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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, 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-MP-2016-001
IN THE MATTER OF IGWA'S SETTLEMENT AGREEMENT MITIGATION PLAN	**BJGWD REBUTTAL EXPERT WITNESS AND REPORT DISCLOSURE**

The Bonneville-Jefferson Ground Water District (hereafter "BJGWD"), acting for and on behalf of its respective members, through counsel, hereby discloses its *Rebuttal Expert Witness and Report* prepared for this matter by Bryce Contor and Thane Kindred of Rocky Mountain Environmental Associates, Inc, attached hereto. Bonneville-Jefferson may call Mr. Contor or

Mr. Kindred as an expert witness to rebut expert testimony presented by the Surface Water Coalition at the hearing on this matter to and testify as to the contents of this report. Mr. Contor and Mr. Kindred's curicula vitarum were previously disclosed to the parties.

DATED: February 29, 2024

/s/ *Skyler C. Johns*
SKYLER C. JOHNS

CERTIFICATE OF SERVICE

I hereby certify that on this the 29th day of February 2024, I served a true and correct copy of the foregoing Notice of Service of *BJGWD Rebuttal Expert Witness and Report Disclosure* on the following by the method indicated:

/s/ Skyler C. Johns
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RMEA PROJECT: 22-0216
Date: 2/29/2024

TECHNICAL RESPONSE TO SURFACE WATER COALITION'S EXPERT REPORT TITLED

"SWC/IGWA SETTLEMENT AGREEMENT MITIGATION PLAN – 2022 BREACH EXPERT REPORT"

INTRODUCTION AND BACKGROUND

In 2015, implementation of the agreement (Settlement) between the Surface Water Coalition (SWC) and Idaho Ground Water Appropriators (IGWA) created a reduction, conservation and/or recharge obligation for each groundwater district within IGWA, including Bonneville Jefferson Ground Water District (BJGWD). This definition of obligation was accepted by the Idaho Department of Water Resources (IDWR) Director in 2016 in a plan referred to here as the "2016 Plan" and by the SWC as "The 2016 Mitigation Plan."

Reduction, conservation, and recharge efforts made by IGWA in 2022 sparked controversy over the intended meaning of the agreement and the implementation of averaging. SWC contends that no averaging was intended by the agreement and thus, that IGWA's conservation and recharge efforts in 2022 constituted a breach.

In February of 2024, as part of ongoing litigation regarding the before-mentioned controversy, the SWC provided IDWR with an export report prepared by David C. Colvin et al. (2024) (SWC Report). This document is an expert response prepared by Rocky Mountain Environmental Associates, Inc. (RMEA). In their report, Colvin et al. render ten opinions (Opinions), of which this response addresses eight:

> Opinion 1: *"Bingham, Bonneville-Jefferson, and Jefferson-Clark Ground Water Districts failed to satisfy their mitigation obligations in 2022. The Director quantified their 2022 excessive pumping amounts as 32,476; 5,204; and 18,605 acre-feet, respectively."*

Opinion 3: *"The 2016 Mitigation Plan addresses declines in aquifer levels, Snake River reach gains, and junior groundwater pumping impacts that extend beyond a single irrigation season."*

Opinion 5: *"ESPAM results show that the 2022 underperformance by the Bingham, Bonneville- Jefferson, and Jefferson-Clark Ground Water Districts will cause a total of a 0.29 foot decline in the Sentinel Well Index. This is a significant amount of Sentinel Well Index decline, especially since the 2016 Mitigation Plan goals are not being met. These impacts propagate into the future and warrant mitigation."*

Opinion 6: *"ESPAM results show that the 2022 underperformance by the Bingham, Bonneville-Jefferson, and Jefferson-Clark Ground Water Districts will cause a 26,143 AF decline in the near Blackfoot to Minidoka reach gains over a 50-year period. A significant amount of these declines have yet to happen."*

Opinion 7: *"The 2016 Mitigation Plan recognizes the long-term, cumulative impacts of IGWA's junior groundwater pumping. Underperformance in 2022 causes impacts occurring in 2022 and for many years after."*

