

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

IN THE MATTER OF THE MITIGATION)	CM-MP-2014-001
PLAN FILED BY THE IDAHO GROUND)	
WATER APPROPRIATORS FOR THE)	ORDER GRANTING IN PART
DISTRIBUTION OF WATER TO WATER)	AND DENYING IN PART
RIGHT NOS. 36-02551 AND 36-07694 IN)	RANGEN'S MOTION TO
THE NAME OF RANGEN, INC.)	DISMISS PROPOSALS 3-9 OF
)	IGWA'S MITIGATION PLAN
)	AND LIMIT SCOPE OF HEARING
)	

BACKGROUND

On February 11, 2014, the Idaho Ground Water Appropriators, Inc.'s ("IGWA") filed with the Idaho Department of Water Resources ("Department") *IGWA's Mitigation Plan and Request for Hearing* ("Mitigation Plan") to avoid curtailment imposed by the *Final Order Regarding Rangen, Inc.'s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962* issued January 29, 2014 ("Curtailment Order").

On March 14, 2014, Rangen, Inc. ("Rangen") filed with the Department *Rangen's Motion to Dismiss Proposals 3-9 of IGWA's Mitigation Plan and Limit Scope of Hearing* ("Motion").

A hearing on Rangen's Motion was held at the commencement of the hearing on IGWA's first Mitigation Plan on March 17, 2014. The Director verbally granted Rangen's motion in part and denied the motion in part and told the parties that a written order documenting the decision would be issued. This is the order documenting the decision.

ANALYSIS

Proposal No. 3

Proposal No. 3 of IGWA's Motion Plan describes IGWA's Application for Water Right Permit No. 63-16976 which is pending before the Department. IGWA asserts it could provide delivery of water to Rangen from this right to satisfy its mitigation obligation. *Mitigation Plan* at 3.

IGWA's Application has not been approved by the Department and Rangen has filed a protest. Rangen asserts that, [u]ntil IGWA's application is actually approved, the water is not 'immediately available to deliver water directly to Rangen' as IGWA claims and cannot be approved as part of IGWA's current Mitigation Plan." *Motion* at 2. Rangen argues the Director should not permit IGWA to present any evidence or elicit any testimony regarding Proposal No. 3 at the hearing on this matter.

As discussed at the hearing on the Motion, it would be premature to rule out Proposal No. 3 from consideration. IGWA should be allowed the opportunity to present evidence about this proposal so that an informed decision can be made.

Proposal Nos. 4 and 5

Proposal Nos. 4 and 5 describe IGWA's plan to mitigate Rangen's lost profit damages caused by junior-priority groundwater pumping with either replacement fish or monetary compensation. Rangen asserts this type of proposal has been previously rejected by the Department and that Proposals Nos. 4 and 5 should be dismissed. *Motion* at 3.

In the Snake River Farm delivery call the Ground Water Districts argued that the Director could compel a senior water user to accept monetary compensation or replacement fish in lieu of replacement water. *Final Order Accepting Ground Water Districts' Withdrawal of Amended Mitigation Plan, Denying Motion to Strike, Denying Second Mitigation Plan and Amended Second Mitigation Plain in Part; and Notice of Curtailment* issued March 5, 2009. Director Tuthill determined he would exceed his statutory authority if he compelled a senior to accept such compensation. *Id.* at 10. Director Tuthill's analysis of this issue was correct. It would be inappropriate for the Director to consider Proposal Nos. 4 and 5 during this proceeding.

Proposal Nos. 6 - 9

Proposal Nos. 6 through 9 describe IGWA's plans to maintain and make improvements to the Martin-Curren Tunnel diversion; pay for engineering and construction costs of a horizontal well in the vicinity of the Martin-Curren Tunnel; drill new groundwater wells or utilize existing wells to deliver water directly to Rangen; and pay the costs to engineer, construct, and operate a direct pumpback and aeration system within the Rangen facility. Rangen argues these proposals should be dismissed because they are merely "concepts for providing replacement water to Rangen" and that, without more detailed engineering information, there is no way for the Director to evaluate or approve of them. *Motion* at 6.

At the hearing on the Motion on March 17, 2014, Rangen acknowledged they have been conducting discovery, interrogatories, and depositions in order to gain an additional understanding of the proposals made in IGWA's Mitigation Plan. IGWA should be allowed the opportunity to present evidence and additional detail regarding IGWA's Proposal Nos. 6 through 9 at the hearing as this will not result in prejudice to Rangen.

ORDER

Based upon the foregoing, the Director GRANTS IN PART and DENIES IN PART *Rangen's Motion to Dismiss Proposals 3-9 of IGWA's Mitigation Plan and Limit Scope of Hearing*. IT IS HEREBY ORDERED that Rangen's motion to dismiss Proposal Nos. 3, 6, 7, 8, and 9 is DENIED. IT IS FURTHER ORDERED that Rangen's motion to dismiss Proposal Nos. 4 and 5 is GRANTED.

Dated this 26th day of March, 2014.



GARY SPACKMAN
Director

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of March, 2014, the above and foregoing document was served on the following by providing a copy of the *ORDER GRANTING IN PART AND DENYING IN PART RANGEN'S MOTION TO DISMISS PROPOSALS 3-9 OF IGWA'S MITIGATION PLAN AND LIMIT SCOPE OF HEARING* in the manner selected:

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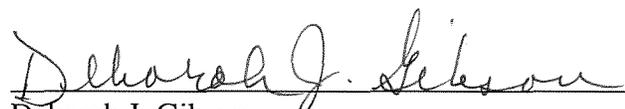
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