

ORIGINAL

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Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

RECEIVED

SEP 27 2012

DEPARTMENT OF
WATER RESOURCES

*Rec'd by email
9/26/12*

**BEFORE DEPARTMENT OF WATER RESOURCES
STATE OF IDAHO**

IN THE MATTER OF DISTRIBUTION OF
WATER TO WATER RIGHT NOS. 36-
02551 & 36-07694

(RANGEN, INC.)

Docket No. CM-DC-2011-004

**AFFIDAVIT OF THOMAS J. BUDGE
IN SUPPORT OF MOTION TO
CONTINUE HEARING**

STATE OF IDAHO)
 : ss
County of Bannock)

I, Thomas J. Budge, hereby declare the following:

1. My name is Thomas J. Budge. I am one of the attorneys of record representing IGWA in this delivery call action.
2. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the deposition of Wayne Courtney. This deposition was designated as confidential by Rangen; therefore, it is attached under seal.
3. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the deposition of Joy Kinyon. This deposition was designated as confidential by Rangen; therefore, it is attached under seal.
4. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from the deposition of Doug Ramsey. This deposition was designated as confidential by Rangen; therefore, it is attached under seal.

5. Attached hereto as **Exhibit 4** is a true and correct copy of a letter dated August 6, 2012, sent to counsel for Rangen regarding discovery.

6. On or about August 8, 2012, shortly after sending the letter in Exhibit 4 to Rangen's counsel, I received a telephone call notifying me that Rangen had hired a third party to scan the documents responsive to IGWA's discovery. Ms. Brody stated that she was optimistic the scanning would be completed and documents would be produced by August 15, 2012.

7. Having received no documents, IGWA's counsel contacted Ms. Brody on August 21, 2012, to inquire about the status of the documents being produced. Shortly thereafter we received a compact disc containing roughly 1,600 pages of documents in Portable Document Format (.pdf) that Rangen produced to supplement its discovery responses. Attached as **Exhibit 5** is a true and correct copy of email correspondence evidencing this.

8. On or about September 1, 2012, Rangen produced a second compact disc of roughly 200 more documents. From the date on the .pdfs, it appears these documents had been scanned approximately one week prior, on August 23, 2012.

9. Beginning on September 10, 2012, Rangen began uploading more than 6,000 pages of additional .pdf document to a file-sharing website. This upload occurred between September 10 and 12, 2012.

10. At the depositions of Rangen's fact witnesses held September 10-12, 2012, it was discovered that Rangen had not produced any of its aquaculture research records. Counsel for IGWA and Pocatello asked that they be produced. Attached as **Exhibit 6** is a true and correct copy of email communications between counsel for IGWA and Rangen's counsel regarding the production of the research information. The emails are dated September 17, 2012 through September 20, 2012.

11. Attached as **Exhibit 7** is a follow-up letter dated September 25, 2012 from Sarah Klahn, counsel for City of Pocatello, sent to Rangen's counsel specifically identifying the documents discovered during the depositions that Rangen had failed to produce.

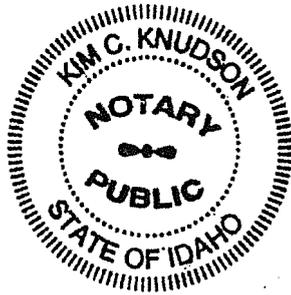
12. Rangen did not produce any such documents until September 25, 2012. Rangen also notified IGWA's counsel on that date that additional research records will need to be inspected personally at Rangen's facility.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

DATED this 28th day of September, 2012.


THOMAS J. BUDGE

SUBSCRIBED AND SWORN TO before me this 28th day of September, 2012.

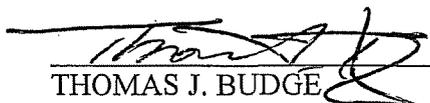



NOTARY PUBLIC FOR IDAHO
Residing at: Pocatello ID
My Commission Expires: 04-16-2016

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of September, 2012, the foregoing document was served upon the persons below in the manner indicated, with the exception that attachments submitted under seal have been served only upon parties who have signed an Agreement to be Bound by the Protective Order in this action.

