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DEPARTMENT OF
WATER RESOURCES

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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

**RANGEN, INC'S RESPONSE IN
OPPOSITION TO MOTION TO
STRIKE TESTIMONY OF JOY
KINYON**

Rangen, Inc. ("Rangen"), through its attorneys, submits the following Response in Opposition to City of Pocatello's Motion to Strike Testimony of Joy Kinyon.

I. ARGUMENT

1. The City of Pocatello seeks to strike the testimony of Joy Kinyon, the manager of Rangen's aquaculture division, concerning the research projects Rangen would do if more water were available at the Research Hatchery to raise fish.
2. Mr. Kinyon was asked during direct examination if Rangen had a list of research projects that the company had **actually** considered but not completed because of

diminished spring flows at the Research Hatchery. He testified that Rangen did not maintain such a list:

Q. And now, does Rangen have a formal list of projects that it considered but rejected because it couldn't coordinate all of these pieces?

A. No, we're not that formal.

Transcript, p. 151, lines 20-23.

2. Kinyon was then asked whether Rangen had considered what research Rangen would do if more water were available at the facility to raise more fish:

Q: Have you considered what Rangen would do if there were more water available to raise more fish in terms of research, what would you do with the research?

A: Yes, I have several projects in mind.

Q: Okay. And what are those?

A: First and foremost I would – if we have we had the water available, we would immediately do feeding trials and on a commercial scale in the large raceways to compare our production size feeds to our numerous competitors, such as Cargill, Skretting, EWOS, Zeigler, and quite possibly we would also do a feeding trial on some of the whole feeds – or excuse me, the whole foods diet that we're currently selling to a few of our customers. That would be one. It sound like one, it's it's probably 20 different feeding trials. Secondly, I have - -

Transcript, p. 151, line 24 – p. 152, line 14.

3. Mid-sentence, the City of Pocatello objected to Mr. Kinyon's testimony, arguing that it had asked for "this kind of information" through written interrogatories authorized by Director Spackman and had not obtained it.

4. To understand Pocatello's Motion, it is necessary to examine Director Spackman's Order Denying IGWA and Pocatello's Motion to Compel Production of

Research List; Order Shortening Time for Interrogatory entered on March 4, 2013 (“Order”).

5. After the deposition of David Brock, one of Rangen’s feed nutritionists, Pocatello and IGWA filed a Motion to Compel seeking to require Rangen to turn over an email communication between Rangen and its attorneys. Director Spackman denied the Motion, finding that the communication was privileged and constituted attorney work product. See Order. The Director ruled:

When Rangen disclosed Brock as a witness, Rangen stated that Brock would testify as to “what type of feed research Rangen could do if more water were available at the facility.” Brock Depo., p. 148, lines 5-11. The Director recognizes that IGWA and Pocatello are trying to understand exactly what type of feed research Rangen could do with more water. It would be a different issue if counsel for Rangen, claiming an attorney-client privilege, had ordered Brock to not explain what types of feed research Rangen could do with more water, but that is not what happened in this case. In response to the above question being posed to Brock, counsel for Rangen stated, “Now, if that’s your question, you can ask him those questions all day long. You can ask those questions.” Because the attorney-client privilege does not protect disclosure of the underlying facts by those who communicated with the attorney, Brock, or any other Rangen witness for that matter, must respond if asked about the types of research Rangen could do if more water were available. Brock did attempt to answer the question that was asked. Brock Depo., p.149, lines 1-3. But once he provided his response, IGWA then went a step further and asked about a communication prepared at the request of Rangen’s attorney on this issue. IGWA and Pocatello are entitled to an answer to the question about what type of feed research Rangen could do with more water, but are not entitled to seek confidential communications between legal counsel for Rangen and Rangen employees on that issue.

Order, pp. 4-5.

4. As part of his Order, Director Spackman authorized Pocatello and IGWA to serve written interrogatories on Rangen concerning “what type of feed research the company could do if more water were available at the facility.” The Order stated:

Furthermore, the Director ORDERS that if IGWA and Pocatello desire to serve interrogatories on Rangen related to the issue of “What type of feed research Rangen could do if more water were available at the facility”, they can do so within five (5) days of the service date of this order. Rangen will then have five (5) days to provide responses to the interrogatories.

Order, p. 6.

5. Pocatello and IGWA both served discovery requests on Rangen following the Order, but neither set of discovery inquired as to what research Rangen could do if more water were available at the facility. Pocatello and IGWA only inquired as to the research Rangen actually considered, but did not conduct because of diminished spring flows.

6. Pocatello propounded the following discovery requests:

REQUEST FOR ADMISSION NO. 1: Please admit that the availability of water supplies is one of the **FACTORS RANGEN** has taken into account in determining which **RESEARCH PROJECTS** to pursue.

RESPONSE TO ADMISSION NO. 1: Admit.

INTERROGATORY NO. 1: If **YOU** admit Request for Admission No. 1 above, please list the other **FACTORS RANGEN** has taken into account in determining which **RESEARCH PROJECTS** to **INITIATE**.

RESPONSE TO INTERROGATORY NO. 1: When evaluating whether to take on a research project, in addition to water availability, Rangen takes into account the research needs of the feed division, research needs of customers, the likelihood of success of the project, estimated costs involved, and the potential application of research results.

INTERROGATORY NO. 2: If YOU admit Request for Admission No. 1 above, list the **RESEARCH PROJECTS** that **RANGEN** did not **INITIATE** for which insufficient water supplies was the deciding **FACTOR**.

RESPONSE TO INTERROGATORY NO. 2: Objection. This interrogatory is overly broad, burdensome, not likely to lead to the discovery of relevant evidence, and inconsistent with the scope of the inquiry that Director Spackman specified in the Order Denying IGWA and Pocatello's Motion to Compel Production of Research List; Order Shortening Time for Interrogatory. Without waiving said objections, Rangen states that it does not maintain a database or centralized repository containing information related to research projects that it planned, but was unable to carry out because of low water flows and is unable to provide the information requested. When Rangen encounters a water limitation on its research, it is handled informally and without documentation. For example, David Brock testified during his deposition that Lonny Tate had recently come to him and Joy Kinyon and told them that there probably would not be enough water flow in the small raceways to conduct a planned research study. See Brock Depo., p. 123, line 25 – p. 125, line 2. No documentation of this type of conversation exists. *Rangen generally does not document the research that it cannot do, but instead, plans what it can do with the water flows it has available.*

* * *

See Exhibit 1 attached hereto for Rangen's complete answer.

7. Rangen actually objected to Pocatello's Interrogatory No. 2 on the basis that it was inconsistent with the scope of the permitted discovery under the Director's Order, but went ahead and answered the question any way because discovery was still ongoing.

8. Likewise, IGWA did not send any discovery inquiring as to what type of research Rangen could do if more water were available. IGWA only asked about what Research Rangen actually considered, but did not conduct because of diminished spring flows:

INTERROGATORY NO. 35: Please state what type of research, feed or other types, Rangen planned to conduct since 1985, if more water was available at the Rangen facility. For each type of research, answer the following:

- a. When did the idea for each type of research first occur?
- b. Whose idea was it?
- c. Are there any contemporaneous writings that would support when the idea for the research first occurred?
- d. Identify the quantity of water needed to conduct such research.
- e. How was the amount of water needed determined?
- f. Who determined the quantity of water needed to conduct such research?
- g. Who determined that there was not enough water available to conduct the research?
- h. Identify all underlying facts to support the possibility of each type of research.
- i. The persons(s) possessing knowledge or information of such research.
- j. All facts and data to support the necessary quantity of water required for each type of research.
- k. Identify all documents which support your answer.

See Exhibit 2 attached hereto.

9. Rangen responded to IGWA's inquiry, in part, as follows:

RESPONSE TO INTERROGATORY NO. 35: Objection. This interrogatory is overly broad, burdensome, not likely to lead to the discovery of relevant evidence, and inconsistent with the scope of the inquiry that Director Spackman specified in the Order Denying IGWA and Pocatello's Motion to Compel Production of Research List; Order Shortening Time for Interrogatory. Without waiving said objections, Rangen states that it does not maintain a database or centralized repository containing information related to research projects that it planned, but was unable to carry out because of low water flows and is unable to provide the information requested. When Rangen encounters a water limitation on its research, it is handled informally and without documentation. For example, David Brock testified during his deposition that Lonny Tate had recently come to him and Joy Kinyon and told them that there probably would not be enough water flow in the small raceways to conduct a planned research study. See Brock Depo., p. 123, line 25 – p. 125, line 2. No documentation of this type of conversation exists. *Rangen generally does not document the research that it cannot do, but instead, plans what it can do with the water flows it has available.*

* * *

See Exhibit 2, pp. 3-5 for Rangen's complete answer.

10. Rangen objected to IGWA's inquiry as being inconsistent with the Director's Order, but answered the inquiries any way because discovery was ongoing.

11. Before Pocatello's Motion to Compel was even filed, IGWA and Pocatello inquired multiple times as to what research Rangen could do if more water were available at the Research Hatchery and Rangen answered through various employees. For example, during David Brock's deposition, Mr. Brock testified:

Q. When you were disclosed as a witness in this case on December 21st, 2012, Rangen stated – and this can be subject to check for Rangen -- that you were going to testify about -- and I'm going to quote from Rangen's disclosure -- "what type of feed research Rangen could do if more water were available at the facility."

MR. HAEMMERLE: *Now, if that's your question, you can ask him those questions all day long. You can ask those questions.*

MS. McHUGH: Okay. I didn't even get to ask my question yet.

MR. HAEMMERLE: The disclosure, I think, speaks for itself. He's here to testify to that disclosure.

MS. McHUGH: Right. And I'm going to ask him a question now.

MR. HAEMMERLE: Okay.

Q. (BY MS. McHUGH): So I'm going to ask you the question: *What type of feed research could Rangen do if more water were available at the Rangen research facility?*

A. We could carry out well-replicated studies on algae, fishmeal replacements, new pigment sources, and so on.'

Q. Where did you come up with that list that you just gave me?

A. I don't understand the question.

Q. Was that spontaneous --

A. I generated it in my mind, and I can't tell you exactly what part of the brain it came from.

Brock Depo., p. 148, line 5- p. 149, line 9 (attached as Exhibit 3).

12. Mr. Kinyon testified in September, 2012 during his first deposition that Rangen has been impacted by not being able to do competitor feed trials or alternative feed ingredient testing. See Kinyon Depo., p. 33, line 11 – p. 34, line 6.

13. Pocatello contends that Mr. Kinyon and Rangen are hiding the ball concerning research, but Pocatello actually made the comment during Mr. Kinyon’s deposition that: “You spoke with Mr. Budge a lot about the research that Rangen would like to be conducting for its operations, correct?” Kinyon Depo., p. 47, lines 2-4.

14. IGWA and Pocatello deposed Mr. Kinyon for a second time in March 2013. At that time, Mr. Kinyon explained that Rangen could do more feeding trials if there were more water available at the Research Hatchery. Kinyon Depo., p. 203, line 22 – p. 204, line 3.

15. Doug Ramsey, Rangen’s Research Scientist, also testified during his deposition in September, 2012 that Rangen has a need for research on its own feeds, disease resistance and alternate sources of protein. See Ramsey Depo., p. 127, lines 8-15. Ramsey also testified:

Q. What research has been on hold or is waiting to be fulfilled if there's more flow at Rangen's facility?

A. Most recently it would be a particular ingredient that has some capability of pigmenting fish.

Ramsey Depo., p. 136, lines 1-5.

16. There is no basis for Pocatello’s argument that Rangen has been “hiding the ball” concerning the research it could do if more water were available at the Research Hatchery. Rangen has answered interrogatories, requests for admission, and its

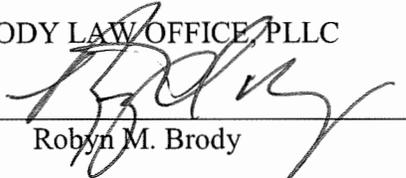
employees have been deposed and re-deposed. As such, Pocatello's Motion to Strike should be denied.

