MEMORANDUM

TO:	IGWA Board of Directors
FROM:	T.J. Budge; Elisheva Patterson (IGWA general counsel)
DATE:	October 18, 2024
SUBJECT:	Frequently Asked Questions – 2024 Stipulated Mitigation Plan

Question 1 - Who is the Surface Water Coalition (SWC)?

Answer: The SWC consists of seven entities that operate irrigation canals in the Magic Valley: 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. The SWC collectively irrigates about 560,000 acres. A map showing the SWC service areas is attached hereto as Appendix A.

Question 2 - How much does the Eastern Snake Plain Aquifer (ESPA) affect the water supply of the SWC?

Answer: Spring flows from the ESPA make up a significant part of the SWC water supply.

The SWC diverts water from the Snake River at Minidoka Dam (a few miles upstream from Burley) and at Milner Dam (a few miles downstream from Burley). Canal companies and irrigation districts in eastern Idaho have water rights that are senior to the SWC, and they frequently divert all of the natural flow of the Snake River during the irrigation season. In the early 1900s, the Snake River was entirely diverted above Blackfoot, leaving several miles of dry riverbed. Today, water always flows past Blackfoot due to storage water released from Palisades Reservoir.

After the spring runoff, the water supply of the SWC consists of spring flows that enter the Snake River in the American Falls area, storage water released from reservoirs, and inflows to the Snake River from the Portneuf River and a few small tributaries downstream of Blackfoot.

Pumping groundwater from the ESPA reduces the amount of water that flows out of the ESPA and into the Snake River via springs in the American Falls area. Spring flows in this area have diminished considerably since the 1980s as shown on the chart attached hereto as Appendix B.

Question 3 - Is the SWC actually short of water?

Answer: The amount of water that flows out of the ESPA and into the Snake River in the American Falls area has declined by roughly 500,000 acre-feet per year, as shown on Appendix B. There is some debate about whether the SWC can get by with less water by making capital improvements to their canal systems and operating more efficiently, but there is no debate that their water supplies have diminished considerably.

In years of above-average snowpack and rainfall, the SWC still receives enough water to irrigate their crops. However, in years of below-average snowpack and rainfall, SWC members have had to reduce water deliveries to their patrons. Attached hereto as Appendix C is a table showing SWC water supply shortfalls calculated by the Idaho Department of Water Resources (IDWR) from 2000-

2001. The "November Actual Demand Shortfall" column shows water supply shortfalls calculated at the end of the irrigation season, which periodically exceed 200,000 acre-feet.

Question 4 - Why has IDWR pursued curtailment of groundwater rights?

Answer: IDWR has a duty to distribute water in accordance with the prior appropriation doctrine. A primary tenet of the doctrine is the principle that "first in time is first in right," which is part of the Idaho Constitution.

The water rights of the SWC are senior in priority to groundwater rights from the ESPA. Therefore, IDWR has pursued curtailment of groundwater rights in order to raise the groundwater table and thereby increase the amount of water that flows from the ESPA into the Snake River.

In addition, the Idaho Ground Water Act requires IDWR to manage the state's aquifers based on "reasonable groundwater pumping levels" in order to achieve "full economic development of underground water resources." (Idaho Code 42-226.) The Act does not allow water users to withdraw groundwater at a faster rate than it can be replenished. Groundwater levels throughout the ESPA have been declining for several decades, and IDWR has expressed a commitment to arrest the decline by reducing the amount of water pumped from the aquifer.

Question 5 - Why has a new mitigation plan been negotiated?

The objective of the new mitigation plan (commonly known as the "2024 Plan") is to implement a better management strategy for the ESPA that is designed to keep as many acres of farmland in production, and as many businesses in operation, as possible.

Question 6 - Are there alternatives to the 2024 Plan?

Answer: Yes, there are three options for managing the ESPA:

1. Methodology Order + Groundwater Management Plan. The Methodology Order is the process used by IDWR to predict the water supply and the water demand of the SWC. When the predicted demand is greater than the predicted supply, IDWR orders curtailment of groundwater rights. This is what happened in the spring of 2024.

