

RECEIVED

FEB 01 2013

DEPARTMENT OF WATER RESOURCES

Robyn M. Brody (ISB No. 5678)
Brody Law Office, PLLC
P.O. Box 554
Rupert, ID 83350
Telephone: (208) 434-2778
Facsimile: (208) 434-2780
robynbrody@hotmail.com
Attorney for Rangen, Inc.

J. Justin May (ISB No. 5818)
May, Browning & May
1419 W. Washington
Boise, Idaho 83702
Telephone: (208) 429-0905
Facsimile: (208) 342-7278
jmay@maybrowning.com
Attorneys for Rangen, Inc.

Fritz X. Haemmerle (ISB No. 3862)
Haemmerle & Haemmerle, PLLC
P.O. Box 1800
Hailey, ID 83333
Telephone: (208) 578-0520
Facsimile: (208) 578-0564
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

**SUPPLEMENTAL AFFIDAVIT OF
ROBYN M. BRODY IN SUPPORT
OF MOTION FOR PROTECTIVE
ORDER**

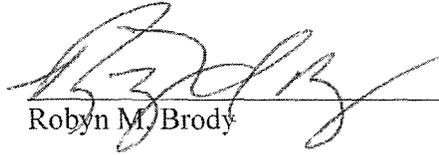
STATE OF IDAHO)
) ss
County of Minidoka)

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

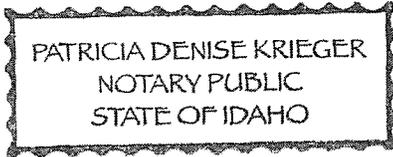
1. My name is Robyn M. Brody. I am attorney licensed to practice law in the State of Idaho. I represent Rangen, Inc. ("Rangen"). The matters contained in this affidavit are based on my personal knowledge.

2. Attached hereto as Exhibit 1 is a true and correct copy of portions of the transcript of the deposition of Joy Kinyon taken on September 12, 2012.
3. Attached hereto as Exhibit 2 is a true and correct copy of Rangen document RANGEN001994-001995 which was produced to the Intervenors on September 6, 2012.
4. Attached hereto as Exhibit 3 is a true and correct copy of a letter from the Department of Agriculture to IGWA's counsel dated November 19, 2012 as that letter was produced to Rangen.

DATED this 1st day of February, 2013.


Robyn M. Brody

SUBSCRIBED AND SWORN to before me this 1st day of February, 2013



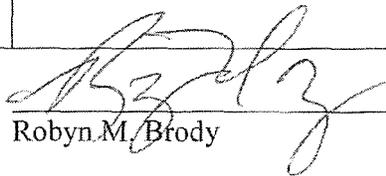
Denise Krieger
Notary Public for the State of Idaho
Residing at: Haize Hon
My Commission Expires: 2/27/2018

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 1st day of February, 2013 she caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

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

<p>195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 ilt@idahowaters.com iks@idahowaters.com</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 wkf@pmt.org</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 & Rigby, Chartered 25 North Second East Rexburg, ID 83440 jrigby@rex-law.com herickson@rex-law.com rwood@rex-law.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>


Robyn M. Brody

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 JOY KINYON
SEPTEMBER 10, 2012

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

Exhibit 1

CONFIDENTIAL

1 A. And the third column it says -- I -- I
 2 think that's "St Count," which is the number of fish
 3 per pound.
 4 Q. Okay.
 5 A. And then he has a starting weight, that's
 6 the total weight of total pounds of fish. This is out
 7 of the -- this is in the hatch house, the hatchery.
 8 Q. Okay. How do you know that?
 9 A. Because of the number of fish and the size
 10 and the number of troughs or tanks that's shown.
 11 Q. Okay.
 12 A. And it's showing the -- let's see. The
 13 fifth column is the number of morts are mortality.
 14 Q. Uh-huh.
 15 A. And the sixth column is the amount of feed
 16 that was used. And then we jump over to a column
 17 called "Out Pounds." You got the pounds of fish out.
 18 And the next column is the out number. That's quantity
 19 of fish. And then, again, he's calculating some hidden
 20 loss. It's just based on sample counts, probably.
 21 Q. So is that how you count the fish in the
 22 first place is sample -- do a transect or something?
 23 A. Yes. Yes.
 24 Q. Okay. And when you said "feed," you meant
 25 pounds of feed? Is that the units that's there?

