Idaho Conjunctive Management Rules & Ground Water District Formation

Hailey, Idaho

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Prior Appropriation

- Water is a public resource that can be appropriated by private parties
- “First in time is first in right” (seniority)
- Diversion and application to beneficial use

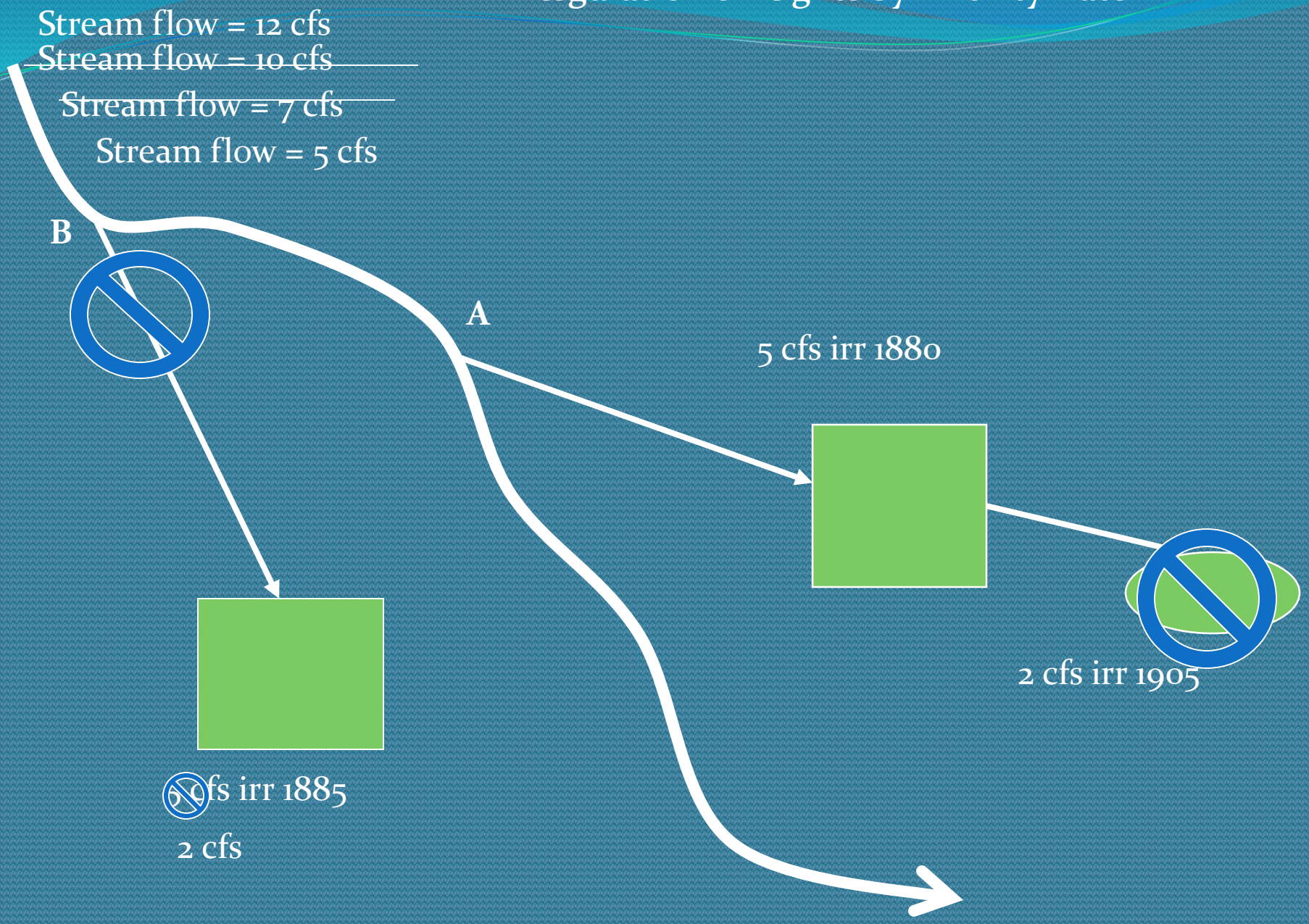
Elements of Water Right

- Source
- Priority Date
- Rate of Diversion
- Use
- Season of Use
- Point of Diversion
- Place of Use

