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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION  
DELIVERY CALL OF RANGEN, INC.'S  
WATER RIGHT NOS. 36-02551 & 36-  
7694

Docket No. CM-DC-2011-004

**AFFIDAVIT OF ROBYN M.  
BRODY IN OPPOSITION TO  
IGWA'S MOTION TO CONTINUE  
HEARING AND REQUEST FOR  
EXPEDITED DECISION**

STATE OF IDAHO            )  
  )  
COUNTY OF MINIDOKA    )

ss:

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

1. My name is Robyn M. Brody. I am one of the attorney of record for Rangen, Inc.

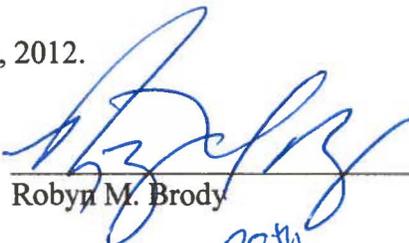
The matters contained in this affidavit are based on my personal knowledge and beliefs.

2. Attached hereto as Exhibit 1 is a true and correct copy of portions of the Transcript of the January 19, 2012 Prehearing Conference.
3. Attached hereto as Exhibit 2 is a true and correct copy of portions of the Transcript of the February 21, 2012 Status Conference.
4. Attached hereto as Exhibit 3 are true and correct copies of the Gantt chart and “punchlist” dated April 17, 2012 as provided by the Idaho Department of Water Resources.
5. Attached hereto as Exhibit 4 is a true and correct copy of portions of the Transcript of the April 28, 2012 Status Conference.
6. Attached hereto as Exhibit 5 is a true and correct copy of the email sent from Rick Raymondi to Director Spackman on July 16, 2012.
7. Attached hereto as Exhibit 6 is a true and correct copy of Willem Schreuder’s August 2011 Powerpoint presentation on MKMOD.
8. Attached hereto as Exhibit 7 is a true and correct copy of a letter from TJ Budge to Robyn M. Brody dated September 25, 2012.
9. Attached hereto as Exhibit 8 is a true and correct copy of a letter from Robyn M. Brody to TJ Budge dated September 25, 2012.
10. Attached hereto as Exhibit 9 is a true and correct copy of portions of the transcript of the May 24, 2012 Status Conference.
11. Rangen agreed to engage in written discovery with IGWA in approximately May 2012 without prior authorization by the Director.
12. In early August 2012 I sought permission from Rangen to have its documents scanned and produced electronically because I was concerned that IGWA had not yet made arrangements to have them copied. I arranged for the scanning of documents on August 8, 2012, had the documents hand-delivered to the scanner on August 9, 2012 and picked them up with a disc on August 15, 2012. I notified IGWA on August 16, 2012 that there was a problem with the disc received and that I had to obtain a new one. I

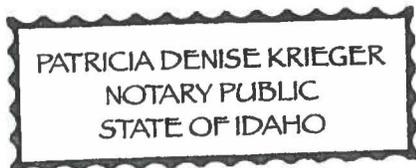
arranged for a courier to hand-deliver the disc to IGWA on August 21, 2012 – just 15 days after it requested to review the documents.

13. I uploaded a large number of documents to a shared electronic website on September 6<sup>th</sup> and 7<sup>th</sup>, 2012. The only upload that I made on September 10<sup>th</sup> was a small batch of documents that I overlooked during the production process. These documents were all provided with Bates Nos., file names that contained the Bates Nos. and a description of the document, and they were grouped together by category. At the time of the depositions on September 10, 2012, I also provided counsel for IGWA with an index showing how the Bates Nos. corresponded to the various categories of documents requested; this was my personal workproduct, but I thought it might make the review process easier for IGWA.

DATED this 27<sup>th</sup> day of September, 2012.

  
\_\_\_\_\_  
Robyn M. Brody

SUBSCRIBED AND SWORN TO BEFORE ME this 28<sup>th</sup> day of September, 2012.



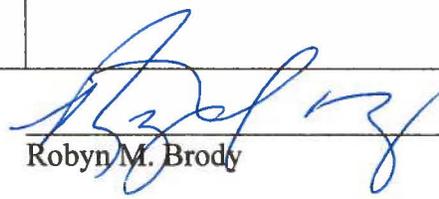
  
\_\_\_\_\_  
Notary Public for the State of Idaho  
Residence: Hazelton  
My Commission Expires: 2/28/2018

## CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 28th day of September, 2012 she caused a true and correct copy of the foregoing document to be served via email and on the 29<sup>th</sup> day of September she caused a true and correct copy of the foregoing document to be served via U.S. Mail upon the following:

<p><b>Original:</b>                  Director Gary Spackman                  Idaho Department of Water Resources                  P.O. Box 83720                  Boise, ID 83720-0098  <a href="mailto:Deborah.Gibson@idwr.idaho.gov">Deborah.Gibson@idwr.idaho.gov</a></p>	<p>Hand Delivery <input type="checkbox"/>                  U.S. Mail <input checked="" type="checkbox"/>                  Facsimile <input type="checkbox"/>                  Federal Express <input type="checkbox"/>                  E-Mail <input checked="" type="checkbox"/></p>
<p>Garrick Baxter                  Chris Bromley                  Idaho Department of Water Resources                  P.O. Box 83720                  Boise, Idaho 83720-0098  <a href="mailto:garrick.baxter@idwr.idaho.gov">garrick.baxter@idwr.idaho.gov</a>  <a href="mailto:chris.bromley@idwr.idaho.gov">chris.bromley@idwr.idaho.gov</a></p>	<p>Hand Delivery <input type="checkbox"/>                  U.S. Mail <input checked="" type="checkbox"/>                  Facsimile <input type="checkbox"/>                  Federal Express <input type="checkbox"/>                  E-Mail <input checked="" type="checkbox"/></p>
<p>Randall C. Budge                  Candice M. McHugh                  Thomas J. Budge                  RACINE, OLSON, NYE, BUDGE &amp;                  BAILEY, CHARTERED                  P.O. Box 1391                  101 South Capitol Blvd, Ste 300                  Boise, ID 83704-1391                  Fax: 208-433-0167  <a href="mailto:rcb@racinelaw.net">rcb@racinelaw.net</a>  <a href="mailto:cmm@racinelaw.net">cmm@racinelaw.net</a>  <a href="mailto:tjb@racinelaw.net">tjb@racinelaw.net</a></p>	<p>Hand Delivery <input type="checkbox"/>                  U.S. Mail <input checked="" type="checkbox"/>                  Facsimile <input type="checkbox"/>                  Federal Express <input type="checkbox"/>                  E-Mail <input checked="" type="checkbox"/></p>
<p>Sarah Klahn                  Mitra Pemberton                  WHITE &amp; JANKOWSKI                  Kittredge Building,                  511 16th Street, Suite 500                  Denver, CO 80202  <a href="mailto:sarahk@white-jankowski.com">sarahk@white-jankowski.com</a>  <a href="mailto:mitrap@white-jankowski.com">mitrap@white-jankowski.com</a></p>	<p>Hand Delivery <input type="checkbox"/>                  U.S. Mail <input checked="" type="checkbox"/>                  Facsimile <input type="checkbox"/>                  Federal Express <input type="checkbox"/>                  E-Mail <input checked="" type="checkbox"/></p>
<p>Dean Tranmer                  City of Pocatello                  P.O. Box 4169                  Pocatello, ID 83201  <a href="mailto:dtranmer@pocatello.us">dtranmer@pocatello.us</a></p>	<p>Hand Delivery <input type="checkbox"/>                  U.S. Mail <input checked="" type="checkbox"/>                  Facsimile <input type="checkbox"/>                  Federal Express <input type="checkbox"/>                  E-Mail <input checked="" type="checkbox"/></p>
<p>John K. Simpson                  Travis L. Thompson</p>	<p>Hand Delivery <input type="checkbox"/>                  U.S. Mail <input checked="" type="checkbox"/></p>

<p>Paul L. Arrington  Barker Rosholt &amp; Simpson, L.L.P.  195 River Vista Place, Suite 204  Twin Falls, ID 83301-3029  Facsimile: (208) 735-2444  <a href="mailto:slt@idahowaters.com">slt@idahowaters.com</a>  <a href="mailto:jks@idahowaters.com">jks@idahowaters.com</a></p>	<p>Facsimile <input type="checkbox"/>  Federal Express <input type="checkbox"/>  E-Mail <input checked="" type="checkbox"/></p>
<p>C. Thomas Arkoosh  Capitol Law Group  PO Box 2598  Boise, ID 83701  Facsimile: (208) 424-8874  <a href="mailto:tarkoosh@capitolawgroup.net">tarkoosh@capitolawgroup.net</a></p>	<p>Hand Delivery <input type="checkbox"/>  U.S. Mail <input checked="" type="checkbox"/>  Facsimile <input type="checkbox"/>  Federal Express <input type="checkbox"/>  E-Mail <input checked="" type="checkbox"/></p>
<p>W. Kent Fletcher  Fletcher Law Office  P.O. Box 248  Burley, ID 83318  <a href="mailto:wkf@pmt.org">wkf@pmt.org</a></p>	<p>Hand Delivery <input type="checkbox"/>  U.S. Mail <input checked="" type="checkbox"/>  Facsimile <input type="checkbox"/>  Federal Express <input type="checkbox"/>  E-Mail <input checked="" type="checkbox"/></p>
<p>Jerry R. Rigby  Hyrum Erickson  Robert H. Wood  Rigby, Andrus &amp; Rigby, Chartered  25 North Second East  Rexburg, ID 83440  <a href="mailto:jrigby@rex-law.com">jrigby@rex-law.com</a>  <a href="mailto:herickson@rex-law.com">herickson@rex-law.com</a>  <a href="mailto:rwood@rex-law.com">rwood@rex-law.com</a></p>	<p>Hand Delivery <input type="checkbox"/>  U.S. Mail <input checked="" type="checkbox"/>  Facsimile <input type="checkbox"/>  Federal Express <input type="checkbox"/>  E-Mail <input checked="" type="checkbox"/></p>

  
Robyn M. Brody

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

\* \* \* \* \*

IN THE MATTER OF DISTRIBUTION )  
OF WATER TO WATER RIGHT NOS. )  
36-02551 and 36-07694 ) CM-DC 2011-004  
)  
(RANGEN , INC.) )  
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REPORTER'S TRANSCRIPT  
OF RECORDED HEARING

DATE: January 19, 2012

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

Before Interim Director Gary Spackman

Transcribed by:  
Maureen Newton, CSR #321  
P.O. Box 132  
Heyburn, ID 83336

EXHIBIT 1

1 was rigorous. And so I guess what's on my mind is, what  
2 does it mean? You know, does the committee have clear  
3 expectations from the department about what it is that  
4 they're supposed to do?

