

Robyn M. Brody (ISB No. 5678)  
Brody Law Office, PLLC  
P.O. Box 554  
Rupert, ID 83350  
Telephone: (208) 434-2778  
Facsimile: (208) 434-2780  
robynbrody@hotmail.com

J. Justin May (ISB No. 5818)  
May, Browning & May, PLLC  
1419 W. Washington  
Boise, Idaho 83702  
Telephone: (208) 429-0905  
Facsimile: (208) 342-7278  
jmay@maybrowning.com

Fritz X. Haemmerle (ISB No. 3862)  
Haemmerle & Haemmerle, PLLC  
P.O. Box 1800  
Hailey, ID 83333  
Telephone: (208) 578-0520  
Facsimile: (208) 578-0564  
fxh@haemlaw.com

*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

**RANGEN, INC.’S RESPONSES TO  
IGWA’S SECOND SET OF  
DISCOVERY**

COMES NOW, Rangen, Inc. (“Rangen”), and responds to IGWA’s First Set of Discovery Requests as follows:

**GENERAL OBJECTIONS**

- 1) Rangen objects to the Requests to the extent that they seek information protected by the attorney-client privilege, the work product doctrine or any other applicable privilege or immunity.
- 2) Rangen objects to the Requests as premature, burdensome, and improper to the extent they seek factual information in support of objections and claims that Rangen has not had

opportunity to fully prepare because IGWA's Second Mitigation Plan is incomplete and for which Rangen may require discovery from IGWA or others. These responses are subject to the discovery or recollection of additional information, knowledge, or facts.

3) These responses are provided pursuant to the Rules of Procedure of the Idaho Department of Water Resources ("IDWR") and the Idaho Rules of Civil Procedure to the extent incorporated by the IDWR. To the extent the Requests attempt to impose any differing or additional instructions, definitions, or obligations, Petitioner objects to the Requests.

### **Interrogatories**

**Interrogatory 10:** For Charles E. Brockway, Dan DeLaughter, Doug Ramsey, Joe Chapman, Ed Schreivener, Gary Burn, Carl H. Nellis, and any person you expect to call as an expert witness at the hearing, please:

- a) State the subject matter on which the witness is expected to testify;
- b) Provide a complete statement of any expert opinions the witness is expected to offer;
- c) State the basis and reasons for the expert opinions;
- d) Identify the underlying facts and data on which the expert opinions are based, in conformity with I.R.C.P. 26(b)(4) and I.R.E. 705;
- e) Identify any exhibits to be used as a summary of or support for the opinions; and
- f) Identify all documents upon which the witness relied.

### **Answer to Interrogatory No. 10:**

#### **Doug Ramsey:**

- A. Mr. Ramsey is expected to testify concerning the following matters: use of gravity-fed water sources for aquaculture facilities in Idaho; expected power and equipment failures associated with pump systems in aquaculture facilities and accompanying fish mortality; the presence of fish diseases and viruses present at the Tucker Springs fish hatchery owned by Idaho Fish and Game; the danger posed by supersaturation in pump and pipeline systems; reduced dissolved oxygen levels at the Tucker Springs fish hatchery; and increased water temperatures at Tucker Springs; any other water quality or temperature issues that may arise, including, Rangen's measurement practices and NPDES requirements.

