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RECEIVED

Aug 22, 2023

DEPARTMENT OF
WATER RESOURCES

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,
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
Docket No. CM-DC-2016-001

**IGWA’s Response to SWC’s Petition for
Reconsideration and Request for Hearing**

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 Area Ground Water District, Jefferson-Clark Ground Water District, Madison Ground Water District, and Henry’s Fork Ground Water District, hereby responds to *Surface Water Coalition’s Petition for Reconsideration and Request for Hearing* (“SWC Petition”) filed August 16, 2023, in this matter.

The SWC Petition asks the Director to reconsider his prior decision to not impose a remedy for what the SWC contends is non-compliance with the IGWA-SWC Settlement Agreement (“Settlement Agreement”). The Director’s decision was appropriate and wise and should not be changed.

First, the SWC’s allegation of non-compliance has not been fully adjudicated. It is based on the SWC’s preferred interpretation of the Settlement Agreement, which is currently undergoing judicial review by the District Court of the State of Idaho. If the District Court rejects the SWC’s interpretation, IGWA’s members would not be out of compliance with the Settlement

Agreement. It would be a travesty for the Director to impose curtailment or another remedy based on a faulty interpretation of the Settlement Agreement.

Second, there is no need for immediate action by the Director on this matter. As noted by the SWC, IGWA reported in *IGWA's Amended Notice of Mitigation* filed June 1, 2023, that IGWA's members will mitigate in 2023 under its aquifer enhancement mitigation plan approved in 2010 ("2010 Mitigation Plan"). The 2010 Mitigation Plan authorizes IGWA to mitigate by providing storage to offset the demand shortfall calculation under the Methodology Order. As of the filing of this response, the Methodology Order calculates zero material injury to any member of the SWC. Despite no material injury calculation, however, IGWA has delivered to the SWC a total of 80,000 acre-feet of storage in 2023 for mitigation purposes. Thus, the SWC has more than enough water to meet its irrigation needs in 2023. It is telling that the SWC continues to push the Director to order curtailment despite having ample water.

Third, the SWC Petition effectively asks the Director to write a new term into the Settlement Agreement which would disallow IGWA from providing mitigation under its 2010 Mitigation Plan. There is no language in the Settlement Agreement to that effect. Moreover, after the Settlement Agreement was entered into in 2015, neither IGWA nor the SWC filed a petition asking the Director to terminate the 2010 Mitigation Plan. Despite the SWC's wishes, the Director has no legal authority to unilaterally add contractual terms to the Settlement Agreement.


Fourth, the Director has no obligation to impose a remedy for the alleged noncompliance. The Director's *Final Order Approving Amendment to Stipulated Mitigation Plan* ("Order Approving 2015 Mitigation Plan") issued May 9, 2017, states:

- a. While the Department will exert its best efforts to support the activities of IGWA and the SWC, approval of the Second Addendum does not obligate the Department to undertake any particular action.
- b. Approval of the Second Addendum does not limit the Director's enforcement discretion or otherwise commit the Director to a particular enforcement approach.

The Director's *Final Order Regarding IGWA's 2022 Mitigation Plan Compliance* ("2022 Compliance Order") issued August 2, 2023, prudently declined to order curtailment in response to the SWC's breach allegation. Therefore, IGWA respectfully requests that the SWC Petition be denied.

Dated this 22nd day of August, 2023.

RACINE OLSON, PLLP

By: 
Thomas J. Budge
Attorneys for IGWA

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2023, I served the foregoing document on the persons below via email or as otherwise indicated:


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