

April 5, 2024

Mathew Weaver, Director
Idaho Department of Water Resources
322 E. Front Street, Ste 648
Boise, Idaho 83702-7371
mathew.weaver@idwr.idaho.gov

Re: 2023 Sentinel Well Benchmark

Director Weaver:

I am writing in response to the letter Travis Thompson sent to you dated March 8, 2024, which requests that you take action “concerning the steering committee’s impasse on recommending additional actions to achieve the 2023 Sentinel Well index benchmark set forth in the 2015 Settlement Agreement and 2016 Stipulated Mitigation Plan.” As explained below, you should not take action because Mr. Thompson’s letter does not comply with IDWR rules of procedure, and because the Steering Committee has not yet reached an impasse concerning adaptive measures under the IGWA-SWC Settlement Agreement.

Department rule of procedure 220 provides that “a request to the agency to take an action in a contested case” requires the filing of a “motion.” Motions must contain certain information and follow a prescribed form, which Mr. Thompson’s letter does not.

If the SWC files a proper motion, the Department must proceed in accordance with the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code, and Department rules of procedure, beginning with informal proceedings. If the matter cannot be resolved informally, the Department may transition to formal proceedings. In the absence of a stipulated resolution of the matter, and in the absence of an emergency, the Department must hold a hearing in accordance with the APA before taking action.

In addition, IGWA disagrees with Mr. Thompson’s assertion that the Steering Committee has reached an impasse. As noted in Mr. Thompson’s letter, the Steering Committee met on November 2, 2023, and tasked the technical working group with evaluating certain hydrologic information and performing model runs using ESPAM to assist the Steering Committee with making recommendations concerning adaptive measures. That effort commenced but has not been completed because of the demands of litigation. The technical working group’s inability to promptly complete the requested work on the anticipated timeframe does not equate to an impasse by the Steering Committee.

The purpose of the Steering Committee was to compel the parties to work cooperatively to resolve disagreements involving the Settlement Agreement. As you know, the Settlement Agreement does not define many important provisions, and the parties recognized from the outset that cooperation would be required for the Settlement Agreement to be successful. The wisdom of this has been realized over the last two years, as litigation has consumed tremendous resources without yielding productive results.

Therefore, IGWA respectfully requests that the Director decline to take action in response to Mr. Thompson’s letter.

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Sincerely,

A handwritten signature in blue ink that reads "T. J. Budge". The signature is stylized with a long horizontal line under the first name and a large, sweeping flourish for the last name.

T. J. BUDGE

c: Garrick Baxter
Skyler Johns
Dylan Anderson
Jerry Rigby
Andy Waldera
Bill Parsons
Travis Thompson
Kent Fletcher
John Simpson
Candice McHugh
Chris Bromley
Sarah Klahn
Rob Harris