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ATTORNEYS FOR IDAHO GROUND WATER APPROPRIATORS, INC.

BEFORE 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	)	Docket No. CM-DC-2011-004
(RANGEN, INC.)	)	**CITY OF POCATELLO AND IDAHO GROUND WATER APPROPRIATORS, INC.'S BRIEF IN AID OF OBJECTION**

City of Pocatello ("Pocatello") and the Idaho Ground Water Appropriators ("IGWA"), by and through undersigned counsel, hereby provide their Brief in Aid of Objection, as requested by the Director at the hearing in this matter on May 2nd 2013.

I. INTRODUCTION

As detailed below, Rangen has steadfastly declined to provide specific examples of research it cannot do for lack of water since at least September of 2012.[1] Nonetheless, on the second day of the hearing in the captioned matter, Rangen attempted to introduce just such testimony

[1] Deposition excerpts and discovery responses referenced herein are attached hereto as exhibits A & B respectively.

through Joy Kinyon for the first time. At the third day of hearing, Rangen confirmed its intention to introduce the same sort of specific research idea testimony though Doug Ramsey. To allow Rangen to introduce specific examples of research it would conduct if it had more water at this stage of the case deprives IGWA and Pocatello of the opportunity to respond through the testimony of Dr. John Woodling, who is an expert in aquaculture research. Pocatello and IGWA request that the Director:

a) Foreclose any testimony regarding specific research Rangen would conduct if it had more water as untimely and prejudicial; or

b) Limit Mr. Kinyon and Mr. Ramsey to the testimony given by Mr. Brock during his deposition (as described *infra* at paragraph 7); or

c) Allow Pocatello's expert Dr. Woodling to respond to Mr. Kinyon's and Mr. Ramsey's testimony during the course of his direct testimony, despite the fact that his opinions regarding such research are not contained in his written reports.[2]

In aid of their objection made during the second day of trial, Pocatello and IGWA would show the Director:

II. FACTUAL BACKGROUND

A. Doug Ramsey's initial testimony regarding injury to research.

1) Doug Ramsey is the research scientist at Rangen. His duties include supervising the laboratory, providing fish disease diagnostics, and performing research projects at the Research Hatchery. Ramsey Dep. I, 7:14-23 (September 12, 2012). Doug Ramsey works with David Brock to design research projects and then puts together a research proposal for Joy Kinyon to approve. Ramsey Dep. I, 8:13-9:2.

[2] Note that this option involves logistical issues, requiring that Mssrs. Kinyon and Ramsey be recalled before May 8, 2013, as Dr. Woodling has to testify on May 8, 2013 in order to accommodate his academic teaching schedule.

2) At Doug Ramsey's first deposition in September of 2012, Pocatello and IGWA learned that Rangen was asserting injury to its ability to conduct research at the Rangen Hatchery. Doug Ramsey Dep. I, 124:13-17. Mr. Ramsey's deposition was left open on issues, *inter alia,* related to Rangen's claim to injury to research. Ramsey Dep. I, 111:3-8.

3) In October of 2012, in response to a discovery request, Rangen made available for review documents at its research facility. Representatives for IGWA and Pocatello traveled to the Rangen Research Hatchery to review and copy research documents.

4) In November of 2012, Mr. Ramsey was deposed again. Counsel for IGWA asked "What research has Rangen wanted to do in the last ten years but has been unable to do because of reduced flows?" Ramsey replied:

> I can't give you any specifics on that except to say that each time the topic has come up for experimentation and I've gone to Lonny to find out how this is going to work with water flows, he's very much – he has a problem with that each time.

Doug Ramsey Dep. II, 324:3-7 (November 13, 2012).

B. Rangen designates a new witness regarding injury to research:

5) On December 21, 2012 Rangen designated David Brock as a witness with "knowledge and information concerning feed research that has been conducted at the Research Hatchery in the past and what type of feed research Rangen could do if more water were available at the facility." Rangen's 3rd Supplemental Responses to IGWA's First Set of Discovery, p. 5 (December 21, 2012).

6) Not unreasonably, given the subject of Mr. Brock's designation and Mr. Ramsey's prior testimony that he could not give "specifics" regarding injury to research, Pocatello and IGWA expected to learn during the course of the Brock deposition about the type of feed research Rangen could do if more water was available.

7) At Mr. Brock's deposition, he identified himself as the "idea guy" for research at Rangen. Brock Dep. 37:9-12, (January 22, 2013). However, when Mr. Brock was asked to identify the research Rangen could not do for lack of water, he provided only a general answer without giving specific examples:

> Q: What types of Research could Rangen do if more water were available at the facility?
>
> A: We could carry out well-replicated studies on Algae, fishmeal replacements, new pigment sources, and so on. Brock Dep. 148:23-149:3.

8) Also during the course of that deposition, Mr. Brock disclosed the existence of a list of research that would be performed if more water were available. When the list was requested by IGWA's and Pocatello's counsel, Rangen's counsel objected to the disclosure of this list, and asserted the work-product and attorney-client privileges as a basis for withholding the document.[3]

C. Motion to Compel production of list of research that would be conducted if Rangen had more water:

9) Following Mr. Brock's Deposition IGWA & Pocatello filed a Motion to Compel the list of research projects which Rangen could not do for lack of water (referenced in Mr. Brock's deposition).

---

[3] Efforts to ask additional questions of Mr. Brock regarding the research that Rangen would conduct if it had more water were frustrated by interference from Rangen's counsel, who agreed at the time that IGWA had adequately asked the question regarding potential research projects. To wit:

MS. McHUGH: Is Rangen planning to call this witness to testify what type of feed research Rangen could do if more water were available at its facility
MR. HAEMMERLE: Yes. And you can ask those questions, and you did. And he answered.
Brock Dep. 150:2-6.

10) The Director denied the motion, instead ordering that IGWA and Pocatello obtain the information contained on the list (but not the list, which the Director found to be privileged) through a discovery request.

11) On March 8, 2013, Pocatello filed its request for discovery pursuant to the Director's Order. In that discovery request Pocatello asked that Rangen "list the Research Projects that Rangen did not initiate for which insufficient water supplies was the deciding factor." City of Pocatello's Discovery Requests to Rangen made pursuant to March 4, 2013 Order Denying IGWA and Pocatello's Motion to Compel Production of Research List, Interrogatory No. 2, (March 8, 2013) ("Pocatello's Research Discovery Request").

12) Similarly, IGWA filed a request in response to the Director's Order, which asked that Rangen identify "what type of research, feed or other types, Rangen planned to conduct since 1985, if more water where available at the Rangen facility." IGWA's Fourth Set of Discovery Requests to Rangen, Inc. Interrogatory No. 35, (March 8, 2013).

13) On March 13, 2013, Rangen filed identical responses to both IGWA and Pocatello's discovery requests, despite the fact that IGWA's and Pocatello's discovery requests made different inquiries.

14) Rangen's responses claimed that "Rangen generally does not document the research that it cannot do, but instead plans what it can do with the water it has available." Response to Pocatello's Research Discovery Request, Response to Interrogatory No. 2, (March 13, 2013); Response to IGWA's Fifth Set of Discovery, Response to Interrogatory No. 35, (March 13, 2013). Rangen then identified a number of past research projects which it had conducted but which it claimed were frustrated by flow problems. *Id.* At no point in Rangen's Response

did it ever identify research projects that it *would* conduct if it had more flow. *Id.* The Response was verified by Mr. Kinyon.

15) Rangen's Discovery Responses did not answer the question of what research Rangen *would* conduct if it had more water.

D. Joy Kinyon's testimony regarding injury to research:

16) At Mr. Kinyon's first deposition, he testified that he was involved in review and approval of research projects. Kinyon Dep. I, 113:13-114:2, (September 12, 2012).[4] Mr. Kinyon also testified, wholly erroneously,[5] that it had been "three, four, five years ago" since Rangen had performed *any* research. Kinyon Dep. I, 25:21-22.

17) Because he verified Rangen's Responses to Pocatello's Research Discovery Requests, Mr. Kinyon was deposed in March of 2013. At his second deposition, Mr. Kinyon testified that Rangen would not begin figuring out specifically what research they would do with more water until *after* curtailment. Kinyon Dep. II, 204:7-14, ("[immediately following curtailment] we would get more fish in the raceway to take advantage of the water, and we'd begin immediately trying to figure out what we are going to do specifically on research.") (Emphasis added).

III. ARGUMENT

David Brock, the witness that Rangen identified as knowledgeable on this issue, provided the closest to specific examples of research that Rangen would do if it had more water. *See,* ¶ 7, *supra.* Mr. Ramsey testified he could not "give any specifics", and Mr. Kinyon testified that Rangen didn't yet know what research it would conduct if it had more water because it was only

[4] Doug Ramsey also testified that he and David Brock assembled research proposals and that Joy Kinyon approves research proposals. Ramsey Dep. I, 8:13-9:2.

[5] Research documents produced by Rangen subsequent to Mr. Kinyon's deposition demonstrate that it has conducted a number of research projects in the last few years, and in his September deposition, Mr. Ramsey testified that Rangen currently had a study planned which he expected to take place that month. Ramsey Dep. I, 137:1-23.

after curtailment that Rangen would "try[] to figure out what [it would do] specifically on research". *See,* ¶¶ 4; 18 *supra.* Now, Rangen proposes to call these same two witnesses to testify as to specific examples of research Rangen would conduct if it had more water. Disclosure of this information at this late date—beyond that information stated by Mr. Brock in his deposition in January—would be prejudicial to both IGWA and Pocatello.