Document served: Affidavit of Thomas J. Budge in Support of Motion to Continue Hearing


THOMAS J. BUDGE

Original and one copy:

Director, Gary Spackman
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098
Deborah.Gibson@idwr.idaho.gov

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Sarah Klahn
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BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION
OF WATER TO WATER RIGHT NOS. 36-
02551 & 36-07694

Docket No.: CM-DC-2011-004

CONFIDENTIAL INFORMATION

The enclosed is subject to the terms of the *Protective Order* entered on August 31, 2012 and is being disclosed pursuant to its terms. The enclosed documents may not be used other than in connection with the above-referenced delivery call.

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

**IN THE MATTER OF DISTRIBUTION
OF WATER TO WATER RIGHT NOS. 36-
02551 & 36-07694**

Docket No.: CM-DC-2011-004

Notice to Non-Authorized Recipients:

IGWA is not authorized to disclose or provide certain attachments to this pleading since they are subject to the terms of the *Protective Order* entered on August 31, 2012. Such documents have been designated as Confidential Information by the Hearing Officer and only those executing the *Agreement to Be Bound By Protective Order* will be given copies under seal.

EXHIBIT 4

LAW OFFICES OF

**RACINE OLSON NYE BUDGE & BAILEY
CHARTERED**

W. MARCUS W. NYE
RANDALL C. BUDGE
JOHN A. BAILEY, JR.
JOHN R. GOODELL
JOHN B. INGELSTROM
DANIEL C. GREEN
BRENT O. ROCHE
KIRK B. HADLEY
FRED J. LEWIS
ERIC L. OLSEN
CONRAD J. AIKEN
RICHARD A. HEARN, M.D.
LANE V. ERICKSON
FREDERICK J. HAHN, III
PATRICK N. GEORGE
SCOTT J. SMITH
JOSHUA D. JOHNSON
DAVID E. ALEXANDER
STEPHEN J. MUHONEN
CANDICE M. MCHUGH
CAROL TIPPI VOLYN
JONATHAN M. VOLYN
THOMAS J. BUDGE
BRENT L. WHITING
DAVE BAGLEY
JASON E. FLAIG
FERRELL S. RYAN, III
AARON A. CRARY
JOHN J. BULGER
BRETT R. CAHOON
BOYD J. HAWKINS

101 SOUTH CAPITOL BOULEVARD
SUITE 300
BOISE, IDAHO 83702

TELEPHONE (208) 395-0011
FACSIMILE (208) 433-0167

WWW.RACINELAW.NET

SENDER'S E-MAIL ADDRESS:

August 6, 2012

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FACSIMILE: (208) 232-6109

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TELEPHONE: (208) 526-6101
FACSIMILE: (208) 526-6101

ALL OFFICES TOLL FREE
(877) 232-6101

LOUIS F. RACINE (1917-2005)
WILLIAM D. OLSON, OF COUNSEL
JONATHAN S. BYINGTON, OF COUNSEL
JEFFREY A. WARR, OF COUNSEL

Robyn M. Brody
Brody Law Office, PLLC
PO Box 554
Rupert, ID 83350

J. Justin May
May, Browning & May
1419 W. Washington
Boise, ID 83702

Fritz X. Haemmerle
Haemmerle & Haemmerle, PLLC
PO Box 1800
Hailey, ID 83333

RE: CM-DC-2011-004 (Rangen Delivery Call)

Dear Counsel:

This letter is sent pursuant to I.R.C.P. 37(a)(2) in an effort to secure complete answers to *IGWA's First Set of Discovery Requests to Rangen, Inc.*, dated May 23, 2012. The following is a list of the discovery requests for which IGWA believes *Rangen, Inc.'s Responses to IGWA's First Set of Discovery Requests* dated June 22, 2012, to be incomplete.

Interrogatory No. 3. Given your objection that this interrogatory is "overly broad and burdensome," it is not clear whether you intend to supplement your answer once you decide what evidence you may offer at the hearing. Please clarify whether you will supplement your response and provide a complete answer to this interrogatory.

Interrogatory Nos. 5 and 7. Given your objections to these interrogatories, and your statement that your responses "may" be supplemented, it is not clear whether you intend to answer them

completely via supplemental discovery responses. Please clarify whether you will provide supplemental responses that completely answer these interrogatories.