Elements of a Water Right
Priority Date

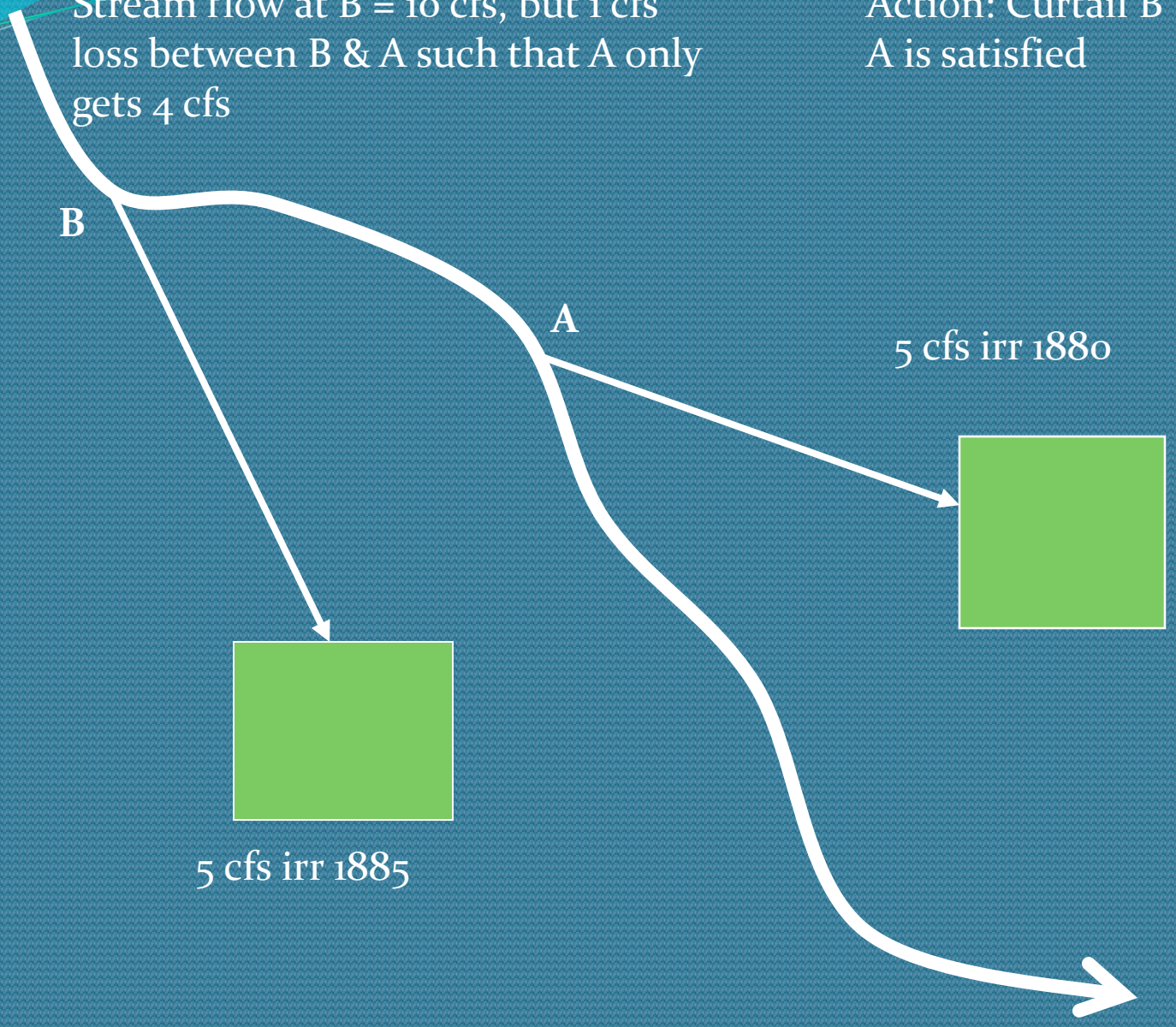
- Determines who gets water in shortage
- Date Water Right Established
  - Relates back to date of filing if right based on application/permit process
  - May relate back to date of first use if based on statutory or beneficial use claim

