

MEMORANDUM

DATE: March 7, 2025

FROM: Shelley W. Keen *SWK*

TO: Mat Weaver and Brian Patton

RE: Letter from King Hill Irrigation District to Lt. Governor Bedke

In a letter dated February 27, 2025, King Hill Irrigation District (“KHID”) asked Lt. Governor Bedke five questions about the possibility of using water “saved” by its efficiency projects. The five questions and brief responses based on the limited information provided by KHID are below.

1. Can the District convert its 70 cfs irrigation water right to any other classification of water right to put it to beneficial use?

Transfer 85581 defines the elements of KHID's two water rights. Right 37-4112 authorizes the diversion of 300 cfs from the Malad River for the irrigation of 11,573 acres within KHID's boundary. Right 37-4112 also authorizes the diversion of 30 cfs for stockwater, but the 300 cfs and 30 cfs components are not additive. Right 37-21595 is for the diversion of an additional 70 cfs from the Malad River for the irrigation of the same 11,573 acres authorized for irrigation by Right 37-4112. Because the two irrigation water rights combine to supply the same 11,573 acres, “unstacking” them to increase the irrigated acreage or to add another beneficial use would enlarge the rights, which is not permissible. See Idaho Code § 42-222(1). See also *Barron v. Idaho Department of Water Resources*, 135 Idaho 414, 18 P.3d 219 (2001).

Converting a water right to another purpose requires an equivalent reduction in beneficial use under the original water right. In the case of an irrigation water right, converting some of the water right to another beneficial use, such as municipal use, requires discontinuing the corresponding share of irrigation use. Changing the water right to another use without the equivalent reduction in the original beneficial use would be an enlargement of the right, which as I noted above, is prohibited by Idaho Code § 42-222(1).

Another way to think of this is that a water right authorizes a beneficial use—such as irrigation of 11,573 acres—and the water entitlement is only the amount needed at the moment to accomplish the beneficial use. The total quantity of water described on the water right—70 cfs, for example—is an upper limit, with the actual water right being what is needed for the authorized beneficial use, up to the upper limit.

2. If the District no longer has the need or ability to divert its entire water right, is it at risk of losing said water right due to not being able to put it to beneficial use?

Depending on the facts, two subsections of Idaho Code § 42-223 may protect KHID from forfeiting unused portions of its water right(s) for non-use. First, Idaho Code § 42-223(9) applies when the full beneficial use is being accomplished with less water. It states:

No portion of any water right shall be lost or forfeited for nonuse if the nonuse results from a water conservation practice, which maintains the full beneficial use authorized by the water right, as defined in section [42-250](#), Idaho Code.

In other words, if KHID irrigates all its 11,573 acres with 70 cfs less water, the 70 cfs would be protected from forfeiture. KHID could divert the 70 cfs again in the future, if it were needed to irrigate the 11,573 acres.

Second, Idaho Code § 42-223(7) applies when the individual landowners within an irrigation district choose not to use the water made available to them by the irrigation district. It states:

No portion of a water right held by an irrigation district, a Carey Act operating company, or any other company, corporation, association, or entity which holds water rights for distribution to its landowners, shareholders or members shall be lost or forfeited due to nonuse by such landowners, shareholders or members, unless the nonuse is subject to the control of such entity.

3. Is it considered an expansion of acreage to use water for a recharge effort outside of District boundaries?

If KHID does not give up acres, then diverting and using some of its water right for another purpose, such as ground water recharge, would be enlargement, which IDWR cannot approve. See Idaho Code § 42-222(1). Converting a water right or a portion of a water right from irrigation to ground water recharge would require a reduction in irrigated acres. If KHID is willing to give up acres, the proportionate share of its water right quantity could possibly be converted to ground water recharge, subject to approval of a water right transfer by IDWR. In such a transfer, only the consumptive portion of the water volume could be converted to the new use.

To my knowledge, whether the ground water recharge use is inside or outside KHID boundaries does not matter in the water right transfer process described in Title 42, Idaho Code, if KHID has legal authority to use the land needed for conveyance and recharge and KHID receives an approved transfer from IDWR. However, there may be Title 43, Idaho Code, restrictions on irrigation district operations outside district boundaries. Questions regarding Title 43 should be referred to KHID's legal counsel.

4. Is recharge an allowable practice within the District's boundaries?

The answer to this question is similar to the answer to question no. 3. If KHID does not give up acres, then diverting and using some of its water right for another purpose, such as ground water recharge, would be enlargement, which is prohibited under the law. Converting a water right or portion of a water right from irrigation to ground water recharge would require giving up irrigated acres. If KHID is willing to give up acres, the proportionate share of the water right quantity could possibly be converted to ground water recharge within KHID's boundary, subject to approval of a water right transfer by IDWR. Only the consumptive portion of the water volume could be converted to the new use.

5. Are there options that the District has not considered for its unused water?

To change the purpose of use of its water right(s), KHID must reduce the currently-authorized beneficial use—irrigation of 11,573 acres. If KHID does not contemplate permanent reductions in irrigated acreage but does have occasional short-term reductions, leasing a portion of its water rights into the Water Supply Bank may be a way to temporarily make water available for another purpose. Rentals from the Water Supply Bank are subject to the same enlargement analysis applied to water right transfers.



King Hill Irrigation District

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February 27, 2025

Lt. Governor Bedke,

Beginning in 2020, the King Hill Irrigation District (District) embarked on a campaign intended to revitalize its crumbling irrigation water delivery system that services 11,573 acres in Elmore and Twin Falls Counties. In 2021, the District water users generously approved a loan of \$1.5 million from the Idaho Water Resource Board, the District was awarded an Aging Infrastructure Grant, Elmore County Soil Conservation District grant, and a commitment of \$1.9 million in matching funds as well as engineering services from the Natural Resources Conservation Service.

In 2023, with the generosity and assistance of the above-named partners, Phase 1 of the District's Infrastructure Improvement Campaign became a reality with the Hammett Pump and Pipeline Project becoming operational. Phase 2, the Cold Springs Pipeline Project, is scheduled to come online for the 2025 irrigation season. In its two seasons of operation the Hammett Pump and Pipeline Project, which services two thousand acres, has saved over 8000 acre/feet of water from being diverted from the Snake River. The District expects similar water savings from subsequent projects.

As the District looks forward to future projects, there are two key questions that must be answered: Can the District monetize its water savings to fund future improvements to its system? And how can the District put the water that it is conserving to beneficial use in the communities that it serves?

The King Hill Irrigation District holds two water rights, one for 300 cfs (37-4112) and the other for 70 cfs (37-21595). In 2024, the highest diversion rate from the combined District pumping facilities was 230 cfs.

The District is investigating the possibility of converting its 70 cfs water right from irrigation to municipal for the purposes of recharge in Elmore County without compromising any of the 11573 acres that the District irrigates. The District is asking you, Lt. Governor Bedke, to facilitate a dialogue directly between the King Hill Irrigation District and the Idaho Department of Water Resources to seek resolution on key issues that the District has encountered in its efforts:

1. Can the District convert its 70 cfs irrigation water right to any other classification of water right to put it to beneficial use?
2. If the District no longer has the need or ability to divert its entire water right, is it at risk of losing said water right due to not being able to put it to beneficial use?
3. Is it considered an expansion of acreage to use water for a recharge effort outside of District boundaries?
4. Is recharge an allowable practice within the District's boundaries?
5. Are there options that the District has not considered for its unused water?

The King Hill Irrigation District would appreciate any insight or assistance that you may be able to offer in this regard.

Sincerely,
Jeff Blanksma, Chairman
King Hill Irrigation District