

Hansen, Angela

From: Jenkins, Megan
Sent: Monday, July 31, 2023 11:00 AM
To: Hersley, Jean; Hansen, Angela
Subject: FW: IWRB Comments Water Appropriation Rules

Hi Ladies,

Rules comments below.

-Megan

From: Ann Yribar <ann.yribar@ag.idaho.gov>
Sent: Friday, July 28, 2023 4:03 PM
To: RulesInfo <rulesinfo@idwr.idaho.gov>
Subject: IWRB Comments Water Appropriation Rules

Hi,

On behalf of the Idaho Water Resource Board I'd like to address the question raised in the last public meeting: "Should IDWR call out public land access vs. private land access requirements or leave the rule more general as drafted now?" The IWRB comments that it has found it difficult to meet the requirement, at the time a water right application is filed, of demonstrating that it has access to public lands, specifically federal public lands. The federal agencies have used the rule's requirement that access be demonstrated at the time the application is filed as a basis of protesting water right applications. The federal agencies often will not withdraw protests until the federal processes are complete or near complete. Because the federal process for obtaining access to federal lands can be lengthy and complicated, the IWRB has found that its water right applications cannot move forward until access to federal public lands has been granted. Essentially, the state water right process is held hostage to the federal land access process. This makes it very difficult to get large scale water projects off the ground.

The IWRB recognizes that access to federal public lands must, at some point, be obtained because a water right cannot be initiated in trespass. However, the IWRB would suggest that requiring applicants to demonstrate access to federal public lands *at the time of application* provides an opportunity for the federal land access processes to unduly delay or prevent the issuance of a state-based water right. The IWRB would suggest that it is more appropriate to require a demonstration of access to federal public lands at the time of licensing. The IWRB believes that including this distinction in the Water Appropriation Rules would facilitate the efficient issuance of water right permits under the rules.

Thanks for your consideration,



Ann N. Yribar | Deputy Attorney General
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