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Irrigation District*

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Irrigation District, Milner Irrigation District,
North Side Canal Company, and Twin Falls
Canal Company*

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT

OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

BONNEVILLE JEFFERSON GROUND)
WATER DISTRICT,)
)
Petitioner,)

) Case No. CV10-24-2909

vs.)

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 THE)
“SURFACE WATER COALITION”), THE)
IDAHO GROUND WATER)
APPROPRIATORS, INC., an Idaho non-)
profit corporation, FREMONT-MADISON)
IRRIGATION DISTRICT, JEFFERSON-)
CLARK GROUND WATER DISTRICT,)

**DECLARATION OF TRAVIS L.
THOMPSON IN SUPPORT OF
RESPONDENTS’ MOTION TO
CHANGE VENUE**

BINGHAM GROUND WATER DISTRICT,)
 AMERICAN FALLS-ABERDEEN)
 GROUND WATER DISTRICT, MAGIC)
 VALLEY GROUND WATER DISTRICT,)
 NORTH SNAKE GROUND WATER)
 DISTRICT, CAREY VALLEY GROUND)
 WATER DISTRICT, JOHN AND JANE)
 DOES 1-50,)
 Respondents.)
)

I, Travis L. Thompson, declare and state as follows:

1. I am an attorney licensed to practice law in the state of Idaho and represent Respondents A&B Irrigation District, Burley Irrigation District, Milner Irrigation District, North Side Canal Company, and Twin Falls Canal Company in the above-entitled action. As such, I have personal knowledge of the facts and statements contained in this Declaration. I submit this Declaration in support of the Motion to Change Venue filed together herewith this Declaration.

2. Seven (7) of the Respondents, 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, are surface irrigation water delivery organizations (collectively “Surface Water Coalition” or “SWC”) located in what is commonly referred to as the “Magic Valley” and within the Fifth Judicial District for the State of Idaho. The principal office of each entity is located as follows:

2.1. A & B Irrigation District with a principal office located in Rupert, Minidoka County, Idaho.

2.2. American Falls Reservoir District #2 with a principal office located in Shoshone, Lincoln County, Idaho.

2.3. Burley Irrigation District with a principal office located in Burley, Cassia County, Idaho.

2.4. Milner Irrigation District with a principal office located in Milner, Twin Falls County, Idaho.

2.5. Minidoka Irrigation District with a principal office located in Rupert, Minidoka County, Idaho.

2.6. North Side Canal Company with a principal office located in Jerome, Jerome County, Idaho.

2.7. Twin Falls Canal Company with a principal office located in Twin Falls, Twin Falls County, Idaho.

3. Three (3) of the SWC entities boundaries extend into Jerome County, Idaho and they deliver irrigation water to water users with real property located in Jerome County, Idaho: A&B Irrigation District, American Falls Reservoir District #2, North Side Canal Company.

4. Seven (7) of the Respondents, Fremont-Madison Irrigation District, Jefferson-Clark Ground Water District, Bingham Ground Water District, American Falls-Aberdeen Ground Water District, Magic Valley Ground Water District, North Snake Ground Water District, Carey Valley Ground Water District are ground water districts, none of whom have an office located in Bonneville County, Idaho. Two of the Respondent ground water districts are located in the Magic Valley and the Fifth Judicial District: Magic Valley Ground Water District and North Snake Ground Water District.

5. Based upon information and belief, Petitioner is asserting that venue is proper in Bonneville County because Petitioner claims that Respondent Idaho Ground Water Appropriators, Inc. ("IGWA") has an office in Idaho Falls, Idaho. IGWA is an Idaho

corporation, and its membership is composed of Petitioner, all the Respondent ground water districts, and is governed by a Board of Directors, all of whom are members of or associated with Petitioner and Respondent ground water districts. IGWA does not own water rights, does not manage water rights, and operates as directed by its members and Directors. From 2019 through March of 2024, IGWA filed annual reports with the Idaho Secretary of State showing that its mailing address was Pocatello, Idaho. Attached as **Exhibit A** is the Annual Report for IGWA filed March 19, 2024 showing the mailing address of IGWA to be in Pocatello, Idaho.

6. The only Director of IGWA located in Bonneville County, Idaho is Ms. Stephanie Mickelsen who, based upon information and belief, is the Co-Chairperson of the Board of Directors of IGWA and is the Chairperson of the Board of Directors of Petitioner. None of the other Directors of IGWA listed in its annual report show an address located in Bonneville County, Idaho.

7. On April 10, 2024, IGWA changed its address to Idaho Falls, Idaho pursuant to a *Change of Business Mailing Address* attached as **Exhibit B**. This change was made approximately six (6) weeks before the filing of the Petition in this action.

8. Many counts of the Petition filed by Petitioner seek to set aside a stipulated mitigation agreement entered into in 2015 between the SWC, Petitioner, and all other Respondents. In addition, the Petition seeks damages pursuant to Counts X through XIII of the Petition and the only parties against whom the Petitioner seeks damages are the SWC entities. The Petitioner does not seek damages from IGWA or any of the other Respondents. The claim for damages is not insignificant. Although the Petitioner does not specify damages, Petitioner alleges that the damages are “millions of dollars”. *See Petition* ¶ 218. The principal offices of the SWC Respondents and where the alleged actions by these members and their boards took

place, were all located outside of Bonneville County.

9. The SWC asserts that an impartial trial cannot be had in Bonneville County for the following reasons:

9.1. The Director of the Idaho Department of Water Resources (“IDWR”) found that Petitioner and other Respondent ground water districts breached the agreement that is the subject matter of this action in 2021 and 2022. As a result, Petitioner and other Respondent ground water districts were required to cure the 2021 breach by purchasing storage water to deliver to the SWC. Petitioner has not yet cured its 2022 breach of the agreement and the matter recently proceeded through a contested case in front of former Chief Justice Roger Burdick who was appointed hearing officer by the Director. A decision from Hearing Officer Burdick is pending before IDWR.

9.2. As of the date that this Declaration is signed, Petitioner is subject to a curtailment order issued by the Idaho Department of Water Resources, a copy of which is attached as **Exhibit C**. Unless the Director of IDWR determines that Petitioner complies with an existing mitigation plan, the order states that water rights located within Petitioner will be curtailed.

9.3. Prior to and since the issuance of the curtailment order, chairperson Stephanie Mickelsen of Petitioner and IGWA, among others, has conducted a public relations campaign denigrating the SWC, IDWR, and its Director. Attached as **Exhibit D** is an article published by the Idaho Capital Sun and republished in the Idaho Falls Idaho Press on June 5, 2024, in which she is quoted as stating in reference to the call and the SWC: “It’s basically a draconian way to bring about what they need.” Attached as **Exhibit E** is an article published in the Idaho Capital Sun on May 31, 2024 in refence to the issuance of the curtailment order

quoting the attorney for IGWA and referring to the curtailment order as “an utterly absurd situation”. These are just a few of many examples of public comments, opinion pieces and press releases made about the curtailment order by representatives of Petitioner and other ground water districts.

