

RECEIVED

JAN 16 2013

DEPARTMENT OF  
WATER RESOURCES

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fxh@haemlaw.com  
*Attorneys for Rangen, Inc.*

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION  
FOR DELIVERY CALL OF RANGEN,  
INC.'S WATER RIGHT NOS. 36-02551  
& 36-07694

Docket No. CM-DC-2011-004

**AFFIDAVIT OF ROBYN M.  
BRODY IN OPPOSITION TO  
IGWA'S MOTION IN LIMINE TO  
EXCLUDE BROCK**

STATE OF IDAHO            )  
  ) ss  
County of Minidoka        )

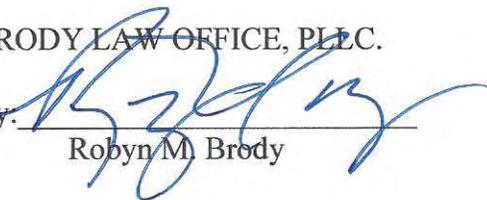
Robyn M. Brody, being sworn upon oath, deposes and says:

1. My name is Robyn M. Brody. I am an attorney licensed to practice law in the State of Idaho. I represent Rangen, Inc. ("Rangen"). The matters contained in this affidavit are based on my personal knowledge.

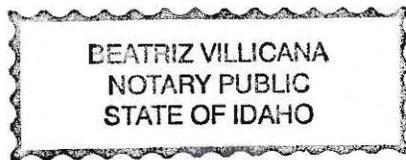
2. Attached hereto as Exhibit 1 are true and correct copies of Subpoenas Duces Tecum which have been issued to Rangen employees in this matter.
3. Attached hereto as Exhibit 2 is true and correct copy of an email exchange between me and Candice McHugh concerning IGWA's inspection of Rangen's research documents.
4. Attached hereto as Exhibit 3 is a true and correct copy of a portion of the transcript of Doug Ramsey's deposition taken on September 12, 2012.
5. Attached hereto as Exhibit 4 is a true and correct copy of a portion of the transcript of the Status Conference held on August 15, 2012.
6. Attached hereto as Exhibit 5 is a true and correct copy of an email exchange between me and Sarah Klahn concerning the deposition of David Brock.

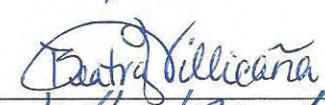
DATED this 16<sup>th</sup> day of January, 2013.

BRODY LAW OFFICE, PLLC.

By:   
Robyn M. Brody

SUBSCRIBED AND SWORN to before me this 16<sup>th</sup> day of January, 2013



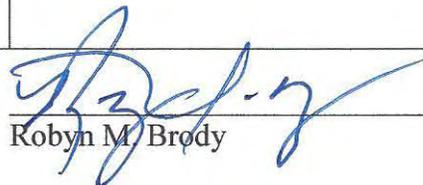
  
Notary Public for the State of Idaho  
Residing at: Rupert  
My Commission Expires: 10/01/2014

## CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 16<sup>th</sup> day of January, 2013 she caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

<b>Original:</b> Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 <a href="mailto:Deborah.Gibson@idwr.idaho.gov">Deborah.Gibson@idwr.idaho.gov</a>	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"/>
Garrick Baxter Chris Bromley Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a> <a href="mailto:chris.bromley@idwr.idaho.gov">chris.bromley@idwr.idaho.gov</a>	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
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 <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a> <a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a> <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a>	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
Sarah Klahn Mitra Pemberton WHITE & JANKOWSKI Kittredge Building, 511 16th Street, Suite 500 Denver, CO 80202 <a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a> <a href="mailto:mitrap@white-jankowski.com">mitrap@white-jankowski.com</a>	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 <a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a>	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/>
John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson, L.L.P.	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/>

<p>195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 <a href="mailto:tlt@idahowaters.com">tlt@idahowaters.com</a> <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a></p>	<p>E-Mail <input checked="" type="checkbox"/></p>
<p>C. Thomas Arkoosh Arkoosh Eiguren P.O. Box 2900 Boise, ID 83702 Tom.arkoosh@aelawlobby.com</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, ID 83318 <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Jerry R. Rigby Hyrum Erickson Robert H. Wood Rigby, Andrus &amp; Rigby, Chartered 25 North Second East Rexburg, ID 83440 <a href="mailto:jrigby@rex-law.com">jrigby@rex-law.com</a> <a href="mailto:herickson@rex-law.com">herickson@rex-law.com</a> <a href="mailto:rwood@rex-law.com">rwood@rex-law.com</a></p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>

