

RECEIVED

JUN 05 2013

DEPARTMENT OF
WATER RESOURCES

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

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

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

Attorneys for Rangen, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

(RANGEN, INC.)

Docket No. CM-DC-2011-004

**AFFIDAVIT OF J. JUSTIN MAY IN
OPPOSITION TO IGWA'S
MOTION TO STRIKE PORTIONS
OF EXHIBITS 1284 AND 1299**

STATE OF IDAHO)
) ss
County of Ada)

J. Justin May, being sworn upon oath, deposes and says:

1. I am one of the attorneys of record for Rangen, Inc. ("Petitioner" or "Rangen") in the above-captioned matter. I am over the age of 18 and state the following based upon my own personal knowledge.

2. Attached hereto as Exhibit A are true and correct copies of excerpts from the May 6, 2013 Hearing Transcript, Volume IV.

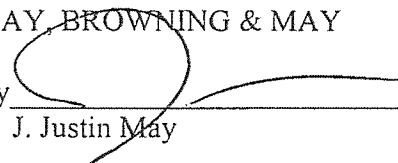
3. Attached hereto as Exhibit B are true and correct copies of excerpts from the May 14, 2013 Hearing Transcript, Volume X.

FURTHER AFFIANT SAYETH NAUGHT.

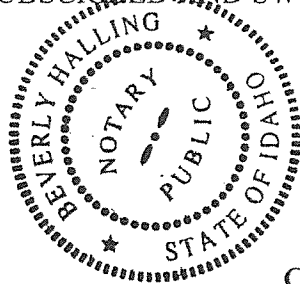
Dated this 5th day of June, 2013.

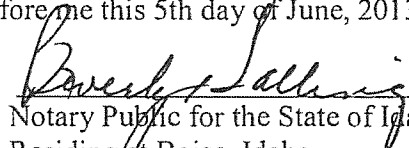
MAY, BROWNING & MAY

By


J. Justin May

SUBSCRIBED AND SWORN to before me this 5th day of June, 2013.




Notary Public for the State of Idaho
Residing at Boise, Idaho
My Commission expires: 9/10/2015

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 5th day of June, 2013 he 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:

Original: Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 deborah.gibson@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 checked="" type="checkbox"/>
Garrick Baxter Chris Bromley Idaho Department of Water Resources P.O. Box 83720	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>Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov chris.bromley@idwr.idaho.gov kimi.white@idwr.idaho.gov</p>	
<p>Randall C. Budge Candice M. McHugh 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 bjh@racinelaw.net</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Sarah Klahn Mitra Pemberton WHITE & JANKOWSKI Kittredge Building, 511 16th Street, Suite 500 Denver, CO 80202 sarahk@white-jankowski.com mitrap@white-jankowski.com</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us</p>	<p>Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input checked="" type="checkbox"/></p>
<p>John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson, L.L.P. 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 tlt@idahowaters.com jks@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 Law Offices 802 West Bannock, Suite 900 Boise, ID 83701 Tom.arkoosh@arkoosh.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>



J. Justin May

EXHIBIT A

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

COPY
CONFIDENTIAL

IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHT NOS. 36-02551) Docket No.
AND 36-07694) CM-DC-2011-004
)
(RANGEN, INC.)) VOLUME IV
) (Pages 785-1019)

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

Pursuant to Protective Order Dated August 31, 2012

BEFORE

HEARING OFFICER: GARY SPACKMAN

Date: May 6, 2013 - 8:36 a.m.

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

REPORTED BY:

