Randall C. Budge, ISB #1949
Candice M. McHugh, ISB #5908
Thomas J. Budge, ISB #7465
RACINE OLSON NYE
BUDGE & BAILEY, CHARTERED
101 S. Capitol Blvd., Suite 300
Boise, Idaho 83702
Telephone: (208) 395-0011
rcb@racinelaw.net
cmm@racinelaw.net
tjb@racinelaw.net

Attorneys for Idaho Ground Water Appropriators, Inc.

BEFORE DEPARTMENT OF WATER RESOURCES

STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 & 36-07694 (RANGEN, INC.)	Docket No. CM-DC-2011-004 **IGWA'S RESPONSE TO RANGEN'S MOTION FOR PARTIAL SUMMARY JUDGMENT RE: MATERIAL INJURY**

Idaho Ground Water Appropriators, Inc. (IGWA) submits this response to *Rangen, Inc.'s Motion for Partial Summary Judgment Re: Material Injury* ("*Rangen's Motion*") filed with the Idaho Department of Water Resources (IDWR) on January 10, 2013. This response is filed pursuant to Rule 565 of the Rules of Procedure of the Department of Water Resources and Rule 56 of the Idaho Rules of Civil Procedure. It is supported by the expert reports filed with the IDWR on December 21, 2012, and by affidavits of Candice M. McHugh, Charles Brendecke, Bern Hinckley, and Tom Rogers filed herewith.

SUMMARY OF ARGUMENT

Rangen's Motion asks the Director to rule that "there are no genuine issues of material fact that the use of groundwater by junior users is causing material injury to Rangen's use of its decreed rights under water right no's [sic] 36-02551 and 36-07694, and Rangen is entitled to a partial finding as a matter of law." (*Rangen's Mot.* 2.) *Rangen, Inc.'s Brief in Support of Motion for Partial Summary Judgment Re: Material Injury* ("*Rangen's Brief*") adds an additional request

that "if the intervenors, Idaho Ground Water Appropriators, Inc. ("IGWA"), the City of Pocatello, and Fremont-Madison Irrigation District, wish to move forward with any defense, including futile call, that it is their burden to establish these defenses as a matter of law, by clear and convincing evidence." (*Rangen's Br.* 2.)

Rangen's motion for summary judgment concerning material injury must be denied because Rangen has failed to prove the absence of any genuine issue of material fact. Contrary to Rangen's assertion, depletion to the water supply does not by itself prove material injury. Material injury is measured by the impact to the senior's actual use of water, not merely by the impact to the available water supply. The expert reports filed previously with the IDWR demonstrate that there are genuine issues of material fact as to whether Rangen legitimately needs additional water to accomplish its beneficial use (CM Rules 42.01.a, 42.01.d, 42.01.e), and whether its water needs (if any) could be met by employing alternate means of diversion, conveyance efficiencies, and conservation practices (CM Rule 42.01.g and 42.01.h).

Rangen's motion for summary judgment concerning the clear and convincing evidence standard must also be denied because not all issues or arguments that may be considered "defenses" are subject to that heightened standard of evidence. For example, arguments concerning the interpretation of Rangen's decree and arguments involving reasonable use of water are not subject to a clear and convincing standard. Therefore, the Director must decline to rule as a matter of law that all defenses are subject to a clear and convincing standard.

SUMMARY JUDGMENT STANDARD

A motion for summary judgment should be granted only if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." I.R.C.P. 56(c). The burden at all times is upon the moving party (Rangen) to prove the absence of a genuine issue of material fact. *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865 (1969). When deciding a motion for summary judgment, the court must draw all reasonable factual inferences and conclusions in favor of the non-moving party (IGWA). *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 529 (1994). It is not permitted to weigh the evidence or to resolve controverted factual issues. *Bybee v. Clark,* 118 Idaho 254, 257 (1990). All doubts are to be resolved against the moving party, and the motion must be denied if the evidence is such that conflicting inferences may be drawn therefrom, and if reasonable people might reach different con-

clusions. *Doe v. Durtschi,* 110 Idaho 466 (1986).