5 And I guess I'm worried that we're never going to  
6 get to a point where it's final. I mean, models aren't, by  
7 their nature, final. People are already talking about  
8 version 3.0. If we don't go through the expert process --  
9 I mean, now I'm just worried that six months from now we're  
10 going to be sitting in this conference room doing the same  
11 exact thing that we're doing now.

12 MR. HAMMERLE: Is it possible, director, for you  
13 to issue what issues you think you have with 2.0, so that  
14 if we go forward with the expert process we have an  
15 opportunity to address the issues you have through our  
16 experts? I think that would be helpful probably to us, for  
17 certain, and for you also, because then you have  
18 independent expert reports probably from two contested  
19 sides on the issues you have. And it probably coincides  
20 somewhat with your earliest date that you would expect to  
21 roll out the model, which is, you know, three months at the  
22 earliest.

23 MR. SPACKMAN: I'm not sure I understand what it  
24 is that you proposing, Fritz.

25 MR. HAMMERLE: Well, we have the proposal to roll

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1 out the expert reports. You said you had concerns,  
2 specific concerns, with 2.0. So if you identified the  
3 issues you had and we make those available to our experts,  
4 you know, we'd have the opportunity to roll out our expert  
5 reports, identifying the concerns you have, in a real case.

6 MR. SPACKMAN: Well, the concern I have, I guess,  
7 is version 2.0 is a department product. And the  
8 participants in the modeling committee are advisors,  
9 they're helpful, they have not developed the model itself,  
10 and there is a process set up for determining when that  
11 model is ready to go.

12 Now, I suppose another process that we could go  
13 through, Robyn, that I think would be an anathema to  
14 everybody here is, we could really start a formal adoption  
15 process, where we start adopting models through ruling. I  
16 mean, that's a possibility, too. You know, that the models  
17 that we use could actually be recognized by rule and that  
18 we go through a formal process of adoption. I don't want  
19 to do that kind of thing. I'm just thinking of  
20 alternatives.

21 But I think it's incumbent on the department when  
22 it's a department product to say, We're ready to roll this  
23 out, and then to be proactive in doing so. So, again, I  
24 appreciate your suggestion, Fritz, but I don't want to get  
25 out ahead of the game. And I think those expert witnesses

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1 can participate in the process. If they want to be a part  
2 of the modeling committee, they can, I suspect they already  
3 are, and that they can identify those proposals we're  
4 engaged in right now that they feel are unproductive.

5 I mean, that's one of the questions that I  
6 continue to ask the staff is: What are we doing, if we are  
7 doing anything, that's getting us nowhere? Because I don't  
8 want to engage in that kind of process. But I intend to  
9 stand firm on not using 2.0 right now and not starting a  
10 process that uses it ahead of the department and the  
11 modeling committee feeling comfortable that we're ready to  
12 roll it forward. And my target is a three-to-six-month  
13 target.

14 MS. BRODY: At this point do you have a sense of  
15 what they have left to do? I mean, what you want them to  
16 finish?

17 MR. SPACKMAN: Well, they need to go through  
18 calibration. They haven't even finished the calibration  
19 process dealing with the changes that we have here. I  
20 mean, calibration of the model is an essential part of any  
21 modeling process. I think the real arguments out there  
22 are, once the model is calibrated, then we stress the  
23 model, and then we look at it and say: Based on those  
24 stresses. So you apply a stress to it to see what the  
25 reactions are in various parts of the model, and by doing

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1 so you identify flaws. Now, are they significant or are  
2 they not significant? We don't know that, but we've  
3 identified two of three of them by going through that  
4 process already.

5 I recognize the argument, Robyn, that we could go  
6 through that process forever. I don't intend to do that,  
7 but I also don't intend to float a model out there that may  
8 be inaccurate, that may produce results that change  
9 obligations or rights of various parties in litigation that  
10 then we find out are in error and I whipsaw people back and  
11 forth. And I'm not willing to do that. So I intend to  
12 hold firm in the use of 2.0 and just say that I don't  
13 intend to use it and we'll reevaluate it in three to six  
14 months and we'll see where we're at based on these  
15 criteria.

16 And my suggestion, Fritz, is that if the experts  
17 representing Rangen want to participate more actively --  
18 and I think they have -- didn't we receive some information  
19 from Chuck Brockway in the filings about an opinion that  
20 version 2.0 is ready to go forward? Wasn't that part of  
21 the file?

22 MS. BRODY: I think all of our experts would say  
23 it's the best science and that it ought to be used.

24 MR. SPACKMAN: And I agree, with the caveat that  
25 it ought to be used when it's ready to go. And there's

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1 department. You know, you guys are working hard, I  
2 understand that, but you're dragging on a little bit and  
3 we've got to get this done, you've got to roll it out.  
4 MR. SPACKMAN: Yeah. My impression in the  
5 committee -- and again, I don't want it to be some sort of  
6 implication that they're not being objective -- but  
7 listening to the distant voices in the committee, I'm not  
8 sure that they will ever come to an agreement as a whole  
9 that the model is ready to use.  
10 And I don't think -- and I'm not sure that it's  
11 proper for the chairman of that committee, Rick Raymondi,  
12 to ask them to vote on it and then for us to take a vote.  
13 So I think it's the department's responsibility to say  
14 we've done what we need to do and we need to move forward.  
15 And so -- the committee is advisory. Ultimately  
16 it's staff and the department's responsibility to say this  
17 is ready. And I feel a huge obligation, it's one of two or  
18 three big issues on the horizon right now, and so I don't  
19 take that responsibility lightly.  
20 MR. HAMMERLE: Under the prior model I think  
21 there's been discussion, debate, issues, whether the trim  
22 line exists in the model or outside the model. So as you  
23 sit here today, when you say there's an expectation that if  
24 we wanted to proceed today the trim line is in or out, or  
25 is it open to discussion from your standpoint?

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1 be imposed using version 1.1 to overcome that trim line,  
2 given its precedent in previous decisions. I will tell  
3 you, in discussing version 2.1, given the way in which  
4 the -- and I may slip in my discussion in representations  
5 of the model -- in its simulations and calibrations to  
6 spring nodes -- well, model nodes and springs, rather than  
7 reaches of the river, the use of any kind of trim line is  
8 much more difficult.  
9 And trim lines may not be a component at all in  
10 using version 2.0. I don't have any idea. But version 2.0  
11 certainly changes because of its accuracy and the way it  
12 simulates the impacts of various activities on the plain to  
13 a particular cell or node. It changes much of that  
14 previous analysis. So I'm giving you more in answering  
15 your question. I want to kind of give you a comparison,  
16 talking about version 1.1 and 2.0.  
17 I, personally, think there's significant  
18 advantage to the department and to Rangen and other parties  
19 to not go through the effort under 1.1 and having version  
20 2.0 rolled out shortly thereafter. But I also recognize  
21 that when a petition for delivery call is filed with the  
22 department, given the court's directives, the department  
23 has an obligation to expeditiously afford the senior an  
24 opportunity for a hearing, but that expeditious hearing  
25 would be held under 1.1.

24

1 MR. SPACKMAN: Well, the best I can do is turn  
2 back and look at the decisions that have been issued by the  
3 department and subsequent issues that have been issued by  
4 the courts (Inaudible). And despite the fact that nobody  
5 liked the trim line, it was recognized by the court as a  
6 reasonable method of determining obligation to the junior  
7 groundwater users.  
8 And I suppose in going through any kind of legal  
9 proceeding, you know, issues can be raised and people can  
10 attempt to put in additional evidence regarding something  
11 like the trim line and ask the director to reconsider it  
12 based on additional facts or information that's available  
13 to the parties. Certainly the collection of that data and  
14 information is not stagnant. But at least right now in  
15 evaluating version 1.1 the intended trim line has been  
16 recognized by the court and I think that gives the use of  
17 the trim line the force of those precedent, at least, in  
18 the department's decision making at this point.  
19 MR. HAMMERLE: If we had to task our experts,  
20 though, you know, I think the question that we have is, is  
21 the trim line open for discussion within 1.1, or in your  
22 mind would you be open to further discussions on that issue  
23 in 1.1, or is there a trim line?  
24 MR. SPACKMAN: At least right now there's a trim  
25 line. It seems to me that there's a huge burden that would

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1 MR. HAMMERLE: Director, can we have maybe a five  
2 - ten minute recess so we can speak?  
3 MR. SPACKMAN: Sure.  
4  
5 Recess.  
6  
7 MR. SPACKMAN: We're back recording again after a  
8 brief recess.  
9 Fritz, you're the one that asked for the recess.  
10 Robyn, your thoughts?  
11 MS. BRODY: Director, what we would like to see  
12 happen, if we had our wish list, is to have the department  
13 modelers issue kind of a punch list: A To-Do list. Here's  
14 what we've got left to do to get this model rolling, and to  
15 share that with the committee on Monday when they meet, so  
16 that everybody's got a clear game plan for what's left to  
17 do.  
18 And what we'd like to do, too, is come back to  
19 you in 60 days and say, Where are we on the punch list?  
20 What's going on and what progress has been made? We  
21 don't -- and we also met with Candace during the break and  
22 all of us agree that using version 1.1 is not the thing to  
23 do. And so our position is, let's just get this model  
24 finished as soon as we can, because every day that goes by,  
25 every irrigation season that goes by, is more injury to

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1 Rangen (inaudible).  
2 MR. SPACKMAN: I think those are both reasonable  
3 requests. In fact, one of the things I thought about as I  
4 was just sitting there, I had suggested 30 -- or three  
5 months, and I thought you suggested 60 days. I mean, I'm  
6 even willing to schedule a status conference every 30 days  
7 to say, Where are we at.

8 MR. HAMMERLE: Maybe that's a good -- A 30-day  
9 telephonic status conference to show where we are would be  
10 probably preferred.

