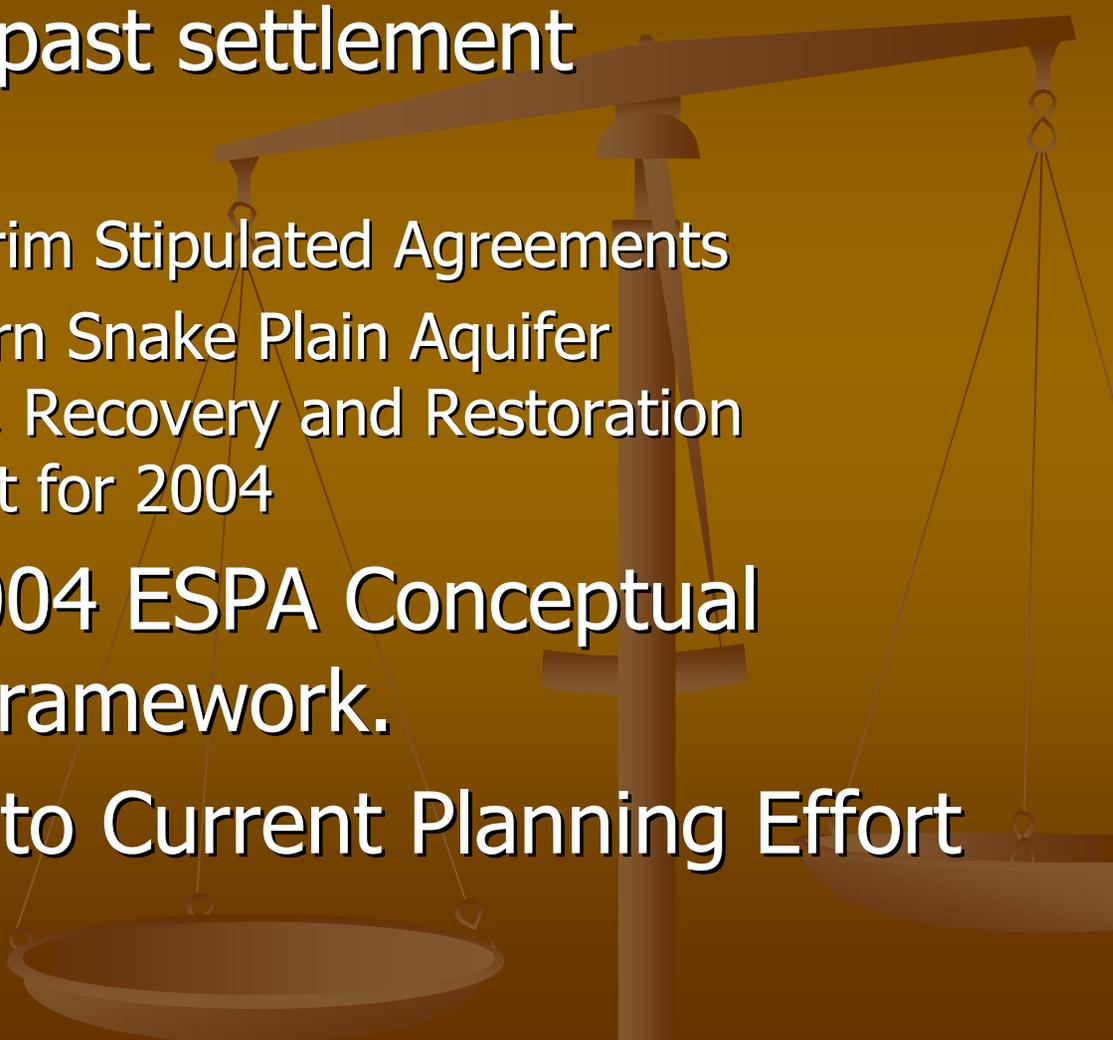


OVERVIEW OF PAST ESPA CONJUNCTIVE MANAGEMENT SETTLEMENT EFFORTS

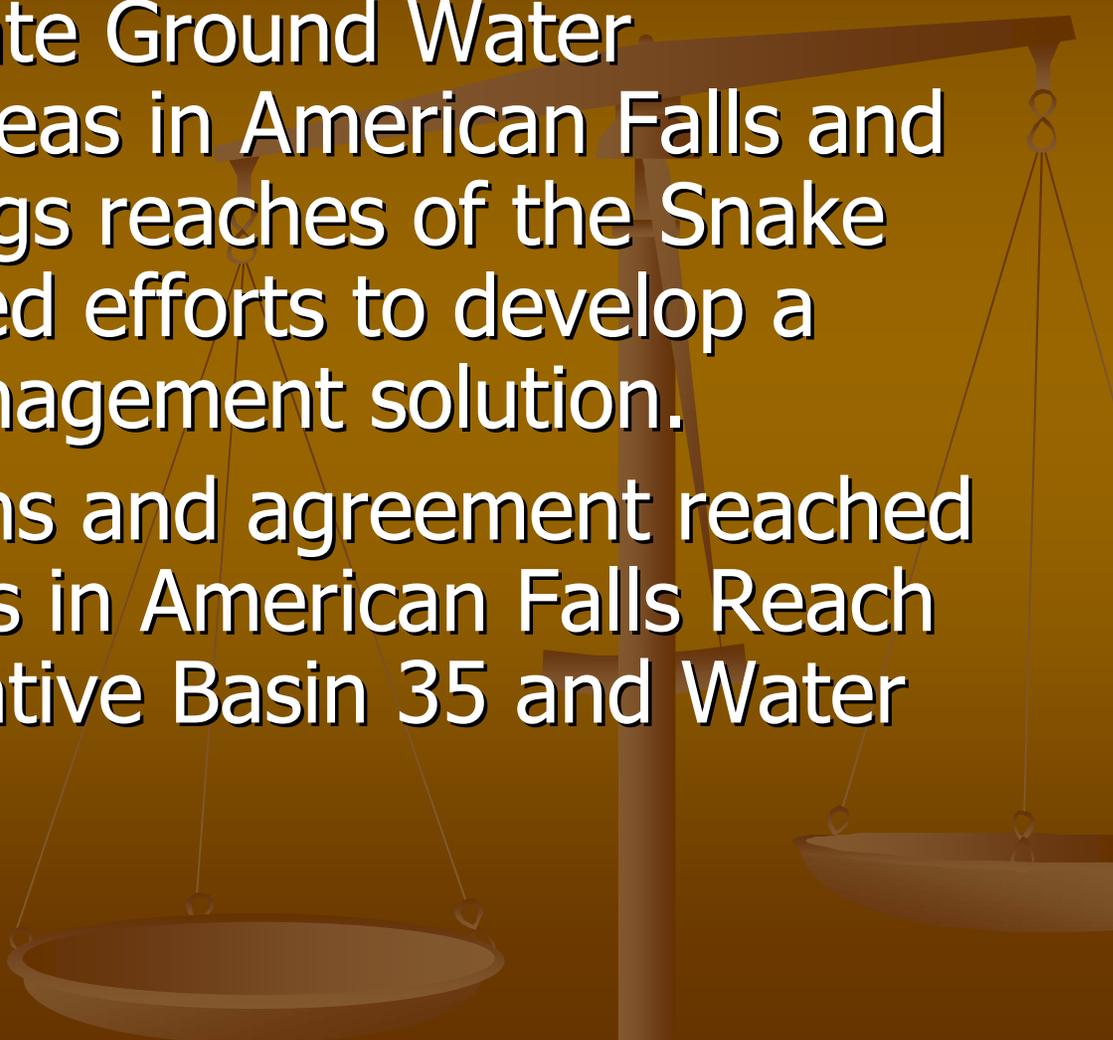
PREPARED BY
CLIVE J. STRONG
FOR
ESPA Advisory Committee
2007 Annual Meeting
August 23, 2007

SUMMARY OF PRESENTATION



1. Overview of past settlement efforts
 - A. 2001 Interim Stipulated Agreements
 - B. The Eastern Snake Plain Aquifer Mitigation, Recovery and Restoration Agreement for 2004
2. Review of 2004 ESPA Conceptual Settlement Framework.
3. Relationship to Current Planning Effort

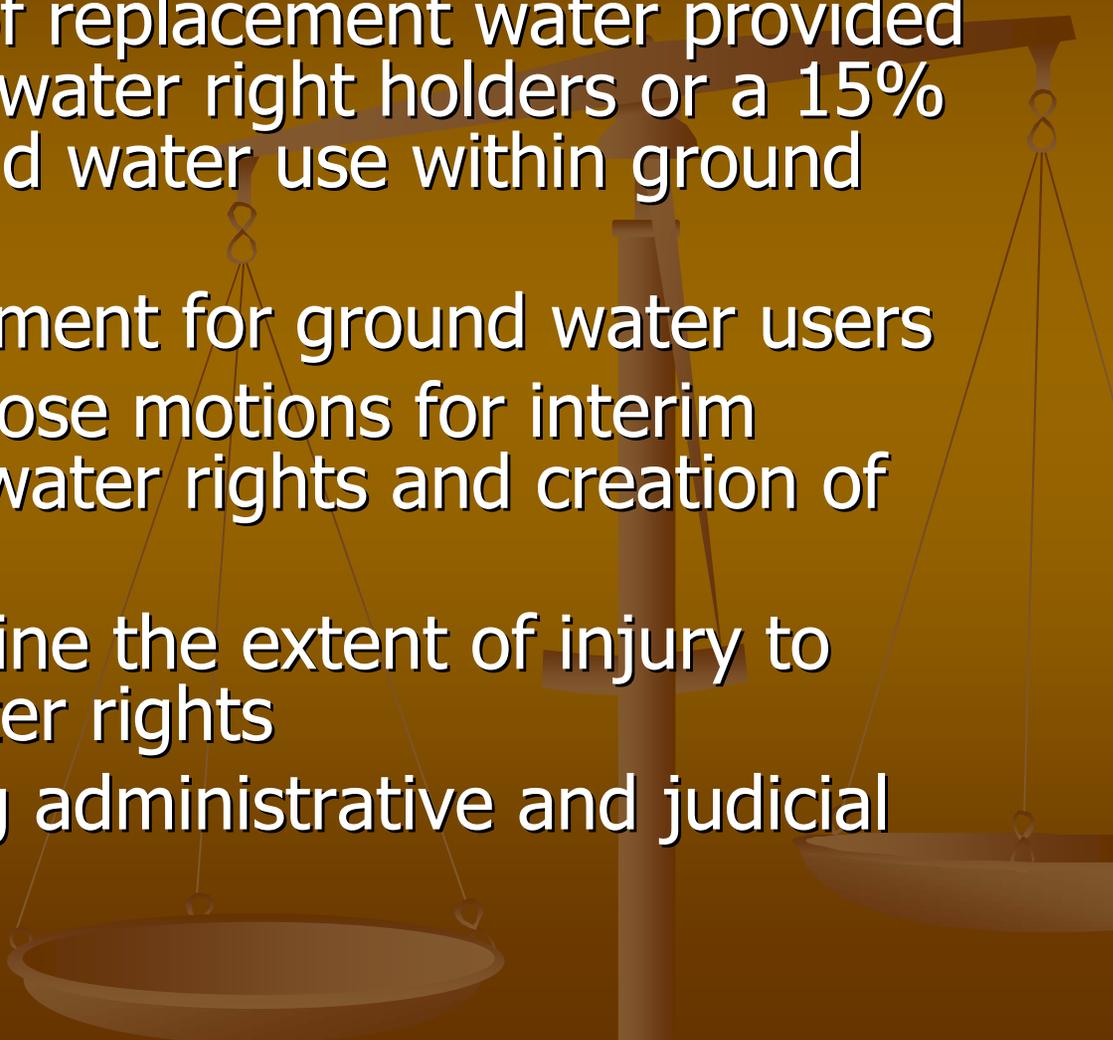
2001 Interim Stipulated Agreements

- Petitions to create Ground Water Management Areas in American Falls and Thousand Springs reaches of the Snake River precipitated efforts to develop a conjunctive management solution.
 - Initial discussions and agreement reached with water users in American Falls Reach (AKA Administrative Basin 35 and Water District 120).
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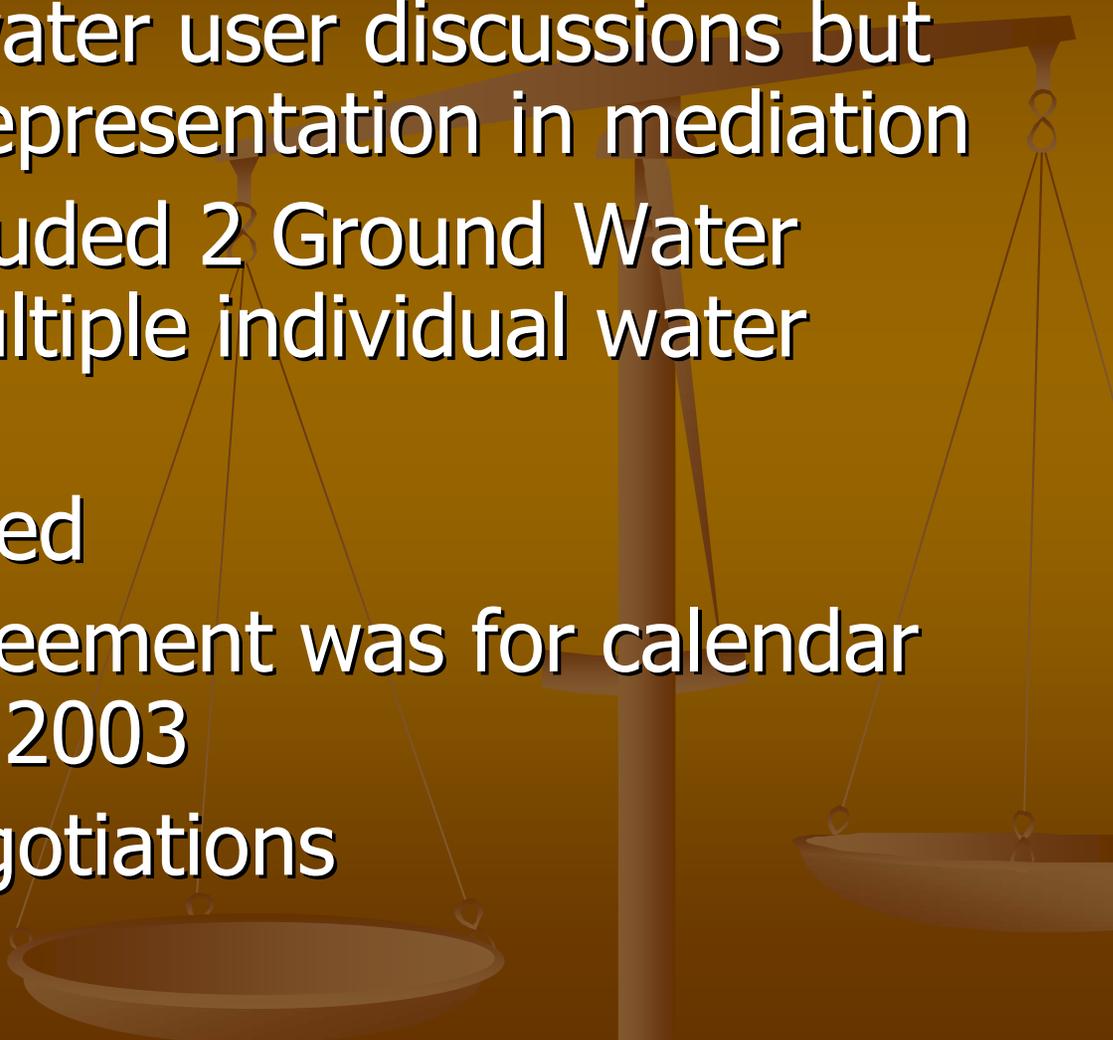
Process for 2001 Interim Stipulated Agreement for Administrative Basin 35