II. CONCLUSION

For the foregoing reasons, Rangen respectfully requests that Pocatello's Motion to Strike be denied and Rangen be permitted to complete the testimony of Joy Kinyon and Doug Ramsey.

DATED this 6th day of May, 2013.

BRODY LAW OFFICE, PLLC

By: 

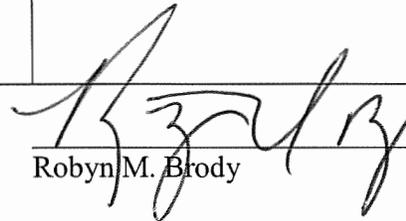
Robyn M. Brody

CERTIFICATE OF SERVICE

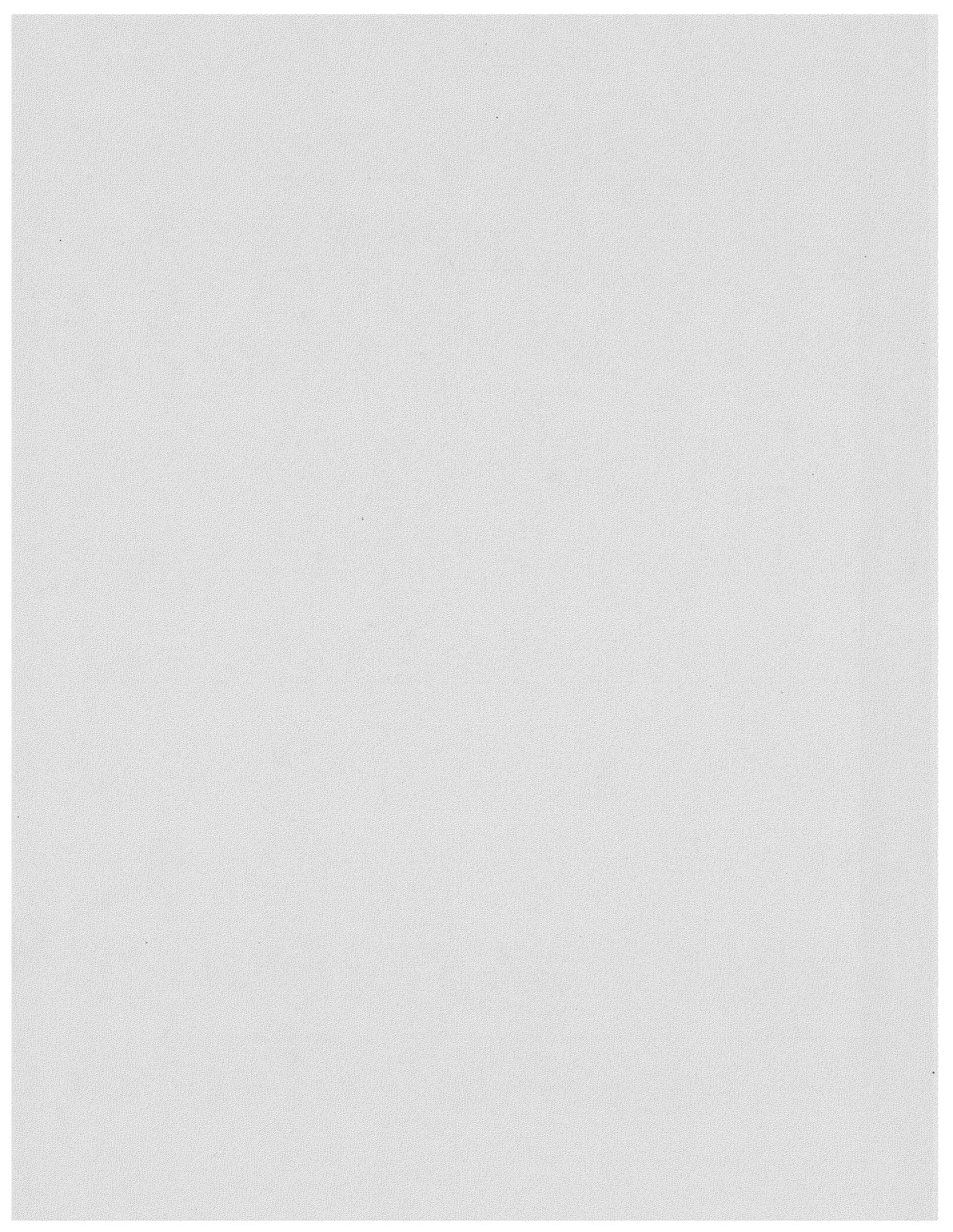
The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 6th day of May, 2013 she caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

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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	Hand Delivery <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input type="checkbox"/>
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Robyn M. Brody



2

1 BEFORE THE DEPARTMENT OF WATER RESOURCES
 2 OF THE STATE OF IDAHO
 3
 4 IN THE MATTER OF DISTRIBUTION OF)
 5 WATER TO WATER RIGHT NOS. 36-02551) Docket No.
 6 AND 36-07694) CM-DC-2011-004
 7)
 8 (RANGEN, INC.)) VOLUME II
 9 _____) (Pages ***-***)
 10
 11
 12 BEFORE
 13 HEARING OFFICER: GARY SPACKMAN
 14 Date: May 2, 2013 - 8:30 a.m.
 15 Location: Idaho Department of Water Resources
 16 322 East Front Street
 17 Boise, Idaho
 18
 19
 20 REPORTED BY:
 21 JEFF LaMAR, C.S.R. No. 640
 22 Notary Public
 23
 24
 25

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 20 WHITE & JANKOWSKI, LLP
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5

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 10 EXHIBITS
 11 NO. MARKED RECEIVED
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1 Q. So you actually have an experiment going on
 2 right now?
 3 A. Yes, we do.
 4 Q. And you said it's in the hatchery?
 5 A. Yes.
 6 Q. Or I'm sorry, in the hatch house?
 7 A. In the hatch house.
 8 Q. And what's the nature of the research?
 9 A. It's -- we're looking at following up on a
 10 customer complaint about the palette built of a certain
 11 starter feed that we're using. Apparently that
 12 customer's fish aren't eating as well as he thinks they
 13 ought to be. And they're getting some deformities in
 14 the fry. And our experience with that feed has been
 15 exceptionally good with all our other customers and we
 16 had an opportunity to fish in the hatch house to
 17 demonstrate to this particular customer in the valley
 18 that it may not be a feed problem. So we set it up so
 19 he could come and him his his hatchery workers could
 20 come and see what's the result of feeding the same
 21 feeds that he's currently feeding, that he's
 22 complaining about.
 23 Q. Now, as you and your team meet with the
 24 fish culturists and you talk about research projects,
 25 have you had situations where you've decided not to

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1 conduct a particular research study because you simply
 2 didn't have enough water?
 3 A. On occasion. All these meetings with the
 4 fish culturist are quite informal and Lonny may be
 5 coming through the office or we may be sitting in Doug
 6 Ramsey's office or something like that and we talk
 7 about that and it maybe a telephone call to Lonny to
 8 discuss the opportunity that fish culturist sees to do
 9 this trial. But we have to know, what's the duration
 10 of the trial, and where the size of the fish that is
 11 desirable for the trial. There's just, you know, many,
 12 many, attributes that we have to address. It's kind of
 13 a complicated process. Time-consuming process to pull
 14 it off, if you will.
 15 Q. And as your flows have decreased at the
 16 hatchery, has the degree of complications increased?
 17 A. Oh, it's much more complex. You've got to
 18 hit the timing just right or wait for the timing to get
 19 right. Yes. To answer your question.
 20 Q. And now, does Rangen have a formal list of
 21 projects that it considered but rejected because it
 22 couldn't coordinate all of these pieces?
 23 A. No, we're not that formal.
 24 Q. Have you considered what Rangen would do if
 25 there were more water available to raise more fish in

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1 terms of research, what would you do with the research?
 2 A. Yes, I do have several projects in mind.
 3 Q. Okay. And what are those?
 4 A. First and foremost I would -- if we have we
 5 had the water available, we would immediately do
 6 feeding trials and on a commercial scale in the large
 7 raceways to compare our production size feeds to our
 8 numerous competitors, such as Cargill, Skretting, EWOS,
 9 Zeigler, and quite possibly we would also do a feeding
 10 trial on some of the whole feeds -- or excuse me, the
 11 whole foods diets that we're currently selling to a few
 12 of our customers. That would be one. It sounds like
 13 one, it's it's probably 20 different feeding trials.
 14 Secondly, I have.
 15 MS. KLAHN: Mr. Director, I'm going to interject
 16 here. An objection. I apologize Mr. Kinyon for
 17 interrupt being. But we had a billing battle about
 18 this particular issue through discovery when we asked
 19 for this type of information. There was I believe a
 20 motion to compel and the Director ordered that the
 21 parties -- the IGWA and Pocatello were allowed to ask
 22 for this information and we submitted written discovery
 23 and confined the discovery requests. But I believe we
 24 asked for this kind of information specifically. I'm
 25 sure Mr. Kinyon participated in drafting the discovery

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1 responses because we talked to him about at in a
 2 subsequent deposition and now all of a sudden on the
 3 second day of trial we learn that there's a whole list
 4 of things that they would have done when they couldn't
 5 ever substantiate that before. So I guess I'd object
 6 to further answer along those lines and I'd move to
 7 strike the portion that we've heard as really being
 8 prejudicial because we've never heard this before. We
 9 never had a chance too inquire into it before.
 10 THE HEARING OFFICER: Just a moment. Let's go
 11 off the record. Jeff. (recess).
 12 THE HEARING OFFICER: We're back on the record.
 13 Everybody's had a chance to talk about this a little
 14 bit and I discussed it a little bit here. We looked
 15 back at the record and the documents to some degree at
 16 least a summary. So I guess I'll ask the parties
 17 whether they have ideas about how to address this
 18 particular concern and I'll just tell you that I think
 19 it's a legitimate objection Ms. Klahn. My concern is
 20 how we sort it out and expeditiously and whether we
 21 spend the rest of the afternoon trying to sort it out
 22 or whether there's some other way forward at this
 23 point. And so I just throw it out to the parties.
 24 MS. BRODY: Well, probably the best thing to do
 25 is if you want some kind of beverage brief or something

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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION
DELIVERY CALL OF RANGEN, INC.'S
WATER RIGHT NOS. 36-02551 & 36-
7694

(RANGEN, INC.)

Docket No. CM-DC-2011-004

**RANGEN, INC.'S RESPONSE TO
CITY OF POCATELLO'S
DISCOVERY REQUESTS TO
RANGEN MADE PURSUANT TO
MARCH 4, 2013 ORDER DENYING
IGWA AND POCATELLO'S
MOTION TO COMPEL
PRODUCTION OF RESEARCH
LIST**

COMES NOW, Rangen, Inc. ("Petitioner"), by and through its counsel of record,
and responds to City of Pocatello's Discovery Requests to Rangen Made Pursuant to

RANGEN, INC.'S RESPONSE TO CITY OF POCATELLO'S DISCOVERY REQUESTS TO RANGEN
MADE PURSUANT TO MARCH 4, 2013 ORDER DENYING IGWA AND POCATELLO'S MOTION
TO COMPEL PRODUCTION OF RESEARCH LIST - 1

Exhibit 1'

March 4, 2013 Order Denying IGWA and Pocatello's Motion to Compel Production of Research List as follows:

GENERAL OBJECTIONS

1) Petitioner objects to the Requests to the extent that they seek information protected by the attorney-client privilege, the work product doctrine or any other applicable privilege or immunity.