9.4. Stephanie Mickelsen, who is the Chairperson of IGWA and the Chairperson of Petitioner, is also an elected State Representative, House Seat 32A, representing Idaho Falls and Bonneville County in the Idaho State Legislature. She won the 2024 Republican primary election for her seat and according to the Idaho Secretary of State received over 60% of the votes in a 3-way primary race.

10. All the primary witnesses for the SWC, including the managers of all of the entities comprising the SWC, reside in the counties located in the Magic Valley, including the counties set forth above as the counties of the principal offices of the SWC entities. It is a tremendous inconvenience for the only parties against whom multi-million dollars in damages are being sought to require them to transport their witnesses, representatives and exhibits to Bonneville County, Idaho. The SWC entities closest to Idaho Falls, Idaho are A&B and Minidoka Irrigation Districts, which are 121 miles away and the furthest is North Side Canal Company, which is 167 miles away.

11. The SWC submits that, because of the influence of Stephanie Mickelsen, Petitioner’s multi-year adjudicated breaches of the Agreement that are the subject matter in this action, the public relations campaign of Petitioner and IGWA, the ill-will that has been generated as a result of the curtailment order and breaches of the agreement, the ongoing threat of curtailment of ground water users located in Bonneville County, and other factors set forth above, the SWC cannot obtain a fair trial in Bonneville County, Idaho and the ends of justice

would be promoted by changing venue of this action as requested by the SWC.

I declare under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

Dated this 10th day of June, 2024

MARTEN LAW LLP



Travis L. Thompson

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of June, 2024, the foregoing was filed electronically using the Court's e-file system, and upon such filing the following parties were served electronically.

Skyler C. Johns Steven L. Taggart Nathan M. Olson P.O. Box 3005 Idaho Falls, ID 83403 sjohns@olsentaggart.com staggart@olsentaggart.com nolsen@olsentaggart.com		
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Travis L. Thompson

Exhibit

A



0005653816



STATE OF IDAHO
Office of the secretary of state, Phil McGrane
ANNUAL REPORT

Idaho Secretary of State
PO Box 83720
Boise, ID 83720-0080
(208) 334-2301
Filing Fee: \$0.00

For Office Use Only

-FILED-

File #: 0005653816

Date Filed: 3/19/2024 11:49:41 AM

Entity Name and Mailing Address:

Entity Name: IDAHO GROUND WATER APPROPRIATORS, INC.
 The file number of this entity on the records of the Idaho Secretary of State is: 0000326586
 Address: TJ BUDGE
 PO BOX 1391
 POCATELLO, ID 83204-1391

Entity Details:

Entity Status: Active-Good Standing
 This entity is organized under the laws of: IDAHO
 If applicable, the old file number of this entity on the records of the Idaho Secretary of State was: C105834

The registered agent on record is:

Registered Agent: Bob Turner
 Registered Agent
 Physical Address
 2498 BRANDON DRIVE
 IDAHO FALLS, ID 83402
 Mailing Address
 2498 BRANDON DR
 IDAHO FALLS, ID 83402-2943

Corporate Officers and Directors:

Name	Title	Business Address
Stephanie Mickelsen	Director	PO BOX 438 RIGBY, ID 83442
Lynn Carlquist	Director	1092 S 2500 E HAZELTON, ID 83335
CONNIE CHRISTENSEN	Director	129 N 1200 W BLACKFOOT, ID 83221
<input checked="" type="checkbox"/> TIM DEEG	Director	2957 DEEG ROAD AMERICAN FALL, ID 83244
<input checked="" type="checkbox"/> Willaim Edward Stoddart	Director	1849 N 800 E MONTEVIEW, ID 83435

The annual report must be signed by an authorized signer of the entity.
 Job Title: Executive Director

Robert L Turner _____ 03/19/2024
 Sign Here _____ Date

B0893-3149 03/19/2024 11:49 AM Received by Office of the Idaho Secretary of State

Exhibit B



0005687430



STATE OF IDAHO
 Office of the secretary of state, Phil McGrane
CHANGE OF BUSINESS MAILING ADDRESS
 Idaho Secretary of State
 PO Box 83720
 Boise, ID 83720-0080
 (208) 334-2301
 Filing Fee: \$0.00

For Office Use Only
-FILED-
 File #: 0005687430
 Date Filed: 4/10/2024 2:19:44 PM

The entity name and address for which the mailing address is being changed:

The name of the business entity is:	IDAHO GROUND WATER APPROPRIATORS, INC.
The file number of this entity on the records of the Idaho Secretary of State is:	0000326586
New Address	BOB TURNER 2498 BRANDON DR IDAHO FALLS, ID 83402-2943

Signature: *Bob Turner* *04/10/2024*

Sign Here _____ Date _____

Job Title: Executive Director

B0899-6466 04/10/2024 2:19 PM Received by Office of the Idaho Secretary of State

Exhibit C

BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS HELD
BY OR FOR THE BENEFIT OF 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

Docket No. CM-DC-2010-001

**FINAL ORDER CURTAILING
GROUND WATER RIGHTS
JUNIOR TO MARCH 31, 1954**

The Director of the Idaho Department of Water Resources (“Department”) finds, concludes, and orders as follows:

FINDINGS OF FACT

1. On July 19, 2023, the Idaho Department of Water Resources (“Department”) issued its *Sixth Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover* (“*Methodology Order*”). The *Methodology Order* established nine steps for determining material injury to members of the Surface Water Coalition (“SWC”).¹

2. On April 18, 2024, the Director issued the *Final Order Regarding April 2024 Forecast Supply (Methodology Steps 1-3)* (“*As-Applied Order*”), which applied steps 1, 2, and 3 of the *Methodology Order*. The Director predicted an April in-season demand shortfall (“IDS”) of 74,100 acre-feet. *As-Applied Order*, at 3. The Director ordered that, by May 2, 2024, ground water users with consumptive water rights “bearing priority dates junior to March 31, 1954, within the Eastern Snake Plain Aquifer area of common ground water supply [(“ESPA ACGWS”)] shall establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted April IDS of 74,100 acre-feet in accordance with an approved mitigation plan.” *Id.* at 6. The Director also ordered that, if such a junior ground water user cannot establish that they can mitigate for their proportionate share of the predicted IDS “in accordance with an approved mitigation plan, the Director will issue an order curtailing the junior-priority ground water user.” *Id.*

¹ The SWC is comprised of 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.

