



IDAHO DEPARTMENT OF
WATER RESOURCES

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Governor Brad Little

Director Mat Weaver

03/11/24

FILIPE AGUIRRE
1290 NE FRONTAGE RD
MOUNTAIN HOME ID 83647

RE: PETITION FOR RESOTRATION OF OWNERSHIP – WATER RIGHT HISTORY

Mr. Aguirre,

The Department received your letter detailing your concerns about water rights 61-7647 and 61-2033. In your letter you assert that water right 61-2033 was replaced by water right 61-7647 and ownership given to JC and Thelma Cantrell. I searched the documents available in the records for each right and found evidence contrary to this assertion. Enclosed with this letter are summaries of the history of rights 61-7647 and 61-2033 based on documents found in the water right record of each right. Please read these summaries prior to the remainder of this letter as I make reference to the history and documents described in the summaries when responding to your statements.

In your letter you write that you are the correct owner of right 61-7647. You enclosed images of the place of use of right 61-2033 and the diversion works and provide a copy of the settlement signed by Aguirre and the Cantrells as supporting evidence. However, the settlement demonstrates Aguirre agreed that the Cantrells could establish a new and junior water right for the use of water from Frazier Tunnel. Documents in the record show right 61-7647 was established through the application, permit development, and license process. Right 61-7647 has a junior priority to former right 61-2033 indicating it was established later in time, authorizes use of spring water for different beneficial uses and authorizes beneficial use at a different place of use than former right 61-2033. The evidence included with your letter and documents in the water right record do not show right 61-7647 replaced right 61-2033.

Also in your letter you write, “mr cantrell illegally went to the department of water resources and lied. He stated that my families water right 61-2033 was abandoned.” There is evidence in the record for right 61-2033 that suggests the Cantrells discussed right 61-2033 with IDWR staff. However, there is evidence in the file demonstrating IDWR staff attempted to verify the use of the right through communication with Aguirre and by site visit. The recommendation to disallow Aguirre’s claim of right 61-2033 was based on a lack of evidence of use and Aguirre was given sufficient opportunity to provide evidence.

Finally, you submitted several forms with your letter, I will address each one separately. The *Claim to a Water Right* form is the appropriate form for recording the historic use of water. However, the point of diversion is within Administrative Basin 61 within the area subject to the Snake River Basin Adjudication (SRBA). The Final Unified Decree was signed on 08/25/2014. Claims in the SRBA can

only be filed for de minimis domestic or stockwater uses. The time to file a claim with the SRBA for irrigation has passed. This form will be returned.

You also included an *Application for Permit* form. This is the appropriate form to file to establish a new water right and requires an application fee pursuant to Idaho Code § 42-221. Without the required fee the application is incomplete and therefore will be returned.

The third form you included is a *Change in Address* form requesting a change in the mailing address for rights 61-10622, 61-2033, and 61-7647. The current owner or record of right 61-10622 is Basque Ranches. According to the Idaho Secretary of State, the mailing address for Basque Ranches and the registered partners is the same as the address listed on the form. IDWR will update the mailing address for right 61-10622. Right 61-2033 is not an active record, therefore owners name and mailing address will not be changed. The Department will add an additional mailing address to this record as requested. The owner of record of right 61-7647 is not Basque Ranches and as discussed in this letter, should not be changed at this time.

If you have acquired right 61-7647 through the purchase of the right directly or the property the right is appurtenant to, please submit a complete Notice of Change in Water Right Ownership form with sufficient evidence of ownership (such as a warranty deed or other legal conveyance of ownership) and the required fee.

On 03/07/24 I spoke with Kari Sinclair and discussed the information found in the water right records. Mrs. Sinclair referenced a document titled "Permit", it can be found on page 48 of the electronic file for water right 61-7647. Mrs. Sinclair called attention to the fourth paragraph beginning at the bottom of the first page and continuing on the second page which states:

AND, WHEREAS, it is understood between the parties hereto that by using said waste water the Second Parties shall not acquire a right to continue to use the same if the First Parties should hereafter put said waste water to beneficial use,

Mrs. Sinclair asserts this document demonstrates Cantrell should not have been allowed to establish a water right for the use of water from Frasier Tunnel. I disagree. On page 1 the document states that the First Parties (Aguirre) owns water rights from the Fraiser Tunnel and other sources and that waste water flows from the Aguirre property and further that the Second Parties (Cantrells) have been using that waste water for stock watering and irrigation. Additionally, the final section of the document states the First Party grants the Second Party permission to use the waste water when available. These sections indicate this document is not related to application for permit 61-7647 which identifies the Frazier Tunnel spring as the source, but to the use of waste water. Finally, this document is not signed by either party and should be considered an executed agreement.

Mrs. Sinclair asked about the options available to acquire water rights for irrigation. The property in question is within the Mountain Home Ground Water Management Area and Snake River Basin Moratorium Area so their options are limited and complicated and will be discuss in a separate document (see enclosed).

In conclusion, the documents in the water right file demonstrate that right 61-2033 was not closed and replaced by right 61-7647 with ownership granted to the Cantrells. Aguirre's claim of right 61-2033 was disallowed by the SRBA court because there was insufficient evidence demonstrating the right was valid. The Cantrells established a new right to the use of water from the Frazier Tunnel with a junior priority pursuant to a settlement recognized and signed by Aguirre.

Respectfully,



Phill Hummer

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Enclosure: Water Right Background Summary, Incomplete Application For Permit, Incomplete Notice of Claim, Amended Snake River Basin Moratorium Order, Water Right Options Summary, Blank Application for Permit form, Application for Permit Fee Schedule

Summary of the History for Right 61-7647

Application 61-7647 ("Application") was filed by JC and Thelma Cantrell ("Cantrells") on 7/2/1990. On 8/3/1990 Domingo Aguirre ("Aguirre") filed a protest of the Application. A conference was held on 4/10/1991 the result of which appears to be a signed and executed agreement between the Cantrells and Aguirre. The Department received a copy of the agreement on 5/8/1991. The agreement recognizes the existence of water license no. 8456 (later identified as no. 61-2033) authorizing the use of water from a source identified as Frazier Tunnel and that this right is senior to application 61-7647. It further recognizes that the Cantrells could make use of water not diverted and used by Aguirre. The Cantrells and Aguirre both signed the agreement. By signing the agreement Aguirre agreed to withdraw the protest filed against 61-7647. IDWR approved permit 61-7647 on 6/20/91.

On 10/8/1996 an examiner conducted an on-site examination of the use developed under permit 61-7647. The examiner found the permit was developed, making use of water from a spring that flows out of a tunnel into a ditch that conveys water to Basque Ranches and to a pond on the Cantrells property. License 61-7647 was issued on 4/6/99 with a priority date of 7/9/1990 based on the on-site examination.

Summary of the History for 61-2033

On 10/10/1921 IDWR issued license 8456 to W.L. Frazier authorizing the use of a "subterranean stream" for the purposes of irrigation and domestic use. The license would later be identified as license no. 61-2033. Then on 1/8/1990 IDWR received a notice of claim to a water right ("Claim") from Basque Ranches. The Claim identifies the basis of the claim as license 61-2033 and lists the source as ground water, but the source is further described as a "Horizontal well into water table – Tunneling techniques used...".

On 10/20/1994 IDWR staff conducted an on-site investigation of the tunnel and place of use claimed in an attempt to verify use of water as claimed. IDWR staff found water flowing out of a tunnel into a ditch and pond. No convincing evidence of use on Basque Ranches property was found during the site visit as evident by the photographs in the record. Then on 10/28/1994 IDWR mailed a letter to Basque Ranches informing them that they needed to submit information demonstrating that use of water as claimed had recently occurred and warned that without evidence of use IDWR would recommend the claim be disallowed. There are documents in the record that indicate IDWR staff has multiple conversations with Aguirre about the claim and how Aguirre could support their claim of right. There is no evidence in the record that IDWR received evidence of use from Aguirre. IDWR recommended the claim be disallowed and on 4/24/2001 the SRBA court issued Partial Decree of Disallowed Water Right Claims for claims of right in Basin 61. The partial decree ordered that the claims in Exhibit A were to be disallowed, 61-2033 was included in Exhibit A.

Water Right Options

Water Right 61-2033

The Final Unified Decree in the Snake River Basin Adjudication (SRBA) was signed on 08/25/2014. Claims in the SRBA can now only be filed for de minimis domestic or stockwater uses. It may be possible to file something with the SRBA court and provide evidence that 61-2033 was not forfeit. I do not know that process, the documents that should be filed, nor what evidence of use will be required. If you would like to do anything with the SRBA court, I highly recommend hiring legal counsel.

