

IDAHO DEPARTMENT OF WATER RESOURCES
REVIEW MEMORANDUM FOR
VEOLIA'S
INTEGRATED MUNICIPAL APPLICATION PACKAGE (IMAP)

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This memorandum is a step-by-step review of VEOLIA's Response ("VEOLIA's Response") to IDWR's Staff Memo, which was received by IDWR on November 30, 2020.

The following abbreviations are commonly used in the various memos that have been compiled for the IMAP reviews. Note that VEOLIA was previously SUEZ Water Company Inc. In this memo the name SUEZ was replaced with VEOLIA, including when text was quoted from other memoranda.

Idaho Department of Water Resources	"IDWR" or "Department"
SUEZ Water Idaho Inc.	VEOLIA
VEOLIA's Response to IDWR's Staff Memo	"VEOLIA's Response"
Memorandum – Analyzing of Staff Memo Attachments 1 and 2	"Side memo"
Staff Review of Suez Water Idaho, Inc.'s Integrated Municipal Application Package	"Staff Memo"
IMAP Review Memorandum (same as above)	"Staff Memo"

SECTION 1. ADDITIONAL INFORMATION REQUESTED FROM VEOLIA

1.A. Qualification as a Municipal Provider

IDWR request for additional information (quoted from page 27 of IMAP Review Memorandum):

- IDWR should seek information from VEOLIA to substantiate its qualification as a municipal provider for the record. Page 3.

VEOLIA's Response substantiates that they do in fact qualify as a municipal provider as follows:

VEOLIA falls under the category of municipal providers described in Idaho Code § 42-202B(5)(c): "A corporation or association which supplies water for municipal purposes through a water system regulated by the state of Idaho as a 'public water supply' as described in section 39-103(12), Idaho Code."..." Consistent with these definitions, VEOLIA is (1) an Idaho corporation that (2) supplies water for municipal purposes (3) through a water system regulated by the state of Idaho as a "public water supply."

VEOLIA's Response further substantiates how they meet those definitions, including the fact that VEOLIA holds more than 100 water rights for municipal purposes and that they are regulated as a public water supply by the Idaho Department of Environmental Quality (IDEQ). IDEQ assigned a public drinking water supply number ("PWS#4010016") to VEOLIA water system.

Conclusion:

VEOLIA's Response fully substantiates that VEOLIA qualifies as a municipal provider as described in Idaho Code § 42-202B(5)(c) and Idaho Code § 39-103 (12).

Section 1.B. VEOLIA's service area and Planning Area.

The *Staff Memo* contains three separate but overlapping requests for information about VEOLIA's service area and Planning Area:

- to "explain its process for obtaining authorization or obligation to serve an area."
- for "information explaining how and why it is reasonable to anticipate that its service area will expand to include all of the Planning Area."
- to explain "how it obtains approval for expanding its service area and why its service area will expand into certain areas in the future."

Due to the overlap of these requests, VEOLIA addressed them in a combined response. For the purposes of this review these three questions are separated to verify that they have been fully addressed.

Explain the process for obtaining Authorization or Obligation to serve an area:

VEOLIA quotes Idaho Code § 61-526 and IDA PA 31.01.01.112, which outline that "VEOLIA may apply to the Idaho Public Utilities Commission ("IPUC") to amend VEOLIA's Certificate of Convenience and Necessity No. 143 ("Certificate"), which describes the area within which VEOLIA is authorized to extend its water system to supply water (its "Certificated Area"). The IPUC may amend the Certificate if it finds, among other things, that (i) VEOLIA has the financial ability and, in good faith, intends to extend its system and supply water to the new area, (ii) that no other public utility is serving the area, and (iii) there is a "necessity of additional service in the community."

Conclusion:

The IPUC is tasked with reviewing and issuing Certificates that authorize VEOLIA to extend its water system to supply water. Idaho Code stipulates the criteria that have to be reviewed by IPUC. The IPUC concludes there is no other public utility serving the area, which avoids overlap in service areas.

Will the service area expand to include all of the Planning Area

VEOLIA provides an overview of their Planning Area and their Certificated Area (Certificated Area being the IPUC certified area that can be amended and corresponds to what Idaho Code §42-402B (9) as "Service Area"). The "Pink Line Map" (originally included with the original IMAP application), displays both VEOLIA's current Certificated Area and its Planning Area. The former is marked by a blue line; the latter is marked by a pink line. VEOLIA explains that the Planning Area depicted on the "Pink Line Map" is their "best effort to predict the location of its Certificated Area at the end of the Planning Horizon in 2065. It is not a commitment that VEOLIA will serve all of those areas. Nor does it preclude VEOLIA from serving areas outside the Planning Area." Similar language was included in VEOLIA's Master Water Plan for the Years 2015 to 2065 ("Master Water Plan") (dated 9/23/2016 including errata dated 4/28/2017), which states that "VEOLIA delineated its Planning Area because some future service area must be assumed for purposes of projecting future water demands."

