

Jerry R. Rigby ISBN 2470
Hyrum Erickson ISBN 7688
Robert H. Wood, ISBN 8229
Tyler J. Salvesen, ISBN 8051
RIGBY, ANDRUS & RIGBY, *Chartered*
Attorneys at Law
25 North Second East
Rexburg, Idaho 83440
Telephone: 208-356-3633

Attorneys for FMID

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION) Docket No. CM-DC-2011-004
DELIVERY CALL OF RANGEN,)
INC.'S WATER RIGHT NOS. 36-02551) **FREMONT MADISON IRRIGATION**
& 36-7694) **DISTRICT'S RESPONSE AND**
) **OBJECTIONS TO RANGEN'S PROPOSED**
) **FINDINGS OF FACT AND CONCLUSIONS**
) **OF LAW**

Comes now Fremont-Madison Irrigation District ("FMID"), by and through its counsel, Jerry R. Rigby, of Rigby, Andrus & Rigby, Chartered, and hereby submits its Response and Objections to Rangen Inc.'s Closing Brief and Proposed Findings of Fact and Conclusions of Law.

RESPONSE TO RANGEN, INC.'S CLOSING BRIEF

In Rangen Inc.'s Closing Brief, Rangen failed to include important and necessary discussion on key issues, and repeatedly misstated or misrepresented statements or testimony given by FMID's expert, Bryce Contor.

In its discussion on the uncertainty analysis performed by the Department, Rangen omits

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important discussion of the effects of heterogeneity at scales smaller than the inter pilot-point distance. *Rangen, Inc. Closing Brief*, Section IV(B)(1)(c), “Uncertainty” pp. 71-72. Rangen also fails to acknowledge that the model is incapable of showing zero effects from very distant points such as FMID, even if such is physically the case. *Id.* Rangen further omits the large uncertainty found by Dr. Wylie in the WD99 Predictive Uncertainty Analysis. *Id.*

In its *Closing Brief*, in Section IV(B)(1)(d), Rangen states “[t]here is absolutely no disagreement in this case; groundwater pumping by junior users in the boundary of the ESPAM2.1 model is affecting Rangen’s use of water. As such, the Director should curtail those users in the boundary of the model.” *Rangen, Inc. Closing Brief*, Section IV(B)(1)(d), “The Director Should Curtail Junior Users Under the Boundaries of the ESPAM2.1 Model,” p. 72.

This statement is either incorrect or misleading for the following three reasons:

1) Bryce Contor, in his testimony, did not agree that groundwater pumping by junior users in the boundary of the ESPAM2.1 model is affecting Rangen’s use of water. Bryce Contor did state that the understanding of the physical hydrology suggests that it cannot be determined with any degree of certainty that FMID pumping has any effect at all on Rangen.

2) Despite being constrained to show a mathematical effect, the model prediction is that if FMID does have an effect, it is negligible and incapable of being measured.

3) This statement also either ignores or sidesteps the important hydrologic fact that there are junior users outside the boundary of the ESPAM2.1 whose pumping does have an effect on Rangen's use of water.

In its *Closing Brief*, in Section IV(B)(2), p. 72, Rangen states that Bryce Contor (Tr. p.

2983, 1. 20-22), testified that ESPAM2.1 represents the best available science and is suitable for use in predicting the impact of junior ground pumping upon the use of Rangen's water rights. However, Bryce Contor did NOT testify that the ESPAM2.1 model is suitable for predicting the impact of junior groundwater pumping on Rangen's water rights. Mr. Contor was careful to point out that the impact is a legal concept and not simply a technical matter, but rather Effect is a technical matter.

Finally, Mr. Contor explained that due to the existence of heterogeneity at scales smaller than the inter-pilot-point distance, the model is not adequate to evaluate the effect of any stress upon an individual spring except a broadly-distributed stress such as the calibration data set.

The most important conclusion from Mr. Contor's testimony was that due to the uncertainties of the model and the physical hydrology of the system, it cannot be determined to any degree of certainty that FMID pumping has **any** effect on Rangen. FMID's example is therefore the poster child for the need to retain the "trimline" presently in place as any other location within the ESPA where the facts are similar to those of FMID, the same uncertainties would clearly exist.