11 MR. SPACKMAN: Yeah. I think there's urgency  
12 about it and maybe even putting it off three months is  
13 unreasonable. I just think, as I said before, the  
14 department staff, the last couple of meetings I've said  
15 I'm -- in fact I think the last meeting I said, Guys, I may  
16 be in here pushing really hard on you to say when will you  
17 get this done? And so -- but on the other hand, I have to  
18 respect the scientific process, and that's the tension that  
19 we're operating under. And I'm happy to have you folks be  
20 a part of this, in whatever way we can, to be transparent  
21 and work at it. So if you want -- and I can have Victoria  
22 set it up on a recurring basis, put it on my calendar,  
23 clear it with you folks. And I'm happy to ask the modeling  
24 committee -- I think we have some of that in the  
25 background, but certainly it can be distributed. You know,

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1 here are the things that we're doing and here's what we're  
2 trying to accomplish now.

3 :: One of the concerns we always have is that we may  
4 go through a calibration process now and find out that with  
5 the input of additional data all of a sudden the model  
6 doesn't calibrate. Then what do you do? We don't think  
7 that will happen, but I always have to hedge against those  
8 kinds of unforeseen circumstances. I mean, that the model  
9 actually blows up in some way. That's probably a remote  
10 possibility, but it's out there. And I'm not a modeler, so  
11 I couldn't give you a percentage of possibility in those  
12 areas, but I can't make a commitment and say it will be  
13 done in three months or it will be done in six or whatever.  
14 But the best I can do is apply a sense of urgency to it and  
15 recognize that you have rights that need to be protected  
16 and the call needs to be addressed.

17 So we can do those two things and Victoria will  
18 set up a schedule, let's meet on a regular basis. And if  
19 the experts want to participate in that conference in some  
20 way, I'm happy to have at least some kind of discussion.  
21 You know, Where are we? But it can't hijack the modeling  
22 committee and the department's process.

23 MR. HAMMERLE: Director, is the department  
24 willing to submit a list of issues to the committee, say as  
25 early as Monday, about questions you might have, so they

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1 can be addressed?

2 MR. SPACKMAN: Well, I'll talk to them about it.  
3 Is the modeling committee on a Monday? I've lost track of  
4 that.

5 MS. McHUGH: It's on the 23rd, which is Monday.

6 MR. BAXTER: Director, if I might, I think they  
7 actually already have the (inaudible) Director's order laid  
8 out in his earlier letter saying you need to complete the  
9 calibration process. You know, they've already voted  
10 previously on a calibration and then found out, Whoops, we  
11 need to go back and change some data. So I don't think  
12 that calibration is going to be that much difficult of a  
13 process for them to come to agreement on saying when a  
14 model is calibrated.

15 You know, the committee has already previously  
16 voted and talked about the issues of validation and the  
17 uncertainty analysis, and those are steps in the scientific  
18 process that need to take place before the model is ready.  
19 So can the department point to an issue? They can say  
20 that, We need to finish the steps, but the scientific  
21 process and the technical document suggests you need to go  
22 through before you have a model that is appropriate for  
23 use.

24 MR. HAMMERLE: Having said that, I'm not an  
25 expert in this field, but it sounds like your experts have

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1 specific questions about calibrations. I mean, very  
2 specific issues. And, you know, I guess our hope is that  
3 specific issues with respect to calibration and uncertainty  
4 from the department's perspective are made available and  
5 known to the committee so that they can start working on  
6 those, as well as your experts, so that we have the most  
7 resources possible working -- Hopefully, as this model's  
8 rolled up, the issues are narrowed down into a funnel. You  
9 know, less and less issues. So if those issues are known  
10 to everybody, we could work on the same page.

11 MR. SPACKMAN: That's our whole point. What if  
12 we refine the request of staff, Fritz? What if they work  
13 with the committee on Monday to develop that punch list?

14 MR. HAMMERLE: That would be perfect.

15 MR. SPACKMAN: So that we're not just dumping  
16 that on them and then it's a product that comes out of this  
17 Monday meeting. Would that be a --

18 MR. HAMMERLE: Yeah, because I think the  
19 committee would be most effective if you made available to  
20 them very specific issues you're having. I understand  
21 those may change, but let's get them out there.

22 MR. SPACKMAN: Okay. Any other comments?

23 MS. McHUGH: No comments. I think that works  
24 fine.

25 MR. SPACKMAN: Okay. And, Victoria, you'll set

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

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IN THE MATTER OF DISTRIBUTION )  
OF WATER TO WATER RIGHT NOS. )  
36-02551 and 36-07694 ) CM-DC 2011-004  
(RANGEN , INC.) )  
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REPORTER'S TRANSCRIPT  
OF RECORDED HEARING

DATE: February 21, 2012

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

Before Interim Director Gary Spackman

Transcribed by:  
Maureen Newton, CSR #321  
P.O. Box 132  
Heyburn, ID 83336

1 District and work them. We've had an e-mail from Brian  
2 Higgs who said he's putting it together.  
3 A VOICE: When will that be done?  
4 MR. RAYMONDI: Well, the data -- Brian has the  
5 data. It's recorded. He just has to transfer it to us, so  
6 we'll be in touch with him. I just got the e-mail this  
7 morning that said he was going to give it to us, so we'll  
8 get back with him and make sure (Inaudible) right away and  
9 let him know that's there's urgency.

10 MR. SPACKMAN: I just thought the discussion  
11 about validation might be important so that you had some  
12 context about what the validation is directed towards, as  
13 opposed to what calibration is.

14 MR. HAMMERLE: Director, last meeting we talked  
15 about the committee being on the same kind of plane that  
16 the department is and sharing information and making sure,  
17 you know, your concerns are relayed to them in a timely  
18 fashion. So last time we talked about the department  
19 providing the committee a punch list. Just a list of items  
20 that you might be concerned about that the committee's not  
21 working on and should be working on. I think we talked  
22 about that, and I don't think the committee's been provided  
23 that kind of information, so I don't know if there is any  
24 or -- I think it would be helpful so both the department,  
25 again, and the committee are working on the same page.

10

1 memo that's helpful for sure. But if there's particular  
2 variables that relate to validity, calibration or  
3 uncertainty, you know, that if you're concerned about that  
4 the committee should be working on, we don't want to get  
5 months down the process and then, you know, all of a sudden  
6 have anyone say, Gee, well, we didn't consider this, that  
7 or the other and we should be. So that's our concern.

8 MR. SPACKMAN: Let's work on an appendage to  
9 this, unless you have some other ideas.

10 MR. BAXTER: I'm just going to go back to what  
11 Rick said. I think this is the list. That last sheet that  
12 we had talked about some of the activities that had taken  
13 place that had resulted in data improvement. And what we  
14 see here, the result is, because they answered the  
15 questions about the data improvement, they've sent out what  
16 they believe is the properly calibrated model. We're  
17 getting ready to send out another version of the model. So  
18 those data issues that we talked about have apparently been  
19 resolved to the satisfaction of the department, to get them  
20 to say, okay, we believe this is going to be the best  
21 calibrated model that we have to date, sending them out  
22 here in the next day or two it sounds like, so the  
23 committee will be ready to vote on that.

24 I'm not aware of any specific issues or anything  
25 else that's out there. I think last time we talked about

12

1 MR. SPACKMAN: Rick?

2 MR. RAYMONDI: This is the list.

3 MR. HAMMERLE: I think you had talked about some  
4 specific variables, and I can't remember exactly which they  
5 were at the last meeting, but there was some specific  
6 concerns that you had that the committee wasn't looking at  
7 and you believed they should have been looking at.

8 MR. SPACKMAN: I guess I don't remember that  
9 discussion. What we did have, we had a summary that I  
10 referred to, and I could retrieve it, of the things that  
11 were being done at the time and then the things that needed  
12 to be addressed. And, you know, some of them were -- and I  
13 can just kind of remember the conversation -- but some of  
14 them were we had an underflow issue.

15 MR. HAMMERLE: Right. That's one that I recall.

16 MR. SPACKMAN: One was the underflow issue that  
17 the committee agreed that we needed to look at for purposes  
18 of calibration. The other one was the adjustments to  
19 spring flows where there had been errors in those entries  
20 and we found better data. And those were the two that I  
21 remember. But, you know, we certainly -- you're right,  
22 Fritz, there was a discussion about a punch list. So to  
23 the extent that this doesn't satisfy it, we can probably  
24 put that together as a bulletin list.

25 MR. HAMMERLE: You know, I see this as a process

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1 going back to the director's letter, as Rick has put on it  
2 here, that kind of framed, from the department's  
3 standpoint, what really needed to happen for us to be able  
4 to move forward. And this shows us all those steps that  
5 the director put out in that letter, talking about the  
6 calibration, the validation, and I think what we've done  
7 here is took your concerns from last meeting, where I heard  
8 what you said was that you were concerned about the  
9 timeframe in which all these things would happen, and this  
10 starts to explain to you how that timeframe process works  
11 from the department's perspective. That we think coming up  
12 with the calibrated model here pretty soon, would expect  
13 the committee to vote that, yes, the model is calibrated,  
14 ready to go.

15 The validation process, the last time we talked  
16 about how sometimes you get into that -- what's the proper  
17 term here -- this fact flow, that if you come through  
18 validation and you find out you have a problem sometimes  
19 you have to go backwards and work through it. But the end  
20 result here is to have a validated model here -- well,  
21 actually have a calibrated model probably by February 27th,  
22 we would expect the modeling committee to be there, go  
23 through the validation approach. I think Rick has put it  
24 best guesstimates for a timeframe, shooting for July to  
25 have that validation process and predictive uncertainty

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1 process complete.  
2 MR. HAMMERLE: So as you sit here today you're  
3 not aware of any variables that the department is concerned  
4 about? Some of the same ones we discussed last time?

5 MR. BAXTER: I guess I don't know what other  
6 variables, other than as the director pointed out, we  
7 talked about some data issues that --

8 MR. HAMMERLE: I think our only concern, Garrick,  
9 is that if those issues do come up, that the department  
10 provide that list to the committee so they could be working  
11 on it in a timely fashion. So I guess you said there are  
12 none, but what we would ask is if you see any, that they be  
13 made available fairly timely so the committee can work on  
14 them.

15 MS. BRODY: And I guess just thinking out loud  
16 for a minute, for example, the data gathering for  
17 validation, you mentioned the ET -- the diversions, you  
18 know, a whole list of areas where you were gathering data.  
19 I mean, I guess our hope was that we would have information  
20 about: Here is the data that we believe is necessary to do  
21 the validation. I mean, these are the 6 or 10 or however  
22 many areas that there are, and this is who's going to go  
23 get that data, this is when it's going to be accomplished.  
24 I mean, literally, you know, like you'd see if you're  
25 building a house. You know, caulk the back of the toilet.

