IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

TWIN FALLS CANAL COMPANY, NORTH SIDE CANAL COMPANY, A & B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT, and MINIDOKA IRRIGATION DISTRICT, Petitioners, vs. GARY SPACKMAN, in his capacity as Interim Director of the Idaho Department of Water Resources, THE DEPARTMENT OF WATER RESOURCES, and THE IDAHO GROUND WATER APPROPRIATORS, INC., Respondents. IN THE MATTER OF THE IDAHO GROUND WATER APPROPRIATORS, INC.'S MITIGATION PLAN FOR CONVERSIONS, DRY-UPS & RECHARGE	Case No. CV-2010-3822 **MEMORANDUM DECISION AND ORDER ON PETITION FOR JUDICIAL REVIEW**

Ruling: The Director's *Final Order Approving Mitigation Credits Regarding SWC Delivery Call* dated July 19, 2010 is **affirmed**.

Appearances:

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Chris M. Bromley, Deputy Attorney General of the State of Idaho, Idaho Department of Water Resources, Boise, Idaho, attorneys for the Idaho Department of Water Resources and Gary Spackman.

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I.

STATEMENT OF THE CASE

A. Nature of the Case.

This case originated when Petitioners A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company and Twin Falls Canal Company (collectively, "Surface Water Coalition" or "SWC") filed a *Petition for Judicial Review* in Twin Falls County district court seeking judicial review of a final order of the Director of the Idaho Department of Water Resources ("IDWR" or "Department").[1] The final order under review is the *Final Order Approving Mitigation Credits Regarding SWC Delivery Call* issued on July 19, 2010 by Interim Director Gary Spackman in IDWR Docket No. CM-MP-2009-006 ("*Final Order*"). The *Final Order* approved a *Request for Mitigation Credit* submitted by the Idaho Ground Water Appropriators, Inc. ("IGWA") in response to a delivery call made by the Surface Water Coalition. The Surface Water Coalition asserts in its *Petition for Judicial Review* that the *Final Order* is contrary to law and requests that this Court reverse the same.

[1] The case was reassigned by the clerk of the court to this Court on August 18, 2010, pursuant to the Idaho Supreme Court Administrative Order Dated December 9, 2009, entitled: *In the Matter of the Appointment of the SRBA District Court to Hear All Petitions for Judicial Review From the Department of Water Resources Involving Administration of Water Rights.*

B. Course of Proceedings and Statement of Facts.

At issue in this matter is one order (i.e., *Final Order Approving Mitigation Credits Regarding SWC Delivery Call*) in a series of orders issued by the Director in response to a delivery call filed by the SWC. The underlying administrative proceeding originated in 2005 when the SWC filed a delivery call with the Department requesting administration and curtailment of certain hydraulically connected junior ground water rights located in the Eastern Snake Plain Aquifer ("ESPA"). As part of its response to the SWC delivery call, IGWA filed a *Mitigation Plan for Conversions, Dry-Ups and Recharge* with the Department on October 6, 2009, in accordance with Rule 43 of the *Rules for Conjunctive Management of Surface and Ground Water Resources*, IDAPA 37.03.11 ("CMR"). R., pp.1–9. The stated purpose of the proposed *Mitigation Plan* was to "provide IGWA and its members with the right to obtain mitigation credit for the Mitigation Activities that will then be applied in response to a finding of material injury to senior water rights under the CM Rules." R., p.2.

In the *Mitigation* Plan, IGWA proposed several activities for the Director's evaluation to mitigate existing and future material injury to SWC members. These included:

1) existing and future conversions of acres irrigated from groundwater to surface water irrigation;

2) dried up acres through the Conservation Reserve Enhancement Program (CREP), AWEP or other voluntary program resulting in the dry-ups of groundwater irrigated acres; and

3) groundwater recharge.

R., pp.1–2. It was IGWA's contention that these activities could alleviate demand on the ESPA, thereby reducing or eliminating material injury to senior water rights. Although IGWA sought advance approval of the proposed mitigation activates themselves, the proposed *Mitigation Plan* anticipated that the location and amount of the mitigation activities, and the calculation of resulting mitigation credit, would be a future determination to be made by the Director on a case-by-case basis. No opposition to the proposed *Mitigation Plan* was filed by any party.

