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DEPARTMENT OF
WATER RESOURCES

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION
DELIVERY CALL OF RANGEN, INC.'S
WATER RIGHT NOS. 36-02551 & 36-
7694

Docket No. CM-DC-2011-004

**RANGEN, INC.'S RESPONSE IN
OPPOSITION TO IGWA'S
MOTION TO CONTINUE
HEARING AND REQUEST FOR
EXPEDITED DECISION**

Rangen, Inc. ("Rangen"), through its attorneys, submits the following Response in Opposition to IGWA's Motion to Continue Hearing and Request for Expedited Decision.

I. INTRODUCTION

Fifteen days before its expert witness reports are due, IGWA has filed a motion seeking to vacate the hearing of this matter to give its expert, Charles M. Brendecke,

additional time to complete his work. As grounds for its Motion, IGWA contends that ESPAM2 is not complete and that Rangen has not timely produced documents in response to discovery requests. IGWA's position is without merit for the reasons set forth below and its Motion should be denied.

II. ANALYSIS

A. Completion of the Final ESPAM2 Report Has Never Been a Condition of Rolling Out the New Model.

1. Rangen filed its Petition for Delivery Call on December 13, 2011. This matter has been pending for over nine months.
2. After Rangen's Petition was filed, the Department scheduled this matter for a status conference to be held on January 19, 2012. See Notice of Prehearing Conference dated January 4, 2012. The Director told Rangen and IGWA at that status conference that Rangen's Delivery Call would not be heard using ESPAM2 until the new model was complete. Director Spackman stated in part: "But I intend to stand firm on not using 2.0 right now and not starting a process that uses it ahead of the department and the modeling committee feeling comfortable that we're ready to roll it forward. And my target is a three-to-six month target." See January 19, 2012 Transcript, p. 16, lines 8-13 (attached as Exhibit 1 to Brody Affidavit).
3. To keep the roll out of ESPAM2 on track with the Director's target, the Department agreed to provide a punch list of items that needed to be completed. See January 19, 2012 Transcript, p. 25, line 11 – p. 26, line 7 (attached as Exhibit 1 to Brody Affidavit). Rangen requested the list so that there would be a clear game plan as to what had to be done to finish ESPAM2. See id., p. 25, line 11 –

p. 26, line 1. The Department also agreed to conduct monthly status conferences so that the parties could be kept abreast of the progress being made to finalize ESPAM2. See id., p. 26, lines 2-10.

4. At the February 21, 2012 status conference, the Department presented the parties with a Gantt chart showing a timeline for the items that needed to be completed before ESPAM2 could be rolled out. See February 21, 2012 Transcript, p. 4, line 3 – p. 10, line 9 (attached as Exhibit 2 to Brody Affidavit). Rangen questioned whether the Gantt chart showed everything that needed to be completed on ESPAM2. Counsel for Rangen explained that Rangen did not want to have the model finalization process thrown off track because tasks necessary for completion were not identified. Counsel for Rangen explained:

You know, I see this [Gantt chart] as a process memo that's helpful for sure. But if there's particular variables that relate to validity, calibration or uncertainty, you know, that if you're concerned about that the committee should be working on, **we don't want to get months down the process and then, you know, all of a sudden have anyone say, Gee, well, we didn't consider this, that or the other and we should be. So that's our concern.**

February 21, 2012 Transcript, p. 11, line 25 – p. 12, line 7 (attached as Exhibit 2 to Brody Affidavit). Counsel for Rangen asked:

Q: So as you sit here today you're not aware of any variables that the department is concerned about?"

A (Mr. Baxter): I guess I don't know what other variables, other than as the director pointed out, we talked about some data issues that –

Q: I think our only concern, Garrick, is that if those issues do come up, that the department provide that list to the committee so they could be working on it in a timely fashion. So I guess you said there are none, but what we would ask is if you see any, that they be made available fairly timely so the committee can work on them.