JEFF LAMAR, C.S.R. No. 640

Notary Public

M & M Court
Reporting
Service, Inc.
Since 1970
Registered Professional Reporters

SOUTHERN
1-800-234-9611

▪ BOISE, ID
208-345-9611

▪ TWIN FALLS, ID
208-734-1700

▪ POCATELLO, ID
208-233-0816

▪ ONTARIO, OR
541-881-1700

▪ HAILEY, ID
208-578-1049

NORTHERN
1-800-879-1700

▪ COEUR D'ALENE, ID
208-765-1700

▪ SPOKANE, WA
509-455-4515

www.idahocourtreporting.com

786

1 APPEARANCES:

2

3 For Rangen, Inc.:

4 MAY, BROWNING & MAY

5 BY MR. J. JUSTIN MAY

6 1419 West Washington

7 Post Office Box 6091

8 Boise, Idaho 83707

9 -and-

10 HAEMMERLE & HAEMMERLE, PLLC

11 BY MR. FRITZ X. HAEMMERLE

12 Post Office Box 1800

13 Hailey, Idaho 83333

14 -and-

15 BRODY LAW OFFICE, PLLC

16 BY MS. ROBYN M. BRODY

17 Post Office Box 554

18 Rupert, Idaho 83350

19 For City of Pocatello:

20 WHITE & JANKOWSKI, LLP

21 BY MS. SARAH A. KLAHN

22 MR. J. RYLAND HUTCHINS

23 511 Sixteenth Street, Suite 500

24 Denver, Colorado 80202

25 ///

787

1 APPEARANCES (Continued):

2

3 For Idaho Groundwater Appropriators:

4 RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

5 BY MR. THOMAS J. BUDGE

6 MS. CANDICE M. McHUGH

7 101 South Capitol Boulevard, Suite 300

8 Boise, Idaho 83702

9 For Idaho Department of Water Resources:

10 OFFICE OF ATTORNEY GENERAL

11 IDAHO DEPARTMENT OF WATER RESOURCES

12 BY MR. GARRICK L. BAXTER

13 MR. CHRISTOPHER M. BROMLEY

14 322 East Front Street

15 Boise, Idaho 83720

16

17

18

19

20

21

22

23

24

25

788

1 INDEX

2

3 WITNESSES

4 TESTIMONY OF CHARLIE SMITH PAGE

5 Further Direct Examination by Mr. May 809

6 Voir Dire Examination by Ms. McHugh 820

7 Further Direct Examination by Mr. May 821

8 Cross-Examination by Ms. McHugh 829

9 Cross-Examination by Ms. Klahn 841

10 Redirect Examination by Mr. May 850

11 TESTIMONY OF LONNY TATE

12 Direct Examination by Mr. May 852

13 Cross-Examination by Mr. Hutchins 870

14 Cross-Examination by Mr. Budge 881

15 Redirect Examination by Mr. May 905

16 Recross-Examination by Mr. Hutchins 906

17 TESTIMONY OF LONNY TATE

18 Direct Examination by Mr. Budge 909

19 TESTIMONY OF CHARLES E. BROCKWAY, Ph.D., P.E.

20 Direct Examination by Mr. Haemmerle 917

21 Voir Dire Examination by Ms. Klahn 941

22 Further Direct Examination by Mr. Haemmerle 942

23 Voir Dire Examination by Ms. Klahn 945

24 Further Direct Examination by Mr. Haemmerle 946

25 Voir Dire Examination by Ms. Klahn 951

789

1 INDEX (Continued)

2

3 WITNESSES

4 TESTIMONY OF CHARLES E. BROCKWAY, Ph.D., P.E. PAGE

5 Voir Dire Examination by Mr. Budge 952

6 Further Direct Examination by Mr. Haemmerle 953

7 Examination by the Hearing Officer 954

8 Further Direct Examination by Mr. Haemmerle 955

9 Cross-Examination by Ms. Klahn 994

10

11 EXHIBITS

12 NO. MARKED RECEIVED

13 1291 *** 928

14 1293 *** 929

15 1305 *** 991

16 1306 *** 960

17 1307 *** 955

18 1308 *** 960

19 1310-1313 *** 942

20 1451 - Water Appropriation Rules 971 ***

21 Table of Contents

22 2328 *** 911

23 3180 *** 1010

24

25

918

1 A. Well, the bachelor's in civil engineering,
 2 the master's is in water resources engineering, and the
 3 Ph.D. is in water resources engineering.
 4 Q. Chuck, if you can go through some of your
 5 work experiences that relate directly to the degrees
 6 you have.
 7 A. Okay. Well, after my master's degree, I
 8 went to work for -- well, I went to work for the U.S.
 9 Army for a while, and then worked for a foundation
 10 design firm in Pasadena. Then I moved back and worked
 11 for -- taught at Boise Junior College and worked for
 12 the U.S. Bureau of Reclamation in Boise on the infamous
 13 Teton Dam. It wasn't my fault.
 14 Then I moved to Denver and worked for the
 15 Bureau of Reclamation in the hydraulics research
