

The following document represents the initial filing of IGWA's Second Motion in Limine and Notice of Hearing, dated June 3, 2014, without the contents of Appendix B which was removed because of its confidential information. The Appendix B was resubmitted with redacted text in IGWA's Corrected Second Motion in Limine and Notice of Hearing, dated June 3, 2014.

ORIGINAL

RECEIVED

JUN 03 2014

DEPARTMENT OF
WATER RESOURCES

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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 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*, 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 2nd Mitigation Plan scheduled to commence at 9a.m. on Wednesday, June 4, 2014 at the office of IDWR in Boise.

Dated this 3rd day of June, 2014.

IDAHO GROUND WATER
APPROPRIATORS, INC.

By: Randall C. Budge
Randall C. Budge

CERTIFICATE OF MAILING

I certify that on this 3rd 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>Original: Director, Gary Spackman Idaho Department of Water Resources PO Box 83720 Boise, ID 83720-0098 Attn: Deborah Gibson Deborah.Gibson@idwr.idaho.gov Kimi.white@idwr.idaho.gov</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>
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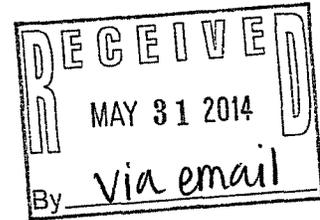


Appendix A

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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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Appendix B



Appendix C



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

Sent by Email and First Class Mail

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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,