

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.

RECEIVED
JAN 08 2020
Department of Water Resources
Eastern Region

Name of applicant Eastern Snake Plain Aquifer Recharge (ESPAR) Phone (208) 243.1824
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 #
7 N	40 E	36			SW	NE	Fremont	Teton River	00E07Q1

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	
7 N	40 E	36				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: 24 cfs; or _____ gpm.
b. Maximum daily volume: 47..5 AF; or _____ gallons.
c. Maximum volume over the duration of the request: 8,000 AF; or _____ gallons.
6. Duration of diversion: from approved (month-day) to December 31, 2020 (month-day).
7. Describe proposed diverting works: Headgate
8. a. Who owns the property at the requested point of diversion? Teton Bass Pond
b. Who owns the facilities that will convey water to the place of use? Teton Bass Pond
c. Who owns the land to be irrigated or place of use? Teton Bass Pond
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 Included
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] Executive Director 01-08-2020
Signature of Applicant Title, if any Date

Received by m. pietta Date 1-8-20 Time 2pm
\$50.00 fee received by 50.00 # 2045546 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 24 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.

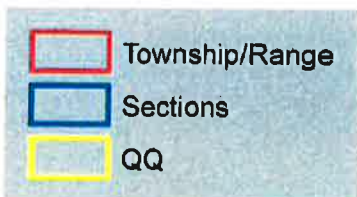
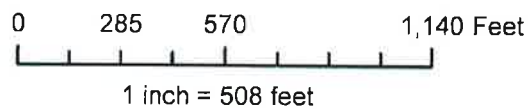
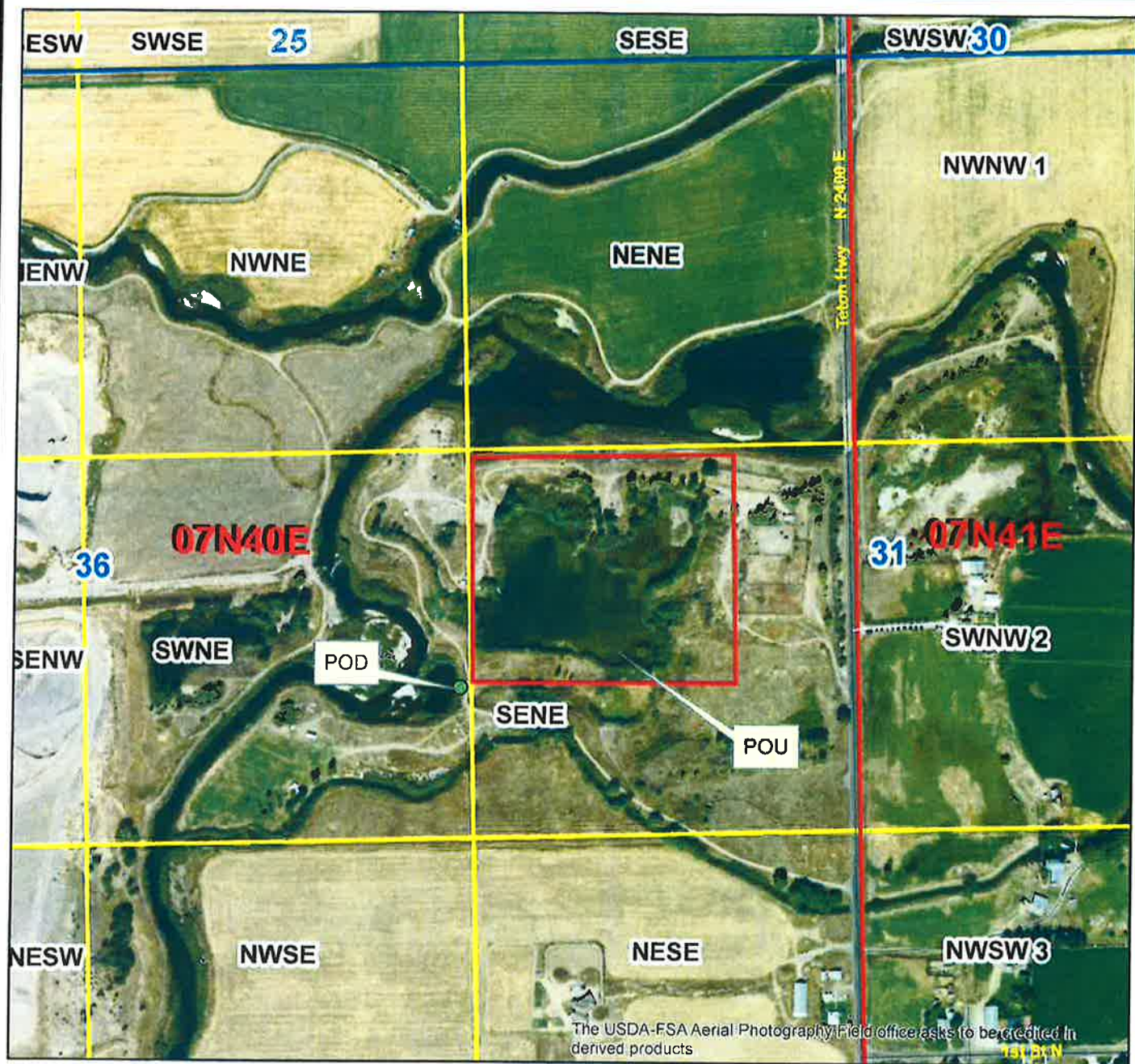