   The Methodology Order is not designed to stabilize groundwater levels under the ESPA. Therefore, IDWR is expected to adopt a groundwater management plan for the ESPA that imposes restrictions on groundwater use.

   The 2024 Plan is designed to both mitigation injury to the SWC and stabilize ESPA groundwater levels, and it is expected to serve as the groundwater management plan for ground water districts that participate in the 2024 Plan.

2. 2015 Agreement. The ESPA ground water districts and the SWC entered into a settlement agreement in 2015 (commonly referred to as the "2015 Agreement" or the "2016 Plan") that was expected to increase ESPA groundwater levels and spring flows and provide an adequate supply of water to the SWC. However, groundwater levels did not recover as had been predicted by the ESPA groundwater model. In response, IDWR initiated a program to reduce the amount of water withdrawn by ground water districts from the ESPA by 12,000 acre-feet annually until groundwater levels rise by about 9 feet aquifer-wide. In addition, IDWR disallowed the use of averaging to measure compliance

with groundwater conservation under the 2015 Agreement. This led to several lawsuits. Most ground water districts do not believe the 2015 Agreement is a viable tool for managing the ESPA.

3. 2024 Plan. The 2024 Plan is intended to provide a more pragmatic approach to managing the ESPA that both mitigates injury to the SWC and stabilizes the ESPA in a manner that keeps as many acres of farmland in production as possible.

Question 7 - What are the key terms of the 2024 Plan?

Answer: The following is a brief summary of the key terms:

1. Four-year terms. The initial term of the 2024 Plan is four years, from 2024-2027. It will automatically renew for successive terms of four years each unless any party terminates the 2024 Plan at the end of a four-year term.

2. Groundwater Conservation. Groundwater users are required to continue conserving 205,000 acre-feet annually on average, which is the same amount initially required under the 2015 Agreement. Under the 2015 Agreement, IDWR required 252,00 acre-feet of groundwater conservation in 2024, escalating by 12,000 acre-feet annually.

   Unlike the 2015 Agreement, groundwater users will receive a four-year allocation of water, allowing them to average their diversion over four-year periods (referred to in the 2024 Plan as "compliance periods"). In addition, the 2024 Plan allows groundwater users to carry unused allocation (*i.e.*, surplus groundwater savings) forward from the first compliance period to the second compliance period. Most importantly, the 2024 Plan does not require groundwater users to raise aquifer levels. The 205,000 acre-feet obligation is fixed during the term of the 2024 Plan.

3. Aquifer Recharge. Ground water districts can perform aquifer recharge to increase their allocations under the 2024 Plan. Unlike the 2015 Agreement, districts can obtain more than 1:1 credit for recharge that provides greater benefit to Snake River reach gains in the American Falls area.

4. Reach Gain Mitigation. The State of Idaho will contribute $5 million to fund projects designed to increase Snake River reach gains in the American Falls area. Beginning in 2035 (assuming the 2024 Plan remains in effect), ground water districts will collectively contribute $250,000 annually toward projects to improve reach gains. If reach gains drop below the 2023 level, ground water districts will be required to contribute $500,000 annually to recover reach gains to the 2023 level.

5. Idaho Water Resource Board Recharge. The parties will jointly advocate for increasing the state's aquifer recharge target from 250,000 acre-feet to 350,000 acre-feet.

6. Storage Water. The 2024 Plan requires the districts to secure the ability to deliver up to 75,000 acre-feet of storage water to the SWC in 2025 and 2026. If Snake River reach gains stay above the 2023 level, the districts will secure the ability to deliver 75,000 acre-feet in 2027 as well. However, if reach gains drop below the 2023 level, the districts will be required to secure the ability to deliver up to 82,500 acre-feet in 2027. The parties will get together in 2027 to determine the amount of storage that will be needed

in 2028 and beyond, which will depend on whether the components of the plan that are designed to stabilize the ESPA and improve reach gains are working.

