

MORE IS BETTER: HOW CAN WE MAKE MORE WATER AVAILABLE FOR PRIVATE RECHARGE?

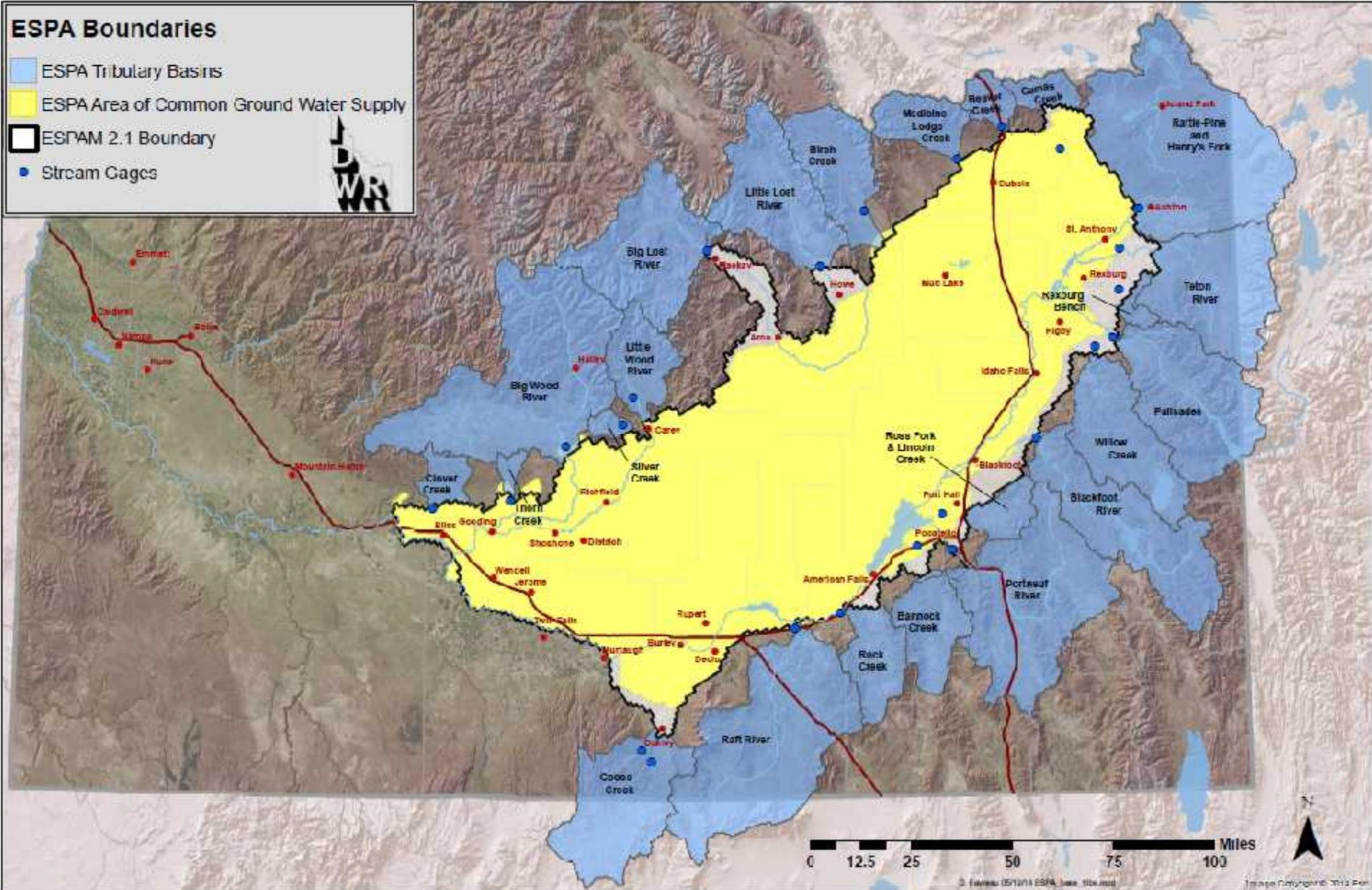