Opinion 8: *"2016 Mitigation Plan underperformance would be minimized by accurate measurement and near real-time reporting of groundwater pumping."*

Opinion 9: *"An effective remedy to the 2022 Breach could include reducing 2024 pumping at the locations where the excessive pumping occurred."*

Opinion 10: *"Implementing additional pumping reductions for Bingham, Bonneville-Jefferson, and Jefferson-Clark Ground Water Districts in the 2024 irrigation season is a realistic remedy to address the long-term impacts of the 2022 Breach. 2024 additional pumping reductions should equal the 2022 excessive pumping amounts of 32,476; 5,204; and 18,605 acre-feet, respectively."*

The context of this response is confined to the implications of the Opinions relative to the BJGWD. This report takes the SWC modeling at face value; RMEA did not verify it. All references to modeling implicitly are to modeling that is performed correctly, with proper input data sets.

RESPONSE TO OPINION 1

Whether averaging was or was not the intent of the original negotiations and agreement is a large part of the controversy at hand and is not a technical issue. However, SWC's Opinion 1 implicitly assumes that there is *not* a controversy, and adopts one possible outcome of the resolution as if it were fact.

Further, with Opinion 1, Colvin et al. fail to acknowledge the conservation-of-mass problem with the Director's calculations. This information is important to consider because the relief that BJGWD, in good faith, committed to was based on an aquifer-wide water-budget deficit calculation, with an upward adjustment to better protect the interest of seniors. The intent of the negotiations and calculations was for each party to the agreement to assume responsibility for its part of the calculated (deficit plus adjustment) volume. The Director's calculation goes beyond this by excluding from calculation some of the parties that, in hydrologic reality, contribute to the deficit, on the grounds that they are mitigating through other approved mitigation plans. The Director then apportions the fraction of the (deficit plus adjustment) volume hydrologically attributable to these other parties to the remaining participants in the 2016 Plan.

From the standpoint of conservation of mass, this means either that the approved mitigation plans for those other parties do not provide material relief, or that the SWC is entitled to double mitigation for that portion of the hydrologic effects. It is unclear whether there are any provisions in Idaho law for either of these possibilities.

RESPONSE TO OPINIONS 3 AND 7

The SWC Report asserts that the 2016 Plan has far reaching impacts "that extend beyond a single irrigation season," the implication being that any deviation from the 2016 Plan would similarly have far reaching impacts "that extend beyond a single irrigation season." RMEA agrees conceptually with this Opinion and concludes that both a deficit of mitigation efforts (i.e. excess of pumping or insufficient recharge) and an excess of mitigation efforts (i.e. excess pumping reductions or excess recharge) have far reaching impacts "that extend beyond a single irrigation season." Further, the evaluation of any single year in isolation distorts the true net effect of mitigation efforts. For instance, if one of the years when BJGWD's efforts far exceeded the obligation were propagated into the future without considering other years of lesser performance, the windfall that accrued to SWC would be over-indicated.

RESPONSE TO OPINION 5

It appears that Colvin et al. were not involved during the deliberations leading up to the 2016 Plan, and perhaps this is why Opinion 5 misses the important historical and factual context of the concepts that are co-mingled within the Opinion. This response briefly explores the relevant context, in order to properly address the assertions of Opinion 5.

In essence, Opinion 5 revisits the metric that was defined for the 2016 Plan. Originally, there were three candidates:

- Reach gains in the Near Blackfoot to Milner reach of the Snake River, that is, the reach that largely supplies the SWC;
- Eastern-Snake-Plain-wide changes in aquifer storage;

- A sentinel well index.

The first candidate was rejected for a policy reason and for a technical reason. The policy reason to reject the first metric was that the 2016 Plan was intended to provide aquifer-wide benefits and work towards stabilization of the entire aquifer, and the first metric could not have been responsive to the entire aquifer. This aquifer-wide-benefit policy is the rationale behind two key provisions of the 2016 Plan: First, that distant locations like Kilgore and Bliss must reduce as much as nearby locations, even though near-term benefit to Near Blackfoot to Milner from the distant locations would be nil and long-term benefit would be small; Second, and logically consistent with the first, that recharge would be accepted in lieu of reduction on a location-neutral basis.

