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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 MOTION TO
QUASH OR MODIFY SUBPOENAS
DUCES TECUM AND MOTION
FOR PROTECTIVE ORDER**

COMES NOW Petitioner Rangen, Inc. ("Rangen"), by and through its attorneys,
and submits this Motion to Quash or Modify Subpoenas and Motion for Protective Order.

As grounds, Rangen states the following:

BACKGROUND FACTS

1) In December of 2011 Rangen submitted its Petition for Delivery Call in the above-entitled action (the “Rangen Call”).

2) A hearing has been scheduled for January 28, 2013.

3) The parties began discovery by mutual agreement on May 23, 2012.

4) Petitioner has timely responded to discovery requests by the Idaho Ground Water Appropriators, Inc. (“IGWA”). Rangen will timely respond to the First Set of Discovery by the City of Pocatello (“Pocatello”) which was served on Rangen on August 10, 2012.

5) Both sets of discovery requests contain broad requests for voluminous documents that cover a time period of forty-six years (1966-2012) and require the disclosure of business records that contain confidential or proprietary information.

6) On August 15, 2012, upon Pocatello and IGWA’s Motion to Issue Subpoenas Duces Tecum, the Director issued Subpoenas Duces Tecum directed to Wayne Courtney, Doug Ramsey, Joy Kinyon, Lonnie Tate, Dan Maxwell and Don Johnson (the “Subpoenas”).

7) The Subpoenas direct the witnesses to produce many of the same documents that were requested in IGWA and Pocatello’s initial discovery requests, but go even further and request additional proprietary and confidential business records such as:

- (a) Rangen’s contracts to supply trout produced at the Rangen facility to Idaho Power or other hydropower providers, or purchasers of trout produced at Rangen’s facility, and any related documents. (Item #16 Wayne Courtney

subpoena, Item #7 Don Johnson and Doug Ramsey subpoenas, Item #10 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas).

- (b) Hatchery fish production records by raceway and in the aggregate. (Item #9 Wayne Courtney subpoena, Item #3 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas);
- (c) All records and/or documents of beneficial use of Rangen's water rights, including but not limited to fish production as measured by pounds per fish per production cycle from 1966-2012. (Item #13 Wayne Courtney subpoena, Item #7 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas);
- (d) Records reflecting final disposition of fish produced at Rangen (e.g. food fish, conservation fish, or other. (Item # 12 Wayne Courtney subpoena, Item #6 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas);
- (e) Records of pounds of fish feed used each month. (Item #8 Wayne Courtney subpoena, Item #2 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas);
- (f) Disease treatment records. (Item #10 Wayne Courtney subpoena, Item #2 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas);
- (g) Fish mortality records (Item #11 Wayne Courtney subpoena, Item #5 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas);
- (h) Records of fish density indices. (Item #15 Wayne Courtney subpoena, Item #9 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas);
- (i) Rangen's Best Management Practices Plan ("BMPP") required under the Middle Snake Rock TMDL and October 25, 2007 Authorization to Discharge under the National Pollutant Discharge Elimination System, Permit No. IDG

130000 under which the Rangen facility is operated. (Item #3 Wayne Courtney subpoena, Item #2 Don Johnson and Doug Ramsey subpoenas);

(j) Any documents related to Rangen's BMPP regarding the development or execution of that BMPP, including draft BMPPs and correspondence with EPA or DEQ regarding Rangen's BMPP efforts. (Item #4 Wayne Courtney subpoena, Item #3 Don Johnson and Doug Ramsey subpoenas);

(k) Rangen's quarterly monitoring data for total phosphorus and total suspended solids collected as required by the Middle Snake Rock TMDL and October 25, 2007 Authorization to Discharge under the National Pollutant Discharge Elimination System, Permit No. IDG 130000. (Item #5 Wayne Courtney subpoena, Item #4 Don Johnson and Doug Ramsey subpoenas);

(l) Rangen's water quality materials, including data and scientific or technical studies, related to dissolved oxygen and total gas saturation within the Rangen facility. (Item #6 Wayne Courtney subpoena, Item #5 Don Johnson and Doug Ramsey subpoenas);

7) Rangen's contract with Idaho Power contains a confidentiality provision which generally prohibits Rangen from disclosing the contract and other documents pertaining to the contract such as records pertaining to production and final disposition of fish. Rangen has given Idaho Power notice of this proceeding and the subpoenas that have been issued.

