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RECEIVED  
JUN 03 2014  
DEPARTMENT OF  
WATER RESOURCES

*Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)*

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

IN THE MATTER OF THE SECOND MITIGATION PLAN FILED BY THE IDAHO GROUND WATER APPROPRIATORS FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 AND 36-07694 IN THE NAME OF RANGEN, INC.

Docket No. CM-MP-2014-003

**IGWA'S CORRECTED  
SECOND MOTION IN  
LIMINE and  
NOTICE OF HEARING**

Idaho Ground Water Appropriators, Inc. (IGWA), by and through its counsel, hereby moves the Director of the Idaho Department of Water Resources (IDWR), to enter an Order pursuant to IDAPA 37.01.01.600 prohibiting protestants from offering any testimony or exhibits concerning the items discussed below. This Motion is based on Rangen's Supplemental Responses to IGWA's First Set of Discovery Requests and Rangen's Responses to IGWA's Second Set of Discovery Requests, which were served on IGWA on Saturday May 31, 2014, copies of which are attached as *Appendices A and B (redacted)*, respectively.

**1. Water quality or temperature necessary to raise trout at the Rangen fish hatchery.**

Rangen's answers to Interrogatories 6 and 15 are as follows:

**Interrogatory 6:** Do you agree that the temperature of the water at Tucker Springs to be delivered to Rangen pursuant to the Mitigation Plan is suitable for Rangen's fish propagation purposes? If you answer is no, please state precisely and in detail why and all evidence you will present at the time of hearing why the temperature is not suitable for raising fish.

**Supplemental Answer to Interrogatory 6:** After reasonable investigation, Rangen does not have sufficient information to answer this interrogatory.

**Interrogatory 15:** What do you contend are the minimum and maximum water quality and water temperature parameters necessary to raise trout in your fish hatchery?

**Answer to Interrogatory 15:** Objection. This interrogatory is vague and ambiguous. There are numerous water quality parameters and without more information Rangen cannot address this interrogatory.

Since Rangen does not know (or refuses to provide) the water quality and temperature parameters necessary to raise trout at its fish hatchery, it has no basis to offer evidence or opinion that the quality or temperature of water from Tucker Springs is not suitable for raising trout at the Rangen hatchery. If such evidence is allowed, IGWA will be unfairly prejudiced by its inability to evaluate, prepare, and defend its position against same.

**2. Permitting that may be required by other state or federal agencies to install the Tucker Springs piping project.**

Late on Friday, May 30, 2014, Rangen served on IGWA a document labelled “Analysis of Tucker Springs Mitigation Plan” by Dan DeLaughter—a Colorado engineer—that addresses state and federal permits, such as a Clean Water Act permit, that may be required to complete the Tucker Springs piping project.

The lateness of the disclosure of Mr. DeLaughter’s opinions, combined with his location in Colorado and the deposition of Chuck Brockway on June 2, 2014, makes it unrealistic for IGWA to depose him and prepare to defend his opinions prior to the hearing. If he is permitted to offer such opinions, IGWA will be unfairly prejudiced by its inability to evaluate, prepare, and defend the same.

In addition, Mr. DeLaughter does not appear to be licensed as an engineer in the State of Idaho, and therefore is not permitted to render opinions as such.

In addition, CM Rule 43 does not require evidence proving that a mitigation plan meets all permitting requirements of other agencies. Rather, the IDWR has previously approved mitigation plans conditionally upon obtaining any necessary permits. The *Final Order Concerning the Over-the-Rim Mitigation Plan* states: “If the plan is accepted by Clear Springs, the Ground Water Districts must immediately file and pursue appropriate transfer applications and finalize all necessary approvals.” (Order at 9.)

IGWA certainly recognizes it will be required to obtain all federal, state, and local permits that may be necessary, if any, to construct the Tucker Springs project. There is no need for the IDWR to pass judgment on those permits, which are outside of its jurisdiction, in this proceeding.

In light of the foregoing, IGWA asks the IDWR to exclude evidence of permitting that may be required by other agencies to complete the Tucker Springs project, and instead condition approval of IGWA's Second Mitigation Plan upon obtaining any necessary approvals.

**3. Confidential settlement communications protected by rule 408 of the Idaho Rules of Evidence.**

Rangen's Responses to IGWA's Second Set of Discovery reference a letter sent to the protestants by IGWA's counsel under rule 408 of the Idaho Rules of Evidence. (IGWA has redacted the relevant language from *Appendix B*.) A copy of the first page of the letter is attached hereto as *Appendix C*, conspicuously stating at the top that the letter is sent pursuant to rule 408. The Responses suggest Rangen intends to use this letter as evidence at the hearing, either directly or indirectly.

To avoid improper disclosure or insinuations concerning the contents of the letter at the hearing, IGWA requests an advance ruling that neither the existence of the letter nor its contents may be referred to by Rangen or its counsel in this matter.

