

RECEIVED

JUL 07 2014

DEPT OF WATER RESOURCES  
SOUTHERN REGION

John K. Simpson, ISB #4242  
Travis L. Thompson, ISB #6168  
Paul L. Arrington, ISB #7198  
**BARKER ROSHOLT & SIMPSON LLP**  
195 River Vista Place, Suite 204  
Twin Falls, Idaho 83301-3029  
Telephone: (208) 733-0700  
Facsimile: (208) 735-2444

*Attorneys for Thousand Springs Water Users  
Association, Inc.*

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

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

Docket No. CM-MP-2014-05

**PROTEST TO IGWA'S AMENDED THIRD  
MITIGATION PLAN**

THOUSAND SPRINGS WATER USERS ASSOCIATION, INC. ("Spring Users"), by and through their attorneys of record, file this *Protest to the Amended Third Mitigation Plan and Request for Hearing*, filed by the Idaho Ground Water Appropriates, Inc. ("IGWA") on June 10, 2014 in the above matter. This protest is filed pursuant to Rule 43 of the CM Rules (IDAPA 37.01.11 *et seq.*) and Rule 250 of the Department's Rules of Procedure (IDAPA 37.01.01 *et seq.*).

IGWA's amended third mitigation plan ("3<sup>rd</sup> Plan") proposes several activities that, it alleges, will mitigate for material injury suffered by Rangen and "other water users in Water District 36A." The plan is speculative and does not identify how or who the other water users are that will be mitigated by the proposed actions. Accordingly, the Spring Users protest the 3<sup>rd</sup> Plan for the following initial reasons:

1. IGWA has failed to demonstrate that the proposed actions will not jeopardize spring flows throughout the Hagerman Valley. For example, IGWA proposes to make "improvements" to

the Curren Tunnel. Expert witnesses and the contractor that testified during the First Mitigation Plan admitted that deepening the tunnel would cause injury to both groundwater users on the ESPA as well as springs below the rim. IGWA concludes that it “may increase the net discharge.” However, it cannot show that disrupting the geology or other areas around the spring source will not jeopardize or affect spring flows in other areas. The Spring Users protest any actions that threaten or would disrupt historical spring flows that they rely upon for a variety of beneficial uses, including irrigation and aquaculture. Furthermore, IGWA should be required to post a bond for any activities that could deplete other spring flows.

2. IGWA fails to show that it meets the requirements of CM Rule 43 addressing standards for mitigation plans.

3. IGWA should be required to commit to the Second Mitigation Plan or withdraw it prior to IDWR and the parties expending time and resources addressing the merits of the 3<sup>rd</sup> Plan. *See* CM Rule 43.j (public interest criteria). Since the Director recently approved the 2<sup>nd</sup> Plan, there is no basis for a contested case concerning the 3<sup>rd</sup> Plan. IGWA’s actions are speculative and without any legal basis. The Director should deny such speculative actions if IGWA intends to implement the 2<sup>nd</sup> Plan, as it previously represented to the Department.

4. IGWA fails to identify the details and proposal concerning the “Aqua Life Project.” While IGWA requests “mitigation credit” for water it delivers to “other Water District 36A water users,” it provides no details or plans to show who would be mitigated or where the mitigation would occur. Other than Rangen’s water rights, IGWA does not identify the water rights for which benefit the mitigation plan is proposed. CM Rule 43.01.b.

5. Any diversion of Big Springs water away from the Aqua Life facility will impact and injure water users who divert water below the facility on Billingsley Creek. Further, rediverting such water to the head of the Rangen facility will result in additional seepage and evaporative losses

not experienced historically. IGWA has further failed to show that it meets the requirements of I.C. § 42-222 for this proposal.

6. IGWA has failed to show how its recharge program at the Sandy Ponds will comply with all water quality requirements of the Idaho Department of Environmental Quality. IGWA has further failed to prove the suitability of the recharge site and its benefit to springs in the area or that it will provide replacement water “at the time and place” required by senior priority water rights. *See* CM Rule 43.03.b.

7. IGWA has failed to demonstrate the reliability of the source of replacement water for its proposed actions. *See* CM Rule 43.03.h.

8. IGWA has failed to demonstrate how the 3<sup>rd</sup> Plan is “consistent with the conservation of water resources, the public interest or injures other water rights, or would result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge.” *See* CM Rule 43.03.j. Shuffling water from one declining spring to another is not in the “public interest” and will likely further injure other water users in Water District 36A.

9. IGWA has failed to show how diverting Big Springs water or water away from Fisher Lake would not impact snails listed under the Endangered Species Act.

10. IGWA has not provided any contingency plans or monitoring plan in the 3<sup>rd</sup> Plan to satisfy CM Rule 43.03.k.

11. For such other and further reasons as may be discovered or set forth at the hearing on this matter.

12. The Spring Users reserve the right to amend this protest as additional information is discovered in this proceeding.

Accordingly, the Spring Users protest IGWA's 3<sup>rd</sup> Plan and request that the Director deny and dismiss that plan.

DATED this 7<sup>th</sup> day of July, 2014.

**BARKER ROSHOLT & SIMPSON LLP**



Travis L. Thompson

*Attorneys for Thousand Springs Water Users Association, Inc.*

**FOR OFFICE USE ONLY**

Fee: \$25.00

Receipt No. 5034141

Receipt by: DM

Date Received: 7-7-2014

## CERTIFICATE OF SERVICE

I hereby certify that on this 7<sup>th</sup> day of July, 2014, I served a copy of the foregoing  
**PROTEST TO IGWA'S AMENDED THIRD MITIGATION PLAN**, by hand-delivery to the  
following:

Idaho Department of Water Resources  
Southern Region  
650 Addison Ave. W., Suite 500  
Twin Falls, Idaho 83301

By email to the following:

Gary Spackman, Director  
Idaho Department of Water Resources  
322 E. Front Street  
Boise, Idaho 83720-0098  
[gary.spackman@idwr.idaho.gov](mailto:gary.spackman@idwr.idaho.gov)  
[deborah.gibson@idwr.idaho.gov](mailto:deborah.gibson@idwr.idaho.gov)  
[garrick.baxter@idwr.idaho.gov](mailto:garrick.baxter@idwr.idaho.gov)

J. Justin May  
MAY BROWNING  
1419 W. Washington  
Boise, Idaho 83702  
[jmay@maybrowning.com](mailto:jmay@maybrowning.com)

Robyn Brody  
BRODY LAW OFFICE  
P.O. Box 554  
Rupert, Idaho 83350  
[rbrody@cableone.net](mailto:rbrody@cableone.net)  
[robynbrody@hotmail.com](mailto:robynbrody@hotmail.com)

Fritz Haemmerle  
HAEMMERLE & HAEMMERLE  
P.O. Box 1800  
Hailey, Idaho 83333  
[fxh@haemlaw.com](mailto:fxh@haemlaw.com)

Randy Budge  
T.J. Budge  
RACINE OLSON  
P.O. Box 1391  
Pocatello, Idaho 83204-1391  
[rcb@racinelaw.net](mailto:rcb@racinelaw.net)  
[tjb@racinelaw.net](mailto:tjb@racinelaw.net)



---

Travis L. Thompson