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Attorneys for Rangen, Inc.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

**IN THE MATTER OF THE SECOND
MITIGATION PLAN FILED BY THE IDAHO
GROUND WATER APPROPRIATORS FOR THE
DISTRIBUTION OF WATER TO WATER RIGHT
NOS. 36-02551 AND 36-07694 IN THE NAME
OF RANGEN, INC.**

"TUCKER SPRINGS"

Docket No. CM-MP-2014-003

**AFFIDAVIT OF ROBYN M.
BRODY IN OPPOSITION TO
IGWA'S MOTION IN LIMINE**

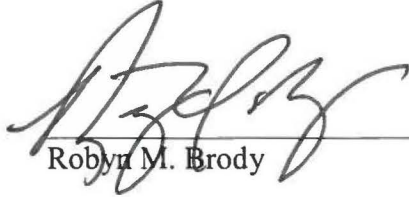
STATE OF IDAHO)
) ss.
County of Ada)

Robyn M. Brody, being first duly sworn upon oath, deposes and says:

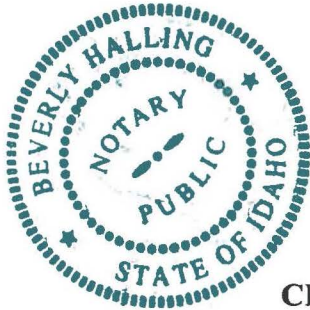
1. I am an attorney licensed to practice law in the State of Idaho.
2. I have been retained to represent Rangen, Inc. in connection with this matter.
3. These matters are based on my personal knowledge.

4. IGWA disclosed a 95 page report from SPF Engineering regarding the Tucker Springs Mitigation Plan on May 19, 2014.

5. Attached hereto as Exhibit 1 is a true and correct copy of the transcript of the Status Conference held on April 30, 2014.


Robyn M. Brody

Subscribed and sworn to before me this 3rd day of June, 2014.




Notary Public for Idaho
Residing at Boise Idaho
My Commission Expires: 9/10/2015

CERTIFICATE OF SERVICE

3rd The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 3rd day of June, 2014 she caused a true and correct copy of the foregoing document to be served upon the following by the indicated method:

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 checked="" type="checkbox"/>
Garrick Baxter Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 garrick.baxter@idwr.idaho.gov kimi.white@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 checked="" type="checkbox"/>
Randall C. Budge Thomas J. Budge 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"/>

201 E. Center St. P.O. Box 1391 Pocatello, ID 83204 rcb@racinelaw.net tjb@racinelaw.net bjh@racinelaw.net	E-Mail <input checked="" type="checkbox"/>
John K. Simpson Paul Arrington BARKER ROSHOLT & SIMPSON, LLP 195 River Vista Place, Suite 204 Twin Falls, Idaho 83301-3029 jks@idahowaters.com pla@idahowaters.com ilw@idahowaters.com	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"/>
Timothy J. Stover WORST FITZGERALD & STOVER PLLC P.O. Box 1428 Twin Falls, Idaho 83303 tjs@magicvalleylaw.com	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"/>
Michael J. Henslee, V.P. Salmon Falls Land & Livestock Co. 95-A Bell Rapids Road Hagerman, Idaho 83332 mjhenslee@gmail.com	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"/>
Leo E. Ray Big Bend Trout, Inc. P.O. Box 479 Hagerman, Idaho 83330 fpi@fishbreedersofidaho.com	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"/>
Almer Huntley, Jr., President Big Bend Irrigation & Mining Co., Ltd. 2721 South 900 East Hagerman, Idaho 83332 plspe@hotmail.com	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"/>


Robyn M. Brody

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE SECOND)
MITIGATION PLAN FILED BY)
THE IDAHO GROUND WATER) CM-MP-2014-13
APPROPRIATORS FOR THE)
DISTRIBUTION OF WATER TO)
WATER RIGHT NOS. 36-02551)
AND 36-07694 IN THE NAME OF)
RANGEN, INC.,)
_____)

REPORTER'S TRANSCRIPT
OF RECORDED HEARING

DATE: April 30, 2014
LOCATION: Idaho Department of Water Resources
322 East Front Street
Boise, Idaho
BEFORE: Director Gary Spackman

Transcribed by:
SABRINA VASQUEZ, CSR #377
Official Reporter

1 TRANSCRIPT OF PROCEEDINGS
2 April 30, 2014
3
4 THE DIRECTOR: Let's go in a clockwise direction.
5 Fritz.
6 MR. HAEMMERLE: Fritz Haemmerle, Rangen, Inc.
7 MS. BRODY: Robyn Brody, Rangen.
8 MR. MAY: Justin May, Rangen.
9 MS. BLADES: Emmi Blades, deputy attorney
10 general, IDWR.
11 MR. SIMPSON: John Simpson, Buckeye.
12 MR. RAY: Leo Ray, Fish Breeders of Idaho, Big
13 Bend Trout.
14 MS. BARNES: Starla Barnes, Fish Breeders of
15 Idaho.
16 MR. HUNTLEY: Bud Huntley, Big Bend Irrigation.
17 MS. GIBSON: Deborah Gibson, water resources.
18 THE DIRECTOR: Okay. And then.
19 MR. COURTNEY: Wayne Courtney, Rangen.
20 MR. KINYON: Joy Kinyon, Rangen.
21 THE DIRECTOR: Okay. Thank you.
22 This is a status conference for a second
23 mitigation plan that's been filed by IGWA, and I
24 scheduled this status conference because the period of
25 time had expired for the publication and filing of