On May 14, 2010, the Director entered an *Order Approving Mitigation Plan*, approving the mitigation activities proposed by IGWA.[2] R., pp.29–33. The *Order* stated that the *Mitigation Plan* "is designed to 'obtain mitigation credit in response to findings of material injury in the existing and any future delivery calls placed by . . . the Surface Water Coalition.'" R., p.30. It further provided that "in the future, if mitigation credit is sought by IGWA, the Director shall determine the appropriate credit, if any, to provide." R., p.32.

Meanwhile, on April 29, 2010, the Director issued his *Order Regarding April 2010 Forecast Supply (Methodology Steps 3 & 4)* ("*As-Applied Order*") in the SWC delivery call, wherein the Director predicted material injury to the SWC of 84,300 acre-feet for the 2010 irrigation season.[3] On May 11, 2010, IGWA filed a *Request for Mitigation Credit* ("*Credit Request*") with the Department. R., pp.23–26.[4] It sought mitigation credit under the Director's *Order Approving Mitigation Plan* with respect to the material injury determination made by the Director in the SWC delivery call for the 2010 irrigation season. In its *Credit Request*, IGWA asserted that the Director's *As-Applied Order* did not "take into consideration other mitigation efforts or activities that enhance the water supply to [SWC members]; the benefits of these actions by IGWA on the ESPA should be considered and mitigation credit granted. . . ." R., p.24. In total, IGWA's *Credit Request* sought 15,306 acre-feet of mitigation credit for conversions, CREP, and recharge activities.

On May 17, 2010, the Director issued his *Order Approving Mitigation Credits*, approving 5,707 acre-feet of mitigation credit in favor of IGWA with respect to the SWC delivery call for the 2010 irrigation season. R., pp.34–45. Of the total mitigation credit awarded, 5,390 acre-feet was attributed to CREP, 220 acre-feet was attributed to conversions, and 97 acre-feet was attributed to groundwater recharge. R., p. 35. On May 28, 2010, the SWC filed a *Petition Requesting Hearing* with the Department, seeking a hearing on the Director's *Order Approving Mitigation Credits*. R., pp.46–50. In the

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[2] This *Order* of the Director is not at issue in this proceeding.

[3] This *Order* of the Director is not at issue in this proceeding.

[4] The *Credit Request* was filed by IGWA "on behalf of its Ground Water District Members and other water user members for and on behalf of their respective members and those ground water users who are non-member participants in their mitigation activities. . . ." R., p.23.

Petition the SWC contended that the *Order Approving Mitigation Credits* did not comply with Rule 43 of the CMR. Following a hearing on the SWC's *Petition*, the Director issued his *Final Order Approving Mitigation Credits Regarding SWC Delivery Call* on July 19, 2010 ("*Final Order*"). R., pp.94–102. The *Final Order* affirmed the prior approval of IGWA's *Credit Request*, but diminished the amount of mitigation credit awarded to IGWA from 5,707 acre-feet to 5,621 acre-feet. Of the total mitigation credit awarded in the *Final Order*, 5,390 acre-feet was attributed to CREP, 220 acre-feet was attributed to conversions, and 11 acre-feet was attributed to groundwater recharge. R., p.95.

On August 16, 2010, the SWC filed a *Petition for Judicial Review* asserting that the *Final Order* is contrary to law and requests that this Court reverse the same. The parties briefed the issues contained in the *Petition for Judicial Review* and a hearing on the *Petition* was held before this Court on March 14, 2011.

II.
MATTER DEEMED FULLY SUBMITTED FOR DECISION

Oral argument before the District Court in this matter was held on March 14, 2011. The parties did not request the opportunity to submit additional briefing and the Court does not require any additional briefing in this matter. Therefore, this matter is deemed fully submitted for decision on the next business day or March 15, 2011.

