

SWC RECOMMENDATIONS TO IDAHO WATER RESOURCES BOARD FOR  
DEVELOPMENT AND CONTENTS OF EASTERN SNAKE RIVER PLAIN  
AQUIFER MANAGEMENT PLAN

The Surface Water Coalition<sup>1</sup>, recommends to the Idaho Water Resources Board (“IWRB”), that the following components and processes be included in any planning for management of the Eastern Snake River Plain Aquifer (“ESPA”):

1. The SWC recommends to the IWRB that the term and result of such Aquifer Management Plan (the “Plan”) and its component parts timely accomplish the goals and objectives as defined herein and be of sufficient duration to accomplish such goals and objectives.
2. Long-Term Goal: The SWC recommends to the IWRB that it develop an aquifer management Plan that will insure recovery of the water table in the ESPA, obtain and maintain aquifer target levels, and improve and restore reach gains in accordance with section 7 below.
3. ESPA Trust Account: The SWC supports inclusion in the Plan recommendations for the creation of an ESPA trust account consisting of three sub-accounts to be funded through a fee program and other sources, as set forth in paragraphs A.1 through 3 below, the proceeds of which would be used to implement measures aimed at achieving the purposes of the sub-accounts. The SWC supports plan recommendations that would provide that Water Districts established pursuant to chapter 6, title 42, Idaho Code or Water Measurement Districts established under chapter 7, title 42, Idaho Code would collect and remit such fees to the IWRB ESPA Trust Account established pursuant to the Plan, and that would further provide that if a water user fails to pay the fees required by the Plan, the water user would forego the benefits of the Plan (i.e, a ground water user who failed to pay established fees would be subject to conjunctive administration pursuant to law, and any water user who failed to pay established fees would be subject to fee collection), and if allowed by law, the District would be authorized to refuse to deliver water to or cause diversions of water by the such non-paying water user to cease.
  - A. The Trust Account should consist of funds from the following sources for the identified purpose(s):
    - i. Annual Administrative Fee: Presently, section 42-620, Idaho Code, requires assessments in water districts by which funds are provided for continued studying and monitoring of the ESPA and continued modeling improvements. Where water districts have not been created, water measurement districts should be required to make similar assessments for this purpose. This funding *is intended to* continue to support adequate

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<sup>1</sup> The Surface Water Coalition consists of \_\_\_\_\_

staffing of the I DWR to administer the Plan.

- ii. Annual Ground Water Mitigation Fee: A mitigation fee should be established by negotiated rulemaking for all ground water uses within the ESPA or areas hydraulically connected to the ESPA, which are impacting senior water rights, to achieve a defined mitigation objective. Such rulemaking shall duly consider the following:
    - a. The IWRB should take into account in recommending a mitigation fee the relative priority, location and impact of a ground water use on the water supply of the senior water rights that require mitigation, not already provided.
    - b. Expenditures from the fund supported by the annual ground water mitigation fee may be used for existing ongoing mitigation costs as well as new costs associated with meeting the mitigation objective(s) of the aquifer management Plan.
  - iii. Annual Aquifer Enhancement Fee: An aquifer enhancement fee for all water users (surface and groundwater, consumptive and non-consumptive within the ESPA, or areas hydraulically connected to the ESPA) should be established by negotiated rulemaking to be used to fund enhancement objectives over and above the mitigation objective of the aquifer management Plan. This specific rulemaking should consider the appropriate fee schedule and allocation of benefits. This fee should be expended only after the mitigation objective expenditures are commenced. There should be no increase in enhancement fees until the mitigation objectives are met.
  - iv. The SWC recommends that as soon as practicable, the State should provide either cash or in-kind contributions to adequately address water demand on spring flows to meet mitigation objectives identified and/or to address observed declines in spring flows.
- B. The IWRB should develop a fee schedule for each sub-account described in paragraphs 3.A. i, ii and iii above as part of a negotiated rulemaking to assure that funds are available to meet the objectives for each sub-account as set forth in the aquifer management Plan. An initial fee schedule should then be presented to the Idaho Legislature as part of the IWRB's aquifer management Plan. At reasonable intervals, the IWRB should evaluate whether the fee schedules are providing sufficient funds to achieve the objectives of the aquifer management Plan for which the sub-account has been established. If a fee schedule is not sufficient to achieve the objective for which the sub-account has been established or is greater than necessary to achieve the objective, then the IWRB should initiate negotiated rulemaking to make an appropriate adjustment in the fee

schedule. The fees collected for each sub-account should remain distinct and separate.

4. Monitoring and Evaluation:

A. Benefits of the aquifer management Plan should be determined through use of appropriate, relevant standards, including but not limited to the ESPA model, actual measurements and other relevant data after the participants in the planning process (“parties”) are provided an opportunity to present their positions regarding the accuracy and capabilities of the model, measurements and data as described in paragraph 7.