For the Department

EXHIBIT 1

MAR SITES

[Describe MAR sites]

Pond located at
41 N 2400 E
Sugar City, ID 83448
Idaho NAIS
Number: 00E07Q1



AGREEMENT FOR DEVELOPMENT AND OPERATION OF THE TETON BASS POND AS A MANAGED AQUIFER RECHARGE SITE

This **AGREEMENT FOR DEVELOPMENT AND OPERATION OF THE TETON BASS POND AS A MANAGED AQUIFER RECHARGE SITE** (this "Agreement") is made and entered into effective October 29, 2019 (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 "ESPAR"), and **Teton Bass Pond, Inc.**, whose mailing address is 14 N. 4100 E., Rigby, ID 83442 (hereinafter "TBP" or the "Company"). ESPAR and TBP are individually a "Party" and together the "Parties."

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RECITALS

A. ESPAR is an Idaho nonprofit corporation organized for the purpose of developing, operating and maintaining incentivized managed aquifer recharge ("IMAR") sites in the Upper Snake River Basin. ESPAR's management of an IMAR site includes assuring that recharged water is properly credited, accrued, stored and accounted for in Aquifer Recharge Units ("ARUsTM") where each filled ARU equals one acre-foot of water stored for the purpose of providing ESPAR shareholders a supplemental supply of water in accordance with Idaho law for recognized beneficial uses including irrigation, commercial, municipal, and others. ESPAR is organized to assist the owners of proposed IMAR sites in the development and subsequent operation of the sites including assistance in obtaining necessary surface water supplies for recharge and performing the required measuring and accounting of the water supplies.

B. TBP is an Idaho nonprofit corporation and is the owner of the Teton Bass Pond which is located in the SENE of Section 36, Township 07 North, Range 40 East, Fremont County, Idaho, proximate to the Teton River. The Teton Bass Pond is a facility well suited to serve as an IMAR site which will also enhance the capacity of the facility to serve as a sport fishing pond. The Company's stated purpose for incorporating is to own, acquire, lease, hold, manage, control, operate and maintain a sport fishing pond for the purpose of the enjoyment of its members. The Company is generally authorized to make and perform agreements and contracts of every kind and nature and to do all things necessary and proper either solely or in conjunction with other corporations, firms or individuals to accomplish its stated purposes; and to do every act or thing incidental or appurtenant to or growing out of or connected with its enumerated business or purposes, provided the same is not inconsistent with law.