7. Alternative Mitigation Actions. The 2024 Plan enables ground water districts to develop alternative mitigation projects to offset the amount of storage water they are required to deliver to the SWC. This opens the door to more creative and cost-effective mitigation projects.

8. Measurement. Ground water districts are required to develop programs that enable monthly readings of their patrons' irrigation diversions. This will help farmers better manage their water supplies, particularly in the fourth year of a compliance period when care will be needed to ensure that patrons do not divert excess water.

9. Litigation Relief. The lawsuits involving the 2015 Agreement and the individual ground water district mitigation plans will be dismissed, and the lawsuits involving the Methodology Order will be put on hold during the term of the 2024 Plan.

Question 8 - What are the ground water districts giving up in the compromise?

Answer: Most of the terms in the 2024 Plan are much more favorable than the Methodology Order and the 2015 Agreement. Major successes include fixing the groundwater conservation obligation at 205,000 acre-feet, not having to raise the groundwater table, the ability to average groundwater conservation over four-year periods, the ability to carry over surplus allocations between compliance periods, and the ability to implement alternative mitigation measures and receive a credit toward storage water mitigation.

The two concessions given by ground water districts are (1) the increase in the amount of storage water the districts may be required to deliver, and (2) developing systems to report groundwater diversions monthly from June through October, starting in 2026.

Question 9 - How will the 205,000 acre-feet of groundwater conservation volume be allocated between the ground water districts?

Answer: The same way it was allocated from 2016-2024, which is based on the historic use of groundwater within each ground water district from 2010-2014. Unlike the 2015 Agreement, the 2024 Plan specifies each district's conservation obligation in Appendix A.

Question 10 - If one or more ground water district does not participate in the 2024 Plan, will it affect the obligations of the districts that do participate?

Answer: No. Unlike in the 2015 Agreement, the 2024 Plan clearly states that the obligations of participating districts are not affected by whether other districts participate.

Question 11 - Can the 205,000 acre-feet groundwater conservation obligation change under the 2024 Plan

Answer: The 205,000 acre-feet obligation will not increase, even if groundwater levels or Snake River reach gains go down. However, if a ground water district accepts new groundwater rights into the district or excludes groundwater rights from the district, the district's overall conservation obligation will be adjusted to reflect the added or removed water rights.

Question 12 - Must ground water districts conserve their portion of the 205,000 acre-feet every year?

Answer: No. Unlike in the 2015 Agreement, averaging is allowed between years. Each groundwater user will be allocated a volume of water they can use over each four-year compliance period. They are not required to use one-fourth of their allocation each year; rather, they can use water as they see fit during the four-year period.

Question 13 - What happens if a ground water district patron exhausts his or her 4-year allocation before the compliance period is over?

Answer: Once a groundwater user has used up their allocation, they must stop diverting water unless they acquire additional allocation from another district patron or from the district (if the district has performed aquifer recharge and has additional water to allocate).

Question 14 - What happens if a ground water district patron diverts more water than they have allocated to them?

Answer: If the patron does not remedy the overage by acquiring additional allocation from another district patron or from the district, the patron will be reported to IDWR for enforcement under Idaho Code 42-5244B.

Question 15 - If a district conserves more groundwater than required, what happens to the excess?

Answer: Surplus groundwater conservation in the first compliance period (2024-2027) will carry over the second compliance period (2028-2031). After the second compliance period, the parties will get together to negotiate the reach gain conditions that must be satisfied to allow surplus groundwater conservation to carry forward from one compliance period to the next.

Question 16 - How much storage water must the ground water districts lease to mitigate injury to the SWC?

Answer: In 2025 and 2026, ground water districts are required to secure the ability to deliver 75,000 acre-feet to the SWC. For 2027, if Snake River reach gains in 2026 are greater than those in 2023, then the districts must secure 75,000 acre-feet. If reach gains are less than 2023, then the districts must secure 82,500 acre-feet. During 2027, the parties will get together to negotiate the volume of storage that will be required in 2028 and subsequent years.

