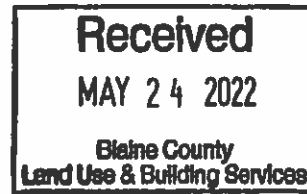


Re: Quigley Ranch Subdivision—Water

To: Blaine County Planning & Zoning Commission

From: Wendy Pabich, Ph.D.

Date: May 24, 2022



As a citizen of Old Hailey and a hydrologist, I am dismayed by what is happening in this valley. I submitted a series of public comments to the City of Hailey in 2008 and 2009 during proceedings considering annexation and development of the Quigley property. Those memos suggested that existing agricultural water rights on the property were insufficient to support the kind of development that was—and still is—being proposed:

“My own analysis suggests that while the owners of Quigley Canyon show seven water rights totaling about 12 cfs appurtenant to their property (Table 1), only one of these is a senior water right (37-19736, priority date 10/11/1889 for 2.28 cfs). The other rights all have priority dates of 1966 and later. The Big Wood basin is already overallocated and junior water rights are in priority only during the early spring when the Big Wood River is running high. To lend perspective, in 2007 (Table 2), on June 22, all water rights in the basin with priorities of May 15, 1892 and later were cut and by July 17, all rights with priority dates March 24, 1883 or later were cut entirely. **Under this management structure, this one senior Quigley Canyon water right would have been cut by June 25th. This means that after June 25th, the project would have been looking to the City to provide for all its water demand.** [Tables are attached for reference.]

Water delivery in recent years shows a similar picture. Delivery records from 2021 (attached) shows that senior water rights were intermittently cut and reinstated from the beginning of the irrigation season through the end of May, with this one senior water right (priority 10/11/1889) cut entirely by June 14, 2021. Thus, under the original conditions of this agricultural property and its appurtenant irrigation rights, no surface water would have been available to the property after June 14th. This makes for a very dry property with no available irrigation water for the majority of the summer.

It is important to note that Idaho water law encourages that use of surface water rights as the primary water source for irrigation:

67-6537. USE OF SURFACE AND GROUND WATER. (1) The intent of this section is to encourage the use of surface water for irrigation. All applicants proposing to make land use changes shall be required to use surface water, where reasonably available, as the primary water source for irrigation...

The City of Carey—with its deep agricultural roots—seems to be the only city in the County that understands this, requiring all applications for subdivision to bring adequate water to the table. Subdivision ordinance 97.06 4.9 states:



(c) A central irrigation water system, separate and apart from the water system providing potable water and fire flows to the subdivision, shall be installed in all subdivisions by the subdivider as a required improvement. **All such irrigation water systems shall provide adequate water rights of not less than 4.35 acre feet per irrigated acre of land within the proposed subdivision delivered at the field headgate to irrigate all lots and parcels within the subdivision and shall convey said water rights in perpetuity to the homeowners association of the subdivision.** All such irrigation systems shall be approved by the City Engineer, and shall comply with laws, ordinances, rules, regulations and standards with regard thereto. The City may adopt and amend the standards for such irrigation water systems by resolution.

(d) The Council may also require a groundwater mitigation plan ("GMP") approved by the Idaho Department of Water Resources ("IDWR") be implemented prior to final subdivision plat. The purpose of the GMP is to (i) mitigate depletion of groundwater by the subdivision, (ii) provide irrigation water at times when the surface or other irrigation water rights appurtenant to the property are not available in lieu of having the applicant acquire supplement water rights and (iii) for any water remaining under the GMP after the preceding purpose (iv) for use by Carey to provide groundwater mitigation to Carey in order for the City or its assigns, to draw addition ground water for municipal irrigation purposes for the benefit of the property. All ground water mitigation from the water rights under the GMP shall be dedicated in perpetuity for said groundwater mitigation purposes. Water rights above and beyond the required 4.35 acre feet per irrigated acre and those dedicated in perpetuity for said groundwater mitigation plan may be transferred or conveyed from the property or removed from the GMP without the prior written consent of the City. The GMP plan and application shall be approved by the City through an administrative approval process prior to filing with IDWR. All costs and expenses incurred with regard to the study, preparation, filing, review and implementation of the GMP shall be paid for by the applicant.

