



Eastern Snake Plain Aquifer (ESPA) Comprehensive Aquifer Management Plan

Funding Working Group and Water Attorneys

Meeting Summary

Monday, June 28 (1 pm – 5 pm) and Tuesday, June 29 (8:30 am – 12:00 pm), 2010
Idaho Department of Water Resources, Boise

The ESPA Plan Funding Working Group met with representatives of the water legal community to identify an acceptable funding mechanism for the ESPA Plan. Attendees discussed a variety of options including the potential benefits and drawbacks of voluntary and mandatory approaches. For the most part, there was support for moving forward with a mandatory fee approach that provided a relatively easy way to ‘opt-out’ of the fee. In addition to a mandatory fee with a low-threshold ‘opt-out’ option, the newly established Funding Drafting Committee will examine the Conservation District and Joint Powers Agreement options. These options are not mutually exclusive and a hybrid option also will be explored. Initially the Drafting Committee, made up of water attorneys, will explore these options, identify key legal issues and brief the Working Group. The Drafting Committee then will develop draft funding legislation; involve Legislators and present concepts and drafts to the Implementation Committee and the Interim Legislative Committee on Natural Resources. The goal is to submit draft legislation to the Legislature early in the session.

Meeting Overview

Voluntary Opt-In: The voluntary funding approach would set a fee unit per participant (i.e. \$1 an acre for surface water users and \$2/af for groundwater users), with an **opt-in** timeframe. The governance structure then would be developed to allocate fees to accomplish the identified hydrologic benefits. The advantages of such an approach include an avoidance of the constitutionality issues previously raised and allow those who are not committed to the goals of the Plan to be excluded. The challenges include that it may be hard for individual water users wanting to participate to convince boards/constituents to participate financially if others opt-out. Projects with long-term operations and maintenance fees would likely not be pursued and it ultimately could evolve into a cost-share program (similar to 2010). It also was noted that the voluntary approach might not attract enough participants to entice the State to match the funds. Additionally, canal companies cannot financially commit future boards to future funding responsibilities. The approach would be subject to the non-appropriation clause.

In order to address some of these issues, a tiered approach could be pursued where the State’s contributions go to larger aquifer-wide programs with individual contributions going toward individual projects. Outside the representative of the Great Feeder, the Working Group did not recommend a voluntary approach.

Mandatory Fee with Opt-Out Provision: The Working Group examined a mandatory fee with an opt-out provision to ensure that the Plan does not get mired in administrative challenges regarding benefit. The group discussed the various options and thresholds for an opt-out provision and recommended an easy way for those who do not want to participate to opt-out. The benefits of such an approach are that it forces organizations/agencies to say yes or no to participate in Plan funding and that the Plan includes people that are in support of the effort versus trying to fight it. In addition, there

are potential benefits to a steadier stream of resources and an ability to pursue larger projects. Ultimately, the goal is to have a consistent group of contributors who are able to implement projects that provide maximum benefit to the ESPA.

The criteria for the opt-out provision needs to be established further. Others noted that the criteria for opting out could be whether there is hydrologic benefit (increased spring flows, river flows and groundwater levels). Questions to address include:

- How little benefit do you have to receive in order to opt-out?
- If you opt-out, are there any ways to get back into the program later? When?
- When would be the cut-off to opt-out?
- Do you assess first and then opt-out later?
- Does this approach get enough water user participation to entice State resources?

Potential benefits to participating in the Plan include:

- Opportunity to get paid to recharge
- Access to state and federal funding, including AWEP
- Access to the Board's loan and grant program (to be discussed with Board)
- DEQ's revolving loan funds
- Others need to be established

Conservation District: Clive Strong introduced the concept of a Conservation District. The concept is for the State to legislatively impose a Conservation District across the entire ESPA with sub-districts to work collectively on funding and identifying projects. A Conservation District Board would be established and elected. Then they would propose projects that need the approval of the Board to be able to move forward. Benefits are that it empowers local groups to solve water problems that have localized benefit, provides a mechanism to impose a fee until there are more defined projects and it could have a high degree of local support. Challenges include that assessments are normally based on a property tax, and it could require a vote of the entire populace annually which would be potentially expensive and administratively difficult.

Joint Powers: The Joint Powers Agreement was outlined and would provide a voluntary partnership with governmental entities. Establishing a governing board and determining who is on it would be challenging. The challenges of the voluntary approach were articulated again, along with how to pull in non-governmental agencies. It also was identified that it will be difficult to get a lot of agencies to sign the agreement.

Incidental Recharge: The issue of incidental recharge was discussed at length with the representative from the Great Feeder who indicated that some form of monetary credit to 'encourage' historic practices was necessary to satisfy HB 264. Others disagreed with the interpretation of the HB 264. It was suggested that providing incidental recharge credits could still be considered and that it be based on hydrologic benefit, but not be included in the funding bill. The ESPA Plan, it was noted, does not preclude such an approach.

Project Definition: Attendees noted that there is a need to define projects more concretely moving forward, so that there is clarity regarding potential benefits of the Plan and the ability to tie funding directly to specific projects. Projects should be well-defined on the frontend so that financial contributors are able to see a clear connection between their contribution and the benefits of implemented projects. It was noted that this was the type of approach used in the 2010 project

submission process. The limitation of such an approach is the larger, long-term projects are not likely to be implemented.

Funding Drafting Committee: The Drafting Committee will be comprised mostly of the water attorneys including Candice McHugh, Travis Thompson, Dan Steenson, Teresa Molitor, a municipal representative (possibly Fritz), Clive Strong and Rich Rigby. Jo Beeman would like to be copied on correspondence.

The immediate charge of the Drafting Committee is to outline how the options would/could work and to identify issues and concerns for the 1) mandatory fee with opt-out (including criteria to opt-out), 2) Joint Powers Agreement and 3) Conservation District.

The Drafting Committee will bring ideas to the Working Group on **Monday, July 19 from 8:30 am – 12:00** to determine the best way to proceed. It was noted that Legislative Services would be very helpful to the actual drafting. Once a concept is developed, Legislators would be invited including Representative Bedke and a Senator (Steve Bair, Burt Brackett and Dean Cameron were suggested).

Attendees:

Jo Beeman
Randy MacMillan
Randy Bingham
Albert Lockwood
Travis Thompson
Rich Rigby
Jeff Raybould
Alex LaBeau
Candice McHugh
Randy Budge (Monday only)
Lance Clow
Lynn Tominaga
Brian Patton
Clive Strong
Teresa Molitor
Jim Tucker
Dean Stevenson
Jonathan Bartsch