Question 17 - How does the storage water delivery work?

Answer: Within three weeks after the Water District 1 “day of allocation” (the date the upper Snake River reservoir system reaches maximum fill, usually in June), the districts must secure the ability to deliver up to 75,000 acre-feet of storage water (water can be secured either by lease or option contracts). If the storage water accounts of SWC members drop below their reasonable carryover volume, SWC members can draw upon the water secured by the ground water districts.

Question 18 - Can the SWC reasonable carryover volume change from year to year?

Answer: No. The reasonable carryover volumes are set in stone during the term of the 2024 Plan and they cannot change unless all parties agree.

Question 19 - What happens when an SWC member's storage account has more or less water than their reasonable carryover volume at the end of the irrigation season?

Answer: If the Water District 1 storage water account of an SWC member has less than their reasonable carryover volume, the SWC member can draw upon the storage secured by the ground water districts, up to the reasonable carryover volume. If the storage water account of the SWC member has more than their reasonable carryover volume, they cannot draw upon storage secured by ground water districts.

Question 20 - How often can we expect the SWC to need storage water to avoid a water supply shortfall during the irrigation season?

Answer: Over the past 13 years, the SWC has ended the irrigation season with a shortage in carryover storage in five of those years. However, shortages have become more frequent over time as spring flows into Snake River flows have declined. Looking forward, the frequency and magnitude of water supply shortages depends largely upon whether actions taken under the 2024 Plan are successful in stabilizing the ESPA and improving reach gains to the Snake River.

Question 21 - How will ground water districts secure the storage water they need to mitigate water supply shortfalls?

Answer: Each ground water district is responsible for securing its proportionate share of the storage water obligation. Each district's percentage share is defined in Appendix B of the 2024 Plan. District percentages are based on their steady-state impacts to Snake River reach gains as determined by the current ESPA Model. Districts will lease storage water from canal companies and irrigation districts that own storage in the Upper Snake River reservoir system. Unlike the Methodology Order, which requires ground water districts to lease storage in April or May, the 2024 Plan gives districts until 21 days after the Water District 1 day of allocation to lease storage.

Question 22 - How are the ground water districts' obligation towards the Reach Gain Mitigation fund determined?

Answer: Each district is required to contribute their portion of the $250,000 towards the Reach Gain Mitigation fund starting in 2035. Each district's share is determined by their steady-state impact to the Snake River reach gains as determined by the ESPA Model. If reach gains during the second compliance period (2028-2031) are less than 2023 then districts must deposit $500,000 into the Reach Gain Mitigation fund until water levels are raised. Districts' proportionate share is determined the same way as the $250,000 contribution.

Question 23 - What happens if a ground water district fails to lease the required storage?

Answer: The district will be in breach of the 2024 Plan, and its patrons will be exposed to curtailment under the Methodology Order.

Question 24 - Are there other ways ground water districts can supply their portion of storage other than by leasing water?

Answer: Yes. The 2024 Plan allows districts to develop alternative ways of delivering water to the SWC to alleviate water supply shortfalls. For example, a project is currently under development that would enable natural flow water owned by canal companies in Bingham County to be sent downstream to the SWC in lieu of storage water.

Question 25 - Under what scenario could ground water district patrons have their water rights curtailed under the 2024 Plan?