ANALYSIS

I. Rangen has not proven that there are no genuine issues of material fact concerning material injury.

To prevail at summary judgment on the issue of material injury, Rangen must at a minimum prove that there are no genuine issues of material fact concerning the eight material injury factors listed in CM Rule 42. (Because the list is non-exclusive, the Director could determine that other factors preclude summary judgment even if Rangen were to prove no genuine issues of fact concerning the listed factors.) Remarkably, *Rangen's Brief* addresses only three of the factors: (i) the effort and expense to divert water from the source (CM Rule 42.01.b; *Rangen's Br.* 12-14), (ii) the existence of measuring and recording devices (CM Rule 42.01.f; *Rangen's Br.* 14-16), and (iii) whether junior-priority groundwater rights affect the quantity and timing of when water is available to Rangen (CM Rule 42.01.c; *Rangen's Br.* 16-18). Rangen's failure to even mention the other material injury factors is troubling since there were already facts in the record at the time Rangen filed its motion for summary judgment that directly address the remaining factors and that contravene Rangen's allegation of material injury.

Rangen contends that there is no dispute of fact that its 1977 water right (36-7694) is short of water. (*Rangen's Br.* 4.) This allegation is controverted by Director Dreher's finding that "there was not water available for appropriation at the time or subsequent to the date of appropriation for water right 36-07694." (*Order* at 12, Feb. 25, 2004; *Second Amended Order* at 14, May 19, 2005.) It is also controverted by the expert report of Chuck Brendecke which states that "flows from the Martin-Curren Tunnel . . . have never been high enough to provide any water to Rangen's 1977 priority (36-7694)" (*Brendecke Report* 3-5), and the expert report of Gregory Sullivan which states, "Based on Rangen's diversion records, there was no flow available in 1977 for Rangen to appropriate on top of its 1962 water right" (*Sullivan Report* 12).

One of the factors Rangen fails to address is CM Rule 42.01.a, which instructs the Director to consider, "The amount of water available in the source from which the water right is diverted." This is an important material injury factor since the expert report of Bern Hinckley explains that the Curren Tunnel is a horizontal well that diverts groundwater from the ESPA, and that there is ample groundwater available in the ESPA to supply Rangen if Rangen will simply

improve its means of diversion. (*Hinckley Report* 28-30.) The expert report of Rangen's own experts Chuck Brockway, David Colvin, and Jim Brannon verify that Rangen is supplied by groundwater from the ESPA. (*BCB Report* 10.)

While Rangen does not cite CM Rule 42.01.a, it does contend that Rangen is supplied by "spring water," apparently in an effort to contest the experts cited above which uniformly agree that Rangen is supplied by groundwater. (*Rangen's Br.* 3.) Alleging that Rangen is supplied by spring water, however, does not prove the absence of any genuine issue of material fact. In addition to the expert reports cited above, the SRBA decrees for Rangen's water rights identify the source as "Martin-Curren Tunnel" (not "spring water"). Thus, there are genuine issues of disputed fact as to the source from which Rangen's water rights are diverted, and the amount of water available from the source.

Rangen also fails to address CM Rule 42.01.d, which instructs the Director to consider, "the rate of diversion compared to the acreage of land served, the annual volume of water diverted, the system diversion and conveyance efficiency, and the method of irrigation water application." This factor refers to irrigation, but is analogous to aquaculture (the list of factors in CM Rule 42 is non-exclusive). Applied to aquaculture, it asks how much water is needed to meet Rangen's beneficial use under reasonable efficiencies. Similarly, CM Rule 42.01.e, which Rangen also fails to address, instructs the Director to consider, "The amount of water being diverted and used compared to the water rights." These factors gives relevance to the rate of diversion compared to the amount of fish produced or research performed, and the volume of water reasonably needed to meet Rangen's beneficial use.