Pocatello has hired an expert, Dr. John Woodling, to give opinions regarding Rangen's claim that its research is impacted or impaired from a lack of water. Rangen is aware of Dr. Woodling's opinions regarding its assertions of injury to research. Dr. Woodling, however, is not aware of the types of research Rangen would conduct if it had more water because that information has not previously been provided. Mr. Woodling's reports respond to Rangen's assertions of injury to their research beneficial use, and in fact his supplemental report individually addressed each example of research cited in Rangen's Response to Pocatello's Research Discovery Requests. *See* Supplemental Expert Report of John Woodling, (April 4, 2013). Had Rangen disclosed the information it now seeks to introduce through Ramsey and Kinyon during discovery, Mr. Woodling's reports would have been able to address this information as well.

IV. CONCLUSION

IGWA and Pocatello request that the Director:

A) Foreclose any testimony regarding specific research Rangen would conduct if it had more water as untimely and prejudicial; or

B) Limit Mr. Kinyon and Mr. Ramsey to the testimony given by Mr. Brock during his deposition; or

C) Allow Pocatello's expert Dr. Woodling to respond to any such testimony during the course of his direct testimony, despite the fact that his opinions regarding such research are not contained in his written reports.

Respectfully submitted this 6th day of May, 2013.

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CERTIFICATE OF SERVICE

I hereby certify that on this __th day of May, 2013, I caused to be served a true and correct copy of the foregoing **City of Pocatello and Idaho Ground Water Appropriators, Inc.'s Brief in Aid of Objection** for **Docket No. CM-DC-2011-004** upon the following by the method indicated:

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EXHIBIT A

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF	)	
WATER TO WATER RIGHT NOS. 36-02551	)	Docket No.
AND 36-07694	)	CM-DC-2011-004
	)	
(RANGEN, INC.)	)	
	)	

C O N F I D E N T I A L

Pursuant to Protective Order Dated August 31, 2012

DEPOSITION OF DOUG RAMSEY

SEPTEMBER 12, 2012

REPORTED BY:

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

Notary Public

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1 waste in the effluent, I believe. It's been a long
2 time ago, and I really don't remember a lot of the
3 details.
4 Q. What was the customer who was involved?
5 A. It was Idaho Trout Company.
6 Q. Okay. All right. What is your job -- what
7 is your title at Rangen?
8 A. I'm a research scientist. That's the
9 title.
10 Q. Okay. And what's your educational
11 background?
12 A. I have a bachelor's from Idaho State
13 University in biology, basically. And then I went on
14 with the master's program at that school for
15 microbiology.
16 Q. Okay. Have you worked as a research or lab
17 person for anybody other than Rangen?
18 A. No, I have not.
19 Q. Okay. And how long have you been with
20 Rangen?
21 A. About 25 years.
22 Q. All right. Did you have a professional job
23 prior to that?
24 A. Yes.
25 Q. What was that?

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1 A. I worked for Idaho Fish and Game.
2 Q. And what was your job with them?
3 A. Fish culturist and hatchery superintendent.
4 Q. Which facility?
5 A. I worked at the Clark Fork Hatchery to
6 begin with, and then transferred to the Mackay
7 Hatchery.
8 Q. Where is the Mackay Hatchery?
9 A. In the Big Lost Valley north of Arco.
10 Q. Okay. Nice up there. 25 years. Wow.
11 What are your general -- tell me again what
12 your title is. I apologize. Research scientist?
13 A. Yes.
14 Q. What are your job duties as research
15 scientist?
16 A. I supervise the laboratory there at the
17 Hagerman facility where I will provide fish disease
18 diagnostics for our customers, for fish feed customers,
19 and perform research when that's available, when it's
20 doable there at the lab. Also supervise the water
21 quality section.
22 Q. All right. Anything else?
23 A. That's -- that's basically it.
24 Q. Okay.
25 A. Yeah.

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1 Q. You mentioned that you do fish disease
2 diagnostics?
3 A. Yes.
4 Q. For the Rangen facilities customers?
5 A. Yes. Our customers, as well as the Rangen
6 hatchery itself.
7 Q. Okay. And when you talk about Rangen
8 customers, are you talking about the customers of the
9 Rangen facility that send you water-quality samples or
10 that purchase feed?
11 A. Both.
12 Q. Oh, okay. That's a nice service. So --
13 and you mentioned that you -- you perform research or
14 you assist with performance of research when it's
15 possible to do that at the hatchery; is that right?
16 A. Yes, I perform that. Yeah.
17 Q. You do that? You're in charge of that?
18 A. Yes.
19 Q. Do you design the tests?
20 A. Yes, I do at times, uh-huh.
21 Q. Who do you work with on that?
22 A. I work with David Brock primarily in terms
23 of getting the research proposal together.
24 Q. And how does that work? You get a research
25 proposal together, and who do you submit it to?

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1 A. Submit it to my boss, Joy Kinyon, for
2 approval.
3 Q. Okay. All right. And I think I saw David
4 Brock's name a couple of times.
5 A. He's a nutritionist for the company.
6 Q. Nutritionist. Okay. And when was the last
7 time that you were working on a test, some research
8 there at the lab for Rangen?
9 A. It's been a number of years ago. I can't
10 really say exactly when. It's been quite a while.
11 Q. Are there records of that research?
12 A. Yes. Yes, there are.
13 Q. So it would be possible to say what year
14 that was?
15 A. Absolutely. Yeah.
16 MS. KLAHN: Fritz, you know, there's been a lot
17 of talk about that in the depositions. I think it
18 would be helpful for us to know when the last research
19 was run. And nobody seems to know what the year was,
20 so...
21 MR. HAEMMERLE: We'll look into that.
22 MS. KLAHN: Okay. I don't know. Some kind of
23 report or something that would just demonstrate when
24 the last research was done.
25 Q. And these were feed trials?

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1 would be great.
2 MS. McHUGH: That would be great.
3 MR. HAEMMERLE: Put that on your list.
4 MS. KLAHN: Okay.
5 MS. BRODY: And I think we need to be very
6 specific about what it is that you want.
7 MR. HAEMMERLE: And then we'll think about it.
8 MR. MAY: Yeah.
9 MS. KLAHN: Just to discuss that a little bit --
10 MR. HAEMMERLE: Let's go off the record.
11 (Discussion.)
12 MS. McHUGH: We're back on the record.
13 And we had an off-the-record discussion
14 about getting some documents regarding the last -- the
15 research that Rangen has done and the notebooks that
16 you referenced.
17 And it's our understanding that we're going
18 to put that on our list and tailor a request
19 specifically, and that Rangen will respond to that, and
20 that this deposition remains open so that if we have
21 any follow-up questions on that we can go ahead and
22 reset that deposition.
23 MR. HAEMMERLE: If I may, Candice, I'm going to
24 add to that.
25 I think our discussion was that you have

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1 not previously requested the research documents.
2 There's been some matters that have arisen today where
3 you believe those are relevant. So you're going to
4 make a specific request for research documents, and
5 then we'll respond to your request, and based on our
6 response, if that brings up additional questions, that
7 the deposition will remain open for those kind of
8 purposes.
9 MS. McHUGH: Can I look at the subpoena for a
10 second?
11 MR. HAEMMERLE: Is that a fact, Candice? Is
12 that your understanding?
13 MS. McHUGH: Well, I don't have any discovery
14 request to Rangen right here. Our requests are pretty
15 all-inclusive, so I'm not going to say that we haven't
16 asked for that. But I'm happy to make another request.
17 I just wanted to -- I'm just not agreeing with that.
18 MR. HAEMMERLE: Okay.
19 MS. McHUGH: Okay. Fair enough.
20 Q. Mr. Ramsey, you testified that you don't
21 recall when the last research trial that you
22 participated in occurred.
23 Could you estimate, is it within ten years?
24 A. Yes. Definitely.
25 Q. Okay. Is it within five years?

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1 A. I would say it is. Probably about that
2 long.
3 Q. When you were conducting the feeding
4 research trials, how does that information benefit
5 Rangen?
6 A. Well, the one that sticks in my mind most
7 notably is the research project where the stable form
8 of vitamin C was developed, which was a huge
9 improvement for the industry overall nutritionwise.
10 Vitamin C is a requirement in fish feeds
11 and --
12 MR. HAEMMERLE: I'm going to instruct you not to
13 say how much money was made on that particular thing or
14 not.
15 THE WITNESS: Okay.
16 MR. HAEMMERLE: Fair enough?
17 MS. McHUGH: I wasn't planning to ask that
18 anyway.
19 MR. HAEMMERLE: Well, I think Doug might have
20 gone over the cliff.
21 MS. KLAHN: Does he know?
22 Q. (BY MS. McHUGH): So when was that
23 vitamin C research? Do you recall the time period?
24 A. It was going on when I first started with
25 the company back in '87. And like I say, that

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1 particular project was huge for everybody in the
2 industry because that was a major problem trying to
3 provide the required amount of vitamin C in feeds,
4 being a very unstable component in the feeds.
5 We worked this project through the lab and
6 out into the raceways to determine its level of
7 effectiveness and became a huge improvement in fish
8 nutrition for the industry.
9 Q. Does Rangen have a patent on that feed?
10 A. We have -- if there was a patent, which I'm
11 not privy to, I believe -- well, the project had -- was
12 sold to another company.
13 Q. Would -- and what company was that? Do you
14 know?
15 A. I can't say for sure. I just know that
16 that project went away.
17 Q. Any other what you would call major
18 research feeding trials that you've been a part of at
19 Rangen?
20 A. We have performed a number of trials
21 employing different types of ingredients or
22 formulations that are used. I guess the vitamin C is
23 the one that just sticks in my mind at this point.
24 Q. Do you recall what the topic of the last
25 research project -- trial research feeding project was?

