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Attorneys for Rangen, Inc.

RECEIVED

JAN 10 2013

DEPARTMENT OF
WATER RESOURCES

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

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

Docket No. CM-DC-2011-004

**AFFIDAVIT OF DAN MAXWELL
IN SUPPORT OF RANGEN, INC.'S
MOTION FOR PARTIAL
SUMMARY JUDGMENT RE:
MATERIAL INJURY**

STATE OF IDAHO)
) ss.
County of Twin Falls)

DAN MAXWELL, being sworn upon oath, deposes and states as follows:

1. My name is Dan Maxwell. I went to work for Rangen, Inc. in approximately 1988. I have worked for Rangen for about 24 years. I am a fish culturist. I am responsible for raising fish at the Rangen Aquaculture Research Center ("Research Hatchery"). The matters contained in this affidavit are based on my personal knowledge, and I am over the age of eighteen (18) years old.

2. Attached hereto as Exhibit A is a diagram showing the layout of the Research Hatchery.

3. I am responsible for taking water measurements at the Research Hatchery and have been taking them for about 13 years. I usually take the measurements once a week and I have been taking them in the same manner for the past 13 years.

4. In order to measure all of the water that flows through the Research Hatchery, I take the measurements at two locations and add them together. One measurement is taken at the bottom of the top set of the CTR ponds shown as shown as a "Measure Point" on Exhibit A. There are three dam boards at that location. I take the measurement by placing a metal, two-inch yardstick at the top dam board facing the water as it flows over the board. I measure the water to the nearest 1/8 inch then record the measurement on a notepad.

5. I take the other measurement at the Lodge Pond dam board which is also shown as a "Measure Point" on Exhibit A. A photograph of this "Measure Point" is attached hereto as Exhibit C. I measure the water flowing over the Lodge Pond dam board just as I do at the CTR ponds. I place a two-inch, metal yardstick in the water at the dam board to measure the water as

it flows over the dam board. I measure the water to the nearest 1/8 inch and then record the measurement on a notepad.

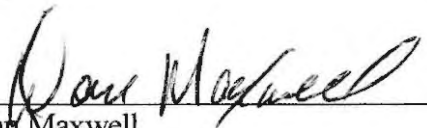
6. After I record the measurements on a notepad, I use a water measurement and flow calculation table to convert the water measurements from inches to cubic feet per second. A copy of the table is attached hereto as Exhibit D (Bates No. RANGEN013292). I then record the water measurements in cubic feet per second in a chart called Hatchery Water Measurements. A copy of that chart as it existed in July 2012 is attached hereto as Exhibit E.

7. After I record the weekly measurements on the Hatchery Water Measurements chart, the Research Hatchery manager then uses the chart to record the data in a computerized spreadsheet that shows Rangen's historical flows. Since there is no Research Hatchery manager at the present time, this job is done by Douglas W. Ramsey, a Research Scientist at the facility.

8. During the time I have worked for Rangen and have taken measurements for Rangen, I notice that the flows for Rangen decrease when the irrigation season begins and the flows then increase when the irrigation season ends.

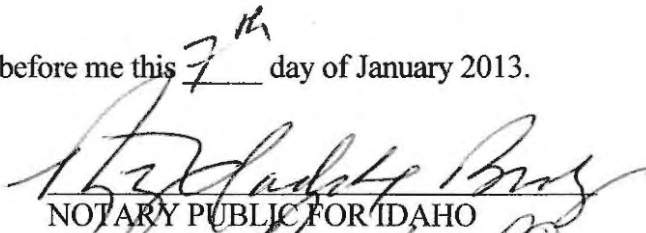
FURTHER YOUR AFFIANT SAYETH NOT.

DATED this 7th day of January 2013.


Dan Maxwell



SUBSCRIBED AND SWORN to before me this 7th day of January 2013.