 16 laboratory in Denver. Came back to Idaho in '65 and
 17 worked for the University of Idaho on the staff of
 18 agricultural and civil engineering for 32 years.
 19 And then I retired from the University of
 20 Idaho. And my son and I opened up a consulting firm in
 21 Twin falls in 1997, and I've been there since.
 22 Q. Chuck, tell me something about Brockway
 23 Engineering and what you do, or what your firm does as
 24 well.
 25 A. Well, we are what you would call wet civil

919

1 engineers. We do mostly hydraulics, hydrology, flood
 2 control, water resources development, water-quality
 3 studies.
 4 THE HEARING OFFICER: Lunch.
 5 THE WITNESS: Do you have that \$10 fine thing
 6 going?
 7 THE HEARING OFFICER: No. It's lunch.
 8 THE WITNESS: Oh, okay.
 9 THE HEARING OFFICER: For everybody, tomorrow.
 10 THE WITNESS: Tomorrow. Okay.
 11 Q. (BY MR. HAEMMERLE): Chuck, before your
 12 cell phone went off, you were describing --
 13 A. Sorry.
 14 Q. -- some of the things that Brockway
 15 Engineering does.
 16 A. Okay.
 17 Q. Were you done, or is there more?
 18 A. I can't remember where I was.
 19 It's all water related. We do a lot of
 20 water rights evaluations and assistance. And we do
 21 water management, water development, wells for cities,
 22 flood control systems, and irrigation diversions.
 23 Q. Okay. Let's just go through some of those
 24 things that Brockway Engineering does and some of the
 25 things you've done in your history.

920

1 Chuck, have you been measuring water for a
 2 long period of time?
 3 A. Yes.
 4 Q. Tell me about your experience measuring
 5 water, if you could. And not only at Brockway
 6 Engineering, but other places you've worked.
 7 A. Well, it starts back in 1954. I worked
 8 for -- in the summers for the University of Idaho,
 9 essentially measuring water on some research projects.
 10 I have experience with developing water-measuring
 11 devices, broad-crested weirs and flumes and also
 12 in-pipe-flow measurement devices.
 13 I have measured water in the field quite a
 14 few times and designed measuring devices and installed
 15 them and evaluated water diversion systems for both
 16 aquaculture and irrigation and cities.
 17 Q. Chuck, have you personally been either
 18 measuring water or studying water measurements since
 19 1954?
 20 A. Pretty much.
 21 Q. You mentioned some of the other things that
 22 Brockway Engineering does.
 23 I take it you had some experience in the
 24 SRBA courts?
 25 A. Yes.

921

1 Q. Did you assist parties filing claims and
 2 going through the SRBA process?
 3 A. We did, yes.
 4 Q. Do you assist people in filing for permits
 5 for water rights?
 6 A. Yes.
 7 Q. Have you been doing that for a long period
 8 of time?
 9 A. A long time.
 10 Q. Basically since Brockway Engineering has
 11 been open?
 12 A. Well, actually, a long time before that.
 13 Since 1965 -- I was working for the University of
 14 Idaho, but we were allowed to moonlight a little bit,
 15 so I did some projects while I was on the staff of the
 16 University of Idaho.
 17 Q. Okay. And I take it the times that you
 18 filed permits you tried to do them in accordance with
 19 whatever rules and regulations existed in the state?
 20 A. Yes.
 21 Q. Chuck, you were hired by Rangen in
 22 connection with this water call; correct?
 23 A. Yes.
 24 Q. And you understand this is a water call for
 25 two water rights owned by Rangen?

922

1 A. Yes.

2 Q. And after you were hired by Rangen, did you

3 study those water rights and the backfiles on those

4 water rights?

5 A. I did, yes.

6 Q. Have you made site visits to the Rangen

7 facility to give any opinions in this case?

8 A. Yes.

9 Q. Have you reviewed Department memorandum in

10 connection with this case?