2

1 MR. HAEMMERLE: I'm sorry, Director.
2 THE DIRECTOR: No, that's fine.
3 Are there other protestants.
4 UNIDENTIFIED SPEAKER: Yes, Salmon Land and --
5 THE DIRECTOR: Okay. I'm sorry, Ken, I missed
6 that. Yes, Salmon Falls Land and Livestock Company.
7 So is that the full list of the protestants
8 then?
9 (No audible response.)
10 THE DIRECTOR: Okay. Randy, do you want to lead
11 out as IGWA, or do you want me to be the lead in this
12 thing? I'm willing to take the lead if you want me to.
13 MR. BUDGE: No, that's fine. We don't have
14 anything other than to schedule a hearing date.
15 I would make one comment relative to the
16 protests of everyone except Rangen, and that is that it
17 appears that all of those protestants could be lumped
18 in a group of asserting injury if water from Tucker
19 Springs was transferred to Billingsley Creek. It would
20 appear to us that their objections probably are best
21 presented as a part of the transfer application which
22 is being filed to change the point of diversion and
23 place of use.
24 So what we would propose to them or at
25 least advise them and further discuss is that the

4

1 protest, and I wanted to, I guess, get an understanding
2 from the parties and from IGWA as to their desires
3 moving forward.
4 I will mention and everybody probably knows
5 I issued a stay order that has a short duration to it
6 and relates to this second mitigation plan.
7 Let me -- Debbie, do we have a list of
8 protestants here?
9 MS. GIBSON: Yes.
10 THE DIRECTOR: Let's see, we have a protest
11 that's been filed by -- let's see, is it Buckeye Farms,
12 John?
13 MR. SIMPSON: It is.
14 THE DIRECTOR: Okay. And then, I'm sorry I'm
15 not prepared here. We have one from Fish Processors,
16 Inc.
17 MR. RAY: Yes, sir.
18 THE DIRECTOR: Okay. And we have one from Big
19 Bend Ditch.
20 MR. HUNTLEY: We do.
21 THE DIRECTOR: Okay. Let's look here. And, of
22 course, Rangen has protested the mitigation plan.
23 Now are there --
24 MR. HAEMMERLE: Yeah.
25 THE DIRECTOR: Go ahead.

3

1 application to approve the second mitigation plan go
2 forward with the approval to be conditional upon the
3 approval of the water right transfer application to
4 change the place of use, and that that would be the
5 appropriate venue for them to then present their
6 concerns over the potential injury to water rights.
7 Other than that, we have -- I would comment
8 that our engineering work is in process at the moment,
9 and we have dates available to suggest for a hearing
10 that would accommodate the folks that are doing the
11 engineering work, which is SPF Water Engineering, and
12 available dates. The ones we were going to suggest
13 would be the 27th, the 29th, the 30th of May, or June 4,
14 5, and 6.
15 THE DIRECTOR: Okay. Fritz, I know I sensed
16 that you wanted to speak.
17 MR. HAEMMERLE: Yeah.
18 THE DIRECTOR: And I want to give you an
19 opportunity here.
20 MR. HAEMMERLE: Well, we have several concerns.
21 I'll just start backwards from what Mr. Budge stated.
22 I think all -- I'm not speaking for the parties who are
23 asserting injury, but I think the proper venue is any
24 plan that causes them injury they should be entitled to
25 participate in. So, you know, to the extent they want

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1 to participate in this or the transfer, they should be
2 entitled to participate any way they want to, and I
3 think they need to participate in this particular case.
4 What's troubling for Rangen, Director, is
5 we seem to be in the same position we were with the
6 first mitigation plan is that there is some complicated
7 engineering being proposed that we haven't seen yet.
8 You know, we're put in kind of a complicated position
9 in that you've entered the stay. Of course we disagree
10 with it, but you've done it. And we need a fair hearing
11 on this Tucker Springs application.
12 We're not going to be put in a position of
13 IGWA presenting us a plan two weeks in front of a
14 hearing and having us responding to some complicated
15 engineering. I just think that's fundamentally unfair.
16 We didn't get any engineering plans last
17 time, so I suppose IGWA is in the same position they
18 were before. They have presented nothing but
19 speculation. This appears to be a serious plan. We've
20 cooperated with SPF for them to do their engineering.
21 We want to see that and we want to see it in a timely
22 way.
23 Our second concern is we believe the state
24 of Idaho has been involved in Tucker Springs. To the
25 extent the state of Idaho has been involved in this

6

1 THE DIRECTOR: Well, let me just comment at this
2 point on a couple of points. One is I anticipated and
3 I suspect people could imply from the stay order that I
4 intended to try to hold this hearing, perhaps not
5 easily, in May sometime and try to have a decision out
6 the first part of June. Maybe my naive time and
7 simplistic timetable won't allow the parties to properly
8 prepare.
9 One of the concerns I always have in these
10 mitigation plan proposals and hearings is that it seems
11 to me, based on the court decisions and my sense of
12 what's expected, there's at least an expectation of
13 expeditious hearing and determination by the department,
14 that these things not drag on, with the mitigation plans
15 as well as with the calls. In both of those arenas we
16 need to try to be more prompt about doing what we're
17 doing.
18 So I wanted to be responsive, I guess, is
19 the statement that I'll make, and I'm willing to be
20 responsive. I'm willing to clear my calendar, but I
21 understand the preparation difficulties that you state
22 and allude to.
23 The second point I want to make is that the
24 state of Idaho has been involved. I purposefully built
25 a wall. I mean, I hear discussions about what's

8

1 project as well, we want full access to those witnesses.
2 We want to know who's involved. We want to know how
3 they're involved. And to the extent they are helping
4 out this plan, we want full access. We want to take
5 discovery of those witnesses, depositions of those
6 witnesses, the whole thing.
7 Again, I suspect this is more than just
8 IGWA doing this plan. I think the whole force of the
9 state of Idaho is behind this, and we want to know to
10 the extent they are, who they are, and we want to take
11 their discovery.
12 Fundamentally, I guess we would sacrifice a
13 little time, Director, to make sure we get a fair
14 hearing on this. That's our interest here as we sit
15 here today.
16 THE DIRECTOR: Okay. So what's your proposal
17 for timing, Fritz?
18 MR. HAEMMERLE: I don't know. As I sit here
19 today, I can't possibly tell you that because we haven't
20 seen the plan. So it's really hard for us to sit here
21 and say, you know, we want a month, a month and a half.
22 I don't know.
23 Maybe IGWA and the state of Idaho can tell
24 us when this plan is going to be presented in a
25 thoughtful way where we can look at it and be critical.

