHALL BE RELEASED AT EITHER POINT C (THE MEASURING DEVICE AT THE UPPER POND) OR THROUGH THE HILL FLUME INTO THE UPPER POND.

The purpose of this condition, applied at licensing in 1986, was evidently to protect flows into a series of ponds owned by an adjacent landowner, A G Hill, and to provide water to an otherwise subordinated hydropower right 36-7866 which was developed in 1979 and which diverted from Hill's largest pond. At this time, Sea Pac owns the Hill property and the power plant has been dismantled. The 13.5 cfs is being retained in the Spring 1 pool and is available to SeaPac when the Brailsford Pipeline is not diverting.

Dated: October 31, 2014

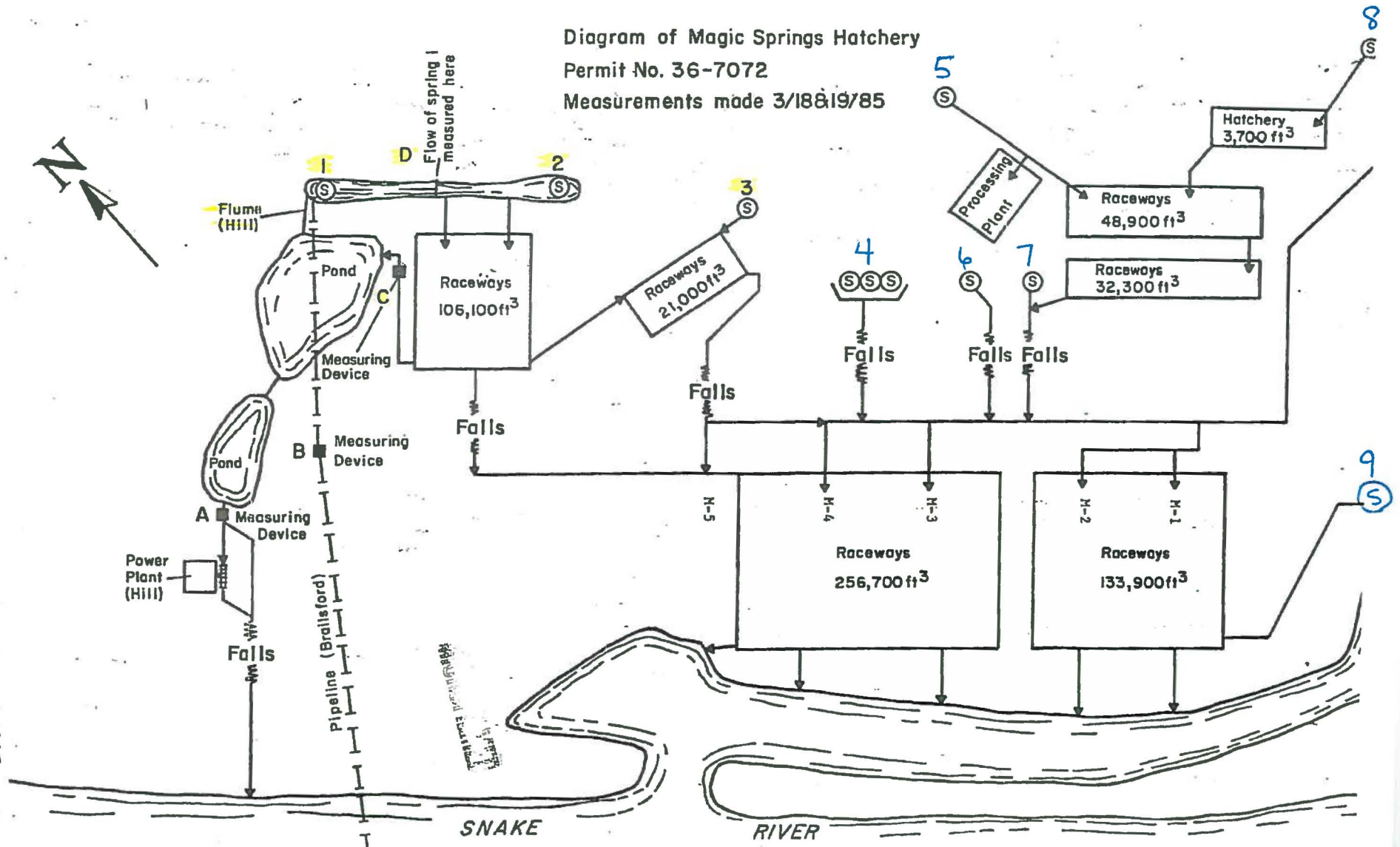
Water District 130



Cindy J Yerter, Watermaster

¹ All 9 pods will be updated to the right(s) as processing proceeds.

