

Oct 23, 2024

DEPARTMENT OF
WATER RESOURCES

GIVENS PURSLEY LLP

Attorneys and Counselors at Law

601 W. Bannock Street
PO Box 2720
Boise, ID 83701
Telephone: 208-388-1200
Facsimile: 208-388-1300

www.givenspursley.com

Taylor J. Barton
Charlie S. Baser
Christopher J. Beeson
Jason J. Blakley
Clint R. Bolinder
Jeff W. Bower
Preston N. Carter
Chynna K. Castoro
Jeremy C. Chou
Charlotte V. Cunningham
Joshua C. Dickinson

Amber N. Dina
Bradley J. Dixon
Thomas E. Dvorak
Rebecca M. Fitz
Morgan D. Goodin
Don Z. Gray
Brian J. Holleran
Kersti H. Kennedy
Elizabeth A. Koeckeritz
Neal A. Koskella
Michael P. Lawrence

Franklin G. Lee
Matthew E. Liebertz
David R. Lombardi
Kimberly D. Maloney
Kenneth R. McClure
Alex P. McLaughlin
Melodie A. McQuade
Megann E. Meier
Christopher H. Meyer
L. Edward Miller
Judson B. Montgomery
Deborah E. Nelson

Deborah E. Nelson
Randall A. Peterman
Blake W. Ringer
Michael O. Roe
Danielle M. Strollo
Robert B. White
Michael V. Woodhouse
Blake W. Ringer
Michael O. Roe
Danielle M. Strollo
Robert B. White
Michael V. Woodhouse

Kenneth L. Pursley (1940-2015)
James A. McClure (1924-2011)
Raymond D. Givens (1917-2008)

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Via Email

Erik Boe
Water Compliance Bureau Chief, Rules Regulation Officer
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 93720-0098
Email: rulesinfo@idwr.idaho.gov

Re: Proposed Rulemaking – IDAPA 37.03.02 (Beneficial Use Examination Rules)
Docket No. 37-0302-2401; ZBR Proposed Rulemaking

Dear Mr. Boe,

We are submitting these comments in the above-referenced matter on behalf of Veolia Water Idaho, Inc. (“VWID”).

VWID submitted comments to the proposed rulemaking on July 12, 2024, in which VWID proposed changes to “Strawman 2.0.” The proposed rule revisions set forth in the October 2, 2024 Idaho Administrative Bulletin (Vol. 24-10) (“IAR 24-10”) address some but not all of VWID’s proposed changes to Strawman 2.0. The comments in this letter address only an issue that remains with Rule 35.01.j.vii, which has been renumbered Rule 35.01.i.vii.

Proposed Rule 35.01.i.vii in IAR 24-10 states that the following water use is exempt from the volume reporting requirement applicable to some other uses:

Municipal use by a municipal provider as defined in Section 42-202B(5), Idaho Code that is serving users within a municipality’s service area as defined in Section 42-202B(9), Idaho Code

Of concern to VWID is the language referring to “a municipality’s service area.” Idaho Code Section 42-202B(9) defines the term “service area” as “that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes.” The term “municipality” used in the proposed rule is not the same as the term “municipal provider” defined in Idaho Code

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Section 42-202B(9). In short, while a “municipality” can be a “municipal provider,” not every “municipal provider” is a “municipality.”

Importantly, some “municipal providers” (like VWID) have “service areas” that are not coincident with the “service area” of a “municipality.” VWID serves users in multiple incorporated cities (each of which fall under the definition of “municipality” in Idaho Code Section 42-202B(4)) and also outside of those cities in unincorporated areas of Ada County (which itself falls within the definition of “municipality” in Idaho Code Section 42-202B(4)).

VWID, as a “municipal provider,” has the “service area” of consequence at licensing. Its “service area” is established and modified from time to time by the Idaho Public Utilities Commission, in whose parlance it is referred to as the “certificated area.” Any city or county “service area” has no bearing on how VWID’s water permits should be licensed, or how they should be used after licensing. *See* I.C. § 42-202B(9) (definition of “service area,” stating: “For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.”)

One reading of proposed Rule 35.01.i.vii in IAR 24-10 would create an anomalous situation where the licensing of VWID’s permits could be measured by the “service areas” of the cities or county in which it provides municipal water, rather than the area VWID is obligated to serve. Another reading of the proposed Rule would not exempt VWID from the volume reporting requirements because its permitted use did not serve “users within a municipality’s service area.”

To avoid these potentially inconsistent interpretations, and to align the proposed Rules with statutory language, VWID suggests deleting the word “municipality’s” in proposed Rule 35.01.i.vii in IAR 24-10 as follows (deletion in ~~strikeout~~):

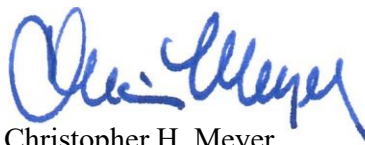
Municipal use by a municipal provider as defined in Section 42-202B(5), Idaho Code that is serving users within a ~~municipality’s~~ service area as defined in Section 42-202B(9), Idaho Code

Thank you for considering these comments and proposed revisions to proposed Rule 35.01.i.vii in IAR 24-10 . Please let us know if you would like to discuss further. We would be pleased to provide further explanation or clarification.

Sincerely,



Michael P. Lawrence



Christopher H. Meyer