14

1 You know, that kind of level of detail. Because this, to  
2 me, speaks of a very high level view of what's going on,  
3 and we'd kind of like to see the real details in terms of  
4 what the department's doing, and if it is the department  
5 that's going out gathering all this data, and make sure  
6 that the committee is in agreement that, yes, these are the  
7 ten data areas that we need to conduct validation that this  
8 is appropriate. And that way we know who's responsible for  
9 it and what the timing of it is.

10 You know, same thing -- and I may be moving a  
11 little bit ahead -- but, like, with predictive uncertainty:  
12 64 runs. Okay, what do those runs look like? Eight of  
13 them look like this, ten of them look like this, here's  
14 who's going to do it, this is when it's going to be done.  
15 But a real game plan for, we're down -- I know everybody's  
16 working hard to get it done, but I mean, these are the 57  
17 things we need to do between now and finish day and who's  
18 going to do it.

19 MR. RAYMONDI: All of that you would find in the  
20 committee minutes. We discuss all these details and who's  
21 doing it and what's the progress. There's even, like,  
22 Chuck Brockway will say, I'll contact so and so and help  
23 you get that. So it's down to the nitty gritty in the  
24 committee meetings, and the minutes will reflect that.

25 MS. BRODY: Is there anybody in the department

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1 who's maybe -- I'm a chart person -- is there anybody who's  
2 got that kind of chart that's really tracking all of that  
3 stuff to make sure that it is getting done? I mean,  
4 because I know the committee folks are incredibly busy  
5 people with lots of different projects and things, and so,  
6 you know, to make sure that emails get sent and data that's  
7 sitting in a government office gets transmitted like it  
8 should, that kind of thing.

9 MR. RAYMONDI: I think if I can spend a few  
10 minutes with you and the committee minutes I could show you  
11 everything you're talking about. Stacey Taylor's in charge  
12 of all this data gathering here and every meeting she goes  
13 through what's left. What's been collected, what's left,  
14 and every meeting it's less and less and less. So we're  
15 right down to the end now.

16 MR. BAXTER: But you're kind of the point person  
17 for the department. You stand there and take on the roll  
18 Robyn kind of talks about as being kind of the minutes man  
19 at the committee meeting, following up with people and  
20 making sure -- have I read that wrong?

21 MR. RAYMONDI: No, that's correct. So we have a  
22 web page. All of this is on there. All our calibration  
23 runs, all our meeting minutes, all of model data.  
24 Everything. Current data, files are all listed in there.

25 MR. HAMMERLE: So the department's fairly

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1 confident we're all working on the same page and all the  
2 variables are known to all the parties?

3 MR. RAYMONDI: They are.

4 MR. HAMMERLE: Okay.

5 MR. BROCKWAY: This is Chuck Brockway. I heard  
6 my name mentioned and I thought -- I have a question, I  
7 guess it must be relative to status, and that the  
8 committee's going to hear something about validation coming  
9 up on the 27th. Has the department put together any  
10 suggested criteria for evaluating the sufficiency of the  
11 validation process? What are you going to present to us to  
12 compare or to judge or to give an opinion on relative to  
13 the sufficiency of the validation?

14 MR. RAYMONDI: You know, we don't have a document  
15 with that, but I can make that assignment when we begin the  
16 process of making the runs. We'll get that going here  
17 right away so that it's done -- the criteria are done  
18 before the validation runs are done.

19 MR. BAXTER: But, Rick, this isn't something  
20 new --

21 MR. BROCKWAY: I think that would be good for the  
22 committee to at least have suggested criteria to judge by.  
23 The committee in their infinite wisdom will come up with  
24 some of their own, I suppose, but anyway, it would be good  
25 to give us some guidance.

17

1 MR. HAMMERLE: That's a fair point. I mean, we  
2 want to understand how it will be handled by the  
3 department. Whether you're going to say this is the  
4 uncertainty and that's what it is and that's what we're  
5 going to apply, or is it going to be at a point where  
6 you're going to say we had a good model, 2.0, we've  
7 accepted it, and now we're -- within this call we're going  
8 to talk about uncertainty analysis being handled.

9 MR. BAXTER: I think you see from the reports  
10 that are being prepared by the experts for the modeling  
11 committee that uncertainty can mean a lot of different  
12 things. I believe that the director is still digesting the  
13 information that's being provided by the parties and is  
14 still subject to a final determination on how it's going to  
15 look (inaudible).

16 I think you're right, I think we're a little  
17 premature on that, but the department is continuing to work  
18 on predictive uncertainty, which is associated with  
19 (inaudible) here in the chart.

20 MR. BROCKWAY: This is Chuck. I think you're  
21 right: What we are getting from the uncertainty analysis  
22 as it's currently structured is some indication of  
23 predictive uncertainty. But I think it appears from the  
24 discussion of the director he's probably at the same  
25 position now as he was at the first hearing where he said,

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1 I believe, that he really didn't know what form the  
2 certainty was going to be factored into the administrative  
3 (inaudible). And it sounds, Gary, like you're still there.

4 MR. SPACKMAN: That's correct. I think it's  
5 really premature to even talk about it, as Fritz said,  
6 until we get through that process and people have an  
7 opportunity to digest the results and then talk about it.  
8 Not only the results of the predictive uncertainty, but I  
9 know there are other uncertainties out there. So --

10 MR. HAMMERLE: I guess, director, the question  
11 was: May we get to the point where we're willing to say,  
12 we have a good model, 2.0, and within this call I'm going  
13 to hear the arguments about uncertainty? Or are you going  
14 to --

15 MR. SPACKMAN: Yeah, I think that's where we're  
16 headed. I think we're headed to a point where we can say  
17 that the model is calibrated and that the committee feels  
18 that we've exhausted or at least done what we need to do,  
19 so that there's comfort in the calibration and we've gone  
20 through a validation process that will be further defined  
21 by Rick, to look at independent data and, you know, apply  
22 the model or place that data in the model to verify or  
23 validate the results of the original model. And then  
24 there's a predictive uncertainty component of that and it  
25 will have some percentages of variation and then I think we

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1 say, Well, the model's been calibrated, it's been  
2 validated, and there is some uncertainty and here's the  
3 ranges of that uncertainty and then people can argue the  
4 various sides about what that really means. You know, is  
5 it significant; is it not significant; and how should it  
6 factor into the ultimate decision of the department.

7 MR. HAMMERLE: That's helpful to understand.

8  
9 (Voices talking simultaneously).

10 MR. BROCKWAY: Hey, Rick, this is Chuck again.

11 Is Allen on the phone?

12 MR. RAYMONDI: No, he's not.

13 MR. BROCKWAY: Okay. I got an e-mail from Allen,  
14 who said relative to calibration runs that Allen's favorite  
15 is run number E120116A001. Is that still true?

16 MR. RAYMONDI: As far as I know. But like I  
17 said, there's a run that just came off the computer this  
18 weekend and Allen said he hadn't had time to review it. I  
19 was just in his office 20 minutes ago.

20 MR. SPACKMAN: Do you have a favorite, Chuck?

21 MR. BROCKWAY: Pardon?

22 MR. SPACKMAN: Do you have a favorite?

23 MR. BROCKWAY: No, I don't. We've looked at  
24 several of them and at least for the ones we've run there's

24

1 some pretty wide variability in spring flow simulations and  
2 I was just wondering if he had done anything after the 001  
3 run. And apparently he has but it isn't on the (inaudible)  
4 yet.

5 MR. RAYMONDI: No.

6 MR. BROCKWAY: Okay.

7 MR. RAYMONDI: We'll share that with you today or  
8 tomorrow. And I'll ask him to update if there's any change  
9 in his favorite run.

10 MR. BROCKWAY: Yes, ask him that. He may not  
11 answer, but ask him anyway.

12 MR. SPACKMAN: Other questions today?

13 MS. BRODY: Is there any plan, Rick, I mean to  
14 sort of -- I know you said I can go back to the minutes or  
15 whatever and sort of look at all of this. Is there any  
16 plan to put together in a single place with this chart a  
17 real checklist? I say real. I just mean a detailed  
18 checklist about what it is that's going to be done and  
19 who's going to do it?

20 MR. RAYMONDI: That's easy to do and we can  
21 provide that.

22 MR. SPACKMAN: I thought we'd agreed -- and I  
23 wanted to come back to this subject, Robyn -- but I think  
24 if Rick goes through as we talked about and summarizes the  
25 simulations, the predictive uncertainty runs that have

