

[NOTE: DISCUSSIONS CONTINUE RELATED TO SPRING USERS' ASSESSMENTS AND INCIDENTAL RECHARGE ISSUES]

LEGISLATURE OF THE STATE OF IDAHO

Sixtieth Legislature

Second Regular Session -- 2010

IN THE _____

_____ BILL NO. _____

BY _____

1 AN ACT

2 RELATING TO WATER, ETC

3 Be It Enacted by the Legislature of the State of Idaho:

4 SECTION 1. That Chapter 17, Title 42, Idaho Code, be, and the same is hereby amended
5 by the addition thereto of NEW SECTIONS, to be known and designated as Sections 42-1781
6 through 42-1788, Idaho Code, inclusive, and to read as follows:

7 **42-1781. SHORT TITLE.** The provisions of this act may be known and cited as the
8 “Comprehensive Aquifer Management Plan Funding Act.”

9 **42-1782. DECLARATION OF POLICY.** The Idaho water resource board prepared
10 and adopted the Comprehensive Aquifer Management Plan for the Eastern Snake Plain Aquifer
11 (“ESPA CAMP”) as a component of the Comprehensive State Water Plan. House Bill No. 264
12 of the 2009 legislative session approved the ESPA CAMP as a component of the Comprehensive
13 State Water Plan, pursuant to section 42-1734B(6), Idaho Code, and directed the Idaho water
14 resource board, with the assistance of the ESPA CAMP Implementation Committee, to prepare
15 and submit for legislative approval a funding mechanism for implementation of Phase I of the
16 ESPA CAMP consistent with the funding participation targets set forth in the ESPA CAMP. It is

1 in the interest of the people of Idaho to provide a means for the ESPA CAMP to be implemented
2 to sustain the economic viability and social and environmental health of the Eastern Snake Plain
3 by adaptively managing a balance between water use and supplies, and to optimize the use of the
4 available water resources for fish and wildlife, recreation, hydropower, municipalities, irrigation,
5 aquaculture and other uses.

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6 **42-1783. LEGISLATIVE FINDINGS AND INTENT.** (1) Water users relying upon
7 surface and ground water supplies within the Eastern Snake River Plain portion of the Snake
8 River basin are presently experiencing or may experience water shortages due to declining
9 ground water levels in the Eastern Snake Plain Aquifer caused by a combination of factors
10 including changes in surface water irrigation practices, ground water withdrawals, and prolonged
11 drought conditions.

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12 (2) It is essential that the state provide a reasonable degree of certainty and assistance in
13 water resource management and water project funding for the benefit of its citizens and for the
14 benefit and safeguard of the state and local economies that rely upon the diversion and use of
15 water for their viability.

16 (3) The legislature intends to provide the means for achieving long-term stability in
17 Eastern Snake Plain Aquifer water supplies for the well-being of the affected citizens of the state.
18 Essential to achieving the desired stability in water supplies is the need to develop a source of
19 funding to finance water projects designed both to enhance available water supplies for use on
20 the Eastern Snake River Plain and to reduce demands for water from the aquifer in a manner that
21 is protective of individual rights and promotes the best interests of water users and the state.

22 (4) The legislature intends to facilitate attainment of the long-term objective of the
23 Comprehensive Aquifer Management Plan for the Eastern Snake Plain Aquifer (“ESPA CAMP”)

1 to incrementally achieve a net ESPA water budget change of 600 thousand acre-feet (“kaf”)
2 annually by the year 2030 through a mix of water management actions including, but not limited
3 to, managed aquifer recharge, ground-to-surface water conversions, demand reduction strategies,
4 and a pilot weather modification program. The legislature endorses the ESPA CAMP Phase I
5 target for the first ten years of achieving a water budget change of between 200 kaf and 300 kaf.

