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Attorneys for Rangen, Inc.

DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF

THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

RANGEN, INC.,

Petitioner,

vs.

THE IDAHO DEPARTMENT OF WATER RESOURCES and GARY SPACKMAN, in his capacity as Director of the Idaho Department of Water Resources,

Respondents.

IDAHO GROUND WATER APPROPRIATORS, INC., and SALMON FALLS LAND & LIVESTOCK CO.,

Intervenors.

Case No. CV-2014-2935

AFFIDAVIT OF J. JUSTIN MAY IN SUPPORT OF RANGEN, INC.'S RESPONSE IN OPPOSITION TO MOTION TO DISMISS APPEAL

STATE OF IDAHO)
)
County of Ada)

J. Justin May, being sworn upon oath deposes and says:

1. My name is J. Justin May. I am an attorney licensed to practice law in the State of Idaho. I represent Rangen, Inc. in the above-captioned matter. The matters contained in this Affidavit are based on my personal knowledge.

2. Attached hereto as Exhibit 1 is a true and correct copy of portions of the hearing transcript in *In the Matter of the Fourth 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.) "Magic Springs Project"*, IDWR Docket No. CM-MP-2014-006, October 8, 2014.

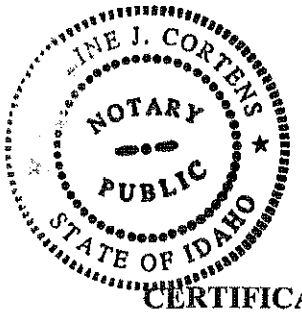
3. Attached hereto as Exhibit 2 is a true and correct copy of *Rangen, Inc.'s Motion to Determine Morris Water Exchange Credit and Enforce Curtailment* and *Affidavit of J. Justin May in Support of Rangen, Inc.'s Motion to Determine Morris Exchange Water Credit and Enforce Curtailment* with Exhibit C which was attached thereto, IDWR Docket No. CM-DC-2011-004 and CM-MP-2014-001, October 31, 2014.

4. Attached hereto as Exhibit 3 is a true and correct copy of the *Order Approving IGWA's Fourth Mitigation Plan,* IDWR Docket No. CM-NMP-2014-006, October 29, 2014, without attachments.

DATED this 6th day of November, 2014.

J. Justin May

SUBSCRIBED AND SWORN to before me this 6th day of November, 2014



Notary Public for the State of Idaho
Residing at: BOISE, IDAHO
My Commission Expires: 6/26/2020

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 6th day of November, 2014 he caused a true and correct copy of the foregoing document to be served by the method indicated upon the following:

Original to: SRBA District Court 253 3rd Avenue North P.O. Box 2707 Twin Falls, ID 83303-2707 Facsimile: (208) 736-2121	Hand Delivery U.S. Mail Facsimile Federal Express E-Mail	☑ ☐ ☐ ☐ ☑
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J. Justin May

EXHIBIT 1

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE FOURTH 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. "MAGIC SPRINGS PROJECT"	Docket No. CM-MP-2014-006

BEFORE

HEARING OFFICER: GARY SPACKMAN

Date: October 8, 2014 - 9:10 a.m.

Location: Idaho Department of Water Resources
322 East Front Street
Boise, Idaho

REPORTED BY:

JEFF LaMAR, C.S.R. No. 640

Notary Public

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Q. And in that time frame, maybe even before the Tucker Springs plan was approved, you switched gears and started working on the Aqua Life project?
A. Yeah. And probably worked on both of them parallel for a short period of time, yeah.
Q. Once the Tucker Springs project was approved, you didn't do anything more in an effort to get that project built; correct?
A. Correct.
Q. You didn't put out any bids or complete any additional plans?
A. Correct.
Q. And you didn't order any pipe or obviously begin construction on it; correct?
A. Well, the pipe that's been ordered could be used for either plan.
Q. Your intention when you ordered it and your understanding is that it would be used for Magic Springs; correct?
A. It would be used to deliver water. If it's installed in a certain portion, it could be for either project. There is some shared alignment.
Q. To this point of the plans or of the pipelines that you've designed for the purpose of mitigation plans, none of those pipelines have been

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built; correct?
A. Correct.
Q. We have -- you were discussing with Mr. Budge the report that came in from AMEC with regard to temperature in the pipeline, which I believe has now been put into the record as Appendix C to Exhibit 1009.
Do you recall that?
A. Yes.
Q. I have not, as you know, had a good opportunity to look through it.
However, you testified that if the pipeline was not insulated that the temperature between the Magic Springs facility and the Rangen facility of that water could rise, and I believe you said 8 degrees?
A. That's what it says, yes.
Q. Okay. And from my quick glance at it while we were sitting here, I saw a number that could have been as high as almost 11.
A. That was from the ABC point of diversion. It's a longer, above-grade pipeline.
Q. So if you were to choose the I&J Diversion location, you'd be looking at an increase of approximately 8 degrees?
A. Uh-huh.
Q. And if you were to choose the ABC flume

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diversion, you would be looking at as much as 11 degrees; correct?
A. That's what it states, yes.
Q. And that's 11 degrees Fahrenheit?
A. Yes.
Q. Are you aware that an increase of 8 to 11 degrees with regard to the temperature of the water would be a significant increase for a fish facility and probably catastrophic?
A. I'm aware it's too much. That's why I state we'll be insulating the pipe to avoid that.
Q. And if the pipe is insulated, you testified that it might be as little as .1 degree Fahrenheit increase?
A. Less than .1 is what the analysis shows, yes.
Q. Okay. What does it mean to say it's insulated? In other words, what type of insulation are we talking about? Where -- what does that involve?
A. It's a -- physically there's pipe insulation. It wraps around the pipe. It's made for that size of pipe. It comes in certain lengths. There's different types, different brands, so to speak. They've assumed the 2-inch pipe insulation on this, which is pretty standard. And then we put a metallic,

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probably aluminum-type shell on it to protect it from the elements. But it is a permanent insulation used -- it's used in all sorts of industrial applications.
In my experience -- I have quite a bit of experience with that at Micron. We did a lot of aboveground, in-air truss mounted pipelines where a lot of them had to be insulated. So it's a pretty standard deal and very reliable. It does its job, so to speak.
Q. We looked at your cost estimates.
Is that something that is built into the cost estimates that we looked at in the tables a little bit earlier?
A. The pipe insulation is not in that cost estimate currently.
Q. What kind of a cost are we talking about for pipe insulation?
A. I'm thinking it might be a hundred thousand dollars.
Q. $100,000 initially to put it in; correct?
A. Yes, to first supply it and install it.
Q. I'm assuming that there's some kind of maintenance that needs to be done with regard to that?
A. Not really. It probably has a life, so it would be like everything else. It could be added to that table and may have to be repaired or replaced at

way they've proceeded.

And I think they've proceeded definitely at their own risk. So, you know, they have a better idea that they think is contrary to your orders, then, you know, all's I have to say to them is too bad for them. They should have been contemplating the order and believing that it was real instead of coming up with things that they think are better.

THE HEARING OFFICER: Well, I won't characterize their efforts as being deficient in some way or not, Mr. Haemmerle.

But, Mr. Budge, in response to your suggestion that there's some parallel reasoning that I should apply to this latest proposal, I guess I would turn around and say I view it as just more of the same.

And I'm not perhaps being as disparaging about it as Mr. Haemmerle is, but what I guess my problem is that I'm not certain with an April 1 deadline that Rangen will -- or that IGWA will have the pipeline half built or a third built or that any of it will be built at all.

And so what I've done is I've allowed the seniors to be injured without assurance that something absolutely will be in place. And I -- I can't do that. I don't see how I could do that. I think I need to

address the material injury that's occurring in the time of injury. And that's what I see coming down in Court decisions, and I need to adhere to it and protect the seniors.

So I guess I want to emphasize again, I view the January 19th as a drop-dead deadline, and April 1 as a drop-dead deadline. And the subsequent benchmarks as well.

Okay. We'll close the record. Thanks for coming.

(Hearing concluded at 4:58 p.m.)

-oOo-

REPORTER'S CERTIFICATE

I, JEFF LaMAR, CSR No. 640, Certified Shorthand Reporter, certify:

That the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me.

That the testimony and all objections made were recorded stenographically by me and transcribed by me or under my direction.

That the foregoing is a true and correct record of all testimony given, to the best of my ability.

I further certify that I am not a relative or employee of any attorney or party, nor am I financially interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this 14th day of October, 2014.

JEFF LaMAR, CSR NO. 640
Notary Public
Eagle, Idaho 83616
My commission expires December 30, 2017

EXHIBIT 2

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Attorneys for Rangen, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 & 36-07694 (RANGEN, INC.) IN THE MATTER OF THE MITIGATION PLAN FILED BY THE IDAHO GROUND WATER APPROPRIATORS FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 & 36-07694 IN THE NAME OF RANGEN, INC.	**CM-DC-2011-004** **CM-MP-2014-001** **RANGEN, INC.'S MOTION TO DETERMINE MORRIS EXCHANGE WATER CREDIT AND ENFORCE CURTAILMENT**

COMES NOW, Rangen, Inc. ("Rangen"), by and through its attorneys, and hereby moves the Director to 1) Determine 2014-2015 Morris Exchange Water Credit utilizing 2014 Martin

Curren Tunnel measurements1, and 2) Enforce the January 29, 2014 Curtailment Order. This Motion is based upon the following:

1. On January 29, 2014, Director Spackman entered an order finding that Rangen's use of Water Right Nos. 36-02251 and 36-07694 is being materially injured by junior-priority ground water pumping. *Final Order re: Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962*, p. 36 at ¶ 36 (*"Curtailment Order"*). Director Spackman ordered that ground water pumping junior to July 13, 1962 be curtailed west of the Great Rift and within the area of common ground water supply as defined by CM Rule 50. *Id.* at p. 42.

2. Director Spackman also ordered that holders of ground water rights affected by the *Curtailment Order* had the right to file a mitigation plan in order to continue to use their rights out of priority. Director Spackman ordered:

> *IT IS FURTHER ORDERED that holders of ground water rights affected by this Order may participate in a mitigation plan through a Ground Water District or Irrigation District if a plan is proposed by a Ground Water District or Irrigation District.* ***The mitigation plan must provide simulated steady state benefits of 9.1 cfs to Curren Tunnel or direct flow of 9.1 cfs to Rangen. If mitigation is provided by direct flow to Rangen, the mitigation may be phased-in over not more than a five-year period pursuant to CM Rule 40 as follows: 3.4 cfs the first year, 5.2 cfs the second year, 6.0 cfs the third year, 6.6 cfs the fourth year, and 9.1 cfs the fifth year.*** *Holders of ground water rights that are not members of a ground water district may be deemed a nonmember participant for mitigation purposes pursuant to H.B. No. 737 (Act Relating to the Administration of Ground Water Rights within the Eastern Snake Plain, ch. 356, 2006 Idaho Sess. Laws 1089) and Idaho Code § 42-5259. If a mitigation plan is approved and the holder of such a junior priority ground water right elects not to join a ground water district, the Director will require curtailment.*

Curtailment Order, p. 42 (emphasis added).

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1 Rangen has petitioned for judicial review of the various orders approving credit for Morris Exchange Water. Rangen does not waive any issues related to the approval of Morris Exchange Water Credit or the methodology for calculating any such credit. This motion simply points out that even utilizing the Department's flawed methodology, the Morris Exchange Water is insufficient.

3. IGWA subsequently filed a series of "mitigation plans." The Director found after a hearing that IGWA's First Mitigation Plan did ***not*** satisfy either the 9.1 cfs steady state mitigation obligation or the 3.4 cfs direct flow mitigation obligation for the first year. *See Amended Order Approving in Part and Rejecting in Part IGWA's Mitigation Plan; Order Lifting Stay Issued on February 21, 2014; Amended Curtailment Order ("First Mitigation Plan Amended Final Order")* entered on May 16, 2014. The Director gave mitigation credit for "aquifer enhancement activities" and "Morris exchange water," which were two of the nine components of IGWA's First Mitigation Plan. *Id.*

4. The Director approved 1.2 cfs of annual mitigation credit for April 1, 2014 through March 31, 2015 as a result of the "aquifer enhancement activities." 2

5. The Morris Exchange Water Credit was estimated based upon anticipated flows in the Curren Tunnel. The Director determined the Morris Exchange Water credit using historical average Curren Tunnel flows from April 15 through October 15 during the years 2002 through 2013 in order to estimate the anticipated flows for that same time period in 2014. The Department utilized the historical average flows because flow data was not yet available for the 2014 irrigation season.

6. Using the historical average Curren Tunnel flows of 3.7 cfs for the 184 day period between April 15 and October 15, the Director approved 1.8 cfs of annual Morris Exchange Water mitigation credit for April 1, 2014 through March 31, 2015.

---

2 For the purpose of this motion, Rangen has used the 1.2 cfs estimate for "aquifer enhancement activities" determined by the Director in the *First Mitigation Plan Amended Final Order*. Like the Morris Exchange Water credit, this "aquifer enhancement activities" credit was based upon estimates from anticipated activities in 2014. Rangen expects that when the data is available to perform a similar analysis on the activities actually undertaken in 2014, there will be a similar reduction in the actual credit related to "aquifer enhancement activities."