7

1 happening, but I have not been directly involved in any
2 of the negotiations or discussions about what's
3 happening down there. And probably the front line
4 internally is Matt Weaver or Brian Patton in working
5 with water court and others.
6 So all I can tell you, Fritz, is that
7 you'll have access to the department and staff to the
8 extent that you want them, and I'll make it a priority.
9 MR. HAEMMERLE: So anyway, Director, we just
10 don't know as we sit here. You know, we had a fairly
11 quick hearing scheduled last time. You know, IGWA was
12 obviously unable to present anything concrete, and
13 that's why they failed to prevail on those issues, but
14 this seems like their shot. They seem to be serious
15 about providing something. So to the extent they're
16 taking their best shot, we want our best shot.
17 THE DIRECTOR: Yeah. And the other tension in
18 this whole discussion is if there is to be curtailment,
19 I want curtailment to be effective. I don't want to
20 see the entire irrigation season go by and not have
21 something in place.
22 MR. HAEMMERLE: Well, what we're worried about
23 is the standard practice of -- and I'll be real
24 candid -- you setting a hearing date the 27th, you
25 know, later this month in May, and all of a sudden IGWA

9

1 gives us some plan a week ahead of that hearing, and
2 our only avenue would be to request a continuance. I
3 mean, then they get their continuance. This matter
4 drags out. Of course we want to be fair.

5 So we want to see that plan. We want time
6 to review it. So, and I haven't heard Mr. Budge tell
7 us -- you know, it's April 30th now -- when we can
8 expect to see it.

9 THE DIRECTOR: I guess, Fritz, I want the senior
10 water right holder to drive the timetable in this. In
11 other words, if you want to see a plan within two weeks
12 or something, then, or three weeks, then let's --

13 MR. HAEMMERLE: I would like to see a plan -- if
14 we're going at the end of this month or start of June,
15 I want to see that plan the end of next week, you know,
16 and I want to know who is behind the plan and how it
17 was developed, you know, the whole thing.

18 MR. BUDGE: I suppose I can respond whenever
19 it's --

20 THE DIRECTOR: Sure. I'll come back to you.

21 MR. BUDGE: I didn't want to interrupt, but just
22 a couple of quick points. I can appreciate the fact
23 that Fritz wants to speak on behalf of the other
24 protestants, but I guess it's their decision to make
25 what proceeding they want to be involved in. I just

10

1 appreciate. So we've proposed suggested dates that
2 would provide a couple of weeks from the time the plan
3 would be available, and they would have an opportunity
4 to depose Mr. Hardgrove or others at SPF. It would
5 give them a couple of weeks from that date.

6 If they don't like the dates proposed, I
7 haven't approved an alternate day, but we are certainly
8 receptive of accommodating whatever dates Mr. Haemmerle
9 believes is necessary to prepare his case.

10 With respect to, I think comment is
11 appropriate regarding the state of Idaho's involvement
12 on this. It should come of no surprise to Rangen or
13 anybody on that end of the table the state has developed
14 the Hagerman settlement framework. It's been out there
15 since the legislature was in session.

16 Our second mitigation plan, as I believe
17 everybody knows, was filed in response to seeing that
18 plan. When the state presented it, a number of items
19 the ground water users were asked to do as a part of
20 that settlement agreement was plumbing, if you will,
21 below the rim. As we looked through the attached
22 project list, the first thing on the project list was
23 the pump from Tucker Springs to Rangen. So we promptly
24 filed our mitigation plan in order to expedite moving
25 along that as one of several mitigation options.

12

1 wanted to make them aware that the transfer application
2 would be filed and that deals with the water right that
3 would affect their interest.

4 As far as not seeing a plan, I think Fritz
5 must be referring to final engineering drawings. The
6 plan is laid out in our mitigation plan. This is not
7 complex. This is not rocket science. This is simple
8 pumping of water from Tucker Springs through some land
9 to the head of the Rangen hatchery.

10 With respect to the engineering design work,
11 that is in process. We do not obviously intend to have
12 100 percent complete engineering studies complete until
13 we get approval of the plan with whatever conditions
14 are imposed, similar to the over-the-rim plan at Clear
15 Springs.

16 We anticipate to have conceptual plans and
17 drawings completed, which engineers describe as a 60
18 percent completion, available in approximately mid-May,
19 approximately two weeks. So that would give Rangen an
20 ample opportunity to depose the SPF witness, Bob
21 Hardgrove, on that. And, of course, when we have the
22 plans available, we're happy to submit them.

23 On the idea that they haven't seen anything,
24 I assume they're not referring to the plan. They're
25 referring simply to the engineering drawings, which we

11

1 It's not the only one we had. Obviously we
2 had nine different proposals in our first plan, all of
3 which Rangen opposed. We're certainly not surprised.
4 Rangen opposes this, and I don't dispute that they
5 should have an opportunity to prepare, and whatever
6 they want to propose, we'll be happy to listen to it.

7 This won't be the last mitigation plan that
8 we'll file either. We have others that will be filed
9 shortly when the engineering is completed, and we
10 intend to move all of these alternatives along and see
11 what happens.

