

Boise Office
1101 W. River St.
Suite 110
Boise, Idaho 83702
Tel. (208) 629-7447

Challis Office
1301 E. Main Ave.
P.O. Box 36
Challis, Idaho 83226
Tel. (208) 879-4488

Twin Falls Office
213 Canyon Crest Drive
Suite 200
Twin Falls, Idaho 83301
Tel. (208) 969-9585

Fax (all offices)
(208) 629-7559



SAWTOOTH LAW OFFICES, PLLC

Thursday, May 09, 2024

David P. Claiborne

S. Bryce Farris

Evan T. Roth

Daniel V. Steenson

Andrew J. Waldera

Kelsea E. Donahue

Brian A. Faria

Thomas M. Larsen

Patxi Larrocea-Phillips

Annabel J. Moore

John A. Richards

Katie L. Vandenberg-Van Vliet

James R. Bennetts *(retired)*

SUBMITTED BY ELECTRONIC MAIL

Idaho Department of Water Resources
IDWR Rules Review Officer
P.O. Box 83720
Boise, ID 83720
rulesinfo@idwr.idaho.gov

RE: Negotiated Rulemaking Comments – Beneficial Use – IDAPA 37.03.02.

Dear Idaho Department of Water Resources:

These comments are being submitted on behalf of Intermountain Sewer and Water Corp. These comments are focused on Section 035.01.i(iv) on page 7 which is a proposed new section to the Beneficial Use Rules which proposes to provide the following: “For multi-home domestic or municipal use, the volume may include up to 0.6 af for in-home use and 0.6 af for developed yard or landscape irrigation for each lot with an existing stub-in water service line **and foundation** where each home’s use will meet the definition of Section 42-111(a), Idaho Code.” **NEW CONTENT TO BE NEGOTIATED.**” (highlights added).

This new section in question relates to the proof of beneficial use for domestic and municipal subdivisions pursuant to the “Stub In Policy” which has been applied by IDWR for at least the past 15 years. The highlighted language appears to be an attempt by IDWR to add an additional requirement that there must be a “foundation” installed in order for the stub in policy to be applicable. This is a new policy requirement that has not been negotiated or discussed and which is not consistent with the intent of the existing stub in policy.

The “Stub In Policy” can generally be found in the Administrator’s Memorandum dated October 19, 2009 (App. Processing No. 18 and Licensing No. 1). IDWR recognizes 1.2 af for

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Attorneys licensed in Idaho, Montana, Oregon, Washington and Texas

each stubbed lot “(i.e. a service line is available for each lot to hook up to the municipal delivery system)” for purposes of proof of beneficial use. It is not necessary to have plat approval or an actual building or residence on said lot as it is sufficient to have the delivery system (i.e. the well, pump and piping) and then a service stub to each lot in order to be recognized for beneficial use and licensing. Page 2 of the Administrator’s Memorandum provides that the intent of the Stub In Policy is to provide flexibility in determining beneficial use by recognizing that “full build out of a subdivision can take longer than the number of years the Department could authorize for completion of a water appropriation project.” Indeed, the sale and buildout of the lots can take longer than IDWR can authorize for completion of the water appropriation project, and there can be multiple phases but so long as the stubs are built out then the intent of the policy is to provide flexibility in determining beneficial use. This stub in practice also helps subdivision developers obtain financing by providing some assurance to lending institutions that a development project will not fail because water rights become unavailable before the project is complete and all lots are sold.

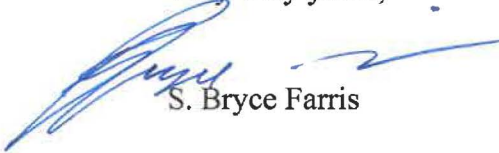
Without any explanation, IDWR has included an additional requirement that there must be a stub in service line and a foundation. This defeats the purpose and intent of the stub in policy and includes a requirement which is generally beyond the control of the developer. The developer may have a development agreement with the appropriate city or county to provide water service to the lots but that does not mean that the developer will have sold the lots or have a building plan and foundation for the lot. In other words, the developer may have control over the construction of the roadway and infrastructure relating to the water service to the lots, but there is little to no control over the timing of when a builder or lot owner may choose to install the foundation. The very purpose/intent of the stub in policy is to provide for flexibility that helps developers which install the water infrastructure.

The proposed addition of a foundation requirement defeats and undermines the intent of the Stub in Policy. There is no basis, need or reason to add a foundation requirement. Accordingly, it is suggested that the language be amended to provide the following: “For multi-home domestic or municipal use, the volume may include up to 0.6 af for in-home use and 0.6 af for ~~developed yard or landscape~~ irrigation ~~for~~ each lot with an existing stub-in water service line ~~and foundation where each home’s use will meet the definition of Section 42-111(a), Idaho Code.~~”

Additionally, and as discussed during the WebEx meeting on May 6, 2024, it appears from the reference to “New Content to be Negotiated” that IDWR recognizes that further discussion and evaluation concerning the stub in policy is necessary. If there is going to be further discussion or evaluation the undersigned specifically requests to be included in any additional discussions/negotiations.

Thank you for the opportunity to participate. Please contact me should you have any questions.

Very truly yours,


S. Bryce Farris

Cc: Client