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**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.**

Docket No. CM-MP-2014-003

**Buckeye's Response to IGWA's
Motion in Limine**

COMES NOW, the Protestant, Buckeye Farms, Inc., and hereby submits this opposition to the *Motion in Limine* filed by Idaho Ground Water Appropriators, Inc. ("IGWA") in the above captioned matter.

IGWA invokes the Department's Rule of Procedure 600 (IDAPA 37.01.01.600) in an effort to prevent Buckeye from presenting evidence at the hearing on IGWA's Second Mitigation Plan. In particular, IGWA seeks to prevent the following evidence from Buckeye:

3. All testimony and evidence of injury that derives from the transfer of the place of use of Idaho Department of Fish & Game water rights to include the Rangen hatchery, for the reason that the pending Application for Transfer is the proper forum for presenting such claims of injury.

4. In the event number 3 above is not granted, testimony and evidence from protestants having water rights in Tucker Springs or downstream on Riley Creek should be limited only to alleged injury resulting from the reduction in 10 cfs return flow from the Hagerman State Hatchery resulting from the 2nd Mitigation Plan transfer of water to Rangen. Protestants should not be allowed to present evidence of other injury to their water rights caused by drought, changes in incidental recharge, or junior ground water pumping which is unrelated to and not relevant to this mitigation plan.

Motion at 2. According to IGWA, “If such testimony and evidence is allowed, IGWA will be unfairly prejudiced by its inability to evaluate, prepare and defend its position against same.” *Id.*

IGWA’s motion should be denied. First, the Director has already addressed – and rejected – IGWA’s request to delay consideration of harm to other water rights. During the prehearing conference, held April 30, 2014, IGWA suggested that the non-Rangen Protestants – including Buckeye – should wait to have their protests addressed until the transfer proceedings.¹ Importantly, however, IGWA explained that it did not intent to force the Protestants to delay – confirming that “it’s their decision to make what proceeding they want to be involved in.” Tr. at 10, 11.24-25. The Director explained that he agreed – the Protestants should be able to participate in the mitigation hearing:

THE DIRECTOR: I neglected just to state for the benefit of the other protestants that I know Randy Budge was suggesting that perhaps the more appropriate forum would be the protestants in an application for transfer, *but I would not exclude you from participating in the mitigation plan hearing. It would be your choice whether you wanted to withdraw or whatever you wanted to do with respect to the mitigation plan.*

But, you are protestants, you’re parties to this contested case, *and you’re entitled to participate.* I wanted to make sure you knew that for the discussion.

Id. at 14, 11.4-14 (emphasis added). Given that the Director made this decision very early in these proceedings, IGWA cannot complain that it has had insufficient time to “evaluate, prepare and defend its position.”

Second, Rule of Procedure 600 provides the Hearing Office with the following authority:

The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho.

¹ Excerpts from the Reporter’s Transcript of Recorded Hearing (Apr. 30, 2014) (CM-MP-2014-13) are attached hereto.

Accordingly, evidence may only be excluded if it falls into one of these categories.

Importantly, however, IGWA fails to identify which of the categories the evidence it would have excluded falls into. This is likely due to the fact that none of the categories applies to the evidence sought to be excluded. The evidence of injury to Buckeye's water rights is relevant in this mitigation plan proceeding. Rule 43.03.j of the Conjunctive Management Rules (IDAPA 37.03.11) makes that clear by providing that the Hearing Office should consider the impacts of the proposed mitigation on "other water rights." The evidence of injury to Buckeye's water rights will not be "unduly repetitious" as there will be no other party providing any testimony or evidence as to the impacts of the proposed mitigation on Buckeye's water rights and operations. IGWA identifies no constitutional or statutory grounds to render the information inadmissible and makes no claim that the evidence sought is privileged. In fact, IGWA admits that it is relevant by requesting that any approval of the mitigation plan be conditioned on consideration of injury in future proceeding. Since the evidence sought to be excluded does not fall within any of the categories of excludible evidence under Rule of Procedure 600, IGWA's motion should be denied.