Rangen does not address CM Rules 42.01.d or 42.01.e but instead provides the following conclusory, factually unsupported statement: "Rangen is currently putting all of its water to a beneficial use, for purposes set forth in its decrees, and it has the ability to continue to put more water to a beneficial use if it had more water." (*Rangen's Br.* 5.) This statement tells us nothing of how Rangen is beneficially using water and how much water is reasonably needed to accomplish its beneficial use. Moreover, it is controverted by the expert report of Tom Rogers filed December 21, 2012, which explains that "Rangen's current fish production is constrained by a contract with IPC," and that "Rangen has unused rearing space where they could rear additional fish" (*Rogers Report* 14), and by the expert report of Gregory Sullivan which explains that Rangen is currently producing about half as many pounds of fish per cfs as it did in the 1970s

and 1980s. (*Sullivan Report* 16, Fig. 4-2.) Rangen's failure to efficiently use its current water supply raises genuine issues of material fact as to whether Rangen legitimately needs additional water to accomplish its beneficial use.

Rangen also fails to address CM Rule 42.01.g, which instructs the Director to consider, "The extent to which the requirements of the holder of a senior-priority water right could be met with the user's existing facilities and water supplies by employing reasonable diversion and conveyance efficiency and conservation practices." The expert report of Greg Sullivan explains that Rangen could fully operate the Small Raceways with its current water supply, but that Rangen has failed to capture and utilize all available flows in the Small Raceways. (*Sullivan Report* 20.) The expert report of Charles Brendecke also concludes that "it is feasible to pump water form Billingsley Creek to the small raceways from the same point where the diversion to the large raceways is made. This would increase the efficiency of use of Rangen's existing physical supplies . . . ." (*Brendecke Report* 2-5). The expert report of Tom Rogers explains that Rangen could reasonably pump-back and re-use water within its facility, as do a number of other fish hatcheries in Idaho. (*Rogers Report* 5 and Table 2.4.) There is additional evidence provided by Rangen itself that indicates this is a reasonable means of meeting its water needs. (McHugh Aff. at pp. 1-2, Exhibits A – C)

Rangen also fails to address CM Rule 42.01.h, which instructs the Director to consider, "The extent to which the requirements of the senior-priority surface water right could be met using alternate reasonable means of diversion or alternate points of diversion, including the construction of wells." As the Idaho Supreme Court stated in *Baker vs. Ore-Ida*, 95 Idaho 575, 584 (1973), "a senior appropriator is not absolutely protected in either his historic water level or his historic means of diversion." And as noted above, the expert report of Bern Hinckley indicates that Rangen could substantially augment its water supply by drilling horizontal or vertical wells that reach to reasonable groundwater levels, just as others do. (*Hinckley Report* 28-30.)

Thus, Rangen has failed to prove the absence of any genuine issues of material fact as to whether Rangen actually needs the maximum decreed rate of diversion authorized under its water right to accomplish its beneficial use (CM Rules 42.01.a, 42.01.d, 42.01.e), and whether its water needs (if any) could be met by employing alternate means of diversion, conveyance efficiencies, and conservation practices (CM Rule 42.01.g and 42.01.h). Therefore, summary judgment is not warranted on the issue of material injury.

Rangen's failure to address multiple material injury factors that are explicitly listed in CM Rule 42, without attempting to explain why they should not be considered by the Director, calls into question Rangen's compliance with Rule 11(a)(1) of the Idaho Rules of Civil Procedure. Rule 11(a)(1) requires that all motions be "well grounded in fact and [] warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law." It prohibits the filing of motions for "any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation." *Id.* While Rangen is free to file motions for summary judgment, it has a duty under Rules 56(c) and 11(a)(1) to at a minimum present facts that attempt to prove each element of the claim for which it seeks summary judgment. Rangen's failure to address multiple material injury factors that are explicitly listed in CM Rule 42 does not meet the minimum requirements of Rule 11(a)(1), particularly since there are already facts in the record contravening Rangen's position as to such factors and since all reasonable inferences are drawn in favor of the non-moving parties.

