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RECEIVED
JUL 07 2014
DEPARTMENT OF
WATER RESOURCES

10 **IDAHO DEPARTMENT OF WATER RESOURCES**

11 IN RE IGWA'S AMENDED THIRD PLAN) Docket No.: CM-MP-2014-005
12 TO MITIGATE MATERIAL INJURY TO)
13 WATER RIGHT NOS. 36-02551 & 36-07694) **MUSSERS' OBJECTIONS TO AND**
14 HELD BY RANGEN, INC., AND OTHER) **PROTEST AGAINST IGWA'S**
15 WATER RIGHTS IN WATER DISTRICT 36A.) **AMENDED THIRD MITIGATION PLAN**
16) **AND REQUEST FOR HEARING**
17)

18 HOPE I. MUSSER, Sole Surviving Trustee of the BYPASS TRUST and MARITAL
19 QUALIFIED TERMINABLE INTEREST PROPERTY TRUSTS of the ALVIN & HOPE
20 MUSSER LIVING TRUST dated September 21, 1990, hereby protests the Idaho Ground Water
21 Appropriators, Inc. ("IGWA") proposed amended third "Mitigation Plan", and each of the
22 multiple components contained therein, as an unbridled, transparent attempt, in the name of
23 protecting the water rights of Mussers' neighbors, the Rangens, whose water rights are junior to
24 the Mussers', to misappropriate not only the Musser's water rights but also to threaten use of
25 governmental force to purloin the Musser's riparian property, all in contempt of and in direct
26 violation of the Idaho Supreme Court's February 28, 1994, decision in the case of Musser v.
27 Higginson, 125 Idaho 392, 871 P. 2d 809 (1994). IGWA's third mitigation plan cajoles the
28 Director to again act "without a reasonable basis in fact or law", "frivolously and unreasonably",
(as was previously noted by the Supreme Court), and shirk the Director's duty that is clear,
unambiguous and constitutionally-required under the Idaho State Constitution and the Doctrine

1 of Prior Appropriation. The Director performed his duty to CURTAIL THE OVERPUMPING
 2 BY THE GROUND WATER APPROPRIATORS. To avoid these requirements IGWA
 3 proposes plans which not only fail to restore or replenish Mussers' and Rangens' water rights but
 4 also confiscates the Mussers' and Rangen's land. They would force improvements devised by
 5 IGWA upon these priority water rights holders, in order to give IGWA "credit" for mitigation,
 6 and thereby skirt their responsibility to comply with the Director's curtailment orders. Instead of
 7 this ill-advised plan, the IGWA needs to restore the water to which the Mussers and the Rangens
 8 are being deprived at the Martin-Curran Tunnel and the water from the springs to which these
 9 objecting parties are entitled.

10 Introduction

11 The ALVIN & HOPE MUSSER LIVING TRUST dated September 21, 1990, is the
 12 owner of real property in Gooding County, Idaho, which has appurtenant to it a decreed right of
 13 4.8 cubic feet per second (cfs) of water from Martin-Curran Tunnel for irrigation, stockwater and
 14 domestic use, with a priority date of April 1, 1892. The Mussers' property is located within
 15 water district 36A and that water right is #36-102. Rangen's right to water from the Martin-
 16 Curran Tunnel is junior to the Mussers' rights. The springs which supply the Mussers' water are
 17 tributary to the Snake River and are hydrologically interconnected to the Snake Plain Aquifer.

18 The property is leased for farm purposes and some of the land, but not all, is in irrigation,
 19 now deriving some irrigation water from the North Side Canal via the Sandy Ponds and pipeline.
 20 The Mussers never approved that "mitigation plan", nor were they given notice of the plan or the
 21 right to object, nor have they ever agreed to forego their rights to the clear spring water to which
 22 they are entitled from the Martin-Curren Tunnel in exchange for the re-cycled, likely pesticide-
 23 laden water delivered to their vault via the canal. Butch Morris, although he leases and farms
 24 some of the Mussers' property, has no authority over the Mussers' water rights. IGWA has
 25 asserted in its papers that "It's understood" that the Mussers will receive no Curren Tunnel water
 26 rights into their vault. But the Mussers have no such understanding.

27 Mussers have the following decreed rights:

Number	Source	Priority	Quantity	Status	Use
36-10290	Grdwater	1/1/1960	0.04 cfs	Decreed	Domestic
36-10291	Grdwater	4/1/1972	0.04 cfs	Decreed	Domestic
36-10293	Spring	4/1/1886	.88 cfs, 44 acres	Decreed	Irrigation

1 36-102 Curren Tunnel 4/1/1892 4.10 cfs, 205 acres Decreed irrigation, domestic,
2 stockwater
3 36-116 Hoagland Tunnel 12/12/1901 1.14 cfs, 57 acres Decreed Irrigation

4 The Mussers' property has been planted with corn for silage, alfalfa, wheat and potatoes
5 at various times, and perhaps farming will remain the primary use for the water appurtenant to
6 their property. But the property has a legally-filed subdivision for 16 lots located on the
7 southwestern corner of the property overlooking the wildlife management area, with the plat map
8 recorded in December 1979 (Hunter Point Subdivision), and it may well be that in the future the
9 spring water from the tunnel, to which Mussers are entitled will be needed for domestic
10 purposes.