III.
STANDARD OF REVIEW

Judicial review of a final decision of the director of IDWR is governed by the Idaho Administrative Procedure Act ("IDAPA"), Chapter 52, Title 67, I.C. § 42-1701A(4). Under IDAPA, the Court reviews an appeal from an agency decision based upon the record created before the agency. I.C. § 67-5277; *Dovel v. Dobson*, 122 Idaho 59, 61, 831 P.2d 527, 529 (1992). The Court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. I.C. § 67-5279(1); *Castaneda v. Brighton Corp.*, 130 Idaho 923, 926, 950 P.2d 1262, 1265 (1998). The

Court shall affirm the agency decision unless the court finds that the agency's findings, inferences, conclusions or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) not supported by substantial evidence on the record as a whole; or

(e) arbitrary, capricious, or an abuse of discretion.

I.C. § 67-5279(3); *Castaneda*, 130 Idaho at 926, 950 P.2d at 1265.

The petitioner must show that the agency erred in a manner specified in Idaho Code § 67-5279(3) and that a substantial right of the party has been prejudiced. I.C. § 67-5279(4); *Barron v. IDWR*, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001). Even if the evidence in the record is conflicting, the court shall not overturn an agency's decision that is based on substantial competent evidence in the record.[5] *Id.* The Petitioner also bears the burden of documenting and proving that there was not substantial evidence in the record to support the agency's decision. *Payette River Property Owners Assn. v. Board of Comm'rs*, 132 Idaho 552, 976 P.2d 477 (1999).

The Idaho Supreme Court has summarized these points as follows:

> The Court does not substitute its judgment for that of the agency as to the weight of the evidence presented. The Court instead defers to the agency's findings of fact unless they are clearly erroneous. In other words, the agency's factual determinations are binding on the reviewing court, even where there is conflicting evidence before the agency, so long as the determinations are supported by substantial competent evidence in the record . . . . The party attacking the Board's decision must first illustrate that the Board erred in a manner specified in I.C. § 67-5279(3), and then that a substantial right has been prejudiced.

Urrutia v. Blaine County, 134 Idaho 353, 357, 2 P.3d 738, 742 (2000) (citations omitted); *see also, Cooper v. Board of Professional Discipline*, 134 Idaho 449, 4 P.3d 561 (2000).

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[5] Substantial does not mean that the evidence was uncontradicted. All that is required is that the evidence be of such sufficient quantity and probative value that reasonable minds *could* conclude that the finding – whether it be by a jury, trial judge, special master, or hearing officer – was proper. It is not necessary that the evidence be of such quantity or quality that reasonable minds *must* conclude, only that they *could* conclude. Therefore, a hearing officer's findings of fact are properly rejected only if the evidence is so weak that reasonable minds could not come to the same conclusions the hearing officer reached. *See eg. Mann v. Safeway Stores, Inc.* 95 Idaho 732, 518 P.2d 1194 (1974); *see also Evans v. Hara's Inc.*, 125 Idaho 473, 478, 849 P.2d 934, 939 (1993).

If the agency action is not affirmed, it shall be set aside in whole or in part, and remanded for further proceedings as necessary. I.C. § 67-5279(3); *University of Utah Hosp. v. Board of Comm'rs of Ada Co.*, 128 Idaho 517, 519, 915 P.2d 1375, 1377 (Ct. App. 1996).

IV.
ANALYSIS

The sole issued presented on judicial review is identified by the SWC as follows: "Whether the Director's granting of mitigation 'credit' to IGWA for amounts paid by the State of Idaho and United States toward conservation programs is arbitrary, capricious, an abuse of discretion or contrary to law?" *Surface Water Coalition Joint Opening Brief*, p.2. The issue pertains to the decision of the Director to approve mitigation credit to IGWA based on its financial enrollment in CREP. The Director's decisions to approve mitigation credit to IGWA based on conversions and recharge are not placed at issue here.

