

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

RECEIVED

APPLICATION FOR TEMPORARY APPROVAL OF WATER USE JAN 08 2020For 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. Department of Water Resources Eastern Region

Name of applicant Eastern Snake Plain Aquifer Recharge (ESPAR) Phone (208) 2431824
 Mailing address 593 E. 5th South City Rexburg
 State ID Zip 83440 Email pgike@cableone.net

1. Source of water Teton River tributary to Snake River
 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	1/4	1/4	1/4	County	Source	Local name or tag #
7N	41E	31		NW			Fremont	Teton River	

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	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
7N	41E	31					X	X	X	X									

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: 22 cfs; or _____ gpm.
 b. Maximum daily volume: 41.65 AF; or _____ gallons.
 c. Maximum volume over the duration of the request: 8,000 AF; or _____ gallons.
 6. Duration of diversion: from approval (month-day) to December 31, 2020 (month-day).
 7. Describe proposed diverting works: Groundwater Recharge
 8. a. Who owns the property at the requested point of diversion? Cade Carter
 b. Who owns the facilities that will convey water to the place of use? Cade Carter
 c. Who owns the land to be irrigated or place of use? Cade Carter
 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. Contract attached.
 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.

Kevin Egan Executive Director 1-08-2020
 Signature of Applicant Title, if any Date

Received by my pettis Date 1-8-20 Time 2pm
 \$50.00 fee received by 50.00 # E045546 Date _____
 Watermaster comments received? _____ Date _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

The Idaho Department of Water Resources ("Department") has examined this application for temporary approval to use water under the provisions of Idaho Code § 42-202A and has determined that:

 A. The application for temporary approval should be denied because _____

☒ B. The application for temporary approval should be approved, since

1. The temporary approval can be properly administered.
2. Other water sources are not readily available.
3. The approval is in the public interest.
4. The approval will not injure known public values associated with the water source or any known water rights.
5. If the temporary approval is within a water district, the Department has sought and considered the recommendations of the watermaster.

This application is therefore hereby:

 A. DENIED

☒ B. APPROVED, subject to the following conditions:

1. Diversion and use of water under this approval is subject to all valid existing water rights.
2. The applicant assumes all risk of the use of the water under this approval.
3. This approval authorizes a maximum diversion volume of 8,000 AF and a maximum diversion rate of 22 cfs.
4. This approval does not grant a right-of-way across the land of another.
5. The Department may cancel or reduce the rate of flow or volume authorized by this approval. For example, the Department may cancel or reduce this approval if it concludes the water use is injuring other water rights or adversely affecting fish, wildlife or other public values.
6. The applicant shall not divert water when downstream minimum flow water rights are not being satisfied.
7. This approval does not create a continuing right to use water.
8. A temporary approval for ground water recharge or prevention of flood damage shall be an opportunistic use of surplus water and shall not interfere with the filling of surface water reservoirs.
9. For a temporary approval authorizing ground water recharge or ground water or surface water remediation, the applicant shall measure and record the weekly quantity of water diverted and report the diversion data to the Department upon request.
10. This temporary approval is not an authorization for the described water use to be used as mitigation or credit for any other purpose.
11. Other: Diversion under this approval is limited to times when the flow at the Snake River near Minidoka gage (#13081500) exceeds 2,700 cfs and excess water is spilling past Milner Dam.
12. This approval expires on December 31, 2020.

Signed this 12th day of February, 2020.


For the Department

Cade Carter Recharge Pond – 64 Teton Highway



**AGREEMENT FOR
PURCHASE AND SALE OF AQUIFER RECHARGE UNITS AND
DEVELOPMENT OF THE CARTER POND AS A
MANAGED AQUIFER RECHARGE SITE**

This AGREEMENT FOR PURCHASE AND SALE OF AQUIFER RECHARGE UNITS AND DEVELOPMENT OF THE CARTER POND AS A MANAGED AQUIFER RECHARGE SITE (this "Agreement") is made and entered into effective September 1, 2018 (the "Effective Date"), by and between Eastern Snake Plain Aquifer Recharge, Inc., an Idaho corporation, whose address is P.O. Box 8, 144 S. Main, Aberdeen, Idaho 83210-0008 (hereinafter "Seller" or "ESPAR"), and Cade Carter, whose mailing address is P.O. Box 122, Teton, ID 83451 (hereinafter "Purchaser"). Purchaser and Seller are individually a "Party" and together the "Parties."

