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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**

CITY OF POCA TELLO, CITY OF IDAHO FALLS,
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, IDAHO GROUND WATER
APPROPRIATORS, BINGHAM GROUND
WATER DISTRICT, BONNEVILLE-JEFFERSON
GROUND WATER DISTRICT, and MCCAIN
FOODS USA, 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. CV01-23-8306

**DECLARATION OF ALAN
JACKSON IN SUPPORT OF
MOTION TO STAY BASED ON
IDWR'S INTERFERENCE WITH
LAWFUL DISCOVERY**

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

I Alan Jackson, declare and state as follows:

1. I am over the age of 18 and competent to testify. I have personal knowledge of the facts set forth herein and, if called upon as a witness, I could and would competently testify thereto.
2. I am the manager of Bingham Ground Water District (BGWD), a position I have held since April 2017.
3. In the spring of 2022 the SWC asserted that BGWD had breached the mitigation plan agreement because the pumping in 2021 exceeded what they interpreted as an annual limit, which was a baseline established subsequent to the agreement, and in the context of averaging yearly pumping to determine compliance with the mitigation plan.
4. Up to that point it was understood by BGWD that the annual limit would be measured on an average basis because of the difficulty in determining a single year pumping need and reduction. This approach is similar to other components of the agreement, and other agreements with SWC. However, the SWC pursued their claim of breach and ultimately the Director agreed that the plain language of the agreement stipulated an annual limit without averaging or cumulative benefit.
5. The baseline average was not mentioned in the settlement agreement, but the Director adopted it as a yearly limit, despite the fact that it included years where pumping requirements were much higher, and much lower than this baseline.

6. Upon analysis of the impact of an annual limit, which was based on a reduction from the average usage between 2010-2014, BGWD determined that in order to comply with the pumping limit, it would have to cease irrigation on at least as many acres as would have been curtailed during the worst projected demand shortfall. Roughly 30,000 acres, similar to a 1976 curtailment date.
7. The total volume of ground water pumping in BGWD on an annual basis fluctuates significantly depending on the crop water demand. It is expensive to pump water from the aquifer so care is taken to ensure that no more water is pumped than is required. This means that when crop water demands are above average there is very little room to meet a hard pumping limit through pumping reductions without causing crop damage, especially when the limit is based on an average. The only way to stay within limits is to reduce irrigated acres and the loss of planted acres during the season would be devastating to a farm operation. It is impossible to accurately predict the total crop water demand for a growing season so the only way to ensure that a hard pumping limit is met is to assume the highest crop water demand every year and only plant as many acres as are certain to have enough water.
8. The crop water demand in 2021 was among the highest ever which meant that ground water pumping was much higher than the average. Irrigators in BGWD diverted on average about 2 acre-feet per acre which led to a districtwide usage totaling about 60,000 acre-feet greater than the hard pumping limit in the agreement, as interpreted by the Director. Based on the 2 acre-foot per acre average usage BGWD would have had to reduce irrigated acres for the entire season by about 30,000 acres in order to comply with the pumping limit. Comparatively, the in-season demand curtailment in

2021, based on the 4th Methodology Order, would have curtailed 26,650 acres in BGWD with a curtailment date of June 14, 1977. Given the similarity in idled acres every year under both scenarios BGWD determined that the settlement agreement did not in fact offer any safe harbor. In fact the settlement agreement was worse than the result of the 4th Methodology Order because along with the similar acreage reduction it required the acquisition of a significant amount of reservoir storage every year to comply with the terms of the agreement.

9. Throughout the settlement process, BGWD voiced its concerns about the settlement agreement, and that its patrons felt that facing the curtailment each year was actually a better outcome than meeting the demands of the settlement agreement as interpreted by the Director. This was based on the number of acres that would be dried up, the inability to get storage water for mitigation purposes on dry years, and crop insurance implications due to an agreed reduction.
10. Multiple sources reported back to BGWD that this position was interpreted as ignoring any responsibility to the SWC or to help stabilize the aquifer because the Department would not actually curtail. Although this is not the position BGWD took, or had any intention of taking, it became a theme among political and state officials.
11. A meeting was held with department staff, elected officials, SWC and representatives of all other ground water districts to create a straw man for settlement talks. BGWD was the only ground water district not invited. We believe that this is because of BGWD's position on curtailment.

12. During settlement conferences with the SWC, BGWD repeated this comparison often. It was also explained during the winter 2023 negotiations to amend the settlement agreement in the presence of IDWR staff and multiple elected state officials.
13. Prior to beginning one session of the settlement conference, Lt. Governor Bedke had invited Director Spackman to speak. He explained that if people did not believe he would curtail, they would be wrong, because if he ordered curtailment, the department would follow through with it.
14. Again, BGWD took the opportunity to explain that it did not doubt the Director's resolve in issuing a curtailment. On the contrary, we were advising patrons and developing plans to prepare for curtailment if we were not able to mitigate through other means. The feedback we had received from our patrons is that they would rather face curtailment from the State, than a voluntary curtailment under the newly interpreted settlement agreement.
15. The fact that the methodology of using the steady state condition in the ground water model to determine curtailment was no worse than the Director's interpretation of the terms in the settlement agreement was obviously a hindrance to the winter negotiations in which the SWC was calling for even greater pumping reduction and/or more storage mitigation.
16. As depositions have progressed in this case, there has been no new technical evidence presented that would require the Department to switch from the steady state condition in the methodology order, to transient state condition when determining curtailment dates. In fact, the questioning has shown that they knew as much about the impacts of transient vs steady state 7 years ago as they do today. It has also been made clear that

the decision to switch to transient coincides with settlement talks this spring. Why did the Department feel the need for such a drastic overhaul of the methodology order in such a short window without any notice or due process consideration? Furthermore, why is the department limiting Groundwater users from discovering any information related to the Directors decision, other than technical information that seems static and unchanged for years?

17. It is easy to conclude that the Director's decision to switch to the transient model is in direct retaliation to BGWD's position that curtailment is better than the Director's interpretation of the settlement mitigation plan. BGWD patrons feel that they have repeatedly been threatened and manipulated to comply with settlement agreement obligations which are substantially different from what they understood upon entering into the agreement, while the Department is simultaneously implementing a manifold increase in the consequences of curtailment under the 5th Methodology Order. BGWD desires to understand the Director's decision to go to the transient model and any influence from within or without the Department that may have pressured him to so undermine our position in settlement negotiations, but his limitation on Discovery is not allowing us to do so.

I declare under penalty of perjury under the laws of the State of Idaho that the foregoing is true and correct.

Dated May 31, 2023

/s/ Alan Jackson
Alan Jackson,
Manager, Bingham Groundwater District

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31th day of May, 2023, 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:

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