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 DEPARTMENT OF
 WATER RESOURCES

Attorneys for Idaho Ground Water Appropriators, Inc. (IGWA)

**BEFORE THE DEPARTMENT OF WATER RESOURCES
 OF THE 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 Reply in Support of its
 Second Petition to Stay
 Curtailment**

Idaho Ground Water Appropriators, Inc. (IGWA) filed *IGWA's Second Petition to Stay Curtailment, and Request for Expedited Decision* ("Petition for Stay") on April 17, 2014. On April 25, 2014, Rangen filed *Rangen, Inc.'s Response in Opposition to IGWA's Second Petition to Stay Curtailment* ("Rangen's Response"). This is IGWA's reply to Rangen's Response. Only a few comments are necessary.

First, Rangen's assertion that groundwater wells must be physically shut off "or else conjunctive management will indeed be fiction" could not be further from the truth.¹ Junior groundwater users have labored under the heavy burden of curtailment orders for the better part of a decade. The notion that these orders have been fictitious is offensive. Conjunctive management is only as fictitious as the tens of millions of dollars spent by junior groundwater users to providing mitigation to senior surface water rights.

Second, Rangen creates a straw man by asserting that the Director must rule on IGWA's Second Mitigation Plan in order to grant IGWA's Petition for Stay. Not so. As explained in IGWA's Petition, the granting of a stay

¹ Rangen's Response p. 5.

is an equitable remedy that turns on the merit of the issues being appealed, the comparable harm to the parties, and the public interest.

The significance of IGWA's Second Mitigation Plan is that it demonstrates one of the long-term mitigation solutions IGWA is pursuing to meet the full 9.1 cfs obligation. IGWA has to date demonstrated an ability to provide mitigation to meet every delivery call, and there is good reason to believe a permanent solution will be implemented here. That said, this is an ancillary consideration. While the likelihood that a long-term mitigation solution will be achieved certainly supports a stay, there is no need for the Director to prejudge IGWA's Second Mitigation Plan here.

Third, Rangen's lengthy argument that groundwater users should have expected curtailment has little if any bearing on whether a stay is warranted, and appears aimed at masking the most compelling reason for a stay, which is that Rangen will receive far more water from a stay than from curtailment. Rangen could not mount any rational defense to this, responding instead that it is "somewhat confusing" and that having more water "causes more harm" for Rangen.²

It could not be simpler. If a stay is granted, Rangen gets to continue diverting water from Billingsley Creek (10-12 cfs). If a stay is denied, the Director's ruling that Rangen does not have a valid right to divert water from Billingsley Creek must be enforced, and Rangen will instead receive 0.4 cfs from curtailment. 10 cfs is 25 times more water than 0.4 cfs.

Rangen asserts that there is "no validity to the assertion that Rangen benefits from the stay IGWA has requested."³ This may be true, but only if the benefit Rangen is seeking is something other than more water.


IGWA does not wish to belabor the point, but if Rangen's delivery call is truly about having as much water as possible to raise fish and conduct research, as Rangen claimed at the hearing, then the only rational response would be for Rangen to support a stay. Instead, the conjunctive management rules are being manipulated to further ulterior motives.

² Rangen's Response p. 12.

³ *Id.*

DATED April 25, 2014

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

By: 
Randy Budge
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CERTIFICATE OF MAILING

I certify that on this 25th day of April, 2014, the foregoing document was served on the following persons in the manner indicated.