1 Okay. Let's mark this Exhibit 31.
 2 (Exhibit 31 marked.)
 3 Q. (BY MS. KLAHN): Mr. Kinyon, have you seen
 4 this form of data before?
 5 A. Yes, I have.
 6 Q. Is this something you receive routinely?
 7 A. No.
 8 Q. What's the purpose of this?
 9 A. This was a report that the manager at the
 10 time did on her system.
 11 Q. Is that Carolyn Peterschmidt?
 12 A. That's correct.
 13 Q. I have a question about the column headings
 14 on that first page.
 15 Does "Hagerman" refer to the Rangen
 16 aquaculture facility that we've been discussing here
 17 today?
 18 A. Yes.
 19 Q. What does "Woods" refer to?
 20 A. At that point in time we were leasing some
 21 dirt ponds.
 22 Q. And what did you do with those dirt ponds?
 23 A. Just additional fish production.
 24 Q. Oh, okay. You raised fish in them?
 25 A. Correct.

1 A. That's what it appears to be, yes.
 2 Q. And the third page in that exhibit?
 3 A. This is of the balance of the raceways
 4 throughout the facility, and with the same information.
 5 Q. Okay. So in the "Inventory" column, that's
 6 going to be the list of raceways?
 7 A. The -- the raceway name or number.
 8 Q. Okay. Is there a code to those that will
 9 help us decipher this?
 10 A. Top of five, center of five, bottom of five
 11 is what you see.
 12 Q. T, C, B?
 13 A. T, C, B.
 14 Q. So how do I know whether those are the
 15 small raceways or the large raceways or the CTRs?
 16 A. Good question on this one.
 17 MR. HAEMMERLE: Do you know?
 18 THE WITNESS: I don't know for certain on these.
 19 Q. (BY MS. KLAHN): Do you have a map or a
 20 diagram that labels the raceways and how you identify
 21 them?
 22 A. I do not.
 23 Q. Okay. Who should we ask that?
 24 A. Lonny Tate.
 25 Q. Okay. Thank you.

1 Q. Where were those located?
 2 A. In Hagerman.
 3 Q. On the same property as the --
 4 A. No. They were north of Hagerman.
 5 Q. On the rim?
 6 A. No. It's down closer to the river.
 7 Q. Does Rangen still lease those ponds?
 8 A. No.
 9 Q. When did you stop?
 10 A. I believe it was in 2002 time frame.
 11 Q. Okay. Why did you stop leasing them?
 12 A. It wasn't a very cost-efficient project in
 13 dirt ponds. We had a lot of upkeep to the ponds, and
 14 the rent was high.
 15 Q. What's the water source for the Woods
 16 ponds?
 17 A. Spring water that -- Woods is located on
 18 the old Bliss Grade Road, if that means anything.
 19 Q. Okay. Have you looked for other lease
 20 opportunities in the vicinity?
 21 A. Well, we're -- again, as I testified
 22 earlier, the community is pretty small in the
 23 aquaculture industry in the Hagerman Valley, so
 24 everyone knows everyone's business.
 25 So usually we -- if we hear about it,

1 A. Yes.

2 Q. What did she use it for? Do you know?

3 A. For reporting her inventory, monthly
4 inventories, for the financial records.

5 Q. Okay. And do you know if she ever did any
6 analysis of production, mortality, any of those kinds
7 of evaluations of the data that are on Exhibit 32?

8 A. I would expect that she would have, yes --

9 Q. Did she --

10 A. -- as a manager.

11 Q. Who would she have provided that to?

12 A. Probably to me, if she had any, or when we
13 had meetings, it would have a point of discussion.

14 Q. Uh-huh. And today you said the data are
15 not kept in electronic format; is that correct?

16 A. Correct.

17 Q. Does that mean nobody's doing any kind of
18 an analysis of success for fish production or mortality
19 or anything else?

20 A. It's still going into our financial
21 records, so we have that scorecard, if you will.

22 Q. Uh-huh.

23 A. We still look at any exceptions on, as I
24 testified, in regards to mortalities.

25 Q. Uh-huh.

1 I'm interested in how many fish you're producing.

2 Is there anything prior to the handwritten
3 data being conveyed to the financial office that is an
4 analysis of fish production numbers by month or by
5 year?

