

Hansen, Angela

From: Woodard, Mleah - FS, UT <MLEah.Woodard1@usda.gov>
Sent: Friday, July 28, 2023 5:55 PM
To: Hansen, Angela
Cc: RulesInfo
Subject: RE: IDAPA 37.03.08 - Strawman v.2

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Thank you, Angela. I do have you on my list to call back – I have been slammed the past few days.

In Strawman v. 2, I am seeing access discussed in three places:

35.03.i (p. 6)

Current language: If someone other than the Applicant owns the property...

Suggested: If a person or entity other than the Applicant owns the property...

40.04.e.iv (p. 10)

Current language: In the instance of a project diverting water from or conveying water across land not in the Applicant's ownership, the Applicant must submit evidence documenting the Applicant has access or has contacted the land owner to initiate action to obtain the necessary interest, right of way, or other arrangement with the landowner prior to development of the permit.

I don't have suggested language, but want to note that this is a chicken-and-egg situation. A third party water user must obtain authorization from the Forest Service to use or occupy National Forest System lands. The Forest Service processes requests for use and occupancy of NFS lands pursuant to guiding authorities, including 36 CFR 251.50 et seq. The fact of an application to IDWR for a water right/ permit is not persuasive evidence in our analysis; our rules and regulations still apply. In other words: please be advised that if your language stands, re: IDWR is satisfied that the Applicant "has contacted the land owner to initiate action to obtain the necessary [permission]," we encourage a follow up mechanism on your side in the event that the permission is not granted by the Forest Service.

45.01.c.i (p.12)

Similar situation here. The current language reads that the Applicant "intends to take action to obtain the necessary interest, right of way, or other arrangement..."

Note that an intention is not permission, privilege, right, or legal interest. My sense is that if roles were reversed, this language would not be satisfactory to the Forest Service. We would need more – proof of authorization, proof that an application has been submitted and is under consideration with no protests filed, etc.

Please note that this paragraph (i) has an "applicant" that needs a capital "A" (second word...).

I have a note to give you a call on Monday morning, but I wanted to get these initial comments in.

I really appreciate your time and consideration!



M'Leah Woodard
Water Rights and Uses Program Manager
Forest Service
Intermountain Region (R4) Regional
Office

p: 801-625-5809
c: 385-400-2579
mleah.woodard1@usda.gov

324 25th Street
Ogden, UT 84401
www.fs.fed.us



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From: Hansen, Angela <Angela.Hansen@idwr.idaho.gov>
Sent: Wednesday, July 26, 2023 11:21 AM
To: Woodard, Mleah - FS, UT <MLEah.Woodard1@usda.gov>
Subject: RE: IDAPA 37.03.08 - Strawman v.2

M'Leah,

Good morning! Thank you for participating in the Water Appropriation Rules Negotiated Rulemaking meeting today. Strawman v 2.0 is available on the Water Appropriation Rulemaking webpage here: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2023-2024/water-appropriation-rules>. Here's a direct link to [Strawman v 2.0](#). I look forward to your comments on or before Friday. Please let me know if you have any questions.

Regards,
Angie



IDAHO DEPARTMENT OF
WATER RESOURCES

Angela Hansen | Water Rights Section Manager
322 E Front St, PO Box 83720, Boise, ID 83720
(208) 287-4951 | www.idwr.idaho.gov

From: Woodard, Mleah - FS, UT <MLEah.Woodard1@usda.gov>
Sent: Wednesday, July 26, 2023 10:51 AM
To: Hansen, Angela <Angela.Hansen@idwr.idaho.gov>
Subject: IDAPA 37.03.08 - Strawman v.2

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Greetings Angela, and thank you for the opportunity to attend the IDAPA37.03.08 rulemaking meeting today.

Please send a link or advise where I can access the Strawman v.2 version of the rules. I understand that a public comment period ends this Friday. We will want to review the provision(s) on public v. private land access.

Many thanks!



M'Leah Woodard
Water Rights and Uses Program Manager

Forest Service
Intermountain Region (R4) Regional
Office

p: 801-625-5809

c: 385-400-2579

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Ogden, UT 84401

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