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DEPARTMENT OF  
WATER RESOURCES

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*Attorneys for Rangen, Inc.*

BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION  
FOR DELIVERY CALL OF RANGEN,  
INC.'S WATER RIGHT NOS. 36-02551  
& 36-07694

Docket No. CM-DC-2011-004

**AFFIDAVIT OF WAYNE  
COURTNEY IN SUPPORT OF  
RANGEN, INC.'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT  
RE: MATERIAL INJURY**

STATE OF IDAHO,            )  
  ) ss.  
County of Twin Falls.     )

**AFFIDAVIT OF WAYNE COURTNEY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY  
JUDGMENT RE: MATERIAL JUDGEMENT - 1**

WAYNE COURTNEY, being sworn upon oath, deposes and states as follows:

1. My name is Wayne Courtney. I am over the age of eighteen (18) years old, and I am of sound mind, capable of making this affidavit, and the matters contained in this affidavit are based on my personal knowledge.

2. I am the Executive Vice President for Rangen, Inc. ("Rangen"). Rangen is a family corporation that has been in business since 1925. Its headquarters is located in Buhl, Idaho. Rangen, among other things, is a leading feed manufacturer in the United States aquaculture markets.

3. As part of its aquaculture business, Rangen owns and operates a research and fish propagation facility ("Research Hatchery") near Hagerman, Idaho. A sketch of Rangen's Research Hatchery is attached hereto as Exhibit A and an aerial photograph is attached as Exhibit B.

4. The water that sustains Rangen's Research Hatchery is spring water from an area commonly referred to as the Thousand Springs area of the Thousand Springs Reach of the Snake River within Water District 130. The Thousand Springs area is characterized by many flowing springs of high quality water that is well suited to aquaculture and fish propagation.

5. Rangen's water comes from a spring source through and near the Martin-Curren Tunnel. The springs located in the vicinity of the Martin-Curren Tunnel are tributaries to Billingsley Creek, a tributary of the Snake River in Gooding County.

6. Rangen has five (5) water rights for the Research Hatchery that have been decreed through the Snake River Basin Adjudication.

7. Rangen has been measuring and recording the water delivered to its Research Hatchery since 1966. Based on the flow data attached to the Affidavit of Doug Ramsey, the amount of water available for Rangen's Research Hatchery has declined significantly over the years.

8. The only water rights which are currently being satisfied are 36-00134B (0.09 cfs), 36-00135A (0.05 cfs) and 36-15501 (1.46 cfs). Rangen is not receiving all of the water to which it is entitled pursuant to decreed water rights nos. 36-02551 and 36-07694. Copies of the partial decrees are attached to the *Affidavit of Fritz X. Haemmerle*.

9. As flows have diminished, Rangen has explored several ways of obtaining more flow for the Research Facility. Those alternatives are all outlined in the *Affidavit of Charles E. Brockway* and Report of Rangen's experts: Charles E. Brockway, Ph.D., Brockway Engineering; David Colvin, P.G., Leonard Rice Engineers; and Jim Brannon, Brannon Developments (hereinafter "BCB Report"). All these alternatives have been rejected because they are either too expensive, too risky, or would not develop any significant amounts of water to produce the quantity of water Rangen is entitled to under water rights 36-02551 and 36-07694. I believe Rangen has expended reasonable efforts to divert water for right nos. 36-02551 and 36-07694.

10. Rangen has been observing its water flows diminish over many years. To be sure, Rangen has not stood ideally by with respect to its diminished flows. In September and October 2003, because Rangen was not receiving all the water to which it is entitled, Rangen filed a water call (hereinafter "Rangen Call"), with the Director of the Idaho Department of Water Resources ("IDWR"). Pursuant to that call, the Director issued three separate Orders: (a) the *Order* dated February 25, 2004 (hereinafter "*Order*"); (b) the *Amended Order*, dated March 10, 2004

(hereinafter "*Amended Order*"); and (c) the *Second Amended Order*, dated May 19, 2005 (hereinafter "*Second Amended Order*"). Copies of these Orders are attached to the *Affidavit of Fritz X. Haemmerle*.