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1 A. It's all basically the same water coming
2 off the hillside, first-use.
3 Q. Do you confirm that with any testing, or
4 are you just...
5 A. There has been testing in the past on that,
6 but I don't know that it was separated between, say,
7 Curren Tunnel water and that that's flowing down on the
8 hillside and then piped over to the large raceways. I
9 don't know if that distinction was made in any of the
10 testing.
11 Q. I'm trying to get all of my research
12 questions kind of lumped together, so just one minute.
13 Is Rangen's research limited to feeding
14 trials?
15 A. No.
16 Q. What other research does Rangen do?
17 A. Well, there's a disease component, disease
18 component that's also tested at times after a feeding
19 trial is completed where we will challenge the fish
20 with a live pathogen, such as a bacteria, and see if
21 the ingredient that we've been testing in the feeding
22 trial provides any benefit as far as their immune
23 capabilities or concern to ward off infection from that
24 pathogen, as an example.
25 Q. Okay. Any other besides the disease?

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1 A. There's bench-type research as well done,
2 you know, more on a -- say a chemical basis, testing
3 feeds and things like that.
4 Q. I don't understand what you mean by a
5 "bench."
6 A. Well, it doesn't involve live animals, for
7 instance. Testing the characteristics of a particular
8 ingredient.
9 Q. Can you tell me how that's done.
10 A. Well, sure. There may be some particular
11 characteristics that we want to examine closer in terms
12 of an ingredient.
13 Q. In feed?
14 A. Yes.
15 Q. Okay.
16 A. And that may be in the form of, say, a
17 particular source of pigment, for instance, and we
18 would want to see if that source is better than another
19 source. Pigment being something that's used in feeds
20 to provide a different color in the flesh of fish.
21 Q. And is water used in those bench
22 experiments?
23 A. Yes. It is at times, yes.
24 Q. Is it a limiting factor in that research?
25 A. In that type of work, probably not, because

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1 it's a smaller amount of water that's being used and
2 where fish are not involved.
3 Q. And when was the last time that kind of
4 research was conducted?
5 A. It was done back in the '90s.
6 Q. And why not since then?
7 A. That particular project didn't appear to be
8 cost beneficial.
9 Q. So if I'm understanding Rangen's research
10 correctly, it uses the greenhouse to conduct some of
11 its research; is that true?
12 A. That's right.
13 Q. Does the greenhouse currently have
14 sufficient water to conduct research?
15 A. At this point, no. We're -- we're still
16 waiting for that bump in flow, which we talked about
17 earlier, that really doesn't show up until September.
18 Q. And what is the total capacity of the
19 greenhouse for water flow? Do you know?
20 A. I don't know for sure. We have -- we have
21 a number of tanks in the greenhouse that have flow
22 restrictors on them so that we would have consistent
23 flow in each of the tanks. And I'm sure it could be
24 calculated, but I don't have that number.
25 Q. Do you know how big the tanks are?

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1 A. Yes. We have 24 tanks that are 200 gallons
2 apiece, three tanks that are 400 gallons apiece, and
3 then 48, I believe, that are 30 gallons apiece.
4 Q. And do you know how much of a bump in flow
5 you need in order to meet the capacity of the
6 greenhouse?
7 A. It's not so much -- it's not so much a
8 particular number of cfs we need to have increase to.
9 We just have -- we have that high-water time that
10 allows for fish to be also out in the small raceways as
11 well as inside the greenhouse for experimentation. We
12 don't have enough to do both until September comes
13 around.
14 Q. Do you have enough to do both in September?
15 A. Yes.
16 Q. Okay.
17 A. Yes. That starts that time that we have
18 that window of opportunity inside the greenhouse for
19 that kind of work to be done.
20 Q. And that window goes until February?
21 A. About.
22 Q. Do you know how much water, maximum flow,
23 the hatchery and greenhouse require to both be fully
24 utilized? The greenhouse and the lower raceways, I
25 guess.

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1 a little closer, I believe, the laboratory itself in
2 terms of the address, the phone number.
3 I believe that this -- this letter that was
4 drafted for the customers that explains the various
5 methods that we use at the laboratory for testing on
6 TSS and TP and other parameters, they wanted that cover
7 letter included with the Quality Assurance Plan as an
8 appendix.
9 I see this chain-of-custody form. They may
10 have asked that to be included as an appendix. There
11 was a number of things. I can't remember anything else
12 specifically.
13 Q. The revisions were primarily driven by EPA
14 requirements or changes, though, if I understand what
15 you're saying?
16 A. Yes. Yes, they were.
17 Q. And you were the one responsible for making
18 those changes to the document?
19 A. Yes.
20 Q. Okay. Do you have any certifications as a
21 fish facility researcher or something along those
22 lines?
23 A. Yes, I do.
24 Q. What are those?
25 A. I'm a fish health inspector certified by

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1 the American Fishery Society. That's the only one.
2 Q. Okay. And that allows you to do what?
3 A. As a certified fish health inspector, I can
4 go ahead and do inspections on fish concerning
5 pathogens, testing for those pathogens, and coming up
6 with results on what types of pathogens are found in
7 those fish that I test.
8 Q. And can you contract out to other
9 facilities for that purpose?
10 A. I can if they are accepting of that
11 certification. It's typically up to the person that
12 either is receiving the fish -- for instance, if
13 there's fish in Oregon -- or fish in Idaho that are
14 going to be shipped to Oregon, the regulatory agency in
15 Oregon would have to accept any certification in order
16 for that work to be done and those fish to enter their
17 state.
18 Q. And do you know what the requirements are
19 for the certification?
20 A. It depends on the receiving end.
21 Q. And is there a place that I could go and
22 find that information out? Is there like a website?
23 Or do you know?
24 A. It's different for every state.
25 Q. Okay.

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1 A. I mean it just depends who you're talking
2 about.
3 Q. Fair enough.
4 MR. HAEMMERLE: Candice, on that question, were
5 you asking the requirements for the certification he
6 received, or the certifications required for the
7 out-of-state receiving fish?
8 MS. McHUGH: I was asking for the certification
9 he received.
10 Q. The requirements for the certification you
11 received.
12 MR. HAEMMERLE: That's what I thought.
13 THE WITNESS: Okay.
14 Q. (BY MS. McHUGH): So for you being a
15 certified fish health inspector.
16 A. I see. Every five years I have to go
17 through recertification process, which involves an
18 examination of the amount of time that I've spent as a
19 fish health inspector doing fish disease diagnostics in
20 my work, as well as the amount of continuing education
21 credits that I've accrued through that period of time.
22 Q. Okay. Thank you.
23 I can't seem to get off the research
24 question, so I have to go back to that again.
25 A. Okay.

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1 Q. What research has been on hold or is
2 waiting to be fulfilled if there's more flow at
3 Rangen's facility?
4 A. Most recently it would be a particular
5 ingredient that has some capability of pigmenting fish.
6 Q. Is there a proposal, a research proposal
7 that has been drafted?
8 A. It has not been drafted yet, no.
9 Q. Okay. And how are you aware of this
10 research that needs to happen?
11 A. Through the nutritionist, David Brock.
12 Q. Oral conversations?
13 A. Yes.
14 Q. And do you have a plan for drawing up the
15 proposal?
16 A. Yes.
17 Q. And when is that going to happen?
18 A. Very soon.
19 Q. Okay. And you expect to conduct that
20 research, then?
21 A. Yes, I'm expecting that to happen.
22 Q. This year, starting this year?
23 A. Yes. Probably even this month, actually.
24 Q. Okay. I'd like to ask just a couple kind
25 of housekeeping questions on the fish facilities, if

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHT NOS. 36-02551) Docket No.
AND 36-07694) CM-DC-2011-004
)
(RANGEN, INC.)) VOLUME II
_____) (Pages 168-353)

CONFIDENTIAL
Pursuant to Protective Order Dated August 31, 2012

CONTINUED DEPOSITION OF DOUG RAMSEY
NOVEMBER 13, 2012

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public

THE DEPOSITION OF DOUG RAMSEY was taken on behalf of the City of Pocatello at the offices of May, Browning & May, 516 Hansen Street East, Twin Falls, Idaho, commencing at 9:00 a.m. on November 13, 2012, before Jeff LaMar, Certified Shorthand Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

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Also Present:
Greg Sullivan
Tom Rogers
Wayne Courtney
Joy Kinyon

