

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF THE THIRD AMENDED
MITIGATION PLAN FILED BY THE IDAHO
GROUND WATER APPROPRIATORS FOR THE
DISTRIBUTION OF WATER TO WATER RIGHT
NOS. 36-02551 & 36-07694 IN THE NAME OF
RANGEN, INC.

Docket No. CM-MP-2014-005

**ORDER DENYING JOINT MOTION TO
DISMISS IGWA'S AMENDED THIRD
MITIGATION PLAN**

BACKGROUND

On June 10, 2014, the Idaho Ground Water Appropriators, Inc. ("IGWA"), filed *IGWA's Amended Third Mitigation Plan and Request for Hearing* ("Third Mitigation Plan") with the Director ("Director") of the Idaho Department of Water Resources ("Department").

On July 15, 2014, the Thousand Springs Water Users Association, Inc., and Robert and Susan Gisler ("Protestants") filed a *Joint Motion to Dismiss IGWA's Amended Third Mitigation Plan* ("Motion to Dismiss"). The Protestants ask the Director to dismiss IGWA's Third Mitigation Plan because "the Director has approved [IGWA's] *Second Mitigation Plan* and there is no need to force water users into the cost and expense of challenging this *Third Mitigation Plan*." *Motion to Dismiss* at 1. In the alternative, the Protestants ask the Director to "stay all proceedings on the *Third Mitigation Plan* until IGWA aborts the *Second Mitigation Plan*." *Id.*

On July 18, 2014, *IGWA's Response to Joint Motion to Dismiss IGWA's Amended Third Mitigation Plan* ("Response") was filed. IGWA argues "there is no legal basis" for the motion and that the motion "fails to cite a single statute, court decision, or administrative rule that supports it[s] requests." *Response* at 1. IGWA states "the [Motion to Dismiss] is predicated on the mistaken assumption that junior water users are not allowed to pursue more than a single mitigation plan." *Id.* at 2.

The Protestants filed a *Reply in Support of Joint Motion to Dismiss IGWA's Amended Third Mitigation Plan* on July 21, 2014 ("Reply"). The Protestants argue IGWA incorrectly construes their argument. The Protestants state they are not arguing that "junior water users are not allowed to pursue more than a single mitigation plan." *Reply* at 2 (quotations omitted). Instead, they state that the Director imposed an obligation on Rangen, Inc. ("Rangen"), in the Rangen delivery call to either accept the mitigation water provided by IGWA under its approved mitigation plan or forgo its delivery call. *Id.* at 1. Protestants complain that "no such obligation was placed on the junior ground water users" and that the Director is legally required to impose

some obligation on IGWA to choose immediately whether it will go forward with the Second Mitigation Plan. *Id.* 1-2 (“There is no legal basis for this inequitable decision.”)

ANALYSIS

The *Rules of Procedure of the Idaho Department of Water Resources* set the minimum pleading standard for motions filed in contested cases. Pursuant to Rule 260, motions should:

- a. Fully state the facts upon which they are based;
- b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and
- c. State the relief sought.

IDAPA 37.01.01.260.02.

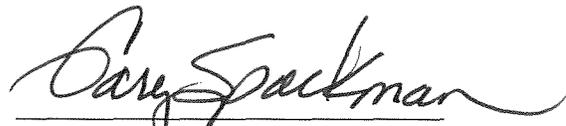
The Protestants argue that because the Director required Rangen to decide whether it would accept the mitigation water in the Second Mitigation Plan, the Director is legally required to dismiss the Third Mitigation Plan. In making this argument, the Protestants fail to cite to any statute, rule, order, notice or other controlling law in support of their argument. Mitigation plans are processed pursuant to Rule 43 of the Department’s *Rules for Conjunctive Management of Surface and Ground Water Resources*. Rule 43 explains the process for submitting a proposed mitigation plan, the notice requirements for publication, and the factors to be considered by the Director in considering the proposed mitigation plan. IDAPA 37.03.11.043. Rule 43 does not restrict the ability of a water user to file and pursue more than one mitigation plan at a time. The Motion to Dismiss must be denied because the Protestants failed to refer to any provision of statute, rule, order, notice, or other controlling law supporting the arguments in the motion.

The Protestants’ argument also fails on the merits. In the Second Mitigation Plan order, the Director conditionally approved the plan and required Rangen to state whether it would accept water delivered from Tucker Spring. The Director required Rangen’s acceptance of water delivery to ensure IGWA can complete the mitigation plan and mitigate the injury. In this proceeding, the question before the Director is the adequacy of the Third Mitigation Plan and whether it complies with Rule 43. There is no legal basis for the Director to require IGWA to choose between the approved Second Mitigation Plan and the proposed Third Mitigation Plan.

ORDER

IT IS HEREBY ORDERED that the Protestants’ *Joint Motion to Dismiss IGWA’s Amended Third Mitigation Plan* is DENIED.

Dated this 25th day of July, 2014.


GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 25th, 2014, I served a true and correct copy of the *Order Denying Joint Motion to Dismiss IGWA's Amended Third Mitigation Plan* on the persons listed below by the method indicated.

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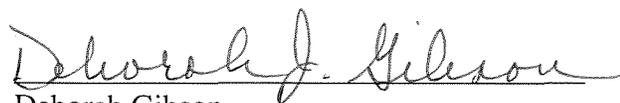
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