The current Certificated Area is within the Planning Area (one possible exception explained in footnotes) and along many areas the current Certificated Area is the same as the Planning Area, because they already are adjacent to areas served by other cities.

VEOLIA then provides a detailed explanation of the Planning Area boundary and specifically addresses the areas of potential overlap along the adjacent municipal providers. (Meridian and Eagle areas, North of Eagle to the Ada County line, Eastern boundary along foothills, Garden City area, Area south of Boise, City of Kuna and western boundary area).

Conclusion:

VEOLIA expands on their original discussion in the Master Water Plan. IDWR should rely on the IPUC to lead the effort of administering the Certificated Areas of VEOLIA and the surrounding potable water service providers. For the purposes of IDWR's review the information provided addresses the question sufficiently.

How does VEOLIA obtain approval for expanding its service area and why its service area will expand into certain areas in the future?

VEOLIA describes mechanisms that are in place, so municipalities and municipal providers collaborate when they develop their planning areas to avoid potential overlap. A footnote on Page 11 states the following: "An "area of city impact" describes the area where a city anticipates growing and, more specifically, extending city services. Since its adoption in 1975, Local Land Use Planning Act ("LLUPA") has mandated that cities designate such areas beyond its corporate boundaries. Idaho Code § 67-6526. See also Idaho Code § 50-1306 which deals with platting and which cross-references the area of city impact requirements. This statute provides that if a proposed subdivision lies within an officially designated area of city impact, the subdivision application must be reviewed in accordance with whichever zoning and subdivision ordinances are made applicable pursuant to the area of impact ordinances of both jurisdictions." VEOLIA further explains that "in many areas the boundary of the Planning Area follows the boundary of the current Certificated Area. These are typically areas where the current Certificated Area is adjacent to areas served by other cities. In other words, these are areas where there is no room for VEOLIA's service area to grow." In other areas VEOLIA must use "best professional judgement to predict where the Certificated Area is likely to expand". This is a reasonable approach, given that municipalities, and organizations that serve municipalities, need to establish boundaries for water demand projections in the future, including areas that have not yet been formally designated as Certificated Areas. In several instances, VEOLIA has entered into formal agreements with other providers delineating our respective service areas and establishing protocols for communication and cooperation with respect to changes in boundaries. VEOLIA adds that "in nearly 20 years of on-and-off administrative litigation involving virtually all of VEOLIA's municipal provider neighbors, none of them has challenged the location of the Planning Area".

Section 1.C. The portion of VEOLIA's RAFN attributable to growth outside its current Certificated Area

VEOLIA retained Professor John S. Church to prepare VEOLIA's RAFN demand projections and presented his conclusions in his *Expansion Quantification Report*. As explained in the *Expansion Quantification Report*, VEOLIA's projected water demand in this so-called "Expansion Area" is a tiny fraction, 1.69%, of VEOLIA's total RAFN projection.

Conclusion

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VEOLIA does not believe that it is appropriate to exclude water demand in the Expansion Area from its RAFN forecast because, as explained in the preceding section, it is reasonable to assume that VEOLIA will serve this area. Idaho Code §42-202B (9) defines the “service area” as follows:

“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.”

The area outside of VEOLIA’s current Certificated Area (Expansion Area) presents only a small fraction (1.69% or 6.27 cfs) of the total RAFN diversion rate projection.

After internal discussion, IDWR has not been able to reach a conclusive answer to the question of whether growth outside the currently Certificated Area can be included in the RAFN projection. However, for the purposes of moving IMAP forward, this question does not need to be resolved at this point, because VEOLIA demonstrated that there is a Gap (shortfall of water right diversion rate within the planning horizon) even without the inclusion of growth outside the currently Certificated Area. IDWR looks forward to resolving this issue once VEOLIA submits their anticipated RAFN water right application. IDWR plans to use the Certificated Area as the service area place of use shape if IMAP is approved.

Section 1.D. IMAP's 81 total APODs

IDWR requested that VEOLIA confirm the total number of wells to clear up previous confusion. VEOLIA confirmed that there will be 81 APODs in the IMAP and attached a list of them in their response.