8) The parties have agreed to a schedule for the depositions of the individuals identified in the Subpoenas. However, the parties have not entered into any agreement regarding the documents identified in the Subpoenas.

ARGUMENT

Rangen requests that the Department issue an Order quashing or modifying the subpoenas and enter the Protective Order attached hereto as Exhibit 1. The Department “upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms.” IDAPA 37.01.01.525. “Unless otherwise provided by statute, rule, order or notice, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure.” IDAPA 37.01.01.520. Rule 45(d) of the Idaho Rules of Civil Procedure further provides that the Director may (1) quash or modify the subpoena if it is unreasonable, oppressive, fails to allow time for compliance, requires disclosure of privileged or other protected matter and no exception or waiver applies, or subjects a person to undue burden or (2) condition compliance with the subpoena upon the advancement of the reasonable cost of producing the books, papers, documents, electronically stored information or tangible things by the person in whose behalf the subpoena is issued. I.R.C.P. 45(d).

Rangen contends that the documents outlined above in paragraph 7 are irrelevant in this call proceeding, not likely to lead to the discovery of relevant information and burdensome to produce. Moreover, the information contained in the documents requested includes proprietary and confidential information regarding Rangen’s production, production methods, finances, and customers. Rangen would be damaged if the information were disclosed to other parties other than counsel for IGWA and Pocatello. Without waiving any objection regarding the use of such information at the

hearing of this matter, Rangen requests that the Department enter an Order granting Rangen the following relief:

- (a) Idaho Power Contract (Item #16 Wayne Courtney subpoena, Item #7 Don Johnson and Doug Ramsey subpoenas, Item #10 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas). Quash. Alternatively, allow Rangen to redact all financial information and produce subject to the proposed Protective Order attached hereto as Exhibit 1.
- (b) Fish Production Records. (Item #9 Wayne Courtney subpoena, Item #3 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas; Item #13 Wayne Courtney subpoena, Item #7 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas). Allow Rangen to redact all financial information, limit records to the past five years, and produce subject to the proposed Protective Order attached hereto as Exhibit 1.
- (c) Final Disposition of Fish (e.g. food fish, conservation fish, or other). (Item #12 Wayne Courtney subpoena, Item #6 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas). Quash. Alternatively, allow Rangen to redact all financial information, limit records to the past five years, and produce subject to the proposed Protective Order attached hereto as Exhibit 1.
- (d) Records of pounds of fish feed used each month. (Item #8 Wayne Courtney subpoena, Item #2 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas). Quash. Alternatively, allow Rangen to redact all financial information, limit records to the past five years, and produce subject to the Protective Order.

- (e) Disease treatment records. (Item #10 Wayne Courtney subpoena, Item #2 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas). Quash. Alternatively, limit records to the past five years and produce subject to the proposed Protective Order attached hereto as Exhibit 1.
- (f) Fish mortality records. (Item #11 Wayne Courtney subpoena, Item #5 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas). Quash. Alternatively, limit records to the past five years and produce subject to the proposed Protective Order attached hereto as Exhibit 1;
- (g) Records of fish density indices. (Item #15 Wayne Courtney subpoena, Item #9 Dan Maxwell, Joy Kinyon and Lonnie Tate subpoenas). Quash. Alternatively, limit records to the past five years and produce subject to the proposed Protective Order attached hereto as Exhibit 1;
- (h) BMPP Documents. (Item #3 Wayne Courtney subpoena, Item #2 Don Johnson and Doug Ramsey subpoenas) (Item #4 Wayne Courtney subpoena, Item #3 Don Johnson and Doug Ramsey subpoenas). Quash. Alternatively, limit records to the past five years and produce subject to the proposed Protective Order attached hereto as Exhibit 1;
- (i) Rangen's water quality materials. (Item #6 Wayne Courtney subpoena, Item #5 Don Johnson and Doug Ramsey subpoenas). Quash. Alternatively, limit records to the past five years and produce subject to the proposed Protective Order attached hereto as Exhibit 1.

CONCLUSION

Based on the foregoing, pursuant to IDAPA 37.01.01.525 and I.R.C.P. 45(d), Rangen respectfully requests that the Department enter an Order quashing or modifying the subpoenas duces tecum as outlined above and permitting Rangen to produce documents subject to the proposed Protective Order attached hereto as Exhibit 1.