Acquiring an Existing Water Right

Idaho Code § 42-222 states that the point of diversion and place of use of existing water rights may be changed if the proposed change meets certain criteria. However, the source of water may not be changed. This means that it may be possible to acquire an existing right and move it to the Aguirre property but the right so acquired must authorize the diversion and use of water from either the Frazier Tunnel or ground water within the same aquifer to be available for transfer. The Department does not participate in any water right market places and therefore can not provide assistance in acquiring water rights. Once acquired you will need to submit an application for transfer to the Department for review. Additional information along with the appropriate form can be found on the Department's website at <https://idwr.idaho.gov/water-rights/transfers/>

The Idaho Water Resource Board operates a Water Supply Bank that accepts idled water rights and rents the same for use by entities in need of water. A rental may provide the authority to use water on the Aguirre property. Rental agreements through the Water Supply Bank typically do not exceed 5 year terms and are dependent on water availability. More information along with the appropriate forms can be found on the Department's website at <https://idwr.idaho.gov/iwrb/programs/water-supply-bank/>.

Establishing a New Right

The Frazier Tunnel and Aguirre property are within the Snake River Basin Moratorium Area. The enclosed Order provides the background information and details. The Order suspends further action on processing and approving applications for new water right for all surface water and ground water sources within the boundary (see page 30 of the Order) subject to some provisions. However, the Director is not prevented from reviewing applications on a case by case basis if the applicant can demonstrate the proposed use of water is non-consumptive, will have no effect on prior surface and ground water rights, or impacts of the new use will be fully mitigated.

To establish a new water right for use of water from the Frazier Tunnel, from a constructed ground water well, or any other source for irrigation you must submit an application for permit (form enclosed) along with the appropriate fee (see enclosed fee schedule) and demonstrate the use would not injure existing water rights. If you wish to pursue this option, I highly recommend seeking the advise of legal counsel or technical consultant firm familiar with the Snake River Basin Moratorium.

**BEFORE THE DEPARTMENT OF WATER RESOURCES
OF THE STATE OF IDAHO**

IN THE MATTER OF APPLICATIONS
FOR PERMITS FOR THE DIVERSION
AND USE OF SURFACE AND GROUND
WATER WITHIN THE SNAKE RIVER
BASIN

**AMENDED SNAKE RIVER
BASIN MORATORIUM ORDER**

SUMMARY

This order expands the existing Eastern Snake River Plain Moratorium to include consumptive use of all surface and ground water tributary to the reach of the Snake River between King Hill and Swan Falls Dam to protect existing water rights, including decreed minimum stream flow water rights. This order modifies certain exceptions related to domestic uses and clarifies the application of the non-consumptive use exception to municipal water use and domestic water use. This order also re-establishes a moratorium on the issuance of permits for new consumptive uses from surface and ground water tributary to the Snake River upstream from Milner Dam to protect existing water rights.

BACKGROUND

Snake River Downstream from Milner Dam

The Idaho Water Resource Board (“Board”) first established minimum stream flows at the USGS gaging station on the Snake River near Murphy (“Murphy Gage”) in the 1976 Idaho State Water Plan.¹ In 1986, the Board amended the Idaho State Water Plan to increase minimum stream flows at Murphy Gage.² The 1986 Idaho State Water Plan also stated, “[i]t is the policy of Idaho that the ground and surface water of the basin be managed to meet or exceed . . . the minimum stream flows at Murphy gauging station.”³ The current Idaho State Water Plan also included the policy of managing Snake River basin water resources to meet or exceed the minimum stream flows at Murphy.⁴

Minimum stream flow water rights at Murphy Gage were decreed in the Snake River Basin Adjudication to the Board and Idaho Power Company. The Board holds decreed water rights 02-201, 02-223, and 02-224 for minimum stream flows in the Snake River at the Murphy

¹ Idaho Water Res. Bd., (1976). *The State Water Plan – Part Two* (p. 116). <https://idwr.idaho.gov/wp-content/uploads/sites/2/iwrb/1976/1976-State-Water-Plan-Part-2.pdf>

² Idaho Water Res. Bd., (1986). *Idaho State Water Plan* (p. 35). <https://idwr.idaho.gov/wp-content/uploads/sites/2/iwrb/1986/1986-State-Water-Plan.pdf>

³ *Id.*

⁴ Idaho Water Res. Bd., (2012). *Idaho State Water Plan* (p. 43). <https://idwr.idaho.gov/wp-content/uploads/sites/2/iwrb/2012/2012-State-Water-Plan.pdf>

FINDINGS OF FACT

Reference Locations

1. The following locations on the Snake River are crucial to understanding the administration of water resources in the Snake River, the Eastern Snake Plain Aquifer ("ESPA"), and their tributaries:

- a. Milner Dam is located in south-central Idaho in Section 29, Township 10 South, Range 21 East, Boise Meridian.
- b. The USGS gauging station at King Hill ("King Hill Gage") (USGS 13154500) is located approximately 94 miles downstream from Milner Dam in Section 7, Township 5 South, Range 11 East, Boise Meridian.
- c. Swan Falls Dam is located approximately 92 miles downstream from the King Hill Gauge in Section 18, Township 2 South, Range 1 East, Boise Meridian.
- d. The USGS gauging station near Murphy ("Murphy Gage") (USGS 13172500) is located approximately 4 miles downstream from Swan Falls Dam in Section 35, Township 1 South, Range 1 West, Boise Meridian.

Each of these locations is shown on the map in Appendix A of this order.

2. The following areas are also crucial to understanding the administration of water resources in the Snake River, the ESPA, and their tributaries:

- a. The "trust water area" is the area where ground water is presumed to be tributary to the Snake River between Milner Dam and Swan Falls Dam. The area is discussed in Rule 30.01 and shown in Appendix A of the Water Appropriation Rules (IDAPA 37.03.08).
- b. The "non-trust water area" is defined in the January 6, 1993 *Moratorium Order in the Matter of Applications for Permits for Diversion and Use of Surface and Ground Water within the Snake River Basin Upstream from Milner Dam the Non-Trust Water Moratorium* ("Non-Trust Water Moratorium") by depicting it on a map. The map shows the non-trust water area to be that portion of the Snake River Basin in Idaho, including tributary basins, upstream from Milner Dam and not within the trust water area.

These areas are shown on the map in Appendix A of this order.

5. Since 1952, there has been a long-term declining trend in ESPA ground water levels and the volume of water in aquifer storage. These trends result largely from the combination of the decreased incidental recharge associated with diversion of surface water onto the ESRP and increased consumptive ground water pumping. The Department estimates the ESPA lost approximately 14 million acre-feet (MAF) from aquifer storage during the period 1952 to 2022, an average reduction of approximately 200 thousand acre-feet per year (KAF/yr.).⁸ Reduced aquifer storage in the ESPA and the corresponding reduction in ground water levels reduce the supply of water to senior water right holders by reducing the spring and base flow discharge needed to maintain stream flows.⁹

6. Recognizing the hydraulic connection between ground water in the ESPA and the Snake River, the Department developed a regional numerical ground water flow model (“ESPA model” or “ESPAM”) to simulate depletions to the Snake River in various reaches caused by diversion of ground water for irrigation and other consumptive uses. The current version of the model is ESPAM 2.2.

7. The ESPA model simulates how stresses applied to the ESPA affect flows in the Snake River and its tributary springs and streams. Modeled aquifer stresses include natural, incidental, and managed recharge, and withdrawal by ground water pumping. The model shows that ground water diversions from the ESPA reduce aquifer storage and reduce flows needed by senior water users.

8. Net recharge to the ESPA is derived primarily from precipitation and snowmelt in tributary basins. Based on the ESPAM 2.2 average annual water budget for water years 1981–2018, only approximately 13% (1.0 MAF/yr.) of aquifer recharge is derived from the infiltration of precipitation on the ESRP. The remaining aquifer recharge is derived from tributary underflow of ground water (approximately 16%), tributary streamflow that seeps into the aquifer via losing streams (approximately 9%), and seepage resulting from diversions of surface water from the Snake River and other streams (approximately 63%).¹⁰