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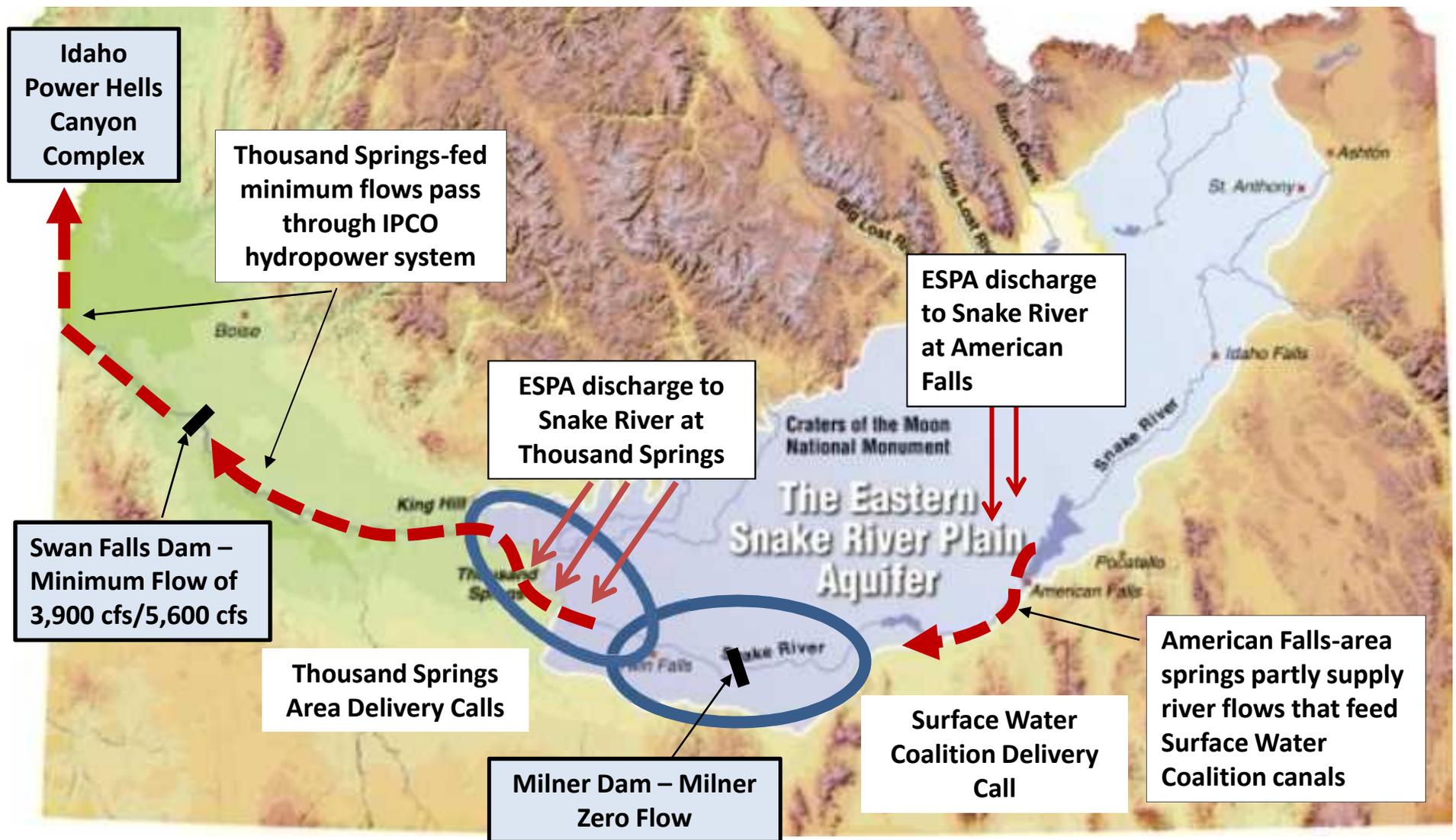
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