11 A. I have.

12 Q. Have you reviewed Department rules and

13 regulations in connection with this case?

14 A. Yes.

15 Q. Now, with respect to this Rangen water

16 call, you filed several reports; correct?

17 A. Joint reports, yes.

18 Q. Okay. I think one of those reports, Chuck,

19 is right in front of you. It's been identified as

20 Exhibit 1284.

21 Do you see that?

22 A. Yes.

23 Q. Chuck, this is a co-report that you

24 authored along with Leonard Rice Engineers and

25 Mr. Brannon?

923

1 A. Yes.

2 Q. And you helped draft this report?

3 A. I did.

4 Q. And this report summarizes some of your

5 conclusions?

6 A. Yes.

7 Q. If I could direct your attention to page 26

8 of that report.

9 Highlight No. 2.

10 MS. KLAHN: Mr. Director, can I pose an

11 objection here. The -- we're in the same territory we

12 were in last week when we were -- expressed our concern

13 about having Mr. -- Mr. Smith testify about his expert

14 report without being offered as an expert, and your

15 response was to wait and see what they did and then to

16 respond in fashion that was appropriate with that.

17 I don't think we got with Mr. Smith to the

18 point of him offering testimony on summaries of

19 opinions in his report. And it appears that may be

20 where Mr. Haemmerle is going.

21 I think it's just important to have a

22 bright-line rule. If the process of this hearing isn't

23 going to involve qualifying experts and offering them

24 in particular areas of expertise, then similar to what

25 Fritz said about offering reports, we don't want to be

924

1 disadvantaged because we didn't raise the issue and

2 work through it. By the same token, we don't want to

3 waste everybody's time if that's kind of where you're

4 feeling that we are at. So...

5 THE HEARING OFFICER: Well, with one

6 qualification, that is, that after additional

7 questioning, I, on my own volition, recognized Dr. --

8 or Mr. Smith as an expert witness in the area.

9 And Mr. Haemmerle, if you want to question.

10 MR. HAEMMERLE: Thank you, Director.

11 I just come into this particular forum with

12 my experience in the courts. And usually when we have

13 people giving opinions, it's simply those types of

14 people who have more specialized knowledge that would

15 be helpful to the trier of fact.

16 Usually we don't offer them per se as an

17 expert. You have to decide whether the testimony

18 they're giving is helpful to you and that they have

19 specialized knowledge in a particular field.

20 Now, having said that, and as an

21 accommodation so I suppose we don't waste time, I'd

22 offer Mr. Brockway virtually as an expert in all

23 aspects of water rights, measurements, knowledge of

24 water rights, how they're filed, how they go through

25 the adjudication, how they're permitted, virtually

925

1 everything to do with water rights in the state of

2 Idaho.

3 MS. KLAHN: Subject to his testimony being

4 limited to the scope of his opinions disclosed, we

5 don't have any objection to Mr. Brockway being offered

6 in this respect.

7 THE HEARING OFFICER: Ms. McHugh?

8 MS. MCHUGH: No objection. Thank you.

9 Oh, sorry. TJ.

10 THE HEARING OFFICER: Mr. Budge?

11 MR. BUDGE: I don't have an objection either.

12 But also would add the qualification that being an

13 expert in water rights is not necessarily being an

14 expert in all types of uses of water, all beneficial

15 uses. So with that qualification, we have no objection

16 either.

17 THE HEARING OFFICER: Well, I've seen enough of

18 Dr. Brockway in my tenure here that he's recognized as

19 an expert witness in broad areas of not only water

20 rights but water measurement and evaluation of water

21 systems. Thank you.

22 Mr. Haemmerle?

23 Q. (BY MR. HAEMMERLE): Chuck, again,

24 directing your attention to page 26.

25 Do you see that before you?

926

1 A. Yes.

2 Q. Justin's pulled up the second of many

3 opinions in the report. No. 2 you opine that "The

4 Rangen Spring flows are being utilized appropriately

5 and efficiently according to the adjudicated water

6 rights."

