

Overview and Background on the Director's May 30, 2024 Final Order Curtailing Ground Water Rights Junior to March 31, 1954 - FAQ

1. What happened?

The Director of IDWR issued an order on May 30, curtailing ground water rights that pump water from the Eastern Snake Plain Aquifer that are junior to March 31, 1954 and located in ground water districts that were found to be deficient in complying with their existing, approved mitigation plans to address an injury volume of 74,100 acre-feet of water to senior water users.

2. Why was a curtailment order necessary?

The surface water users and ground water users in the Eastern Snake Plain region have been in conflict and litigation for many years. This conflict prompted the development of the methodology for determining material injury to senior water users (Methodology). The Methodology has been implemented for many years to evaluate water supply and crop need conditions to determine the magnitude of injury to senior surface water users. In 2015, members of the Surface Water Coalition (SWC), and members of the Idaho Ground Water Appropriators, Inc. (IGWA), reached a settlement agreement that was submitted and approved by the Department as a mitigation plan (2016 Stipulated Mitigation Plan).

Under the existing water delivery call by the SWC, the Director of IDWR must use the Methodology to evaluate water supply conditions in April of each year and determine if there is a water shortage. This year, the Director determined there would be a shortage to the Twin Falls Canal Co. (senior surface water users) of 74,100 acre-feet of water.

IDWR notified junior ground water users on May 10 that they would need to show how they will mitigate for the water shortfall.

Currently, four ground water districts were found to be deficient in meeting an existing mitigation plan, while nine other entities were found to be in compliance with their existing mitigation plans.

The nine entities found to be **in compliance** are as follows:

1. Aberdeen American Falls Ground Water District
2. A & B Irrigation District
3. Coalition of Cities
4. Southwest Irrigation District
5. Henry's Fork Ground Water District
6. Madison Ground Water District
7. Magic Valley Ground Water District
8. North Snake Ground Water District
9. Water Mitigation Coalition

The four ground water districts found to be **in non-compliance** are as follows:

1. Bingham Ground Water District
2. Bonneville-Jefferson Ground Water District
3. Jefferson-Clark Ground Water District
4. Carey Valley Ground Water District