7. The combination of 1.2 cfs credit for "aquifer enhancement activities" and 1.8 cfs Morris Exchange Water Credit resulted in total mitigation credit for the First Mitigation Plan of 3.0 cfs for April 1, 2014 through March 31, 2015. This is 0.4 cfs short of the first year direct flow obligation from the Curtailment Order. *First Mitigation Plan Amended Final Order*, p. 21.

8. IGWA filed its Second Mitigation Plan on March 10, 2014. It involved the acquisition of Tucker Springs water rights in order to divert up to 9.1 cfs of that water and pipe it over a mile to the Research Hatchery. The water was to be delivered over the canyon rim to Rangen's raceways.

9. Rangen told the Director that IGWA had no intention of ever building the Tucker Springs pipeline to deliver water to Rangen:

> MR. HAEMMERLE: Director, I think I'm glad that Mr. Budge took this opportunity to vent his frustrations with this entire process because, frankly, we have frustrations as well.
>
> Our biggest frustration, I guess, Director, is that we keep coming before you in all these administrative processes for the approval of plans that are never going to be built.
>
> Now, what IGWA is here to do, Director, is they're here to have a mitigation plan approved and say "There, Director, see, we can have a plan approved." "What do you think, Rangen?"
>
> What we think is that IGWA has gone around with respect to the Tucker Springs plan and advised the whole world that they have no intent of developing this plan. None. If there's no intent to develop this plan and get Rangen any actual water, then this whole process is frankly a farce. That's what it is.
>
> That's our frustration, Director, is that we keep slopping things up against the wall. IGWA keeps doing that. And the reason they're doing that is they want you to issue stay after stay after stay without the delivery of one drop of water that satisfies your call -- that satisfies the order on our call.

(Haemmerle, Hrg. Tr. CM-MP-2014-003, Vol. I, 6/4/2014, *Affidavit of J. Justin May*, Exh. A, Tr., p.56, L.1-25).

10. Despite Rangen's admonition and the fact that IGWA admitted that no water could be delivered until January 2015 at the earliest, the Director conditionally approved the Second Mitigation Plan on June 20, 2014. *See Order Approving IGWA's Second Mitigation Plan; Order Lifting Stay Issued April 28, 2014; Second Amended Curtailment Order* ("*Order Approving Tucker Springs Mitigation Plan*"). Since the Second Mitigation Plan did nothing about the 0.4 cfs shortage for 2014, the Director creatively "reaveraged" the Morris Exchange Water credit in order to avoid enforcement of the Curtailment Order.

11. Starting with the historical average Curren Tunnel flow of 3.7 cfs utilized in the *First Mitigation Plan Amended Final Order*, the Director reaveraged that flow to provide 2.2 cfs of mitigation credit for 293 days rather than 1.8 cfs of mitigation credit for 365 days. As a result of this reaveraging, the Director determined that the first year mitigation obligation of 3.4 cfs was satisfied until January 18, 2015 and there would be a 2.2 cfs deficit from January 19, 2015 until March 31, 2015.

12. The Director justified the reaveraging of the Morris Exchange Water credit based upon an expection that the Second Mitigation Plan would deliver water:

> 3. Because there is an expectation of additional water being delivered to Rangen by the Second Mitigation Plan, (a) recalculate the period of time the Morris exchange water is recognized as mitigation to equal the number of days that the water will provide full mitigation to Rangen, and (b) require curtailment or additional mitigation from IGWA under the Second Mitigation Plan after the time full mitigation under the First Mitigation Plan expires.

Order Approving Tucker Springs Mitigation Plan, p. 6.

13. Just as Rangen predicted, IGWA has taken no steps to build the Tucker Springs pipeline since the Director approved the Plan. In fact Bob Hardgrove, the engineer that designed the Tucker Springs pipeline for IGWA, testified during the hearing on IGWA's Fourth Mitigation

Plan on October 8, 2014 that IGWA had stopped implementation of the Second Mitigation Plan before it was even approved. (Hardgrove, Hrg. Tr. CM-MP-2014-006, 10/8/2014, *Affidavit of J. Justin May*, Exh. B, Tr., p.189, L. 15 – p.191, L.2). Lynn Carlquist, the Chairman of the Board of the North Snake Ground Water District and a board member of IGWA, testified at the hearing on IGWA's Fourth Mitigation Plan that IGWA has no intention of going forward with the Tucker Springs Plan. (Carlquist, Hrg. Tr. CM-MP-2014-006, 10/8/2014, *Affidavit of J. Justin May*, Exh. B, Tr., p.74 – 78).

14. IGWA formally withdrew the Second Mitigation Plan on October 30, 2014.

15. With the withdrawal of the Second Mitigation Plan, there is no approved mitigation plan that even proposes to provide sufficient water to meet the Curtailment Order's first year obligation of 3.4 cfs. The CM Rules provide that the Director may not allow out-of-priority ground water pumping without an approved mitigation plan. *In the Matter of Distribution of Water to Various Water Rights*, 155 Idaho 640, 315 P.3d 828 (2013).

16. The Martin Curren Tunnel measurements for April 15, 2014 through October 15, 2014 are now available. *See* Memorandum from Dave Colvin, P.G. of Leonard Rice Engineers, Inc., dated October 31, 2014 (*"Leonard Rice Engineers, Inc. Memorandum"*) *(Affidavit of J. Justin May*, Exh. C).

17. As expected, the actual average Curren Tunnel flow from April 15, 2014 through October 15, 2014 was substantially less than the historical average of 3.7 cfs. The actual average daily Curren Tunnel during the period from April 15, 2014 through October 15, 2014 was 2.4 cfs rather than the historical average of 3.7 cfs. (*"Leonard Rice Engineers, Inc. Memorandum"*) *(Affidavit of J. Justin May*, Exh. C).

18. Conjunctive Management Rule 43.03k provides that a mitigation plan should provide for " . . . monitoring and adjustment as necessary to protect senior-priority water rights from material injury." IDAPA 37.03.11.43.03k. [In the *First Mitigation Plan Amended Final Order*, the Director stated that the credits could be recalculated prior to the next irrigation season.] *First Mitigation Plan Amended Final Order*, p.6. The Director acknowledged during the October 8, 2014 hearing that he feels a "heightened obligation to protect the senior water rights holder when they're not receiving their water" based on recent court decisions. (*Affidavit of J. Justin May*, Exh. A, Tr., p. 133, lines 21-23). "The Department monitors activities conducted pursuant to approved mitigation plans in order to ensure compliance with mitigation requirements and if IGWA fails to comply with those requirements junior ground water right holders will be curtailed." (*Affidavit of J. Justin May*, Exh. D, *Idaho Department of Water Resources' Brief in Response to Rangen, Inc.'s Opening Brief*, CV-2013-2446, p. 13). The monitoring and adjustment of any credits must be made in a timely fashion in order to protect the senior water user. (*Affidavit of J. Justin May*, Exh. E, *Memorandum Decision and Order on Petitions for Judicial Review*, CV-2010-382, p. 38). To protect Rangen's senior rights, the Director must recalculate the mitigation credit that he gave junior-priority ground water users for the Morris Exchange Water based on actual Martin-Curren Tunnel flows.

19. At Rangen's request, Leonard Rice Engineers has calculated what the Morris Exchange Water credit would be utilizing the methodology employed by the Director in evaluating IGWA's first and second mitigation plans and substituting the actual average daily flow of 2.4 cfs for the historical average daily flow of 3.7 cfs. *See Leonard Rice Engineers, Inc. Memorandum, (Affidavit of J. Justin May*, Exh. C) The result of these calculations is set forth in the *Leonard Rice Engineers, Inc. Memorandum (Affidavit of J. Justin May*, Exh. C). The annual average is 1.1 cfs

rather than 1.8 cfs. This 1.1 cfs provides 2.2 cfs for only 184 days rather than 293. This means that utilizing the Department's own methodology together with actual Curren Tunnel flows, the Morris Exchange Water Credit was fully utilized on October 2, 2014 rather than January 18, 2015 as predicted in the Second Mitigation Plan Order. *Id.*

Rangen respectfully requests that the Director calculate the Morris Exchange Water Credit for 2014 utilizing the actual Martin-Curren Tunnel flows and curtail out-of-priority ground water pumping as necessary to address the material injury acknowledged in the January 29, 2014 Curtailment Order.

DATED this 31st day of October, 2014.

MAY, BROWNING & MAY

By _____
J. Justin May

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 31st day of October, 2014 he caused a true and correct copy of the foregoing document to be served by email and first class U.S. Mail, postage prepaid upon the following:

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Attorneys for Rangen, Inc.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 & 36-07694 (RANGEN, INC.) IN THE MATTER OF THE MITIGATION PLAN FILED BY THE IDAHO GROUND WATER APPROPRIATORS FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 & 36-07694 IN THE NAME OF RANGEN, INC.	**CM-DC-2011-004** **CM-MP-2014-001** **AFFIDAVIT OF J. JUSTIN MAY IN SUPPORT OF RANGEN, INC.'S MOTION TO DETERMINE MORRIS EXCHANGE WATER CREDIT AND ENFORCE CURTAILMENT**

STATE OF IDAHO)
)
County of Ada)

J. Justin May, being sworn upon oath deposes and says:

1. My name is J. Justin May. I am an attorney licensed to practice law in the State of Idaho. I represent Rangen, Inc. in the above-captioned matter. The matters contained in this Affidavit are based on my personal knowledge.

2. Attached hereto as Exhibit A is a true and correct copy of portions of the hearing transcript in *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"*, IDWR Docket No. CM-MP-2014-003, June 4, 2014, Volume I.

3. Attached hereto as Exhibit B is a true and correct copy of portions of the hearing transcript in *In the Matter of the Fourth 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.) "Magic Springs Project"*, IDWR Docket No. CM-MP-2014-006, October 8, 2014.

4. Attached hereto as Exhibit C is a true and correct copy of a Memorandum from Dave Colvin, P.G. of Leonard Rice Engineers, Inc., dated October 31, 2014 (*"Leonard Rice Engineers, Inc. Memorandum"*).

5. Attached hereto as Exhibit D is a true and correct copy of a portion of *Idaho Department of Water Resources' Brief in Response to Rangen, Inc.'s Opening Brief*, Twin Falls County Case No. CV-2014-2446, dated October 8, 2014.

6. Attached hereto as Exhibit E is a true and correct copy of Judge Wildman's *Memorandum Decision and Order on Petitions for Judicial Review*, Gooding County Case No. CV-2010-382, dated September 26, 2014.

DATED this 31st day of October, 2014.

J. Justin May

SUBSCRIBED AND SWORN to before me this 31st day of October, 2014

Notary Public for the State of Idaho
Residing at: Boise, Idaho
My Commission Expires: 6/26/2020

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 31st day of October, 2014 he caused a true and correct copy of the foregoing document to be served by email and first class U.S. Mail, postage prepaid upon the following:

Original: Director Gary Spackman IDAHO DEPARTMENT OF WATER RESOURCES P.O. Box 83720 Boise, ID 83720-0098 deborah.gibson@idwr.idaho.gov	Hand Delivery ☑ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☑
Garrick Baxter IDAHO DEPARTMENT OF WATER RESOURCES P.O. Box 83720 Boise, Idaho 83720-0098 garrick.baxter@idwr.idaho.gov kimi.white@idwr.idaho.gov	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☑
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	Dean Tranmer CITY OF POCATELLO P.O. Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☑
	John K. Simpson Travis L. Thompson Paul L. Arrington BARKER ROSHOLT & SIMPSON, L.L.P. 195 River Vista Place, Suite 204 Twin Falls, ID 83301-3029 Facsimile: (208) 735-2444 tlt@idahowaters.com jks@idahowaters.com pla@idahowaters.com	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☑
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	Almer Huntley Jr. BIG BEND IRRIGATION & MINING CO.	Hand Delivery ☐ U.S. Mail ☐

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Leo E. Ray BIG BEND TROUT, INC. P.O. Box 479 Hagerman, ID 83330	Hand Delivery ☐ U.S. Mail ☑ Facsimile ☐ Federal Express ☐ E-Mail ☐

J. Justin May

EXHIBIT C

Memorandum

To:	Justin May
From:	Dave Colvin, P.G.
Reviewed by:	Dan DeLaughter
Date:	October 31, 2014
Project:	Rangen Delivery Call - Docket No. CM-DC-2011-004
Subject:	Morris Exchange Water Credit

Leonard Rice Engineers, Inc. (LRE) has calculated the 2014/2015 Morris Exchange Water Credit that the Idaho Ground Water Appropriators, Inc. (IGWA) would be credited utilizing actual 2014 Curren Tunnel flows and the methodology set out in the Idaho Department of Water Resources (IDWR) orders related to curtailment and mitigation proposals for the Rangen, Inc. (Rangen) 2011 delivery call (Docket No. CM-DC-2011-004).

The intent of this memo is to explain the sources of data and methodology we used for calculation of mitigation credits. In each of the orders, the hearing officer (IDWR Director, Gary Spackman) ordered that IGWA was responsible for providing Rangen with 3.4 cubic feet per second (CFS) of water in the first year of mitigation requirements (April 1,2014 through March 31, 2015).