Interrogatory No. 9. Your response states that “Rangen’s need for water and its use of water do not vary seasonally,” but also that “Rangen has, and will, beneficially use all water available.” If Rangen’s need for water is static, then presumably Rangen’s production is defined by the minimum amount of water available during the year (which is consistent with the evidence presented in the Blue Lakes/Clear Springs cases, and consistent with your answers to interrogatory nos. 26 and 29) and that mitigation should be focused on increasing seasonal minimum flows. In contrast, the statement that Rangen will beneficially use all water available suggests that mitigation should be spread evenly throughout the year in an effort to equally increase both seasonal minimum and seasonal maximum flows. This is why it is important and relevant for us to understand seasonal and other patterns of water use at the Rangen facility. Please supplement your response to this interrogatory accordingly.

Interrogatory Nos. 10, 12, 16, 17, 18, 19, 29, and 30; Request for Production No. 18. Conjunctive Management Rule 42.01.g instructs the Director to consider, when determining material injury, whether the senior’s water needs can be met by employing reasonable diversion and conveyance efficiency and conservation practices. Rule 42.01.h considers whether the senior’s water needs can be met by using alternate means or points of diversion. These interrogatories seek information that is reasonably calculated to lead to the discovery of admissible evidence involving these material injury factors. Please supplement your responses to these interrogatories accordingly.

Interrogatory Nos. 32 and 33. Your response to this interrogatory incorporates your responses to interrogatory nos. 4 and 8. Those responses contain objections and do not address the items requested in interrogatory no. 32. Thus, your response to this interrogatory is incomplete. Conjunctive Management Rule 42.01.a instructs the Director, when determining material injury, to consider the amount of water from the source from which the water right is diverted. Rule 42.01.e considers the amount of water diverted and used compared to the water rights. Please supplement your response to this interrogatory accordingly.

Request for Production No. 1. You refused to produce any documents in response to this request on the basis that it is “overly broad and burdensome.” As you know, I.R.C.P. 26(b)(1) authorizes discovery of “any matter, not privileged, which is relevant to the subject matter involved in the pending action, ... including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things” Please supplement your response to this request by producing all relevant documents that would not be overly burdensome to produce, and by identifying generally or where practical specifically all relevant documents that you claim would be overly burdensome to produce.

Request for Production Nos. 3, 4, 5, 6, 7, 9, 14, 15. Your response states that responsive records will be made available for inspection and copying pursuant to I.R.C.P. 34(b)(2). While we appreciate your client’s willingness to allow inspection of records in its possession, this

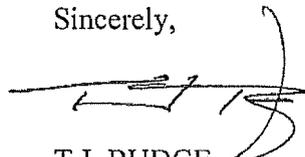
response is not adequate. I.R.C.P. 26(b)(1) allows discovery of the "nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of any discoverable matter." Please supplement your response to this request by providing a description of the requested documents, exact location of such documents, and the identity of any and all persons having knowledge of the documents. Please also provide the condition of the documents and the date(s), time(s) and location(s) where you will make them available. Since it is necessary to plan in advance how the inspection, copying or other type of reproduction will occur, the condition and form of the documents is required.

Request for Production Nos. 7 and 8. A general reference to public records at the IDWR or SRBA without identifying the records in any detail or at least the range of documents does not satisfy the expectation of the discovery requests pursuant to the I.R.C.P. Without such detail, counsel cannot know which records the Petitioner is referring to. Please supplement your responses accordingly.

Please, at your earliest convenience, supplement your responses with the requested information. My paralegal Becky Harvey must make arrangements over the next few weeks to review and copy the documents to be made available for inspection. Please call her at (208) 395-0011 at your earliest convenience to arrange that.

Thank you for your anticipated courtesy and cooperation in this regard.

Sincerely,



T.J. BUDGE

TJB/bh

ccs: Garrick Baxter
Chris Bromley
Sarah A. Klahn
Mitra Pemberton

EXHIBIT 5

Becky J. Harvey

From: T. J. Budge
Sent: Tuesday, August 21, 2012 12:43 PM
To: 'Robyn Brody'
Subject: RE: Document Disk

Got it! Thanks

T.J. BUDGE
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED
201 East Center Street
Post Office Box 1391
Pocatello, Idaho 83204
(208) 232-6101 – phone
(208) 232-6109 – fax
www.racinelaw.net
tjb@racinelaw.net

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From: Robyn Brody [<mailto:robynbrody@hotmail.com>]
Sent: Tuesday, August 21, 2012 12:38 PM
To: T. J. Budge
Subject: RE: Document Disk

TJ,

I called Go-fer-It Express and they said it was delivered at 10:45 am. Can you double check with your staff and let me know if you got it?

