

# Memorandum

**TO: DAVID HENNESSY  
HENNESSY COMPANY**

**FROM: NORM YOUNG  
ERO RESOURCES COMPANY**

**RE: CITY OF HAILEY USES FOR QCR WATER RIGHTS**

**DATE: SEPTEMBER 30, 2011**

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Future use of water rights appurtenant to Quigley Creek Ranch is an important factor as the City of Hailey considers annexation of QCR property. This memorandum summarizes the QCR water rights, laws and policies allowing water rights to be changed to new uses and lists potential uses for these rights by the City.

## SUMMARY OF QCR WATER RIGHTS.

The following table summarizes the water rights held by Quigley Green Owner LLC for diversion and use on Quigley Creek Ranch:

Water Right No./ Status	Priority Date	Source/ Tributary	Flow Rate CFS/ limit Volume AF/ limit	Purpose of use	Acreage/ Acreage limit	Acre feet per year/ limit
37-2784A Partial Decree	1/3/ 1967	Quigley Creek/ Sinks	-- CFS 16 AF/ 30 AF	Storage	154/ 276.5	16/ 967.7
37-7693 Partial Decree	12/16/ 1977	Quigley Creek/ Sinks	5.27 CFS 30 AF	Irrigation and Storage	276.5	900
37-19736 Partial Decree	4/15/ 1880	Quigley Creek/ Sinks	2.28 CFS/ 5.53 CFS	Irrigation	276.5/ 276.5	-- AF/ 967.7 AF
37-8283 License	9/23/ 1986	Quigley Creek/ Big Wood River	0.12 CFS 35 AF	Stockwater Rec. and Aesth. storage	NA	41.7

37-20902 Partial Decree	7/21/ 1966	Ground water/ NA	2.01 cfs 0.12 cfs/ 2.01 cfs	Irrigation Stockwater	113.4/ 123.4/ 276.5	340.2/ 967.7
37-21348 Partial Decree	4/15/ 1985	Ground water/ NA	0.16 cfs/ 2.01 cfs	Irrigation	10/ 123.4/ 276.5	35/ 967.7
37-21349 Partial Decree	10/28/ 1969	Ground water/ NA	2.01 cfs/ 2.01 cfs	Irrigation	113.4/ 123.4/ 276.5	56.7/ 967.7

A permissible place of use (ppu) totaling 276.5 acres is described in the partial decrees issued on July 29, 2011 for irrigation rights from Quigley Creek. The partial decrees issued on the same date for QCR’s ground water rights have a 123.4-acre ppu located within the southwestern part of the 276.5-acre ppu. The combined diversion rate under all rights cannot exceed 0.02 cfs per acre (5.53 cfs if the entire ppu is being irrigated). The combined annual volume diverted under all rights is limited to 3.5 af/a (967.7 afa if the entire ppu is being irrigated). The partial decrees recognize a combined total volume of 30 af of storage for irrigation purposes in the existing upper pond and a lower pond that has now been filled in.

Because the place of use of the irrigation rights is duplicated (often called “stacked” water rights) proposed changes to the rights will have to be structured to prevent an enlargement to the number of acres irrigated, diversion rate, annual volume diverted and annual volume of consumptive use. Likely, irrigation will have to be discontinued under all of the rights, both ground water and surface water, for the portion of the place of use from which any of the water rights are being transferred.

The Water District 37/37M watermaster does not now and has not historically curtailed diversions from Quigley Creek to satisfy earlier priority rights calling for water from Big Wood River and tributaries because of the senior priority QCR has for use of water from Quigley Creek (the April 15, 1880 priority decreed by the SRBA court for the oldest right on the Ranch is among the oldest priorities in the Big Wood River Basin) and the watermaster’s traditional recognition that calling for water from Quigley Creek for delivery to the river is futile. The SRBA court confirmed this understanding by issuing partial decrees listing Quigley Creek as tributary to “sinks” although Quigley Creek is not listed as a separate source in the General Provisions for the basin.

**LAWS AND POLICIES ALLOWING WATER RIGHTS TO BE CHANGED:**

Idaho law and IDWR policies include several ways for changing the use of existing water rights without affecting priority of the rights<sup>1</sup>. These include:

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<sup>1</sup> A change to an existing right cannot be approved if any other right, whether junior or senior in priority date to the right being changed, will be injured by the change. If otherwise approvable, IDWR may

1. Change in point of diversion, place of use, period of use, or nature of use authorized by § 42-222, Idaho Code.
2. Exchange of water rights, § 42-240, Idaho Code.
3. Marketing of water rights through the Idaho Water Resource Board Water Supply Bank, § 42-1764, Idaho Code.
4. Dedication of an existing right to mitigation as authorized by § 42-223, Idaho Code, as described in IDWR Application Processing Memo #71/Transfer Processing Memo #27 (“Water Rights Dedicated for Mitigation Protected from Forfeiture” May 3, 2010) or IDWR Application Processing Memo #72 (“Evaluation of Mitigation Plans for Water Rights Permits” May 3, 2010) and as provided in Rule 43, IDWR Rules for Conjunctive Management of Surface and Ground Water Resources, IDAPA 37.03.11. Copies of IDWR Memorandums # 71/27 and # 72 are attached.