- Water user to water user discussions
 - Primary parties were Canal Companies and 3 Ground Water Districts
 - No legal representation in mediation
 - IDWR participated
 - Term of the Agreement was for 2002 and 2003 calendar years
 - Extended to cover 2004 irrigation season and to include cities and counties
 - Confidential Negotiations
- 

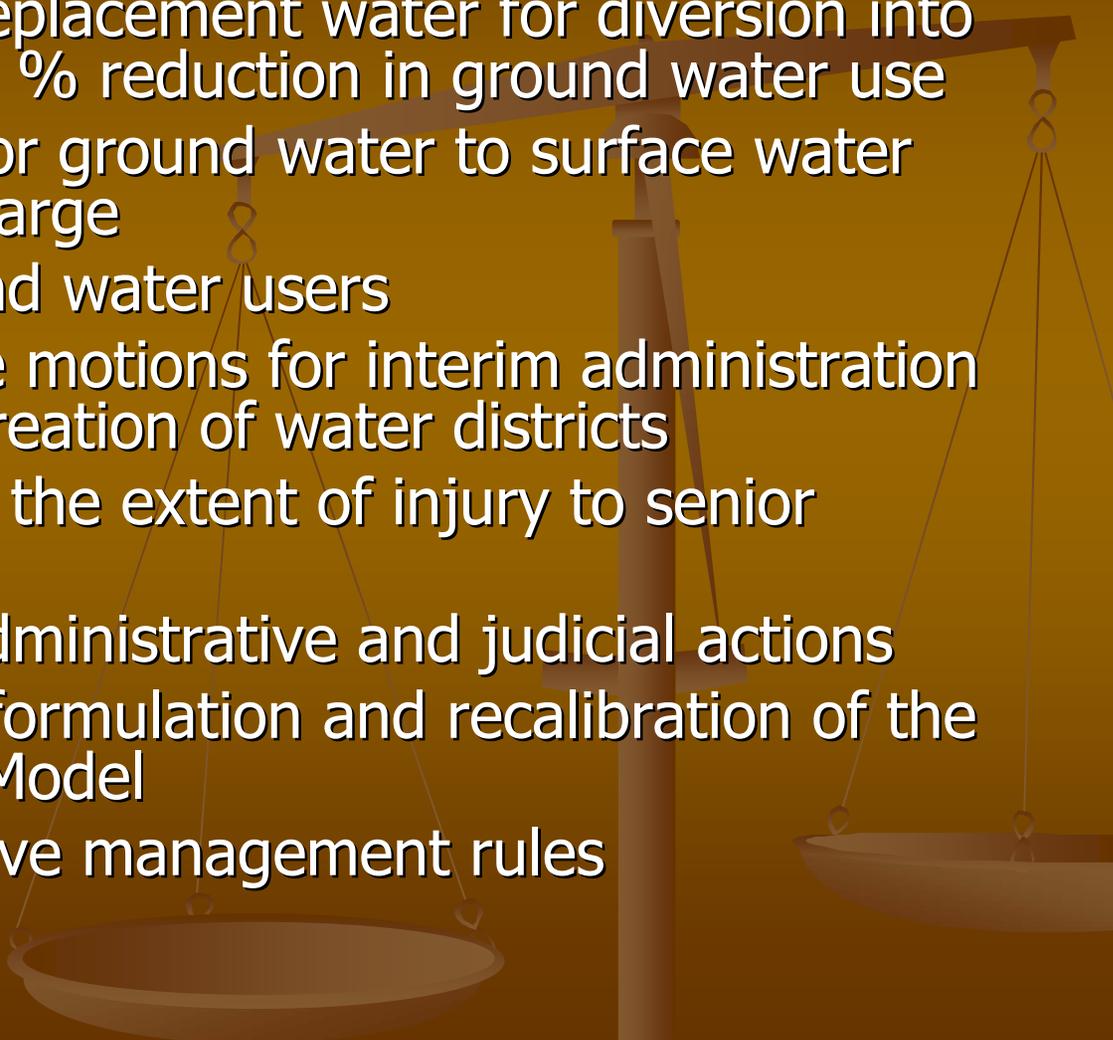
Elements of 2001 Interim Stipulated Agreement for Administrative Basin 35

- 28,500 acre feet of replacement water provided for senior surface water right holders or a 15% reduction in ground water use within ground water districts
 - Safe harbor agreement for ground water users
 - Agreed to not oppose motions for interim administration of water rights and creation of water districts
 - Process to determine the extent of injury to senior surface water rights
 - Stay of all pending administrative and judicial actions
- 

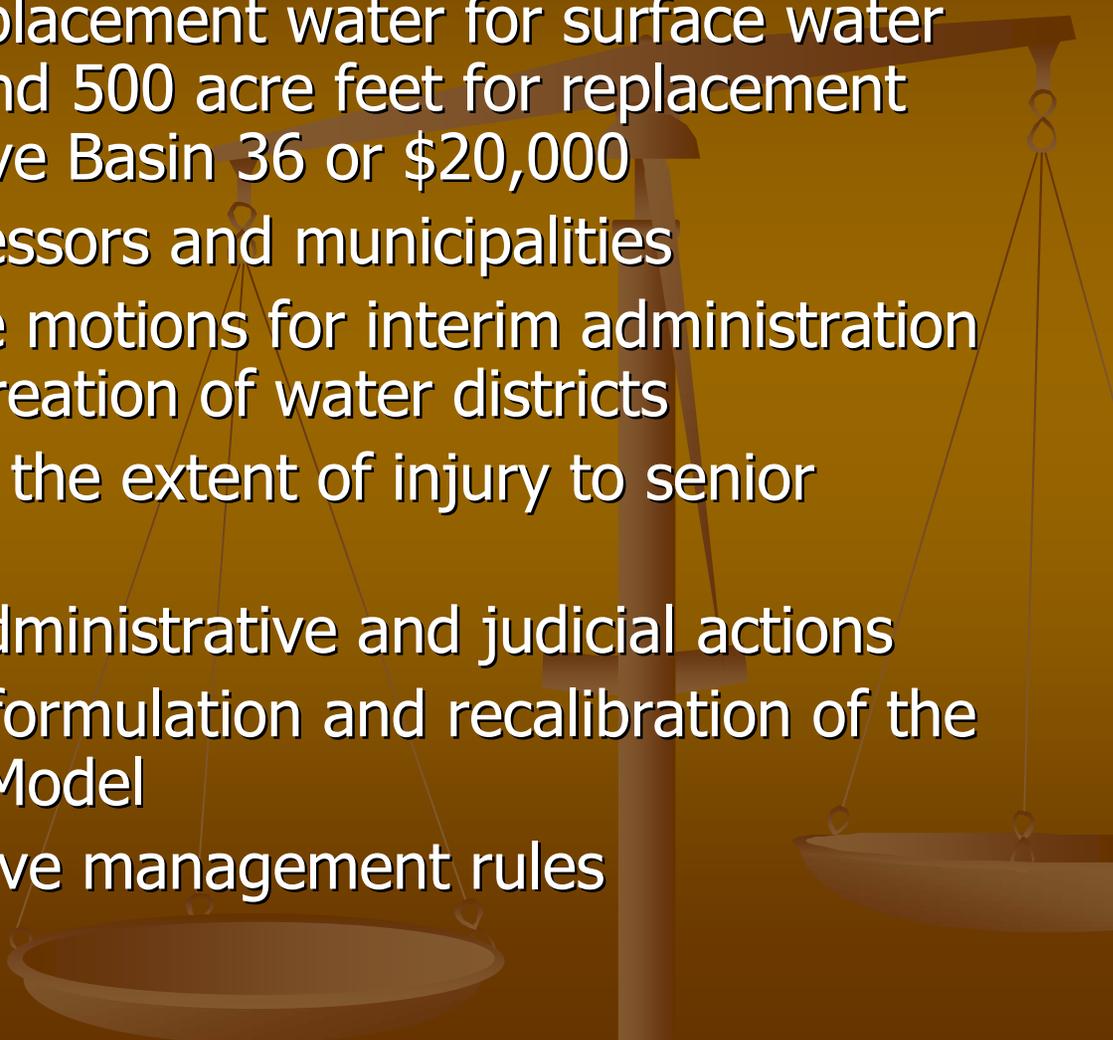
Process for 2001 Interim Stipulated Agreement for Administrative Basin 36

- Water user to water user discussions but included legal representation in mediation
 - Participants included 2 Ground Water Districts and multiple individual water users
 - IDWR participated
 - Term of the agreement was for calendar years 2002 and 2003
 - Confidential Negotiations
- 

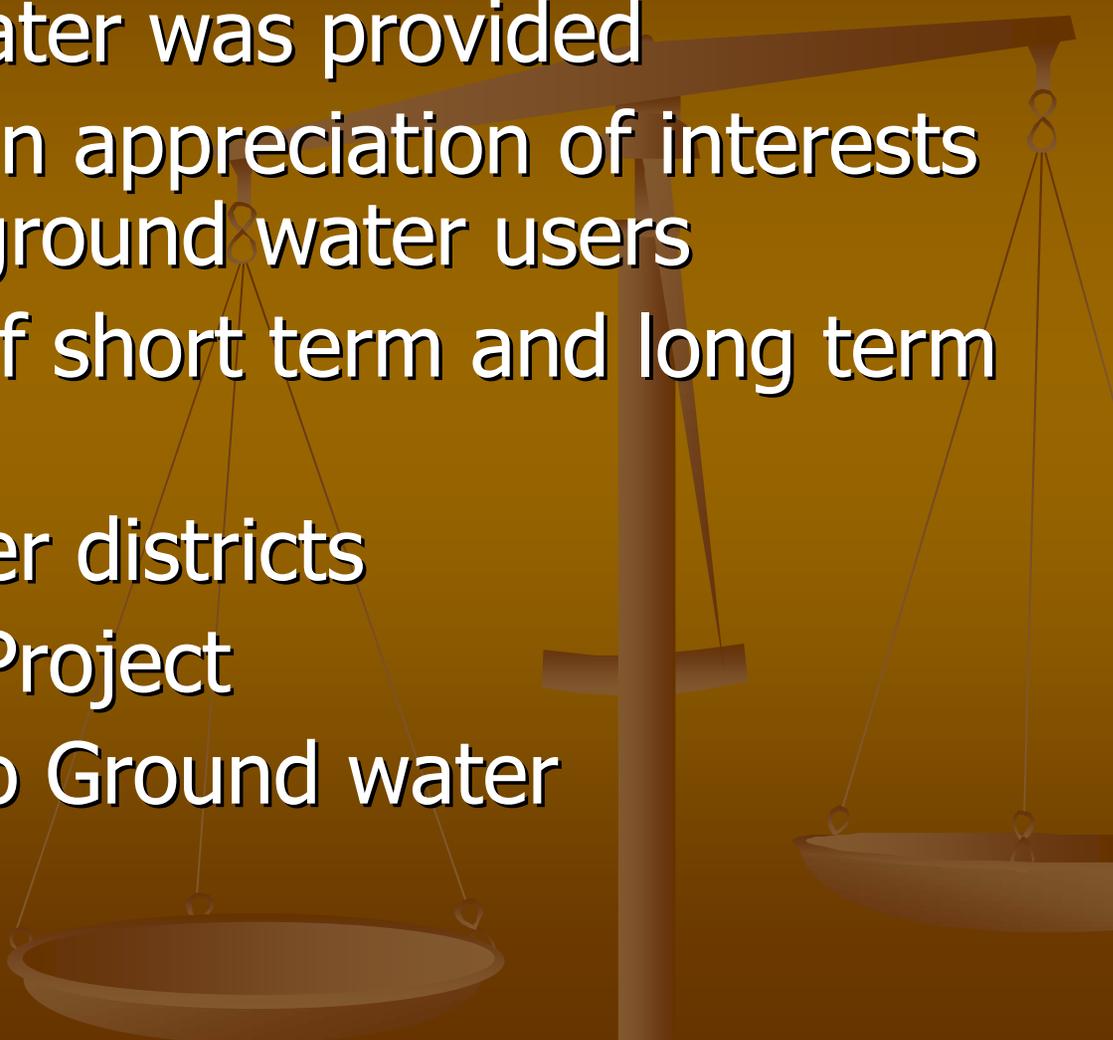
Elements of 2001 Interim Stipulated Agreement for Administrative Basin 36

- 40,000 acre feet of replacement water for diversion into the NSCC canal or 10 % reduction in ground water use
 - Replacement water for ground water to surface water conversions and recharge
 - Safe harbor for ground water users
 - Agreed to not oppose motions for interim administration of water rights and creation of water districts
 - Process to determine the extent of injury to senior surface water rights
 - Stay of all pending administrative and judicial actions
 - Agreed to support reformulation and recalibration of the ESPA Ground Water Model
 - Adoption of conjunctive management rules
- 