3. There are currently seven approved mitigation plans in place responding to the SWC delivery call²:

- (1) Docket No. CM-MP-2009-007 for the benefit of the Idaho Ground Water Appropriators, Inc. (“IGWA”) (delivery of stored water);
- (2) Docket No. CM-MP-2009-006 for the benefit of IGWA (conversions, dry-ups, and recharge);
- (3) Docket No. CM-MP-2016-001 for the benefit of IGWA (the IGWA and SWC stipulated mitigation plan);
- (4) Docket No. CM-MP-2010-001 for the benefit of the Southwest Irrigation District and Goose Creek Irrigation District (collectively, “SWID”);
- (5) Docket No. CM-MP-2019-001 for the benefit of certain cities commonly referred to as the “Coalition of Cities”;
- (6) Docket No. CM-MP-2015-003 for the benefit of the A&B Irrigation District (“A&B”); and
- (7) Docket No. CM-MP-2007-001 for the benefit of certain entities commonly referred to as the “Water Mitigation Coalition.”

4. In the 2024 *As-Applied Order*, the Director found that due to the nature of the approved mitigation plans for SWID, the Coalition of Cities, and the Water Mitigation Coalition, these entities do not need to establish they can mitigate for their proportionate share of the predicted April IDS. *See As-Applied Order*, at 5 n.8. However, the Director found that A&B must mitigate for its proportionate share of the predicted IDS of 74,100 acre-feet and determined that A&B’s proportionate share is 455 acre-feet. *Id.* Regarding IGWA’s mitigation plan CM-MP-2016-001, the Director found that IGWA does not need to establish it can mitigate for its proportionate share of the predicted IDS. *Id.* at 5–6 n.8. Regarding IGWA’s mitigation plan CM-MP-2009-007, the Director found that IGWA’s obligation is 74,100 acre-feet, and consistent with the plan IGWA must mitigate for all ground water users. *Id.* at 6 n.8.

5. In response to the 2024 *As-Applied Order*’s requirement for junior ground water right holders to establish how they will mitigate their proportionate share of the predicted demand shortfall, A&B sent a letter to the Director stating:

[I]t is the District’s intent to continue to curtail the enlargement water rights (2,063) acres for the 2024 irrigation season. The District will also deliver surface water to an additional 1,510.6 acres that could have been irrigated with some of the District’s ground water rights with an April 1, 1962 priority (water right nos. 36-15127A et al.). The District intends to continue to deliver surface water to lands formerly

² In December 2023 and January 2024, a number of ground water districts and A&B Irrigation District submitted new individual mitigation plans. The plans were advertised, and they were protested by various entities. The Director has appointed an independent hearing officer, Gerald F. Schroeder, to hear the contested cases on behalf of the Department. Those proceeding are ongoing and no final orders have been issued related to the new mitigation plans.

irrigated with groundwater, approximately 3,573.6 in total, with groundwater supplied to certain areas as needed for pipeline operations.

Letter from Travis Thompson, attorney for A&B, to Mat Weaver, Department Director (May 1, 2024).

6. On May 2, 2024, IGWA filed IGWA's *Petition for Reconsideration of Final Order Regarding April 2024 Forecast Supply* ("Petition for Reconsideration") with the Department. In the *Petition for Reconsideration*, IGWA asked the Director to reconsider requiring IGWA to mitigate ground water diversions by non-IGWA members. *Petition for Reconsideration*, at 2. IGWA disputed the Director's conclusion that under IGWA's *2009 Storage Water Mitigation Plan*, IGWA must provide the full 74,100-acre-foot obligation. *Id.* The Director issued a *Final Order Denying IGWA's Petition for Reconsideration of April As-Applied Order* ("Order Denying Reconsideration") on May 10, 2024.

7. Historically, IGWA, acting on behalf of its member ground water districts, filed a notice of mitigation with the Department to establish that the ground water districts can mitigate the predicted IDS in accordance with an approved mitigation plan. However, this year, individual ground water districts submitted their own mitigation notices. Between May 2 and May 6, 2024, Bonneville-Jefferson, Jefferson-Clark, Magic Valley together with North Snake, Henry's Fork together with Madison, Bingham, Carey Valley, and American Falls-Aberdeen ground water districts (collectively, the "Districts") all filed mitigation notices with the Department.

8. On May 10, 2024, the Director issued an *Order Determining Deficiency in Notices of Secured Water* ("Order Determining Deficiency"). In the *Order Determining Deficiency*, the Director found that the mitigation notices filed by the Districts "are deficient and fail to demonstrate that they are operating in accordance with an approved mitigation plan." *Order Determining Deficiency*, at 11. The Director concluded:

The *2016 Settlement Mitigation Plan* allows individual ground water districts to mitigate for their proportionate share of the 240,000-acre-foot reduction obligation set forth in the plan. It also requires that the ground water districts annually provide 50,000 acre-feet of storage water through private leases to the SWC 21 days after the day of allocation. While the *2016 Settlement Mitigation Plan* allows for determining the proportionate share of the reduction obligation of the parties, it does not authorize the proportionate sharing of the 50,000-acre-foot storage volume by the parties. As a result of the plain language of the plan, for any ground water district to comply with the plan, the entire 50,000 acre-feet must be provided.

Id. at 6. Additionally, the Director noted,

that regarding the *2009 Storage Water Mitigation Plan*, if ground water districts submit adequate contracts to establish that they have secured storage water and the amount secured is less than the shortfall obligation, the Director will credit the contracted volume against the overall obligation, thus reducing the overall obligation for all ground water users.

Id. at 4. The Director gave the Districts until May 17, 2024, “to submit additional notice that demonstrates to the satisfaction of the [D]irector that they have secured storage water in compliance with either the 2009 Storage Water [Mitigation] Plan or the 2016 Settlement Mitigation Plan.” *Id.*

9. On May 14, 2024, the Department received IGWA’s *Conditional Notice of Mitigation Compliance; Petition for Reconsideration; and Request for Expedited Decision* (“*Second Petition for Reconsideration*”). IGWA’s *Second Petition for Reconsideration* requested that the *Order Determining Deficiency* and *Order Denying Reconsideration* be “amend[ed] or vacate[d] and replace[d]” on an expedited basis. *Id.* at 3–4. The Director denied the *Second Petition for Reconsideration* on May 28, 2024.

10. On May 17, 2024, American Falls-Aberdeen filed a *Motion for Reconsideration of Order Determining Deficiency in Notices of Secured Water* (“*AFA’s Motion for Reconsideration*”). American Falls-Aberdeen argued that requiring “evidence [that] it has secured storage water to satisfy the entire 50,000 acre-feet (“50kaf”) delivery obligation . . . is inconsistent with the plain language of the underlying settlement that was adopted as the 2016 Plan and with the Department’s prior interpretations of the ground water districts’ obligations under the 2016 Plan.” *AFA’s Motion for Reconsideration*, at 1. American Falls-Aberdeen requested the Director reconsider the *Order Determining Deficiency* to remove any obligation on behalf of the ground water districts to provide proof that 50,000 acre-feet of storage water has been secured under the 2016 Settlement Mitigation Plan. *Id.* at 5–7.