12 The author of the Hagerman settlement plan,
13 as I understand it, largely came through Speaker Bedke.
14 I suppose if Rangen wants to depose the speaker and
15 other legislators and folks at the department and go on
16 a fishing hunt, that's their entitlement. If the
17 director wants to -- if they want to file a motion
18 allowing discovery, the director here can, I suppose,
19 determine what the parameters are of the fishing trip
20 that Rangen wants to go on.

21 So we don't have any objection to that.
22 I'm fine with them pursuing whatever discovery they
23 want. I think that's a clear decision as to whether
24 that's productive to the mitigation plan is really
25 relatively simple, pumping water from one location.

13

1 THE DIRECTOR: Fritz, or Rangen, why don't you,
2 if you want to respond, and then let's give the other
3 protestants an opportunity to speak.
4 I neglected just to state for the benefit
5 of the other protestants that I know Randy Budge was
6 suggesting that perhaps the more appropriate forum
7 would be the protestants in an application for transfer,
8 but I would not exclude you from participating in the
9 mitigation plan hearing. It would be your choice
10 whether you wanted to withdraw or whatever you wanted
11 to do with respect to the mitigation plan.
12 But you are protestants, you're parties to
13 this contested case, and you're entitled to participate.
14 I wanted to make sure you knew that for the discussion.
15 Fritz, or --
16 MR. HAEMMERLE: I'll let any of the protestants
17 comment if they want to first.
18 THE DIRECTOR: Okay.
19 MR. HAEMMERLE: Then you can come back to me.
20 THE DIRECTOR: John, should we start with you or
21 do you want to be last?
22 MR. SIMPSON: No, I'll go first.
23 Well, I appreciate what Randy has said
24 about his view of the mitigation plan being set before
25 a transfer. I guess I don't share that view because

14

1 THE DIRECTOR: You're entitled to participate.
2 So, thanks.
3 Starla.
4 MR. RAY: She's with me.
5 THE DIRECTOR: Oh, okay.
6 Let's see, is it Almer?
7 MR. HUNTLEY: Yep.
8 THE DIRECTOR: Almer.
9 MR. HUNTLEY: I'm president of Big Bend Ditch.
10 While we're not seeing water taken directly from us,
11 we get the bulk of our water from the upper spring; 20
12 cfs we're supposed to be getting. Buckeye Ranch has
13 65 shares of water out of our allotment, and some of
14 that water goes to pasture and a pond, and it's also
15 being transported out of our district by a culvert
16 under the 2900 Road, and it goes into one of the ponds
17 on Route 30.
18 And rumors are flying in the valley of all
19 kinds of ways that things are going to be taken care of
20 down there. One solution we heard about was to pump
21 out of the ponds down there, which again would be our
22 water. We would try to shut that water off leaving our
23 district. And we're also concerned the fish hatchery
24 is going to be removed or it's going to be curtailed
25 considerably.

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1 they are intertwined.
2 With respect to Buckeye's interest,
3 obviously they have rights in Riley Creek, which is
4 part of Upper Tucker Springs, and any plan that would
5 propose to take water out of Upper Tucker Springs,
6 hence the Riley Creek drainage, from our perspective,
7 not only is it a real possibility, it would impact
8 flows available for Buckeye Farms. So there's our
9 interest.
10 At this point we prefer to be involved
11 throughout the process, and my understanding is that
12 there hasn't been a transfer application filed, at
13 least one that I'm aware of. So, hence, this is the
14 proceeding that's in front of everyone.
15 THE DIRECTOR: Okay. Leo.
16 MR. RAY: I have leases with the Salmon Falls
17 Land and Cattle and with Big Bend Ditch to use that
18 water for fish. We're short on water at Salmon Falls.
19 We're not getting near all of our water at the present
20 time, and they are talking about taking water away from
21 us there. With Big Bend, my water right, I've been
22 getting most of my water there, but Salmon Falls is
23 where we are short.
24 Ways to find out the rumors is not through
25 the rumor mill. We would like to know what's going on.

15

1 We're just here -- we don't want to see a
2 loss of water. We have been approached by the pumpers
3 to sell some of our water in exchange for piping the
4 ditch, and so far we've seen no concrete plans. And
5 our board so far has said no.
6 THE DIRECTOR: Thanks.
7 Again, I'll reiterate, you're entitled and
8 the ditch company is entitled to participate --
9 MR. HUNTLEY: Yes.
10 THE DIRECTOR: -- in this mitigation proposal
11 and the associated hearing and be a full party in that.
12 Okay. Kent Stoker, Stover. Is it Stover?
13 MR. HAEMMERLE: Tim Stover.
14 THE DIRECTOR: I didn't get it right, Tim. I'm
15 sorry.
16 MR. STOVER: I have been called a lot of things.
17 THE DIRECTOR: Well, I apologize.
18 MR. STOVER: Thank you, Director.
19 I guess I first need to apologize. I'm
20 extremely late to the party here and really not up to
21 speed or as up to speed as I should be. So, again, I
22 apologize in advance for that.
23 I guess I don't know that I have a whole
24 lot more to add to what Fritz has already said. It
25 seems to me that we need to be given the opportunity to

17

1 present whatever evidence that we want to present and
2 to, I guess, take a look at the engineering that's being
3 proposed.
4 I'm having trouble understanding why, if
5 it's not rocket science, why that information isn't
6 available at this point for us to take a look at and
7 see how it is we want to respond.
8 The bottom line: We need ample time to
9 prepare our response. And to prepare the response, we
10 need to know what it is we're facing before we can move
11 forward.
12 THE DIRECTOR: Okay. So I'll ask the question
13 again, what's a reasonable time period given the --
14 given at least what I perceive to be the dictates for
15 expeditiously reviewing and processing, not only for
16 the protection of the senior right holder, but to allow
17 the mitigation plan to be heard.
18 I'll come back to you, Fritz, if you don't
19 want to drive the process, I'll --
20 MR. HAEMMERLE: No, I'll be happy to start.
21 I have to comment on the so-called term
22 sheet that's been circulated. I think it's fair to say
23 that term sheet is being driven by the state
24 legislature, IGWA, with little, if any, involvement,
25 true involvement, I think, of the Hagerman water users.