- B. Mr. Ramsey is expected to offer the following opinions:
- Aquaculture facilities in the Hagerman valley are typically built to use gravity flow of water to feed production raceways.
  - Pump and pipeline systems are costly to build and operate and result in fish mortalities because of inevitable equipment and power failures even when redundant systems are utilized.
  - The Tucker Springs fish hatchery owned by Idaho Fish and Game is experiencing fish mortalities and rearing problems related to viruses and diseases that are not present or are well controlled at the Rangen Research Hatchery. Introducing water from Tucker Springs to the Rangen Research Hatchery poses a serious risk of introducing viruses, pathogens and diseases that are not already present.
  - The Tucker Springs water has a lower dissolved oxygen level and higher temperature than the water at the Rangen Research Hatchery. There is insufficient water quality data available to determine whether the water is suitable for use at the Rangen Research Hatchery and what impact it will have on Rangen's ability to comply with NPDES requirements. Mr. Ramsey will testify that the pump and pipeline system poses a risk of supersaturation of the water which creates bubbles in fish circulatory systems.
  - The Tucker Springs mitigation plan does not address biosecurity, and there is greater risk of harm because Rangen will not control the source of water or operation of the pipeline.
- C. Mr. Ramsey's opinions are based on his education, background, training and experience. They are also based on his review of the SPF Report, the deposition of Joe Chapman and the documents produced by Idaho Fish and Game at the deposition of Joe Chapman.
- D. See subsection C above.
- E. See SPF Report, documents produced by Idaho Fish and Game at the deposition of Joe Chapman, the transcript of the deposition of Joe Chapman. See also the following articles: "Systems Failure Causes Salmon Loss," Aquaculture North America, May/June 2014; "Power Outage Meant Lost Lives at Fish Farm," East Hampton Press, September 12, 2011; "Power Outage Kills 160,000 Fish at Eureka Hatchery," Daily Inter Lake, June 25, 2013; "150,000 Fish Die in Power Failure," Jackson Hole News, June 15, 2011; "Delaware Canal Pump Failure Leads to Large Fish Kill," Phillyburbs.com, October 29, 2013; "Fish Die Due to Hatchery Power Outage," NBC Montana.com, June 25, 2013; "Failed Water Pump Kills 500,000 Juvenile Salmon at WDFW's Issaquah Hatchery, Washington Department of Fish and Wildlife, News Release March 16, 2005; "Overworked Pump Fails at Elwha Hatchery, Killing 200,000 Fish," The Seattle Times, July 13, 2013; "Pump Failure Pummels Salmon," High Country News, April 24, 2000; "Police Probes Power Failure at Canadian on-land Salmon Farm," Intrafish Media, April 14, 2014.
- F. See subsections C and E above.



**Dan DeLaughter:**

- A. Mr. DeLaughter is expected to testify that the Tucker Springs mitigation plan does not address state and federal environmental review and permit requirements.
- B. Mr. DeLaughter is expected to offer the opinions set forth in the written analysis that was provided to IGWA on May 30, 2014.
- C. Mr. DeLaughter's opinions are based on his education, background, training and experience. They are also based on his review of the SPF Report, the deposition transcript of Bob Hardgrove and the documents contained in the Exhibit List in his Analysis.
- D. See subsection C above.
- E. See Exhibit List in Mr. De Laughter's Analysis.
- F. See subsection C above.

**Dr. Brockway:**

- A. Dr. Brockway is expected to testify concerning the following matters: use of gravity-fed water sources for aquaculture facilities in Idaho; expected power and equipment failures associated with pump systems in aquaculture facilities and accompanying fish mortality; the injury likely to be sustained by downstream users of Tucker Springs and Riley Creek, including, but not limited to, Buckeye Farms; the nature of Buckeye Farms' water rights and limitations and restrictions thereon; objections made to water rights claimed by Buckeye Farms; the insufficiency of the engineering details for the Mitigation Plan, including the failure to provide sufficient detail to demonstrate the feasibility and adequacy of the collection box/system at Tucker Springs; the hindrance and impact on Rangen's ability to use water from the Martin-Curren Tunnel because of the design of the tie-in at the Rangen Research Hatchery; and the stacking of Water Right Nos. 36-2055, 36-2056 and 36-2159.
- B. Dr. Brockway is expected to offer the following opinions:
  - Aquaculture facilities in the Hagerman valley are typically built to use gravity flow of water to feed production raceways.
  - Pump and pipeline systems are costly to build and operate and result in fish mortalities because of inevitable equipment and power failures even when redundant systems are utilized.
  - The downstream users of Tucker Springs and Riley Creek are presently short water. The diversion of water under the proposed plan will further injure downstream users' water rights by hindering and impacting their use of water. This includes, but is not limited to Buckeye Farms given the nature of their water rights and limitations and restrictions thereon.