Signature of person serving document

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Appendix A

Exhibits 2291 & 3656

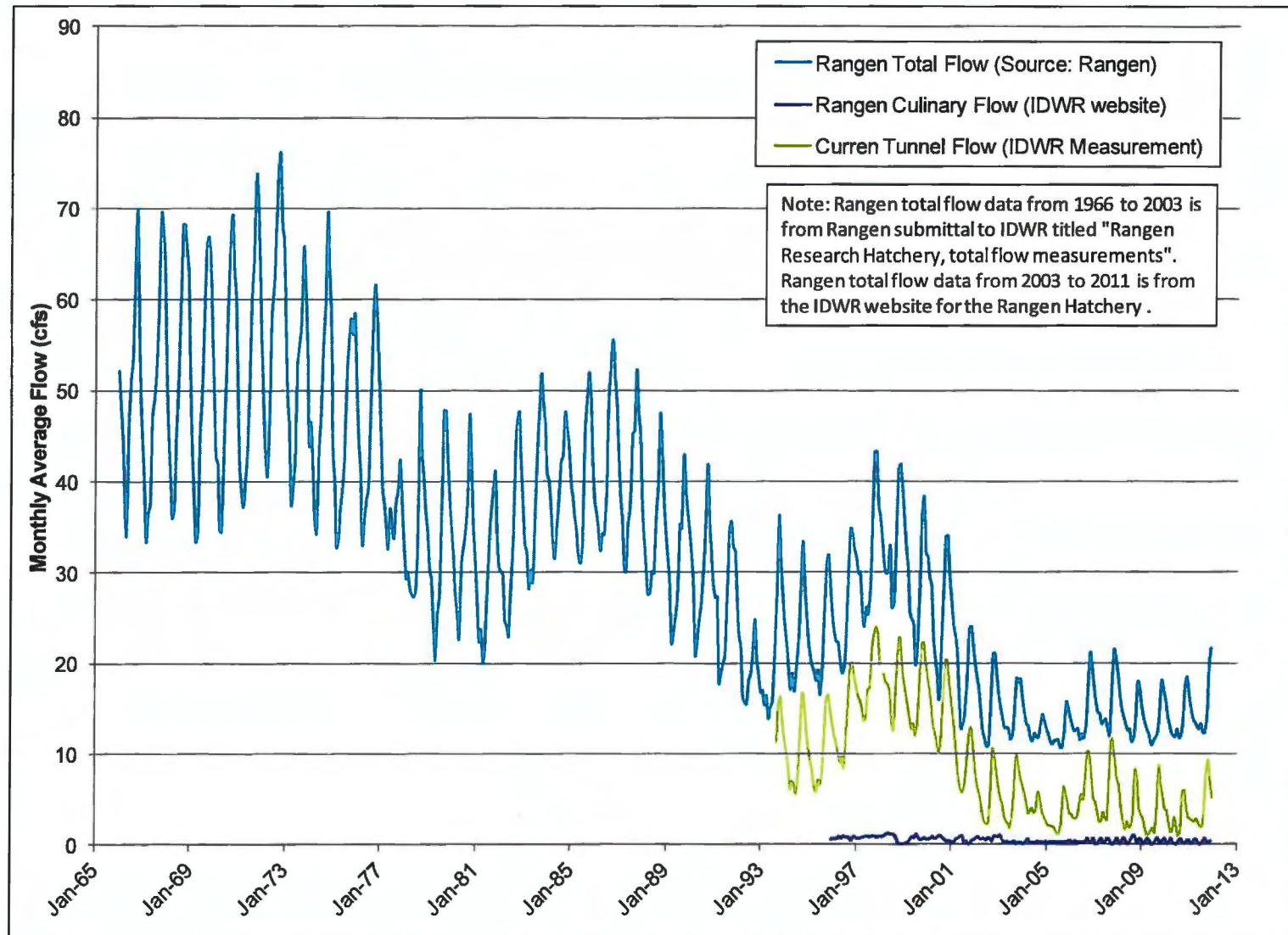
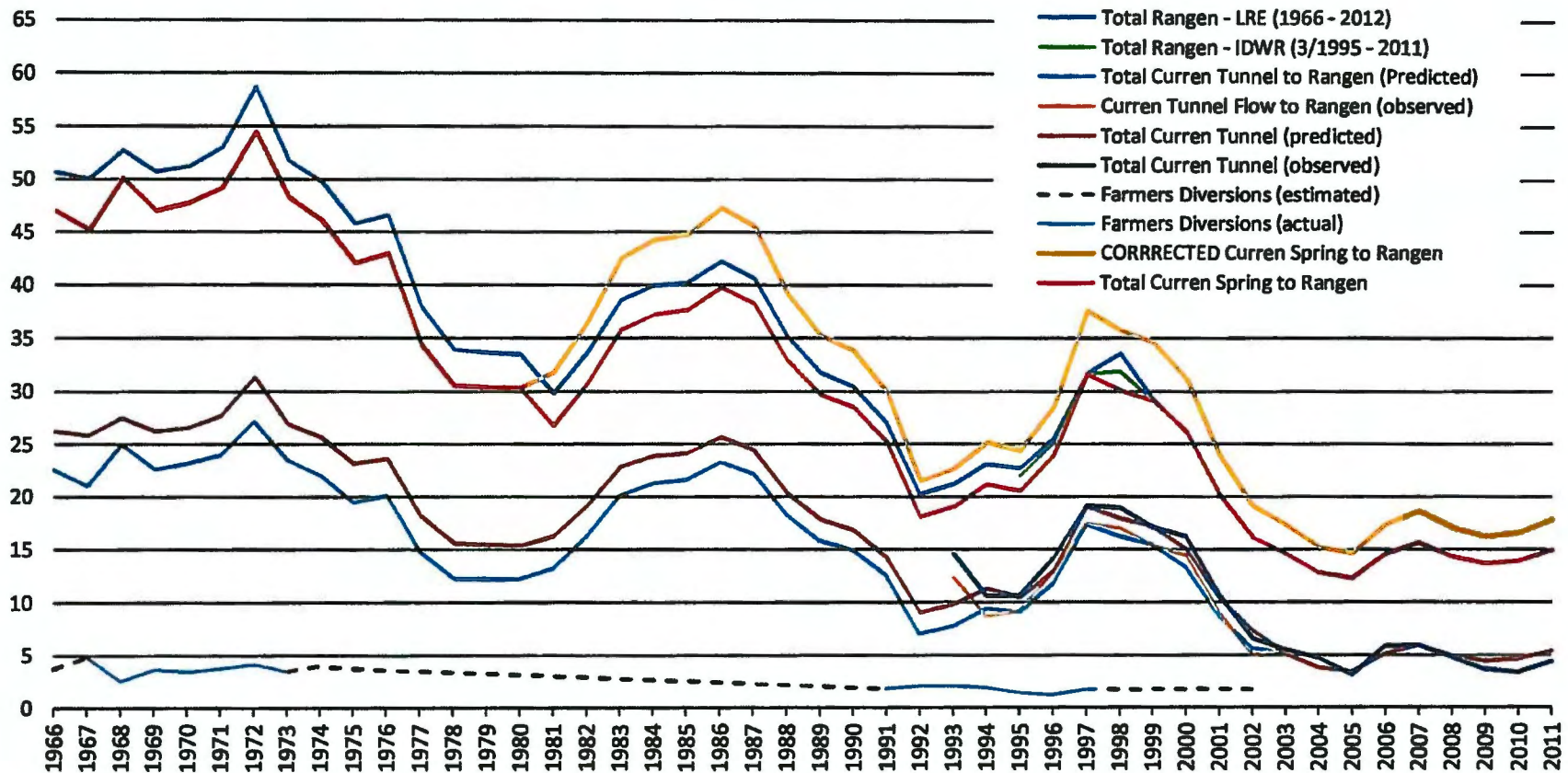


Figure 3.8: Historical Flows at Rangen Facility

Figure 2-5c

**Annual Average Flow
Rangen Hatchery
1966 - 2012
Values in CFS**



Source: Annual averages of monthly average flows presented in Figure 2-5b.

Annual average Total Curren Spring Flow to Rangen computed as the Total Curren Spring after diversions to farmers.

Spronk Water Engineers, Inc.



Updated 5/15/2013