Section 1.E. Low temperature geothermal water

VEOLIA does not have any low temperature geothermal (LTG) wells. However, it is possible that a replacement well could be constructed that would encounter LTG water. VEOLIA does not object to the Staff Memo's recommendation that all rights approved through the IMAP include standard condition 073. Note however that IDWR incorrectly referred to this condition as condition #073, but it is in fact condition #058. VEOLIA provided minor edits to the standard condition (#058), which are acceptable to IDWR. Condition 073, which states “Diversion and use of water with a temperature greater than 85 degrees Fahrenheit is not authorized under this right” should also be added to all rights approved through the IMAP, since VEOLIA has not diverted LTG water historically and therefore shall not divert LTG water under existing water rights in the future.

Section 1.E. Cold water below 300 feet

VEOLIA disagrees with the Staff Memo's suggestion that "IDWR should consider limiting the use of cold water(< 85 degrees Fahrenheit) below 300 ft [within the Boise Front GWMA], the additional use of which may impact the LTG resource." VEOLIA makes the following arguments:

(a) A cold water condition is not mandated by the Department's guidance.

VEOLIA correctly clarifies that there is only one "Administrative Action Required to Implement Objectives" addressing water below 300 feet in the 1988 Policy: “Require a drilling prospectus to be submitted for review and approval with each drilling permit proposing to construct a well into the low temperature

geothermal aquifer or which exceeds a 300 ft depth.”

This policy does not limit the use of cold water, but it simply requires a drilling prospectus for new wells in the Boise Front GWMA that would divert from the low temperature geothermal aquifer or which exceed a 300 foot depth.

Conclusion:

IDWR agrees that to date there is no condition that addresses cold water below 300 ft in the Boise GWMA.

(b) The APOD condition will provide adequate protection in any event.

Refer to pages 22 & 23 in the VEOLIA Response to review their explanation that the APOD condition will provide adequate protection.

Conclusion:

IDWR concurs that the APOD condition would accomplish addressing the concern of injury to LTG wells as a result of pumping water from wells that are greater than 300 ft depth during a curtailment.

F. VEOLIA confirms the abandonment of right nos. 63-8385 and 63-10150

Conclusion:

IDWR acknowledges that VEOLIA intends to abandon right nos. 63-8385 and 63-10150, which would have rates of zero after removal of combined limits and assignment of diversion rates and/or volumes to the most senior of the combined rights if IMAP is approved.

G. VEOLIA's intent regarding right no. 63-12363 (which is not in the IMAP) and its combined limit with 63-11558

VEOLIA provides the following statement in their response:

If the quantity element of 63-12363 cannot be reduced without bringing it back into the IMAP, then VEOLIA drops its request to eliminate the combined use limit on these two rights. At some point down the road, VEOLIA may file a transfer application for 63-12363 to accomplish this result, but VEOLIA does not want to hold up final action on the IMAP in the interim.

Conclusion:

IDWR concurs that bringing water right 63-12363 back into IMAP at this stage would be complicated and cause potential delays and thus VEOLIA's suggestions to address the two referenced rights after the final action on IMAP is the best approach.

H. Water bearing zones for permit nos. 63-12452, 63-12464, and 63-12516

VEOLIA explains that the water bearing zone (WBZ) for five of the six wells associated with the three water rights (two wells each) are within the ranges described in the permit conditions. The actual WBZ in the current Foxtail well is not relevant to IMAP approval because the IMAP was filed when the Foxtail well's WBZ fell within permit no. 63-12516's WBZ limitation.

Conclusion:

IDWR disagrees with this conclusion. The permit WBZ condition is still in place now and was when the replacement well was drilled. The replacement well WBZ is deeper than permitted, which is acceptable because the WBZ condition is meant to restrict use of water above 200 ft to avoid injury to senior surface water rights. Also, IDWR's practice to modify the WBZ condition at licensing instances such as this.

III. GAP ANALYSIS REVISIONS

Note, the following review is based on the “Side Memo” and follows the organization (report numbering format) of that document.

Gap Analysis differences between IDWR Staff Memo and VEOLIA’s Master Water Plan Calculations

IDWR General Comment:

VEOLIA has demonstrated, and IDWR confirmed, that there will be a Gap based on the forecast for water demand in 2065. This Gap is large enough that the individual water rights below, even cumulatively, do not change the fact that there will be a Gap. Some of the discussions below include water rights that are or will be included in the IMAP that will require a nature of use transfer after IMAP has been approved. The discussions in this memo should not be interpreted as the exact rates that will result from the respective transfers.