- The SPF Report and engineering plans do not contain sufficient information to determine whether the collection box/system located at Tucker Springs is feasible or adequate for the project.
  - The design of the tie-in at the Rangen Research Hatchery will hinder and impact Rangen's ability to use water from the Martin-Curren Tunnel mouth.
  - The water rights associated with the state hatchery supplied by Tucker Springs must be further investigated to determine whether there is an issue of stacking. There are three water rights with the same place of use: 36-2055, 36-2056, and 36-2159. Under general rules regarding the stacking of rights, if IGWA proposes to take 10 cfs from 36-2055, then it must also take 10 cfs from the other two rights. Otherwise, there is an issue regarding expansion of use.
- C. Dr. Brockway's opinions are based on his education, background, training and experience. They are also based on: his review of the SPF Report; the depositions of Frank Erwin, Lynn Carlquist and Joe Chapman; objections to Buckeye Farms' water rights made by the Idaho Department of Fish and Game and others; documents produced during the course of discovery. See also the following articles: "Systems Failure Causes Salmon Loss," *Aquaculture North America*, May/June 2014; "Power Outage Meant Lost Lives at Fish Farm," *East Hampton Press*, September 12, 2011; "Power Outage Kills 160,000 Fish at Eureka Hatchery," *Daily Inter Lake*, June 25, 2013; "150,000 Fish Die in Power Failure," *Jackson Hole News*, June 15, 2011; "Delaware Canal Pump Failure Leads to Large Fish Kill," *Phillyburbs.com*, October 29, 2013; "Fish Die Due to Hatchery Power Outage," *NBC Montana.com*, June 25, 2013; "Failed Water Pump Kills 500,000 Juvenile Salmon at WDFW's Issaquah Hatchery, Washington Department of Fish and Wildlife, News Release March 16, 2005; "Overworked Pump Fails at Elwha Hatchery, Killing 200,000 Fish," *The Seattle Times*, July 13, 2013; "Pump Failure Pummels Salmon," *High Country News*, April 24, 2000; "Police Probes Power Failure at Canadian on-land Salmon Farm," *Intrafish Media*, April 14, 2014.
- D. See subsection C above.
- E. See SPF Report. See also the following articles: "Systems Failure Causes Salmon Loss," *Aquaculture North America*, May/June 2014; "Power Outage Meant Lost Lives at Fish Farm," *East Hampton Press*, September 12, 2011; "Power Outage Kills 160,000 Fish at Eureka Hatchery," *Daily Inter Lake*, June 25, 2013; "150,000 Fish Die in Power Failure," *Jackson Hole News*, June 15, 2011; "Delaware Canal Pump Failure Leads to Large Fish Kill," *Phillyburbs.com*, October 29, 2013; "Fish Die Due to Hatchery Power Outage," *NBC Montana.com*, June 25, 2013; "Failed Water Pump Kills 500,000 Juvenile Salmon at WDFW's Issaquah Hatchery, Washington Department of Fish and Wildlife, News Release March 16, 2005; "Overworked Pump Fails at Elwha Hatchery, Killing 200,000 Fish," *The Seattle Times*, July 13, 2013; "Pump Failure Pummels Salmon," *High Country News*, April 24, 2000; "Police Probes Power Failure at Canadian on-land Salmon Farm," *Intrafish Media*, April 14, 2014.

F. See subsections C and E above.

**Joe Chapman**

- A. Mr. Chapman will be called to testify as the manager of the Tucker Springs hatchery concerning the matters covered in his deposition.
- B. Mr. Chapman is expected to offer the same testimony and opinions covered in his deposition.
- C. Mr. Chapman's testimony is based on his education, background, training and experience. His testimony is also based on the documents produced at his deposition.
- D. Mr. Chapman's testimony is based on his education, background, training and experience. His testimony is also based on the documents produced at his deposition.
- E. See subsections C and D above.
- F. See subsections C and D above.

**Interrogatory 11:** Your answer to Interrogatory 3 states Rangen would be in favor of a mitigation proposal that delivers mitigation water directly to the Martin-Curren Tunnel. Would you accept as mitigation the delivery of water directly to the Martin-Curren Tunnel from Tucker Springs, assuming the delivery system was satisfactory to you? If not, explain in detail why.

**Answer to Interrogatory 11:** Objection. This interrogatory is vague and ambiguous. Without waiving said objection, a letter from IGWA to the other Protestants in this matter dated May 23, 2014 makes it clear that even though the State of Idaho through IDWR has provided IGWA with the Tucker Springs proposal in an effort to mitigate Rangen's call, IGWA does not intend to pursue the plan beyond this hearing now that Director Spackman has granted IGWA a stay of curtailment is in place. In addition, even if it were assumed that IGWA will pursue the Tucker Springs as a real mitigation plan, SPF's Report indicates that the earliest any water could be delivered through the pipeline is March 15, 2015, and there are serious problems with that timeline because of the plan's failure, among other things, to address injury to downstream users, access easements, collection box/system design at Tucker Springs, and federal and state environmental regulations and permit requirements. There are also serious problems related to fish viruses, pathogens and diseases at the Tucker Springs hatchery that are not present at the Rangen Hatchery.

