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RECEIVED

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DEPARTMENT OF
WATER RESOURCES

Angela Hansen
Idaho Dept. of Water Res.
322 E. Front St.
Boise, ID 83702
rulesinfo@idwr.idaho.gov

Re: Comments for Negotiated Rulemaking, Rules 10, 25, 35, 40.01-05.g, 45.01, 50 & 55

Dear Ms. Hansen:

Please find below comments from McHugh Bromley, PLLC as to the request for comments as to Water Appropriate Rules 10, 25, 35, 40.01-05.G, 45.01, 50, and 55. Our comments are in *italics*.

Rule 35 – Application Requirements

03.j. “Period of time required for completion of the project works and application of water to beneficial use. This period of time ~~shall~~ may not exceed five (5) years.”

- *In the original rule, the period of time for completion could not exceed five years, with use of the word “shall.” In the proposed rewrite, why has the rule been changed from mandatory to permissive?*

03.l.iii. “If the signatory is an authorized representative of the applicant, include a power of attorney or other documentation demonstrating the signatory has legal authority to sign on behalf of the applicant. If the representative is a licensed attorney, a power of attorney is not required.”

- *A difficulty our law office has had over the years is some staff require us to submit a power of attorney, with other staff not requiring a power of attorney. We’ve heard other law offices having similar problems. The underlined text proposes to address this problem by providing that licensed attorneys do not have to file a power of attorney because we are actual attorneys.*

Rule 40.01 – General

e.i. “In unprotested, the Director may hold a fact-finding hearing or may request the applicant file additional information under Subsection 040.05.”

- *If the Director has this authority, please let us know where the authority is located.*

Rule 40.02 – Public Notice Requirement

c. “The Director ~~will~~ shall make an application accepted for filing available on the Department’s website in accordance with Section 42-203A(3), Idaho Code.”

- *Because the code section that’s cited uses the word “shall” as opposed to the word “will” we suggest staying consistent and replacing “will” with “shall” as shown in underline and strikethrough.*

f. “The Director may deny approval of an application filed for diversion of ground water in a designated critical ground water area without advertisement of the application.”

- *If an application in a critical ground water management area proposes to mitigate for its full depletions, why would the Director have the authority to prevent the advertisement of the application?*

Rule 40.03 – Protests, Intervention, Hearing, and Appeals

b. “The Director will not accept a protest or petition to intervene unless the protest or petition intervene is filed with the statutory filing fee prescribed in Section 42-221L, Idaho Code, except any subdivision of the state, as defined in Section 67-2301, Idaho Code, is exempt from paying filing fees.”

- *A difficulty our office has had in the past is some staff require a filing fee for municipal clients, despite the fact that Idaho Code § 67-2301 prevents the collection of such fees. To resolve the issue, we generally have to speak with attorneys for the Department, who then instruct staff not to collect such fees. A proposed edit, as shown in underline, is to write into the rule that political subdivisions are exempt from paying filing fees.*

d. “The Director will not consider general statements of protest (blanket protests) against applications for a particular class of use or from a particular source of water valid protests.”

- *This rule change is unclear; what is intended?*

Rule 45.02 – Evaluation Criteria

e. “Other provisions of these rules notwithstanding, the Director will presume an application for domestic, commercial, municipal, or industrial use does not cause a significant reduction if the total proposed use does not reduce the flow at the Murphy Gage by more than two (2) af per day.”

- *Why was 2 af/day picked?*

Rule 45.03 – Criteria for Evaluating Public Interest under Section 42-203C(2), Idaho Code

j. “The Director will presume proposed domestic, commercial, municipal, or industrial uses which individually do not have a maximum consumptive use of more than two (2) af per day meet the public interest criteria of Section 42-203C(2), Idaho Code, unless protested.”

- *Why was 2 af/day picked?*

Thank you again for the opportunity to submit written comments.

Sincerely,



Chris M. Bromley



Candice M. McHugh