Thanks.

Robyn

From: tjb@racinelaw.net
To: robynbrody@hotmail.com
Subject: RE: Document Disk
Date: Tue, 21 Aug 2012 18:09:04 +0000

Robyn,

We haven't received the disc. Can you provide an update on that? We've got some additional discovery requests to send but have been waiting to see what comes back on the disc.

Thanks,

T.J. BUDGE
RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

201 East Center Street
Post Office Box 1391
Pocatello, Idaho 83204
(208) 232-6101 – phone
(208) 232-6109 – fax
www.racinelaw.net
tjb@racinelaw.net

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From: Robyn Brody [<mailto:robynbrody@hotmail.com>]
Sent: Thursday, August 16, 2012 1:34 PM
To: T. J. Budge
Subject: Document Disk

TJ,

I picked up the disk from our processor yesterday after the hearing and have now finished going through it. There is a problem with the disk and I am having to get a new one from Boise. It will be sent to me today and I should get it tomorrow or Saturday. Hopefully I can get it sent via courier to you on Monday.

Robyn

EXHIBIT 6

Becky J. Harvey

Subject: FW: Research Binders Request

From: Candice M. McHugh
Sent: Thursday, September 20, 2012 8:56 AM
To: 'Robyn Brody'; 'Fritz Haemerle'; 'J. Justin May'
Cc: 'Sarah Klahn'; 'J. Ryland Hutchins'; 'Mitra Pemberton'; T. J. Budge; Randy Budge
Subject: RE: Research Binders Request

Thanks Robyn. I returned your call yesterday but both times it didn't go to voice mail. I figured we'd get it worked out today.

Given the fact that there may voluminous documents it is important that we get this taken care of as soon as possible.

Candice M. McHugh
RACINE, OLSON, NYE
BUDGE & BAILEY
101 S. Capitol Blvd., Ste. 300
Boise, ID 83702
(208) 395-0011

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From: Robyn Brody [<mailto:robynbrody@hotmail.com>]
Sent: Thursday, September 20, 2012 8:54 AM
To: Candice M. McHugh; 'Fritz Haemerle'; 'J. Justin May'
Cc: 'Sarah Klahn'; 'J. Ryland Hutchins'; 'Mitra Pemberton'; T. J. Budge; Randy Budge
Subject: RE: Research Binders Request

Dear Candice,

I drafted an email earlier this week in response, but apparently it did not go through (it doesn't show up in my "sent" basket). I tried calling yesterday afternoon, but I understand you were in a conference. I apologize for the delay in responding. Doug Ramsey is out of town all of this week and is really the person with whom I need to discuss this request. My understanding right now is that "research information" would probably fill up two rooms. When Doug returns on Monday I will get a better handle on what the documentation consists of and determine Rangen's response.

Robyn

From: Candice M. McHugh [<mailto:cmm@racinelaw.net>]
Sent: Wednesday, September 19, 2012 3:46 PM
To: Candice M. McHugh; Fritz Haemerle; Robyn Brody ; J. Justin May
Cc: Sarah Klahn; J. Ryland Hutchins; Mitra Pemberton; T. J. Budge; Randy Budge
Subject: RE: Research Binders Request

I haven't heard back on this email. Will Rangen be providing the research binders?

Candice M. McHugh
RACINE, OLSON, NYE

BUDGE & BAILEY
101 S. Capitol Blvd., Ste. 300
Boise, ID 83702
(208) 395-0011

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From: Candice M. McHugh
Sent: Monday, September 17, 2012 3:56 PM
To: 'Fritz Haemerle'; Robyn Brody ; J. Justin May
Cc: 'Sarah Klahn'; J. Ryland Hutchins; Mitra Pemberton; T. J. Budge; Randy Budge
Subject: Research Binders Request

Fritz,

At your request, I am following up on my deposition request for copies of the research binders and information that Rangen keeps at its facility.

Based on Rangen's discovery responses and answers to questions at the depositions, Rangen claims it has been materially injured in part, by lack of flows resulting in the inability to conduct additional research at its facilities. I believe we requested all information that would support or discredit such a claim in our request for production no. 4 -- research binders and information would fall under this request.