February 21, 2012 Transcript, p. 14, lines 2-14 (attached as Exhibit 2 to Brody Affidavit).

To address Rangen's concerns, the Department agreed to work the Gantt chart into a more detailed punch list of items that needed to be completed to roll out ESPAM2. February 21, 2012 Transcript, p. 25, line 13 – p. 26, line 24 (attached as Exhibit 2 to Brody Affidavit).

5. The Gantt chart and punch list were modified over time as tasks were completed on ESPAM2. Copies of the Gantt chart and the punch list dated April 17, 2012 are attached as Exhibit 3 to Brody Affidavit as an example.
6. It is important to note that completion of the final report on ESPAM2 was never part of the items listed on the Gantt chart or punch list. The final report was never identified as something that had to be done before ESPAM2 would be considered complete. During the April 28, 2012 status conference Rangen explained to IGWA that Rangen's experts share their opinions about the model openly in the ESHMC meetings and that IGWA's experts should, in good faith, do the same. April 28, 2012 Transcript, p. 20, line 21 – p. 21, line 23 (attached as Exhibit 4 to Brody Affidavit). IGWA affirmed that its expert, Charles M. Brendecke, was active in the ESHMC meetings and shared his opinions openly. Id. at p. 21, lines 14-23 (attached as Exhibit 4 to Brody Affidavit). At no time prior to the filing of the present Motion did IGWA or Brendecke share their view that ESPAM2 would not be complete until the final report was issued.

B. IGWA Did Not Object to the Director Entering an Unconditional Order Allowing the Roll-Out and Use of ESPAM2 in Rangen’s Call.

7. At the June 2012 status conference it became clear that the items listed on the Gantt chart and punch list were nearly finished and that ESPAM2 would be ready to roll out within the Director’s target time frame.

8. Following the June 2012 status conference there was much discussion among the members of the ESHMC concerning the language that should be used to notify the Department that the Committee considered ESPAM2 complete and ready to use. Because the members of the ESHMC could not reach a consensus on the language to be sent to the Department, Rick Raymondi, the chairman of the ESHMC, sent the Director an email on July 16, 2012 notifying him that:

The Eastern Snake Hydrologic Modeling Committee recommends that the Department begin using ESPAM version 2 rather than ESPAM version 1.1 for ground water modeling.

See Exhibit 5 to Brody Affidavit.

9. Raymondi’s email did not end with this simple statement. Raymondi shared with the Director other comments from some of the committee members who wanted different language used. Raymondi explained that Greg Sullivan, an expert for the City of Pocatello, was more comfortable if the phrase “. . . although other tools or models may be more appropriate in some circumstances” were added to the phrase set forth above in paragraph 8. See id.

10. Raymondi also explained that “Chuck Brendecke [IGWA’s expert] said that he shared Greg [Sullivan’s] concerns about implying that the model is appropriate for any and all situations.” See id.

11. It is important to note that neither Brendecke nor IGWA objected to the issuance of the Committee's statement that the Department should begin using ESPAM2. Brendecke did not share with Raymondi, the Department or any of the parties that he believed ESPAM2 was incomplete, deficient or could not be used until the final documentation for the model was complete.

12. Based on the ESHMC's recommendation, Spackman entered an order on July 27, 2012 stating:

Based on the foregoing, IT IS HEREBY ORDERED as follows:

For purposes of the Rangen, Inc. delivery call, the Department will utilize ESPAM version 2.0. This order does not decide how, in this delivery call, the Department will use ESPAM version 2.0. As it relates to the Rangen, Inc. delivery call, any and all issues associated with ESPAM version 2.0 and the Department's use of ESPAM version 2.0 will be addressed during the course of the January 28, 2013 hearing.

13. Director Spackman's July 27, 2012 Order is **not** conditioned upon the completion of the final report for ESPAM2. IGWA did not object to the entry of the Director's Order.