**NOTICE OF HEARING**

Notice is hereby given that this motion shall be heard at the outset of the hearing on IGWA's 2<sup>nd</sup> Mitigation Plan scheduled to commence at 9a.m. on Wednesday, June 4, 2014 at the office of IDWR in Boise.

Dated this 3<sup>rd</sup> day of June, 2014.

IDAHO GROUND WATER  
APPROPRIATORS, INC.

By: Randall C. Budge  
Randall C. Budge

**CERTIFICATE OF MAILING**

I certify that on this 3<sup>rd</sup> day of June, 2014, the foregoing document was served on the following persons in the manner indicate

*Randall C. Budge*

\_\_\_\_\_  
Signature of person mailing form

<p><b>Original:</b> Director, Gary Spackman Idaho Department of Water Resources PO Box 83720 Boise, ID 83720-0098 Attn: Deborah Gibson <a href="mailto:Deborah.Gibson@idwr.idaho.gov">Deborah.Gibson@idwr.idaho.gov</a> <a href="mailto:Kimi.white@idwr.idaho.gov">Kimi.white@idwr.idaho.gov</a></p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail</p>
<p>John K. Simpson Paul Arrington BARKER ROSHOLT &amp; SIMPSON, LLP 195 River Vista Place, Suite 204 Twin Falls, Idaho 83301-3029 <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a> <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a> <a href="mailto:jlw@idahowaters.com">jlw@idahowaters.com</a></p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail</p>
<p>Leo E. Ray Big Bend Trout, Inc. P.O. Box 479 Hagerman, Idaho 83330 <a href="mailto:fpi@fishbreedersofidaho.com">fpi@fishbreedersofidaho.com</a></p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail</p>
<p>Michael J. Henslee, V.P. Salmon Falls Land &amp; Livestock Co. 95-A Bell Rapids Road Hagerman, Idaho 83332 <a href="mailto:mjhenslee@gmail.com">mjhenslee@gmail.com</a></p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-mail</p>

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<p>Almer Huntley, Jr., President  Big Bend Irrigation &amp; Mining Co., Ltd.  2721 South 900 East  Hagerman, Idaho 83332  <a href="mailto:plspe@hotmail.com">plspe@hotmail.com</a></p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> E-mail</p>
<p>Robyn Brody  Brody Law Office, PLLC  P.O. Box 554  Rupert, ID 83350-0554  <a href="mailto:robynbrody@hotmail.com">robynbrody@hotmail.com</a></p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> E-Mail</p>
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<p>Fritz X. Haemmerle  Haemmerle Haemmerle  P.O. Box 1800  Hailey, ID 83333-1800  <a href="mailto:fxh@haemlaw.com">fxh@haemlaw.com</a></p>	<p><input type="checkbox"/> U.S. Mail/Postage Prepaid  <input type="checkbox"/> Facsimile  <input type="checkbox"/> Overnight Mail  <input type="checkbox"/> Hand Delivery  <input checked="" type="checkbox"/> E-Mail</p>

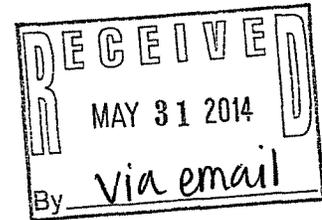


# *Appendix A*

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*Attorneys for Rangen, Inc.*

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF THE SECOND  
MITIGATION PLAN FILED BY THE IDAHO  
GROUND WATER APPROPRIATORS FOR  
THE DISTRIBUTION OF WATER TO  
WATER RIGHT NOS. 36-02551 AND 36-  
07694 IN THE NAME OF RANGEN, INC.

Docket No. CM-MP-2014-003

**RANGEN, INC.'S SUPPLEMENTAL  
RESPONSES TO IGWA'S FIRST  
SET OF DISCOVERY**

**"TUCKER SPRINGS"**

COMES NOW, Rangen, Inc. ("Rangen"), and responds to IGWA's First Set of Discovery Requests as follows:

**GENERAL OBJECTIONS**

- 1) Rangen 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) Rangen objects to the Requests as premature, burdensome, and improper to the extent they seek factual information in support of objections and claims that Rangen has not had

**RANGEN, INC.'S SUPPLEMENTAL RESPONSES TO IGWA'S FIRST SET OF  
DISCOVERY- 1**

opportunity to fully prepare because IGWA's Second Mitigation Plan is incomplete and for which Rangen may require discovery from IGWA or others. These responses are subject to the discovery or recollection of additional information, knowledge, or facts.

3) The mitigation plan filed by IGWA is incomplete. It does not contain the information required to be included in a mitigation plan pursuant to Rule 43.01 of the Conjunctive Management Rules. Rangen does not have sufficient information to evaluate the mitigation plan. There is not sufficient information in the plan for the Director to evaluate the factors set forth in Rule 43.03 of the Conjunctive Management Rules. Rangen may supplement or modify these responses when, and if, IGWA files a mitigation plan that complies with the Conjunctive Management Rules and contains sufficient information for evaluation.

4) 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 2:** If Rangen opposes the Second Mitigation Plan any part, please explain precisely and in detail every reason for Rangen's opposition.

