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DEPT OF WATER RESOURCES
SOUTHERN REGION

Attorneys for Robert & Susan Gisler

**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-2014-01

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

ROBERT & SUSAN GISLER ("Gisler"), 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 and Rule 250 of the Department's Rules of Procedure.

IGWA's amended third mitigation plan ("3rd 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 other water users will be mitigated by the proposed actions. Accordingly, Gisler protest the 3rd 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 and concludes that it "may increase the net discharge." However, it cannot show that disrupting the geology or other areas around the spring will not jeopardize or affect spring flows in other areas. Gisler protest any actions that threaten or would disrupt historical spring flows that

they rely upon for a variety of beneficial uses. 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 relinquish it prior to IDWR and the parties expending time and resources addressing the merits of the 3rd Mitigation Plan. *See Rule 43.j (Public interest)*. Since the 2nd Plan was recently approved there is no basis for a contested case concerning the 3rd Plan, unless IGWA withdraws the 2nd Plan. The Director should deny such speculative actions if IGWA intends to implement the 2nd 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 3rd 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 3rd 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. Gisler reserve the right to amend this protest as additional information is discovered in this proceeding.

Accordingly, Gisler protest IGWA’s 3rd Plan and request that the Director deny and dismiss that plan.

DATED this 7th day of July, 2014.

BARKER ROSHOLT & SIMPSON LLP



Paul L. Arrington

Attorneys for Robert & Susan Gisler

CERTIFICATE OF SERVICE

I hereby certify that on this 7th 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, ID 83301

And by U.S. Mail and email to:

Randall C. Budge
Thomas J. Budge
Racine Olson Nye Budge & Bailey, chartered
P.O. Box 1391
Pocatello, Idaho 83204
(208) 232-6109 – fax



Paul L. Arrington

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Fee: \$25.00

Receipt No. S034141

Receipt by: DM

Date Received: 7-7-2014