



**Governor Brad Little**

**Director Mathew Weaver**

June 5, 2024

**RE: SWC Delivery Call Mitigation**

To Whom it may concern:

In a recent statement, the Governor said, “Water curtailment is never desired, but the Director must follow Idaho law and the constitution. . . .” I strongly agree with both sentiments. Like the Governor, I do not desire curtailment. But I must follow the law and the constitution, which requires curtailment to protect senior water rights unless juniors comply with an *approved* mitigation plan.

The operative word is *approved*. Mitigative actions taken by ground water districts outside an *approved* plan are likely to benefit the aquifer, but they do not protect juniors from curtailment. Recently submitted mitigation plans likely have merit, but they do not protect juniors from curtailment until they survive all protests and appeals. Only two *approved* plans are currently available to the ground water districts: IGWA’s 2009 storage water delivery plan and its 2016 aquifer management plan. I have clarified the requirements to comply with either plan. And I will only consider other interpretations of the plans with all parties’ full and formal consent—surface and ground water users.

The ground water districts have argued that the 2009 plan contradicts the law. If that is the case, the plan is illegal. If a mitigation plan is illegal, it is no longer an available plan. Also, Justice Burdick recently ruled in his interlocutory order that the 2016 plan supersedes and replaces the 2009 plan. He will soon present a recommended order to me for consideration. In addition to these challenges, the 2009 plan is fifteen years old, and the current delivery call landscape little resembles the landscape in 2009 when it was the only *approved* plan. In other words, it has aged poorly.

This is why I believe the 2016 plan is the best pathway for ground water users to avoid curtailment this season. I have laid out the requirements to comply with the 2016 plan: Complete curing of the 2021 breach, quickly work with the SWC to resolve the remaining 2022 breach, and honor this year’s conservation obligations under the plan.

Although I view the 2016 plan as the best vehicle for the ground water districts to avoid curtailment this year, I also acknowledge that it, too, is showing its age. One possible path forward is developing an improved plan to replace the 2016 plan. A plan that builds on what we now know works and avoids what does not. Such a plan should include averaging conservation actions, in-season measurement of ground water use, predictable and confident access to storage water, and achievable recovery goals with reasonable timelines. I’m committed to supporting a new mitigation plan, but it must go through the entire legal review and approval process. It is a process that can be shortened if the parties work together to develop the plan and stipulate its

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use. The Department is also committed to requiring mitigation actions from all ground water users who deplete the Snake River. Senate Bill 1341 gives the Department the authority and process to see this through.

Respectfully,

A handwritten signature in blue ink, appearing to be 'M. Weaver', with a long horizontal stroke extending to the right.

Mathew Weaver

Director