  
Robyn M. Brody

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

IN THE MATTER OF DISTRIBUTION )  
OF WATER TO WATER RIGHT NOS. ) Docket No. CM-DC-2011-004  
36-02551 AND 36-07694 )  
) **MODIFIED SUBPOENA DUCES TECUM FOR**  
(RANGEN, INC.) ) **WAYNE COURTNEY**  
\_\_\_\_\_)

**To: Wayne Courtney, Vice-President Rangen, Inc.**

Pursuant to Idaho Rules of Civil Procedure 26, 30(b)(5) and 34, and IDAPA 37.01.01.525, you are instructed to bring to your deposition, set to commence at **8:30 a.m. on September 10, 2012**, and continue from day to day until completion, at the offices of **May, Sudweeks & Browning, LLP, 516 Hansen Street East, Twin Falls, ID 83301**, the following documents, subject to the Protective Order signed in this case, and to the terms and conditions of the Stipulation for Protective Order and Modified Subpoenas:

1. Documents maps, diagrams, drawings, and surveys showing all or any part of the Rangen facility not previously produced as part of the December 13, 2011 Petition in this matter.
2. All water right permits, licenses, and decrees under which the Rangen facility is operated, not previously produced as part of the December 13, 2011 Petition in this matter.
3. 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.
4. Any documents related to Rangen's BMPP (see preceding) regarding the development or execution of that BMPP, including draft BMPPs and correspondence with EPA or DEQ regarding Rangen's BMPP efforts.

  
Exhibit 1

5. 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.
6. Rangen's water quality materials, including data and scientific or technical studies, related to dissolved oxygen and total gas saturation within the Rangen facility.
7. All hatchery flow records, by raceway from 1966-2012, not previously produced to IGWA in response to IGWA's June 2012, discovery requests.
8. Records of pounds of fish feed used each month.
9. Hatchery fish production records by raceway and in the aggregate.
10. Disease treatment records.
11. Fish mortality records by raceway and in the aggregate.
12. Records reflecting final disposition of fish produced at Rangen (e.g., food fish, conservation fish, or other).
13. Provide all records and/or documents of beneficial use of Rangen's water rights, including but not limited to fish production as measured by pounds of fish per production cycle. .
14. Records of facility improvements..
15. Records of fish density indices.
16. Rangen's contracts to supply trout produced at the Rangen facility to Idaho Power or other hydropower providers, or other purchasers of trout produced at Rangen's facility, and any related documents.
17. All documents you have reviewed and will review in preparation for this deposition.

Unless otherwise indicated, the documents requested are for the period between 1987-2012. For purposes of this notice, "document" includes but is not limited to memoranda, notes (field, meeting,

or otherwise), reports, studies, maps, photographs, calculations, spreadsheets and any computer analyses.

SO ORDERED THIS 31<sup>st</sup> day of August, 2012.

  
GARY SPACKMAN

**DIRECTOR, IDAHO DEPARTMENT OF WATER  
RESOURCES**

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

IN THE MATTER OF DISTRIBUTION )  
OF WATER TO WATER RIGHT NOS. ) Docket No. CM-DC-2011-004  
36-02551 AND 36-07694 )  
(RANGEN, INC.) ) **MODIFIED SUBPOENA DUCES TECUM FOR**  
 ) **JOY KINYON**  
 )

---

**To: Joy Kinyon**

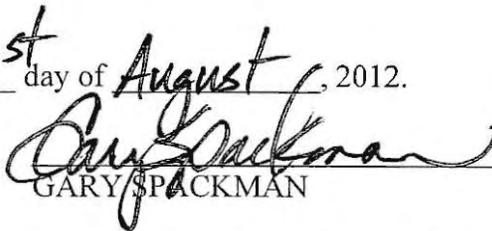
Pursuant to Idaho Rules of Civil Procedure 26, 30(b)(5) and 34, and IDAPA 37.01.01.525, you are instructed to bring to your deposition, set to commence on a trailing docket at the hour of **1:00 p.m. on September 10, 2012**, and continue from day to day until completion, at the offices of **May, Sudweeks & Browning, LLP, 516 Hansen Street East, Twin Falls, ID 83301**, the following documents subject to the Protective Order signed in this case, and to the terms and conditions of the Stipulation for Protective Order and Modified Subpoenas:

1. All hatchery flow records, by raceway.
2. Records of pounds of fish feed used each month.
3. Hatchery fish production records by raceway and in the aggregate.
4. Disease treatment records.
5. Fish mortality records by raceway and in the aggregate.
6. Records reflecting final disposition of fish produced at Rangen (e.g., food fish, conservation fish, or other).
7. Provide all records and/or documents of beneficial use of Rangen's water rights, including but not limited to fish production as measured by pounds of fish per production cycle.
8. Records of facility improvements.
9. Records of fish density indices.

10. Rangen's contracts to supply trout produced at the Rangen facility to Idaho Power or other hydropower providers, or other purchasers of trout produced at Rangen's facility, and any related documents.
11. All documents you have reviewed and will review in preparation for this deposition.

Unless otherwise specified, the documents requested are for the period from 1987-2012. For purposes of this notice, "document" includes but is not limited to memoranda, notes (field, meeting, or otherwise), reports, studies, maps, photographs, calculations, spreadsheets and any computer analyses.

SO ORDERED THIS 31<sup>st</sup> day of August, 2012.



GARY SPACKMAN

**DIRECTOR, IDAHO DEPARTMENT OF WATER  
RESOURCES**

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

IN THE MATTER OF DISTRIBUTION )  
OF WATER TO WATER RIGHT NOS. ) Docket No. CM-DC-2011-004  
36-02551 AND 36-07694 )  
) **MODIFIED SUBPOENA DUCES TECUM FOR**  
(RANGEN, INC.) ) **LONNIE TATE**  
\_\_\_\_\_ )

To: **Lonnie Tate**

Pursuant to Idaho Rules of Civil Procedure 26, 30(b)(5) and 34, and IDAPA 37.01.01.525, you are instructed to bring to your deposition, set to commence on a trailing docket at the hour of **8:30 a.m. on September 11, 2012**, and continue from day to day until completion, at the offices of **May, Sudweeks & Browning, LLP, 516 Hansen Street East, Twin Falls, ID 83301**, the following documents subject to the Protective Order signed in this case, and to the terms and conditions of the Stipulation for Protective Order and Modified Subpoenas:

1. All hatchery flow records, by raceway from 1966-2012, not previously produced to IGWA in response to IGWA's June 2012, discovery requests.
2. Records of pounds of fish feed used each month.
3. Hatchery fish production records by raceway and in the aggregate.
4. Disease treatment records.
5. Fish mortality records by raceway and in the aggregate.
6. Records reflecting final disposition of fish produced at Rangen (e.g., food fish, conservation fish, or other).
7. Provide all records and/or documents of beneficial use of Rangen's water rights, including but not limited to fish production as measured by pounds of fish per production cycle...
8. Records of facility improvements..

9. Records of fish density indices.
10. Rangen's contracts to supply trout produced at the Rangen facility to Idaho Power or other hydropower providers, or other purchasers of trout produced at Rangen's facility, and any related documents.
11. All documents you have reviewed and will review in preparation for this deposition.

Unless otherwise indicated, the documents requested are for the period between 1987-2012. For purposes of this notice, "document" includes but is not limited to memoranda, notes (field, meeting, or otherwise), reports, studies, maps, photographs, calculations, spreadsheets and any computer analyses.

SO ORDERED THIS 31<sup>st</sup> day of August, 2012.

  
GARY SPACKMAN

**DIRECTOR, IDAHO DEPARTMENT OF WATER  
RESOURCES**

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

IN THE MATTER OF DISTRIBUTION )  
OF WATER TO WATER RIGHT NOS. ) Docket No. CM-DC-2011-004  
36-02551 AND 36-07694 )  
) **MODIFIED SUBPOENA DUCES TECUM FOR**  
(RANGEN, INC.) ) **DAN MAXWELL**  
\_\_\_\_\_ )

