

Memorandum

To: Water Supply Bank Committee
From: Mary Condon
Date: July 12, 2022
Re: Ground Water District Concerns in the ESPA



REQUIRED ACTIONS: The Board may establish criteria and fees for processing and maintaining applications.

The Idaho Water Resource Board (IWRB; Board) is responsible for operation of the Water Supply Bank, inclusive of the Board's Bank. The attached email from TJ Budge poses five concerns with requests for changes in policy and to the Water Supply Bank Rules, under IDAPA 37.02.03. Below, each of the five items are compared to current procedures and policies, followed by a recommendation to address each concern.

1. **Area of Common Ground Water Supply**, or specifically, Subrule 50.1 – Eastern Snake Plain Aquifer, as described within IDAPA 37.03.11 – Rules for Conjunctive Management of Surface and Ground Water Resources. Water Supply Bank review criteria to avoid injury and to consider the local public interest, as well as other considerations the IWRB should require are defined by law under Section 42-1763 Idaho Code, Rentals from the Bank, and through Rule 30, IDAPA 37.02.03 - Rentals from the Bank. Reviews of ground water rentals from the Board's bank with respect to the ESPA boundary are evaluated using the Transfer Processing Memo No. 24 (December 21, 2009); the ESPA Model Transfer tool (ETRAN 3.4); procedural guidance document Use of the ESPA Model Transfer Spreadsheet (ETRAN) for Water Supply Bank Rentals in the Eastern Snake Plain Aquifer (Revised January 14, 2022); and the ESPA Transfer Spreadsheet Version 3.1 - Implementation and Use memo (August 13, 2007), also referenced in the 'Transfer Processing Memo 24,' on page 14.

Under item 2.4, of the Use of the ESPA Model Transfer Spreadsheet (ETRAN) for Water Supply Bank Rentals in the Eastern Snake Plain Aquifer, "... At some locations, the grid cells extend beyond the model boundary. If the To [or FROM] Well location is farther than a distance of two grid cells from the ESPA boundary, the modeler will need to employ additional modeling tools or methods in conjunction with the ESPA modeling tool to calculate the timing and quantity of the impacts to the Snake River...."

This is further expanded upon under item 5 of the ESPA Transfer Spreadsheet Version 3.1 - Implementation and Use, where "For points of diversion between the ESPA and just outside the ESPA modeled area, it may be reasonable to allow use of the closest cell within the ESPA modeled area for analysis using the transfer spreadsheet and ignore other tributary effects." This item of the memo ends with, "Transfers between the ESPA modeled area and non-modeled tributary aquifers will require separate analysis by other acceptable methods, unless the distance is less than 2 cells outside the modeled area."

The Bank uses the current guidance referenced above along with available modeling tools to evaluate depletions to the ESPA for ground water rentals. The 2 cell buffer described above has been used in the recent past, and repeatedly since at least 2004 with a particular set of rights located just 1.7 miles outside the ESPA boundary, which is within the 2 cell range. The leased diversion points for these set of rights is not overlying a known different, distinct aquifer than the ESPA, and both the lease and proposed rental

diversion could reasonably be expected to be within the same aquifer due to their close proximity. See Attachment 1, ESPA boundary close-up picture.

Rentals of ground water qualify under the GWD assessments, pursuant to Section 42-5414 Idaho Code, and under Rule 43 of IDAPA 37.03.11 - Rules for Conjunctive Management, where mitigation plans must allow for accounting of new appropriators who did not previously participate. It becomes the ground water district's responsibility to assess new uses within their boundaries, even for rentals. It is recommended that WSB staff continue evaluating moves in the ESPA with the guidance already in place to evaluate injury and depletions to the ESPA, and any changes to obligations of a ground water user who is a member of a ground water district be left to the ground water district to assess. If the Board wants WSB staff to no longer consider any moves across the ESPA boundary, regardless of the 2 cell buffer and other evaluation techniques as described in the current guidance for moves in the ESPA to assist in evaluating such moves, this can be done through a WSB guidance memo specific to Bank rentals adopted by the Board and does not require adding words into rule.

2. **Ground Water District Review.** Newly submitted Water Supply Bank applications are listed on the public website under Reports and Resources for the Water Supply Bank, with the requested water right, beneficial use, and the water user details shown. There is adequate time for any person to view the processing spreadsheet and provide their comments or concerns prior to finalization, since nearly all of the applications received for leases and rentals take longer than 30 days to review and recommend for action. The use of this tool, along with the lease and rental map tool on the IDWR site, was made aware to Idaho Ground Water Appropriators (IGWA) back in February of this year, and Mr. Turner agreed that this would be sufficient for ground water districts to have notice. This additional request by TJ Budge allowing ground water districts a notification and comment period by modifying Rule 30, of the Water Supply Bank Rules, is counter-productive to the rule-elimination executive order of the Governor of Idaho and would add into rules text that will not result in any changes in current practices.