**Interrogatory 12:** Your answer to Interrogatory 3 states Rangen would be in favor of a mitigation proposal that delivers mitigation water directly to the Martin-Curren Tunnel. Do you contend that its material injury cannot be mitigated by delivering mitigation water directly to the 14" pipe that transports water from the "Rangen Box" to the Small Raceways, as proposed in the report by SPF Water Engineering? If so, explain in detail way.

**Answer to Interrogatory No. 12:** Objection. This interrogatory is vague and ambiguous and does not accurately state Rangen's answer to Interrogatory 3. Without waiving said objection, the proposed tie-in at the Rangen Research Hatchery will actually further hinder and impair Rangen's ability to use water from the Martin-Curren Tunnel since Tucker Springs water will be



pipled uphill to the collection box using the same pipe that Rangen uses for Martin-Curren Tunnel water.

**Interrogatory 13:** Do you contend the Tucker Springs water that IGWA proposes to deliver to you as mitigation under the Second Mitigation Plan is not of suitable quality or temperature to mitigate your material injury? If so, explain in detail why.

**Answer to Interrogatory No. 13:** Rangen does not have sufficient information or data to determine whether the Tucker Springs water is of suitable quality or temperature to mitigate Rangen's material injury. IGWA has provided very little water quality and temperature data and no analysis of the impact on NPDES requirements for Billingsley Creek or Riley Creek. In addition, the deposition of Joe Chapman revealed that the Tucker Springs hatchery has serious problems with fish viruses, pathogens and viruses that are not present or are well controlled at the Rangen Research Hatchery. Dissolved oxygen readings at the Tucker Springs Hatchery raise serious concerns about the suitability of the water. The data provided shows that the temperature of the Tucker Springs water is also higher than at the Rangen Research Hatchery and IGWA has not provided any analysis of projected water temperature at the time of delivery through the pipeline.

**Interrogatory 14:** Do you measure the temperature or quality of water that flows through your fish hatchery? If so, please state the types of measurements taken, and for each type of measurement:

- a) How the measurement is taken.
- b) The type of instrument(s) is used.
- c) The location the water sample is taken from.
- d) Who takes the measurement.
- e) How often the measurement is taken.
- f) How the measurement is recorded.
- g) Whether the measurement is compiled or summarized.
- h) What records you have of the measurement.
- i) Whether you have any memos, letters, or other documents discussing the measurement.

**Answer to Interrogatory No. 14:** Yes. IGWA deposed Rangen staff at length concerning these matters in Rangen's delivery call proceeding and has in its possession the transcripts of the depositions of Doug Ramsey, Lonny Tate, and Dan Maxwell which address these issues. Rangen has also previously produced to IGWA extensive water quality records including, but not limited to: Rangen TSS Results July 92\_March 96 (RANGEN 001833-1882 produced on

9/6/12); Water Quality Test Results (RANGEN 0001883-1889 produced on 9/6/12); NPDES documentation (RANGEN 002271-3774 produced on 9/6/12); WQ Test (RANGEN 008186-8182 produced on 9/7/12); Water Quality Reports (RANGEN 0008387-8560 produced on 11/7/12); Water Quality Testing (RANGEN 0009352-9356 produced on 11/7/12); WQ Reports (RANGEN 0009384-9748 produced on November 7, 2012); Water Quality Notebooks (RANGEN100826-101993 produced on November 28, 2012).

**Interrogatory 15:** What do you contend are the minimum and maximum water quality and water temperature parameters necessary to raise trout in your fish hatchery? Upon what data do you rely to support this contention?

**Answer to Interrogatory 15:** Objection. This interrogatory is vague and ambiguous. There are numerous water quality parameters and without more information Rangen cannot address this interrogatory.

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

The documents requested below shall be produced for inspection and copying at the law office of Plaintiff's counsel (Racine Olson Nye Budge & Bailey, Chartered, 201 East Center Street, Pocatello, Idaho 83204). In lieu thereof, you may provide Plaintiff's counsel with full and complete copies of each document.

**Request for Production 1:** Produce true and correct copies of all documents referred to or relied upon in answer the interrogatories set forth above, and identify which interrogatory each document relates to.

**Response to Request for Production 1:** See documents specified in Answer to Interrogatory No. 14. These documents were previously produced to IGWA in Rangen's delivery call action. See documents listed in Dan McLaughter's Analysis which were produced to IGWA electronically on May 30, 2014. See articles outlined in Answer Interrogatory No. 11 which were produced to IGWA electronically on May 30, 2014.