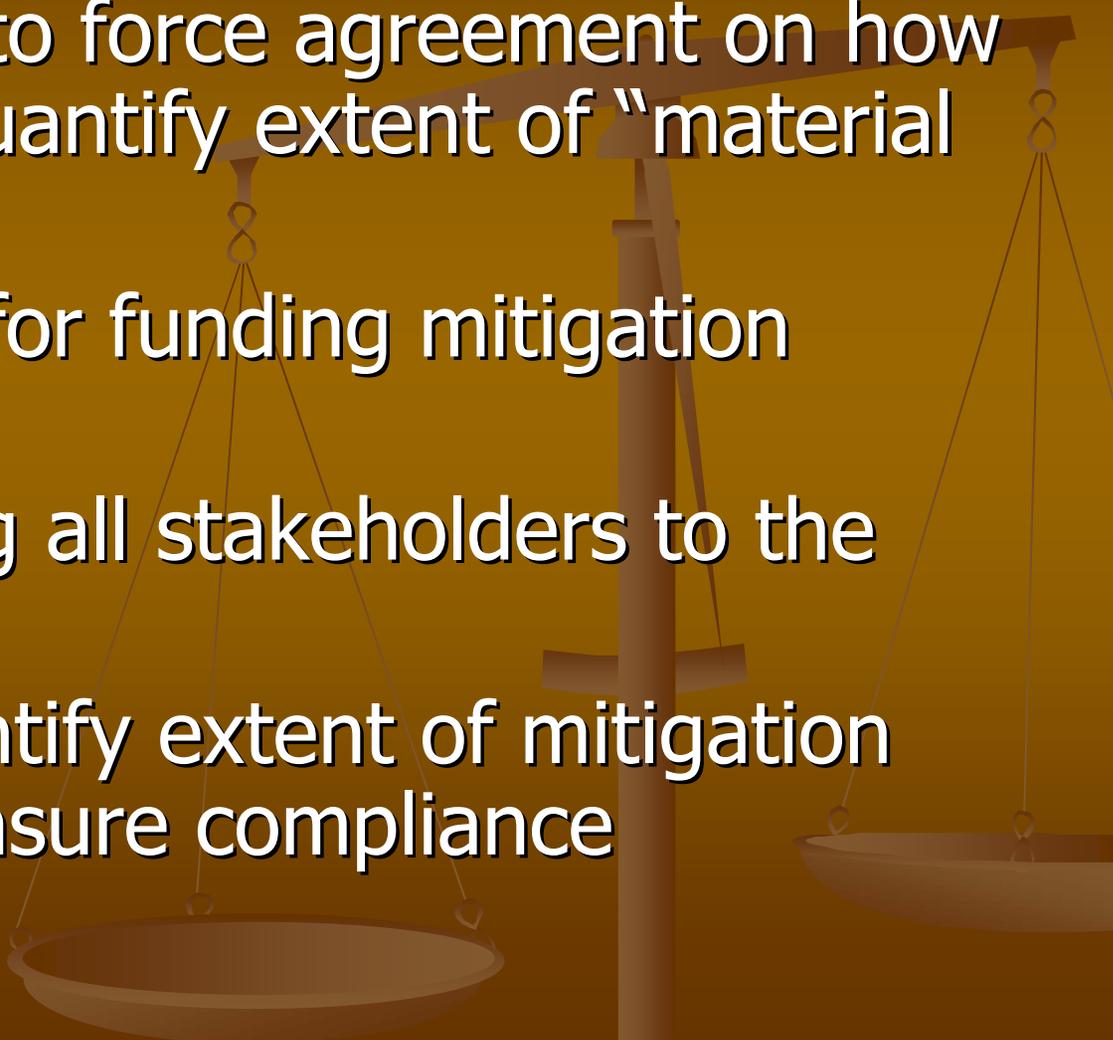
Processors' and Municipalities' Agreement

- 3,000 acre feet of replacement water for surface water users above Milner and 500 acre feet for replacement water in Administrative Basin 36 or \$20,000
 - Safe Harbor for processors and municipalities
 - Agreed to not oppose motions for interim administration of water rights and creation of water districts
 - Process to determine the extent of injury to senior surface water rights
 - Stay of all pending administrative and judicial actions
 - Agreed to support reformulation and recalibration of the ESPA Ground Water Model
 - Adoption of conjunctive management rules
- 

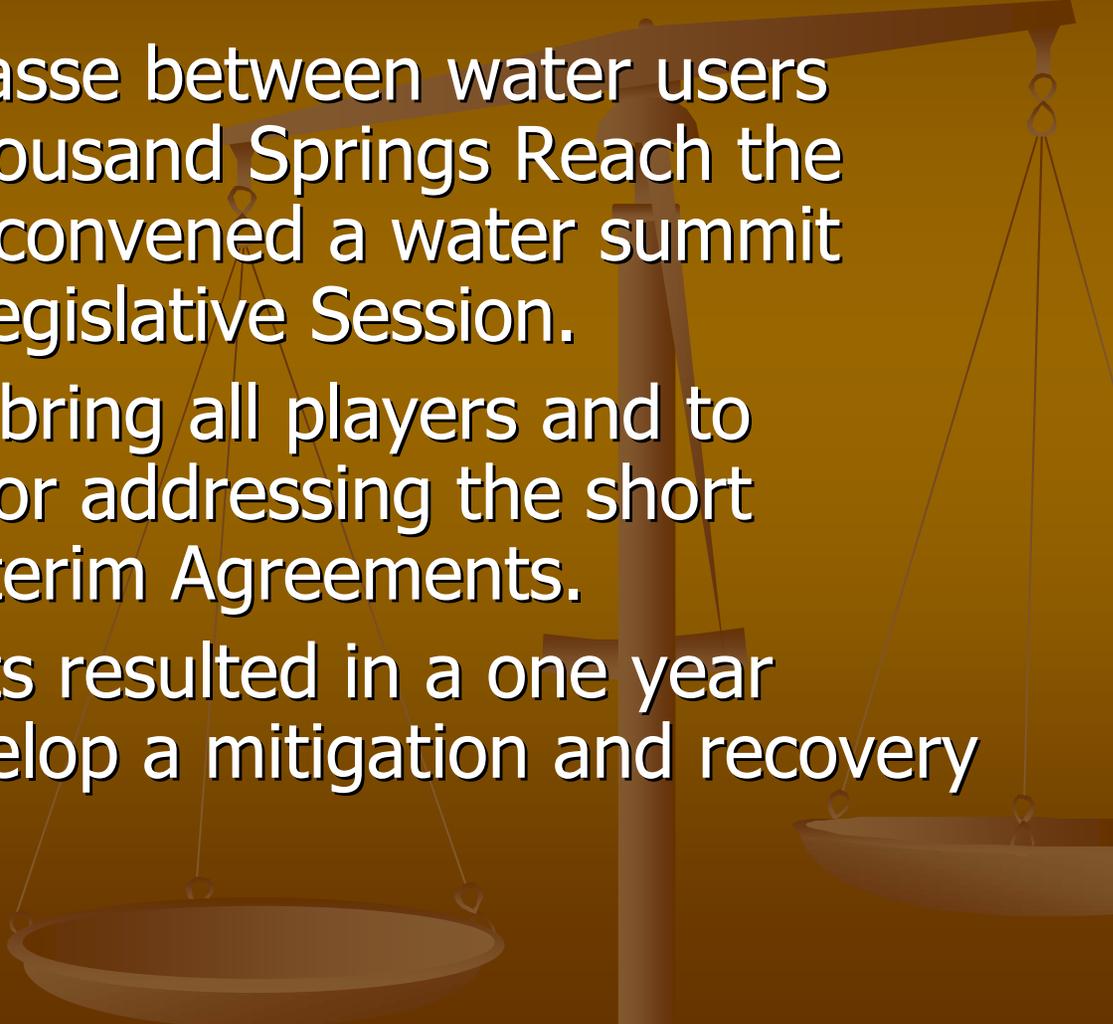
Accomplishments Under Interim Stipulated Agreements

- Replacement water was provided
 - Parties gained an appreciation of interests of surface and ground water users
 - Developed list of short term and long term measures
 - Creation of water districts
 - Sandy Pipeline Project
 - Surface water to Ground water conversions
- 

Shortcomings of Interim Agreements

- No mechanism to force agreement on how to define and quantify extent of “material injury”
 - No mechanism for funding mitigation measures
 - Inability to bring all stakeholders to the table
 - Inability to quantify extent of mitigation provided and ensure compliance
- 

The Eastern Snake Plain Aquifer Mitigation, Recovery and Restoration Agreement for 2004

- As a result of impasse between water users involved in the Thousand Springs Reach the Idaho Legislature convened a water summit during the 2004 Legislative Session.
 - The intent was to bring all players and to provide a means for addressing the shortcomings of the Interim Agreements.
 - State commitments resulted in a one year agreement to develop a mitigation and recovery plan for the ESPA.
- 

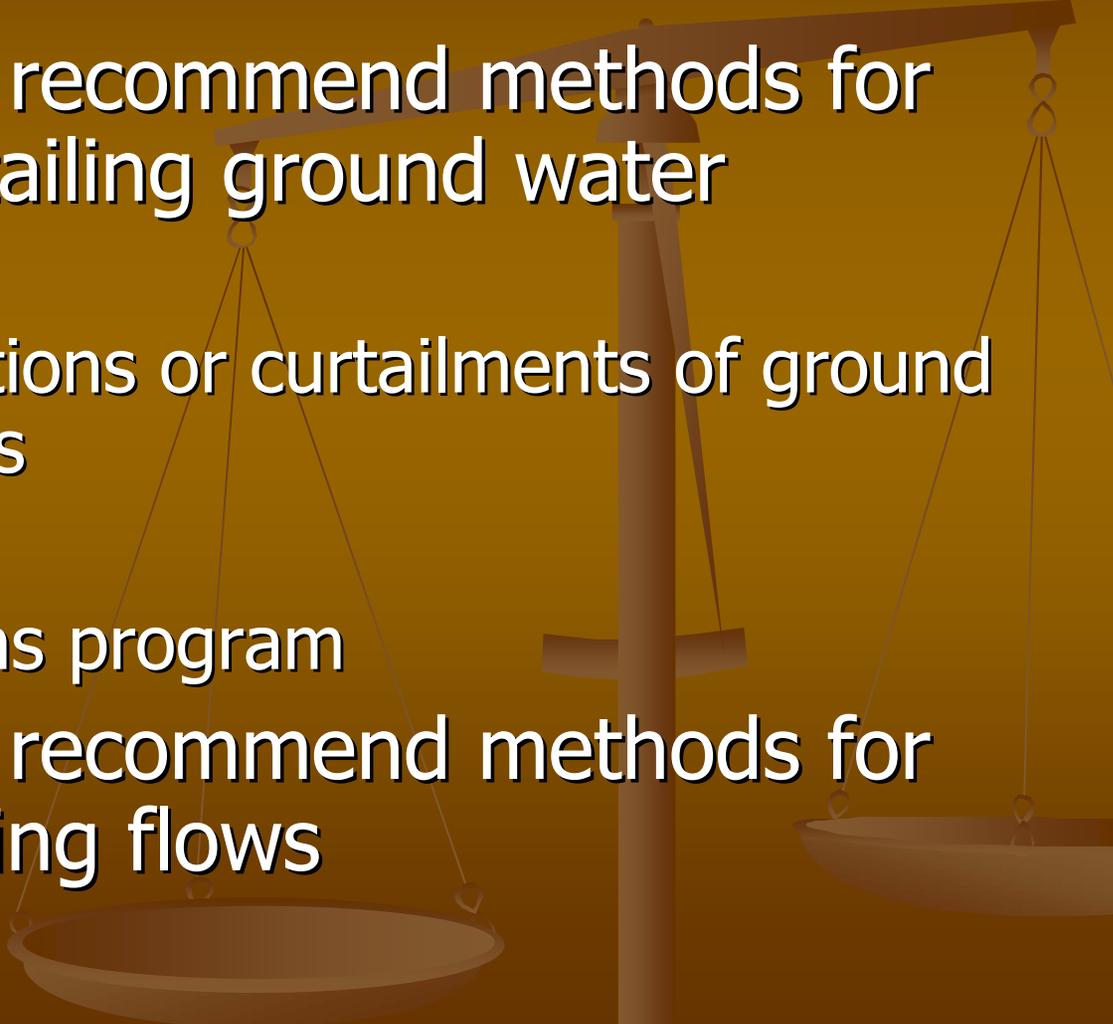
Legislative Commitments in ESPA Mitigation, Recovery and Restoration Agreement for 2004

- Natural Resources Interim Committee to develop short-term and long-term ESPA management goals and objectives
- Investigate and recommend water supply measures
 - Recharge
 - Storage



