

Email #2

Dear East Idaho Legislators and Candidates:

September 26, 2023

This is the second email in a series of informational emails from the Eastern Idaho Water Rights Coalition regarding a serious dispute between the Idaho Groundwater Appropriators (IGWA) and the Surface Water Coalition from the Magic Valley (SWC) that could ultimately require the curtailment of groundwater pumping to hundreds of thousands of farm acres. (You can read the first email below this one).

After sending the first email, the SWC was upset that the details of their dispute with IGWA went public. Because of that, we are sending this email without IGWA's involvement. We have verified the facts with Eastern Idaho Groundwater Districts. If the SWC would like an opportunity to express their side of any of the facts contained herein, we invite them to send it to us and we will forward it to you.

#2 Re. Issues of Dispute Between IGWA and SWC

Under the 2016 agreement signed between the Idaho Groundwater Appropriators (IGWA) and the Surface Water Coalition (SWC) in the Magic Valley the parties agreed that a reduction of 240,000 acre-feet of groundwater pumping on the ESPA was needed each year in order to stabilize the level of the aquifer and the spring flows back into the Snake River. IGWA understood that the 240,000 acre-feet applied to all pumpers on the ESPA, including cities, many of which later entered their own agreements. Since not all groundwater pumpers are members of IGWA or the corresponding Groundwater Districts, IGWA understood that its percentage share of the 240,000-acre-foot cut was calculated at 204,000 acre-feet.

However, in the SWC claim of breach against IGWA for 2021, it contended that IGWA is responsible for the entire 240,000 acre-foot cut, regardless of other agreements that have been entered into with other entities. If 204,000 acre-feet were the number used to calculate the required cut-back, as the groundwater pumpers understood, there would be no breach in 2021. However, Director Spackman agreed with the SWC, so a breach was declared, and this issue is still in dispute.

Under SWC's understanding of the agreement, IGWA members were told they would need to reduce pumping by an average of roughly 12%. Members also had the option of replacing the water they pump with recharge water if they were unable to reduce their pumping. The groundwater districts took advantage of the first four wet years of the agreement to recharge roughly 700,000-acre feet. In addition, the Idaho Water Resource Board (IWRB) supported the agreement with an average of around an additional 250,000-acre feet of recharge per year, which the legislature funded. (This IWRB recharge is not counted in the cut-back requirement and is the state's contribution to stabilizing the aquifer.)

Another point of the agreement requires IGWA to provide 50,000-acre feet of actual storage water to the SWC each year. However, this amount is not allowed to count for any of the mitigation cut-back requirements. And finally, the agreement also designated 19 "sentinel wells" across the ESPA, with set water levels targets that the groundwater pumpers would have to obtain by certain years to be in compliance with the agreement. The first benchmarked target was reached, but even before the current drought, it had become apparent that the targets in years further out would not be attainable.

Going into the current drought, IGWA and the Groundwater Districts thought they were in good shape because they had accumulated more than a year of excess savings or recharge in the previous wet years, when the water was available. However, under the complaint of breach filed by the SWC, they contend that the 240,000-acre-foot cut must be made each year and that no averaging is allowed. Again, Director Spackman agreed with the Coalition, finding the Agreement does not permit averaging. If this stands there will be no incentive to do future recharge beyond what is needed in one year because storing recharge water for dry years is not allowed. This would be akin to telling a household that they are not allowed to put money in a savings account for an emergency, that each year's budget has to balance on its own. This is an issue that IGWA and the Groundwater Districts cannot compromise on without needlessly idling hundreds of thousands of acres on the ESPA. They also won't know from one year to the next if they will have adequate irrigation water for that season.

It is increasingly apparent that the SWC/IGWA Agreement is unclear and subject to varying interpretations. The SWC really can't be blamed for interpreting terms in their favor, if those terms were not properly spelled out or were based on faulty information. However, IGWA, too, cannot be blamed for its interpretation. The agreement was based on the "best science available" at that time, but since then much has been learned. The burden now is to come up with the best possible plan for all to move forward that will both protect the water rights of the SWC and ensure that wide-spread pumping curtailment is not an annual concern on the ESPA.

In the next email we will start looking at potential solutions.

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