Diagram of Magic Springs Hatchery
 Permit No. 36-7072
 Measurements made 3/18&19/85



APR 24 1985

APPENDIX B
AMEC (CHUCK BRENDKE, P.E. AND SOPHIA SIGSTEDT)
DECEMBER 12, 2014, MEMORANDUM TO SCOTT KING

MEMORANDUM

To: Scott King P.E., SPF Water Engineering

From: Chuck Brendecke P.E., Sophia Sigstedt

Subject: Follow-up to December 2nd Memo Re: Evaporation from Magic Springs Deliveries to Rangen Hatchery

Date: December 12, 2014

This memo is a follow-up to AMEC's December 2nd, 2014 memo Re: Evaporation from Magic Springs Deliveries to Rangen Hatchery. The December 2nd memo summarized calculations by AMEC to determine the potential evaporation of Magic Springs water delivered to the Rangen hatchery facility on Billingsley Creek and the offsetting reach gains to Billingsley Creek and the Snake River from other mitigation activities undertaken by the Idaho Groundwater Appropriators (IGWA).

It was noted in the December 2nd memo that the offsetting reach gains to Billingsley Creek and the Snake River were only summarized for selected springs for which IDWR had post-processed the model output and that time did not permit the extraction of these additional gains outputs. The purpose of this follow-up memo is to summarize the expanded analysis for offsetting reach gains to Billingsley Creek and the Snake River from all modeled springs and the tributary underflow to the Snake River through General Head Boundaries (GHBs). The expanded analysis further supports the conclusions drawn in the December 2nd memo that the calculations demonstrate that evaporation of Magic Springs water in Billingsley Creek is more than offset by gains to Billingsley Creek and the Snake River resulting from other IGWA mitigation activities.

Methodology

AMEC's calculation of evaporation of Magic Springs water in Billingsley Creek is unchanged and for methodology the reader should refer to the original documentation in the December 2nd memo. For convenience Table 1 summarizing the evaporation calculation in the December 2nd memo is reproduced as Table 1 at the back of this memo.

Reach gains resulting from IGWA's historical and ongoing mitigation activities in Water District 130 were derived from ESPAM2.1 model runs done by the Idaho Department of Water Resources (IDWR) for the Amended Final Order approving IGWA's first mitigation plan, dated May 16, 2014. These model runs are described in Finding of Fact 7 of the Amended Final Order. Model files associated with the runs are available on the IDWR website at:

http://www.idwr.idaho.gov/browse/legal/rangen/Data_Accmp_4_11_14_Order/.

IGWA mitigation activities contributing to gains in springs discharges below Milner include CREP, voluntary dry-ups, conversions, and recharge undertaken by IGWA and SWID. Some of these activities, have been underway since 2005. The IDWR modeling represented the effects of these historical activities for a five-year period starting with 2014. Current gains can reasonably be expected to be slightly larger in magnitude, since these activities are ongoing.

The gains from these IGWA mitigation activities to selected springs were contained in the IDWR model files. The files did not include post-processed output for all modeled springs, only the Class A&B springs were included in their post-processed spreadsheet "2005_2013Transient.xlsx" associated with their model runs. In the December 2nd memo the post-processed gains that were contained in the IDWR files were summarized for three sets of springs: 1) Three Springs (a surrogate for all the non-Rangen springs discharging to Billingsley Creek), 2) springs represented in the model as serving the Thousand Springs

and Malad hydropower facilities, and 3) other large springs entering the Snake River below Milner. These gains were summarized in Table 2 of the December 2nd memo and for convenience is reproduced as Table 2 at the back of this memo.

Table 3 is an expanded version of Table 2 from our memo of December 2nd. The spring gain extractions that were contained in Table 2 were extended to all springs between Kimberly and King Hill. These extractions represent the increased flows from the ESPA resulting from IGWA mitigation activities exclusive of Sandy Pond recharge.

Springs that discharge to surface flows are represented by drain cells in ESPAM2.1. Those springs that were used as calibration targets are classified as either A, B or C, depending on the flow data collection methods used. Class A and B springs have systematic measurement by the USGS and water users, respectively. Class C springs have only spot or sporadic measurements. Subsurface flows from the ESPA directly into the Snake River are represented by General Head Boundary (GHB) cells in the groundwater model.