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1 the last ten years but has been unable to do because of
2 reduced water flows? Do you know?
3 A. I can't give you any specifics on that
4 except to say that each time that the topic has come up
5 for experimentation and I've gone to Lonny to find out
6 how this is going to work with the water flows, he's
7 very much -- he has a problem with that each time.
8 It's been a difficult thing to try and get that worked
9 out logistically with the flows.
10 Q. Is that because the flows are being used
11 for other purposes?
12 A. No. It's normally a case where the
13 experiments would require water -- additional water be
14 used, additional tanks being watered up for the trial.
15 And that additional water is just not available. It
16 jeopardizes the other things that are going on, the
17 other fish.
18 Q. And when you say "additional water," what's
19 the other things going on? What would it divert water
20 from?
21 A. Well, it would divert water from the Idaho
22 Power fish, for instance. And with those being mainly
23 what we're raising at this point there at the hatchery,
24 it jeopardizes those fish.
25 Q. Okay. So does Mr. Tate -- Lonny Tate;

1 right?
2 A. Uh-huh.
3 Q. Does he decide on which research should be
4 done by Rangen?
5 A. No.
6 Q. And who does that?
7 A. Joy Kinyon does.
8 Q. Okay. I'm going back to Exhibit 63.
9 A. Okay.
10 Q. Before I switch gears on that, you said
11 that watering up the tanks for experiments would
12 jeopardize the Idaho Power fish.
13 A. Yes.
14 Q. In what way would it jeopardize the Idaho
15 Power fish?
16 MR. HAEMMERLE: Hold on, Candice. He's fumbling
17 around looking for 63.
18 Is there a question on the table on 63
19 right now?
20 MS. McHUGH: No. I'll just ask him about the
21 Idaho Power fish.
22 Q. How does it jeopardize the Idaho Power
23 fish?
24 MR. HAEMMERLE: When you say "it," you mean how
25 does research affect the Idaho Power fish?

1 Q. (BY MS. McHUGH): What I understood his
2 testimony to be is that if you were to divert any
3 additional water for research purposes, it would
4 jeopardize the Idaho Power fish.
5 Do I understand that correctly?
6 A. Yes.
7 Q. My question is, how?
8 A. Okay. It would definitely affect the flow
9 and density indices that we're obligated to maintain
10 for that contract.
11 Q. In what way?
12 A. As -- well, particularly the flow index,
13 with more water being diverted into other tanks,
14 there's less flow for the Idaho Power fish, and that
15 would increase the flow index to a point that might
16 take it out of compliance with what we've agreed to.
17 Q. Has that actually been analyzed by Rangen?
18 A. I'm not sure if it's been analyzed. If
19 there is a level that we have to maintain for flow
20 index, a low level for the flow index and there's some
21 water that's taken out of that equation, it's going to
22 raise the flow index to a point that could jeopardize
23 that maximum value. I don't think it's been actually
24 penciled out, if that's what you're asking.
25 Q. That's what I'm asking.

1 A. Okay.
2 MS. McHUGH: Could I have you mark this as an
3 exhibit.
4 (Exhibit 87 marked.)
5 Q. (BY MS. McHUGH): You've been handed what's
6 been marked as Exhibit 87.
7 Could you identify that document.
8 A. It's reviews of a number of experiments
9 that have been performed there at the Rangen facility.
10 Q. Do you know who authored this document?
11 A. No, I don't.
12 Q. And it says, "Project No. N0102."
13 Does that tell you anything?
14 A. Yes.
15 Q. What does it tell you?
16 A. That it was a feeding trial performed in
17 2001, and it was the second experiment that was run in
18 that year.
19 Q. Could I have you look at Exhibit 70, which
20 is, I think, the indexes.
21 A. Yes.
22 MR. HAEMMERLE: That's my copy of 70.
23 THE WITNESS: Is that yours?
24 MR. HAEMMERLE: No, go ahead. That's fine.
25 What's the question?

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF	)	
WATER TO WATER RIGHT NOS. 36-02551	)	Docket No.
AND 36-07694	)	CM-DC-2011-004
	)	
(RANGEN, INC.)	)	
	)	

C O N F I D E N T I A L

Pursuant to Protective Order Dated August 31, 2012

DEPOSITION OF DAVID LORING BROCK

JANUARY 22, 2013

REPORTED BY:

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

Notary Public

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1 to the Hagerman facility, research facility, the one
2 that is placing the priority call that's the subject of
3 this matter.
4 A. Okay.
5 Q. So back to the other food species.
6 And you don't recall when salmon research
7 was last done; is that correct?
8 A. Not the specific date, no.
9 Q. And do you recall when that formula was
10 last altered in a major way?
11 A. What formula?
12 Q. Salmon food formula.
13 A. It would probably be consistent with the
14 fat change that we discussed using poultry fat would be
15 applied to some of the salmon feed formulas as well.
16 Q. Okay. So your research on trout feed often
17 carries over to salmon feed, then? Are they similar
18 enough for that?
19 A. Yes, they can be, depending on the nature
20 of the research and the biology of the animals. And if
21 the research applies to the biology of trout and the
22 biology of salmon is similar in that respect, yes, they
23 can.
24 MR. HUTCHINS: Okay. I'm going -- I believe
25 this has already been marked as an exhibit, but I'm

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1 going to introduce it again so we don't have to dig it
2 out.
3 (Exhibit 95 marked.)
4 Q. (BY MR. HUTCHINS): Can you describe for me
5 again, please, the relationship between food
6 formulations and research conducted at the research
7 facility.
8 A. Can you be a little more specific? That's
9 very broad.
10 Q. I believe you said earlier that a new
11 protein source would come to your attention and you
12 would recommend that it be tested prior to being
13 incorporated into the feed formula; is that accurate?
14 A. Yes.
15 Q. So this is a research index which Rangen
16 produced.
17 Are you familiar with this research index?
18 A. Uh-huh, yes.
19 Q. So as I look through this, if there's no
20 research listed on here, can it be said that the food
21 formula was not changed for that year in a significant
22 way?
23 A. No.
24 Q. Is there any way that we can tell -- any
25 record anywhere that we can tell if the research was

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1 changed in a significant way in a year? The formula.
2 I'm sorry.
3 MR. HAEMMERLE: Just so the record's clear,
4 we're referring to Exhibit 95?
5 MR. HUTCHINS: Yes.
6 THE WITNESS: No. On the most recent change
7 that we discussed, the major change of using poultry
8 fat, that would not -- you would not be able to
9 reference this document to see research supporting that
10 change.
11 Q. (BY MR. HUTCHINS): And you are not aware
12 of any documentation which would support that change?
13 MR. HAEMMERLE: That's been asked and answered.
14 And the answer to that question was he's not aware of
15 any documents, but...
16 THE WITNESS: Correct.
17 Q. (BY MR. HUTCHINS): Can you describe your
18 individual role in research at the facility.
19 A. Repeat the question.
20 Q. Can you describe your role in research at
21 the facility.
22 A. At the Rangen research facility?
23 Q. At the Rangen research facility.
24 A. My job there is primarily with regards to
25 research conducted at the Rangen research facility is

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1 to identify either contract research possibilities or
2 in-house research that I think will have benefits for
3 the company.
4 Q. So would you say that you have significant
5 involvement in research done at the research facility,
6 then?
7 A. Define "significant." I mean I
8 participate.
9 Q. You participate. And you come up with the
10 ideas for the research?
11 A. Yes. I'm more or less the idea guy for
12 some of the projects that are conducted down there.
13 Q. Can you give me an idea of what percentage
14 of the projects you come up with the ideas for?
15 A. I don't know the whole scope of the
16 projects that are done down there.
17 Q. Do you -- sorry.
18 A. They don't always involve me.
19 Q. Do you have a list of the ideas you come up
20 with?
21 A. Not a specific written-down list, no.
22 Q. I'm going to refer to Exhibit 95. And
23 let's -- I believe those are in chronological order.
24 If you can just flip to about the time which you
25 started at the facility, which I think you said was

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1 let you ask questions about that list from this
2 witness.
3 THE WITNESS: Okay.
4 MS. McHUGH: Okay. Well, I don't believe the
5 list is protected by attorney-client privilege. I
6 think if he's seen it before today in preparation for
7 the deposition -- I'm making my record.
8 MR. HAEMMERLE: Fine.
9 MS. McHUGH: -- I'm objecting to that. I'm
10 requesting the list. I think we have a right to see
11 what projects Rangen had planned and couldn't perform.
12 And I'm going to ask some questions now of Mr. Brock in
13 aid of my objection.
14 Q. Were you aware that Rangen disclosed you as
15 a witness in this case? Are you aware that Rangen has
16 disclosed you as a witness in this case?
17 MR. HAEMMERLE: You've been disclosed as a
18 witness in this case.
19 THE WITNESS: Yeah. Yes.
20 Q. (BY MS. McHUGH): Do you know when you were
21 disclosed?
22 A. No.
23 Q. I'm going to represent to you that you were
24 disclosed officially as a witness in this case on
25 December 21st of 2011. Subject to check, I don't know

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1 that there's any dispute about that.
2 MS. BRODY: It was 2012.
3 MS. McHUGH: 2012. Excuse me. 2012.
4 Q. Did you know prior to December 21st, 2012,
5 that you were going to be disclosed as a witness in the
6 Rangen delivery call case?
7 A. No.
8 Q. When was the first time you became aware
9 that you were disclosed as a witness in the Rangen
10 delivery call case?
11 MR. HAEMMERLE: Okay. Candice, I'm going to
12 object because I think this whole line of questioning
13 is probably related to something else rather than this
14 list that we're talking about today. If it's related
15 to your claim of prejudice, that we had set this up
16 somehow to your prejudice, I think that's what you're
17 trying to do now, which is different. You know, I
18 don't know what that has to do with this deposition.
19 I'm not going to let you, no matter how many questions
20 you ask, get at the list.
21 MS. McHUGH: Fair enough, Fritz.
22 MR. HAEMMERLE: You know, you can make your
23 arguments to Gary, and we'll have to live with his
24 decision.
25 MS. McHUGH: Absolutely. I'm going to continue