2) Petitioner objects to the Requests as premature, burdensome, and improper to the extent they seek factual information in support of Petitions and Claims that Petitioner has not had opportunity to fully prepare and for which Petitioner may require discovery from Plaintiffs or others. These responses are subject to the discovery or recollection of additional information, knowledge, or facts.

3) These responses are provided pursuant to the Rules of Procedure of the Idaho Department of Water Resources ("IDWR") and the Idaho Rules of Civil Procedure to the extent incorporated by the IDWR. To the extent the Requests attempt to impose any differing or additional instructions, definitions, or obligations, Petitioner objects to the Requests.

INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION

REQUEST FOR ADMISSION NO. 1: Please admit that the availability of water supplies is one of the **FACTORS RANGEN** has taken into account in determining which **RESEARCH PROJECTS** to pursue.

RESPONSE TO ADMISSION NO. 1: Admit.

INTERROGATORY NO. 1: If **YOU** admit Request for Admission No. 1 above, please list the other **FACTORS RANGEN** has taken into account in determining which **RESEARCH PROJECTS** to **INITIATE**.

RESPONSE TO INTERROGATORY NO. 1: When evaluating whether to take on a research project, in addition to water availability, Rangen takes into account the research needs of the feed division, research needs of customers, the likelihood of success of the project, estimated costs involved, and the potential application of research results.

INTERROGATORY NO. 2: If YOU admit Request for Admission No. 1 above, list the **RESEARCH PROJECTS** that **RANGEN** did not **INITIATE** for which insufficient water supplies was the deciding **FACTOR**.

RESPONSE TO INTERROGATORY NO. 2: Objection. This interrogatory is overly broad, burdensome, not likely to lead to the discovery of relevant evidence, and inconsistent with the scope of the inquiry that Director Spackman specified in the Order Denying IGWA and Pocatello's Motion to Compel Production of Research List; Order Shortening Time for Interrogatory. Without waiving said objections, Rangen states that it does not maintain a database or centralized repository containing information related to research projects that it planned, but was unable to carry out because of low water flows and is unable to provide the information requested. When Rangen encounters a water limitation on its research, it is handled informally and without documentation. For example, David Brock testified during his deposition that Lonny Tate had recently come to him and Joy Kinyon and told them that there probably would not be enough water flow in the small raceways to conduct a planned research study. See Brock Depo., p. 123, line 25 – p. 125, line 2. No documentation of this type of conversation exists. *Rangen generally does not document the research that it cannot do, but instead, plans what it can do with the water flows it has available.*

Rangen has been dealing with, and adapting to, declining water flows at its Research Hatchery for decades. For example, in 2001, Rangen lost a batch of fish that were slated to be used in a raceway experiment identified as N0202. The remaining fish that Rangen had available were not the proper size, and, as a result, Rangen had to delay the start of the experiment. Because of low water flows, there was concern as to whether a raceway experiment could be conducted at the time the available fish would be the proper size; the decision was made to cancel the raceway experiment and conduct it in

the greenhouse. See computer file called Timeline winter 2001 RW produced on 3/12/13; see also computer file called "WCG Final Draft" produced on October 9, 2012.

Rangen's water flows have declined, its ability to perform research in the hatchery raceways has been impaired because, among other things, by the inability to conduct studies that have a sufficient number of replicates to achieve statistically significant results. For example, in 1997 Rangen conducted a study to evaluate the use of poultry by-product meal as a substitute for fish meal in trout diets. See RANGENWJ001788. Researchers recommended that the study be continued in a raceway setting to evaluate how poultry by-product meal impacted growth to market size in a production setting. See *id.* at p. 2 of the study. Researchers actually recommended using another facility in order to increase replication and stocking density. See *id.*

Rangen's records also show that Rangen conducted a feed trial beginning in the Fall of 1999 to compare its existing 450 feed with an "improved" version for the same feed. The final report for that study shows that the number of replicates involved in the study had to be reduced due to water and space limitations and this impacted the overall statistical sensitivity of the study. RANGENWJ001076, p. 5 of adobe pdf file (there are no Bates Nos. or page numbers on the document itself). Some notes pertaining to that study state:

Experiment: N0003

Title: 450 vs. 450 improved

Location: Hagerman Raceways

Start: Sep 24, 1999

End: Mar 9, 2000

Abstract: A total of six raceways were fed either the standard EXTR 450 diet or an improved formulation. Fish were all female RBT, graded tops out of the hatch house. On Nov 16th, the fish were condensed into four raceways in the CTR's due to water and space limitations. In January an episode of gill problems and higher mortality was experienced. The experiment was terminated on two different dates, again due to space limitations and production needs.

Results: While statistical significance is limited due to low number of replicates, the improved 450 appears to have performed better. FCR = .98 vs. 1.14, End Wt. = 390 gms. Vs. 338 and mortality = 4.15% vs. 9.66%.

See computer file titled "Research Summary as of 2.25.01" produced on October 9, 2012 (emphasis added).

RANGEN, INC.'S RESPONSE TO CITY OF POCA TELLO'S DISCOVERY REQUESTS TO RANGEN MADE PURSUANT TO MARCH 4, 2013 ORDER DENYING IGWA AND POCA TELLO'S MOTION TO COMPEL PRODUCTION OF RESEARCH LIST - 4

The final report for Experiment N0004, another feed study, provide similar information concerning the lack of replication and the impact it has on the statistical analysis. See RANGENWJ001096. Some notes pertaining to that study state:

Experiment: N0004
Title: 45/16 vs. 45/21
Location: Hagerman Raceways
Start: Oct 27, 1999
End: Mar 14, 2000

Abstract: a total of six raceways were fed either the standard EXTR 450 at 16% fat, or 450 formulated with 21% fat (this was the diet with the best performance potential from the greenhouse study N9904). Sibling fish, which were double graded tops of all female RBT, were stocked into two series of three raceways and held there for the duration of the test. *Fish did need thinning in mid February due to crowding and declining water.* All fish were terminated within a two day period, with final sample counts and full raceway weigh-up. *The limited number of replicates reduced the statistical significance of the results.* Fish on the higher fat 45/21 diet were larger at the end of the test, but there was no real difference in FCR or mortality. Cost/lb gain favored the standard 45/16 formulation.

See computer file titled "Research Summary as of 2.25.01" produced on October 9, 2012 (emphasis added).

Rangen attempted to address the replication problem at the Research Hatchery by using using "cages" in the raceways. The cages were put in a raceway (one in front of the other) and each cage was treated as a replicate. See, e.g., RANGENWJ001782. The cages were not able to address the replication problem, however, because the quality of the water decreased as it flowed through each successive cage thereby introducing another variable into the study being conducted.

INTERROGATORY NO. 3: For each **RESEARCH PROJECT** identified in

Interrogatory No. 2 above, please provide the following information:

- a. The hypothesis to be tested by the **RESEARCH PROJECT**.
- b. The date the decision was made not to **INITIATE** the **RESEARCH PROJECT**.
- c. The names and contact information of any **RANGEN** personnel involved

in the decision not to INITIATE the RESEARCH PROJECT.

- d. What additional amount of water RANGEN personnel determined was required to INITIATE the RESEARCH PROJECT.

RESPONSE TO INTERROGATORY NO. 3: See Response to Interrogatory No. 2.

REQUEST FOR PRODUCTION NO. 1: Please PRODUCE all DOCUMENTS that are RELEVANT to the Discovery Requests made above.

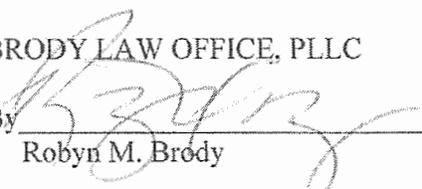
RESPONSE TO REQUEST FOR PRODUCTION NO. 1: See documents cited in Response to Interrogatory No. 2.

INTERROGATORY NO. 4: Please provide a list of all individuals, their professional positions, whether or not they are presently associated with RANGEN, and contact information, for those individuals who participated in answering these Discovery Requests.

RESPONSE TO INTERROGATORY NO. 4: Joy Kinyon, the manager of General Feeds and Aquaculture Divisions, David Brock and Doug Ramsey participated in answering these discovery requests.

DATED this 13th day of March, 2013.

BRODY LAW OFFICE, PLLC

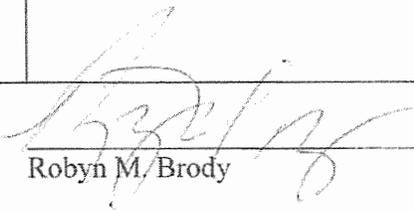
By 
Robyn M. Brody

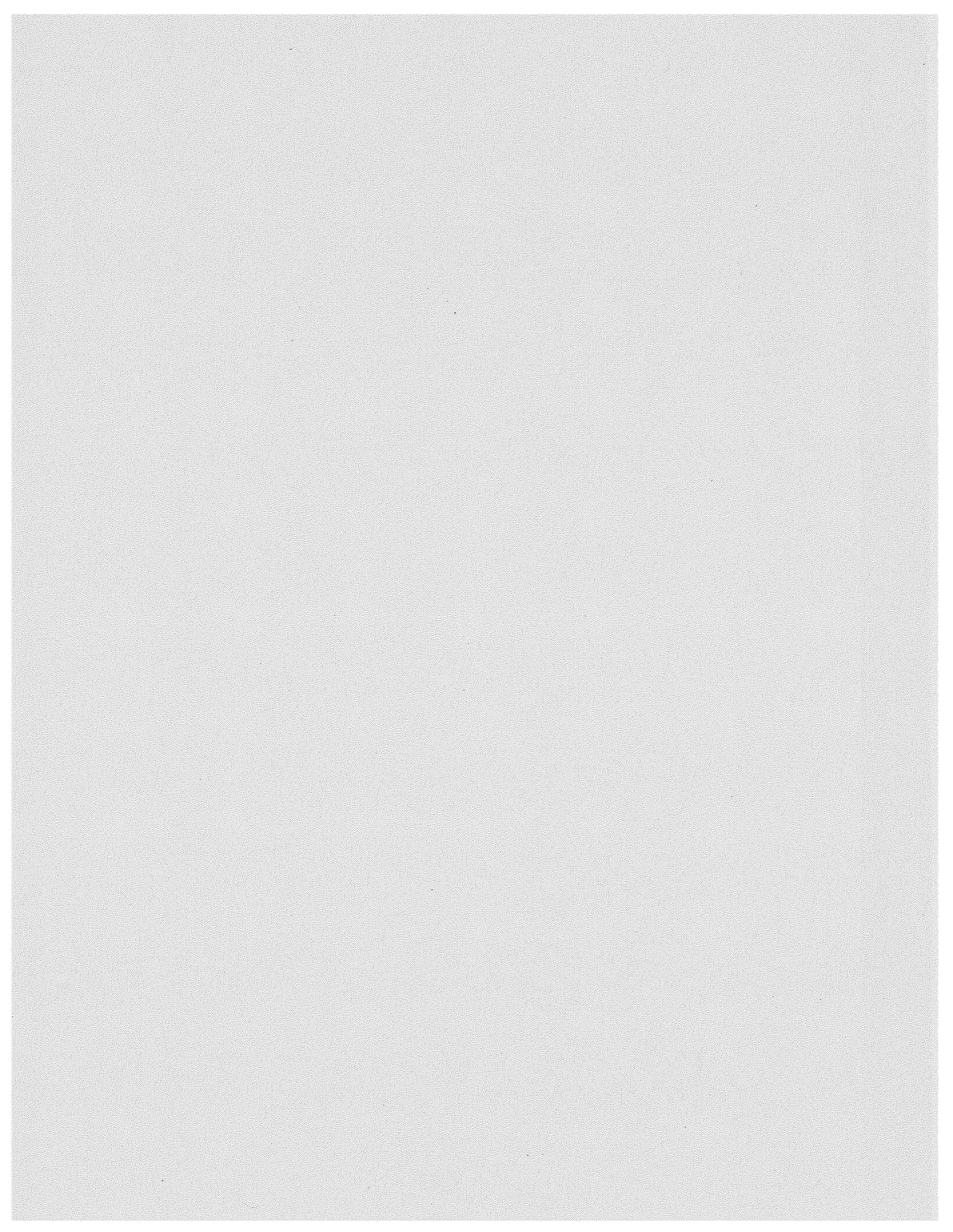
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 13th day of March, 2013 she caused a true and correct copy of the foregoing document to be served by email and first class U.S. Mail, postage prepaid upon the following:

<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 type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input 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 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 emm@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</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/></p>

<p>John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson, L.L.P. 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 tlt@idahowaters.com iks@idahowaters.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>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



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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
DELIVERY CALL OF RANGEN, INC.'S
WATER RIGHT NOS. 36-02551 & 36-
7694

(RANGEN, INC.)

