

Surface Water Coalition Delivery Call, Amended 5th Methodology and April 2023 As-Applied Orders

FAQs

- Why did IDWR change the Methodology?

IDWR is obligated to update the Methodology to incorporate new climate and hydrologic data and to ensure adequate protection for senior water users from injury. The new Methodology revises important elements used to determine in-season injury to water supplies and end-of-season injury to storage reservoir carryover. It also revises the method used to calculate curtailment dates, relying on what is referred to as “transient” model analysis, in a manner that may result in earlier curtailment dates than previously predicted.

- What changes did IDWR make to the Methodology?

IDWR made the following changes to its Methodology: (1) updated climate, hydrologic, and demand data used by the Methodology to determine injury, (2) updated “base line year,” (3) updated “reasonable carryover” volumes for the Surface Water Coalition (SWC), and (4) changed how the Eastern Snake Plain Aquifer Model (ESPAM 2.2) is deployed to calculate a priority curtailment date from “steady state” to transient analysis.

- Why did IDWR change the methodology to a transient model?

The Director has concluded that using the ESPA model in steady-state mode is no longer legally supportable because steady state does not provide water at the time, place, and quantity needed by the senior water user.

- Does this mean that 940,000 acres will be curtailed along the East Snake Plain Aquifer?

No, many irrigated acres are covered by approved mitigation plans and are not subject to curtailment.

- How many acres will be curtailed that IDWR estimates are NOT part of an approved mitigation plan?

IDWR will not have an estimate for this number until it works through curtailment with individual water right holders.

- How can there be curtailment in a year when we have so much snow in the hills?

The As-Applied order is an early season prediction of what the water supply for the SWC will be for the upcoming year. The courts have been clear that the Director’s predictions must favor the senior water users. And while there is a good snowpack in the hills above the ESPA, that is only part of the water supply for the SWC. Additional supply comes from recharge from the aquifer and that is at a record low. Plus, we are coming out of two years of drought and the existing storage supply was low.

- Are water users immediately subject to curtailment with the issuance of the Methodology and As-Applied orders?

No. The Director has scheduled a contested case hearing (June 6 – 10, 2023) to allow parties to submit testimony and evidence regarding the changes to the Methodology implemented by the Director. Because of the pending hearing, the Director will delay issuing a curtailment notice to Snake River junior water users until after the hearing. This means junior ground water pumpers who do not have approved mitigation plans in place will have a reprieve from curtailment until late June. Junior water users should wait for specific notice and direction from IDWR as to how their individual water rights are affected by this decision. However, water right holders who are junior to 1953 should work with IDWR to understand how their water right could be impacted in the case they are not in compliance and a party to an approved mitigation plan.

The following questions all assume that the Director issues a curtailment order and the water rights at issue are junior to the curtailment date in the order:

- What happens if I am participating in an approved mitigation plan?

If you are participating in an approved mitigation plan and the mitigation plan is being complied with, you will not be subject to curtailment.

- What happens if I am participating in an approved mitigation plan but the plan is not being complied with?

You will be subject to curtailment.

- What happens if I am NOT part of an approved mitigation plan?

You will be subject to curtailment. However, you do have the option to join an approved mitigation plan. This is based on the parties in the approved mitigation plan agreeing to add additional members.

- What happens if I am a party to, and meet the criteria of IGWA's 2009 Storage Water Delivery Mitigation Plan?

If IGWA delivers storage water to the SWC in a volume equal to the injury determination, participating members are not subject to curtailment. However, this mitigation plan does not provide safe harbor for future injury determination and IGWA must always secure storage water commensurate with the injury determination regardless of the size of injury (e.g., in July of 2021, the injury determination was ~170 KAF). For example, at the mid-season adjustment, if IDWR determines the injury is greater than its April determination, IGWA will have to secure additional storage water or be subject to curtailment during the season after crops are planted.

- What if I am a party to, and meet the criteria of the SWC-IGWA 2015 settlement agreement?

The 2015 settlement agreement was approved as a mitigation plan by IDWR. So long as the ground water districts comply with the mitigation plan, members of the ground water districts are not subject to curtailment.

- What if I am a city participating in a mitigation plan?

If you are a city participating in an approved mitigation plan and the mitigation plan is being complied with, you are not subject to curtailment.

- What if I am a city NOT participating in a mitigation plan?

You will be subject to curtailment. However, you do have the option to join an approved mitigation plan. This is based on the parties in the approved mitigation plan to agree to add additional members.

- What if I am a processor participating in an approved mitigation plan?

If you are a processor participating in an approved mitigation plan and the mitigation plan is being complied with, you are not subject to curtailment.

- What if I am a processor NOT participating in an approved mitigation plan?

You are subject to curtailment. However, you do have the option to join an approved mitigation plan. This is based on the parties in the approved mitigation plan to agree to add additional members.

- Can I submit a mitigation plan now and get it approved in time for this coming irrigation season?

It is unlikely that a mitigation plan can be approved before a potential curtailment order is issued. Once a plan is submitted, the plan must be advertised and is then subject to a protest deadline. The plan is subject to hearing if protested or if the Director determines a hearing is necessary. This process can take many months.