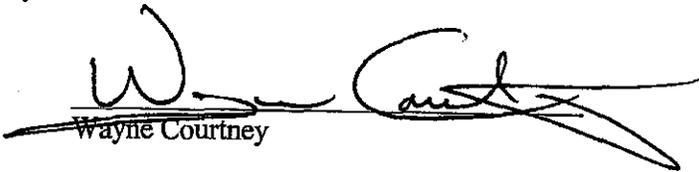
11. After the *Second Amended Order* was issued, Rangen attempted several times to have a hearing with the Director of IDWR pertaining to Rangen's water call, but Rangen was denied any hearing or response on the call.

12. Rangen initiated the new call on December 13, 2011. Under this call, Rangen's experts have issued an opinion that Rangen can realize 17.9 cfs, at steady state, of additional water. This year, Rangen's lowest flows were 11.6 cfs of water, and its average flow for 2012 was 14.6 cfs. Accordingly, 17.9 cfs of water would more than double the water currently available to Rangen as compared to 2012 flows. I understand that this water would come from the curtailment of junior water users who pump water from the ground covered by the Eastern Snake Plain Aquifer ("ESPA"), based on the opinion from Rangen's experts that these junior priority water users are hindering and impacting the quantity of water that is available to Rangen from the Martin-Curren Tunnel.

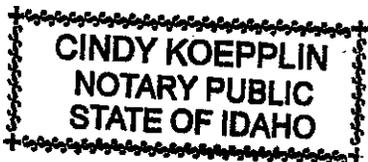
13. Based on the recorded flows at Rangen, there is no doubt that Rangen could put the additional 17.9 cfs of water to a beneficial use.

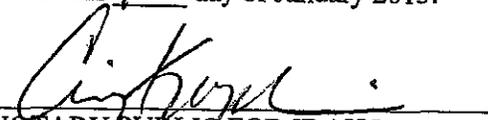
FURTHER AFFIANT SAYETH NOT.

DATED this 9<sup>th</sup> day of January 2013.

  
Wayne Courtney

SUBSCRIBED AND SWORN to before me this 9<sup>th</sup> day of January 2013.