C. The Final Documentation for MKMOD Will Not Provide Additional, Material Information to Brendecke.

14. While the final report for ESPAM2 may be important for users who have not been involved in the development of the model or for institutional purposes such as planning ESPAM3, the reality is that it has little value for insiders like Brendecke.

15. Brendecke has been a member of the ESHMC since 1998 (Brendecke Affidavit at ¶ 4) and has been actively involved in committee meetings, discussions, and activities. Id.

16. Bredecke complains in his supporting Affidavit that the documentation for a data processing tool called MKMOD and On-Farm Algorithm are incomplete. See id. at ¶ 11. He overlooks, however, the extensive training he has already received on the MKMOD module.
17. In August 2011, Willem Schreuder, an ESHMC Committee member, gave an extensive presentation concerning MKMOD at a two-day training session. See Exhibit 6 to Brody Affidavit for a copy of Schreuder's Powerpoint presentation. The training session was videotaped and is available on the IDWR website at http://www.idwr.idaho.gov/Browse/WaterInfo/ESPAM/meetings/MKMOD_MODFLOWTraining/.
18. Schreuder included in his presentation a slide titled "Whom to Blame for MKMOD". See page 4 of Exhibit 6 to Brody Affidavit. The slide states:
- * Greg Sullivan (on farm algorithms)
 - * Willem Schreuder (implementation)
 - * Jim Brannon (peer review)
 - * Allan Wylie (user testing)
 - * David Blew (just because we always blame him for everything)
19. Greg Sullivan is the expert designated by the City of Pocatello. IGWA and the City of Pocatello work closely together on this case. The parties typically take the same position, their attorneys caucus together privately during depositions, they file joint motions, and their attorneys authorize each other to sign documents on their behalf. Given the parties' close working relationship, it is reasonable to conclude that if Bredecke had questions about the On Farm algorithms all he

would have to do is pick up the phone, call IGWA's counsel and ask to arrange a meeting with Sullivan to discuss any questions that he may have. A telephone call or meeting with Sullivan would yield far more information about the On-Farm algorithms than the final report for ESPAM2.

20. As a committee member, Brendecke also has the ability to call Schreuder directly to ask questions about the work he did in connection with MKMOD. Even if Schreuder were reluctant to talk to Brendecke, a subpoena could be issued to take Schreuder's deposition. Again, a telephone call or deposition of Schreuder would yield far more information about MKMOD than any documentation that he might supply for the ESPAM2 final report.
21. Schreuder also identified Allan Wylie as being involved in the user testing of MKMOD. The Department allowed Brendecke to have a telephone meeting with Wylie to discuss any questions that he had. The meeting took place without a court reporter or attorneys being present.
22. In his supporting Affidavit, Brendecke makes much of the fact that Jim Brannon, one of Rangen's experts, played a role in MKMOD. He states in part:

At a September 7, 2012 telephone meeting with Dr. Allan Wylie, I learned that important components of the documentation were not complete and that some had not yet been written. **These unwritten components included documentation of code modules and data sets prepared by one of the ESHMC members, Rangen Inc.'s own expert.**

Brendecke Affidavit at ¶10 (emphasis added). The expert to whom he is referring is identified elsewhere in the Affidavit as Jim Brannon.

23. Brendecke's understanding of Brannon's role with MKMOD is incorrect. Brannon did not prepare any code modules or data sets for MKMOD. Brannon

Affidavit at ¶ 5; see also page 4 of Schreuder’s MKMOD presentation attached as Exhibit 6 to Brody Affidavit which shows Brannon as doing “peer review”. Brannon’s only role with MKMOD was to review the computer code written by Schreuder for MKMOD5. Brannon Affidavit at ¶ 5. Brannon presented his review of the MKMOD5 code to the ESHMC. Id. He was asked to write up a short document describing what he presented. Id. He also volunteered to add more to the document if he did additional modeling work that revealed more about how MKMOD worked internally. Id. at ¶ 6. Brannon did not do the additional modeling work involving MKMOD because IDWR created a curtailment scenario tool that could be used. Id.