**Supplemental Answer to Interrogatory 2:** Objection. Interrogatory No. 2 calls for speculation because IGWA's Second Mitigation Plan is facially deficient and cannot be approved since the Tucker Springs water rights have not been acquired (the transfer application was only filed on May 19, 2014), access easements and/or rights of way have not been acquired, and the plan lacks sufficient details to evaluate it under CM Rule 43. Specifically, the plan fails to provide adequate data demonstrating suitable water quality and temperature, fails to address the presence of fish viruses, pathogens and diseases at the Tucker Springs hatchery which are not present at the Rangen Research Hatchery, fails to address state and federal environmental assessments and permit requirements, fails to analyze injury to Tucker Springs water rights and/or water rights downstream of Tucker Springs (e.g., Riley Creek) and plans to mitigate said injuries, fails to provide sufficient detail of the collection box/system at Tucker Springs to evaluate feasibility and suitability, further hinders and impairs Rangen's ability to use water from the Martin-Curren Tunnel because the SPF plan pumps water up to the Rangen Box using the same pipe that Rangen uses for water coming from the mouth of the Martin-Curren Tunnel, fails to address biosafety, fails to address monitoring, maintenance and repair plans, and fails to address adequately insurance and/or bonding for

compensation for property damage, fish mortalities, and lost income due to pump or pipeline failures.

**Interrogatory 3:** If Rangen opposes any part of the Second Mitigation Plan, please explain what, if anything can be done to modify the Second Mitigation Plan to enable Rangen to support it.

**Supplemental Answer to Interrogatory No. 3:** Rangen does not have sufficient information at this time to evaluate whether the Second Mitigation Plan can be modified in such a way that it can be approved.

**Interrogatory 4:** For each water supply used by Rangen at its Billingsley Creek facility please describe by date, location, and method used, all water temperature monitoring and samples taken. Please identify any results thereof found unacceptable for fish propagation.

**Supplemental Answer to Interrogatory 4:** Objection. This interrogatory is unduly burdensome and the information is already in IGWA's possession. This interrogatory is also vague in terms of what is meant by the term "unacceptable." Without waiving said objections, see Rangen's Answer to Interrogatory 14 and Response to Request for Production 1 in Rangen's Responses to IGWA's Second Set of Discovery.

**Interrogatory 5:** For each water supply used by Rangen at its Billingsley Creek facility please describe by date, location, and method used, all water quality monitoring and samples taken. Please identify any results thereof found unacceptable for fish propagation.

**Supplemental Answer to Interrogatory 5:** See Supplemental Answer to Interrogatory 4.

**Interrogatory 6:** Do you agree that the temperature of the water at Tucker Springs to be delivered to Rangen pursuant to the Mitigation Plan is suitable for Rangen's fish propagation purposes? If your answer is no, please state precisely and in detail why and all evidence you will present at the time of hearing why the temperature is not suitable for raising fish.

**Supplemental Answer to Interrogatory 6:** After reasonable investigation, Rangen does not have sufficient information to answer this interrogatory. IGWA has not supplied sufficient information in its Second Mitigation Plan related to water temperature at Tucker Springs or water temperature at the time water is to be delivered to the Rangen Research Hatchery. The small amount of data that has been supplied demonstrates that the water temperature is higher at Tucker Springs than at the Rangen Hatchery.

**Interrogatory 7:** Do you agree that the quality of the water at Tucker Springs to be delivered to Rangen pursuant to the Mitigation Plan is suitable for Rangen's fish propagation purposes? If your answer is no, please state precisely and in detail why and all evidence you will present at the time of hearing why the water quality is not suitable for raising fish.

**Supplemental Answer to Interrogatory 7:** No. The deposition of Joe Chapman revealed that the Tucker Springs hatchery has serious problems with fish viruses, pathogens and diseases which

are not present or are well controlled at the Rangen Research Hatchery. There is insufficient information to evaluate whether these viruses, pathogens and diseases would be carried to the Rangen Research Hatchery where they would pose a serious risk of harm.

**Interrogatory 9:** Identify and describe every document and tangible item you may attempt to introduce into evidence at the hearing in this matter, and explain the significance of each to your case.

**Supplemental Answer to Interrogatory 9.** See also the documents listed in Dan DeLaughter's Analysis which provided electronically to IGWA on May 30, 2014 and the articles identified in Rangen's Answer to Interrogatory 10 (part of the description of Doug Ramsey and Chuck Brockway's testimony) which were also produced electronically to IGWA on May 30, 2014.

#### REQUESTS FOR PRODUCTION OF DOCUMENTS

The documents requested below shall be produced for inspection and copying at the law office of Plaintiff's counsel (Racine Olson Nye Budge & Bailey, Chartered, 201 East Center Street, Pocatello, Idaho 83204). In lieu thereof, you may provide Plaintiff's counsel with full and complete copies of each document.

**Request for Production 2:** Produce all exhibits or documentary evidence you intend to offer into evidence in this matter.