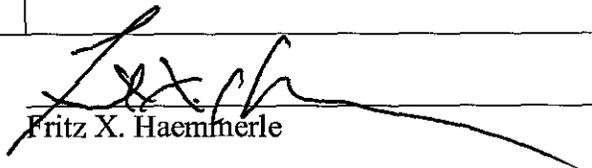
  
NOTARY PUBLIC FOR IDAHO  
Residing at: Filer ID  
Commission expires: 9-5-15

**CERTIFICATE OF SERVICE**

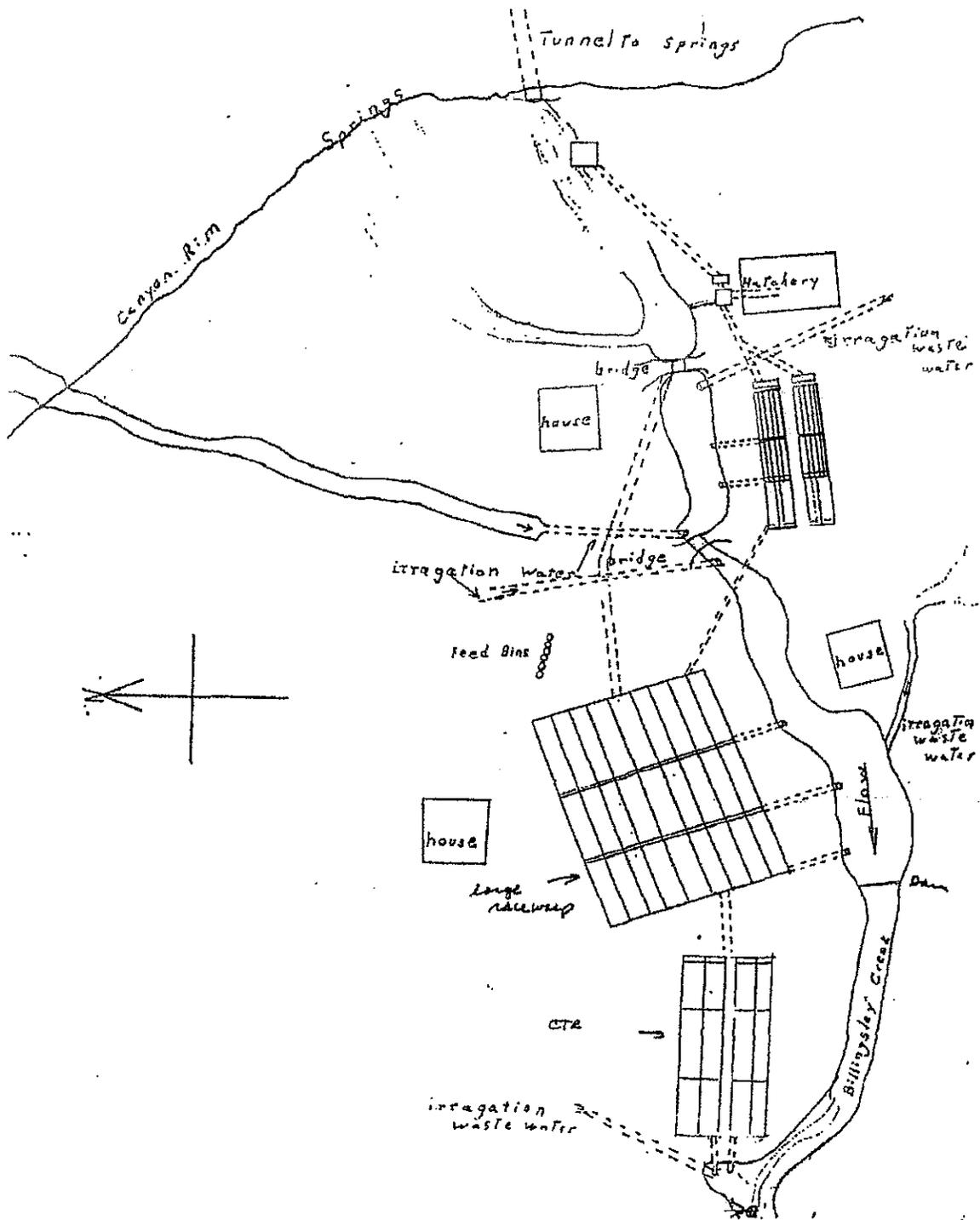
9<sup>th</sup> The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the day of January, 2013, he caused a true and correct copy of the foregoing document to be served by email and first class U.S. Mail, postage prepaid upon the following:

<p><b>Original:</b>                  Director Gary Spackman                  Idaho Department of Water                  Resources                  P.O. Box 83720                  Boise, ID 83720-0098                  Deborah.Gibson@idwr.idaho.gov</p>	<p>Hand Delivery <input type="checkbox"/>                  U.S. Mail <input type="checkbox"/>                  Facsimile <input type="checkbox"/>                  Federal Express <input checked="" 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                  garrick.baxter@idwr.idaho.gov                  chris.bromley@idwr.idaho.gov</p>	<p>Hand Delivery <input type="checkbox"/>                  U.S. Mail <input type="checkbox"/>                  Facsimile <input type="checkbox"/>                  Federal Express <input type="checkbox"/>                  E-Mail <input checked="" type="checkbox"/></p>
<p>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                  rcb@racinelaw.net                  cmm@racinelaw.net                  tjb@racinelaw.net</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                  sarahk@white-jankowski.com                  mitrap@white-jankowski.com</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>

Dean Tranmer City of Pocatello P.O. Box 4169 Pocatello, ID 83201 dtranmer@pocatello.us	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"/>
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	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"/>
C. Thomas Arkoosh Arkoosh Eiguren P.O. Box 2900 Boise, ID 83702 Tom.arkoosh@aclawlobby.com	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"/>
W. Kent Fletcher Fletcher Law Office P.O. Box 248 Burley, ID 83318 wkf@pmt.org	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"/>
Jerry R. Rigby Hyrum Erickson Robert H. Wood Rigby, Andrus & Rigby, Chartered 25 North Second East Rexburg, ID 83440 jrigby@rex-law.com herickson@rex-law.com rwood@rex-law.com	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"/>

  
Fritz X. Haemmerle

# **EXHIBIT A**



Rangen Hatchery Facilities  
Hagerman, Idaho



# **EXHIBIT B**



PLAINTIFF'S  
EXHIBIT

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