Finally, the Conjunctive management Rules specifically call for the analysis IGWA seeks to prevent. The CM Rules provide that the Hearing Office should consider:

Whether the mitigation plan is consistent with the conservation of water resources, the public interest *or injures other water rights*, or would result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge.

CM Rule 43.03.j (emphasis added). The Rule specifically calls for consideration of the impacts of the proposed mitigation on "other water rights" – particularly, whether the mitigation will "injure" those other water rights. This is a question that must be addressed in the mitigation plan proceedings. The fact that some of the analysis may overlap with the transfer proceeding does

not mean that the question can be ignored during the mitigation plan proceeding. Indeed, the Hearing Office already recognized that the information on impacts to other water rights would be considered in these proceedings. *See supra*.

IGWA's motion appears to be driven by a misunderstanding of the mitigation plan review process. It appears to assume that the Director can approve the mitigation plan without consideration of the impacts to other water rights, because, according to IGWA, those impacts will be addressed in a separate forum (i.e. the transfer proceedings). A plain reading of the CM Rules, however, reveals that IGWA is wrong. The mitigation plan review process includes consideration of impacts to other water rights. As such, a mitigation plan cannot be approved – even in “concept” – if it cannot be shown that the mitigation will be accomplished without injuring other water rights. The Second Mitigation Plan seeks to mitigate injury to Rangen by moving water from one spring reach to a separate, unconnected spring reach. The total removal of water from a spring reach (i.e. Tucker Springs) that is already suffering significant shortages is not appropriate mitigation. The CM Rules specifically allow Buckeye to explain to the Hearing Office why the mitigation plan is inappropriate by presenting evidence of the impacts of the proposed mitigation. Accordingly, IGWA's motion in limine should be denied.

IGWA would have the Hearing Officer delay consideration of injury to other water rights – concluding that the same process was followed in the Over-the-Rim mitigation plan proceedings. However, as explained by Buckeye during the pre-hearing conference, this situation is not the same. Importantly, the Director agreed:

MR. SIMPSON: Mr. Director, on that point, I guess I would just, because I was involved in that prior proceeding, just raise the fact that in the Clear Springs case it dealt with basically the same drainage, if you will, the ground water flows to Snake River farms in that case. *Wherein, in this case, we're essentially talking about moving water from one drainage to another,*

*and it is an important distinction that needs to be considered.*²

THE DIRECTOR: That's a good point.

And I think the other point in this discussion is that the water rights, as I recall, that were being proposed as the authorization for the diversion of ground water to Clear Springs, the water right holders were not objecting to the use of that water, the delivery of that water.

Here we have a different situation where there are actual protestants or potential protestants who feel they might be injured by a diversion of the water that's proposed. So just that difference factually is a distinction that needs to be addressed that we need to be cognizant of as well.

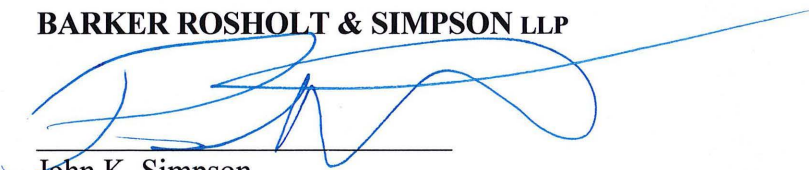
So there are differences and I need to sort through them.

Tr. at 33-34 (emphasis added).

Since injury to other water rights is an important part of the mitigation plan review process, IGWA's motion should be denied and Buckeye should be permitted to present its evidence at the hearing on this matter.

DATED this 3rd day of June, 2014.

BARKER ROSHOLT & SIMPSON LLP



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Attorneys for Buckeye Farms, Inc.

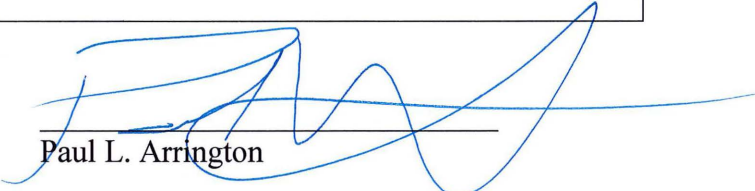
² See, generally, *Catskills Mts. Chptr. Of Trout Unlimited, Inc. v. E.P.A.*, 2014 U.S. Dist. LEXIS 42535 (S. Dist. N.Y.) (Mar. 28, 2014).

