

# MEMORANDUM

**DATE:** June 29, 2018

**TO:** IMAP Participants & Hearing Officer Cefalo

**FROM:** Shelley W. Keen 

**RE:** Proposed Conditions of Approval

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## Background

To advance discussions regarding possible settlement of protests against the Integrated Municipal Application Package (“IMAP”) of Suez Water Idaho Inc., IDWR’s Water Rights Section has compiled a draft list of approval conditions that could be placed on each water right or permit addressed in the IMAP, if an approval is ultimately issued. The hearing officer for the IMAP contested case proceeding requested this draft list of conditions at the status conference on May 31, 2018. On a right-by-right basis, additional conditions of approval may also be necessary to further describe, define, or administer specific water rights. Further, IDWR’s final decision on the IMAP will ultimately depend on IDWR’s determinations pursuant to the statutory requirements and limitations of Idaho Code § 42-222 (for licensed or decreed water rights) and Idaho Code § 42-211 (for permits).

The list of potential conditions includes standard conditions for transfer approvals, reasonably anticipated future needs (“RAFN”) water rights, municipal water rights in general, and alternative points of diversion (“APODs”) for municipal water rights.<sup>1</sup> In addition, the list includes a non-standard condition addressing the desire of the participants in the IMAP matter to document that use of the water rights involved in the IMAP may also be subject to private agreements.

The list does not include a condition reflecting the IMAP participants’ desire to allow re-opening the transfer approval at some time during the proposed planning horizon. Idaho Code does not direct IDWR to re-open RAFN transfer approvals, and the Water Rights Section is concerned about the operational impact of committing resources to re-review the IMAP and about the precedent it might set for similar resource commitments to resolve other contested cases. In addition, the questions of whether IDWR could include re-opener conditions in approving the IMAP and what the conditions should look like raise legal and procedural questions that should be addressed by the hearing officer in the IMAP proceeding.

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<sup>1</sup> For further explanation regarding the proposed APOD conditions (nos. 5 and 6), see pages 2-3 of the *Order Addressing Exception and Amending Transfer Approval* (“Order”) in the Matter of Application for Transfer No. 79778 in the Name of City of Meridian. The Order is available via IDWR’s website among the documents for Water Right No. 63-2893.

The list also does not include a condition reflecting some of the IMAP participants' desire to allow the planning horizon for the IMAP to be advanced or rolled forward at the end of the initial planning horizon. As with the re-opener issue, the questions of whether IDWR could include roll-forward conditions in approving the IMAP and what the conditions should look like raise legal and procedural questions that should be addressed by the hearing officer.

### **Proposed Conditions**

1. Place of use is within the service area of SUEZ Water Idaho as provided for under Idaho law. The place of use is generally described as within the city limits of Boise and the surrounding service area.
2. A map generally depicting the service area for this water right at the time of this approval is attached to this document for illustrative purposes.
3. This right authorizes <0.00> cfs for reasonably anticipated future needs for a planning horizon that ends on December 31, 2065, within the service area pursuant to Chapter 2, Title 42, Idaho Code.
4. The full system capacity necessary to provide water for the reasonably anticipated future needs authorized under this right must be used by the end of the designated planning horizon.
5. To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from <well name> located in T\_\_\_, R\_\_\_, S\_\_\_, \_\_\_, \_\_\_.
6. This transfer authorizes additional wells located in T\_\_\_, R\_\_\_, S\_\_\_, \_\_\_, \_\_\_ as points of diversion under this right as of the date of approval.
7. The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use or where the use of surface water was replaced by the use of water diverted in connection with this right before the approval of this transfer. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
8. That portion of this right authorized for reasonably anticipated future needs shall not be changed to a place of use outside the service area as defined in Idaho Code § 42-202B or to a new purpose of use.
9. After specific notification by the Department, the right holder shall record the quantity of water diverted or shall enter into an agreement with the Department to use power records to determine the amount of water diverted and shall annually report the information to the Department.

10. This right does not grant any right-of-way or easement across the land of another.
11. Failure of the right holder to comply with the conditions of this transfer is cause for the Director to rescind approval of the transfer.
12. The diversion and use of water described in this transfer approval may be subject to additional conditions and limitations agreed to by the participants in the IMAP contested case proceeding pursuant to separate agreements to which the Department is not a party. Because the Department is not a party to those agreements, the Department is not responsible for enforcement of any aspect of the agreements not specifically addressed in conditions herein. Enforcement of those portions of the agreements not specifically addressed in conditions herein shall be the responsibility of the parties to the agreements. Such agreements may include, but are not limited to, *IMAP Settlement Agreement Between Boise Project et. al. and SUEZ*.