Regulation of Rights by Priority Date



Stream flow at B = 10 cfs, but 1 cfs loss between B & A such that A only gets 4 cfs

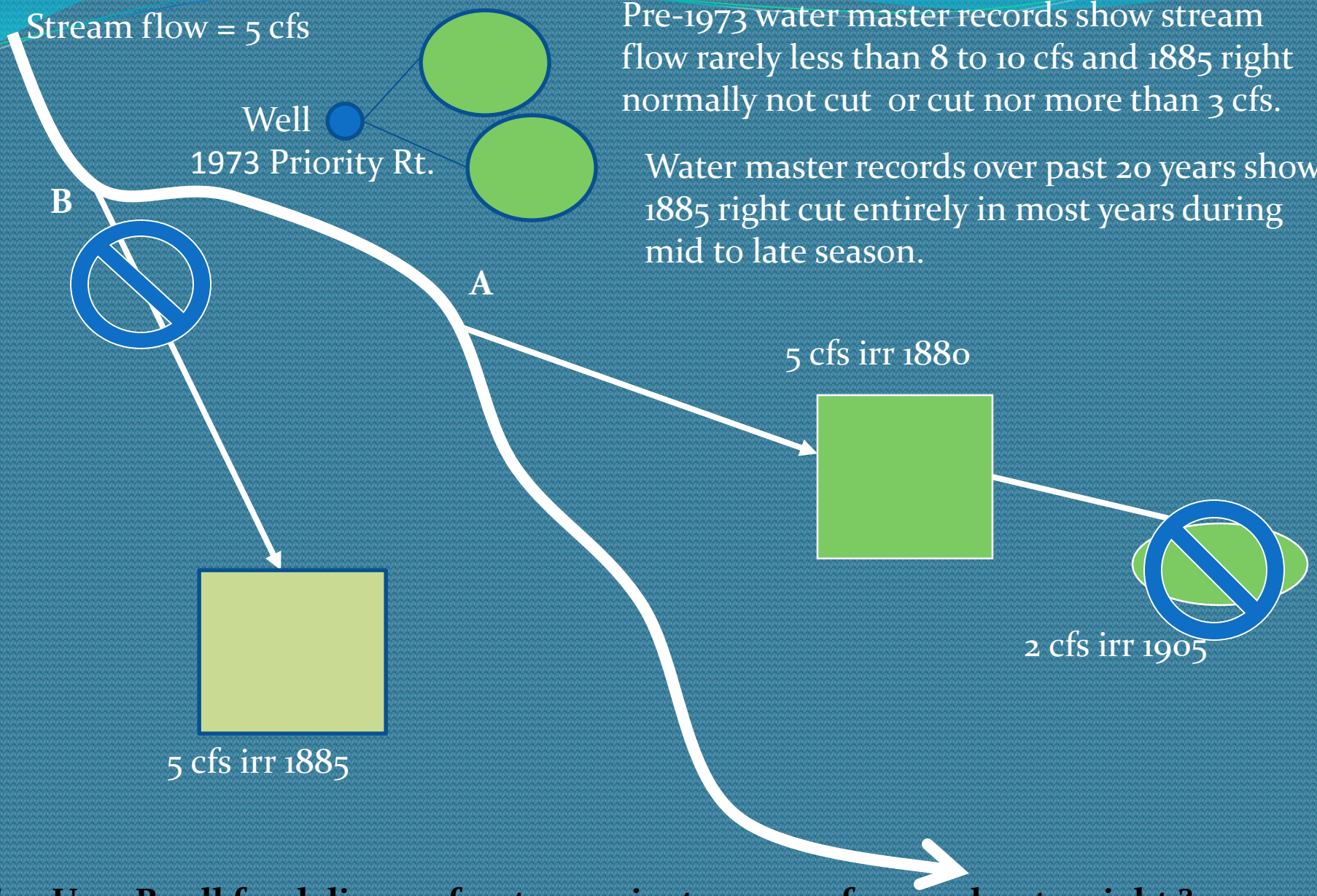
Action: Curtail B by 1 cfs or untill A is satisfied