II. Depletion to the water supply does not automatically result in material injury, and Rangen is barred by the doctrine of *res judicata* from re-litigation of that issue.

The tenor of *Rangen's Brief* gives the impression that Rangen did not address some of the material injury factors based on its position that they are not relevant to the Director's determination of material injury. This is difficult to imagine since Rangen was a party to the Idaho Supreme Court decision in *American Falls Reservoir District No. 2 v. Idaho Dept. of Water Resources*, 143 Idaho 862 (2007) ("*AFRD2*), that specifically upheld the constitutionality of CM Rule 42 and confirmed that the Director has the duty to consider the senior's current use of and need for water when determining material injury in response to a water delivery call. Nonetheless, the overriding theme of *Rangen's Brief* is that reduced water flow alone proves material injury. Rangen's position that depletion equals injury was reinforced in its recent *Reply in Support of Motion for Protective Order and Request for Status Conference* (February 2, 2013) which asserts point blank "that 'need' is not a proper focus of this call." *Id.* at 2, ¶ 2.

Contrary to Rangen's position, material injury is measured, at least in part, by the impact to the senior's actual beneficial use and need for water, not simply by the impact to the available water supply. The CM Rules define material injury as "impact upon the exercise of a water right caused by the use of water by another person as determined in accordance with Idaho law, as set forth in Rule 42." CM Rule 10.14 (emphasis added). The phrase "exercise of a water right" re-

fers to the *use* of water. A water right is not a possessory right; it is a right to use water owned by the people of the state. *Coulsen v. Aberdeen-Springfield Canal Co.*, 39 Idaho 320, 323-24 (1924). The Idaho Constitution states, "Priority of appropriation shall give the better right as between those using the water." Idaho Const. art. XV, § 3 (emphasis added). Idaho Code section 42-104 reads, "The appropriation must be for some useful and beneficial purpose, and when the appropriator or his successor in interest ceases to use it for such purpose, the right ceases."

Accordingly, the material injury factors listed in CM Rule 42 go beyond depletion to the water supply, and instruct the Director to consider "[t]he amount of water being diverted and used compared to the water rights." CM Rule 42.01.e (emphasis added). They also instruct him to determine whether the senior's water needs could be met without resorting to curtailment by using water more efficiently, implementing reasonable conservation practices, or changing its means of diversion. (CM Rules 42.01.g and 42.01.h.) Under the CM Rules, it is not enough to demonstrate material injury by showing only that the senior is receiving less than the maximum rate of diversion authorized under its water right. There must be evidence that the senior actually needs additional water to accomplish his or her beneficial use, and that those needs cannot be met with reasonable improvements to the senior's diversion or conveyance system.

The material injury factors of CM Rule 42 are grounded in a long line of Idaho Supreme Court decisions that limit senior water users to the amount of water reasonably needed to accomplish their beneficial uses. More than a century ago the Court declared, "The theory of the law is that the public waters of this state shall be subjected to the highest and greatest duty." *Niday v. Barker*, 16 Idaho 73, 79 (1909). The same year, in *Farmer's Co-operative Ditch Co. v. Riverside Irrigation District, Ltd.*, 16 Idaho 525, 535 (1909), the Court stated, "Economy must be required and demanded in the use and application of water." In *Washington State Sugar Co. v. Goodrich*, 27 Idaho 26, 44 (1915), the Court explained it this way:

> It is the settled law of this state that no person can, by virtue of a prior appropriation, claim or hold more water than is necessary for the purpose of the appropriation . . . . A prior appropriator is only entitled to the water to the extent that he has use for it when economically and reasonably used. It is the policy of the law of this state to require the highest and greatest possible duty from the waters of the state in the interest of agriculture and for useful and beneficial purposes.