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of June, 2014, I caused to be served a true and correct copy of the foregoing **Buckeye's Response to IGWA's Motion in Limine** upon the following by the method indicated:

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Paul L. Arrington

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 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

<p>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.</p> <p>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.</p> <p>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.</p> <p>15 Fritz, or --</p> <p>16 MR. HAEMMERLE: I'll let any of the protestants 17 comment if they want to first.</p> <p>18 THE DIRECTOR: Okay.</p> <p>19 MR. HAEMMERLE: Then you can come back to me.</p> <p>20 THE DIRECTOR: John, should we start with you or 21 do you want to be last?</p> <p>22 MR. SIMPSON: No, I'll go first.</p> <p>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</p> <p style="text-align: center;">14</p>	<p>1 they are intertwined.</p> <p>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.</p> <p>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.</p> <p>15 THE DIRECTOR: Okay. Leo.</p> <p>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.</p> <p>24 Ways to find out the rumors is not through 25 the rumor mill. We would like to know what's going on.</p> <p style="text-align: center;">15</p>
<p>1 THE DIRECTOR: You're entitled to participate. 2 So, thanks.</p> <p>3 Starla.</p> <p>4 MR. RAY: She's with me.</p> <p>5 THE DIRECTOR: Oh, okay.</p> <p>6 Let's see, is it Almer?</p> <p>7 MR. HUNTLEY: Yep.</p> <p>8 THE DIRECTOR: Almer.</p> <p>9 MR. HUNTLEY: I'm president of Big Bend Ditch.</p> <p>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.</p> <p>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.</p> <p style="text-align: center;">16</p>	<p>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.</p> <p>6 THE DIRECTOR: Thanks.</p> <p>7 Again, I'll reiterate, you're entitled and 8 the ditch company is entitled to participate --</p> <p>9 MR. HUNTLEY: Yes.</p> <p>10 THE DIRECTOR: -- in this mitigation proposal 11 and the associated hearing and be a full party in that.</p> <p>12 Okay. Kent Stoker, Stover. Is it Stover?</p> <p>13 MR. HAEMMERLE: Tim Stover.</p> <p>14 THE DIRECTOR: I didn't get it right, Tim. I'm 15 sorry.</p> <p>16 MR. STOVER: I have been called a lot of things.</p> <p>17 THE DIRECTOR: Well, I apologize.</p> <p>18 MR. STOVER: Thank you, Director.</p> <p>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.</p> <p>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</p> <p style="text-align: center;">17</p>