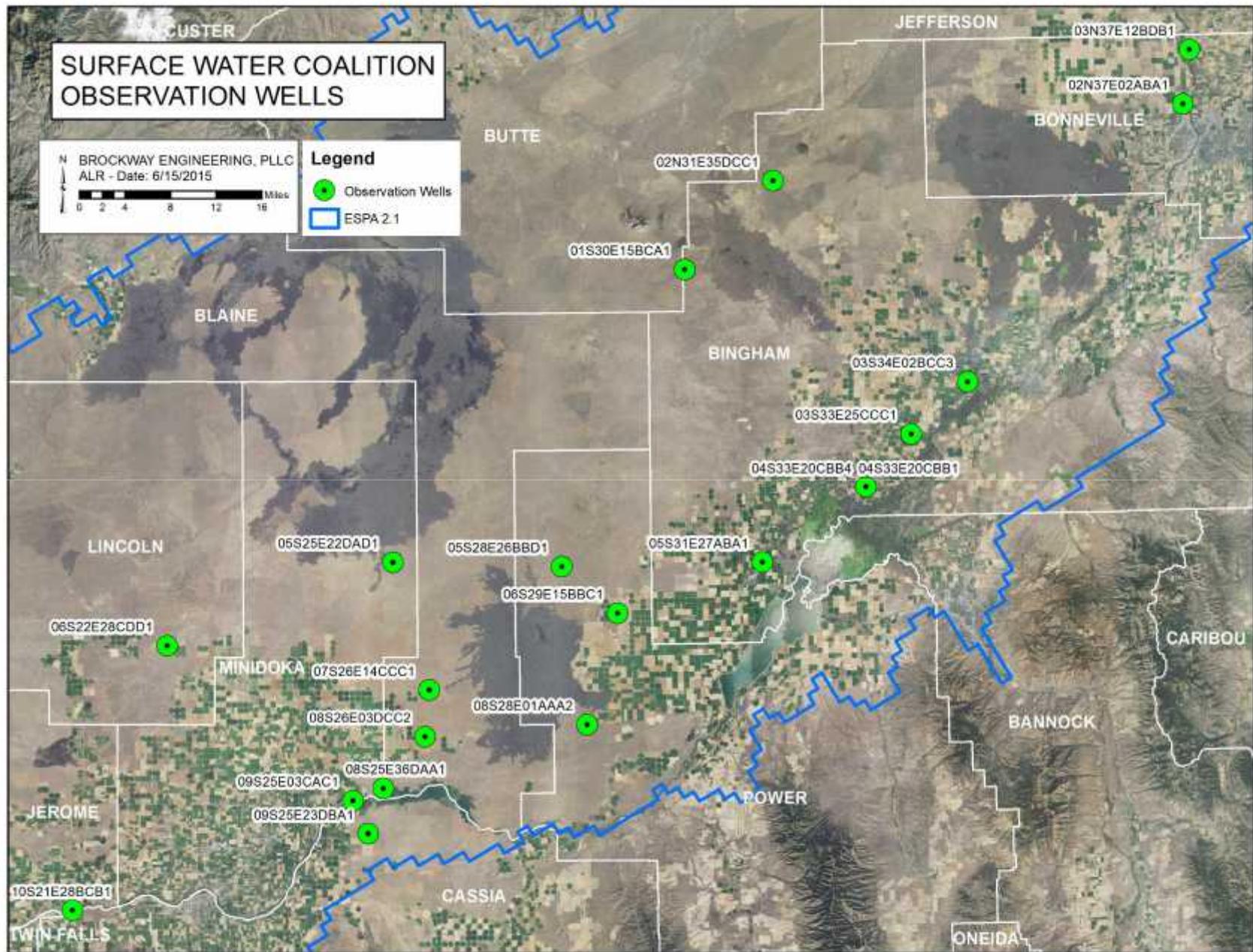
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ESPA and the Snake River – A Combined System