The technical reason for rejection of the first metric was simple; the expected changes in reach gains from the proposed activities were small relative to the precision of the technological ability to quantify changes in reach gains, and no technological fix to this problem was or is apparent.

The second candidate was rejected for technical reasons. First, the calculation of aquifer-wide aquifer water-level changes requires spatial interpolation of small numbers of water-level data with lumpy spatial distribution across a large area. This can be seen by the large blank spaces with few wells in the IDWR map (McVay, 2021) reproduced here as Figure 1. Though the legend does not indicate it, wells with data are indicated by McVay as small black dots. This deficiency severely strains or violates the statistical requirements of the interpolation methods used.

Second, calculation of a volume of change necessarily requires an estimate of the aquifer storage coefficient, labeled "Sy" in McVay's figure. McVay's crossed-out and replaced values show how sensitive the calculation is to the storage coefficient, indicating that simply using the storage coefficient from consecutive versions of the Enhanced Snake Plain Aquifer Model changed the indicated calculation by almost half the initial estimate. The difference (700,000 acre feet) is equivalent to approximately three years' total expected conservation under the 2016 Plan, from all parties combined.

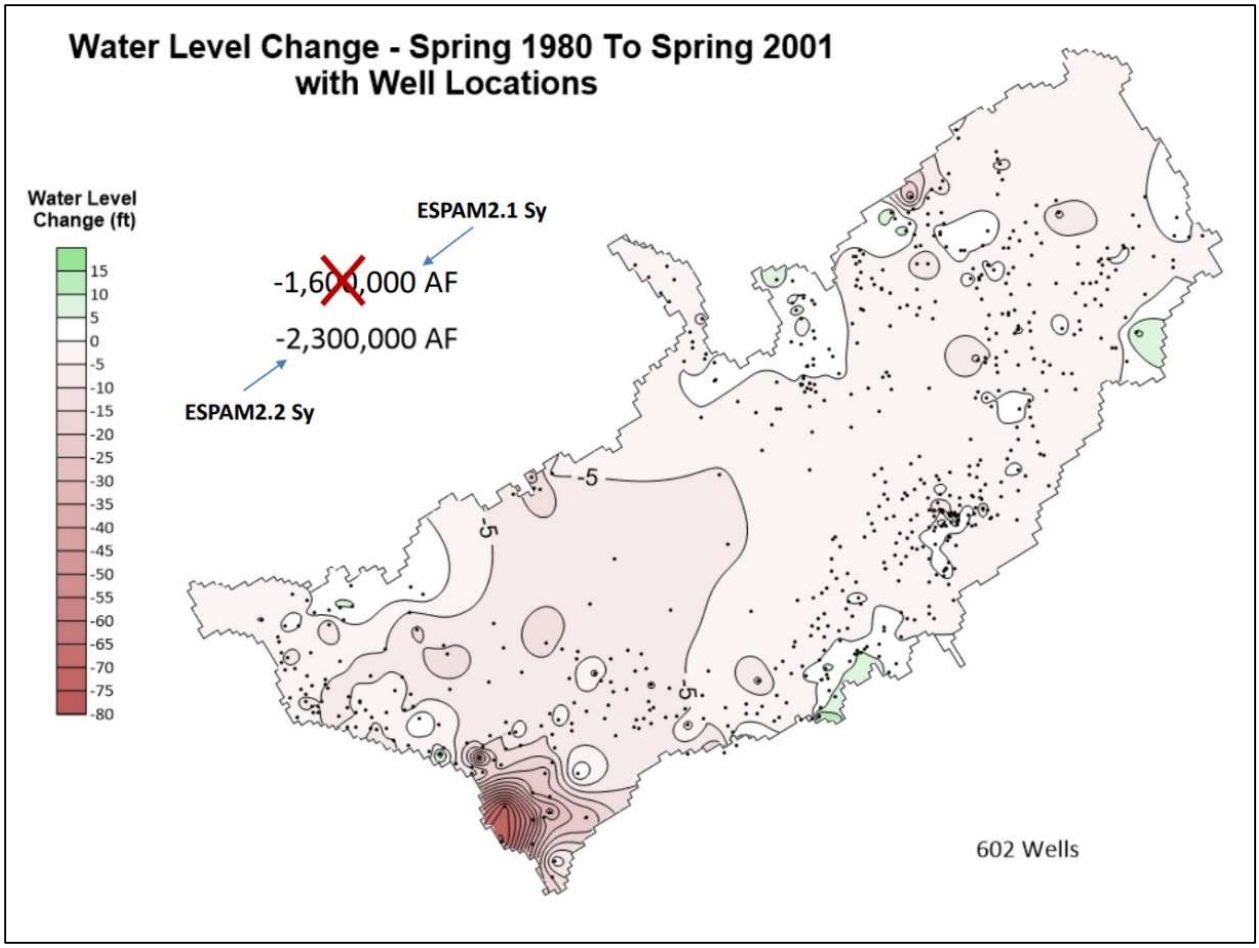

Figure 1. IDWR illustration of the effect of a change in storage coefficient (Sy), reproduced from McVay (2021).