**Response to Request for Production 2:** Rangen reserves the right to introduce the following exhibits at the hearing of this matter:

All exhibits admitted into evidence in In the Matter of Distribution of Water to Water Right Nos. 36-02551 & 36-07694 (Rangen, Inc.), IDWR Docket No. CM-DC-2011-004.

All exhibits admitted into evidence in In the Matter of Mitigation Plan Filed by the Idaho Ground Water Appropriators for the Distribution of Water to Water Right Nos. 36-02551 and 36-07694 in the Name of Rangen, Inc., IDWR Docket No. CM-MP-2014-001.

All documents produced or identified by IGWA or any other party or protestant in this matter.

All documents produced or identified by IDWR in connection with this matter, including, but not limited to the following:

- JHoman Emails
- Aqua Life (pdf in BPatton folder)
- BPatton Emails(1)
- BPatton Emails (2)
- BigBendDitch (Excel Spreadsheet)

BillingsleyCr\_BTR\_v2 BWP edits  
FRAMEWORK FOR THOUSAND SPRINGS  
MWeaver Emails  
Potential Settlement Term Sheet Project  
SpringDiversionsHagermanValley  
SpringDiversions HagermanValley (pdf)  
SpringDiversionsRangenHatcheryArea  
SpringDiversionsRangenHatcheryArea (pdf)  
State hatchery-to-Rangen pipeline memo  
Tucker for Tim Luke through 2013\_1231  
Tucker Springs Water Rights  
UpTucker\_DiversionData  
Billingsley Creek WR Report  
Riley Creek WR Report  
WD 130 WR Report  
Big Bend Ditch Upper & Lower Tucker Springs (folder and all documents in it)  
Conyers Ditch John Lemoyne 410016 (folder and all documents in it)  
HUNT DITCH Buckeye Farms 410017 (folder and all documents in it)  
IDAHO POWER DITCH & PIPE 410019 410 (folder and all documents in it)  
IDFG Upper Tucker (folder and all documents in it)  
Tucker Springs\_RileyCreekRts\_graphs (folder and all documents in it)

Curriculum Vitae/Resume of Charles E. Brockway

Curriculum Vitae/Resume of Dan DeLaughter

Curriculum Vitae/Resume of Doug Ramsey

Protest filed by Boise Valley Fly Fishermen to water right permit application nos. 36-08783-08785 (Buckeye Farms) and 36-08786 (Western Legends) (attached hereto).

Protest filed by Idaho Fish and Game to water right permit application nos. 36-08783-08785 (Buckeye Farms) and 36-08786 (Western Legends) (attached hereto).

All deposition exhibits in this matter.

Letter from Randy Budge to Protestants dated May 23, 2014 (produced electronically on May 30, 2014).

Dan DeLaughter Exhibits (produced electronically on May 30, 2014).

“Systems Failure Causes Salmon Loss,” Aquaculture North America, May/June 2014 (produced electronically on May 30, 2014).

“Power Outage Meant Lost Lives at Fish Farm,” East Hampton Press, September 12, 2011 (produced electronically on May 30, 2014).

“Power Outage Kills 160,000 Fish at Eureka Hatchery,” Daily Inter Lake, June 25, 2013 (produced electronically on May 30, 2014).

“150,000 Fish Die in Power Failure,” Jackson Hole News, June 15, 2011 (produced electronically on May 30, 2014).

“Delaware Canal Pump Failure Leads to Large Fish Kill,” Phillyburbs.com, October 29, 2013 (produced electronically on May 30, 2014).

“Fish Die Due to Hatchery Power Outage,” NBC Montana.com, June 25, 2013 (produced electronically on May 30, 2014).

“Failed Water Pump Kills 500,000 Juvenile Salmon at WDFW’s Issaquah Hatchery, Washington Department of Fish and Wildlife, News Release March 16, 2005 (produced electronically on May 30, 2014).

“Overworked Pump Fails at Elwha Hatchery, Killing 200,000 Fish,” The Seattle Times, July 13, 2013 (produced electronically on May 30, 2014).

“Pump Failure Pummels Salmon,” High Country News, April 24, 2000 (produced electronically on May 30, 2014).

“Police Probes Power Failure at Canadian on-land Salmon Farm,” Intrafish Media, April 14, 2014 (produced electronically on May 30, 2014).

BRODY LAW OFFICE, PLLC

By: \_\_\_\_\_  
Robyn M. Brody

**VERIFICATION**

STATE OF IDAHO            )  
  ) ss  
County of Twin Falls        )

J. Wayne Courtney, being first duly sworn, on oath, deposes and says.

That he is the Executive Vice President of Rangen, Inc., that he has read the foregoing RANGEN, INC.'S RESPONSES TO IGWA'S FIRST SET OF DISCOVERY, knows the contents thereof, and the facts stated he believes to be true.