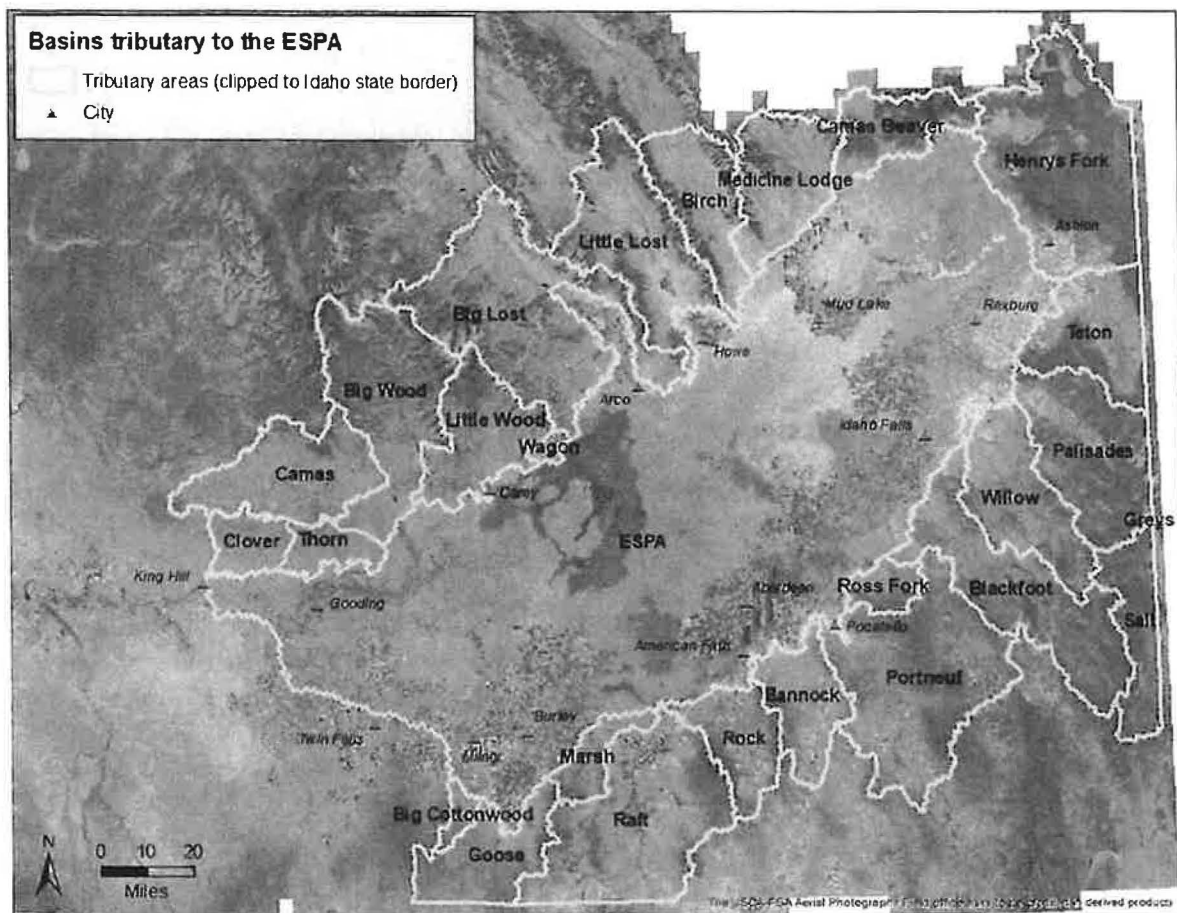
Basins Tributary to ESPA

9. Streamflow originating in tributary basins recharges the ESPA through a combination of infiltration of water from losing streams and incidental recharge (canal seepage and on-farm infiltration) resulting from the diversion of surface water onto the ESRP. Consumptive use of ground water and surface water in basins tributary to the ESPA reduces inflow to the ESPA and Snake River via tributary streamflow and/or ground water underflow.

⁸ *Id.*

⁹ Barlow, P.M., & Leake, S.A. (2012). *Streamflow depletion by wells—Understanding and managing the effects of groundwater pumping on streamflow* (Circular 1376), U.S. Department of the Interior & U.S. Geological Survey (p. 84). https://pubs.usgs.gov/circ/1376/pdf/circ1376_barlow_report_508.pdf

¹⁰ Sukow, J. (2021). *Model calibration report: Eastern Snake Plain Aquifer model version 2.2*. Idaho Department of Water Resources (p. 19). https://research.idwr.idaho.gov/files/projects/espam/browse/ESPAM22_Reports/ModelCalibrationRpt/ModelCalibration22_Final.pdf



11. Consumptive use of surface water in tributary basins also reduces flow in the Snake River, both upstream and downstream of Milner Dam, by either reducing tributary streamflow, reducing infiltration of streamflow to the ESPA via losing streams, or by reducing incidental recharge associated with diversions of streamflow onto the ESRP. The timing and location of impacts on surface water supply is dependent on the timing and location of the diversion.

Perched Aquifers

12. Several locally perched aquifers, often recharged largely by infiltration of irrigation water, are also tributary to the ESPA. In a study conducted during development of the Minidoka Project, perched ground water below the surface water irrigated portion of the project was observed to be an important source of recharge to the ESPA.¹¹ A more recent study on the age of irrigation water also indicates that incidental recharge from the Minidoka Irrigation District flows west and northwest in a perched aquifer before joining the ESPA, which generally flows

¹¹ Crosthwaite, E.G., & Scott, R.C. (1956). *Ground water in the North Side Pumping Division, Minidoka project, Minidoka County, Idaho* (Circular 371), U.S. Department of the Interior & U.S. Geological Survey (p. 10). <https://pubs.usgs.gov/circ/0371/report.pdf>

16. New consumptive uses of ground water or surface water in the Salmon Falls Creek, Rock Creek, and other tributary drainage basins south of the Snake River between Murtaugh Lake and Salmon Falls Creek will result in reduced discharge to the Snake River between Milner and King Hill. The Department calculates that approving the approximately 63 pending applications for diversion of ground water for irrigation, commercial, municipal, or industrial use in this area would deplete south side aquifer discharge to the Snake River between Milner Dam and King Hill by up to 42,000 AF/yr. (58 cfs).

Tributary Basins from King Hill to Swan Falls

17. Aquifers tributary to the King Hill to Swan Falls Dam reach of the Snake River, both north and south of the river, are generally recharge limited. Ongoing water level declines in aquifer monitoring wells indicate that the rate of discharge exceeds the rate of recharge.

18. An early study of ground water resources in the Mountain Home Plateau, located west of King Hill, concludes that ground water is recharged mainly along the Mt. Bennett Hills.¹⁹ The water table slopes downward to the Snake River Canyon, where ground water discharges to the Snake River. Ralston supports his conclusions by plotting ground water contours that depict a steep gradient toward the Snake River. Ralston's report states, "the water-level contours indicate that the Mt. Bennett Hills are the primary source areas for ground-water recharge for the entire study area, and that the majority of the discharge is to the Snake River."

19. Ground water contours, derived by a U.S. Geological Survey, support a conclusion that the ground water and the Snake River west of King Hill are hydraulically connected.²⁰ Newton shows ground water contours parallel to the Snake River both on the north and south sides with declining elevation toward the river; this indicates that the Snake River is an area of ground water discharge. Newton estimated ground water discharge to the Snake River between King Hill and Murphy in 1980 comprised about 4% of the total discharge at Murphy.

20. Two additional studies support a conclusion that ground water and surface water are hydraulically connected west of King Hill. Welhan presents several conceptual models on perched and regional-scale flow on the Mountain Home Plateau.²¹ Tesch presents a water budget for an area of proposed housing development near the Danskin Mountains on the Mountain Home Plateau and states, "[u]nless inflow to the aquifer system in the study area is

¹⁹ Ralston, D.R., & Chapman, S.L. (1968). *Ground-water resource of the Mountain Home Area, Elmore County, Idaho* (Water Information Bulletin No. 4), Idaho Department of Reclamation (p. 48). <https://idwr.idaho.gov/wp-content/uploads/sites/2/publications/wib04-gw-res-mthome-id.pdf>.

²⁰ Newton, G.D. (1991). *Geohydrology of the regional aquifer system, Western Snake River Plain, Southwestern Idaho* (Professional Paper 1408-G), U.S. Department of the Interior & U.S. Geological Survey (figs. 3, 21). <https://pubs.usgs.gov/pp/1408g/report.pdf>

²¹ Welhan, J.A. (2012). *Preliminary hydrogeologic analysis of the Mayfield Area, Ada and Elmore Counties, Idaho* (Staff Report S-12-2), Idaho Geological Survey & University of Idaho (p.41). https://www.idahogeology.org/pub/Staff_Reports/2012/StaffReport_S-12-2.pdf.

Prior Administrative Actions Affecting the Snake River, ESPA, and Tributaries

Snake River Basin Upstream from Milner Dam

25. Snake River water rights identifying points of diversion upstream from Milner Dam are administered separately from Snake River water rights identifying points of diversion downstream from Milner Dam pursuant to Idaho Code § 42-203B(2), and General Provision 4 for Basin 2 in the SRBA's *Final Unified Decree*. See also IDAPA 37.03.08.030.03.e. The median annual natural flow passing the Snake River at Milner for years 1990 to 2021 range from 0 cfs to approximately 3,500 cfs and the median annual volume is approximately 550,000 acre-feet. The flow past Milner Dam is reduced to zero during normal irrigation season operating conditions. When no Snake River flow passes Milner Dam, existing junior Snake River water rights upstream from Milner Dam are curtailed to satisfy senior Snake River water rights upstream from Milner Dam.

26. Junior surface water rights diverting water from the Snake River and tributary streams upstream from Milner Dam are curtailed every year and rely on storage water, if available, to maintain adequate supply throughout the year or irrigation season. Administration of surface water rights by priority is accomplished by Water District 1 and other water districts in the Snake River and tributary streams upstream from Milner Dam.