If you would please supplement your production by the end of this week by the production of copies of the research binders and information or have it canned and produced electronically, it would be much appreciated.

If you don't intend to produce the information or need more time please let me know as soon as possible.

We will provide you with our supplemental responses by Wednesday the 19th. Thanks for the extra days.

Regards,

Candice M. McHugh
RACINE, OLSON, NYE
BUDGE & BAILEY
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Boise, ID 83702
(208) 395-0011

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EXHIBIT 7

White & Jankowski

Lawyers

September 20, 2012

Via email

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Rupert, ID 83350

Fritz X. Haemmerle
Haemmerle & Haemmerle,
PO Box 1800
Hailey, ID 83333

J. Justin May
May, Browning & May, PLLC
1419 W. Washington St.
Boise, ID 83702

Re: Documents Requested at Lay Depositions

Dear Counsel:

By this letter the City of Pocatello ("Pocatello") and the Idaho Ground Water Appropriators ("IGWA") are making written requests for documents which were previously requested on the record at the depositions of Rangen's lay witnesses on September 10th, 11th and 12th 2012 ("the lay depositions"). Many of the below documents also fit within the scope of previous requests made in either IGWA or Pocatello's Requests for Discovery, or in the subpoenas issued to Rangen, Inc.'s ("Rangen") lay witnesses prior to their depositions.

After the lay witness depositions, Mr. Haemmerle requested that Pocatello and IGWA go back through notes and transcripts in order to consolidate all those requests. (Doug Ramsey Dep. 83:18-20, Sep. 12, 2012.) Each request is summarized below, and citations to the requests in the

September 20, 2012

Page 2

record, as well as prior requests which included the same documents or categories of documents are provided for Rangen's convenience:

1. **Electronic copy of excel spreadsheet file containing historic flow data from 1966 to present**, as requested in Wayne Courtney Dep. 52:12 - 53:1, (Sep. 10, 2012); IGWA's Requests For Production ("RFP"), No. 5; No. 6 (May 23, 2012); Courtney Subpoena, No. 7, (August 31, 2012).
2. **Electronic file of production/sales data summary tables related to Deposition Exhibit 32**, as requested in Joy Kinyon Dep. 85:3-19, (Sep. 10, 2012); Pocatello's RFP No. 7, Courtney Subpoena No. 9; No. 12; No. 13; No. 15.
3. **Caroline Petersmidt's fish production summaries (in electronic form)**, as requested in Joy Kinyon Dep. 91:16 - 92:18, (Sep. 10, 2012); Doug Ramsey Dep. 83:4-84:1, (Sep. 12, 2012) (rough copy cite); Pocatello's RFP No. 7 (August 10, 2012), Courtney Subpoena No. 9; No. 12; No. 13; No. 15.
4. **Size and description of "grading rack" used for "spot sales" of fish**, as requested in Lonny Tate Dep. 125:20-127:5, (Sep. 11, 2012).
5. **Un-redacted copy of Deposition Exhibit 47 (summary of production/flow prior to 1987)**; as well as any other summaries similar to exhibit 47, as requested in Lonny Tate Dep. 139:5-19, (Sep. 11, 2012); Pocatello's RFP No. 7; Courtney Subpoena No. 7, No. 9.
6. **Log Book of persons who have entered the Curren Tunnel**, Lonny Tate Dep. 149:23 - 150:9, (Sep. 11, 2012).
7. **Date when last research was done at Rangen's facility**, as requested in Doug Ramsey Dep. 6:13, (Sep. 12, 2012) (rough copy cite).
8. **All research notebooks which are used to record the nature, structure, timing, and results of Rangen's fish research**, as requested in Doug Ramsey Dep. 102: 21-104:18, (Sep. 12, 2012) (rough copy cite), IGWA RFP No. 4.

As stated above, most of the listed documents have been requested multiple times, and with only a few exceptions their existence has been confirmed on the record. In addition, Counsel for Rangen has already agreed to produce many of them on the record during the lay depositions. Nonetheless, if Rangen chooses to resist production of any of the above categories of documents please notify Counsel for Pocatello and IGWA in writing no later than the close of business Monday September 24, 2012 as we will be pursuing other remedies.

September 20, 2012
Page 3

Thanks, in advance, for your cooperation in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read 'SK', written in a cursive style.

Sarah Klahn

cc: Director Gary Spackman, Counsel of Record