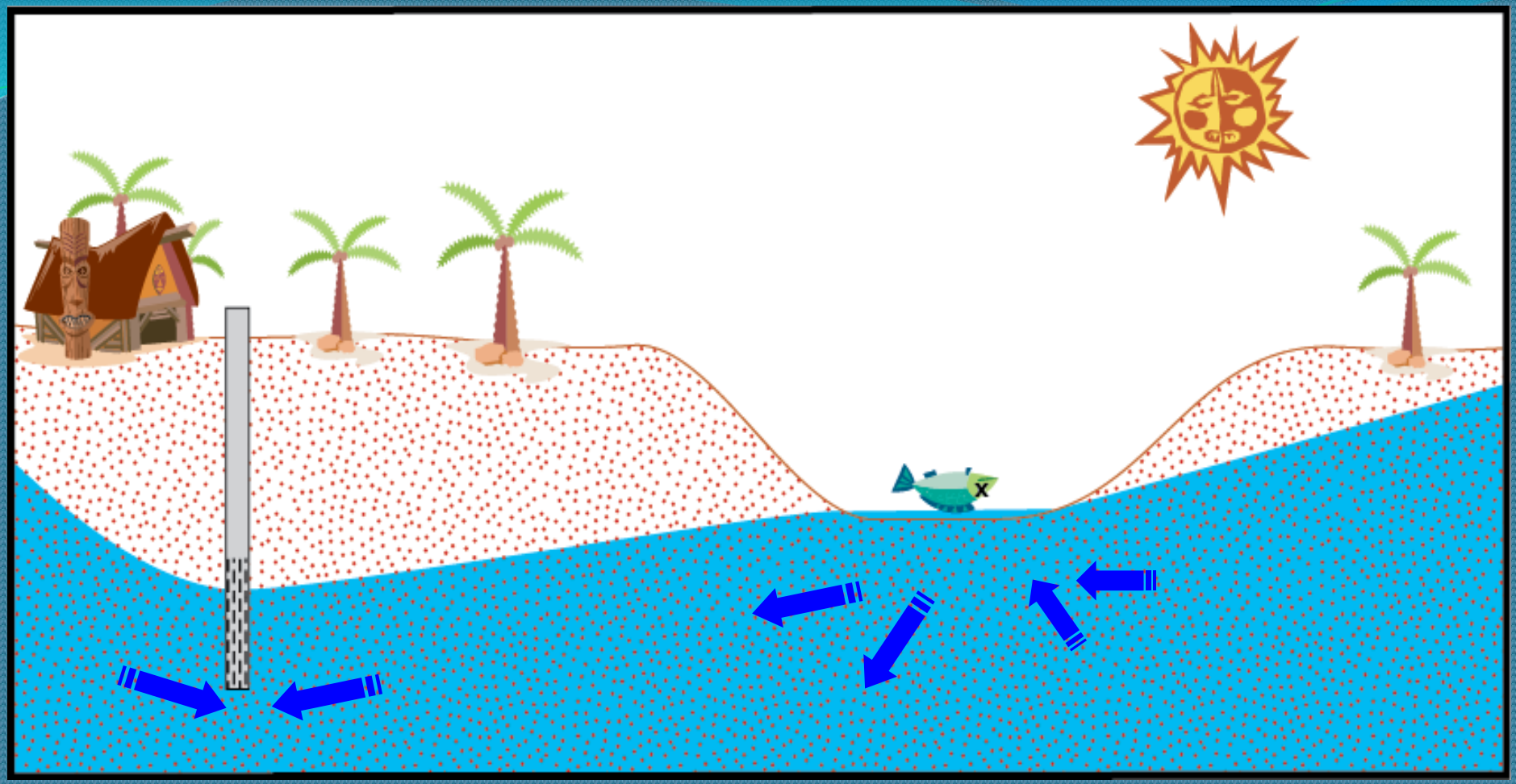
Regulation of Rights by Priority Date

Pre-1973 water master records show stream flow rarely less than 8 to 10 cfs and 1885 right normally not cut or cut nor more than 3 cfs.

Water master records over past 20 years show 1885 right cut entirely in most years during mid to late season.



Can User B call for delivery of water against owner of ground water right ?



Does ground water pumping cause injury to water rights diverted from the stream?

Idaho has a process to address this question!

Conjunctive Management of Surface and Ground Water Resources

- Conjunctive Management Rules
  - IDAPA 37.03.11
  - Authorized by I.C. § 42-603
- IDWR Adopted 1994
  - (approved by Legislature 1995)

Conjunctive Management Rules

- Conjunctive Management Defined (010.03):
  - Legal and hydrologic integration of administration of the diversion and use of water under water rights from surface and ground water sources, including areas having a common ground water supply.

Or,

Administration of surface water and ground water rights together from a common source

Conjunctive Management Rules

- "These rules apply where diversion and use of water under junior priority ground water rights either individually or collectively causes **material injury** to use of water under senior priority water rights" (020.01)
- "These rules provide the basis and procedure for responding to delivery calls by the holder of a senior priority surface or ground water right against the holder of junior priority ground water right." (020.04)

Conjunctive Management Rules

- Material Injury defined (020.01):
  - "Hindrance to or impact upon the exercise of a water right caused by another person as determined in accordance with Idaho Law, as set forth in Rule 42."

Conjunctive Management Rules