B. IDWR should establish an on-going water measurement and monitoring program for the ESPA under item 3.A.i above consisting of the following actions:

- i. Updating of the ESPA ground water model on a periodic basis, to identify actions needed to:
  - a. Obtain and continue target return flows and ground water levels and to monitor conditions at a frequency adequate to detect change and determine availability of natural flow;
  - b. Identify or establish sentinel observation wells for annual measurements of ground water levels and conduct mass ground water level measurements as necessary.
  - c. Collect continuous spring flow measurements on sentinel springs within the following reaches:

Blackfoot to Neeley: Spring Creek or other indicator spring in Blackfoot/Neeley Reach (need to resolve access issues with Shoshone-Bannock Tribe on Spring Creek).

Devil’s Washbowl to Buhl: Devil’s Corral or Vineyard Creek; Blue Lakes; Crystal Springs.

Buhl to Thousand Springs: Briggs Springs, Box Canyon Springs, the Clear Lakes Complex .

Thousand Springs: White Springs and Big Springs, if feasible, Billingsley Creek and Riley Creek (NFH) .

Malad: Malad, if feasible.

- ii. Update water budget;
- iii. Review IDWR tributary underflow study and develop and implement a methodology to improve quantification of tributary

underflow; and

- iv. Develop and implement a methodology for updating evapotranspiration. (NASA is suspending the thermal band on spatial imagery used by IDWR for determining evapotranspiration.)
  - C. Continuation of ESPA technical advisory committee review of ESPA modeling activities.
  - D. Completion of agreed upon ESPA modeling scenarios to implement conjunctive management.
  - E. Update surface water accounting model to provide transparency, near real-time output, and an improved data bridge or link between the ESPA ground water model and surface water accounting model. Improvement in the model should be accomplished through a collaborative effort of the current technical committee, as well as participation by consultants engaged by the parties. Prior to employment of the model to determine the benefits of the aquifer management Plan as contemplated by paragraph 4(A), supra, each Party should have an opportunity for input on the model.
5. Water Right Enforcement Program. The Plan should provide that existing water rights administration programs be reviewed and, as deemed appropriate, modified: 1) to provide for adequate funding for the appointment and equipping of a sufficient number of watermasters to ensure all authorized diversions are adequately measured and reported and all water rights are regulated in accordance with the prior appropriation doctrine; 2) to ensure all water district water masters meet minimum qualifications as established by rule; and 3) to ensure watermasters are fair and impartial. In addition, existing water rights administration programs should be reviewed and, as deemed appropriate, modified: 1) to empower water right holders to implement water management projects; 2) to hold water rights for recharge and mitigation; 3) to require the participation of all water right holders deriving the benefits described in the ESPA aquifer management Plan, based on benefits received; and 4) to eliminate or consolidate duplicative programs. This effort should be undertaken and recommended during the next legislative session after adoption of the Plan.
6. ESPA Aquifer Management Plan. IWRB should develop an ESPA water management Plan in consultation with water right holders for submission to the Idaho Legislature. The SWC will support provisions of the Plan that comport with and advance, and that do not contravene, the prior appropriation doctrine or water rights as established by Idaho law. The IWRB Plan should, as appropriate, rely upon objective standards, including, but not limited to the ESPA model, measurements and other relevant data in the manner set forth above, to

develop the measures to implement the Plan. The use and method of implementation of the model should be established with the input of both the technical committee and the participation and advice of the Parties' independent consultants prior to use of the model and development of the aquifer management Plan such that the Parties and the IWRB have a fair and adequate opportunity to reach consensus on the operation and employment of the model. In formulating the Plan, the Board should ensure a fair and open process in which all persons consulted, and all comment, facts, opinions and advice provided to or relied upon by the IWRB, are identified and fully disclosed in a timely manner to all participants in the planning process. The IWRB should ensure that all participants have a meaningful opportunity to evaluate and respond to such persons or information. Hence, no individual involved in the legal analysis or technical determinations of the orders issued by the Idaho Department of Water Resources in response to the ESPA delivery calls, or any State employee involved in the decision-making process relative to the formal hearings before the IDWR shall have any input on the goals and objectives identified as a part of the planning process. The Plan should be developed and adopted under IWRB's water Planning authority as set forth in I.C. § 42-1734. This effort should include development of long-term goals and objectives, which should include mitigation goals and objectives to mitigate the effects of ground water pumping by junior appropriators upon senior surface and ground water rights, and measures to meet those goals and objectives, and measures to implement those goals and objectives, and a domestic ground water use policy. The Plan should be developed so as to direct expenditures from the respective sub-account funds provided for in 3.A above.

7. Changed Circumstances: The SWC recommends that on an annual basis, the IWRB should submit a report on the status on the implementation of the Plan. The IWRB should, as needed, review, and where appropriate, modify the aquifer management Plan. Any Party should be able to petition the IWRB to undertake an interim review if they feel that the aquifer management Plan is no longer adequate, or is not being implemented. The IWRB, through its rules or otherwise, should develop the aquifer management Plan in accordance with the provisions of the prior appropriation doctrine and consistent with water rights as established by Idaho law, and should not develop a Plan with provisions which contravene the prior appropriation doctrine as established by Idaho law; fails to implement measures which will timely achieve the goals of the Plan; fails to establish fees reasonably calculated to achieve the Plan; or, fails to implement the approved aquifer management Plan.,