

IDAHO DEPARTMENT OF WATER RESOURCES

Negotiated Rulemaking - Petition to Amend Rule 50

Notes from the Public Meeting held on June 2, 2014,
at the Butte County Middle School, Arco, Idaho.

- * Due to a technical error there is no audio recording for this meeting. These meeting notes will be posted to the Department's website in lieu of the audio recording.

The meeting was led by Richard Rigby of IDWR. These meeting notes as well as the agenda and roster of attendance for this meeting are posted on the Department's website at the following link:

<http://www.idwr.idaho.gov/WaterInformation/GroundWaterManagement/Petition/Meetings.htm>.

Introduction:

- History of Conjunctive Administration on the ESPA
 - The rate of discharge at the Thousand Springs area during the high peak in 1955 was approximately 42,000 cfs. This amount has declined over the years and is now approximately 4,900 cfs. Some of the causes of the decline include:
 - Pumping
 - Changes in irrigation practices.
 - In 1993 the Idaho Supreme Court issued its decision on the Musser delivery call which ordered the Director of the Department to regulate and administer water rights regardless of the complexity.
 - The Conjunctive Management Rules were adopted by the Department in 1994.
 - Surface Water Coalition (SWC) delivery calls are unpredictable because the shortfall depends on the snowpack that year. The Director has to consider many variables including the shortfall each year to calculate the curtailment.
 - Spring Water User delivery calls are more predictable because the supply is static and therefore it is easier to determine the curtailment.
 - Significant water delivery calls were made by the Spring Water Users in 2004 and the Surface Water Coalition in 2005.
 - Work on the Eastern Snake Plain Aquifer Model 1.0 began in 1999. ESPAM Version 1.1 (ESPAM 1.1) was adopted in 2004. IDWR is continually working to improve the model. The model is not perfect, but it is the best tool and science available.
 - The Big Lost and Little Lost have been included because there were actual measurement points for these tributaries.
- Development of the ESPAM Model 2.1
 - ESPAM Version 2.0 was completed in 2009. Errors were discovered in this version, which lead to the development of version 2.1 (ESPAM 2.1). ESPAM 2.1 was completed in 2012.

- Presently, the only active spring call is the Rangen delivery call (CM-DC-2011-004). The water users in this area are outside of the Rangen 1% trim line.
- Clear Springs Foods, Inc.’s Petition for Modification of Area of Common Ground Water
 - In 2010, Clear Springs filed its petition to amend rule 50 of the conjunctive management rules (37.03.11) requesting that the area of common ground water boundary be based upon the most recent data/information, specifically the Enhanced Snake Plain Aquifer Model Final Report dated July 2006, Idaho Water Resources Research Institute Technical Report 06-002.
 - The Department initiated the negotiated rulemaking process, held public meetings and received comments.
 - The Director temporarily suspended the rulemaking process in 2011 pending the completion of ESPAM version 2.0 (now 2.1) and the decision in the Rangen Delivery Call (CM-2011-004).
 - With the completion of ESPAM 2.1 and the issuance of the order in the Rangen Delivery Call on January 29, 2014, the Director reinitiated action on Clear Springs’ petition on April 11, 2014.
- Department’s Rulemaking Process and Schedule
 - The deadline to submit comments on the negotiated rulemaking is June 24, 2014. Twenty-one (21) days from the date of the last public meeting (June 3, 2014).
 - Mr. Rigby discussed the information available on the Department’s website relating to this matter and how to navigate the webpage.

Discussion/Q&A:

- The three main options for the Department to consider concerning the change in the boundary.
 - 1) Include all the areas from mountain range to mountain range.
 - 2) Use the ESPAM 2.1 boundary.
 - 3) Don’t change it.
- The Director is limited to two options when responding to a delivery call:
 - 1) Curtailment; or
 - 2) Mitigation.
- There are two ways water users can prepare for delivery calls:
 - 1) Find a way to produce recharge that would replace what they are using; or
 - 2) Put money aside to save for a possible curtailment.
- Question: Please explain why the use of the trimline was established and why the change was made in the Rangen curtailment order from the prior use of 10% to 1%.
 - Response: The use of the trimline was enacted by the Department as a way to utilize the data provided in the model to more accurately administer a curtailment. ESPAM 1.1 was relied upon in the 2005 Rangen Delivery Call. ESPAM 2.1 was relied upon in the 2011 Rangen Delivery Call. Errors were found in the data used in ESPAM 1.1, which lead to the development of ESPAM 2.1 which incorporated updated data. It

was determined that 10% to the reach (data from ESPAM 1.1) was equivalent to 1% to the spring cell (data from ESPAM 2.1). It was further determined that since the percentages were equivalent, the more current data from ESPAM 2.1 should be used to calculate the Rangen curtailments issued in the January 29, 2014 order.

- Question: Can the Department provide the ESPAM 2.1 data relating to tributary underflow?
 - Response: This information was not available at the meeting, but the Department stated it would be posted to its website.
- Question: Why is the Big Lost area included in the ESPAM 2.1 model boundary?
 - Response: This area was included because there is a monitoring gage at Mackay and the data collected was included in the model.
- Question: Why is the Big Wood River area was not included?
 - Response: The modeling committee incorporated areas where good measurement data was available. There was not good measurement data from that area.
- Question: Why don't the fish guys re-circulate the water?
 - Response: There are many complex factors to consider relating to the re-use of the water for fish propagation.
- Comment: We in this area have less water then anywhere else in the state. We have our own delivery calls and mitigations that we are a part of and now the Department is asking us to be a part of other curtailments in other areas because we have a monitoring gauge.
- Comment: Our area is being unfairly included in this boundary because we have measurement gauges. Other areas should be monitored and measured before any tributary basins are included in the boundary.
- Comment: All tributary basins should be included in the boundary or none at all. There should be a stay on this petition until measurements and conjunctive managements have been enacted in the tributary basins.
- Comment: The water users in this area in the process of organizing a ground water district. We would like to have a stay to see where we stand once we are organized.