

07/2008

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED
SEP 19 2014
DEPARTMENT OF
WATER RESOURCES

NOTICE OF PROTEST

This form may be used to file a protest with the department under sections 42-108B, 42-203A, 42-203C, 42-211, and 42-222, Idaho Code. The department will also accept a timely protest not completed on this form if it contains the same information.

1. Matter being protested IGWA's 4th Mitigation Plan to meet Rangen Inc. delivery call

2. Name of protestant Kathy McKenzie

3. Protestant's Representative for service (If different than protestant)
Self

4. Service mailing address P.O.Box 109 Hagerman, ID. 83332

5. Service telephone no. 208-837-4875 Email Address: knbmac@q.com

6. Basis of protest (including statement of facts and law upon which the protest is based)
Ownership/control of water rights # 36-1011,#36-2734,#36-15476,#36-2414 and #36-2338 by IGWA---See attached letter

(additional pages may be attached to describe nature of the protest)

7. What would resolve your protest? The use of water right #36-7072 and #36-8356 to satisfy Rangens 9.1 delivery call--Without the additional ownership/control of all of the Aqua Life water rights

I hereby, acknowledge that if I, or my designated representative, fails to appear at any regularly scheduled conference or hearing in the matter of which I have been notified at the address above, the department may issue a notice of proposed default against me in this matter for failure to appear. I also verify that I have served a copy of this protest upon the applicant.

Signed this 17th day of Sept., 20 14.

Kathy McKenzie Kathy McKenzie
Protestant

Protestant's Representative

I, Kathleen McKenzie, water right holder #36-82B, oppose/protest the "ownership/ control" of water rights # 36-1011, # 36-2734, # 36-15476, # 36-2414 and # 36-2338 by IGWA, at the Aqua Life facility, as bargaining chips in return for the purchase/lease of water rights # 36-7072 and # 36-8356 from Sea Pack/ Magic Springs, as stated in the proposed 4th Mitigation Plan Aug. 27th, 2014, by IGWA to mitigate for the Rangen Inc. delivery call.

The acquisition of all 5 water rights of Aqua Life by IWRB was proposed and passed by the Idaho Legislature and in their Statement of Purpose it states that "It is in the public interest that the State retains ownership of Aqua Life...and its water rights" which "allow use of those assets to resolve delivery calls in Hagerman Valley". Ownership by IGWA, of these 5 water rights at Aqua Life is in direct contradiction of the Legislatures Statement of Purpose and can compound future issues with senior water rights delivery calls (CM Rule 43.03.j and 03.k)

Anything that transpires at the springs of the Aqua Life facility can affect and potentially cause injury to the Billingsley Creek and its senior water right holders as demonstrated with the Amended 3rd Mitigation arguments and depositions. (CM Rule 43.03.k)

Sea Pack is presently leasing water rights and is operational at Aqua Life. IWRB and Sea Pack are presently negotiating and carrying over the leases from IDPR without IGWAs involvement. The proposed contract between IGWA and Sea Pack is one of capital return on Aqua Life water rights which does not comply with CM Rule 43.03.a, "Whether delivery, storage and use of water pursuant to the mitigation plan is in compliance with Idaho law (House Bill 0644).

Under the Magic Springs Project, the 4th Mitigation states, "no mitigation plan approval is sought by this plan other than to Rangen". If so the "ownership/control" of 7 (seven) 36A District Spring Water Rights, by IGWA, to meet the 9.1cfs required to mitigate Rangens delivery call is extensive and not a necessity. (CM Rule 43.03.k and 03.j)

The 10cfs obtainable from Magic Springs water rights #36-7072 and #36-8356 though the purchase/ lease from Sea Pack by IGWA, is more than adequate to satisfy the 9.1cfs Rangen delivery call. It is a feasible proposal, standing on its own merit, without the hand-off of 5 Aqua Life water rights to back it up. (CM Rule 43.03.k and 03.j)

Sincerely, Kathy McKenzie

Kathy McKenzie 9-17-14

NOTE:

A protestant is required to timely file a protest with the department together with a \$25.00 protest fee for each application being protested in order for the protestant to be considered a full party by the department. In addition, the department's Rule of Procedure, IDAPA 37.01.01203, requires a protestant to send a copy of a protest to the applicant.

INSTRUCTIONS

1. The matter being protested must be clearly identified. A typical matter is identified by the application number such as "Application for Permit No. _____ in the name of _____" or "Application for Transfer No. _____ in the name of _____."
 2. Show the name of the protestant. Only one (1) protestant may be shown per protest form. If this protest form is signed by more than one person, the hearing officer will consider the first signer as the official protestant and the representative for service of documents.
 3. If the protestant is represented by an attorney or other authorized representative, show the representative's name. The department then will serve documents on the representative and upon the protestant if specifically requested.
 4. Show the address where the department is to serve the documents. This should be the address of the authorized representative unless the protestant does not designate a representative.
 5. Show the telephone number of the authorized representative unless the protestant does not designate a service representative.
 6. Specifically describe the nature of the protest.
 7. Describe the relief being sought by the protestant.
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FOR DEPARTMENT USE ONLY

Received by ds Date 9/19/14 Time 9:45AM
\$25.00 fee Received by ds # C099429 Date 9/19/14

Certificate Of Service

1. I Hereby Certify that on Sept. 15th, 2014, I served a copy of my protest of the 4th Mitigation Plan filed by IGWA to mitigate material injury held by Rangen Inc. to the persons listed below by method of prepaid U.S. Mail.

Randall C. Budge
Thomas J Budge
Racine Olson Nye Budge & Bailey Chartered
201 E Center Street
PO Box 1391
Pocatello, ID 83204

Idaho Ground Water Appropriators, Inc.
1109 W Main, Suite 300
PO Box 2624
Boise, ID. 83701

Director Gary Spackman
Idaho Dept. of Water Resources
P.O. Box 83720
Boise, ID. 83720-0098

Sincerely,

Kathy McKenzie