Calculation of Morris Exchange Water Credit

In his Amended Curtailment Order[1] issued on May 16, 2014, the Director presents IDWR calculations for the Morris Exchange Water Credit. Morris is only entitled to use water during the irrigation season. Consequently, the Department based its calculations on Curren Tunnel flows during the period from April 15 to October 15. The Director calculated the amount of Curren Tunnel Available Flow for use as mitigation by using the following formula for flows during this irrigation season:

Total Curren Tunnel Flow (CT_{Tot}) –Rangen water right (R) – Candy water right(C)

Or

Curren Tunnel Available Flow = $CT_{Tot} - R - C$ [Equation 1]

The Director further explains the calculation of Total Curren Tunnel Flows as follows:

> *"The Curren Tunnel discharge is the sum of the average monthly flow measured at the mouth of the tunnel by IDWR (Exhibit 2045) and the average monthly flow diverted into Rangen's 6-inch PVC pipe (Exhibit 3000)."*

Or

Total Curren Tunnel Flow = IDWR Tunnel Mouth Flow + Rangen Pipe Flow [Equation 2]

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[1] Amended Order Approving in Part and Rejecting in Part IGWA's Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order & Attachment A - May 16, 2014 (Link)

Using 2002-2013 daily average Total Curren Tunnel Flows, IDWR has calculated an irrigation season average of 3.7 CFS. Using this Total Curren Tunnel Flow, the Director calculated Total Curren Tunnel Available Flow to be approximately 3.5 CFS using the following formula:

$$Curren\ Tunnel\ Available\ Flow = CT_{Tot} - R - C\ [Equation\ 1]$$

Or

$$Curren\ Tunnel\ Available\ Flow = 3.7\ CFS\ (CT_{Tot}) - 0.14\ CFS\ (R) - 0.04\ CFS\ (C) = 3.5\ CFS\ (approximately)$$

The Director used the following formula to calculate the Average Annual Benefit of the irrigation season Curren Tunnel Available Flow:

$$Average\ Annual\ Benefit = \frac{Days\ of\ Flow}{Days\ in\ a\ Year}\ x\ Curren\ Tunnel\ Available\ Flow \quad [Equation\ 3]$$

Or

$$Average\ Annual\ Benefit = \frac{184\ days}{365\ day}\ x\ 3.5\ CFS = 1.8\ CFS$$

In his Order Approving IGWA's Second Mitigation Plan[2], the Director reaveraged the Average Annual Benefit to determine the number of days this 1.8 CFS Average Annual Benefit would provide 2.2 CFS with the following formula:

$$\frac{Flow\ Rate\ x\ Days\ of\ Flow}{Mitigation\ Flow\ Requirement} = Days\ meeting\ Mitigation\ Flow\ Requirement \quad [Equation\ 4]$$

Or

$$\frac{3.5\ CFS\ x 184\ days}{2.2\ CFS} = 293\ days$$

Using these equities and historical Average Flows, the Director determined that the Morris Exchange Water would provide 2.2 CFS of mitigation credit for the 293 day period April 1, 2014 through January 19, 2015.

[2] Order Approving IGWA's Second Mitigation Plan; Order Lifting Stay Issued April 28, 2014; Second Amended Curtailment Order - June 20, 2014 (Link)

2014 Curren Tunnel Flow

IDWR has recently provided updated flow measurement data for the mouth of the Curren Tunnel. The updated data for the period April 15, 2014 through October 15, 2014 are attached as Exhibit "A". LRE downloaded additional data from the IDWR water rights accounting webpage[3] for the Rangen Pipe (IDWR SiteID 360410041). Rangen also provided additional data for the Rangen Pipe 2014 measurements. The Curren Tunnel flows available as credit under the Morris irrigation exchange are calculated as the IDWR Curren Tunnel flow measurements plus the Rangen Pipe flows, minus the other senior water rights.

Using the data and estimates above, and Equation 2 above, the 2014 Curren Tunnel average daily flows were approximately 2.4 CFS from April15, 2014 - October 15, 2014 (184 days). Using 2014 total Curren Tunnel flows and the Director's method for calculating IGWA mitigation credit results in 2.2 CFS of mitigation credit available.

$$IGWA\ Mitigation\ Credit\ Available = CT_{Tot} - R - C\ [Equation\ 1]$$

Or

$$IGWA\ Mitigation\ Credit\ Avilable = 2.4\ CFS\ (CT_{Tot}) - 0.14\ CFS\ (R) - 0.04\ CFS\ (C) = 2.2\ CFS\ (approximately)$$

This results in an average annual benefit of 1.1 CFS, calculated as:

$$Average\ Annual\ Benefit = \frac{Days\ of\ Flow}{Days\ in\ a\ Year} x Flow\ Rate \quad [Equation\ 3]$$

Or

$$Average\ Annual\ Benefit = \frac{184\ days}{365\ day} x 2.2\ CFS = 1.1\ CFS$$

Prorating this 2014 IGWA Mitigation Credit Available utilizing the Department methodology in a total of 184 days with the following calculation:

$$\frac{Flow\ Rate\ x\ Days\ of\ Flow}{Mitigation\ Flow\ Requirement} = Days\ meeting\ Mitigation\ Flow\ Requirement \quad [Equation\ 4]$$

Or

$$\frac{2.2\ CFS\ x 184\ days}{2.2\ CFS} = 184\ days$$

[3] http://maps.idwr.idaho.gov/qWRAccounting/WRA_Select.aspx

Table 1 provides a comparison of the Director's predicted mitigation credit and the mitigation credit based on 2014 flow measurements.

Table 1 - Morris Irrigation Credits

Data Source	Average Irrigation Season Flow (CFS)	Annual Average Flow (CFS)	Number of Days Prorated at 2.2 CFS	Last Date of 2.2 CFS Available for Morris Credit
Average Annual Curren Tunnel Flows Predicted by IDWR Orders	3.5	1.8	293	1/19/15
Measured 2014 Curren Tunnel Flows	2.2	1.1	184	10/2/14

Exhibit A

2014 Curren Tunnel Flow Data

Date	Flow (cfs)	Rangen Pipe	Tunnel + Pipe
1/1/2014	2.56	0.46	3.02
1/2/2014	2.71	0.46	3.17
1/3/2014	2.71	0.46	3.17
1/4/2014	2.71	0.46	3.17
1/5/2014	2.71	0.46	3.17
1/6/2014	2.56	0.46	3.02
1/7/2014	2.56	0.46	3.02
1/8/2014	2.56	0.47	3.03
1/9/2014	2.71	0.47	3.18
1/10/2014	2.56	0.48	3.04
1/11/2014	2.56	0.48	3.04
1/12/2014	2.71	0.48	3.20
1/13/2014	2.71	0.49	3.20
1/14/2014	2.56	0.49	3.05
1/15/2014	2.56	0.50	3.06
1/16/2014	2.56	0.50	3.06
1/17/2014	2.41	0.50	2.92
1/18/2014	2.56	0.51	3.07
1/19/2014	2.27	0.51	2.78
1/20/2014	2.32	0.52	2.84
1/21/2014	2.20	0.52	2.72
1/22/2014	2.36	0.52	2.88
1/23/2014	2.38	0.56	2.93
1/24/2014	2.40	0.59	2.99
1/25/2014	2.56	0.63	3.19
1/26/2014	2.44	0.66	3.10
1/27/2014	2.31	0.70	3.01
1/28/2014	2.19	0.61	2.79
1/29/2014	2.20	0.51	2.72
1/30/2014	2.22	0.42	2.64
1/31/2014	2.24	0.33	2.57
2/1/2014	2.26	0.24	2.49
2/2/2014	2.14	0.14	2.28
2/3/2014	2.15	0.05	2.20
2/4/2014	2.03	0.05	2.08
2/5/2014	2.05	0.05	2.10
2/6/2014	2.07	0.05	2.12
2/7/2014	2.22	0.05	2.27
2/8/2014	2.10	0.05	2.15
2/9/2014	2.12	0.05	2.17
2/10/2014	2.14	0.05	2.19
2/11/2014	2.16	0.05	2.21
2/12/2014	2.17	0.05	2.22
2/13/2014	2.19	0.05	2.24
2/14/2014	2.35	0.05	2.40
2/15/2014	2.37	0.05	2.42

Date	Flow (cfs)	Rangen Pipe	Tunnel + Pipe
2/16/2014	2.39	0.05	2.44
2/17/2014	2.41	0.05	2.46
2/18/2014	2.43	0.05	2.48
2/19/2014	2.45	0.05	2.50
2/20/2014	2.46	0.05	2.51
2/21/2014	2.48	0.05	2.53
2/22/2014	2.50	0.05	2.55
2/23/2014	2.55	0.05	2.60
2/24/2014	2.60	0.05	2.65
2/25/2014	2.65	0.05	2.70
2/26/2014	2.69	0.05	2.74
2/27/2014	2.74	0.05	2.79
2/28/2014	2.79	0.05	2.84
3/1/2014	2.84	0.05	2.89
3/2/2014	2.89	0.05	2.94
3/3/2014	2.67	0.05	2.72
3/4/2014	2.46	0.05	2.51
3/5/2014	2.22	0.05	2.27
3/6/2014	2.40	0.05	2.45
3/7/2014	2.07	0.05	2.12
3/8/2014	2.05	0.05	2.10
3/9/2014	2.00	0.05	2.05
3/10/2014	1.97	0.05	2.02
3/11/2014	2.00	0.05	2.05
3/12/2014	1.98	0.05	2.03
3/13/2014	1.95	0.05	2.00
3/14/2014	1.92	0.05	1.97
3/15/2014	2.14	0.05	2.19
3/16/2014	2.28	0.05	2.33
3/17/2014	2.21	0.05	2.26
3/18/2014	2.30	0.05	2.35
3/19/2014	2.24	0.05	2.29
3/20/2014	2.21	0.05	2.26
3/21/2014	2.04	0.05	2.09
3/22/2014	2.00	0.05	2.05
3/23/2014	2.01	0.05	2.06
3/24/2014	1.96	0.05	2.01
3/25/2014	1.96	0.09	2.05
3/26/2014	1.93	0.12	2.05
3/27/2014	1.97	0.16	2.13
3/28/2014	1.97	0.20	2.17
3/29/2014	1.91	0.24	2.14
3/30/2014	1.91	0.27	2.18
3/31/2014	1.91	0.31	2.22
4/1/2014	1.66	0.35	2.01
4/2/2014	1.58	0.39	1.97

Date	Flow (cfs)	Rangen Pipe	Tunnel + Pipe
4/3/2014	1.55	0.43	1.98
4/4/2014	1.57	0.45	2.02
4/5/2014	1.56	0.47	2.03
4/6/2014	1.56	0.48	2.04
4/7/2014	1.52	0.50	2.03
4/8/2014	1.45	0.52	1.97
4/9/2014	1.38	0.54	1.92
4/10/2014	1.24	0.56	1.80
4/11/2014	1.12	0.58	1.70
4/12/2014	1.23	0.59	1.82
4/13/2014	1.35	0.61	1.96
4/14/2014	1.31	0.63	1.94
4/15/2014	1.20	0.64	1.84
4/16/2014	1.11	0.64	1.75
4/17/2014	1.05	0.65	1.70
4/18/2014	0.98	0.66	1.64
4/19/2014	0.98	0.67	1.64
4/20/2014	0.83	0.67	1.51
4/21/2014	0.85	0.68	1.53
4/22/2014	0.74	0.68	1.42
4/23/2014	0.75	0.68	1.43
4/24/2014	0.71	0.68	1.39
4/25/2014	0.69	0.68	1.37
4/26/2014	0.71	0.68	1.39
4/27/2014	0.72	0.68	1.40
4/28/2014	0.77	0.68	1.45
4/29/2014	0.83	0.68	1.51
4/30/2014	0.81	0.68	1.49
5/1/2014	0.73	0.68	1.41
5/2/2014	0.73	0.68	1.41
5/3/2014	0.70	0.68	1.38
5/4/2014	0.68	0.68	1.36
5/5/2014	0.66	0.68	1.34
5/6/2014	0.62	0.68	1.30
5/7/2014	0.57	0.68	1.25
5/8/2014	0.55	0.68	1.23
5/9/2014	0.56	0.68	1.24
5/10/2014	0.63	0.68	1.31
5/11/2014	0.67	0.68	1.35
5/12/2014	0.71	0.68	1.39
5/13/2014	0.76	0.59	1.35
5/14/2014	0.69	0.50	1.19
5/15/2014	0.67	0.41	1.08
5/16/2014	0.67	0.32	0.99
5/17/2014	1.09	0.23	1.32
5/18/2014	1.55	0.14	1.69