To: **Dan Maxwell**

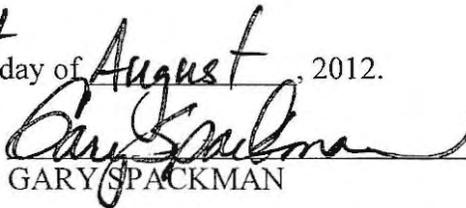
Pursuant to Idaho Rules of Civil Procedure 26, 30(b)(5) and 34, and IDAPA 37.01.01.525, you are instructed to bring to your deposition, set to commence on a trailing docket at the hour of **1:00 p.m. on September 11, 2012**, and continue from day to day until completion, at the **S May, Sudweeks & Browning, LLP, 516 Hansen Street East, Twin Falls, ID 83301**, the following documents subject to the Protective Order signed in this case, and to the terms and conditions of the Stipulation for Protective Order and Modified Subpoenas:

1. All hatchery flow records, by raceway.
2. Records of pounds of fish feed used each month.
3. Hatchery fish production records by raceway and in the aggregate.
4. Disease treatment records.
5. Fish mortality records by raceway and in the aggregate.
6. Records reflecting final disposition of fish produced at Rangen (e.g., food fish, conservation fish, or other).
7. Provide all records and/or documents of beneficial use of Rangen's water rights, including but not limited to fish production as measured by pounds of fish per production cycle.
8. Records of facility improvements.

9. Records of fish density indices.
10. Rangen's contracts to supply trout produced at the Rangen facility to Idaho Power or other hydropower providers, or other purchasers of trout produced at Rangen's facility, and any related documents.
11. All documents you have reviewed and will review in preparation for this deposition.

Unless otherwise indicated, the documents requested are for the period between 1987-2012. For purposes of this notice, "document" includes but is not limited to memoranda, notes (field, meeting, or otherwise), reports, studies, maps, photographs, calculations, spreadsheets and any computer analyses.

SO ORDERED THIS 31<sup>st</sup> day of August, 2012.

  
GARY SPACKMAN

**DIRECTOR, IDAHO DEPARTMENT OF WATER  
RESOURCES**

**BEFORE 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 )  
)  
(RANGEN, INC.) )  
\_\_\_\_\_ )

Docket No. CM-DC-2011-004

**MODIFIED SUBPOENA DUCES  
TECUM FOR DON JOHNSON**

**To: Don Johnson**

Pursuant to Idaho Rules of Civil Procedure 26, 30(b)(5) and 34, and IDAPA 37.01.01.525, you are instructed to bring to your deposition, set to commence on a trailing docket at **1:30 p.m. on September 12, 2012**, and continue from day to day until completion at the offices of **May, Sudweeks & Browning, LLP, 516 Hansen Street East, Twin Falls, ID 83301**, the following documents subject to the Protective Order signed in this case, and to the terms and conditions of the Stipulation for Protective Order and Modified Subpoenas:

1. Documents maps, diagrams, drawings, and surveys showing water quality measurement points at the Rangen facility not previously produced as part of the December 13, 2011 Petition in this matter.
2. 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.
3. Any documents related to Rangen's BMPP (see preceding) regarding the development or execution of that BMPP, including draft BMPPs and correspondence with EPA or DEQ regarding Rangen's BMPP efforts.

**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 )  
(RANGEN, INC.) )  
\_\_\_\_\_ )

Docket No. CM-DC-2011-004

**MODIFIED SUBPOENA DUCES  
TECUM FOR DOUG RAMSEY**

To: **Doug Ramsey**

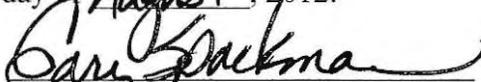
Pursuant to Idaho Rules of Civil Procedure 26, 30(b)(5) and 34, and IDAPA 37.01.01.525, you are instructed to bring to your deposition, set to commence on a trailing docket at **8:30 a.m. on September 12, 2012**, and continue from day to day until completion at the offices of **May, Sudweeks & Browning, LLP, 516 Hansen Street East, Twin Falls, ID 83301**, the following documents subject to the Protective Order signed in this case, and to the terms and conditions of the Stipulation for Protective Order and Modified Subpoenas:

1. Documents maps, diagrams, drawings, and surveys showing water quality measurement points at the Rangen facility not previously produced as part of the December 13, 2011 Petition in this matter.
2. 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.
3. Any documents related to Rangen's BMPP (see preceding) regarding the development or execution of that BMPP, including draft BMPPs and correspondence with EPA or DEQ regarding Rangen's BMPP efforts.

