

STATEMENT OF PURPOSE

RS26512

On June 30, 2015, a historic settlement was entered into between seven canal companies known as the Surface Water Coalition (SWC) and several ground water districts and irrigation districts represented by Idaho Ground Water Appropriators, Inc. (IGWA), for the purpose of resolving water delivery calls, reversing the long-term trend of declining Eastern Snake Plain Aquifer (ESPA) water levels, minimizing harm to Idaho's economy from water supply shortages, and supporting ongoing state management of the ESPA.

During the 2016 legislative session, the Idaho Legislature adopted Senate Concurrent Resolution No. 138 which supported the settlement in recognition of the important impacts it has on Idaho's water resources and economy. On May 2, 2016, the director of the department of water resources approved the settlement as a mitigation plan for the Surface SWC delivery call.

The settlement and mitigation plan currently require groundwater users to reduce the amount of ground water diverted from the ESPA by 240,000 acre-feet annually. To achieve this, each ground water district has apportioned its mitigation obligation among its district members, taking into account priority dates. However, some ground water district members have failed to comply with their proportionate share of the mitigation obligation, undermining the efforts of all ground water users to achieve the goals set forth in the settlement agreement. The Ground Water District Act, Chapter 52, Title 42, Idaho Code, expressly authorizes the director to undertake enforcement against ground water users who fail to pay assessments, but it does not expressly authorize the director to undertake enforcement against users who fail to comply with mitigation obligations.

This legislation authorizes ground water districts to apportion mitigation obligations among their members in a manner comparable to assessments. This apportionment of mitigation obligations among all members is appropriate because some mitigation activities, including those agreed upon in the historic ESPA settlement, protect all groundwater right holders from curtailment, but to varying degrees. Accordingly, when ground water districts apportion mitigation obligations to its members, the districts must consider the benefits a particular water user receives from mitigation. The apportionment must be structured to assign a greater mitigation obligation to holders of junior priority water rights than to holders of senior priority water rights and may be structured to adjust a member's obligation based on consumptive use under the member's ground water rights or other attributes of the member's ground water rights. This legislation expressly authorizes the director to curtail ground water users that have failed to comply with the apportionment of mitigation obligations imposed by ground water districts.

This legislation must be effective during the 2019 irrigation season to preserve and sustain the ESPA settlement agreement. Therefore, an emergency clause provides an effective date of April 1, 2019. However, to provide additional time for water users to work with ground water districts to come into compliance with mitigation plan obligations, districts will not be permitted to seek enforcement by the director of the department of water resources prior to January 1, 2020. In addition, this legislation may not be used to enforce assessments or mitigation plan obligations incurred prior to the 2019 irrigation season.

DISCLAIMER: This statement of purpose and fiscal note are a mere attachment to this bill and prepared by a proponent of the bill. It is neither intended as an expression of legislative intent nor intended for any use outside of the legislative process, including judicial review (Joint Rule 18).

FISCAL NOTE

There is no impact on the general fund or other state funds. Costs incurred by the Department under section 42-5244B to curtail water users who fail to pay assessments or who fail to comply with mitigation plan obligations will be reimbursed by the ground water district that reports the enforcement action to the Department. Reimbursement costs will not include costs that are part of the normal operating functions of the Department or are part of water district operations for which the ground water district is assessed.

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