- Rule 42.01 – Factors in Determining Material Injury include but are not limited to:
  - Is senior using water efficiently and without waste?
  - Methods and reasonableness of diversion, as well as reasonable alternative means of diversion
  - Amount of water available from the source
  - Effort or expense of right holder to divert water from source
  - Amount of water diverted and used compared to water right(s)
  - Existence of measuring and recording devices
  - Other…

Conjunctive Management Rules

- Rule 42.02 – Mitigation

  'Holder of a senior priority right will be prevented from making delivery call for curtailment of pumping of any well used by the holder of a junior priority ground water right if junior right is covered by an approved and effectively operating mitigation plan.'

- Mitigation Plans can be phased in over period of 5 years

  - Various factors considered for acceptable plans per rules

- Mitigation may allow juniors to pump out of priority even if material injury determined

Delivery Calls and Mitigation in a Water District (process/timeframe)

- Senior must submit petition alleging injury by junior users and identify senior rights being injured
- Initial investigation by Water District watermaster and IDWR
  - Director may request additional information from Senior (senior does not bear burden to determine/prove injury)

Delivery Calls and Mitigation in a Water District (process/timeframe)

- IDWR Director considers factors to determine material injury
  - Matter generally handled as contested case as per IDAPA Rules
  - Pre-hearing schedule
    - information gathered/provided by both senior and junior right holders; expert reports/analyses; motions; depositions etc.
  - Hearing scheduled and held

Delivery Calls and Mitigation in a Water District (process/timeframe)