25

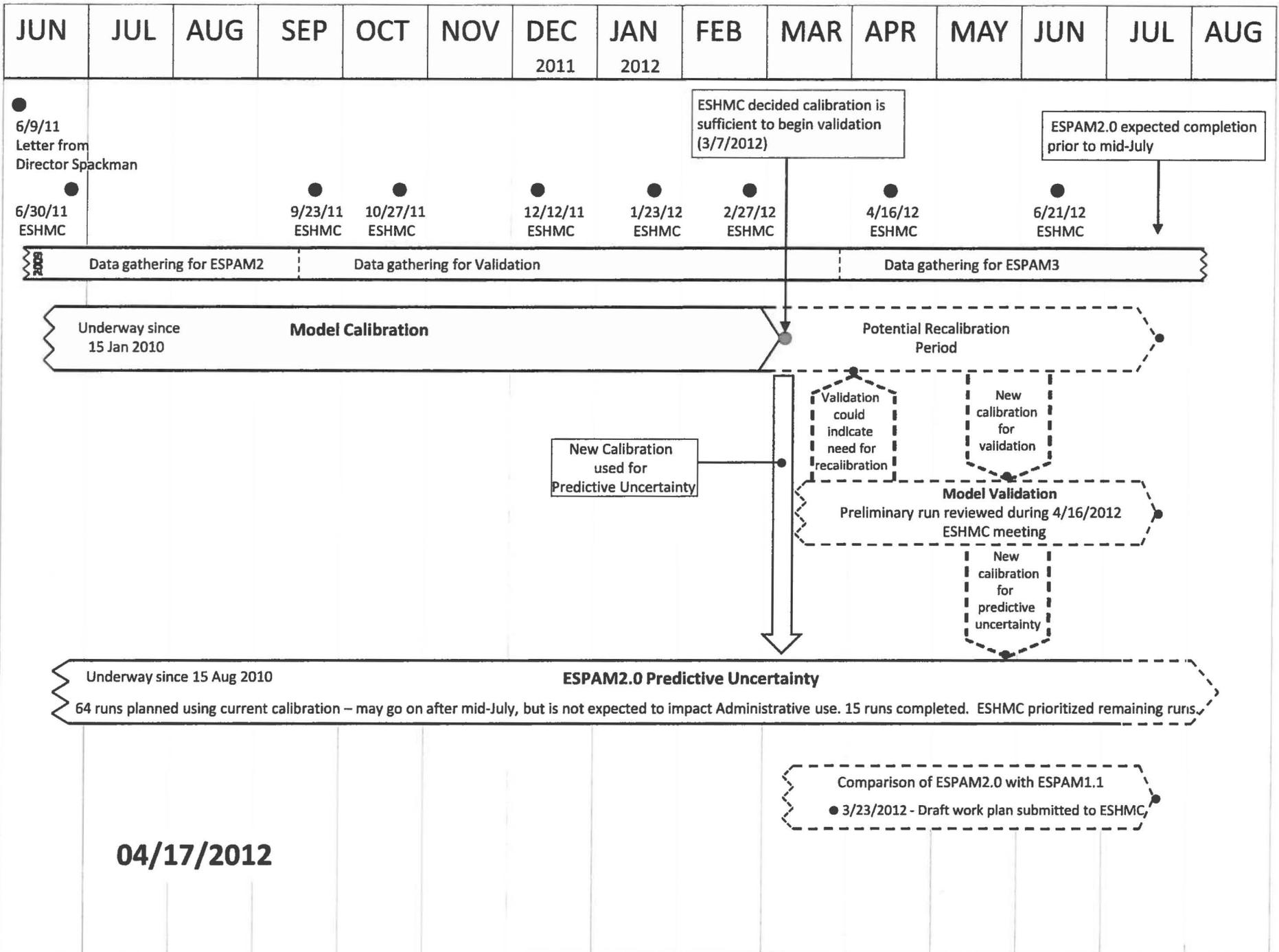


EXHIBIT 3

April 17, 2012

**Items required for completion of Eastern Snake Plain Aquifer Model**

**ESPAM version 2.0**

Item	Status	Comments
<b>Assemble Validation Data Sets</b>	Data set essentially complete for 2009/2010 validation. IDWR recently received 2009-2010 spring flows at Niagara and Blue Lakes, and the data will be entered later this week for comparison with modeled values.	ESHMC is aware that validation is going forward using averages for missing data components. Preliminary run was presented to committee on April 16 <sup>th</sup> . Results to date are encouraging, and completion of validation is on track.
	Data set for 1902 validation has been assembled.	1902 validation will not impact schedule to complete model by mid-July.
<b>Model Calibration</b>	IDWR proposed calibration runs E120116A006 & E120116A008 to ESHMC for review on March 5 <sup>th</sup> .	ESHMC adopted calibration run E120116A008 on March 7 <sup>th</sup> . E120116A008 is incorporated in validation and uncertainty runs.
<b>Model Validation</b>	Using calibrated model, validation with 2009/2010 dataset began in March. Preliminary results presented to ESHMC April 16 <sup>th</sup> . Updated runs in progress.	ESHMC provided comments and recommendations on how to present results during April 16 <sup>th</sup> meeting.
	Validation run is being planned.	Results of 1902 validation runs will be done in late April/May, shared with committee, and later discussed in the June 21 <sup>st</sup> meeting.
<b>Predictive Uncertainty runs</b>	Runs with newly calibrated dataset began week of March 12 <sup>th</sup> . Fifteen runs have been completed and were presented to the ESHMC for discussion.	Runs will continue through early summer. IDWR will perform uncertainty runs after mid-July, but effort will not impact completion. ESHMC will be routinely notified of results. Discussions will be held in ESHMC meetings.
<b>Comparison of ESPAM version 1.1 with version 2.0</b>	A work plan for comparing the results of the Curtailment Scenario using ESPAM version 1.1 and version 2 was developed and sent to the committee for comment on March 23 <sup>rd</sup> .	The work plan was discussed with the committee on April 16 <sup>th</sup> . Comparison runs will likely be completed in May. Results will be sent to committee when completed and discussed in the June 21 <sup>st</sup> ESHMC meeting.
<b>June 21<sup>st</sup> ESHMC meeting</b>	Meeting agenda will be sent to committee and will include results of validation, uncertainty, and comparison of ESPAM version 1.1 with version 2.0.	IDWR will provide consultants and committee members training on procedures for simulating a curtailment of junior priority ground water users. Training held June 22 <sup>nd</sup> .

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REPORTER'S TRANSCRIPT  
OF RECORDED HEARING

DATE: April 28, 2012

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

Before Interim Director Gary Spackman

Transcribed by:  
Maureen Newton, CSR #321  
P.O. Box 132  
Heyburn, ID 83336

1 MR. HAMMERLE: Rick, Garrick, you said one thing  
2 that interests me. It seems like we're rolling out a model  
3 that might have some policy overlays over the model. And  
4 I'll just kind of cut to the chase: In our mind under 1.0  
5 there was a trim line policy that overlaid the model and  
6 you said that there may be some policy decisions with  
7 respect to ESPAM 2.0. Do we expect those policy decisions  
8 to be made before or at the time the model is rolled out;  
9 or, director, are those things you may roll out based on  
10 what we've presented evidentiary hearings?

11 MR. SPACKMAN: My inclination is, I think we've  
12 been consistent about this, is to have the model roll out  
13 and have it from a policy standpoint be very sterile. In  
14 other words, it's clean from a policy determination and  
15 then let the parties present evidence regarding how that  
16 model should be used so that -- I mean I certainly want to  
17 be well enough versed in what's happening with it that I  
18 understand what's going on as the evidence comes in, but I  
19 want to come in with as clean a slate as I can and have the  
20 parties present.

21 MR. HAMMERLE: It's always been our  
22 understanding, director, too. We appreciate that. The  
23 word policy just came up so we didn't want to be surprised  
24 or confused at any particular comment.

25 MR. SPACKMAN: And I guess, Rick, I still have

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1 some concerns about training and how you define the  
2 mechanics and keep the mechanics out of the policy. And I  
3 suppose I don't understand that boundary right now, unless  
4 the mechanics are simply trying to go through and show how  
5 a comparison of ESPAM 1.1 was completed. A comparison of  
6 1.1 and 2.0. Because I think in making that comparison you  
7 probably have to go back to certain assumptions that were  
8 made in 1.1, otherwise you can't. The comparison is apples  
9 and oranges is my guess. I don't know. I'm not close  
10 enough to it.

11 MR. BROCKWAY: This is Chuck Brockway.

12 Gary, you know, the modeling committee has acted  
13 as an advisory to the department or to you on the model and  
14 on the development of ESPAM 2, and it would seem to me like  
15 you would want advice from the committee relative to the  
16 capabilities of the model. If the model is capable of  
17 simulating individual spring flows it would seem that you  
18 would want the modeling committee to weigh in on that  
19 capability so that you could develop a rational policy.  
20 And I think they're prepared to do that.

21 So to defer, in my opinion, to say I'm not even  
22 going to decide whether that model is capable of simulating  
23 an individual spring until after the evidentiary hearing,  
24 it seems that your advisory committee on that topic is  
25 somewhat useless.

19

1 MR. SPACKMAN: But isn't this the subject, Chuck,  
2 that was supposed to be presented in the beige paper on the  
3 model paper, or whatever other color it was supposed to be?

4 MR. BROCKWAY: I think it should be, yeah.

5 MR. SPACKMAN: I guess I thought that information  
6 was being developed by the modeling committee and would be  
7 presented.

8 MS. MCHUGH: And I would hesitate to provide --  
9 what our letter goes towards -- and if you don't have  
10 copies then I'll send it to you -- is a concern that the  
11 modeling committee consensus or whatever takes on some sort  
12 of legal significance different than an advisory group.  
13 Because we know that not all the experts see things the  
14 same way. So I understood that the white paper, or the  
15 model paper, was going to be just a summary of everybody's  
16 comments on what the model can or cannot do or what  
17 considerations should or shouldn't be considered. That the  
18 actual evidence the director would be considering would be  
19 presented in the evidentiary hearing through expert  
20 opinion.

21 MR. HAMMERLE: You know, we -- and director, I  
22 disagree with that approach for this reason. We've been  
23 participating within the committee in good faith trying to  
24 say, This is our opinion of what the model is capable of  
25 doing. And based on what it's capable of doing, this is

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1 our policy, what we would suggest. And we've done that  
2 throughout this entire committee. We have not hidden  
3 any -- we've tried not to hide any of our expert opinion.  
4 And, you know, if this is to be an effective committee we  
5 would ask that IGWA presents what limitations it thinks are  
6 with respect to 2.0 or the committee can't function  
7 properly. The department is working on the model. We've  
8 presented what we think are the limits, what policies  
9 should come from that model, and we think it would be  
10 really unfair for you and IGWA to sit back silent as the  
11 deputy adopts 2.0 and then come out in an evidentiary  
12 hearing with stuff that you've just been sitting on the  
13 whole time. I don't think that's good faith.

14 MS. MCHUGH: And I don't think there's anything  
15 in the committee that Chuck Brendecke's not presenting. He  
16 comments and provides this information, he's on the  
17 committee. I think it's no secret, we are very adamant  
18 that the committee's not a policy group and we've said it  
19 and been consistent from the beginning. And Chuck does not  
20 give his opinions about policy, or if he does, it's in  
21 response to other experts providing policy and saying this  
22 isn't what we understand the committee to do. And so I  
23 don't --

24 MR. HAMMERLE: For example --

25 MS. MCHUGH: -- bad faith issue. I think he's

21

**From:** [Raymondj. Rick](#)  
**To:** [Spackman, Gary](#)  
**Cc:** "[marx.hintze@ico.doe.gov](#)"; "[marxhintze@hintze.net](#)"; [Olenichak, Tony](#); "[kwoqsland@spronkwater.com](#)"; "[mariivn@tflaw.com](#)"; "[irvu@uidaho.edu](#)"; "[Dave Shaw](#)"; "[brian@waterwellconsultants.com](#)"; "[jalrohermandez@boisestate.edu](#)"; [Weaver, Mathew](#); "[Kevin Boggs](#)"; [Jennifer Johnson](#); [Bob Turik](#); [Brendecke, Chuck](#); [Bryce Contor \(bcontor@rockymountainenvironmental.com\)](#); [Chuck Brockway](#); [Dave Colvin](#); [David Blew](#); [David Hoekema](#); [David Kampwerth \(David\\_Kampwerth@fws.gov\)](#); [Gary Johnson](#); [Greg Clark](#); [Greg Sullivan](#); [Gregg S. Ten Eyck](#); [Hal Anderson](#); [J. D. May](#); [Jack Harrison](#); [Janak Timilsena](#); [Jeff Sondrup](#); [Jim Bartolino](#); [Jim Brannon](#); [John Koreny](#); [John Lindgren](#); [Jon Bowling](#); [Ken Skinner](#); [Linda Lemmon](#); [McVay, Michael](#); [Mike Beus](#); [Rick Allen](#); [Rick Raymondi \(rick.raymondi@idwr.idaho.gov\)](#); [Roger Warner](#); [Sharon Parkinson](#); [Stacey L Taylor](#); [Sukow, Jennifer](#); [Swank, Lyle](#); [Thomas R Wood](#); [Vincent, Sean](#); [Willem Schreuder](#); [Wylie, Allan](#); [Young Harvey Walker](#)  
**Subject:** ESPAM version 2.0  
**Date:** Monday, July 16, 2012 5:09:21 PM