11 Without limitation to their right to amend, Mussers object to and hereby protest each of
12 the groundwater pumpers' multiple components to their amended plan:

13 **I. Measuring Devices to give Mitigation Credit:**

14 IGWA says the North Side Canal Company is delivering water to Sandy Ponds, owned
15 by one of the ground water districts, and that water discharged into the Sandy Ponds goes via the
16 Sandy Pipeline into the vault that is used by Butch Morris to irrigate his property and property he
17 leases from Mussers. They say that water is a substitute for water that is no longer available
18 from the Hoagland Tunnel and Curran Tunnel and Billingsley Creek, where Mussers have
19 decreed rights. They admit that historically one pipeline conveyed water from Curran tunnel into
20 the vault, but say "it is understood" that the pipe will no longer feed water from Curran Tunnel
21 into the Vault. Musser does not agree. The water from the canal is inferior quality to spring and
22 tunnel water. Musser are unable to grow organic crops using that recycled water. Musser never
23 agreed to this substitution. Mussers never gave up their superior rights to the Curran Tunnel
24 water. Mussers have no knowledge that the canal water will be available permanently and have
25 entered no agreements respecting the canal water use.

26 Now IGWA wants to get "credit" for the percolation they claim takes place under the
27 pond, and recharges the aquifer. They say they would install measuring devices to determine
28 how much water goes into the 44-acre pond, and how much goes out, minus the evaporation, and
they would hypothesis that any difference could be credited to them as "recharge" and used for

1 mitigation to prevent them from having to restore the clean water they have deprived the
2 Mussers of by over-pumping of the aquifer. They would be the measurers.

3 It is difficult to understand how this helps to restore the water that the Rangens' fish
4 hatchery is missing, and it does not adequately compensate the Mussers for the loss of the pure
5 spring water to which they are entitled from their spring and the Curran Tunnel.

6 **II. Deepen, Widen, Lower Elevation of the Curran Tunnel to increase water to**
7 **Rangens.**

8 This plan assumes that IGWA can just come on people's property and start digging and
9 demolish the existing water source which has supplied water since the 1890s on their speculation
10 that they can make the tunnel more productive, so they don't have to curtail their over-pumping
11 and depletion of the water that feeds that spring that supplies the tunnel. It further disregards
12 altogether Mussers' superior rights, indicating their intention to make the tunnel supply more
13 water for Rangens, by taking the water rights of Musser. They then say that if the Rangens
14 won't give them access and let them do this, they should be freed of their responsibility to restore
15 the water Rangens are being deprived of from the Curran Tunnel. Mussers object to this plan.

16 **III. Direct Delivery: Take water from Billingsley Creek and pump it up to Rangens:**

17 IGWA says they have applied for Permit No. 36-16976 to give them the right to take
18 water right out of Billingsley Creek and pump it up to Rangens by use of a hydraulic pump at the
19 headgate and give them mitigation credits for doing so. The Director previously said this is
20 speculative, but they responded saying they are only asking for credit for the water they actually
21 deliver. IGWA has no rights to this water. On what basis could a permit be issued to allow them
22 to purloin the creek water for their benefit? And they want to use eminent domain to take the
23 rights to the riparian land needed to establish the right to use the creek water? Mussers object.

24 **IV. Recirculation of Rangens' Water Rights:**

25 Next the IGWA says they and Rangens have filed for permits to use the water from
26 Billingsley Creek for fish propagation. They want to build a pump facility and possibly a
27 treatment plant on either Rangens' or Mussers' riparian property on the Billingsley Creek and
28 pump water at the bottom of Rangens' facility, (i.e., where it dumps into the creek), back up to
the top of their facility. For that they need a half acre parcel of land for the pump house and
possibly treatment plant. So IGWA would pay the cost of delivering water to Rangens' Fish
Hatchery by taking property from the Mussers or the Rangens in order to suck the water out of

1 the creek that has flowed through Mussers property for generations so that IGWA can avoid the
2 necessity of restoring spring water to the Curran Tunnel where both Mussers and Rangens
3 historically derived their clean water. So in other words, IGWA wants to steal both the Mussers'
4 decreed water rights and their riparian property, and wants this Director to grant them permits to
5 do so, as well as to sanction use of eminent domain to accomplish this, and give them mitigation
6 credit for so doing. Further, they plan to dump solids from the treatment plant sludge, right back
7 into the Billingsley Creek, so the downstream users can have their water supply polluted.
8 Mussers object and protest.