6 A. I don't recall if there ever was one
7 summary or anything beyond this monthly inventory.

8 Q. But you're sure the numbers are too low,
9 but you don't have any analysis of the data to back
10 that up; is that right?

11 A. When I say the numbers are too low, the
12 fish production, pounds of fish grown, are much too low
13 compared to previous production years when water was
14 higher.

15 Q. But how do you know that if you don't have
16 a year-to-year comparison?

17 A. Well, if we look at our -- you can look at
18 your inventories at year end, you look at your
19 pounds -- pounds sold, you look at your sales, you
20 generally know what your sales prices are, and you look
21 at the hatchery performance. It's not there.

22 Q. But there's no -- all I'm trying to get at
23 is you don't have a routine of collecting that
24 information so that you can look at an analysis and
25 compare it quarter to quarter, for example, and draw

1 A. And we look into the pounds of production,
2 which I think I testified that the numbers are too low
3 compared to where we were at. So yeah, there's still
4 analysis going on. Now, whether it's -- it's not in an
5 electronic format to come to a, you know, nice pretty
6 summary. But it's still on an exception basis type
7 review.

8 Q. So who makes that decision about what's an
9 exceptional situation that requires that flagging of a
10 high mortality or low production or whatever?

11 A. Well, that opportunity presents itself to
12 the fish culturist, Dan Maxwell, Lonny Tate. It also
13 presents itself to me as the aquaculture division
14 manager. And it presents itself to the controller in
15 financial analysis, if any, as well as it goes on to my
16 boss, Wayne Courtney, for his analysis as well in
17 performance of the hatchery cost center.

18 Q. So do you have an annual analysis of how
19 you've done in a particular year? Do you have a
20 practice of doing an annual analysis?

21 A. Yeah. It's called a financial statement.

22 Q. Okay. Does that include fish production
23 and mortality?

24 A. No.

25 Q. I'm not really interested in your finances.

1 any conclusions about it?

2 MR. HAEMMERLE: Object to the form of the
3 question.

4 Do you understand the question?

5 THE WITNESS: Well, not exactly.

6 Q. (BY MS. KLAHN): I'm just trying to
7 understand how a facility which has been represented to
8 me all day to be a top fish feed producer can allege
9 their numbers aren't high enough if they don't do a
10 routine analysis of fish production. That's my only
11 question.

12 And I guess the answer is no; is that
13 correct?

14 A. There's no formal analysis recent -- in
15 recent years.

16 Q. So in what year are you aware of that there
17 was a formal analysis?

18 A. I don't recall.

19 Q. Since you became chief in 1997?

20 A. We would have had some analysis since then.

21 Q. By who?

22 A. By the hatchery manager.

23 Q. Caroline?

24 A. Uh-huh.

25 MS. KLAHN: Can we have that data, if it exists?

DR

RANGEN RESEARCH HATCHERY
 Monthly Report - February 2002

	Hagerman	Woods	Combined
INVENTORY (Begin - Previous Month Ending)	80,936		
TRANSFERS IN - Internal			
TRANSFERS OUT - Internal	10,737		
TRANSFERS OUT - Sales			
Actual Large Red - W			
Projected Large Red	0		
Actual White - R & W	43,148		
Projected White	31,200		
INVENTORY (Ending - Current Month Actual)	63,004		
GAINS			
Actual	35,953		
Projected	31,200		
FEED FED (Lbs.)	34,904		
CONVERSION	0.97		
Feed Fed/Lbs. Gained = Conversion			
MORTALITY (Fish Count)			
Fry (1 - 6)	791		
Fingerling (6 - 9)	1,319		
Production	1,944		
Red	0		
TOTAL MORTALITY	4,054		
WATER FLOWS			
Actual	15.92		
Projected	24.00		
DENSITY (Lbs./CFS)	3,958		

COMMENTS:

Formula:
 Ending Inventory (Actual)
 less Transfer In
 plus Transfer Out
 less Begin Inventory (prev.)

