

NOTES ON IDWR’S PROPOSED CONDITIONS FOR IMAP APPROVAL

(Limited to “Broadly Applicable Conditions”)

TO: Cody Parker, IDWR
Jacob Caraig, IDWR

FROM: Christopher H. Meyer *che*
Michael P. Lawrence *MPL*

DATE: January 17, 2025

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EXECUTIVE SUMMARY

On January 2, 2025, Jacob Caraig sent Chris Meyer an email with proposed transfer approvals for each IMAP right. On January 3, 2025, Cody Parker sent a revised set of proposed transfer approvals.¹

We have not yet completed a comprehensive review of all 343 pages of the revised set of draft approvals. Doing so will entail a substantial technical effort to confirm that every transfer has the correct elements, remarks, and conditions tailored to each right.

The purpose of this memo is to respond to the 22 conditions that are broadly applicable to all or many of the IMAP water rights (“**Broadly Applicable Conditions**”). These include the 21 conditions that were addressed in our April 23, 2024 memo specifying the so-called “buckets” (*i.e.*, groups) of water rights to which each condition would attach (“*Bucket Notes Memo*”). In addition, we address one other condition (the “accomplish within one year” condition) included in the draft transfer approvals for the first time.

We are encouraged that IDWR’s proposed approvals resolve nearly all of the issues raised in Veolia’s *Bucket Notes Memo* dealing with condition language. Of the 22 Broadly Applicable Conditions summarized in the Table on page 16, there are only seven conditions in which Veolia has some remaining concerns (“**Remaining Concerns Conditions**”). This memo examines those seven conditions and explains Veolia’s thinking.

¹ The draft approvals provided by IDWR include 90 proposed transfer approvals and no approvals for amendment of permits. We assume the permit amendments will come in a separate batch.

REFERENCE NOTES

To our knowledge, the January 2025 drafts are the first time that IDWR has assigned a transfer number to the IMAP (Transfer 89499).

IDWR has provided three memos addressing IMAP conditions:

- Memo from Shelley Keen to IMAP participants and Hearing Officer entitled “Proposed Conditions of Approval” dated June 29, 2018 (“*Keen Memo*”).
- Memo from Manuel Rauhut, Angela Grimm, Pamela Skaggs, Erik Boe, and Shelley Keen to Hearing Officer entitled “Staff Review of Suez Water Idaho, Inc.’s Integrated Municipal Application Package” dated January 14, 2019 (“*Staff Memo*”).
- Memo from Manuel Rauhut entitled “Review Memorandum for Veolia’s Integrated Municipal Application Package (IMAP)” dated May 2023 and issued on May 12, 2023 (“*Rauhut Memo*”).

Veolia submitted three memos to IDWR:²

- Memo from Chris Meyer and Mike Lawrence to Manuel Rauhut entitled “IMAP Wrap-Up Memo” dated October 9, 2023.
- Memo from Chris Meyer and Mike Lawrence to Manuel Rauhut entitled “Proposed Conditions for IMAP Approval” dated October 9, 2023, revised on April 23, 2024 to add “Bucket Notes” (“*Bucket Notes Memo*”).
- Memo from Mike Lawrence to Jacob Caraig entitled “Response to IDWR questions concerning IMAP PODs” dated January 13, 2025. (This memo relates to points of diversion, not conditions.)

² Until recently, our points of contact for IMAP review were Manuel Rauhut and Angie Hansen (formerly Grimm). Manuel left IDWR in August of 2024, and Angie departed the following month. Our points of contact with IDWR on draft IMAP approvals are Cody Parker (Water Rights Supervisor) and Jacob Caraig (Engineer Intern). Craig Saxton (Section Manager) was copied on their emails to me.

THE SEVEN “REMAINING CONCERN CONDITIONS”

The seven Remaining Concern Conditions are discussed below. As noted, this memo does not address conditions unique to a particular water right or small groups of rights or the elements proposed in the draft approvals. For reference, the draft approval for water right no. 63-11990 contains each of the seven conditions discussed below. A copy of that draft approval is set out on page 18.

(1) Administration of APODs

This is condition 5 in Veolia’s *Bucket Notes Memo* and condition 13 in the draft approval for water right no. 63-11990. As noted in the *Bucket Notes Memo*, this condition will attach to all IMAP water rights, but it needs to be modified for each right to reflect the location of the well or wells initially associated with that right.