24. Brannon has not reviewed any additional MKMOD code since his presentation to the ESHMC in November 2010. Id. Brannon’s contribution to the ESPAM2 final report does not contain any material that is not in his November 2010 powerpoint presentation attached to his affidavit. Id. Brannon’s review of MKMOD only verifies that the PERL code correctly implemented the On-Farm algorithms developed by Sullivan and discussed at length during ESHMC meetings. Id. Brannon’s contribution to the final ESPAM2 report does not contain any new information regarding MKMOD or how to use it. Id.
25. Even if Brendecke had questions about Brannon’s work on MKMOD, it was not until September 25th – nearly three weeks after Brendecke’s September 7th telephone meeting with Wylie wherein he claims he learned about the lack of documentation – that IGWA told Rangen that it believed that Brannon had information about MKMOD and Rangen’s historical spring flows that Brendecke

needed. IGWA emailed Rangen a request for information on September 25, 2012 and gave Rangen 24 hours to respond to the inquiry. See Exhibit 7 to Brody Affidavit.

26. Rangen responded to IGWA's inquiry a few hours after it was received and explained that Brannon had not done any work on MKMOD5 or Rangen's historical spring flows for at least two years and that he reported all of his work to the ESHMC when it was complete. Rangen provided IGWA with links to Brannon's presentations and pointed out that it had provided a copy of Brannon's spring flow presentation prior to IGWA's site visit in June 2012. See Exhibit 8 to Brody Affidavit.

27. Brendecke's assertion that "ESPAM2.0 is lacking complete documentation and that Rangen Inc.'s own expert is a contributor of a vital portion thereof is a disadvantage to me as an expert witness for IGWA" is without merit. There are multiple avenues for Brendecke to obtain information about MKMOD5 and the On-Farm algorithms. Informal telephone calls, written discovery or even depositions all could, and should, have been arranged if the lack of information is so critical that Brendecke cannot offer his expert opinions. Because the information was available through alternate means, Brendecke's claim of being disadvantaged should not be used to postpone the hearing scheduled to begin on January 28, 2012. If the Director is inclined to offer IGWA any relief to address this situation (Rangen contends that no relief should be given), Brendecke can be given the opportunity to provide a supplemental report that explains any errors

that may have been made in his initial report due to final documentation issues associated with MKMOD.

D. Rangen Has Timely Supplied the Documents and Information Requested by IGWA.

28. Rangen's Petition for Delivery Call was not the typical "we demand water" letter that is normally sent to IDWR. The Petition laid out Rangen's position in great detail and provided preliminary reports of Rangen's water experts based on ESPAM2.0-E110712A which was in place at the time of the filing. When Rangen filed its Petition it also provided a detailed Preliminary Expert Witness Disclosure which identified Rangen's experts, provided their curriculum vitae, set forth summaries of their opinions, included the information considered in forming their opinions, and listed the exhibits that they would likely use at a hearing of this matter. From the time it filed its Petition, Rangen has been clear about its position and the basis for it.
29. Rangen has made every effort to accommodate IGWA's requests for information. For example, Rangen agreed to allow IGWA and its experts to conduct a site visit prior to the opening of discovery. See May 24, 2012 Transcript, p. 7, lines 6-7 (attached as Exhibit 9 to Brody Affidavit). Similarly, Rangen agreed to engage in written discovery without prior authorization by the Director. See Brody Affidavit at ¶ 11.
30. On June 29, 2012, Rangen timely provided responses to IGWA's First Set of Discovery. While IGWA complains that not a single document was produced, it does not explain that Rangen responded repeatedly in its answers that it would make documents available for inspection and copying upon request. For example:

Request for Production No. 3: Produce all maps, diagrams, drawings, and surveys showing all or part of the Rangen facility.

