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DEPT. OF WATER RESOURCES
SOUTHERN REGION

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Attorneys for Rangen, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE
APPLICATION FOR TRANSFER OF
WATER RIGHT NO. 36-2055
(TRANSFER APPLICATION #79330) IN
THE NAME OF NORTH SNAKE GWD,
MAGIC VALLEY GWD, SOUTHWEST
ID ON BEHALF OF THE OWNER,
STATE OF IDAHO, DEPT. OF FISH
AND GAME,

**NOTICE OF PROTEST BY
RANGEN, INC. TO WATER RIGHT
TRANSFER APPLICATION NO.
79330**

Rangen, Inc. ("Rangen"), P.O. Box 706, 115 13th Avenue South, Buhl, Idaho 83316, by and through its attorneys, and pursuant to Idaho Code Section 42-222, or as otherwise provided by administrative rules, hereby files its protest to Transfer Application No. 790330 (the "Application") for the transfer of the Place of Use for up to 10 cfs of Water Right No. 36-2055 owned by Idaho Fish and Game Department ("IDFG") from Tucker Springs at the Hagerman State Fish Hatchery, for delivering mitigation water to the Rangen, Inc. location and/or

**NOTICE OF PROTEST BY RANGEN, INC. TO WATER RIGHT TRANSFER APPLICATION
NO. 79330 - 1**

Billingsley Creek to satisfy in part the Director of Idaho Department of Water Resources' *Final Order regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* ("Curtailment Order") in the Rangen delivery call case, CM-DC-2011-004.

PROTEST

1. The Application violates the criteria of I.C. § 42-222.
2. The current use for water right 36-2055 is fish propagation. This is a non-consumptive use.
3. The Application proposes to transfer water from Tucker Springs and Riley Creek to the head of Billingsley Creek. The water will not return to Riley Creek. The transfer will therefore transform this non-consumptive right to one that is 100% consumption as to Tucker Springs and Riley Creek.
4. There are diseases such as PKD that are present in Tucker Springs that are not present at the head of Billingsley Creek. The transfer of water will result in transfer of disease.
5. The Idaho Fish & Game previously protested a similar application to remove water from Riley Creek. As noted by the Idaho Fish & Game, this transfer "will be detrimental to fish and wildlife, including their associated habitats, and therefore, is not in the best interest of the general public of the State of Idaho." See *Idaho Fish & Game Protest*, attached as Exhibit 1.
6. Other water rights are injured by the transfer and the change constitutes an enlargement in use of the original right, in violation of the criteria of I.C. § 42-222.
7. The change is not consistent with the conservation of water resources within the state, in violation of the criteria of I.C. § 42-222.

8. The transfer is not in the local public interest as defined in section 42-202B, Idaho Code, in violation of the criteria of I.C. § 42-222.

9. For all the reasons contained herein, the Application should be denied.

10. For such other and further reasons as may be discovered or set forth at the hearing of this matter. Protestant reserves the right to amend this protest as necessary.

WHEREFORE, the Protestant prays for the following relief:

1. That the Permit be denied in all respects.
2. For attorney's fees and costs as may be allowed by law.
3. For any other relief as deemed just and equitable.

RESPECTFULLY SUBMITTED this 23rd day of June, 2014.

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at either address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

MAY, BROWNING & MAY

By: 
for J. Justin May

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Fee: \$25.00

Receipt No. 5034098

Receipt by: N. ERICKSON

Date Received: 6/23/14

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 23rd day of June, 2014, he caused a true and correct copy of the foregoing document to be served upon the following as indicated:

Original: IDAHO DEPARTMENT OF WATER RESOURCES Southern Region 650 Addison Ave. W., Ste. 500 Twin Falls, ID 83301	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	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	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☒
Big Bend Irrigation & Mining Co., Ltd. Almer Huntley, Jr., President P.O. Box 334 Hagerman, ID 83332	Hand Delivery ☐ U.S. Mail ☒ Facsimile ☐ Federal Express ☐ E-Mail ☐

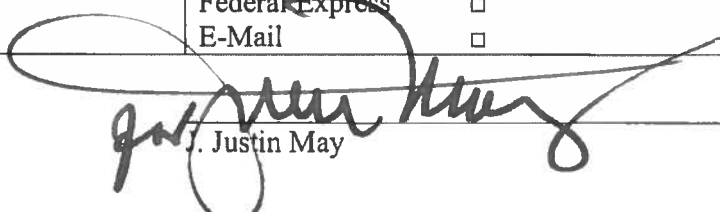
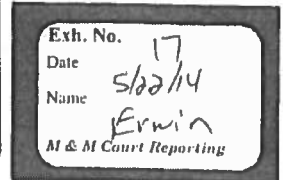

Justin May

EXHIBIT 1



IDAHO FISH & GAME
MAGIC VALLEY REGION
 808 East Main Street
 P.O. Box 428
 Jerome, Idaho 83338-0428



Dirk Kempton
 Stephen P. Stealey

January 20, 1999

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JAN 22 1999

Department of Water Resources
 Southern Region

Mr. Allen Merritt
 Idaho Dept. of Water Resources
 1341 Fillmore Street, Suite 200
 Twin Falls, Idaho 83301-3380

RE: Water Right Applications #36-08783 (15 cfs Billingsley Creek), #36-08784 (12 cfs Billingsley Creek), #36-08785 (16 cfs Riley Creek) Buckeye Farms, and #36-08786 (15 cfs Billingsley Creek) Western Legends

Dear Allen,

We would like to protest the above referenced water right applications for permits #36-08783 - #36-08786 for a cumulative total of 42 cfs from Billingsley Creek and 16 cfs from Riley Creek. All four diversions are for year-around use. The reason for the protest is the appropriations will be detrimental to fish and wildlife, including their associated habitats, and therefore, is not in the best interest of the general public of the State of Idaho.

Both Billingsley Creek and Riley Creek support diverse populations of fish and riparian dependent wildlife. Survival of these species, especially fish populations, are dependent on adequate flows to maintain biological parameters. Removal of 42 cfs from Billingsley Creek and 16 cfs from Riley Creek will result in flows which may not support dissolved oxygen levels and flowing water in pools and interstitial spaces which are utilized by fish and other aquatic organisms for reproductive or security habitats. These flow reductions, which we estimate represents between 60 and 80% of the average stream flow during low flow conditions at their confluence with the Snake River, will also result in a substantial reduction in overall habitat available for fish from the diversion points to the Snake River.

Water quality in both streams is also an issue which will be impacted by further diversions. Both Billingsley Creek and Riley Creek are currently on Idaho's Clean Water Act section 303(d) water quality limited list. Pollutants listed for each include nutrients, sediment, and low dissolved oxygen. Billingsley Creek is rated as a "high" priority while Riley Creek is rated "low" for development of total maximum daily loads for the listed pollutants.

It should also be noted that the Idaho Water Resources Board has on file an application for a minimum stream flow in Billingsley Creek below the Highway 20 bridge, with a proposed priority date of June 24, 1991. The amounts applied for are 75 cfs April 1 to Sept. 30 and 140 cfs from October 1 to March 31. Beneficial uses which the flows are targeted to support are:

Receipt # 50-1150
 1/25/99

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fish rearing and spawning habitat, fish passage, waterfowl habitat, and aesthetic beauty. Although this application has not been acted upon by the Water Resource Board, it should be noted that any further diversions may potentially be diminished if the minimum stream flow amount is approved. For this reason we suggest the Billingsley Creek applications be held pending the decision of the Water Resource Board on the minimum flow right application.

Thank you for your consideration of this matter. If you have further questions please contact Dave Parrish, Natural Resource Biologist at this office.

Sincerely,



Carl H. Nellis
Magic Valley Regional Supervisor

cc: IDFG-NRFB (Robertson)
State of Idaho A.G.'s Office (Ampe)
IDWR-Boise (Graham)
IDHW-DEQ-Twin Falls (McMasters)
Buckeye Farms (Yore)
Western Legends