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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<p>1 to another, and it is an important distinction that</p> <p>2 needs to be considered.</p> <p>3 THE DIRECTOR: That's a good point.</p> <p>4 And I think the other point in this</p> <p>5 discussion is that the water rights, as I recall, that</p> <p>6 were being proposed as the authorization for the</p> <p>7 diversion of ground water to Clear Springs, the water</p> <p>8 right holders were not objecting to the use of that</p> <p>9 water, the delivery of that water.</p> <p>10 Here we have a different situation where</p> <p>11 there are actual protestants or potential protestants</p> <p>12 who feel they might be injured by a diversion of the</p> <p>13 water that's proposed. So just that difference</p> <p>14 factually is a distinction that needs to be addressed</p> <p>15 that we need to be cognizant of as well.</p> <p>16 So there are differences and I need to sort</p> <p>17 through them.</p> <p>18 Okay. Anything else?</p> <p>19 MR. BUDGE: Director, one other point of</p> <p>20 clarification. On the discovery order that will be</p> <p>21 part of your scheduling order, we had discussion that</p> <p>22 Rangen would also disclose its witnesses and exhibits</p> <p>23 one week later on the 19th. So I just wanted to make</p> <p>24 sure that was going to be included in the order.</p> <p>25 THE DIRECTOR: Yes.</p> <p>34</p>	<p>1 MR. BUDGE: And that we would update our</p> <p>2 discovery after the 12th as new information came</p> <p>3 available before the hearing, and we would expect</p> <p>4 Rangen to do the same.</p> <p>5 THE DIRECTOR: Yes.</p> <p>6 MR. HAEMMERLE: Director, well, you understand</p> <p>7 the bind we're under. We haven't seen any part of this</p> <p>8 plan yet. All we know is SPF is working on it. We</p> <p>9 haven't seen their witnesses. They have all the time</p> <p>10 to prepare and then do, for lack of a better word, a</p> <p>11 dump on us of information, and then we're expected to</p> <p>12 come back one week later.</p> <p>13 THE DIRECTOR: We're under a significant time</p> <p>14 crunch.</p> <p>15 MR. BUDGE: Well, if you want more time, that's</p> <p>16 fine, but we don't -- we want the same courtesy. If</p> <p>17 you don't --</p> <p>18 MR. HAEMMERLE: No, that's fine. We believe in</p> <p>19 a reciprocal discovery.</p> <p>20 (Both parties speaking at same time.)</p> <p>21 MR. HAEMMERLE: -- two weeks.</p> <p>22 MR. BUDGE: Excuse me. I think we were speaking</p> <p>23 over each other.</p> <p>24 MR. HAEMMERLE: I apologize.</p> <p>25 MR. BUDGE: Can I finish my sentence?</p> <p>35</p>
<p>1 MR. HAEMMERLE: Yes.</p> <p>2 MR. BUDGE: I was simply saying if that doesn't</p> <p>3 work for them, we still will have to have ample time</p> <p>4 for discovery. We don't want to be in a situation</p> <p>5 where we first see Dr. Brendecke's testimony the day of</p> <p>6 the hearing, and that's somewhat what happened last</p> <p>7 time. We want to have an opportunity to do some</p> <p>8 discovery as well once we see their witnesses and</p> <p>9 exhibits. There may well be none, but we don't want to</p> <p>10 be foreclosed if Rangen is dropping all of these things</p> <p>11 on us the day before the hearing and we don't have an</p> <p>12 opportunity to do discovery either.</p> <p>13 THE DIRECTOR: Everybody is worried about being</p> <p>14 surprised. Given the short time frames we're operating</p> <p>15 under, I will allow some amendments to witness lists</p> <p>16 and additions to evidence as we go forward. I recognize</p> <p>17 to some degree that it may prejudice the parties. If</p> <p>18 they feel it has prejudiced them in some way, then come</p> <p>19 to me and you can move for a continuance or something</p> <p>20 else, but I don't intend to get involved in motions for</p> <p>21 sanctions and those kinds of things with the short time</p> <p>22 frames that we have.</p> <p>23 MR. T.J. BUDGE: Director, this is T.J. One</p> <p>24 housekeeping item. For the method of the protestants,</p> <p>25 in past cases Rangen and IGWA have done all of their</p> <p>36</p>	<p>1 document delivery via e-mail. We have accepted service</p> <p>2 of documents and we've served documents by e-mail.</p> <p>3 That's been efficient and certainly more timely than</p> <p>4 putting stuff in the mail.</p> <p>5 I would be interested to find out if the</p> <p>6 protestants would agree to do that here as well. If</p> <p>7 so, if we could get the e-mail addresses that they</p> <p>8 would like to use and that could be provided, made in</p> <p>9 conjunction with your discovery order, Director.</p> <p>10 THE DIRECTOR: Protestants, you're all e-mail</p> <p>11 savvy?</p> <p>12 (No audible response.)</p> <p>13 THE DIRECTOR: Maybe we could --</p> <p>14 MS. GIBSON: Their e-mails were provided on the</p> <p>15 protest forms.</p> <p>16 THE DIRECTOR: Oh, okay.</p> <p>17 MS. GIBSON: So they are available.</p> <p>18 THE DIRECTOR: So we have e-mails available for</p> <p>19 all of the protestants?</p> <p>20 MS. GIBSON: Yes.</p> <p>21 THE DIRECTOR: Okay. That's helpful. If</p> <p>22 everybody is in agreement, then that will expedite the</p> <p>23 distribution of documents.</p> <p>24 Okay. Anything else?</p> <p>25 MR. BUDGE: I have one matter just to answer</p> <p>37</p>

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