Docket No. CM-DC-2011-004

**RANGEN, INC.'S RESPONSE TO
IGWA'S FIFTH SET OF
DISCOVERY**

COMES NOW, Rangen, Inc. ("Petitioner"), by and through its counsel of record,
and responds to IGWA's Fifth Set of Discovery as follows:

GENERAL OBJECTIONS

1) Petitioner objects to the Requests to the extent that they seek information
protected by the attorney-client privilege, the work product doctrine or any other
applicable privilege or immunity.

2) Petitioner objects to the Requests as premature, burdensome, and improper to the extent they seek factual information in support of Petitions and Claims that Petitioner has not had opportunity to fully prepare and for which Petitioner may require discovery from Plaintiffs or others. These responses are subject to the discovery or recollection of additional information, knowledge, or facts.

3) These responses are provided pursuant to the Rules of Procedure of the Idaho Department of Water Resources (“IDWR”) and the Idaho Rules of Civil Procedure to the extent incorporated by the IDWR. To the extent the Requests attempt to impose any differing or additional instructions, definitions, or obligations, Petitioner objects to the Requests.

INTERROGATORIES

INTERROGATORY NO. 35: Please state what type of research, feed or other types, Rangen planned to conduct since 1985, if more water was available at the Rangen facility. For each type of research, answer the following:

- a. When did the idea for each type of research first occur?
- b. Whose idea was it?
- c. Are there any contemporaneous writings that would support when the idea for the research first occurred?
- d. Identify the quantity of water needed to conduct such research.
- e. How was the amount of water needed determined?
- f. Who determined the quantity of water needed to conduct such research?
- g. Who determined that there was not enough water available to conduct the research?
- h. Identify all underlying facts to support the possibility of each type of research.
- i. The persons(s) possessing knowledge or information of such research.
- j. All facts and data to support the necessary quantity of water required for each type of research.
- k. Identify all documents which support your answer.

RESPONSE TO INTERROGATORY NO. 35: Objection. This interrogatory is overly broad, burdensome, not likely to lead to the discovery of relevant evidence, and inconsistent with the scope of the inquiry that Director Spackman specified in the Order Denying IGWA and Pocatello's Motion to Compel Production of Research List; Order Shortening Time for Interrogatory. Without waiving said objections, Rangen states that it does not maintain a database or centralized repository containing information related to research projects that it planned, but was unable to carry out because of low water flows and is unable to provide the information requested. When Rangen encounters a water limitation on its research, it is handled informally and without documentation. For example, David Brock testified during his deposition that Lonny Tate had recently come to him and Joy Kinyon and told them that there probably would not be enough water flow in the small raceways to conduct a planned research study. See Brock Depo., p. 123, line 25 – p. 125, line 2. No documentation of this type of conversation exists. *Rangen generally does not document the research that it cannot do, but instead, plans what it can do with the water flows it has available.*

Rangen has been dealing with, and adapting to, declining water flows at its Research Hatchery for decades. For example, in 2001, Rangen lost a batch of fish that were slated to be used in a raceway experiment identified as N0202. The remaining fish that Rangen had available were not the proper size, and, as a result, Rangen had to delay the start of the experiment. Because of low water flows, there was concern as to whether a raceway experiment could be conducted at the time the available fish would be the proper size; the decision was made to cancel the raceway experiment and conduct it in the greenhouse. See computer file called Timeline winter 2001 RW produced on 3/12/13; see also computer file called "WCG Final Draft" produced on October 9, 2012.

Rangen's water flows have declined, its ability to perform research in the hatchery raceways has been impaired because, among other things, by the inability to conduct studies that have a sufficient number of replicates to achieve statistically significant results. For example, in 1997 Rangen conducted a study to evaluate the use of poultry by-product meal as a substitute for fish meal in trout diets. See RANGENWJ001788. Researchers recommended that the study be continued in a raceway setting to evaluate how poultry by-product meal impacted growth to market size

in a production setting. See *id.* at p. 2 of the study. Researchers actually recommended using another facility in order to increase replication and stocking density. See *id.*

Rangen's records also show that Rangen conducted a feed trial beginning in the Fall of 1999 to compare its existing 450 feed with an "improved" version for the same feed. The final report for that study shows that the number of replicates involved in the study had to be reduced due to water and space limitations and this impacted the overall statistical sensitivity of the study. RANGENWJ001076, p. 5 of adobe pdf file (there are no Bates Nos. or page numbers on the document itself). Some notes pertaining to that study state:

Experiment: N0003

Title: 450 vs. 450 improved

Location: Hagerman Raceways

Start: Sep 24, 1999

End: Mar 9, 2000

Abstract: A total of six raceways were fed either the standard EXTR 450 diet or an improved formulation. Fish were all female RBT, graded tops out of the hatch house. On Nov 16th, the fish were condensed into four raceways in the CTR's due to water and space limitations. In January an episode of gill problems and higher mortality was experienced. The experiment was terminated on two different dates, again due to space limitations and production needs.

Results: While statistical significance is limited due to low number of replicates, the improved 450 appears to have performed better. FCR = .98 vs. 1.14, End Wt. = 390 gms. Vs. 338 and mortality = 4.15% vs. 9.66%.

See computer file titled "Research Summary as of 2.25.01" produced on October 9, 2012 (emphasis added).

The final report for Experiment N0004, another feed study, provide similar information concerning the lack of replication and the impact it has on the statistical analysis. See RANGENWJ001096. Some notes pertaining to that study state:

Experiment: N0004

Title: 45/16 vs. 45/21

Location: Hagerman Raceways

Start: Oct 27, 1999

End: Mar 14, 2000

Abstract: a total of six raceways were fed either the standard EXTR 450 at 16% fat, or 450 formulated with 21% fat (this was the diet with the best

performance potential from the greenhouse study N9904). Sibling fish, which were double graded tops of all female RBT, were stocked into two series of three raceways and held there for the duration of the test. *Fish did need thinning in mid February due to crowding and declining water.* All fish were terminated within a two day period, with final sample counts and full raceway weigh-up. *The limited number of replicates reduced the statistical significance of the results.* Fish on the higher fat 45/21 diet were larger at the end of the test, but there was no real difference in FCR or mortality. Cost/lb gain favored the standard 45/16 formulation.

See computer file titled "Research Summary as of 2.25.01" produced on October 9, 2012 (emphasis added).

Rangen attempted to address the replication problem at the Research Hatchery by using using "cages" in the raceways. The cages were put in a raceway (one in front of the other) and each cage was treated as a replicate. See, e.g., RANGENWJ001782. The cages were not able to address the replication problem, however, because the quality of the water decreased as it flowed through each successive cage thereby introducing another variable into the study being conducted.

INTERROGATORY NO. 36: For each type of research identified above, please state what other factors besides water quantity hampered the research from being conducted or completed at the Rangen facility. For each factor, answer the following:

- a. All underlying facts to support your answer.
- b. The person(s) possessing knowledge or information regarding your response.
- c. Identify all documents which support your answer.

RESPONSE TO INTERROGATORY NO. 36: Objection. This interrogatory is vague and ambiguous. Without waiving said objection, see response to Interrogatory No. 35.

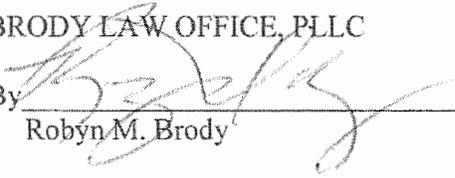
REQUEST FOR PRODUCTION NO. 21: Please produce all documents that you identified in your answers to Interrogatory Nos. 35 and 36 above and all documents that support your answers to Interrogatory Nos. 35 and 36 above.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21: The documents cited in Rangen's Response to Interrogatory Nos. 35 and 36 were previously produced.

DATED this 13th day of March, 2013.

BRODY LAW OFFICE, PLLC

By



Robyn M. Brody

VERIFICATION

STATE OF IDAHO)
) ss
County of Twin Falls)

Joy Kinyon, being first duly sworn, on oath, deposes and says.

That he is the General Manager of the General Feeds and Aquaculture divisions of Rangen, Inc., that he has read the foregoing RANGEN, INC.'S RESPONSE TO CITY OF POCA TELLO'S DISCOVERY REQUESTS TO RANGEN MADE PURSUANT TO MARCH 4, 2013 ORDER DENYING IGWA AND POCA TELLO'S MOTION TO COMPEL PRODUCTION OF RESEARCH LIST, knows the contents thereof, and the facts stated he believes to be true.

Joy Kinyon

SUBSCRIBED AND SWORN to before me this ____ day of March, 2013.

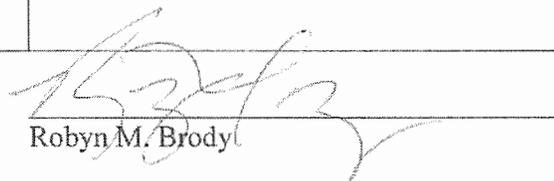
Notary Public for State of Idaho
Residing at _____, therein.
Commission Expires: _____

CERTIFICATE OF SERVICE

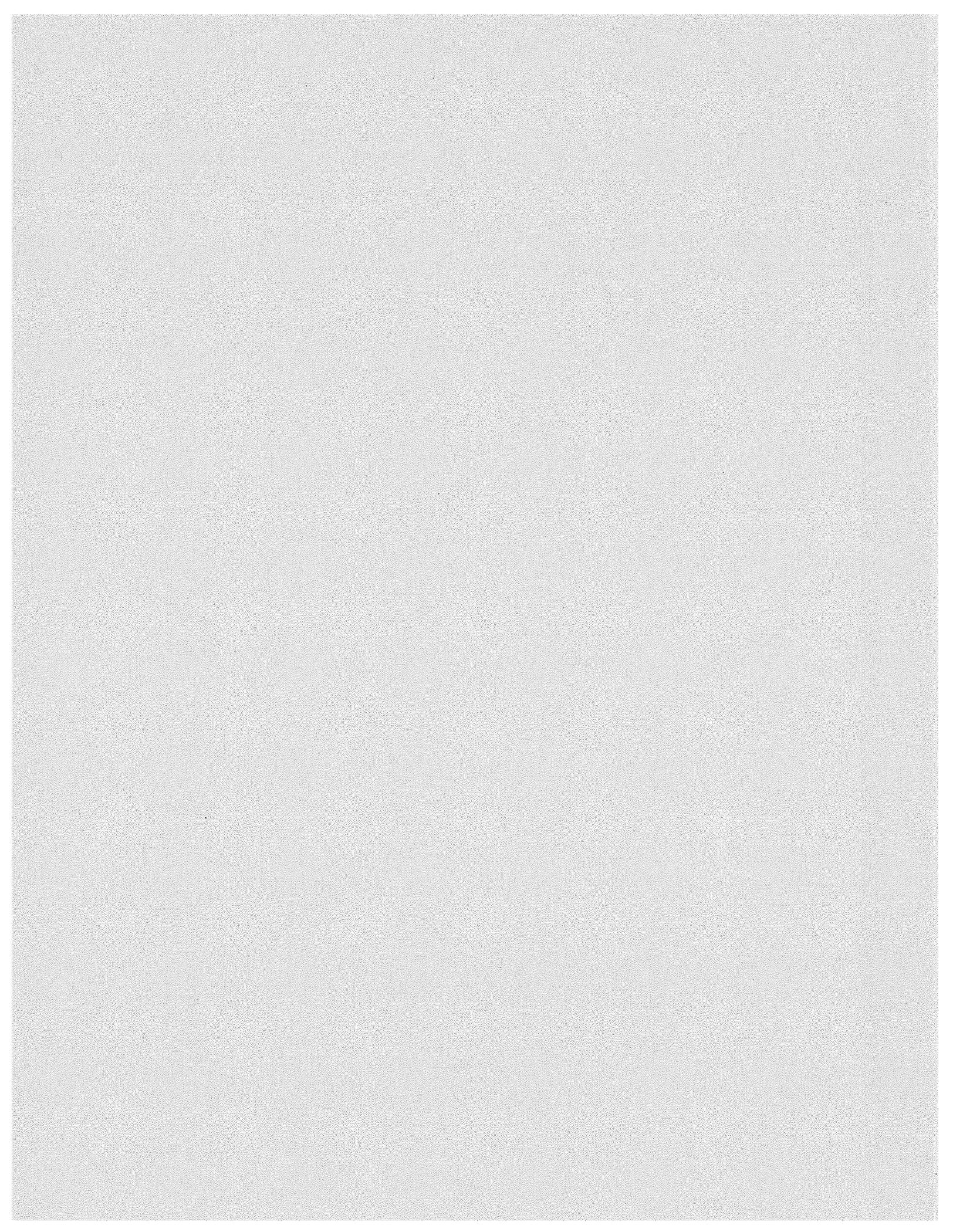
The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 13th day of March, 2013 she caused a true and correct copy of the foregoing document to be served by email and first class U.S. Mail, postage prepaid upon the following:

