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DEC 10 1997
CLERK OF DISTRICT COURT
TWIN FALLS, IDAHO
36-15501

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 36-15501
_____	)	

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

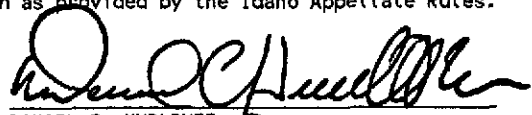
POINT OF DIVERSION: T07S R14E S32 SESWNW Within GOODING County

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

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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): 36-15501

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

CERTIFICATE OF MAILING

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NOV 20 2000

PAGE 1
12/29/97



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 31, 2003

J. Dee May
May, Sudweeks & Browning, LLP
516 Second Street East
P. O. Box 1846
Twin Falls, ID 83303

VIA FACSIMILE TO (208) 733-7967 AND FIRST CLASS MAIL

Re: Distribution of Water to Water Rights Nos. 36-02551, 36-07694, and 36-15501

Dear Mr. May:

After reading your letter yesterday, I want to clarify my request for information conveyed by my letter to you dated October 17, 2003. In my letter, I stated that I need additional information as follows:

- (1) The amount of water available to supply the listed water rights from the surface water sources from which the right is diverted;
- (2) The configuration of diversion works used to divert water under the listed water rights;
- (3) The amounts of water being diverted at the present time as well as the amounts of water historically diverted under the listed water rights;
- (4) The configuration of water measuring and recording devices used to measure the quantity of water diverted under the listed rights; and
- (5) The potential for supplying water to the listed rights by implementing alternate reasonable means of diversion or alternate points of diversion.

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MAR 10 2004

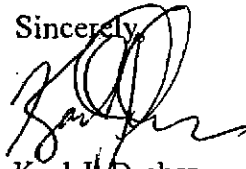
J. Dee May
October 31, 2003
Page 2 of 2

It is the responsibility of the Department of Water Resources to gather this information, and I did not necessarily intend for Rangen, Inc. to develop this information. Of course any of this information that Rangen can provide will be helpful.

What I requested of Rangen, Inc. was to: (1) contact Cindy Yenter, the watermaster for Water District No. 130 to arrange for site visits; and (2) provide all historical records of the amounts of water diverted under the listed rights. The purpose of the site visits is to develop the five items of information listed on the previous page. The reason for my request for historical records is that the Department only has records of diversions under the Rangen rights from 1995 through 2002.

If further clarification is needed, please contact me at your earliest convenience.

Sincerely,



Karl J. Dreher
Director

c: Wayne Courtney – Rangen, Inc.
Cindy Yenter – Water District No. 130 Watermaster
Lewis Rounds – Water District No. 120 Watermaster
Frank Irwin – Water District No. 36A Watermaster
Tim Luke – IDWR

RECORDED
OCT 30 2004

May, Sudweeks & Browning, LLP

Attorneys at Law

JAY D. SUDWEEKS, PC
J. DEE MAY, PC
BART D. BROWNING, CHTD.
J. JUSTIN MAY

jdmay@tflaw.com

Twin Falls, Idaho

516 Second Street East
P.O. Box 1846
83303
Telephone (208) 733-7180
Facsimile (208) 733-7967

Reply to Twin Falls Office

Boise, Idaho

1419 W. Washington
P.O. Box 6091
83707
Telephone (208) 429-0905
Facsimile (208) 342-7278

October 30, 2003

RECEIVED
NOV - 3 2003
Department of Water Resources

VIA FACSIMILE
208-327-7866

Mr. Karl Dreher, Director
Idaho Department of Water Resources
1301 North Orchard St.
Boise, ID 83706-2237

RE: Distribution of Water to Water Right Nos. 36-02551, 36-07694, and
36-15501, said Water Rights owned by Rangen, Inc.

Dear Mr. Dreher:

This letter is in response to your October 17, 2003 letter which was received in my office on October 20, 2003. In that letter you indicate that you are initiating a response to our delivery call. In that process you say that you must first make findings that material injury is occurring and also make a determination of reasonableness of water diversions under those listed water rights pursuant to Rule 42 of the Conjunctive Management Rules. You then indicate that you do not have sufficient information to make the findings required by the Conjunctive Management Rules and that you need additional information from us.