Date	Flow (cfs)	Rangen Pipe	Tunnel + Pipe
5/19/2014	1.58	0.05	1.63
5/20/2014	1.61	0.05	1.66
5/21/2014	1.62	0.05	1.67
5/22/2014	1.66	0.05	1.71
5/23/2014	1.74	0.05	1.79
5/24/2014	1.56	0.05	1.61
5/25/2014	1.47	0.05	1.52
5/26/2014	1.49	0.05	1.54
5/27/2014	1.57	0.05	1.62
5/28/2014	1.55	0.05	1.60
5/29/2014	1.51	0.05	1.56
5/30/2014	1.39	0.05	1.44
5/31/2014	1.32	0.05	1.37
6/1/2014	1.34	0.05	1.39
6/2/2014	1.40	0.05	1.45
6/3/2014	1.42	0.05	1.47
6/4/2014	1.41	0.05	1.46
6/5/2014	1.23	0.05	1.28
6/6/2014	1.10	0.05	1.15
6/7/2014	1.02	0.05	1.07
6/8/2014	0.97	0.05	1.02
6/9/2014	0.87	0.05	0.92
6/10/2014	0.83	0.05	0.88
6/11/2014	0.79	0.05	0.84
6/12/2014	1.07	0.05	1.12
6/13/2014	1.36	0.05	1.41
6/14/2014	1.30	0.05	1.35
6/15/2014	1.24	0.05	1.29
6/16/2014	1.27	0.05	1.32
6/17/2014	1.26	0.05	1.31
6/18/2014	1.37	0.05	1.42
6/19/2014	1.55	0.05	1.60
6/20/2014	1.65	0.05	1.70
6/21/2014	1.69	0.05	1.74
6/22/2014	1.67	0.05	1.72
6/23/2014	1.55	0.05	1.60
6/24/2014	1.54	0.05	1.59
6/25/2014	1.53	0.05	1.58
6/26/2014	1.55	0.05	1.60
6/27/2014	1.54	0.05	1.59
6/28/2014	1.63	0.05	1.68
6/29/2014	1.67	0.05	1.72
6/30/2014	1.65	0.05	1.70
7/1/2014	1.49	0.05	1.54
7/2/2014	1.34	0.05	1.39
7/3/2014	1.34	0.05	1.39

Date	Flow (cfs)	Rangen Pipe	Tunnel + Pipe
7/4/2014	1.23	0.05	1.28
7/5/2014	1.24	0.05	1.29
7/6/2014	1.07	0.05	1.12
7/7/2014	1.04	0.05	1.09
7/8/2014	1.00	0.05	1.05
7/9/2014	1.01	0.05	1.06
7/10/2014	0.94	0.05	0.99
7/11/2014	0.94	0.05	0.99
7/12/2014	0.87	0.05	0.92
7/13/2014	0.83	0.05	0.88
7/14/2014	0.82	0.05	0.87
7/15/2014	0.92	0.05	0.97
7/16/2014	0.73	0.05	0.78
7/17/2014	0.76	0.05	0.81
7/18/2014	0.73	0.05	0.78
7/19/2014	0.77	0.05	0.82
7/20/2014	0.67	0.05	0.72
7/21/2014	0.67	0.05	0.72
7/22/2014	0.60	0.05	0.65
7/23/2014	0.71	0.05	0.76
7/24/2014	0.78	0.05	0.83
7/25/2014	0.77	0.05	0.82
7/26/2014	0.67	0.05	0.72
7/27/2014	0.72	0.05	0.77
7/28/2014	0.83	0.05	0.88
7/29/2014	0.81	0.05	0.86
7/30/2014	0.82	0.05	0.87
7/31/2014	0.84	0.05	0.89
8/1/2014	1.25	0.05	1.30
8/2/2014	1.22	0.05	1.27
8/3/2014	1.30	0.05	1.35
8/4/2014	1.42	0.05	1.47
8/5/2014	1.46	0.05	1.51
8/6/2014	1.53	0.05	1.58
8/7/2014	1.65	0.05	1.70
8/8/2014	1.95	0.05	2.00
8/9/2014	2.25	0.05	2.30
8/10/2014	2.41	0.05	2.46
8/11/2014	2.50	0.05	2.55
8/12/2014	2.53	0.24	2.77
8/13/2014	2.21	0.43	2.64
8/14/2014	2.03	0.43	2.46
8/15/2014	2.01	0.43	2.44
8/16/2014	1.99	0.43	2.42
8/17/2014	1.96	0.43	2.39
8/18/2014	2.02	0.43	2.45

Date	Flow (cfs)	Rangen Pipe	Tunnel + Pipe
8/19/2014	2.03	0.43	2.46
8/20/2014	2.02	0.43	2.45
8/21/2014	2.02	0.43	2.45
8/22/2014	2.01	0.43	2.44
8/23/2014	2.14	0.43	2.57
8/24/2014	2.28	0.43	2.71
8/25/2014	2.44	0.43	2.87
8/26/2014	2.56	0.43	2.99
8/27/2014	2.65	0.43	3.08
8/28/2014	2.63	0.43	3.06
8/29/2014	2.72	0.43	3.15
8/30/2014	2.89	0.43	3.32
8/31/2014	3.03	0.43	3.46
9/1/2014	3.19	0.43	3.62
9/2/2014	3.31	0.47	3.77
9/3/2014	3.32	0.51	3.82
9/4/2014	3.26	0.54	3.80
9/5/2014	3.01	0.58	3.59
9/6/2014	2.93	0.58	3.51
9/7/2014	3.09	0.58	3.67
9/8/2014	3.29	0.58	3.87
9/9/2014	3.49	0.58	4.07
9/10/2014	3.55	0.58	4.13
9/11/2014	3.60	0.58	4.18
9/12/2014	3.61	0.58	4.19
9/13/2014	3.68	0.58	4.26
9/14/2014	3.80	0.58	4.38
9/15/2014	3.90	0.58	4.48
9/16/2014	3.90	0.59	4.49
9/17/2014	3.88	0.60	4.48
9/18/2014	4.03	0.61	4.64
9/19/2014	4.09	0.62	4.71
9/20/2014	4.21	0.63	4.84
9/21/2014	4.32	0.64	4.96
9/22/2014	4.51	0.65	5.16
9/23/2014	4.70	0.65	5.35
9/24/2014	4.84	0.65	5.49
9/25/2014	4.98	0.65	5.63
9/26/2014	4.89	0.65	5.54
9/27/2014	4.87	0.65	5.52
9/28/2014	4.85	0.65	5.50
9/29/2014	4.93	0.65	5.58
9/30/2014	5.09	0.65	5.74
10/1/2014	5.20	0.65	5.85
10/2/2014	5.28	0.65	5.93
10/3/2014	5.39	0.65	6.04

Date	Flow (cfs)	Rangen Pipe	Tunnel + Pipe
10/4/2014	5.46	0.65	6.11
10/5/2014	5.60	0.65	6.25
10/6/2014	5.65	0.65	6.30
10/7/2014	5.81	0.66	6.47
10/8/2014	5.91	0.67	6.57
10/9/2014	5.94	0.68	6.61
10/10/2014	6.11	0.68	6.79
10/11/2014	6.24	0.69	6.94
10/12/2014	6.25	0.70	6.95
10/13/2014	5.99	0.71	6.70
10/14/2014	5.75	0.62	6.37
10/15/2014	5.70	0.52	6.22
10/16/2014	5.65	0.43	6.08
10/17/2014	5.94	0.33	6.27
10/18/2014	6.35	0.24	6.59
10/19/2014	6.27	0.14	6.42
10/20/2014	6.28	0.05	6.33

Notes:
Curren Tunnel flow data provided by IDWR.
2014 Rangen Pipe data provided by Rangen.

EXHIBIT 3

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF THE FOURTH MITIGATION PLAN FILED BY THE IDAHO GROUND WATER APPROPRIATORS FOR THE DISTRIBUTION OF WATER TO WATER RIGHT NOS. 36-02551 & 36-07694 IN THE NAME OF RANGEN, INC.	Docket No. CM-MP-2014-006 **ORDER APPROVING IGWA'S FOURTH MITIGATION PLAN**

PROCEDURAL BACKGROUND

On January 29, 2014, the Director ("Director") of the Idaho Department of Water Resources ("Department") issued the *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* ("Curtailment Order").[1] The Curtailment Order recognizes that holders of junior-priority ground water rights may avoid curtailment if they participate in a mitigation plan which provides "simulated steady state benefits of 9.1 cfs to Curren Tunnel [sometimes referred to as the "Martin-Curren Tunnel"] or direct flow of 9.1 cfs to Rangen." *Curtailment Order* at 42. The Curtailment Order explains that mitigation provided by direct flow to Rangen, Inc. ("Rangen"), "may be phased-in over not more than a five-year period pursuant to CM Rule 40 as follows: 3.4 cfs the first year, 5.2 cfs the second year, 6.0 cfs the third year, 6.6 cfs the fourth year, and 9.1 cfs the fifth year." *Id.*

On February 11, 2014, the Idaho Ground Water Appropriators, Inc. ("IGWA"), filed with the Department *IGWA's Mitigation Plan and Request for Hearing* ("First Mitigation Plan") to avoid curtailment imposed by the Curtailment Order. The First Mitigation Plan proposed nine possible mitigation activities for junior-priority ground water pumpers to satisfy mitigation obligations.

On February 12, 2014, IGWA filed *IGWA's Petition to Stay Curtailment, and Request for Expedited Decision.* On February 21, 2014, the Director issued an *Order Granting IGWA's Petition to Stay Curtailment,* which stayed enforcement of the Curtailment Order for members of IGWA and the non-member participants in IGWA's First Mitigation Plan until a decision was issued on the First Mitigation Plan.

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[1] The Curtailment Order is currently on appeal in *Rangen, Inc., v. IDWR*, Twin Falls County Case No. CV-2014-1338. Judge Wildman issued his *Memorandum Decision and Order on Petitions for Judicial Review* ("Memorandum Decision") on October 24, 2014, which affirmed the Director on a number of issues, but held the Director erred by applying a trim line to reduce the zone of curtailment. *Memorandum Decision* at 28. The Memorandum Decision is not yet final, but given that time is of the essence in this matter, this order should not be delayed. Depending on the outcome of the appeal in Case No. CV-2014-1138, aspects of this order may need to be revisited and the mitigation obligation may increase.

On March 17-19, 2014, the Director conducted a hearing for the First Mitigation Plan at the Department's state office in Boise, Idaho. On April 11, 2014, the Director issued an *Order Approving in Part and Rejecting in Part IGWA's Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order* ("First Mitigation Plan Order"). In the First Mitigation Plan Order, the Director approved two of the nine proposed components of the First Mitigation Plan: (1) credit for current and ongoing mitigation activities (collectively referred to as "aquifer enhancement activities"), and (2) delivery of water directly to Rangen that otherwise would have been delivered in priority to Howard "Butch" Morris ("Morris") but for North Snake Ground Water District ("NSGWD") delivering surface water to Morris through the Sandy Pipeline ("Morris exchange agreement"). The Director rejected the other seven components of the First Mitigation Plan. The Director recognized 1.2 cfs of mitigation credit for IGWA's aquifer enhancement activities and 1.8 cfs of mitigation credit for delivery of water to Rangen as a result of the Morris exchange agreement. The Director recognized a total mitigation credit of 3.0 cfs, 0.4 cfs short of the 3.4 cfs mitigation required for the time period from April 1, 2014, through March 31, 2015. To satisfy the 0.4 cfs mitigation deficiency, the Director ordered curtailment of ground water rights bearing priority dates junior or equal to July 1, 1983, during the 2014 irrigation season. *First Mitigation Plan Order* at 21.[2]

On March 10, 2014, during the pendency of the First Mitigation Plan proceeding, IGWA filed with the Department *IGWA's Second Mitigation Plan and Request for Hearing* ("Second Mitigation Plan") in response to the Curtailment Order. The Second Mitigation Plan proposed delivery of up to 9.1 cfs of water from Tucker Springs, a tributary to Riley Creek, through a 1.3 mile pipeline to the fish research and propagation facility owned by Rangen ("Rangen Facility"). *Second Mitigation Plan* at 2.

On April 17, 2014, IGWA filed *IGWA's Second Petition to Stay Curtailment, and Request for Expedited Decision* ("Second Petition"). The Second Petition asked the Director to "stay implementation of the [Curtailment Order], . . . until the judiciary completes its review of the Curtailment Order in *IGWA v. IDWR*, Gooding County Case No. CV-2014-179, and *Rangen v. IDWR*, Twin Falls County Case No. CV-2014-1338." *Second Petition* at 1. On April 28, 2014, the Director issued an *Order Granting IGWA's Second Petition to Stay Curtailment* stating the Director would revisit the stay at the time a decision on IGWA's Second Mitigation Plan was issued.