IDWR version:

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from the <well name> well located in T__ R__ S__ ____.³

Veolia’s proposed version (same as Bucket Notes Memo):

To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from the <well name> well located in T__ R__ S__ ____ [list all original points of diversion]. Additional points of diversion have been authorized as set out in condition <6>. The purpose of conditions <5> and <6> is to allow the right holder to divert water at points of diversion that were not initially associated with this right, but only when doing so does not cause material injury to other rights. Accordingly, if

³ Twenty-one of IDWR’s draft transfer approvals (including, for example, water right no. 63-4395) contain the following additional language (or similar) at the end of this condition: “At the time of the approval of Transfer 89499, this well is not an authorized point of diversion for this water right.” At least in the case of right no. 63-4395, this language appears to reflect the fact that the original POD has been abandoned and is not included in the APODs approved for the IMAP rights. We will continue to review these conditions to confirm the accuracy of such language.

pumping from a well not originally authorized under this right is causing material injury to another right, the priority date and authorized quantity used for injury analysis shall be that of the right originally associated with the well causing the material injury. Provided, however, that in a regional curtailment, if the priority date of this right is senior to the cutoff date and the original point or points of diversion for this right lie within the curtailment zone, water may be diverted under this right from any authorized point of diversion.

Discussion:

Veolia explained its concerns with IDWR's language in the *Bucket Notes Memo*, pp. 7-10. In the draft approvals, however, IDWR used its standard APOD condition language and rejected the additional explanatory language proposed by Veolia.

This evidently is not a substantive disagreement. The standard APOD condition language is not wrong. Indeed, it is incorporated into Veolia's proposed language. Veolia helped craft the standard APOD language in the early days of the SRBA. And Veolia previously litigated on IDWR's side in defense of that language in *City of Pocatello v. State*, 152 Idaho 830, 275 P.3d 845 (2012).

That said, there are two reasons that IDWR should take another look at Veolia's additional proposed language.

First, the standard language is "inside baseball." No one understands its obtuse language, except those who are steeped in its history. The additional explanation may avoid confusion and disagreement in future years.

Second, Veolia entered into a stipulated withdrawal of protest agreement with two IMAP parties (Nampa & Meridian Irrigation District and Settlers Irrigation District) on April 18, 2018. That stipulation states:

SUEZ's request for alternative points of diversion ("APODs"), if approved by the Department, will be made subject to an express, enforceable condition or remark appearing on the face of each right that embodies the principles described in *Suez's 2017 Supplement to the Update Report, Addressing APODs* (June 26, 2017), *Suez's Further Explanation of APOD Condition Language* (Sept. 11, 2017), and *SUEZ's Submission of Additional Authority on APODs* (Nov. 28, 2017). So long as the APODs are granted subject to condition language along those lines, the Districts have no objection to the APODs.

Stipulation for Withdrawal of Protests and Request to Change Status to Intervenor by Nampa & Meridian Irrigation District and Settlers Irrigation District (filed in the IMAP proceedings on April 18, 2028), § 4, p. 4 (“***Irrigation Districts Stipulation***”).

It may be that the standard APOD language satisfies this provision of the settlement. After all, it may be said that the standard language “embodies the principles described” in the referenced documents. But the standard language doesn’t explain those principles very well. In the spirit of cooperation, Veolia crafted the suggested language to provide clarity to future readers and to meet its obligation under the *Irrigation Districts Stipulation*. If nothing else, the proposed explanatory language will promote clarity, reduce the likelihood of future litigation, and thereby reduce the administrative burden on IDWR in future years.

(2) Authorization of additional APODs

This is condition 6 in Veolia’s *Bucket Notes Memo* and condition 12 in the draft approval for water right no. 63-11990. As noted in the *Bucket Notes Memo*, this condition will attach to all IMAP water rights, but it needs to be modified for each right to reflect the location of each additional well now authorized as a POD.

IDWR version:

This transfer authorizes the following additional wells as points of diversion under this right as of the date of approval. <List of all additional APODs not previously authorized under this right.>

Veolia’s proposed version (differs from Bucket Notes Memo):

~~This transfer~~ Transfer 89499 authorizes the following additional wells as points of diversion under this right as of the date of approval. <List of all additional APODs not previously authorized under this right.>

When this right was initially <licensed> <permitted> <decreed>, it authorized the following well(s) as points of diversion. <List the original well or wells authorized under this right.>

Prior to Transfer 89499, the <partial decree> <transfer> dated <date> authorized the following additional wells as points of diversion under this right: <List of APODs added after initial authorization and before this transfer.>

Discussion:

Veolia explained its concerns with IDWR’s language in its *Bucket Notes Memo*, pp. 10-11. However, IDWR used its standard condition language and rejected Veolia’s suggestion that the condition also identify the other times that APODs were authorized or added.

This also is not a substantive disagreement. The additional detail proposed by Veolia admittedly could be sorted out later. The sole purpose of adding it to the condition is to clarify the historical facts thereby simplifying any future administration of the APOD condition.

The language proposed above is slightly simpler than that proposed in the prior *Bucket List Memo*. Perhaps this would be more acceptable to IDWR.

At a minimum, the language should be changed to reference “Transfer 89499” rather than “this transfer.” In future years, it may not be clear what “this transfer” means.