C. TBP desires to participate in the IMAR program with ESPAR, subject to the terms of this Agreement, by developing the Teton Bass Pond as an IMAR site through which additional measured water supplies would be recharged to the Eastern Snake Plain Aquifer and stored and accounted for by ESPAR in ARUs.

D. ESPAR desires to assist TBP in accordance with the terms of this Agreement to further develop and modify the Teton Bass Pond facility to improve its suitability and capacity for conducting recharge to fill ARUs owned by ESPAR thus making the water available to be acquired for diversion by ESPAR members to supplement existing ground water or surface water supplies in accordance with Idaho law. ESPAR presently estimates that it could potentially recharge as much as 7,000 acre feet of water on a year-round basis at the fully developed Teton Bass Pond recharge site.

E. In order to derive benefit from the IMAR conducted pursuant to this Agreement, ESPAR will use ARUs to allocate, track, and account for MAR water used to fill ARUs, and to establish and maintain a record of the ownership interest in the recharged water. ESPAR delivers water to its shareholders through ARUs. Pursuant to this Agreement, the Teton Bass Pond Recharge Site will be used to fill type S ARUs. Ownership of the necessary S ARUs will be held in the name of ESPAR. If in the future Teton Bass Pond desires to acquire ownership of the ARUs, they will be available for purchase from ESPAR at the cost of ARUs at that time. The price is presently \$25 per ARU but this cost may increase over time. The benefits of owning ARUs can be discussed with ESPAR at the request of Teton Bass Pond at any time.

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

AGREEMENTS

1. New Teton River Structure. The Parties mutually agree that a new, lower and larger diversion structure from the Teton River is required to conduct recharge in the Teton Bass Pond as contemplated and desired by the Parties. The Parties mutually agree to the following terms for replacement of the diversion structure:

(a) ESPAR will initially pay for the cost of vaults, headgates, screens, pipe, measuring structure, management, and related equipment required to install a new diversion structure.

(b) The total costs are estimated to be approximately ____.

(c) Lyle Gardner, on behalf of TBP, will approve the plans and estimated expenditures for all work prior to construction.

(d) TBP will reimburse ESPAR for all costs reasonably incurred by ESPAR for installing the new diversion works. The funds for this reimbursement will come from payments owed the Company by ESPAR for the use of the Teton Bass Pond for conducting recharge to fill ARUs owned by ESPAR.

(e) The reimbursement to ESPAR will be paid first before any payment will go to TBP. All reimbursement will come from monies otherwise owed to the Company. If water supplies are not available to do recharge in a given year no reimbursement payment will be expected from the Company that year and the reimbursement obligation will carry over to the next year.

2. **Recharge Payment Terms.** The base amount ESPAR will pay or credit TBP is \$10 per acre foot of completed recharge (meaning ARUs filled) through recharge operations at the Teton Bass Pond Recharge Site. The base amount is based on ESPAR's 2018 charge to its shareholders of \$14 per acre foot for water made available for diversion pursuant to law from the ESPA. This charge rate is the rate applicable to water that has been acquired by ESPAR at no cost for recharge use. If this ESPAR charge rate decreases in the future, ESPAR will decrease the price paid or credited to the Company by that same amount. (For example, if the ESPAR charge is decreased by \$2.00 to a total of \$12, ESPAR will decrease the price paid or credited by \$2.00, thus making the amount paid or credited to the Company \$8.00 per acre foot or ARU filled.)

3. **Recharge Year.** The recharge year as calculated by ESPAR currently runs from April 1 to March 31 of the following year. This date is subject to change by ESPAR.

4. **Water Rights for Recharge.** All natural flow water that ESPAR counts as recharge has to come from a water right that is in priority for recharge and the recharge must have been authorized by ESPAR. ESPAR will at its own cost file applications for temporary or permanent recharge water rights. ESPAR will also work to find other water that could be used for recharge, either from storage or from natural flow water rights owned by other entities such as certain municipalities. If ESPAR acquires storage water, the per acre foot cost of the water for recharge will be deducted from the per acre foot amount that would otherwise be owed TBP under this Agreement. If other natural flow water rights become available for recharge use in the Teton Bass Pond, the Parties shall address issues related to the payment amounts for such recharge through an addendum or amendment to this Agreement.

5. ESPAR is aware that if the Teton Bass Pond fills high enough water will flow into a pond on adjacent property owned by a neighbor. The neighbor has indicated that the pond is available for recharge use in return for compensation. ESPAR will help TBP estimate the amount of water that flows into this pond on the adjacent property, but ESPAR shall not be responsible for any payments to the neighboring property owner. Any agreement between the neighboring property owner and TBP is solely the responsibility of TBP.

6. TBP shall be responsible for opening and closing the Teton River headgate to the Teton Bass Pond as directed by ESPAR and will strive to maximize the amount of recharge done when water is available. ESPAR recognizes that the Teton Bass Pond has recreational facilities on the pond site that the Company desires not to flood. TBP shall be responsible for the routine cleaning of the screen on the river headgate and for future maintenance that may be needed.

7. ESPAR shall at its sole expense install and maintain transducers to measure the flow of water through the weir to the Teton Bass Pond.

8. **Acknowledgement of Potential Risk Factors.** The Parties concur that the utilization of ARUs by ESPAR and its shareholders shall be subject to the accounting and delivery processes initially established by RDC and implemented and followed by ESPAR. 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. The Parties

understand that the RDC process established for ARU storage and delivery is predicated upon current Idaho law and the expectation that any administrative 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 water distribution activities within the State. The potential for challenges or disputes arising with respect to the use or management of ARUs is mutually recognized by the Parties as a potential risk. The Parties are mutually willing to accept this risk and address such matters as they may arise.

9. **ESPAR's Representations and Warranties.** ESPAR hereby represents and warrants to TBP, as of the effective date of this Agreement, as follows:

(a) **Authority.** ESPAR has the full legal right, power and authority to enter into this Agreement and to perform its obligations hereunder.

(b) **No Representation or Warranty.** ESPAR has not made, and hereby makes, no representation or warranty to TBP except as expressly contained in this Agreement.

10. **TBP Representations and Warranties.** TBP hereby represents and warrants to ESPAR, as of the effective date of this Agreement, as follows:

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

(b) **No Representation or Warranty.** TBC has not made, and hereby makes, no representation or warranty to ESPAR except as expressly contained in this Agreement.

11. **Term.** The term of this Agreement shall be for a period of five (5) years from the Effective Date. The Parties may review the Agreement each year within sixty (60) days of the anniversary of the Effective Date. During the review period either party may request changes to the Agreement in writing. Changes to the Agreement shall be made in writing if both parties agree to the requested changes. After its initial five (5) year term, the Agreement shall automatically extend for an additional five (5) year term if neither party gives notice of intent to terminate the Agreement. Written notice of intent to terminate the Agreement at the end of a set term must be received by the other party no later than ninety (90) days prior to expiration of the existing term. All monies that may be owed by either party to the other party under the Agreement must be paid in full prior to the effective termination of the Agreement.

12. **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:

"ESPAR"

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

"TBP"

Teton Bass Pond, Inc.
14 N. 4100 E.
Rigby, Idaho 83442

(c) **Merger.** This Agreement supersedes any and all other written or verbal agreements between the Parties hereto regarding the matters herein addressed. Neither ESPAR nor TBP shall be bound by any understanding, agreement, promise, representation or stipulation, express or implied, not specifically contained herein; provided however that the Recharge Agreement entered into by the Parties and effective as of the 11th day of April, 2019 shall remain in effect according to its terms and not be in any manner affected by this Agreement.

(d) **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.

(e) **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.

(f) **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.

(g) **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 each Party hereto shall constitute one and the same Agreement.

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

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

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

(k) **Amendments.** This Agreement may not be amended, restated, modified, supplemented, or otherwise changed except by a writing signed by the Parties to this Agreement.

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

"ESPAR"

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

By: Reid Egan
Executive Director
10-28-19

"TBP"

TETON BASS POND, INC.

By: Sones
10.28.19



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.

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