9 **V. "Aqua Life Project"**

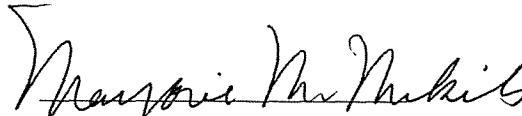
10 The final component of the third amended mitigation plan is to lease or purchase water
11 from Aqua Life Hatchery, operated by Idaho Water Resources Board, 3.2 miles away and deliver
12 the water to Rangens. That entails designing and constructing a pump station and pipeline to
13 transport the water from Aqua Life to Rangens and acquiring easements for the pump station and
14 pipes, and permits from Rangen to access their property for engineering, designing and
15 construction. Of course, Mussers property lies right between the source of this desired water and
16 Rangens, and the plan does nothing to replenish the water that has been stolen from the Mussers
17 at the Martin-Curran Tunnel. Nor does the IGWA explain why they should be able to deplete the
18 water at the state-owned hatchery to acquire that clean water for one user, when there are many
19 other surface users with superior rights to Rangens' who have been deprived of their water, and
20 this proposed "mitigation" will serve only one user. Further, after dedicating that water via a
21 permanent pipe to Rangens' use, how will the depleted water of the Mussers be restored? Is the
22 IGWA intending to use the power of eminent domain to cut through the Mussers' land? They
23 have asked and politely been refused the option to acquire an easement that cuts right across the
24 Mussers' irrigated fields to deliver water not to replenish the Mussers tunnel rights, but to deliver
25 to the neighbor. IGWA's vain response was Idaho Code § 42-5224 (13), and total disdain for the
26 landowners' Constitutional prior rights.

27 Mussers object and protest this and all of the elements of the IGWA's audacious plan to
28 avoid the Director's curtailment orders by these proposed "mitigation" measures.

Mussers ask that the IGWA's Amended Third Mitigation Plan be denied in its entirety,
and that IGWA try a new tactic—such as meeting and negotiating with fellow Idaho landowners
to come up with solutions that benefit everyone, while respecting Idaho's Constitutional law.

1 Dated: July 3, 2014

2 Respectfully Submitted:

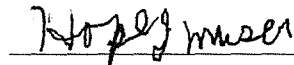
3 
4 Marjorie M. Mikels
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8 VERIFICATION

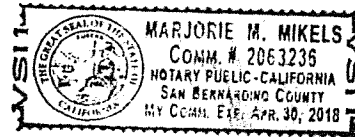
9
10 State of California)
11 County of San Bernardino)

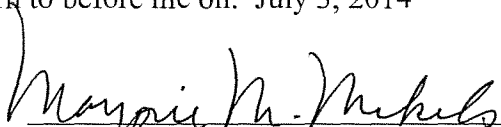
12
13 HOPE I. MUSSER, TRUSTEE, duly sworn, upon oath, deposes and says:

14
15 That I am the party/claimant filing this objection/protest, as defined by I.C. §§42-1401 A
16 (1) and (6) and that I have read this objection, know its contents and believe that the statements
17 are true to the best of my knowledge.

18 
19 HOPE I. MUSSER, TRUSTEE
20 of the Bypass and Qtip Trusts of the
21 ALVIN & HOPE MUSSER LIVING TRUST
22 dated September 21, 1990

23 Subscribed and sworn to before me on: July 3, 2014



24 
25 MARJORIE M. MIKELS
26 Notary Public for the State of California,
27 County of San Bernardino,
28 Residing at 201 N. First Ave., Upland, CA 91786.

My Commission Expires: April 30, 2018

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2014, I served a true and correct copy of the

**MUSSERS' OBJECTIONS TO AND PROTEST AGAINST IGWA'S AMENDED THIRD
MITIGATION PLAN AND REQUEST FOR HEARING**

On the persons listed below by the method indicated.

State of Idaho
Department of Water Resources
322 East Front Street
P. O. Box 83720
Boise, ID 83720-0098
Attn.: Gary Spackman, Director

Overnight Mail

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US Mail (postage prepaid) and Email

I declare under penalty of perjury that the foregoing is true and correct and this
declaration was executed at Upland, California, on July 3, 2014.


Marjorie M. Mikels

Idaho Department of Water Resources Receipt

Receipt ID: C099132

Payment Amount \$25.00 Date Received 7/7/2014 2:43 PM Region STATE

Payment Type Check Check Number 11380

Payer MIKELS, MARJORIE M - ATTORNEY AT LAW

Comments PROTEST REGARDING IGWA'S 3RD MITIGATION PLAN FOR HOPE I MUSSER, TRUSTEE

Fee Details

Amount	Description	PCA	Fund	Fund Detail	Subsidiary	Object
\$25.00	PROTESTS	56103	0229	21		1155



Signature Line (Department Representative)