

“Department”). The order under review is the Director’s *Order Approving IGWA’s Fourth Mitigation Plan* (“*Final Order*”) issued on October 29, 2014. The *Final Order* conditionally approves a mitigation plan submitted by the Idaho Ground Water Appropriators, Inc. (“IGWA”) in response to a delivery call made by Rangen. Rangen asserts that the *Final Order* is contrary to law in several respects and requests that this Court set it aside and remand for further proceedings.

B. Course of Proceedings and Statement of Facts.

On December 13, 2011, Rangen filed a *Petition for Delivery Call* with the Department. It alleged Rangen is short water under two senior rights due to junior ground water use. The Director subsequently issued a curtailment order concluding that Rangen’s senior rights are being materially injured by junior ground water pumpers.¹ 4633 Ex.1018.² The curtailment order provided for the curtailment of certain ground water rights that divert from the Eastern Snake Plain Aquifer with priority dates junior to July 13, 1962. 4633 Ex.1018, p.42. The Director instructed, however, that affected juniors could avoid curtailment if they proposed and had approved a mitigation plan that provided Rangen with phased-in mitigation over a five-year period as follows: 3.4 cfs the first year, 5.2 cfs the second year, 6.0 cfs the third year, 6.6 cfs the fourth year, and 9.1 cfs the fifth year. *Id.* The time period associated with the first year was to begin April 1, 2014 and end March 31, 2015. 2935 R., p.296. Thereafter, the second year would commence April 1, 2015, and so on and so forth. *Id.*

IGWA submitted several mitigation plans on behalf of affected users. The first was on February 11, 2014. 2935 R., p.291. It set forth nine proposals for juniors to meet their mitigation obligations. *Id.* The Director approved it in part, granting IGWA a total of 3.0 cfs of mitigation credit from April 1, 2014 to March 31, 2015. 2935 R., p.311. Of that, 1.2 cfs was attributable to IGWA’s aquifer enhancement activities, including conversions from ground water

¹ The term “curtailment order” as used herein refers to the Director’s *Final Order Regarding Rangen, Inc.’s Petition for Delivery Call; Curtailing Ground Water Rights Junior to July 13, 1962*, dated January 29, 2014. A copy is included in the record as Exhibit 1018. The Director’s curtailment order is not at issue in this proceeding, but was previously addressed by this Court on judicial review in Twin Falls County Case No. CV-2014-1338.

² There are multiple agency records made part of the record in this matter. The citation “4633, R., ____” refers to the agency record compiled for this judicial review proceeding. The citation “2935 R., ____” refers to the agency record compiled for Twin Falls County Case No. CV-2014-2935. The citation “1338 R., ____” refers to the agency record compiled for Twin Falls County Case No. CV-2014-1338.

to surface water irrigation, voluntary “dry-ups” of irrigated acreage, and ground water recharge. *Id.* The remaining 1.8 cfs was attributable to the direct delivery of surface water to Rangen as a result of a water exchange agreement between the North Snake Ground Water District and another senior water user that diverts from the same source as Rangen. *Id.* The Director’s final order approving the first plan in part is not at issue in this proceeding.

Although IGWA was originally granted 3.0 cfs of mitigation credit under its first plan (0.4 cfs short of its first year mitigation obligation), the Director subsequently recalculated the amount of credit granted for the water exchange agreement. 4633 Ex.1021, pp.17-18. The recalculation resulted in a mitigation credit of 3.4 cfs from April 1, 2014 to January 18, 2015. *Id.* This recalculation changed the dynamic of the first mitigation plan. It resulted in IGWA being granted full mitigation credit of 3.4 cfs, but only for a portion of the first mitigation year. *Id.* This left a first year mitigation deficiency of 2.2 cfs from January 19, 2015 to March 31, 2015. To address the deficiency, the Director looked to IGWA’s second mitigation plan. That plan proposed direct delivery of 9.1 cfs of mitigation water from Tucker Springs through a 1.3 mile pipeline to Rangen. 4633 Ex.2003, p.2. The Director entered his final order conditionally approving the plan on June 20, 2014. 4633 Ex.2003. The order directed that the pipeline project be completed and provide the requisite amount of water to Rangen on or before January 19, 2015. 4633 Ex.2003, p.18. If not, the Director would curtail. *Id.* Ultimately, the Director found that IGWA’s first mitigation plan, when paired with its second, provided sufficient mitigation to satisfy the junior users’ first year mitigation obligation. *Id.* The Director’s final order conditionally approving IGWA’s second mitigation plan is not at issue in this proceeding.

Before the pipeline project contemplated by the second plan was realized, IGWA withdrew its second mitigation plan. As will be discussed further herein, the Director approved IGWA’s fourth mitigation plan in its stead. IGWA’s third mitigation plan consists of five components, including a proposed pump and pipeline project to provide for direct delivery of water to Rangen from another spring user in the Hagerman area. 4633 R., p.180. Full consideration of the third plan is on hold due to the Director’s conditional approval of the fourth mitigation plan. *Id.* In any event, no final order pertaining to IGWA’s third plan is before the Court in this, or any other, judicial review proceeding.

IGWA submitted its fourth mitigation plan to the Director on August 27, 2014. 4633 R., pp.1-24. It is comprised of multiple components which the Director summarized as follows:

[The] lease or purchase of 10.0 cfs of water right nos. 36-7072 and 36-8356 owned by SeaPac of Idaho ("SeaPac"); long-term lease or purchase from the Idaho Water Resource Board ("IWRB") of water right nos. 36-4011, 36-2734, 36-15476, 36-2414, and 36-2338 to make available to SeaPac; design, construction, operation, and maintenance of the water intake and collection facilities, pump station, and pipeline to transport water from SeaPac's Magic Springs facility to the head of Billingsley Creek directly up gradient from the Rangen Facility; acquisition of permanent easements at Magic Springs for the water intake and collection facilities, pump station, pipeline, and other necessary features for delivery of water to the head of Billingsley Creek; and approval of a transfer application to change the place of use from SeaPac to Rangen.

4633 R., pp.180-181 (internal footnotes omitted). The Director issued his *Final Order* conditionally approving the fourth mitigation plan on October 29, 2014. 4633 R., pp.1-24. The fourth plan was approved in the stead of the second. To dovetail the January 19, 2015, completion deadline established under the second plan, the Director ordered that the mitigation project proposed under the fourth plan be completed and deliver the requisite amount of mitigation water to Rangen by that same date. 4633 R., pp.197 & 198. The Director's *Final Order* conditionally approving IGWA's fourth mitigation plan is the only final order of the Director presently before the Court.

On November 25, 2014, Rangen filed the instant *Petition for Judicial Review*, asserting that the Director's *Final Order* is contrary to law in several respects and should be set aside and remanded for further proceedings. The case was reassigned by the clerk of the court to this Court on December 1, 2014.³ On February 3, 2015, the Court entered an *Order* permitting IGWA to appear as an intervenor. The parties subsequently briefed the issues raised on judicial review. A hearing on the *Petition* was held before this Court on April 16, 2015. The parties did not request the opportunity to submit additional briefing and the Court does not require any. Therefore, this matter is deemed fully submitted for decision on the next business day or April 17, 2015.

³ The case was reassigned to this Court 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*.

II.

STANDARD OF REVIEW

Judicial review of a final decision of the director of IDWR is governed by the Idaho Administrative Procedure Act ("IDAPA"). Under IDAPA, the court reviews an appeal from an agency decision based upon the record created before the agency. I.C. § 67-5277. 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). The court shall affirm the agency decision unless it 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). Further, the petitioner must show that one of its substantial rights has been prejudiced. I.C. § 67-5279(4). 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. *Barron v. IDWR*, 135 Idaho 414, 417, 18 P.3d 219, 222 (2001). The Petitioner 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).

III.

ANALYSIS

A. The Director's *Final Order* is not contrary to Rule 40 of the CM Rules.⁴

When the Director makes a determination that material injury exists in the context of a call, he must engage in one of two actions. He may regulate and curtail the diversions causing injury, or he may approve a mitigation plan that permits offending out-of-priority diversions to continue. IDAPA 37.03.11.040.01.a,b. Rangen argues that the Director exceeded his authority, and acted contrary to Rule 40 of CM Rules, by permitting out-of-priority diversions during the first mitigation year without a properly approved mitigation plan. Rangen's argument on this issue is strewn over a multitude of events pertaining to this call, many of which are not properly

⁴ The term "CM Rules" refers to Idaho's *Rules for Conjunctive Management of Surface and Ground Water Resources*, IDAPA 37.03.11.

before the Court. It is, it seems, important to clarify what is, and what is not, properly before the Court in this judicial review proceeding.

- i. **Whether the Director violated Rule 40 of the CM Rules in allowing out-of-priority water use from April 1, 2014 to January 18, 2015 is not properly before the Court.**

The *Petition* in this matter seeks judicial review of the Director's *Final Order* conditionally approving IGWA's fourth mitigation plan. Issues limited to the Director's rulings in that *Final Order* are the only issues properly before the Court. Much of Rangen's argument that out-of-priority water use unlawfully occurred during the first mitigation year is addressed to the Director's final order partially approving IGWA's first mitigation plan. It is solely pursuant to mitigation activities approved under that plan that junior users were permitted to divert from April 1, 2014 to January 18, 2015. The mitigation activities approved under the fourth plan only concern, and provided mitigation credit for, the period beginning January 19, 2015 and ending March 31, 2015 of the first mitigation year.

Rangen already sought and received judicial review of the Director's final order partially approving the first mitigation plan in Twin Falls County Case No. CV-2014-2446. *Rangen Op. Br.*, Appx.2 In that proceeding, the Court fully addressed the issues raised by Rangen in relation to the Director's final order partially approving the first plan. *Id.* Judgment was entered in that matter on December 3, 2014. No party has appealed from the Judgment, and the time for an appeal has expired. Therefore, the Court will not revisit those issues, or address any other issues pertaining to the Director's approval of the first mitigation plan in this proceeding.

- ii. **Whether the Director violated Rule 40 of the CM Rules in allowing out-of-priority water use from January 19, 2015 to February 6, 2015 is not properly before the Court.**

The Director ordered that the mitigation project proposed by IGWA under its fourth plan be completed and delivering water to Rangen by January 19, 2015, or there would be curtailment. 4633 R., p198. The project was not completed by the January 19th deadline. With curtailment looming, IGWA motioned this Court to stay the Director's curtailment for an additional nineteen days. That was the additional time IGWA asserted was necessary to complete the project due to complications. In support of its request, IGWA established that it

was in good faith constructing the project, that the project was very near completion, and that curtailment of affected juniors for nineteen days would provide little, if any, measurable water to Rangen. For these reasons, among others, the Court in an exercise of its discretion ordered that the Director stay his curtailment until February 7, 2015.

Therefore, it was not the Director that permitted out-of-priority water use to occur from January 19, 2015 to February 6, 2015. The Director was prepared to enforce his curtailment order at that time but for this Court's stay order. The stay order was entered in Twin Falls County Case No. CV-2015-237 on January 22, 2015. The Court subsequently entered Judgment in that matter on February 17, 2015. No party appealed from the Judgment, and the time for an appeal has expired. Therefore, issues concerning the propriety of junior out-of-priority water use from January 19, 2015 to February 6, 2015 are not properly before the Court in this proceeding.

iii. The Director did not violate Rule 40 of the CM Rules in allowing out-of-priority water use to occur from February 7, 2015 to March 31, 2015 under the *Final Order*.

The only out-of-priority water use to occur during the first mitigation year under the fourth mitigation plan took place from February 7, 2015 to March 31, 2015. The issue before the Court is whether that use was lawfully permitted pursuant to an approved mitigation plan as required by Rule 40 of the CM Rules. When the Director issued his *Final Order*, he did not outright approve the fourth mitigation plan. He conditionally approved it. 4633 R., p.197. His approval was contingent upon "approval of IGWA's September 10, 2014, Application for Transfer of Water Right to add the Rangen Facility as a new place of use for up to 10 cfs from water right number 36-7072 or an authorized lease through the water supply bank." *Id.* Approval was further contingent upon "all necessary agreements or options contracts being reduced to final written agreements." 4633 R., p.197. Rangen challenges the Director's conditional approval of the plan, arguing that such approval is contrary to Rule 40.

The Director may conditionally approve a mitigation plan consistent with Rule 40. To do so, however, he must not permit out-of-priority water use to occur under that plan prior to the conditions of approval being satisfied. Such is the case here. The Director's *Final Order* was issued in October 2014. Although the fourth plan was only conditionally approved at the time, the *Final Order* directed that if IGWA failed to provide the requisite amount of mitigation water

to Rangen under the plan by January 19, 2015, junior users would be curtailed. 4633 R., p.198. The January 19, 2015, date is meaningful. It is the date the Director determined IGWA would be short mitigation under activities undertaken, and approved, in conjunction with the first plan. Therefore, IGWA needed additional mitigation under its fourth plan by that date. If IGWA were unable to satisfy the Director's conditions of approval by January 19th, or if it were unable to deliver sufficient mitigation for any other reason, the *Final Order* made clear that the Director would *not* permit out-of-priority water use under the plan, but would instead curtail. 4633 R., p.198. Since the Director's conditional approval of the fourth plan did not permit out-of-priority water use prior to the conditions of approval being satisfied, the Court finds that the Director's *Final Order* is consistent with Rule 40.

The Court does note that the Director's conditions of approval were met before he allowed any out-of-priority water use to occur under the fourth mitigation plan. IGWA entered into a lease with the Water Supply Bank on January 15, 2015, and was able to secure the necessary agreements. *Budge Aff.*, ¶6 & 8, Ex.A & C. It is undisputed that the fourth mitigation project is operational, and has been providing the required amount of mitigation water to Rangen since February 6, 2015. *Budge Aff.*, ¶9. As explained above, out-of-priority water use did occur from January 19th to February 6th. However, this was not permitted by the Director in his *Final Order*, but rather was permitted by this Court via its stay order from which no appeal has been taken. Therefore, while junior users have been permitted to continue out-of-priority diversions since February 6, 2015, under the Director's *Final Order*, such diversions have occurred pursuant to an approved mitigation plan consistent with Rule 40 of the CM Rules.

B. The Director's approval of the fourth mitigation plan contains adequate contingencies.

Rangen argues that the *Final Order* should be reversed and remanded for failure to set forth adequate contingencies to protect its senior rights. When the Director considers a proposed mitigation plan, he may approve the plan only if it includes "contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable." IDAPA 37.03.11.043.03.c. The Court finds that the Director's *Final Order* contains adequate contingencies.

The first contingency is curtailment. On several occasions this Court has reversed the Director's approval of a mitigation plan for failing to contain adequate contingencies. Each time, the Director had (1) expressly stated he would not curtail junior rights if and when mitigation water became unavailable under the plan, and (2) the plan provided for no secondary mitigation source to address a mitigation deficiency.⁵ For instance, when the Director approved IGWA's first mitigation plan, he approved mitigation resulting from conversions by junior users from ground to surface water irrigation. However, he expressly provided that if those junior users reverted back to ground water resulting in a mitigation deficiency, he would not curtail during that irrigation season to address the deficiency. Since the Director would not curtail, and the plan provided for no secondary mitigation source to address the deficiency, the Court reversed and remanded the Director's approval of the plan on the grounds it did not contain adequate contingencies. *Rangen Op. Br., Appx. 2*, pp.6-10. Such is not the case here. In the event mitigation water under the fourth plan becomes unavailable, curtailment is a contingency to address the mitigation deficiency.

The second contingency is insurance. The Director's *Final Order* requires IGWA "to purchase an insurance policy for the benefit of Rangen to cover any losses of fish attributable to the failure of the temporary or permanent pipeline system to the Rangen Facility." 4633 R., p.198. The record establishes the insurance has been obtained. *Budge Aff.*, ¶12, Ex.D. The Court finds that the contingencies of curtailment coupled with insurance are adequate contingencies to satisfy Rule 43.03.c of the CM Rules.

C. The Director did not err in deferring consideration of Rule 43.03.j factors until a separate transfer proceeding.

Rule 43.03 sets forth the "[f]actors that may be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights. . . ." IDAPA 37.03.11.043.03. One of the listed factors is "[w]hether the mitigation plan is consistent with the conservation of water resources, the public interest or injures other water rights, or would result

⁵ See e.g., *Memorandum Decision*, Twin Falls County Case No CV-2014-2446, pp.6-10 (Dec.3, 2014) (reversing approval of mitigation plan where the Director expressly stated he would not curtail and the plan contained no secondary source of mitigation water in event mitigation water became unavailable); *Memorandum Decision*, Gooding County Case No. CV-2010-382, pp.14-15 (Sept.26, 2014)) (reversing approval of mitigation plan where the Director expressly stated he would not curtail and the plan contained no secondary source of mitigation water in event mitigation water became unavailable).

in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge.” IDAPA 37.03.11.043.03.j. The Rule’s use of the term “may” leaves it to the discretion of the Director to determine which of the 43.03 factors he will consider. *See e.g., Rife v. Long*, 127 Idaho 841, 848, 908 P.2d 143, 150 (1995) (holding that the word “may” is a permissive term expressing a right of discretion, whereas, the words “must” or “shall” are mandatory).

In conjunction with the fourth mitigation plan, IGWA filed an “Application for Transfer of Water Right” with the Director in a separate administrative proceeding to add the Rangen facility as a new place of use for up to 10 cfs from water right number 36-7072. 4633 R., p.196. In his *Final Order*, the Director chose to consider the issue of potential injury to other water users as a result of that transfer, but ruled that “[i]ssues of potential injury to other water users due to a transfer are most appropriately addressed in the transfer contested case proceeding.” *Id.* It is understandable that the Director would, in his discretion, refrain from engaging in a full blown transfer and injury analysis in the context of the administrative proceeding on the mitigation plan under these circumstances. This is because a separate administrative proceeding on the transfer application itself was also pending before Department, wherein those same issues would be addressed. The Director’s approval of the fourth mitigation plan was made in part contingent upon the approval of the transfer. Given the nature of a transfer proceeding, notice and the opportunity to be heard would need to be afforded to a lot more water users than just those who were already a party to the administrative proceeding on the fourth mitigation plan. It would have been untenable for the Director to make a determination on the transfer in conjunction with the mitigation plan, and then make a separate determination in conjunction with the transfer proceeding. So the Director determined to engage in the injury analysis at what he determined to be the most appropriate time – in the context of the transfer proceeding. The Court holds that the Director did not abuse his discretion under Rule 40.03 in so determining.⁶

⁶ The record establishes that the administrative proceeding on the transfer has concluded and that the transfer has been approved. *Budge Aff.*, Ex.B. In his order approving the transfer, the Director engaged in an injury analysis. The Director’s final order is presently before this Court on judicial review in Twin Falls County Case No. CV-2015-1130.

D. The Director's recalculation of the water exchange agreement is reversed and remanded for further proceedings as necessary.

When the Director partially approved IGWA's first mitigation plan, he granted IGWA 1.8 cfs of mitigation credit towards its first year mitigation obligation as a result of the water exchange agreement. This Court judicially reviewed the Director's determination in this respect in Twin Falls County Case No. CV-2014-2446. *Rangen Op. Br., Appx. 2*. In its *Memorandum Decision*, the Court reversed and remanded the Director's determination in this respect on two grounds. First, the Director's use of flow data associated with an average year to determine the mitigation credits of junior users was reversed and remanded for further proceedings. *Rangen Op. Br. Appx. 2*, pp.12-14. Second, the Director's use of an annual time period to evaluate the mitigation benefits of the water exchange agreement was reversed and remanded for further proceedings. *Id.*

After his original determination, but prior to the issuance of this Court's decision reversing and remanding that determination, the Director engaged in a recalculation of the mitigation credit awarded as a result of the water exchange agreement. The recalculation was originally completed in the Director's final order conditionally adopting IGWA's second proposed mitigation plan, but was adopted and carried out by the Director in his *Final Order*. The Director's recalculation perpetuated the same legal errors present in his original calculation. Therefore, for the reasons set forth in this Court's *Memorandum Decision* entered in Twin Falls County Case No. CV-2014-2446, at pages 12-15, which reasoning and analysis is expressly incorporated herein, the Director's recalculation of the mitigation credit awarded as a result of the water exchange agreement is reversed and remanded for further proceedings as necessary.

E. The Director's *Final Order* did not effectuate an unconstitutional taking.

Rangen argues that the Director's *Final Order* constitutes a taking of its property without just compensation in violation of Article I, Section 14 of the Idaho Constitution and the Fifth Amendment of the U.S. Constitution. Rangen complains of the following provision contained in the Director's *Final Order*:

IT IS FURTHER ORDERED that, within seven (7) days from the date of this order, Rangen must state, in writing, whether it will accept water delivered pursuant to the Magic Springs Project. Rangen must submit its written acceptance/rejection to the Department and IGWA. The written

acceptance/rejection must state whether Rangen will accept the Magic Springs water and whether Rangen will allow construction on its land related to the placement of delivery pipe. If the Fourth Mitigation Plan is rejected by Rangen or Rangen refuses to allow construction in accordance with an approved plan, IGWA's mitigation obligation is suspended.

4633 R., p.198.

A plain reading of the provision establishes that it did not effectuate a taking of Rangen's real property by the Department. Nor is it a mandate that Rangen provide IGWA an easement or other legal access for delivery of mitigation water. Rather, it is an inquiry as to whether Rangen is determined to refuse IGWA the access necessary to mitigate its injury under the plan. If so, the logistics and timing of the fourth mitigation plan may be affected. IGWA would then be required to take further steps to implement the plan, including but not limited to the commencement of condemnation proceedings by it or its member ground water districts under Idaho Code 42-5224(13).⁷

In any event, the record is clear that no taking of Rangen's property by the Department has occurred. Rangen and various IGWA participating ground water districts have entered into a license agreement, wherein for good and valuable consideration Rangen has granted the districts a license "to install, operate, maintain and replace as needed, at their expense, buried pipelines for the conveyance of water from Magic Springs to Rangen's hatchery. . . ." *Budge Aff.*, Ex.C. Furthermore, because of the revocable nature of the license agreement, the ground water districts have instituted a condemnation proceeding against Rangen in Twin Falls County Case No. CV-2015-123 pursuant to Idaho Code § 42-5224(13). In that action the districts seek to condemn two easements on Rangen's property: one for the pipe and another to provide access to the pipe. That matter is currently stayed pursuant to stipulation of the parties. However, if the action is pursued and the districts are successful, the issue of just compensation due Rangen will be addressed by the Court in that proceeding. Therefore, the Court finds that the Director's *Final Order* does not effectuate an unlawful taking of Rangen's property without just compensation.

⁷ Idaho Code § 42-5224(13) is part of the Ground Water District Act. It states that the board of a ground water district shall have the power and duty "To have and exercise the power of eminent domain in the manner provided by law for the condemnation of private property for easements, rights-of-way, and other rights of access to property necessary to the exercise of the mitigation powers herein granted, both within and without the district." I.C. § 42-5224(13).

F. Rangen is not entitled to an award of attorney's fees on judicial review.

In its *Petition*, Rangen seeks an award of attorney fees under Idaho Code § 12-117. While Rangen seeks an award in its *Petition*, it has not supported that request with any argument or authority in its briefing. On that ground, Rangen is not entitled to an award of attorney fees on judicial review, and its request must be denied. *See e.g., Bailey v. Bailey* 153 Idaho 526, 532, 284 P.3d 970, 976 (2012) (providing “the party seeking fees must support the claim with argument as well as authority”). Additionally, Rangen has only prevailed in part, and the Court does not find the arguments of the Department to be frivolous or unreasonable. Therefore an award of attorney fees under Idaho Code § 12-117 is not warranted.

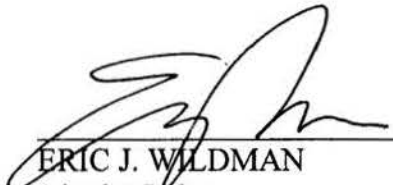
IV.

ORDER

For the reasons set forth above, the Director's *Final Order* is affirmed save the Director's recalculation in the *Final Order* of the mitigation credit granted to IGWA as a result of the water exchange agreement which is reversed, set aside and remanded for further proceedings as necessary consistent with this decision.

IT IS SO ORDERED.

Dated May 13, 2015


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the MEMORANDUM DECISION AND ORDER was mailed on May 13, 2015, with sufficient first-class postage to the following:

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A handwritten signature in cursive script, appearing to read "Julie Murphy", is written over a horizontal line.