Response to Request for Production No. 3: See Petition and documents attached thereto and referenced therein. Other documents responsive to this request in Petitioner's possession will be made available for inspection and copying pursuant to Rule 34(b)(2) of the I.R.C.P.

Request for Production No. 5: Produce all records in your possession of water flows in the Rangen facility.

Response to Request for Production No. 5: See Petition and documents attached thereto and referenced therein. Other documents responsive to this request in Petitioner's possession will be made available for inspection and copying pursuant to Rule 34(b)(2) of the I.R.C.P.

Request for Production No. 6: Produce all records in your possession of water flows from the springs that supply the Water Rights.

Response to Request for Production No. 6: See Petition and documents attached thereto and referenced therein. Other documents responsive to this request in Petitioner's possession will be made available for inspection and copying pursuant to Rule 34(b)(2) of the I.R.C.P.

Request for Production No. 7: Produce all water right permits, licenses, and decrees under which the Rangen facility is operated.

Response to Request for Production No. 7: See Petition and documents attached thereto and referenced therein. Other documents responsive to this request in Petitioner's possession will be made available for inspection and copying pursuant to Rule 34(b)(2) of the I.R.C.P. These documents are also available to IGWA on IDWR's website and/or the SRBA website.

Request for Production No. 9: Produce all documents related to water quality at the Rangen facility.

Response to Request for Production No. 9: See Petition and documents attached thereto and referenced therein. Other documents responsive to this request in Petitioner's possession will be made available for inspection and copying pursuant to Rule 34(b)(2) of the I.R.C.P.

Request for Production No. 12: Produce all documents related to dissolved oxygen and total gas saturation at the Rangen facility.

Response to Request for Production No. 12: See Response to Interrogatory No. 30. All documents responsive to this request in

Petitioner's possession will be made available for inspection and copying pursuant to 34(b)(2) of the I.R.C.P.

Request for Production No. 14: Produce all documents related to any wells, well pumps, groundwater production, and groundwater quality within one mile of the Rangen facility.

Response to Request for Production No. 14: Petitioner objects to this request as overbroad and burdensome. Without waiving and subject to this objection, see Petition and documents attached thereto and referenced therein. Other documents responsive to this request in Petitioner's possession will be made available for inspection and copying pursuant to Rule 34(b)(2) of the I.R.C.P.

Request for Production No. 15: Produce all documents associated with geologic or hydrologic investigations of springs, groundwater, or groundwater wells within one mile of the Rangen facility.

Response to Request for Production No. 15: Petitioner objects to this request as overbroad and burdensome. Without waiving and subject to this objection, see Petition and documents attached thereto and referenced therein. Other documents responsive to this request in Petitioner's possession will be made available for inspection and copying pursuant to Rule 34(b)(2) of the I.R.C.P.

31. For more than five weeks IGWA did not make any request to inspect or copy the documents that Rangen said it would make available. See Exhibit 4 to Budge Affidavit. When IGWA finally made its request to inspect the documents, Rangen had already made the decision to produce the documents to IGWA to avoid any type of argument that IGWA did not have adequate time to review documents. Rangen arranged for the scanning of documents on August 8, 2012, had the documents delivered to the scanner on August 9, 2012 and picked them back up with a disc on August 15, 2012. Brody Affidavit at ¶ 12. Rangen advised IGWA via email on Thursday, August 16, 2012 that there was a problem with the disc received and that a new disc would be produced shortly. See Exhibit

5 to Budge Affidavit. A courier hand-delivered the disc to IGWA on August 21, 2012 – just 15 days after IGWA requested to review the documents. Id.