18

1 held the 4th, 5th, and 6th, which a Wednesday, Thursday,
2 and Friday of June.
3 Any comments on that time period?
4 MR. T.J. BUDGE: Director, this is T.J. I'm on
5 a different phone from Randy. If I could ask for just
6 a little bit of clarification that I think would help,
7 and I can initially state that those June dates work
8 for me, but one question for clarification concerning
9 the participation by the other protestants?
10 THE DIRECTOR: Yes.
11 MR. T.J. BUDGE: We certainly don't have an
12 objection to them participating and monitoring, and
13 they have a right to do that. I guess the question I
14 have is whether, as part of this proceeding, there
15 needs to be a definitive determination of whether the
16 transfer of water from Tucker Springs to Rangen will
17 cause injury to their water rights. That's a question
18 that's got to be answered one way or the other. We
19 certainly agree that has to be addressed and they have
20 legitimate concerns that have to be resolved.
21 I guess my concern is that if this is going
22 to be the forum to make that definitive determination,
23 that's certainly going to broaden the issues at the
24 hearing and broaden the scope of discovery
25 significantly. And if we do that in this proceeding,

20

1 And I can only speak probably on behalf of Rangen that,
2 you know, we haven't been to that party or the table
3 where this term sheet has been developed. So I'm
4 certainly not certain if it's in the best interest of
5 Hagerman and its users and anyone else who actually
6 uses water there.
7 At any rate, again, we want a fair hearing.
8 So I think we can go with the 4, 5, 6 in June. We'll
9 kill ourselves to get our discovery done, as we always
10 do. We need to see engineering quickly and we need the
11 discovery process to begin now.
12 Director, we'll -- if we feel that we're
13 being prejudiced through a delay in giving us
14 information or if that plan is given to us at too late
15 of a date, we're going to come back. We have to balance
16 our interest in a quick hearing versus a fair hearing.
17 So we'll do our best to do it 4, 5, and 6, if you
18 authorize discovery now and IGWA prepares, gives us
19 something.
20 They were critical of us not giving them
21 quick enough access to the property by SPF, and we
22 gave them what they wanted. So we want a plan and
23 we'll start discovery now.
24 THE DIRECTOR: Okay. Everybody listening in and
25 sitting at the table, Fritz has proposed the hearing be

19

1 then we want to be sure that that's conclusive for the
2 transfer application as well and we don't have to
3 relitigate those issues a second time.
4 So some clarification on that, I think,
5 would help us in knowing how much time we need to
6 prepare for the hearing and how much time we need for
7 the hearing itself.
8 Then the second concern relates to the
9 scope of discovery. If we're going to be required to
10 be participating in the depositions of legislators and
11 department personnel over the Hagerman term sheet and a
12 whole bunch of things, that is going to make it more
13 difficult to be prepared by that early June date. So,
14 and I don't think that's necessarily relevant to the
15 issues in the mitigation plan hearing, but clarification
16 of those two issues, I think, would be helpful at this
17 point.
18 MR. HAEMMERLE: Director, we have no intent of
19 deposing legislators on term sheets. They're certainly
20 entitled to do term sheets and legislate and be
21 proactive in that area.
22 You know, what we want is any state
23 officials that have been involved in the technical
24 aspects of this Tucker Springs plan and the pipeline,
25 those kinds of things.

21

1 You know, it's curious, I think, that we're
2 going forward with the Tucker Springs plan when they
3 haven't even filed the transfer yet. That's just --
4 we're going to get to the hearing and we're going to
5 say it's speculative because they haven't even filed a
6 transfer yet. That should indicate to the department
7 that this thing is not going to happen this year. Best
8 case, even if they proved everything up, it's not
9 happening this year.
10 But, at any rate, it's hard to believe
11 that we would move forward on the 4th, 5th, and 6th
12 when they haven't filed a transfer, and they want the
13 issues in this case to be dispositive of a transfer
14 application they haven't even filed yet. It seems mind
15 boggling.
16 THE DIRECTOR: Justin, did you have a comment?
17 MR. MAY: No. That was my comment, that I can't
18 believe that we're seriously suggesting that this
19 hearing would go forward without consideration of the
20 injury to water rights that the plan proposes. I can't
21 believe that's seriously being suggested.
22 THE DIRECTOR: Okay. Well, the issue --
23 MR. T.J. BUDGE: Director, this is T.J. I might
24 comment that this gets back to the question we've had.
25 You know, I think we've anticipated that when a

22

1 I would ask the parties to go back and look
2 at the decision, if you have it available or we can
3 make it available to you, the decision for the
4 mitigation plan that was approved for the Clear Springs
5 call. I expect to apply the same kinds of standards as
6 far as the burden on the juniors showing that the
7 proposed plan is feasible and that there's sufficient
8 engineering and that the water can be accessed legally.
9 As I recall, in that particular --
10 MR. BUDGE: Director, I just --
11 THE DIRECTOR: Excuse me?
12 MR. BUDGE: I didn't mean to interject. That's
13 exactly the standard that we were proceeding on. In
14 the Clear Springs case there were no water right
15 transfers filed and approved either. That was the --
16 as I recall, the order that was conditional upon being
17 able to secure several things. One of them was the
18 final drawings and the other one was on getting the
19 water right transfer approved, and all of those were
20 simply conditions of approval. And we're proceeding in
21 the same way.
22 I did have just a couple of other. The
23 schedule proposed is fine. As I mentioned earlier, we
24 expect to have the engineering plans completed in about
25 two weeks. There's only one engineer involved so that