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1 asking --
2 MR. HAEMMERLE: We're willing to do that, and I
3 respect that you have your arguments.
4 MS. McHUGH: Thank you.
5 Q. When you were disclosed as a witness in
6 this case on December 21st, 2012, Rangen stated -- and
7 this can be subject to check for Rangen -- that you
8 were going to testify about -- and I'm going to quote
9 from Rangen's disclosure -- "what type of feed research
10 Rangen could do if more water were available at the
11 facility."
12 MR. HAEMMERLE: Now, if that's your question,
13 you can ask him those questions all day long. You can
14 ask those questions.
15 MS. McHUGH: Okay. I didn't even get to ask my
16 question yet.
17 MR. HAEMMERLE: The disclosure, I think, speaks
18 for itself. He's here to testify to that disclosure.
19 MS. McHUGH: Right. And I'm going to ask him a
20 question now.
21 MR. HAEMMERLE: Okay.
22 Q. (BY MS. McHUGH): So I'm going to ask you
23 the question: What type of feed research could Rangen
24 do if more water were available at the Rangen research
25 facility?

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1 A. We could carry out well-replicated studies
2 on algae, fishmeal replacements, new pigment sources,
3 and so on.
4 Q. Where did you come up with that list that
5 you just gave me?
6 A. I don't understand the question.
7 Q. Was that spontaneous --
8 A. I generated it in my mind, and I can't tell
9 you exactly what part of the brain it came from.
10 Q. Spontaneous today?
11 A. Yeah.
12 Q. Have you ever written down whether or not
13 what projects you -- Rangen could do if more water were
14 available at the Rangen research facility?
15 A. Have I ever?
16 Q. Yes.
17 A. Yes.
18 Q. And who did you communicate that list to?
19 Who did you send that list to? Okay. Let's back up.
20 When did you create such a list?
21 A. 2012, seems like fall, winter --
22 Q. Did you ever --
23 A. -- or late summer.
24 MR. HAEMMERLE: I'm going to object. You're
25 asking about the attorney-client privileged document,

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1 likely, that we requested.
2 MS. McHUGH: Is Rangen planning to call this
3 witness to testify what type of feed research Rangen
4 could do if more water were available at its facility?
5 MR. HAEMMERLE: Yes. And you can ask those
6 questions, and you did. And he answered.
7 Q. (BY MS. McHUGH): And he's written it down
8 on a list.
9 A. No, it wasn't just feed research on the
10 list.
11 Q. What kind of research was on the list?
12 A. Other.
13 Q. Explain.
14 A. I mean there were all sorts of possible
15 research that we have an interest in finding the
16 answers to.
17 Q. Did you look at any documents to come up
18 with the possible types of research that Rangen would
19 be interested in performing?
20 A. Documents?
21 Q. Any prior research documents?
22 A. No.
23 Q. How did you come up with the list?
24 MR. HAEMMERLE: I'm going to object to reference
25 to the list. I'm going to object all day long if

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1 you're asking about the list. If you're asking about
2 projects that Rangen can or can't do because of lack of
3 water and what documents he may have reviewed in
4 developing that type of opinion, ask all day long, just
5 so long as you don't ask and re-ask your question.
6 Q. (BY MS. McHUGH): So I understand from your
7 answer to my question on what type of feed research
8 Rangen could do if more water were available at the
9 facility that it would be pigment research.
10 Is that true?
11 A. Possible, yes.
12 Q. When you say "possible," explain.
13 A. I've recently been approached by a company
14 that is developing a new pigment that is coming out of
15 Japan that is a natural pigment. The ones we currently
16 use are synthetic. And its effectiveness in pigmenting
17 fish is worthy of evaluation.
18 Q. And how much flow is needed to do a pigment
19 test, research test?
20 A. As I've said before, I'm not the flow guy.
21 I can't tell you.
22 Q. So Mr. Ramsey would be the flow guy?
23 A. Yes, and the -- and the hatchery staff.
24 Q. Of the list of the type of feed research
25 Rangen could do if it had more water, how much more

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1 water does it need in order to do the research that you
2 just testified to earlier, the other research, the
3 pigment research?
4 A. As I said before, I'm the idea guy. I'm
5 not the guy that says how much water it's going take to
6 run it.
7 Q. Okay. Thank you.
8 Earlier in response to a question by
9 Ryland, you said something, and I missed it, about
10 flagship diet. And I think you used like some numerals
11 and some numbers.
12 Could you tell me what is considered
13 Rangen's flagship diet? Do you recall that part of
14 your testimony earlier?
15 A. Yeah, but I can't recall the -- I mean I
16 actually remembered it as being our EXTR 400 diet.
17 Q. EXTR --
18 A. 400 or 450. Those are our two mainstay
19 trout diets.
20 Q. Okay. Simply a clarification question.
21 Several times you testified about asset
22 issues and water issues on reasons why research may not
23 be conducted or completed in answer to Mr. Ryland's
24 questions.
25 Could you explain to me what you mean by

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1 "asset issues."
2 A. Asset or acid?
3 Q. Oh, I thought you said asset, like asset.
4 MR. HAEMMERLE: I think he did. Anyway.
5 Q. (BY MS. McHUGH): Like a-s-s-e-t.
6 A. Right.
7 Q. So I'm talking about that, asset issues.
8 A. Right. And we discussed that before. I
9 think Ryland might have asked what assets were, and I
10 said water --
11 Q. Okay.
12 A. -- manpower are the primary ones, when
13 we're looking at doing research. But we also -- I also
14 mentioned the availability of the ingredient.
15 Q. Okay. When you say "manpower," can you
16 elaborate a little bit on that. Is it manpower at the
17 research facility itself?
18 A. Yes.
19 Q. Was the ability of Rangen to do research
20 greater when Ms. Peterschmidt was employed by Rangen?
21 A. I guess I haven't thought through our
22 abilities then versus our abilities now.
23 Q. Would the loss of Ms. Peterschmidt have
24 been a manpower asset issue?
25 A. Yeah. I mean she was a good researcher.

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF)
WATER TO WATER RIGHT NOS. 36-02551) Docket No.
AND 36-07694) CM-DC-2011-004
)
(RANGEN, INC.))
_____)

C O N F I D E N T I A L
Pursuant to Protective Order Dated August 31, 2012

DEPOSITION OF JOY KINYON
SEPTEMBER 10, 2012

REPORTED BY:
JEFF LaMAR, C.S.R. No. 640
Notary Public

THE DEPOSITION OF JOY KINYON was taken on behalf of the City of Pocatello at the offices of May, Browning & May, 516 Hansen Street East, Twin Falls, Idaho, commencing at 1:02 p.m. on September 10, 2012, before Jeff LaMar, Certified Shorthand Reporter and Notary Public within and for the State of Idaho, in the above-entitled matter.

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30 - Spreadsheet of fish production, Bates Nos. Rangen001917-001919 69
31 - Rangen Research Hatchery and Fall Creek Hatchery Monthly Report, 1994, Bates Nos. Rangen002116-002119 76
32 - Spreadsheet of fish production, 1998, Bates Nos. Rangen002002-002003 83
33 - Miscellaneous file, Bates Nos. Rangen003750-003774 94
34 - Annual Report file, Bates Nos. Rangen003708-003732 96

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1 A. Yes.
2 Q. Is that a common occurrence?
3 A. Yes.
4 Q. And what do you do to respond when a
5 disease is detected?
6 A. When detected, we may treat it, if
7 treatable.
8 Q. Using antibiotics?
9 A. Yes.
10 Q. Are there other things you use to treat
11 disease?
12 A. Did you say are there other --
13 Q. Are there other things you use besides
14 antibiotics?
15 A. I'm not aware of any.
16 Q. Are you currently conducting research
17 within this facility?
18 A. No.
19 Q. When was the last time you performed
20 research within the facility?
21 A. I'd be guessing. Three, four, five years
22 ago.
23 Q. How come research has not been performed in
24 the last three or four or five years?
25 A. Not enough water.