NOTARY PUBLIC FOR IDAHO
Residing at: Boise, ID
Commission expires: 11/27/18

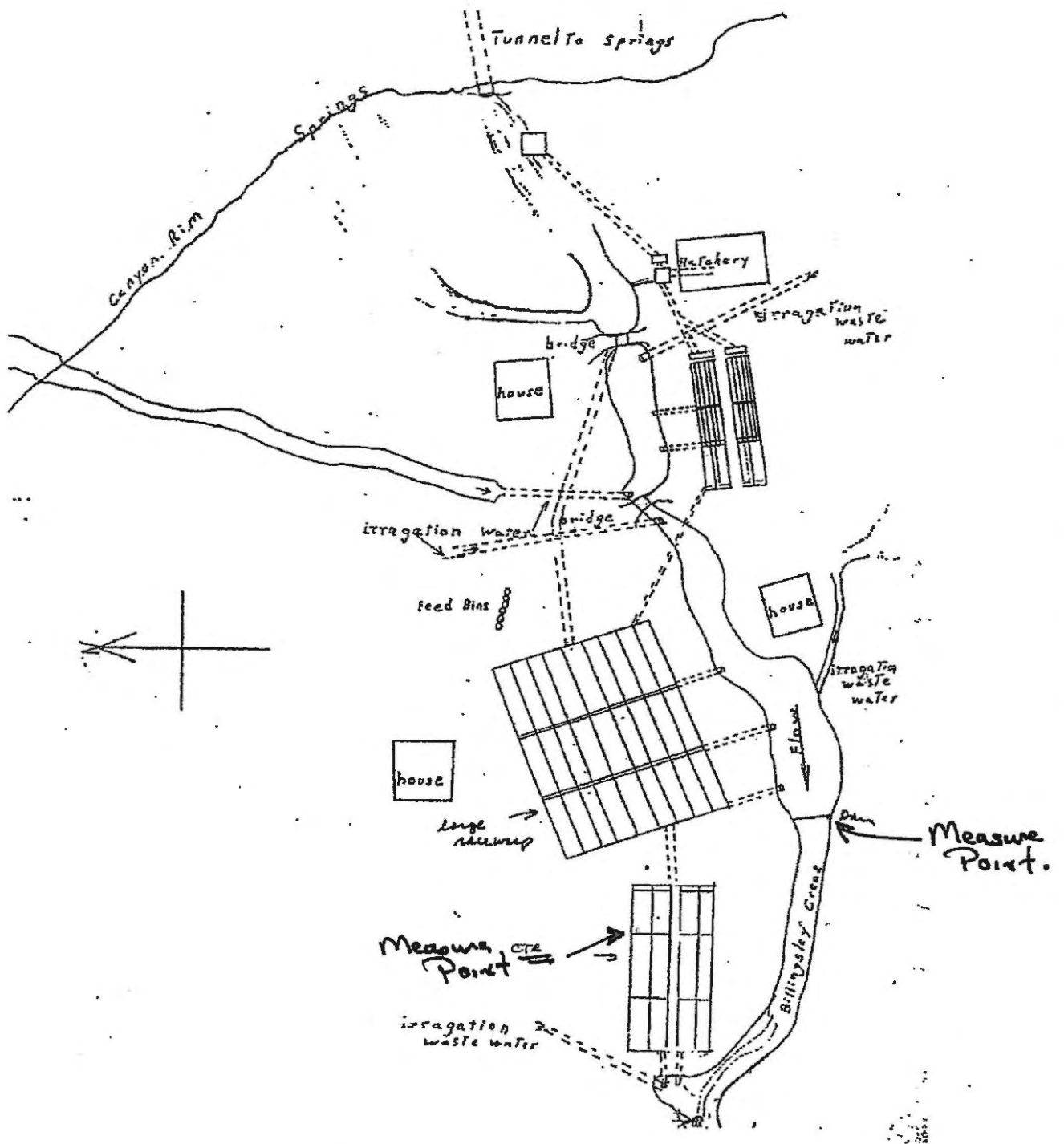
CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the ____ day of January, 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 ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
Garrick Baxter Chris Bromley Idaho Department of Water Resources P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov chris.bromley@idwr.idaho.gov	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
Randall C. Budge Candice M. McHugh Thomas J. Budge RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED P.O. Box 1391 101 South Capitol Blvd, Ste 300 Boise, ID 83704-1391 Fax: 208-433-0167 rcb@racinelaw.net cmm@racinelaw.net tjb@racinelaw.net	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
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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 tlr@idahowaters.com jks@idahowaters.com	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
C. Thomas Arkoosh Arkoosh Eiguren P.O. Box 2900 Boise, ID 83702 Tom.arkoosh@aelawlobby.com	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, ID 83318 wkf@pmt.org	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
Jerry R. Rigby Hyrum Erickson Robert H. Wood Rigby, Andrus & Rigby, Chartered 25 North Second East Rexburg, ID 83440 jrigby@rex-law.com herickson@rex-law.com rwood@rex-law.com	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐

Fritz X. Haemmerle



Rangen Hatchery Facilities
Hagerman, Idaho

PLAINTIFF'S
EXHIBIT

tabbles

A



**PLAINTIFF'S
EXHIBIT**

tabbles

C

Appendix 2. SOP 400.1 Rangen Hatchery Water Measurements and Flow Calculations

INCHES		LG RW	CTR	SM	DAM
1	0	0.25	0.33	0.23	0.28
1	1/8	0.30	0.40	0.27	0.33
1	1/4	0.35	0.47	0.31	0.39
1	3/8	0.41	0.54	0.36	0.45
1	1/2	0.47	0.61	0.41	0.51
1	5/8	0.52	0.69	0.47	0.57
1	3/4	0.59	0.77	0.52	0.64
1	7/8	0.65	0.86	0.58	0.71
2	0	0.72	0.95	0.64	0.78
2	1/8	0.79	1.04	0.70	0.86
2	1/4	0.93	1.22	0.82	1.01
2	3/8	1.00	1.32	0.89	1.09
2	1/2	1.08	1.42	0.96	1.18
2	5/8	1.16	1.53	1.03	1.26
2	3/4	1.24	1.63	1.10	1.35
2	7/8	1.32	1.74	1.17	1.44
3	0	1.40	1.85	1.24	1.53
3	1/8	1.48	1.96	1.32	1.62
3	1/4	1.57	2.07	1.40	1.72
3	3/8	1.66	2.19	1.47	1.81
3	1/2	1.75	2.31	1.55	1.91
3	5/8	1.84	2.43	1.63	2.01
3	3/4	1.93	2.55	1.72	2.11
3	7/8	2.12	2.80	1.89	2.32
4	0	2.22	2.93	1.97	2.43
4	1/8	2.32	3.06	2.06	2.53
4	1/4	2.42	3.19	2.15	2.64
4	3/8	2.52	3.33	2.24	2.75
4	1/2	2.62	3.46	2.33	2.87
4	5/8	2.73	3.60	2.42	2.98
4	3/4	2.83	3.74	2.52	3.10
4	7/8	2.94	3.88	2.61	3.21
5	0	3.05	4.02	2.71	3.33
5	1/8	3.16	4.17	2.80	3.45
5	1/4	3.27	4.31	2.90	3.57
5	3/8	3.38	4.46	3.00	3.69
5	1/2	3.49	4.61	3.10	3.82
5	5/8	3.61	4.76	3.20	3.94
5	3/4	3.72	4.92	3.31	4.07
5	7/8	3.84	5.07	3.41	4.20
6	0	3.96	5.23	3.52	4.33
6	1/8	4.08	5.38	3.62	4.46
6	1/4	4.20	5.54	3.73	4.59
6	3/8	4.32	5.70	3.84	4.72
6	1/2	4.44	5.86	3.95	4.86
6	5/8	4.57	6.03	4.06	4.99
6	3/4	4.69	6.19	4.17	5.13
6	7/8	4.82	6.36	4.28	5.27

** table adjusted for measurement over 2" boards

PLAINTIFF'S
EXHIBIT

tabbies

	HATCHERY WATER MEASUREMENTS					B // B+D	
2012	Week 1	Week 2	Week 3	Week 4	Week 5	Average	
JAN	2/ 12.55 12.64 2.57	9/ 14.77 12.36 3.33	16/ 14.82 13.53 1.91	23/ 14.83 13.85 1.62	30/ 14.22 12.04 1.72	12.88	15.31
FEB	6/ 13.82 11.25 2.43	13/ 14.02 11.68 2.01	20/ 13.34 11.24 2.11	27/ 13.53 10.97 2.11		11.28	13.44
MAR	5/ 12.85 11.24 1.91	12/ 12.27 10.80 1.91	19/ 12.93 12.94 1.44	26/ 12.45 11.36 1.53		11.58	13.27
APR	2/ 12.26 10.94 1.91	9/ 12.25 11.08 1.44	16/ 12.45 11.08 1.53	23/ 11.69 10.53 1.22	30/ 12.07 10.53 1.53	10.83	12.45
MAY	7/ 11.88 10.80 1.72	14/ 10.77 10.11 2.43	21/ 11.65 10.67 1.35	28/ 11.70 10.94 1.01		10.63	12.25
JUN	4/ 12.16 10.94 1.62	11/ 10.86 10.94 2.43	18/ 11.41 10.94 1.53	25/ 11.42 10.94 1.35		10.94	12.67
JUL	2/ 10.97 10.94 1.35	9/ 11.35 11.08 1.01	16/ 11.24 10.94 0.86	23/	30/		
AUG							
SEP							
OCT							
NOV							
DEC							

EXHIBIT E

RANGEN00001