

Testimony of Mr. Wesley Hipke  
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Before the United States House of Representatives  
Natural Resources Committee  
Water, Wildlife and Fisheries Subcommittee

*Legislative Hearing on H.R. 331, Amendments to the Aquifer Recharge Flexibility Act*

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My name is Wesley Hipke, and I am the Water Projects Section Manager for the Idaho Department of Water Resources. I am also here today testifying on behalf of the Idaho Water Resources Board (Board). The Board consists of eight governor-appointed members, knowledgeable in the field of water resources from across the State of Idaho and is required by law to be politically balanced. The Board was established by Idaho Constitution Article 15, Section 7, and is charged with formulating a comprehensive state water plan for conservation, development, management, and optimum use of Idaho's water resources, and undertaking and financing projects and programs to help meet those needs.

Idaho is a headwaters state with significant water resources, but also includes vast semi-arid and arid regions. Like all arid Western states, Idaho depends on snowpack for its water supplies, which varies from year to year. Water resource administration and management are therefore of critical interest to the State of Idaho and its residents.

As with other Western states, water supply shortages and water use conflicts occur across the various regions of the state. Idaho has an exceptional program to adjudicate water rights within the state, including the Snake River Basin Adjudication which was completed in 2014. The Northern Idaho Adjudications and the Bear River Basin Adjudication are currently underway. These adjudications, when completed, will allow the Idaho Department of Water Resources to administer water rights on a priority basis in times of shortage.

About one-third of Idaho's population resides on the Eastern Snake River Plain. The Eastern Snake River Plain is underlain by the Eastern Snake Plain Aquifer ("ESPA"), which is roughly the size of Lake Erie. The ESPA is a 10,000 square-mile aquifer that underlies much of southern and eastern Idaho, supports about 1 million acres of irrigated farmland, municipal water supplies for 18 cities, and thousands of individual domestic wells for drinking water. The aquifer discharges spring flows to the Snake River, supplying water to an additional 600,000 acres of downstream irrigated land, many municipalities, and flows for hydropower generation. The ESPA is the sole source of drinking water for both cities and most rural residents in eastern Idaho. The value of goods and services produced by the ESPA region exceeds \$10 billion annually.

Idaho has been very proactive in its responses to drought and water supply shortages for all water uses, including drinking water, irrigation, hydropower, fish, wildlife, environmental needs, and others. With the strong support of Governor Brad Little and the Idaho Legislature, Idaho has made significant investments in water management, building drought resiliency, expanding water supplies, and repairing and improving critical water resource infrastructure to benefit water availability into the future. Since 2019, more than \$500 million has been appropriated by the legislature to the Board for these water management improvement purposes.

The water levels in the ESPA are declining at an unsustainable rate. Because of its importance for the citizens of Idaho, the Idaho Legislature tasked the Idaho Water Resource Board with developing a plan to stabilize and recover the ESPA. In response, the Board developed the Eastern Snake Plain Comprehensive Aquifer Management Plan (ESPA CAMP) which was adopted as part of the State Water Plan in 2009. The ESPA CAMP sets forth a suite of measures, the most prominent of which is the development of a state-sponsored aquifer recharge program. The aquifer recharge program diverts excess surface water (including flood flows) in wet years to stabilize and recover the declining aquifer.

Development of the managed aquifer recharge program includes the use of existing irrigation canals and ditches as the mechanism for seeping and percolating water into the aquifer. A significant number of the existing irrigation canals and ditches cross lands owned by the U.S. Bureau of Land Management (BLM). The irrigation canal owners already have existing rights of way with the BLM for their irrigation canals. Using existing irrigation infrastructure to divert, seep, and deliver managed aquifer recharge water is hugely beneficial in reaching Idaho's aquifer recharge goals. The program also includes other measures undertaken by water users, municipalities, and other partners in the effort. To date, Idaho has invested approximately \$60 million on aquifer recharge infrastructure in addition to program operations and maintenance costs, not including the expenditures made by private parties.

To ensure flexibility in managing aquifer recharge over federal lands, the 116<sup>th</sup> Congress enacted Section 1105 of P.L. 116-260, the *Aquifer Recharge Flexibility Act* (introduced as S.1570/H.R. 2871 in the 116<sup>th</sup> Congress). Section 1105 facilitates the use of existing irrigation canals for aquifer recharge purposes by allowing the canals to be used for the conveyance of aquifer recharge water without the need to seek additional authorization from the federal government. In part, the Act states:

***Conveyance for Aquifer Recharge Purposes***— *The holder of a right-of-way, easement, permit, or other authorization to transport water across public land administered by the Bureau of Land Management may transport water for aquifer recharge purposes without requiring additional authorization from the Secretary where the use does not expand or modify the operation of the right-of-way, easement, permit or other authorization across public land.*

The Act was intended to allow the Board to move and infiltrate managed recharge water through existing irrigation canals that cross BLM lands without having to obtain additional rights of way from the BLM. Despite the plain wording of the Act, the BLM has taken the position that the Act does not apply to third parties, only to the right of way owners of record. This interpretation has led the BLM to deny the Board's use of those existing irrigation canals without first obtaining a new right of way. The BLM right of way process can be onerous and will add significant time to the development of recharge projects. Utilizing the right of way process may severely delay the Board's ability to reach its goal of recovering and stabilizing the ESPA.

The BLM's insistence that the Board obtains new rights of way to run aquifer recharge water through existing irrigation canals is in contravention of the plain language of the Act and we believe is contrary to the intent of Congress in passing the Act. The amendments to the Act being sought in the legislation would address BLM's erroneous interpretation that the Act does not apply to third parties. The amendment will enable the Board to more efficiently implement its managed aquifer recharge activities and reach its goal of recovering the ESPA for the benefit of the citizens of the State of Idaho.

In conclusion, I want to thank this subcommittee for considering this amendment to the Aquifer Recharge Flexibility Act and for this opportunity to provide testimony. I would be happy to answer any questions the Subcommittee may have.