Section I.A. - Item 1: Total “face value” or “paper” diversion rate (sum of each right)

Differences are attributed to three water rights (63-12140, 63-12310, 63-31406)

63-12140 & 63-12310: VEOLIA agrees with quantities on the draft licenses (1.72 cfs & 1.74 cfs respectively).

63-31406: Pumping capacity (1.11 cfs) is less than permitted amount (2.0 cfs)

Conclusion:

IDWR concurs with VEOLIA’s analysis presented in Item 1.

Section I.B. - Item 2: Total diversion rate after the combined limit adjustments

After accounting for reductions due to combined rate limits and elimination of volume limits related to water rights 63-2915, 63-3239, & 63-12363 there is no difference between IDWR’s and VEOLIA’s diversion rates.

Conclusion:

IDWR concurs with VEOLIA’s analysis presented in Item 2.

Section I.C. - Item 3: Total diversion rate after combined limit and volume limit adjustments

Water rights 63-169F, 63-243E, & 63-243H are not part of the IMAP transfer applications and IDWR did not account for these rights annual volume limitations and the resulting calculated constant diversion rate.

The beneficial use for water right 63-10945 is for domestic, irrigation, and fire protection. To change the nature of use from irrigation to municipal use, only the consumptive portion of the irrigation use can be transferred. IDWR based their calculation on a simplified approach to determine historical consumptive use as follows: $3.5 \text{ af/ac} \times 53 \text{ ac} = 185.5 \text{ af}$, which corresponds to 0.26 cfs. However, that rate may also overestimate the consumptive use, if a significant portion of the irrigation was accomplished with surface waters shares or if the full 53 acres authorized was not irrigated in the last five years. In-house domestic use is not considered consumptive and thus does not add additional rate [Refer to Transfer Processing Memo No. 24, Section 3 (15)]. VEOLIA does not concur with IDWR's assessment that the calculated diversion rate should be based on and limited to the historical consumptive use.

63-12140 & 63-12310: VEOLIA agrees with quantities on the draft licenses (1.7cfs & 1.74 cfs respectively) and recommends that the diversion rate for water right 63-31406 should be based on the known pumping capacity (1.11 cfs), rather than the permitted amount (2.0 cfs).

Conclusion:

IDWR concurs with VEOLIA's analysis presented in Item 3, with the exception of their analysis of water right 63-10945, which does not account for historical consumptive use, which must be accounted for. The paragraph of Transfer Processing Memo No. 24, Section 5d. Enlargement of Use (13) that is referenced in the "Side Memo" (Michael Lawrence) specifically states that the exemption of enlargement concerns applies to water rights that were "established and held by a municipality", which was not the case for water right 63-10945.

Section I.D. - Item 4: Total diversion rate after temporal considerations

Conclusion:

IDWR concurs with VEOLIA's analysis presented in Item 4, specifically that VEOLIA can never divert its 63-31409 (20 cfs from the Boise River) right at the same time as its exchange rights. The 20 cfs rate is not additive to VEOLIA's overall portfolio for purposes of conducting the Gap analysis.

Section I.E. - Item 5: Forecast for water demand in 2065 and "Gap"

Conclusion:

IDWR concurs with VEOLIA's analysis presented in Item 5 that the water demand, as projected in the Water Master Plan, in 2065 is forecasted to have a peak day production rate of 370.87 cfs. The main divergence of opinion related to the gap analysis is the diversion rate calculated for the water rights discussed below. IDWR maintains that only the consumptive portion of the irrigation right is eligible for the nature of use change. Additionally, as stated in Section I.C: for the purposes of moving IMAP forward, the question does not need to be resolved at this point, because VEOLIA demonstrated that there is a Gap (shortfall of water right diversion rate within the planning horizon) even without the inclusion of growth outside the currently Certificated Area. IDWR looks forward to resolving this issue once VEOLIA submits their anticipated RAFN water right application.

Section II.A. 63-147D

IDWR concurs that since VEOLIA has the referenced shares at the time we're doing this analysis, they should be included in the portfolio with a 0.37 cfs diversion rate, which will decrease their "GAP" accordingly.

