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DEPARTMENT OF  
WATER RESOURCES

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*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

(RANGEN, INC.)

Docket No. CM-DC-2011-004

**RANGEN, INC.'S RESPONSE IN  
OPPOSITION TO CITY OF  
POCATELLO'S MOTION FOR  
DECLARATORY ORDER  
REGARDING RANGEN'S LEGAL  
OBLIGATION TO  
INTERCONNECT**

COMES NOW, Rangen, Inc. ("Petitioner" or "Rangen"), by and through its attorneys,  
and hereby submits the following Response in Opposition to City of Pocatello's Motion for  
Declaratory Order Regarding Rangen's Legal Obligation to Interconnect.

**RANGEN INC.'S RESPONSE IN OPPOSITION TO CITY OF POCATELLO'S MOTION FOR  
DECLARATORY ORDER REGARDING RANGEN'S LEGAL OBLIGATION TO  
INTERCONNECT- 1**

## **I. BACKGROUND**

The City of Pocatello (“Pocatello”) has filed a motion requesting that the Director issue a Declaratory Order that Rangen, as a matter of law, must demonstrate that it has taken reasonable steps to “maximize interconnection” of its existing water supplies, or show that such “interconnection” is financially or technically infeasible, before it can seek curtailment of junior-priority ground water pumping. See *City of Pocatello’s Motion for Declaratory Order that Rangen has Legal Obligation to Interconnect*. Other than citing CM Rules 260 and 565 which allow for the filing of pretrial motions, Pocatello has not cited the legal basis for its request for a “declaratory order” and has not addressed the standard by which the Director should address this motion. The sole basis for Pocatello’s argument is the Idaho Supreme Court’s decision in *A&B Irrigation Dist. v. Spackman*, 153 Idaho 500, 284 P.3d 225 (2012). Pocatello’s interpretation of the *A&B Irrigation* decision goes too far and its reliance on the case is misplaced. There is no legal or factual basis for Pocatello’s Motion. As such, it should be denied.

## **II. DISPUTED/UNDISPUTED FACTS**

It is unclear why the City of Pocatello has labeled its statement of facts “Undisputed Facts” in its Memorandum in Support of its Motion for Declaratory Order Regarding Rangen’s Legal Obligation to Interconnect. Pocatello’s motion is not a motion for summary judgment that might require a response to undisputed facts. Nevertheless, Rangen does not agree that the facts stated by Pocatello are undisputed.

1. With regard to paragraph 1, Rangen’s Research Hatchery can use all water captured by its diversions structures. Rangen beneficially uses all water available in one or more of four areas within the facility: 1) the Greenhouse/Hatch house, 2) the Small Raceways, 3) the Large Raceways, and 4) the CTR Raceways. See *Affidavit of Charlie E. Smith in Support of*

*Rangen, Inc.'s Motion for Partial Summary Judgment, Exhibit A: Expert Report, Pg. 2; Transcript, Deposition of Charlie E. Smith, 3/7/2013, Pg. 130 Ln. 1 – Pg. 131 Ln.8 (attached as Exhibit B to May Affid. in Opposition to Motion for Declaratory Order); Transcript, Deposition of Thomas L. Rogers, 3/15/2013, Pg. 20, Ln. 15-20 (attached as Exhibit C to May Affid.); Transcript, Deposition of John D. Woodling, 2/21/2013, Pg. 32, Ln. 24 – Pg. 33, Ln. 1 (attached as Exhibit D to May Affid.). All water is used multiple times before leaving the facility whether or not it is used first in the upper portion of the facility or the lower portion of the facility. See Affidavit of Charlie E. Smith in Support of Rangen, Inc.'s Motion for Partial Summary Judgment, Exhibit A: Expert Report, Pg. 9; Transcript, Deposition of Charlie E. Smith, 3/7/2013, Pg. 55, Ln. 7 – Pg. 56, Ln. 12, Pg. 57, Ln. 13 – Pg. 58, Ln. 15 (attached as Exhibit B to May Affid.); Transcript, Deposition of Lonnie Tate, 9/11/2012, Pgs. 16-24 (attached as Exhibit E to May Affid.).*