7 Do you see that?

8 A. Yes.

9 Q. That is one of the opinions that you gave?

10 A. I did that, yes.

11 MR. HAEMMERLE: Okay. If we can pull up No. 4.

12 MR. BUDGE: Mr. Director?

13 THE HEARING OFFICER: Yeah.

14 MR. BUDGE: I don't mean to interrupt the

15 process, but there's a number of opinions, including

16 the one just issued, that we do have objection to. And

17 we can either handle these as we go along or do that in

18 cross-examination, whatever you think's appropriate.

19 But we do have objection to some of the opinions

20 rendered in this report.

21 MR. HAEMMERLE: Director, I'm just trying to

22 define the scope of this particular examination and get

23 the two opinions that we're going to be discussing

24 today out before everyone so everyone knows what

25 opinions we're talking about.

927

1 THE HEARING OFFICER: Okay. Let's address it in

2 cross.

3 Q. (BY MR. HAEMMERLE): Chuck, again, Justin

4 has put up what is opinion 4.

5 Do you see that?

6 A. Yes.

7 Q. And that states, "It is our opinion that

8 the flow measurements collected at the Rangen facility

9 are accurate and consistent with industry practice."

10 Do you see that?

11 A. Yes.

12 Q. And that's one of your opinions?

13 A. Yes.

14 Q. Now, you submitted several reports in this

15 case; correct, Chuck?

16 A. Yes.

17 Q. Okay. We're going to wade through those

18 reports as we go through your testimony.

19 All right?

20 A. Okay.

21 Q. Chuck, you took some photographs in

22 connection with your initial report; correct?

23 A. I did, yes.

24 Q. I'd like to just go through those, kind of

25 some of the ones you took.

928

1 If we can pull up 1291.

2 Chuck, Justin has pulled up what has been

3 marked as 1291.

4 Do you recognize that photograph?

5 A. Yes.

6 Q. What is that photograph?

7 A. That is a digital photo of the outlet of

8 Curren Tunnel as it existed, I believe, six months ago.

9 Q. Okay. Did you or one of your team take

10 Exhibit -- or the photograph shown in 1291?

11 A. I believe we did. If not, we took one

12 exactly like it.

13 MR. HAEMMERLE: All right. Director, I'd offer

14 1291.

15 MS. KLAHN: No objection.

16 MR. BUDGE: No objection.

17 THE HEARING OFFICER: Document marked as

18 Exhibit 1291 is received into evidence.

19 (Exhibit 1291 received.)

20 MR. HAEMMERLE: Pull up 1292.

21 Q. Chuck, we pulled up what's been marked as

22 Exhibit 1292, which is Figure 7 in the report.

23 Do you recognize that photograph?

24 A. Yes.

25 Q. What does that photograph depict?

929

1 A. That's a digital photo looking up the talus

2 slope toward the Curren Tunnel from the Rangen

3 facility. It shows one of the -- well, both of the

4 concrete boxes and the pipelines that come out of them.

5 MR. HAEMMERLE: Offer 1292.

6 MS. KLAHN: I think that's already in.

7 MS. McHUGH: It's already in.

8 MR. MAY: It's already in.

9 MR. HAEMMERLE: Okay. We can go to 1293, then.

10 Q. Chuck, we've pulled up Exhibit 1293, which

11 on the report is Figure 8.

12 Do you recognize that document -- or

13 photograph?

14 A. Yes.

15 Q. What is that photograph of?

16 A. That's a photo of the diversion structure

17 from Billingsley Creek into the pipeline that goes to

18 the large raceways at the Rangen facility.

19 MR. HAEMMERLE: I'd offer 1293.

20 MS. KLAHN: No objection.

21 MR. BUDGE: No objection.

22 THE HEARING OFFICER: Document marked as

23 Exhibit 1293 is received into evidence.

24 (Exhibit 1293 received.)

25 Q. (BY MR. HAEMMERLE): Now, Chuck, one of the

EXHIBIT B

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

COPY
CONFIDENTIAL

IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHT NOS. 36-02551) Docket No.
AND 36-07694) CM-DC-2011-004
)
(RANGEN, INC.)) VOLUME X
_____) (Pages 2250-2501)

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

Pursuant to Protective Order Dated August 31, 2012

BEFORE

HEARING OFFICER: GARY SPACKMAN

Date: May 14, 2013 - 8:49 a.m.