It is Rangen's position that the Conjunctive Management Rules were not promulgated with the requisite authority and therefore our call should not be administered under the jurisdiction of those Conjunctive Management Rules. We believe those Rules are unconstitutional both in their creation and in their application by the Department. We therefore believe that much of the information requested by you is irrelevant to administering our call under the constitutional and statutory directives given to you as the Director of the Department of Water Resources. As you know those Rules along with

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MAR 10 2004

Mr. Karl Dreher
October 30, 2003
Page 2

their promulgation and application among other things are presently in litigation; a case in which we soon hope to be a party.

Be that as it may, on an administrative level (to preserve our rights in that venue) we wish to provide the requested information to you where we feel it is appropriate. You first of all asked for the amount of water available to supply the listed water rights from the surface water sources from which the right is diverted. We do not presently have that information nor do we believe it is the responsibility and burden of the senior water right holder (in this case Rangen, Inc.) to supply a list of the individual water rights that impact Rangen's above-referenced water rights. It is our understanding (based on what you said to me at our last meeting) that you already have compiled such a list and we believe that the burden is the Departments or at the very least would be the burden of the junior water right holder(s) who should be curtailed in order to supply our water rights as appropriated under the Prior Appropriation Doctrine.

You also asked for a configuration of the diversion works used to deliver water under the listed water rights. We are in the process of trying to put together such a configuration. You asked the amounts of water being diverted at the present time as well as amounts of water historically diverted under the water rights listed above. Those records have been kept by Rangen since approximately 1966. We have a summary that has been prepared and are at the present time going through numerous boxes to find the underlying documents (from which the summary was prepared) which we will provide. However, in furnishing those records, we believe that the past records are irrelevant to the present call; Rangen, Inc. is not receiving its full appropriated right as appropriated; the past records would seem inappropriate for any necessary administration based on a present call.

You also asked for a configuration of water measuring and recording devices. We are trying to get that configuration put together and will furnish it to you under the same protest set out in the preceding paragraph.

You have asked what the potential is for supplying water under an alternate reasonable means of diversion or alternate points of diversion. We do have some suggestions that we are compiling at the present which could be used by junior water right holders and when we have fleshed out those alternatives those also will be provided to you.

We would welcome the site visits you suggest which would involve the Department, District 130's Water Master, as well as representatives of Rangen. We will make those arrangements with Cindy Yenter (whom I have recently talked with), the Water Master for Water District 130, in the near future once we have determined our own

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Mr. Karl Dreher
October 30, 2003
Page 3

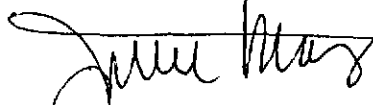
schedules. When it is determined when such a site visit could be set up between all participants my secretary, Marilyn, will try and coordinate such site visit(s).

Lastly, you ask that we provide you with historical records as to the amount of water diverted under the Rangen water rights as soon as practicable. Again, we will provide those records but are doing so under protest in that we do not feel that that historical recordation is relevant to the present call made by Rangen. The fact remains that presently Rangen is not receiving its appropriated water and what has happened in the past really has no relevancy or value. It is the present that we are dealing with now and under the present situation Rangen certainly is not receiving its full appropriation as outlined in previous correspondence.

We will try and get the requested information to you as set out above as quickly as possible and appreciate your courtesy in that regard realizing that there are several boxes of materials which must be perused, separated and correlated in order to provide the material in a form that would be understandable to all parties. We thank you for your patience in that regard and will be getting back to you very shortly.

Very truly yours,

MAY, SUDWEEKS & BROWNING, LLP



J. DEE MAY

JDM:mab

cc: Wayne Courtney
Dan Steenson
John Simpson
Jason Miciak

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MAR 10 2004



State of Idaho

DEPARTMENT OF WATER RESOURCES

1301 North Orchard Street, Boise, ID 83706 - P.O. Box 83720, Boise, ID 83720-0098
Phone: (208) 327-7900 Fax: (208) 327-7866 Web Site: www.idwr.state.id.us

DIRK KEMPTHORNE
Governor

KARL J. DREHER
Director

October 17, 2003

J. Dee May
May, Sudweeks & Browning, LLP
516 Second Street East
P. O. Box 1846
Twin Falls, ID 83303

VIA FACSIMILE TO (208) 733-7967 AND FIRST CLASS MAIL

Re: Distribution of Water to Water Rights Nos. 36-02551, 36-07694, and 36-15501

Dear Mr. May:

This is in response to your letter dated October 6, 2003, which was received in my office on October 10, regarding the administration of water rights junior in priority to water rights no. 36-02551 for 48.54 cfs (priority date of July 7, 1962), no. 36-07694 for 26.0 cfs (priority date of April 12, 1977), and no. 36-15501 for 1.46 cfs (priority date of July 1, 1957), used by Rangen, Inc. at its fish propagation facilities. I have been out of town at various meetings and did not see your letter until yesterday, October 16.