4. 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.
5. Rangen's water quality materials, including data and scientific or technical studies, related to dissolved oxygen and total gas saturation within the Rangen facility.
6. Records of water quality-related facility improvements..
7. Rangen's contracts to supply trout produced at the Rangen facility to Idaho Power or other hydropower providers, or other purchasers of trout produced at Rangen's facility, and any related documents.
8. All documents you have reviewed and will review in preparation for this deposition.

Unless otherwise indicated, the documents requested are for the period between 1987-2012. For purposes of this notice, "document" includes but is not limited to memoranda, notes (field, meeting, or otherwise), reports, studies, maps, photographs, calculations, spreadsheets and any computer analyses.

SO ORDERED THIS 31<sup>st</sup> day of August, 2012.

  
GARY SPACKMAN

**DIRECTOR, IDAHO DEPARTMENT OF WATER  
RESOURCES**

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31<sup>st</sup> day of August, 2012, a true and correct copy of the documents described below were served by placing the same in the United States mail, postage prepaid and properly addressed to the following:

### Documents Served:

Order Approving Stipulation for Entry of Protective Order and Modification of Subpoenas Duces Tecum  
Protective Order  
Modified Subpoena Duces Tecum for Joy Kinyon  
Modified Subpoena Duces Tecum for Lonnie Tate  
Modified Subpoena Duces Tecum for Dan Maxwell  
Modified Subpoena Duces Tecum for Doug Ramsey  
Modified Subpoena Duces Tecum for Don Johnson  
Modified Subpoena Duces Tecum for Wayne Courtney

J JUSTIN MAY (X) U.S. Mail  
MAY BROWNING & MAY PLLC ( ) Facsimile  
1419 W WASHINGTON ST (X) E-mail  
BOISE ID 83702-5039  
[jmay@maybrowning.com](mailto:jmay@maybrowning.com)

ROBYN BRODY (X) U.S. Mail  
BRODY LAW OFFICE PLLC ( ) Facsimile  
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[robynbrody@hotmail.com](mailto:robynbrody@hotmail.com)

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RANDALL C BUDGE (X) U.S. Mail  
CANDICE MCHUGH ( ) Facsimile  
THOMAS J BUDGE (X) E-mail  
RACINE OLSON NYE BUDGE & BAILEY CHTD  
101 S CAPITOL BLVD STE 300  
BOISE ID 83702-5079  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[cmm@racinelaw.net](mailto:cmm@racinelaw.net)  
[tjb@racinelaw.net](mailto:tjb@racinelaw.net)

A DEAN TRANMER (X) U.S. Mail  
CITY OF POCATELLO ( ) Facsimile  
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POCATELLO ID 83205-4169  
[dtranmer@pocatello.us](mailto:dtranmer@pocatello.us)

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MITRA PEMBERTON  
J RYLAND HUTCHINS  
WHITE & JANKOWSKI LLP  
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[sarahk@white-jankowski.com](mailto:sarahk@white-jankowski.com)  
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[rylandh@white-jankowski.com](mailto:rylandh@white-jankowski.com)

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 E-mail

JOHN K SIMPSON  
TRAVIS L THOMPSON  
PAUL L ARRINGTON  
BARKER ROSHOLT & SIMPSON LLP  
195 RIVER VISTA PL STE 204  
TWIN FALLS ID 83301-3029  
[jks@idahowaters.com](mailto:jks@idahowaters.com)  
[tlt@idahowaters.com](mailto:tlt@idahowaters.com)  
[pla@idahowaters.com](mailto:pla@idahowaters.com)

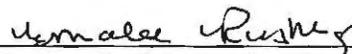
U.S. Mail  
 Facsimile  
 E-mail

C THOMAS ARKOOSH  
CAPITOL LAW GROUP  
PO BOX 2598  
BOISE ID 83702  
[tarkoosh@capitollawgroup.net](mailto:tarkoosh@capitollawgroup.net)

U.S. Mail  
 Facsimile  
 E-mail

W KENT FLETCHER  
FLETCHER LAW OFFICE  
PO BOX 248  
BURLEY ID 83318-0248  
[wkf@pmt.org](mailto:wkf@pmt.org)

U.S. Mail  
 Facsimile  
 E-mail

  
\_\_\_\_\_  
Emalee Rushing, Administrative Assistant II  
Idaho Department of Water Resources

## Robyn Brody

---

**From:** Sarah Klahn <SarahK@white-jankowski.com>  
**Sent:** Thursday, September 20, 2012 9:07 AM  
**To:** 'Candice M. McHugh'; Robyn Brody  
**Subject:** RE: Research Binders Request

Yes, we have a draft letter that will go out today or tomorrow detailing our requests.

