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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  
*Attorney for Rangen, Inc.*

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

*Via email*

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

Docket No. CM-DC-2011-004

**RANGEN, INC.'S MOTION FOR  
PROTECTIVE ORDER RE: OTHER  
FACILITIES**

Rangen, Inc. ("Rangen"), through its attorneys, hereby moves the Director to enter an Order pursuant to Rule 532 of the Rules of Procedure of the Idaho Department of Water Resources and Rule 26(c) of the Idaho Rules of Civil Procedure that Rangen has no obligation to provide further answers to the Interrogatories or respond to the Requests for Production set forth in IGWA's Third Set of Discovery. The information sought by IGWA is not reasonably calculated to lead to the discovery of admissible evidence and the production of the evidence is unduly burdensome. The Affidavits of Joy Kinyon and Robyn M. Brody have been submitted in support of this Motion.

## I. BACKGROUND

1. On December 6, 2012, IGWA served Rangen with its Third Set of Discovery requesting that Rangen provide extensive information related to Rangen's lease of fish propagation facilities identified by IGWA as the "Woods Farm Ponds" and "Decker Springs Farms Ponds" and produce all of its records related to those facilities. See Exhibit 1 to Brody Aff for a copy of IGWA's Third Set of Discovery.
2. Specifically, IGWA requested that Rangen answer the following interrogatories:

**INTERROGATORY NO. 34:** Please describe in detail the nature of Rangen's business operation, ownership, water use, research, or other feed or fish propagation practice at Woods Farm Ponds and Decker Springs Farm Ponds including fish production numbers, identify the manager and/or operator of each facility and the water rights that supply each facility.

See Exhibit 1 to Brody Aff.

**INTERROGATORY NO. 35:** Please supplement your answer to Interrogatories No. 21 and 22 and provide the requested information pertaining to each of the facilities identified in Interrogatory No. 34.

Id.

3. Interrogatory Nos. 21 and 22 state:

**INTERROGATORY NO. 21:** List the name and address of all fish rearing, hatchery, processing, brooding or other such type of facility owned in whole or in part or operated or managed by Rangen, and for each such facility identify its location, the name(s) of its operator(s), and the water rights that supply the facility.

See Exhibit 2 to Brody Aff for a copy of IGWA's First Set of Discovery.

**INTERROGATORY NO. 22:** For the Rangen facility, describe (using one or more aerial photos if desired) the locations of all of the following items:

- a. Spring outlets that supply the Water Rights.
- b. Points of diversion of the Water Rights.
- c. Points of discharge of the Water Rights.

- d. Course(s) of water flow of the Water Rights between the point(s) of diversion and point(s) of discharge.
- e. Devices used to measure the quantity or quality of water flow.

4. In addition to the information outlined above, IGWA sent Rangen the following Request for Production:

**Request for Production No. 20:** Please produce all documents, including but not limited to electronic files and data files relevant to your Answer to Interrogatory Nos. 34 and 35.

Although Request for Production No. 20 is somewhat difficult to interpret because of its form, it appears IGWA is demanding paper and electronic copies of all documents related to Rangen's:

- a. business operations at Woods and Decker Springs
- b. ownership of Woods and Decker Springs
- c. water use at Woods and Decker Springs
- d. research at Woods and Decker Springs
- e. fish propagation and fish propagation practices at Woods and Decker Springs
- f. water rights at Woods and Decker Springs
- g. spring outlets that supply the water rights at Woods and Decker Springs
- h. points of diversion of the water rights at Woods and Decker Springs
- i. Points of discharge of the water rights at Woods, Decker Springs and First Ascent
- j. course(s) of water flow of the Water Rights between the point(s) of diversion and point(s) of discharge at Woods, Decker Springs and First Ascent

- k. devices used to measure the quantity or quality of water flow at Woods, Decker Springs and First Ascent.

See Exhibit 1 to Brody Aff.