\_\_\_\_\_  
J. Wayne Courtney, Executive Vice President

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public for State of Idaho  
Residing at \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the \_\_\_\_ day of \_\_\_\_\_, 2014 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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John K. Simpson Paul Arrington BARKER ROSHOLT & SIMPSON, LLP 195 River Vista Place, Suite 204 Twin Falls, Idaho 83301-3029 <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a> <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a> <a href="mailto:jlw@idahowaters.com">jlw@idahowaters.com</a>	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"/>
Timothy J. Stover WORST FITZGERALD & STOVER PLLC P.O. Box 1428 Twin Falls, Idaho 83303	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/>

<a href="mailto:tjs@magicvalleylaw.com">tjs@magicvalleylaw.com</a>	E-Mail <input type="checkbox"/>
Michael J. Henslee, V.P. Salmon Falls Land & Livestock Co. 95-A Bell Rapids Road Hagerman, Idaho 83332 <a href="mailto:mjhenslee@gmail.com">mjhenslee@gmail.com</a>	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"/>
Leo E. Ray Big Bend Trout, Inc. P.O. Box 479 Hagerman, Idaho 83330 <a href="mailto:fpi@fishbreedersofidaho.com">fpi@fishbreedersofidaho.com</a>	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"/>
Almer Huntley, Jr., President Big Bend Irrigation & Mining Co., Ltd. 2721 South 900 East Hagerman, Idaho 83332 <a href="mailto:plspe@hotmail.com">plspe@hotmail.com</a>	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"/>

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Robyn M. Brody



# *Appendix B*

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*Attorneys for Rangen, Inc.*

BEFORE THE DEPARTMENT OF WATER RESOURCES  
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**IN THE MATTER OF THE SECOND  
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**“TUCKER SPRINGS”**

Docket No. CM-MP-2014-003

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IGWA’S SECOND SET OF  
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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 10:** For Charles E. Brockway, Dan DeLaughter, Doug Ramsey, Joe Chapman, Ed Schreivener, Gary Burn, Carl H. Nellis, and any person you expect to call as an expert witness at the hearing, please:

- a) State the subject matter on which the witness is expected to testify;
- b) Provide a complete statement of any expert opinions the witness is expected to offer;
- c) State the basis and reasons for the expert opinions;
- d) Identify the underlying facts and data on which the expert opinions are based, in conformity with I.R.C.P. 26(b)(4) and I.R.E. 705;
- e) Identify any exhibits to be used as a summary of or support for the opinions; and
- f) Identify all documents upon which the witness relied.

### **Answer to Interrogatory No. 10:**

#### **Doug Ramsey:**

- A. Mr. Ramsey is expected to testify concerning the following matters: use of gravity-fed water sources for aquaculture facilities in Idaho; expected power and equipment failures associated with pump systems in aquaculture facilities and accompanying fish mortality; the presence of fish diseases and viruses present at the Tucker Springs fish hatchery owned by Idaho Fish and Game; the danger posed by supersaturation in pump and pipeline systems; reduced dissolved oxygen levels at the Tucker Springs fish hatchery; and increased water temperatures at Tucker Springs; any other water quality or temperature issues that may arise, including, Rangen's measurement practices and NPDES requirements.

- B. Mr. Ramsey is expected to offer the following opinions:
- Aquaculture facilities in the Hagerman valley are typically built to use gravity flow of water to feed production raceways.
  - Pump and pipeline systems are costly to build and operate and result in fish mortalities because of inevitable equipment and power failures even when redundant systems are utilized.
  - The Tucker Springs fish hatchery owned by Idaho Fish and Game is experiencing fish mortalities and rearing problems related to viruses and diseases that are not present or are well controlled at the Rangen Research Hatchery. Introducing water from Tucker Springs to the Rangen Research Hatchery poses a serious risk of introducing viruses, pathogens and diseases that are not already present.
  - The Tucker Springs water has a lower dissolved oxygen level and higher temperature than the water at the Rangen Research Hatchery. There is insufficient water quality data available to determine whether the water is suitable for use at the Rangen Research Hatchery and what impact it will have on Rangen's ability to comply with NPDES requirements. Mr. Ramsey will testify that the pump and pipeline system poses a risk of supersaturation of the water which creates bubbles in fish circulatory systems.
  - The Tucker Springs mitigation plan does not address biosecurity, and there is greater risk of harm because Rangen will not control the source of water or operation of the pipeline.
- C. Mr. Ramsey's opinions are based on his education, background, training and experience. They are also based on his review of the SPF Report, the deposition of Joe Chapman and the documents produced by Idaho Fish and Game at the deposition of Joe Chapman.
- D. See subsection C above.
- E. See SPF Report, documents produced by Idaho Fish and Game at the deposition of Joe Chapman, the transcript of the deposition of Joe Chapman. See also the following articles: "Systems Failure Causes Salmon Loss," Aquaculture North America, May/June 2014; "Power Outage Meant Lost Lives at Fish Farm," East Hampton Press, September 12, 2011; "Power Outage Kills 160,000 Fish at Eureka Hatchery," Daily Inter Lake, June 25, 2013; "150,000 Fish Die in Power Failure," Jackson Hole News, June 15, 2011; "Delaware Canal Pump Failure Leads to Large Fish Kill," Phillyburbs.com, October 29, 2013; "Fish Die Due to Hatchery Power Outage," NBC Montana.com, June 25, 2013; "Failed Water Pump Kills 500,000 Juvenile Salmon at WDFW's Issaquah Hatchery, Washington Department of Fish and Wildlife, News Release March 16, 2005; "Overworked Pump Fails at Elwha Hatchery, Killing 200,000 Fish," The Seattle Times, July 13, 2013; "Pump Failure Pummels Salmon," High Country News, April 24, 2000; "Police Probes Power Failure at Canadian on-land Salmon Farm," Intrafish Media, April 14, 2014.
- F. See subsections C and E above.