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1 Q. Are there any other reasons?
2 A. No.
3 Q. Has Rangen done anything to adapt -- strike
4 that question.
5 Is Rangen doing research at any other fish
6 facilities?
7 A. Yes.
8 Q. Which facilities?
9 A. Annually we work with Texas A&M and
10 participate through supplying feeds to one or two of
11 their research facilities down there. Also we work
12 fairly closely with Auburn University on some of their
13 research.
14 Q. Anywhere else?
15 A. Those are the ones that come to mind.
16 Q. During the time that you've worked for
17 Rangen, have they done research at any other facilities
18 in Idaho?
19 A. Yes.
20 Q. Where?
21 A. At First Assent.
22 Q. Where is that?
23 A. Buhl.
24 Q. Okay.
25 A. I don't recall specifically, but we've

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1 worked with the University of Idaho in Hagerman in
2 support of some of their feeding trials. That's all
3 that comes to mind.
4 Q. How long have you worked with Texas A&M?
5 A. More than 15 years.
6 Q. And can you explain to me that business
7 relationship.
8 A. It varies on a year-to-year basis. Some
9 year we may sponsor the complete study that they're
10 doing, other years we may just -- on the opposite end
11 of the spectrum, we may be just a -- donating feed to
12 their project in exchange for their results.
13 Q. So do they do feed trials for Rangen, then?
14 A. They have, yes.
15 Q. Do they do research at Rangen's request?
16 A. They have.
17 Q. And what about Auburn, what's your business
18 relationship with Auburn University?
19 A. We're more of a feed supplier to their
20 trials. We have not sponsored any direct research over
21 there with them. We have a good relationship with
22 Dr. Alan Davis.
23 Q. He's with Auburn?
24 A. Yes. He runs that program over there.
25 Q. When you provide feed, do you get the

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1 results of their trials?
2 A. Typically, yes.
3 Q. Who do you work with at Texas A&M
4 primarily?
5 A. Tzachi Samocha. Don't ask me how to spell
6 it.
7 Q. And what's your relationship been with
8 First Assent?
9 A. First Assent is a feed customer. And we
10 also lease -- built and leased a warm-water research
11 facility from First Assent for about ten years.
12 Q. You leased it from them?
13 A. We built it and leased the space and
14 primarily the water.
15 Q. Where is that located?
16 A. Buhl.
17 Q. Their facility was in Buhl?
18 A. North of Buhl, yes.
19 Q. Has First Assent done research for Rangen?
20 A. No.
21 Q. They have done feed studies, feed trials?
22 A. No.
23 Q. What about U of I, have they done research
24 for Rangen?
25 A. Yes.

BEFORE THE DEPARTMENT OF WATER RESOURCES

OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF	)	
WATER TO WATER RIGHT NOS. 36-02551	)	Docket No.
AND 36-07694	)	CM-DC-2011-004
	)	
(RANGEN, INC.)	)	VOLUME II
	)	(Pages 104-231)

C O N F I D E N T I A L

Pursuant to Protective Order Dated August 31, 2012

CONTINUED DEPOSITION OF JOY KINYON

MARCH 21, 2013

REPORTED BY:

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

Notary Public

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1 Q. Okay. If it's mismanufactured, is it
2 necessarily unsellable to a customer?
3 A. Probably in that form, if it's
4 mismanufactured.
5 Q. And if it's mismanufactured, would it then
6 be used at the hatchery, then, potentially?
7 A. Not necessarily, no.
8 Q. Okay. Sometimes is it used at the
9 hatchery, if it's mismanufactured?
10 A. Again, it depends. If it's just a size
11 issue, it may not have enough float or sink, yeah, we
12 could use it at the hatchery.
13 Q. Okay. Do your duties include reviewing
14 potential research projects?
15 A. Yes.
16 Q. And approval of potential research
17 projects?
18 A. Yes.
19 Q. Execution of research projects?
20 A. No.
21 Q. And the reason I ask about execution is
22 because some of the articles that we were provided by
23 Rangen have your name as an author. So I wondered if
24 you were actually involved in any of the research.
25 A. Well, again, as far as the review of the

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1 project and approval of the project, yes, I am.
2 Q. Okay. You're not out there helping Lonny
3 move fish or something like that?
4 A. I try not to be.
5 Q. Do your duties involve fish-stocking
6 decisions?
7 A. Yes.
8 Q. Hiring and firing of employees at the
9 Hagerman facility?
10 A. Yes.
11 Q. At the Buhl office?
12 A. Yes.
13 Q. And there was a deposition duces tecum that
14 was issued today, and we asked for --
15 Do we have a copy of that?
16 MS. McHUGH: No.
17 Q. (BY MS. KLAHN): We asked for materials
18 related to employee numbers and employee jobs or tasks,
19 I guess.
20 Do you know if any of that information was
21 sought out?
22 A. I think we have a list of employees or past
23 employees who had worked at the hatchery.
24 Q. Okay. Well, maybe we can get that.
25 MR. HAEMMERLE: You issued the same subpoena

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1 duces tecum to both Joy and Wayne; correct?
2 MS. KLAHN: Yeah.
3 MR. HAEMMERLE: Here's the response that Wayne
4 provided, which contains the measurements as well as
5 the list of employees, so...
6 MS. McHUGH: I'll go make a copy of this really
7 fast.
8 MR. HAEMMERLE: We have copies.
9 MS. McHUGH: Okay. So we can just have this
10 entered.
11 MS. KLAHN: Thank you.
12 MS. McHUGH: Yeah. Thanks, Fritz.
13 (Exhibit 245 marked.)
14 Q. (BY MS. KLAHN): All right. Mr. Kinyon, is
15 it okay if I call you Joy?
16 A. Yes.
17 Q. Would you take a look at Exhibit 245. And
18 this is a subpoena -- a Notice of Deposition Subpoena
19 Duces Tecum for Wayne Courtney, however, we issued one
20 with the same requests for you.
21 Did you review either this one or the duces
22 tecum that was sent for you?
23 A. Yes. I think there were two or three
24 different versions that came over.
25 MS. McHUGH: Granted. But the substance was the

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1 same.
2 THE WITNESS: And I think I reviewed the most
3 current version.
4 Q. (BY MS. KLAHN): Well, the only thing that
5 changed was the date and time, and that was just to
6 make sure you were paying attention. I'm just joking.
7 So I was asking you about the third bullet
8 point on page 2 of Exhibit 245, "All documents kept in
9 the ordinary course of Rangen's business that reflect
10 the number of employees and nature of the positions
11 held from 1990 to the present."
12 Do you see that?
13 A. Yes.
14 Q. And can you page through here and tell me
15 what it was that you provided that you believe is
16 responsive to that.
17 A. It would be the list of names that's the
18 papers entitled "Employees for Rangen, Inc.
19 Hatchery/Research from 1990 through Present."
20 Q. And is this a document you keep in the
21 ordinary course of business?
22 A. No.
23 Q. Was this created in response to the
24 deposition duces tecum?
25 A. I don't know.

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1 would have a substantial part of that.
2 Q. Okay. Is it your understanding that you'd
3 have an additional 18 cfs at all times during the year,
4 or would that fluctuate, would that amount fluctuate
5 throughout the year?
6 A. Well, I guess I was trying to describe my
7 answer to my earlier question, I would expect that it
8 would be close to that increase. If it's 18 cfs, is
9 that 18 -- my understanding, that's steady-state flow,
10 right, under the model?
11 Q. Uh-huh. Go ahead.
12 THE WITNESS: Am I saying something I shouldn't
13 be saying?
14 MR. HAEMMERLE: You don't get to ask her
15 questions.
16 THE WITNESS: Okay.
17 Q. (BY MS. McHUGH): And, Joy, the reason I'm
18 asking these questions is because I think this is the
19 critical part of the case, is what Rangen expects to
20 get from curtailment and how you're going to use that
21 water that you're expecting to get from curtailment.
22 And that's what I'm trying to understand. And so
23 that's what I'm trying to get.
24 So your understanding is you will get 17 to
25 18 cfs over a period of time from curtailment of junior

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1 users. And it's your understanding that that 17 or
2 18 cfs will accrue -- occur at all times during the
3 year?
4 MR. HAEMMERLE: Objection. Is there a question
5 on the table or --
6 Q. (BY MS. McHUGH): Is that your
7 understanding, that it will accrue at all times during
8 the year?
9 A. My understanding is if our average flow
10 today is 16, as I previously said, that under a
11 curtailment scenario we would gain 18 cfs, so our
12 average flow then would be 16 plus 18, so our average
13 flow would be 34 cfs.
14 Q. And naturally in an average there -- some
15 months there would be less and some months there could
16 be more; is that your understanding?
17 A. Yes.
18 Q. Was this information, this kind of
19 information on the expectation of the amount of water
20 Rangen could expect over time from curtailment of
21 junior users, discussed prior to making the delivery
22 call in 2011?
23 A. The amount of water that we could recover?
24 Q. Yes.
25 A. Not any specific amounts.

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1 Q. Okay. Have you discussed the amount of
2 water that Rangen could expect to recover from
3 curtailment of junior users with your hatchery staff?
4 A. No.
5 Q. Have you discussed that with anyone at
6 Rangen?
7 A. Yes.
8 Q. And who would that be?
9 A. Primarily, with Wayne Courtney.
10 Q. And what were the nature of those
11 discussions?
12 A. Well, probably more me questioning to help
13 me understand the results of the model, what ESPAM-2.1
14 was showing and how we would -- how much -- I guess his
15 question to me was how much more fish we could raise
16 and how many more feeding trials we could conduct.
17 Q. And were you able to answer those questions
18 for him?
19 A. No. I have not answered those yet.
20 Q. Do you --
21 A. Specifically answered those questions.
22 Q. Are you doing some sort of analysis or do
23 you plan to be able to answer those questions?
24 A. Well, I've already given him an answer, in
25 general. A general answer is absolutely we can raise

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1 more fish with more water, and we can conduct more
2 feeding trials with research -- conduct more research
3 with more water.
4 Q. When did Mr. Courtney ask you that
5 question?
6 A. I'd say within the last two months.
7 Q. Do I understand your testimony to mean --
8 to say that Rangen does not know how it would
9 specifically use the additional water that it expects
10 to recover from the curtailment of junior groundwater
11 users?
12 A. No, that's not my testimony at all.
13 Q. Okay.
14 A. It's actually we know what we would do.
15 Q. Okay.
16 A. As far as immediately we would get more
17 fish into the raceway to take advantage of the water,
18 and we'd begin immediately trying to figure out what
19 we're going to do specifically on research.
20 Q. But you're not sure exactly when the amount
21 of water will be available to Rangen? You don't have
22 an understanding of that?
23 A. That's correct.
24 Q. If I could have you look at Exhibit 245.
25 And that's the Joint Notice of Continued Deposition

EXHIBIT B

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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 (RANGEN, INC.)	Docket No. CM-DC-2011-004 **RANGEN, INC.'S RESPONSE TO IGWA'S FIFTH SET OF DISCOVERY**

COMES NOW, Rangen, Inc. ("Petitioner"), by and through its counsel of record, and responds to IGWA's Fifth Set of Discovery as follows:

GENERAL OBJECTIONS

1) Petitioner objects to the Requests to the extent that they seek information protected by the attorney-client privilege, the work product doctrine or any other applicable privilege or immunity.