27. On January 6, 1993, the Director issued the Non-Trust Water Moratorium to prevent the approval of certain new applications to appropriate water in the non-trust water area. The order stated:

Ground water aquifers have been stressed by the reduction in natural recharge, from reduced recharge due to changes in diversion and use of surface waters throughout the basin and by the increased volume of pumping. As a consequence, ground water levels have fallen. The lowered water levels in the aquifers of the non-trust water area have resulted in numerous wells, often used for domestic and municipal water supply purposes, becoming unusable. Lowered ground water levels also reduce spring discharge needed to maintain stream and river flows.²⁵

28. The Non-Trust Water Moratorium order contained language that “the moratorium shall be in effect on and after its entry and shall remain in effect until December 31, 1997.”²⁶

29. On August 15, 2013, the Department received a *Petition to Renew Moratorium Order for Non-Trust Water Area* from A&B Irrigation District, American Falls Reservoir District #2, Burley Irrigation District, Milner Irrigation District, Minidoka Irrigation District, North Side Canal Company, and Twin Falls Canal Company. The petition argued:

²⁵ Moratorium Order, at 1, *In re Applications for Permits for Diversion and Use of Surface and Ground Water within the Snake River Basin Upstream from Milner Dam* (Idaho Dep't of Water Res. Jan. 6, 1993).

²⁶ *Id.* at 5.

33. Applications for permit to appropriate trust water, i.e., applications for Trust Water Rights, may be approved if they meet criteria in Idaho Code § 42-203A and additional criteria established for trust water, including a determination whether the proposed use will significantly reduce the availability of trust water, *see* Idaho Code § 42-203C.

34. In 1990, the Department completed studies to estimate the impact of appropriations of trust water on Snake River flows and associated hydropower generation losses. Projected appropriations of trust water were based on undeveloped permits and applications in the trust water area totaling about 196,000 irrigated acres. The IDWR/UI Ground Water Flow Model, a precursor to ESPAM, simulated depletions due to trust water diversions over 60 years.³¹ The studies resulted in a decision of the Department—*Memorandum Decision and Order*, dated November 7, 1990 (“1990 Evaluation of Significant Reduction Order”). The studies and order concluded that “[d]evelopment of 196,000 acres would reduce outflow by 87% of the new depletions in the 60th year. Other factors present in the dynamic system as large as the Snake Plain aquifer will have more effect on the discharge of the Snake River than decreases caused by this amount of new development.”³² The order concluded that the new appropriations of trust water would not cause a significant reduction in the water supply available for power production purposes.

35. After the 1990 decision, development of beneficial uses pursuant to existing undeveloped permits continued in the trust water area, and new applications for consumptive uses were processed and approved throughout the trust water area until 1992.

36. On May 15, 1992, the Director issued an order establishing a moratorium on the approval of new applications to appropriate surface water or ground water in the Snake River Basin upstream from the USGS gaging station on the Snake River at Weiser to protect existing water rights. Because Weiser is downstream from Swan Falls Dam, the moratorium included the entire trust water area. Meanwhile, development of beneficial uses pursuant to existing undeveloped permits continued in the trust water area.

37. On January 6, 1993, the Director amended the moratorium order to eliminate the area in the Snake River Basin upstream from Milner Dam (the non-trust water area) from the scope of the moratorium order.³³

38. On April 30, 1993, the Director amended the moratorium order again. The amendment further reduced the size of the moratorium area, limiting it to just the trust water area of the Snake Plain Aquifer (and tributary aquifers) upstream from the King Hill Gage (hereinafter Eastern Snake River Plain Area) and the Boise River Drainage Area.

³¹ The Snake River Plain Aquifer Model (“SRPAM”) preceded ESPAM. The Idaho Water Resources Research Institute published the documentation for SRPAM1.1 in 1999 and stated that prior to 1999 the model was referred to as the “IDWR/UI Ground Water Flow Model.”

³² *Memorandum Decision and Order* ¶ 3, at 4, *In re Evaluating Whether Development of New Irrigated Acreage Will Cause a Significant Reduction in Trust Water Available for Power Production* (Idaho Dep’t of Water Res. Nov. 7, 1990).

³³ On the same day, the Director issued the Non-Trust Area Water Moratorium discussed in Finding of Fact 27.

GWMA's and CGWAs in the Trust Water Area and Non-Trust Water Area

46. The Department established Critical Ground Water Areas ("CGWA") pursuant to Idaho Code § 42-233a or Ground Water Management Areas ("GWMA") pursuant to Idaho Code § 42-233b, in areas where ground water pumping for irrigation is significant and water levels have declined.

47. In 2016, the ESPA GWMA was designated to address long-term declines in both aquifer water levels and discharge to the Snake River system. The ESPA GWMA includes most of the ESPA from the St. Anthony area in the east to King Hill in the west.

48. The Raft River Basin is tributary to the ESPA. Concerns over the potential effects of new and increased ground water use in the Raft River Basin resulted in the designation of the Raft River CGWA in 1963. Ongoing monitoring of water levels in the Raft River Basin indicate regional declining ground water level trends of 0.9 feet per year from 1966 to 1991 and 2.1 feet per year from 1991 to 2016.³⁷

49. The Goose Creek and Big Cottonwood Creek Basins are tributary to the ESPA. Observed water-level declines and concerns over the potential effects of new and increased ground water use in the Goose Creek and Big Cottonwood Creek Basins resulted in the designation of the Goose Creek-Rock Creek CGWA in 1962. The boundaries of the CGWA were modified in 1967 to create three separate CGWAs in the basin (Artesian City, Oakley-Kenyon, and Cottonwood CGWAs). A fourth CGWA (West Oakley Fan CGWA) was added in 1982, resulting in a contiguous tract of CGWAs across the basin.

50. The Big Wood, Camas Creek, and Silver Creek drainages in Administrative Basin 37 are tributary to the ESPA. Concerns about the impact of ground water pumping in these drainages on senior priority surface water rights in Administrative Basin 37 led to the designation of the Big Wood River Ground Water Management Area ("BWRGWMA") in 1991. In May 2022, the Department established a moratorium enjoining the processing and approval of new and pending applications for permits to appropriate water from surface and ground water sources within the BWRGWMA.

51. The Blue Gulch and Cinder Cone Butte CGWAs were established for portions of aquifers that are tributary to the Snake River in the King Hill to Murphy reach. The Blue Gulch CGWA was designated in 1970 based on a report by Chapman and Ralston (1970), which stated that discharge was exceeding recharge. The Cinder Cone Butte area was declared a CGWA in 1981 because of declining ground water levels.

52. In the Milner to King Hill reach, GWMA's were established for portions of two aquifers experiencing declining artesian pressures and water temperatures. The Banbury Hot Springs GWMA was established in 1983. The resource was declared a GWMA because of declining artesian pressures and concerns about potential over-utilization, and a moratorium on new ground water rights has been established. The Twin Falls GWMA was established in 1984

³⁷ Amended Final Order Re: Management Program and Curtailing Expansion Rights, at 9, *In re Expansion Ground Water Rights in the Raft River Critical Ground Water Area* (Idaho Dep't of Water Res. Sep. 24, 2016).

other holders of senior priority water rights authorizing the diversion of spring flows in the Milner Dam to King Hill reach of the Snake River. The acquisition of the senior priority spring rights was costly.

58. Additional appropriation of ground water would deplete spring flows needed to satisfy the spring flow water rights held by the ground water districts. In addition, further depletion of spring flows will jeopardize the ability of the ground water districts to mitigate for depletions caused by existing ground water diversions.

Lake Walcott to Milner Dam

59. In 2005, a delivery call was filed by seven irrigation delivery entities holding senior priority water rights to divert surface water from the Snake River between Lake Walcott and Milner Dam. The Snake River in the Walcott to Milner reach derives a portion of its flow from springs that discharge to the Snake River and its tributary streams between the Near Blackfoot and Minidoka gaging stations. These spring flows are depleted by diversions authorized by junior priority ground water rights.

60. After protracted litigation, the Department issued a *Methodology Order* that requires an annual analysis of hydrologic conditions, prediction of water supply to the Snake River, and a corresponding prediction of whether the holders of senior priority surface water rights will suffer a demand shortfall.³⁸

61. Based on the annual predictions, and additional adjustments during the irrigation season, holders of junior priority ground water rights must mitigate for the predicted demand shortfall, or their diversion of ground water will be curtailed. The extent of curtailment is established by the severity of the predicted demand shortfall and a corresponding priority cut date.