(3) Surface water first

This is condition 7 in Veolia's *Bucket Notes Memo* and condition 2 in the draft approval for water right no. 63-11990. As noted in the *Bucket Notes Memo*, Veolia believes this condition should be dropped, but if it remains it will attach to all IMAP water rights.

IDWR version:

The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use or where the use of surface water was replaced by the use of water diverted in connection with this right before the approval of Transfer 89499. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.

Veolia's proposed version (differs from Bucket Notes Memo):

Preferably no condition at all. Or the following:

~~The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use or where the use of surface water was replaced by the use of water diverted in connection with this right before the approval of Transfer 89499. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.~~

Taking into account operational complexities, regulatory requirements, and other constraints, the right holder shall use natural flow surface water supply available to it as its primary source to meet municipal demand whenever reasonably practicable. The right holder shall take no action to prevent or discourage either its customers or developers of land to be served by the right holder from using natural flow surface water available to them as their primary source of irrigation water.

Discussion:

Veolia explained its concerns with IDWR's language in its *Bucket Notes Memo*, pp. 11-14. However, IDWR used its standard "surface water first" language and rejected Veolia's proposed alternative. Veolia continues to believe the standard condition is unnecessary, inappropriate, and unworkable for non-governmental municipal providers like Veolia that have no control over whether their customers use or fail to use surface water available to them from other sources.

For example, homeowners in Harris Ranch can irrigate with available surface water or Veolia water simply by turning valves, at their discretion. This is intended to allow homeowners to continue to irrigate with Veolia water during the shoulder season. But Veolia has no control over whether these homeowners use the surface water supply when it is available. Likewise, Veolia has no control over whether a developer designs the irrigation system to take advantage of surface supplies (as did the Harris Ranch developer) or instead abandons or sells the surface supplies. The most that can be expected of Veolia is that it not encourage customers or developers not to use surface supplies.

Veolia's proposed language also imposes on Veolia a duty to take full advantage of its own natural flow water supply when reasonably practicable. This is not as simple as it sounds. A municipal provider operating on a regional scale is not like a farmer who can turn a center pivot on or off at will. Veolia manages an enormously complex system of diversions, water treatment, above-ground storage, aquifer recharge and quality measures, and an intricately complex integrated delivery network, not to mention the need to deal with emergency circumstances, maintenance, repairs, and water quality regulatory requirements. Imposing an inflexible surface water first requirement designed for irrigators and planning and zoning officials imposes unworkable administrative obligations, both for Veolia to follow and for IDWR to enforce.

Moreover, IDWR is under no legal obligation to impose this condition at all. As discussed in the *Bucket Notes Memo*, Judge Wildman ruled that the "surface water first" provision in Idaho Code § 67-6537(1) applies to local governments only and there is no blanket, statewide "surface water first" policy. *Eden's Gate LLC v. IDWR*, Case No. CV14-21-10116, Idaho Dist. Ct., Third Judicial Dist. (June 9, 2022) (Wildman, J.), pp. 5-7. Recently enacted Idaho Code § 42-204A is a statewide policy favoring use of surface water, but it applies only to new appropriations for irrigation purposes.

In the hope that IDWR may take another look at this condition, we have taken another run at proposed language above. It differs from the proposal in the prior *Bucket Notes Memo*, in the hope that IDWR finds this language more acceptable. Or better yet, IDWR may drop the condition entirely.

(4) Transfer to new place or nature of use (anti-speculation)

This is condition 8 in Veolia's *Bucket Notes Memo* and condition 7 in the draft approval for water right no. 63-11990. As noted in the *Bucket Notes Memo*, this condition will attach to all IMAP water rights.

IDWR version:

The portion of this right authorized for reasonably anticipated future needs shall not be changed to a place of use outside the service area as defined in Idaho Code § 42-202B or to a new purpose of use. This condition does not prohibit the transfer or change in ownership of this water right or a portion thereof to another municipal provider that will continue service to customers in the area previously served by this right. Nor does it apply to the use of municipal water rights for groundwater recharge undertaken in support of a municipal water system.

Veolia's proposed version (differs from *Bucket Notes Memo*):

The portion of this right ~~authorized~~ held for reasonably anticipated future needs shall not be changed to a place of use outside the service area as defined in Idaho Code § 42-202B or to a new purpose of use. This condition does not prohibit the transfer or change in ownership of this water right or a portion thereof to another municipal provider that will continue service to customers in the area previously served by this right. Nor does it apply to the use of municipal water rights for groundwater recharge undertaken in support of a municipal water system.

Discussion:

Veolia explained its concerns with IDWR's language in its *Bucket Notes Memo*, pp. 14-15. IDWR accepted most of the changes suggested by Veolia in its *Bucket Notes Memo* (adding the final two sentences in the IDWR version above). The only remaining difference is that IDWR declined to include Veolia's language clarifying that this anti-speculation provision applies only to the portion of the right that has not been diverted and put to use for municipal purposes. In other words, the condition should apply only to water currently held for future needs.