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Gary,

The following statement was agreed upon by **twenty** members of the Eastern Snake Hydrologic Modeling Committee (David Hoekema, Bryce Contor, Willem Schreuder, Jim Brannon, Dave Colvin, Chuck Brockway, Gary Johnson, Chuck Brendecke, Rick Allen, David Blew, John Koreny, Allan Wylie, Jon Bowling, Rick Raymondi, Jennifer Sukow, Jennifer Johnson, Mike McVay, Stacey Taylor, Greg Sullivan, and Sean Vincent):

**"The Eastern Snake Hydrologic Modeling Committee recommends that the Department begin using ESPAM version 2 rather than ESPAM version 1.1 for ground water modeling."**

There was considerable debate in developing the recommendation with numerous committee members expressing the concern during the last meeting and via emails that the model should be used with caution and that there may be other tools or models that may be more appropriate for some analyses. Greg Sullivan indicated that the recommendation was more complete and he was more comfortable if the following phrase was added to the above statement:

**.....although other tools or models may be more appropriate in certain circumstances."**

Chuck Brendecke said that he shared Greg's concerns about implying that the model is appropriate for any and all situations.

Finally, Roger Warner indicated that the following paragraph submitted by the Eastern Idaho Water Rights Coalition reflected his opinion, and Bryce Contor indicated that when added to the first statement, the paragraph below represented his full opinion:

**The ESHMC has completed the development of the Eastern Snake Plain Aquifer Model (ESPAM) version 2.0. Great effort was put in by the committee to improve the model in hopes that the model can help better predict future hydrologic scenarios. We feel the model is useful for planning purposes but recognize that data used in the model vary in accuracy with select data varying greatly. Therefore, while we feel the model is useful for planning purposes, we acknowledge accuracy limitations with use of the model for administrative purposes; particularly at a local scale. While we have all aspired to the highest level of accuracy attainable, we are forced to admit that if this model were to continue to be used for administrative purposes it must recognize some defensible level of uncertainty.**

Thanks,

Rick Raymondi

**mkmod**

Willem A. Schreüder  
Principia Mathematica  
August 2011

# What is mkmod

2

- Program to build MODFLOW input files for the ESPAM model
- Replaces the *readinp.for* program used with ESPAM 1.x
  - “Tail end” of the recharge tool
- Operates at the entity-model cell level
  - Maps entity level inputs to model cells
  - Time increments are stress periods (months)

# What is new in mkmod

36

- Implements new algorithms for calculating recharge and pumping
  - On farm algorithm
  - Soil Moisture Accounting
  - Returns calculated instead of specified
- Adds output options
  - Steady state initial stress period
  - Separate recharge and well packages
  - Summary tables

# Whom to blame for mkmod 4

- Greg Sullivan (on farm algorithms)
- Willem Schreüder (implementation)
- Jim Brannon (peer review)
- Allan Wylie (user testing)
- David Blew (just because we always blame him for everything)

# mkmod inputs

- Command line options
  - Controls algorithms, file names, etc.
- mkmod control file (.mdl)
  - Specifies model dimensions, units, periods,...
- Data files
  - Output from other tools that pre-process data
  - Input data such as efficiencies

# mkmod outputs

le

- MODFLOW input files
  - Net recharge a.k.a. “well term”
  - Individual water budget items
- Summary tables
  - HTML table by period and entity
- Diagnostic outputs
  - Acres by cell, ...
  - User specified summeries

# mkmod flow chart

7

- Read definitions and time invariant data
- Loop over periods
  - Read data for current period
  - Calculate irrigated recharge/pumping
  - Calculate non-irrigated recharge
  - Distribute canal seepage
  - Distribute trib underflow and perched river
  - Save data

# Irrigated recharge/pumping 8

- Applied water by entity
  - Diversion-Canal Seepage+Off-site Pumping
- Loop over entities
  - Loop over gravity & sprinkler lands
    - Loop over cells
      - Calculate CIR, pumping recharge, soil moisture
        - Algorithms depend on command line switches
        - GW and SW treated differently
        - Done on unit area basis, then multiply by acres
      - Accumulate irrigated acres

# Crop Irrigation Requirement (CIR)

- Done by cell under the entity
- Adjusted ET =  $ET_{adj}(Gr/Sp) * ET(Cell)$
- Precip = Precip(Cell)
- CIR = Adjusted ET - Precip

# For Groundwater Entities

10

- If  $CIR < 0$ , pumping = 0
- Else pumping =  $CIR / \text{Efficiency}(Gr/Sp)$
- Recharge = Pumping – CIR
- Notes
  - If  $CIR < 0$ , Recharge =  $-CIR$
  - Net Recharge =  $-CIR = \text{Recharge} - \text{Pumping}$
  - Recharge =  $\text{Precip} + (1 - \text{Eff}) * \text{Pumping}$
  - Soil moisture never changes

# For Groundwater Entities

- If  $CIR < 0$ , pumping = 0
- Else pumping =  $CIR / \text{Efficiency}(Gr/Sp)$
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  - Soil moisture never changes

# SW Entities - On Farm Algorithm <sup>18</sup>

- Determine over/under irrigation
  - deficit is the amount of under irrigation
  - excess is the amount of over irrigation
- Adjust soil moisture of deficit/excess
- Recharge =  $DP_{in} * (1 - Eff) * Applied + DP_{ex} * Excess$
- Runoff =  $(1 - DP_{in}) * (1 - Eff) * Applied + (1 - DP_{ex}) * Excess$
- Notes
  - When deficit > 0, CIR is not met (ET shorted)
  - When excess > 0, Actual Efficiency < Eff(Gr/Sp)

# Deficit/Excess Calculation (SW) <sup>7/2</sup>

- $\text{NetApp} = \text{Eff}(\text{Gr}/\text{Sp}) * \text{Application} - \text{CIR}$ 
  - if  $\text{NetApp} > 0$ ,  $\text{excess} = \text{NetApp}$ ,  $\text{deficit} = 0$
  - if  $\text{NetApp} < 0$ ,  $\text{excess} = 0$ ,  $\text{deficit} = -\text{NetApp}$
- Optional Soil Moisture Adjustment
  - $\text{SM}_{\text{sink}} = \text{field capacity} - \text{soil moisture}$
  - $\text{SM}_{\text{source}} = \text{soil moisture} - \text{wilting point}$
  - If  $\text{deficit} > 0$  &  $\text{SM}_{\text{source}} > 0$ 
    - $\text{SM}_{\text{change}} = -\min(\text{SM}_{\text{source}}, \text{deficit})$
    - $\text{deficit} = \text{deficit} + \text{SM}_{\text{change}}$
  - If  $\text{excess} > 0$  &  $\text{SM}_{\text{sink}} > 0$ 
    - $\text{SM}_{\text{change}} = \min(\text{SM}_{\text{sink}}, \text{excess})$
    - $\text{excess} = \text{excess} - \text{SM}_{\text{change}}$

# SW Entities – V1.x Algorithm

- Recharge = Application – CIR
- Notes
  - Assumes Runoff>Returns are known and subtracted from Applied Water
  - Application efficiency could be 100%
  - Needs manual adjustment to avoid negatives
  - $\text{Eff} * \text{Applied} \geq \text{CIR}$ , On Farm algorithm gives the same result, but uses DPex & DPin to partition overage to recharge and runoff

# Irrigated Entity Summary

151

- GW – pump to meet CIR
  - SM constant, net pumping =  $ET - \text{precip}$
- SW – Apply Diversion – Leakage + Pumping
  - SM adjusted for excess or deficit
  - Recharge fixed fraction of applied water plus fixed fraction of an excess
  - Runoff fixed fraction of applied water plus fixed fraction of excess
  - Deficit shorts ET
- Cell by cell for all entities, Sprinkler/Gravity

# mkmod flow chart

14

- Read definitions and time invariant data
- Loop over periods
  - Read data for current period
  - **Calculate irrigated recharge/pumping**
  - Calculate non-irrigated recharge
  - Distribute canal seepage
  - Distribute trib underflow and perched river
  - Save data



You are here

# Non-irrigated recharge

17

- $\text{Area} = \text{Cell Area} - \text{Irrigated Area}$ 
  - Calculated when doing irrigated recharge
- Loop over all active cells
  - $\text{Recharge} = \text{Factor}(\text{soil}) * \text{NIR} * \text{Area}$

# Fixed point & off-site terms

81

- Loop over all locations
  - Add term to budget
  - Location specified by model cell
  - Budget term specified in .mdl file
  - Wetlands is a special case and have an adjustment factor (currently 1)

# Canal Seepage

19

- Volume specified as total for entity
- Location specified as a list of model cells
- Volume is distributed uniformly to cells

# Tributary Underflow & Perched River Seepage

20

- Volumes specified by reach
- Scale factor for each reach
- Location specified as a list of cells
- Distribute uniformly to cells in reach

# Output

21

- Recharge, pumping, etc are accumulated on a cell by cell basis
  - Net Recharge “well term” is the sum of all arrays on a cell by cell basis
  - Arrays can be saved individually or as sum
- Budget terms are accumulated for each irrigation entity
  - Summarized for all SW and GW entities and by entity in the HTML table

# Steady State

22

- Steady State stresses are average of sequence of stress periods
  - Currently 229 (May 1999) to 240 (April 2000)
- mkmod can calculate this average and save it as the first stress period
  - Combines steady state and transient into one MODFLOW run
  - Requires more memory

# Running mkmod

23

- Written in Perl, so needs a Perl interpreter
- Mac OS/X, Unix, Linux
  - mkmod <options and parameters>
- Windows
  - Invoke perl explicitly
    - perl mkmod <options and parameters>
  - Compile to EXE using PAR-packer

# Production mode command line <sup>h8</sup>

- `mkmod -ss E110712A`
  - Parameter `-ss` omits steady state, saves only “well term” and requires only 72MB RAM
  - Input files are named `E110712A.*`
  - Output file is `E110712A.net`
  - Run time about 10 minutes

# Input files with data that apply to all periods in the simulation

- .mdl Model units, dimensions, periods, ...
- .cel Active cells and cell areas
- .sol Soil type for non-irrigated recharge
- .red Reduction factors (Gravity, Sprinkler)
- .eff On Farm parameters Eff, DP<sub>in</sub>, DP<sub>ex</sub>,...