<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 type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input 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 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</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/></p>

Pocatello, ID 83201 dtranmer@pocatello.us	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. 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 flt@idahowaters.com jks@idahowaters.com	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"/>
C. Thomas Arkoosh Arkoosh Eiguren P.O. Box 2900 Boise, ID 83702 Tom.arkoosh@aelawlobby.com	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"/>
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, ID 83318 wkf@pmt.org	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"/>
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	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"/>



Robyn M. Brody



1 BEFORE THE DEPARTMENT OF WATER RESOURCES
 2 OF THE STATE OF IDAHO
 3
 4 IN THE MATTER OF DISTRIBUTION OF)
 5 WATER TO WATER RIGHT NOS. 36-02551) Docket No.
 6 AND 36-07694) CM-DC-2011-004
 7)
 8 (RANGEN, INC.))
 9 _____)

CONFIDENTIAL

Pursuant to Protective Order Dated August 31, 2012

16 DEPOSITION OF DAVID LORING BROCK
 17 JANUARY 22, 2013

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

1 THE DEPOSITION OF DAVID LORING BROCK was
 2 taken on behalf of the City of Pocatello at the offices
 3 of May, Sudweeks & Browning, LLP, 516 Hansen Street
 4 East, Twin Falls, Idaho, commencing at 9:18 a.m. on
 5 January 22, 2013, before Jeff LaMar, Certified
 6 Shorthand Reporter and Notary Public within and for the
 7 State of Idaho, in the above-entitled matter.

APPEARANCES:

10 For City of Pocatello:
 11 WHITE & JANKOWSKI, LLP
 12 BY MR. J. RYLAND HUTCHINS
 13 511 Sixteenth Street, Suite 500
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 15 For Idaho Groundwater Appropriators:
 16 RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED
 17 BY MS. CANDICE M. McHUGH
 18 101 South Capitol Boulevard, Suite 300
 19 Boise, Idaho 83702
 20 For Rangen, Inc.:
 21 HAEMMERLE & HAEMMERLE, PLLC
 22 BY MR. FRITZ X. HAEMMERLE
 23 Post Office Box 1800
 24 Hailey, Idaho 83333
 25 -and-

APPEARANCES (Continued):

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 4 BY MS. ROBYN M. BRODY
 5 Post Office Box 554
 6 Rupert, Idaho 83350
 7 Also Present:
 8 Heidi Welsh
 9 Joy Kinyon

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13	02/26/1999, no Bates number	
14	92 - Rangen Aquaculture Research Center Contract	11
15	Research Agreement, dated 12/14/2007, no	
16	Bates numbers	
17	93 - Resumé of David L. Brock, no Bates numbers	13
18	94 - Resumé of David L. Brock, no Bates numbers	14
19	95 - RARC (IARC) Work Unit Summary, updated	35
20	May 2002, Bates Nos. Rangen008188-008203	
21	96 - Notebook No. 2012, issued 08/17/2012, Bates	54
22	Nos. RangenWJ003924-003955	
23	97 - Final Report for N0405, dated March 2005,	58
24	Bates Nos. Rangen008234-008241	
25	///	

1 We'll do that if it exists, and then you can take it up
2 with the Director. You're not going to get an answer
3 from this witness on that question. And we'll bring
4 him back if we have to.

5 MS. McHUGH: I think if the witness saw the
6 document, under Idaho rule of evidence, and he looked
7 at it today prior to deposition, I think it's
8 discoverable. And that's all I'm asking. If he's seen
9 the list, does he know it exists, did he look at it
10 before he came to deposition. I think that's fair
11 questions.

12 MR. HAEMMERLE: Let's take a break.

13 MS. BRODY: I need to take a break because I
14 need to talk to Fritz about it.

15 MS. McHUGH: Fair enough.

16 (Recess.)

17 MR. HAEMMERLE: Let's talk about this list.
18 This list is not a list that was prepared in the normal
19 course of business of Rangen, Inc. It was a list that
20 Robyn and I requested. At our request it was prepared
21 for the lawyers. In that respect it is an
22 attorney-client privilege list.

23 Whether the list was seen by Joy, Wayne,
24 this witness, Doug, or the janitor, it doesn't remove
25 it from attorney-client privilege. So I'm not going to

1 let you ask questions about that list from this
2 witness.

3 THE WITNESS: Okay.

4 MS. McHUGH: Okay. Well, I don't believe the
5 list is protected by attorney-client privilege. I
6 think if he's seen it before today in preparation for
7 the deposition -- I'm making my record.

8 MR. HAEMMERLE: Fine.

9 MS. McHUGH: -- I'm objecting to that. I'm
10 requesting the list. I think we have a right to see
11 what projects Rangen had planned and couldn't perform.
12 And I'm going to ask some questions now of Mr. Brock in
13 aid of my objection.

14 Q. Were you aware that Rangen disclosed you as
15 a witness in this case? Are you aware that Rangen has
16 disclosed you as a witness in this case?

17 MR. HAEMMERLE: You've been disclosed as a
18 witness in this case.

19 THE WITNESS: Yeah. Yes.

20 Q. (BY MS. McHUGH): Do you know when you were
21 disclosed?

22 A. No.

23 Q. I'm going to represent to you that you were
24 disclosed officially as a witness in this case on
25 December 21st of 2011. Subject to check, I don't know

1 that there's any dispute about that.

2 MS. BRODY: It was 2012.

3 MS. McHUGH: 2012. Excuse me. 2012.

4 Q. Did you know prior to December 21st, 2012,
5 that you were going to be disclosed as a witness in the
6 Rangen delivery call case?

7 A. No.

8 Q. When was the first time you became aware
9 that you were disclosed as a witness in the Rangen
10 delivery call case?

11 MR. HAEMMERLE: Okay. Candice, I'm going to
12 object because I think this whole line of questioning
13 is probably related to something else rather than this
14 list that we're talking about today. If it's related
15 to your claim of prejudice, that we had set this up
16 somehow to your prejudice, I think that's what you're
17 trying to do now, which is different. You know, I
18 don't know what that has to do with this deposition.
19 I'm not going to let you, no matter how many questions
20 you ask, get at the list.

21 MS. McHUGH: Fair enough, Fritz.

22 MR. HAEMMERLE: You know, you can make your
23 arguments to Gary, and we'll have to live with his
24 decision.

25 MS. McHUGH: Absolutely. I'm going to continue

1 asking --

2 MR. HAEMMERLE: We're willing to do that, and I
3 respect that you have your arguments.

4 MS. McHUGH: Thank you.

5 Q. When you were disclosed as a witness in
6 this case on December 21st, 2012, Rangen stated -- and
7 this can be subject to check for Rangen -- that you
8 were going to testify about -- and I'm going to quote
9 from Rangen's disclosure -- "what type of feed research
10 Rangen could do if more water were available at the
11 facility."

12 MR. HAEMMERLE: Now, if that's your question,
13 you can ask him those questions all day long. You can
14 ask those questions.

15 MS. McHUGH: Okay. I didn't even get to ask my
16 question yet.

17 MR. HAEMMERLE: The disclosure, I think, speaks
18 for itself. He's here to testify to that disclosure.

19 MS. McHUGH: Right. And I'm going to ask him a
20 question now.

21 MR. HAEMMERLE: Okay.

22 Q. (BY MS. McHUGH): So I'm going to ask you
23 the question: What type of feed research could Rangen
24 do if more water were available at the Rangen research
25 facility?

1 A. We could carry out well-replicated studies
 2 on algae, fishmeal replacements, new pigment sources,
 3 and so on.
 4 Q. Where did you come up with that list that
 5 you just gave me?
 6 A. I don't understand the question.
 7 Q. Was that spontaneous --
 8 A. I generated it in my mind, and I can't tell
 9 you exactly what part of the brain it came from.
 10 Q. Spontaneous today?
 11 A. Yeah.
 12 Q. Have you ever written down whether or not
 13 what projects you -- Rangen could do if more water were
 14 available at the Rangen research facility?
 15 A. Have I ever?
 16 Q. Yes.
 17 A. Yes.
 18 Q. And who did you communicate that list to?
 19 Who did you send that list to? Okay. Let's back up.
 20 When did you create such a list?
 21 A. 2012, seems like fall, winter --
 22 Q. Did you ever --
 23 A. -- or late summer.
 24 MR. HAEMMERLE: I'm going to object. You're
 25 asking about the attorney-client privileged document,

1 likely, that we requested.
 2 MS. McHUGH: Is Rangen planning to call this
 3 witness to testify what type of feed research Rangen
 4 could do if more water were available at its facility?
 5 MR. HAEMMERLE: Yes. And you can ask those
 6 questions, and you did. And he answered.
 7 Q. (BY MS. McHUGH): And he's written it down
 8 on a list.
 9 A. No, it wasn't just feed research on the
 10 list.
 11 Q. What kind of research was on the list?
 12 A. Other.
 13 Q. Explain.
 14 A. I mean there were all sorts of possible
 15 research that we have an interest in finding the
 16 answers to.
 17 Q. Did you look at any documents to come up
 18 with the possible types of research that Rangen would
 19 be interested in performing?
 20 A. Documents?
 21 Q. Any prior research documents?
 22 A. No.
 23 Q. How did you come up with the list?
 24 MR. HAEMMERLE: I'm going to object to reference
 25 to the list. I'm going to object all day long if

1 you're asking about the list. If you're asking about
 2 projects that Rangen can or can't do because of lack of
 3 water and what documents he may have reviewed in
 4 developing that type of opinion, ask all day long, just
 5 so long as you don't ask and re-ask your question.
 6 Q. (BY MS. McHUGH): So I understand from your
 7 answer to my question on what type of feed research
 8 Rangen could do if more water were available at the
 9 facility that it would be pigment research.
 10 Is that true?
 11 A. Possible, yes.
 12 Q. When you say "possible," explain.
 13 A. I've recently been approached by a company
 14 that is developing a new pigment that is coming out of
 15 Japan that is a natural pigment. The ones we currently
 16 use are synthetic. And its effectiveness in pigmenting
 17 fish is worthy of evaluation.
 18 Q. And how much flow is needed to do a pigment
 19 test, research test?
 20 A. As I've said before, I'm not the flow guy.
 21 I can't tell you.
 22 Q. So Mr. Ramsey would be the flow guy?
 23 A. Yes, and the -- and the hatchery staff.
 24 Q. Of the list of the type of feed research
 25 Rangen could do if it had more water, how much more

