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**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,

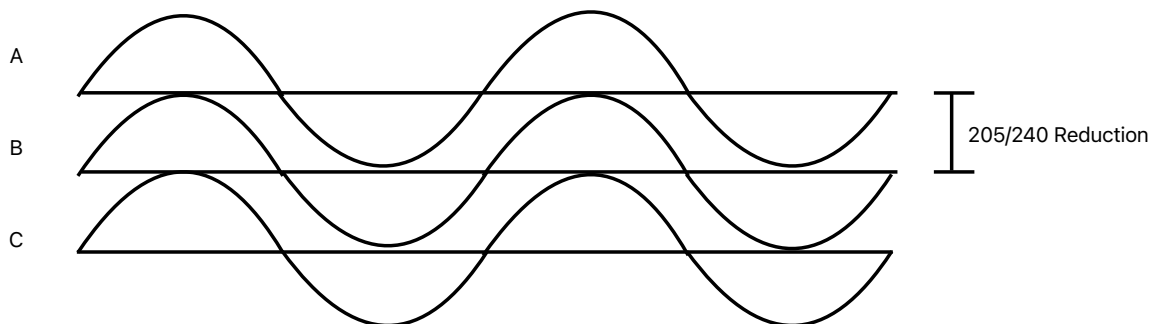
MINIDOKA IRRIGATION DISTRICT,
NORTH SIDE CANAL COMPANY,
AND TWIN FALLS CANAL
COMPANY

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:

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