Most of the springs listed in Table 3 discharge directly to the Snake River through powerplants or fish hatcheries, which are non-consumptive uses. For these there is very little if any opportunity for subsequent re-diversion to consumptive use. Of the listed springs, only those serving the National Fish Hatchery and those discharging to Billingsley Creek present significant potential for re-diversion. Minor re-diversion is possible at Blue Lakes and Clear Lakes. Increased flows from GHB cells occur directly in the river and present no opportunity for re-diversion.

Conclusions

From the comparison of evaporation calculated in Table 1 and gains shown in Table 3, we would conclude that ongoing increases in spring discharges to the Snake River above Murphy from ongoing IGWA mitigation activities substantially exceed the potential consumption of water added to Billingsley Creek from the Magic Springs transfer. Accordingly, the transfer does not present risk to the minimum flows called for in the Swan Falls agreement.

Table 1

<i>Billingsley Creek Surface Water Evaporation Calculation</i>															
ETIdaho 2012 Hagerman 2 SW (NWS-103932)	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	annual (in/yr)	annual (ft/yr)	
Open Water-Shallow Systems (ponds, streams) Precipitation Deficit (in/month)	0.00	0.30	1.88	3.24	4.53	5.60	6.81	5.80	4.64	2.79	0.25	0.00	35.84	2.97	
Billingsley Creek Length (km)															
Billingsley Creek Width (ft)															
Billingsley Creek surface area (ft ²)															
Potential Billingsley Creek Evaporation (ft ³ /yr)															
Potential Billingsley Creek Evaporation (af/yr)															
Potential Billingsley Creek Evaporation (cfs)															
13134800 Billingsley Creek nr Hagerman, ID ¹	Date	Discharge													
Discharge measurements Water October 2011 to September 2012 (cfs)	3/8/2012	15.70													
Magic Springs Transfer (cfs)		10													
Magic Springs Transfer portion of Billingsley Ck Flow		39%													
Potential Magic Springs Transfer Evaporation (af/yr)		28.3													
Potential Magic Springs Transfer Evaporation (cfs)		0.036													

¹<http://data.kimberly-ukidaho.edu/ETIdaho/stc/vtats.py?station=103932&cover=55&state=Deficit>

²<http://wdr/water/usgs/gov/vy2012/pdfs/13134800.2012.pdf>

Table 2

	Year 1	Year 2	Year 3	Year 4	Year 5
	(4/2014- 3/2015)	(4/2015- 3/2016)	(4/2016- 3/2017)	(4/2017- 3/2018)	(4/2018- 3/2019)
<i>ESPAM 2.1 Predicted Mitigation Benefit to Spring Cell(s) ¹ (cfs)</i>					
Three Springs	1.37	1.48	1.57	1.63	1.68
Malad & Thousand Springs	9.17	9.92	10.51	10.95	11.30
Box Canyon Springs	7.49	8.10	8.57	8.92	9.20
Crystal Springs	5.17	5.60	5.92	6.17	6.36
Clear Lake Springs	4.54	4.91	5.19	5.40	5.57
Blue Lake Springs	3.69	3.94	4.13	4.27	4.37

¹http://www.idwr.idaho.gov/browse/legal/rangen/Data_Accmp_4_11_14_Order/ "2005_2013Transient.xlsx"

Table 3

	Year 1 (4/2014- 3/2015)	Year 2 (4/2015- 3/2016)	Year 3 (4/2016- 3/2017)	Year 4 (4/2017- 3/2018)	Year 5 (4/2018- 3/2019)
<i>ESPAM 2.1 Predicted Mitigation Benefit to Spring Cell(s) & GHBs Tributary to Snake River¹ (cfs)</i>					
Three Springs (tributary to Billingsley Creek)	1.37	1.48	1.57	1.63	1.68
Thousand Springs	5.30	5.73	6.06	6.31	6.50
Malad	3.87	4.20	4.45	4.64	4.80
Box Canyon Springs	7.49	8.10	8.57	8.92	9.20
Crystal Springs	5.17	5.60	5.92	6.17	6.36
Clear Lake Springs	4.54	4.91	5.19	5.40	5.57
Blue Lake Springs	3.69	3.94	4.13	4.27	4.37
Niagara Springs	3.51	3.79	4.01	4.18	4.31
Sands Springs	2.00	2.16	2.29	2.38	2.46
Devils C Springs	1.68	1.77	1.84	1.90	1.94
Devils WB Springs	1.30	1.37	1.43	1.47	1.50
NFHatchery Springs	1.20	1.30	1.37	1.43	1.47
Briggs Springs	0.12	0.13	0.14	0.15	0.15
Rangen Cell (Talus Slope Springs)	0.70	0.76	0.82	0.82	0.88
Total AB Springs (not including Rangen Curren Tunnel)	41.95	45.23	47.78	49.66	51.18
Class C Springs Tributary to Billingsley Creek	0.96	1.03	1.09	1.14	1.13
Class C Springs Kimberly to King Hill	2.22	2.33	2.42	2.40	2.26
General Head Boundaries (GHBs) Kimberly to King Hill	3.49	3.49	3.49	3.49	3.49
Total Snake River Gains below Milner	48.61	52.09	54.78	56.70	58.06

