

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

IN THE MATTER OF THE AMENDED THIRD
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 LIMITING SCOPE OF
MITIGATION PLAN; LIMITING SCOPE
OF HEARING; SETTING DEADLINE TO
SUBMIT ENGINEERING PLANS**

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”). The Third Mitigation Plan was filed in response to the Rangen delivery call and “pending and threatened delivery calls” from other water users in Water District 36A and is intended “to provide mitigation to Rangen and other water users in the Water District 36A.” *Third Mitigation Plan* at 1. The five components of the Third Mitigation Plan are: 1) Sandy Ponds recharge and Sandy Pipe delivery; 2) improvements to the Curren Tunnel diversion; 3) direct delivery of water right no. 36-16976; 4) recirculation of Rangen water rights; and 5) the Aqua Life project.

Notice of the Third Mitigation Plan was published and timely protests were filed by the following: Ruth Musser-Lopez; Little Sky Farms, c/o C. Tom Arkoosh; Alvin and Hope Musser Living Trust, c/o Marjorie M. Mikels; Buckeye Farms, c/o John K. Simpson; Thousand Springs Water Users Association, Inc., and Robert & Susan Gisler, c/o Travis Thompson; Rangen, Inc. (“Rangen”), c/o Robyn Brody, Fritz Haemmerle and Justin May; Blind Canyon Aquaranch, Inc., c/o Gary Lemmon; US Fish & Wildlife Service, c/o Tim Mayer; Bret and Kathleen McKenzie; Vaughn McKnight; and Jamie and Katherine Martin.

A *Notice of Status Conference and Hearing* was issued on July 8, 2014, scheduling a hearing on the Third Mitigation Plan for September 8-10, 2014.

A status conference was held on July 22, 2014. Various concerns were raised by the protestants regarding the scope, breadth, and complexity of the Third Mitigation Plan and the timing of the hearing. This order documents verbal rulings of the Director in response to the concerns raised.

Application of the Mitigation Plan to Water Users in Water District 36A Other Than Rangen

In response to concerns raised by the protestants, IGWA verbally offered to withdraw the request to have the Third Mitigation Plan apply to water users in Water District 36A other than Rangen, thereby limiting the application of the Third Mitigation Plan to the Rangen water rights. The Director verbally granted IGWA's request.

Direct Delivery of Water Right No. 36-16976

At the status conference, the Director considered the specific components of the Third Mitigation Plan and concluded the direct delivery of water right no. 36-16976 component should be dismissed because it raised the same legal issue the Director previously considered and rejected in proceedings related to IGWA's first mitigation plan. *See Amended Order Approving in Part and Rejecting in Part IGWA's Mitigation Plan; Order Lifting Stay Issued February 21, 2014; Amended Curtailment Order* at 13-14 (May 16, 2014) ("Amended Order"). IGWA attempts to distinguish the proposal regarding water right 36-16976 set forth in the Third Mitigation Plan from the proposal set forth in the first mitigation plan. Specifically, IGWA argues the first mitigation plan proposed to assign application for water right 36-16976 to Rangen for mitigation credit, whereas in the Third Mitigation Plan, IGWA is "simply asking for mitigation credit for water IGWA actually delivers to Rangen under water right 36-16976, if and when it is approved." *Third Mitigation Plan* at 5. The Director rejected the proposal in the first mitigation plan because the application was too speculative:

The Department published notice of the application [for water right no. 36-16976] and the application was protested by Rangen. Rangen also filed a competing application and a transfer to address the point of diversion issue. The facts behind IGWA's application and the competing application and transfer are unique. Given the uncertainty of the application given the specific facts which have developed in this case, the Director concludes that it is too speculative to consider.

Amended Order at 13. Whether IGWA assigns the water right to Rangen for mitigation credit or whether IGWA simply gets credit for delivery of water, neither characterization changes the speculative nature of the application for water right no. 36-16976. Accordingly, the Director verbally ordered that this component of the Third Mitigation Plan would not be considered in this proceeding.

Improvements to Curren Tunnel Diversion

Various protestants raised concerns about the Curren Tunnel component of the Third Mitigation Plan and their ability to prepare for the September hearing given the complexity of the issues raised by the proposal. Given the complexity of the Curren Tunnel component, the Director bifurcated the proceeding and limited the scope of the September 8-10 hearing to just three components: 1) Sandy Ponds recharge and Sandy Pipe delivery; 2) recirculation of Rangen water rights; and 3) the Aqua Life project. The Curren Tunnel component will be scheduled for hearing at a later date.

Deadline to Submit Engineering Plans

While IGWA submitted preliminary engineering plans with its Third Mitigation Plan, IGWA stated at the status conference that its engineers were working on more detailed engineering plans and that IGWA would be in a position to share those “in a couple weeks.” A number of protestants voiced concern about having sufficient time to review the new engineering plans prior to the hearing. A deadline of Monday, July 28, 2014, was set for IGWA to submit any additional engineering plans to the Department and the parties.

ORDER

IT IS HEREBY ORDERED that IGWA’s request to limit the scope of the Third Mitigation Plan to only the Rangen water rights is GRANTED. The Third Mitigation Plan will not be effective as to any other water rights in Water District 36A.

IT IS FURTHER ORDERED that the scope of the September 8-10 hearing is limited to just three components of the Third Mitigation Plan: 1) Sandy Ponds recharge and Sandy Pipe delivery; 2) recirculation of Rangen water rights; and 3) the Aqua Life project. The component addressing direct delivery of water right no. 36-16976 will not be considered at the hearing on the Third Mitigation Plan and is hereby dismissed. The Curren Tunnel component will be scheduled for hearing at a later date.

IT IS FURTHER ORDERED that Monday, July 28, 2014, is the deadline for IGWA to submit engineering plans it wishes to present at the September 8-10 hearing to the Department and the parties.

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 Limiting Scope of Mitigation Plan; Limiting Scope of Hearing; Setting Deadline to Submit Engineering Plans* on the persons listed below by the method indicated.

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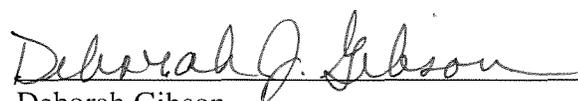
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