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BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF THE PETITION) Docket No. CM-DC-2011-004
DELIVERY CALL OF RANGEN,)
INC.'S WATER RIGHT NOS. 36-02551) **FREMONT MADISON IRRIGATION**
& 36-7694) **DISTRICT'S RESPONSE AND**
) **OBJECTIONS TO RANGEN'S PROPOSED**
) **FINDINGS OF FACT AND CONCLUSIONS**
) **OF LAW**

Comes now Fremont-Madison Irrigation District ("FMID"), by and through its counsel, Jerry R. Rigby, of Rigby, Andrus & Rigby, Chartered, and hereby submits its Response and Objections to Rangen Inc.'s Closing Brief and Proposed Findings of Fact and Conclusions of Law.

RESPONSE TO RANGEN, INC.'S CLOSING BRIEF

In Rangen Inc.'s Closing Brief, Rangen failed to include important and necessary discussion on key issues, and repeatedly misstated or misrepresented statements or testimony given by FMID's expert, Bryce Contor.

In its discussion on the uncertainty analysis performed by the Department, Rangen omits

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important discussion of the effects of heterogeneity at scales smaller than the inter pilot-point distance. *Rangen, Inc. Closing Brief*, Section IV(B)(1)(c), “Uncertainty” pp. 71-72. Rangen also fails to acknowledge that the model is incapable of showing zero effects from very distant points such as FMID, even if such is physically the case. *Id.* Rangen further omits the large uncertainty found by Dr. Wylie in the WD99 Predictive Uncertainty Analysis. *Id.*

In its *Closing Brief*, in Section IV(B)(1)(d), Rangen states “[t]here is absolutely no disagreement in this case; groundwater pumping by junior users in the boundary of the ESPAM2.1 model is affecting Rangen’s use of water. As such, the Director should curtail those users in the boundary of the model.” *Rangen, Inc. Closing Brief*, Section IV(B)(1)(d), “The Director Should Curtail Junior Users Under the Boundaries of the ESPAM2.1 Model,” p. 72.

This statement is either incorrect or misleading for the following three reasons:

1) Bryce Contor, in his testimony, did not agree that groundwater pumping by junior users in the boundary of the ESPAM2.1 model is affecting Rangen’s use of water. Bryce Contor did state that the understanding of the physical hydrology suggests that it cannot be determined with any degree of certainty that FMID pumping has any effect at all on Rangen.

2) Despite being constrained to show a mathematical effect, the model prediction is that if FMID does have an effect, it is negligible and incapable of being measured.

3) This statement also either ignores or sidesteps the important hydrologic fact that there are junior users outside the boundary of the ESPAM2.1 whose pumping does have an effect on Rangen's use of water.

In its *Closing Brief*, in Section IV(B)(2), p. 72, Rangen states that Bryce Contor (Tr. p.

2983, 1. 20-22), testified that ESPAM2.1 represents the best available science and is suitable for use in predicting the impact of junior ground pumping upon the use of Rangen's water rights. However, Bryce Contor did NOT testify that the ESPAM2.1 model is suitable for predicting the impact of junior groundwater pumping on Rangen's water rights. Mr. Contor was careful to point out that the impact is a legal concept and not simply a technical matter, but rather Effect is a technical matter.

Finally, Mr. Contor explained that due to the existence of heterogeneity at scales smaller than the inter-pilot-point distance, the model is not adequate to evaluate the effect of any stress upon an individual spring except a broadly-distributed stress such as the calibration data set.

The most important conclusion from Mr. Contor's testimony was that due to the uncertainties of the model and the physical hydrology of the system, it cannot be determined to any degree of certainty that FMID pumping has **any** effect on Rangen. FMID's example is therefore the poster child for the need to retain the "trimline" presently in place as any other location within the ESPA where the facts are similar to those of FMID, the same uncertainties would clearly exist.

FMID'S RESPONSE AND OBJECTIONS TO RANGEN, INC.'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

FMID adopts by reference any objection made by IGWA with respect to Rangen's Proposed Findings of Fact and Conclusions of Law. Furthermore and in addition, FMID specifically objects to Rangen's Proposed Findings of Fact and Conclusions of Law as follows:

With respect to Finding 31, pp. 6-7, the Snake Plain Aquifer occupies approximately

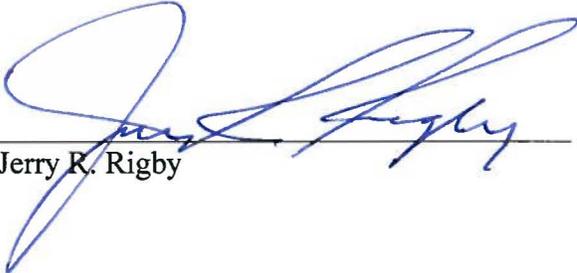
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11,000 square miles, rather than the 15,600 square miles listed by Rangen. It also is more likely the track of the Yellowstone hotspot than a graben.

With respect to finding 63, p. 11, the model does not give the best available predictions of any particular junior pumping impact, due to the uncertainties of the model and the effects of heterogeneity at spatial scales smaller than the inter-pilot-point distance.

With respect to Section J. "Trimline", pp. 12-13, The IGWA brief did call for the use of a trimline, and trimline is not a matter of fact but a matter of law. It is FMID's position that a trimline should be used as decided by the Director. Furthermore, FMID's position at the hearing was fully based upon the "call" for the use of a trimline.

DATED this 19th day of July, 2013.



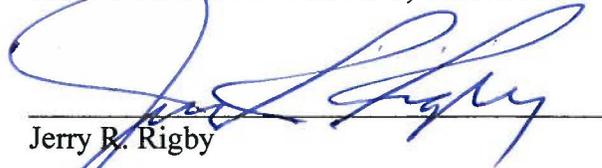
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I hereby certify that a true and correct copy of the foregoing document was on this date served upon the persons named below, at the addresses set out below their name, either by mailing, hand delivery or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 19th day of July, 2013.

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