Because of these deficiencies in the other two candidates, a Sentinel Well Index was selected as the criterion for the 2016 Plan. Because the three metrics are different methods of assessing underlying conditions within the same aquifer, it is neither surprising that there would be correlation nor informative to explore it.

The SWC Report asserts that modeling the alleged excess pumping resulted in a total decline of the Sentinel Well Index of 0.29 feet. Colvin et al. then attempt to put that value into context by relating the change in aquifer storage from 2015 to 2016 with a corresponding reduction of similar magnitude in the Sentinel Well Index over the same period. While a conceptual and physical relationship exists between these two data series, using a single pair of values to extrapolate from a long-term data set is statistically invalid. An examination of changes across the full suite of years (as provided in Table 1 and Figure 2) reveals additional information about the relationship. For construction of this table and figure, the 2015-2016 change in index value was accepted from the SWC Report. The 2022-2023 Change in Index was calculated directly from numbers indicated on a graphic produced by IDWR (Ragan, 2023) and the remaining

values were calculated from index values extracted by hand by RMEA from the same graphic. The differences resulting from hand-extracted values are indicated to a precision of only 0.1 foot.

Table 1. Change in Well Index vs. Change in Storage

Year	Change in Aquifer Storage (Acre Ft)	Well Index Change (Ft)
2015-2016	-300,000	-0.27
2016-2017	800,000	1.7
2017-2018	1,600,000	0.9
2018-2019	-30,000	0.4
2019-2020	400,000	0.7
2020-2021	-400,000	-0.9
2021-2022	-1,300,000	-1.22
2022-2023	-1,000,000	-1.35