DATED This 27th day of August, 2012.

BRODY LAW OFFICE, PLLC

By: 

Robyn M. Brody

HAEMMERLE & HAEMMERLE, PLLC

By: 

Fritz Haemmerle

MAY, BROWNING & MAY, PLLC

By: 

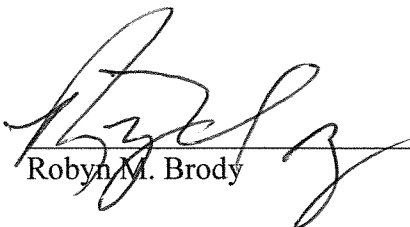
J. Justin May

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the th 27 day of August, 2012 she caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

Randall C. Budge	Hand Delivery	<input type="checkbox"/>
Candice M. McHugh	U.S. Mail	<input checked="" type="checkbox"/>
Thomas J. Budge	Facsimile	<input type="checkbox"/>
RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED	Federal Express	<input type="checkbox"/>
P.O. Box 1391	E-Mail	<input checked="" type="checkbox"/>
101 South Capitol Blvd, Ste 300		
Boise, ID 83704-1391		
Telephone: 208-395-0011		
Fax: 208-433-0167		
rcb@racinelaw.net		
cmm@racinelaw.net		

Sarah Klahn	Hand Delivery	<input type="checkbox"/>
Mitra Pemberton	U.S. Mail	<input checked="" type="checkbox"/>
WHITE & JANKOWSKI	Facsimile	<input type="checkbox"/>
Kittredge Building,	Federal Express	<input type="checkbox"/>
511 16th Street, Suite 500	E-Mail	<input checked="" type="checkbox"/>
Denver, CO 80202		
sarahk@white-jankowski.com		
mitrap@white-jankowski.com		



Robyn M. Brody

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

PROTECTIVE ORDER

The Director of the Idaho Department of Water Resources having reviewed and considered the Motion for Protective Order filed by Rangen, Inc. ("Rangen"), and good cause appearing therefore;

IT IS HEREBY ORDERED AND THIS DOES ORDER as follows:

1) This Order applies to any document production, responses to subpoenas or subpoenas duces tecum, deposition or other sworn statement or testimony produced or elicited from Rangen or its employees in the above-entitled action (the "Rangen Call").

2) Rangen may designate information as "Confidential Information." Such Confidential Information, not otherwise objectionable, shall be furnished subject to this Protective Order. Except as otherwise provided, confidential documents or information shall be so designated by means of a stamp bearing the legend "Confidential Information" on each page containing such information, or by producing documents to be protected under this order on a disk with the label "Confidential Information".

3) Any Person other than Rangen in receipt of documents or information designated as Confidential Information by Rangen shall not disclose the existence or contents of the Confidential Information, or any portion thereof, to any person, firm or



entity other than: (a) Counsel of record for IGWA or counsel of record for the City of Pocatello; (b) litigation support personnel or copy services who need access to such Confidential Information to assist IGWA and the City of Pocatello's counsel of record; (c) IGWA and the City of Pocatello's consulting experts; (d) experts whom counsel of record for IGWA or the City of Pocatello intend to call to testify concerning the issues in any trial or proceeding held in the Action; or (e) court reporters (collectively, "Authorized Recipients"). Prior to disclosure of Confidential Information to any person listed in this paragraph, other than IGWA or the City of Pocatello's counsel of record, such persons must execute a copy of the "**AGREEMENT TO BE BOUND BY PROTECTIVE ORDER**" attached hereto as "**Exhibit A,**" which is to be retained by counsel of record.

4) Documents or information designated by Rangen as Confidential Information shall not be disclosed or provided to any person other than Authorized Recipients, except as expressly provided herein. Except as provided herein, Authorized Recipients shall not use, provide, or otherwise make available to any non-Authorized Recipient any Confidential Information in connection with (a) any other pending or future litigation, judicial, and/or administrative proceedings, and/or (b) any other purpose, except as set forth herein. Authorized Recipients may only use Confidential Information in connection with the Rangen Call subject to the provisions contained herein.

5) Each Authorized Recipient given access to Confidential Information shall be advised that the Confidential Information is being disclosed and is subject to the terms of this Protective Order, may not be disclosed other than pursuant to the terms hereof, and may not be used other than in connection with the Rangen Call.

