

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN
September 7, 2011

Christopher H. Meyer
Givens Pursley LLP
601 West Bannock St
P.O. Box 2720
Boise, ID 83702

Re: City of McCall - Land application of municipal effluent outside of city limits

Dear Chris:

This responds to your letter of August 18, 2011 requesting confirmation that the City of McCall ("City") has authority to land apply its municipal effluent to lands located beyond the city limits but within the City's service area. I have reviewed your letter with staff of the Idaho Department of Water Resources ("IDWR") and am able to confirm that on the issue of whether municipal reuse of waste water comes within the original use of the municipal right, your analysis is consistent with current IDWR policy. Waste water treatment necessary to meet adopted state water quality requirements is considered by IDWR as part of the use authorized under a municipal right so long as the treatment process complies with the best management practices required by the Idaho Department of Environmental Quality, the U.S. Environmental Protection Agency, or other state or federal agency having regulatory jurisdiction. For new uses of municipal waste water that are not necessary to meet water quality requirements, an application for permit to appropriate water should be filed as required by Idaho Code § 42-202.

One concern raised by IDWR relates to your analysis of the place of use for a municipal provider. As you correctly recognize, the Municipal Water Rights Act of 1996 expressly authorizes municipal providers to serve within a "service area" that may include lands "located outside the boundaries of a municipality served by a municipal provider." Idaho Code § 42-202B(6). The term "service area" is defined by the 1996 Act as follows:

"Service area" means that area within which a municipal provider is or becomes entitled or obligated to provide water for municipal purposes. For a municipality, the service area shall correspond to its corporate limits, or other recognized boundaries, including changes therein after the permit or license is issued. The service area for a municipality may also include areas outside its corporate limits, or other recognized boundaries, that are within the municipality's established planning area if the constructed delivery system for the area shares a common

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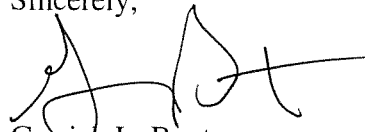
water distribution system with lands located within the corporate limits. For a municipal provider that is not a municipality, the service area shall correspond to the area that it is authorized or obligated to serve, including changes therein after the permit or license is issued.

Idaho Code § 42-202B(9) (emphasis supplied).

Under this statute, only if the constructed delivery system for the area outside the city limits shares a common water distribution system with lands located within the corporate limits, may the area outside the city limits be considered part of the city's service area. In the City's case, the Department understands that the City uses a series of privately owned irrigation ditches to transport effluent to lands outside the city limits. The Department has questions regarding the process in which the City delivers effluent to the lands outside the city limits. A measure of control and supervision is at least implied for a delivery system to be considered a "common" water distribution system. The Department does not have a complete understanding of how the effluent is tracked and delivered by the City. In short, the Department would need a better understanding of the City's actual delivery process to be able to answer whether the use of private irrigation ditches by the City would satisfy Idaho Code § 42-202B.

The Department would be happy to meet with you and your clients to discuss this matter further. Let me know if you would like to set up a meeting.

Sincerely,

A handwritten signature in black ink, appearing to read 'Garriek L. Baxter', with a long horizontal stroke extending to the right.

Garriek L. Baxter
Deputy Attorney General
Idaho Department of Water Resources

cc: Gary Spackman
Jeff Peppersack
John Westra
Steve Lester