In the *Final Order*, the Director made the following findings of fact with respect to CREP and IGWA's financial involvement in CREP:

> 10. CREP is a federal program that compensates landowners, primarily with federal dollars for discontinuing the cropping of farmland and growing a cover crop to protect the lands for conservation purposes. The program is "enhanced" when idling the lands will result in significant additional benefits that are identified by the U.S. Department of Agriculture. When lands are set aside under CREP, the owner of the lands receives compensation from the base purposes of the conservation reserved program and additional compensation for the "enhanced" purpose of the set aside. Lands within portions of the Eastern Snake River Basin are eligible for the enhanced compensation provided by CREP because of the ground water savings when the lands are no longer irrigated following enrollment.
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> 11. IGWA offered and continues to offer a signing bonus of $30 per acre to landowners who enroll in CREP within the eligible area of the ESPA.
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> 12. The Idaho CREP contract called for a maximum CREP enrollment of 100,000 acres. Approximately 17,000 acres are enrolled in CREP. The total authorized federal expenditure for CREP in the state of Idaho is $183,000,000. The total authorized state of Idaho and private contribution

> from cash and in-kind services is $75,041,883. Of this total state contribution, IGWA agreed to contribute a total of $3,000,000 in cash to enrollees as a signing bonus at the rate of $30 per acre. In addition, ground water districts, which are underlying members of IGWA, agreed to contribute $375,000 of in-kind services in the form of water measurement.
>
> 13. The total project enrollment cost is $258,041,833. IGWA's contribution of $3,375,000 is approximately 1.3% of the total cost of the CREP authorized budget.

R., pp.95–96. None of the parties to this proceeding dispute any of the above-mentioned findings of fact.

It is certain of the Director's conclusions of law based on the above-mentioned facts that are placed at issue by the SWC. It argues that the following conclusions of law are contrary to law, arbitrary and capricious, and an abuse of discretion on the part of the Director:

> 6. CREP accomplishes a goal of demand reduction in the Eastern Snake River Basin. The federal government and the state of Idaho are not requesting a proportionate share of the benefits derived from enrollment in CREP. *The Department will assign credit for mitigation to the entity contributing privately to enrollment. If there is more than one private contributor, the credit will be assigned to each contributor based on the proportion of the private contributions. If there is no private contribution, the Department will assign credit for mitigation as designated by the enrollee, if the enrollee determines that credit should be assigned.* A contributor may assign his or her credit.
> . . .
>
> 8. *The 5,621 acre-feet mitigation credit established herein may be applied by IGWA to its 2010 in-season demand shortfall to the SWC, if any.*

R., p.98 (emphasis added).

It is the SWC's position that the Director erred in approving a 5,390 acre-feet mitigation credit in favor of IGWA for the 2010 irrigation due to its financial participation in CREP. Its main concern is that IGWA was awarded 100% of the available CREP mitigation (i.e., 5,390 acre-feet) even though the Director made the factual finding that IGWA, as a private contributor, only contributes approximately 1.3% of the total financial cost of CREP. The SWC asserts that the Director's decision to award IGWA 100% of the available CREP mitigation under the circumstances is contrary

to law, arbitrary and capricious, and an abuse of discretion on the part of the Director, and requests that this Court reverse the same. None of the other financial contributors to CREP protested the Director's assignment of mitigation credits. Among other things, both IDWR and IGWA argue that the SWC is not entitled to relief on judicial review because it has failed to establish that its substantial rights were prejudiced by the Director's decision. This Court agrees.

A. The SWC has failed to sufficiently allege and/or establish how its substantial rights are prejudiced by the Director's *Final Order*.

A party seeking judicial review of an agency final order is only entitled to relief where that party establishes that one of its substantial rights have been prejudiced. I.C. § 67-5279(4); *In re Idaho Dept. of Water Resources Amended Final Order Creating Water Dist. No. 170*, 148 Idaho 200, 207, 220 P.3d 318, 325 (2009) (holding "the agency action shall be affirmed unless substantial rights of the appellant have been prejudiced"); *Kirk-Hughes Development, LLC v. Kootenai County Bd. of County Com'rs*, 149 Idaho 555, 557, 237 P.3d 652, 654 (2010) (holding, "the party challenging the decision of the Board must not only demonstrate that the Board erred in a manner specified in I.C. § 67-5279(3) but must also show that its substantial rights have been prejudiced").