¹http://www.idwr.idaho.gov/browse/legal/rangen/Data_Accmp_4_11_14_Order/ "2005_2013Transient.xlsx"

APPENDIX C
KOHRING PERMIT NO. 51-13067

State of Idaho
Department of Water Resources

Amended

Permit to Appropriate Water

Amended

NO. 51-13067

Priority: August 07, 2009

Maximum Diversion Rate: 3.60 CFS

This is to certify, that KENT G KOHRING
28924 DAVIS RD
BRUNEAU ID 83604

has applied for a permit to appropriate water from:

WASTE WATER Tributary to: JACKS CREEK

and a permit is APPROVED for development of water as follows:

<u>BENEFICIAL USE</u>	<u>PERIOD OF USE</u>	<u>RATE OF DIVERSION</u>	<u>ANNUAL VOLUME</u>
DIVERSION TO STORAGE	01/01 to 12/31	3.60 CFS	
IRRIGATION STORAGE	03/01 to 11/15		20.4 AF
IRRIGATION FROM STORAGE	03/01 to 11/15		14.3 AF
MITIGATION STORAGE	03/01 to 11/15		20.4 AF
MITIGATION FROM STORAGE	03/01 to 11/15		20.4 AF

LOCATION OF POINT(S) OF DIVERSION:

WASTE WATER SW¼4NE¼ Sec. 25, Twp 06S, Rge 04E, B.M. OWYHEE County

PLACE OF USE: IRRIGATION STORAGE AND MITIGATION STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
06S 04E 25	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
			X	X													

PLACE OF USE: IRRIGATION FROM STORAGE

Twp Rge Sec	NE				NW				SW				SE				Totals
06S 04E 24	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	80.0
				40.0												40.0	
06S 05E 19																	
					40.0	40.0	40.0	40.0	40.0	40.0	40.0	40.0					240.0

Total Acres: 320

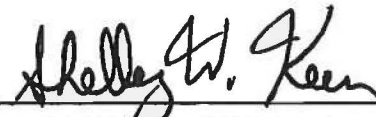
State of Idaho
Department of Water Resources***Amended*****Permit to Appropriate Water*****Amended***

NO. 51-13067

CONDITIONS OF APPROVAL

1. Proof of application of water to beneficial use shall be submitted on or before **February 1, 2015** but not before **January 1, 2015**.
2. Subject to all prior water rights.
3. Project construction shall commence within one year from the date of permit issuance and shall proceed diligently to completion unless it can be shown to the satisfaction of the Director of the Department of Water Resources that delays were due to circumstances over which the permit holder had no control.
4. This right when combined with all other rights shall provide no more than 0.02 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.
5. Any license issued by IDWR pursuant to the right or portion thereof for the use of trust water is subject to a term review of 20 years after the date of this approval to determine availability of water for the use and to re-evaluate the public interest at the end of the term.
6. This right is limited to the irrigation of 200 acres within the place of use described above in a single irrigation season.
7. The source of water diverted under this right is waste water and is subject to the right of the original appropriator, in good faith and in compliance with state laws governing changes in use and/or expansion of water rights, to cease wasting water, to change the place of use or manner of wasting it, or to recapture it.
8. This right does not grant any right-of-way or easement across the land of another.
9. This right is appurtenant to land designated as DLE #: IDL-31613-6F.
10. Mitigation use is 20.4 acre-feet of storage water for release to the Snake River via Jacks Creek to mitigate the diversion of water pursuant to right 51-7358 during periods when the Snake River Murphy Gauge is below 3900 cfs.
11. The right holder shall cease diversion to storage when the flow at the Snake River at Murphy Gauge falls below 3900 cfs from April 1 to October 31 or 5600 cfs from November 1 to March 31.
12. The Director retains jurisdiction to require the right holder to provide purchased or leased natural flow or stored water to offset depletion of Lower Snake River flows if needed for salmon migration purposes. The amount of water required to be released into the Snake River or a tributary, if needed for this purpose, will be determined by the Director based upon the reduction in flow caused by the use of water pursuant to this permit.
13. Prior to diversion of water under this right, the right holder shall install and maintain acceptable measuring devices at the authorized point of diversion and at the reservoir outlet to measure the amount of water diverted at the point of diversion and amount of water released from the reservoir.
14. Noncompliance with any condition of this right, including the requirement for mitigation, is cause for the director to issue a notice of violation, cancel or revoke the right, or, if the right is included in a water district, request that the watermaster curtail diversion and use of water.

