BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 AND 36-07694	)	**CM-DC-2011-004**
	)	**ORDER DENYING RANGEN, INC.'S MOTION FOR PROTECTIVE ORDER**
(RANGEN, INC.)	)	

FINDINGS OF FACT

On January 21, 2013, Rangen, Inc. ("Rangen") filed *Rangen, Inc.'s Motion for Protective Order Re: Other Facilities* ("Motion") asking the Director ("Director") of the Idaho Department of Water Resources ("Department") to declare that "Rangen has no obligation to provide further answers to the Interrogatories or respond to the Requests for Production" related to Rangen's past use of other fish rearing facilities. *Motion* at 1. Rangen argues that its past use of other facilities "is not relevant to any of the issues to be decided by the Director and is not reasonably calculated to lead to the discovery of admissible information."[1] *Id.* at 8.

The Idaho Ground Water Appropriators, Inc. ("IGWA") responded to the Motion by filing *IGWA's Response to Rangen's Motion for Protective Order Re: Other Facilities* ("IGWA Response") on January 28, 2013. IGWA argues that information about Rangen's past use of other fish rearing facilities is relevant to this proceeding and is reasonably calculated to lead to the discovery of relevant evidence. IGWA argues that "the documents requested by IGWA are necessary to enable IGWA to obtain an accurate understanding of how Rangen uses water, whether or to what extent its ability to produce fish or perform research has actually been impaired by reduced water flows (as opposed to discontinued use of other facilities)... ." *Id.* at 2.

[1] Rangen also argues that it would be "unduly burdensome" for it to produce the requested information, stating that it has already "gone to great lengths and expense" to comply with IGWA and Pocatello's other discovery requests. *Motion* at 6. Rangen's argument on this issue falls short however because Rangen fails to explain how responding to this specific request would be unduly burdensome. An analysis of how much money Rangen has already spent in discovery responding to other discovery requests is not sufficient. Without an explanation of the specific burdens this request would place on Rangen, the Director cannot conclude that responding to the request would be unduly burdensome. Plus, as Pocatello points out, if Rangen does not want to pay to scan and produce the requested information, it can simply make the documents available for examination by the parties.

The City of Pocatello ("Pocatello") put a finer point on this argument in its response to the Motion. Pocatello states:

> IGWA and Pocatello have been attempting to understand how many fish Rangen has produced over the history of the facility... . To date, our experts have been unable to substantiate historical Rangen fish production numbers based on the size and water flows in the facility... . Without information related to fish production at Rangen's other facilities, comparisons of Rangen's current fish production with past fish production is the metaphorical comparison of apples and oranges.

City of Pocatello's Response to Rangen's Motion for Protective Order at 3-4.

CONCLUSIONS OF LAW

The scope of discovery in administrative proceedings before the Department is governed by the Idaho Rules of Civil Procedure ("IRCP"). IDAPA 37.01.01.520.02. IRCP 26(b) permits broad discovery of any matter, not privileged, that is "relevant to the subject matter involved in the pending action" relating to "the claim or defense" of a party to the litigation. IRCP 26(b)(1). Even inadmissible evidence is discoverable, so long as it is "reasonably calculated to lead to the discovery of admissible evidence." *Id.*

IGWA and Pocatello do make a linkage (albeit a thin one) between the Rangen facility at issue in this proceeding and Rangen's past use of other fish rearing facilities. That linkage comes from IGWA's and Pocatello's attempts to understand Rangen's overall historical operations. The Director will not prejudge the admissibility of evidence that may be presented at hearing, but the Director concludes he should err on the side of access to the information sought given the broad scope of discovery provided under the rules. IGWA and Pocatello should be allowed access to the requested information to try to develop arguments they wish to make at hearing. Rangen itself controls the information related to its operations and IGWA and Pocatello are at a distinct disadvantage if they are not even allowed access to information to try to develop possible defenses to Rangen's delivery call. The purpose of discovery "is to facilitate fair and expedient pretrial fact gathering." *Edmunds v. Kraner*, 142 Idaho 867, 873, 136 P.3d 338, 344 (2006). Allowing IGWA and Pocatello access to the requested information is consistent with the stated purpose of discovery, even if some of the information collected during the discovery process may ultimately be found to be inadmissible at hearing.

For the reasons described above, the Director concludes that IGWA's and Pocatello's inquiries into information about Rangen's past use of other fish rearing facilities appears reasonably calculated to lead to the discovery of admissible evidence.

ORDER

Based upon and consistent with the foregoing, the Director hereby DENIES *Rangen, Inc.'s Motion for Protective Order Re: Other Facilities*.

DATED this 1st day of February, 2013.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of February, 2013, the above and foregoing document was served on the following by providing a copy in the manner selected:

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