24

1 mitigation plan requires a transfer of water rights,
2 that the first step would be to decide if providing the
3 proposed water source to the senior would mitigate
4 their injury. If the director decides that the injury
5 would be mitigated with water from the mitigation
6 source, then the juniors would have the duty to file
7 transfer applications or whatever other permits may be
8 necessary to deliver that water.
9 Again, what Rangen is proposing is that
10 juniors file transfer applications and have those
11 approved before finding out if the proposed water
12 source will actually mitigate the injury. So we need
13 clarification on what process the department is going
14 to follow.
15 The conjunctive management rules certainly
16 don't require all transfers to have been filed and
17 approved before a mitigation plan is submitted, and we
18 just need to know which way, Director, you're heading
19 on this issue.
20 THE DIRECTOR: The issue that we're talking
21 about is one that I had not thought of, and it's
22 partly being developed because of the protestants to
23 this mitigation plan. So I'm not prepared to rule on
24 it today, but I agree that some direction would be
25 helpful.

23

1 provides ample time for him to be deposed before the
2 suggested hearing date.
3 I can appreciate that Fritz likes to
4 complain about lack of discovery, but they have yet to
5 file a motion to allow discovery and they've yet to ask
6 for any discovery. Once we receive discovery, we'll
7 timely respond as quick as we can.
8 While I'm a little puzzled by the comment
9 that Rangen has not been a party to negotiations, not
10 been at the table, that's been at Rangen's choice.
11 They were invited to participate in the very first
12 meeting, as IGWA did, and Rangen chose, for whatever
13 reason, not to participate. Subsequently, Rangen was
14 there at the meeting here a couple of weeks ago when
15 the state came to Hagerman and unveiled their proposed
16 settlement. We were not invited to that and we did not
17 participate, but Rangen did.
18 So I think that's kind of a sidebar,
19 unrelated issue to complain about, but we don't really
20 think it's relevant to the issues at hand here, which
21 is the second mitigation plan. That's what's before
22 us. And we'll do what we can to timely respond to
23 discovery once we see some. And certainly we'll
24 accommodate whatever reasonable needs are to allow
25 Rangen to do their discovery before the hearing date.

25

1 If they can't be completed by the 4th, 5th, and 6th and
2 want to continue it, we certainly wouldn't resist that.
3 I did have one other matter, before we
4 complete, to address, but I suppose it can be done
5 after we establish a schedule.

6 THE DIRECTOR: Let's start from the back end and
7 move forward. So I'll issue a notice of hearing for
8 the 4th, 5th, and 6th of June. It will be here in
9 Boise. I've checked -- Debbie, I've checked the
10 calendar for the conference rooms. It appears they're
11 available.

12 So let's work backwards on some of the
13 discovery matters. I'll issue an order, and I think I
14 can do this under our rules on my own volition rather
15 than waiting for some document to come in requesting
16 discovery, but I hope I'm not usurping authority, but
17 I don't know why I couldn't do that. So I'll issue an
18 order that will allow discovery and at least verbally
19 let's start immediately.

20 Randy, based on your statements, I propose
21 that at least preliminary engineering plans and whatever
22 SPF has put together and whatever information that you
23 have regarding the plans for diversion, for
24 transportation and delivery of water to Rangen from
25 Tucker Springs be distributed to Rangen and the parties

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1 on or before May 12th, which is a Monday, and then we
2 move forward from there. I thought about making it the
3 9th, but that just gives them an additional weekend.
4 That's about ten days. So I'm not sure that I want to
5 push it any more quickly than that.

6 I recognize that the development of those
7 engineering plans may evolve over the three-week period
8 of time until we hold the hearing, and I would expect a
9 disclosure of those updates, Randy, would be immediately
10 delivered to the parties.

11 Now are there other subjects that we need
12 to talk about in the discovery to tighten it up?

13 MR. HAEMMERLE: Director, on that 12th deadline,
14 could we have -- and we can send out discovery
15 requests -- can we send out -- have them disclose who
16 their witnesses, both lay witnesses, expert witnesses
17 are going to be, you know, brief summary of what they
18 are going to say and any documents they are going to
19 produce.

20 THE DIRECTOR: I think that would be fine. Do
21 you want me to issue the order so that both parties --
22 I know it makes it difficult where you haven't seen the
23 plans for experts.

24 MR. HAEMMERLE: Well, it's a bit difficult for
25 us. I would suggest at least having them disclose who

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1 they're going to be as soon as possible, perhaps, you
2 know, a week if they have those witnesses. Give us
3 then a week to respond to that.

4 THE DIRECTOR: Randy, you probably know who
5 those people are?

6 MR. BUDGE: Yeah, we would be fine. On the 12th
7 we can disclose our proposed witnesses and exhibit
8 lists, and they can have another week to respond, the
9 19th. That's fine.

10 THE DIRECTOR: Okay.

11 MR. HAEMMERLE: I proposed a week earlier for
12 just witnesses, those kinds of things.

13 THE DIRECTOR: Is that troublesome, Randy?

14 MR. BUDGE: A week earlier? You mean the 5th?

15 THE DIRECTOR: Yeah, I think that's a short time
16 period.

17 MR. BUDGE: That's not a week. Our engineers
18 told us yesterday they needed two weeks. So --

19 MR. HAEMMERLE: Well, we'll deal with what we
20 have to deal with.

21 MR. BUDGE: We'll make it for sure in two weeks,
22 but we'll disclose what they have available, but I
23 think we can probably have our witnesses and exhibit
24 lists disclosed all on the 12th.

25 THE DIRECTOR: Let's make it all on the 12th

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1 then.

2 MR. HAEMMERLE: Director, going back to what I
3 had -- one of my initial concerns was the state of Idaho
4 and who is helping develop this. I don't care about
5 term sheets, legislation, and those things. I care
6 about who are the state people involved in the
7 development of this Tucker Springs plan. If they're
8 involved in obtaining right-of-ways, engineering, if
9 they're technically involved, we want to know who they
10 are as well.