This permit is issued pursuant to the provisions of Section 42-204, Idaho Code. Witness the signature of the Director, affixed at Boise, this 23rd day of February, 2010.


for GARY SPACKMAN, Interim Director

APPENDIX D
RANGEN, INC.'S NOTICE OF ACCEPTANCE OF DELIVERY
OF WATER UNDER IGWA'S FOURTH MITIGATION PLAN

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NOV 05 2014

DEPARTMENT OF
WATER RESOURCES

Attorneys for Rangen, Inc.

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

IN THE MATTER OF THE FOURTH
MITIGATION PLAN FILED BY THE
IDAHO GROUND WATER
APPROPRIATORS FOR THE
DISTRIBUTION OF WATER TO
WATER RIGHT NOS. 36-02551 & 36-
07694 IN THE NAME OF RANGEN,
INC.

"MAGIC SPRINGS PROJECT"

Docket No. CM-MP-2014-006

**RANGEN, INC.'S NOTICE OF
ACCEPTANCE OF DELIVERY OF
WATER UNDER IGWA'S FOURTH
MITIGATION PLAN**

WHEREAS, on October 29, 2014, the Director of the Idaho Department of Water Resources ("Director") issued an *Order Approving IGWA's Fourth Mitigation Plan* ("Order");

WHEREAS, the Order conditionally approved IGWA's Fourth Mitigation Plan subject to approval of 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. Approval is also conditioned upon all necessary agreements or options contracts being reduced to final written agreements. (*Order*, p.20-21); and

WHEREAS, the Director ordered IGWA to deliver Magic Springs water to Rangen no later than January 19, 2015 (*Order*, p.21);

WHEREAS, over Rangen's objection to IGWA's Fourth Mitigation Plan, the Director ordered Rangen to accept this water and allow construction on its land related to placement of the delivery pipe, and if not accepted, IGWA's mitigation obligation would be suspended (*Order*, p. 21);

NOW THEREFORE, RANGEN HEREBY PROVIDES NOTICE that Rangen, Inc. will comply with the Director's Order and accept the water to be delivered under the Fourth Mitigation Plan. By delivering this Notice, Rangen does not waive any right to seek judicial review of the Order. Rangen also does not waive any cause of action it may have against IGWA, its Districts, the Department, or the State of Idaho including, but not limited to, compensation for the condemnation of its real property, damages resulting from the implementation of the Mitigation Plan such as fish loss or the introduction of disease, pathogens, parasites, or other organisms harmful to Rangen's operation, or damages resulting from the failure to deliver water for any reason whatsoever. Rangen also reserves the right to reject the water in the event it determines the delivery of water is causing harm to Rangen's operation.

DATED this 5th day of November, 2014.

BRODY LAW OFFICE, PLLC

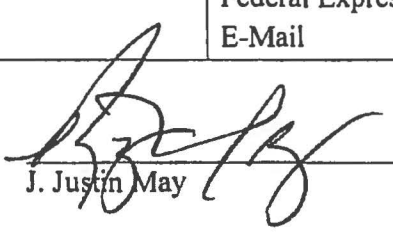
By

Robyn M. Brody

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 5th day of November, 2014, I caused a true and correct copy of the foregoing document to be served using 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 Thomas J. Budge RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P.O. 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 ☒
Kathy McKenzie P.O. Box 109 Hagerman, ID 83332 knbmac@q.com	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☒


J. Justin May