

Lieutenant Governor Bedke said in a recent interview with the Post Register concerning IDWR's recent Methodology Order, that only about 900 ground water users on the Eastern Snake Plain Aquifer (ESPA) are not covered by any of the approved mitigation plans and therefore, the methodology order, should be a call to those that have not signed on to recent negotiations to get on board so as to not face curtailment of their water rights.

However, the crux of this matter lies buried on the back page where it said the Director of the Idaho Department of Water resources, Gary Spackman, "determined that the Idaho Ground Water Appropriator's Inc.'s approved mitigation plan unambiguously requires it to reduce its ground water diversion by 240,000 acre-feet each year meaning that averaging is prohibited."

This decision drastically affected ground water irrigators by decreasing the volume of water they can pump each year and by prohibiting them from averaging their water use. Since 2016, the Idaho Ground water Appropriators (IGWA) believed they only had to reduce their pumping by 205,000 acre feet and that they could average their reductions using a five-year rolling average. The Director's decision contradicted IGWA's prior understanding and performance, making compliance with this mitigation plan nearly impossible to comply with during dry periods. This is because each water year is unique and different. Although, statisticians and managers will always use an average number to gauge how things compare to the past 30 years, the uniqueness of each year is so distinct that the predictive water reports normally compare--not to the average--but to an actual past water year.

When IGWA entered into discussions with the Surface Water Coalition (SWC, aka Twin Falls area canals), everyone at the table was well aware of the variability of each water year. The SWC and IGWA folks agreed to provisions of the mitigation measures for the ability to have "safe harbor" when certain conditions prevailed. So how did that play out? For the first three years, eastern Idaho experienced an abundant water supply, resulting in the development and use of many managed recharge opportunities both by the state and privately. Everyone was very excited about recharge with the exception of our state's namesake power company. But the last two water years were dryer than normal resulting in little or no recharge because nearly all surface water flows were required to sustain existing surface water irrigation needs. The SWC came forward demanding their mitigation water, IGWA responded that they had already made deposits into the aquifer in the form of managed recharge in previous years that was now returning to the river in the form of increased spring flow gains. SWC responded that they did not agree to this definition of safe harbor. Indeed, they responded that safe harbor could only occur on abundant water years (when mitigation was not needed for that year). IGWA argues that safe harbor loses its meaning when safe harbor is not needed in an abundant water year. This concept of averaging of mitigation obligations has always been held by IGWAs members to be fundamental to the agreement, while now the SWC and IDWR state that it was not. While the wording of the document itself does not appear to authorize averaging, this may reflect a mistake in drafting the document rather than describing what was actually agreed to. At the very least, the first time that mitigation efforts far in excess of the requirement were reported, IDWR's and SWC's silence was not in good faith. If they truly believed averaging was not contemplated, the upright thing to have done would have been to notify IGWA that their obligation had been met and that any additional mitigation (or recharge) would not count toward future years—which they did not do.

It's important to note that a large group of cities in east Idaho also found themselves facing the same uncertainty as IGWA but rather than fall within IGWA's group for negotiating a settlement agreement, decided to do it on their own. Chief among that group was the City of Pocatello who holds 50,000 acre feet of storage water in Palisades Reservoir--essentially ensuring all of its members. Since that time, participant cities have also engaged in developing mitigation options of their own hoping to ensure longevity of their agreement. But significant to the city's plan is *safe harbor* with the ability to *average* their mitigation over time—and to actually receive the blessing of a safe harbor condition during a water scarce year.

Of IGWA's membership, none are equal in their allocations for mitigation requirement or their ability to mitigate. Some have mixed use irrigation within their districts that can more easily mitigate for their own or nearby neighbor ground water users. Others have none and must rely on open-market purchases of mitigation water--usually reservoir storage water. But the storage water system in Idaho, consisting of a series of dams, was originally built to ensure surface water irrigators—not ground water irrigators. Since the signing of SWC/IGWA settlement agreement, the price for rental water has gone up exponentially—and for good reason, it is a finite supply that is not guaranteed to replenish over the following winter.

How does this problem get resolved? Unlike Bedke's response, there are only two choices—1. Use the existing mitigation plans and the current agreement that is deemed to not allow for averaging. or 2. Dry up acres of irrigated lands. For the first option, Bedke enumerates that IGWA members are obligated to the original amount of 240,000 acre feet plus calculated shortfalls of 30,000 acre feet for the past 2021 season and the predicted shortfall (thus far) of 15,000 acre feet for 2023.

The second option for IGWA is to just dry up acres. IGWA patrons, unlike their SWC counterparts, have dialed down their usage to less than 2 acre feet per year per irrigated acre. This number can vary slightly between ground water districts but the results are nearly the same—for each 100,000 acre foot obligation would require the drying up of about 50,000 acres of irrigated farm land.

Modeling. Suffice it to say that predictive modeling factors large in this issue. When modeling the effects to the ESPA the effects output calculated by the model never occur immediately but rather accrue or decay over time—depending whether modeling pumping or recharging. It is one of the primary reasons why the IGWA folks feel averaging needs to be accepted. Said another way, water that was recharged into the aquifer, discharges back into the river over a period of time—sometimes months—sometimes years. Saying that it only counts for a given year does not reflect reality or the data output by the model.

Pope Benedict once said, "Dialogue is the oxygen to peace." While mischaracterization and misunderstanding may have existed, it is the East Idaho Water Right Coalition's desire that both parties come together to better understand one another's needs and work cooperatively to ensure each other's livelihood. Both groups need each other. Those hay trucks on the highway are not going to California—they are going to dairies in southern Idaho. Whether or not the concept of averaging was omitted from the original agreement, we challenge parties to come together on this issue. Modeling works both ways—it is equally predictive for recharge as it is for discharge from the aquifer. Past and future recharge mitigation needs to be recognized and credited over its predictive time span—not for one year only.

Roger Warner, President of the Eastern Idaho Water Rights Coalition

The Eastern Idaho Water Rights Coalition (EIWRC) is a grass roots organization founded on the basis of advocating for eastern Idaho's interest in water rights. Our group is comprised of a diverse group of ground water pumpers, Canal Companies, irrigation districts, and municipalities. The coalition seeks understand and influence on water policy impacting their neighbors in eastern Idaho.