62. In 2015, because of the specter of significant, predicted demand shortfall, and the threat of thousands of acres being curtailed resulting from an early priority cut date, the holders of senior priority surface water rights and junior priority ground water rights executed a settlement agreement (“Settlement Agreement”).³⁹

³⁸ Since the original methodology order was issued on April 7, 2010, there have been multiple revisions to this order—the current version was issued on April 19, 2016. See Final Order Regarding Methodology for Determining Material Injury to Reasonable In-season Demand and Reasonable Carryover, *In re Distribution of Water to Various Water Rights Held by or for the Benefit of A&B Irr. Dist., American Falls Reservoir Dist. #2, Burley Irr. Dist., Milner Irr. Dist., Minidoka Irr. Dist., North Side Canal Co., and Twin Falls Canal Co.* (Idaho Dep’t of Water Res. April 7, 2010); Fourth Am. Final Order Regarding Methodology for Determining Material Injury to Reasonable In-Season Demand and Reasonable Carryover, *In re Distribution of Water to Various Water Rights Held by or for the Benefit of A&B Irr. Dist., American Falls Reservoir Dist. #2, Burley Irr. Dist., Milner Irr. Dist., Minidoka Irr. Dist., North Side Canal Co., and Twin Falls Canal Co.*, No. CM-DC-2010-001 (Idaho Dep’t of Water Res. April 19, 2016).

³⁹ Surface Water Coalition & Idaho Ground Water Appropriators, Inc. (2015). *Settlement Agreement Entered into June 30, 2015 Between Participating Members of the Surface Water Coalition and Participating Members of the Idaho Ground Water Appropriators, Inc.* <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/swc-igwa-settlement/SWC-IGWA-Settlement-20150630-SWC-IGWA-Settlement-Agreement.pdf>

2022, the Sentinel Well Water Level Index had dropped to -7.62. Attainment of the April 2023 Sentinel Well Index target of -3.9 is now unlikely. Progress towards meeting the April 2026 Sentinel Well Index target will be dependent on future reductions in ground water consumption, as well as the future climate, which affects crop irrigation demand and the water supply available for natural, incidental, and managed aquifer recharge.

Current Conditions in the Snake River, ESPA, and Tributaries

Pending Water Right Applications

69. Ground water pumping from the ESPA, and from aquifers tributary to the ESPA, including perched aquifers, depletes the flow in the Snake River, both upstream and downstream from Milner Dam. An assessment by the Idaho Water Resources Research Institute notes: “Every acre-foot of water consumptively used in basins tributary to the Snake River ultimately reduces the flow of the Snake River.”⁴² New consumptive uses of ground water from the ESPA and tributary aquifers will further deplete the flow in the Snake River.

70. There are approximately 474 pending water rights applications proposing ground water diversions for irrigation, commercial, municipal, or industrial uses within the ESPA model boundary and in basins tributary to the ESPA. The pending applications propose irrigation of approximately 151,000 acres and diversions of approximately 79 cfs for commercial, municipal, and industrial purposes.

Snake River Basin Upstream from Milner Dam

71. As described above, the flow past Milner Dam is reduced to zero during normal irrigation season operating conditions. When no Snake River flow passes Milner Dam, existing junior Snake River water rights upstream from Milner Dam are curtailed to satisfy senior Snake River water rights upstream from Milner Dam. Curtailed surface water rights rely on storage water, if available, to maintain adequate supply throughout the year or irrigation season.

72. In July 2022, the Department performed an analysis using ESPAM 2.2 to determine the potential impacts to the Snake River of the pending water right applications for irrigation, commercial, municipal, and industrial uses of ground water within the ESPA and tributary basins. The model predicted a steady state depletion of 184,000 AF/yr (254 cfs) to the Snake River upstream from Milner Dam, including a steady state depletion of 100,000 AF/yr (138 cfs) to the Snake River between Near Blackfoot and Minidoka. The model prediction shows that granting pending applications will reduce flows to the Snake River upstream from Milner Dam, to the detriment of senior water users.

73. There is no moratorium on processing applications for new water rights in the non-trust water area. Most pending applications from the non-trust water area predate the expiration

⁴² Ralston, D. R., Broadhead, R., & Grant, D. L. (1984). *Hydrologic and legal assessment of ground water management alternatives for Idaho* (Technical Completion Report WRIP/371405), Idaho Water Resources Research Institute & University of Idaho (p. 10).
<https://cdm17254.contentdm.oclc.org/utils/getfile/collection/idahowater/id/553/filename/iwdl-198410.pdf>

the beginning of the irrigation season for water users diverting from the Snake River between Milner Dam and the Murphy Gage.⁴³

80. The low flows in the Snake River at Murphy Gage during the time period from mid-June to mid-August correspond to the time period of peak crop consumption demand across the ESRP and the Snake River tributaries.⁴⁴ Flows in the Snake River generally increase from late summer through fall as irrigation return flows increase and percolation from irrigation to ground water increases ESPA spring discharge to the Snake River.⁴⁵

81. In June 2022, the Department presented results of an evaluation of the impact of trust water rights developed for irrigation, commercial, municipal, or industrial use of ground water or surface water on the Snake River downstream of Milner Dam.⁴⁶ The estimated long-term annual average impact of trust water use is between 98 cfs and 197 cfs. The estimated long-term impact in March is between 58 cfs and 165 cfs. The estimated long-term peak summer impact is between 108 cfs and 300 cfs. The ranges reflect a lack of information on the consumptive use associated with the commercial, municipal, and industrial water rights, uncertainty in the timing of impacts from irrigation use in the Twin Falls area and Western Snake Plain, and uncertainty on surface water available to fill surface water trust rights. The majority, but not all the impacts of Trust Water Right appropriations on the Snake River, have been realized.

82. Any new appropriations of trust water for consumptive use of surface water from the Snake River and tributary springs and streams between Milner Dam and Swan Falls Dam will further reduce flows in the Snake River at the Murphy Gage. The reductions in flow will jeopardize maintenance of the minimum stream flow water rights at the Murphy Gage. The reductions in flow will also jeopardize some water right permits, licenses, and decreed water rights authorizing diversion and beneficial use of trust water.

83. In July 2022, the Department performed an analysis using ESPAM 2.2 to determine potential impacts to the Snake River of the pending water right applications for irrigation, commercial, municipal, and industrial uses of ground water within the ESPA and tributary basins. The model predicted a steady state depletion of 73,000 AF/yr (101 cfs) of ESPA discharge to the Snake River between Milner Dam and King Hill. The model prediction shows that granting pending applications in the trust water area will reduce flows to the Snake River

⁴³ Geisler, E. (2022). *Swan Falls AADF update* [presentation to Swan Falls Technical Working Group]. Idaho Department of Water Resources (p. 2-3). <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/swan-falls-settlement/20220810-Swan-Falls-TWG-Presentation-AADFUpdate.pdf>.

⁴⁴ *Id.*

⁴⁵ *Id.*; Sukow, J. (2021). *Model calibration report: Eastern Snake Plain Aquifer model version 2.2*. Idaho Department of Water Resources (p. 19). https://research.idwr.idaho.gov/files/projects/espam/browse/ESPAM22_Reports/ModelCalibrationRpt/ModelCalibration22_Final.pdf

⁴⁶ Sukow, J. (2022). *Preliminary evaluation of trust water use impact on Snake River below Milner Dam* [presentation to Swan Falls Technical Working Group]. Idaho Department of Water Resources. <https://idwr.idaho.gov/wp-content/uploads/sites/2/legal/swan-falls-settlement/20220607-Swan-Falls-TWG-Presentation-Trust-Water-Impact.pdf>

88. Ongoing monitoring of water levels in the Grand View-Bruneau GWMA indicate regional declining ground water level trends of 0.8 feet per year from 1998 to 2017 and 0.9 feet per year from 2008 to 2017.⁵⁴

89. Ongoing monitoring of water levels in the Mountain Home GWMA and Cinder Cone Butte CGWA indicate declining water levels southwest of Interstate 84, in areas where significant volumes of ground water are pumped for agricultural irrigation.⁵⁵

90. Ongoing monitoring of water levels in the Castle Creek Basin indicate a declining water level trend of 1.1 feet per year from 1968 to 2021, illustrating that water level declines are also occurring in recharge limited areas within the trust water area but outside of the designated GWMA and CGWAs.

91. Designation of GWMA and CGWA to protect aquifers tributary to the Snake River has not arrested the declines in ground water levels and aquifer storage in those aquifers. Based on the available information, new ground water development would also decrease aquifer storage and the ground water supply for existing ground water users in recharge limited areas already experiencing declining aquifer storage.

ANALYSIS

The ESPA is a vital source of water for the State of Idaho. Approximately one million acres of land on the Snake River Plain are irrigated by ground water pumped directly from the ESPA. The ESPA is hydraulically connected to the Snake River and indirectly supports surface water irrigation of roughly another million acres. ESPA-supported agriculture is crucial to Idaho's food supply and to the economies of communities across southern Idaho. As discussed in Finding of Fact 5, there has been a long-term declining trend in ESPA ground water levels and the volume of water in aquifer storage. While there have been brief periods of recovery, the overall downward trend has continued unabated.

