

Conceptual Outline

For Funding CAMP Projects

Current Proposal: For the reasons discussed below, the original CAMP funding proposal does not appear to have the necessary traction for successful implementation. A drafting committee comprised of Senator Steve Bair, Representative Scott Bedke, Legislative Services, IDWR, Attorney General and private counsel has examined the issues associated with funding CAMP projects and offers the following two options:

Option A:

1. Existing ground water districts are authorized to undertake aquifer improvement actions on behalf of their members.
2. In order to create opportunities for collaboration between surface water and ground water users, the committee recommends that the state consider development of separate surface water entities that would have authority (1) to enter into joint power agreements with ground water districts to fund mutually agreed upon projects and (2) to assess surface water users for agreed upon projects. One alternative that has been considered is the creation of nine separate surface water entities that coincide with the areas served by each member of the Committee of Nine. These nine entities would be separate and independent of the Committee of Nine. Fewer than nine new entities may work. There appear to be natural alliances between the two Committee of Nine areas covering the Henrys Fork, the Great Feeder and Main River above Lorenzo, and the three lower valley areas.
3. Spring users do not belong to a ground water district or Committee of Nine area. It would be desirable to include spring users into a distinct entity, but it is recognized that specific geographic areas where all spring users have a community of interest do not appear to exist. It appears appropriate to move forward on the rest of this proposal while the issue of how to address participation by the spring users is more thoroughly considered.
4. Different entities may participate together on projects under a joint powers arrangement.
5. Project proponents may petition the Idaho Water Resources Board for grants or loans to the extent of available funds.
6. The issue of mitigation credits would be addressed on a case-by-case basis with participating entities.

Option B:

1. A pilot project or projects would be pursued with one or more willing set of participants to implement an identified set of actions. Legislation may be necessary under such a program to assure that the participants have sufficient legal authority and monetary

resources to levy assessments and issue bonds if projects require significant funding resources.

2. Project proponents may petition the Idaho Water Resources Board for grants or loans to the extent of available funds.
3. The issue of mitigation credits would be addressed on a case-by-case basis with participating entities.

Summary: The recommended options depart from the original concept developed by the CAMP Implementation Committee. They also have the potential to result in local decisions on projects instead of a more comprehensive ESPA-wide approach as originally contemplated. The redeeming qualities of the recommended options are that they allow for early action on aquifer improvements, empower willing participants to undertake projects, and avoid all-out conflicts between CAMP participants before the legislature and the courts. Given the choice between what appear to be futile efforts to resurrect the original proposal and a slightly less ambitious approach that has the promise to move forward, the Committee accepted the latter.

Establishing surface water entities patterned after Committee of Nine geographic boundaries under option A appears to be meritorious because there appears to be a good community of interest within each of the nine areas and there are natural alliances among some of the areas.

The recommended options serve to address a key economic reality—that particularly in today’s economic climate the resources of the state must be focused on measures expected to resolve identified problems. Extensive curtailments are possible in the near future which could arguably seriously impact the State’s fragile economy. Properly focused actions should have two benefits—to improve hydrologic conditions in the areas which are experiencing the most serious declines and simultaneously reduce the potential economic impacts from curtailment.

Under this proposal, which tends to promote locally promoted projects, the role of the CAMP Implementation Committee is clearly evolving. Consideration will be given to the future role of the ESPA CAMP and the Implementation Committee. The CAMP process and the Implementation Committee are largely responsible for the successes achieved to date, and a properly functioning committee can play an important role in future aquifer management decisions.

If additional information is desired, please refer to the following pages.

Analysis: The drafting committee met three times and explored the following four funding options for CAMP:

1. CAMP model with “opt in” approach (only those participants who affirmatively act would be subject to funding requirements)
2. CAMP model with “opt out” approach (All participants would be deemed “in” unless they opt out under criteria to be determined)
3. Creation of aquifer improvement districts model (more than one district with the authority to collect funds from participants)
4. A joint powers model (Existing districts may agree to jointly undertake actions)

The drafting committee discussed extensively each of the options considered, and made the following observations about the original funding model:

1. Sufficiently broad political support for a basin wide funding mechanism does not appear to exist. The reluctance to support a basin wide funding mechanism arises at least in part because water users are being asked to pay before they can assess the merits of how the money will be spent and how the benefits will be apportioned. There are regional differences over what actions should be undertaken, the priority for implementation of the actions, and whether mitigation credit should be provided.
2. Even if legislation could be enacted, it is reasonable to expect lengthy and costly legal challenges to any basin wide funding formula.
3. A basin wide CAMP funding mechanism requires that expenditures be made based on geography and not benefits to the aquifer, in order to keep everyone at the table.

Given these challenges, the drafting committee concluded agreement on a basin wide funding mechanism is not feasible absent a fully developed Phase I implementation plan. Thus, the drafting committee focused on a funding mechanism that creates opportunities for water users to develop collaborative solutions on a regional basis.

History: The CAMP Implementation Committee agreed on a CAMP phase one funding proposal with the following elements:

1. ESPA water users would contribute about \$4 million and the State would contribute \$3 million, for a total of \$7 million per year.
2. The funding from ESPA water users would be comprised of the following amounts:
 - a. Ground water users would pay \$2 per acre per year
 - b. Surface water users would pay \$1 per acre per year
 - c. Spring users would pay \$200,000 per year

- d. Municipalities would pay \$700,000 per year
 - e. Industrial/Commercial users would pay \$150,000 per year
3. In addition to the above amounts, Idaho Power would participate in weather modification (cloud seeding) and temperature improvement projects that the Company proposed to undertake under Clean Water Act applications before the Idaho and Oregon Department's of Environmental Quality.
 4. Federal grants, probably through the U.S. Department of Agriculture or U.S. Department of Interior, would be sought as opportunities arose.

Proposed legislation was drafted in accordance with the above criteria. Attorneys representing some of the parties to CAMP raised concerns about the draft legislation. Among other issues, they expressed reservations about the fee based approach which, according to State law, must be based on the level of service provided and must include a process whereby prospective participants may petition for relief.

In addition to the legal concerns, some surface water users voiced serious objections about a perceived unfairness of the proposed fee. It appeared certain that legislative consideration of a CAMP fee would face strong opposition. Consequently, a CAMP funding committee was established to study the issue. A smaller drafting committee, comprised of Senator Steve Bair, Representative Scott Bedke, Legislative Services, IDWR, Attorney General and private counsel, has formulated this funding proposal.

More recently, the interim director of the Idaho Department of Water Resources was confronted with the question whether and how to account for improvements to the aquifer funded in part by ground water users. He issued an opinion that credited ground water users with 100% of the benefits from the Conservation Reserve Enhancement Program (CREP) because they provided 100% of the private funds dedicated to the program.¹ That opinion has been appealed to the court. This opinion is implicated in the funding issue because the CAMP document provides: "This Plan is not designed to provide mitigation credit for any individual group, although it is expected that the Plan implementation should reduce the demand for administrative solutions."

¹ July 19, 2010 Final Order Approving Mitigation Credit Regarding SWC Mitigation Call