Section II.B&C. 63-3222 & 63-10890

Conclusion:

These two water rights aren't in IMAP. IDWR concurs with VEOLIA's approach and the rates they calculated for purposes of the Water Rights Portfolio. The addition of these two rights to VEOLIA's portfolio is acceptable and will have only a small effect on the GAP. IDWR does not necessarily approve of the proposed diversion rates for 63-3222 & 63-10890 in Table 7 of the side memo (Michael Lawrence memo). IDWR will include these two rights in VEOLIA's portfolio at the rates VEOLIA proposes, recognizing that ultimately the amounts may change based on historic consumptive use if a nature of use change is filed.

Section III.A. 63-8248

IDWR concurs that the VEOLIA's conclusion that this is a rounding error $((843.3\text{AFA}/365 \text{ days})/1.9835 = 1.164 \text{ cfs} = 1.16 \text{ cfs})$.

Section III.B. 63-12140 & 63-12310

IDWR concurs that the diversion rates reflect the draft licenses correctly.

Section III.C. 63-10945, 63-11990, and 63-12362

63-10945

Domestic

VEOLIA interprets Transfer Processing No. 24 (relevant portion of the memo quoted at the end of this memo) to indicate that the domestic use under the original water right should be transferred fully based on the annual diversion volume and will not require limitation to the historic consumptive use under the right. However, this water right was not established by a municipality and in-house domestic use is considered non-consumptive and does not provide a rate when transferred to municipal use. Furthermore, the water right is conditioned to specifically exclude irrigation under the domestic use (Domestic use is for 256 homes and does not include lawn, garden, landscape, or other types of irrigation). In this case the water right includes a rate and annual volume for irrigation. The consumptive use for the irrigation component of the water right can be calculated and the nature of use changed from irrigation to municipal (see below).

Irrigation

The beneficial use for water right 63-10945 is for domestic, irrigation, and fire protection. To change the nature of use from irrigation to municipal use, only the consumptive portion of the irrigation use can be transferred. After further review, IDWR determined that on average there was 0.1 acre of irrigation per lot. Domestic use is for 256 homes, resulting in 25.6 acres of historic irrigation eligible for a nature of use change. IDWR agrees with the 3.24 AFA (based on ET Idaho) consumptive use that VEOLIA also used. Based on those values the diversion rate

should be calculated as follows: $25.6 \text{ ac} \times 3.24 \text{ AFA} = 82.9 \text{ AF} \Rightarrow 82.9 \text{ AFA}/365 \text{ days} = 0.227 \text{ AFday} \Rightarrow 0.227 \text{ AFday}/1.9835 = 0.11 \text{ cfs}$.

63-11990

The water right was not established and held by a municipality and is therefore subject to a nature of use change through a transfer, including accounting for a historic consumptive use analysis. In-house domestic is considered non-consumptive and therefore can't be included in a nature of use change (domestic to municipal use). (Refer to Transfer Processing Memo No. 24, Section 3 (15) and 5d (13)). Only the portion of historically irrigated land is eligible for the purpose of determining historic consumptive use that would be eligible to be transferred to municipal use. In this case it would be most appropriate to determine the historic consumptive use based on the lawn size approach (similar to what was done for the City of Meridian - Transfer 82259). Domestic use is for 520 homes within the Walden Pond and Edgewater Estates Subdivisions. According to the Side Memo on page 17, 46% of the homes (239 homes) use groundwater for primary irrigation, while the remaining 54% of homes (281 homes) use surface water for primary irrigation. Similar to water right 63-10945, the historic consumptive use was calculated based on average irrigated acres per house. The average amount of irrigation was estimated as 0.2 acres per lot, for a total of 47.8 acres (239 homes x 0.2 acres/home = 47.8 acres). IDWR agrees with the 3.24 AFA (based on ET Idaho) consumptive use that VEOLIA also used. Based on those values the diversion rate should be calculated as follows: $47.8 \text{ ac} \times 3.24 \text{ AFA} = 154.9 \text{ AF} \Rightarrow 154.9 \text{ AFA}/365 \text{ days} = 0.42 \text{ AFday} \Rightarrow 0.42 \text{ AFday}/1.9835 = 0.21 \text{ cfs}$.

Response to Historic Use Recognized for Municipal Purposes

Historic Use Recognized for Municipal Purposes. An application for transfer, which proposes to change the nature of use to municipal purposes for a water right **established** (emphasis added) and held by a municipality that lists the purpose(s) of use as some combination of domestic, commercial, industrial, or irrigation, where those uses have historically been essentially for municipal purposes, as defined in Section 42-202B, Idaho Code, will not be presumed to be an enlargement of the right and will not require limitation to the historic consumptive use under the right. However, the change will be subject to the annual diversion volume, if specifically stated on the water right license or decree. (Transfer Memo 5d (13))