Thanks—

Sarah

---

**From:** Candice M. McHugh [mailto:cmm@racinelaw.net]  
**Sent:** Thursday, September 20, 2012 9:06 AM  
**To:** Robyn Brody  
**Cc:** Sarah Klahn  
**Subject:** RE: Research Binders Request

The only thing I had was the research binders. I think Sarah is working on her requests but am ccing her.

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 9:06 AM  
**To:** Candice M. McHugh  
**Subject:** RE: Research Binders Request

Oh yeah, before I forget, are you and Sarah working on a letter setting forth the other document requests that came out of the depo? I just don't want to overlook something. Thanks.

Robyn

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**From:** Candice M. McHugh [mailto:cmm@racinelaw.net]  
**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  
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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

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**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 19<sup>th</sup>. Thanks for the extra days.

Regards,

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

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF )  
WATER TO WATER RIGHT NOS. 36-02551 ) Docket No.  
AND 36-07694 ) CM-DC-2011-004  
 )  
(RANGEN, INC.) )  
\_\_\_\_\_ )

C O N F I D E N T I A L

Pursuant to Protective Order Dated August 31, 2012

DEPOSITION OF DOUG RAMSEY

SEPTEMBER 12, 2012

REPORTED BY:  
JEFF LaMAR, C.S.R. No. 640  
Notary Public



Exhibit 3

1 waste in the effluent, I believe. It's been a long  
 2 time ago, and I really don't remember a lot of the  
 3 details.  
 4 Q. What was the customer who was involved?  
 5 A. It was Idaho Trout Company.  
 6 Q. Okay. All right. What is your job -- what  
 7 is your title at Rangen?  
 8 A. I'm a research scientist. That's the  
 9 title.  
 10 Q. Okay. And what's your educational  
 11 background?  
 12 A. I have a bachelor's from Idaho State  
 13 University in biology, basically. And then I went on  
 14 with the master's program at that school for  
 15 microbiology.  
 16 Q. Okay. Have you worked as a research or lab  
 17 person for anybody other than Rangen?  
 18 A. No, I have not.  
 19 Q. Okay. And how long have you been with  
 20 Rangen?  
 21 A. About 25 years.  
 22 Q. All right. Did you have a professional job  
 23 prior to that?  
 24 A. Yes.  
 25 Q. What was that?

1 A. I worked for Idaho Fish and Game.  
 2 Q. And what was your job with them?  
 3 A. Fish culturist and hatchery superintendent.  
 4 Q. Which facility?  
 5 A. I worked at the Clark Fork Hatchery to  
 6 begin with, and then transferred to the Mackay  
 7 Hatchery.  
 8 Q. Where is the Mackay Hatchery?  
 9 A. In the Big Lost Valley north of Arco.  
 10 Q. Okay. Nice up there. 25 years. Wow.  
 11 What are your general -- tell me again what  
 12 your title is. I apologize. Research scientist?  
 13 A. Yes.  
 14 Q. What are your job duties as research  
 15 scientist?  
 16 A. I supervise the laboratory there at the  
 17 Hagerman facility where I will provide fish disease  
 18 diagnostics for our customers, for fish feed customers,  
 19 and perform research when that's available, when it's  
 20 doable there at the lab. Also supervise the water  
 21 quality section.  
 22 Q. All right. Anything else?  
 23 A. That's -- that's basically it.  
 24 Q. Okay.  
 25 A. Yeah.