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

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

M & M Court
Reporting
Service, Inc.
Since 1970
Registered Professional Reporters

SOUTHERN
1-800-234-9611

- BOISE, ID
208-345-9611
- TWIN FALLS, ID
208-734-1700
- POCATELLO, ID
208-233-0816
- ONTARIO, OR
541-881-1700
- HAILEY, ID
208-578-1049

NORTHERN
1-800-879-1700

- COEUR D'ALENE, ID
208-765-1700
- SPOKANE, WA
509-455-4515

www.idahocourtreporting.com

2251

1 APPEARANCES:

2

3 For Rangen, Inc.:

4 MAY, BROWNING & MAY

5 BY MR. J. JUSTIN MAY

6 1419 West Washington

7 Post Office Box 6091

8 Boise, Idaho 83707

9 -and-

10 HAEMMERLE & HAEMMERLE, PLLC

11 BY MR. FRITZ X. HAEMMERLE

12 Post Office Box 1800

13 Hailey, Idaho 83333

14 -and-

15 BRODY LAW OFFICE, PLLC

16 BY MS. ROBYN M. BRODY

17 Post Office Box 554

18 Rupert, Idaho 83350

19 For City of Pocatello:

20 WHITE & JANKOWSKI, LLP

21 BY MS. SARAH A. KLAHN

22 MR. J. RYLAND HUTCHINS

23 511 Sixteenth Street, Suite 500

24 Denver, Colorado 80202

25 ///

2252

1 APPEARANCES (Continued):

2

3 For Idaho Groundwater Appropriators:

4 RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED

5 BY MR. THOMAS J. BUDGE

6 MS. CANDICE M. McHUGH

7 101 South Capitol Boulevard, Suite 300

8 Boise, Idaho 83702

9 For Surface Water Coalition:

10 BARKER, ROSHOLT & SIMPSON LLP

11 BY MR. JOHN K. SIMPSON

12 1010 West Jefferson, Suite 102

13 Post Office Box 2139

14 Boise, Idaho 83701-2139

15 -and-

16 ARKOOSH LAW OFFICES

17 BY MR. C. THOMAS ARKOOSH

18 Post Office Box 2900

19 Boise, Idaho 83701

20 For Fremont-Madison Irrigation District:

21 RIGBY, ANDRUS & RIGBY, CHARTERED

22 BY MR. JERRY R. RIGBY

23 25 North Second East

24 Rexburg, Idaho 83440

25 ///

2253

1 APPEARANCES (Continued):

2

3 For Idaho Department of Water Resources:

4 OFFICE OF ATTORNEY GENERAL

5 IDAHO DEPARTMENT OF WATER RESOURCES

6 BY MR. CHRISTOPHER M. BROMLEY

7 322 East Front Street

8 Boise, Idaho 83720

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

2254

1 INDEX

2

3 WITNESSES

4 TESTIMONY OF BERN HINCKLEY	PAGE
5 Cross-Examination by Mr. May	2258
6 Cross-Examination by Mr. Simpson	2275
7 Redirect Examination by Mr. Budge	2276
8 Recross-Examination by Mr. May	2280
9 Examination by the Hearing Officer	2283
10 Further Redirect Examination by Mr. Budge	2286
11 TESTIMONY OF CHARLES E. BROCKWAY, PH.D., P.E.	
12 Direct Examination by Mr. Haemmerle	2293
13 Cross-Examination by Ms. Klahn	2364
14 Cross-Examination by Ms. McHugh	2371
15 Cross-Examination by Mr. Rigby	2383
16 Redirect Examination by Mr. Haemmerle	2390
17 Recross-Examination by Ms. Klahn	2392
18 TESTIMONY OF DAVID COLVIN	
19 Direct Examination by Mr. May	2397
20 Cross-Examination by Mr. Hutchins	2420
21 Cross-Examination by Mr. Budge	2423
22 Direct Examination by Mr. May	2429
23 TESTIMONY OF BERN HINCKLEY	
24 Direct Examination by Mr. Budge	2432
25 ///	