# Input files with data by Entity

24

(Header + data set for each stress period)

- .ent Entity names; sprinkler fractions
- .iar Irrigated acres by cell
- .div Diversions and returns
- .cni Canal leakage
- .fpt Fixed point pumping
- .off Off-site pumping
- .pch Perch river seepage
- .trb Tributary underflow

# Input files with cell arrays

78

(no header, just array of values for each stress period)

- .pre Precipitation
- .eti Evapotranspiration
- .nir Non-irrigated recharge

# Model Input File (.mdl)

(See annotated mdl file for details)

- Run title (shown in HTML)
- Units
- Stress periods
- Dimensions
- Adjustment factors
- Fixed point definitions
- Debug output
- Minimum non-irrigated area

# Cells (.cel) and Soil Types (.sol)<sup>69</sup>

- cel file
  - IBOUND array (1=active,0=inactive)
  - Area by cell (5280 x 5280)
- .sol file
  - Soil index for non-irrigated recharge
  - 1-max (max  $\leq$  number of soils in .mdl)
  - Dead cells are ignored

# ET Reduction Factors (.red)

30

- Row 1: gravity reduction factor
- Row 2: sprinkler reduction factor
  - Should be a fraction (0=none)
  - One value per stress period

# On Farm Factor File (.eff)

31

- One row for each entry
  - Name
  - Maximum efficiency gravity (0-1)
  - Maximum efficiency sprinkler (0-1)
  - DPin (Deep perc fraction of applied water)
  - DPex (Deep perc fraction of excess water)
  - Wilting point
  - Field Capacity
  - Depth of rooting zone

# Entity File (.ent)

32

- Header
  - Entity Identifier (e.g. IESW029)
  - Entity type (SW/GW)
  - ET Adjustment Sprinkler
  - ET Adjustment Gravity
  - Display name
- For each stress period
  - Sprinkler Fraction (one value per entity)

# Irrigated Area File (.iar)

*2/20*

- No Header
- For each stress period
  - List of cells (row,col,count)
    - List of entities in that cell
    - List of areas (one per entity)
- Many stress periods repeat previous data

# Diversions (.div)

HE

- Header
  - Row listing entities
- Each Stress Period
  - Row of diverted amounts (cubic feet)
  - Row of returns (cubic feet)
    - Returns are zeroed when returns are calculated

# Canal Leakage (.cnl)

35

- Header
  - #Cells, Adjustment, Identifier, Text Name
  - Row Column (rest of row is not used)
    - Could be used to weight spatially
- For each stress period
  - Canal leakage fraction (of diversion)

# Fixed Point [Pumping] (.fpt)

34

- Header
  - Type Layer Row Column Name
  - Current types
    - W Wetlands
    - U Urban Pumping
    - E Exchange Pumping
    - M Mud Lake Pumping
- Stress periods
  - Row of values, one per entry (cubic feet)

# Off-site Pumping (.off)

FS

- Header
  - Layer Row Column Entity Name
- For each stress period
  - Row of volumes, one per well (cubic feet)

# Command Line

- `mkmod [parameters] fileroot`
  - `fileroot` sets default file root for input and output files
  - `-o` sets alternate output file root
  - `--xxx` sets alternate input file name, where `xxx` is the file extension (e.g. `--ent foo.ent`)
  - `-a` save service areas (entityname.dat)
  - `-s` single output file ('well term')
  - `-ss` No steady state, single output file
  - `-S` No steady state, separate output files
  - `-sss` Production mode only output is well file

# Command Line Option -m

15

- FRS (default): Maximum Farm Efficiency using Runoff for Returns and Soil Moisture
- 1: ESPAM 1.1
- MFE: Maximum Farm Efficiency using Fixed Returns
  - ESPAM 1.1 with on farm
- FER: Maximum Farm Efficiency using Runoff for Returns
  - FRS without soil moisture

# Output files (-s)

40

- Net recharge ['well term'] (.net)
  - MODFLOW well file format (k,i,j,q)
- Summary table (.htm)
  - Summarizes input and output by groups and by entity by stress period
- Summary table (.dat)
  - Main summary table for plotting
- Return flows (.rfl)
- Debug output (.rfx)

# Output files (separate terms)

16

- .ppt precipitation recharge
- .can canal seepage
- .tri tributary underflow
- .gwr groundwater deep percolation
- .swr surface water deep percolation
- .wel well pumping

# Output Files (acreage)

42

- .AGWgr Groundwater Gravity Acres
- AGWsp Groundwater Sprinkler Acres
- ASWgr Surface Water Gravity Acres
- ASWsp Surface Water Sprinkler Acres

# Summary Table Contents (.htm)<sup>13</sup>

- Title and definitions
- Total Non-irrigated, GW & SW by period
- Average values by GW entity
- Individual GW entities by period
- Average values by SW entity
- Individual SW entities by period
- *See example file for individual fields*
- *Column numbers correspond to .dat file*

# Programing Notes 1

44

- Major functions

- Read read next non blank/comment line
- ReadLine Read & split on spaces
- ReadCSV Read array from CSV file
- Open open file and read header
- Next read next period from file
- Average Average summary values
- SaveCell save stresses in cell format
- SaveArea save stresses in array format

# Programming Notes 2

4/5

- Major Variables

- Input Data Structures

- $x\{\text{type}\}\{\dots\}$

- Structure varies by input data type

- Output arrays

- $\text{out}\{\text{type}\}[\text{period}][\text{cell}]$

- Volumes (converted to rates when saving)

- Summary tables

- $\text{sum}[\text{period}]\{\text{entity}\}\{\text{type}\}$

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September 25, 2012

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**RE: Rangen Delivery Call (CM-DC-2011-004)  
ESPAM 2.0 computer code modules**

Dear Counsel:

This letter is sent in a good faith effort to secure information and documentation that our expert Chuck Brendecke needs to properly evaluate ESPAM 2.0 for the upcoming administrative hearing on Rangen's delivery call. It is our understanding that some of the information needed to complete the documentation supporting ESPAM 2.0 is held by your expert, Jim Brannon. We ask that you provide all such information, including electronic data and documentation regarding the computer code modules MKMOD, the On-Farm Algorithm, and Mr. Brannon's analysis and decomposition of Rangen spring flows used as the target for ESPAM 2.0 calibration.

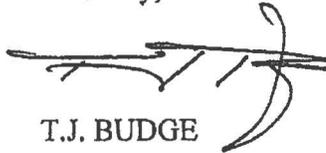
It was the understanding of Dr. Brendecke that Mr. Brannon would submit this information to the Eastern Snake Hydrologic Modeling Committee well in advance of the October 10, 2012, deadline for opening expert reports in this case, which has not occurred. The lack of this

EXHIBIT 7

information compromises Dr. Bredecke's ability to render an opinion on how ESPAM 2.0 should be applied to the Rangen delivery call.

Because the deadline for opening reports is fast approaching, I am requesting that this information be provide to Dr. Bredecke by the end of business tomorrow, September 26, 2012. If you are not able to comply with this request, please let me know as soon as possible.

Sincerely,



T.J. BUDGE

cc: Garrick Baxter ([Garrick.Baxter@idwr.idaho.gov](mailto:Garrick.Baxter@idwr.idaho.gov))  
Chris Bromley ([Chris.Bromley@idwr.idaho.gov](mailto:Chris.Bromley@idwr.idaho.gov))  
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September 25, 2012

TJ Budge  
Racine Olson  
201 East Center Street  
Pocatello, ID 83204

Re: Jim Brannon Information

Dear TJ:

I received your letter this afternoon and have had a chance to discuss it with Mr. Brannon. It is my understanding that Mr. Brannon reviewed the computer code used for MKMOD5 in approximately November 2010 and gave a powerpoint presentation to the ESHMC concerning his findings. Copies of his Powerpoint slides are attached to this email. I understand that MKMOD8 is now being used. Mr. Brannon has done no review of MKMOD8. Mr. Brannon has been looking through some of the ESHMC documentation that is available on-line and he has told me that some information concerning MKMOD is available through the following link:

[http://www.idwr.idaho.gov/Browse/WaterInfo/ESPAM/Recharge\\_tool\\_threaded\\_discussions/MK%20mod%20changes/](http://www.idwr.idaho.gov/Browse/WaterInfo/ESPAM/Recharge_tool_threaded_discussions/MK%20mod%20changes/).

I am not sure what type of information that Mr. Brendecke is looking for, but perhaps this link will assist him.

With respect to Rangen's historical spring flows, Mr. Brannon gave a Powerpoint presentation to the ESHMC in September 2009 prior to Rangen's spring being made a target. I provided a copy of that presentation to Ms. McHugh via email before the site visit in June 2012. The data and Mr. Brannon's presentation were also produced by IDWR in response to one of IGWA's document requests to the Department. It is on Disk 3 of 6, Folder: RangenHistoricDischarge Rangen Water History for IDWR.xls (a copy is also attached to this email). The presentation can also be found at:

[http://www.idwr.idaho.gov/Browse/WaterInfo/ESPAM/meetings/2009\\_ESHMC/9-21%2622-2009/rangen\\_data\\_presentation.pdf](http://www.idwr.idaho.gov/Browse/WaterInfo/ESPAM/meetings/2009_ESHMC/9-21%2622-2009/rangen_data_presentation.pdf)

You mentioned in your letter that Mr. Brendecke understood that Mr. Brannon would submit the information outlined in your letter "well in advance" of the October 10<sup>th</sup> deadline for expert witness reports. Mr. Brannon has not done any work on MKMOD5 or Rangen's historic

TJ Budge  
September 25, 2012  
Page - 2

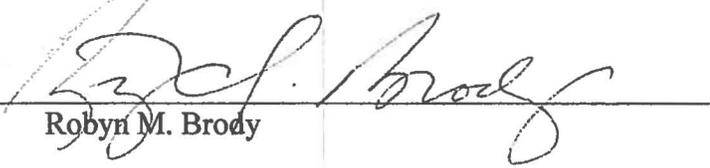
spring flows for at least two years. His analysis of these issues was presented to the ESHMC long ago and is complete.

