Legislation and Securing Water Supply for the Future

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Topics for Conversation

• **Shelley Keen**
  – Water Right Adjudications
  – 2020 Legislation
  – ESPA Transfers
  – IDWR Rules Reauthorization

• **Chris Bromley**
  – Eastern Snake Plain Aquifer Settlements
  – Ground Water Management Areas

• **Brian Patton**
  – ESPA Comprehensive Aquifer Management Plan
  – Anderson Ranch Dam Raise
Shelley Keen
Idaho Dept. of Water Res.
Presentation Outline

• Water Right Adjudications
• 2020 Legislation
• ESPA Transfers
• IDWR Rules
• Reauthorization
What is a water rights adjudication?

- Defines water rights, which are property rights.
- Most water users in a basin are required to participate by filing claims.
- IDWR investigates the claims and prepares a Director’s Report.
- A court oversees the process, adjudicates disputes, and decrees the water rights.
Northern Idaho Water Rights Adjudications

- Phase 1 - Coeur d’Alene-Spokane River Basin (CSRBA)
- Phase 2 – Palouse River Basin (PRBA)
- Phase 3 – Clark Fork-Pend Oreille River Basin (CFPRBA)

Kootenai River basin excluded in 2008

Authorized in 2006 – Idaho Code § 42-1406B
Phase 2 – Palouse River Basin Adjudication (PRBA)

- 1,879 claims filed since May 2019
- About 80% domestic and stockwater
- Director’s Report anticipated for the summer of 2021
Phase 3 – Clark Fork-Pend Oreille River Basin (CFPRBA)

- IDWR is seeking fiscal authorization from the 2020 Legislature
- Anticipate a commencement order from the Court in the fall of 2020
- Anticipate taking claims in the summer of 2021
- Over 10,000 claims expected
“The Bear River crosses state boundaries five times and is the largest stream in the western hemisphere that does not empty into the ocean.”

(Utah Department of Natural Resources)
Other 2020 Legislation

• House Bill 329 – IDWR Digital Records Authorization
• RS27214 – Eliminate the statutory claim deadline for adjudication claimants
• RS27297 – Updates to Water District Operations
• Reasonably Anticipated Future Needs (RAFN) updates for Municipal Water Rights
Concerns about Municipal Water Rights Act of 1996

Significant and irreconcilable time differences between when proof of beneficial use is due and the planning horizon.

**Proof Due**
- Proof due in 5 years + up to 5-10 year extension
- Difficult to require a full 10-15 years before proof is due
- License is final representation of a water right

**Vs.**

**Planning Horizon**
- Planning horizon may be 20 – 50 years
- No mechanism to adjust following the issuance of a license
- Development period continues after license issuance
Draft RAFN Legislation - 2020

- Water Users Recognize Existing Statute Challenges
- Draft Legislation – City of Twin Falls Initiative
- Idaho Water Users Association – Working Group
- Work Group Has Developed Consensus Legislation
- Legislation Addresses:
  - Reconciliation of development period and planning horizon
  - Incremental proof and licensing
  - General housekeeping
Eastern Snake Plain Aquifer (ESPA)

- Since 1992 a **moratorium** order has been in place on new appropriations within the ESPA.

- Main way to acquire a water right to divert from the ESPA is through a **transfer**.
Transfer Policy: What is the purpose?

• Changes to ground water use can impact the Snake River and spring flows and the water rights that depend on them.

• Surface water in the Snake River and many tributary springs is fully appropriated at certain times.
ESPAs Transfer Evaluation Policy

- In 2009 IDWR implemented its current policy for transfers of ground water rights within the ESPA.

- The policy is intended to allow some water right transfers while preventing injury to water rights that divert and use water from the Snake River and from springs tributary to the Snake River.
Trend in Cumulative Effect of ESPA Transfers approved between January 1, 2012 and September 30, 2019
Red Tape Reduction Act

All previous agency rules expired on June 30th.

Agencies were encouraged to remove obsolete/outdated provisions, and make changes that align with Licensing Freedom Act.
IDWR Rules Hearing Schedule

Two omnibus dockets, one for fee rules and one for non-fee rules.

- House Resources and Conservation Committee – 1/15/2020
- Senate Resources and Environment – 1/29/2020
Chris Bromley
McHugh Bromley PLLC
Eastern Snake Plain Aquifer Settlements

- Ongoing litigation since at least 2005 against junior ground water users by
  - Surface Water Coalition
  - Thousand Springs
  - A&B Irrigation Dist.
- Many IDWR administrative orders, district court decisions, and Idaho Supreme Court opinions
- Decisions created predictability
- IDWR’s 2016 administrative order revised injury methodology, creating uncertainty for users
ESPA Settlements

- 2015 IGWA-SWC Agreement
  - 240,000 af reduction in pumping
  - 50,000 af storage water
  - 250,000 af state-sponsored recharge
  - Increase ESPA levels at “sentinel wells” by 2026 to 1991-2001 levels, otherwise “adaptive management”
  - Safe harbor from delivery calls
ESPA Settlements

• 2019 Cities-SWC Agreement
  – 7,650 af in annual aquifer enhancement
    • 35 years or 120,000 af total municipal pumping, whichever is first
  – All cities may participate
  – Safe harbor from delivery calls
  – Seat at the table for ESPA GWMA management plan
Ground Water Management Areas