The reason I sought additional clarification by my letter dated September 25, 2003, regarding your earlier letter dated September 21, was that in your letter you specifically asked to have "the diversion of water in District 36A" (emphasis added) administered such that Rangen, Inc. "receives its full appropriation of the above-referenced water rights." Because of the specific reference to Water District No. 36A, I did not understand your request to include the clarification provided in your October 6 letter that you had meant for your request to include administration of "all water right diversions junior to ours that are interfering with and impacting our water rights under the water right numbers referenced above."

The spring flow available for water rights nos. 36-02551, 36-07694, and 36-15501, is allocated to the rights in order of priority. To the extent that the more junior right(s) are not receiving the full quantity of water authorized under the right(s), and since there are no surface water rights that are junior in priority to the listed rights that divert from the same sources as the listed rights, your request for water rights administration will be treated as a call for water

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delivery under the "Rules for Conjunctive Management of Surface and Ground Water Resources" (IDAPA 37.03.11) ("Conjunctive Management Rules"). The rules are available at the following website:

<http://www2.state.id.us/adm/adminrules/rules/idapa37/0311.pdf>

These rules prescribe how IDWR is to respond to a call for water delivery made by a holder of a senior priority surface or ground water right. Rules 40 and 30 of the Conjunctive Management Rules prescribe procedures for responding to delivery calls against junior priority ground water rights that are and are not within a water district where ground water regulation is included in the function of such districts, respectively.

With this letter, I am initiating a response to your delivery call as against junior priority ground water rights in Water Districts Nos. 120 and 130, the only water districts over the Eastern Snake River Plain Aquifer (ESPA) upgradient from the Thousand Springs area within which ground water regulation is included. If you wish to have your delivery call applied against junior priority water rights from the ESPA that are not in Water Districts Nos. 120 or 130, you will need to follow the process outlined in Rule 30 of the Conjunctive Management Rules.

In responding to your calls for water delivery under Rule 40 of the Conjunctive Management Rules, I must first make findings that material injury is occurring and determinations of reasonableness of water diversions under the listed water rights, as provided in Rule 42 of the Conjunctive Management Rules. I do not have sufficient information to make the findings required by Rules 40 and 42 of the Conjunctive Management Rules. Therefore, I will need certain additional information as follows:

- (1) The amount of water available to supply the listed water rights from the surface water sources from which the right is diverted;
- (2) The configuration of diversion works used to divert water under the listed water rights;
- (3) The amounts of water being diverted at the present time as well as the amounts of water historically diverted under the listed water rights;
- (4) The configuration of water measuring and recording devices used to measure the quantity of water diverted under the listed rights; and
- (5) The potential for supplying water to the listed rights by implementing alternate reasonable means of diversion or alternate points of diversion.

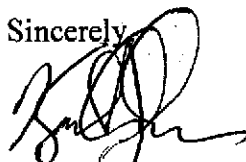
Developing the above information will require site visits by the watermaster for Water District No. 36A, the watermaster for Water District No. 130, and at least one or two other employees of IDWR. Please have a representative of Rangen, Inc. contact Cindy Yenter, the

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NOV 20 2003

J. Dee May
October 17, 2003
Page 3 of 3

watermaster for Water District No. 130, at the Department's offices in Twin Falls (telephone no. 208-736-3033) as soon as possible to schedule site visits. In addition, please provide me with all historical records of the amounts of water diverted under the listed rights as soon as practicable.

Sincerely,



Karl J. Dreher
Director

c: Cindy Yenter – Water District No. 130 Watermaster
Lewis Rounds – Water District No. 120 Watermaster
Frank Irwin – Water District No. 36A Watermaster
Tim Luke – IDWR
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

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