It may be that there is no substantive disagreement, and that IDWR simply did not think that language was necessary. After all, IDWR's language says the condition

applies only to the “portion” of the right authorized for RAFN.⁴ Our concern is that there may still be some ambiguity about what that “portion” is. Accordingly, Veolia now offers the more modest suggestion above: substituting the word “held” for “authorized.” This makes more clear that the limitation applies to the portion currently held for RAFN, not the portion originally authorized for RAFN.

This is probably academic. It is not likely that such a transaction would ever occur. Nevertheless, it seems best to implement this anti-speculation policy according to the statutory language. Idaho Code § 42-219(1) says the restriction applies not to the right itself or to water initially acquired for future use, but to “amounts held for reasonably anticipated future needs.” This is reinforced by Idaho Code § 42-222(1), which states that the restriction applies to “that portion of the right held for reasonably anticipated future needs at the time of the change.” In other words, the restriction on place and purpose of use transfers applies only to the portion of a RAFN right that has never been actually diverted and applied to municipal use.

The prior appropriation doctrine is based on the principle of “use it or lose it.” That forfeiture principle has been in place since the West was settled in order to prevent speculation in water rights. The RAFN statute carved out an exception (first recognized in common law), allowing water to be held by municipal providers for long-term future use. But the statute included the key anti-speculation provision to eliminate the incentive to over-appropriate RAFN rights in the hope of selling them later if it turns out they are not needed. That is why the statutory restriction is limited to the portion held for future use. Accordingly, the restriction no longer applies to a water right or portion thereof that actually has been diverted and used for municipal purposes.

By the way, the fact that the restriction on transfer of RAFN rights no longer applies to rights or portions thereof actually put to use for municipal purposes does not mean that municipal providers have unconstrained ability to sell their water rights to the highest bidder, particularly those in distant places. First, privately owned municipal providers are subject to substantial regulatory control by the Idaho Public Utilities Commission. Second, all water rights are constrained by limitations on interbasin transfers and out-of-state export.

⁴ As explained below, speaking of the “portion” of a RAFN right that is held for future needs is appropriate and consistent with the statutory language. For this reason, IDWR may wish to also change the wording of the “planning horizon condition (condition 1 in water right no. 63-11990 and condition 3 in the *Bucket Notes Memo*) to read: “This right authorizes 0.21 cfs for present and reasonably anticipated future needs for a planning horizon that ends on December 31, 2065, within the service area pursuant to Chapter 2, Title 42, Idaho Code.”

(5) Redefinition of elements

This is condition 16 in Veolia’s *Bucket Notes Memo* and condition 16 in the draft approval for water right no. 63-11990. Bullet point 4 on page 25 of the *Staff Memo* explains that it attaches only to those rights in which the diversion rate, volume, and/or nature of use have changed. In other words, it does not attach to rights which only add additional APODs and establish a planning horizon.

IDWR version:

The approval transfer 89499 redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.

Veolia’s proposed version (same as Bucket Notes Memo):

The approval transfer 89499 redefines one or more ~~all~~ of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.

Discussion:

The purpose of this condition is explained in the *Staff Memo*:

The IMAP proposes to change the diversion rate, volume, and/or nature of use for the following rights: 63-3411, 63-3457, 63-4395, 63-7979, 63-7998, 63-8011, 63-8248, 63-8405, 63-8635, 63-9384, 63-10391, 63-10945, 63-11090A, 63-11467, 63-11990, 63-12334, and for permit 63-11878. IDWR standard condition 205 should be added to these rights confirming that the changes to the elements of the rights was intended. Condition 205 states: “The approval of this transfer redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.”

Staff Memo, 4th bullet point, p. 25 (footnote omitted).

IDWR declined to implement the minor wording change Veolia proposes above. Although it is not a big deal, Veolia thinks it would be more clear to say that one or more of the elements have changed. It is not technically accurate to say that all elements have changed.

(6) **Reopener**

This is condition 21 in Veolia's *Bucket Notes Memo* and condition 6 in the draft approval for water right no. 63-11990. As noted in the *Bucket Notes Memo*, this condition will attach to all IMAP water rights.