**Dan DeLaughter:**

- A. Mr. DeLaughter is expected to testify that the Tucker Springs mitigation plan does not address state and federal environmental review and permit requirements.
- B. Mr. DeLaughter is expected to offer the opinions set forth in the written analysis that was provided to IGWA on May 30, 2014.
- C. Mr. DeLaughter's opinions are based on his education, background, training and experience. They are also based on his review of the SPF Report, the deposition transcript of Bob Hardgrove and the documents contained in the Exhibit List in his Analysis.
- D. See subsection C above.
- E. See Exhibit List in Mr. De Laughter's Analysis.
- F. See subsection C above.

**Dr. Brockway:**

- A. Dr. Brockway is expected to testify concerning the following matters: use of gravity-fed water sources for aquaculture facilities in Idaho; expected power and equipment failures associated with pump systems in aquaculture facilities and accompanying fish mortality; the injury likely to be sustained by downstream users of Tucker Springs and Riley Creek, including, but not limited to, Buckeye Farms; the nature of Buckeye Farms' water rights and limitations and restrictions thereon; objections made to water rights claimed by Buckeye Farms; the insufficiency of the engineering details for the Mitigation Plan, including the failure to provide sufficient detail to demonstrate the feasibility and adequacy of the collection box/system at Tucker Springs; the hindrance and impact on Rangen's ability to use water from the Martin-Curren Tunnel because of the design of the tie-in at the Rangen Research Hatchery; and the stacking of Water Right Nos. 36-2055, 36-2056 and 36-2159.
- B. Dr. Brockway is expected to offer the following opinions:
  - Aquaculture facilities in the Hagerman valley are typically built to use gravity flow of water to feed production raceways.
  - Pump and pipeline systems are costly to build and operate and result in fish mortalities because of inevitable equipment and power failures even when redundant systems are utilized.
  - The downstream users of Tucker Springs and Riley Creek are presently short water. The diversion of water under the proposed plan will further injure downstream users' water rights by hindering and impacting their use of water. This includes, but is not limited to Buckeye Farms given the nature of their water rights and limitations and restrictions thereon.
  - The SPF Report and engineering plans do not contain sufficient information to determine whether the collection box/system located at Tucker Springs is feasible or adequate for the project.

- The design of the tie-in at the Rangen Research Hatchery will hinder and impact Rangen's ability to use water from the Martin-Curren Tunnel mouth.
  - The water rights associated with the state hatchery supplied by Tucker Springs must be further investigated to determine whether there is an issue of stacking. There are three water rights with the same place of use: 36-2055, 36-2056, and 36-2159. Under general rules regarding the stacking of rights, if IGWA proposes to take 10 cfs from 36-2055, then it must also take 10 cfs from the other two rights. Otherwise, there is an issue regarding expansion of use.
- C. Dr. Brockway's opinions are based on his education, background, training and experience. They are also based on: his review of the SPF Report; the depositions of Frank Erwin, Lynn Carlquist and Joe Chapman; objections to Buckeye Farms' water rights made by the Idaho Department of Fish and Game and others; documents produced during the course of discovery. See also the following articles: "Systems Failure Causes Salmon Loss," *Aquaculture North America*, May/June 2014; "Power Outage Meant Lost Lives at Fish Farm," *East Hampton Press*, September 12, 2011; "Power Outage Kills 160,000 Fish at Eureka Hatchery," *Daily Inter Lake*, June 25, 2013; "150,000 Fish Die in Power Failure," *Jackson Hole News*, June 15, 2011; "Delaware Canal Pump Failure Leads to Large Fish Kill," *Phillyburbs.com*, October 29, 2013; "Fish Die Due to Hatchery Power Outage," *NBC Montana.com*, June 25, 2013; "Failed Water Pump Kills 500,000 Juvenile Salmon at WDFW's Issaquah Hatchery, Washington Department of Fish and Wildlife, News Release March 16, 2005; "Overworked Pump Fails at Elwha Hatchery, Killing 200,000 Fish," *The Seattle Times*, July 13, 2013; "Pump Failure Pummels Salmon," *High Country News*, April 24, 2000; "Police Probes Power Failure at Canadian on-land Salmon Farm," *Intrafish Media*, April 14, 2014.
- D. See subsection C above.
- E. See SPF Report. See also the following articles: "Systems Failure Causes Salmon Loss," *Aquaculture North America*, May/June 2014; "Power Outage Meant Lost Lives at Fish Farm," *East Hampton Press*, September 12, 2011; "Power Outage Kills 160,000 Fish at Eureka Hatchery," *Daily Inter Lake*, June 25, 2013; "150,000 Fish Die in Power Failure," *Jackson Hole News*, June 15, 2011; "Delaware Canal Pump Failure Leads to Large Fish Kill," *Phillyburbs.com*, October 29, 2013; "Fish Die Due to Hatchery Power Outage," *NBC Montana.com*, June 25, 2013; "Failed Water Pump Kills 500,000 Juvenile Salmon at WDFW's Issaquah Hatchery, Washington Department of Fish and Wildlife, News Release March 16, 2005; "Overworked Pump Fails at Elwha Hatchery, Killing 200,000 Fish," *The Seattle Times*, July 13, 2013; "Pump Failure Pummels Salmon," *High Country News*, April 24, 2000; "Police Probes Power Failure at Canadian on-land Salmon Farm," *Intrafish Media*, April 14, 2014.
- F. See subsections C and E above.