11 MR. BUDGE: I can respond. Fritz may not be
12 willing to accept my statement, but we are doing all of
13 it. The only thing that we have seen from the state is
14 the same as you've seen, and that is the settlement
15 term sheets that list this as a proposal. From that
16 point on, we have taken it from there.

17 We are securing the right-of-ways. We are
18 securing a term sheet with Fish and Game for the water.
19 We're securing approval of that with the Idaho Water
20 Resource Board. We are doing all of that.

21 If you want to know everybody we've talked
22 to, that's a different matter. But we are, meaning
23 IGWA, the applicant, is pursuing all aspects of the
24 project, that is engineering, that is right-of-way,
25 that is power supply, the like.

29

1 THE DIRECTOR: Nonetheless, Fritz, I would start
2 and --
3 MR. HAEMMERLE: If that's true, that's true. We
4 just don't know.
5 THE DIRECTOR: From the state's side --
6 MR. BUDGE: If we did the term sheets so you can
7 pursue state people if you want to go take issue with
8 the term sheets, but there are other venues to do that
9 and that seems a little bit irrelevant to our plan.
10 THE DIRECTOR: Nonetheless, it might lead to
11 discoverable -- it might lead to admissible evidence.
12 So, Fritz, I guess what I would tell you is
13 if you want to set up either formal or informal
14 discussions with either Matt Weaver or Brian Patton in
15 the office, they have been the two point people that
16 have been working on this, and they could disclose to
17 you other people who might be involved either
18 technically, or otherwise, inside the department.
19 As I've said before, I've been insulated
20 from a lot of the process by design and, frankly, feel
21 a little adrift that I don't even know what's going on
22 there.
23 MR. HAEMMERLE: Director, that process with the
24 department, I think, has worked out well and served the
25 parties well. And we're happy to have a discussion to

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1 was done informally, but it was done with notice to the
2 parties so that anybody -- they didn't have to have
3 multiple conversations.
4 MR. HAEMMERLE: Yeah.
5 MR. SIMPSON: So maybe --
6 MR. HAEMMERLE: I think that goes without --
7 that's a good suggestion, John.
8 MR. SIMPSON: Once you set it up, just make sure
9 that everybody knows so that if any of these folks want
10 to come and --
11 MR. HAEMMERLE: Good plan.
12 THE DIRECTOR: Good suggestion.
13 MR. HAEMMERLE: Director, one thing I just
14 thought of: To the degree that there is -- I think
15 injury is going to be a very serious part of it. Are
16 there measurements in any relevant plans that are going
17 to be important that the state of Idaho is in possession
18 of?
19 THE DIRECTOR: I don't know. I don't know the
20 answer to your question.
21 MR. HAEMMERLE: I assume we can get that from
22 Garrick as well.
23 THE DIRECTOR: I would ask all of those
24 questions. Again, Matt and Brian probably are the
25 front lines on those issues. We might have to burrow

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1 figure out what's going on and take it from there if
2 there's any technical aspects that the state is doing.
3 THE DIRECTOR: I'd suggest that you call Garrick
4 and I'll talk to him. He would have been here today,
5 but he had a family emergency this morning. I'd suggest
6 you call Garrick and arrange either a deposition or an
7 informal discussion with him, and that informal
8 conversation might be more helpful to start with.
9 MR. HAEMMERLE: Yeah, we would be happy to start
10 there.
11 THE DIRECTOR: Yeah, okay.
12 Okay. Other -- I haven't asked the other
13 protestants, other issues that you want to raise with
14 respect to the timing, with respect to discovery, with
15 respect to how you want to participate?
16 Tim, I don't want to forget about you on
17 the phone as well, so speak up.
18 MR. STOVER: I'll speak up. I don't have
19 anything to add.
20 THE DIRECTOR: Okay. Thanks.
21 MR. SIMPSON: Well, Mr. Director, you know that
22 informal conversation that Fritz was referring to and
23 you've identified, I recall back in some discussions on
24 previous delivery calls where the parties wanted to
25 talk to Alan Wiley, for example, on modeling. That

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1 into our hydrology staff. I suspect there are some
2 measurements out there. I don't know whether they
3 would be measurements that are retained by the
4 department, maybe Tim Luke's folks, or whether they be
5 retained by the watermaster, Frank Erwin. He is the
6 watermaster there, isn't he, on Tucker? I just don't
7 know. Let's start there. And as soon as you can
8 arrange it, the better, in my perspective --
9 MR. HAEMMERLE: Yeah.
10 THE DIRECTOR: -- for you and everybody else.
11 Now in issuing an order, I'll also send out
12 probably a copy of the Clear Springs decision, and I'll
13 try in the order to give the parties some direction
14 about the participants of those protestants who are
15 concerned about the diminishment of their flows and
16 their water rights so that the parties have some idea
17 about the standard that I'll apply. I'm just not ready
18 to address it today.
19 MR. SIMPSON: Mr. Director, on that point, I
20 guess I would just, because I was involved in that
21 prior proceeding, just raise the fact that in the
22 Clear Springs case it dealt with basically the same
23 drainage, if you will, the ground water flows to Snake
24 River farms in that case. Wherein, in this case, we're
25 essentially talking about moving water from one drainage

