

Dylan Anderson (ISB# 9676)
Dylan Anderson Law PLLC
P.O. Box 35
Rexburg, Idaho 83440

Phone - (208) 684-7701
Email - dylan@dylanandersonlaw.com

Attorney for Bingham Groundwater District. (BGWD)

**IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA**

IDAHO GROUND WATER
APPROPRIATORS, INC.,

Petitioners,

vs.

IDAHO DEPARTMENT OF WATER RESOURCES and
GARY SPACKMAN, in his capacity as Director of the Idaho
Department of Water Resources,

Respondents.

Case No. CV01-23-07893

**BINGHAM GROUNDWATER
DISTRICT’S REPLY BRIEF IN
SUPPORT OF IGWA’S PETITION FOR
REHEARING**

CITY OF POCATELLO, CITY OF BLISS, CITY OF
BURLEY, CITY OF CAREY, CITY OF DECLO, CITY OF
DIETRICH, CITY OF GOODING, CITY OF HAZELTON,
CITY OF HEYBURN, CITY OF JEROME, CITY OF PAUL,
CITY OF RICHFIELD, CITY OF RUPERT, CITY OF
SHOSHONE, CITY OF WENDELL, A&B IRRIGATION
DISTRICT, BURLEY IRRIGATION DISTRICT, MILNER
IRRIGATION DISTRICT, NORTHSIDE CANAL
COMPANY, TWIN FALLS CANAL COMPANY,
AMERICAN FALLS RESERVOIR DISTRICT #2
MINIDOKA IRRIGATION DISTRICT, BONNEVILLE-
JEFFERSON GROUND WATER DISTRICT, AND BINHAM
GROUNDWATER DISTRICT

IN THE MATTER OF THE
DISTRIBUTION OF WATER TO
VARIOUS WATER RIGHTS HELD BY
AND FOR THE BENEFIT OF A&B
IRRIGATION DISTRICT, AMERICAN
FALLS RESERVOIR DISTRICT #2,
BURLEY IRRIGATION DISTRICT,
MILNER IRRIGATION DISTRICT,

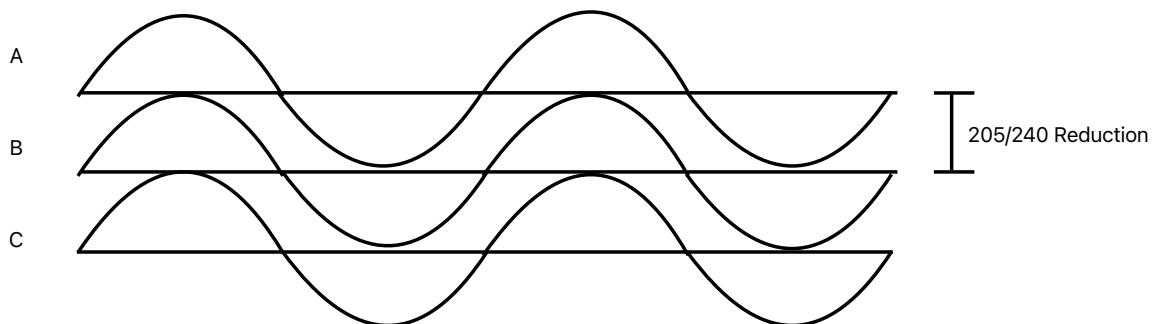
MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY,
AND TWIN FALLS CANAL
COMPANY

IN THE MATTER OF IGWA'S
SETTLEMENT AGREEMENT
MITIGATION PLAN

Bingham Ground Water District (BGWD) submits this reply brief in support of IGWA's Petition for rehearing. Bingham Groundwater District did not receive notice of the hearing and the allotted briefing schedule until today, February 14. This hearing did not appear in iCourts, and it seems that Bingham Ground Water's service email was incorrect on the notice of hearing. For these reasons, Bingham requests the court allow this short reply brief that is submitted after the February 12 deadline. If nothing else, counsel would like to refer to the crude graph below during brief oral arguments.

Argument

Groundwater usage is dynamic. It is not steady from year to year. Pumping fluctuated roughly 400,000 acre/feet during just the 5 years before the 2016 settlement agreement. Those 5 years were used, because it was really the only data we had. Because of these dynamic changes, it is difficult to pick a specific amount from which groundwater users are to reduce from. At the risk of being redundant, please consider the following graph that illustrates previous arguments in a different way.



Above is a graph with three rows represented by "A", "B", and "C". In each row is a wave representing groundwater pumping, and a straight line representing an average. Imagine the wave in row "A" represents historical pumping, with the straight line representing the base

ling average. Similar to chart 3 in Bingham’s’ response in support of IGWA’s motion for rehearing, there are values above and below the base line average. Because of this dynamic range of historic pumping, IGWA took an “averaging” approach portrayed by row “B”. This approach allowed for dynamic pumping, and expected that required reductions would come in wet and dry years. The straight line in row “B” represents the average pumping *after* the required reduction, or the “target average”. IGWA believed that reduction to be 205,000 acre/feet, but even if it were 240,000 acre/feet, this example is the same. The issue comes when the director took the target average (straight line in row “B”) and made it the annual pumping limit. This made the straight line in row “B” a cap, not an average. This decision does nothing to change the dynamic nature of groundwater pumping. Groundwater usage is still a wave, not a flat line. In order to comply with the directors interpretation, the peaks of the wave must now be below the straight line in row “B”. This reality is represented in row “C”. Any comparison to like years between row “A” and row “C” will not show an annual reduction of 205,000 acre feet, but nearly twice that. If the reduction was in fact 240,000 feet, then the reduction would be even more.

CONCLUSION

As pointed out, the Directors interpretation is simply inconsistent with the plan language of settlement agreement and annual reductions.

Dated February 14, 2024

Dylan Anderson Law, PLLC

_____/s/ Dylan Anderson_____
Dylan Anderson,
Attorney for Bingham Groundwater District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 2024, I caused to be filed a true and correct copy of the foregoing document via iCourt E-File and Serve, and upon such filing, the following parties were served via electronic mail:

Idaho Dept. of Water Resources
file@idwr.idaho.gov

Kathleen Marion Carr
US Dept. Interior
960 Broadway Ste 400
Boise, ID 83706
kathleenmarion.carr@sol.doi.gov

John K. Simpson
MARTEN LAW LLP
P.O. Box 2139 Boise, ID 83701-2139
jsimpson@martenlaw.com

David W. Gehlert
Natural Resources Section Environment and
Natural Resources Division U.S. Department
of Justice
999 18th St., South Terrace, Suite 370 Denver,
CO 80202
david.gehlert@usdoj.gov

Travis L. Thompson
MARTEN LAW LLP P.O. Box 63
Twin Falls, ID 83303-0063
tthompson@martenlaw.com
jnielsen@martenlaw.com

Matt Howard
US Bureau of Reclamation
1150 N Curtis Road
Boise, ID 83706-1234
mhoward@usbr.gov

W. Kent Fletcher
FLETCHER LAW OFFICE
P.O. Box 248
Burley, ID 83318
wkf@pmt.org

Thomas J. Budge
Elisheva M. Patterson
RACINE OLSON
P.O. Box 1391
Pocatello, ID 83204-1391
tj@racineolson.com
elisheva@racineolson.com

Candice McHugh
Chris Bromley
MCHUGH BROMLEY, PLLC
380 South 4th Street, Suite 103
Boise, ID 83702
cbromley@mchughbromley.com
cmchugh@mchughbromley.com

Robert L. Harris
HOLDEN, KIDWELL, HAHN & CRAPO, PLLC
P.O. Box 50130
Idaho Falls, ID 83405
rharris@holdenlegal.com

Robert E. Williams
WILLIAMS, MESERVY, & LOTH SPEICH, LLP
P.O. Box 168
Jerome, ID 83338
rewilliams@wmlattys.com

Skyler C. Johns
Nathan M. Olsen
Steven L. Taggart
OLSEN TAGGART PLLC
P.O. Box 3005
Idaho Falls, ID 83403
sjohns@olsentaggart.com
nolsen@olsentaggart.com
staggart@olsentaggart.com

Randall D. Fife
City Attorney
CITY OF IDAHO FALLS
P.O. Box 50220
Idaho Falls, ID 83405
rfife@idahofallsidaho.gov

Corey Skinner
IDWR—Southern Region
1341 Fillmore St., Ste. 200
Twin Falls, ID 83301-3033
corey.skinner@idwr.idaho.gov

Tony Olenichak
IDWR—Eastern Region
900 N. Skyline Drive, Ste. A
Idaho Falls, ID 83402
Tony.Olenichak@idwr.idaho.gov

William A. Parsons
PARSONS SMITH & STONE
P.O. Box 910
Burley, ID 83318
wparsons@pmt.org

Rich Diehl
City of Pocatello
P.O. Box 4169
Pocatello, ID 83205
rdiehl@pocatello.us

Sarah A Klahn
Somach Simmons & Dunn
1155 Canyon Blvd, Ste. 110
Boulder, CO 80302
sklahn@somachlaw.com
dthompson@somachlaw.com

/s/ Dylan Anderson.
Dylan Anderson
Attorney for Bingham Groundwater District