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6 (5) The legislature finds that a funding mechanism for implementation of Phase I of the
7 ESPA CAMP consistent with the funding participation targets set forth in the ESPA CAMP is
8 reasonable and should be imposed by the legislature and implemented by the Idaho water
9 resource board with collection assistance from county assessors, county treasurers, state water
10 districts, ground water districts, irrigation districts, and the department of water resources, as
11 determined necessary and appropriate by the Idaho water resource board.

12 (6) The legislature finds that the amount of the fee to be assessed individual water right
13 holders or entities within the various categories of water users and the relative share of the total
14 contributions to be collected from the various water user categories as set forth in the Phase I
15 Funding Participation Targets in the ESPA CAMP is reasonable and reflects the benefits to be
16 enjoyed by the various categories of water users from the implementation of CAMP. It is the
17 intention of the legislature that de minimis domestic and stock water rights as defined under
18 sections 42-111 and 42-1401A, Idaho Code, and state-owned facilities not subject to the fee are
19 covered by the funds and services contributed by the state.

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20 **42-1784. WATER RIGHT FEE IMPOSED – OTHER FUNDING SOURCES –**
21 **EXEMPTIONS – DEBT OBLIGATION – LIEN CREATED.** (1) There is hereby imposed,
22 as of January 1, of each year (commencing in 2011), a fee upon the owners or users of irrigation,
23 fish propagation, industrial/commercial, and municipal water rights, diverted from, appurtenant

1 to, or used upon lands within the boundaries of the Eastern Snake River Plain as defined in the
2 report entitled Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake
3 River Plain, Idaho, USGS Professional Paper 1408-F, 1992, and including all or a portion of the
4 counties of Bannock, Bingham, Blaine, Bonneville, Butte, Cassia, Clark, Elmore, Fremont,
5 Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Power, and Twin Falls. The fee is
6 imposed for the purpose of funding implementation of the Comprehensive Aquifer Management
7 Plan for the Eastern Snake Plain Aquifer ("ESPA CAMP") as adopted by the Idaho water
8 resource board in 2009 and approved by the legislature through enactment of House Bill 264,
9 2009 Idaho Session Laws, ch. 223. The fee shall be assessed in amounts consistent with the
10 annual funding participation targets for various water user categories as set forth in the ESPA
11 CAMP. The Idaho water resource board shall determine, with the assistance of the ESPA
12 CAMP Implementation Committee, the amount of the fee to be assessed each year, which
13 amount for irrigation water rights shall not exceed an annual fee cap of one dollar (\$1.00) per
14 acre for lands authorized to be irrigated with surface water and a two dollars (\$2.00) per acre
15 annual fee cap for lands authorized to be irrigated with ground water. The amount of the fee will
16 vary proportionally depending upon the amount of state funds appropriated or otherwise
17 available to meet the state's funding participation target so that the relative contributions of the
18 various water user categories as set forth in the ESPA CAMP are maintained. The Idaho water
19 resource board shall receive and utilize the assistance, services, and cooperation of county
20 assessors, county treasurers, state water districts, ground water districts, irrigation districts, and
21 the department of water resources, as more specifically provided in sections 42-1785 and 42-
22 1786, Idaho Code, in collecting the required fee from the following categories of affected water
23 users:

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1 (a) Irrigated Agriculture - \$3,000,000 (based on \$2,000,000 from ground water users
2 and \$1,000,000 from surface water users, given acreage amounts about equal for
3 both at approximately 1,000,000 acres; provided each acre shall be assessed as
4 irrigated by either ground water or surface, but not both);

5 (b) Spring Users (aquaculture uses) - \$200,000 (assessments based on the 2010
6 U.S.G.S. total discharge estimate for the Thousand Springs Reach; if in a
7 subsequent year the U.S.G.S. total discharge estimate for the reach is below the
8 2010 baseline, the funding target will be reduced proportionately);

9 (c) Industrial/ Commercial (uses, including dairy uses, not provided through a
10 municipality) - \$150,000;

11 (d) Municipalities - \$700,000 (assessments for municipal and community water
12 systems servicing fifteen (15) or more connections, based on annual diversion
13 amount); and

14 (e) State of Idaho - \$3,000,000 (the Idaho water resource board shall annually request a
15 state appropriation of \$3 million and user assessments shall be proportionally based
16 on the amount of the state contribution appropriated or otherwise available).