IDWR version:

On or before December 31, 2045 and again each 21 years thereafter (or such other date as the Department may specify in the future) or upon the expiration of the planning horizon then in effect, whichever occurs first, the right holder shall prepare an updated forecast of peak demand at the end of the planning horizon, together with a gap analysis comparing projected peak demand with the right holder's portfolio of water rights and other entitlements available to meet that demand. The demand forecast and gap analysis shall be consistent with procedural requirements, law, and guidance on the subject then in effect. The evaluation shall be submitted to IDWR with notice provided by the right holder to the parties and interested parties to transfer 89499 and such other persons or entities as IDWR may direct. Following the submission of each such demand forecast and gap analysis or the right holder's failure to timely provide such, IDWR may (1) request the submission of additional information from the right holder and engage informally with the right holder and others regarding such information, (2) initiate a contested case, or (3) take no action. If IDWR does not initiate a contested case within three months following the latest submission, any interested person including the right holder may petition IDWR to initiate a contested case. If a contested case is initiated, IDWR shall determine whether the right holder has met its obligation to demonstrate that there is no substantial shortfall of projected peak demand compared to available water rights and entitlements at the close of the planning horizon. This determination shall take into account all relevant circumstances including the need for redundant supplies and a reasonable cushion. Based on that determination, IDWR may elect to lengthen or shorten the duration of the planning horizon consistent with Idaho law then in effect.

Veolia's proposed version (differs from Bucket Notes Memo):

Same as IDWR's version, but adding a three-month deadline:

On or before December 31, 2045 and again each 21 years thereafter (or such other date as the Department may specify in the future) or upon the expiration of the planning horizon

then in effect, whichever occurs first, the right holder shall prepare an updated forecast of peak demand at the end of the planning horizon, together with a gap analysis comparing projected peak demand with the right holder's portfolio of water rights and other entitlements available to meet that demand. The demand forecast and gap analysis shall be consistent with procedural requirements, law, and guidance on the subject then in effect. The evaluation shall be submitted to IDWR with notice provided by the right holder to the parties and interested parties to transfer 89499 and such other persons or entities as IDWR may direct. Following the submission of each such demand forecast and gap analysis or the right holder's failure to timely provide such, IDWR may (1) request the submission of additional information from the right holder and engage informally with the right holder and others regarding such information, (2) initiate a contested case, or (3) take no action. If IDWR does not initiate a contested case within three months following the latest submission, any interested person including the right holder may petition IDWR to initiate a contested case within three months from the expiration of such period. If a contested case is initiated, IDWR shall determine whether the right holder has met its obligation to demonstrate that there is no substantial shortfall of projected peak demand compared to available water rights and entitlements at the close of the planning horizon. This determination shall take into account all relevant circumstances including the need for redundant supplies and a reasonable cushion. Based on that determination, IDWR may elect to lengthen or shorten the duration of the planning horizon consistent with Idaho law then in effect.

Discussion:

Veolia's proposed revision above is intended to remedy an issue that we had not identified with the language proposed in the *Bucket Notes Memo*. That issue is the open-ended language allowing an interested party or the right holder to initiate a contested case if IDWR does not. This would allow a contested case to be opened by anyone at any time (even years later) if IDWR decides to not open one. The proposed language provides a definite time frame for someone other than IDWR to initiate a contested case. Veolia is open to a time frame different than three months, but believes some deadline should be included to provide IDWR and all parties with certainty.

(7) **Accomplish within one year**

This condition was not included in any of the prior IDWR memoranda discussing proposed IMAP conditions (*Keen Memo*, *Staff Memo*, and *Rauhut Memo*). Accordingly, it was not addressed in Veolia's *Bucket Notes Memo*. But it appears in the draft transfer approval for water right no. 63-11990 as condition 18 (and seemingly all others under various condition numbers).

IDWR version:

The right holder shall accomplish the change authorized by Transfer 89499 within one year of the date of this approval.

Veolia's proposed version (new – not addressed in *Bucket Notes Memo*):

Veolia believes this condition should be dropped. But if it remains, it should be revised to say:

The right holder has accomplished the change authorized by Transfer 89499.

Discussion:

Veolia believes this condition should be dropped. If it is included, the condition should attach to all IMAP water rights with the proposed revision noted above.

It is our impression that this condition is often included in transfer approvals. Doing so makes sense when there is a real question as to whether the transfer actually will be accomplished. In the case of the IMAP, however, Veolia's integrated delivery system is in place and functional. And all APODs are based on existing wells. In short, there is nothing left to accomplish.

This condition could lead to confusion in the future. For example, could someone contend that Veolia had not fully accomplished the transfer because the molecules of water produced by some wells do not, as a practical matter, reach the entire service area? Or could Veolia be precluded from reconstructing a well that is not physically in production today if that is not accomplished within one year? Veolia does not see the need for this condition.

If any such condition is included, it should recognize that the changes approved in the transfer already have occurred.

TABLE OF “BROADLY APPLICABLE CONDITIONS”

The table on the following page summarizes the 22 Broadly Applicable Conditions discussed above. Of these, 21 conditions were discussed in Veolia’s *Bucket List Memo*. One (the “Accomplish within one year“ condition discussed on page 15) was newly added by IDWR in 2025.

The seven Remaining Concern Conditions are marked “Yes” in the column labeled “Remaining concerns?”

Each of the Remaining Concerns Conditions are included in water right no. 63-11990. In addition, the table below includes columns for water right nos. 63-10862 and 63-4395 in order to identify examples of other Broadly Applicable Conditions that do not appear in water right no. 63-11990.