- Time from Delivery Call Petition to Hearing
  - May take up to one year or more:
    - May depend on complexity of case and parties
    - May depend on availability of ground water model
- Post Hearing
  - Director review and consideration
  - May require use of ground water model
    - Injury determination does not require model but model may be necessary to determine extent of injury & complete order

Delivery Calls and Mitigation in a Water District (process/timeframe)

- From Call to Post Hearing
  - Parties may discuss settlement
- If Director Finds Material Injury
  - Curtailment Ordered with priority date identified
  - Mitigation requirements identified with ability to phase in over five years
  - Watermaster(s) notify juniors of curtailment

Delivery Calls and Mitigation in a Water District (process/timeframe)

- Mitigation Plans
  - Plans must be advertised
  - Hearing(s) scheduled
  - Director Orders issued

Ground Water Districts

An organizational opportunity in which junior ground water users can collectively be represented

- Address delivery calls
- Formulate mitigation plans
- Other benefits?

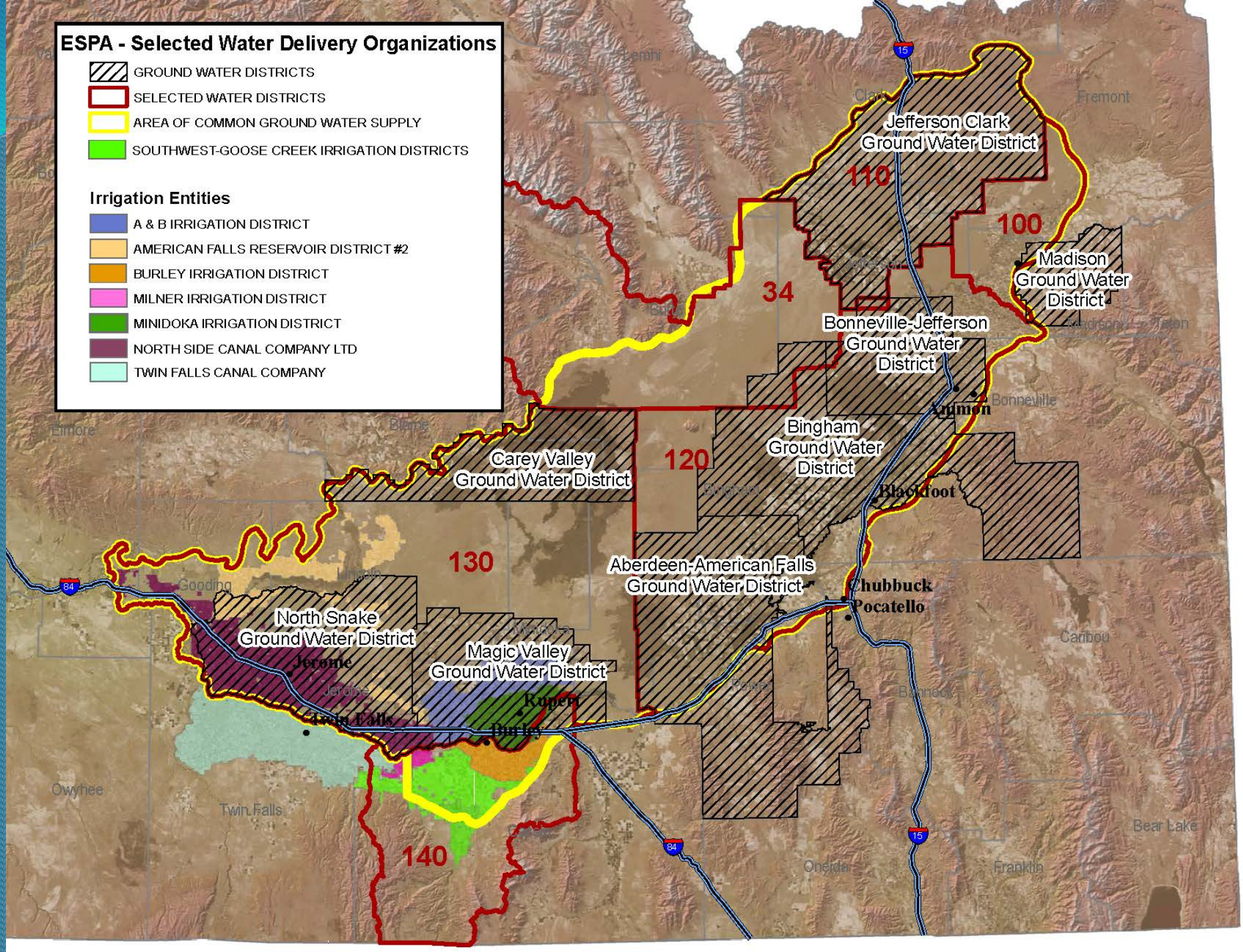
Ground Water Districts

Chapter 52, Title 42, Idaho Code

Created by county commission upon petition of land owners holding ground water irrigation rights & those right holders voting to create district.