17 (2) In addition, the Idaho water resource board, with the assistance of the ESPA CAMP
18 Implementation Committee, shall take actions as necessary to implement the Phase I Funding
19 Participation Targets contained in the ESPA CAMP by obtaining funds or services in lieu of fees
20 from the following water user categories:

21 (a) Power Companies regulated by the Idaho public utilities commission;

22 ~~(b) Federal; and~~

23 ~~(c) Recreation/conservation.~~

Deleted: (b) State of Idaho (the Idaho water resource board shall annually request a state appropriation of \$3 million and user assessments shall be proportionally based on the amount of the state contribution);¶

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1 (3) Certain water rights that would otherwise be subject to assessment of the fee
2 imposed under this section shall be exempt from payment of the fee as follows:

3 (a) water rights appurtenant to lands owned by the state of Idaho, an Indian tribe, or the
4 United States;

5 (b) water rights, or portions of water rights, not being utilized for irrigation or other
6 authorized use, provided the owner or the owner's legal representative, signs an
7 affidavit attesting under penalty of perjury that all, or an identified portion of the
8 water right, is not being beneficially used because, for example, some or all of the
9 acres authorized to be irrigated under an irrigation water right are enrolled in an
10 approved land set aside program or are otherwise idled as part of an approved
11 mitigation plan. Lands idled due to enrollment in an approved land set aside
12 program may receive water necessary to establish a required cover crop without
13 being subject to assessment of the fee. The affidavit shall be filed with the board
14 prior to the current year on a form provided by the Idaho water resource board.

15 (4) The fee assessed under this section shall be a debt of the owner(s) of the land on
16 which the water right is used and the owner(s) shall be obligated to pay the fee. The fee shall be
17 a debt owed the Idaho water resource board and if unpaid shall constitute a lien on the land on
18 which the water right is used. The date of priority of the lien shall be the date upon which the
19 charge becomes delinquent. The lien shall not be removed until the assessments are paid. If the
20 Idaho water resource board successfully sues for collection of delinquent assessments, it shall be
21 entitled to an award of reasonable costs and attorneys fees.

22 (5) For fee assessment amounts collected by the Idaho water resource board through a
23 county pursuant to section 42-1785, Idaho Code, the board shall have the authority to certify

1 such charge to the county clerk, and the charge shall be collected in the same manner provided
2 by law for the collection of real taxes pursuant to section 63-903, Idaho Code.

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3 (6) For fee amounts collected by the Idaho water resource board through a state water
4 district pursuant to section 42-1786, Idaho Code, the board shall have the authority to certify
5 such charge to the watermaster of the district, and the charge shall be collected in the manner
6 provided by law for the collection of water district assessments.

7 **42-1785. COLLECTION OF FEE THROUGH COUNTIES.** (1) The Idaho water
8 resource board shall request in writing and receive from the county assessor via electronic media
9 the following information for each irrigated land parcel with appurtenant water rights subject to
10 the ESPA CAMP implementation fee: owner name; county parcel number; and irrigated
11 acreage.

12 (2) If the Idaho water resource board determines that counties shall collect the fee, then
13 no later than the third Monday in July (commencing in 2011), the board shall provide to the
14 county clerk and treasurer of each county identified in section 42-1784, Idaho Code, via
15 electronic media, an alphabetic list of the owners of affected irrigated land parcels in the county,
16 as shown in the records of the Idaho department of water resources and the county and certified
17 by the secretary of the Idaho water resource board. The information for each irrigated land
18 parcel covered by the water rights assessed the ESPA CAMP implementation fee pursuant to
19 section 42-1784, Idaho Code, which is to be totally or partially collected by the county, shall be
20 provided as follows:

- 21 (a) Owner name;
- 22 (b) County parcel number;
- 23 (c) Amount of fee to be assessed (not to exceed one dollar \$1.00) per acre; and

1 (d) Phone number to obtain information from the Idaho water resource board regarding
2 the assessment.