In this preliminary review, it is possible that we have overlooked other conditions within the 343 pages of draft approvals that might be deemed Broadly Applicable Conditions.

In addition, there are other conditions in the draft approvals that are specific to a single water right or a small group of water rights. As noted, they are beyond the scope of this memo.

THE 22 “BROADLY APPLICABLE CONDITIONS” (INCLUDING 7 “REMAINING CONCERNS CONDITIONS”)

	IDWR Standard Condition #	Condition # in Veolia's Bucket List Memo of 4/23/2024	Condition # in 63-11990	Condition # in 63-10862	Condition # in 63-4395	Description of Condition	Remaining concerns?	Discussion of areas of disagreement	This condition applies to which rights?	Generic or Tailored ?
1		1	5	4	4	Place of use			90 transfers	Generic
2	180	2	4	3	3	Map			90 transfers	Generic
3		3	1	1	1	Planning horizon			90 transfers	Tailored
4	109	4	None	None	None	System capacity			None	Generic
5	208	5	13	12	11	Administration of APODs	Yes	IDWR used its standard APOD language. IDWR rejected the longer, more explanatory language proposed by Veolia.	90 transfers	Tailored
6		6	12	11	12	Additional APODs	Yes	IDWR used its standard language listing newly authorized APODs. IDWR rejected Veolia's suggestion of identifying each time APODs were authorized or added. At a minimum, the language should be changed to reference "Transfer 89499" rather than "This transfer."	90 transfers	Tailored
7	102	7	2	2	2	Surface water first	Yes	IDWR used its standard "surface water first" language, rejecting Veolia's proposed alternative. Veolia believes the standard condition is unnecessary and unworkable for non-governmental municipal providers.	90 transfers	Generic
8		8	7	6	6	New place of use or nature of use (anti-speculation)	Yes	IDWR accepted one of the two changes suggested by Veolia. IDWR did not use Veolia's language clarifying that the anti-speculation limitation applies only to the portion held for future needs.	90 transfers	Generic
9	10Q	9	14	13	13	Documentation of quantity			90 transfers	Generic
10	004	10	20	18	18	No rights-of-way			90 transfers	Generic
11	T08	11	19	17	17	Failure to comply			90 transfers	Generic
12		12	17	15	15	Side agreement			90 transfers	Generic
13	T17	13	15	14	14	Measuring devices			90 transfers	Generic
14	058	14	8	7	7	Boise Front Geothermal			90 transfers	Generic
15	073	15	9	8	8	85 degrees			90 transfers	Generic
16	205	16	16	None	None	Redefinition of elements	Yes	IDWR rejected one of Veolia's two minor wording change. IDWR's language says the transfer redefines "all" elements.	14 transfers	Generic
17	T19	17	None	None	19	SRBA general provisions			71 transfers	Generic
18		18	10	9	9	Floating Feather well			90 transfers	Generic
19	120	19	None	None	None	Salmon flow mitigation			None	Generic
20		20	11	10	10	Water bearing zone			90 transfers	Generic
21		21	6	5	5	Re-opener	Yes		90 transfers	Generic
22		None	18	16	16	Accomplish w/i one year	Yes	This condition was not previously identified by IDWR. Veolia believes it is unnecessary and may lead to confusion or disputes.	90 transfers	Generic

IDWR'S DRAFT APPROVAL FOR WATER RIGHT NO. 63-11990

(Redlining is by IDWR, showing differences between its January 2 and January 3, 2025 draft approvals.)

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WATER RIGHT NO. 63-11990 As Modified by Transfer No. 89499

In accordance with the approval of Transfer No. 89499, Water Right No. 63-11990 is now described as follows

Right Holder: VEOLIA WATER IDAHO INC
8248 W VICTORY RD
BOISE, ID 83709-4165

Priority Date: 1/27/1993

Source: GROUND WATER

<u>BENEFICIAL USE</u>	<u>FROM</u>	<u>TO</u>	<u>DIVERSION RATE</u>
FIRE PROTECTION	01/01	12/31	1.80 cfs
MUNICIPAL	01/01	12/31	0.21 cfs
			1.80 cfs

LOCATION OF POINT(S) OF DIVERSION

Points of diversion authorized by this water right are described in Attachment A of this approval document.