Development is proceeding throughout the remainder of this valley with minimal attention paid to the very real physical constraints associated with the actual supply of water ("wet" water), rather than what may be associated with water rights ("paper" water). We are in a megadrought. This basin has been overallocated (i.e., existing water rights exceed physical supply) arguably since the turn of the last century. And, we continue to increase total water use in the basin by:

- 1) Allowing developers and property owners to tap into municipal water supply systems and their water rights portfolios (municipal water rights are significantly more permissive than irrigation rights and allow for quantity calculations based on future growth—calculations that are inherently unsustainable in an overallocated basin) rather than remain constrained by the volume limitations associated with their existing water rights.

- 2) Allowing for increased development by, among other things, increasing allowable density via subdivision permitting, annexing lands into the cities where greater density is allowed, and removing restrictions (e.g. MOD designations), simultaneously increasing the number of groundwater wells or switching from irrigation rights to municipal rights.
- 3) Failing to holistically manage our water resources by systemically cleaving the regulatory process into numerous jurisdictions (municipal, county and state), each with its own regulatory responsibilities and agendas, and none safeguarding the whole.

This kind of disjointed management shows up glaringly here. For example, part of this development has been annexed into the City of Hailey to be served by its municipal water system, thereby avoiding the physical constraints posed by existing water rights on the property. Another part of this development is coming to the County with no information related to the overall water budget, but instead only data to show that nearby groundwater wells have sufficient supply. And, while this may satisfy Idaho Department of Water Resources by demonstrating sufficient *localized* supply, it is entirely irrelevant to what actually matters. The real question is: How much water does this basin have and how much are we using? This speaks to a physical water balance (supply and demand) for the basin (i.e., science) that dictates how much water use the system can support. The rest of this amounts to a shell game.

I recommend the County:

- (1) Require and evaluate a full water balance for the site prior to making any decisions.
- (2) Incorporate the limits for total water use that were imposed by the historical water rights on the site into plans moving forward, potentially using the kind of tools developed by the City of Hailey. (Projected future water use by the development approved to date is likely to already exceed those limits but this would be a useful metric to determine how much more burden this development will be placing on the basin moving forward.)
- (3) Begin working collaboratively with the municipalities to develop consistent and integrated strategies, processes, and regulations across jurisdictions in order that all future land and water use decisions are based on the total water balance of the basin.

As a community, we need to adopt more forward-thinking, integrated strategies if we have any chance at a sustainable water future. I hope you will take this opportunity to safeguard our water resources.

Thank you,

Wendy Pabich, Ph.D.
613 North 4th Avenue
Hailey, ID 83333

Table 1.

WATER RIGHTS APPURTENANT TO QUIGLEY GREEN OWNER LLC

Right No.	Source	Priority ¹	Purpose	Amount ²	Status	Remarks
37-2784A	Quigley Ck	1/3/1967	Irrigation Storage	16 afa	Rec. in SRBA	Obj. pending
37-7693	Quigley Ck	12/16/1977	Irrigation Irrig. Stor.	5.27 cfs 30 afa	Rec. in SRBA	Obj. pending
37-8283	Quigley Ck	9/23/1986	Stock water Rec. & Aesth. Stor.	0.12 cfs 35 afa	License	No SRBA claim required
37-19736	Quigley Ck	10/11/1889	Irrigation	2.28 cfs	Rec. in SRBA	Obj. pending
37-20902	Ground Water	7/21/1966	Irrigation Stock water	2.01 cfs 0.12 cfs	Rec. in SRBA	Obj. pending
37-21348	Ground Water	4/15/1985	Irrigation	0.27 cfs	Rec. in SRBA	Obj. pending
37-21349	Ground Water	10/28/1979	Irrigation ³	2.01 cfs 56.7 afa	Rec. for disallowal	Obj. pending

1. Priority as claimed and recommended in SRBA except for License 37-8283 (no claim in SRBA) and Claim 37-21349 (not recommended for decree). An objection to Claim 37-19736 is that the priority should be 1879.
2. The amount listed is as recommended in the SRBA except for License 37-8283 and 37-21349 (the claimed amounts). Limitations on diversion rate, diversion volume and number of acres irrigated apply for combined use of the rights.
3. Claim no. 37-21349 asserts an enlarged irrigation season and annual volume from that licensed under 37-20902.