3 (3) The treasurer of each affected county shall be required to collect the ESPA CAMP
4 implementation fee upon the Idaho water resource board presenting to the county auditor and
5 treasurer, no later than the third Monday in July, a certified list containing the land parcel
6 information and fee amount to be collected within the county as provided by section 42-1784,
7 Idaho Code. The county treasurer shall enter the fee amount owed upon the tax rolls as provided
8 by law for the entry of taxes, against the real property of each person named on the list, and mail
9 a notice to each affected irrigated land parcel owner stating the amount of the fee payable and the
10 due date. The fees assessed shall be due and payable on the date specified in the county's tax
11 notice and shall be collected and accounted for by the county treasurer in the same manner and
12 subject to the same penalties as real property taxes. The fees collected shall be paid over to the
13 Idaho water resource board together with any penalties or interest collected. The county shall
14 enforce the collection of the fee assessment in the same manner as it enforces the collection of
15 property taxes of the county, and failure to pay the assessment shall be subject to the same
16 penalties; provided, however, that fee assessments not paid within two (2) years may be returned
17 to the Idaho water resource board for collection together with the amount of the penalties and
18 interest added thereto.

19 **42-1786. COLLECTION OF FEE THROUGH WATER DISTRICTS.** (1) No later
20 than the second Monday in January (commencing in 2011), the Idaho water resource board shall
21 provide to the watermaster of each affected water district on the Eastern Snake Plain, via
22 electronic media, an alphabetic list of the owners of affected ground water rights and non-
23 irrigation surface water rights administered by the district, as shown in the records of the Idaho

1 department of water resources and the county and certified by the secretary of the Idaho water
2 resource board. If the Idaho water resource board determines that the fee for irrigation surface
3 water rights also shall be collected by water districts, then the board shall provide the same
4 information regarding these rights to the watermaster in the same manner. The information for
5 each water right to be assessed the ESPA CAMP implementation fee, which is to be totally or
6 partially collected by the water district, shall be provided as follows:

- 7 (a) Owner name;
- 8 (b) County parcel identification number;
- 9 (c) Amount of fee to be assessed; and
- 10 (d) Phone number to obtain information regarding the assessment.

11 (2) The watermaster of each affected water district shall be required to collect the
12 ESPA CAMP implementation fee upon the Idaho water resource board presenting to the water
13 district on or before the second Monday of January a certified list containing the land parcel and
14 water right information and fee amount to be collected from each affected water right holder or
15 user within the water district as provided by section 42-1804, Idaho Code. The watermaster shall
16 mail a notice, or provide for a notice to be sent through a ground water district or an irrigation
17 district, to each affected water right holder or user stating the amount of the fee payable and the
18 due date. The fee amount shall be included as a line item on the annual assessment notice of the
19 water district but shall not constitute a part of the annual budget of the district. If not so paid, the
20 amount due shall be subject to interest and penalty in the same amount that would accrue on
21 property taxes until paid.

22 **42-1787. DISPOSITION OF FUNDS – REIMBURSEMENT OF COLLECTION**
23 **COSTS.** All funds, except as provided herein, resulting from collection of the ESPA CAMP

1 implementation fee or otherwise collected or received to implement the funding participation
2 targets contained in the ESPA CAMP shall be paid to the Idaho water resource board and
3 deposited by the board into the Idaho water resource board aquifer planning and management
4 fund established in the state treasury by section 42-1780, Idaho Code, to be used for the purposes
5 therein authorized, with the assistance of the ESPA CAMP Implementation Committee.