1 Q. You mentioned that you do fish disease  
 2 diagnostics?  
 3 A. Yes.  
 4 Q. For the Rangen facilities customers?  
 5 A. Yes. Our customers, as well as the Rangen  
 6 hatchery itself.  
 7 Q. Okay. And when you talk about Rangen  
 8 customers, are you talking about the customers of the  
 9 Rangen facility that send you water-quality samples or  
 10 that purchase feed?  
 11 A. Both.  
 12 Q. Oh, okay. That's a nice service. So --  
 13 and you mentioned that you -- you perform research or  
 14 you assist with performance of research when it's  
 15 possible to do that at the hatchery; is that right?  
 16 A. Yes, I perform that. Yeah.  
 17 Q. You do that? You're in charge of that?  
 18 A. Yes.  
 19 Q. Do you design the tests?  
 20 A. Yes, I do at times, uh-huh.  
 21 Q. Who do you work with on that?  
 22 A. I work with David Brock primarily in terms  
 23 of getting the research proposal together.  
 24 Q. And how does that work? You get a research  
 25 proposal together, and who do you submit it to?

1 A. Submit it to my boss, Joy Kinyon, for  
 2 approval.  
 3 Q. Okay. All right. And I think I saw David  
 4 Brock's name a couple of times.  
 5 A. He's a nutritionist for the company.  
 6 Q. Nutritionist. Okay. And when was the last  
 7 time that you were working on a test, some research  
 8 there at the lab for Rangen?  
 9 A. It's been a number of years ago. I can't  
 10 really say exactly when. It's been quite a while.  
 11 Q. Are there records of that research?  
 12 A. Yes. Yes, there are.  
 13 Q. So it would be possible to say what year  
 14 that was?  
 15 A. Absolutely. Yeah.  
 16 MS. KLAHN: Fritz, you know, there's been a lot  
 17 of talk about that in the depositions. I think it  
 18 would be helpful for us to know when the last research  
 19 was run. And nobody seems to know what the year was,  
 20 so...  
 21 MR. HAEMMERLE: We'll look into that.  
 22 MS. KLAHN: Okay. I don't know. Some kind of  
 23 report or something that would just demonstrate when  
 24 the last research was done.  
 25 Q. And these were feed trials?

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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  
(RANGEN , INC.) )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT  
OF RECORDED HEARING

DATE: August 15, 2012

LOCATION: Idaho Department of Water Resources  
322 East Front Street,  
Boise, Idaho.

Before Interim Director Gary Spackman

Transcribed by:  
Maureen Newton, CSR #321  
P.O. Box 132  
Heyburn, ID 83336

1 see one here in the order and it wasn't here. So at least  
2 in the order right now it just says that discovery open  
3 June 8, 2012, and that by October 3rd, 2012, opening expert  
4 reports would be due. So let me clarify again what I  
5 heard. Are there depositions right now that are occurring  
6 with the expert witnesses?

7 MS. McHUGH: There's depositions scheduled, and I  
8 think we requested subpoenas from the director on that, the  
9 second week of September for Rangen's factual witnesses.  
10 Their nonexpert factual witnesses of Rangen.

11 MR. SPACKMAN: Okay. So at least right now there  
12 wasn't a deadline that was established by order for the  
13 exchange of the expert witness names. So, Sarah, I think  
14 in response to your inquiry, John and Tom, if you can have  
15 something to us in writing. Now, did you exchange lists of  
16 both experts and lay witnesses?

17 MS. BRODY: Just experts.

18 MR. SPACKMAN: Just experts? Okay. So if you  
19 could let us know who those experts would be, in writing, a  
20 week from today, Wednesday. Is that okay? Do it in  
21 writing. Sarah, then you'll have something.

22 MS. KLAHN: Thank you. That sounds fine.

23 MR. SPACKMAN: Now in fairness, maybe the Surface  
24 Water Coalition hasn't seen the names that have already  
25 been submitted. Are those in writing? Did they come

10

1 MR. HAMMERLE: Director, I don't have that  
2 scheduling order in front of me. There was a separate lay  
3 witness disclosure date in that order?

4 MR. SPACKMAN: I don't see one.

5  
6 (Voices talking simultaneously)

7  
8 A VOICE: January 11th is the disclosure date.

9 MR. SPACKMAN: Yeah, that wouldn't be until  
10 January 11th. That's just a final disclosure of who would  
11 call (inaudible). I hate to start sending out first and  
12 second and third amended scheduling orders, but I could  
13 reestablish some of those if you want.

14 MR. HAMMERLE: I think it would be helpful if we  
15 had an earlier disclosure date, frankly, for lay witnesses.  
16 I think we disclosed ours in discovery, but, you know,  
17 maybe we need to have some sort of at least an initial  
18 formal lay witness disclosure. And I think we can do that  
19 within a week, too, if you can, Candace.