6) With respect to testimony sought or elicited during any deposition or hearing, whenever counsel deems that any question or line of questioning calls for or may result in the disclosure of Confidential Information, said counsel may designate on the record prior to such disclosure, or within seven (7) business days of the date of the deposition,

that such testimony is Confidential Information. Any portion of a deposition or other transcript that has been designated as including Confidential Information shall be so marked, shall be separately bound, and shall be subject to the provisions of this Protective Order pertaining to Confidential Information. Until the lapse of seven (7) business days from the date of a deposition, all deposition testimony shall be deemed Confidential Information.

7) Unless otherwise ordered by the Hearing Officer, no person shall attend any portion of a deposition, hearing or proceeding during which Confidential Information is disclosed unless such person is an Authorized Recipient under the terms of this Order. If the response to a question would require the disclosure of Confidential Information, the witness may refuse to answer or the Party whose Confidential Information would be disclosed may object and instruct the witness not to answer or not to complete an answer, as the case may be, until any persons who are not Authorized Recipients have left the room.

8) In the event any of the Parties determines to file or submit to the Hearing Officer any Confidential Information or information derived therefrom, or any papers containing or making reference to such information, unless agreed to in writing by the Parties, such documents shall be filed under seal in accordance with applicable rules. Where possible, only the portions of filings that contain Confidential Information shall be filed under seal.

9) If a Party in receipt of Confidential Information is subpoenaed, ordered by the Hearing Officer of competent jurisdiction, or otherwise legally required to produce information that another entity designated Confidential Information, the person or entity receiving the subpoena, order, or request shall: (a) immediately notify Rangen of the existence and substance of each such subpoena, order or request; (b) promptly furnish Rangen with a copy of any document(s) that memorialize the subpoena, order, or request; (c) not interfere with Rangen's response or objection to any such subpoena, order, or

request; and (d) unless Rangen consents in writing to an earlier production, not produce documents or information designated as Confidential Information until the last day permitted under any valid subpoena, order, or request.

10) Subject to further order of the Hearing Officer, all Confidential Information (and all copies) covered by this Protective Order and obtained by counsel or given to experts shall be destroyed or returned to counsel for the producing Party within thirty (30) days after the entry of a final, non-appealable judgment dispositive of the merits of the Action, and counsel shall certify that Confidential Information (and all copies) have been destroyed or returned. Notwithstanding anything to the contrary contained herein, counsel may retain any Confidential Information contained within, or in support of, their work product for archival purposes, provided that any such Confidential Information remains subject to the terms herein.

11) This Protective Order shall be without prejudice to the right of the Parties (a) to bring before the Hearing Officer at any time the question of whether any particular document or information constitutes Confidential Information, or (b) to present a motion for a separate or modified Protective Order as to any particular document or information, including restrictions differing from those as specified herein. The Parties, however, agree to seek the resolution of any disputes regarding the propriety of a designation of any particular document or information as Confidential Information through the meet and confer process prior to seeking relief from the Hearing Officer. If the Parties cannot reach agreement through the meet and confer process within three (3) business days of written notice of a dispute as to whether any particular document or information constitutes Confidential Information, the Party challenging the designation may seek resolution of the dispute by the Hearing Officer. If a Party challenges the designation of any information as confidential, the producing Party shall have the burden of proof with respect to such confidentiality. All Confidential Information shall remain confidential and be treated as such under the terms of the Protective Order until any disputes

regarding the propriety of the designation are resolved either informally or by the Hearing Officer. A Party's failure to dispute a confidential designation shall not waive that Party's right to assert thereafter that the document or information is not or has ceased to be Confidential Information.

12) This Protective Order shall remain in full force and effect until modified, superseded, or terminated on the record by agreement of the Parties or by Order of the Hearing Officer.

IT IS SO ORDERED.

DATED This ____ day of August, 2012.

Gary Spackman
Director

EXHIBIT A

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Docket No. CM-DC-2011-004

**AGREEMENT TO BE BOUND BY
PROTECTIVE ORDER**

- 1) I have read the Protective Order in the above-captioned matter.
- 2) I understand the terms of the Protective Order and agree to be fully bound by them.

DATED This ____ day of August, 2012.

By _____