11. Also on May 17, 2024, IGWA submitted *IGWA’s Notice of Storage Water Leases* (“*IGWA’s Notice*”) for the purpose of demonstrating that adequate storage water leases were secured to mitigate material injury caused by ground water use within Bonneville-Jefferson, Jefferson-Clark, Magic Valley, North Snake, Henry’s Fork, Madison, Bingham, and Carey Valley ground water districts, in compliance with the 2009 Storage Water Mitigation Plan. *IGWA’s Notice*, at 1. IGWA produced copies of storage water leases evidencing “44,509 acre-feet available to meet the proportionate mitigation of the” Districts, excluding American Falls-Aberdeen Ground Water District. *Id.* at 2 (emphasis added). Further, IGWA stated:

These leases are submitted on condition that they are utilized by IDWR strictly to mitigate for material injury caused by groundwater use within the districts listed above [the Districts, excluding American Falls-Aberdeen Ground Water District] in accordance with Idaho Code § 42-5224(11). These leases cannot be used to roll back the curtailment date for all groundwater users or to otherwise mitigate for groundwater users that do not belong to the districts listed above.

Id. at 3.

12. On May 28, 2024, the Director issued an *Order Granting Upper Valley Districts Limited Intervention and AFA’s Motion for Reconsideration* (“*Order Granting AFA Reconsideration*”) and *Amended Order Determining Deficiency in Notices of Secure Water* (“*Amended Order Determining Deficiency*”). In the *Order Granting AFA Reconsideration*, the Director concluded:

Under the plain language of the *2016 Settlement Mitigation Plan*, the 50,000-acre-foot obligation does not come due until 21 days after the day of allocation. *Settlement Agreement* at 2, ¶ 3.b.i. . . . The Director agrees that those portions of the *Order Determining Deficiency* that condition AFA’s safe harbor from curtailment on providing proof it has secure 50,000 acre-feet of storage water should be withdrawn and replaced.

Order Granting AFA Reconsideration, at 5. In accordance with the *Order Granting AFA Reconsideration*, the concurrently issued *Amended Order Determining Deficiency* included: “At this time, American Falls-Aberdeen is the only ground water district that has told the Director that it continues to uphold and seek protection under the *2016 Settlement Mitigation Plan* and has demonstrated that it continues to comply with all elements of the plan.” *Amended Order Determining Deficiency*, at 10–11.

13. Also on May 28, 2024, the Director issued an *Order Denying IGWA’s Second Petition for Reconsideration; Order Determining Deficiency in IGWA’s May 17, 2024 Notice of Storage Water Leases* (“*Second Order Denying Reconsideration and Determining Deficiency*”). In the order, the Director concluded, “IGWA’s *2009 Storage Water Mitigation Plan* requires IGWA to mitigate for all junior groundwater users,” therefore, the Director could not consider the conditioned leases IGWA produced on May 17, 2024. *Second Order Denying Reconsideration and Determining Deficiency*, at 7. Consequently, the Director found *IGWA’s Notice* to be deficient “because it fail[ed] to demonstrate that Bonneville-Jefferson, Jefferson-Clark, Magic Valley, North Snake, Henry’s Fork, Madison, Bingham, and Carey Valley ground water districts are operating in accordance with an approved mitigation plan.” *Id.* at 8. The Director ordered:

Any ground water district that previously sought protection under the *2009 Storage Water Mitigation Plan* that now wishes to seek protection under the *2016 Settlement Mitigation Plan* has until Wednesday, May 29, 2024, at 5:00 p.m. (MT) to inform the Director of their intention to do so and to demonstrate they are in compliance with the *2016 Settlement Mitigation Plan*.

Id. (emphasis added).

14. On May 29, 2024, Henry’s Fork and Madison ground water districts jointly filed a timely *Notice of Intended Compliance With 2016 Mitigation Plan by Henry’s Fork Ground Water District and Madison Ground Water District* (“*HFMGWD Compliance Notice*”). The two districts gave notice,

that for the year 2024, they will comply with the 2016 mitigation plan as to their proportionate share, which by agreement with IGWA to date has been 1,500 acre feet of storage and 3,000 acre feet of recharge as well as any adaptive management which the Director imposes on said [d]istricts should the various [Districts] fail to agree to any proportionality.

HFMGWD Compliance Notice, at 4.³ Attached to the *HFMGWD Compliance Notice*, for the benefit of the two districts, is an assignable storage water lease for 1,500 acre-feet of storage water. *Id.* at 5, Attach.

15. On May 29, 2024, North Snake and Magic Valley ground water districts jointly filed a timely *Notice of Compliance; Request for Clarification* (“*NSMVGWD Compliance Notice*”). However, the *NSMVGWD Compliance Notice* does not inform the Director of an intention to seek protection under the *2016 Settlement Mitigation Plan*; instead, North Snake and Magic Valley request the Director grant them safe harbor under the *2009 Storage Water Mitigation Plan*. *NSMVGWD Compliance Notice*, at 9. The two districts commit to supply “their proportionate share of the full 74,100 April 2024-predicted IDS.” *Id.* at 5. Further, North Snake and Magic Valley request the Director provide clarification and an explanation if he “believes the 2009 Plan is unavailable to the Districts for some reason, or unavailable to the Districts on a proportionate share basis” *Id.* at 9.

16. Additionally, on May 29, 2024, at 5:23 p.m., Bingham, Bonneville-Jefferson, and Jefferson-Clark ground water district jointly submitted *Bingham Ground Water District, Bonneville Jefferson Ground Water District, and Jefferson Clark Ground Water District Amended Notice of Mitigation Compliance* (“*BGWD Compliance Notice*”).⁴ Like North Snake and Magic Valley’s notice, the *BGWD Compliance Notice* does not inform the Director of an intention to seek protection under the *2016 Settlement Mitigation Plan*; instead, the ground water districts continue to seek protection under the *2009 Storage Water Mitigation Plan*. *BGWD Compliance Notice*, at 3–4.

CONCLUSIONS OF LAW

1. Idaho Code § 42-602 authorizes the Director to supervise water distribution within water districts:

The director of the department of water resources shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom. Distribution of water within water districts created pursuant to section 42-604, Idaho Code, shall be accomplished by watermasters as provided in this chapter and supervised by the director. The director of the department of water resources shall distribute water in water districts in accordance with the prior appropriation doctrine. The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.

³ Henry’s Fork and Madison also state that they plan to mitigate “not only under the [*2016 Settlement Mitigation Plan*], but also under any version of the 2009 mitigation plan, which is being proposed by other ground water districts.” *HFMGWD Compliance Notice*, at 4–5. In a previous order, the Director made it clear that ground water districts cannot apply their secured storage water to multiple plans. *Order Determining Deficiency*, at 3 (“ground water districts can apply their secured storage water to either plan, but not both.”). Because Henry’s Fork and Madison cannot mitigate under both plans, the Director will treat their submission solely as a request to mitigate under the *2016 Settlement Mitigation Plan*.

