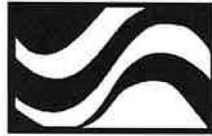


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May 4, 2023

VIA U.S. MAIL AND EMAIL

Angela Hansen
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RECEIVED

May 04, 2023

DEPARTMENT OF
WATER RESOURCES

**RE: Written Comment for Negotiated Rulemaking
Rules 10, 35, and 45.01**

Dear Ms. Hansen:

Our office writes to provide the following comments for the March 11, 2023 written comment deadline related to the negotiated rulemaking process for IDAPA 37.03.08 and Rules 10, 25, 35, 40.01-05.g, 45.01, 50 and 55.

First, we'd like to thank the Idaho Department of Water Resources ("IDWR") for opening the negotiated rulemaking to public input. We look forward to further discussion regarding these rules and seeing the draft rules develop pursuant to this process. For the written comments due by March 11, 2023, our office's comments are limited to draft rules 10, 35, and 45.01 as outlined in the document entitled "Preliminary Draft Rule (Strawman v1.0) with redline" dated April 10, 2023.

I. Rule 10

Our office is in general agreement with the revisions to the definitions in Rule 10, especially as such definitions are linked to existing statutory language that may be subject to more frequent changes and updating. One concern arising from the proposed changes, however, is the deletion of the definition of "beneficial use." Given the use of such terminology later in the draft, we would recommend retaining the definition or updating such to refer to relevant statutory sections wherein the term is defined and/or described.

II. Rule 35

Regarding the proposed changes to application requirements, our office presents two comments. First, we appreciate the clarification language that water right applications as personal property may be assigned, and that the assignee must notify IDWR of the assignment. Will this information be available to the public? In other words, will there be a database or other publicly available location where another party, such as a protestant or potential protestant would be able to obtain notification of the assignee of an application?

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Second, the inclusion of application requirements for Municipal rights for reasonable anticipated future need ("RAFN rights") is appreciated given some confusion related to development of such rights in the recent past. However, as the additional requirements are largely dependent on the "planning horizon", our office would request a definition of "planning horizon" be added to Section 10 to provide additional guidance and/or insight on how burdensome the additional RAFN requirements may become based on the timeline that must be encompassed in a population projection, future demand within the service area, and gap analysis.

III. Rule 45.01

Our office is in agreement with the revisions made to Rule 45.01 regarding conservation of water through new applications for appropriation. We look forward to hearing any public comments and technical feedback related to this proposed change and the practical implications of this requirement in applying for new water rights.

IV. Conclusion

Thank you again for the opportunity to participate in the rulemaking process and to provide comments regarding the proposed rule language. If you have any questions, please contact our office at (775)786-8800.

Very truly yours,
SCHROEDER LAW OFFICES, P.C.



Caitlin R. Skulan
Laura A. Schroeder

LAS:crs