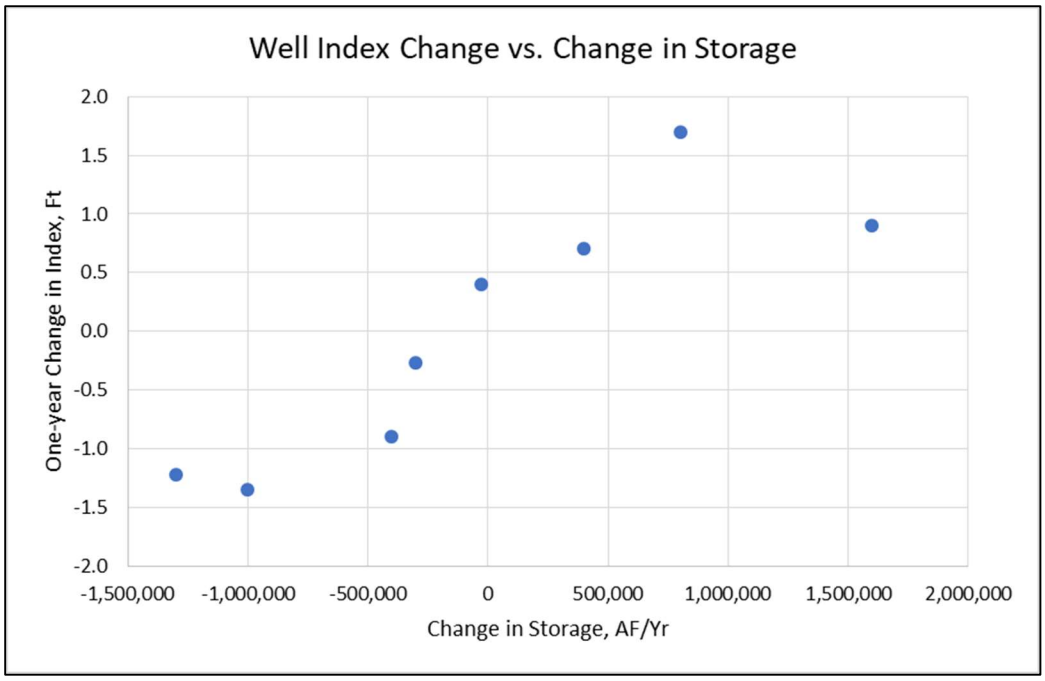

Figure 2. Well Index Change vs. Change in Storage.

Though as indicated by Colvin et al. a large decrease in aquifer storage between 2015 and 2016 does correlate with a small decrease in the Sentinel Well Index over the same period, a *decrease* in aquifer storage correlates with an *increase* in the Sentinel Well Index from 2018 to 2019. Neither observation in isolation can describe the overall relationship.

If it were important to assess the effect of conservation upon the Sentinel Well Index, a more robust method would be modeling analysis, such as that performed by IDWR (Moody, 2023), as reproduced in Figure 3.