On June 4-5, 2014, the Director conducted a hearing for the Second Mitigation Plan at the Department's state office in Boise, Idaho. On June 20, 2014, the Director issued an *Order Approving IGWA's Second Mitigation Plan; Order Lifting Stay Issued April 28, 2014; Second Amended Curtailment Order* ("Second Mitigation Plan Order"). To dovetail the First Mitigation Plan into the Second Mitigation Plan, the Director recalculated the period of time over which the

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[2] On April 25, 2014, Rangen filed *Rangen's Motion for Reconsideration of Order Re: IGWA's Mitigation Plan; Order Lifting Stay; Amended Curtailment Order* ("Motion for Reconsideration") challenging the Director's method of determining mitigation credit for the Morris exchange water. *Motion for Reconsideration* at 1-6. On May 16, 2014, the Director issued both the Order on Reconsideration denying Rangen's Motion for Reconsideration and the Amended Mitigation Plan Order. The Director's method of calculating mitigation credit was not altered. *Amended Mitigation Plan Order* at 21.

volume of water provided by the Morris exchange agreement was averaged to equal the number of days the water would provide full mitigation to Rangen. *Second Mitigation Plan Order* at 6-7. The Director required curtailment or additional mitigation from IGWA under the Second Mitigation Plan after the time full mitigation credit under the First Mitigation Plan expires. *Id.* Specifically, the Director calculated that 2.2 cfs of mitigation water must be delivered to Rangen by the Morris exchange agreement to provide full mitigation during the first year of phased-in mitigation. The Director calculated the 2.2 cfs mitigation obligation by subtracting the 1.2 cfs mitigation credit from aquifer enchancement activities from the 3.4 cfs first year phase-in mitigation obligation. In the Second Mitigation Plan Order, the Director recognized mitigation credit for the Morris exchange agreement at an average rate of 2.2 cfs for the 293-day period between April 1, 2014 and January 18, 2015. As of January 19, 2015, IGWA must begin providing water to Rangen at a rate of 2.2 cfs by other means to meet the 3.4 cfs annual obligation for April 1, 2014 through March 31, 2015. *Id.* at 18. Accordingly, the Director ordered that the April 28, 2014, stay was lifted and failure to deliver 2.2 cfs to Rangen from Tucker Springs by January 19, 2015, will result in curtailment of water rights junior or equal to August 12, 1973, unless another mitigation plan has been approved and is providing the required water to Rangen. *Id.*

On August 27, 2014, IGWA filed *IGWA's Fourth Mitigation Plan and Request for Expedited Hearing* ("Fourth Mitigation Plan").[3] The Fourth Mitigation Plan consists of the "Magic Springs Project." *Fourth Mitigation Plan* at 2. Rangen and Kathy McKenzie separately filed protests to the Fourth Mitigation Plan on September 19, 2014.

The Magic Springs Project is comprised of multiple components including: lease or purchase of 10.0 cfs of water right nos. 36-7072 and 36-8356 owned by SeaPac of Idaho ("SeaPac"); long-term lease or purchase from the Idaho Water Resource Board ("IWRB") of water right nos. 36-4011[4], 36-2734, 36-15476, 36-2414, and 36-2338 to make available to SeaPac; design, construction, operation, and maintenance of the water intake and collection facilities, pump station, and pipeline to transport water from SeaPac's Magic Springs facility to the head of Billingsley Creek directly up gradient from the Rangen Facility; acquisition of permanent easements at Magic Springs for the water intake and collection facilities, pump

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[3] On June 10, 2014, IGWA filed *IGWA's Amended Third Mitigation Plan and Request for Hearing* ("Third Mitigation Plan"). The five components of the Third Mitigation Plan were identified as: 1) Sandy Ponds recharge and Sandy Pipe delivery; 2) improvements to the Curren Tunnel diversion; 3) direct delivery of water right no. 36-16976; 4) recirculation of Rangen water rights; and 5) the Aqua Life project. On August 19, 2014, the Director issued an *Order Denying Rangen's Motion to Dismiss Proposals One, Two, Three, and Four of IGWA's Amended Third Mitigation Plan.* After entry of that order, the only proposals remaining for consideration at the hearing regarding IGWA's Third Mitigation Plan are IGWA's request for mitigation credit for Sandy Ponds recharge, recirculation of Rangen water rights, and the Aqua Life project. On September 25, 2014, IGWA filed *IGWA's Motion to Vacate Hearing* requesting that the hearing scheduled for the Third Mitigation Plan be vacated. On October 7, 2014, IGWA filed *IGWA's Request for Hearing on Sandy Ponds/Sandy Pipe Component of Plan* requesting a hearing on only the Sandy Ponds/Sandy Pipe component of the Third Mitigation Plan, thereby bifurcating it from any hearing that may be held on the remaining components. On October 9, 2014, the Director issued an *Order Granting IGWA's Motion to Vacate Hearing and Notice of Third Status Conference.* A hearing date of February 18 & 19, 2015, for the Sandy Ponds/Sandy Pipe component of the Third Mitigation Plan was determined at a status conference on October 21, 2014.

[4] This water right was mistakenly identified as 36-1044 in the Fourth Mitigation Plan.

station, pipeline, and other necessary features for delivery of water to the head of Billingsley Creek; and approval of a transfer application to change the place of use from SeaPac to Rangen. The Director held a hearing for the Fourth Mitigation Plan on October 8, 2014, at the Department's State office in Boise, Idaho.

APPLICABLE LAW

Conjunctive Management Rule 43.03 ("Rule 43.03") establishes the following factors that "may be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights":

> a. Whether delivery, storage and use of water pursuant to the mitigation plan is in compliance with Idaho law.
>
> b. Whether the mitigation plan will provide replacement water, at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and place as necessary to satisfy the rights of diversion from the surface or ground water source. Consideration will be given to the history and seasonal availability of water for diversion so as not to require replacement water at times when the surface right historically has not received a full supply, such as during annual low-flow periods and extended drought periods.
>
> c. Whether the mitigation plan provides replacement water supplies or other appropriate compensation to the senior-priority water right when needed during a time of shortage even if the effect of pumping is spread over many years and will continue for years after pumping is curtailed. A mitigation plan may allow for multi-season accounting of ground water withdrawals and provide for replacement water to take advantage of variability in seasonal water supply. The mitigation plan must include contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable.
>
> d. Whether the mitigation plan proposes artificial recharge of an area of common ground water supply as a means of protecting ground water pumping levels, compensating senior-priority water rights, or providing aquifer storage for exchange or other purposes related to the mitigation plan.
>
> e. Where a mitigation plan is based upon computer simulations and calculations, whether such plan uses generally accepted and appropriate engineering and hydrogeologic formulae for calculating the depletive effect of the ground water withdrawal.
>
> f. Whether the mitigation plan uses generally accepted and appropriate values for aquifer characteristics such as transmissivity, specific yield, and other relevant factors.

g. Whether the mitigation plan reasonably calculates the consumptive use component of ground water diversion and use.

h. The reliability of the source of replacement water over the term in which it is proposed to be used under the mitigation plan.

i. Whether the mitigation plan proposes enlargement of the rate of diversion, seasonal quantity or time of diversion under any water right being proposed for use in the mitigation plan.

j. 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.

k. Whether the mitigation plan provides for monitoring and adjustment as necessary to protect senior-priority water rights from material injury.

l. Whether the plan provides for mitigation of the effects of pumping of existing wells and the effects of pumping of any new wells which may be proposed to take water from the areas of common ground water supply.

m. Whether the mitigation plan provides for future participation on an equitable basis by ground water pumpers who divert water under junior-priority rights but who do not initially participate in such mitigation plan.

n. A mitigation plan may propose division of the area of common ground water supply into zones or segments for the purpose of consideration of local impacts, timing of depletions, and replacement supplies.

o. Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions.

IDAPA 37.03.11.043.03(a-o). A proposed mitigation plan must contain information that allows the Director to evaluate these factors. IDAPA 37.03.11.043.01(d).

While Rule 43.03 lists factors that "may be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights," factors 43.03(a) through 43.03(c) are necessary components of mitigation plans that call for the direct delivery of mitigation water. A junior water right holder seeking to directly deliver mitigation water bears the burden of proving that (a) the "delivery, storage and use of water pursuant to the mitigation plan is in compliance with Idaho law," (b) "the mitigation plan will provide replacement water, at the time and place required by the senior priority water right, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and place as necessary to satisfy the rights of diversion from the surface or ground

water source," and (c) "the mitigation plan provides replacement water supplies or other appropriate compensation to the senior-priority water right when needed during a time of shortage." IDAPA 37.03.11.043.03(a-c). These three inquiries are threshold factors against which IGWA's Magic Springs Project must be measured.

To satisfy its burden of proof, IGWA must present sufficient factual evidence at the hearing to prove that (1) the proposal is legal, and will generally provide the quantity of water required by the curtailment order; (2) the components of the proposed mitigation plan can be implemented to timely provide mitigation water as required by the curtailment order; and (3)(a) the proposal has been geographically located and engineered, and (b) necessary agreements or option contracts are executed, or legal proceedings to acquire land or easements have been initiated.

FINDINGS OF FACT

Rangen's Existing System

1. The Rangen Facility is located in the Thousands Springs area near Hagerman, Idaho. The Rangen Facility is situated below a canyon rim at the headwaters of Billingsley Creek.

2. Immediately east of the Rangen Facility, water emanates from numerous springs on the talus slopes just below the canyon rim. Water also emanates from the Curren Tunnel. The tunnel is a large, excavated conduit constructed high on the canyon rim and extends approximately 300 feet into the canyon wall.

3. A concrete collection box located near the mouth of the Curren Tunnel collects water for delivery to Rangen and holders of early priority irrigation water rights via pipelines. The concrete box is commonly referred to as the "Farmers' Box."

4. Further down the talus slope is a second concrete water collection box with an open top, commonly referred to as the "Rangen Box." Rangen rediverts the water from the Farmers' box through two plastic pipes down to the Rangen Box. Water is then delivered from the Rangen Box via a steel pipe to the small raceways. The water diverted by Rangen can then be routed from the small raceways down through the large and CTR raceways at the Rangen Facility. Water can also be spilled out the side of the Rangen Box and returned to the talus slope.

5. In the early 1980's, Rangen built a six-inch white PVC pipeline to divert water from inside the Curren Tunnel and deliver the water to the hatch house and greenhouse buildings. The water is used in the hatch house and/or greenhouse and then can be discharged either back into Billingsley Creek or discharged directly into the small raceways and used in the large and CTR raceways.

Magic Springs Project

6. IGWA's Fourth Mitigation Plan proposes direct delivery of up to 10 cfs of "first use" water from SeaPac's Magic Springs facility to the Rangen Facility. *Fourth Mitigation Plan* at 2; Ex. 1009 at 4.

7. SeaPac owns two water rights for fish propagation at its Magic Springs facility: 36-7072 which authorizes the diversion of 148.2 cfs for fish propagation from Thousand Springs with a priority date of September 5, 1969, and 36-8356 which authorizes the diversion of 45 cfs for fish propagation from springs with a priority date of May 9, 1988. Ex. 2013, attachments 4 & 5. The two water rights combined may not exceed a total diversion rate of 148.2 cfs. *Id.*

8. A letter of intent executed by IGWA and SeaPac states that SeaPac will agree to lease or sell to IGWA up to 10 cfs of "first use" water from its Magic Springs water rights (36-7072 and 36-8356) for mitigation purposes ("IGWA/SeaPac agreement"). Ex. 1003 at 2.

9. SeaPac currently has a short-term lease of the Aqua Life Aquaculture Facility Hatchery ("Aqua Life") from the IWRB, which owns and operates Aqua Life and water right numbers 36-4011, 36-2734, 36-15476, 36-2414, and 36-2338. SeaPac desires to continue its Aqua Life operations by securing ownership and/or a long-term lease of Aqua Life. Ex. 1003 at 1-3.

10. The IGWA/SeaPac agreement is contingent upon 1) IGWA securing an approval of its Fourth Mitigation Plan from the Department, 2) IGWA securing an order approving the transfer of the point of diversion and place of use (as necessary) from SeaPac to Rangen, 3) IGWA constructing the pump and pipeline facilities and delivering Magic Springs water pursuant to an approved mitigation plan, and 4) IGWA owning or controlling Aqua Life water right numbers 36-4011, 36-2734, 36-15476, 36-2414, and 36-2338 by long-term lease or purchase from the IWRB and making them available to SeaPac. Ex. 1003 at 2-3.

11. The Magic Springs Project will be designed to deliver a maximum flow of 10 cfs of spring water associated with water right 36-7072 to Rangen. IGWA will divert Magic Springs water from a point of diversion authorized by water right number 36-7072. Ex. 1009 at 4.

12. IGWA, on behalf of NSGWD, Magic Valley Ground Water District, and Southwest Irrigation District, submitted an Application for Transfer of Water Right to the Department on September 10, 2014, to add the Rangen Facility as a new place of use for up to 10 cfs from water right number 36-7072. Ex. 1009 at 64-70.

13. On July 18, 2014, prior to filing of the Fourth Mitigation Plan, the IWRB executed a letter of intent with IGWA to make available to IGWA by long-term lease or purchase up to 10 cfs of its Aqua Life water rights as needed to satisfy the mitigation obligation to Rangen ("IGWA/IWRB agreement"). Ex. 1002 at 2.

14. IGWA and the IWRB are negotiating to finalize the details of a thirty-year lease of the Aqua Life water rights and facility. IGWA intends to assign the lease to SeaPac and gain access to the Magic Springs water. Tr. p. 38-40; 87-89.