**Joe Chapman**

- A. Mr. Chapman will be called to testify as the manager of the Tucker Springs hatchery concerning the matters covered in his deposition.
- B. Mr. Chapman is expected to offer the same testimony and opinions covered in his deposition.
- C. Mr. Chapman's testimony is based on his education, background, training and experience. His testimony is also based on the documents produced at his deposition.
- D. Mr. Chapman's testimony is based on his education, background, training and experience. His testimony is also based on the documents produced at his deposition.
- E. See subsections C and D above.
- F. See subsections C and D above.

**Interrogatory 11:** Your answer to Interrogatory 3 states Rangen would be in favor of a mitigation proposal that delivers mitigation water directly to the Martin-Curren Tunnel. Would you accept as mitigation the delivery of water directly to the Martin-Curren Tunnel from Tucker Springs, assuming the delivery system was satisfactory to you? If not, explain in detail why.

**Answer to Interrogatory 11:** Objection. This interrogatory is vague and ambiguous. Without waiving said objection, a letter from IGWA to the other Protestants in this matter dated May 23, 2014 [REDACTED]

[REDACTED] SPF's Report indicates that the earliest any water could be delivered through the pipeline is March 15, 2015, and there are serious problems with that timeline because of the plan's failure, among other things, to address injury to downstream users, access easements, collection box/system design at Tucker Springs, and federal and state environmental regulations and permit requirements. There are also serious problems related to fish viruses, pathogens and diseases at the Tucker Springs hatchery that are not present at the Rangen Hatchery.

**Interrogatory 12:** Your answer to Interrogatory 3 states Rangen would be in favor of a mitigation proposal that delivers mitigation water directly to the Martin-Curren Tunnel. Do you contend that its material injury cannot be mitigated by delivering mitigation water directly to the 14" pipe that transports water from the "Rangen Box" to the Small Raceways, as proposed in the report by SPF Water Engineering? If so, explain in detail way.

**Answer to Interrogatory No. 12:** Objection. This interrogatory is vague and ambiguous and does not accurately state Rangen's answer to Interrogatory 3. Without waiving said objection, the proposed tie-in at the Rangen Research Hatchery will actually further hinder and impair Rangen's ability to use water from the Martin-Curren Tunnel since Tucker Springs water will be piped uphill to the collection box using the same pipe that Rangen uses for Martin-Curren Tunnel water.

**Interrogatory 13:** Do you contend the Tucker Springs water that IGWA proposes to deliver to you as mitigation under the Second Mitigation Plan is not of suitable quality or temperature to mitigate your material injury? If so, explain in detail why.

**Answer to Interrogatory No. 13:** Rangen does not have sufficient information or data to determine whether the Tucker Springs water is of suitable quality or temperature to mitigate Rangen's material injury. IGWA has provided very little water quality and temperature data and no analysis of the impact on NPDES requirements for Billingsley Creek or Riley Creek. In addition, the deposition of Joe Chapman revealed that the Tucker Springs hatchery has serious problems with fish viruses, pathogens and viruses that are not present or are well controlled at the Rangen Research Hatchery. Dissolved oxygen readings at the Tucker Springs Hatchery raise serious concerns about the suitability of the water. The data provided shows that the temperature of the Tucker Springs water is also higher than at the Rangen Research Hatchery and IGWA has not provided any analysis of projected water temperature at the time of delivery through the pipeline.

**Interrogatory 14:** Do you measure the temperature or quality of water that flows through your fish hatchery? If so, please state the types of measurements taken, and for each type of measurement:

- a) How the measurement is taken.
- b) The type of instrument(s) is used.
- c) The location the water sample is taken from.
- d) Who takes the measurement.
- e) How often the measurement is taken.
- f) How the measurement is recorded.
- g) Whether the measurement is compiled or summarized.
- h) What records you have of the measurement.
- i) Whether you have any memos, letters, or other documents discussing the measurement.