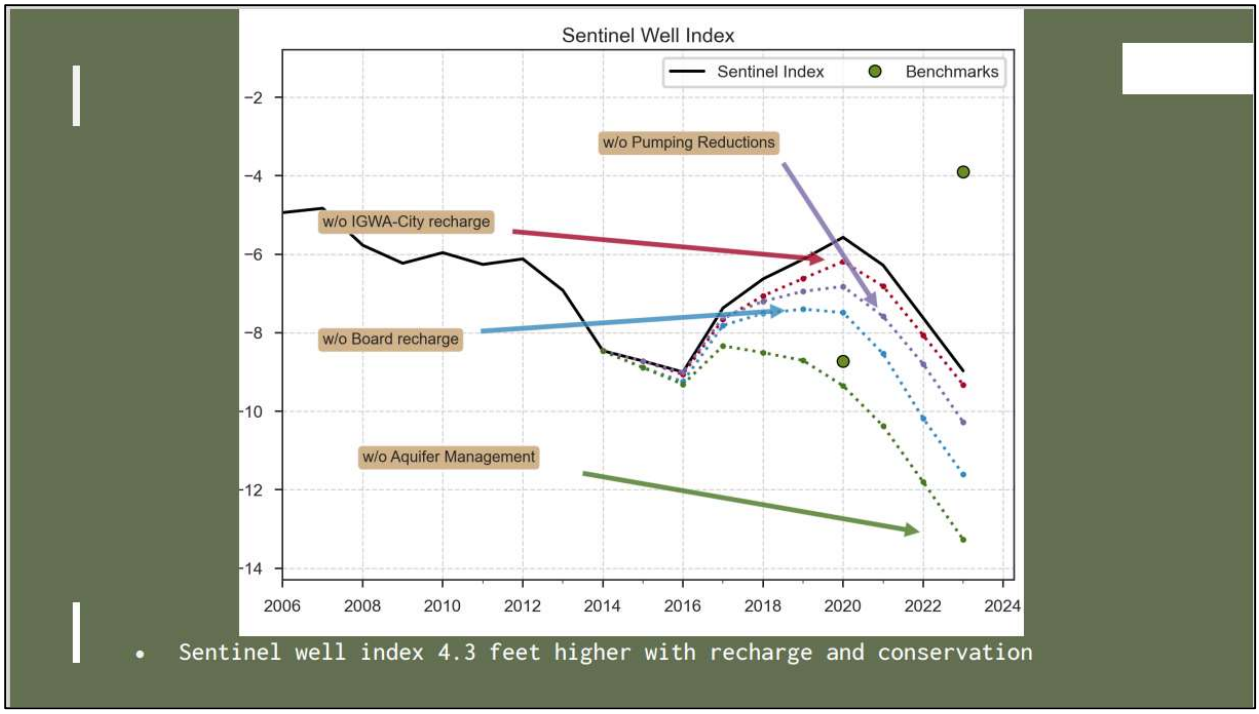

Figure 3. Modeling comparison of the effects of recharge and conservation on the Sentinel Well Index, reproduced from Moody (2023).

Careful examination of the IDWR graphic indicates that 2023's index may be nearly as low as the index before implementation of the 2016 Plan, but does not support the SWC Report assertion that the current index is at a historic low. Importantly, IDWR's work indicates that the 2023 index is substantially higher than it would have been absent the 2016 Plan implementation.

The SWC Report further asserts that the effects of excess pumping in 2022 "propagate into the future," and RMEA agrees with this conceptually. However, there is nothing unique about 2022; this hydrologic fact applies to all the years of operation of the mitigation plan. The effects of over-mitigation in 2017, 2018, and other years propagate into the future as well. The SWC Report indicates that this propagation of 2022 effects "warrant[s] mitigation." RMEA agrees that if the *net* effect of propagation of all prior efforts were to indicate a future shortfall, additional mitigation would be warranted at the affected future time.

RESPONSE TO OPINION 6

Implicit in Opinion 6 is an assumption that averaging was not deliberated and intended as part of the 2016 Plan. As discussed above, whether this assumption is correct, or the alternate assumption is correct that averaging was contemplated, negotiated, and intended, drastically impacts how compliance with the agreement is measured.

Using the values reported annually to SWC and IDWR, Table 2 shows that if averaging was the intent of the original negotiations and agreement, there was no shortfall in 2022; rather, that

BJGWD still was almost 1,000 acre feet ahead of its good-faith commitment to a moving average of 18,264 acre feet per year. Data for 2016 through 2021 are from BJGWD records (Buttars, 2023), data for 2022 are from IDWR (Spackman, 2023), and data for 2023 are from BJGWD records (Johns, 2024) and IGWA records (Higgs, 2024).

Table 2. Summary of BJGWD Efforts with Averaging

Year	Reduction (af)	Recharge & Wet Water (af)	Total Effort (af)	Moving Average (af)	Averaging Period (Yrs)
2016	2,540	10,612	13,152	13,152	1
2017	21,531	46,815	68,346	40,749	2
2018	20,865	11,500	32,365	37,954	3
2019	19,030	14,103	33,133	36,749	4
2020	5,551	5,482	11,033	31,606	5
2021	-1,925	5,080	3,155	29,607	5
2022	6,888	9,249	16,137	19,165	5
2023	20,774	1,262	22,036	17,099	5

Though it has no technical meaning, it may be important that IDWR and SWC implicitly accepted the concept of averaging by not commenting at the time on excess efforts reported for 2017 through 2019. Furthermore, in discussing the long-term effects of year 2022, the SWC Report does recognize that something like averaging must be done to account for the temporal delay of propagation of effects.

Regardless of the status of averaging, with Opinions 3, 6, and 7 the SWC Report introduces the concept of applying modeling to assess the effect of delay in propagation through the aquifer. Though such an approach may not be expressly outlined in the 2016 Plan, RMEA agrees with the application of modeling if it is done in a holistic fashion encompassing all years of effort.