Exhibit 2

MORTALITY (FISH COUNT) - February 2002

	<u>Total Mortality</u> (Monthly)	<u>Total Live Fish</u> (Month End)	<u>Percentage of Loss</u>	<u>Total Mortality</u> (Fiscal Year to Date)
Rangen				
Production	1,944	59,874	3.2468	6,056
Red	0	0	0.0000	955
Subtotal	1,944	59,874	3.2468	7,011
Woods				
Production				
Red				
Subtotal				
Total				

COMMENTS (percentages over 2%):

Morts at Rangen have been mostly in the CTR's where the declining amount of water is contributing to stress levels. Also, the percentage of loss is slightly artificially high due to harvest/transfers that took place in February.



STATE OF IDAHO

C.L. "BUTCH" OTTER
Governor
Celia R. Gould
Director

DEPARTMENT OF AGRICULTURE
DIVISION OF ANIMAL INDUSTRIES

2270 Old Penitentiary Rd.
P.O. Box 7249
Boise, Idaho 83707

(208) 332-8540
www.agri.idaho.gov

November 19, 2012

Becky J. Harvey
Paralegal
Racine Olson Nye Budge & Bailey, Chtd.
101 S Capitol Blvd, Suite #300
Boise, ID 83702

Re: Public Records Request received November 14, 2012

Dear Ms. Harvey:

On November 14, 2012, the Idaho State Department of Agriculture, Division of Animal Industries, received your email request for:

"... copies of all license applications filed for the Rangen fish facility located near Hagerman in Gooding County from 1972 to the present, along with any and all supporting documents, photographs, inspections, investigations, reports, certifications, email transmittals, research materials, data files, correspondence, and any and all items relating to the licensing procedures".

Per your request, enclosed is a copy of the following information:

	DATE	DOCUMENT	# OF PAGES
1.	1-28-10	Commercial Fish Facility Field Inspection – Rangen Research Hatchery	1
2.	2-2-10	Commercial Fish Rearing License #83 & Application	5
3.	12-05-08	Commercial Fish Facility Inspection – Rangen Research Hatchery	3
4.	2-4-08	Commercial Fish Rearing License #83 & Application	5
5.	4-13-06	Commercial Fish Rearing License #83 & Application	14
6.	4-9-04	Commercial Fish Rearing License #83, Application & inspection	7
7.	2-25-02	Commercial Fish Rearing License #83 & Application	4
8.	8-29-01	Commercial Fish Facility Inspection – Rangen Research Hatchery	3

"Serving consumers and agriculture by safeguarding the public, plants, animals and the environment through education and regulation"

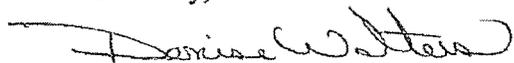
IGWA 000650

Exhibit 3

Becky J. Harvey
 Racine Olson Nye Budge & Bailey, Chtd.
 November 19, 2012
 Page 2

9.	1-28-00	Commercial Fish Rearing License #83 & Application	6
10.	3-2-98	Commercial Fish Rearing License #83 & Application	4
11.	7-7-97	Commercial Fish Facility Inspection – Rangen Research Hatchery	3
12.	3-6-96	Commercial Fish Rearing License #83 & Application	4
13.	3-6-96	Commercial Fish Rearing License #81 & application	4
14.	3-6-96	Commercial Fish Rearing License #82 & Application	4
15.	2-27-96	Letter from Caroline Peterschmidt, Hatchery Manager, Rangen Inc.	2
16.	6-9-97	Export Certificate – Animal Products No. ID-P71000	5
17.	2-24-92	Commercial Fish Rearing License 706-2-000033 & application	3
18.	4-8-94	Letter from Steven M. Huffaker, Chief, Idaho Fish & Game	1
19.	1-13-94	Letter from Phillip Mamer, Aquaculture Coordinator, Idaho State Department of Agriculture	1
20.	5-9-88	Commercial Fish Rearing License 65-800145	1
21.	2-24-92	Commercial Fish Rearing License 706-2-000031 & application	3
22.	12-16-93	Letter from Bob Deisher, Hatchery Manager, Rangen Aquaculture Research Center & attachments	18
		Total	101

Sincerely,



Denise Walters
 Administrative Assistant
 Division of Animal Industries

Becky J. Harvey
Racine Olson Nye Budge & Bailey, Chtd.
November 19, 2012
Page 3

I hereby certify that the original of this letter was deposited in the United States mail,
postage prepaid, this 19th day of November, 2012.



Denise Walters
Administrative Assistant