Additionally, as part of an earlier email from TJ Budge following the last WSB Committee meeting but was left out of this email to the WSB Rulemaking, was a concern of leased acres to the Bank also being made as part of a ground water districts mitigation plan. Leased acres to the Bank should not be used as part of a mitigation plan since they are made available for rental. If a leased right is rented, it cannot be terminated without other suitable rights for the rental as substitution. Any ground water district accepting acres as part of a mitigation plan should check to make sure the portion for mitigation is not already leased to the Bank. A question on the lease application form for the Water Supply Bank already asks the applicant if the acres offered are part of a mitigation plan or federal set aside program for this purpose. It becomes the responsibility of the ground water district to check leased acres after a right has been accepted in the Bank.

3. **Rentals between ground water districts.** This request is counter-productive to the rule-elimination executive order of the Governor of Idaho. The Director can already add any conditions to the terms of a rental through Section 42-1763, Idaho Code. Additionally, adding a blanket condition to ground water rentals within ground water districts is unnecessary since each ground water district has the authority to enforce reductions and increase obligations through their own rules, a ground water user within the boundaries of a ground water district is not obligated to be a member of the ground water district, and the boundaries of each ground water district can be modified, reduced, or expanded. The ground water districts should continue to communicate with their members and with the watermaster to ensure user obligations are met.

4. **Substitute different terms for "lease" and "rental."** The terms "lease," "lessor," and "lessee" are established under law, through Section 42-1762, Idaho Code for the acquisition of rights, and the term and "rental" through Section 42-1763, Idaho Code for the rental of rights. A change to rule would be inconsistent with the terms set by law.

5. **Signing of Water Supply Bank applications.** The requirement for wet signatures by the Department and the IWRB was established under Rule 53 of IDAPA 37.01.01 - Rules of Procedure of the Idaho Department of Water Resources. This rule was changed earlier this year to allow electronic filings, including e-signatures. Including this request in the WSB rulemaking is redundant, and counter-productive to the rule-elimination executive order of the Governor of Idaho to add into rules text that will not result in any changes in current practices.

Attachment 1

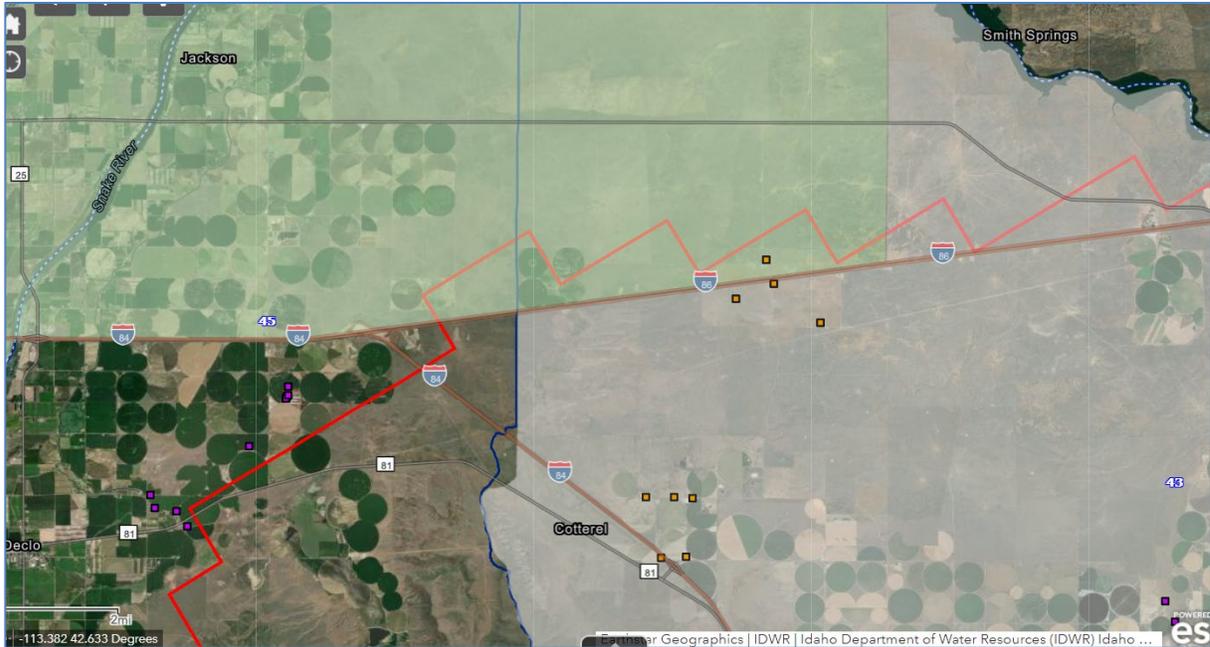


Figure 1

The picture above is a close-up of the ESPA boundary, between Magic Valley Ground Water District and Raft River Ground Water District. The ESPA boundary shape is the red zigzag line, and the shaded boundaries are two different ground water districts, overlaying the ESPA boundary. The shape of the ESPA boundary is not exact to the natural shape of an aquifer. It was created using 1x1 grid cells for the modeled area.