5. In its response to IGWA's Third Discovery Request, Rangen explained to IGWA that the only fish propagation facility owned or operated by Rangen is the Research Hatchery which is fed by the water rights at issue in this case and objected to providing the information requested for the facilities identified by IGWA because it is not reasonably calculated to lead to the discovery of admissible information. See Exhibit 2 to Brody Aff for a copy of Rangen's Responses.
6. On January 15, 2012, IGWA sent Rangen a letter demanding that Rangen produce the information requested and expanded the scope of the request to include a facility called "First Ascent". See Exhibit 3 to Brody Aff for a copy of the demand letter.
7. IGWA demanded that all information be produced no later than Friday, January 18, 2013. IGWA again cited the imminent deadline for expert rebuttal reports presumably to argue later that it has been unfairly prejudiced by Rangen's refusal and that the hearing date needs to be moved.

## **II. STANDARD**

8. Rule 520.02 of the Rules of Procedure of the Idaho Department of Water Resources provides that discovery in this matter is generally governed by the Idaho Rules of Civil Procedure.
9. When analyzing a dispute under the Rules of Civil Procedure it is important to recognize that the stated purpose of the Rules is to secure the ". . . just, speedy and inexpensive

determination of every action and proceeding.” See Rule 1(a) of the Idaho Rules of Civil Procedure.

10. Rule 26(c) is the Rule that applies to motions for protective orders. The Rule provides in relevant part:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matter relating to a deposition, the court in which the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; ... (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters . . . .

I.R.C.P. 26(c).

### **III. ARGUMENT**

11. Rangen is mindful of an off-the-record discussion on August 15, 2012 in which the Director reminded the parties of the broad scope of the discovery rules. See, e.g., Transcript, p. 15, lines 12-25 (attached as Exhibit 5 to Brody Aff). Since that time Rangen, at its own expense, has produced nearly 20,000 documents to IGWA that include, but are not limited to: water right records dating back to the 1960s; old photographs and surveys; water measurement records dating back to the 1960s; fish production records for the past twenty-five years; feed records for the past twenty-five years; mortality records for the past twenty-five years; business contracts; sales data and fish disposition records for the past twenty-five years, decades of water quality records, and EPA compliance plans and reports. See, e.g., Subpoenas Duces Tecum issued by Director to Rangen employees on August 15, 2012 (attached as Exhibit 1 to Brody Aff in Opposition to Motion in Limine to Exclude Brock). Rangen allowed the intervenors and its experts to inspect the Research Hatchery and review decades of Rangen’s research records. See Exhibit 2 to Brody Aff in Opposition to Motion in Limine to Exclude

Brock). To date, Rangen has spent over \$4,300.00 with Ascensio Document Management Solutions to scan the documents that it has produced and it has spent over \$7,300.00 with a forensic computer analyst to obtain computer files from old 5" and 3" floppy disks. See Brody Aff at ¶ 4. Rangen's IT specialist has even cobbled together old computers to obtain electronic copies of spreadsheets and documents, many of which were previously produced by Rangen in paper form. See, e.g., letter from Robyn M. Brody to Sarah Klahn dated October 5, 2012 (this letter was previously filed with the Department). Rangen has gone to great lengths and expense to comply with IGWA's expansive discovery requests even though most of the requests have dealt with fish production records and research records that Rangen contends are not relevant to the issues to be decided by the Director.

12. *While the scope of the discovery rules is broad, it is not without limit.* The matters being inquired into have to be "reasonably calculated to lead to admissible evidence" and protective orders may be entered to prevent harassment, oppression and undue burden and expense. See I.R.C.P. 26(b)(1) and (c). IGWA's Third Set of Discovery is not reasonably calculated to lead to admissible evidence and it is oppressive, unduly burdensome and borders on harassment.
13. IGWA's Third Set of Discovery essentially requires Rangen to provide the same type of information that it has produced relative to its Hagerman Research Hatchery, but, this time, the information is for facilities that Rangen does not even have the right to operate. To explain Rangen's position, there are a few points that need to be clarified:

- a. The only fish propagation facility that is owned or operated by Rangen is the Research Hatchery that is supplied by the water rights at issue. Rangen does not have the right to use any other fish propagation facilities.
  - b. In approximately 1989, Rangen contracted with the Woods family to raise trout for Rangen at a fish propagation facility near Rangen's Research Hatchery. Kinyon Aff at ¶ 2. Rangen supplied the fish to the Woods family and paid a price for the weight "gain" that the fish made over a period of time. Id. In approximately 1992, Rangen began leasing the fish propagation facility from the Woods family to raise its own trout. Id. at ¶ 3. *Rangen terminated that relationship on November 30, 2003 – nearly ten years ago and has no right to use the Woods propagation facility.* Id.
  - c. In the past, Rangen leased the right to use warm water at a facility called "First Ascent." Rangen had a small research building constructed at that facility to conduct warm water tilapia research that could not be conducted at the Research Hatchery because it is a cold water facility suitable for trout, not tilapia. Id. at ¶ 5. Rangen terminated its use of the First Ascent facility in February 2010. All research documents related to work done at the First Ascent facility were in the same location as Rangen's other research documents and IGWA's attorney and its expert, Tom Rogers, had access to those documents. Id.
14. None of the information or documents requested by IGWA has anything to do with the issues to be decided in this case nor is the information reasonably calculated to lead to admissible evidence. By conducting extensive discovery concerning Rangen's historical fish production and research, IGWA appears to be positioning itself to make the

argument that showing a decrease in water flow is not enough to show material injury; instead, Rangen must be able to produce more fish and sell them at a profit. Rangen explained in its recent Response in Opposition to Motion in Limine to Exclude Brock that the Idaho Supreme Court recently rejected IGWA's position "material injury" argument in Clear Springs Foods, Inc. v. Spackman, 150 Idaho 790, 810-11, 252 P.3d 71, 91-92 (2011).

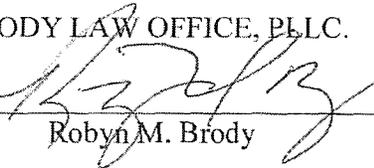
15. The bottom line is that Rangen's past use of other facilities is not relevant to any of the issues to be decided by the Director and is not reasonably calculated to lead to the discovery of admissible information. IGWA's request for production is unduly burdensome and oppressive and borders on harassment. As such, Rangen's Motion for Protective Order should be granted.

### **III. CONCLUSION**

For the foregoing reasons, Rangen respectfully requests that the Director enter an Order that Rangen has no obligation to provide further answers to the Interrogatories or respond to the Requests for Production set forth in IGWA's Third Set of Discovery.

DATED this 21<sup>st</sup> day of January, 2013.

BRODY LAW OFFICE, PLLC.

By: 

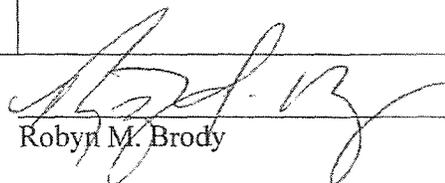
Robyn M. Brody

## CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 21<sup>st</sup> day of January, 2013 she caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

<b>Original:</b> Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 <a href="mailto:Deborah.Gibson@idwr.idaho.gov">Deborah.Gibson@idwr.idaho.gov</a>	Hand Delivery <input type="checkbox"/> U.S. Mail <input checked="" 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 Boise, Idaho 83720-0098 <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a> <a href="mailto:chris.bromley@idwr.idaho.gov">chris.bromley@idwr.idaho.gov</a>	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"/>
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 <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a> <a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a> <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a>	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"/>
Sarah Klahn Mitra Pemberton WHITE & JANKOWSKI Kittredge Building, 511 16th Street, Suite 500 Denver, CO 80202 <a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a> <a href="mailto:mitrap@white-jankowski.com">mitrap@white-jankowski.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 checked="" type="checkbox"/>
Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 <a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a>	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"/>
John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson, L.L.P.	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/>

<p>195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 <a href="mailto:lt@idahowaters.com">lt@idahowaters.com</a> <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a></p>	<p>E-Mail <input checked="" type="checkbox"/></p>
<p>C. Thomas Arkoosh Arkoosh Eiguren P.O. Box 2900 Boise, ID 83702 Tom.arkoosh@aelawlobby.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 <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></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 &amp; Rigby, Chartered 25 North Second East Rexburg, ID 83440 <a href="mailto:jrigby@rex-law.com">jrigby@rex-law.com</a> <a href="mailto:herickson@rex-law.com">herickson@rex-law.com</a> <a href="mailto:rwood@rex-law.com">rwood@rex-law.com</a></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>

  
Robyn M. Brody