32. On August 13, 2012, while Rangen’s initial set of documents were out for scanning, IGWA and the City of Pocatello filed a joint Motion to Issue Subpoenas Duces Tecum requesting the production of documents at the depositions of various Rangen employees scheduled for the week of September 10th. Contrary to IGWA’s assertion that the subpoenas were largely just a repeat of initial discovery, the subpoenas expanded the scope of discovery considerably. Among other things, IGWA and the City of Pocatello requested:

- (1) Records of pounds of fish feed used each month
- (2) Fish production records by raceway and in the aggregate
- (3) Fish mortality records by raceway and in the aggregate
- (4) Records reflecting final disposition of fish produced at Rangen
- (5) Pounds of fish per production cycle from 1966-2012
- (6) Fish density indices
- (7) Rangen’s contracts to supply trout

The Director issued the Subpoenas Duces Tecum at the Status Conference that was held on August 15, 2012.

33. It took a considerable amount of time and effort to gather the new records requested in the subpoenas duces tecum. While Rangen was working on these production requests it discovered that its contract with Idaho Power Company has a confidentiality clause in it. Before Rangen could produce documents related to its production for Idaho Power, it had to obtain a protective order allowing the

redaction of financial information and Idaho Power's permission to disclose the information requested. See Rangen's Motion to Quash or Modify Subpoenas and Motion for Protective Order. This also meant that once the documents were scanned they then had to be redacted – another time consuming step in the production process.

34. It is true that a large number of documents were produced via a shared electronic website. The uploads took place primarily on September 6 and 7, 2012 – not September 10th as IGWA contends. The uploads were made in advance of the depositions even though IRCP 30(b)(1) only requires that the documents be produced at the time of the deposition. The only upload that was made on September 10th was a small batch of documents that was overlooked during the production process. See Brody Affidavit at ¶ 13.
35. Between the time IGWA made its request to inspect documents on August 6, 2012, and the time of the depositions on September 10, 2012 (a period of just 35 days), Rangen, at its sole expense, gathered, scanned, redacted and produced to IGWA more than 8,000 pages of documents requested by IGWA and the City of Pocatello. The documents were well organized and labeled in such a manner that they could easily be identified. See Brody Affidavit at ¶ 13. Rangen also, as a courtesy to the parties, provided an index to the documents to group the Bates Nos. according to the various categories of documents requested. See id. Rangen has handled the information requests in a timely and efficient manner.
36. The last item that IGWA raises in support of its Motion is Rangen's alleged failure to produce its research notebooks. In paragraph 3 of its Petition for

Delivery Call, Rangen explains that it owns and operates “a research and fish propagation facility” in Hagerman. Throughout the Petition, Rangen calls the facility the “Research Hatchery”. Despite being given this information, IGWA’s written discovery did not inquire into the research aspects of the facility or request any research-related documents.

37. During the deposition of Doug Ramsey, a research scientist at Rangen, IGWA requested the production of Rangen’s research notebooks. Ramsey Depo., p. 109, line 11 – p. 112, line 19. The research notebooks contain Rangen’s documentation of fish feed trials and other research projects performed at the Research Hatchery.
38. Rangen asked that IGWA make a specific written request for the documents following the depositions because of a multitude of requests made during the depositions. See id. IGWA sent an email requesting the research notebooks on September 17, 2012. See Exhibit 7 to Budge Affidavit. Rangen responded that it would have to address the issue when Mr. Ramsey returned to work on September 24, 2012 since he was the person who had the knowledge necessary to obtain the research notebooks. On September 20, 2012, Rangen received a letter from the City of Pocatello also making the request that Rangen produce all research notebooks. Rangen advised the parties on the morning of September 25, 2012 that they would have to come and inspect the research documents themselves because of the voluminous nature of the request (Rangen has been doing research at the facility since it was built in the mid 1960s). Rangen’s handling of this

document request was reasonable and efficient and is not justification for vacating the current hearing schedule.

39. To support its request for research-related documents now, IGWA relies on the following Request for Production contained in its initial set of discovery:

Request for Production No. 4: Produce each and every document that tends to support or discredit your claim of material injury.