Engineering Design

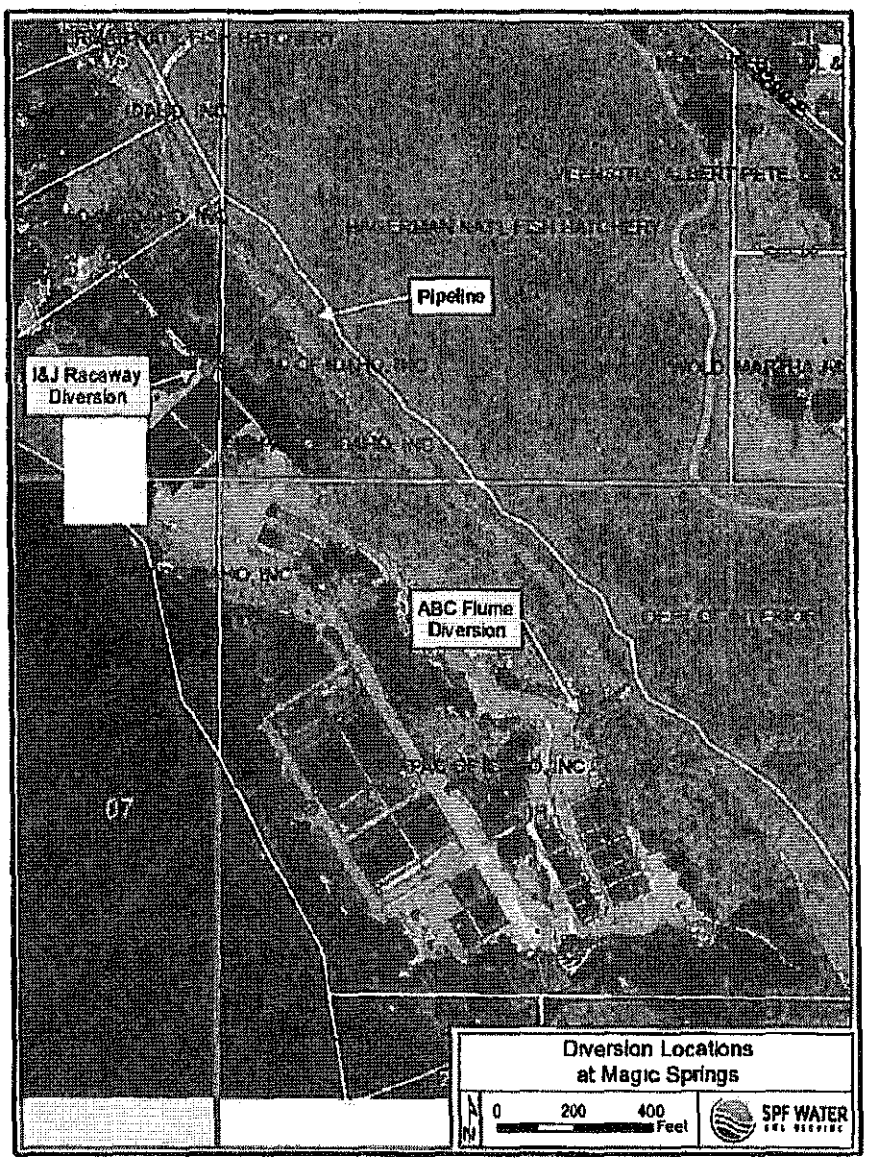
15. Engineers for IGWA have completed sixty percent of the engineering design necessary to construct the full Magic Springs Project ("engineering design"). Ex. 1009. The engineering design calls for the construction of a permanent pump station and pipeline system "to reliably deliver 9.1 cfs from Magic Springs to the Rangen [F]acility." *Id.* at 10.

16. The engineering design also calls for the construction of a temporary pump and pipeline system to deliver water to Rangen by January 19, 2015, when the Morris exchange agreement will no longer provide full mitigation to Rangen as set forth in the Second Mitigation Plan Order.[5] Ex. 1009 at 7-9. The design plans call for the delivery of 0.5 cfs to Rangen by January 19, 2015, but Bob Hardgrove ("Hardgrove"), the design engineer for IGWA, testified that the temporary system design could be modified to provide up to 2.2 cfs of water. Tr. p. 152-53.

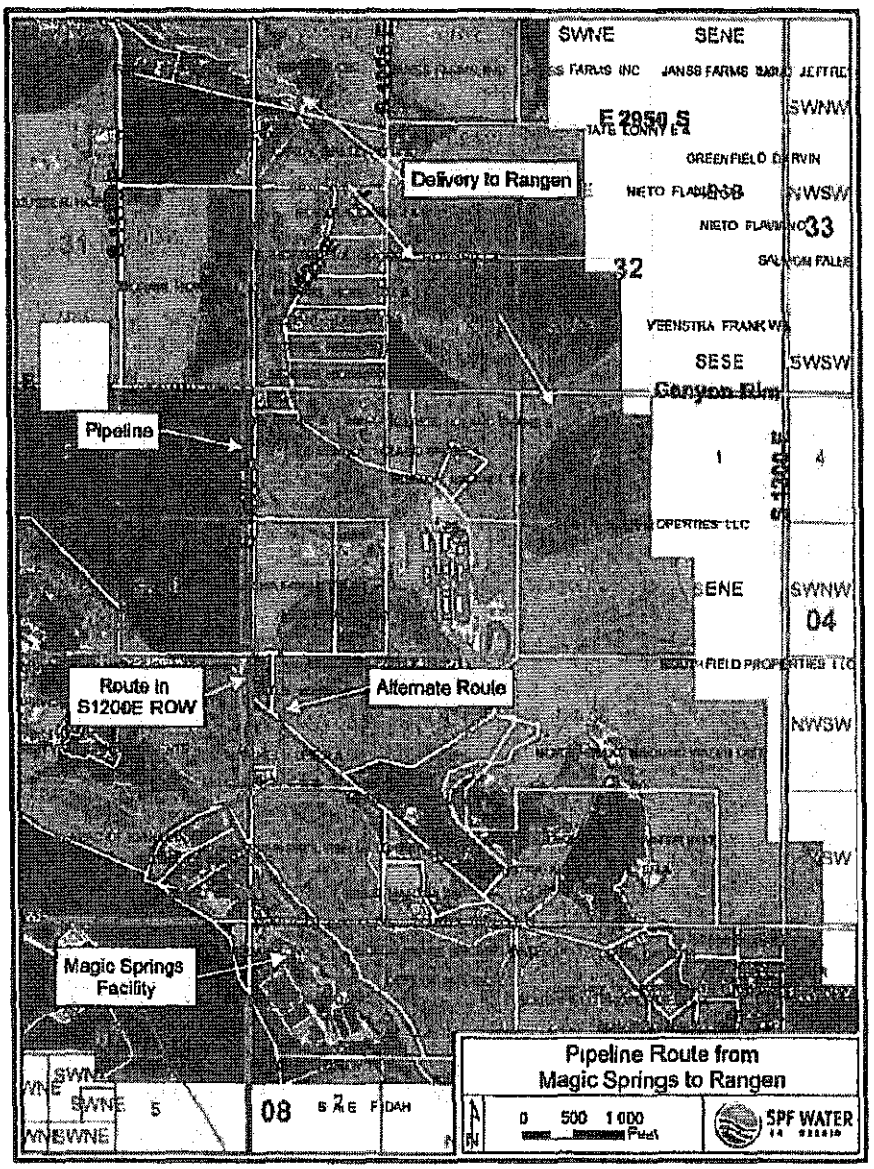
Permanent Pump Station and Pipeline System

17. The following figure taken from Exhibit 1009 at 13 displays two potential diversion points that have been identified below the rim at the Magic Springs facility: the I&J Raceway Diversion ("I&J Diversion") and the ABC Flume Diversion ("ABC Diversion").

[5] On October 1, 2014, Rangen filed a motion in limine seeking to exclude presentation of evidence regarding the temporary pump and pipeline system at the October 8, 2014, hearing on the Fourth Mitigation Plan. The Director verbally denied the motion at the commencement of that hearing.



18. The pipeline alignments for the I&J Diversion and the ABC Diversion eventually intersect on top of the rim within SeaPac property, and from that point to the Rangen Facility, the alignment for both points of diversion is the same. Ex. 1009 at 10. The following figure taken from Exhibit 1009 at 11 depicts the proposed pipeline alignments:



- ABC Diversion, Pipeline, and Pump Station

19. The ABC Diversion, an authorized point of diversion under SeaPac's water right 36-7072, will connect to an existing concrete flume that carries ABC spring water to raceways at the Magic Springs facility. Ex. 1009 at 12. A 24-inch diameter and approximately 120 foot long gravity pipeline constructed of welded steel pipe will carry water from the flume to the pump station. *Id.* at 14. This pipeline will be installed above-ground and will connect to the flume via a new concrete collection box. *Id.* A head gate will be installed on the upstream end of the pipeline to isolate the feed to the pump station for maintenance. *Id.*

20. The proposed pipeline from the ABC Diversion to Rangen is approximately 1.9 miles long. Ex. 1009 at 16. In addition to the 120 feet of welded steel pipe for the gravity line from the ABC flume to the pump station, approximately 360 feet of exposed, above-ground welded 24-inch diameter steel pipe will convey water from the pump station to the top of the rim. *Id.* at 16, 27. Once to the top of the rim, the pipeline will change to 24-inch diameter high-density polyethylene pipe ("HDPE pipe"). *Id.* The HDPE pipe will be buried for approximately 9,440 feet. The HDPE pipe will be connected using a butt-fusion welding machine and interior welds will be de-beaded resulting in a fully restrained and leak-free pipeline. *Id.*

21. A minimum of three feet of cover is required for the pipeline installation. Ex. 1009 at 16. Combination air valves will be installed at the high points and pipeline drains will be installed at the low points. *Id.*

22. The engineering design calls for a skid-mounted packaged pump station including pumps, mechanical piping, valves, flow meter, variable frequency drives ("VFDs"), and associated controls, generators, and enclosure. Ex. 1009 at 14.

23. The pump station will include three short-set line-shaft turbine pumps. Ex. 1009 at 14. Two of the pumps will be duty pumps and one will be on standby to ensure that two pumps can operate at all times. Ex. 1009 at 14. The pumps will be placed in individual 24-inch diameter pump cans that will be approximately seven feet below existing ground surface. *Id.* The 24-inch diameter gravity line from the ABC flume will deliver water to the pump cans. *Id.*

24. The pump station will be enclosed for protection from weather and to reduce sound. Ex. 1009 at 12. The insulated enclosure will be heated and ventilated. *Id.* The pump station enclosure will be lockable and durable. *Id.*

25. To deliver 9.1 cfs to Rangen[6] from the ABC Diversion, the pump station must produce approximately 200 feet of total dynamic head ("TDH"). Ex. 1009 at 15. The pumps will require nominal 150-hp motors that will be controlled by VFDs to maintain any operator-adjustable flow rate up to 10 cfs. *Id.* System operation will be controlled by a programmable logic controller with remote monitoring and auto-restart capabilities. *Id.* The packaged pump station will include an isolation and check valve on each pump, a mainline butterfly valve, pressure relief, combination air valve, and a flow meter. *Id.*

26. Three-phase power is available at Magic Springs to power the ABC pump station. Ex. 1009 at 15; Tr. p. 158. Idaho Power can supply the pump station with the necessary electrical service without any upgrades. *Id.*

27. A generator is proposed to provide emergency power. Ex. 1009 at 15. The generator will automatically start within seconds of a power outage. Tr. p 158-59. While the pumps will need to be slowly ramped up, the full pumping capacity can be restored within two or three minutes. *Id.* The generator proposed by IGWA is the type used by municipal water systems, semiconductor facilities, and hospitals. *Id.* at 159.

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[6] The design plans for the project state that "IGWA has requested SPF design a 10-cfs pumping and pipeline system to reliably deliver 9.1 cfs from Magic Sprigs to the Rangen [F]acility." Ex. 1009 at 10.

28. The redundant pump, remote monitoring and alarming capabilities, auto-restart, proposed standby power generator and auto-transfer switch, and lockable and durable pump station enclosure make the pump station dependable, and will minimize downtime due to maintenance and power outages. Ex. 1009 at 15.

- I&J Diversion, Pipeline, and Pump Station

29. The I&J Diversion, if chosen as the point of diversion, will divert water from the manifold at the head of the I&J raceway, eliminating the need to construct new spring collection infrastructure. Ex. 1009 at 16. The I&J Diversion is directly adjacent to the spring water source pond and is upstream of any commercial use within the raceway. *Id.*

30. A 24-inch diameter ductile iron pipe buried for approximately forty-five feet, will convey water from the I&J raceway to the pump station. Ex. 1009 at 17. A head gate will be installed on the upstream end of the gravity line to isolate the feed to the pump station for maintenance. *Id.*

31. The total pipeline length from the I&J Diversion to Rangen is 1.6 miles. Ex. 1009 at 19. A 24-inch diameter exposed, above-ground steel pipe 365 feet long will convey Magic Springs water from the I&J Diversion to the top of the rim. Approximately 7,980 feet of buried 24-inch diameter HDPE pipe will convey water from the top of the rim to the Rangen Facility. Ex. 1009 at 19. The HDPE pipe will be connected using a butt-fusion welding machine and interior welds will be de-beaded resulting in a fully restrained and leak-free pipeline. *Id.*

32. A minimum of three feet of cover is required for the pipeline installation. Ex. 1009 at 19. Combination air valves will be installed at the high points and pipeline drains will be installed at the low points. *Id.*

33. The engineering design calls for a skid-mounted packaged pump station including pumps, mechanical piping, valves, flow meter, VFDs, and associated controls, generators, and enclosure. Ex. 1009 at 18.