⁴ While the filing is untimely, the Director will address the filing in this order.

2. As explained above, by May 2, 2024, ground water users with consumptive water rights “junior to March 31, 1954, within the [ESPA ACGWS]” had to “establish, to the satisfaction of the Director, that they can mitigate for their proportionate share of the predicted April IDS of 74,100 acre-feet in accordance with an approved mitigation plan.” *As-Applied Order*, at 6. If a junior ground water user does not establish that they can mitigate for their proportionate share of the predicted April IDS “in accordance with an approved mitigation plan” the ground water user will be subject to this “order curtailing the junior-priority ground water user.” *Id.*

3. Due to the nature of the approved mitigation plans for SWID, the Coalition of Cities, and the Water Mitigation Coalition, these entities do not need to establish that they can mitigate for their proportionate share of the predicted April IDS. Junior ground water users entitled to the protection of SWID, the Coalition of Cities, and the Water Mitigation Coalition mitigation plans will not be subject to curtailment during the 2024 irrigation season.

4. American Falls-Aberdeen, Henry’s Fork, and Madison ground water districts have demonstrated that they are operating in accordance with the *2016 Settlement Mitigation Plan*. Junior ground water users who are members of American Falls-Aberdeen, Henry’s Fork, or Madison ground water district will not be subject to curtailment during the 2024 irrigation season.

5. The *Second Order Denying Reconsideration and Determining Deficiency* gave ground water districts that “wish[ed] to seek protection under the 2016 Settlement Mitigation Plan [] until Wednesday, May 29, 2024, at 5:00 p.m. (MT) to inform the Director of their intention to do so. . . .” *Second Order Denying Reconsideration and Determining Deficiency*, at 8 (emphasis added). The *NSMVGWD Compliance Notice* does not inform the Director of an intention to seek protection under the *2016 Settlement Mitigation Plan*. Accordingly, Magic Valley and North Snake have failed to show that they can mitigate in accordance with the *2016 Settlement Mitigation Plan*. Their notice does, however, express an intention to seek “safe harbor” under the *2009 Storage Water Mitigation Plan* and inquires as to the status of the mitigation plan. *NSMVGWD Compliance Notice*, at 9. As stated in the *Amended Order Determining Deficiency*, the Director considers the *2009 Settlement Mitigation Plan* “available for use at this time.” *Amended Order Determining Deficiency*, at 4. But as was also made clear in that order, and again in the *Second Order Denying Reconsideration and Determining Deficiency*, the plain language of the plan requires that IGWA will mitigate for all ground water users, not just member participants. This is not an arbitrary requirement imposed by this Director. This is the plain language of the approved mitigation plan. IGWA has affirmed that this was IGWA’s intent: “IGWA offered to provide storage water to mitigate all material injury, whether caused by IGWA members or others.” *Second Petition for Reconsideration*, at 2. As was also stated in the *Amended Order Determining Deficiency*, previous decisions of the agency have held if IGWA fails to provide the full volume of secured water, the Director will subtract the amount of secured water from the overall obligation and not allow ground water districts to mitigate only for their water users’ proportional share:

IGWA cannot pick and choose who gets the benefit of storage water if IGWA is not providing storage water amounts equal to the shortfall obligation. The Director reiterated that regarding the *2009 Storage Water Mitigation Plan*, if ground water

FINAL ORDER CURTAILING GROUND WATER RIGHTS JUNIOR TO MARCH 31, 1954—Page 7

districts submit adequate contracts to establish that they have secured storage water and the amount secured is less than the shortfall obligation, the Director will credit the contracted volume against the overall obligation, thus reducing the overall obligation for all ground water users.

Amended Order Determining Deficiency at 4–5 (quotations and citations omitted). IGWA’s obligation under the *2009 Storage Water Mitigation Plan* is 74,100 acre-feet. Magic Valley and North Snake state that they have secured what they claim is their proportionate share of the 74,100-acre-foot IDS—15,590 acre-feet of storage water. *NSMVGWD Compliance Notice*, at 6. Since they have secured less than the full shortfall obligation, if the Director were to accept their lease, it would not provide Magic Valley and North Snake “safe harbor under the *2009 Storage Water Mitigation Plan*” but would only reduce the overall obligation for all ground water users. It is clear from the *NSMVGWD Compliance Notice* that they only seek protection for their members, not for ground water users outside their district. While Magic Valley and North Snake did not expressly condition the Director’s acceptance of their notice like IGWA did with *IGWA’s Notice of Storage Water Leases*, it has the same effect. Magic Valley and North Snake seek an outcome that is inconsistent with the plan. Accordingly, the Director deems the notice deficient. If the Director has interpreted Magic Valley and North Snake’s notice incorrectly and it was their intent to have the Director credit the contracted volume against the overall obligation, they simply need to submit a filing clarifying their intent. As a result of their deficient notice of secured storage water filings, Magic Valley and North Snake will be subject to curtailment during the 2024 irrigation season.

6. In the *BGWD Compliance Notice*, the Bingham, Bonneville-Jefferson, and Jefferson-Clark ground water districts take a position similar to Magic Valley and North Snake. They state that they have “secured storage water leases to fully cover their proportionate shares of the 74,100 acre-feet IDS” *BGWD Compliance Notice*, at 3. Like Magic Valley and North Snake, these ground water districts seek an outcome that is inconsistent with the *2009 Storage Water Mitigation Plan*. Accordingly, the Director deems the notice deficient. If the Director has interpreted their notice incorrectly and it was their intent to have the Director credit the contracted volume against the overall obligation, they simply need to submit a filing clarifying their intent. As a result of their deficient notice of secured storage water filings, Bingham, Bonneville-Jefferson, and Jefferson-Clark ground water districts will be subject to curtailment during the 2024 irrigation season.

7. A&B has failed to provide timely documentation that it has adequately secured the storage water necessary to mitigate for all its obligation under its approved mitigation plan.⁵ Accordingly, A&B will be subject to curtailment during the 2024 irrigation season.

⁵ On May 30, 2024, A&B submitted a lease for 62 acre-feet. The required fee had not yet been received by the Water District 01 watermaster. In the event the required fee is received, and the lease is approved, the Director will consider how to apply the mitigation benefit associated with the leased water.

8. Carey Valley Ground Water District has not demonstrated that it is operating in accordance with an approved mitigation plan. Accordingly, Carey Valley will be subject to curtailment during the 2024 irrigation season.

9. Consistent with the *As-Applied Order*, Idaho Code § 42-602, and decisions of the courts, the Director must order curtailment of junior-priority ground water users that have not established they can mitigate in accordance with an approved mitigation plan. Junior-priority ground water users subject to curtailment are listed in Attachments A and B⁶ to this order.