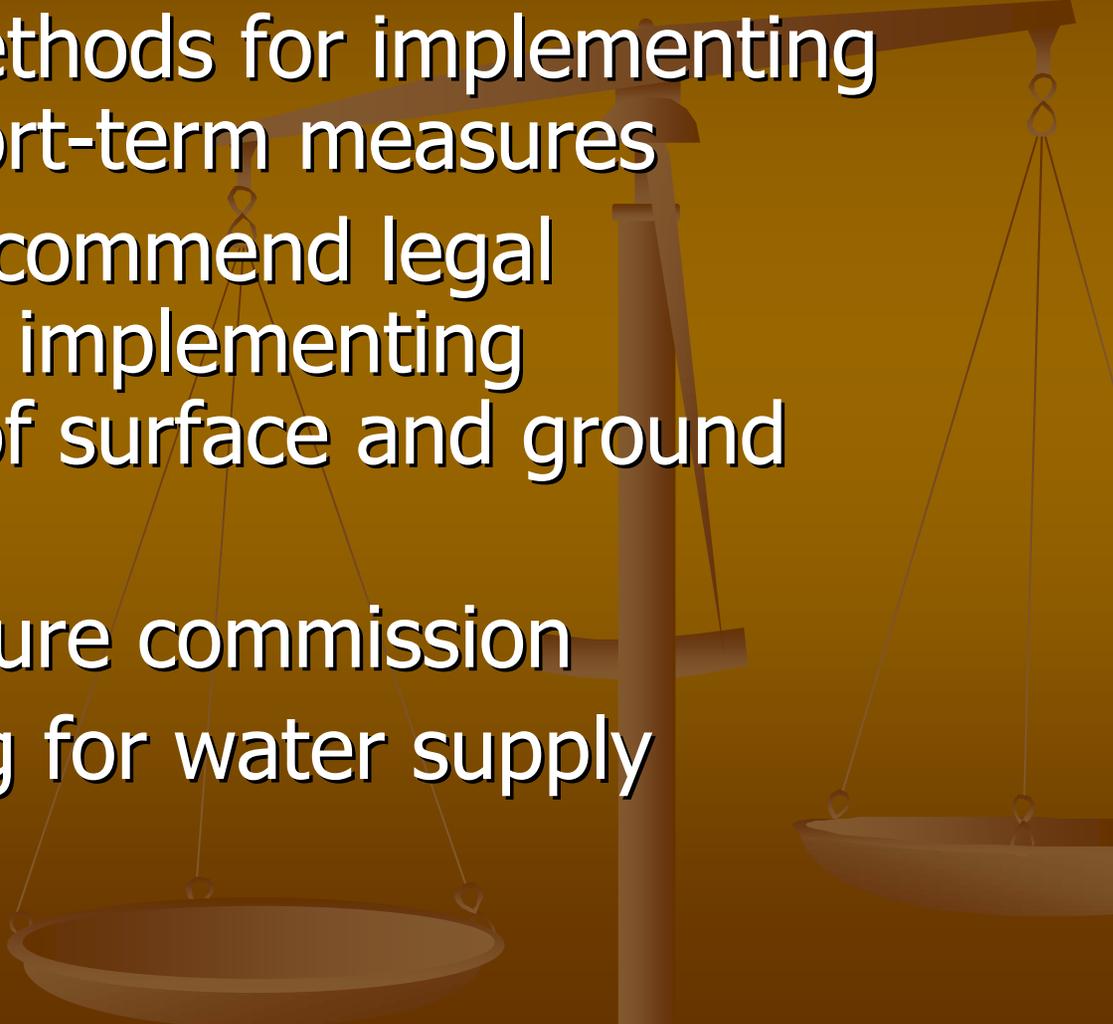
Legislative Commitments in ESPA

Mitigation, Recovery and Restoration Agreement for 2004

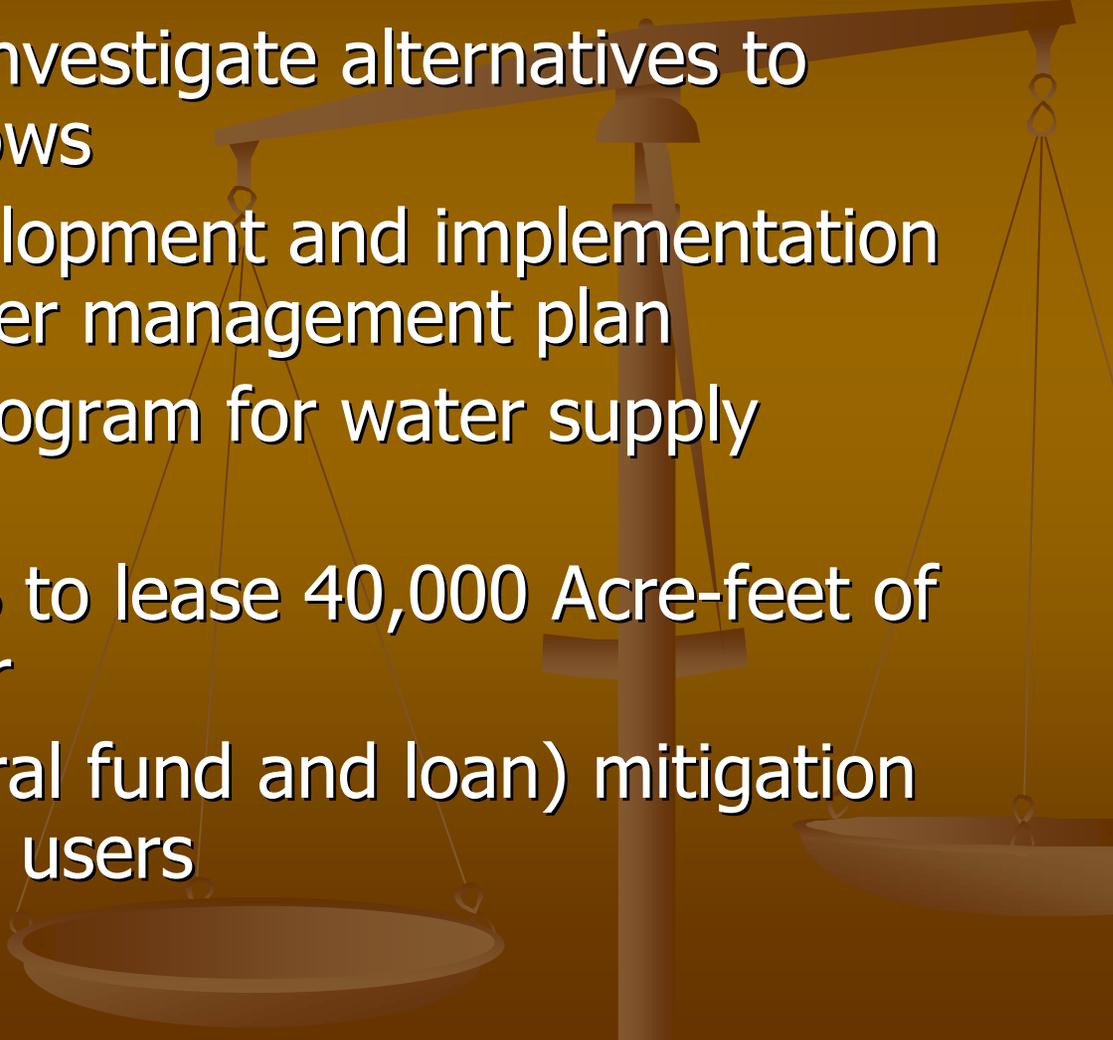
- Investigate and recommend methods for reducing or curtailing ground water depletions
 - Facilitate reductions or curtailments of ground water depletions
 - CREP program
 - Land acquisitions program
 - Investigate and recommend methods for augmenting spring flows
- 

Legislative Commitments in ESPA

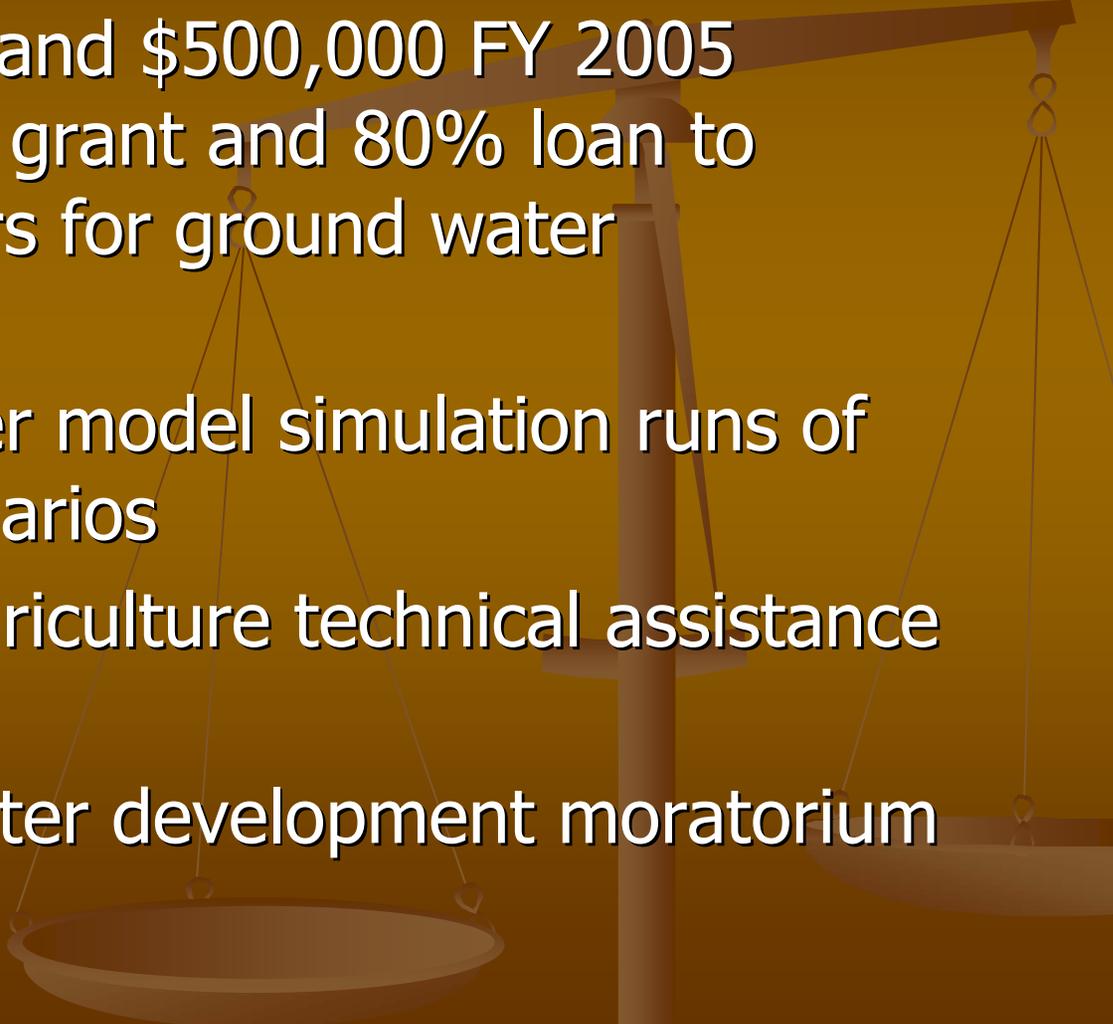
Mitigation, Recovery and Restoration Agreement for 2004

- Recommend methods for implementing and funding short-term measures
 - Evaluate and recommend legal mechanisms for implementing administration of surface and ground water rights
 - Create aquaculture commission
 - FTE and funding for water supply measures
- 

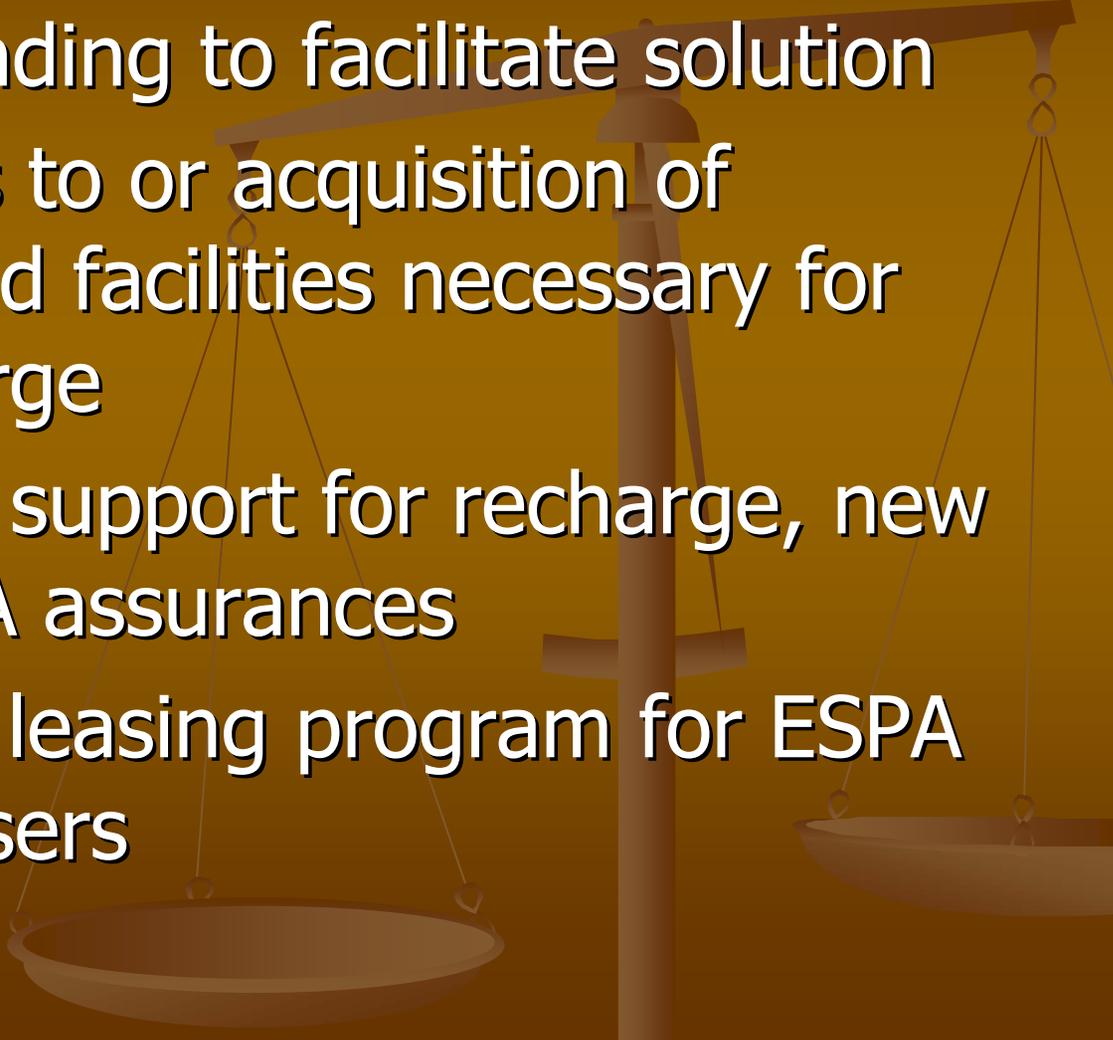
Legislative Commitments in ESPA Mitigation, Recovery and Restoration Agreement for 2004

- FTE for IDWR to investigate alternatives to enhance spring flows
 - \$300,000 for development and implementation of long-term aquifer management plan
 - \$500,000 grant program for water supply projects
 - \$520,000 to IWRB to lease 40,000 Acre-feet of replacement water
 - \$1,000,000 (general fund and loan) mitigation payment to spring users
- 

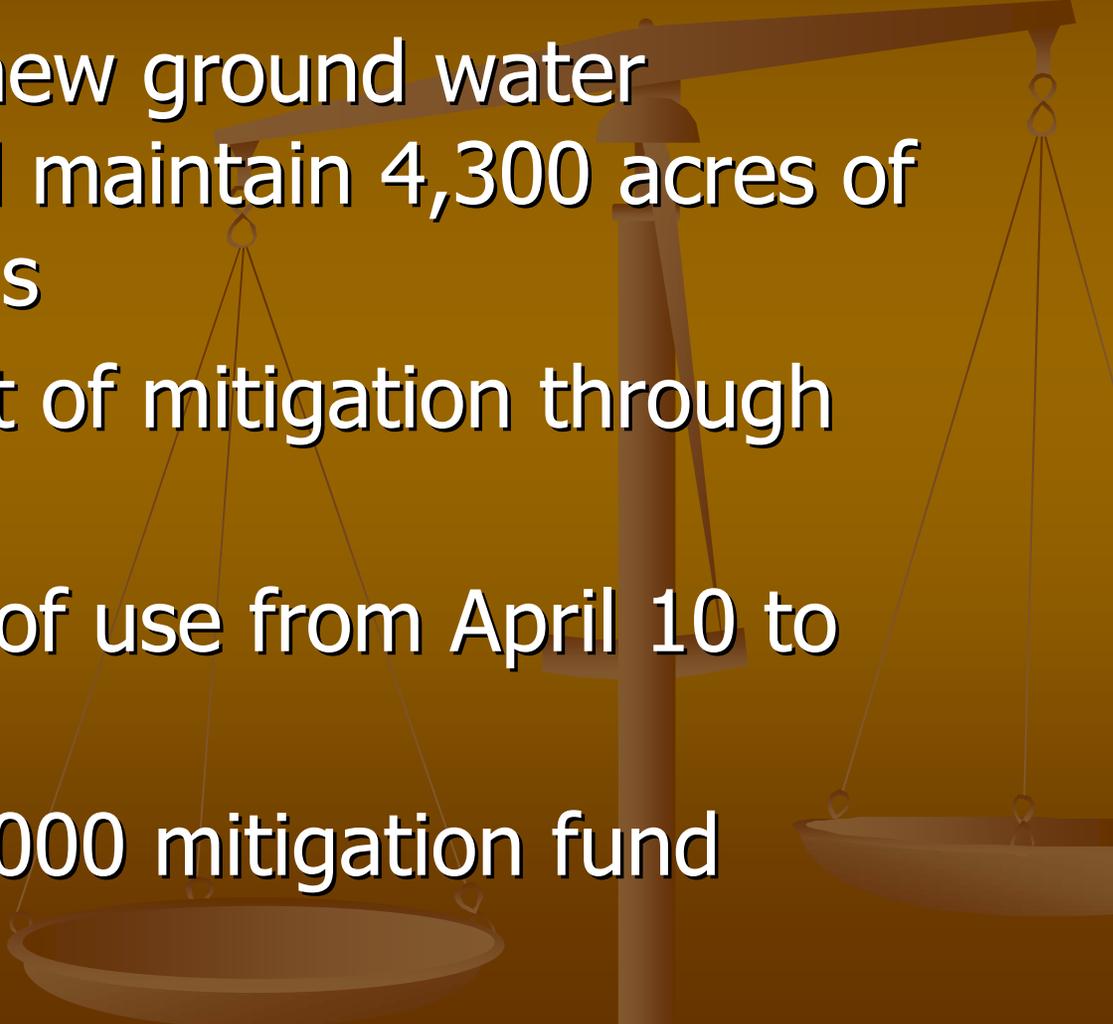
Executive Commitments in ESPA Mitigation, Recovery and Restoration Agreement for 2004