Path: F:\Projects\Surface Water Coalition\Arcview\Bobservation well map.mxd





RECHARGE

- Ground water recharge is a water management tool used to enhance aquifer storage and improve surface water reach gains to reaches of the Snake River.
- The main hurdle now appears to be finding consistent water supplies for that ground water recharge.

RECHARGE

- Some water users—including cities—have retained canal company shares or paid assessments within an irrigation district for irrigation water on lands that were historically farmed, but are no longer farmed.
- Water allocated to these entitlements is left in the canal unused.
- Is it possible to find ways to allow this water to be used for ground water recharge purposes without impact to the operation of the canal companies/irrigation districts, and perhaps even without the need for IDWR or other governmental authorization?

RECHARGE: OBSTACLES TO USING *NATURAL FLOW* WATER RIGHTS

- Natural flow water rights held by canal companies and irrigation districts are only authorized to be used for the beneficial use of “irrigation.” Ground water recharge is a separate and distinct beneficial use.
 - In order to authorize the use of canal company/irrigation district water, it is necessary to either permanently amend the canal company/irrigation district water rights (through a transfer application under Idaho Code § 42-222); OR
 - Temporarily amend the water rights (through a water bank application under IDAPA 37.02.03—the Idaho Water Supply Bank is administered by the Idaho Water Resource Board under Idaho Code § 42-1765).

RECHARGE: OBSTACLES TO USING *NATURAL FLOW* WATER RIGHTS

- Most canal companies/irrigation districts are not willing to allow their water rights to be permanently amended because seeking approval to add this additional use subjects their historical water rights usage to scrutiny from IDWR in the transfer process.
- Most canal company/irrigation districts are not willing to allow their water rights to be temporarily amended because seeking approval for a water bank application requires a quantification of how much of the water right—and which water right—to allow for ground water recharge purposes.
 - This requires time and effort, but more importantly, the earliest-priority water right owned by the canal company/irrigation district is not likely to be amended if requested because of the impact on irrigators who rely upon that early-priority right.

RECHARGE: OBSTACLES TO USING *STORAGE* WATER RIGHTS

- Storage water used by canal companies and irrigation districts is the result of contracts with the United States Bureau of Reclamation. The water rights that yield storage water are limited to the beneficial use of “irrigation from storage.”
 - In order to authorize the use of storage water for ground water recharge, it is generally accepted that rental of storage water under the *2017 Water District 1 Rental Pool Procedures* (found at <http://www.waterdistrict1.com/rental%20pool%20rules.pdf>) provides a temporary way to amend the nature of use of storage water so that it can be used for ground water recharge.
 - Rule 6.6 of the *Procedures* states: “**Recharge**. All storage used for the purpose of recharge must be transacted through the rental pool. Unless storage is rented pursuant to Rule 5.0, storage used for recharge, whether diverted by the storage spaceholder or another person, will be treated as a lease of storage.”

RECHARGE: OBSTACLES TO USING *STORAGE* WATER RIGHTS

- A private lease of storage water has negative repercussions to the canal company/irrigation district who provides the storage water for lease:
 - It subjects the leased water to a “last-to-fill penalty” under Rule 7.6 of the Procedures, which states:
 - **“Impacts to Spaceholders due to Private Leases.** If the lease of storage pursuant to a private lease caused computed impacts, as determined by the Watermaster, the lessor’s storage allocation shall be reduced by an amount equal to such computed impacts, not to exceed the quantity of storage leased by the Lessor, and reallocated to mitigate computed impacts to affected spaceholders. This reallocation will only occur in the year following the lease of storage.”
 - The canal company/irrigation district is prohibited from renting from the “Common Pool” under Rule 5.6 of the *Procedures*, which states:
 - **“Limitations.** A participant cannot rent water from the Common Pool if the participant is replacing storage space or water which has been evacuated due to an assignment to or private lease through the Water District 1 Rental Pool, unless an exception is granted by the Committee.”

LEGISLATIVE SOLUTION?

- Legislation could exempt the requirement to amend a canal company/irrigation district natural flow water right where water diverted under such right is used for ground water recharge purposes, subject to specific requirements.
- Has something like this been done before?
 - Yes. In 2016, Idaho Code § 42-201(9) was added to exempt the requirement for a canal owner to obtain a new hydropower water right for water that is transported down the canal if the canal owner wanted to install a hydropower facility.

LEGISLATIVE SOLUTION?

- A proposed new subsection—Idaho Code § 42-222(6).
 - The conceptual legislation can be thought of in three sections:
 - Legal exemption
 - Limitations on diversion of water for recharge itself
 - Limitations on how the benefits of the recharge are recognized

LEGISLATIVE SOLUTION?

- Legal Exemption:

- “(6) Notwithstanding the provisions of subsection (1) of this section, a person or entity owning shares in a canal company or being assessed for acreage in an irrigation district which authorizes the person or entity to use a proportionate share of natural flow water allocated to such shares or acres shall not be required to change or add ground water recharge as a nature of use to a canal company or irrigation district water right or water rights if . . .”

LEGISLATIVE SOLUTION?