(Internal cite omitted.) Again, in *Munn v. Twin Falls Canal Co.*, 43 Idaho 198, 207 (1926), the Court held, "It is a cardinal principle established by law and the adjudications of this court that the highest and greatest duty of water be required. The law allows the appropriator only the

amount actually necessary for the useful or beneficial purpose to which he applies it." And the amount "actually necessary" assumes the senior is using water efficiently: "No person is entitled to use more water than good husbandry requires." *Id.*; *see also* Idaho Code § 42-101 (requiring "economical use, by those making a beneficial application of the same"). As the Court stated *Kunz v. Utah Power & Light Co.,* 117 Idaho 901, 904 (1990), "Because Idaho receives little annual precipitation, Idahoans must make the most efficient use of this limited resource."

The argument that depletion to the water supply alone proves material injury was already considered and rejected by the Idaho Supreme Court in *AFRD2*. That decision originated with a curtailment order issued under the CM Rules in 2005. The order included conclusions of law that "depletion does not equate to material injury," and that "injury is a highly fact specific inquiry that must be determined in accordance with IDAPA conjunctive management rule 42." *Id.* at 868. Rangen and others objected to these conclusions and filed a lawsuit in district court seeking a declaratory ruling that the CM Rules, and CM Rule 42 in particular, were facially unconstitutional. They argued that the Director has no authority to evaluate the senior's use of water, conveyance efficiencies, etc. in response to a delivery call. The district court judge agreed, holding the material injury analysis set forth in CM Rule 42 to be unconstitutional because it permits the Director to "re-adjudicate water rights by conducting a complete re-evaluation of the scope and efficiencies of a decreed water right in conjunction with a delivery call." *Id.* at 876.

On appeal, however, the Idaho Supreme Court reversed the district court decision on this point, holding that CM Rule 42 is constitutional and that the Director has the duty and authority when responding to a delivery call to evaluate the senior's "system, diversion, and conveyance efficiency, the method of irrigation water application and alternate reasonable means of diversion." *Id.* at 876. The Court explicitly rejected the notion that "when a junior diverts or withdraws water in times of shortage, it is presumed that there is injury to a senior," explaining that "a partial decree is not conclusive as to any post-adjudication circumstances," and that "even with decreed water rights, the Director does have some authority to make determinations regarding material injury, the reasonableness of a diversion, the reasonableness of use, and full economic development." *Id.* at 877. "If this Court were to rule the Director lacks the power in a delivery call to evaluate whether the senior is putting the water to beneficial use," the Court held, "we would be ignoring the constitutional requirement that priority over water be extended only to those using the water." *Id.* at 876; *see also, e.g., Id.* at 789 (rejecting the argument that holders

of storage water rights are entitled to "insist on all available water to carryover in future years in order to assure that their full storage right is met (regardless of need)").

The Court reaffirmed in *A&B Irrigation District v. Spackman*, that the Director does have authority to evaluate the senior's use of water and whether the senior's water needs can be met by employing conveyance efficiencies or alternate means or points of diversion, concluding in that case that "the Director properly applied the CM Rules by finding that A&B must interconnect individual wells or well systems across the project before a delivery call can be filed. 284 P.3d 225, 237 (Idaho 2012). Although there was some "uncertainty as to whether large portions of the project can be interconnected," the Court found that the Director acted within his discretion in determining that "there is an obligation of A&B to take reasonable steps to maximize the use of [interconnection] to move water within the system before it can seek curtailment or compensation from juniors." *Id.* at 239 (citing *AFRD2*). A&B argued that this resulted in impermissible burden-shifting, but the Court disagreed, stating, "Idaho law does not explicitly state that interconnection is a condition of administration, but the CM Rules allow the director to consider reasonable diversion in his determinations." *Id.* at 241. The Court quoted verbatim the material factors in CM Rules 42.01.a through 42.01.h to support this ruling. *Id.*