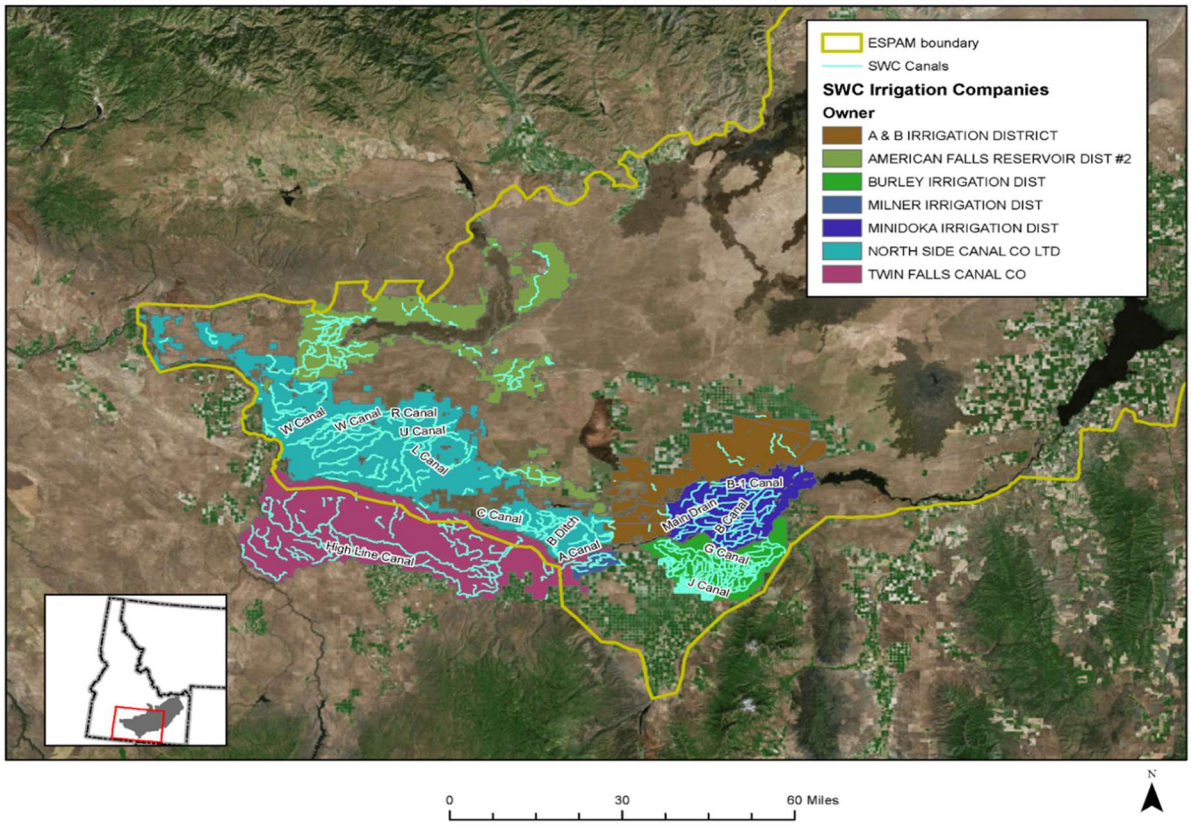
Answer: A patron's water rights may be curtailed if they use more water than they are allocated or the district fails to provide its share of storage water. After 2035, districts will also be required to contribute to the reach gain mitigation fund.

Question 26 - What happens if a ground water district does not join the 2024 Plan?

Answer: Districts that do not sign the 2024 Plan will not receive safe harbor from curtailment under the SWC delivery call. They will be governed by the Methodology Order. In addition, they will be subject to any groundwater management plan IDWR adopts for the ESPA Ground Water Management Area. For Districts that join the 2024 Plan, the 2024 Plan will be submitted to IDWR as the groundwater management plan for those districts.