FMID'S RESPONSE AND OBJECTIONS TO RANGEN, INC.'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

FMID adopts by reference any objection made by IGWA with respect to Rangen's Proposed Findings of Fact and Conclusions of Law. Furthermore and in addition, FMID specifically objects to Rangen's Proposed Findings of Fact and Conclusions of Law as follows:

With respect to Finding 31, pp. 6-7, the Snake Plain Aquifer occupies approximately

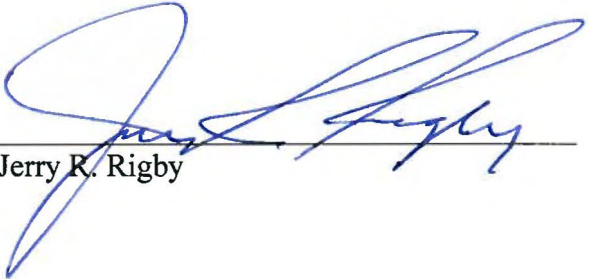
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11,000 square miles, rather than the 15,600 square miles listed by Rangen. It also is more likely the track of the Yellowstone hotspot than a graben.

With respect to finding 63, p. 11, the model does not give the best available predictions of any particular junior pumping impact, due to the uncertainties of the model and the effects of heterogeneity at spatial scales smaller than the inter-pilot-point distance.

With respect to Section J. "Trimline", pp. 12-13, The IGWA brief did call for the use of a trimline, and trimline is not a matter of fact but a matter of law. It is FMID's position that a trimline should be used as decided by the Director. Furthermore, FMID's position at the hearing was fully based upon the "call" for the use of a trimline.

DATED this 19th day of July, 2013.



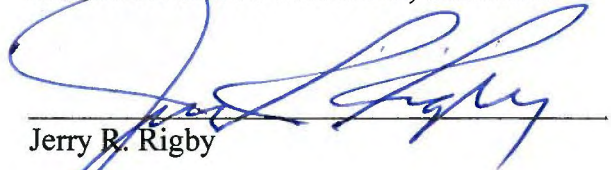
Jerry R. Rigby

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I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 19th day of July, 2013.

RIGBY ANDRUS & RIGBY, Chartered



Jerry R. Rigby

Gary Spackman, Director
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720
deborah.gibson@idwr.idaho.gov

Mail
 Hand Delivery
 Electronic Mail

Robyn Brody
Brody Law Office
P.O. Box 554
Rupert, ID 83350
robynbrody@hotmail.com

Mail
 Hand Delivery
 Electronic Mail

Randy Budge
Candice McHugh
Racine Olson
P.O. Box 1391
Pocatello, ID 83204
rcb@racinelaw.net
cmm@racinelaw.net
tjb@racinelaw.net

Mail
 Hand Delivery
 Electronic Mail

J. Justin May
May Browning
1419 W. Washington
Boise, ID 83702
jmay@maybrowning.com

Mail
 Hand Delivery
 Electronic Mail

Fritz Haemmerle
Haemmerle Haemmerle
P.O. Box 1800
Hailey, ID 83333
fxh@haemlaw.com

Mail
 Hand Delivery
 Electronic Mail

Sarah Klahn
Mitra Pemberton
White & Jankowski
511 16th St., Ste. 500
Denver, CO 80202
sarahk@white-jankowski.com
mitrap@white-jankowski.com

Mail
 Hand Delivery
 Electronic Mail

Garrick Baxter
Chris Bromley
Kimi White
Idaho Department of Water Resources
P.O. Box 83720
Boise, ID 83720
garrick.baxter@idwr.idaho.gov
chris.bromley@idwr.idaho.gov
kimi.white@idwr.idaho.gov

Mail
 Hand Delivery
 Electronic Mail

Dean Tranmer
City of Pocatello
P.O. Box 4169
Pocatello, ID 83201
dtranmer@pocatello.us

Mail
 Hand Delivery
 Electronic Mail

John K. Simpson
Travis L. Thompson
Paul L. Arrington
195 River Vista Place, Ste. 204
Twin Falls, ID 83301
tlt@idahowaters.com
jks@idahowaters.com
pla@idahowaters.com

Mail
 Hand Delivery
 Electronic Mail

W. Kent Fletcher
Fletcher Law Office
P.O. Box 248
Burley, ID 83318
wkf@pmt.org

Mail
 Hand Delivery
 Electronic Mail

C. Thomas Arkoosh
Arkoosh Law Offices
P.O. Box 2900
Boise, ID 83701
tom.arkoosh@arkoosh.com
erin.cecil@arkoosh.com

Mail
 Hand Delivery
 Electronic Mail