

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

IN THE MATTER OF DISTRIBUTION OF)	CM-DC-2011-004
WATER TO WATER RIGHT NOS. 36-02551)	
AND 36-07694)	ORDER DENYING RANGEN,
)	INC.'S MOTION TO COMPEL
(RANGEN, INC.))	
)	
)	
_____)	

FINDINGS OF FACT

On April 17, 2013, Rangen, Inc. (“Rangen”) filed with the Director (“Director”) of the Idaho Department of Water Resources (“Department”) a *Motion to Compel* (“Motion”) and an *Affidavit in Support of Motion to Compel* (“Affidavit”) asking the Department for an order compelling the production of certain documents requested in the *Notice of Deposition Duces Tecum of Brian Higgs*.¹

The documents requested by Rangen are eight pages of notes prepared by Brian Higgs which Higgs originally provided to Rangen at his deposition and then which counsel for the Idaho Ground Water Appropriators, Inc. (“IGWA”) later took back and refused to allow into the record at the deposition.

In his affidavit, counsel for Rangen states that the notes at issue “indicated that Chuck Brendecke, IGWA’s main expert [sic], needed to ‘take a dive.’” *Affidavit* at 2. Counsel for Rangen states, “It was further stated in the document that Mr. Brendecke needed to do anything he could to ‘destroy the model’ since he was the one IGWA agent who had the best information about the model.” *Id.* Counsel for Rangen argues that “IGWA should produce the disputed documents because documents purporting to direct experts to ‘take a dive’ and ‘destroy the model’ seem like documents designed to lead to discoverable evidence, and the documents appear to be responsive to the Notice.” *Id.* at 3.

¹ The affidavit of Rangen’s counsel provides that Higgs “works for many of the Ground Water Districts who are also member [sic] of the Idaho Ground Water Association, Inc.” and is “also the person responsible, through Water Well Consultants, Inc., who measures water for the various Ground Water Districts within IGWA.” *Affidavit* at 2. Higgs is also the watermaster for Water District 140.

On April 23, 2013, IGWA submitted its *Response to Motion to Compel* (“Response”). The Response was supported by the *Affidavit of Brian D. Higgs*. In its Response, IGWA argues the Motion should be denied for two reasons. First, IGWA argues the notes are “neither relevant nor reasonably calculated to lead to the discovery of relevant evidence.” *Response* at 1. IGWA argues that Rangen has the burden to show that the notes are relevant and that Rangen has failed to meet its burden. *Id.* IGWA further argues that the notes are not relevant to the case as they were “private notes that [Brian Higgs] made many years ago, before ESPAM 1.0 was completed, and long before ESPAM2.1.” *Id.* IGWA argues that the notes “have nothing to do with Rangen, or Mr. Higgs work as watermaster for Water District 140, or his groundwater measurement on behalf of Ground Water Districts.” *Id.* at 2-3. Second, IGWA argues that even if the Director concludes the notes have some relevancy, any possible probative value of the notes is outweighed by the danger of unfair prejudice. *Id.* at 3.

CONCLUSIONS OF LAW

Discovery before the Department is governed by the Idaho Rules of Civil Procedure. IDAPA 37.01.01.520.02. Idaho Rule of Civil Procedure 26(b)(1) provides “Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: (1) Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action,” Rangen fails to explain how the documents it seeks are relevant to the subject matter involved in the pending action. While Higgs’s statements about a prior version of the model may be unprofessional, that does not make them relevant to this proceeding. The notes were written a number of years ago, well before the development of ESPAM 2.1. Higgs is not involved in water measurement at the Rangen facility, nor is he involved in the application of the model by the Department. Higgs’s role in this contested matter is inconsequential and his thoughts and opinions related to the actions of IGWA’s expert do not relate to the issues to be decided by the Director in this proceeding.

ORDER

Based upon the foregoing, the Director DENIES Rangen’s *Motion to Compel*.

DATED this 26th day of April, 2013.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of April, 2013, the above and foregoing document was served on the following by providing a copy in the manner selected:

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