6 (2) The county treasurers and water districts engaged in the collection of the fee are
7 authorized to retain up to three percent (3%) of the funds collected as determined necessary by
8 the collecting entity for reimbursement of the added cost of administration for collection of the
9 fee.

10 **42-1788. APPEALS.** Any owner of a water right assessed a fee under section 42-1784,
11 Idaho Code, shall have a right of administrative review before the Idaho water resource board
12 pursuant to the provisions of chapter 52, title 67, Idaho Code.

13 SECTION 2. That Chapter 6, Title 42, Idaho Code, be, and the same is hereby amended
14 by the addition thereto of a NEW SECTION to be known and designated as Section 42-611,
15 Idaho Code, and to read as follows:

16 42-611. COLLECTION OF FEE FOR COMPREHENSIVE AQUIFER
17 MANAGEMENT PLANS. Pursuant to the provisions of section 42-1786, Idaho Code, the
18 watermaster of each affected water district shall be required to collect from the water users of the
19 district a fee for implementation of the Comprehensive Aquifer Management Plan for the Eastern
20 Snake Plain Aquifer (“ESPA CAMP implementation fee”) upon the Idaho water resource board
21 presenting to the water district on or before the second Monday of January a certified list
22 containing the land parcel and water right information and fee amount to be collected from each
23 affected water right holder or user within the water district as provided by section 42-1804, Idaho

1 Code. The watermaster shall mail a notice, or provide for a notice to be sent through a ground
2 water district or an irrigation district, to each affected water right holder or user stating the
3 amount of the fee payable and the due date. The fee amount shall be included as a line item on
4 the annual assessment notice of the water district but shall not constitute a part of the annual
5 budget of the district. If not so paid, the amount due shall be subject to interest and penalty in
6 the same amount that would accrue on property taxes until paid.

7 SECTION 3. That Section 42-1780, Idaho Code, be, and the same is hereby amended to
8 read as follows:

9 42-1780. AQUIFER PLANNING AND MANAGEMENT FUND. The aquifer planning
10 and management fund is hereby created in the state treasury. ~~Pursuant to appropriation, All~~
11 moneys in the fund shall be used for technical studies, facilitation services, hydrologic
12 monitoring, measurement and comprehensive plan development as well as for personnel costs,
13 operating expenditures and capital outlay associated with the statewide comprehensive aquifer
14 planning and management effort. The state treasurer shall invest the idle moneys of the fund, and
15 the interest earned on such investments shall be retained by the fund. All money in the fund
16 derived from the fee imposed by section 42-1784, Idaho Code, is appropriated continuously to
17 the board to be used and administered by it for the purposes described in this section, and shall
18 not be subject to the provisions of the Standard Appropriations Act of 1945 or section 67-3516,
19 Idaho Code.

20 SECTION 4. That Section 42-5224, Idaho Code, be, and the same is hereby amended to
21 read as follows:

22 42-5224. POWERS AND DUTIES OF BOARD OF DIRECTORS. The board shall, in
23 addition to any other powers and duties provided in this chapter, and provided that nothing in

1 this chapter shall abrogate or impair the right of any person to take any action necessary to
2 acquire, protect, challenge or defend any water right, have the following powers and duties:

3 (1) To acquire, and/or construct, operate, control or use by appropriation, grant,
4 purchase, bequest, devise, contract or lease works or facilities, water rights, water permits or
5 licenses, well-drilling permits, wells, pipelines, ditches and any other real and personal property
6 (including easements and rights-of-way) or contract entitlement within or without the district
7 necessary or convenient to fully exercise its powers;

8 (2) To sell, lease, encumber, alienate, or otherwise dispose of works or facilities, water,
9 water rights, wells, pipelines, ditches, reservoirs, recharge facilities, and any other real and
10 personal property owned by the district within or without its boundaries, and to incur
11 indebtedness on behalf of the district as specified in this chapter;