In this case the SWC has failed to establish that its substantial rights were prejudiced by the Director's *Final Order*. The extent of the SWC's argument on the issue is that its "water rights are substantial rights and that the right of the Coalition to receive delivery of its water rights, in priority, is a substantial right." SWC Reply Br., p.8. The SWC goes onto argue that "the manner in which the Director determines the appropriate mitigation credit for junior users desiring to pump out of priority is a substantial right of the Coalition." *Id.* While the SWC argues that it has the above-mentioned substantial rights, it has not established how these rights were prejudiced or even could be potentially prejudiced, by the Director's *Final Order*. Conclusory statements that a petitioner has substantial rights that have been prejudiced, without establishing with particularity how the agency's decision results in prejudice to those rights, does not satisfy Idaho Code § 67-5279(4). *See e.g., Kirk-Hughes Development,*

LLC, 149 Idaho at 558, 237 P.3d at 655(stating that substantial rights have been prejudiced in a conclusory manner in briefing, without more, is insufficient).

In this case, members of the SWC who were predicted to suffer material injury for the 2010 irrigation season as identified in the Director's *As-Applied Order* divert water from the Blackfoot to Minidoka reach of the Snake River. The record establishes that the voluntary drying up of acres enrolled in the CREP program results in demand reduction on the ESPA, which it turn results in increased water gains to the Blackfoot to Minidoka reach of the Snake River. The Director quantified the amount of water gains to the Blackfoot to Minidoka reach resulting from CREP via the utilization of the ESPA Model. The Model predicted that in this case the voluntary drying up of acres involved in CREP would result in increased gains between the Blackfoot to Minidoka reach for the 2010 irrigation season of 5,390 acre-feet.

Of significance, the SWC has not challenged the ESPA Model or the results of the Director's modeling in this proceeding. Thus, the fact that ESPA Model predicted that the SWC was to receive 5,390 acre-feet of water during the 2010 irrigation season as a result of CREP is not in dispute. Rather, the SWC challenges only the Director's decision to assign the resulting mitigation credit associated with the gain increase to IGWA.[6] It argues that since IGWA contributes only 1.3% of the financial cost of CREP, it should only be entitled to 1.3% of the available CREP mitigation credit (i.e., a 70 acre-feet mitigation credit as opposed to a 5,390 acre-feet mitigation credit).

However, given that it is undisputed that the SWC benefited from increased water gains as a result of CREP, it is unclear how its water rights were, or would have been, prejudiced by the Director's allocation of the resulting mitigation credit. The SWC points to no facts in the record, and sets forth no supporting argument or legal authority, establishing how the Director's allocation of mitigation credit to IGWA in this case would prejudice its water rights. If injury to the SWC's water rights is in fact being mitigated, then the Court fails to understand how the Director's allocation of mitigation credit would prejudice those rights. If there is a difference resulting to the SWC's water rights should IGWA receive only 1.3% of the mitigation credit as opposed to 100% of the

[6] It should also be noted that the SWC did not challenge the Director's May 14, 2010, *Order Approving Mitigation Plan*, wherein the Director approved the drying up of acres through the Conservation Reserve CREP as a valid CMR 43 mitigation activity under IGWA's proposed mitigation plan.

mitigation credit, the SWC has failed to establish what that difference would be under the circumstances. In sum, the argument has nothing to do with potential differences in hydrological impacts to the SWC's rights or the potential for subverting a senior priority resulting from how mitigation credits are apportioned across an area of impact but rather the argument focuses solely on who pays for the mitigation credits. Due to any lack of showing of hydrological impact or injury to a senior priority date, this Court fails to comprehend how the senior rights of the SWC are prejudiced.

Likewise, the SWC's assertion that its right to receive water in priority was prejudiced by the Director's allocation of mitigation credit to IGWA is unsupported by any facts in the record, supporting argument or legal authority. Indeed the SWC has the right to have its water delivered according to its priority in relation to other priorities on the system. However, absent a showing of potential hydrological impact or subversion of a senior priority date, the right to have water delivered in priority does not carry with it the right to also demand which junior rights to curtail in order to satisfy its senior rights. Junior right holders certainly have the right to agree amongst themselves how the pain is going to be spread. Assume for the sake of discussion, in response to a delivery call by senior surface right holders, the most senior groundwater pumpers in the area of impact voluntarily agreed (maybe for altruistic reasons) to cease pumping in order to allow more junior groundwater rights to continue pumping. Assume further, the voluntary curtailment resulted in eliminating all material injury to the senior surface right. The SWC cites to no legal authority allowing the senior to demand that the Director disregard the remedial impacts of the voluntary curtailment and seek curtailment from juniors that would have otherwise been administered but for the voluntary curtailment efforts. In one respect that is what the SWC is arguing in this case. The parties responsible for financially contributing to the CREP program, due to the lack of protests, have tacitly agreed with the Director's methodology for assigning the mitigation credits resulting from CREP. Provided no injury inures to the rights of the SWC, this Court fails to see a distinction between whether the contributors to the CREP program decide how to assign mitigation credits amongst themselves, or they leave it for the Director to decide. From the perspective of the SWC, there has been no showing that such a distinction exists resulting in prejudice to its substantial rights.

