



IDAHO WATER RESOURCE BOARD

May 23, 2024

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DEPT. OF WATER RESOURCES

Brad Little
Governor

IDWR Rules Review Officer
Idaho Department of Water Resources
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Jeff Raybould
Chairman
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At Large

To Whom It May Concern,

The IWRB provides the following comments on the May 3, 2024 Draft Beneficial Use Exam Rules (Strawman REV 1); see comment ix (emphasis added). The IWRB may provide additional comments on future draft versions of the Rules:

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Patrick McMahon
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RULE	COMMENT
37.03.02.035.01.j	<p>Recommend Amending subsection j to add a section ix. as follows:</p> <p>j. The following water use are exempt from the volume reporting requirement:</p> <ul style="list-style-type: none"> i. Diversion to storage. ii. Domestic use from ground water as defined in Section 42-111, Idaho Code. iii. In-stream watering of livestock. iv. Fire protection (Volume is required for fire protection from storage). v. On-stream, run-of-the-river, non-consumptive power generation uses. vi. Minimum stream flows established pursuant to Chapter 15, Title 42, Idaho Code. vii. Municipal use by an incorporated city or other entity serving users throughout an incorporated city, except the following situations that do require a volume to be reported: <ul style="list-style-type: none"> (1) The permit or amended permit was approved with a volume limitation; or (2) The permit was not approved for municipal use but can be amended and licensed for a municipal use established during the authorized development period for the permit. viii. Irrigation using natural stream flow diverted from a stream or spring. (Volumes must be reported for irrigation uses from ponds, lakes and ground water and for irrigation storage and irrigation from storage.) ix. <u>Aquifer recharge water rights owned by the Idaho Water Resource Board.</u>

Under I.C. § 42-234, it is:

[T]he policy of the state of Idaho to promote and encourage the optimum development and augmentation of the water resources of this state [and] . . . The legislature finds that the use of water to recharge ground water basin in accordance with Idaho law and the state water plan may enhance the full realization of our water resource potential by furthering was conservation and increasing the water available for beneficial use.

The Eastern Snake Plain Aquifer Comprehensive Aquifer Management Plan ("ESPA CAMP"), directed the IWRB to "incrementally achieve a net ESPA water budget change of 600 thousand acre-feet (kaf) annually" including "approximately 150-250 kaf/year" of aquifer recharge. ESPA CAMP at 4, 10. In addition, the State Water Plan acknowledges that aquifer recharge may be an important tool for use throughout the State as "an appropriate means for enhancing ground and surface water supplies, providing mitigation for junior ground water depletions, or to help maintain desirable aquifer levels." 2012 State Water Plan Policy 1I.

To achieve the goals set forth in the ESPA CAMP and the 2012 State Water Plan, the IWRB needs to take advantage of high water years, which occur only sporadically. IWRB-sponsored aquifer recharge efforts are largely opportunistic. During high water years, large volumes of water may be available for recharge. Placing volume limits on IWRB-owned recharge water rights has the potential to severely reduce the IWRB's ability to fully utilize high flows for aquifer recharge when large volumes of water are available in high water years. Thus, placing volume limits on IWRB recharge water rights creates unnecessary limitations on the opportunistic use of high flows and is contrary to the public policy stated in I.C. § 42-234 and the State Water Plan of maximizing the beneficial use of the waters of the State of Idaho.

In addition, it is not necessary to place volumes limits on the face of IWRB-owned recharge water rights because other statutory limits already exist that would preclude over-use of water for recharge. Idaho Code Section 42-234(3) allows the Director of IDWR to "regulate the amount of water which may be diverted for recharge purposes and may reduce such amount, *even though there is sufficient water to supply the entire amount originally authorized by permit or license.*" (emphasis added). Idaho Code Section 42-234(4) also provides the Director of IDWR with the authority to "approve, disapprove or required alterations in the methods employed to achieve ground water recharge" when those operations might affect or create conditions adverse to existing water rights. These statutory provisions ensure that water rights for water recharge purposes can be limited at any time. Therefore, there is no need to further limit the IWRB-owned recharge water rights by placing a volume limit on the face of the right.

Based on the foregoing, the IWRB requests that IWRB-owned aquifer recharge water rights be exempted from the requirement of reporting a volume when proving beneficial use.

Sincerely,



Cynthia Bridge Clark, P.E.
Planning & Projects Bureau Chief,
Idaho Water Resource Board