**Answer to Interrogatory No. 14:** Yes. IGWA deposed Rangen staff at length concerning these matters in Rangen's delivery call proceeding and has in its possession the transcripts of the depositions of Doug Ramsey, Lonny Tate, and Dan Maxwell which address these issues. Rangen has also previously produced to IGWA extensive water quality records including, but not limited to: Rangen TSS Results July 92\_March 96 (RANGEN 001833-1882 produced on 9/6/12); Water Quality Test Results (RANGEN 0001883-1889 produced on 9/6/12); NPDES documentation (RANGEN 002271-3774 produced on 9/6/12); WQ Test (RANGEN 008186-8182 produced on 9/7/12); Water Quality Reports (RANGEN 0008387-8560 produced on 11/7/12); Water Quality

Testing (RANGEN 0009352-9356 produced on 11/7/12); WQ Reports (RANGEN 0009384-9748 produced on November 7, 2012); Water Quality Notebooks (RANGEN100826-101993 produced on November 28, 2012).

**Interrogatory 15:** What do you contend are the minimum and maximum water quality and water temperature parameters necessary to raise trout in your fish hatchery? Upon what data do you rely to support this contention?

**Answer to Interrogatory 15:** Objection. This interrogatory is vague and ambiguous. There are numerous water quality parameters and without more information Rangen cannot address this interrogatory.

#### REQUESTS FOR PRODUCTION OF DOCUMENTS

The documents requested below shall be produced for inspection and copying at the law office of Plaintiff's counsel (Racine Olson Nye Budge & Bailey, Chartered, 201 East Center Street, Pocatello, Idaho 83204). In lieu thereof, you may provide Plaintiff's counsel with full and complete copies of each document.

**Request for Production 1:** Produce true and correct copies of all documents referred to or relied upon in answer the interrogatories set forth above, and identify which interrogatory each document relates to.

**Response to Request for Production 1:** See documents specified in Answer to Interrogatory No. 14. These documents were previously produced to IGWA in Rangen's delivery call action. See documents listed in Dan McLaughter's Analysis which were produced to IGWA electronically on May 30, 2014. See articles outlined in Answer Interrogatory No. 11 which were produced to IGWA electronically on May 30, 2014.

**Request for Production 2:** Produce true and correct copies of all documents containing water quality or water temperature data from measurements taken at the Rangen Research Hatcher within the last 20 years.

**Response to Request for Production 2:** See documents specified in Answer to Interrogatory No. 14. These documents were previously produced to IGWA in Rangen's delivery call action.

BRODY LAW OFFICE, PLLC

By: \_\_\_\_\_  
J. Justin May

**VERIFICATION**

STATE OF IDAHO            )  
  ) ss  
County of Twin Falls        )

J. Wayne Courtney, being first duly sworn, on oath, deposes and says.

That he is the Executive Vice President of Rangen, Inc., that he has read the foregoing RANGEN, INC.'S RESPONSES TO IGWA'S FIRST SET OF DISCOVERY, knows the contents thereof, and the facts stated he believes to be true.

\_\_\_\_\_  
J. Wayne Courtney, Executive Vice President

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2014.

\_\_\_\_\_  
Notary Public for State of Idaho  
Residing at \_\_\_\_\_  
Commission Expires: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the \_\_\_\_ day of \_\_\_\_\_, 2014 she caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

Randall C. Budge Thomas J. Budge RACINE OLSON NYE BUDGE & BAILEY CHARTERED 201 E. Center St. P.O. Box 1391 Pocatello, ID 83204 rcb@racinelaw.net tjb@racinelaw.net	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"/>
John K. Simpson Paul Arrington BARKER ROSHOLT & SIMPSON, LLP	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/>

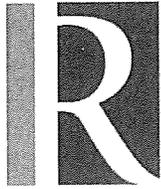
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Robyn M. Brody



# *Appendix C*



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**Confidential – Subject to I.R.E. Rule 408**

**Sent by Email and First Class Mail**

**TO: ALL PROTESTANTS**

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**FROM: Randall C. Budge/T.J. Budge – Attorneys for IGWA**

**DATE: May 23, 2014**

**RE: IGWA's Second Mitigation Plan to Rangen-Tucker Springs Project**

I am writing this letter and providing the attachments to each of you as Protestants to IGWA's Second Mitigation Plan to Rangen known as the Tucker Springs Project ("Project"). As you know, the Tucker Springs Project proposes to pump and pipe up to 10 cfs from IDFG's Tucker Springs Water Right No. 36-2055 to Rangen's facility at the head of Billingsley Creek to satisfy the 9.1 cfs mitigation obligation set forth in the Director's January 29, 2014 Order.

Based upon the Director's recent Order approving in part IGWA's First Mitigation Plan, IGWA has in place credits of 3.0 cfs, reducing the mitigation obligation from 9.1 to 6.1 cfs. These credits were approved as a result of IGWA's previous and ongoing CREP, conversion and recharge efforts above the rim. Accordingly, if the Tucker Springs project is completed,