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STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

IN THE MATTER OF DISTRIBUTION OF
WATER TO VARIOUS WATER RIGHTS
HELD BY OR FOR THE BENEFIT OF
A&B IRRIGATION DISTRICT, AMERI-
CAN 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

**IGWA’s Reply to SWC’s Response to
IGWA’s Amended Notice of Mitigation**

Idaho Ground Water Appropriators, Inc. (“IGWA”), acting on behalf of North Snake Ground Water District, Carey Valley Ground Water District, Magic Valley Ground Water District, Aberdeen-American Falls Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, Henry’s Fork Ground Water District, Bonneville-Jefferson Ground Water District, and Bingham Ground Water District, hereby replies to the *Surface Water Coalition’s Response to IGWA’s Amended Notice of Mitigation* (“*SWC Response*”) filed June 5, 2023.

First, the SWC argues that the 2009 Storage Water Mitigation Plan requires IGWA to provide mitigation equal to the entire 75,200 acre-feet Demand Shortfall predicted by the *April 2023 As-Applied Order* as opposed to the 63,645 acre-feet attributable to groundwater diversions by IGWA’s patrons. (*SWC Response*, p. 2.) In other words, the SWC contends that for IGWA’s patrons to avoid curtailment they must mitigate not only for their own groundwater diversions but also for the groundwater diversions of A&B Irrigation District, Southwest Irrigation District, the Water Mitigation Coalition, the Coalition of Cities, Pocatello, Idaho Falls, and the approximately 900 water rights having no mitigation plan.

The SWC relies on a finding of fact in the *Order Determining Deficiency in IGWA’s Notice of Secured Water* (“*Order*”) which tells only half the story. Finding of Fact # 4 notes that when

IGWA filed its 2009 Storage Water Mitigation Plan, IGWA proposed to mitigate all material injury of senior users. At that time, IGWA did not have the modelling data needed to distinguish between reach gain impacts of groundwater use by IGWA’s patrons versus reach gain impacts of groundwater use by other water users.


The Director’s order approving the 2009 Storage Water Mitigation Plan states that “IGWA’s obligation for mitigation shall be determined as set forth in the Methodology Order.” (*Order Approving Mitigation Plan*, IDWR Docket No. CM-MP-2009-007, p. 10, Nov. 9, 2009.) This ruling is quoted in the *Order*, but ignored by the SWC. This ruling is significant because the Department now has the data needed to distinguish between reach gain impacts from groundwater use by IGWA’s patrons versus other water users. Accordingly, the *April 2023 As-Applied Order* specifies IGWA’s share of the total predicted Demand Shortfall as 63,645 acre-feet. This is the amount of mitigation for which IGWA is legally responsible, and this is the amount that IGWA will provide to the SWC.

Next, the SWC argues that IGWA has failed to comply with the Settlement Agreement dated September 7, 2022, between IGWA and the SWC. The SWC cites the term of that agreement that requires IGWA to “advise the Coalition of its ability to deliver 30,000 acre-feet of storage by April 1, 2023,” and then asserts, disingenuously, that “IGWA has not done so.” (*SWC Response*, p. 3.) The truth is, during the spring of 2023, counsel for IGWA spoke with counsel for the SWC on two different occasions about this term of the agreement, advising counsel for the SWC on both occasions that IGWA expects to be able to rent the full 30,000 acre-feet from other spaceholders, but that IGWA is prepared to rent storage from the SWC if needed. On both occasions, counsel for the SWC advised counsel for IGWA that the SWC would prefer that IGWA rent storage from other spaceholders. IGWA has proceeded accordingly.

Lastly, the SWC argues that IGWA has failed to comply with the September 7, 2022, Settlement Agreement by not submitting storage water contracts to the Director as proof of compliance. Yet, the terms of the agreement do not require IGWA to provide storage water contracts to the Director; it requires only that storage water be delivered to the SWC “within 10 days after the Date of Allocation.” IGWA will abide by the terms of the agreement.

Dated this 6th day of June, 2023.

RACINE OLSON, PLLP

By: 
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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of June, 2023, I served the foregoing document on the persons below via email or as otherwise indicated:


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