• GWMAs
  – IC 42-223b
    • Approaching the conditions of a critical ground water management area

• Critical GWMAs
  – IC 42-233a
    • Insufficient ground water to provide a reasonably safe supply at the current or projected rates of pumping

• Very little law on either designation
ESPA GWMA

- 2016 ESPA Designated GWMA
- February 2020 Hearing on Four Issues
  - Procedurally deficient?
  - Rulemaking?
  - Contested Case?
  - Water districts foreclose GWMA?
- Applicability of ESPA decision to other GWMAs or CGWMAs across the state?
Brian Patton
Idaho Water Resource Board
Volume Change of Water Stored Within the Eastern Snake Plain Aquifer and Thousand Springs Total Discharge

Aquifer Storage

Thousand Springs Discharge

Aquifer storage and flows from the Thousand Springs are directly correlated

40 years of “up”

60 years of “down”

1912 – 1952 Change +17,000,000 AF

1952 – 2015 Change -13,000,000 AF

Average annual 1952-2015 loss of aquifer storage is about 215,000 AF
Combined System

Idaho Power
Hells Canyon Complex

Swan Falls Dam – Minimum Flow of 3,900 cfs/5,600 cfs

Thousand Springs-fed minimum flows pass through IPCO hydropower system

Thousand Springs Area Delivery Calls

Milner Dam – Milner Zero Flow

ESPA discharge to Snake River at Thousand Springs

ESPA discharge to Snake River at American Falls

American Falls-area springs partly supply river flows that feed Surface Water Coalition canals

Surface Water Coalition Delivery Call
The Comprehensive Aquifer Management Plan (CAMP) was an attempt to create a management program for the ESPA to resolve water use conflicts, maintain the Swan Falls minimum flows, and provide other positive outcomes.

The ESPA CAMP adopted by Water Board and approved by Legislature as part of State Water Plan in 2009.

CAMP set goals for management of ESPA by proposing a water budget change of 600,000 AF through management actions:
- Aquifer Recharge
- Demand Reduction
- Ground Water-to-Surface Water Conversions
- Could Seeding

CAMP also proposed funding allocation to pay for management -- not adopted.
• By letter dated May 8, 2019, Speaker Bedke requested Water Board conduct a 10-year review of CAMP actions and implementation

• Letter included several questions and requested recommendations

• Water Board is approached review as follows:
  ✓ Inventoried aquifer management actions including those done by State and by others
  ✓ Reported aquifer level, spring flow, and reach gain responses
  ✓ Reported on finances provided by State for aquifer management
  ✓ Conducted review in open, transparent manner through sub-committee meetings
  ✓ Invited stakeholder input
Major management actions proposed in CAMP have been implemented:

- **Aquifer Recharge** – Water Board implementing a 250,000 AF average annual program with state funding and Legislative direction (HB547 in 2014; SCR136 in 2016)
- **Demand Reduction** – ground water users agreed to reduce use by 240,000 AF in 2015 SWC-IGWA Settlement Agreement
- **Ground Water-to-Surface Water Conversions** – some projects counted toward 240,000 AF reduction; others are separate including 85,000 AF in SWID and 8,000 AF in ABID
- **Cloud Seeding** – cooperative program put into place as joint venture between Idaho Power, State, and Water Users in Upper Snake and Wood (and Boise) Basins
• Other actions contributing to ESPA Aquifer Management:
  ✓ IGWA-SWC Settlement Agreement – IGWA provides 50,000 AF of storage water to SWC every year -- If not needed by SWC, it is to be used for aquifer management
  ✓ Cities-SWC-IGWA Settlement Agreement – ESPA Cities agreed to provide 7,650 AF of storage every year to aquifer management
  ✓ Others – food processors, SWID, ABID agreements

• Adding up all these actions puts at 554,000 AF toward the 600,000 AF CAMP water budget goal from actions reasonably certain to occur

• Other actions occurring that are opportunistic

• CAMP estimated 30 years to reach 600,000 AF
Note – IWRB Managed Recharge numbers are reported as of mid-2019. Additional recharge capacity has been completed since that date (Northside Canal Company) and places the average annual capacity at about 240,000 AF.
State Recharge Starts
IGWA-SWC Settlement Agreement
CAMP Approved
Anderson Ranch Dam Raise

- 6-foot dam raise of Anderson Ranch Dam
- 29,000 acre-feet increase in water storage
- Increased water needs due to population growth
- IWRB partnering with Reclamation on project
- Relevant legislation
  - Water Infrastructure Improvements for the Nation (WIIN) Act of 2016 - federal funding for new water storage
  - HJM 4 (2019) – Legislative support
  - House Bill 285 (2019) - funding
Current Status

- Feasibility Study and Environmental Impact Statement (EIS) underway
- Once these are done, will go to Secretary of Interior for federal determination of feasibility

Costs

- Preliminary estimates were at about $40M
- Final estimate not complete yet but will be higher

Water Allocation

- Idaho Water Resource Board (will subcontract to water providers)
  - Several municipal interests have requested to contract for space in project
  - Some may be retained by federal government

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<tr>
<td>Draft Feasibility Report and Draft EIS Release</td>
<td>Spring 2020</td>
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<td>Final Feasibility Report and EIS Release</td>
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<td>Federal Feasibility Determination Process</td>
<td>Fall 2020</td>
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<td>Current WIIN Act Deadline</td>
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Questions?

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