- \$300,000 in 2004 and \$500,000 FY 2005 consisting of 20% grant and 80% loan to ground water users for ground water conversions
 - ESPA ground water model simulation runs of management scenarios
 - Commerce and Agriculture technical assistance for spring users
 - Extend ground water development moratorium
- 

Congressional Commitments in ESPA Mitigation, Recovery and Restoration Agreement for 2004

- Seek federal funding to facilitate solution
 - Facilitate access to or acquisition of federal lands and facilities necessary for managed recharge
 - Encourage BOR support for recharge, new storage and ESA assurances
 - Encourage Pilot leasing program for ESPA ground water users
- 

Ground Water User Commitments in ESPA Mitigation, Recovery and Restoration Agreement for 2004

- 7,700 acres of new ground water conversions and maintain 4,300 acres of prior conversions
 - 10,000 acre feet of mitigation through Sandy Pipeline
 - Restrict season of use from April 10 to October 31
 - Provide \$1,000,000 mitigation fund
- 

Spring User Commitments in ESPA Mitigation, Recovery and Restoration Agreement for 2004

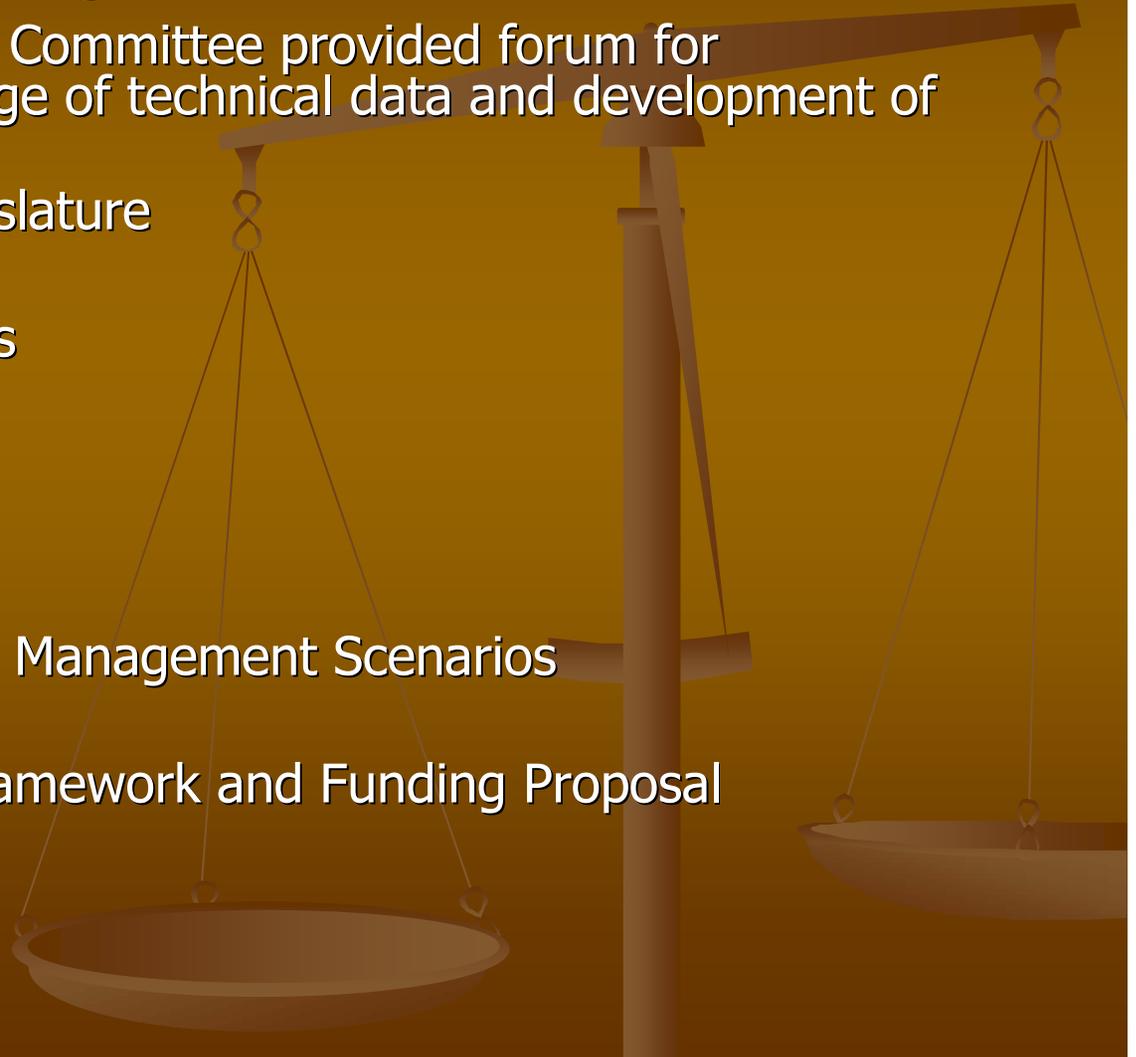
- Safe Harbor Agreement for one year
- Participate in Legislative planning process



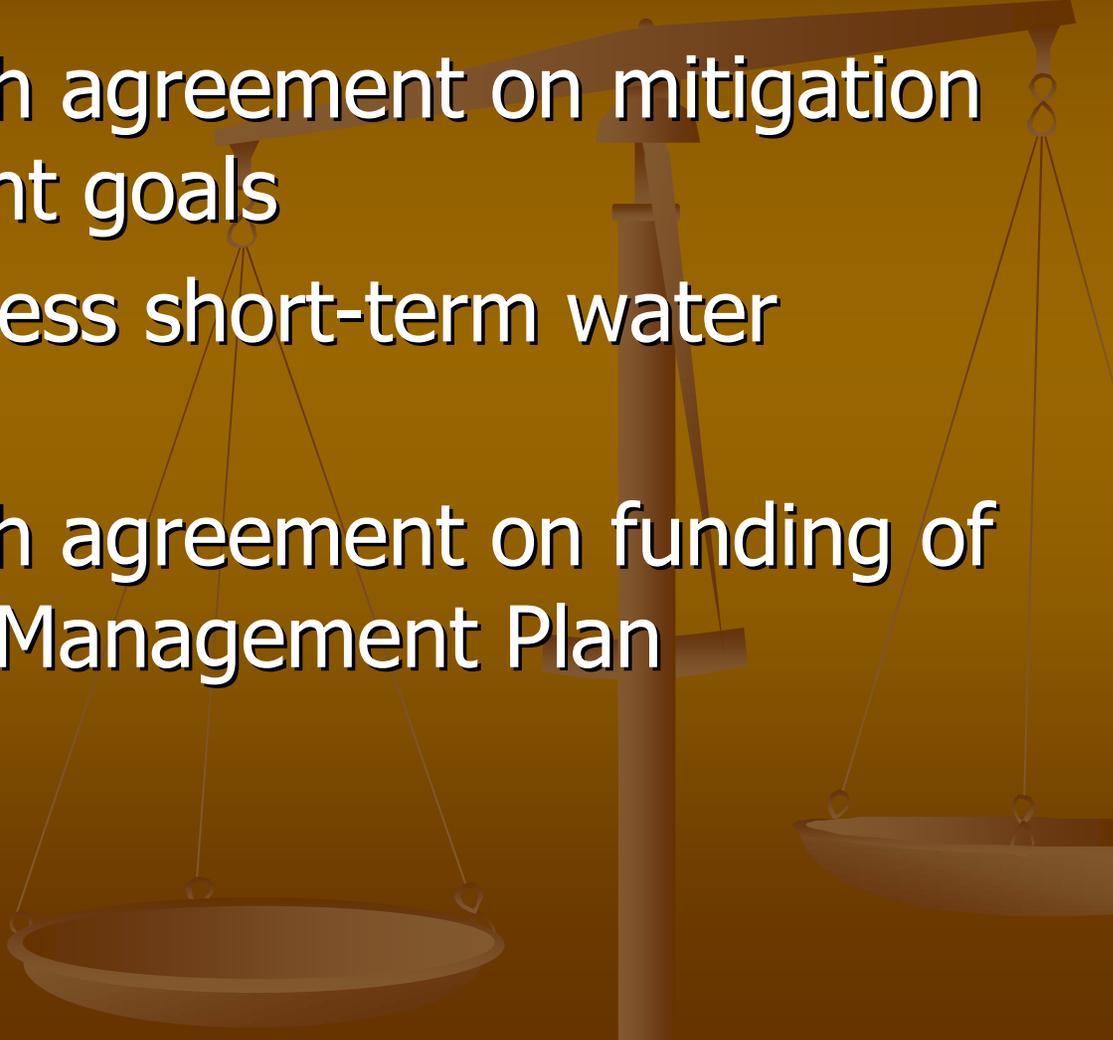
Accomplishments of ESPA

Mitigation, Recovery and Restoration Agreement for 2004

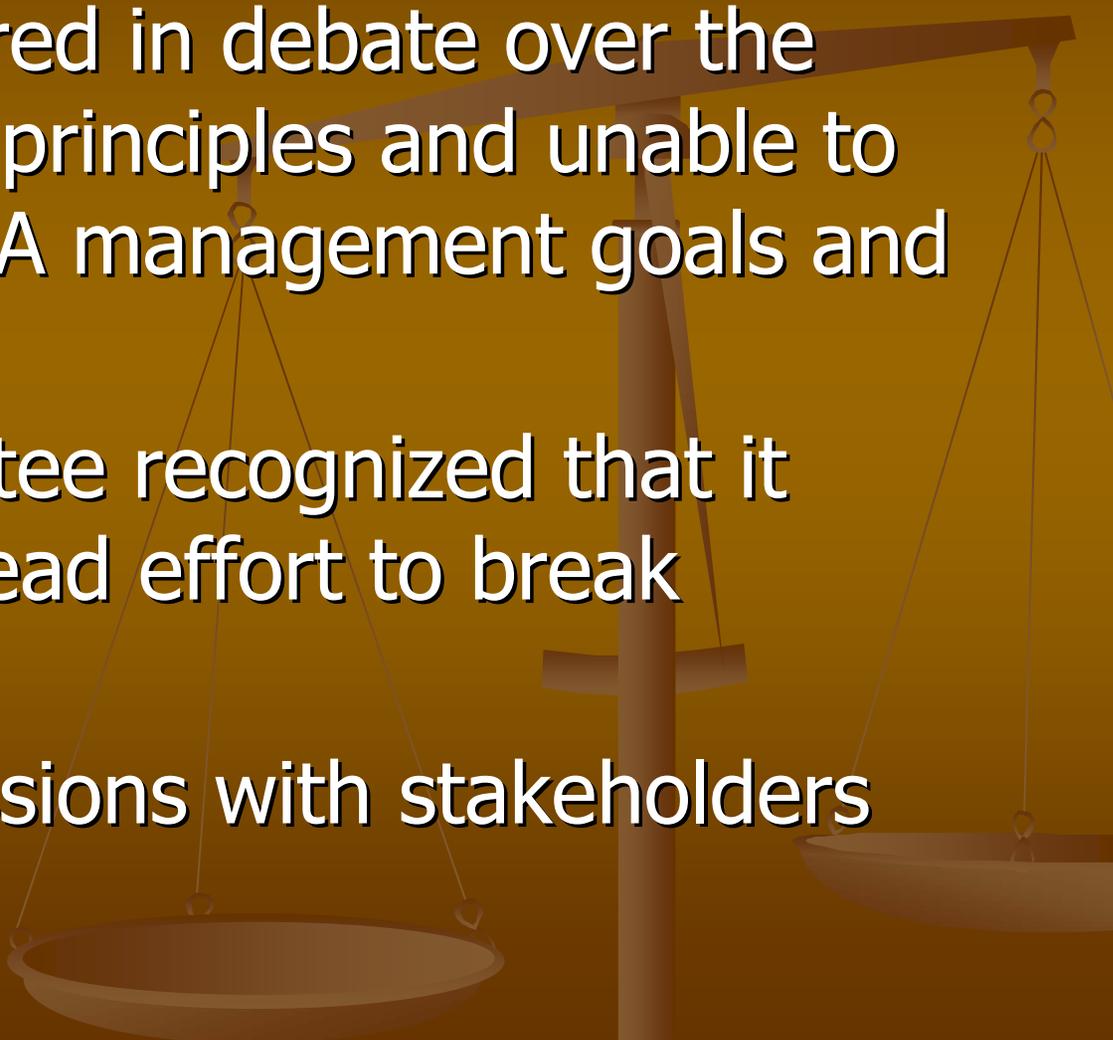
- Natural Resource Interim Committee provided forum for development and exchange of technical data and development of policy
- Forum for educating Legislature
- Aquaculture Commission
- Ground water conversions
- CREP Program
- Financial Mitigation
- In kind mitigation
- Water supply projects
- ESPA Model Upgrade and Management Scenarios
- Recharge proposal
- Straw Man Settlement Framework and Funding Proposal



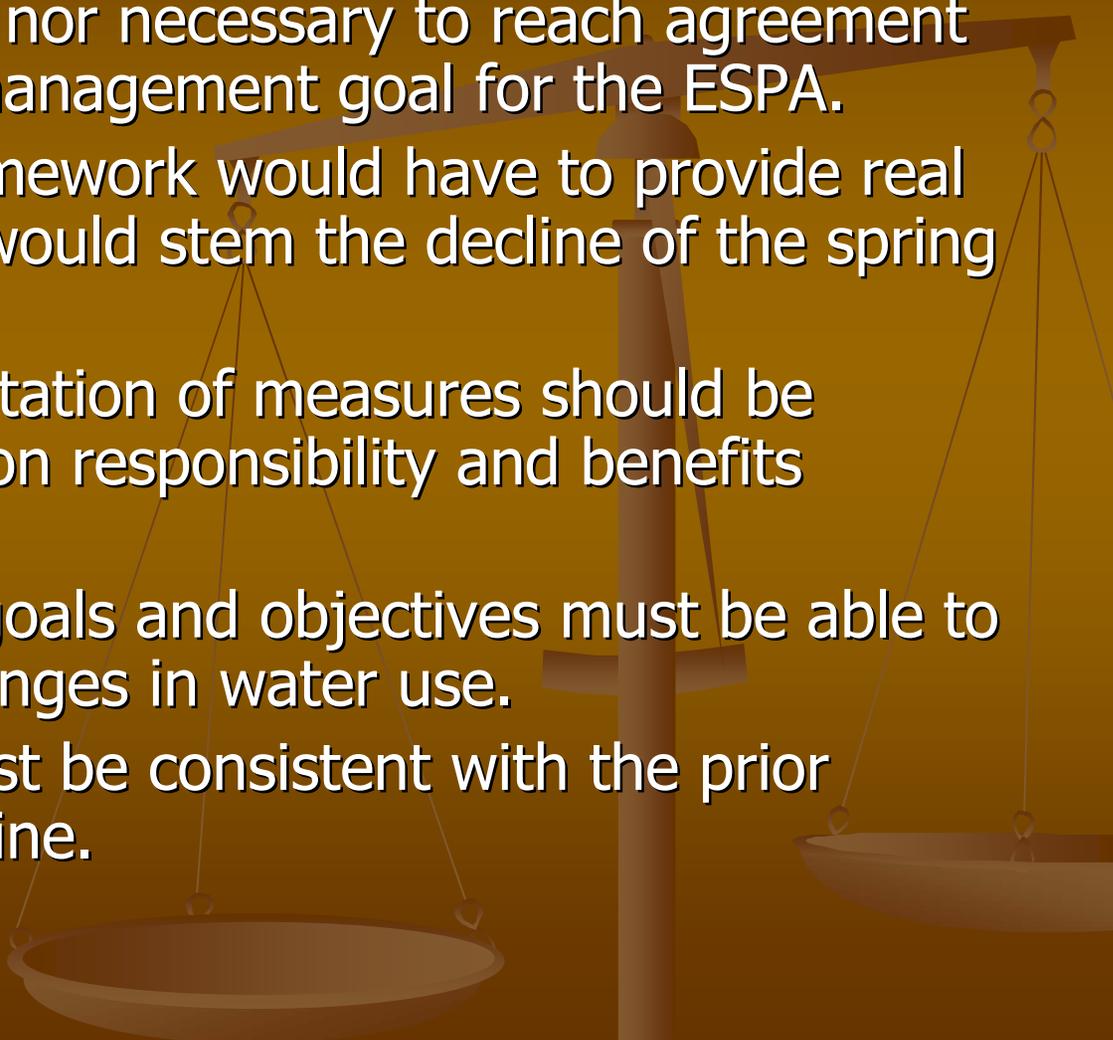
Short Comings of ESPA Mitigation, Recovery and Restoration Agreement for 2004