12 (3) To enter into contracts and agreements, cooperative and otherwise, including
13 contracts with the United States of America and any of its agencies or instrumentalities, and
14 tribes, and contracts with corporations, public or private, municipalities, or governmental
15 subdivisions necessary or convenient to fully exercise its powers;

16 (4) To hire and retain agents, employees, engineers, hydrologists, geologists, and
17 attorneys as shall be necessary and convenient to transact the district's business and to represent
18 the district's interests;

19 (5) To levy assessments for the operation of the district and its programs;

20 (6) To represent district members, with respect to their individual water rights, in general
21 water rights adjudications and other legal and administrative proceedings or before political
22 bodies, provided that the board may levy assessments for these matters against only those
23 members who have given written consent for the representation;

1 (7) To represent district members in proceedings or meetings of a water district
2 established by the director of the department notwithstanding any provision to the contrary in
3 chapter 6, title 42, Idaho Code. Provided however, that the board shall not be authorized to cast a
4 vote in any proceeding or meeting of a water district established pursuant to chapter 6, title 42,
5 Idaho Code, on behalf of any district member who has, prior to such proceeding or meeting,
6 given written notice to the board and to the water district that such district member intends to
7 vote on his own behalf, or on behalf of any district member who attends such meeting or
8 proceeding and intends to vote on his own behalf. The board shall provide a verified list of the
9 water rights that it represents at any water district proceeding or meeting to the chairman of the
10 water district proceeding or meeting;

11 (8) To appropriate, develop, store, and transport water within the state;

12 (9) To acquire stock in canal companies, water companies, and water users' associations;

13 (10) To invest any surplus money in the district treasury pursuant to the public depository
14 law as contained in chapter 1, title 57, Idaho Code;

15 (11) To develop, maintain, operate and implement mitigation plans designed to mitigate
16 any material injury caused by ground water use within the district upon senior water uses within
17 and/or without the district;

18 (12) To finance the repair or abandonment of wells in the ground water district which
19 have experienced or are experiencing declines in water level or water pressures because of
20 reasons including, but not limited to, flow, leakage, and waste from improper construction,
21 maintenance, and operation of wells;

22 (13) To have and exercise the power of eminent domain in the manner provided by law
23 for the condemnation of private property for easements, rights-of-way, and other rights of access

1 to property necessary to the exercise of the mitigation powers herein granted, both within and
2 without the district;

3 (14) To sue and be sued, and be a party to suits, actions and proceedings;

4 (15) To enter into joint powers agreements and/or memoranda of understanding with
5 other districts, governmental or quasi-public entities;

6 (16) To develop and acquire water rights for, and operate, aquifer storage or recharge
7 projects;

8 (17) To monitor, measure, study, and implement programs in the interests of the district's
9 members regarding the protection of ground water diversions, depth of water in wells, aquifer
10 water levels and characteristics;

11 (18) To adopt and amend bylaws not in conflict with the constitution and laws of the state
12 for carrying on the business, objects and affairs of the board and of the district and to establish a
13 fiscal year;

14 (19) To enter upon land to make surveys, locate district property, works, or facilities, and
15 to otherwise conduct the affairs of the district;

16 (20) To make, record and report annually to the director sufficient measurements of
17 diversions and water levels of district members to allow the district to be excluded from any
18 water measurements district created pursuant to sections 42-705 through 42-715, Idaho Code;

19 (21) To manage and conduct the affairs of the district and to have and exercise all rights
20 and powers necessary or incidental to or implied from the specific powers granted herein. Such
21 specific powers shall not be considered as a limitation upon any power necessary or appropriate
22 to carry out the purposes and intent of this chapter.

1 (22) To collect from district members assessments from a water district established
2 pursuant to chapter 6, title 42, Idaho Code, and to collect for a water district the fees assessed
3 pursuant to section 42-1786, Idaho Code, for implementation of the Comprehensive Aquifer
4 Management Plan for the Eastern Snake Plain Aquifer.

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