

Rangen's motion raises two objections to the *Order Granting Motion to Stay Curtailment Order*. First, Rangen claims IGWA cannot deliver the increased amount (7.81 cfs) required by the order. Second, Rangen objects to the Idaho Department of Water Resources' (IDWR) approval of the Water Supply Bank (WSB) transaction that allows IGWA to deliver water to Rangen from Magic Springs. As explained below, neither argument warrants withdrawal of the stay.

1. The Water Supply Bank transaction has been amended to enable IGWA to deliver 7.81 cfs to Rangen.

Rangen first claims IGWA is incapable of delivering 7.81 cfs to Rangen as required by the *Order Granting Motion to Stay Curtailment Order*.¹ This assertion is mistaken.

IGWA entered into an agreement with SeaPac of Idaho (the owner of the Magic Springs fish hatchery) to allow IGWA to deliver up to 10 cfs of first-use water from Magic Springs to Rangen.² IGWA can deliver 7.81 cfs via either (a) its pending transfer application if approved prior to February 7th, or (b) amendment of the approved WSB transaction. IGWA fully intends to deliver 7.81 cfs to Rangen under one or the other.

Toward that end, IGWA submitted amended WSB documents to IDWR on January 26th to increase the amount from 5.5 cfs to 7.81 cfs. This was approved on January 27th, as shown in Exhibit B to the *Second Affidavit of Thomas J. Budge*.

Two related matters warrant mention. First, Rangen complains it was not aware of the WSB transaction until the January 22nd hearing. Yet, the *Order Approving IGWA's Fourth Mitigation Plan* explicitly recognizes that IGWA may deliver water to Rangen via "an authorized lease through the

¹ Memo in Support of Motion for Reconsideration of Order Granting Stay of Curtailment Order page 4 (Jan. 26, 2015).

² Memo. of Agreement, attached as Ex. A to *Second Affidavit of Thomas J. Budge* (Jan. 27, 2015).

Water Supply Bank.”³ A search of the IDWR water right database for water right 36-7072 would have disclosed IGWA’s applications to lease water through the WSB.

Second, Rangen infers IGWA misled the Court by representing that it would be prepared to be able to deliver 7.81 cfs to Rangen. Admittedly, the thought that IGWA would need to amend its WSB transaction did not cross its counsel’s mind in the midst of the January 22, 2015 hearing, yet it is clear that the discussion of the WSB transaction (tr. pp. 31-32) was separate in time and context from the discussion about IGWA’s commitment to deliver additional water to Rangen to make up for the stay (tr. p. 38).⁴

Considering IGWA had already secured from SeaPac the ability to deliver up to 10 cfs to Rangen, and the WSB had already approved the delivery of water from Magic Springs to Rangen, there was no reason to think IGWA would not be able to deliver 7.81 cfs. And, the fact that the WSB transaction has already been approved for the increased amount of 7.81 cfs demonstrates the Court was not misled.

Thus, the stay should not be reversed based on Rangen’s assertion that IGWA cannot deliver 7.81 cfs once the pipe is finished.

2. Rangen’s disappointment with the WSB transaction should not cause the stay to be withdrawn.

Rangen next argues IDWR should not have approved the WSB transaction that will enable IGWA to meet its mitigation obligation.⁵

As an initial observation, Rangen’s opposition to the WSB transaction again demonstrates its strategy to prevent IGWA from delivering mitigation water to Rangen.

³ Order Approving IGWA’s Fourth Mitigation Plan p. 19, attached as Ex. H to *Affidavit of Thomas J. Budge* (Jan. 20, 2015).

⁴ Hearing Transcript attached as Exhibit 1 to May Affidavit (Jan. 26, 2015).

⁵ Memo. in Support of Motion for Reconsideration at 5.

It is also ironic for Rangen to criticize the IDWR's approval of the WSB transaction only days after lecturing this Court about why it should not second-guess IDWR decisions:

HAEMMERLE: . . . Why are you and your decision, why are you better placed to make that decision? You're not, in all due respect. It's not the proper province of the Court to reverse discretionary calls. Enough.

Judge, if you feel you have the free will and the authority to second-guess agencies, you're going to get a lot more of this in the future. So I suggest you shouldn't micromanage. You should respect the decision of the agency and find like we do. . . .⁶

Regardless, Rangen's objection to the WSB transaction should not cause the stay to be withdrawn for four reasons.

First, WSB transactions are normally approved as short-term arrangements. The maximum duration is five years. They are often employed as a temporary stop-gap until a permanent transfer can be approved.

Second, this is not the proper forum for Rangen to challenge the approval of IGWA's WSB application, nor has Rangen exhausted its administrative remedies concerning the same.

Third, even if this Court were to consider evidence from the transfer hearing, Rangen's motion for reconsideration tells only a partial, incomplete story. Rangen's objection to the transfer was based on the fact that some of the transferred water could be consumed by irrigators after leaving the Rangen hatchery. The transfer would benefit Rangen, of course, but it could have a very small impact on the flow of the Snake River, which Rangen latched onto to oppose the transfer.

⁶ Hearing Transcript p. 48, Ex. 1 to May Aff. (Jan. 26, 2015).

What Rangen's motion does not state is that IGWA has already taken actions that off-set and mitigate the impact of the transfer.⁷ The Director sat through that transfer proceeding and surely considered the issue in approving the WSB transaction. The fact the Director had questions about the enlargement issue at the close of the hearing simply does not demonstrate impropriety in approving the WSB application.

Finally, Rangen's dissatisfaction with the WSB approval does not negate the equities on which this Court granted a stay—principally, that curtailment will be devastating to dairies and cities, yet would provide no benefit Rangen by the time the pipe is completed.

DATED January 27, 2015.

RACINE OLSON NYE BUDGE
& BAILEY, CHARTERED

By: 

Randall C. Budge
Thomas J. Budge

⁷ See IGWA's Post-Hearing Brief attached as Exhibit __ to the Second Affidavit of Thomas J. Budge.

CERTIFICATE OF MAILING

I certify that on this 27th day of January, 2015, the foregoing document was served on the following persons in the manner indicated.



Signature of person serving document

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