2. There is no area of Rangen's facility that has more available water than can be beneficially used in that area of the facility. Rangen is short water throughout its facility as a whole. See *Affidavit of Charlie E. Smith in Support of Rangen, Inc.'s Motion for Partial Summary Judgment, Exhibit A: Smith Expert Report, Pg. 2; Transcript, Deposition of Charlie E. Smith, 3/7/2013, Pg. 131 Ln. 19 – Pg. 133 Ln.2 (attached as Exhibit B to May Affid.); Transcript, Deposition of Thomas L. Rogers, 3/7/2013, Pg. 24, Ln.9 – Pg. 25, Ln. 7 (attached as Exhibit C to May Affid.); Transcript, Deposition of John D. Woodling, 3/18/2013, Pg. 34, Ln. 8 – Pg. 35, Ln. 24, Pg. 35, Ln.9-24, and Pg. 36, Ln. 18 – Pg. 37, Ln.16 (attached as Exhibit D to May Affid.).*

3. With regard to paragraphs 2 through 6, the upper portion of the facility including the Greenhouse/Hatch house and the Small Raceways is fed through a collection box located on the upper portion of the talus slope below the tunnel. See *Transcript, Deposition of Lonnie Tate,*

9/11/2012, Pgs. 18-22 (attached as Exhibit E to May Affid.); Affidavit of C. Brockway, 1/9/2013, attaching Brockway Expert Report, at Figure 5; Affidavit of Greg Sullivan, 2/7/2013, attaching Spronk Expert Report, at Figure 1-4.

4. Water diverted by Rangen below that collection box does not go through the upper portion of the facility. The amount of water that is available at the collection box varies with the flow of the Springs as a whole. See *Transcript, Deposition of Lonnie Tate, 9/11/2012, Pg. 33, Ln. 1-12, Pg. 50, Ln. 10-19* (attached as Exhibit E to May Affid.); Affidavit of C. Brockway, 1/9/2013, attaching Brockway Expert Report, at Figure 5; Affidavit of Greg Sullivan, 2/7/2013, attaching Spronk Expert Report, at Figure 1-4..

5. With regard to paragraph 7, Rangen is concerned with the water shortage at the Small Raceways. That concern, however, cannot be separated from the water shortage in the facility as a whole. Rangen is short of water throughout its facility. There is no portion of the facility with excess water that could be moved to another portion of the facility. See *Affidavit of Charlie E. Smith in Support of Rangen, Inc.'s Motion for Partial Summary Judgment, Exhibit A: Expert Report, Pgs. 2-3, 9; Transcript, Deposition of Charlie E. Smith, 3/7/2013, Pg. 55, Ln. 7 – Pg. 56, Ln. 12, Pg. 57, Ln. 13 – Pg. 58, Ln. 15* (attached as Exhibit B to May Affid.); *Transcript, Deposition of Thomas L. Rogers, 3/15/2013, Pg. 24, Ln.9 – Pg. 25, Ln. 7, Pg. 37, Ln. 22 – Pg. 37, Ln. 1, and Pg.40, Ln. 12-15* (attached as Exhibit C to May Affid.); *Transcript, Deposition of John D. Woodling, 3/18/2013, Pg. 35, Ln.9-24, and Pg. 36, Ln. 18 – Pg. 37, Ln.16* (attached as Exhibit D to May Affid.).

6. With regard to paragraph 8 and 9, the portion of Rangen's water diverted below the box that feeds the upper portion of the facility is not available in the upper portion of the facility. That portion of Rangen's water is needed and used in the lower portion of the facility

including the Large Raceways and the CTR Raceways. There is no excess water. See *Affidavit of Charlie E. Smith in Support of Rangen, Inc.'s Motion for Partial Summary Judgment, Exhibit A: Expert Report, Pgs. 2-3, 9; Transcript, Deposition of Charlie E. Smith, 3/7/2013, Pg. 55, Ln. 7 – Pg. 56, Ln. 12, Pg. 57, Ln. 13 – Pg. 58, Ln. 15, Pg. 87, Ln. 3-10, Pg. 90 Ln. 7-16* (attached as Exhibit B to *May Affid.*).

7. With regard to paragraph 10, water could possibly be pumped to the upper areas of the facility, but Pocatello has not identified any benefit of such pumping. There is no such benefit. Rangen would only be able to use more water in the upper portion of the facility if more water were also available throughout the other areas of the facility. *Deposition of Charlie E. Smith, 3/7/2013, Pg. 55, Ln. 7 – Pg. 56, Ln. 12, Pg. 57, Ln. 13 – Pg. 58, Ln. 15, Pg. 87, Ln. 3-10, Pg. 90 Ln. 7-16* (attached as Exhibit B to *May Affid.*). Because of the current configuration of the facility, if more water were available to other areas of the facility from the springs proportionally more water would also be available at the collection box feeding the upper portion of the facility. Pumping to the upper areas of the Rangen facility as Pocatello contends is unnecessary and counterproductive.