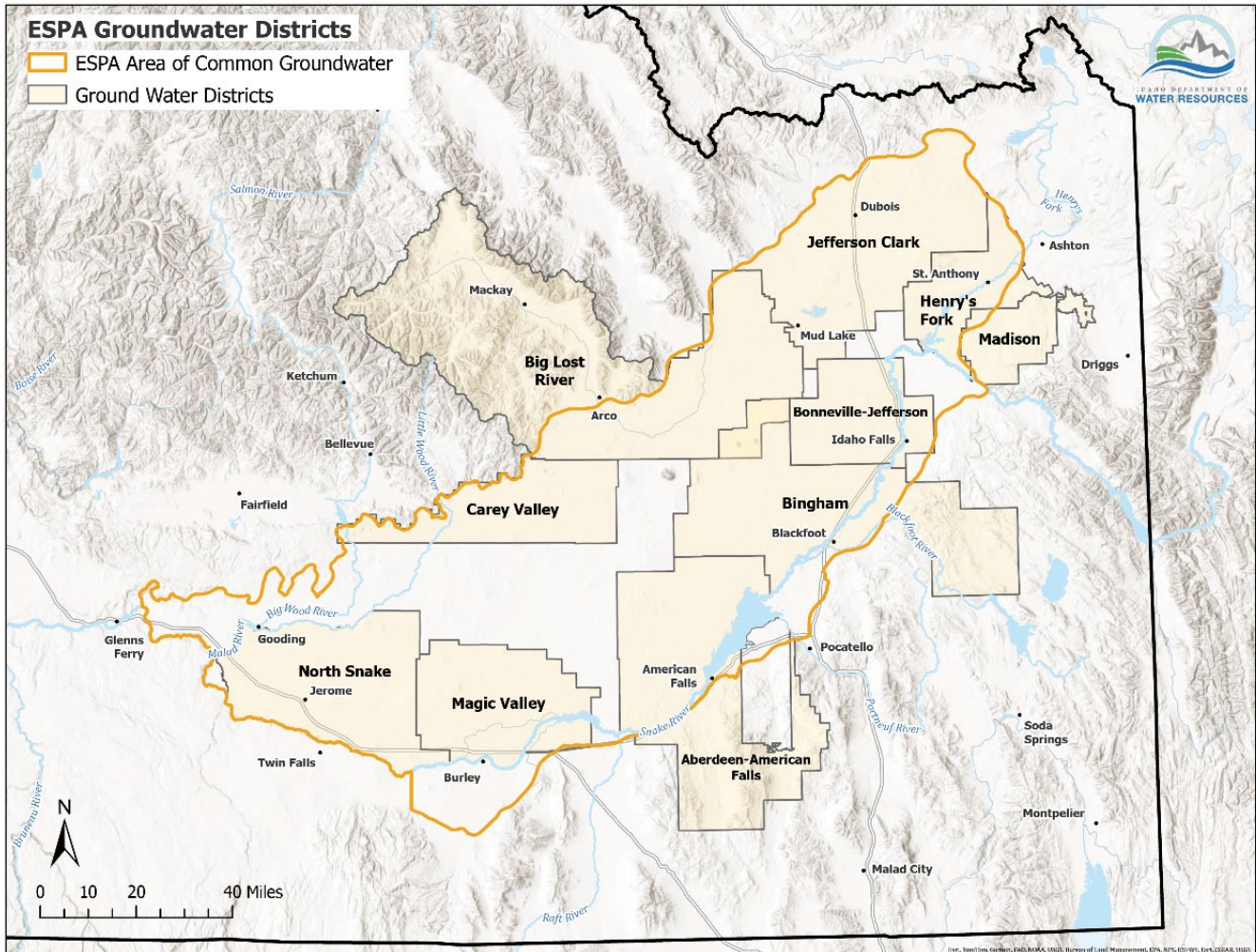


Figure 1. Ground water districts within the ESPA Area of Common Ground Water Supply

3. Why is there a conflict between the SCW and IGWA?

In Idaho, water rights are assigned a priority date based on the date the water was developed or put to beneficial use. Generally, surface water rights are senior and ground water rights are junior. Often, surface water users will have senior water rights dating to the early 1900s compared to ground water users, whose water rights date to the 1940s and 1950s.

Under Idaho Water Law, the priority of water distribution followed by the courts is called prior-appropriation, or “first in time, first in right”. Idaho is a prior-appropriation state, which means senior-priority water rights receive their water first followed by junior water rights. If there is not enough water to fill all water rights, junior users can potentially be curtailed when senior users submit a delivery call to the Department for their water.

Much of the conflict centers around water rights – first in time, first in right – and the health of the Eastern Snake Plain Aquifer (ESPA). The ESPA is a Lake Erie-sized aquifer that provides multiple benefits

for everyone who lives in the Magic Valley and Eastern Idaho, including drinking water, water for irrigation, water for business, industry and cities.

The ESPA has been in decline since the 1950s. There are more than 5,500 water wells drawing water from the ESPA and the aquifer is being overdrawn by about 200,000 acre-feet a year. The graph below illustrates ESPA storage volume over time. Storage volume increased in the early days of Idaho’s history when farmers used surface water to water their crops, thus increasing the amount of water in the ESPA due to aquifer recharge from farm fields. Around the 1950s groundwater pumping became more feasible, and many farmers started watering their fields with groundwater pumped from the ESPA. As shown in the graph, a steady decline in ESPA storage volume begins in the 1950s. The amount of discharge at the Thousand Springs complex is an indicator of aquifer health. Discharge at Thousand Springs fluctuates according to ESPA storage volumes.