- Inability to reach agreement on mitigation and management goals
 - Inability to address short-term water shortages
 - Inability to reach agreement on funding of proposed ESPA Management Plan
- 

ESPA Conceptual Settlement Framework

- Parties were mired in debate over the governing legal principles and unable to agree upon ESPA management goals and objectives
 - Interim Committee recognized that it would have to lead effort to break impasse
 - Based on discussions with stakeholders
- 

Premises Underlying Framework

1. It was not possible nor necessary to reach agreement on a quantitative management goal for the ESPA.
 2. Any settlement framework would have to provide real assurances that it would stem the decline of the spring flows.
 3. Costs for implementation of measures should be allocated based upon responsibility and benefits received.
 4. The management goals and objectives must be able to adapt to future changes in water use.
 5. The framework must be consistent with the prior appropriation doctrine.
- 

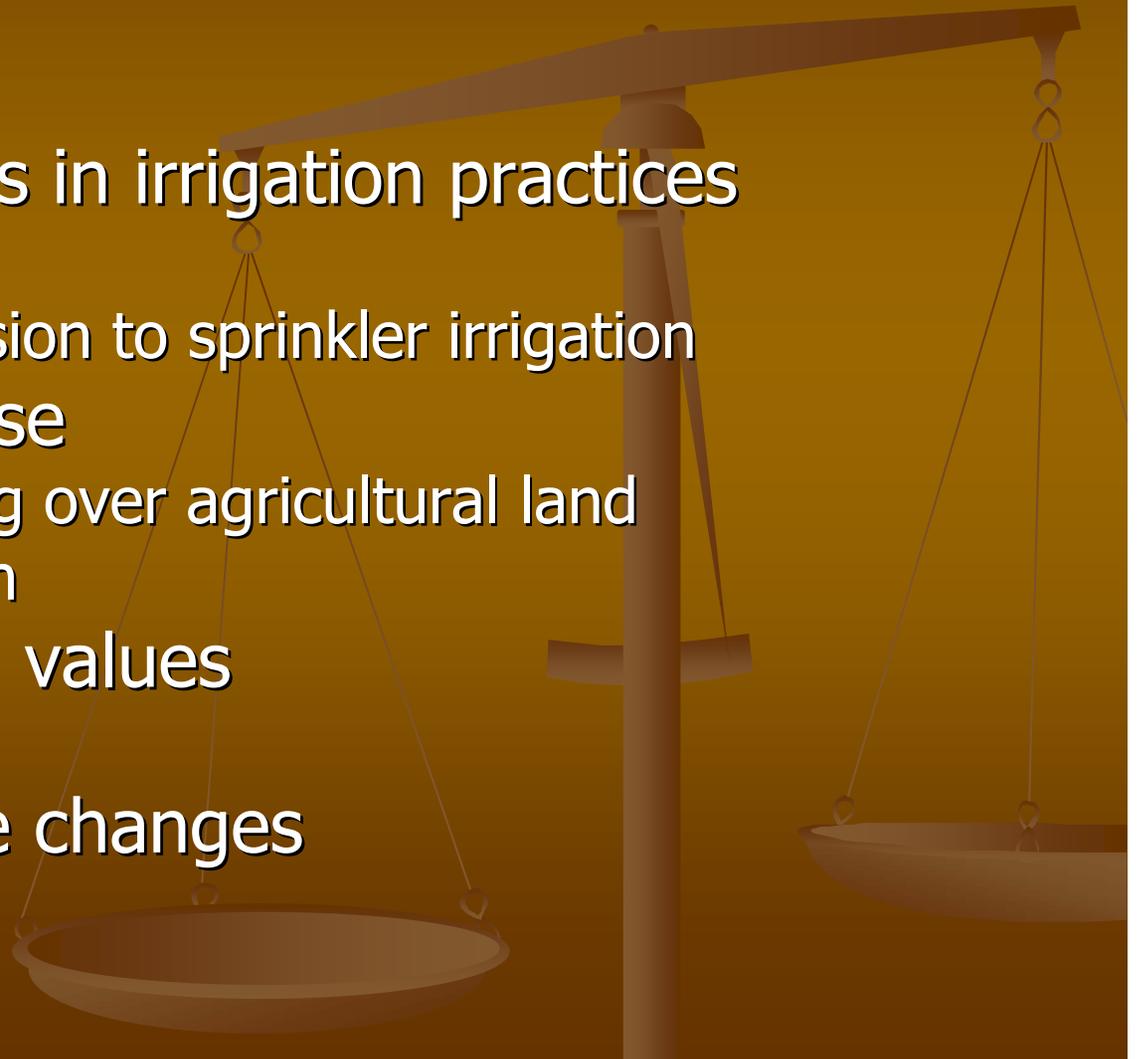
No Need for Quantitative ESPA Goal.

The conclusion that no long term quantitative goal was necessary was based on the following facts:

1. Lack of agreement between the parties on the underlying legal principles.
2. Reality that given the length of time it would take to address the current decline in spring flows there was no immediate need to expressly define the end goal.
3. Realization that a qualitative goal would ultimately prevail over a quantitative goal because of changing water use patterns, uncertainty regarding what measures would be implemented and the physical realities of managing a dynamic system.

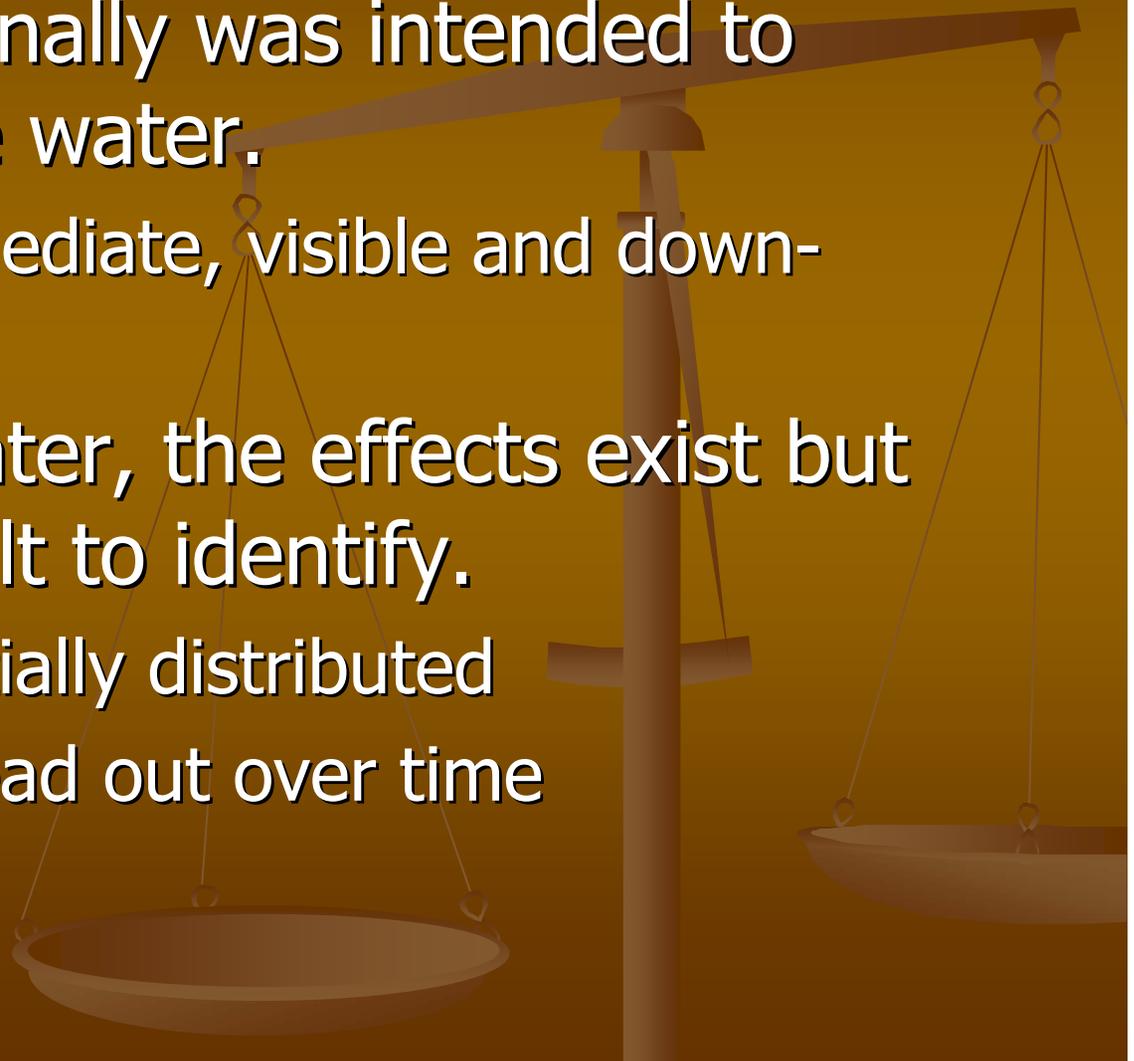
The ESPA management goal must be a qualitative goal implemented through an adaptive management process.

- Continued changes in irrigation practices
 - Canal lining
 - Continued conversion to sprinkler irrigation
- Changes in land use
 - Subdivisions taking over agricultural land
 - Industry moving in
- Change in societal values
 - Species protection
- Impacts of climate changes



Why is Conjunctive Management So Difficult?

- Water Law originally was intended to manage surface water.
 - Effects are immediate, visible and down-stream only
- With ground-water, the effects exist but are more difficult to identify.
 - Effects are spatially distributed
 - Effects are spread out over time