- Limitations on diversion of water for recharge itself:
 - “(a) the canal company or irrigation district consents to the use of company or district water for ground water recharge,
 - (b) the canal company or irrigation district retains full control of delivery of its water supplies and supervises the diversion and use of water for ground water recharge,
 - (c) the person or entity does not irrigate the property to which the canal company shares or irrigation district acreage is appurtenant under any other natural flow water right for the entire irrigation season during which ground water recharge under this subsection occurs,
 - (d) the ground water recharge occurs within the boundaries of the canal company or irrigation district unless written consent otherwise is obtained from the canal company or irrigation district,
 - (e) the ground water recharge is diverted into to an off-canal recharge site at times when canal company or irrigation district water is also being diverted and used for irrigation purposes elsewhere, and
 - (f) the ground water recharge that occurs is properly measured and accounted and such measurements are made available upon request to the department of water resources and/or watermaster.
 - The provisions of this subsection apply only to natural flow water rights and not to storage water held by the canal company or irrigation district. “

LEGISLATIVE SOLUTION?

- Limitations on how the benefits of the recharge are recognized:
 - “Any water use mitigation plan dependent upon ground water recharge conducted under the provisions of this subsection shall be subject to separate review and approval under the applicable laws and procedures for such review.
 - Consistent with Section 42-234(5), Idaho Code, seepage from canals incidental to delivery of irrigation water shall not be considered ground water recharge under this subsection.
 - To qualify for this exemption, prior to the diversion of water for ground water recharge under this subsection, the person or entity must give written notice to the department of water resources and the watermaster describing the location of the ground water recharge.
 - The notice must also certify that the proposed ground water recharge meets or will meet all the requirements of this subsection.”

ADMINISTRATIVE SOLUTION?

- Two possible and viable alternatives to legislation:
 - Streamlined Idaho Water Supply Bank process to allow for recharge to occur under natural flow water rights in addition to irrigation
 - Perhaps even specific rules to address Idaho Water Supply Bank applications for ground water recharge
 - Yearly Approvals from IDWR
 - This could be similar to the Application for Temporary Approval of Water Use authorized under Idaho Code § 42-202A:

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

APPLICATION FOR TEMPORARY APPROVAL OF WATER USE

For a use not intended to become an established water right and not to exceed one (1) year in duration in accordance with Idaho Code § 42-202A.

Name of applicant _____ Phone (____) _____
 Mailing address _____ City _____
 State _____ Zip _____ Email _____

1. Source of water _____ tributary to _____
 2. Location of point(s) of diversion. If more than two, attach a [Point of Diversion/Place of Use Supplement](#).

TWP	RGE	SEC	GOVT LOT	¼	¼	¼	County	Source	Local name or tag #

3. Location of place of use. If more rows are needed, attach a [Point of Diversion/Place of Use Supplement](#). _____

TWP	RGE	SEC	NE				NW				SW				SE				Totals				
			NE	NW	SW	SE																	

4. Proposed use of water:
 a. Prevention of flood damage Ground water recharge Ground water or surface water remediation
 Other (Limited to a diverted volume of 5 acre-feet.) Describe: _____

b. Attach a detailed description of how the proposal will accomplish the intended objective, such as prevention of flood damage. _____

5. Amount of water. Complete all three:
 a. Maximum rate of diversion: _____ cfs; or _____ gpm.
 b. Maximum daily volume: _____ AF; or _____ gallons.
 c. Maximum volume over the duration of the request: _____ AF; or _____ gallons.

6. Duration of diversion: from _____ (month-day) to _____ (month-day)

7. Describe proposed diverting works: _____

8. a. Who owns the property at the requested point of diversion? _____
 b. Who owns the facilities that will convey water to the place of use? _____
 c. Who owns the land to be irrigated or place of use? _____
 d. If any of the items above is owned by a person or entity other than the applicant, describe the arrangement allowing access and attach written evidence of the arrangement. _____

9. Attach an 8 1/2" x 11" map identifying the water source, point(s) of diversion, place(s) of use and conveyance system.

I hereby acknowledge that I assume all risk of the diversion and use of the water under this approval. I certify this is a temporary use and is not intended to become an established water right.

Signature of Applicant _____ Title, if any _____ Date _____

Received by _____ Date _____ Time _____
 SHOW fee receipt by _____ # _____ Date _____
 Watermaster contact received? _____ Date _____

QUESTIONS?

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