Table 2.**2007 PRIORITY CUTS**

BIG WOOD RIVER ABOVE MAGIC RESERVOIR		
WATER DISTRICT 37		
Date Priority Cut Made	Date of Priority	Remarks
June 22, 2007	May 15, 1892	
June 25, 2007	June 12, 1886	
June 26, 2007	May 15, 1885	
June 28, 2007	October 15, 1884	
July 2, 2007	August 1, 1884	
July 3, 2007	July 10, 1884	
July 9, 2007	May 2, 1884	
July 10, 2007	March 24, 1883	75% cut of 3/24/1883
July 17, 2007	March 24, 1883	100% cut of 3/24/1883
August 17, 2007	August 1, 1882	
BIG WOOD RIVER BELOW MAGIC RESERVOIR		
WATER DISTRICT 37M		
Date Priority Cut Made	Date of Priority	Remarks
May 31, 2007	May 1, 1887	
June 26, 2007	August 15, 1886	
August 14, 2007	April 15, 1883	
SILVER CREEK & LITTLE WOOD RIVER		
WATER DISTRICT 37M		
Date Priority Cut Made	Date of Priority	Remarks
June 25, 2007	May 27, 1899	Cottonwood Rights
June 26, 2007	May 15, 1904	
July 13, 2007	November 1, 1889	

August 14, 2007
August 21, 2007
August 24, 2007
August 30, 2007
September 25, 2007

September 1, 1887
April 1, 1886
April 1, 1884
September 1, 1883
September 1, 1883

75% Cut

Water District 37 2021 Priority Cuts

BIG WOOD RIVER ABOVE MAGIC RESERVOIR

Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
April 15, 2021	October 15, 1884	
April 16, 2021	June 20, 1884	Cut 50 %
April 19, 2021	June 20, 1884	Cut 100 %
May 1, 2021	June 20, 1884	Reinstate 100%
May 17, 2021	October 15, 1884	Reinstate 75%
May 18, 2021	May 1, 1886	Reinstate all 1886
May 20, 2021	May 21, 1890	Reinstate 100%
May 25, 2021	May 14, 1886	
May 31, 2021	October 1, 1890 + Senior	Reinstate
June 14, 2021	May 14, 1886	
June 17, 2021	October 15, 1884	Cut 50 %
June 19, 2021	July 10, 1884	
June 22, 2021	June 15, 1884	
June 23, 2021	April 3, 1884	
June 24, 2021	March 24, 1883	Cut 25 %
June 29, 2021	March 24, 1883	Cut 75 %
July 12, 2021	December 19, 1882	
July 13, 2021	August 1, 1882	Cut 50 %
July 14, 2021	May 15, 1882	
August 3, 2021	August 1, 1882	Reinstate 50%

BIG WOOD RIVER BELOW MAGIC RESERVOIR

Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
April 22, 2021	June 1, 1890	
April 26, 2021	February 10, 1906 + Senior	
April 30, 2021	May 1, 1897	
May 4, 2021	January 5, 1911 + Senior	Reinstate
May 14, 2021	April 30, 1886	
May 20, 2021	May 5, 1905	Reinstate
June 3, 2021	May 20, 1897	
June 7, 2021	November 1, 1913 + Senior	Reinstate
June 14, 2021	May 1, 1896 + Junior	
July 8, 2021	April 27, 1896	
July 12, 2021	June 1, 1888	
July 19, 2021	April 1, 1885	
July 21, 2021	All Decrees	Decrees Undeliverable

SILVER CREEK & LITTLE WOOD RIVER

Date Priority Cut Made	Date of Priority Cut to and including:	Remarks
May 27, 2021	May 15, 1886	
June 3, 2021	May 5, 1884	
June 14, 2021	July 17, 1884 + Senior	Reinstate
June 21, 2021	April 3, 1884	
June 23, 2021	September 1, 1883	
July 8, 2021	September 1, 1883	Picabo Live agrees to no delivery of 9-1-1883
July 9, 2021	April 1, 1884	Reinstate
July 10, 2021	April 30, 1884	Reinstate
July 13, 2021	May 5, 1884 + Senior	Reinstate
July 14, 2021	May 1, 1884	5/1/1884 and junior curtailed
July 23, 2021	April 1, 1884	4/1/1884 & junior curtailed
July 25, 2021	April 30, 1884	4/30/1884 and senior reinstated
July 25, 2021		Barbara Farms agrees to no delivery of 4-6-1883 and 4-1-1884
August 2, 2021		Barbara Farms delivery of 4-6-1883 and 4-1-1884
August 3, 2021	May 5, 1884 + Senior	Reinstate
August 9, 2021	May 1, 1884	5/1/1884 & junior curtailed
August 19, 2021	September 1, 1883	25% Reinstate
August 23, 2021	September 1, 1883	50% Reinstate
September 21, 2021	September 1, 1883	100% Reinstate