### **III. ARGUMENT**

#### **A. The A&B Decision Does Not Create a Legal Duty for a Senior Water User to Demonstrate Reasonable Steps to “Maximize Interconnection” Before a Call Can Be Made.**

Pocatello claims that the Idaho Supreme Court’s decision in *A&B Irrigation* creates a threshold impediment for Rangen. Pocatello argues that before Rangen can request curtailment (i.e., before it can make a delivery call), it must demonstrate that it has taken reasonable steps to “maximize interconnection” of its water supplies or demonstrate why it is financially or technically infeasible to do so. There is no such requirement in the Conjunctive Management

Rules or Idaho law. There is not a two-step process for making a delivery call. Rangen's Petition for Delivery Call complies with the procedures set forth in the Conjunctive Management Rules and is ripe for determination by the Director. Pocatello has fundamentally misconstrued the Idaho Supreme Court's decision in *A&B Irrigation* and its motion should be denied.

The term "interconnection" as Pocatello uses it is not found in the Conjunctive Management Rules or any Idaho case law prior to the *A&B Irrigation* decision. It is not a legal term of art. The term "interconnection" is a unique concept that was used and applied to the A&B Irrigation District because of its unique water rights. It has no factual or legal application in this case.

The A&B Irrigation District made a delivery call requesting the curtailment of junior-priority groundwater pumping in 1994. See *A&B Irrigation*, 153 Idaho at 503; 284 P.3d at 228. The case is still on-going. The essence of A&B's claim is that junior-priority groundwater pumping from the Eastern Snake Plain Aquifer has lowered the water table on average of twenty feet and up to forty feet in some areas, which has resulted in a 126 cfs reduction in A&B's diversion rate. See *id.* The issue with A&B's call is that only some of its wells in Unit B are short of water – not the well system in its entirety.

A&B holds a unique water right with a unique history. See *id.* at 514, 284 P.3d at 239. The United States Bureau of Reclamation developed the North Side Pumping Division of the Minidoka Project in approximately 1963. See Memorandum Decision and Order on Petition for Judicial Review, *A&B Irrigation District v. IDWR*, Case No. 2009-000647, at p. 5 (attached as Exhibit A to *May Affid. in Opposition to Motion for Declaratory Order*). The landowners of the North Side Pumping Division formed the A&B Irrigation District. *Id.* The Bureau of Reclamation then transferred the project to A&B Irrigation District to benefit the landowners.

*Id.* The project consists of two units – Unit A and Unit B. Unit A provides surface water from the Snake River to approximately 15,000 acres. See *id.* Unit B provides groundwater pumped from the ESPA to irrigate approximately 66,000 acres. See *id.*

Unit B originally held a decreed water right that authorized the diversion of 1100 cfs to irrigate nearly 63,000 acres with 177 separate points of diversion (wells). See *id.* A subsequent administrative transfer approved the use of up to 188 wells for purposes of irrigating nearly 67,000 acres. See *id.* The place of use for all points of diversion is the land within the boundaries of the A&B district. See *id.* The rate of diversion for the wells is cumulative (i.e., there is no maximum diversion rate for each well) and the water can be used anywhere in the A&B Irrigation District. See *id.* The Bureau of Reclamation applied to have the right licensed in this manner to give it the greatest flexibility in distributing the water throughout the project. See *id.*

The Hearing Officer who was assigned to handle A&B's call, determined that the wells in Unit B have to be treated as system – not just individually – because of the unique way that the right was decreed. See *id.* at p. 39. The Hearing Officer used the term “interconnection” in his analysis:

Considering the fact that the project was developed, licensed and partially decreed as a system of separate wells with multiple points of diversion, ***it is not A&B's obligation to show interconnection of the entire system to defend its water rights and establish material injury.*** However, it is equally clear that the licensing requested by the Bureau of Reclamation envisioned flexibility in moving water from one location to another. Consequently, there is an obligation of A&B to take reasonable steps to maximize the use of that flexibility to move water within the system before it can seek curtailment or compensation from juniors. A&B has some interconnection within the system to utilize the water it can pump. But the record does not establish whether further interconnection is either financially or technically practical.

See *id.* at p. 39 (emphasis added). The essence of the Hearing Officer's conclusion was that given the way its water right was decreed if A&B could remedy a water shortage in one area of the system by connecting wells, then it had an obligation to do so if it was financially and technically practical.

In determining whether A&B was suffering *material injury*, Director Spackman adopted the Hearing Officer's recommendations and analyzed A&B's water right as a whole system as opposed to 177 individual wells. See *A&B Irrigation*, 153 Idaho at 514; 284 P.3d at 239. The District Court affirmed this decision finding that: "The way in which the 36-2080 water right was licensed and ultimately decreed in the SRBA is not typical." See Memorandum Decision and Order on Petition for Judicial Review, *A&B Irrigation District v. IDWR*, Case No. 2009-000647, at p. 39 (attached as Exhibit A to *May Affid. in Opposition to Motion for Declaratory Order*). The District Court went on to explain that A&B's unique decree resulted in analyzing material injury based on the well system as a whole rather than just looking at individual underperforming wells:

Although decreed as such, the Unit [B] presently does not consist of interconnected wells and due to the geographic terrain, water cannot presently readily be distributed throughout the entire project from any particular well or system. Nonetheless, the right is essentially decreed as having alternative points of diversion for the 1100 cfs for the entire 62,604.3 acres. ***Therefore, because no rate of diversion or volumetric limitation is decreed to a particular point of diversion, A&B has no basis on which to seek regulation of juniors in order to divert a particular rate of diversion from a particular point of diversion, provided a sufficient quantity can be diverted through the various alternative points of diversion that are appurtenant to the same lands.*** Simply put, based on the way in which the right is decreed A&B does not get to dictate particular quantities that need to be diverted from particular points of diversion.

See *id.* at p. 40.



The Idaho Supreme Court held that the Director's decision was appropriate based on the material injury factors set forth in CM Rule 42, particularly CM Rule 42.g. See *id.* at 515-16, 284 P.3d at 240-41. Rule 42.g. states:

01. Factors. Factors the Director may consider in determining whether the holders of water rights are suffering material injury and using water efficiently and without waste include, but are not limited to, the following:

\* \* \*

g. 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; . . . .

See IDAPA Rule 37.03.11.042.g; see also *A&B Irrigation*, 153 Idaho at 515-16, 284 P.3d at 240-41.

The situation with Rangen's Research Hatchery is entirely different from A&B's wells in Unit B. Rangen does not have, and has never had, a portion of its facility with too much water that could benefit another portion with too little by being interconnected. Pocatello's claim that Rangen's "primary" concern is that there is a shortage of water in the Small Raceways is not accurate. Rangen's primary concern is that it does not have enough water throughout the entire Research Hatchery and has dry raceways throughout the facility.

While Rangen's situation is factually distinct from A&B's, Pocatello's legal interpretation of the Supreme Court's decision also misses the mark. The A&B decision did not create a legal duty on the part of senior water users to demonstrate reasonable steps to "maximize interconnection" or to show that "interconnection" is infeasible before a delivery call can be made. In fact, the Supreme Court held that "[t]he Director did not impose a new condition, but rather he used his discretion to analyze A&B's delivery call using his statutory authority in the

manner governed by the CM rules.” *Id.* at 516; 284 P.3d at 241. The Court also explained that “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 516, 284 P.3d at 241.

Rangen has no duty to prove that it has taken reasonable steps to “maximize interconnection” of its water supplies before it can make a call. There is no threshold impediment to requesting curtailment. The reasonableness of Rangen’s diversion methods is *one factor* that *may* be considered by the Director in evaluating material injury at the time of the hearing on Rangen’s delivery call. If Pocatello wants to argue that junior-priority groundwater pumping does not injure Rangen because “interconnection” can remedy Rangen’s shortage, then it can do so at the hearing that is scheduled in May, but it has the burden of proving non-injury by clear and convincing evidence. See *A&B Irrig.* 153 Idaho at 516 and 524, 284 P.3d at 241 and 249.

The bottom line is that the concept of “interconnection” is unique to A&B and should not be applied to Rangen. There is no need to hold a hearing to determine whether Rangen has “maximized interconnection” before evaluating Rangen’s Petition for Delivery Call. To the extent Pocatello wants to argue non-injury, it can do so at the hearing in May, but it has the burden of proving that defense by clear and convincing evidence. Because there is no legal or factual basis for Pocatello’s Motion for Declaratory Order, it should be denied.

**B. Pumping Water From One Area of the Research Hatchery to Another would Not Remedy Rangen’s Hatchery-Wide Water Shortage.**

The basic premise of Pocatello’s argument is that pumping water from Billingsley Creek to the Greenhouse/Hatch House and/or the Small Raceways would resolve or alleviate Rangen’s water shortage. This is incorrect. Rangen has a shortage of water throughout the facility not just

in one portion of the facility. The water that Pocatello proposes to move around within the facility is being fully utilized in the Large Raceways and the CTR Raceways. Moving the water would simply reduce the amount of first use water available in the Large Raceways and make a bad situation worse. As currently configured, the Rangen facility allows for the beneficial use of the full amount of Rangen's water rights if the water were available.

**1) The Rangen Research Hatchery is already interconnected.**

Rangen uses the water that is available to raise fish in four interconnected areas within the facility: 1) the Greenhouse/Hatch house, 2) the Small Raceways, 3) the Large Raceways, and 4) the CTR Raceways. A diagram of Rangen's Research Hatchery and an aerial photograph are attached as Exhibits 1A and 1B to Rangen's Petition for Delivery Call. Water utilized in the Greenhouse/Hatch house and the Small Raceways is collected on the talus slope above the facility. This water is conveyed by gravity and can be directed to the Greenhouse/Hatch house and/or the Small Raceways depending upon the lifecycle of fish present in the facility and the quantity of water available in the facility. Water used in the Greenhouse/Hatch house flows into the head of Billingsley Creek along with the other water from the springs and talus slope to be used further in the Large Raceways and CTR Raceways. Water used in the Small Raceways flows from the outlet of the Small Raceways to the top of the Large Raceways for further use in the Large Raceways and CTR Raceways. Any water that is not used in the Greenhouse/Hatch house and/or the Small Raceways flows directly into the Large Raceways as first use water. Water in the Large Raceways flows into the CTR Raceways for further use.

**2) The available water is fully utilized within the Research Hatchery.**

All water available within Rangen's Research Hatchery is used multiple times regardless of the path it takes through the facility. Water that is not used in the Greenhouse/Hatch house or

the Small Raceways flows directly to the top of the Large Raceways. This first use water is  
**RANGEN INC.'S RESPONSE IN OPPOSITION TO CITY OF POCATELLO'S MOTION FOR  
DECLARATORY ORDER REGARDING RANGEN'S LEGAL OBLIGATION TO  
INTERCONNECT- 11**

combined at the top of the Large Raceways with water that has already been used higher in the facility. The Large Raceways consist of 10 sets of 3 raceways in sequence. Water from the top of the Large Raceways flows through one of the sets of Raceways. The water is used once in each of the 3 raceways in the set and then passes to the next. This means that all available water is used at least three times in the Large Raceways. *Transcript, Deposition of Lonny Tate, 9/11/2012, Pgs.16-39* (attached as Exhibit E to *May Affid.*); *Transcript, Deposition of Thomas L. Rogers, 3/7/2013, Pg. 24, Ln.9 – Pg. 25, Ln. 7* (attached as Exhibit C to *May Affid.*); *Transcript, Deposition of John D. Woodling, 3/18/2013, Pg. 35, Ln.9-24, and Pg. 36, Ln. 18 – Pg. 37, Ln.16* (attached as Exhibit D to *May Affid.*). Each such use depletes oxygen and increases waste products. At current flows, by the time the water leaves the Large Raceways the available oxygen is nearly depleted, which indicates that the water has been fully utilized. *Transcript, Deposition of Charlie E. Smith, 3/7/2013, Pg.56, Ln 12-22, Pg. 57, Ln 7-12* (attached as Exhibit B to *May Affid.*). This water then flows through the CTR Raceways. The CTR Raceways consist of 3 sets of 3 raceways and 1 section of 3 settling ponds. Of the 3 sections of non-settling CTR Raceways, only 1 section is currently in use. The available oxygen at current flows severely restricts the number of fish that can be raised even in the 1 section of the CTR Raceways with flowing water. Reducing the amount of first use water available in this lower area of the facility would make the shortage of water in the lower area of the facility worse.

**3) Moving water around within the Research Hatchery would not be useful.**

Pocatello claims that Rangen's "primary" concern is the shortage of water it experiences at its Small Raceways. This is not an accurate statement. While it is certainly true that Rangen is concerned with the lack of water available in the Greenhouse/Hatch house and Small Raceways, the crux of Rangen's concern is the shortage of water it experiences *throughout* its Research Hatchery. The essence of Rangen's call is that its decrees allow Rangen to divert and

**RANGEN INC.'S RESPONSE IN OPPOSITION TO CITY OF POCATELLO'S MOTION FOR DECLARATORY ORDER REGARDING RANGEN'S LEGAL OBLIGATION TO INTERCONNECT- 12**

use approximately 76 cfs of water for fish propagation. It is presently receiving only 14-15 cfs of its decreed rights. This water shortage impacts Rangen's ability to raise fish throughout the Research Hatchery – the Greenhouse/Hatch house, Small Raceways, Large Raceways and the CTR Raceways. It is not true that Rangen is short water in only one part of its facility and that the shortage could be remedied by pumping water to the Small Raceways.

In arguing that Rangen should be required to pump water to the Greenhouse/Hatch house and Small Raceways, Pocatello misses the point that unless more water were available for use in the Research Hatchery as a whole, moving water to the upper portion of the facility at the expense of the lower portion of the facility would be counterproductive. Raising small fish in the Small Raceways instead of raising fish in the Large Raceways does not make any sense. With Rangen's current water supply, there is no point in putting more small fish in the Small Raceways or increasing the number of fish eggs being produced in the Hatch house because the small fish would need Large Raceways in which to go in order to allow room for the next batch. *Transcript, Deposition of Charlie Smith, 3/7/2013, Pg.87, Ln 3-1 and Pg.90, Ln 7-16* (attached as Exhibit B to *May Affid.*). Without more water for the Large Raceways, Rangen would simply have a surplus of small fish. *Transcript, Deposition of Thomas L. Rogers, 3/15/2013, Pg.34, Ln 12-15* (attached as Exhibit C to *May Affid.*).

With the current design and interconnection of the facility, the water available in the upper and lower areas of the facility matches the needs and lifecycle of the fish that can be raised with the amount of water available to the facility as a whole. As the amount of water available to the facility as a whole increases, the amount of water available to the Greenhouse/Hatch house and Small Raceways increases. There has never been a time that Rangen has had more water at the head of Billingsley Creek than it could beneficially use in the Large Raceways and CTR Raceways when it could not get enough water to the Greenhouse/Hatch house and Small Raceways. *Transcript, Deposition of Thomas L. Rogers, 3/15/2013, Pg.37, Ln 22 – Pg.38, Ln 1* (attached as Exhibit C to *May Affid.*).

At current flows, there is sufficient water to use only 3 of the ten sets of Large Raceways. Seven sets of Large Raceways are dry. There are two sets of dry CTR Raceways and the set being used is severely restricted by the lack of water. This means that even if no water were used in the Greenhouse/Hatch house or the Small Raceways, Rangen would still have a significant need for water in the Large Raceways and CTRs alone. If more of the limited amount of available water were used higher in the facility there would be even more of a shortage in the Large Raceways and CTR Raceways. The available water is being fully utilized by Rangen. Pocatello has not offered any reason to require the installation of a pumping system so that Rangen can raise fish in the Small Raceways instead of raising fish in the Large Raceways and the CTR Raceways.

### **III. CONCLUSION**

Rangen has no legal obligation to demonstrate that it has taken reasonable steps to “maximize interconnection” before it can make a Delivery Call. Rangen’s Petition for Delivery Call is ripe for adjudication and the hearing set for May 1<sup>st</sup> should not be delayed or altered in any way. If Pocatello wants to argue that Rangen is not being injured because it can pump water to the Greenhouse/Hatch House or Small Raceways, then it can raise this defense at the hearing in May. Pocatello has the burden of proving this defense by clear and convincing evidence. Pocatello misses the point that Rangen’s Research Hatchery is already “interconnected” and allows for the beneficial use of the water that is available, and, in fact, results in multiple uses of the water. Pocatello’s argument that Rangen should be required to pump water to the Greenhouse/Hatch house and Small Raceways will not alleviate the facility-wide water shortage. Because there is no legal or factual basis for Pocatello’s Motion for Declaratory Order, Rangen respectfully requests that the Motion be denied.

DATED this 22nd day of March, 2013.

BRODY LAW OFFICE, PLLC

By   
Robyn M. Brody

HAEMMERLE & HAEMMERLE, PLLC

By   
Fritz X. Haemmerle

MAY, BROWNING & MAY

By   
J. Justin May

### CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 22nd day of March, 2013 she 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:


<b>Original:</b> Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 deborah.gibson@idwr.idaho.gov	Hand Delivery <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/> E-Mail <input type="checkbox"/>
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 kimi.white@idwr.idaho.gov	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 RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Federal Express <input type="checkbox"/>



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