2387

1 budget.
 2 Whatever that ends up being, less than
 3 17 percent, according to what I understand your
 4 testimony to be, that uncertainty, doesn't that then
 5 add also to your uncertainty that you addressed in
 6 your -- in your report as the parameter uncertainty,
 7 the parameter of the model?
 8 A. It could be part of that.
 9 Q. Meaning the further away the more
 10 uncertainty there is with the water budget as one of
 11 the criteria with its uncertainty?
 12 A. The further away from what?
 13 Q. From the target, meaning Rangen Spring.
 14 A. Well, we haven't even addressed that.
 15 Q. I understand that. I'm asking you from the
 16 model. I'm asking you parameter uncertainty.
 17 What is parameter uncertainty?
 18 A. Well, parameter is -- parameters are
 19 inputs, if you will, data that go into the model, and
 20 they can have uncertainty.
 21 Q. Okay.
 22 A. Water budget integrates a lot of those
 23 parameters.
 24 Q. Understood. In fact, there are a lot of
 25 uncertainties, again, that you've addressed in your,

2388

1 again, report: conceptual uncertainty, mathematical
 2 uncertainty, internal calibration uncertainty,
 3 calibration target uncertainty, and predictive
 4 uncertainty.
 5 Are any of those -- would you dispute that
 6 each of those come with their own uncertainties?
 7 A. They do, yes.
 8 Q. Okay. As to the model itself, isn't it
 9 true that any target point or well compared to -- for
 10 purpose of running an impact, the model was in fact
 11 programmed that once you determined the ESPAM area --
 12 in other words, the boundary of the aquifer model --
 13 once you determined that, isn't it true that any point
 14 within that -- and I want to call it boundary.
 15 What would you call it, the ESPAM-2
 16 boundary?
 17 A. That's fine.
 18 Q. Okay. That any point, before you even
 19 point it, has already been programmed to show that it
 20 has an impact? Meaning that even before I plot a
 21 point, say in Fremont-Madison area, you already know
 22 because you told the model that it is to have an
 23 impact, it's just a matter of how much of an impact?
 24 MR. HAEMMERLE: I'm going to object to the way
 25 Mr. Rigby is asking the question. He asks the

2389

1 question, pauses, and then asks another question like
 2 it's a speech instead of an actual question.
 3 MR. RIGBY: I'm sorry.
 4 MR. HAEMMERLE: So is there a question on the
 5 table?
 6 MR. RIGBY: I thought there was.
 7 Q. Do you understand my question?
 8 A. I don't, no.
 9 Q. Okay. Isn't it a fact that the model has
 10 been preprogrammed to show that no matter where you
 11 plot a point within the boundary of Eastern Snake Plan
 12 Aquifer that it's prepresumed, predetermined to have an
 13 impact?
 14 A. Not necessarily.
 15 Q. That's not the case?
 16 A. That is not the case for every point. It
 17 depends on where the stresses are in the model.
 18 MR. RIGBY: I have no further questions.
 19 THE HEARING OFFICER: Okay. Other questions?
 20 Mr. Simpson?
 21 MR. SIMPSON: None.
 22 THE HEARING OFFICER: Redirect, Mr. Haemmerle?
 23 ///
 24 ///
 25 ///

2390

1 REDIRECT EXAMINATION
 2 BY MR. HAEMMERLE:
 3 Q. Chuck, you've been around a lot of fish
 4 hatcheries in your life?
 5 A. Yes.
 6 Q. Can you raise fish in empty raceways?
 7 A. Do I raise fish?
 8 Q. Can you raise fish in raceways without
 9 water?
 10 A. Not the species we have around here, no.
 11 Q. If you had water in raceways, could you
 12 raise fish?
 13 A. I believe I could.
 14 Q. Chuck, I'm going direct your attention to
 15 Appendix B of your report.
 16 Justin, if we can go there. Go to 1285.
 17 Go to the first page and we'll just zip through these.
 18 Go to the fourth page. And go to the residual box at
 19 the bottom.
 20 Chuck, do you recall Ms. Klahn's
 21 questioning on the residuals with respect to the Rangen
 22 Spring cell?
 23 A. Yes.
 24 Q. Do you recall the shape of the black curve?
 25 A. Yes.