ESPAM 2.2 shows that the reduced aquifer storage in the ESPA—and the corresponding reduction in ground water levels—reduce the supply of water to senior water right holders. In Surface Water Coalition delivery call proceeding, the Director determined that ground water pumping by *existing* ground water users is causing material injury to *existing* surface water users.⁵⁶ In other words, in some years, current water supplies do not satisfy current demands. If

⁵⁴ McVay, M. (2017). *Summary of groundwater levels in the Grand View-Bruneau Groundwater Monitoring Network – 2017 update*. Idaho Department of Water Resources (p. 17). <https://idwr.idaho.gov/wp-content/uploads/sites/2/publications/201706-OFR-grand-view-bruneau-gwma-water-level-update-2017.pdf>

⁵⁵ Tesch, C. (2017). *Hydrogeology of the Mountain Home Plateau* [presentation to the Idaho Water Resources Board], Idaho Department of Water Resources (p. 38). <https://idwr.idaho.gov/wp-content/uploads/sites/2/iwrb/2017/20170914-IWRB-Work-Session-Materials-10-17.pdf#page=38>

⁵⁶ See Final Order Establishing 2021 Reasonable Carryover (Methodology Step 9) at 3–4, *In re Distribution of Water to Various Water Rights Held by or for the Benefit of A&B Irr. Dist., American Falls Reservoir Dist. #2, Burley Irr. Dist., Milner Irr. Dist., Minidoka Irr. Dist., North Side Canal Co., and Twin Falls Canal Co.*, No. CM-DC-2010-001 (Idaho Dep't of Water Res. Dec. 21, 2021) (Finding material injury of 31,900 acre-feet to AFRD#2)

CONCLUSIONS OF LAW

1. The Director is responsible for administration of the appropriation and use of the waters of the state of Idaho. Idaho Code § 42-202 reads in pertinent part:

For the purpose of regulating the use of the public waters and of establishing by direct means the priority right to such use, any person, association or corporation hereafter intending to acquire the right to the beneficial use of the waters of any natural streams, springs or seepage waters, lakes or ground water, or other public waters in the state of Idaho, shall, before commencing of the construction, enlargement or extension of the ditch, canal, well, or other distributing works, or performing any work in connection with said construction or proposed appropriation or the diversion of any waters into a natural channel, make an application to the department of water resources for a permit to make such appropriation.

2. The Director is authorized under the provisions of Idaho Code § 42-1805(7) as follows:

After notice, to suspend the issuance or further action on permits or applications as necessary to protect existing vested water rights or to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, or to prevent violation of the minimum flow provisions of the state water plan.

3. Water Appropriation Rule 55 of the Department (IDAPA 37.03.08.055) provides that a moratorium on processing of applications for permit shall be entered by issuance of an order of the Director. Notice of the order shall be by certified mail to affected applicants and by publishing a legal notice in newspapers of general circulation in the area.

4. The current Idaho State Water Plan Policy 4A provides, in part, that the Snake River above Hells Canyon will be managed to meet or exceed the following minimum average daily flows at the Murphy gaging station of 3,900 cfs from April 1 through October 31, and 5,600 cfs from November 1 through March 31.

5. Idaho Code § 42-203B(2) provides in pertinent part as follows:

For the purposes of the determination and administration of rights to the use of the waters of the Snake river or its tributaries downstream from Milner dam, no portion of the waters of the Snake river or surface or ground water tributary to the Snake river upstream from Milner dam shall be considered.

6. General Provision 4 for Basin 2 in the SRBA Final United Decree states as follows:

The exercise of water rights above Milner Dam has and may reduce the flow at the dam to zero. For the purposes of the determination and administration of rights to the use of the waters of the Snake river or its tributaries downstream

Snake River Upstream from Milner Dam

14. During any time that water is not spilling over Milner Dam, existing junior surface water rights are being curtailed by Water District 01. The flow past Milner Dam is reduced to zero during normal irrigation season operating conditions. Because existing junior surface water users are already curtailed during normal irrigation season operations, there is no surface water available for appropriation.

15. New appropriations for consumptive use of ground water to be diverted from the non-trust water area will reduce the quantity of water available to surface water right holders entitled to divert water from the Snake River Basin upstream from Milner Dam, resulting in injury to senior water right holders. The non-trust water area is shown in Appendix A of this order.

16. A moratorium on issuance of permits to divert and use surface or ground water from the Snake River Basin upstream from Milner Dam in the non-trust water area for new consumptive uses should be established to protect existing vested water rights and to ensure compliance with the provisions of chapter 2, title 42, Idaho Code, in the non-trust water area.

ORDER

IT IS THEREFORE HEREBY ORDERED that the Snake River Basin moratorium established by the Department by order dated May 15, 1992, as amended January 6, 1993, April 30, 1993, and May 3, 1995, is superseded by this Moratorium Order.

IT IS FURTHER ORDERED that this Moratorium Order suspends further action on the processing and approval of presently pending and new applications for permits to appropriate water from the Snake River upstream from Swan Falls Dam and all surface and ground water sources in the trust water area and the non-trust water area, subject to the following provisions:

1. The moratorium order does not change or affect the authorization to continue development of any existing approved application (permit) that is not subject to an order establishing an indefinite stay in development or suspending action and prohibiting development of any existing approved application (permit).⁵⁷

2. The moratorium does not apply to any appropriation of ground water by beneficial use pursuant to Idaho Code § 42-227 for domestic purposes, including livestock watering, as such term is defined in Idaho Code § 42-111.

3. The moratorium does not apply to any application proposing a non-consumptive use of water as the term is used in Idaho Code § 42-605A. This exception to the moratorium shall not apply to applications for non-consumptive uses of water that will reduce the supply of water available to existing water rights because of the location or timing of return flows. Applications for ground water recharge shall be evaluated on a case-by-case basis to determine whether the

⁵⁷ See Finding of Fact 39.

applications to appropriate non-low temperature geothermal water within the Banbury Ground Water Management Area, the provisions of this moratorium and the Banbury Ground Water Management Area moratorium shall apply.

Within Water District No. 13-T, this moratorium order shall apply only to that portion within Administrative Basin 29.

8. The moratorium does not prevent the Director from reviewing for approval on a case-by-case basis an application which otherwise would not be approved under terms of this moratorium if:

- a. Protection and furtherance of the public interest, as determined by the Director, requires consideration and approval of the application irrespective of the moratorium; or
- b. The Director determines that the development and use of the water pursuant to an application will have no effect on prior surface and ground water rights because of its timing, location, insignificant consumption of water, or mitigation provided by the applicant to offset injury to other water rights. For example, the Director may consider applications proposing to appropriate surface water from the Snake River or its surface water tributaries upstream from Milner Dam when unappropriated water is flowing past Milner Dam or from the Snake River or its surface water tributaries downstream from Milner Dam when flows at the USGS gaging station on the Snake River near Murphy exceed the decreed minimum stream flow water rights.

IT IS FURTHER ORDERED that this Moratorium Order shall be in effect on and after its entry and shall remain in effect until it is withdrawn or modified by order of the Director.

IT IS FURTHER ORDERED that the Department shall serve a copy of this order by certified mail upon holders of applications for permits proposing appropriation of ground water or surface water within the moratorium area as shown in Appendix A and shall publish notice of this order for three consecutive weeks as required by IDAPA Rule 37.03.08.055 (Water Appropriation Rule 55).

Pursuant to Idaho Code § 42-1701A(3), any person aggrieved by any decision, determination, order or other action of the Director, and who has not previously been afforded an opportunity for a hearing on the matter, shall be entitled to a hearing before the Director to contest the action. The person shall file with the Director, within fifteen (15) days after receipt of written notice of the action issued by the Director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the Director and requesting a hearing.

DATED this 21st day of October 2022.


Gary Spackman
Director

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
APPLICATION FOR PERMIT
To appropriate the public waters of the State of Idaho

Ident. No. _____

1. Name of applicant(s) _____ Phone _____
Name connector (check one): ☐ and ☐ or ☐ and/or

Mailing address _____ City _____
State _____ ZIP _____ Email _____

2. Name of representative, if any _____ Phone _____
Mailing address _____ City _____
State _____ ZIP _____ Email _____

- a. ☐ Send all correspondence for this application to the representative and not to the applicant OR
☐ Send original correspondence to the applicant and copies to the representative.
- b. ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant OR
☐ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation.

3. Source of water supply _____ which is a tributary of _____

4. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #

5. Water will be used for the following purposes:

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)

Amount _____ for _____ purposes from _____ to _____ (both dates inclusive)
(cfs or acre-feet per year)

6. Total quantity to be appropriated is (a) _____ cubic feet per second (cfs) and/or (b) _____ acre-feet per year (af).

7. Proposed diverting works:

- a. Describe type and size of devices used to divert water from the source. _____
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 12. For dams 10 feet or more in height AND having a storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☐ No
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
- d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ No
- e. If well is already drilled, when? _____; drilling firm _____;
well was drilled for (well owner) _____; Drilling Permit No. _____.