1 water does it need in order to do the research that you
 2 just testified to earlier, the other research, the
 3 pigment research?
 4 A. As I said before, I'm the idea guy. I'm
 5 not the guy that says how much water it's going take to
 6 run it.
 7 Q. Okay. Thank you.
 8 Earlier in response to a question by
 9 Ryland, you said something, and I missed it, about
 10 flagship diet. And I think you used like some numerals
 11 and some numbers.
 12 Could you tell me what is considered
 13 Rangen's flagship diet? Do you recall that part of
 14 your testimony earlier?
 15 A. Yeah, but I can't recall the -- I mean I
 16 actually remembered it as being our EXTR 400 diet.
 17 Q. EXTR --
 18 A. 400 or 450. Those are our two mainstay
 19 trout diets.
 20 Q. Okay. Simply a clarification question.
 21 Several times you testified about asset
 22 issues and water issues on reasons why research may not
 23 be conducted or completed in answer to Mr. Ryland's
 24 questions.
 25 Could you explain to me what you mean by

Page 1

1 BEFORE THE DEPARTMENT OF WATER RESOURCES
 2 OF THE STATE OF IDAHO
 3
 4 IN THE MATTER OF DISTRIBUTION OF)
 5 WATER TO WATER RIGHT NOS. 36-02551) Docket No.
 6 AND 36-07694) CM-DC-2011-004
 7)
 8 (RANGEN, INC.))
 9 _____)
 10
 11
 12 C O N F I D E N T I A L
 13 Pursuant to Protective Order Dated August 31, 2012
 14
 15
 16 DEPOSITION OF JOY KINYON
 17 SEPTEMBER 10, 2012
 18
 19
 20 REPORTED BY:
 21 JEFF LaMAR, C.S.R. No. 640
 22 Notary Public
 23
 24
 25

Page 2

1 THE DEPOSITION OF JOY KINYON was taken on
 2 behalf of the City of Pocatello at the offices of May,
 3 Browning & May, 516 Hansen Street East, Twin Falls,
 4 Idaho, commencing at 1:02 p.m. on September 10, 2012,
 5 before Jeff LaMar, Certified Shorthand Reporter and
 6 Notary Public within and for the State of Idaho, in the
 7 above-entitled matter.
 8
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 21 Tom Rogers
 22 Wayne Courtney
 23
 24
 25

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1 I N D E X
 2
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 4 Examination by Mr. Budge 5,98
 5 Examination by Ms. Klahn 41
 6
 7 EXHIBITS
 8 25 - Aerial photograph, no Bates number 10
 9 26 - Total Flow Through Rangen Hatchery,
 10 2001-2011 graph, no Bates number 59
 11 27 - Diagram of Curren Tunnel, no Bates number 65
 12 28 - Photograph of field trip 65
 13 29 - Spreadsheet of fish production, Bates 68
 14 No. Rangen002244
 15 30 - Spreadsheet of fish production, Bates 69
 16 Nos. Rangen001917-001919
 17 31 - Rangen Research Hatchery and Fall Creek 76
 18 Hatchery Monthly Report, 1994, Bates
 19 Nos. Rangen002116-002119
 20 32 - Spreadsheet of fish production, 1998, Bates 83
 21 Nos. Rangen002002-002003
 22 33 - Miscellaneous file, Bates 94
 23 Nos. Rangen003750-003774
 24 34 - Annual Report file, Bates 96
 25 Nos. Rangen003708-003732

1 which, you know, we're told is a real critical part of
 2 your business, and yet you're not doing it anywhere
 3 else.
 4 So, you know, how have you adapted to the
 5 lack of research, or what are you doing differently now
 6 that you're not able to do feed trials on your own?
 7 MR. HAEMMERLE: I'll object to the form of the
 8 question. I think it's asked and answered.
 9 And, TJ, that was a compound question. If
 10 you have a simple question to put to the witness.
 11 Q. (BY MR. THOMAS J. BUDGE): How has Rangen
 12 adapted or how has Rangen changed since it ceased doing
 13 research at this facility?
 14 A. We've had to rely more on public research
 15 through the university systems, more on ingredient
 16 suppliers and their own research that they may have
 17 done in their systems, and probably -- primarily we've
 18 suffered in not being able to do the hands-on research
 19 ourselves.
 20 Q. Can you explain more the ways in which
 21 you've suffered.
 22 A. Not having accurate information as to how
 23 well our feeds are performing to our competition comes
 24 to mind immediately in a commercial environment or a
 25 commercial study, if you will.

1 We haven't been able to do a lot of the
 2 feeding trials on specific ingredients that may have
 3 been offered to Rangen because of Rangen's research
 4 reputation and its reputation of its feeds to take
 5 advantage of some of those ingredients that aren't
 6 commercially available to all feed producers.
 7 Q. Have you laid off researchers?
 8 A. We've lost -- we lost several over the
 9 years. We haven't replaced. I know we laid off a
 10 clerk and we've -- at the end of a couple of feeding
 11 trials. We didn't bring some of the people back. But
 12 I don't recall if they were temporary employees or if
 13 they were employees.
 14 Q. Do you have plans to do feed trials
 15 elsewhere to remedy this problem?
 16 MR. HAEMMERLE: TJ, you're asking the same
 17 question in slightly different ways, but they're all
 18 the same question. I think he's testified as to why
 19 they don't employ third parties to do their research.
 20 MR. BUDGE: Yeah, I just asked if they have any
 21 other plans or ideas to resolve that. I know what
 22 they've done and why.
 23 MR. HAEMMERLE: Okay.
 24 Q. (BY MR. BUDGE): I'm just wondering if
 25 there's anything on the horizon.

1 A. Well, we haven't come up with anything
 2 that's going to resolve the issue of not being able to
 3 do research at our own facility. We are working on a
 4 couple of things that may help us continue some
 5 research on our feeds, but it's not going to resolve
 6 it.
 7 Q. And what are those things?
 8 A. We are working on -- with one ingredient
 9 supplier to make some feeds for them to run at their
 10 facility back East -- and I don't even know where that
 11 is -- through our -- and we've had some internal
 12 discussions on requesting some research through the
 13 university. University of Idaho, that is. That's as
 14 much as we've done.
 15 Q. Who is it that you work with at U of I?
 16 A. Dr. Ron Hardy.
 17 Q. Ron Hardy?
 18 A. Yes.
 19 Q. Let me change subjects and ask you about
 20 the Curren Tunnel.
 21 Have you ever been inside of it?
 22 A. No.
 23 Q. Do you have any idea how deep it is?
 24 A. No.
 25 Q. There was a schematic identified earlier.

1 Let me see if I can find it. There it is right there.
 2 No. That's yours. 15, I guess.
 3 MR. HAEMMERLE: That's fine. We can use this
 4 one. Exhibit 15.
 5 Q. (BY MR. BUDGE): Do you recognize that,
 6 Mr. Kinyon?
 7 A. No.
 8 Q. Okay. Thanks.
 9 Do you know anybody who's been inside the
 10 tunnel?
 11 A. Yes.
 12 Q. Who is that?
 13 A. Lonny Tate, Dan Maxwell. And I know
 14 there's been some IDWR people in there, but I don't
 15 know who they are.
 16 Q. Okay. Do you know if Rangen has any
 17 records on how long the corrugated pipe is that lines
 18 the tunnel?
 19 A. I haven't seen any.
 20 Q. Do you know if Rangen has any materials,
 21 records or otherwise, about -- for the PVC pipe that's
 22 inside the corrugated pipe?
 23 A. I know that it's been modified.
 24 Q. In what way?
 25 A. My understanding is that the pipe was --

1 Rangen's numbers that would be in the record just to
2 ask you in your experience whether you've seen this
3 kind of seasonal variation, low during part of the
4 year, higher during other parts of the year.

5 A. Yes.

6 Q. Okay. Do you know currently when you see
7 high flows, what months?

8 A. Well, generally they probably -- I'm
9 guessing, again, without looking at the actual flows,
10 would somewhat mirror this three-year period on this
11 graph.

12 Q. Okay. I'm going to ask you about the --
13 let me make sure I'm done with that.

14 So you also testified to Mr. Budge that
15 stocking decisions are made based on a projected or
16 expected low-flow amount.

17 Do you recall that?

18 A. Yes.

19 Q. So if that's the basis for stocking
20 decisions, how could having water during the high-flow
21 period assist Rangen in its fish production?

22 A. I guess I don't understand it.

23 Would you repeat the question, please.

24 Q. Mr. Budge asked you whether you'd prefer to
25 have mitigation water during -- the same amount all

1 year-round, which would basically, if you will, add the
2 same -- it would just raise that curve. Okay? It's
3 going to stay the same shape. It's raise the curve --
4 or would you prefer to have it delivered during the
5 low-flow period to raise that. And you're right, when
6 you testified before you did give more than one answer.

7 So my question is, how could Rangen
8 receiving more flow during that period when it's
9 already high flow assist it in fish-production
10 decisions?

11 A. Well, what immediately comes to mind is it
12 may -- if the flows are for a long enough period, we
13 could get some gain on some fish and possibly sell them
14 to other grow-out facilities that have water.

15 Q. Okay. So that would then mean that --
16 well, let me ask a related question.

17 Do you get about an inch of growth a month
18 on fish in your facility?

19 A. I don't know.

20 Q. You just mentioned being able to supply
21 fish to a grow-out facility.

22 What size would they be when you would
23 supply them to a grow-out facility?

24 A. In the -- in the past when we've sold some
25 fish like that, I mean they're the size that -- the

1 size that they are. I mean it's -- grow-out facilities
2 are just looking for fish to put into their available
3 water, and they could continue on growing in there.
4 Q. Okay. I see. All right. Do you know what
5 the smallest size fish you can sell to a grow-out
6 facility?

7 A. No.

8 Q. Doug Ramsey would know, perhaps?

9 A. Yeah, probably.

10 Q. Would it depend on the contract? I mean
11 would somebody contract you with a -- contract with
12 Rangen for a certain size fish to supply their grow-out
13 facility?

14 A. I don't think it would be a contract-type
15 arrangement. I think it would be the fish are
16 available, find somebody who's got some water
17 available. I mean that's...

18 Q. Would you call that a spot sale?

19 A. That would be fair, yes.

20 Q. Okay. Have you been involved in this kind
21 of an arrangement, spot sale to a grow-out facility?

22 A. Yes.

23 Q. How recently?

24 A. I'm guessing, probably three or four years.

25 Q. Okay. I have, I guess, kind of a

1 step-back, big-picture question.

2 You spoke with Mr. Budge a lot about the
3 research that Rangen would like to be conducting for
4 its operations; correct?

5 A. Yes.

6 Q. And we received from subpoenas a number of
7 pages of fish-production data.

8 When fish production is measured at Rangen,
9 are all fish in the entire facility measured as part of
10 the production, whether they're in trials or whether
11 they're being grown for Idaho Power or whatever the
12 ultimate disposition of the fish, is that all within
13 that fish-production data?