To apply modeling holistically, RMEA used a Transient State realization of the Eastern Snake Plain Aquifer version 2.2 (ESPAM2.2) to provide approximate aquifer modeling of the reduction, conservation, and recharge efforts performed by BJGWD from 2016 to 2023, which are shown in Table 2 above. The accruals of BJGWD's efforts were then compared to accruals that would have resulted had BJGWD strictly met the target conservation set by the 2016 plan.

Table 3 shows the expected accruals, based on Transient State modeling, had BJGWD performed 18,264 af of reductions as specified in the 2016 Mitigation Plan. The table also shows the accruals that would be indicated by the Director's alternate reduction calculation, and most importantly, the accruals that have or will result from actual activities performed by BJGWD between 2016 and 2023. The columns labeled "Difference in Accruals" are calculated by subtracting the "Expected Accruals" from the "Actual Accruals." This calculation results in a positive number if BJGWD efforts resulted in accruals that exceed expectations, and a negative number if BJGWD efforts were deficient. These results are shown in graphical form in Figure 4. The red line in both Table 3 and Figure 4 separate past accruals from future accruals.

It is important to point out that in performing the modeling, no assumptions of future reduction, conservation, and recharge efforts were made. Thus, the drop of accruals (seen after the red line in Table 3 and Figure 4) represent the effect if BJGWD were to do no reductions, conservation, or recharge in 2024 and subsequent years. In reality, BJGWD is committed to ongoing mitigation, and accruals will not drop in the future.

Table 3: Comparison of Actual BJGWD Performance with Expectations

		Target Conservation of 18,264 af		Target Conservation of 21,341 af	
	Actual Total Accruals	**Expected Accruals**	**Difference in Accruals**	**Expected Accruals**	**Difference in Accruals**
2016	237	1,188	-950	1,388	-1,151
2017	6,633	3,115	3,518	3,640	2,993
2018	7,578	4,637	2,942	5,418	2,161
2019	10,431	5,723	4,709	6,687	3,745
2020	9,193	6,490	2,703	7,583	1,610
2021	7,367	7,036	331	8,222	-855
2022	14,578	7,432	7,145	8,685	5,893
2023	5,478	7,725	-2,247	9,027	-3,549
2024	5,227	6,759	-1,532	7,898	-2,670
2025	3,966	5,002	-1,036	5,845	-1,879
2026	2,909	3,616	-706	4,225	-1,316
2027	2,151	2,639	-488	3,083	-932
2028	1,619	1,961	-342	2,292	-672
2029	1,245	1,489	-244	1,740	-495
2030	979	1,157	-178	1,351	-373