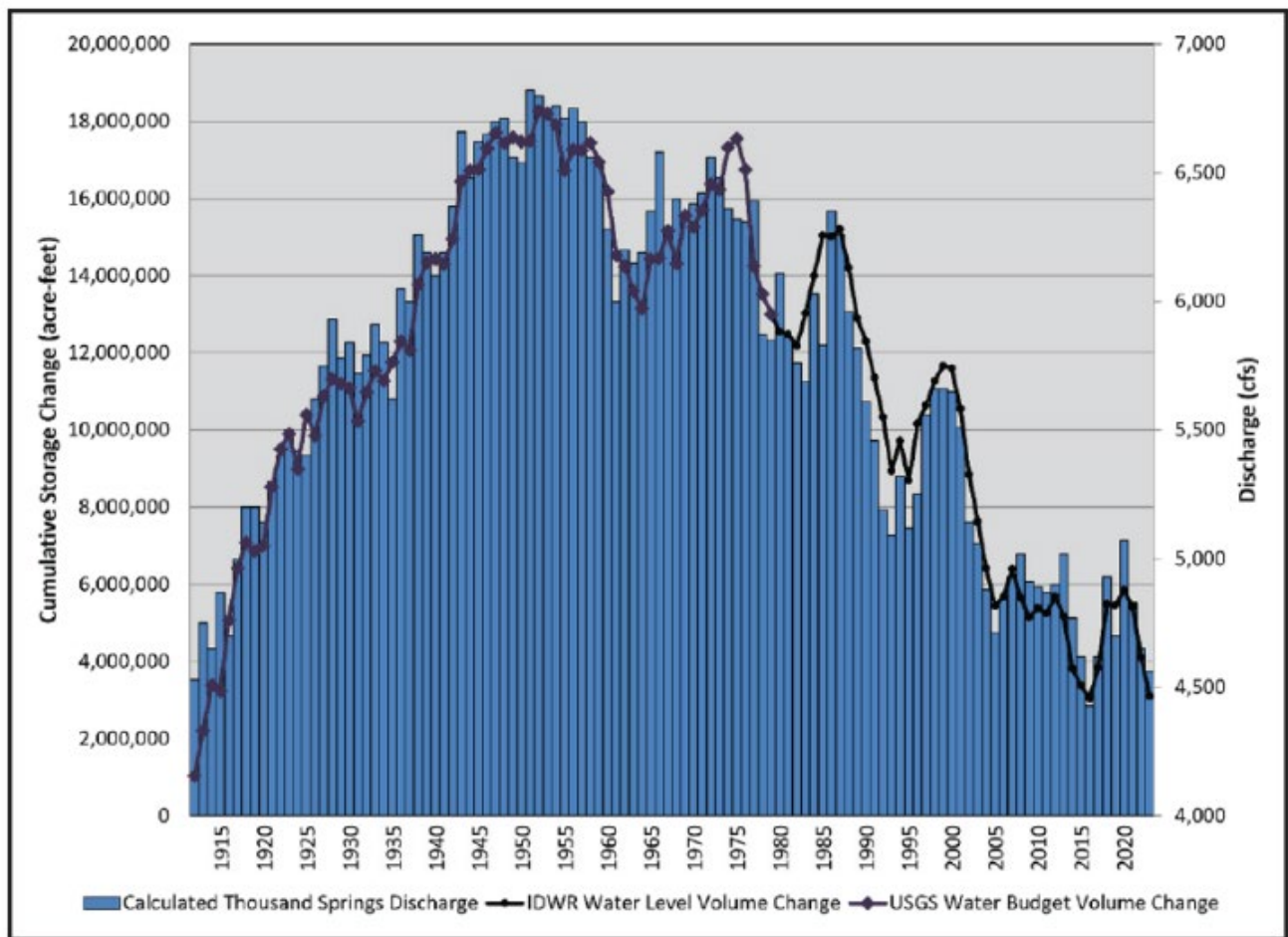


Figure 2: ESPA storage volume change (black line) and discharge from the Thousand Springs complex (blue bars) from 1912-2023.

4. Didn't the 2015 settlement agreement between the Surface Water Coalition and the Idaho Ground Water Appropriators, Inc. over water rights in the ESPA region, brokered by Lt. Gov. Scott Bedke, resolve the water rights dispute?

Yes, it did for a number of years. In 2016, IDWR approved the SWC's and IGWA's Stipulated Mitigation Plan following their 2015 settlement agreement. The 2016 Stipulated Mitigation Plan called for ground water reductions of 240,000 acre-feet per year by ground water districts in the ESPA region or 13% across the region.

However, some ground water districts are now seeking to mitigate under the 2009 mitigation plan, which calls for delivery of storage water to the SWC.

5. Did ground water users have any other options for safe harbor from the Director's curtailment order?

The ground water districts have two mitigation plans that were approved by the Department that are available to them this year:

- [2016 Stipulated Mitigation Plan](#)
- [2009 Storage Water Delivery Plan](#)

Three ground water districts have met the terms of the 2016 Stipulated Mitigation Plan and have shown that they are in compliance with the plan. These ground water districts are protected from curtailment under the plan. The remaining districts have not shown that they are in compliance with either mitigation plan.

6. Could the Director have waited to issue a curtailment order? Farmers have already planted their crops, right?

The IDWR Director is required by the Idaho Constitution, Idaho Law, and numerous court decisions to administer water rights. The SWC members submitted a delivery call for their water that requires the Director to take action to protect the SWC's senior water rights. If juniors cannot show that they are in compliance with an approved mitigation plan, the Director has no choice but to curtail junior users.

7. How does IDWR determine how many acres will be curtailed?

The number of curtailed acres is a function of the curtailment priority date. The curtailment priority date will be different each year and may change mid-season depending on current water supply, aquifer conditions, and irrigation demand.

7. How can there be curtailment in a year when there is a good snowpack or full reservoirs?

The April Forecast Supply order, a part of the Methodology, is an early season prediction of the SWC's water supply for the upcoming irrigation season, based on aquifer conditions, natural flow, storage water, and aquifer discharge to the Snake River. Snowpack is only one component of the SWC's water supply. In 2023, the ESPA and spring discharge, both of which affect Snake River surface water flows, were at

record low levels. Because of this, there can be curtailment in a year when there is a good snowpack or full reservoirs.

8. Are junior ground water users immediately subject to curtailment?

Ground water users that are members of ground water districts that are not in compliance with an approved plan are immediately curtailed. Ground water users that are not members of a ground water district have 15 days from May 30, 2024, to join a ground water district that is operating in compliance with an approved mitigation plan.

9. What happens if I am a ground water user and I'm a member of an organization that is operating in compliance with an approved mitigation plan?

If you are a member of an organization or entity that is operating in compliance with an approved mitigation plan, you are not subject to curtailment.

10. What happens if I am a ground water user and I am not in compliance with an approved mitigation plan?

You are subject to curtailment.

IDWR website resources:

[Welcome to Idaho Department of Water Resources](#)

[2024 Surface Water Coalition Delivery Call](#)

[Final Order Curtailing Ground Water Rights Junior to March 31, 1954](#)

- [Amended Attachment A: Ground Water Rights Junior to March 31, 1954](#)
- [Amended Attachment B: Ground Water Rights Junior to March 31, 1954](#)

[SWC Delivery Call Legal Filings and IDWR Orders \(2010 – Present\) CM-DC-2020-001](#)