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1 to another, and it is an important distinction that
2 needs to be considered.
3 THE DIRECTOR: That's a good point.
4 And I think the other point in this
5 discussion is that the water rights, as I recall, that
6 were being proposed as the authorization for the
7 diversion of ground water to Clear Springs, the water
8 right holders were not objecting to the use of that
9 water, the delivery of that water.
10 Here we have a different situation where
11 there are actual protestants or potential protestants
12 who feel they might be injured by a diversion of the
13 water that's proposed. So just that difference
14 factually is a distinction that needs to be addressed
15 that we need to be cognizant of as well.
16 So there are differences and I need to sort
17 through them.
18 Okay. Anything else?
19 MR. BUDGE: Director, one other point of
20 clarification. On the discovery order that will be
21 part of your scheduling order, we had discussion that
22 Rangen would also disclose its witnesses and exhibits
23 one week later on the 19th. So I just wanted to make
24 sure that was going to be included in the order.
25 THE DIRECTOR: Yes.
34

1 MR. HAEMMERLE: Yes.
2 MR. BUDGE: I was simply saying if that doesn't
3 work for them, we still will have to have ample time
4 for discovery. We don't want to be in a situation
5 where we first see Dr. Brendecke's testimony the day of
6 the hearing, and that's somewhat what happened last
7 time. We want to have an opportunity to do some
8 discovery as well once we see their witnesses and
9 exhibits. There may well be none, but we don't want to
10 be foreclosed if Rangen is dropping all of these things
11 on us the day before the hearing and we don't have an
12 opportunity to do discovery either.
13 THE DIRECTOR: Everybody is worried about being
14 surprised. Given the short time frames we're operating
15 under, I will allow some amendments to witness lists
16 and additions to evidence as we go forward. I recognize
17 to some degree that it may prejudice the parties. If
18 they feel it has prejudiced them in some way, then come
19 to me and you can move for a continuance or something
20 else, but I don't intend to get involved in motions for
21 sanctions and those kinds of things with the short time
22 frames that we have.
23 MR. T.J. BUDGE: Director, this is T.J. One
24 housekeeping item. For the method of the protestants,
25 in past cases Rangen and IGWA have done all of their
36

1 MR. BUDGE: And that we would update our
2 discovery after the 12th as new information came
3 available before the hearing, and we would expect
4 Rangen to do the same.
5 THE DIRECTOR: Yes.
6 MR. HAEMMERLE: Director, well, you understand
7 the bind we're under. We haven't seen any part of this
8 plan yet. All we know is SPF is working on it. We
9 haven't seen their witnesses. They have all the time
10 to prepare and then do, for lack of a better word, a
11 dump on us of information, and then we're expected to
12 come back one week later.
13 THE DIRECTOR: We're under a significant time
14 crunch.
15 MR. BUDGE: Well, if you want more time, that's
16 fine, but we don't -- we want the same courtesy. If
17 you don't --
18 MR. HAEMMERLE: No, that's fine. We believe in
19 a reciprocal discovery.
20 (Both parties speaking at same time.)
21 MR. HAEMMERLE: -- two weeks.
22 MR. BUDGE: Excuse me. I think we were speaking
23 over each other.
24 MR. HAEMMERLE: I apologize.
25 MR. BUDGE: Can I finish my sentence?
35

1 document delivery via e-mail. We have accepted service
2 of documents and we've served documents by e-mail.
3 That's been efficient and certainly more timely than
4 putting stuff in the mail.
5 I would be interested to find out if the
6 protestants would agree to do that here as well. If
7 so, if we could get the e-mail addresses that they
8 would like to use and that could be provided, made in
9 conjunction with your discovery order, Director.
10 THE DIRECTOR: Protestants, you're all e-mail
11 savvy?
12 (No audible response.)
13 THE DIRECTOR: Maybe we could --
14 MS. GIBSON: Their e-mails were provided on the
15 protest forms.
16 THE DIRECTOR: Oh, okay.
17 MS. GIBSON: So they are available.
18 THE DIRECTOR: So we have e-mails available for
19 all of the protestants?
20 MS. GIBSON: Yes.
21 THE DIRECTOR: Okay. That's helpful. If
22 everybody is in agreement, then that will expedite the
23 distribution of documents.
24 Okay. Anything else?
25 MR. BUDGE: I have one matter just to answer
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1 questions that have been raised. We're assuming that
2 the cease and desist order to Rangen is being stayed
3 consistent with the stay of the current order on the
4 ground water users. We haven't seen anything on that.
5 THE DIRECTOR: I don't know that there's a need
6 for us to do anything with respect to the cease and
7 desist order, at least right now. There's not an
8 immediate requirement that Rangen cease and desist
9 based on the consent order that was signed, unless you
10 recall differently, Fritz or Justin.
11 I don't see a need for me to do anything on
12 that particular matter at this point. I guess I want
13 to keep some separation between the relationship of
14 that matter and this particular hearing.
15 MR. HAEMMERLE: Director, I think you've been
16 fair in that respect, and the consent order simply says
17 if you believe there's a need to change it, give us
18 notice, and we'll be back.
19 THE DIRECTOR: Yeah. Okay.
20 All right. Thanks, everyone.
21 MR. BUDGE: The only reason I ask is we haven't
22 been a party to that proceeding and we've received
23 information that fish have been removed out at the
24 facility, so we didn't know if something had changed on
25 that.

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1 THE DIRECTOR: I don't see it having a
2 relationship to this proceeding.
3 MR. BUDGE: Just making an inquiry.
4 MR. HAEMMERLE: Interesting point of
5 intelligence. I don't know.
6 THE DIRECTOR: I don't either.
7 All right. Thanks everyone. Have a good
8 day.
9 (Conclusion of proceedings.)
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TRANSCRIBER'S CERTIFICATE

STATE OF IDAHO)
)
County of Twin Falls)

The undersigned does hereby certify that she correctly and accurately transcribed and typed the above transcript of the recording of the hearing that was recorded on April 30, 2014, in the above-entitled action or proceeding.

Dated and certified this 9th day of May, 2014.

/s/ Sabrina Vasquez
Official Reporter
Fifth Judicial District
Twin Falls, Idaho
CSR #377