For Department Use

Received by _____ Date _____ Time _____ Preliminary check by _____
Fee \$ _____ Received by _____ Receipt No. _____ Date _____

8. Description of proposed uses (if irrigation only, go to item 9):
- Hydropower; show total feet of head and proposed capacity in kW. _____
 - Stockwatering; list number and kind of livestock. _____
 - Municipal; must complete and attach the Municipal Water Right Application Checklist.
 - Domestic; show number of households _____
 - Other; describe fully. _____

9. Description of place of use:
- If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
 - If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE				NW				SW				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	

Total number of acres to be irrigated: _____

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping? _____
11. a. Who owns the property at the point of diversion? _____
- b. Who owns the land to be irrigated or place of use? _____
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____
12. Describe your proposal in narrative form and provide additional explanation for any of the items above. Attach additional pages if necessary. _____
13. Time required for completion of works and application of water to proposed beneficial use is _____ years (minimum 1 year).
14. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map or maps clearly identifying the proposed point of diversion, place of use, section #, township & range. The map scale shall not be less than two (2) inches equal to one (1) mile.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Signature of Applicant

Signature of Applicant

Print Name (and title, if applicable)

Print Name (and title, if applicable)

Application for Permit Fee Schedule

Per Idaho Code § 42-221

The application fee is based on the proposed storage volume (acre-feet per year or AFY) or on the proposed diversion rate (cubic feet per second or CFS). For applications proposing both a diversion rate and a storage volume, determine each fee separately and pay the greater of the two.

Flow Rate (CFS)	Storage Volume (AFY)	Fee	Flow Rate (CFS)	Storage Volume (AFY)	Fee
0.00 to 0.20	0.0 to 20.0	\$100	11.01 to 12.00	1,100.1 to 1,200.0	\$690
0.21 to 1.00	20.1 to 100.0	\$250	12.01 to 13.00	1,200.1 to 1,300.0	\$730
1.01 to 2.00	100.1 to 200.0	\$290	13.01 to 14.00	1,300.1 to 1,400.0	\$770
2.01 to 3.00	200.1 to 300.0	\$330	14.01 to 15.00	1,400.1 to 1,500.0	\$810
3.01 to 4.00	300.1 to 400.0	\$370	15.01 to 16.00	1,500.1 to 1,600.0	\$850
4.01 to 5.00	400.1 to 500.0	\$410	16.01 to 17.00	1,600.1 to 1,700.0	\$890
5.01 to 6.00	500.1 to 600.0	\$450	17.01 to 18.00	1,700.1 to 1,800.0	\$930
6.01 to 7.00	600.1 to 700.0	\$490	18.01 to 19.00	1,800.1 to 1,900.0	\$970
7.01 to 8.00	700.1 to 800.0	\$530	19.01 to 20.00	1,900.1 to 2,000.0	\$1,010
8.01 to 9.00	800.1 to 900.0	\$570	20.01 to 100.00	2,000.1 to 10,000.0	*
9.01 to 10.00	900.1 to 1,000.0	\$610	100.01 to 500.00	10,000.1 to 50,000.0	**
0.01 to 11.00	1,000.1 to 1,100.0	\$650	500.01 & over	50,000.1 & over	***

* \$1,010.00 plus \$20.00 for each additional cfs or part thereof or 100 acre-feet or part thereof

** \$2,610.00 plus \$10.00 for each additional cfs or part thereof or 100 acre-feet or part thereof

*** \$6,610.00 plus \$2.00 for each additional cfs or part thereof or 100 acre-feet or part thereof

Statutory Claim Fee Schedule		Amendment of Permit	
For Domestic Use	\$100	Flat Fee	\$100
For All Other Uses	\$1,000		
After June 30, 2025	\$1,500		

See separate fee schedule for Application for Transfer or Exchange.

Claim No. 61-02033

RECEIVED

FEB 08 2024

DEPARTMENT OF
WATER RESOURCES

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

CLAIM TO A WATER RIGHT

Former
change this
current #
61-07647

Under the provisions of Section 42-243, *Idaho Code*, any person claiming a water right established by diversion and application of water to beneficial use must file a claim with the Department of Water Resources. **The filing of this claim does not confirm the water right claimed.** Water rights represented by a valid permit, license, decree, or previous claim are exempt from this requirement, as are uses of water for domestic purposes as defined in Section 42-111, *Idaho Code*. A filing fee must be submitted with this claim. See the instruction sheet to determine the appropriate fee.

Notice is hereby given that Felipe Aguirre and Kari B. Sinclair DBA Basque Ranches.

Felipe Aguirre
(Name of Claimant)

Mailing Address: 1290 ne Frontage rd

1290 NE Frontage RD

Telephone No: 208 590 4025 or 208 590 4564

Email: sinclairkari5@gmail.com

claims a right to the diversion and beneficial use of surface or ground water. The extent and nature of said claim is as follows:

1. Date of Priority: (When the water was first applied to beneficial use) 06/06/1912

06/06/1912

A claim is not acceptable for the use of surface water with a priority later than May 20, 1971. A claim is not acceptable for the use of ground water with a priority date later than March 25, 1963, unless the water is used for domestic purposes as defined in Section 42-111, *Idaho Code*.

2. Describe the source of water: (Name of stream, lake, spring, etc., or ground water)

spring or subterranean stream

Spring

tributary to

Sinks

3. Describe the purpose for which the water has been used and the time during the year when you have used the right claimed:

(cfs or af)	(Irrigation, Domestic, Stock, Etc.)	(Both dates inclusive) (MM/DD)	(MM/DD)
Quantity <u>4 sec ft</u>	Use <u>irrigation, stockwater</u>	Period of Use From <u>01/01/2023</u>	to <u>01/01/2024</u>
Quantity <u>4 sec ft</u>	Use <u>irrigation, stockwater</u>	Period of Use From <u>01/01/2022</u>	to <u>01/01/2023</u>
Quantity <u>4 sec ft</u>	Use <u>irrigation, stockwater</u>	Period of Use From <u>01/01/2021</u>	to <u>01/01/2022</u>
Quantity <u>4sec ft</u>	Use <u>irrigation, stockwater</u>	Period of Use From <u>01/01/2020</u>	to <u>01/01/2021</u>

4. 512 af TOTAL QUANTITY USED.

(cfs or af)

5. A) Location of point of diversion is NE NE $\frac{1}{4}$ of SW SW $\frac{1}{4}$ of $\frac{1}{4}$, Govt. Lot

Sec. 13 Township 3S Range 6E B.M., Elmore County; additional points of diversion, if any: none

B) Describe means of diversion of water: (Pump and pipeline, well, diversion dam, reservoir, length of ditch etc.). Give sizes and capacities. Be specific. Describe any changes in the system and give the date of the change.

constructed ditch on property made by Wm L. Frazier priority date of 6/06/1912, water right license or permit # 8456 the point of diversion is the same as it has always been for water right number 61-0233 belonging to Basque Ranches, until J.C. Cantrell died even after there was an ORDER

After the Court ordered agreement between J.C. Cantrell and Basque ranches was reached Mr. Cantrell went and told someone at IDWR that Basque Ranches had abandoned their right, which was preposterous, considering the lengthy fight between Aguirre's and Cantrells. After the court on

Ditches and pumps will attach photos of all
upon Request. Belong to Stewardship program
with USDA NRCS, they can provide evidence
as well.

6. A) Describe the place of use within each 40-acre tract in the appropriate box using the symbols listed below. If the use is for irrigation, describe the location by listing the number of irrigated acres within each 40-acre tract.

D - domestic, S - stockwater, M - municipal, C - Commercial, I - Industrial, X - other

Twp	Rge	Sec	NE¼				NW¼				SW¼				SE¼				TOTAL ACRES
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03	06E	13	¾		~~¾~~														167

TOTAL ACRES

167

- B) If water is used for purposes other than irrigation, fully describe the use. Be specific.

Stockwater Irrigation

NOTE: Include here the type and number of stock watered:

6 Horses 2 Donkeys 1 pig
1 cow

7. Remarks:

8. **Map** -- Attach an 8½"x11" map clearly identifying the point of diversion and the place of use by 40-acre subdivisions, section, township and range of the public land survey system. (A photocopy of a USGS 7½ minute topographic quadrangle map is preferred.) Attach an **aerial photograph** of the place of use if available.

State of Idaho)
County of Elmore) ss.

Be it known that the undersigned, being duly sworn, deposes and says that he, she, they subscribed the forgoing claim to a water right, together with all attached information, and that the matters and facts therein are true to the best of the affiant's knowledge.