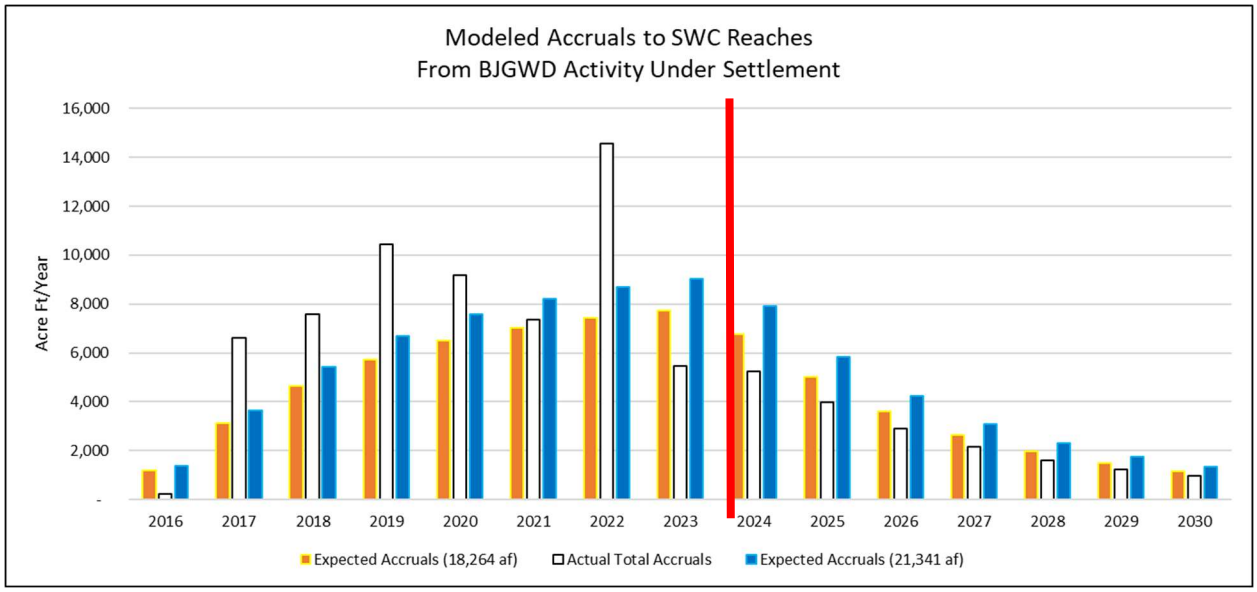

Figure 4: Modeled Accruals to the SWC reach.

The implication of these results is that in 2022 the SWC received almost double the accruals from BJGWD that it would have if BJGWD had only performed the target conservation of 18,264 acre feet each year between 2016 and 2022. Likewise, the SWC still received substantially more than would have been required if 21,341 acre feet had been the correct requirement. Because much of the water provided to the SWC in 2022 came in the form of "wet water delivery," conservation efforts in 2022 did not provide as many accruals in subsequent years as did the prior regime of efforts, and the effect is seen in the actual 2023 accruals. RMEA views the indication of shortfall for 2023 and its associated remedy as having been dealt with previously and beyond the scope of this report and this hearing.

Conceptually, RMEA proposes that for 2024 and beyond, similar modeling be used to ensure that by the end of each calendar year, the cumulative effect of all BJGWD efforts at least matches the calculated expected accruals that would result in that year from annual exact performance of required reduction.

Response to Opinion 8

The SWC Report suggests that BJGWD perform near-real-time monitoring of all ground water pumping. RMEA views the material of this suggestion as policy rather than as technical. While such a policy may offer some utility, monitoring has no ability to rewind the clock to 2022 and address what occurred then, and therefore would be irrelevant to the current proceeding even had SWC not received more than its expected relief from BJGWD in 2022.

However, to the extent that this suggestion may be relevant, RMEA agrees that "accurate measurement and near real-time reporting" of water use can equally benefit groundwater and surface-water management and administration. The spatial density of measurement and

reporting locations should be comparable across water sources, and the temporal definition of "near-real time" reporting should be commensurate to the physical response time and administrative needs within the relevant water-source system. For instance, nanosecond reporting of field-headgate delivery to an individual surface-water-irrigated parcel probably would be too frequent, and weekly reporting surely would be too infrequent.

RESPONSE TO OPINIONS 9 AND 10

Had there actually been a shortfall in BJGWD's performance in 2022, the SWC Report suggests that the remedy could have been as simple as imposing additional reductions in 2024, in the amounts and locations that the alleged shortfall had occurred in 2022. Given the nature of both the timing and the spatial distribution of propagation of effects from the aquifer to the Snake River and its tributary springs and streams, such a simplistic approach could only function under the additional requirement that the replacements also occur at the *time* of the alleged shortfalls. As this would be impossible, there is no reasonable expectation that the simplistic approach could provide relief to the SWC at the time(s) and location(s) needed.

Rather, RMEA proposes that if there were to be a shortfall that was not otherwise mitigated, modeling similar to that performed by Colvin et al. should be applied to the full time series of efforts made by BJGWD to indicate when and where the effects of the shortfall would be felt. Then, remedies should be crafted so that at the end of each year, the accruals for that year from the full history of BJGWD efforts would sum to at least the accruals for that year that would have resulted from a continuous time series of exactly the required reduction.

SIGNATURES

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