20 MS. McHUGH: I think that's probably fine. I'll  
21 defer to TJ because he's been more involved in the case  
22 (inaudible). So on the 22nd we all disclose our potential  
23 lay witnesses.

24 MR. HAMMERLE: We've already done it in  
25 discovery, but I think to get the ball rolling so there's

12

1 through the department or are they just --

2 MR. SIMPSON: They're on the website.

3 MS. McHUGH: Yeah.

4 MR. SPACKMAN: Are they? Okay. So you have  
5 access to those, so you know who's on the board right now.  
6 Okay.

7 MR. BUDGE: Director, this is TJ. If I might  
8 ask, could we also have any lay witnesses disclosed, if  
9 they intend to call lay witnesses? I know, while we didn't  
10 disclose those in conjunction with our expert disclosures  
11 in June, we have acquired a list of Rangen's lay witnesses  
12 through discovery, and if we were to do the same thing with  
13 the Surface Water Coalition we wouldn't get the list of  
14 their lay witnesses for potentially a month or more. So if  
15 it is possible to disclose those as well, I think that  
16 would be helpful in being able to keep on schedule as much  
17 as possible.

18 MR. SPACKMAN: What are your thoughts, John?

19 MR. SIMPSON: I don't have any problem with that  
20 by next week as well. At first blush, based upon our  
21 limited intervention on the issue of the model and this  
22 application, as I sit here I don't see a place for a lay  
23 witness on that issue. But we can give it some further  
24 thought and certainly can have those, if there is none  
25 disclosed, within a week.

11

1 no surprise to anybody, I think that would be a useful  
2 process right now, understanding that, you know, some other  
3 lay witnesses may be found and disclosed after the fact, I  
4 suppose.

5 MS. KLAHN: So, Mr. Director, maybe we should  
6 submit to you some proposed language for the amended  
7 scheduling order, because I hear Fritz saying that lay  
8 witnesses may be called. And I think that's fair, as it's  
9 fairly early yet in the case and we may not know how we  
10 streamline things yet, so we may want to error on the side  
11 of disclosing several people and end up calling none of.

12 MR. SPACKMAN: Well, one of my questions is do  
13 all the parties want me to issue an amended scheduling  
14 order now and anticipating that I'll receive some sort of  
15 request for change in the scheduling order once the witness  
16 lists come; or can the parties just agree to submit those  
17 lists of witnesses here today and have them in on the 22nd?

18 MR. HAMMERLE: As far as Rangen's concerned,  
19 director, I think we could do that amongst ourselves. I  
20 don't think that it's necessary to amend the order.

21 MR. ARKOOSH: Mr. Director, I concur with that.  
22 It sounds like everyone else has exchanged discovery, and  
23 it is doubtful, I agree with John, that we will have any  
24 factual witnesses, given that scope of the intervention.

25 MR. SPACKMAN: Fine, Candace?

13

## Robyn Brody

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**From:** Sarah Klahn <SarahK@white-jankowski.com>  
**Sent:** Thursday, January 10, 2013 10:33 AM  
**To:** 'Robyn Brody'  
**Subject:** RE: dates for Brock deposition

Robyn, I saw IGWA's motion in limine yesterday. Just to be clear, we still want to depose Mr. Brock.

Thanks—

Sarah

---

**From:** Robyn Brody [<mailto:robynbrody@hotmail.com>]  
**Sent:** Wednesday, January 09, 2013 1:56 PM  
**To:** Sarah Klahn  
**Subject:** RE: dates for Brock deposition

Hi there. Thanks for the call. My email is back running so now I can respond quickly. I have forwarded this to Rangen to see if David is available. I will get back to you shortly.

Robyn

---

**From:** Sarah Klahn [<mailto:SarahK@white-jankowski.com>]  
**Sent:** Wednesday, January 09, 2013 1:34 PM  
**To:** Robyn Brody  
**Cc:** J. Ryland Hutchins; Shirley Merryman  
**Subject:** dates for Brock deposition

Hi Robyn—

We'd like to depose David Brock sometime soon—before rebuttal reports. How are the dates of January 21 or 22? Or possibly early in the week of January 28?

I also left a message with your secretary about this.

Thanks in advance.

Best,

Sarah