Created for purpose of organizing ground water irrigation users.

(Legislation effective 1995. Nine districts created and currently active.)


ESPA - Selected Water Delivery Organizations
GROUND WATER DISTRICTS
SELECTED WATER DISTRICTS
AREA OF COMMON GROUND WATER SUPPLY
SOUTHWEST-GOOSE CREEK IRRIGATION DISTRICTS
Irrigation Entities
A & B IRRIGATION DISTRICT
AMERICAN FALLS RESERVOIR DISTRICT #2
BURLEY IRRIGATION DISTRICT
MILNER IRRIGATION DISTRICT
MINIDOKA IRRIGATION DISTRICT
NORTH SIDE CANAL COMPANY LTD
TWIN FALLS CANAL COMPANY
Jefferson Clark Ground Water District
110
100
Madison Ground Water District
34
Bonneville-Jefferson Ground Water District
Ammon
Bonneville
Bingham Ground Water District
120
Carey Valley Ground Water District
Blackfoot
130
Aberdeen-American Falls Ground Water District
Chubbuck
Pocatello
North Snake Ground Water District
Jerome
Magic Valley Ground Water District
Rupert
Twin Falls
Burley
140
Fremont
Caribou
Bear Lake
Franklin
Oneida
Owyhee
Twin Falls
Gooding
Elmore
Bonneville
15
84

Ground Water Districts

Features

- Similar to Irrigation Districts in method of creation and organization
- Participation is voluntary (include/exclude)
- Users can join districts as full members or for mitigation purposes only
- Board of Directors
  - elected by district members, represent divisions
  - staggered 3-year terms
  - possess fairly broad authorities