34. The pump station will include three short-set line-shaft turbine pumps. Ex. 1009 at 18. Two of the pumps will be duty pumps and one will be on standby to ensure that two pumps can operate at all times. *Id.* The pumps will be placed in individual 24-inch diameter pump cans that will be approximately twelve feet below existing ground surface. *Id.* The 24-inch diameter gravity line from the I&J raceway will deliver water to the pump cans. *Id.*

35. To deliver 10 cfs to Rangen from the I&J Diversion, the pump station must produce approximately 220 feet of TDH. Ex. 1009 at 18. The pumps will require nominal 200-hp motors that will be controlled by VFDs to maintain any operator-adjustable flow rate up to 10 cfs. *Id.* System operation will be controlled by a programmable logic controller with remote monitoring and auto-restart capabilities. *Id.* The pump station for the I&J Diversion will be designed to be a reliable and secure facility including a redundant pump, remote monitoring and

alarming capabilities, auto-restart, and a proposed standby power generator and auto-transfer switch. *Id.*

36. Three-phase power is available at Magic Springs to power the I&J pump station. Ex. 1009 at 18-19. Idaho Power can supply the pump station with the necessary electrical service without any upgrades. *Id.*

Temporary Pump and Pipeline System

37. IGWA proposes a temporary pump and pipeline system to deliver water from Magic Springs to the Rangen Facility. The engineering design proposes delivery of 0.5 cfs to Rangen, but at the hearing, Hardgrove testified the system design could be changed to deliver up to 2.2 cfs through the temporary system. Ex. 1009 at 7; Tr. p. 152-53.

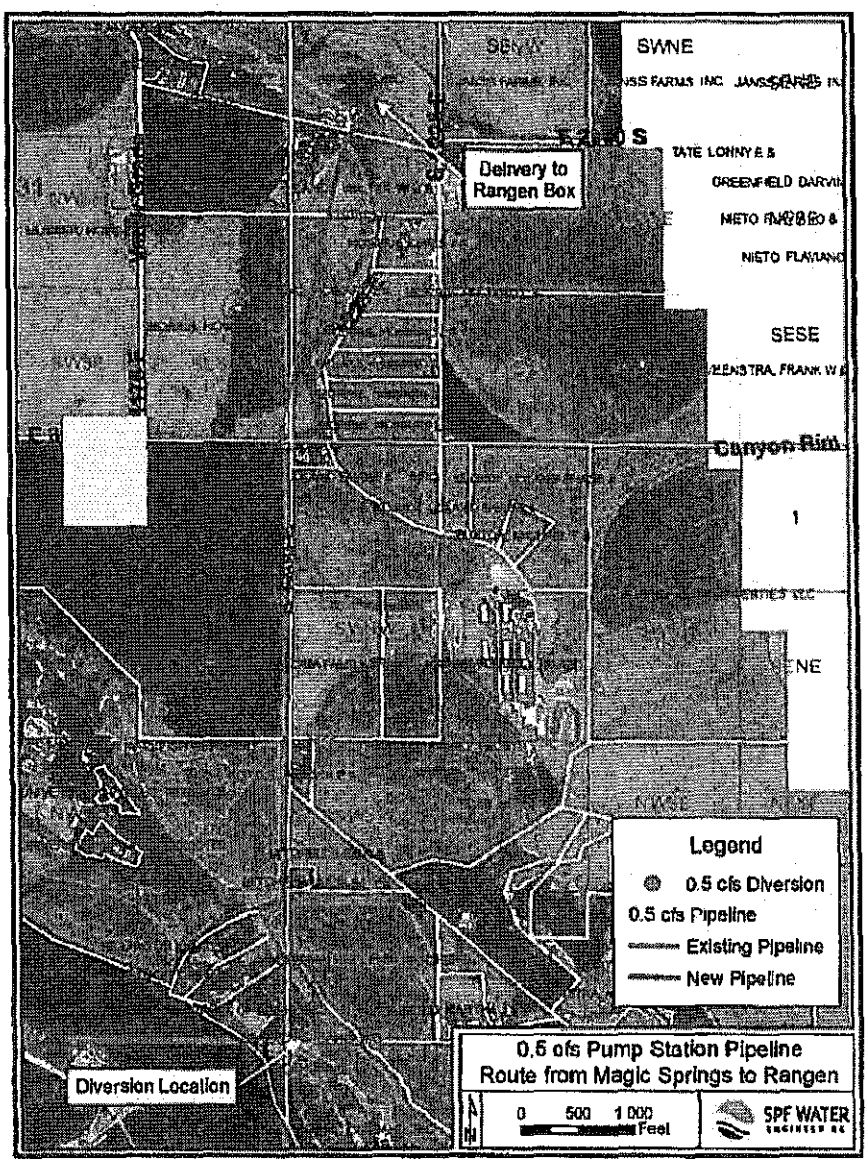
38. Delivery of 0.5 cfs to Rangen by January 19, 2015, will result in a remainder mitigation obligation of 1.7 cfs (3.4 cfs total mitigation obligation for the time period of April 1, 2014, through March 31, 2015, minus 1.2 cfs for aquifer enhancement activities, minus 0.5 cfs via IGWA's temporary pipeline).

39. The engineering design calls for a temporary end-suction pump that will be constructed to pump water directly from the upstream end of the I&J raceway at the Magic Springs facility. Ex. 1009 at 7. The pump will be designed with a manual priming pump and foot valve on the suction line. The design plans call for a pump to be sized for a TDH of 200 feet and a flow of 225 gpm (0.5 cfs) and will require a twenty-hp motor. *Id.* A larger pump can be used if IGWA decides to deliver 2.2 cfs to Rangen. Tr. p. 152-53.

40. IGWA alludes there will be some manual monitoring of the pump to ensure it is operating correctly: "Pump monitoring during the day will be completed by the general contractor selected for the pump installation." Ex. 1009 at 7. SeaPac staff that live on-site at the Magic Springs facility will be available during non-working hours for pump monitoring. *Id.* Hardgrove testified that backup pumps and power could be added to the temporary system to address concerns about backup power and reliability. Tr. p. 208-09.

41. The engineering design explains the proposed temporary pipeline alignment will parallel the permanent pipeline alignment. Ex. 1009 at 7. The design plans call for a six-inch diameter SDR 9 HDPE pipe to be placed on top of the ground from the pump to the top of the rim. *Id.* A 10 inch diameter pipe would be used if IGWA decides to increase the amount of water to 2.2 cfs. Tr. p. 152-53. The pipe will be hung, above-ground, from the rim and will be restrained across the talus slope with sand bags. Ex. 1009 at 7. Once on top of the rim, the pipe will be placed on top of the ground north to property owned by Lee and Mary Mitchell ("Mitchell"). *Id.* From the south end of the Mitchell property north to E 3000 S, water will be delivered through existing pipe owned by Morris. *Id.* New pipe will be buried under E 3000 S. *Id.* From the north side of the road to the Rangen property, pipe will be placed on top of the ground through dormant fields owned by Morris and Walter Candy. *Id.* The pipe will then follow the existing above grade piping up the talus slope and discharge into the existing Rangen

Box. *Id.* This described alignment is depicted in the following figure taken from Exhibit 1009 at 9[7]:



42. Once full build-out of the permanent pump station and pipeline occurs and the permanent piping is successfully delivering water to Rangen, the temporary piping facilities will be removed. Ex. 1009 at 8.

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[7] The engineering design and Hardgrove explained that additional portions of buried piping network that belong to Morris and idle above ground six-inch aluminum irrigation pipe have the potential to be used, which would result in a reduction of the amount of new pipe required for the temporary pipeline project. Ex. 1009 at 8-9; tr. p. 201-04. However, further investigation would be needed to confirm reliability, location, and materials of those existing pipes. *Id.*

Required Property Crossings for Permanent and Temporary Pipeline Alignments

43. Pursuant to the IGWA/SeaPac agreement, SeaPac will grant IGWA permanent easements at its Magic Springs facility to access design, construct, operate and maintain the water in-take and collection facilities, pump station, pipeline, and other facilities as necessary to divert and deliver water for mitigation purposes. Ex. 1003 at 2.

44. Once the proposed pipelines exit SeaPac property, the proposed alignments to the Rangen Facility cross properties owned by the following: Mitchell, North Side Canal Company, Hagerman Highway District, Howard "Butch" and Rhonda Morris (hereinafter collectively referred to as "Morris"), Walter and Margaret Candy ("Candy"), and Rangen.

45. IGWA and Mitchell entered into an option agreement on October 4, 2014, to allow IGWA an exclusive and irrevocable option and right to purchase an easement to construct, own, and operate a buried pipeline through Mitchell's property to convey 10 cfs of water from Magic Springs to the head of Billingsley Creek for mitigation purposes. Ex. 1034 at 1, 7.

46. North Side Canal Company has given IGWA verbal assurances that IGWA may run pipeline through North Side Canal Company's property. Tr. p. 103, 148.

47. The Hagerman Highway Commissioners held a meeting on September 26, 2014, and approved "the proposed main pipeline alignment within the S1200E right of way." Ex. 1014.

48. IGWA executed option agreements with Morris and Candy to purchase easements for the construction/placement of a pipeline through those properties to deliver Tucker Springs water to the Rangen Facility as part of the Second Mitigation Plan. Ex. 1012 & 1013. Morris is willing to provide and utilize the same option agreement to allow an easement for purposes of the Magic Springs Project. Tr. p. 50. The pipeline alignment through the Candy property for the Magic Springs Project is the same alignment proposed for the Tucker Springs Project. Tr. p. 51.

Tie-in to Rangen's Delivery System

49. The pipeline from Magic Springs will connect to the existing pipeline between the hatch house and the small raceway at the Rangen Facility. Ex. 1009 at 19. Redundant butterfly valves will be installed immediately upstream of the tie-in point to maintain minimum upstream pressure in the pipeline under all static and operating conditions. *Id.* Throttling the butterfly valve will ensure a full pipeline upstream of the valve and that enough pumping head is developed to transport water over the mainline high-point without creating a vacuum condition. *Id.* Only one throttling valve will be utilized at a time and should the active valve need replaced, the other valve could be used to maintain delivery of water to Rangen. *Id.* Isolation valves will be installed on either side of each butterfly valve to allow for maintenance or replacement. *Id.* The butterfly valves will be housed in a buried vault on Rangen's property. *Id.*

50. Directly downstream of the valve vault, the new pipeline will connect by a tee to the existing buried steel pipeline between the hatch house and small raceway at the Rangen

Facility. Ex. 1009 at 19. A butterfly valve will be installed on the small raceway leg of the tee to allow control of flow into the small raceway. *Id.* An existing valve located in a vault near the hatch house could be used to control flow from or to the Rangen Box. *Id.* There is also an existing valve and lateral that could deliver water from the buried pipeline to the hatch house. *Id.*

51. Hardgrove testified that the tie-in design could be modified to satisfy the needs of Rangen. Tr. p. 164.

Project Schedule

52. Figure 5 on page 20 of Exhibit 1009 is IGWA's project schedule. The target date to deliver water to Rangen via the temporary pump and pipeline system is January 19, 2015. The target date to deliver up to 10 cfs to Rangen via the permanent pump and pipeline system is April 1, 2015. IGWA's project schedule does not take into account the time for processing IGWA's September 10, 2014, transfer application to add the Rangen Facility as a new place of use for up to 10 cfs from water right number 36-7072.

Project Costs

53. The engineering design provides estimated design and construction costs for the ABC Diversion and I&J Diversion alignment options, but not the proposed temporary pipeline. For the I&J Diversion alignment, the estimated design and construction cost is $2,217,000. *Id.* at 22. For the I&J Diversion, annual system operational costs were estimated to be $176,392. *Id.* For the ABC Diversion alignment, the estimated design and construction cost is $2,349,000. Ex. 1009 at 21. Annual system operational costs for the ABC Diversion alignment were estimated to be $163,966. *Id.* at 24.

54. Rangen raised concerns at the October 8, 2014, hearing regarding how design, construction, and annual system operational costs would be paid for. Tr. p. 108-09. Lynn Carlquist ("Carlquist"), chairman of the board of NSGWD, explained assessments to NSGWD members have been increased for the upcoming budget year in order to help pay for mitigation costs. Tr. p. 108. He also testified that informal discussions revealed money could be borrowed from the IWRB in order to fund the Magic Springs Project. *Id.*; Tr. p. 124-25. Carlquist stated "But I'm not too worried about finding the funds for this, either privately or from the Water Resource Board." *Id.* at 109.

Insurance

55. Carlquist testified that, as an additional protective measure, IGWA can acquire insurance to insure against aquaculture production losses due to pumping system failures. Tr. p. 53-54; Ex. 1016.

