

Proposed Funding Mechanisms for CAMP

Funding Working Group

Presented by

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Background

- ESPA Comprehensive Management Plan (CAMP) was adopted by the Idaho Water Resource Board (Board) and signed into law by the Governor in 2009.
- The Board is the responsible entity for Implementation of CAMP.
- The CAMP Implementation Committee was charged with further defining the funding strategies outlined in the plan and recommending a funding mechanism.

Background

- CAMP establishes that 60% of the funds should come from water users and the balance from the state of Idaho.
- CAMP provides that all fees, assessments and interest collected for plan implementation be deposited in the Board's Revolving Development Fund.

Funding Alternatives

- The Board formed a subcommittee in January of 2009 for the purpose of developing a specific recommendation for funding the CAMP.
- After much deliberation, the subcommittee identified several sideboards for its funding recommendation:

Funding Alternative Sideboards

- CAMP funding should be based upon the assessment of a mandatory fee rather than a tax.
 - The consensus of the subcommittee is that a fee provides more flexibility because it can be tailored to the benefits received by each water user group.
 - Additionally, because the fee is based upon benefits received it is likely to enjoy more public support.

Funding Alternative Sideboards

- The fee should be collected through existing water districts rather than through the creation of a new district structure, if at all possible.
- The subcommittee considered creating a conservancy district, but was hesitant to create a new district because it would entail the creation of another level of governance and associated administrative requirements.

Funding Alternative Sideboards

- Finally, the fee must be based upon the funding allocation set forth in the CAMP.
- Funding recommendations from the CAMP advisory committee are included in CAMP Appendix B.

Recommendations

- The Office of the Attorney General was asked to explore whether a funding mechanism with the above described sideboards is legally possible.
- Our preliminary opinion is that it is possible to develop a funding mechanism within the sideboards set forth above.
- The most significant legal issue identified so far is the distinction in the law between what is a tax and what is a fee.

Recommendations

Overall Structure

- The Legislature would approve the fee structure.
 - Essential to sustaining a legislative fee are findings demonstrating that the fee is reasonably related to the benefits received.
 - Simply describing the assessment as a fee is not enough.

Recommendations

Overall Structure

- A court is free to look behind the label to determine whether the assessment is a tax rather than a fee.
- Thus, the subcommittee will have to clearly articulate and the Legislature will have to adopt a clear statement of legislative findings supporting the proposed fee structure, which demonstrates the relationship between the fee assessed and the benefits received.

Recommendations

Overall Structure

- Each water district would by law be required to collect the CAMP fee.
- The fee would be collected annually as part of the water districts created by the director of the Department of Water Resources under chapter 6, title 42, Idaho Code.
- The fee would not be identified as an expense related to water distribution, but instead would be separately itemized as a CAMP implementation fee

Recommendations

Overall Structure

- The legislation would provide when the collected fees must be paid to the state and the fund to which the fees would be deposited.
- The legislation would authorize the retention of a percentage of the collected amount as the cost of administration for collection of the fee.
- The legislation would contain other provisions as determined necessary during the drafting process.

Conclusions

- This described approach satisfies the CAMP advisory committee's desire for a funding mechanism that is mandatory and that does not add another level of governance.
- For some water user categories, it will be necessary to rely upon agreements between the Board and the individual participants.
- For example, the assessment of Idaho Power's share would need to be obtained through an agreement because its use is largely outside of the affected water districts.

Conclusions

- Given that issues of aquifer management arise in other areas of the state the CAMP advisory committee should consider whether it desires the legislation to be drafted so that it applies not just to the Eastern Snake Plain Aquifer but to all areas of the state for which an aquifer management plan has been approved by the Board and approved by the Legislature.

QUESTIONS?

- Next Steps:
 - Direction on proceeding?
 - Timing?
 - Scope of legislation: ESPA only or statewide