Ground Water Districts

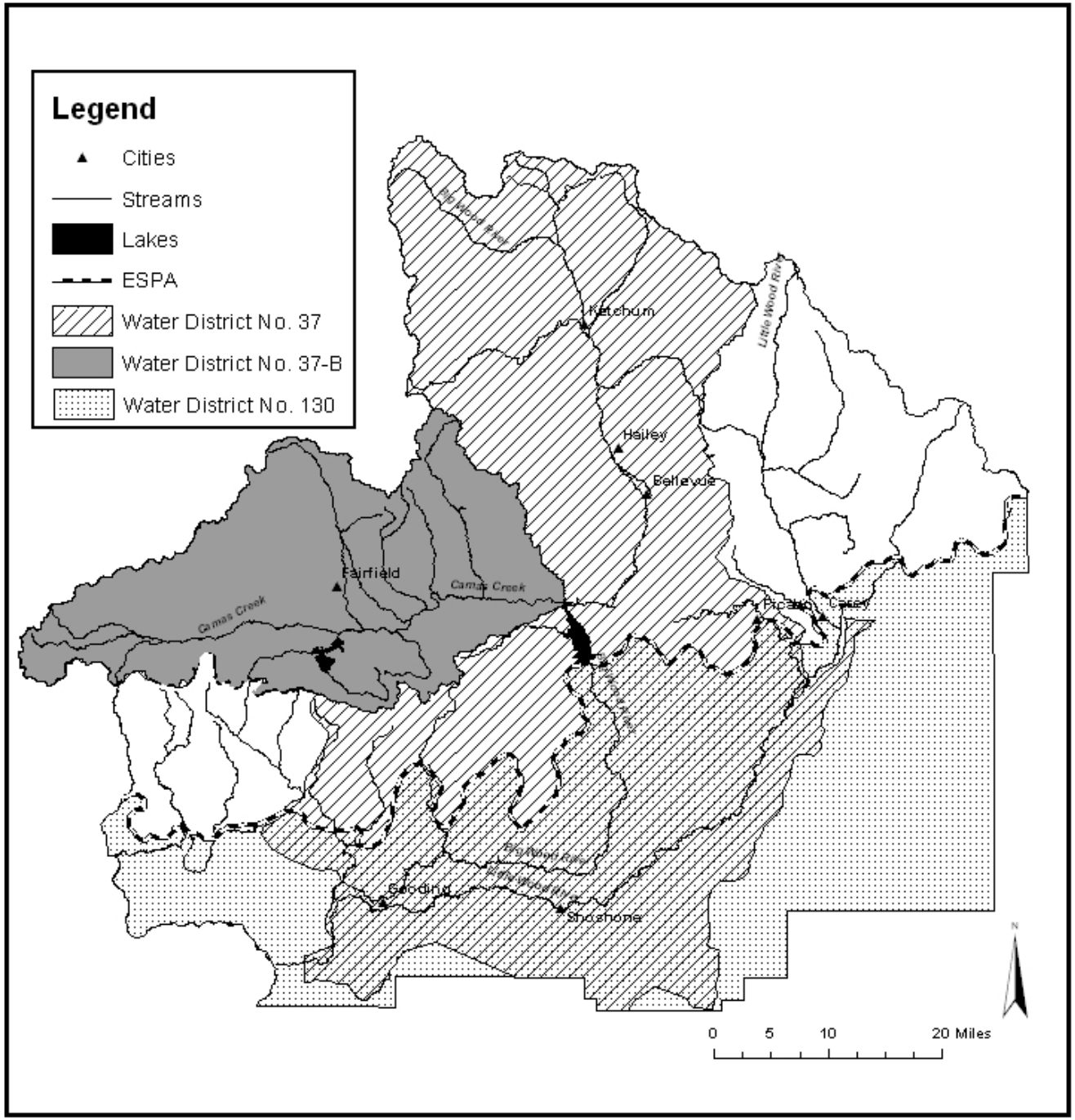
Features

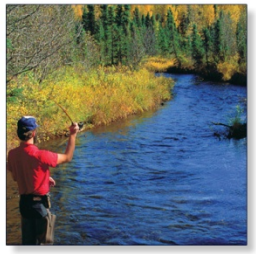
- Authority of Board (IC § 42-5224)
  - represent members in various water related matters/issues
  - develop and maintain mitigation plans
  - conduct recharge/construct recharge facilities
  - acquire property and water rights
  - measure and report water use
  - levy assessments for operation of district
  - enter into contracts and agreements

Ground Water Districts

Features

- Annual Assessments
  - collected directly or via county tax rolls
  - can make liens against property
  - based on pro-rata charge against water right diversion rates (some districts use irrigated acreage as basis)


Legend
Cities
Streams
Lakes
ESPA
Water District No. 37
Water District No. 37-B
Water District No. 130
Big Wood River
Little Wood River
Ketchum
Hailey
Bellevue
Fairfield
Camas Creek
Camas Creek
Picabo
Carey
Big Wood River
Big Wood River
Big Wood River
Gooding
Shoshone
N
0
5
10
20 Miles



Questions and Discussion?