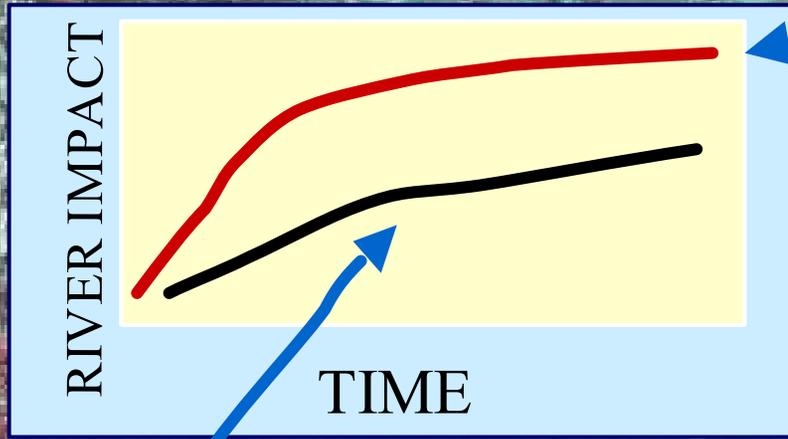


IMPACTS DO
NOT FOLLOW
FLOW LINES

COMPLICATION NO. 1

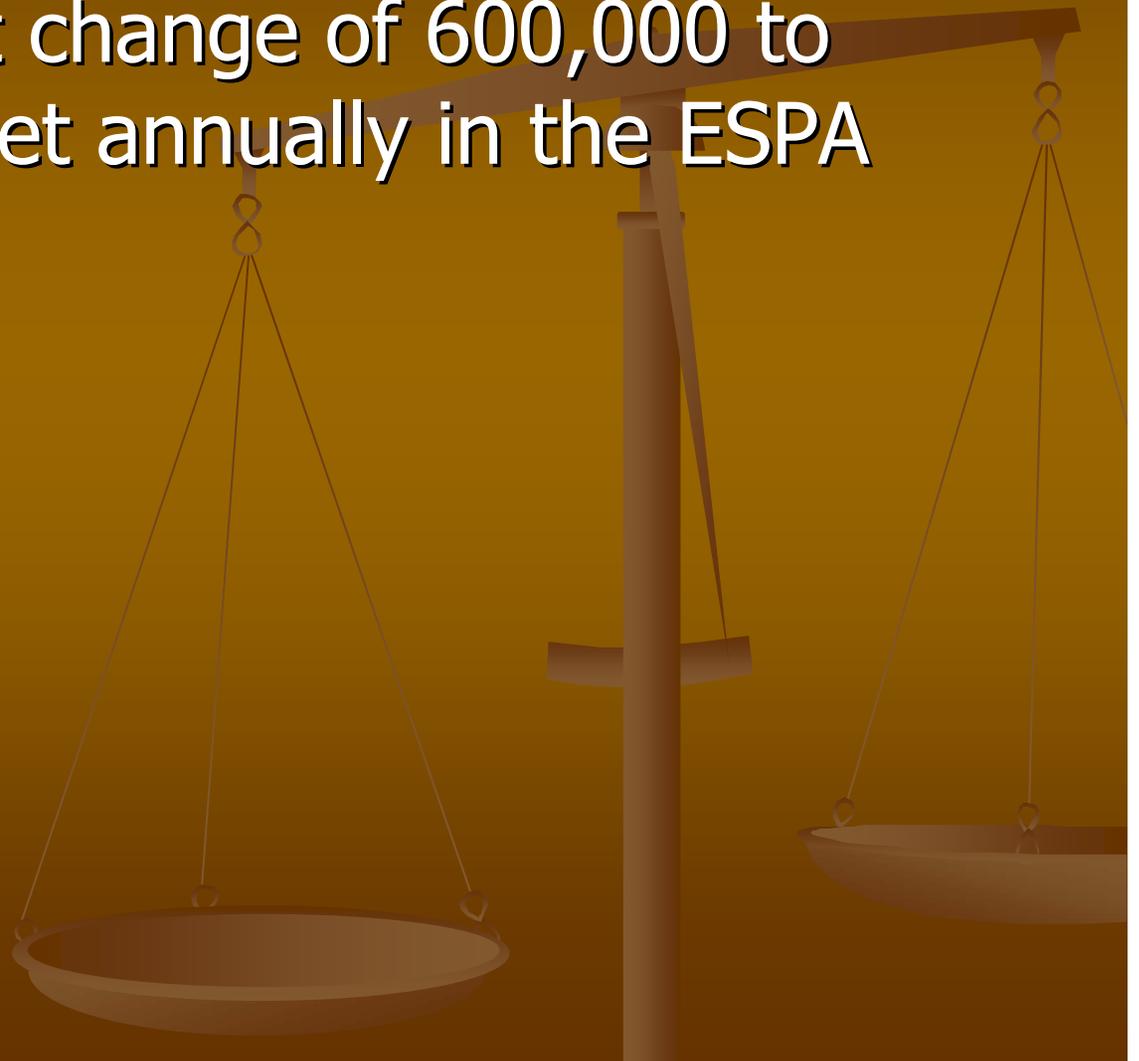


COMPLICATION NO. 2: TIME ATTENUATED IMPACTS



Framework Goal

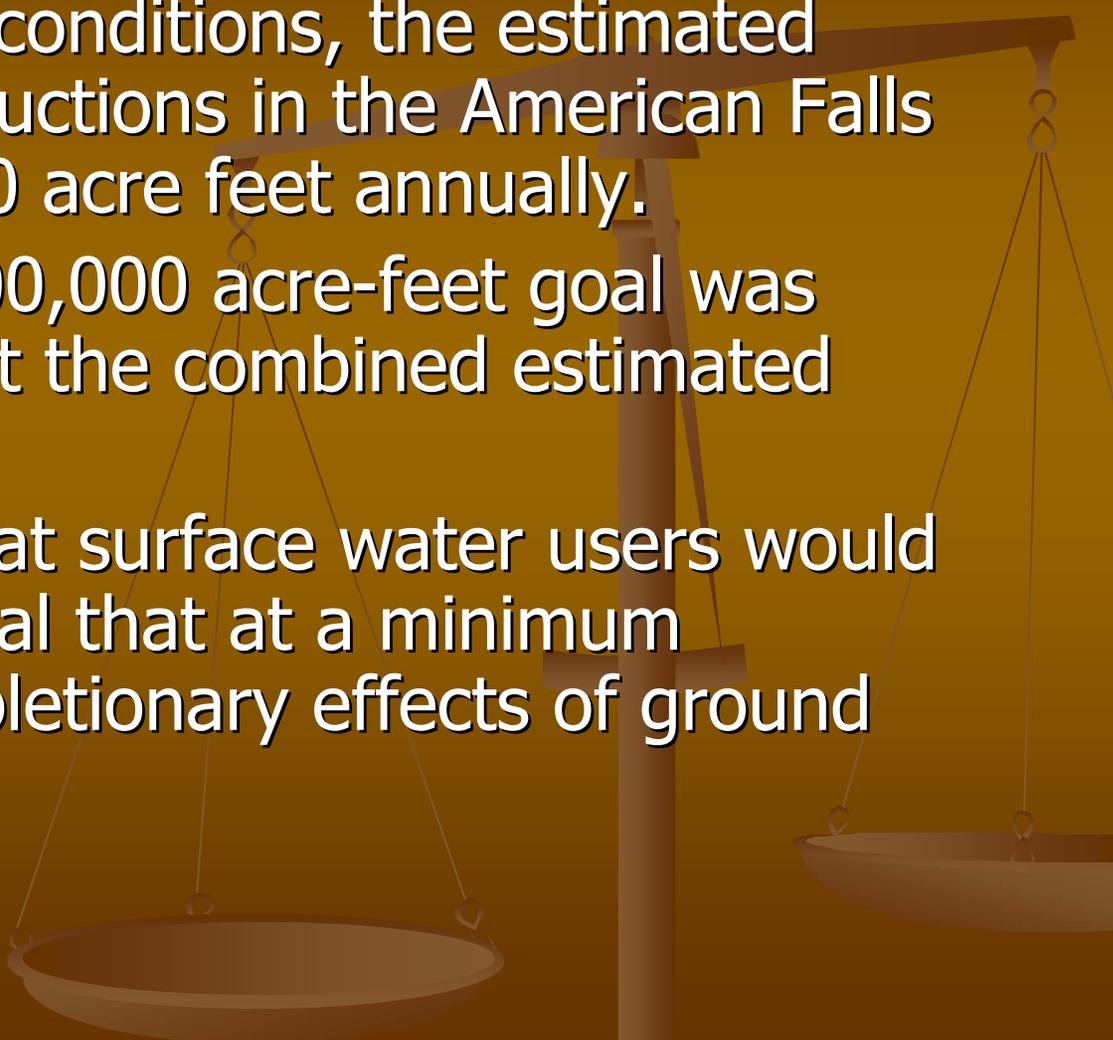
- Effectuate a net change of 600,000 to 900,000 acre-feet annually in the ESPA water budget.



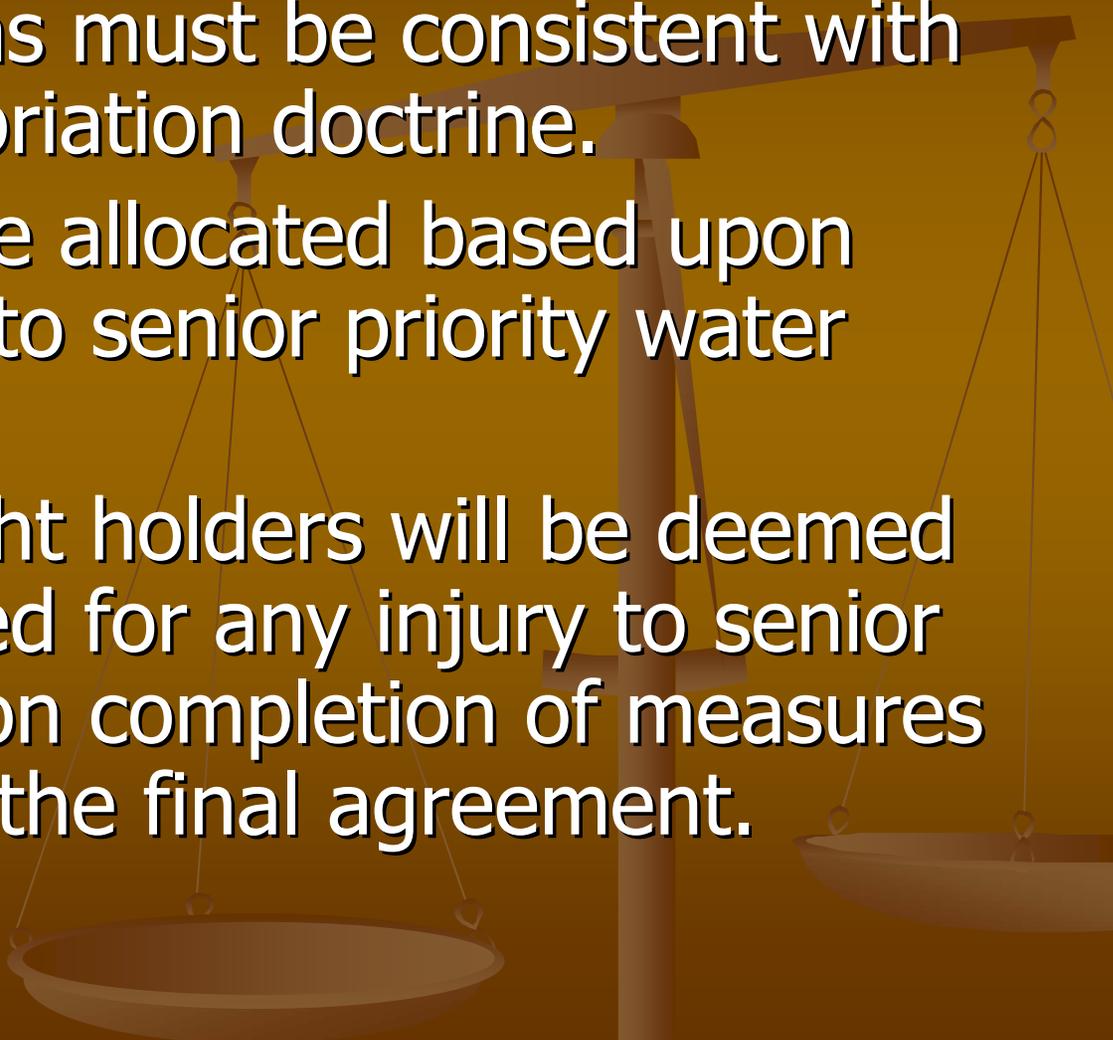
Basis for Selection of Goal

- Driven largely by litigation risk assessment.
- Under prior appropriation doctrine, the outer bounds of the ground water user responsibility is defined by the extent of depletions caused by ground water use.
- Aquaculture rights generally extend back to 1962. Curtailing all ground water rights junior to 1962 is estimated to provide 240,000 acre feet of reach gains in the Thousand Springs.
- If all ground water rights curtailed, it was estimated that 480,000 acre feet of reach gains would be realized in the Thousand Springs reach.

Basis for Selection of Goal

- Based upon 1992 conditions, the estimated impact of flow reductions in the American Falls reach was 300,000 acre feet annually.
 - The 600,000 to 900,000 acre-feet goal was selected to bracket the combined estimated depletion effect.
 - Conclusion was that surface water users would need to have a goal that at a minimum addressed the depletionary effects of ground water use.
- 

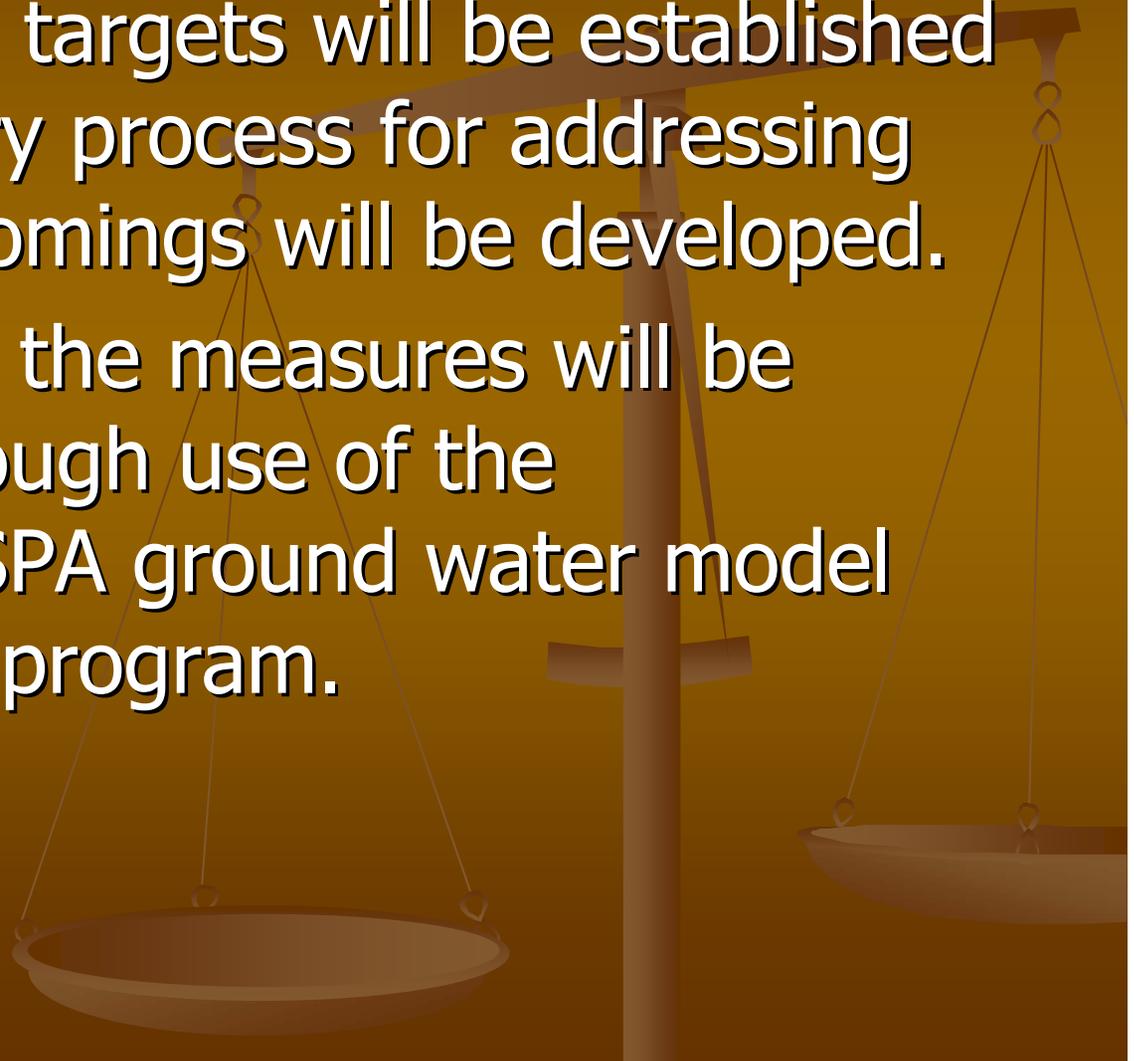
Settlement Principles



- Settlement terms must be consistent with the prior appropriation doctrine.
- Mitigation will be allocated based upon potential injury to senior priority water rights.
- Junior water right holders will be deemed to have mitigated for any injury to senior water rights upon completion of measures assigned under the final agreement.