Rangen makes note of the statement in *Clear Springs Foods* that proving material injury does not require showing "an impact on the profitability of the senior appropriator's business." (*Rangen's Br.* 15, quoting *Clear Springs Foods*, 150 Idaho at 811.) That ruling, however, does not preclude the Director for considering how Rangen actually uses water and whether its water needs could be met by utilizing conveyance efficiencies or alternate means of diversion. The *Clear Springs Foods* decision only removed "profitability" from the material injury equation.[1] In no way did the Court abrogate its prior rulings in *AFRD2* and *A&B Irrigation District* that CM Rule 42 is constitutional and that the Director has the duty and authority to evaluate the senior's actual beneficial use of water in making determinations regarding material injury, the reasonableness of a diversion, and reasonableness of use. In fact, the Court cited its *AFRD2* decision at least four times in support of its *Clear Springs Foods* decision. *Id.* at 807, 809, 810, and 811.

Rangen was a party to the *AFRD2* case, and is therefore barred by the doctrine of *res ju-*

[1] It is worth noting that while IGWA put economic evidence into the record in that case, IGWA never argued either in writing or at oral argument to the hearing officer, Director, district judge, or Idaho Supreme Court that material injury requires showing an impact on profitability; that evidence was submitted to support arguments concerning reasonable use and full economic development of water resources.

dicata from arguing that depletion to its water supply automatically equals material injury. The doctrine of *res judicata* includes the concept of issue preclusion which prevents people from re-litigating issues that were finally decided in an earlier case involving the same parties. *Berkshire Invs., LLC v. Taylor*, 278 P.3d 943, 951 (Idaho 2012).

III. The clear and convincing standard does not apply to all decisions to be made by the Director when responding to a delivery call under the CM Rules.

Rangen's arguments concerning material injury are curiously prefaced with a discussion of burdens of proof and standards of evidence. (*Rangen's Br.* 9-12). Although not formally designated as an issue for summary judgment, Rangen requests on page 2 of *Rangen's Brief* that the Director rule that *every* defense raised by junior-priority water users must be proven by clear and convincing evidence. This request must be denied because it is legally incorrect.

IGWA acknowledges that defenses that permanently or temporarily modify the defined elements of a water right decree are subject to the heightened clear and convincing standard, as explained in *A&B Irrigation District v. Spackman*, 284 P.3d at 249. However, not all decisions made by the Director in response to a water delivery call modify the senior's decree, and not all decisions are subject to the clear and convincing standard. The following two examples should be sufficient to deny Rangen's motion for summary judgment on this issue.

First, issues involving the interpretation of a water right decree are subject to the preponderance of the evidence standard. The Idaho Supreme Court explained this in *A&B Irrigation District*, stating: "There is no problem with applying a preponderance of the evidence standard to the interpretation of a decree. We apply the same rules of interpretation to a decree that we apply to contracts." *Id.* at 248 (citing *DeLancey v. DeLancey*, 110 Idaho 63, 65 (1986)).

Issues of interpretation of a decree may be asserted as defenses to a delivery call. For example, there is a question in this case as to whether the Martin-Curren Tunnel (the source of water in Rangen's decrees) qualifies as a groundwater well. Resolution of this issue will involve interpretation of Rangen's decree. This issue is being asserted by IGWA as a defense to Rangen's call, yet it is governed by the preponderance of the evidence standard.

Second, issues involving reasonableness are also subject to the preponderance of the evidence standard. In *AFRD2* the Idaho Supreme Court rejected the argument that CM Rule 42 was unconstitutional, partly because that rule raises issues of reasonableness, and "reasonableness is not an element of a water right; thus, evaluation of whether a diversion is reasonable in the administra-

tion context should not be deemed a re-adjudication." 143 Idaho at 877. Because issues of reasonableness do not modify the senior's water right decree, they are subject to the preponderance of the evidence standard that normally governs administrative decisions. *N. Frontiers v. State ex re. Cade*, 129 Idaho 437, 439 (Ct. App. 1996) ("the preponderance of the evidence standard [is] generally applied in administrative hearings") (citing 2 Am. Jur. 2d Administrative Law § 363 (1994)).

Since there are at least two defenses to a delivery call that are not subject to the heightened clear and convincing standard, the Director must deny Rangen's motion for summary judgment on this issue. The Director need not delineate on summary judgment the standard of evidence for every issue that may arise in this case. The Director should simply decline to rule as a matter of law that *every* defense is subject to the clear and convincing standard.

CONCLUSION

As set forth above, *Rangen's Motion* concerning material injury must be denied because Rangen has failed to prove the absence of any genuine issue of material fact. There are genuine issues of material fact as to whether Rangen legitimately needs additional water to accomplish its beneficial use, and whether those needs can be met by implementing conveyance efficiencies and/or alternate means of diversion, without resorting to curtailment.

Rangen's Motion concerning the clear and convincing evidence standard must also be denied because not all issues or arguments that may be considered "defenses" are subject to that heightened standard of evidence. For example, arguments concerning the interpretation of Rangen's decree and arguments involving reasonable use of water are not subject to a clear and convincing standard. Therefore, the Director must decline to rule as a matter of law that all defenses are subject to a clear and convincing standard.

RESPECTFULLY SUBMITTED this 8th day of February, 2013.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 

RANDALL C. BUDGE
CANDICE M. McHUGH
THOMAS J. BUDGE
Attorneys for IGWA

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 2013, I caused to be served a true and correct copy of the foregoing **IGWA's Response to Rangen's Motion for Partial Summary Judgment Re: Material Injury**, upon the following by the method indicated:

Signature of person serving form

Original and one copy:
Director, Gary Spackman
Idaho Department of Water Resources
PO Box 83720
Boise, ID 83720-0098
Deborah.Gibson@idwr.idaho.gov
Kimi.white@idwr.idaho.gov

- [x] U.S. Mail/Postage Prepaid
- [ ] Facsimile
- [ ] Overnight Mail
- [x] Hand Delivery
- [ ] 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

- [x] U.S. Mail/Postage Prepaid
- [ ] Facsimile
- [ ] Overnight Mail
- [ ] Hand Delivery
- [x] E-mail

Robyn M. Brody
Brody Law Office, PLLC
PO Box 554
Rupert, ID 83350
robynbrody@hotmail.com

- [x] U.S. Mail/Postage Prepaid
- [ ] Facsimile
- [ ] Overnight Mail
- [ ] Hand Delivery
- [x] E-mail

Fritz X. Haemmerle
Haemmerle & Haemmerle, PLLC
PO Box 1800
Hailey, ID 83333
fxh@haemlaw.com

- [x] U.S. Mail/Postage Prepaid
- [ ] Facsimile
- [ ] Overnight Mail
- [ ] Hand Delivery
- [x] E-mail

J. Justin May
May, Browning & May, PLLC
1419 West Washington
Boise, ID 83702
jmay@maybrowning.com

- [x] U.S. Mail/Postage Prepaid
- [ ] Facsimile
- [ ] Overnight Mail
- [ ] Hand Delivery
- [x] E-mail

Sarah Klahn
Mitra Pemberton
WHITE JANKOWSKI, LLP
511 16th St., Suite 500
Denver, Colorado 80202
sarahk@white-jankowski.com
mitrap@white-jankowski.com

- [x] U.S. Mail/Postage Prepaid
- [ ] Facsimile
- [ ] Overnight Mail
- [ ] Hand Delivery
- [x] E-Mail

Dean Tranmer City of Pocatello PO Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-Mail
C. Thomas Arkoosh ARKOOSH EIGUREN LLC PO Box 2900 Boise, Idaho 83701	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-Mail
John K. Simpson Travis L. Thompson Paul L. Arrington Barker Rosholt & Simpson 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 tlt@idahowaters.com jks@idahowaters.com pla@idahowaters.com	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-Mail
W. Kent Fletcher Fletcher Law Office PO Box 248 Burley, ID 83318 wkf@pmt.org	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ 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	☒ U.S. Mail/Postage Prepaid ☐ Facsimile ☐ Overnight Mail ☐ Hand Delivery ☒ E-Mail