14 A. I guess I'm not sure which -- or what
15 fish-production data you're referring to.

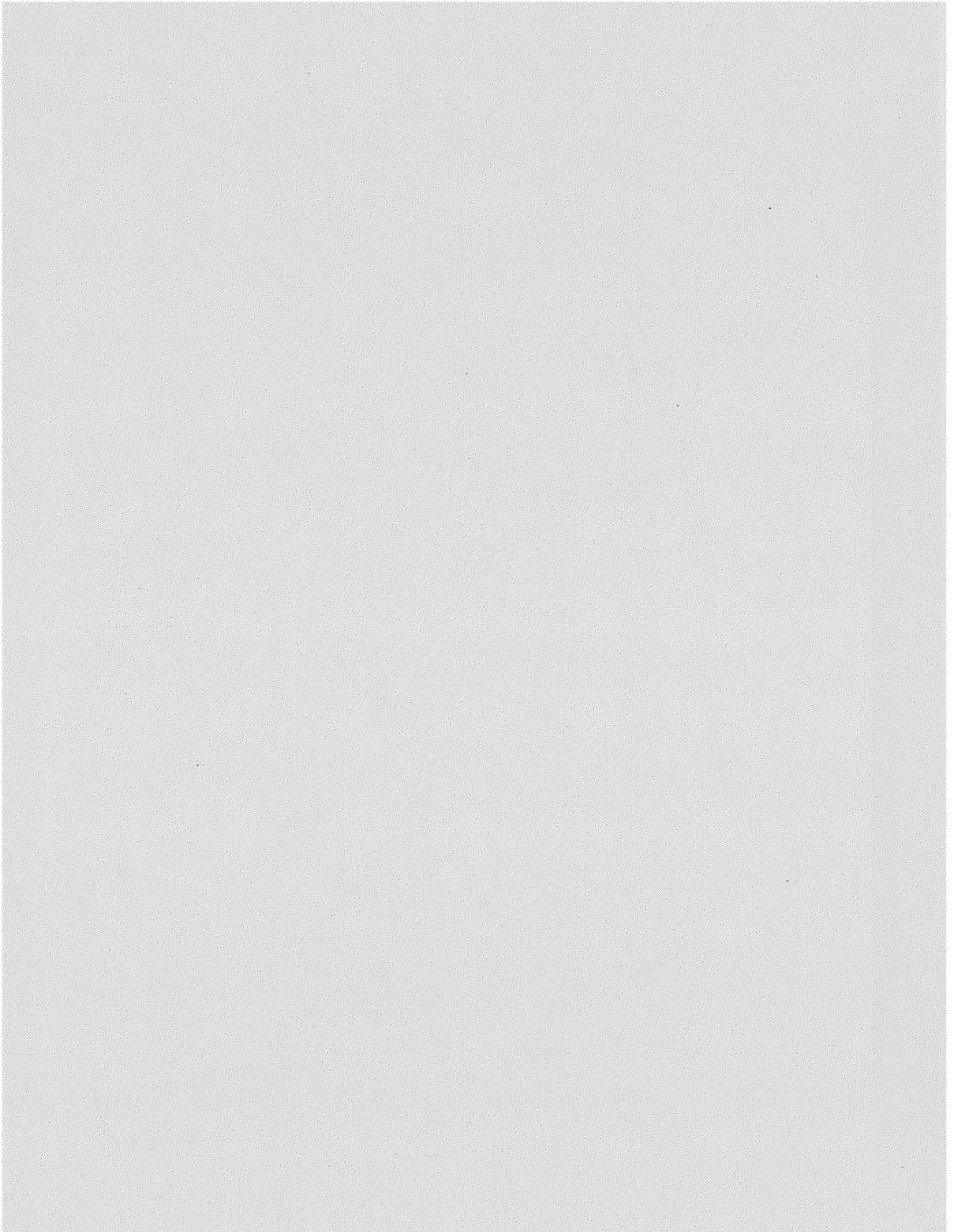
16 Q. Well, I'll find some. We'll come back to
17 that.

18 Can you find some fish-production data that
19 we can show to him?

20 I'm going to ask you to look at Exhibit 4.
21 And this is the Idaho Power contracts that were
22 provided to us in response to the subpoena. You can
23 take a minute and take a look at that, if you'd like.

24 A. (Reviews.)

25 Okay.



1 BEFORE THE DEPARTMENT OF WATER RESOURCES
 2 OF THE STATE OF IDAHO
 3
 4 IN THE MATTER OF DISTRIBUTION OF)
 5 WATER TO WATER RIGHT NOS. 36-02551) Docket No.
 6 AND 36-07694) CM-DC-2011-004
 7)
 8 (RANGEN, INC.)) VOLUME II
 9 _____) (Pages 104-231)
 10
 11
 12 C O N F I D E N T I A L
 13 Pursuant to Protective Order Dated August 31, 2012
 14
 15
 16 CONTINUED DEPOSITION OF JOY KINYON
 17 MARCH 21, 2013
 18
 19
 20 REPORTED BY:
 21 JEFF LaMAR, C.S.R. No. 640
 22 Notary Public
 23
 24
 25

1 THE CONTINUED DEPOSITION OF JOY KINYON was
 2 taken on behalf of the City of Pocatello at the offices
 3 of May, Browning & May, 516 Hansen Street East, Twin
 4 Falls, Idaho, commencing at 8:59 a.m. on March 21,
 5 2013, before Jeff LaMar, Certified Shorthand Reporter
 6 and Notary Public within and for the State of Idaho, in
 7 the above-entitled matter.
 8
 9 APPEARANCES:
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 24 Hailey, Idaho 83333
 25 Also Present: Wayne Courtney

1 I N D E X
 2
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 4 Examination by Ms. Klahn 109
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 8 245 - Joint Notice of Continued Deposition Duces 115
 9 Tecum of Wayne Courtney, no Bates numbers
 10 246 - Research Review and Planning Agenda, 137
 11 July 30th and July 31st, no Bates number
 12 247 - Timeline for next Warm Water Experiment 139
 13 N0301, no Bates number
 14 248 - Timeline for next Greenhouse Experiment 141
 15 N0302, no Bates number
 16 249 - Pleistocene Era experiments, no Bates 143
 17 numbers
 18 250 - Recent Research at Rangen, Bates 144
 19 Nos. RANGENWJ014230-014237
 20 251 - Recent Research at Rangen, Bates 144
 21 Nos. RANGENWJ014238-014246
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 23 ///
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 2
 3 EXHIBITS PAGE
 4 252 - Rangen, Inc.'s Response to City of 146
 5 Pocatello's Discovery Requests to Rangen
 6 Made Pursuant to March 4, 2013 Order
 7 Denying IGWA and Pocatello's Motion to
 8 Compel Production of Research List, no Bates
 9 numbers
 10 253 - Timeline for Winter 2001 Raceway Experiment 153
 11 N0202, no Bates numbers
 12 254 - Timeline for Winter 2001 Greenhouse 156
 13 Experiment N0202, Bates No. RANGENWJ003444
 14 255 - Protocol for Diet N0202 - Greenhouse Tests 159
 15 of EXTR 450 with Substitution of White Corn
 16 Gluten Meal into Diet, Bates
 17 Nos. RANGENWJ003440-003441
 18 256 - Memorandum from D. McGrane, J. Brannon, and 186
 19 D. Colvin to Rangen, Inc., dated
 20 12/09/2011, no Bates numbers
 21 257 - Rangen Research Hatchery flow and 186
 22 production record, 1972-1990, no Bates
 23 number
 24 258 - Farm to School, The Pick of the Crop from 210
 25 Idaho, no Bates number

1 be able to achieve much better results than what we
2 have historically seen on this chart.

3 Q. Okay. So is it fair to say that you would
4 at least be able to produce the 772,000 pounds of
5 production that was achieved in 1988 with 30.6 annual
6 average cfs if you were able to recover back to an
7 average annual 30.6 cfs?

8 A. Yes.

9 Q. Okay. Do you have an understanding of when
10 the water will accrue to Rangen through curtailment of
11 junior users, during what period of time during the
12 year?

13 A. Under a curtailment scenario?

14 Q. Correct.

15 A. Well, my understanding is that it would
16 continue -- I mean our recovery would be somewhat
17 relevant with current flows, only higher. It would
18 gain. Whether it's the 18 cfs, if it comes back, we'd
19 generally see that consistent throughout the period
20 that we would gain -- it would be more than just a
21 one-time seasonal flow of 18.

22 I'm not explaining it very well or saying
23 it very well, but I don't know if it necessarily would
24 be absolutely relevant 18 cfs more throughout the
25 seasonality of the water flows, but I would expect that

1 would have a substantial part of that.

2 Q. Okay. Is it your understanding that you'd
3 have an additional 18 cfs at all times during the year,
4 or would that fluctuate, would that amount fluctuate
5 throughout the year?

6 A. Well, I guess I was trying to describe my
7 answer to my earlier question, I would expect that it
8 would be close to that increase. If it's 18 cfs, is
9 that 18 -- my understanding, that's steady-state flow,
10 right, under the model?

11 Q. Uh-huh. Go ahead.

12 THE WITNESS: Am I saying something I shouldn't
13 be saying?

14 MR. HAEMMERLE: You don't get to ask her
15 questions.

16 THE WITNESS: Okay.

17 Q. (BY MS. McHUGH): And, Joy, the reason I'm
18 asking these questions is because I think this is the
19 critical part of the case, is what Rangen expects to
20 get from curtailment and how you're going to use that
21 water that you're expecting to get from curtailment.
22 And that's what I'm trying to understand. And so
23 that's what I'm trying to get.

24 So your understanding is you will get 17 to
25 18 cfs over a period of time from curtailment of junior

1 users. And it's your understanding that that 17 or
2 18 cfs will accrue -- occur at all times during the
3 year?

4 MR. HAEMMERLE: Objection. Is there a question
5 on the table or --

6 Q. (BY MS. McHUGH): Is that your
7 understanding, that it will accrue at all times during
8 the year?

9 A. My understanding is if our average flow
10 today is 16, as I previously said, that under a
11 curtailment scenario we would gain 18 cfs, so our
12 average flow then would be 16 plus 18, so our average
13 flow would be 34 cfs.

14 Q. And naturally in an average there -- some
15 months there would be less and some months there could
16 be more; is that your understanding?

17 A. Yes.

18 Q. Was this information, this kind of
19 information on the expectation of the amount of water
20 Rangen could expect over time from curtailment of
21 junior users, discussed prior to making the delivery
22 call in 2011?

23 A. The amount of water that we could recover?

24 Q. Yes.

25 A. Not any specific amounts.

1 Q. Okay. Have you discussed the amount of
2 water that Rangen could expect to recover from
3 curtailment of junior users with your hatchery staff?

4 A. No.

5 Q. Have you discussed that with anyone at
6 Rangen?

7 A. Yes.

8 Q. And who would that be?

9 A. Primarily, with Wayne Courtney.

10 Q. And what were the nature of those
11 discussions?

12 A. Well, probably more me questioning to help
13 me understand the results of the model, what ESPAM-2.1
14 was showing and how we would -- how much -- I guess his
15 question to me was how much more fish we could raise
16 and how many more feeding trials we could conduct.

17 Q. And were you able to answer those questions
18 for him?

19 A. No. I have not answered those yet.

20 Q. Do you --

21 A. Specifically answered those questions.

22 Q. Are you doing some sort of analysis or do
23 you plan to be able to answer those questions?

24 A. Well, I've already given him an answer, in
25 general. A general answer is absolutely we can raise

1 more fish with more water, and we can conduct more
2 feeding trials with research -- conduct more research
3 with more water.

4 Q. When did Mr. Courtney ask you that
5 question?

6 A. I'd say within the last two months.

7 Q. Do I understand your testimony to mean --
8 to say that Rangen does not know how it would
9 specifically use the additional water that it expects
10 to recover from the curtailment of junior groundwater
11 users?

12 A. No, that's not my testimony at all.

13 Q. Okay.

14 A. It's actually we know what we would do.

15 Q. Okay.

16 A. As far as immediately we would get more
17 fish into the raceway to take advantage of the water,
18 and we'd begin immediately trying to figure out what
19 we're going to do specifically on research.

20 Q. But you're not sure exactly when the amount
21 of water will be available to Rangen? You don't have
22 an understanding of that?