[Signature]
Claimant's Signature (and title if claim is for an organization)
Ran Suleur DB & B ASQUE Land

Sworn to before me this _____ day of _____

Notary Public

Residing at: _____

My commission expires: _____

FOR DEPARTMENT USE ONLY

Received by _____ Date _____
Prelim. check by _____ Date _____
Fee _____ Receipt # _____
Receipt prepared by _____ Date _____

Published in _____
Publication dates _____
Publication checked by _____ Date _____
Exceptions filed by _____

RECEIVED

DEPARTMENT OF WATER RESOURCES

FEB 08 2024

APPLICATION FOR PERMIT

To appropriate the public waters of the State of Idaho

DEPARTMENT OF
WATER RESOURCES

1. Name of applicant(s) Felipe M. Aguirre Phone (208) 590-4025
 Mailing address 1290 NE Frontage RD City Mountain
 State ID ZIP 83647 Email Sinclair Karin@comcast.net
2. Name of representative, if any Karin Sinclair Phone (208) 590-4564
 Mailing address 11 City 11
 State 11 ZIP 11 Email 11
- a. ☒ Send all correspondence for this application to the representative and not to the applicant OR
☒ Send original correspondence to the applicant and copies to the representative.
- b. ☐ The representative may submit information for the applicant but is not authorized to sign for the applicant OR
☒ The representative is authorized to sign for the applicant. Attach a Power of Attorney or other documentation.
3. Source of water supply Spring which is a tributary of Sinks
4. Location of point(s) of diversion:

Twp	Rge	Sec	Govt Lot	1/4	1/4	1/4	County	Source	Local name or tag #
03S	06E	13					Elmore	Spring	Frazier Run

5. Water will be used for the following purposes: 12 AF
- Amount 0.090 for Irrigation purposes from 3/1 to 10/31 (both dates inclusive)
 (cfs or acre-feet per year)
- Amount 0.090 for Irrigation Storage purposes from 11/3 to 3/1 (both dates inclusive)
 (cfs or acre-feet per year)
- Amount 0.020 for Stock water purposes from 4/01 to 12/31 (both dates inclusive)
 (cfs or acre-feet per year)
- Amount 0.020 for Stock water purposes from 1/01 to 12/31 (both dates inclusive)
 (cfs or acre-feet per year)
6. Total quantity to be appropriated is (a) 0.090 cubic feet per second (cfs) and/or (b) 65.2 acre-feet per year (af).

7. Proposed diverting works:
- a. Describe type and size of devices used to divert water from the source. Ditches and Holding ponds For Storage
- b. Height of storage dam _____ feet; active reservoir capacity _____ acre-feet; total reservoir capacity _____ acre-feet. If the reservoir will be filled more than once each year, describe the refill plan in item 12. For dams 10 feet or more in height AND having a storage capacity of 50 acre-feet or more, submit a separate Application for Construction or Enlargement of a New or Existing Dam. Application required? ☐ Yes ☐ No
- c. Proposed well diameter is _____ inches; proposed depth of well is _____ feet.
- d. Is ground water with a temperature of greater than 85°F being sought? ☐ Yes ☐ No
- e. If well is already drilled, when? _____; drilling firm _____; well was drilled for (well owner) _____; Drilling Permit No. _____

For Department Use

Received by _____ Date _____ Time _____ Preliminary check by _____
 Fee \$ _____ Received by _____ Receipt No. _____ Date _____

8. Description of proposed uses (if irrigation only, go to item 9):

- a. Hydropower; show total feet of head and proposed capacity in kW. _____
- b. Stockwatering; list number and kind of livestock. 4 horses 1 Donkey cow/calf pair
- c. Municipal; must complete and attach the Municipal Water Right Application Checklist.
- d. Domestic; show number of households _____
- e. Other; describe fully. We have dammed this right off for 10 years and have used it. ROD is on our property and has always been. Trying to get this right back

9. Description of place of use:

- a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.
- b. If water is used for other purposes, place a symbol of the use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RGE	SEC	NE ^{1/4}				NW				SW ^{1/4}				SE				TOTALS
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
3	06E	13																	56
		24																	72

Total number of acres to be irrigated: 108

10. Describe any other water rights used for the same purposes as described above. Include water delivered by a municipality, canal company, or irrigation district. If this application is for domestic purposes, do you intend to use this water, water from another source, or both, to irrigate your lawn, garden, and/or landscaping?

We only use this source to irrigate, and stockwater, and lawn watering.

11. a. Who owns the property at the point of diversion? Basque Ranches / Felipe Aguirre
- b. Who owns the land to be irrigated or place of use? Basque Ranches Felipe Aguirre
- c. If the property is owned by a person other than the applicant, describe the arrangement enabling the applicant to make this filing: _____

12. Describe your proposal in narrative form, and provide additional explanation for any of the items above. Attach additional pages if necessary.

This water right was previously owned by US (Basque Ranches) but Campbell falsified documents and obtained water right. For the last 10 years Campbell's haven't used this right

13. Time required for completion of works and application of water to proposed beneficial use is 1 years (minimum 1 year).

14. **MAP OF PROPOSED PROJECT REQUIRED** - Attach an 8½" x 11" map or maps clearly identifying the proposed point of diversion, place of use, section #, township & range. The map scale shall not be less than two (2) inches equal to one (1) mile.

The information contained in this application is true to the best of my knowledge. I understand that any willful misrepresentations made in this application may result in rejection of the application or cancellation of an approval.

Felipe M. Aguirre
Signature of Applicant
Felipe M. Aguirre
Print Name (and title, if applicable)

Kari B. Sinclair
Signature of Applicant
DBA Basque Ranches
Print Name (and title, if applicable)

11:57



69%

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IDAHO DEPARTMENT OF WATER RESOURCES

Water Rights

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Streams/Dams/Floods

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Maps/Spatial Data

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Water Rights

WATER RIGHT REPORT

2/3/2024

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report

WATER RIGHT NO. 61-7647

Owner Type Name and Address

Current Owner J C CANTRELL

Current Owner THELMA CANTRELL

2400 N 3RD W

MOUNTAIN HOME, ID 83647

2085874301

Priority Date: 07/09/1990

Basis: License

Status: Active

Source Tributary

SPRING SINKS

Beneficial Use	From	To	Diversion Rate	Volume
IRRIGATION	4/01	10/31	0.09 CFS	12 AFA
IRRIGATION STORAGE	1/01	12/31		0.3 AFA
IRRIGATION FROM STORAGE	4/01	10/31		0.3 AFA
STOCKWATER	1/01	12/31	0.02 CFS	0.4 AFA
STOCKWATER STORAGE	1/01	12/31		0.3 AFA
RECREATION	1/01	12/31	0.09 CFS	65.2 AFA
RECREATION STORAGE	1/01	12/31		0.3 AFA
Total Diversion			0.09 CFS	65.2 AFA

Location of Point(s) of Diversion:

SPRING/SENESEW Sec. 13 Township 03S Range 06E ELMORE County

Licensed Diversion Capacity: 0.43

Place(s) of use:

Place of Use Legal Description: IRRIGATION ELMORE County

Township	Range	Section	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres	Lot	Tract	Acres
03S	06E	13		SWSW 3										

Total Acres: 3

Conditions of Approval:

1. R55 This right is for the use of trust water and is subject to review 20 years after the issuance of the permit to determine availability of water and to re-evaluate the public interest.
2. The source is known locally as Frazier Tunnel Spring. Recreation use is for a swimming pond.
3. 020 Use of water under this right may be affected by an agreement between the protestant and the right holder.
4. 052 Diversion and use of water under this right is subject to an annual use fee if rules are subsequently promulgated which provide for the submittal of the fee.
5. R68 This right when combined with all other rights shall provide no more than 0.03 cfs per acre nor more than 4.0 afa per acre at the field headgate for irrigation of the lands above.

Dates:

Licensed Date: 04/06/1999

Decreed Date:

Permit Proof Due Date: 6/1/1993



1 of 1



Source	SINKS
SourceQualifier	
TributaryOf	SINKS
TributaryOfQualifier	
WaterDistrictNumber	EXC
DiversionName	
DataSource	QQQ
MetalTagNumber	
DiversionType	
RightID	28,648
PointOfDiversionID	22,313
WRReport	More info
WRDocs	More info
WRMap	More info
SpatialDataID	113,006
TrustOrNonTrust	T
Use	IRRIGATION, IRRIGATION STORAGE, IRRIGATION FROM STORAGE, STOCKWATER, STOCKWATER STORAGE, RECREATION, RECREATION STORAGE
OverallMaxDiversionVolume	65.20

Source **Tributary**

SPRING | SINKS

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Vc</u>
IRRIGATION	4/01	10/31	0.09 CFS	12
IRRIGATION	1/01	12/31		0.1
STORAGE				
IRRIGATION	4/01	10/31		0.1
FROM				
STORAGE				
STOCKWATER	1/01	12/31	0.02 CFS	0.1
STOCKWATER	1/01	12/31		0.1
STORAGE				
RECREATION	1/01	12/31	0.09 CFS	65
				AF
RECREATION	1/01	12/31		0.1
STORAGE				
Total			0.09 CFS	65
Diversion				AF

Location of Point(s) of
Diversion: