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Department of Water Resources
Eastern Region

Randall C. Budge (ISB# 1949)
Thomas J. Budge (ISB# 7465)
RACINE OLSON NYE BUDGE & BAILEY CHARTERED
201 E. Center St. / P.O. Box 1391
Pocatello, Idaho 83204
(208) 232-6101 – phone
(208) 232-6109 – fax
rcb@racinelaw.net
tjb@racinelaw.net

Attorneys for the Ground Water Districts

IDAHO DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF APPLICATION
FOR PERMIT NO. 36-16976 IN THE
NAME OF NORTH SNAKE GROUND
WATER DISTRICT ET AL., AND AP-
PLICATION FOR PERMIT NO. 36-
17002 IN THE NAME OF RANGEN,
INC.

Water Right Permit No. 36-16976
Water Right Permit No. 36-17002

**Ground Water Districts'
Motion in Limine**

North Snake Ground Water District, Magic Valley Ground Water District, Aberdeen-American Falls Ground Water District, Bingham Ground Water District, Bonneville-Jefferson Ground Water District, Clark-Jefferson Ground Water District, and Madison Ground Water District (collectively, the “Districts”) file this motion pursuant to IDAPA 37.01.01.600 to preclude Rangen, Inc. (“Rangen”) from introducing evidence of past water diversions at the Rangen fish hatchery.

SUMMARY

The exhibits disclosed by Rangen on September 5, 2014, include numerous documents relating to past water diversions at the Rangen hatchery. Rangen presented these same documents in its delivery call hearing to argue it would be unfair to limit Rangen to water from the Martin-Curren Tunnel, since Rangen has in the past diverted water from Billingsley Creek in addition to the Tunnel. The Director rejected Rangen’s argument, ruling that the elements of its SRBA partial decrees authorize the diversion of water from the Curren Tunnel only.

Rangen obviously plans to present the same evidence in this matter to argue it would be unfair to grant Application for Permit no. 36-16976 to the Districts on the basis it would allow them to appropriate water that Rangen has diverted in the past. Evidence of prior water diversions, however, is irrelevant to the statutory factors governing IDWR review of permit applications. Moreover, allowing Rangen to rehash its unfairness argument will significantly prolong the hearing in this matter, putting the other parties and IDWR to unnecessary time and expense.

Therefore, Rangen should be barred from presenting evidence of past water diversions in this matter.

ARGUMENT

A. Rangen's SRBA partial decrees.

In 1997, the SRBA court issued partial decrees defining the source of Rangen's water rights as "Martin-Curren Tunnel," and the point of diversion as "T07S R14E S32 SESWNW."¹ The partial decrees were certified as final judgments under I.R.C.P. 54(b), with no appeal taken.² The partial decrees for Rangen's fish propagation water rights are summarized as follows:

Water Right No.	36-15501	36-02551	36-07694
Priority Date	07/01/1957	07/13/1962	04/12/1977
Source	Martin-Curren Tunnel; Tributary to Billingsley Creek	Martin-Curren Tunnel; Tributary to Billingsley Creek	Martin-Curren Tunnel; Tributary to Billingsley Creek
Quantity	1.46 cfs	48.54 cfs	26.00 cfs
Point of Diversion	T07S R14E S32 <u>SESWNW</u>	T07S R14E S32 <u>SESWNW</u>	T07S R14E S32 <u>SESWNW</u>

B. IDWR summary judgment ruling concerning the source and point of diversion of Rangen's water rights.

On December 13, 2011, Rangen filed a delivery call seeking curtailment of junior-priority groundwater rights, claiming material injury to "the

¹ See *Appendix A* attached hereto.

² *Id.*

Martin-Curren tunnel, the source of Rangen's water rights"³ Rangen subsequently filed a motion for summary judgment arguing its water rights should be interpreted to allow Rangen to divert water from Billingsley Creek in addition to the Curren Tunnel.^{4, 5} Billingsley Creek is a distinct source of water from the Curren Tunnel, and the diversion structure Rangen used to divert water from Billingsley Creek (the "Bridge Diversion") is located outside of the legally described point of diversion in Rangen's partial decrees (the Bridge Diversion is in the SWSWNW). Nonetheless, Rangen argued:

Because Rangen's historical appropriations, point of diversion and use of water includes water from the entire spring complex at the head of its Research Hatchery, the [] attempt to restrict Rangen's delivery call to water that would flow through the mouth of the Martin-Curren Tunnel itself should be rejected. Rangen is entitled to judgment as a matter of law on this issue.⁶

After reviewing Rangen's motion and brief, the Director disagreed, relying on the unambiguous terms of Rangen's partial decrees. As to the point of diversion, he held:

The point of diversion element decreed by the SRBA district court unambiguously limits diversion to T07S R14E S32 SESWNW. Therefore, by the unambiguous terms of its SRBA partial decrees, Rangen is not authorized to divert water from sources outside T07S R14E S32 SESWNW. Without a water right that authorizes diversion outside T07S R14E S32 SESWNW, Rangen cannot call for delivery of water from sources located outside its decreed point of diversion.⁷

As to the source, the Director held:

While the SRBA partial decrees list Martin-Curren Tunnel as the source, the partial decrees do not expressly state that Rangen's water rights are limited only to diversion from the mouth of Martin-Curren Tunnel; likewise, the decrees do not

³ *Petition for Delivery Call*, IDWR Docket No. CM-DC-2011-004, p. 5 (Dec. 13, 2011).

⁴ *Brief in Support of Motion for Summary Judgment Re: Source*, IDWR Docket No. CM-DC-2011-004, p. 19 (Mar. 8, 2013).

⁵ "Martin-Curren Tunnel" is often referred simply as the "Curren Tunnel."

⁶ *Id.* at 12.

⁷ *Order Granting in Part and Denying in Part Rangen, Inc.'s Motion for Partial Summary Judgment Re: Source*, CM-DC-2011-004, p. 6 (April 22, 2013) ("2013 Order on Summary Judgment").

state that sources other than Martin-Curren Tunnel are lawfully diverted within the ten-acre tract. Thus, there are genuine issues of material fact in dispute as to whether Rangen can divert from sources other than Martin-Curren Tunnel that are located within T07S R14E S32 SESWNW.⁸

C. Rangen's SRBA late claim.

As Rangen was pursuing its motion for summary judgment before the Director, it was also taking action in the SRBA. Three days before the Director issued his summary judgment ruling, Rangen filed a *Motion for Late Claim* seeking another fish propagation water right with the source as Billingsley Creek and the springs at the head of the Creek.⁹ Rangen subsequently filed a *Motion to File Amended Notice of Claim* to expand the legal description to include the SWSWNW where the Bridge Diversion is located on Billingsley Creek.¹⁰ However, Judge Wildman denied both the motion to amend and the late claim, holding:

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.

....

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. Therefore, it is of no surprise that the Department has and will continue to administer water in basin 36

⁸ *Id.*

⁹ *Notice of Claim*, SRBA subcase no. 36-16977 (April 19, 2013).

¹⁰ *Motion to File Amended Notice of Claim*, SRBA subcase no. 36-16977 (April 26, 2013).

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 review at the appropriate time in the form of judicial review.

....

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. Further, despite Rangen's claims for the Forty Acre Tract point of diversion, the Department only recommended the Ten Acre Tract point of diversion. Rangen did not object to these recommendations. ... 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 facts, 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 claim 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.¹¹

D. IDWR Final Order.

At the hearing on its delivery call, Rangen challenged the Director's summary judgment ruling, dedicating much of its case to a lengthy review of IDWR backfiles, surveys, water measurements, and old photographs documenting Rangen's past diversions of water from Billingsley Creek. After reviewing the testimony and exhibits Rangen presented, the Director ruled that Rangen's SRBA decrees limit it to water from the Curren Tunnel:

The source for water right nos. 36-02551 and 36-07694 is the Curren Tunnel. The point of diversion for both water rights is described to the 10 acre tract: SESWN Sec. 32, T7S, R14E. While Rangen has historically diverted water from Billingsley Creek at the Bridge Diversion located in the SWSWNW Sec. 32, T7S, R14E, Rangen's SRBA decrees do not identify Billingsley Creek as a source of water and do not include a point of diversion in the SWSWNW Sec. 32, T7S, R14E. A decree entered in a general adjudication such as the SRBA is conclusive as to the nature and extent of the water right. Idaho Code § 42-1420. Administration must comport with the unambiguous terms of the SRBA decrees. Because the SRBA decrees identify the source of the water as the Curren Tunnel, Rangen is limited to only that water discharging from the Curren Tunnel. Because the SRBA decrees list the point of diversion as SESWNW Sec. 32, T7S, R14E, Rangen is restricted to

¹¹ *Order Denying Motion to File Late Claim; Order Denying Motion to File Amended Notice of Claim*, SRBA subcase no. 36-16977, p. 4-5, 7-9 (Oct. 2, 2013).

diverting water that emits from the Curren Tunnel in that 10-acre tract.¹²

E. Judicial review of Final Order.

Rangen petitioned for judicial review of the Director's ruling.¹³ In its appeal brief and at oral argument Rangen again rehearsed the history of past water diversions from Billingsley Creek to argue it is unfair for the Director to limit its water rights to the Curren Tunnel. All briefing has been submitted, oral argument has occurred, and a written decision is pending.

F. Criteria for examining permit applications.

Idaho Code § 42-203A instructs the IDWR to approve applications for permits unless the IDWR finds:

- (a) the proposed diversion will reduce the quantity of water under existing water rights;
- (b) the water supply is insufficient for the purpose for which it is sought to be appropriated;
- (c) the application is not made in good faith, or is made for delay or speculative purposes;
- (d) the applicant does not have sufficient financial resources to complete the work involved therein;
- (e) it will conflict with the local public interest as defined in section 42-202B, Idaho Code;
- (f) it is contrary to conservation of water resources within the state of Idaho; or
- (g) it will adversely affect the local economy of the watershed or local area within which the source of water for the proposed use originates, in the case where the place of use is outside of the watershed or local area where the source of water originates.

Past water diversions at the Rangen fish hatchery have no bearing on any of these factors. Therefore, Rangen should be precluded from presenting evidence of past water diversions, particularly since it is clear Rangen's purpose in doing so is to circumvent the Director's ruling concerning the

¹² *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962*, CM-DC-2011-004, p. 32 (Jan. 29, 2014) ("2014 Final Order").

¹³ *Rangen v. IDWR et al.*, Fifth Jud. Dist., Case No. CV-2014-1338.

source and point of diversion of Rangen's water rights based on subjective notions of fairness that have no part in IDWR review of permit applications.

CONCLUSION

Based on the foregoing, Rangen should be precluded from putting on evidence of past water diversions at the Rangen fish hatchery, including but not limited to the following exhibits:

Exhibit No.	Description
2013	IDWR backfile for water right 36-2551
2015	IDWR backfile for water right 36-7694
2017	Rangen hatchery water measurements
2018	IDWR memo re Rangen hatchery water measurements
2019	NPDES Permit
2020	Government Permits
2022	Brockway letter re flow measurements
2023	GPS data related to Exhibit 2022
2024	Map related to Exhibits 2022 and 2023
2025	Photos related to Exhibits 2022, 2023, and 2024
2026	Photo - Rangen Box
2027	Photo - pipes leading to Rangen Box
2028	Photo - 6" white pipe, discharge pipe from Farmer's Box
2029	Photo - Rangen Box
2030	Photo - Rangen Box
2031	Photo - Rangen Box
2032	Diagram of Curren Tunnel, Talas Slope, Billingsley Creek
2033	Curren Tunnel flow measurements
2034	1962 Warranty Deed

Dated this 11th day of September, 2014.

RACINE OLSON NYE BUDGE &
BAILEY, CHARTERED

By: 
Thomas J. Budge
Attorney for the Ground Water Districts

CERTIFICATE OF MAILING

I certify that on this 11th day of September, 2014, the foregoing document was served on the following persons in the manner indicated.


Signature of person mailing form

James Cefalo IDAHO DEPT. OF WATER RESOURCES 900 N. Skyline Drive, Ste. A Idaho Falls, Idaho 83402-1718 james.cefalo@idwr.idaho.gov sharla.cox@idwr.idaho.gov	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-mail
Gary Lemmon BLIND CANYON AQUA RANCH 2757 S. 1050 E. Hagerman, Idaho 83332 glemmon@northrim.net	☐ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-mail
Craig Hobdey HOBDEY LAW OFFICE P.O. Box 176 Gooding, Idaho 83330 hobdeycraig@gmail.com	☐ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-mail
Robyn Brody BRODY LAW OFFICE, PLLC P.O. Box 554 Rupert, ID 83350-0554 robynbrody@hotmail.com	☐ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-Mail
J. Justin May MAY BROWNING & MAY PLLC 1419 W Washington Boise, ID 83702-5039 jmay@maybrowning.com	☐ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-Mail
Fritz X. Haemmerle HAEMMERLE & HAEMMERLE, PLLC P.O. Box 1800 Hailey, ID 83333-1800 fxh@haemlaw.com	☐ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-Mail

APPENDIX A

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)
_____)
ORDER OF PARTIAL DECREE
For Water Right 36-15501

On October 10, 1997, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 36-15501 is hereby **decreed** as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED December 29, 1997.



DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

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)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-15501

NAME & ADDRESS: RANGEN INC
PO BOX 706
BUHL ID 83316

SOURCE: MARTIN-CURREN TUNNEL TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 1.46 CFS

THIS RIGHT AND RIGHT NO. 36-02551 ARE LIMITED TO A TOTAL
COMBINED FACILITY VOLUME OF 123,272 CU. FT.

PRIORITY DATE: 07/01/1957

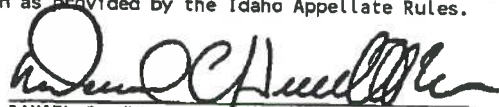
POINT OF DIVERSION: T07S R14E S32 SESWNW Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	FISH PROPAGATION	01-01 12-31	1.46 CFS

PLACE OF USE:	FISH PROPAGATION	Within GOODING County
	T07S R14E S31	SENE
	S32	SWNW

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.



DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

1997 DEC 29 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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	)	CERTIFICATE OF MAILING
	)	
Case No. 39576	)	
_____	)	Water Right(s): 36-15501

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 36-15501 was mailed
on December 29, 1997, with sufficient first-class postage prepaid
to the following:

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

RANGEN INC
Represented by:
J DEE MAY
PO BOX 1846
TWIN FALLS, ID 83303
Phone: 208-733-7180

DIANA DELANEY
Chief 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)
_____)

PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-07694

1997 DEC 30 AM 9:46

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

FILED _____

NAME & ADDRESS: RANGEN INC
PO BOX 706
BUHL ID 83316

SOURCE: MARTIN-CURREN TUNNEL TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 26.00 CFS
FACILITY VOLUME=287,640 CU. FT.

PRIORITY DATE: 04/12/1977

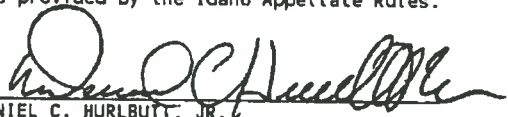
POINT OF DIVERSION: T07S R14E S32 SESWNW Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	FISH PROPAGATION	01-01 12-31	26.00 CFS

PLACE OF USE:	FISH PROPAGATION	Within GOODING County
	T07S R14E S31	SENE
	S32	SWNW

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.


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

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	)	ORDER OF PARTIAL DECREE
	)	
Case No. 39576	)	For Water Right 36-02551
	)	

On October 10, 1997, a *Special Master's Report and Recommendation* was filed for the above water right. No Challenges were filed to the *Special Master's Report and Recommendation* and the time for filing Challenges has now expired.

Pursuant to I.R.C.P. 53(e)(2) and *SRBA Administrative Order 1*, Section 13f, this court has reviewed the Findings of Fact and Conclusions of Law contained in the *Special Master's Report* and wholly adopts them as its own.

Therefore, IT IS ORDERED that water right 36-02551 is hereby **decreed** as set forth in the attached *Partial Decree Pursuant to I.R.C.P. 54(b)*.

DATED December 29, 1997.



DANIEL C. HURLBUTT, JR.
Presiding Judge
Snake River Basin Adjudication

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)
PARTIAL DECREE PURSUANT TO
I.R.C.P. 54(b) FOR
Water Right 36-02551

NAME & ADDRESS: RANGEN INC
PO BOX 706
BUHL ID 83316

SOURCE: MARTIN-CURREN TUNNEL TRIBUTARY: BILLINGSLEY CREEK

QUANTITY: 48.54 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR DOMESTIC USE SHALL
NOT EXCEED 13,000 GALLONS PER DAY.
THIS RIGHT AND RIGHT NO. 36-15501 ARE LIMITED TO A TOTAL
COMBINED FACILITY VOLUME OF 123,272 CU. FT.

PRIORITY DATE: 07/13/1962

POINT OF DIVERSION: T07S R14E S32 SESWNW Within GOODING County

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	FISH PROPAGATION	01-01 12-31	48.54 CFS
	DOMESTIC 3 HOMES AND 2 OFFICES	01-01 12-31	0.1 CFS

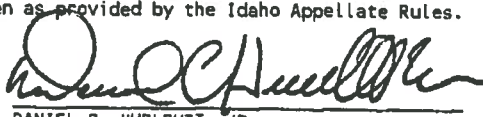
PLACE OF USE:	FISH PROPAGATION	Within GOODING County
	T07S R14E S31 S32	SENE SWNW
	DOMESTIC	Within GOODING County
	T07S R14E S31 S32	SENE SWNW

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
DOMESTIC USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.

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.


DANIEL C. HURLBUTT, JR.
PRESIDING JUDGE
Snake River Basin Adjudication

1997 DEC 29 PM 02:00
DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO
FILED _____

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

)
)
)
)

CERTIFICATE OF MAILING

Water Right(s): 36-02551

CERTIFICATE OF MAILING

I certify that a true and correct copy of the PARTIAL DECREE
PURSUANT TO I.R.C.P. 54(b) for WATER RIGHT 36-02551 was mailed
on December 29, 1997, with sufficient first-class postage prepaid
to the following:

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

RANGEN INC
Represented by:
J DEE MAY
PO BOX 1846
TWIN FALLS, ID 83303
Phone: 208-733-7180

DIANA DELANEY
Chief Deputy Clerk

CERTIFICATE OF MAILING

PAGE 1
12/29/97