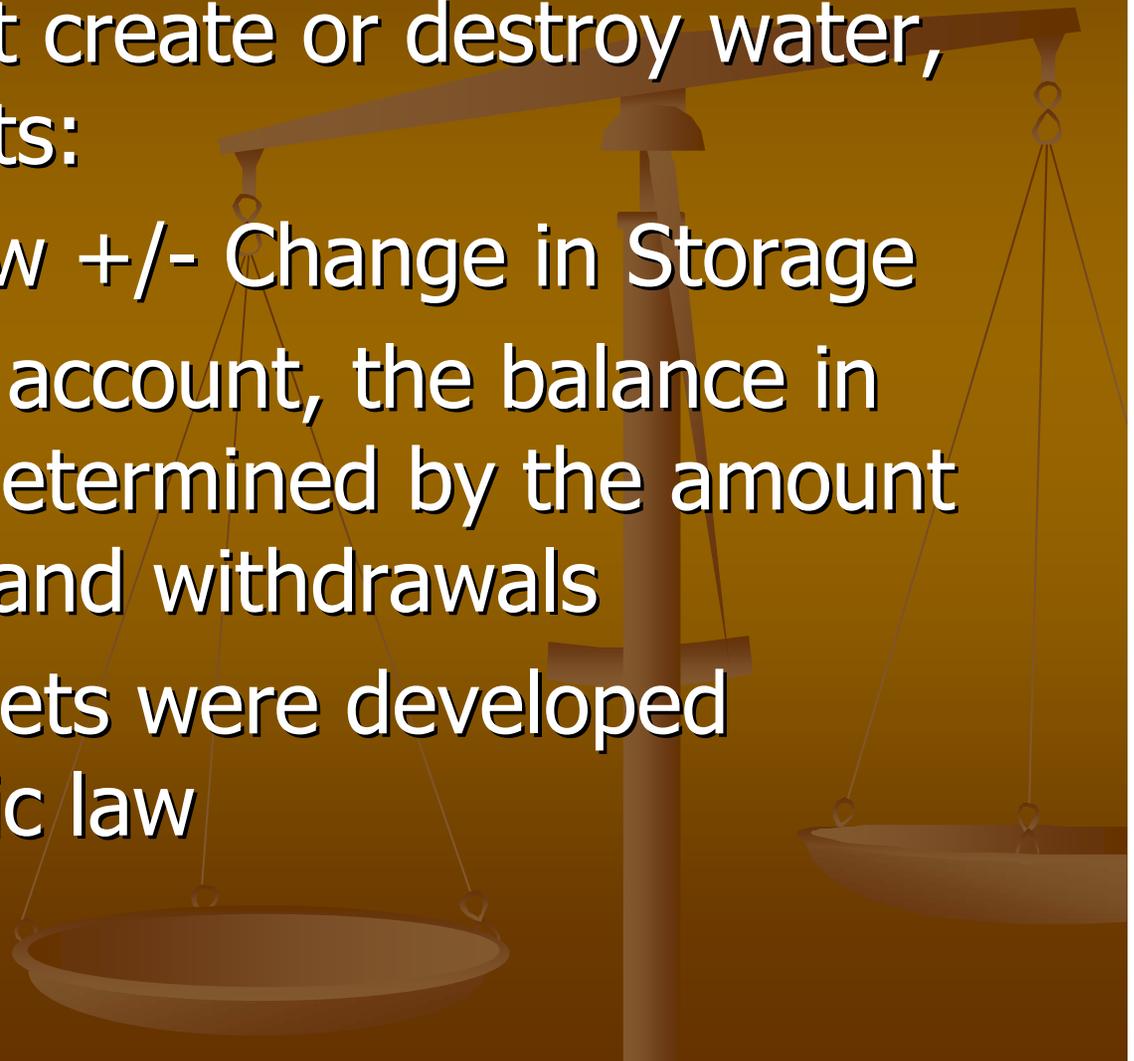
Settlement Principles

- Implementation targets will be established and a mandatory process for addressing program shortcomings will be developed.
- Effectiveness of the measures will be determined through use of the reformulated ESPA ground water model and monitoring program.

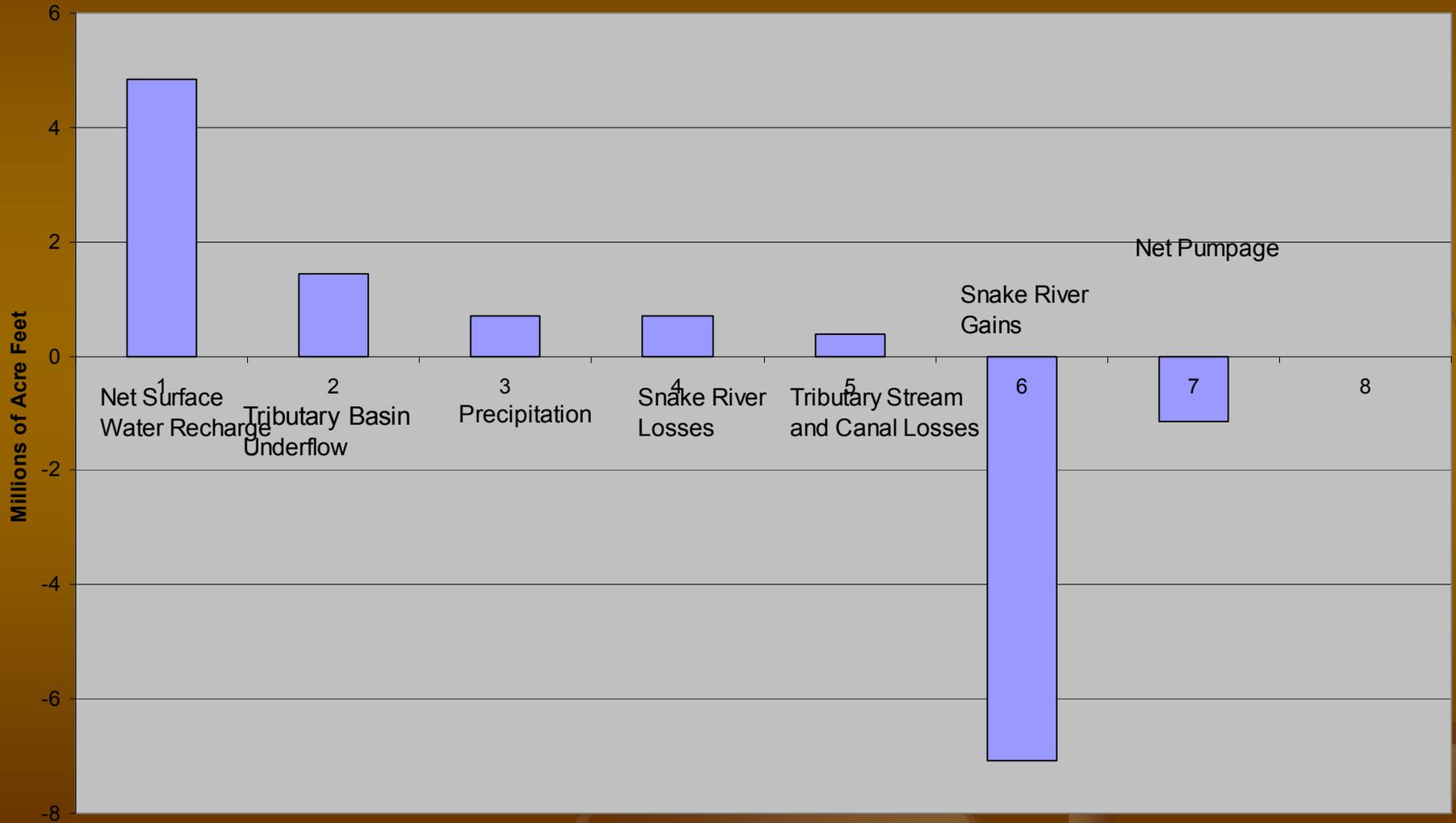


Framework Targets

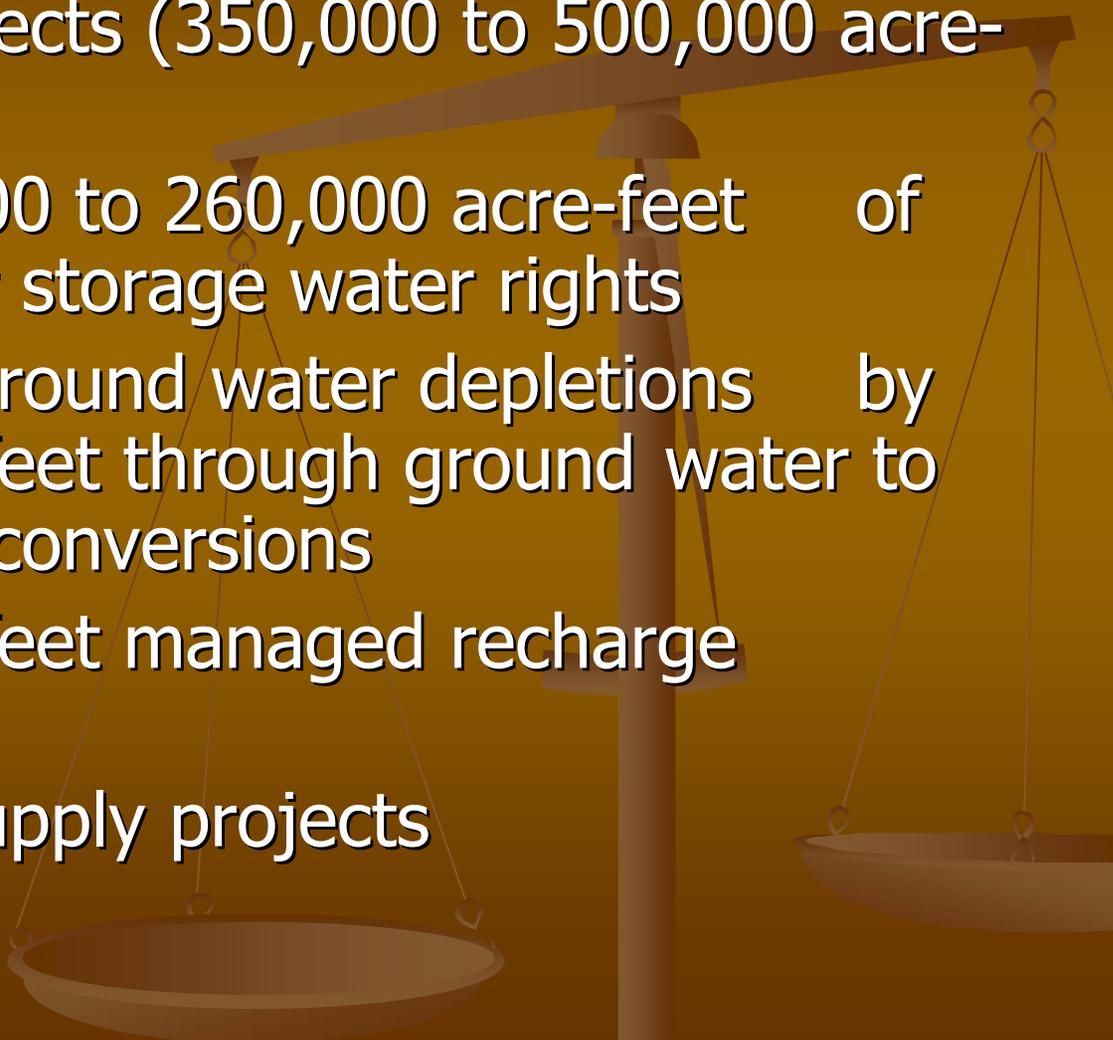
- Since we cannot create or destroy water, a basic law exists:
- $\text{Inflow} = \text{Outflow} \pm \text{Change in Storage}$
- It is like a bank account, the balance in the account is determined by the amount of the deposits and withdrawals
- Framework targets were developed around this basic law



ESPA Water Budget



Framework Targets



- Water Supply Projects (350,000 to 500,000 acre-feet)
 1. Acquire 200,000 to 260,000 acre-feet of natural flow or storage water rights
 2. Reduction of ground water depletions by 100,000 acre-feet through ground water to surface water conversions
 3. 200,000 acre-feet managed recharge program
 4. Other water supply projects

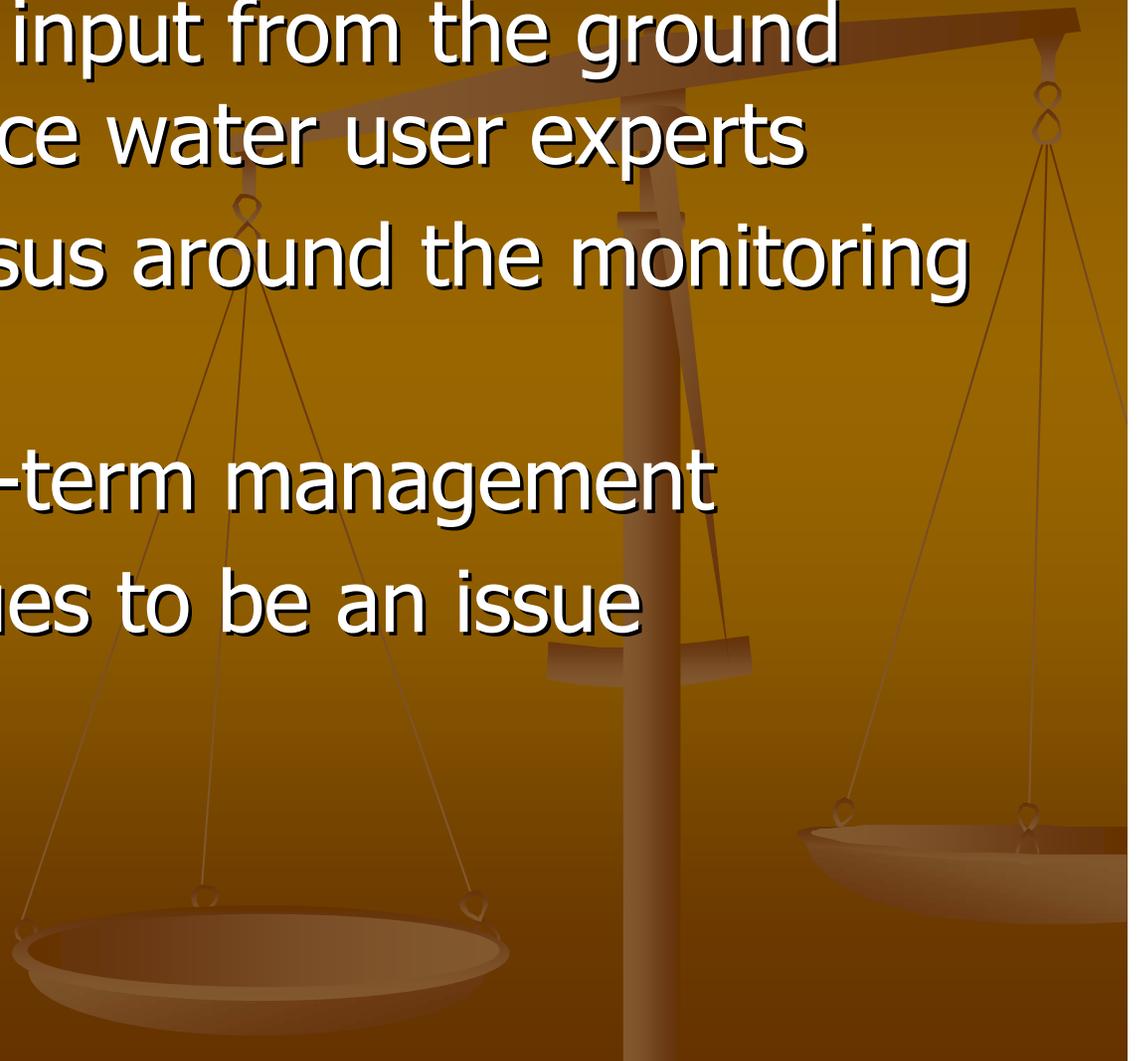
Framework Targets

- Water Management Projects (100,000 to 150,000 acre-feet)
 - Above and below rim management projects
- Reductions in Demand (150,000 to 250,000 acre-feet)
 - CREP Program
 - Spring flow acquisitions



Monitoring Program

- Developed with input from the ground water and surface water user experts
- General consensus around the monitoring program
- Key to any long-term management
- Funding continues to be an issue



ESPA Aquifer Management Plan

- A requirement of the Conceptual Framework
 - Intent of Legislature was to build on prior successes and to address prior shortcomings
 - While the parties may still disagree over the governing legal principles, there is no question that when the litigation concludes there will still need to be an ESPA Management Plan.
 - Seek to reach agreement where possible and finesse differences.
- 