**Request for Production 2:** Produce true and correct copies of all documents containing water quality or water temperature data from measurements taken at the Rangen Research Hatcher within the last 20 years.

**Response to Request for Production 2:** See documents specified in Answer to Interrogatory No. 14. These documents were previously produced to IGWA in Rangen's delivery call action.

BRODY LAW OFFICE, PLLC

By:

J. Justin May

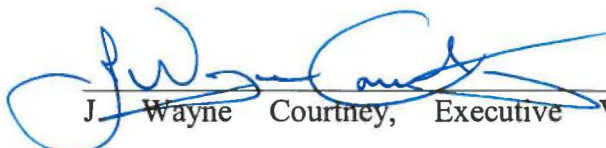
Robyn M. Brody

**VERIFICATION**

STATE OF IDAHO            )  
  ) ss  
County of Twin Falls        )

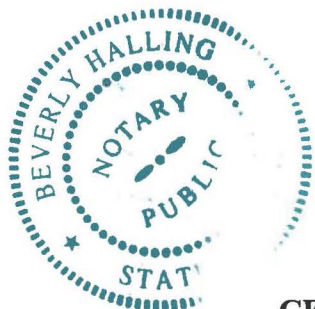
J. Wayne Courtney, being first duly sworn, on oath, deposes and says.

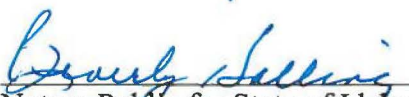
That he is the Executive Vice President of Rangen, Inc., that he has read the foregoing RANGEN, INC.'S RESPONSES TO IGWA'S FIRST SET OF DISCOVERY, knows the contents thereof, and the facts stated he believes to be true.

  
\_\_\_\_\_  
J. Wayne Courtney, Executive Vice

President

SUBSCRIBED AND SWORN to before me this 3rd day of June, 2014.



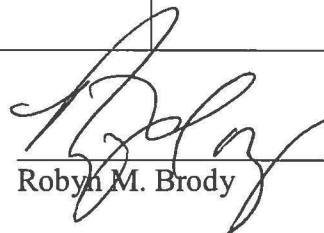
  
\_\_\_\_\_  
Notary Public for State of Idaho  
Residing at Bain Meadows  
Commission Expires: 9/10/2015

**CERTIFICATE OF SERVICE**

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:

Randall C. Budge Thomas J. Budge RACINE OLSON NYE BUDGE & BAILEY CHARTERED 201 E. Center St. P.O. Box 1391 Pocatello, ID 83204 rcb@racinelaw.net tjb@racinelaw.net	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"/>
John K. Simpson Paul Arrington BARKER ROSHOLT & SIMPSON, LLP	Hand Delivery <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Facsimile <input type="checkbox"/>

<p>195 River Vista Place, Suite 204  Twin Falls, Idaho 83301-3029  <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a>  <a href="mailto:pla@idahowaters.com">pla@idahowaters.com</a>  <a href="mailto:jlw@idahowaters.com">jlw@idahowaters.com</a></p>	<p>Federal Express <input type="checkbox"/>  E-Mail <input checked="" type="checkbox"/></p>
<p>Timothy J. Stover  WORST FITZGERALD &amp; STOVER PLLC  P.O. Box 1428  Twin Falls, Idaho 83303  <a href="mailto:tjs@magicvalleylaw.com">tjs@magicvalleylaw.com</a></p>	<p>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"/></p>
<p>Michael J. Henslee, V.P.  Salmon Falls Land &amp; Livestock Co.  95-A Bell Rapids Road  Hagerman, Idaho 83332  <a href="mailto:mjhenslee@gmail.com">mjhenslee@gmail.com</a></p>	<p>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"/></p>
<p>Leo E. Ray  Big Bend Trout, Inc.  P.O. Box 479  Hagerman, Idaho 83330  <a href="mailto:fpi@fishbreedersofidaho.com">fpi@fishbreedersofidaho.com</a></p>	<p>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"/></p>
<p>Almer Huntley, Jr., President  Big Bend Irrigation &amp; Mining Co., Ltd.  2721 South 900 East  Hagerman, Idaho 83332  <a href="mailto:plspe@hotmail.com">plspe@hotmail.com</a></p>	<p>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"/></p>



Robyn M. Brody