CONDITIONS OF APPROVAL

- 1 This right authorizes 0.21 cfs for reasonably anticipated future needs for a planning horizon that ends on December 31, 2065, within the service area pursuant to Chapter 2, Title 42, Idaho Code
- 2 The right holder shall not provide water diverted under this right for the irrigation of land having appurtenant surface water rights as a primary source of irrigation water except when the surface water rights are not available for use or where the use of surface water was replaced by the use of water diverted in connection with this right before the approval of Transfer 89499. This condition applies to all land with appurtenant surface water rights, including land converted from irrigated agricultural use to other land uses but still requiring water to irrigate lawns and landscaping.
- 3 **Water shall not be diverted for fire protection use under this right except to fight or repel an existing fire.**
- 4 A map generally depicting the service area for this water right at the time of the approval of Transfer 89499 is attached to this document for illustrative purposes.
- 5 Place of use is within the service area of Veolia Water Idaho, Inc. as provided for under Idaho law. The place of use is generally described as within the city limits of Boise and the surrounding service area.
- 6 On or before December 31, 2045 and again each 21 years thereafter (or such other date as the Department may specify in the future) or upon the expiration of the planning horizon then in effect, whichever occurs first, the right holder shall prepare an updated forecast of peak demand at the end of the planning horizon, together with a gap analysis comparing projected peak demand with the right holder's portfolio of water rights and other entitlements available to meet that demand. The demand forecast and gap analysis shall be consistent with procedural requirements, law, and guidance on the subject then in effect. The evaluation shall be submitted to IDWR with notice provided by the right holder to the parties and interested parties to transfer 89499 and such other persons or entities as IDWR may direct. Following the submission of each such demand forecast and gap analysis or the right holder's failure to timely provide such, IDWR may (1) request the submission of additional information from the right holder and engage informally with the right holder and others regarding such information, (2) initiate a contested case, or (3) take no action. If IDWR does not initiate a contested case within three months following the latest submission, any interested person including the right holder may petition IDWR

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to initiate a contested case. If a contested case is initiated, IDWR shall determine whether the right holder has met its obligation to demonstrate that there is no substantial shortfall of projected peak demand compared to available water rights and entitlements at the close of the planning horizon. This determination shall take into account all relevant circumstances including the need for redundant supplies and a reasonable cushion. Based on that determination, IDWR may elect to lengthen or shorten the duration of the planning horizon consistent with Idaho law then in effect.

- 7 The portion of this right authorized for reasonably anticipated future needs shall not be changed to a place of use outside the service area as defined in Idaho Code § 42-202B or to a new purpose of use. This condition does not prohibit the transfer or change in ownership of this water right or a portion thereof to another municipal provider that will continue service to customers in the area previously served by this right. Nor does it apply to the use of municipal water rights for groundwater recharge undertaken in support of a municipal water system.
- 8 Some points of diversion identified in this right are located within the boundaries of the Boise Front Low Temperature Geothermal Resource Groundwater Management Area. The well driller shall monitor water temperatures while drilling any new or replacement well under this right within the Boise Front Low Temperature Geothermal Resource Groundwater Management Area. If water with a temperature greater than 85 degrees Fahrenheit is encountered by the driller when drilling such a well, drilling must immediately cease, and the Department must be notified. Drilling such a well shall not resume until the Department has reviewed the drilling conditions, and established standards for construction with the driller.
- 9 Diversion and use of water with a temperature greater than 85 degrees Fahrenheit is not authorized under this right.
- 10 Point of diversion located within SESW, S05, T04N, R01E is known as Floating Feather Well. Point of diversion located within SWNW, S07, T04N, R01E is known as Redwood Creek Well #1. The right holder shall measure its diversions from the Floating Feather well and report water diverted and water levels measured to the Department upon request.
- 11 The water bearing zone for points of diversion located with SESW, S05, T04N, R01E and SWNW, S07, T04N, R01E is below 183 feet. The water bearing zone for the points of diversion located within SWNWW, S28, T03N, R03E and SENE, S29, T03N, R03E is below 80 feet. The water bearing zone for the points of diversion located within NESW, S23, T04N, R01W and SWSE, S24, T04N, R01W is below 233 feet.
- 12 This transfer authorizes the following additional wells as points of diversion under this right as of the date of approval. Hidden Valley 1 well located in T02N R01E S3 SESE, Hidden Valley 2 well located in T02N R01E S3 NESW, JR Flat well located in T02N R02E S2 NWNW, Tenmile well located in T02N R02E S17 SENE, Raptor well located in T02N R02E S17 NWNW, Pleasant Valley well located in T02N R02E S21 NENW, Pioneer well located in T02N R02E S22 NWNE, Bali Hai well located in T03N R01E S3 SENE, Maple Hills 1 well located in T03N R01E S14 NENE, Maple Hills 2 well located in T03N R01E S14 NENE, Brook Hollow well located in T03N R01E S15 SENE, Paradise 1 well located in T03N R01E S15 NESE, Country Square well located in T03N R01E S23 NWNW, Countryman well located in T03N R01E S23 SENW, Sherman Oaks well located in T03N R01E S23 SESE, Cole well located in T03N R01E S24 NESE, Victory well located in T03N R01E S27 NENE, Five Mile 12 well located in T03N R01E S27 NWSW, Lagrange well located in T03N R01E S34 NESW, Amity well located in T03N R01E S36 NWNE, Sunset W well located in T03N R01E S36 NESE, Central Park well located in T03N R02E S2 NENW, Idaho well located in T03N R02E S4 SWSW, Twenty-Seventh well located in T03N R02E S4 SWSW, Fisk well located in T03N R02E S6 SESE, Bethel well located in T03N R02E S7 SWSW, Arctic well located in T03N R02E S8 NENE, Clinton well located in T03N R02E S8 NESW, Sixteenth St well located in T03N R02E S9 SENW, Longmeadow well located in T03N R02E S13 SWNW, Beacon well located in T03N R02E S14 SENW, Cliffside well located in T03N R02E S15 NWNW, Roosevelt 1