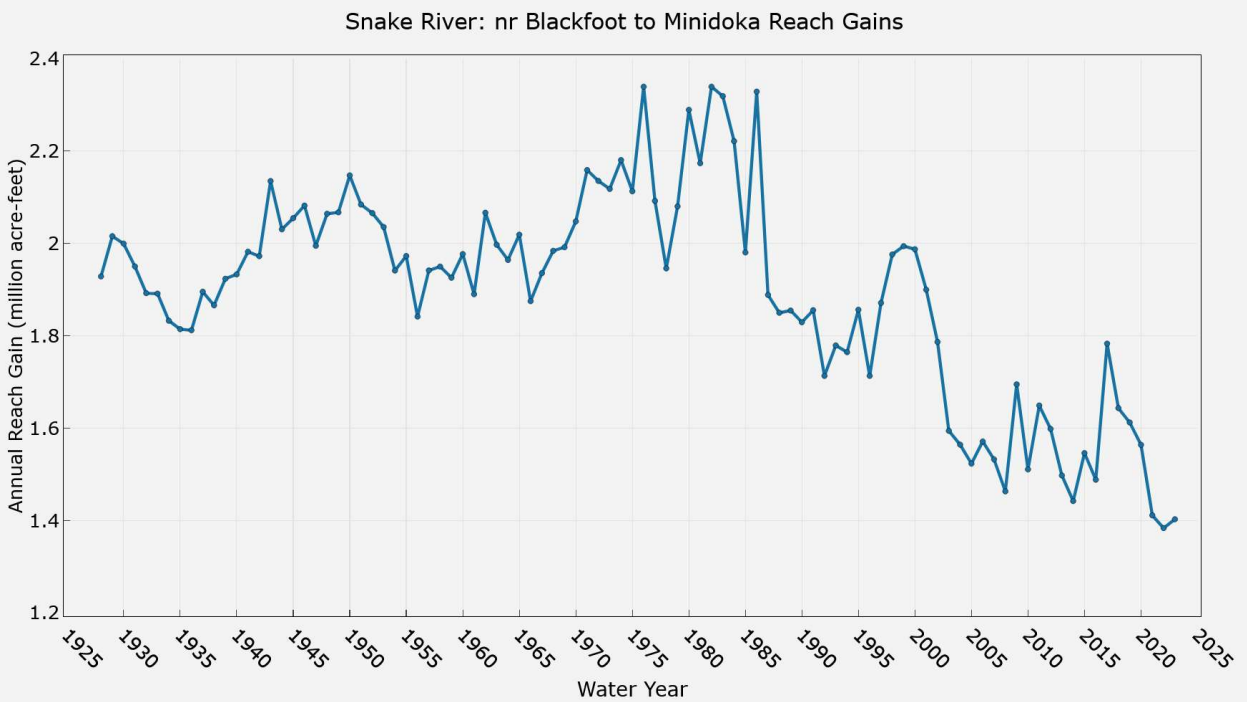
Appendix A

Surface Water Coalition



Appendix B

Near Blackfoot to Minidoka Reach Gains



Appendix C

IDWR Demand Shortfall Hindcast

Table 1 - Summary of Hindcast SWC Delivery Call Demand Shortfall Calculations 2000-2022

Year	April BLY 06-08-12 (AF)	April BLY 2018 (AF)	July BLY 06-08-12 (AF)	July BLY 2018 (AF)	November Actual Demand Shortfall (AF)
2000	30,183	126,125	0	0	0
2001	179,947	334,970	160,472	200,546	243,565
2002	42,800	131,308	17,381	45,136	31,217
2003	10,124	93,902	43,808	80,241	0
2004	199,101	364,958	223,032	264,426	264,340
2005	114,916	228,241	0	0	0
2006	0	0	365,880	388,939	23,792
2007	56,914	152,855	201,036	253,185	289,065
2008	0	15,138	46,525	55,334	0
2009	0	34,109	0	0	0
2010	94,957	190,898	0	0	0
2011	0	0	0	0	0
2012	0	53,778	69,066	92,125	139,524
2013	28,802	110,912	114,058	154,132	22,588
2014	0	0	0	0	0
2015	88,959	184,901	107,418	138,684	92,246
2016	44,163	111,457	21,271	44,330	7,853
2017	0	65,382	0	0	0
2018	0	44,805	0	0	10,996
2019	20,943	88,237	0	0	0
2020	0	59,101	0	0	0
2021	40,491	126,102	162,873	194,139	190,816
2022	162,613	313,446	52,771	84,036	276,551