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VIA EMAIL

IDWR Rules Review Officer
P.O. Box 83720
Boise, ID 83720
rulesinfo@idwr.idaho.gov

Re: Docket No. 37-0302-2401 (ZBR Chapter Rewrite)
IDAPA 37.03.02 – Beneficial Use Exam Rules
Comments on Strawman v2, Rule 035.01(j)(ix)

Dear Sir or Madam:

I am submitting these brief written comments regarding the above-referenced rulemaking, on behalf of Elmore County. Specifically, this comment relates to Beneficial Use Exam Rule 035.01(j)(ix) from strawman v2, which would exempt groundwater recharge rights owned by the Idaho Water Resource Board (IWRB) from annual volume limitations.

Elmore County has been actively engaging in aquifer recharge efforts since 2017 pursuant to its now-licensed water right 61-7731 and water permit 61-12314. These recharge efforts are aimed at addressing the severe and well-documented groundwater deficit on the Mountain Home plateau, which includes both the Mountain Home Ground Water Management Area and the Cinder Cone Butte Critical Groundwater Area.

I have read IWRB's comment letter dated May 23, 2024. For the most part, the County agrees with the reasoning in that letter. The County faces the same challenge as the IWRB: The amount of recharge water available to the County can vary wildly from year to year, and the typical licensing period is not an adequate amount of time to capture that variability. Because of the nature of aquifer recharge and its recognized benefits statewide, typically, the goal is to recharge as much water to the depleted aquifer as possible. This can be difficult if a high-water year is not captured during the licensing period. From a high-level perspective, volumetric limitations are most important for storage water rights (so that the capacity of the reservoir is known and legally binding) and groundwater rights (so that aquifer depletion can be avoided pursuant to Idaho Code Section 42-231).

The County does not agree, however, that only aquifer recharge rights held by IWRB should be exempt from annual volume limitations. IWRB's comment letter does not articulate a legal basis for its recharge rights to be treated differently from other recharge rights. Any such legal basis would most likely appear in Chapters 2 and 17 of Title 42 of the Idaho Code. After reviewing those statutes, I have come to the conclusion that the County's recharge rights must be treated equally with IWRB's rights. Idaho Code Section 42-1734(6) provides IWRB with authority:

To file applications and obtain permits in the name of the board, to appropriate, store, or use the unappropriated waters of any body, stream, or other surface or underground source of water for specific water projects. Such filings and appropriations by the board, or any water rights owned or claimed by the board, ***shall be made in the same manner and subject to all of the state laws relating to appropriation of water***, with the exception that the board will not be required to pay any fees required by the laws of this state for its appropriations. ***The filings and appropriations by the board shall be subject to contest or legal action the same as any other filing and appropriation, and such filings and appropriations shall not have priority over or affect existing prior water rights of any kind or nature;*** provided that the board shall have the right to file for water rights with appropriate officials of other states as trustee for project users, and to do all things necessary in connection therewith....

IDAHO CODE § 42-1734(6) (emphasis added).

The highlighted language above is strong legal authority for the proposition that the County should enjoy the same exemption from volumetric limitations on its recharge rights as IWRB.

Thank you for the opportunity to provide these comments.

Sincerely,

VARIN THOMAS



Dylan B. Lawrence