TJ, if I have misunderstood something, please give me a call to discuss this further.

Very truly yours,

BRODY LAW OFFICE, PLLC

By:

  
Robyn M. Brody

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BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

\* \* \* \* \*

IN THE MATTER OF DISTRIBUTION )  
OF WATER TO WATER RIGHT NOS. )  
36-02551 and 36-07694 ) CM-DC 2011-004  
(RANGEN , INC.) )  
\_\_\_\_\_ )

REPORTER'S TRANSCRIPT  
OF RECORDED HEARING

DATE: May 24, 2012

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

Before Interim Director Gary Spackman

Transcribed by:  
Maureen Newton, CSR #321  
P.O. Box 132  
Heyburn, ID 83336

1 I'd like to have an order placed before the beginning of  
2 the next irrigation season.  
3 So I think May is too late for me, Candace.  
4 MS. McHUGH: And if you would indulge me as to  
5 what we were thinking, just for my benefit and maybe this  
6 would help for some of the other parties.  
7 Rangen made the delivery call in December and at  
8 that point we came to the conclusion that it didn't make  
9 sense to go forward under the old model and there was a  
10 conclusion that we needed to proceed with the new model.  
11 My proposal of a May 1st hearing date is actually  
12 less than a year from the time we have all of the  
13 production tools that are in the new model available to  
14 Chuck. I originally thought, you know, a late winter/early  
15 spring hearing was probably going to be doable, and then  
16 talking to Chuck and the kind of effort that needs to  
17 happen on running the model and then getting that  
18 information to our other experts to use that information to  
19 then be able to construct expert reports, it just was too  
20 quick.  
21 The proposal was basically in July. The model  
22 will be done and in less than 30 days Chuck would have his  
23 original expert report done. I mean, I think that's  
24 pushing it. And based on the party's agreement in  
25 December, you know, in good faith we decided not to pursue

6

1 all the production tools in place to work with that and  
2 work with our other model people. It's less than a year  
3 from our site visit. And the fact is, is that's I think a  
4 reasonable schedule.  
5 Pushing it I think is prejudicial to the  
6 Groundwater Users and will essentially not allow us to put  
7 together the kind of case to present you with information  
8 you need to look at all of the different policy as well as  
9 technical information. This is not just a case of, you  
10 know, the model and what it says, et cetera. There's also  
11 other considerations, and that stuff I think we should be  
12 fairly able to discover and our experts should be fairly  
13 able to conclude and share that information.  
14 And then also built into this, the other cases  
15 that we've tried took much longer from the time the first  
16 order was issued. Not when the delivery call was issued,  
17 but the first order was issued, and the hearing, and we  
18 were already starting out with data from the department.  
19 The department had done a lot of information and discovery  
20 and we were reacting to information that was already there.  
21 Now we are actually creating it. And so I think it's more  
22 reasonable to have a hearing that gives us the time we need  
23 and it's based really on looking from July to when the  
24 first expert report could reasonably be done.

And I think that's the area where the change was.

8

1 the case aggressively, kind of seeing where the model was,  
2 to make sure that it was in fact going to stay on track.  
3 Since the last status conference when we realized the model  
4 was on track and we were going to have it in July the  
5 parties exchanged hearing schedules. You know, we talked  
6 about a site visit. We have it tentatively scheduled for  
7 the middle of June.

8 But the reality is, is Rangen's case and IGWAs  
9 cases are very different, and the preparation time, the  
10 fact of the matter is, is going to be different. We have  
11 to defend the call. We have to look at the trim line. We  
12 have to come up with ways to, you know, express the trim  
13 line both from a technical potential or some other basis  
14 for the trim line. We also need to be able to inspect  
15 their facilities, understand their water use, look at their  
16 diversion structures, understand the spring discharge, all  
17 of the information of which Rangen has at its disposal and  
18 we have to discover and then incorporate into all of these  
19 different expert reports.

20 Their case kind of rises and falls on the fact  
21 that they don't have their claim of not enough water and  
22 that the model answers all their questions. The defense  
23 requires more work, frankly, and we just weren't able to  
24 come up with a way to do that so quickly from July on. The  
25 main hearing date is ten months after the time Chuck has

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1 I think they proposed a month later and we proposed about  
2 three months later. And then when I looked at the  
3 schedule, basically I understand the director has a  
4 two-week hearing that I'm actually involved in in April,  
5 starting April 15th, so that took the month of April kind  
6 of out of the equation. So that month, in part the reason  
7 the schedule starts in May, three months later, is because  
8 we have an April challenge from the director's schedule to  
9 not have it start in April.

10 But anyway, you know, the solutions and the  
11 timing of what the Ground Water District's pumping may or  
12 may not effect the sprinklers at Rangen didn't happen  
13 immediately and any curtailment isn't going to give them  
14 water immediately.

15 That's not to discount the fact that you don't  
16 want to go through another irrigation season, I understand  
17 that. But I want the director to know that my picking of  
18 the May 1st hearing date didn't have to do with the fact  
19 that it makes another by on the irrigation season. I just  
20 really think it's based on the timing of when we have the  
21 tools available to us. And Chuck can certainly weigh in on  
22 that, but we really did give it some consideration on when  
23 we could get our first expert reports reasonably and fairly  
24 filed after we got the information we needed. So I would  
25 ask for a longer hearing date -- for a hearing date later.

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1 MR. HAMMERLE: Director, first and foremost we  
2 think we can actually live with your date of December. Our  
3 experts have been working I think within the committee.  
4 We've been working on validation, calibration,  
5 uncertainties, and these aren't secrets. Hopefully IGWA's  
6 experts are working within the committee, can anticipate  
7 what the committee's doing and exactly what the issues are.  
8 This is frankly the first time I've heard about a trim line  
9 from IGWA.  
10 You told Robyn in confidence or not in confidence  
11 that you were going to do that. We understood you were  
12 going to do that. We think you have plenty of time within  
13 the committee to propose that, at least anticipate it  
14 within your own experts what that might be. So, you know,  
15 if you want to move, director, with the December date, we  
16 think we can accommodate that. Our experts are prepared.  
17 We've been working on these issues and we should be able to  
18 go on your deadline. So if that's the date that you want,  
19 director, then that's the date we'll live with.  
20 MR. SPACKMAN: I think in listening to Candace:  
21 Candace, you pointed out some compelling reasons why maybe  
22 there ought to be additional time, so I'm willing to move  
23 back to a January or 1st of February hearing date. End of  
24 January, 1st of February. When you were you proposing?  
25 MR. HAMMERLE: We had actually proposed

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1 have been issued is that the courts have said that the  
2 director has the responsibility to afford the parties a  
3 hearing, (inaudible) the director needs to expedite that  
4 hearing and that the director can't delay. And I think  
5 there was some dissatisfaction expressed with the time  
6 frames within which the hearings were held and orders were  
7 timely issued. And I want to be sensitive and be timely.  
8 Sounds to me like January 28th is a good day. How long do  
9 we need to reserve?  
10 MS. McHUGH: If I understood the director's  
11 comments from earlier this year, you were anticipating all  
12 life witness testimony, correct? Is that a correct  
13 assumption?  
14 MR. SPACKMAN: Well, I'm happy to receive  
15 testimony as has been received previously, if that's the  
16 preference of the parties. Go ahead.  
17 MR. HAMMERLE: Do you want to adopt somewhat of a  
18 contested case rules, where if the parties agree they can  
19 submit things as -- I forget what those are called --  
20 they're in the contested rules -- statements -- kind of  
21 affidavits, for lack of a better word, with the parties  
22 agreeing?  
23 MR. BAXTER: Pre-filed testimony?  
24 MS. McHUGH: That's what we've done in the past  
25 cases and it's taken to -- I guess the reason I ask the

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1 January 28th.  
2 MR. SPACKMAN: I'm willing to go to there. But  
3 to have sufficient time to issue an order by the 1st of  
4 April, which to me is drop-dead time for issuance of an  
5 order for the irrigation season, I think any later than  
6 that, and that's consistent with the other orders that were  
7 issued, I need to hold a hearing at the end of January or  
8 first of February. What day is the 28th?  
9 MS. BRODY: It's a Monday.  
10 MR. SPACKMAN: So I guess I'm willing to move off  
11 of the earlier date, move into January, but I don't see a  
12 way. And under the schedule we have outlined, Candace,  
13 that would give your expert not one month, but about three  
14 to prepare, and all the experts to prepare their original  
15 reports, looking at the SeaPac order that was issued. So  
16 they'd have 90 days, plus the time starting right now to  
17 prepare.  
18 And we can listen to Rick and what he has to say,  
19 but my guess is, because I haven't heard noise, is we're  
20 moving forward within the next couple months and we'll be  
21 ready to go. That's my guess. So I think the parties can  
22 gear up and start preparing.  
23 And I guess the other point that I'll make here  
24 is -- and I haven't gone back and read it for quite  
25 awhile -- but my understanding of the court orders that

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1 question is, the pre file -- with pre-filed testimony and  
2 cross examination only it's taken 18 days roughly. You  
3 know, 12 to 18 days in the past hearings. A few more  
4 parties. So that's why I was asking the question if we  
5 were going to do only a live direct examination and also  
6 cross examination, I think, you know, it would be a solid  
7 two weeks, I think a good ten days of hearing time, if not  
8 more. That's why I was asking the question.  
9 MR. SPACKMAN: 18 days (inaudible).  
10 MS. McHUGH: It was 18 days of actual hearing  
11 time. I believe it was 18 days for the Thousand Springs  
12 hearing.  
13 MS. KLAHN: This is Sarah Klahn. Candace, I  
14 think that 18 days was the Surface Water Coalition where we  
15 didn't really have fully pre filed testimony.  
16 MS. McHUGH: Okay, that could be.  
17 MS. KLAHN: Or was it A&B? It was the one where  
18 we didn't have fully pre filed testimony.  
19 MS. McHUGH: Okay. So I'm just saying that  
20 that's a consideration when you look at this, as far as if  
21 we do all examination orally.  
22 MR. HAMMERLE: I think pre filed with the  
23 opportunity to cross-examine would be, you know --  
24 MS. McHUGH: (Inaudible).  
25 MS. KLAHN: It's more efficient.

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