In another respect, the SWC's assertion appears to attack the concept of mitigation credits in general, which not only act to allow those awarded with the credit to divert and use water out of priority, but also appear to treat the relative effects of groundwater pumping within an area of impact the same.[7] However, the SWC is precluded from arguing that mitigation credits cannot be awarded to IGWA in this case based on its participation in CREP since it did not oppose IGWA's *Mitigation Plan* requesting the approval of mitigation credits based upon CREP, or challenge the Director's *Order Approving Mitigation Plan*, which determined that when mitigation credit was sought by IGWA, "the director shall determine the appropriate credit, if any, to provide." R. p.32. Indeed, it appears to be the SWC's position that the Director has the authority to issue mitigation credits to those that financially contribute to CREP so long as the percentage of the mitigation credit awarded is related to the water users' financial contribution to CREP. However, if there is any prejudice to the SWC's asserted right to receive water in priority resulting from the Director's decision to award IGWA 100% of the mitigation credit as opposed to 1.3% of the mitigation credit, the SWC has failed to establish what that prejudice would be under the circumstances.

In sum, under the circumstances of this case, there has been no showing by the SWC that the remedial value of the CREP acres on its senior rights is affected by how the mitigation credits are assigned.[8] Conclusory and unsupported assertions by the SWC that its water rights and its right to receive delivery of water in priority were prejudiced, without further supporting argument and/or facts in the record, fail to satisfy the SWC's burden under Idaho Code § 67-5279(4). This Court finds that the SWC has not established that any of its substantial rights have been prejudiced. Therefore the relief requested by the SWC must be denied.

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[7] An alternative would be for the Director to factor CREP or any other voluntary fallowing of acres as an adjustment to the material injury side of the equation as opposed to the mitigation side. Any necessary involuntary administration would then be according to priority.

[8] The Court's holding does not mean that the Director's methodology for assigning mitigation credits resulting from CREP acres would never under any circumstances prejudice other rights, including the rights of other groundwater pumpers. However, the Court need not address that issue under the facts presented in this particular case. The Director's methodology applied in this case is not immune from contest in the future if under the appropriate set of facts prejudice to other rights can be established.

B. The Court need not reach the issue of whether the Director's *Final Order* is contrary to law, arbitrary and capricious, or an abuse of discretion.

Since the Court finds that the SWC has not established prejudice to one of its substantial rights resulting from the Director's *Final Order*, it need not address whether the rule set forth by the Director in conclusion of law no. 6 of the *Final Order* governing the allocation of mitigation credits is contrary to law, arbitrary and capricious, or an abuse of discretion. The Court notes that the CMR do not explicitly address the use of, or distribution of, mitigation credits. However the issue of whether the implementation of mitigation credits by the Director is contrary to law, arbitrary and capricious, or an abuse of discretion has not been raised, as the SWC did not challenge the Director's May 14, 2010, *Order* approving the use of mitigation credits resulting from CREP mitigation activities. The Court further notes that the financial contributors to the CREP program, as well as the enrollees in the program, who arguably do have a substantial interest in the assignment of the mitigation credits, did not oppose the Director's methodology. That being said, the Court's holding in this matter regarding the rule set forth by the Director in conclusion of law no. 6 of the *Final Order* is limited to the facts of this case.

V.
CONCLUSION

Based on the foregoing, the Director's *Order Approving Mitigation Credits* is **affirmed.**

Dated April 22, 2011

ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER ON PETITION FOR JUDICIAL REVIEW was mailed on April 22, 2011, with sufficient first-class postage to the following:

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