42-234. Managed ~~G~~ground water recharge -- Authority of department to grant permits and licenses -- Promulgation of rules.

(1) It is the policy of the state of Idaho to promote and encourage the optimum development and augmentation of the water resources of this state. The legislature deems it essential, therefore, that water projects designed to advance this policy be given maximum support. The legislature finds that the use of water to recharge ground water basins in accordance with Idaho law and the state water plan may enhance the full realization of our water resource potential by furthering water conservation and increasing the water available for beneficial use.

(2) The legislature hereby declares that the appropriation of water for purposes of managed ground water recharge shall constitute a beneficial use of water. The director of the department of water resources is authorized to issue permits and licenses for the purpose of managed ground water recharge, which is defined as the intentional diversion and use of water for the sole purpose of recharging ground water basins, pursuant to the provisions of this chapter and in compliance with other applicable Idaho law and the state water plan.

(3) The Idaho water resource board is authorized to promulgate state-wide and basin-specific rules governing the use of water rights for managed ground water recharge designed to protect, sustain and enhance the water resources of the state of Idaho, while ensuring the optimum development and augmentation of the water resources of this state.

(a) The board shall promulgate rules governing the use of water rights for managed ground water recharge to the Eastern Snake Plain Aquifer (ESPA). The rules shall provide standards for prioritizing projects that enhance the ESPA and improve water supplies in furtherance of the hydrologic goals identified in the ESPA comprehensive aquifer management plan (CAMP) component of the state water plan. In promulgating managed ground water recharge rules for the ESPA, the board shall consider the following: i. the optimum use and development of unappropriated stream flows and the optimum augmentation of the ground water resource; ii. the ESPA CAMP goal of sustaining and enhancing the ESPA and hydraulically connected reaches of the Snake River; iii. the State minimum flows at Murphy gage; and iv. managed ground water recharge not interfering with the optimal storage of water in the Snake River reservoir system.

(b) Rules developed by the board pursuant to this section shall be administered by the director of the department of water resources and shall be consistent with rules developed pursuant to section 42-1762B, Idaho Code, for the creation of an aquifer credit program related to ground water recharge.

(~~3~~4) The director of the department of water resources may regulate the amount of water which may be diverted for recharge purposes and may reduce such amount, even though there is sufficient water to supply the entire amount originally authorized by permit or license. ~~To facilitate necessary financing of an aquifer recharge project, the director may fix a term of years~~

~~in the permit or license during which the amount of water authorized to be diverted shall not be reduced by the director under the provisions of this subsection.~~

(~~4~~5) To ensure that other water rights are not injured by the operations of a~~n~~ ~~aquifer~~ managed ground water recharge project, the director of the department of water resources shall have the authority to approve, disapprove or require alterations in the methods employed to achieve managed ground water recharge. In the event that the director determines that the methods of operation are adversely affecting existing water rights or are creating conditions adverse to the beneficial use of water under existing water rights, the director shall order the cessation of operations until such alterations as may be ordered by the director have been accomplished or such adverse effects otherwise have been corrected.

(~~5~~6) The legislature further recognizes that incidental ground water recharge benefits are often obtained from the diversion and use of water for various beneficial purposes. However, such incidental recharge may not be used as the basis for claim of a separate or expanded water right. Incidental recharge of aquifers which occurs as a result of water diversion and use that does not exceed the vested water right of water right holders is in the public interest. The values of such incidental recharge shall be considered in the management of the state's water resources.

(7) Managed ground water recharge or aquifer credits from managed ground water recharge shall not be the basis for approval of an application for permit for a new water right unless: (a) the application satisfies the criteria of chapter 2, title 42, Idaho Code, and is consistent with rules promulgated pursuant to section 42-234(3), if such rules have been promulgated; (b) there is reasonable certainty the managed ground water recharge or aquifer credits will provide a sufficient supply of water to sustain the diversion and use of water proposed by the permit application; and (c) the proposed diversion and use of water is in furtherance of any applicable comprehensive aquifer management plan and consistent with any applicable aquifer credit program.

(8) Nothing contained in this section shall prevent a water user from using a water right for a mitigation plan as provided under the department's conjunctive management rules or from using a water right as mitigation in conjunction with a new water right application or transfer.

(9) If the use of the diversion works or irrigation system is represented by shares of stock in a corporation or if such works or system is owned or managed by an irrigation district, no application for managed ground water recharge may be approved by the director of the department of water resources without the consent of such corporation or irrigation district.

42-1762B. Aquifer credit defined -- Aquifer credit program authorized – Rules authorized.

(1) Aquifer credit is defined as credit for that portion of water that accrues from managed ground water recharge that may be used for mitigation for either existing water rights or new appropriations of water.

(2) The Idaho water resource board is authorized to develop an aquifer credit program to be managed as part of the board's water supply bank established pursuant to section 42-1761, Idaho Code. As part of the aquifer credit program, the board is authorized to establish and maintain methods to calculate and track the accrual of aquifer credits, to track expenditures of aquifer credits to mitigate for existing water rights or new appropriations of water as the mitigation may be approved by the director of the department of water resources, and to compensate the contributors of the aquifer credits from the proceeds of the sale of their credits. The board is authorized to adopt fee rules necessary to provide a source of revenue to operate the aquifer credit program.

(3) The board is authorized to adopt state-wide and basin-specific rules governing the accrual of aquifer credits under the aquifer credit program in compliance with chapter 52, title 67, Idaho Code, and consistent with the rules developed pursuant to section 42-234(3), Idaho Code. The rules shall be consistent with any approved comprehensive aquifer management plan (CAMP) or plans for the basin or basins covered by the rules.

(a) The board shall adopt rules governing the accrual of aquifer credits on the Eastern Snake Plain Aquifer (ESPA). For credit in the ESPA, whether using natural flow or stored water, the managed ground water recharge must further the hydrologic goals identified in the ESPA CAMP component of the state water plan.

(4) For purposes of the board's aquifer credit program, the allocation of the benefits of managed ground water recharge identified and confirmed through modeling and measurements shall be determined by the board.

(5) The board shall not allow aquifer credits for incidental recharge.

(6) The board may enter into contracts with others to exercise the board's managed ground water recharge rights and participate in the aquifer credit program. The board may provide a preference to those parties who help achieve the board's hydrologic goals identified in an approved comprehensive aquifer management plan for the basin.

(7) Nothing contained in this section shall prevent a water user from using a water right for a mitigation plan as provided under the department's conjunctive management rules or from using a water right as mitigation in conjunction with a new water right application or transfer.