23 A. That's correct.

24 Q. If I could have you look at Exhibit 245.

25 And that's the Joint Notice of Continued Deposition

1 Duces Tecum of Mr. Courtney, which is, in substance,
2 the same as yours. If you could turn to page 2.

3 A. Okay.

4 Q. The first question -- the first request
5 there, No. 1, asks you to bring "All documents that
6 demonstrate that Rangen, Inc. has a specific plan and
7 intent to beneficially use additional water flows if
8 the Director finds Rangen to be injured and orders" --
9 there's not an "and" there -- "delivery by curtailment
10 or mitigation."

11 Do you see that?

12 A. Yes.

13 Q. Does Rangen have any documents responsive
14 to that request?

15 A. No.

16 Q. Do you, as the manager of the aquaculture
17 division, have a specific plan in mind?

18 A. I do not have a specific plan, but I --
19 once I know we have water coming, I know what I can do,
20 and know what I need to do.

21 Q. The second request there says -- requested
22 "All documents that demonstrate that Rangen can and
23 will beneficially use the water demanded under this
24 delivery call."

25 Do you see that?

1 A. Yes.

2 Q. Does Rangen have any documents responsive
3 to that request?

4 A. I think they've already been provided.

5 Q. And those --

6 A. We've provided you pictures of available
7 raceways, dry raceways that are currently there. We've
8 shown you 50 years of -- of documents, you know,
9 demonstrating production levels of fish, and we
10 supplied you numerous research files showing that -- of
11 research that had been done in the past that certainly
12 could be duplicated in the future.

13 We've shown you the research facility so
14 you could see the tanks and the raceways and the
15 55-gallon drums are there, in place -- plumbed, in
16 place. So I think we -- I don't know what more we can
17 show you.

18 Q. So I understand your testimony to be that
19 Rangen will use the water in the future the same way it
20 has used the water in the past?

21 MR. HAEMMERLE: Object to the form of the
22 question.

23 Do you understand that question? Do you
24 want it read back to you?

25 THE WITNESS: Well, I understand the question.

1 But I think I've testified that -- already that we --
2 we would expect to -- we've strived to raise as many
3 fish -- want to raise as many fish, at least as many as
4 we have done in the past.

5 And I've also demonstrated or testified
6 that we should be able to raise more fish, given the
7 progress of our feeds that we've made over the years
8 and what was demonstrated on this Exhibit 257.

9 So is it the same as the past? No, I would
10 expect it to be better than the past.

11 Q. (BY MS. McHUGH): Okay. So what's your
12 understanding of the current market cycle for slaughter
13 fish, fish raised for slaughter?

14 A. I don't have a good understanding for the
15 processors' markets.

16 Q. What's your understanding of the market for
17 grow-out fish?

18 A. It's very seasonal in nature.

19 Q. And can you explain that further.

20 A. Well, I mean you don't stock fish until
21 weather -- weather -- you don't stock trout until
22 weather allows -- or is conducive to stocking trout.
23 So it would be in the spring and fall are ideal times.
24 Less stress on the animal.

25 Q. Okay. Am I to understand when you say

1 BEFORE THE DEPARTMENT OF WATER RESOURCES
 2 OF THE STATE OF IDAHO
 3
 4 IN THE MATTER OF DISTRIBUTION OF)
 5 WATER TO WATER RIGHT NOS. 36-02551) Docket No.
 6 AND 36-07694) CM-DC-2011-004
 7)
 8 (RANGEN, INC.))
 9 _____)

12 CONFIDENTIAL

13 Pursuant to Protective Order Dated August 31, 2012

16 DEPOSITION OF DOUG RAMSEY
 17 SEPTEMBER 12, 2012

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

1 THE DEPOSITION OF DOUG RAMSEY was taken on
 2 behalf of the City of Pocatello at the offices of May,
 3 Browning & May, 516 Hansen Street East, Twin Falls,
 4 Idaho, commencing at 8:53 a.m. on September 12, 2012,
 5 before Jeff LaMar, Certified Shorthand Reporter and
 6 Notary Public within and for the State of Idaho, in the
 7 above-entitled matter.

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1 A. Yes. We have 24 tanks that are 200 gallons
 2 apiece, three tanks that are 400 gallons apiece, and
 3 then 48, I believe, that are 30 gallons apiece.
 4 Q. And do you know how much of a bump in flow
 5 you need in order to meet the capacity of the
 6 greenhouse?
 7 A. It's not so much -- it's not so much a
 8 particular number of cfs we need to have increase to.
 9 We just have -- we have that high-water time that
 10 allows for fish to be also out in the small raceways as
 11 well as inside the greenhouse for experimentation. We
 12 don't have enough to do both until September comes
 13 around.
 14 Q. Do you have enough to do both in September?
 15 A. Yes.
 16 Q. Okay.
 17 A. Yes. That starts that time that we have
 18 that window of opportunity inside the greenhouse for
 19 that kind of work to be done.
 20 Q. And that window goes until February?
 21 A. About.
 22 Q. Do you know how much water, maximum flow,
 23 the hatchery and greenhouse require to both be fully
 24 utilized? The greenhouse and the lower raceways, I
 25 guess.

1 A. The small raceways?
 2 Q. The small raceways.
 3 MR. HAEMMERLE: Is your question to be fully
 4 utilized, all raceways at the same time?
 5 MS. McHUGH: And the greenhouse.
 6 MR. MAY: Are you talking about the whole --
 7 MR. HAEMMERLE: Are you talking about all
 8 raceways at the same time?
 9 MS. McHUGH: I'm talking about the hatch -- yes,
 10 all raceways of the small raceways, if I'm using that
 11 correctly.
 12 Q. I'll refer to Exhibit 25.
 13 A. Uh-huh.
 14 Q. And let's see. On there there is the
 15 greenhouse --
 16 A. Yes.
 17 Q. -- and then the small raceways that we've
 18 been talking about.
 19 A. Yes.
 20 Q. Do you know what the total -- what the
 21 maximum flow would be?
 22 A. No, I don't know how much that water would
 23 be -- or how much would be needed to supply all of
 24 that.
 25 Q. Do you know --

1 A. It's been too long since that's been
 2 completely filled.
 3 Q. And do you --
 4 A. I don't know.
 5 Q. Would you know the capacity of just the
 6 small raceways?
 7 A. No.
 8 Q. What is the current need for feed research
 9 at the Rangen facility?
 10 A. There's any number of areas that can be
 11 tested and improved upon in terms of the research and
 12 the feeds. Disease resistance is the one that I keep
 13 talking about, because much of my work involves that.
 14 But certainly alternate protein sources are huge as
 15 well.
 16 Q. And when was the last disease resistance
 17 research completed? Do you know?
 18 A. Within the Rangen facility, I can't tell
 19 you. I don't know exactly when it was.
 20 Q. Since you've been there?
 21 A. Oh, absolutely, yes. We've done any number
 22 of them since I've been with the company. But they
 23 have not been done for quite a while now.
 24 Q. And why is that?
 25 A. I think a lot of it has to do with not only

1 the water situation we've been talking about, but
 2 also -- I mean from a theoretical standpoint, yes, we
 3 can run experiments from September through February in
 4 the greenhouse or the laboratory building where we do
 5 disease research.
 6 But also what comes into play is the timing
 7 of other components that are involved with an
 8 experiment. Not only do you have water, but you have
 9 fish and you have feed to run one of these trials.
 10 And to be able to bring all those together
 11 magically into that window of time in the year that we
 12 have enough water can be very difficult. So on a
 13 practical standpoint, not only are we limited by water,
 14 but also by the fact that we have to have a certain
 15 size of fish, for instance.
 16 And with only having three lots of fish
 17 grown on the place each year, our ability to choose a
 18 particular size of fish that we need for the specific
 19 experiment becomes very limited.
 20 Q. And does the Idaho -- the need to fill the
 21 Idaho Power contract also impact that ability?
 22 A. No, it has not. No. Well, I take that
 23 back. I need to think about that a little bit.
 24 I mean we -- we have done research during
 25 the Idaho Power contract period.

1 Q. Okay. Thank you.
 2 Does Rangen have a document-retention
 3 policy? Do you know?
 4 A. We basically keep everything that the lab
 5 has generated.
 6 Q. Okay.
 7 A. It's archived in one of the buildings.
 8 Q. Okay. I'm going to hand you what has been
 9 previously marked as Exhibit 56.
 10 Are you familiar with that document?
 11 A. Yes.
 12 Q. It's the Quality Assurance Plan?
 13 A. Yes.
 14 Q. What's the date on that?
 15 A. May 1, 2008.
 16 Q. Okay. And I believe Ms. Klahn asked you
 17 some questions about that. And if I understood your
 18 testimony, you said something to the effect of you
 19 revised the Quality Assurance Plan in 2008.
 20 A. Correct.
 21 Q. Is that correct?
 22 A. Yes.
 23 Q. Do you recall what the revisions were?
 24 A. Let's see. There was information that --
 25 there was information that EPA wanted to help describe

1 a little closer, I believe, the laboratory itself in
 2 terms of the address, the phone number.
 3 I believe that this -- this letter that was
 4 drafted for the customers that explains the various
 5 methods that we use at the laboratory for testing on
 6 TSS and TP and other parameters, they wanted that cover
 7 letter included with the Quality Assurance Plan as an
 8 appendix.
 9 I see this chain-of-custody form. They may
 10 have asked that to be included as an appendix. There
 11 was a number of things. I can't remember anything else
 12 specifically.
 13 Q. The revisions were primarily driven by EPA
 14 requirements or changes, though, if I understand what
 15 you're saying?
 16 A. Yes. Yes, they were.
 17 Q. And you were the one responsible for making
 18 those changes to the document?
 19 A. Yes.
 20 Q. Okay. Do you have any certifications as a
 21 fish facility researcher or something along those
 22 lines?
 23 A. Yes, I do.
 24 Q. What are those?
 25 A. I'm a fish health inspector certified by

1 the American Fishery Society. That's the only one.
 2 Q. Okay. And that allows you to do what?
 3 A. As a certified fish health inspector, I can
 4 go ahead and do inspections on fish concerning
 5 pathogens, testing for those pathogens, and coming up
 6 with results on what types of pathogens are found in
 7 those fish that I test.
 8 Q. And can you contract out to other
 9 facilities for that purpose?
 10 A. I can if they are accepting of that
 11 certification. It's typically up to the person that
 12 either is receiving the fish -- for instance, if
 13 there's fish in Oregon -- or fish in Idaho that are
 14 going to be shipped to Oregon, the regulatory agency in
 15 Oregon would have to accept any certification in order
 16 for that work to be done and those fish to enter their
 17 state.
 18 Q. And do you know what the requirements are
 19 for the certification?
 20 A. It depends on the receiving end.
 21 Q. And is there a place that I could go and
 22 find that information out? Is there like a website?
 23 Or do you know?
 24 A. It's different for every state.
 25 Q. Okay.

1 A. I mean it just depends who you're talking
 2 about.
 3 Q. Fair enough.
 4 MR. HAEMMERLE: Candice, on that question, were
 5 you asking the requirements for the certification he
 6 received, or the certifications required for the
 7 out-of-state receiving fish?
 8 MS. McHUGH: I was asking for the certification
 9 he received.
 10 Q. The requirements for the certification you
 11 received.
 12 MR. HAEMMERLE: That's what I thought.
 13 THE WITNESS: Okay.
 14 Q. (BY MS. McHUGH): So for you being a
 15 certified fish health inspector.
 16 A. I see. Every five years I have to go
 17 through recertification process, which involves an
 18 examination of the amount of time that I've spent as a
 19 fish health inspector doing fish disease diagnostics in
 20 my work, as well as the amount of continuing education
 21 credits that I've accrued through that period of time.
 22 Q. Okay. Thank you.
 23 I can't seem to get off the research
 24 question, so I have to go back to that again.
 25 A. Okay.