

**Natural Resources Interim Legislative Committee Meeting**  
Capitol Annex -- Boise, Idaho, September 24, 2009

***Proposed Funding Mechanisms for the  
Eastern Snake Plain Aquifer Comprehensive Management Plan***

Presented by  
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Background

The Eastern Snake Plain Aquifer Comprehensive Management Plan (CAMP) was adopted by the Idaho Water Resource Board (Board) and signed into law by the Governor in 2009. The CAMP established an Implementation Committee that among other things is charged with further defining the funding strategies outlined in the plan and recommending a funding mechanism. The CAMP also establishes that 60% of the required funds should come from water users and the balance from the state of Idaho. The CAMP further identifies that all fees and assessments collected for plan implementation and accrued interest be deposited in the Board's Revolving Development Fund. The Board is the responsible entity for Implementation of the CAMP.

Funding Alternatives

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

1. CAMP funding should be based upon the assessment of a mandatory fee rather than a tax. The consensus of the work group 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.
2. The fee should be collected through an existing governmental entity rather than through the creation of a new district structure, if at all possible. While the work group considered the option of creating a conservancy district, the work group expressed hesitancy about embracing the creation of a new district because it would entail the creation of another level of governance and associated administrative requirements.
3. The fee must be based upon the funding allocation set forth in the CAMP.  
Funding recommendations from the CAMP are included in CAMP Appendix B.

The Office of the Attorney General was requested to explore whether a funding mechanism with the above described sideboards is legally possible. At the August 13,

2009 meeting of the Implementation Committee, the Office of the Attorney General presented a preliminary opinion that it is possible to develop a funding mechanism within the sideboards set forth above using state water districts to collect the fee as imposed by the Legislature. The most significant legal issue identified was the distinction in the law between what is a tax and what is a fee.

The Implementation Committee considered the proposed funding mechanism using water districts to collect the fee as imposed by the Legislature, but asked that a similar proposal be developed for consideration using the treasurers of affected counties to collect the fee. Thus, the below recommendations set out alternative proposals using state water districts and counties to collect the CAMP implementation fee. Whether state water districts or counties are used to collect the fee, considerable effort would be required of the state, presumably through the Idaho Water Resource Board and the Department of Water Resources, to determine the amount of the fee to be collected from individual water users or water delivery entities.

### Recommendations

The overall structure of the funding mechanism would be as follows.

1. 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. 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.
2. **Water District Alternative.** 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.
3. **County Treasurer Alternative.** The treasurer of each affected county would be required by law to collect the CAMP fee as imposed by the Legislature upon the presentation to the county auditor of a certified copy of the fee amounts to be collected from each water delivery entity or affected water user within the county. The county auditor would be required to make up a roll showing the fee amount to be collected and from whom and deliver the roll to the county treasurer for collection. The county treasurer would be required to mail a notice to each water delivery entity or affected water user stating the amount of the fee payable and the due date, and if not so paid, the amount of the penalty and monthly interest accruing until paid.

4. The legislation would provide when the collected fees, whether collected by water districts or county treasurers, 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.
5. Because the fee is intended to be mandatory, the legislation would at a minimum need to authorize the water districts, the county treasurers, or the Water Resource Board to collect any fees due and unpaid, by civil action brought in a court of competent jurisdiction, and to include the collection of any penalty, interest and costs, together with reasonable attorney fees.

This 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 directly affected geographical area. Assessments for municipalities also may be best handled with agreements.