Water Quality Issues

56. The engineering design presents water quality field analysis done at both Magic Springs and Rangen, which focused on temperature, pH, electrical conductivity, specific conductance, and dissolved oxygen. Ex. 1009 at 6.

Temperature

57. The temperature of Magic Springs water is very similar to temperature readings at Rangen. Ex. 1009 at 6. The temperature of Magic Springs water is suitable for rearing trout. *Id.*

58. An AMEC temperature analysis revealed that, with use of the ABC diversion system, the maximum expected rise in temperature from the diversion to the Rangen Facility is 10.96 degrees Fahrenheit for uninsulated steel pipe and 0.08 degrees Fahrenheit for insulated steel pipe. Ex. 1009, Appendix C. With use of the I&J diversion system, the maximum expected rise in temperature is 8.8 degrees Fahrenheit for uninsulated steel pipe and 0.06 degrees Fahrenheit for insulated steel pipe. *Id.* IGWA will insulate the permanent pipeline regardless of the chosen point of diversion in order to keep the water temperature within an acceptable range for delivery to the Rangen Facility. Tr. p. 160; Tr. p. 248-49.

59. Rangen raised concerns at the hearing regarding the potential for water temperature to rise to an unacceptable range if transported through the temporary pipeline. Tr. 249. IGWA's expert Hardgrove testified: "This is the January/February/March time frame, so external temperatures will not have any heating effects on the water, more than likely, if people are concerned about an increase in temperature." Tr. p. 152.

Water Chemistry

60. IGWA gathered and analyzed water quality field data regarding dissolved oxygen, conductivity, and pH of the water at Magic Springs and Rangen. Ex. 1009 at 6. In general, the Magic Spring water had a pH and dissolved oxygen concentration similar to that found at Rangen. *Id.* The electrical conductivity and specific conductance had slightly higher readings than the water at Rangen. *Id.*

61. In its answer to interrogatory number five, Rangen stated that dissolved oxygen and pH of the water at Magic Springs as set forth in the engineering design appear to be within acceptable ranges. Ex. 1032 at 4. Hardgrove testified that, if deemed necessary, infrastructure including packed columns or aeration structures or degassing facilities could be added at the Rangen site. Tr. p. 145. Rangen raised no concerns regarding electrical conductivity or specific conductance.

62. The engineering design concludes there are no critical water quality disparities between the Magic Springs and Rangen water sources and that water from Magic Springs will be suitable for raising trout at Rangen. Ex. 1009 at 7. Rangen has previously purchased fingerlings from Magic Springs to stock in ponds and raise at the Rangen Facility. Tr. p. 219; 247. The water quality at Magic Springs is suitable for raising trout at the Rangen Facility.

63. With respect to the temporary pipeline system, Rangen raised concerns that, if used irrigation pipe delivers water to Rangen, there is a risk of contamination of water delivered from Magic Springs to the Rangen Facility. Tr. p. 241, 252.

CONCLUSIONS OF LAW

1. Idaho Code § 42-602, addressing the authority of the Director over the supervision of water distribution within water districts, provides:

> The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

In addition, Idaho Code § 42-1805(8) provides the Director with authority to "promulgate, adopt, modify, repeal and enforce rules implementing or effectuating the powers and duties of the department."

2. Idaho Code § 42-603 grants the Director authority to adopt rules governing water distribution. In accordance with chapter 52, title 67, Idaho Code, the Department adopted rules regarding the conjunctive management of surface and ground water effective October 7, 1994, ("CM Rules"). The CM Rules prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against junior-priority ground water rights in an area having a common ground water supply. CM Rule 1.

3. CM Rule 43.01 sets forth the criteria for submission of a mitigation plan to the Director.

4. CM Rule 43.03 establishes factors that may be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights.

5. The Director concludes IGWA's Fourth Mitigation Plan is an acceptable mitigation plan under the CM Rules and conditionally approves the plan. The Fourth Mitigation Plan adequately describes the actions that will be taken by IGWA to mitigate material injury to Rangen by pumping water from Magic Springs to the Rangen Facility for the beneficial purpose of fish propagation. CM Rule 43.01.d. The plan is in compliance with Idaho law. CM Rule 43.03.a. The plan has been geographically located and engineered. While IGWA has not finalized some aspects of the plan, for instance IGWA offered two possible points of diversion and also offered at least two alternative pipeline alignments, this does not render the plan unapprovable. In fact, because some aspects of the plan have not yet been finalized, this will

provide Rangen an opportunity to offer additional input on issues such as how to integrate the Magic Springs water into Rangen's system.

6. If implemented, the plan will provide water to Rangen "at the time and place required by the senior-priority water right... ." CM Rule 43.03.b.

7. The permanent pipeline system proposed in the Fourth Mitigation Plan satisfies the necessary standard of temperature, water chemistry, reliability, and biosecurity. Should dissolved oxygen levels become an issue once the permanent pipeline system is constructed and operating, IGWA will be required to install an aeration system to oxygenate the water. Similarly, should it appear that gas supersaturation is an issue once the system is constructed and operating, IGWA will be required to address the issue.

8. The redundancy built into the permanent pumping and power system are the same type and design as those used by municipalities and hospitals and are of sufficient protection to justify approval of the Fourth Mitigation Plan. The system design is reliable. CM Rule 43.03.h. If IGWA builds the temporary pipeline, IGWA must provide similar redundancy for pumping and power systems.

9. While the system design near the proposed points of diversion at Magic Springs is open (i.e. there is no netting surrounding the headwaters of the springs and points of diversion), this is similar to the open systems at other fish hatcheries. Tr. p. 217-19. The open nature of these delivery systems does not cause problems for operations of fish facilities. *Id.* The system design provides adequate protection.

10. With respect to the temporary pipeline system, because the pipeline will be above ground, IGWA will be required to monitor the temperature of water delivered to the Rangen Facility through the pipeline to ensure temperatures remain within a suitable range for raising trout at the Rangen Facility.

11. Concerns were raised by Rangen about any potential contamination through the use of existing pipe to develop the temporary pipeline system. If IGWA decides to develop a temporary pipeline system, IGWA must build the pipeline using new pipe.

12. The Fourth Mitigation Plan should be approved conditioned upon the approval of the IGWA's September 10, 2014, Application for Transfer of Water Right to add the Rangen Facility as a new place of use for up to 10 cfs from water right number 36-7072 or an authorized lease through the water supply bank. The consideration of a transfer application is a separate administrative contested case evaluated pursuant to the legal standards provided in Idaho Code §§ 42-108 and 42-222. Issues of potential injury to other water users due to a transfer are most appropriately addressed in the transfer contested case proceeding.

13. An additional condition of approval is that all necessary agreements or options contracts must be reduced to final written agreements including:

a. The IGWA/SeaPac agreement;

b. The IGWA/IWRB agreement;
c. Easements with Mitchell, North Side Canal Company, Hagerman Highway District, Morris, and Candy.

14. IGWA is required to pay for all costs of building, operating, maintaining, and monitoring the pipeline(s). As an additional contingency, IGWA is also required to purchase an insurance policy for the benefit of Rangen to cover any losses of fish attributable to the failure of the temporary or permanent pipeline system to the Rangen Facility. CM Rule 43.03.c

15. IGWA is entitled to know whether Rangen will refuse the replacement water. It appears Rangen will accept water provided from Magic Springs:

> Question by Randy Budge, Attorney for IGWA: If [the water is] the quality of Magic [Springs], according to the tests and the testimony of Mr. Hardgrove, and according to the interrogatory answers of Rangen, that it's suitable to raise fish, if it comes in that form will you in fact begin to ramp up and change your operations and utilize it, or will you wait until April 1 when you know you have a constant supply of 5 or 6 [cfs], whatever is required, from that point on?
>
> Response by Joy Kinyon, Rangen Manager: I think I've already answered that. But yes, if its suitable water, we will use that water for raising fish.

Tr. R. p. 253. However, to be certain, Rangen should be afforded an opportunity to consider and formally notify IGWA of its intent. Within seven (7) days from the date of this order, Rangen must state, in writing, whether it will accept the water delivered pursuant to the Magic Springs Project.

16. IGWA shall provide the 100 percent engineering design to the Department and Rangen upon its completion of the design. Objections to the 100 percent design must be filed within seven (7) days of receipt of the design. If no objections are received, the final engineering design will be deemed acceptable.

17. This approval does not modify the deadline established in the Director's approval of the Second Mitigation Plan. IGWA must provide the full 2.2 cfs mitigation required when credit for the Morris exchange agreement expires on January 19, 2015, or junior-priority ground water pumpers will face curtailment to satisfy the mitigation deficiency unless another mitigation plan has been approved and is providing water to Rangen at its time of need.

ORDER

Based upon and consistent with the foregoing, the Director hereby orders as follows:

IT IS ORDERED that the Fourth Mitigation Plan is conditionally approved. It is approved conditioned upon approval of IGWA's September 10, 2014, Application for Transfer of Water Right to add the Rangen Facility as a new place of use for up to 10 cfs from water right number 36-7072 or an authorized lease through the water supply bank. Approval is also

conditioned upon all necessary agreements or options contracts being reduced to final written agreements.

IT IS FURTHER ORDERED that, should dissolved oxygen levels become an issue once the permanent pipeline system is constructed and operating, IGWA will be required to install an aeration system to oxygenate the water. Similarly, should it appear that gas supersaturation is an issue once the system is constructed and operating; IGWA will be required to address the issue.

IT IS FURTHER ORDERED that, if IGWA builds the temporary pipeline, IGWA must provide similar redundancy for the pumping and power system as proposed for the permanent pipeline pumping and power system. IGWA must also monitor the temperature of water delivered to the Rangen Facility through the temporary pipeline to ensure temperatures remain within a suitable range for raising trout at the Rangen Facility. In addition, if IGWA decides to construct a temporary pipeline system, IGWA must build the pipeline with new pipe.

IT IS FURTHER ORDERED that IGWA is required to purchase an insurance policy for the benefit of Rangen to cover any losses of fish attributable to the failure of the temporary or permanent pipeline system to the Rangen Facility.

IT IS FURTHER ORDERED that, within seven (7) days from the date of this order, Rangen must state, in writing, whether it will accept water delivered pursuant to the Magic Springs Project. Rangen must submit its written acceptance/rejection to the Department and IGWA. The written acceptance/rejection must state whether Rangen will accept the Magic Springs water and whether Rangen will allow construction on its land related to placement of the delivery pipe. If the Fourth Mitigation Plan is rejected by Rangen or Rangen refuses to allow construction in accordance with an approved plan, IGWA's mitigation obligation is suspended.

IT IS FURTHER ORDERED that IGWA shall provide the 100 percent engineering design to the Department and Rangen upon its completion of the design. Objections to the 100 percent design must be filed within seven (7) days of receipt of the design. If no objections are received, the final engineering design will be deemed acceptable.

IT IS FURTHER ORDERED that failure to provide water by January 19, 2015, to Rangen to satisfy the 2.2 cfs mitigation deficiency will result in curtailment of junior water rights, unless another mitigation plan has been approved and is providing water to Rangen at its time of need. If IGWA fails to satisfy this obligation, at 12:01 a.m. on or before January 19, 2015, users of ground water holding consumptive water rights bearing priority dates junior to August 12, 1973, listed in Attachment A to this order, within the area of common ground water, located west of the Great Rift, and within a water district that regulates ground water, shall curtail/refrain from diversion and use of ground water pursuant to those water rights unless notified by the Department that the order of curtailment has been modified or rescinded as to their water rights. This order shall apply to all consumptive ground water rights, including agricultural, commercial, industrial, and municipal uses, but excluding ground water rights used for *de minimis* domestic purposes where such domestic use is within the limits of the definition set forth in Idaho Code § 42-111 and ground water rights used for *de minimis* stock watering

where such stock watering use is within the limits of the definitions set forth in Idaho Code § 42-1401A(11), pursuant to IDAPA 37.03.11.020.11.

IT IS FURTHER ORDERED that the watermasters for the water districts within the area of common ground water, located west of the Great Rift, and who regulate ground water, are directed to issue written notices to the holders of the consumptive ground water rights listed in Attachment A to this order. The water rights on the list bear priority dates equal or junior to August 12, 1973. The written notices are to advise the holders of the identified ground water rights that their rights are subject to curtailment in accordance with the terms of this order.

IT IS FURTHER ORDERED that this is a FINAL ORDER of the agency. Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law pursuant to Idaho Code § 67-5246.

IT IS FURTHER ORDERED that pursuant to sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by the final order or orders previously issued by the Director in this matter may appeal the final order and all previously issued orders in the matter to district court by filing a petition in the district court of the county in which a hearing was held, the final agency action was taken, the party seeking review of the order resides, or the real property or personal property that was the subject of the agency action is located. The appeal must be filed within twenty-eight (28) days: (a) of the service date of the final order; (b) of an order denying petition for reconsideration; or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. *See* Idaho Code § 67-5273. The filing of an appeal to district court does not in itself stay the effectiveness or enforcement of the order under appeal.

Dated this 29th day of October 2014.

GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 29th, 2014, I served a true and correct copy of the *ORDER APPROVING IGWA'S FOURTH MITIGATION PLAN* on the persons listed below by the method indicated.

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