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well located in T03N R02E S16 NWNW, Roosevelt 3 well located in T03N R02E S16 NWNW, Cassia well located in T03N R02E S16 NESE, Cassia 2 well located in T03N R02E S16 NESE, Hilton well located in T03N R02E S17 NESW, Franklin Park well located in T03N R02E S18 NWNW, Hummel well located in T03N R02E S18 NESW, Kirkwood well located in T03N R02E S19 NENE, Overland well located in T03N R02E S19 NENW, Hillcrest well located in T03N R02E S20 SENE, Taggart 1 well located in T03N R02E S21 NENE, Taggart 2 well located in T03N R02E S21 NENE, Chamberlain 1 well located in T03N R02E S22 NWNW, Chamberlain 2 well located in T03N R02E S22 NWNW, Broadway well located in T03N R02E S22 SESE, Warm Springs Mesa 2 well located in T03N R02E S24 SWNE, Warm Springs Mesa 3 well located in T03N R02E S24 SWNE, Logger well located in T03N R02E S24 SWNW, River Run well located in T03N R02E S24 SWSE, Centennial well located in T03N R02E S25 NWSE, Bergeson well located in T03N R02E S26 NESE, Bif well located in T03N R02E S27 NWSE, Vista well located in T03N R02E S28 NENE, Country Club well located in T03N R02E S28 NWNW, Swift 1 well located in T03N R02E S30 SWSE, Mac well located in T03N R02E S32 NWNW, Byrd well located in T03N R02E S33 NENW, Market well located in T03N R02E S35 NENW, Terteling well located in T03N R02E S36 SWNE, Barb Durham 2 well located in T03N R03E S28 SWNW, Barber 1 well located in T03N R03E S29 SENE, Floating Feather well located in T04N R01E S5 SESW, Redwood Creek well located in T04N R01E S7 L2(SWNW), Island Woods 1 well located in T04N R01E S16 L5(NWSW), Island Woods 2 well located in T04N R01E S21 NWNW, H.P. well located in T04N R01E S27 SENE, McMillan well located in T04N R01E S28 SWSW, Frontier well located in T04N R01E S34 NESW, Settlers well located in T04N R01E S35 NENW, Goddard well located in T04N R01E S36 NENW, Spurwing well located in T04N R01W S23 NESW, Foxtail (aka Fox Tail #2) well located in T04N R01W S24 SWSE, Swift 2 well located in T04N R02E S31 SWSE, Westmoreland well located in T04N R02E S31 NWSW, Willow Lane 1 well located in T04N R02E S32 NWNW, Willow Lane 2 well located in T04N R02E S32 SWNW, Willow Lane 3 well located in T04N R02E S32 SWNW, Veterans well located in T04N R02E S32 SESE

- 13 To the extent necessary for administration between points of diversion for ground water, and between points of diversion for ground water and hydraulically connected surface sources, ground water was first diverted under this right from the Edgeview well located in T03N R01E S16 SENE.
- 14 After specific notification by the Department, the right holder shall record the quantity of water diverted on a system-wide basis and shall annually report the information to the Department.
- 15 Prior to diversion of water under this approval, the right holder shall provide a means of measurement acceptable to the Department from all authorized points of diversion which will allow determination of the total rate of diversion
- 16 The approval transfer 89499 redefines all of the elements of this water right, and the new use of water authorized by this approval shall constitute the full extent of the right.
- 17 The diversion and use of water described in Transfer 89499 may be subject to additional conditions and limitations agreed to by the participants in the IMAP contested case proceeding pursuant to separate agreements to which the Department is not a party. Because the Department is not a party to those agreements, the Department is not responsible for enforcement of any aspect of the agreements not specifically addressed in conditions herein. Enforcement of those agreements shall be the responsibility of the parties to the agreements. Such agreements may include, but are not limited to, IMAP Settlement Agreement Between Boise Project et al. and SUEZ (executed July 9, 2018).
- 18 The right holder shall accomplish the change authorized by Transfer 89499 within one year of the date of this approval.

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- 19 Failure of the right holder to comply with the conditions of Transfer 89499 is cause for the Director to rescind approval of the transfer.
- 20 This right does not grant any right-of-way or easement across the land of another.

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