RECITALS

A. Seller is an Idaho non-profit corporation with a focus on incentivized managed aquifer recharge ("IMAR") and is the owner or authorized seller of Aquifer Recharge Units ("ARUs™"), the purpose, elements, usage, and associated general assessment obligations of which are more fully described in the document attached hereto as Exhibit 1 and incorporated in this Agreement by reference. Seller is authorized by Recharge Development Corporation, Inc. (RDC™) to sell the ARUs conveyed under this Agreement.

B. Purchaser, who is the owner of a gravel pit located in the NW¼ of Section 31, Township 7N, Range 31E, Fremont County, proximate to the Teton River, desires to participate in IMAR programs and to own ARUs for the water storage, management and accounting benefits they provide, including making aquifer storage available for diversion from the Eastern Snake Plain Aquifer ("ESPA") for ESPAR members to supplement existing ground water or surface water rights in accordance with Idaho law.

C. Seller desires to sell and Purchaser desires to buy two thousand (2,000) Class-S ARUs to be used for Purchaser's purposes.

D. Purchaser also desires to acquire an option to purchase an additional 5,000 Class-S ARUs from Seller at the same price per ARU and under the same terms provided for under this Agreement, such option to extend for a period of five (5) years from the effective date of this Agreement.

E. Class-S ARUs represent ARUs available only to ARU purchasers who have both a water supply usable for IMAR purposes and the existing facilities necessary to recharge the water to the aquifer. Seller has access to resources, including financial resources to assist Purchaser with the development of the above described site as an IMAR facility to be included in the network of ESPAR recharge facilities.

F. Class-G ARUs represent ARUs held by a person or entity who is a member of a group that frequently needs aquifer storage to supplement shortages in their existing authorized water supply. Class-G ARU sales provide the funding for the development of the IMAR capacity needed to meet the supplemental water requirements of the water users comprising this group. For Class-G ARUs, ESPAR is responsible to use its best efforts to acquire water, to arrange for IMAR facilities, and to implement necessary IMAR operations. Each year, Class-G ARU owners have the opportunity to meet their need for supplemental aquifer storage by purchasing all or a portion of the water held in or allocated to Class-S ARUs for the year and transferring the acquired water to the Class-G ARUs of the owners through ESPAR's storage accounting processes.

G. As a non-profit corporation organized under the laws of the State of Idaho, ESPAR is established to assume legal rights and responsibilities commonly associated with surface water distribution companies referred to as "canal companies." Canal companies typically allocate operating and maintenance costs among their members through annual assessments. ESPAR set an annual O&M assessment of \$2.48 per assessable Class-G ARU for 2018. The O&M assessment for 2019 will cover associated corporate costs incurred in 2019. It is anticipated that the O&M charge for Class-S ARUs will be one half of the amount of the Class G ARUs. An O&M assessment for the Class-S ARUs acquired under this Agreement will not be made before January 2020.

IN CONSIDERATION of the mutual representations, warranties, and covenants contained herein, the Parties, intending to be legally bound hereby, agree as follows:

AGREEMENTS

1. **Property Purchased.** Seller hereby agrees to sell to Purchaser, and Purchaser agrees to buy from Seller, on the terms and conditions herein specified, Two Thousand (2,000) Class-S ARUs (the "Purchased ARUs") together with a no-cost option to purchase an additional 5,000 Class-S ARUs at the same price per ARU provided for under this Agreement, said option to extend for a period of five (5) years from the effective date of this Agreement.

2. **Purchase Price.** The purchase price for the 2,000 Class-S Purchased ARUs is Twenty-Five Dollars (\$25.00) per ARU for a total purchase price of Fifty Thousand U.S. Dollars (\$50,000.00) (the "Purchase Price").

3. **Payment Terms.** Annual payments for the 2,000 Class-S Purchased ARUs at \$25 per ARU, for a total purchase price of \$50,000, shall be made by Purchaser over a period of five (5) years in the principal amount of \$10,000 plus interest accrued on the unpaid balance at the rate of five percent (5%) per annum. Payments are to be made with funds received by the Purchaser from the ESPAR charges for water accrued to the Purchased ARUs. The 5-year payment period shall extend as necessary to account for years in which funds are not available to Purchaser from the designated funding source to fully or partially meet the annual payment obligation under this Agreement. Partial payments, if made, shall first be applied toward payment of accrued interest before any amount is applied to reduction of principal. Payments shall be due on July 1 of each year for 5 years or until the total amount of \$50,000.00 plus accrued interest has been paid in full. The payments shall be made in the order described in Section 6 below, at an interest rate of five

percent beginning July 1, 2020. The outstanding balance plus any accrued interest can be pre-paid in full, or in part, at any time without an early payment penalty.

4. **Seller's Responsibility.** Seller has or shall accomplish the following work and administrative items to assist Purchaser with the development of the Carter Pond as an IMAR site:

(a) Include the site in the IMAR network managed by ESPAR to provide the supplemental storage supply needed by Class-G ARU owners.

(b) Make available \$12,315.53 as a loan to Purchaser to upgrade the diversion works and measuring device on the Teton River for the IMAR site.

(c) Evaluate with the appropriate state and federal agencies any regulations and permitting requirements prior to commencing construction of this IMAR project.

(d) Seek a recharge water right for the IMAR site.

(e) Assure that the Purchased ARUs are entered into the basin-wide ARU accounting system, and that Purchaser is recorded with ESPAR as a shareholder owning 2,000 corporate (S) shares in ESPAR.

5. **Purchaser's Responsibilities.** Purchaser has removed trees and debris from the proposed IMAR site at his own expense and agrees to continue such management and maintenance actions as may be found necessary to preserve the recharge capacity of the "Carter IMAR Site."

6. **Mutual Agreement.** The Parties mutually agree that all construction and other development costs for the Carter IMAR Site and the payments due for the Purchased ARUs shall come from the ESPAR charges for water measured and credited as MAR from the IMAR Site. The Parties further mutually agree that the cost of water recharged at the IMAR site and any required payments for the Purchased ARUs shall be deducted from water marketing revenues associated with this site. Net revenue attributed to the water from Purchaser's 2,000 ARUs will thus consist of the revenue from ESPAR charges received for water transferred to Class-G ARUs from the Purchased ARUs minus (1) the annual general O&M charges, (2) the operational costs for this site, (3) repayment of the capital costs incurred for development of the site, and (4) the cost of the required payments for the Purchased ARUs. All net water charge revenues from Buyer's 2,000 ARUs shall be credited to the benefit of Purchaser or his successor in interest. The parties mutually agree that in any year the revenues attributed to the IMAR site are insufficient to pay all applicable costs then owed the revenues available shall be used to pay applicable costs in the following order of preference: (1) through (4) above. If revenues are insufficient to pay for these costs, the costs will be carried forward to the next year at an interest of five percent. If revenues exceed the costs they shall be paid to the purchaser.

7. **Use of Purchased ARUs.** The use of ARUs by the Purchaser is subject to the accounting and delivery processes implemented by ESPAR or its successor in interest. Measuring devices or data collection protocols may be a requirement for water accounting and the delivery of aquifer storage from ARUs to specified points of diversion.

8. **Assumed Risks.** The Parties mutually understand that the ESPAR processes for ARU storage and delivery of water are predicated upon current Idaho law and the expectation that any administrative authorizations or requirements that may be necessary will be the same or similar to those required to be satisfied by other water user or water delivery entities conducting similar

activities within the State. The potential for challenges or disputes arising with respect to the use or management of ARUs is recognized by the Parties as a potential risk. The Parties are mutually willing to accept these risks and address such matters as they may arise.

9. **2019 Use of Purchased ARUs.** The Parties agree to initiate use of the Purchased ARUs for the 2019 irrigation year, if possible, which for accounting purposes ends March 31, 2020. ESPAR, through its Board of Directors, reserves the right to set and modify the dates encompassing a “recharge season” to be applied in future years. MAR water accrued to the ARUs owned by the Purchaser will be made available for allocation through ESPAR accounting processes to meet the obligations of designated ESPA ground water users for 2019 irrigation usage under the 2015 IGWA–SWC Settlement Agreement. The Parties agree that RDC™ may be called upon to assist the Parties in identifying users for water recharged at the Carter IMAR Site for the 2019 irrigation year.

10. **Seller’s Representations and Warranties.** Seller hereby represents and warrants to Purchaser, as of the effective date of this Agreement and again as of the closing as follows:

(a) **Authority.** Seller has the full legal right, power and authority to enter into and perform this Agreement, and has authority to provide good marketable title to the Purchased ARUs and Seller (at its expense) shall remove, or cause to be removed, all liens, claims, or encumbrances, whether of record or not, upon or affecting the Purchased ARUs on or before closing.

(b) **No Representation or Warranty Concerning Suitability for Purchaser’s Intended Use.** Seller has not made, and hereby makes, no representation or warranty to Purchaser except as expressly contained in this Agreement.

11. **Purchaser’s Representations and Warranties.** Purchaser hereby represents and warrants to Seller as of the effective date of this Agreement and again as of the closing for the Purchased ARUs, as follows:

(a) **Authority.** Purchaser has the legal power, right and authority to enter into this Agreement and to perform Purchaser’s obligations hereunder.

(b) **Purchaser’s Due Diligence.** Purchaser and Purchaser’s consultants and counsel have had a full opportunity to review all documents, records and other information made available to Purchaser and Seller and/or otherwise reasonably available to Purchaser through public and other sources, related to the nature and extent of the Purchased ARUs, the laws and rules affecting their transfer and use by Purchaser, and the suitability or fitness of the Purchased ARUs for Purchaser’s intended purposes.

12. **Warranties to Survive Closing.** All representations and warranties made by the Parties herein are also covenants, and each Party shall take all such actions as may be required to satisfy said covenants and to cause the representations and warranties to be true on and as of the closing. The Parties’ respective obligations to close and consummate the transaction contemplated herein are contingent upon the representations, warranties and covenants contained in this Agreement being true, valid and satisfied on and as of the closing. All such representation and warranties shall survive the closing.

13. **Miscellaneous.**

(a) **Attorneys' Fees.** If either party commences any legal action or proceeding to enforce any of the terms of this Agreement (or for damages by reason of an alleged breach hereof), the prevailing party therein shall be entitled to recover from the other, in addition to any other relief granted, its reasonable attorney's fees, costs and expenses incidental to such legal action.

(b) **Notices.** Any notice under this Agreement shall be in writing and be delivered in person, by U.S. Mail, by private courier, or by facsimile. Notice shall be provided to the following:

Seller

Eastern Snake Plain Aquifer Recharge
P.O. Box 8,
144 S. Main
Aberdeen, Idaho 83210-0008

Buyer

Cade Carter
P.O. Box 122,
Teton, ID 83451

(c) **Merger.** This Agreement supersedes any and all other written or verbal agreements between the Parties hereto regarding the Purchased ARUs. Neither Purchaser nor Seller shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein.

(d) **Broker.** It is understood and agreed by and between the Parties that the transaction herein contemplated does not involve a broker for either Seller or Purchaser. To the extent any broker commissions are owed as a result of this transaction by Purchaser, Purchaser agrees to be solely liable therefor, and Purchaser agrees to indemnify Seller from any such commissions. To the extent any broker commissions are owed as a result of this transaction by Seller, Seller agrees to be solely liable therefor, and Seller agrees to indemnify Purchaser from any such commissions.

(e) **Remedies Cumulative.** Upon any breach, any and all rights and remedies which either Party may have under this Agreement or by operation of law or equity, shall be distinct, separate and cumulative and shall not be deemed inconsistent with each other. No such right or remedy, whether exercised by said Party or not, shall be deemed to be in exclusion of any other right or remedy, any two or more of all such rights and remedies may be exercised at the same time or separately as desired.

(f) **Documents Incorporated by Reference.** The purpose, elements, usage, and associated assessment obligations of ARUs are more fully described in the document attached hereto as **Exhibit 1** hereby incorporated in this Agreement by reference.

(g) **Further Documents.** The Parties hereby agree that they shall sign such other and further documents as may be required to carry into effect the terms and conditions of this Agreement.

(h) **Enforceability.** The validity or enforceability of any term, phrase, clause, paragraph, restriction, covenant, agreement or other provision hereof, shall in no way affect the validity or enforcement of the remaining provisions, or any part hereof.

(i) **Counterparts.** This Agreement may be executed in any number of counterparts for the convenience of the Parties, all of which, when taken together and after execution by all Parties hereto, shall constitute one and the same Agreement.

(j) **Governing Law.** This Agreement shall be governed by the laws of the State of Idaho.

(k) **Successors.** This Agreement is for the benefit only of the Parties hereto and shall inure to the benefit of and bind their respective heirs, agents, personal representatives, successors and assigns.

(l) **Essence of Time.** Time is of the essence in this Agreement.

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement effective on the date set forth above.

“SELLER”

**EASTERN SNAKE PLAIN AQUIFER
RECHARGE, INC.**

By: 

“BUYER”

CADE CARTER

By: 



State of Idaho

DEPARTMENT OF WATER RESOURCES

Eastern Region • 900 N SKYLINE DR STE A • IDAHO FALLS, ID 83402-1718

Phone: (208)525-7161 • Fax: (208)525-7177 • Website: www.idwr.idaho.gov

Brad Little
Governor

Gary Spackman
Director

February 12, 2020

EASTERN SNAKE PLAIN AQUIFER RECHARGE
593 E 5TH S
REXBURG ID 83440-5064

RE: Application for Temporary Approval of Water Use: TP-21-57, TP-22-30, TP-22-31

Dear Applicant:

Your applications for temporary water appropriation have been approved and are enclosed. These approvals authorize the temporary use of water and do not grant trespass or other activity on public land or on private property.

Please review the **conditions of approval on page 2 of the Application for Temporary Approval forms** to understand the limitations associated with the temporary use of water.

These temporary approvals **expire on** December 31, 2020. The expiration dates cannot be extended under this temporary approval.

If you have any questions, please feel free to contact this office, and any of our agents will be able to assist you.

If you require additional information regarding this matter, please call me at (208) 497-3793 or email me at Christina.Henman@idwr.idaho.gov.

Sincerely,

Christina Henman
Administrative Asst. I.

Enclosure(s): TP-21-57, TP-22-30, TP-22-31

cc: TONY OLENICHAK, Water District 01.

Cefalo, James

From: Cefalo, James
Sent: Thursday, January 16, 2020 10:54 AM
To: Keith Esplin
Subject: ESPAR Applications for Temporary Water Use
Attachments: ESPAR Teton River Apps.pdf

Keith,

I have started to review the Applications for Temporary Approval of Water Use recently filed by ESPAR and wanted to notify you that the applications are deficient and cannot be processed in their current state.

The first application, proposing recharge on property owned by Cade Carter does not include a complete legal description for the point of diversion. Further, there was no map provided with the application. Please correct the point of diversion description and provide a map showing the proposed point of diversion and place of use.

The second application, proposing recharge on property owned by Teton Bass Inc., was not signed. Please mail in a signed copy of the application or stop by the office to sign the copy already filed. The proposed recharge area on the Teton Bass Inc. has open water in every aerial photo on Google Earth, suggesting a direct and immediate connection to the Teton River. Are you aware of any studies evaluating the connectivity between the Teton Bass pond and the South Fork Teton River? Please provide any information you have about the connectivity between the proposed recharge sites and the Teton River.

James Cefalo
Regional Manager
IDWR Eastern Region
(208) 525-7161

Henman, Christina

From: Olenichak, Tony
Sent: Tuesday, February 11, 2020 4:05 PM
To: Henman, Christina
Subject: RE: TP Applications follow-up

Christina,

On the determination sheet for each application, I would recommend checking "This application is therefore hereby: B. APPROVED, subject to the following conditions:.....".

I also recommend language be added to Condition 11 to read as follows: "11. Other: The daily discharge at USGS Station 13081500 Snake River near Minidoka must be exceeding 2700 cfs and excess water must be spilling past Milner Dam during use of water under this application."

Tony

From: Henman, Christina
Sent: Tuesday, February 11, 2020 2:57 PM
To: Olenichak, Tony <Tony.Olenichak@idwr.idaho.gov>
Subject: TP Applications follow-up

Hey Tony,

I was just curious to see if you have had a chance to go over the 4 temporary applications I sent you via email on 1/31.

The applications in question are TP-21-57, TP-21-56, TP-22-31, and TP-22-30.

Thank You,

Christina Henman
Administrative Assistant
Idaho Dept. of Water Resources, Eastern Region
900 N Skyline Ste. A
Idaho Falls, ID 83402
Phone: (208) 497-3793