2) Petitioner objects to the Requests as premature, burdensome, and improper to the extent they seek factual information in support of Petitions and Claims that Petitioner has not had opportunity to fully prepare and for which Petitioner may require discovery from Plaintiffs or others. These responses are subject to the discovery or recollection of additional information, knowledge, or facts.

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

INTERROGATORIES

INTERROGATORY NO. 35: Please state what type of research, feed or other types, Rangen planned to conduct since 1985, if more water was available at the Rangen facility. For each type of research, answer the following:

a. When did the idea for each type of research first occur?

b. Whose idea was it?

c. Are there any contemporaneous writings that would support when the idea for the research first occurred?

d. Identify the quantity of water needed to conduct such research.

e. How was the amount of water needed determined?

f. Who determined the quantity of water needed to conduct such research?

g. Who determined that there was not enough water available to conduct the research?

h. Identify all underlying facts to support the possibility of each type of research.

i. The persons(s) possessing knowledge or information of such research.

j. All facts and data to support the necessary quantity of water required for each type of research.

k. Identify all documents which support your answer.

RESPONSE TO INTERROGATORY NO. 35: Objection. This interrogatory is overly broad, burdensome, not likely to lead to the discovery of relevant evident, and inconsistent with the scope of the inquiry that Director Spackman specified in the Order Denying IGWA and Pocatello's Motion to Compel Production of Research List; Order Shortening Time for Interrogatory. Without waiving said objections, Rangen states that it does not maintain a database or centralized repository containing information related to research projects that it planned, but was unable to carry out because of low water flows and is unable to provide the information requested. When Rangen encounters a water limitation on its research, it is handled informally and without documentation. For example, David Brock testified during his deposition that Lonny Tate had recently come to him and Joy Kinyon and told them that there probably would not be enough water flow in the small raceways to conduct a planned research study. See Brock Depo., p. 123, line 25 – p. 125, line 2. No documentation of this type of conversation exists. ***Rangen generally does not document the research that it cannot do, but instead, plans what it can do with the water flows it has available.***

Rangen has been dealing with, and adapting to, declining water flows at its Research Hatchery for decades. For example, in 2001, Rangen lost a batch of fish that were slated to be used in a raceway experiment identified as N0202. The remaining fish that Rangen had available were not the proper size, and, as a result, Rangen had to delay the start of the experiment. Because of low water flows, there was concern as to whether a raceway experiment could be conducted at the time the available fish would be the proper size; the decision was made to cancel the raceway experiment and conduct it in the greenhouse. See computer file called Timeline winter 2001 RW produced on 3/12/13; see also computer file called "WCG Final Draft" produced on October 9, 2012.

Rangen's water flows have declined, its ability to perform research in the hatchery raceways has been impaired because, among other things, by the inability to conduct studies that have a sufficient number of replicates to achieve statistically significant results. For example, in 1997 Rangen conducted a study to evaluate the use of poultry by-product meal as a substitute for fish meal in trout diets. See RANGENWJ001788. Researchers recommended that the study be continued in a raceway setting to evaluate how poultry by-product meal impacted growth to market size

in a production setting. See *id.* at p. 2 of the study. Researchers actually recommended using another facility in order to increase replication and stocking density. See *id.*

Rangen's records also show that Rangen conducted a feed trial beginning in the Fall of 1999 to compare its existing 450 feed with an "improved" version for the same feed. The final report for that study shows that the number of replicates involved in the study had to be reduced due to water and space limitations and this impacted the overall statistical sensitivity of the study. RANGENWJ001076, p. 5 of adobe pdf file (there are no Bates Nos. or page numbers on the document itself). Some notes pertaining to that study state:

> Experiment: N0003
> Title: 450 vs. 450 improved
> Location: Hagerman Raceways
> Start: Sep 24, 1999
> End: Mar 9, 2000
> Abstract: A total of six raceways were fed either the standard EXTR 450 diet or an improved formulation. Fish were all female RBT, graded tops out of the hatch house. On Nov 16th, the fish were condensed into four raceways in the CTR's due to water and space limitations. In January an episode of gill problems and higher mortality was experienced. The experiment was terminated on two different dates, again due to space limitations and production needs.
>
> Results: While statistical significance is limited due to low number of replicates, the improved 450 appears to have performed better. FCR = .98 vs. 1.14, End Wt. = 390 gms. Vs. 338 and mortality = 4.15% vs. 9.66%.

See computer file titled "Research Summary as of 2.25.01" produced on October 9, 2012 (emphasis added).

The final report for Experiment N0004, another feed study, provide similar information concerning the lack of replication and the impact it has on the statistical analysis. See RANGENWJ001096. Some notes pertaining to that study state:

> Experiment: N0004
> Title: 45/16 vs. 45/21
> Location: Hagerman Raceways
> Start: Oct 27, 1999
> End: Mar 14, 2000
>
> Abstract: a total of six raceways were fed either the standard EXTR 450 at 16% fat, or 450 formulated with 21% fat (this was the diet with the best

> performance potential from the greenhouse study N9904). Sibling fish, which were double graded tops of all female RBT, where stocked into two series of three raceways and held there for the duration of the test. ***Fish did need thinning in mid February due to crowding and declining water.*** All fish were terminated within a two day period, with final sample counts and full raceway weigh-up. ***The limited number of replicates reduced the statistical significance of the results.*** Fish on the higher fat 45/21diet were larger at the end of the test, but there was no real difference in FCR or mortality. Cost/lb gain favored the standard 45/16 formulation.

See computer file titled "Research Summary as of 2.25.01" produced on October 9, 2012 (emphasis added).

Rangen attempted to address the replication problem at the Research Hatchery by using using "cages" in the raceways. The cages were put in a raceway (one in front of the other) and each cage was treated as a replicate. See, e.g., RANGENWJ001782. The cages were not able to address the replication problem, however, because the quality of the water decreased as it flowed through each successive cage thereby introducing another variable into the study being conducted.

INTERROGATORY NO. 36: For each type of research identified above, please state what other factors besides water quantity hampered the research from being conducted or completed at the Rangen facility. For each factor, answer the following:

a. All underlying facts to support your answer.

b. The person(s) possessing knowledge or information regarding your response.

c. Identify all documents which support your answer.

RESPONSE TO INTERROGATORY NO. 36: Objection. This interrogatory is vague and ambiguous. Without waiving said objection, see response to Interrogatory No. 35.

REQUEST FOR PRODUCTION NO. 21: Please produce all documents that you identified in your answers to Interrogatory Nos. 35 and 36 above and all documents that support your answers to Interrogatory Nos. 35 and 36 above.

RESPONSE TO REQUEST FOR PRODUCTION NO. 21: The documents cited in Rangen's Response to Interrogatory Nos. 35 and 36 were previously produced.

DATED this 13th day of March, 2013.

BRODY LAW OFFICE, PLLC

By _____
Robyn M. Brody

VERIFICATION

STATE OF IDAHO)
) ss
County of Twin Falls)

Joy Kinyon, being first duly sworn, on oath, deposes and says.

That he is the General Manager of the General Feeds and Aquaculture divisions of Rangen, Inc., that he has read the foregoing RANGEN, INC.'S RESPONSE TO CITY OF POCATELLO'S DISCOVERY REQUESTS TO RANGEN MADE PURSUANT TO MARCH 4, 2013 ORDER DENYING IGWA AND POCATELLO'S MOTION TO COMPEL PRODUCTION OF RESEARCH LIST, knows the contents thereof, and the facts stated he believes to be true.

_____
Joy Kinyon

SUBSCRIBED AND SWORN to before me this ____ day of March, 2013.

_____
Notary Public for State of Idaho
Residing at _____, therein.
Commission Expires:_____

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 13th day of March, 2013 she caused a true and correct copy of the foregoing document to be served by email and first class U.S. Mail, postage prepaid upon the following:

Original: Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 Deborah.Gibson@idwr.idaho.gov	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
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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 (RANGEN, INC.)	Docket No. CM-DC-2011-004 **RANGEN, INC.'S RESPONSE TO CITY OF POCATELLO'S DISCOVERY REQUESTS TO RANGEN MADE PURSUANT TO MARCH 4, 2013 ORDER DENYING IGWA AND POCATELLO'S MOTION TO COMPEL PRODUCTION OF RESEARCH LIST**

COMES NOW, Rangen, Inc. ("Petitioner"), by and through its counsel of record, and responds to City of Pocatello's Discovery Requests to Rangen Made Pursuant to

March 4, 2013 Order Denying IGWA and Pocatello's Motion to Compel Production of Research List as follows:

GENERAL OBJECTIONS

1) Petitioner objects to the Requests to the extent that they seek information protected by the attorney-client privilege, the work product doctrine or any other applicable privilege or immunity.

