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DEPARTMENT OF
WATER RESOURCES

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**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

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| IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-0413A, 36-04013B AND 36-7148<br><br>**(Snake River Farm)** | **RANGEN'S PROTEST OF THE SECOND MITIGATION PLAN OF NORTH SNAKE GROUND WATER DISTRICT AND MAGIC VALLEY GROUND WATER DISTRICT PROVIDING FOR MONETARY COMPENSATION** |
| IN THE MATTER OF THE SECOND MITIGATION PLAN OF NORTH SNAKE GROUND WATER DISTRICT AND MAGIC VALLEY GROUND WATER DISTRICT PROVIDING FOR MONETARY COMPENSATION | |

COMES NOW Rangen, Inc., by and through counsel, and protests the approval of the Second Mitigation Plan of North Snake Ground Water District and Magic Valley



R# C088059
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Ground Water District Providing For Monetary Compensation ("Second Mitigation Plan For Compensation").

1) Rangen, Inc. holds a number of water rights with a source in the Martin-Curren Tunnel, a spring that is part of the Thousand Springs complex. Rangen's water rights include water rights numbers 36-15501, 36-02551, and 36-07694.

2) The Martin-Curren Tunnel, like the other springs in the Thousand Springs complex is hydraulically connected to the Eastern Snake Plain Aquifer ("ESPA").

3) Rangen conducts research and development and raises fish year round using spring water from its water rights. The Martin-Curren Tunnel has experienced significant decreases in flow due in part to ground water pumping on the ESPA. By letters dated September 23, 2003 and October 6, 2003, Rangen requested that the director of the Department of Water Resources fulfill his duty to administer water rights in accordance with priority.

4) In response to Rangen's request for administration, the director issued a series of orders culminating in the Second Amended Order of May 19, 2005. Rangen filed a Petition for Hearing on the director's order. Rangen's petition is currently pending and Rangen is still waiting for its hearing.

5) The Director determined that model simulations show that curtailment of water rights junior to January 1, 1961 would result in an average steady state increase of 5 cfs in the Thousand Springs to Malad Gorge spring reach, which includes the Curren Tunnel. *Second Amended Order of May 19, 2005,* Finding of Fact 81.

6) The Director then applied a 10% trimline to include only those junior water rights that the model indicates reduce spring discharge in the Thousand Springs to Malad spring breach by more than 10% of the amount of depletion resulting from those ground water diversions. Application of the 10% trimline reduced the simulated effect of

curtailment to 0.4 cfs in the Thousand Spring to Malad Gorge spring reach. *Second Amended Order of May 19, 2005,* Finding of Fact 80.

7) The Director concluded that 0.4 cfs was insignificant and that Rangen's delivery call is futile. *Second Amended Order*, Conclusion of Law 25.

8) Rangen timely petitioned for a hearing on a number of aspects of the Director's order including the accuracy of the model simulations in the Thousand Springs to Malad spring reach, the application of the 10% trimline, and the Director's determination of a futile call. That petition is still pending and Rangen has not yet had its hearing.

9) With regard to the Snake River Farm water rights, the director determined the simulated impact of pumping of the Snake River Farm's water rights utilizing the 10% trimline with an analysis similar to that utilized in Rangen's Second Amended Order.

10) On September 5, 2008, North Snake Ground Water District and Magic Valley Ground Water District filed an Amended Mitigation Plan proposing alternate mitigation including a pump back proposal.

11) On December 18, 2008, the ground water districts filed this Second Mitigation Plan of North Snake Ground Water District and Magic Valley Ground Water District providing for monetary compensation. The Ground Water District proposed to mitigate for 2.0 cfs on an annual basis in the amount of $17,820.00 per cfs per year.

12) On February 17, 2009, the Ground Water District, withdrew their Amended Mitigation Plan.

13) The Ground Water Districts rely upon Conjunctive Management Rule 43, IDAPA 37.03.11.043.03.c which provides that one of the factors to be considered by the Director when evaluating a proposed mitigation plan is "whether the mitigation plan provides replacement water supplies or other appropriate compensation to the senior priority water right. . .."

14) The Director does not have the authority to approve a mitigation plan providing for monetary compensation instead of water over the objection of the senior water right holder.

15) Even if the director has authority to approve monetary compensation without approval of the senior water right holder, the Ground Water District's proposal only addresses 2.0 cfs. This is only a portion of the depletion caused by junior ground water pumping. As set forth in the report of Willem Schreuder, PhD dated December 4, 2008, filed by Clear Springs, the director's application of the 10% trimline is inappropriate.

16) The Ground Water District's proposal for monetary compensation for depletions on an annual basis does not address the cumulative and ongoing effect that continued out of priority pumping will have on spring flows at the Snake River Farms' facility as well as springs utilized by other senior water rights holders including Rangen.

17) The Ground Water District's Second Mitigation Plan does not comply with the requirements of Conjunctive Management Rule 43 including IDAPA 37.03.11.043.01.c.

18) For the foregoing reasons the Second Mitigation Plan of North Snake Ground Water District and Magic Valley Ground Water District providing for monetary compensation should be rejected.

19) Rangen, Inc. requests a hearing on the Ground Water District's Second Mitigation Plan pursuant to IDAPA 37.03.11.043.02.

Dated this 23 day of February, 2009.

MAY, SUDWEEKS & BROWNING, LLP

J. Justin May
Attorneys for Rangen, Inc.

## CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of February, 2009, I served a true and correct copy of the foregoing by delivering it to the following individuals by the method indicated below, addressed as stated.

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