



(including testimony) that goes to the economic balancing argument.<sup>1</sup> However, the Director also agrees with IGWA that the Court did not close the door completely to the use of economic evidence. The Court stated that “[u]nder the law, the Groundwater Users' arguments regarding reasonable aquifer levels and full economic development must challenge the Spring Users' means of diversion.” *Id.* at 809, 252 P.3d at 90. To the extent that IGWA is able to link economic evidence to a reasonable means of diversion argument, such linkage is allowable. Because Rangen’s motion comes before Church’s expert report has been provided, the Department does not know if or how IGWA is able to make this link and it would be inappropriate to completely foreclose IGWA from trying to make this link. Accordingly, the Director will partially grant the Motion and exclude economic evidence, including the testimony by Church or any other witness, to the extent it revisits the balancing of economic interests raised and rejected in *Clear Springs*. However, IGWA will not be foreclosed from trying to link economic evidence to a reasonable means of diversion argument.

Rangen requests that it be allowed to supplement its witness disclosure list by designating an economist if the Director does not completely exclude Church’s testimony. *Motion* at 8. IGWA did not respond to this request in its Response. Given that expert reports have not yet been submitted, the Director finds this request reasonable and will grant the request.

The Director is not required to provide oral argument or a hearing on prehearing motions. IDAPA 37.01.01.565. In this case, the Director does not believe a hearing would be useful. The Director denies Rangen’s request for a hearing on the Motion.

## ORDER

Based on the foregoing, IT IS HEREBY ORDERED that Rangen’s *Motion in Limine to Exclude Testimony of John S. Church* is PARTIALLY GRANTED. Economic evidence, including testimony by Church, is excluded to the extent it revisits the balancing of economic interests raised and rejected in *Clear Springs*. However, IGWA is not foreclosed from trying to use economic evidence as part of a reasonable means of diversion argument.

IT IS FURTHER ORDERED that Rangen’s request to be allowed to designate an economist is GRANTED. Rangen has one week from the date of this order to designate its economist.

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<sup>1</sup> In its Response, IGWA suggests that Rangen’s motion is styled only as a motion to exclude the testimony of Church, not a motion to exclude economic evidence. *Response* at 2. While Rangen did caption the Motion with a focus on Church, the Director does not read the substance of the Motion so narrowly and interprets it as a request to exclude economic evidence that goes to the balancing of economic interests argument rejected by the Court in *Clear Springs*.

IT IS FURTHER ORDERED that Rangen's request for a hearing on its motion is DENIED.

Dated this 20<sup>th</sup> day of September, 2012.

A handwritten signature in black ink, appearing to read "Gary Stackman", written in a cursive style. The signature is positioned above a horizontal line.

GARY STACKMAN  
Director

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of September, 2012, a true and correct copy of the document described below was served by email and by placing in the United States mail, postage prepaid and properly addressed to the following:

**Document Served: Order Partially Granting Rangen, Inc.'s Motion in Limine to Exclude Testimony of John S. Church, Granting Request to Designate Expert and Denying Request for Hearing**

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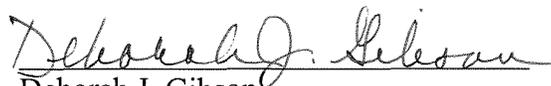
Deborah J. Gibson  
 Administrative Assistant to the Director

**AMENDED CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 20<sup>th</sup> day of September, 2012, a true and correct copy of the document described below was served by email and by placing in the United States mail, postage prepaid and properly addressed to the following:

**Document Served: Order Partially Granting Rangen, Inc.'s Motion in Limine to Exclude Testimony of John S. Church, Granting Request to Designate Expert and Denying Request for Hearing**

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