2) Petitioner objects to the Requests as premature, burdensome, and improper to the extent they seek factual information in support of Petitions and Claims that Petitioner has not had opportunity to fully prepare and for which Petitioner may require discovery from Plaintiffs or others. These responses are subject to the discovery or recollection of additional information, knowledge, or facts.

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

INTERROGATORIES, REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION

REQUEST FOR ADMISSION NO. 1: Please admit that the availability of water supplies is one of the **FACTORS RANGEN** has taken into account in determining which **RESEARCH PROJECTS** to pursue.

RESPONSE TO ADMISSION NO. 1: Admit.

INTERROGATORY NO. 1: If **YOU** admit Request for Admission No. 1 above, please list the other **FACTORS RANGEN** has taken into account in determining which **RESEARCH PROJECTS** to **INITIATE**.

RESPONSE TO INTERROGATORY NO. 1: When evaluating whether to take on a research project, in addition to water availability, Rangen takes into account the research needs of the feed division, research needs of customers, the likelihood of success of the project, estimated costs involved, and the potential application of research results.

INTERROGATORY NO. 2: If **YOU** admit Request for Admission No. 1 above, list the **RESEARCH PROJECTS** that **RANGEN** did not **INITIATE** for which insufficient water supplies was the deciding **FACTOR**.

RESPONSE TO INTERROGATORY NO. 2: Objection. This interrogatory is overly broad, burdensome, not likely to lead to the discovery of relevant evident, and inconsistent with the scope of the inquiry that Director Spackman specified in the Order Denying IGWA and Pocatello's Motion to Compel Production of Research List; Order Shortening Time for Interrogatory. Without waiving said objections, Rangen states that it does not maintain a database or centralized repository containing information related to research projects that it planned, but was unable to carry out because of low water flows and is unable to provide the information requested. When Rangen encounters a water limitation on its research, it is handled informally and without documentation. For example, David Brock testified during his deposition that Lonny Tate had recently come to him and Joy Kinyon and told them that there probably would not be enough water flow in the small raceways to conduct a planned research study. See Brock Depo., p. 123, line 25 – p. 125, line 2. No documentation of this type of conversation exists. ***Rangen generally does not document the research that it cannot do, but instead, plans what it can do with the water flows it has available.***

Rangen has been dealing with, and adapting to, declining water flows at its Research Hatchery for decades. For example, in 2001, Rangen lost a batch of fish that were slated to be used in a raceway experiment identified as N0202. The remaining fish that Rangen had available were not the proper size, and, as a result, Rangen had to delay the start of the experiment. Because of low water flows, there was concern as to whether a raceway experiment could be conducted at the time the available fish would be the proper size; the decision was made to cancel the raceway experiment and conduct it in

the greenhouse. See computer file called Timeline winter 2001 RW produced on 3/12/13; see also computer file called "WCG Final Draft" produced on October 9, 2012.

Rangen's water flows have declined, its ability to perform research in the hatchery raceways has been impaired because, among other things, by the inability to conduct studies that have a sufficient number of replicates to achieve statistically significant results. For example, in 1997 Rangen conducted a study to evaluate the use of poultry by-product meal as a substitute for fish meal in trout diets. See RANGENWJ001788. Researchers recommended that the study be continued in a raceway setting to evaluate how poultry by-product meal impacted growth to market size in a production setting. See *id.* at p. 2 of the study. Researchers actually recommended using another facility in order to increase replication and stocking density. See *id.*

Rangen's records also show that Rangen conducted a feed trial beginning in the Fall of 1999 to compare its existing 450 feed with an "improved" version for the same feed. The final report for that study shows that the number of replicates involved in the study had to be reduced due to water and space limitations and this impacted the overall statistical sensitivity of the study. RANGENWJ001076, p. 5 of adobe pdf file (there are no Bates Nos. or page numbers on the document itself). Some notes pertaining to that study state:

> Experiment: N0003
> Title: 450 vs. 450 improved
> Location: Hagerman Raceways
> Start: Sep 24, 1999
> End: Mar 9, 2000
> Abstract: A total of six raceways were fed either the standard EXTR 450 diet or an improved formulation. Fish were all female RBT, graded tops out of the hatch house. On Nov 16th, the fish were condensed into four raceways in the CTR's due to water and space limitations. In January an episode of gill problems and higher mortality was experienced. The experiment was terminated on two different dates, again due to space limitations and production needs.
>
> Results: While statistical significance is limited due to low number of replicates, the improved 450 appears to have performed better. FCR = .98 vs. 1.14, End Wt. = 390 gms. Vs. 338 and mortality = 4.15% vs. 9.66%.

See computer file titled "Research Summary as of 2.25.01" produced on October 9, 2012 (emphasis added).

The final report for Experiment N0004, another feed study, provide similar information concerning the lack of replication and the impact it has on the statistical analysis. See RANGENWJ001096. Some notes pertaining to that study state:

> Experiment: N0004
> Title: 45/16 vs. 45/21
> Location: Hagerman Raceways
> Start: Oct 27, 1999
> End: Mar 14, 2000
>
> Abstract: a total of six raceways were fed either the standard EXTR 450 at 16% fat, or 450 formulated with 21% fat (this was the diet with the best performance potential from the greenhouse study N9904). Sibling fish, which were double graded tops of all female RBT, where stocked into two series of three raceways and held there for the duration of the test. ***Fish did need thinning in mid February due to crowding and declining water.*** All fish were terminated within a two day period, with final sample counts and full raceway weigh-up. ***The limited number of replicates reduced the statistical significance of the results.*** Fish on the higher fat 45/21diet were larger at the end of the test, but there was no real difference in FCR or mortality. Cost/lb gain favored the standard 45/16 formulation.

See computer file titled "Research Summary as of 2.25.01" produced on October 9, 2012 (emphasis added).

Rangen attempted to address the replication problem at the Research Hatchery by using using "cages" in the raceways. The cages were put in a raceway (one in front of the other) and each cage was treated as a replicate. See, e.g., RANGENWJ001782. The cages were not able to address the replication problem, however, because the quality of the water decreased as it flowed through each successive cage thereby introducing another variable into the study being conducted.

INTERROGATORY NO. 3: For each **RESEARCH PROJECT** identified in Interrogatory No. 2 above, please provide the following information:

a. The hypothesis to be tested by the **RESEARCH PROJECT**.

b. The date the decision was made not to **INITIATE** the **RESEARCH PROJECT**.

c. The names and contact information of any **RANGEN** personnel involved

in the decision not to **INITIATE** the **RESEARCH PROJECT**.

d. What additional amount of water **RANGEN** personnel determined was required to **INITIATE** the **RESEARCH PROJECT**.

RESPONSE TO INTERROGATORY NO. 3: See Response to Interrogatory No. 2.

REQUEST FOR PRODUCTION NO. 1: Please **PRODUCE** all **DOCUMENTS** that are **RELEVANT** to the Discovery Requests made above.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1: See documents cited in Response to Interrogatory No. 2.

INTERROGATORY NO. 4: Please provide a list of all individuals, their professional positions, whether or not they are presently associated with **RANGEN**, and contact information, for those individuals who participated in answering these Discovery Requests.

RESPONSE TO INTERROGATORY NO. 4: Joy Kinyon, the manager of General Feeds and Aquaculture Divisions, David Brock and Doug Ramsey participated in answering these discovery requests.

DATED this 13th day of March, 2013.

BRODY LAW OFFICE, PLLC

By _____
Robyn M. Brody

VERIFICATION

STATE OF IDAHO)
) ss
County of Twin Falls)

Joy Kinyon, being first duly sworn, on oath, deposes and says.

That he is the General Manager of the General Feeds and Aquaculture divisions of Rangen, Inc., that he has read the foregoing RANGEN, INC.'S RESPONSE TO CITY OF POCATELLO'S DISCOVERY REQUESTS TO RANGEN MADE PURSUANT TO MARCH 4, 2013 ORDER DENYING IGWA AND POCATELLO'S MOTION TO COMPEL PRODUCTION OF RESEARCH LIST, knows the contents thereof, and the facts stated he believes to be true.

Joy Kinyon

SUBSCRIBED AND SWORN to before me this 13th day of March, 2013.

Notary Public for State of Idaho
Residing at Filer, Idaho, therein.
Commission Expires: 9-5-15

CINDY KOEPPLIN
NOTARY PUBLIC
STATE OF IDAHO

CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, hereby certifies that on the 13th day of March, 2013 she caused a true and correct copy of the foregoing document to be served by email and first class U.S. Mail, postage prepaid upon the following:

Original: Director Gary Spackman Idaho Department of Water Resources P.O. Box 83720 Boise, ID 83720-0098 Deborah.Gibson@idwr.idaho.gov	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
Garrick Baxter 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	Hand Delivery ☐ U.S. Mail ☐ Facsimile ☐ Federal Express ☐ E-Mail ☐
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Robyn M. Brody