Response to Request for Production No. 4: The Petitioner objects to this request as being overly broad and burdensome. The request asks the Petitioner to characterize documents, which is not appropriate for a Request for Production. The Petitioner is not required to characterize documents or make conclusions about documents. Without waiving and subject to this objection, see Petition and documents attached thereto and referenced therein. Other documents responsive to this request in Petitioner's possession will be made available for inspection and copying pursuant to Rule 34(b)(2) of the I.R.C.P.

40. Rangen objected to this Request for Production because it requires Rangen to make a subjective determination of what documents tend to support or discredit its claim. In this instance, while it is certainly material that Rangen's ability to do research has been limited by diminished spring flows, Rangen does not believe that the research notebooks requested by IGWA have a tendency to support or discredit Rangen's claim. The research notebooks contain very detailed information about how particular research studies were carried out on a daily basis. Frankly, a chart showing how much feed was given to the fingerlings in trough 7 during a particular feeding cycle has nothing to do with Rangen's claim of material injury.

III. CONCLUSION

IGWA is looking for any way to delay the hearing of this matter because even a slight delay will probably mean that curtailment will not be ordered in 2013 even if Rangen prevails on its material injury claim. The Director has made it clear that April 1 is the “drop dead” date for ordering curtailment and that he must have time to issue a decision before that date or curtailment will not be ordered. The Director stated at the May 24, 2012 hearing that:

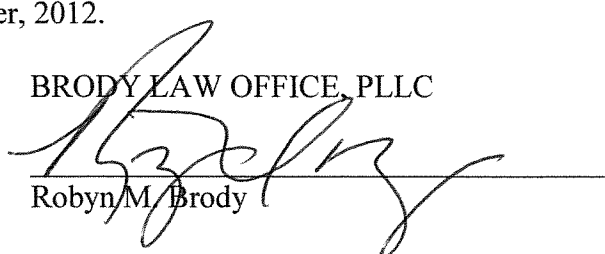
I’m willing to go there. But to have sufficient time to issue an order by the 1st of April, which to me is drop-dead time for issuance of an order for the irrigation season, I think any later than that, and that’s consistent with the other orders that were issued, I need to hold a hearing at the end of January or the first of February.

May 24, 2012 Transcript, p. 11, lines 2-8 (attached as Exhibit 9 to Brody Affidavit). If Rangen prevails in its claim of material injury and curtailment is not available as a remedy in 2013 then it is Rangen, a senior-priority water right holder, who continues to suffer irreparable harm. IGWA’s Motion to Continue is without merit and should be denied in its entirety.

**RANGEN REQUESTS A STATUS CONFERENCE TO SET ANY NEW DATES
IF THE DIRECTOR DECIDES TO GRANT IGWA SOME FORM OF RELIEF.**

DATED this 27th day of September, 2012.

BRODY LAW OFFICE, PLLC

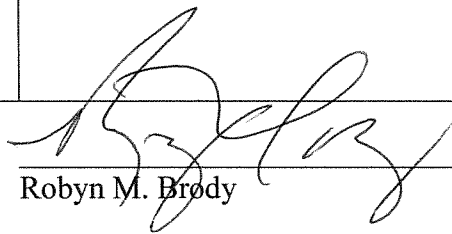

Robyn M. Brody

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 28th day of September, 2012 she caused a true and correct copy of the foregoing document to be served by email and on the 29th day of September she caused a true and correct copy of the foregoing document to be served by U.S. Mail upon the following:

<p>Original: Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 Deborah.Gibson@idwr.idaho.gov</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Garrick Baxter Chris Bromley Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov chris.bromley@idwr.idaho.gov</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Randall C. Budge Candice M. McHugh Thomas J. Budge RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P.O. Box 1391 101 South Capitol Blvd, Ste 300 Boise, ID 83704-1391 Fax: 208-433-0167 rcb@racinelaw.net cmm@racinelaw.net tjb@racinelaw.net</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Sarah Klahn Mitra Pemberton WHITE & JANKOWSKI Kittredge Building, 511 16th Street, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
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<p>John K. Simpson Travis L. Thompson</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/></p>

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