These statutes, rules and policies include procedures and criteria that must be satisfied to obtain IDWR’s approval for a change in use of an existing right. IDWR must determine that no other right will be injured and that the use of water under the right will not be enlarged as a result of the proposed change before approving any transfer application. Approval of a mitigation plan involving existing water rights requires satisfying IDWR that replacement water will be provided at the location, time, and amount sufficient to off-set depletions to other water rights caused by the use being mitigated.

In addition to IDWR’s requirements, the City should consider the encouragement expressed in § 67-6537, Idaho Code, to use surface water supplies for irrigation purposes whenever land use changes are proposed.

#### POTENTIAL USE BY THE CITY OF QCR WATER RIGHTS AND WATER SOURCES:

1. Use the rights for existing and future irrigation of City-owned property or projects, such as parks and schools. Although the purpose of use would not be changed, approval from IDWR would be required for a change in place of use or point of diversion. Retaining irrigation as the purpose of use takes advantage of IDWR’s practice of allowing the point of diversion and place of use of irrigation rights to be changed acre-for-acre usually without reduction in diversion rate or annual volume of diversion. Diversion and delivery of the irrigation water could be through individual systems constructed for specific parcels, either by diverting and piping from Quigley Creek or from wells, if Quigley’s ground water rights are used, through the existing municipal system or a separate dual system constructed to supply irrigation water to existing and new lots. Changes that alter return flows or otherwise impact sources for other rights may require conditions to prevent injury. IDWR allows water from rights listing irrigation as the purpose of use to be delivered

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condition its approval to subordinate a change in use to junior priority rights that would be injured by the change.

through a municipal system that also supplies potable water if irrigation use commensurate with the irrigation right can be documented to be occurring from the system. Rights can be protected from forfeiture until needed for the City's new irrigation uses by continuing irrigation of QCR ranch or by placing the rights in the IWRB water supply bank for temporary use by others.

2. Change the nature of use of the rights to municipal purposes. The nature of use of an existing right can be changed, but IDWR usually limits the change to the historic consumptive use of the right. Additional treatment may be needed to use Quigley Creek water in the municipal potable water system. However, additional treatment may not be needed if QCR ground water rights are used for this purpose. QCR's water rights from Quigley Creek could be used to mitigate in the event of a conjunctive management call to allow the ground water rights to be used out of priority. The season of use of rights with ground water as a source may be changed to cover the entire year, but diversion rate and diverted volume may be adjusted to prevent enlargement in use.

3. Use the rights for mitigation purposes. Senior priority water rights for consumptive uses such as irrigation are valuable for mitigating impacts of ground water pumping on interconnected surface water sources when the sources are managed conjunctively. About 20 years ago, the State of Idaho began implementing conjunctive management of surface and ground water sources in Idaho. Implementation of this policy in the Big Wood River Basin is occurring in phases. A management plan, in effect since designation of the basin as a ground water management area in 1991, requires mitigation of impacts to existing water rights from surface water sources as a condition of approval of permits for new consumptive uses from ground water. As an apparent next step toward conjunctive management of existing rights from ground water sources in the Big Wood River Basin, IDWR is now in the process of establishing a water measurement district, including rights from ground water sources. Watermaster administration by date of priority of right from surface water and ground water as interconnected sources would be yet another step toward complete conjunctive management in the basin.

QCR water rights may be valuable to the City for either or both purposes; i.e., mitigating to obtain permits for new development as needed in the future and/or to allow continued use of the City's existing ground water rights when impacted by a conjunctive management call. The physical actions needed to use Quigley Creek water for mitigation may be implemented in various ways depending upon the purpose of mitigation: a) if the intent is to compensate the Big Wood River drainage for out-of-priority diversions by the City, ceasing irrigation of all or part of the historically-irrigated QCR ranch in accordance with an approved mitigation plan may be all that is needed, b) piping Quigley Creek water to the Big Wood River or another surface source (perhaps the Hiawatha Canal in exchange for reduced diversions from the river) to allow out-of-priority diversion by the City from surface or ground water sources, or c) using Quigley Creek water to recharge the ground water sources in the

Hailey area to allow out-of-priority diversions by the City under existing or new ground water rights.

Determining the best approach for the City to get the most value from the acquisition of water rights such as those from QCR will require a thorough understanding of the City's present and future needs for water, details concerning the administrative and technical requirements of conjunctive management when fully implemented in the basin, and information concerning the nature of the interconnection of surface and ground water sources in the Hailey area. Ultimately, detailed information about the amount, timing and location of depletions to senior surface water rights caused by the City's existing and future use of ground water is needed to determine mitigation requirements, if any.

Attachments:

IDWR Application Processing Memo #71/Transfer Processing Memo #27  
("Water Rights Dedicated for Mitigation Protected from Forfeiture" May 3, 2010)

IDWR Application Processing Memo #72 ("Evaluation of Mitigation Plans for  
Water Rights Permits" May 3, 2010)

- c. Evan Robertson, Robertson and Slette  
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