ORDER

Based upon and consistent with the foregoing, IT IS HEREBY ORDERED that effective May 30, 2024, ground water users holding water rights bearing priority dates junior to March 31, 1954, within the ESPA ACGWS, and listed in Attachment A to this order, shall immediately curtail/refrain from diversion and use of ground water pursuant to those water rights unless notified by the Department that the order of curtailment has been modified or rescinded as to their water rights.

IT IS FURTHER ORDERED that effective May 30, 2024, ground water users holding water rights bearing priority dates junior to March 31, 1954, within the ESPA ACGWS, and listed in Attachment B to this order, shall curtail/refrain from diversion and use of ground water pursuant to those water rights unless notified by the Department that the order of curtailment has been modified or rescinded as to their water rights.

IT IS FURTHER ORDERED that holders of ground water rights listed in Attachment B to this order may seek to participate in an approved mitigation plan through a ground water district and shall have fifteen days from the date of this order to join, solely for mitigation purposes, the ground water district situated nearest the lands to which the water rights are appurtenant. *See H.B. 737a, 58th Leg., 2d Reg. Sess. (Idaho 2006) (Act Relating to the Administration of Ground Water Rights Within the Eastern Snake River Plain); see also I.C. § 42-5259.*

IT IS FURTHER ORDERED that watermasters for the water districts within the ESPA ACGWS who regulate ground water are directed to review the water rights listed in Attachment A and B to this order and begin the curtailment process.

IT IS FURTHER ORDERED that this order shall apply to consumptive ground water rights, including but not limited to, agricultural, commercial, industrial, and municipal uses. This order excludes ground water rights used for *de minimis* domestic purposes where such domestic use is within the limits of the definition set forth in Idaho Code § 42-111 and ground water rights

⁶ The *Act Relating to the Administration of Ground Water Rights Within the Eastern Snake River Plain*, H.B. 737a, 58th Leg., 2d Reg. Sess. (Idaho 2006), allows for ground water users that are not members of a ground water district to join or participate in an approved mitigation plan of a ground water district. Attachment B identifies those junior ground water users who, according to Department records, are not currently members of a ground water district and are subject to curtailment by this order.

used for *de minimis* stock watering where such stock watering use is within the limits of the definitions set forth in Idaho Code § 42-1401A(11), pursuant to IDAPA 37.03.11.020.11.

Dated this 30th day of May 2024.

A handwritten signature in black ink, appearing to read 'MW', is written above a horizontal line.

MATHEW WEAVER

Director

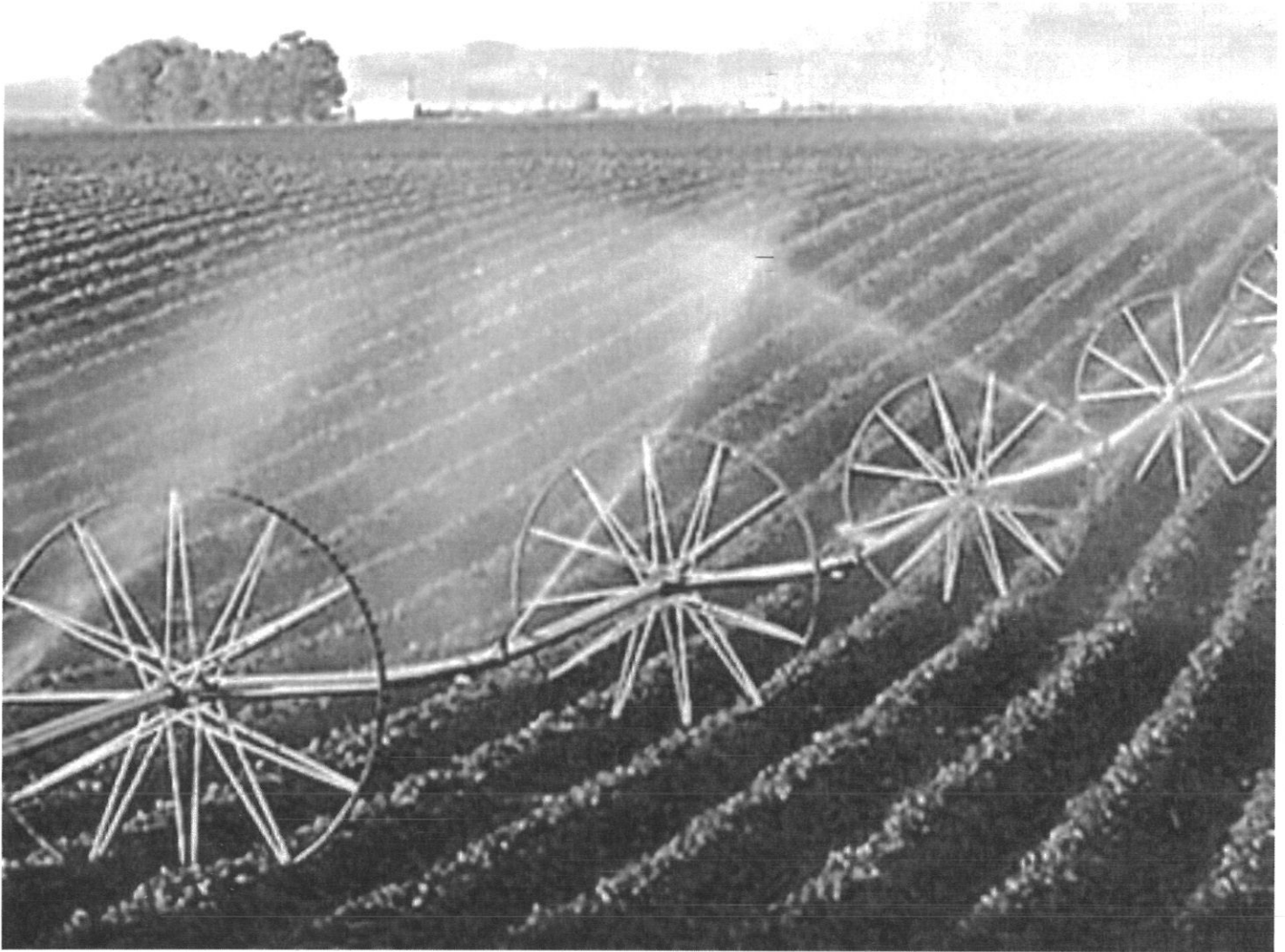
Exhibit D

https://www.idahopress.com/news/local/idaho-farmers-say-water-curtailment-order-will-dry-up-land-push-them-out-of-business/article_88b4716a-22a6-11ef-b841-3fe1e7db0a5f.html

FEATURED

Idaho farmers say water curtailment order will dry up land, push them out of business

CLARK CORBIN Idaho Capital Sun
Jun 5, 2024



The Idaho Department of Water Resources has issued a curtailment order that requires 6,400 junior groundwater rights holders who pump off the Eastern Snake Plain Aquifer to shut off their water, potentially affecting 500,000 acres of farmland.

File photo

Originally published June 4 on IdahoCapitalSun.com.

Faced with a water curtailment order issued last week, third-generation Idaho farmer Adam Young isn't just thinking about preparing to cut alfalfa or anxiously waiting for his wheat to flower.

Today, Young is confronting the reality of up to 70% of his family's 2,700-acre farm in eastern Idaho's Bingham

County drying up this year.

Unless there is an emergency stay to the curtailment order, Young said the water will be shut off. Meanwhile, the crops are already in the ground. Young has already invested in seed, fertilizer and other inputs he said total \$400 per acre.

If the water is shut off, Young said that would mean a total loss for this year's wheat and barley crop and he would expect to get one cutting of alfalfa in, instead of the three he hoped for.

"Being done for this year means absorbing several million dollars in losses this year and we don't recover from that," Young said in a phone interview. "That would spell the end of our business and that's true for everybody else frankly who is farming."

Young is among the eastern Idaho and Magic Valley family farmers and other water users who hold the 6,400 groundwater rights that are subject to curtailment. The Idaho Department of Water Resources said those water rights holders are being subject to curtailment because they are not in compliance with a state plan.

While some groundwater users and districts are subject to curtailment, other users and districts found to be in compliance with a state plan are not subject to having their water shut off.

The Idaho Department of Water Resources said curtailment — or shutting off the water — is necessary because of a predicted water shortfall this year.

When it announced the curtailment order Thursday afternoon, the Idaho Department of Water Resources estimated 500,000 acres of farmland could be affected by shutting off the water.

To put that in perspective, Young said that amount of farmland is about five times the size of the cities of Boise, Meridian and Eagle combined.

The history of the Young Family Farms dates to 1952 when Young's grandfather, Darwin Young started the farm.

Adam Young said the farm sustains his parents, his family, his brother's family, two-full time employees with 30 years of experience, two landlords and additional part-time and seasonal employees.

Rep. Stephanie Mickelsen, R-Idaho Falls and the chair of the Idaho Groundwater Appropriators, is also affected by the curtailment order. Mickelsen is CFO of Mickelsen Farms, which grows several varieties of potatoes, as well as winter and spring wheat varieties. With the curtailment order, Mickelsen estimated she would only be able to water and farm about 80 acres out of 7,000 acres.

"You're talking about wiping out family farms and other businesses across the ag sector," Mickelsen said in a phone interview on Monday. "It's basically a draconian way to bring about what they need."

HOW ARE WATER ISSUES GOVERNED IN IDAHO? On Thursday, Idaho Department of Water Resources Director Mathew Weaver issued a curtailment order that requires 6,400 junior groundwater rights holders who pump off the Eastern Snake Plain Aquifer to shut off their water, the Idaho Capital Sun previously reported.

In Idaho, water issues are governed by what is called the doctrine of prior appropriation, which means the older senior water rights have priority over the newer junior water rights. When there isn't enough water to go around, the senior water rights get priority while the junior rights get curtailed, or shut off.

Generally, surface water users in Idaho have more senior water rights, while groundwater users have junior water rights.

For example, the Twin Falls Canal Co. holds senior water rights that date back to 1900. On the other hand, the groundwater users affected by Thursday's Idaho Department of Water Resources curtailment order hold junior water rights dating back to 1954.

Curtailment is coming into play because in April, Weaver issued a water methodology order that predicted a water shortage of 74,100 acre-feet of water to the Twin Falls Canal Co. Acre-feet is a measurement that represents the volume of water covering an acre of land in water exactly one foot deep. According to the Water Education Foundation's website, an acre is about the size of a football field.

The Idaho Department of Water Resources says the groundwater users subject to the curtailment order are being forced to stop pumping water because they are not in compliance with or stopped participating in an approved state plan. The Idaho Department of Water Resources said there are two plans water users can participate in to avoid curtailment when there is a water shortage. One is a 2009 plan submitted by the Idaho Groundwater Appropriators. The other is a settlement agreement from 2016.

Groundwater users who spoke to the Sun don't agree that they are out of compliance. They said they provided documents to the Idaho Department of Water Resources verifying they have provided enough storage water to cover their proportional share of the predicted water shortage and believe they are holding up their end of mitigating under a 2009 plan.

But under the 2009 plan, the Idaho Groundwater Appropriators provided enough water to cover the entire shortfall of the surface water users, not just their proportionate share, said Brian Patton, deputy director of the Idaho Department of Water Resources.

"They offered it conditionally upon the director agreeing with them that that is the extent of their obligation," Patton said in a phone interview Monday. "The director could not agree to that."

Now, Patton said the department was obligated to take action to protect senior water rights holders from a water shortfall.

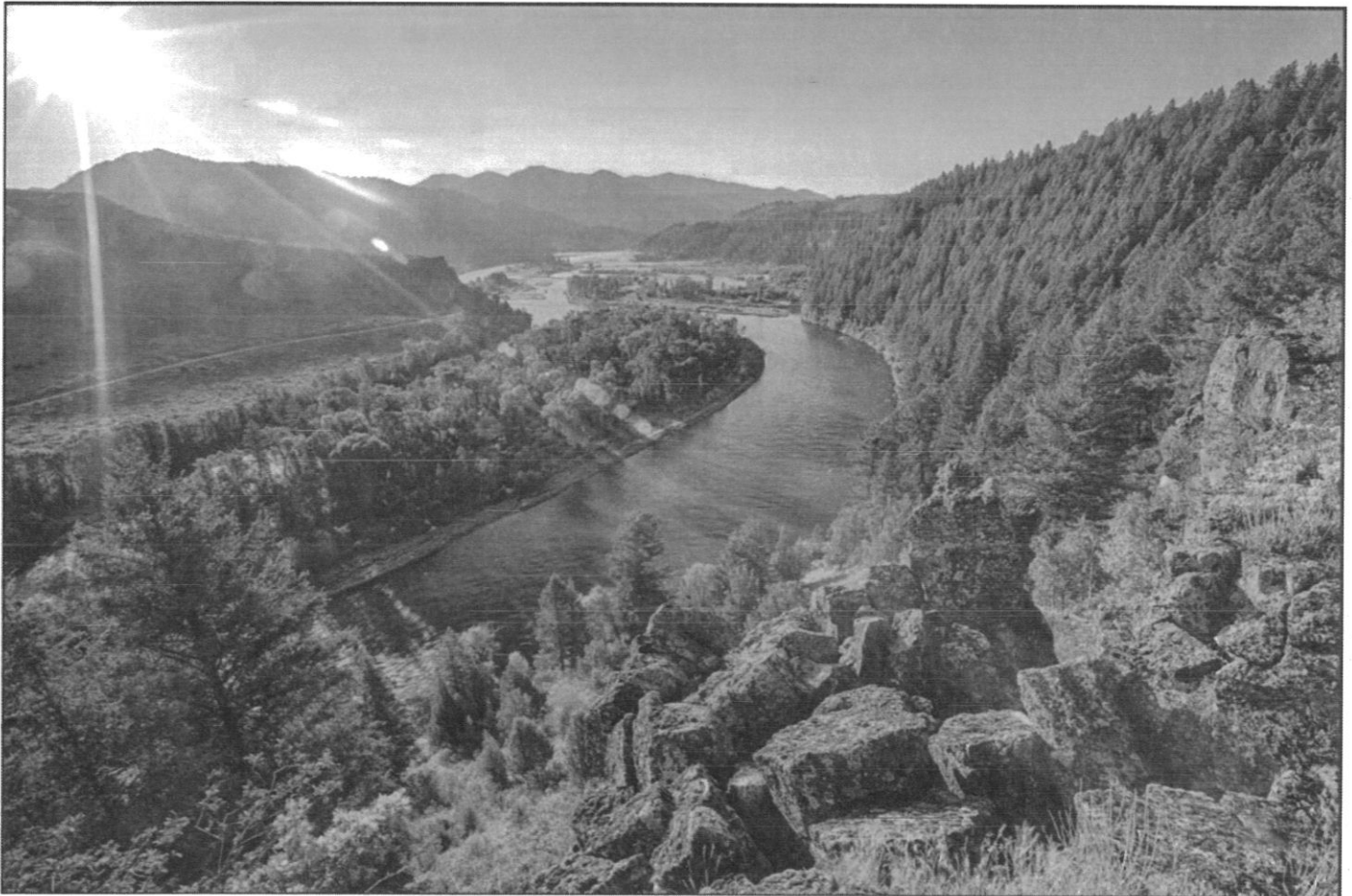
"The law and the court's direction about that law is very clear," Patton added. "If there is a finding of injury to the senior water right holders, and the junior water right holders are not operating in compliance with an approved mitigation plan, the director's obligation is to curtail."

Exhibit E

https://www.idahopress.com/news/local/idaho-department-of-water-resources-director-issues-water-curtailment-order/article_5969f332-1f7a-11ef-854e-e77528f9f427.html

Idaho Department of Water Resources director issues water curtailment order

Clark Corbin Idaho Capital Sun
May 31, 2024



The South Fork of the Snake River runs for more than 60 miles across southeastern Idaho.

Courtesy of the Bureau of Land Management

Originally published May 30 on [IdahoCapitalSun](#)

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tardive dyskinesia
(TD) in adults

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Idaho Department of Water Resources Director Mathew Weaver issued a curtailment order Thursday afternoon that requires 6,400 junior groundwater rights holders who pump off the Eastern Snake Plain Aquifer to shut off their water.

The order would affect groundwater users that the Idaho Department of Water Resources said are not in compliance with state mitigation plans, according to a news release the department issued Thursday.

"It is surprising to us that six groundwater districts would choose not to live by the terms of either of their approved mitigation plans and subject their members to curtailment," said Brian Patton, deputy director of Idaho Department of Water Resources, in a written statement.

Idaho Gov. Brad Little issued a statement supporting the order on Thursday afternoon.

"Water curtailment is never desired, but the director must follow Idaho law and the Constitution in issuing this order," Little wrote.

The order would affect about 500,000 acres of agricultural land in eastern Idaho and the Magic Valley if the groundwater water users do not come into compliance. Groundwater users who have not participated in a groundwater district for mitigation purposes will have 15 days to join a plan or face curtailment, the Idaho

Department of Water Resources said.

In a statement released Thursday night, the Idaho Groundwater Appropriators criticized the order, which it described as the single largest curtailment of water use in state history. The Idaho Groundwater Appropriators said the order would dry up hundreds of thousands of acres of farmland and could cause a hit to the state's economy totaling hundreds of millions of dollars in economic losses.

"What remains is an utterly absurd situation, where hundreds of thousands of acres of farmland, and their associated economic benefits, are thrown away during a wet year to cause a small amount of additional water to overflow from the aquifer into the Snake River," Idaho Groundwater Appropriators attorney TJ Budge said in a written statement Thursday night.

Under Idaho law, Weaver will issue an updated order in July that takes into account the new water supply and crop needs, the department said.

Water rights in Idaho are governed by what is referred to as the doctrine of prior appropriation, which means "first in time, first in right." When there isn't enough water to go around the senior water rights holders get their water first and junior water rights holders get shut off – or curtailed – if there is not enough water to go around.

"Idaho must maintain our water sovereignty and not turn out like other western states in the Colorado River Basin, such as California, where the federal government stepped in to supersede the state's control of its water," Little said in his written statement. "We absolutely must conserve water for future generations, which is why the Legislature and I championed half a billion dollars in historic investments in recent years to modernize water infrastructure statewide."

"My administration has been engaged on this issue for years, most recently through the formation of a Groundwater Management Plan Advisory Council," Little added. "The users should determine their own destiny, and the creation of the council will continue to help them to find solutions outside government. Idahoans have always and will continue to solve our own problems, and we remain committed to working with all water users in Idaho to ensure we have a sustainable supply of water for this generation and future generations."

"If we continue the status quo with water use on the Eastern Snake Plain, we are setting our children and grandchildren up for failure," Little said.

HOW DO WATER RIGHTS WORK IN IDAHO?

Generally in Idaho, surface water users have senior rights, while groundwater users have junior rights.

For example, the Twin Falls Canal Co. holds senior water rights dating back to 1900. The curtailment order that Weaver issued Thursday affects groundwater users who hold junior water rights to 1954.

On April 18, Weaver issued a water methodology order for the 2024 irrigation season that determined a shortfall of 74,100 acre-feet of water to the Twin Falls Canal Co. Weaver gave junior water rights holders until May 2 to supply notices to the Idaho Department of Water Resources that they are in compliance with their approved mitigation plans, the Idaho Department of Water Resources previously

announced in a May 10 press release.

Thursday's new curtailment order would apply to groundwater users that the Idaho Department of Water Resources has determined are not operating under an approved mitigation plan. Those groups include the Bingham Groundwater District, Carey Valley Groundwater District, North Snake Groundwater District, Magic Valley Groundwater District, Bonneville-Jefferson Groundwater District and the Jefferson-Clark Groundwater District.

Several other groundwater users are operating under an approved plan and will not be curtailed, including the Coalition of Cities, Southwest Irrigation District, Henry's Fork Groundwater District, Madison Groundwater District and others.

The prospect of curtailment for junior water rights holders is not a new issue. Water issues have been litigated in Idaho courtrooms for decades, with a key settlement agreement reached in 2016. More recently, the Idaho Department of Water Resources issued an order last year that contained a curtailment order that was put on hold pending a hearing with the department, the [Idaho Capital Sun](#) previously [reported](#). Ultimately, the [department didn't shut off the water last year](#) after finding there was no water shortfall at that point last summer.