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DEPARTMENT OF
WATER RESOURCES

MEMORANDUM

TO: Cody Parker, Water Rights Supervisor, Western Regional Office, IDWR
Sara M. Ajeti, Deputy Attorney General

FROM: Christopher H. Meyer 

RE: Proposed revision to the "anti-speculation condition" in IMAP Transfer No. 89499

DATE: July 18, 2025

I am writing to follow up on our discussion at IDWR HQ on 6/12/2025 regarding IDWR's proposed approval of the IMAP transfers. Per your directive at that meeting, I am sending this only to the two of you.

At the June meeting, we agreed that our immediate focus would be on resolving the remaining active protests, and that once that was done, we would promptly turn our attention to remaining issues.

One of the items we discussed was IDWR's draft "anti-speculation condition." This is the condition that restricts changes in place of use or purpose of use. This condition appears, for example, as condition #5 in right No. 63-11990.

IDWR's "long version"

In prior discussions at the staff level (see draft approvals emailed to Veolia on 1/2/2025), IDWR had proposed a longer version of this condition that made it clear that it is not intended to prohibit a municipal provider who is currently providing water service to customers in a particular area or subdivision from moving or swapping that service territory to another municipal provider who could more efficiently integrate that service into its network.

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.

IDWR's "short version"

As currently proposed by IDWR (see draft approvals emailed to Veolia on 6/9/2025), the condition reads:

That 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.

The problem with this language is that the term "authorized for reasonably anticipated future needs" is ambiguous. The ambiguity results from the fact the entire right is "authorized" as a RAFN right (allowing the provider to gradually grow into full use). Thus, the condition might be read to apply to the entire RAFN right, not just to the unused portion.

Veolia's proposed revision to the "short version"

If IDWR will not agree to the longer version that it floated on 1/2/2025, Veolia suggests that the short version be modified to conform to the statutory language. We suggest the following:

That portion of this right ~~authorized~~ held for reasonably anticipated future needs at the time of the change 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.

Statutory basis for the condition

Veolia's proposed revision corresponds precisely to the language of the statute:¹

¹ The statute uses the term "nature of use." IDWR's condition language uses the term "purpose of use." We view these as interchangeable, and have no objection to IDWR's departure from the statutory terminology. The

When a water right or a portion thereof to be changed is held by a municipal provider for municipal purposes, as defined in section 42-202B, Idaho Code, that portion of the right held for reasonably anticipated future needs at the time of the change shall not be changed to a place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use.

Idaho Code § 42-222(1) (emphasis added).

Our proposed revision to the condition is also consistent with the other statutory provision addressing this issue:

The director shall condition the license to prohibit any transfer of the place of use outside the service area, as defined in section 42-202B, Idaho Code, or to a new nature of use of amounts held for reasonably anticipated future needs together with such other conditions as the director may deem appropriate.

Idaho Code § 42-219(1) (emphasis added).

Purpose of statute

The key point is that the statute is aimed at preventing a change in place of use or purpose of use of water rights held solely for future use (i.e., for potentially speculative purposes). The statute is not intended to restrict changes in water rights or portions thereof that are currently in use.

This language was intended to address a common practice in Colorado in which each municipality would acquire large quantities of water rights (and physical storage) in the hope that one day it would manage to expand its service area, knowing that, if it did not, it could monetize the unneeded water rights by selling them to others. The 1996 RAFN Act removed the incentive for hoarding water rights. By making RAFN rights unsalable for new uses outside the provider's service area, it eliminated the promise of financial gain that has driven municipal water right speculation in Colorado and elsewhere.

only problem with "purpose of use" is that it has the same acronym as "place of use," which can cause confusion. But that is IDWR's call.

The emphasized language in the two statutory provisions quoted above make clear that the prohibition applies only to the portion of a RAFN right that has not been diverted and applied to beneficial use and is held solely for future needs at the time of the proposed change in place or purpose of use.

Purpose of revision

Why does this matter? The reason is that, on occasion, neighboring municipal providers find it mutually beneficial to move or swap existing service territory. This is done where it becomes apparent that another municipal provider is able to more effectively or efficiently integrate the territory into its water delivery network.

Examples of prior territory transfers

On a handful of occasions, Veolia's predecessor (United Water Idaho Inc. aka UWID) has done just this, although not with RAFN rights:

- Permit No. 63-12266 was issued on 11/14/1995 as a domestic right to the developer of M&M Mountain View subdivision. It had a place of use limited to the M&M Mountain View subdivision. UWID later took over service. On 10/17/2008, UWID conveyed its interest in the well infrastructure, well lot, and permit to the City of Nampa. The right was licensed (incorrectly) to M&M on 10/19/2011 as a domestic right with a limited place of use. On 5/7/2012 Nampa submitted a change in ownership notice to IDWR.
- Permit No. 63-12463 was issued to UWID on 9/14/1998. It had a place of use limited to the Carriage Hill subdivision. An amended permit was issued to UWID on 4/15/2003 changing the place of use to UWID's entire service area. UWID conveyed the permit to Nampa by grant deed on 12/14/2004. Nampa submitted notice of change in ownership on 12/21/2004 and IDWR acknowledged the change in ownership on 1/4/2005. The right was licensed to Nampa on 8/12/2008 as a municipal right serving its entire service area.
- Permit No. 63-12506 was issued to UWID on 4/23/1999. The right was developed to serve the Coventry Place subdivision, but the place of use listed on the permit was UWID's service area. UWID executed an Assignment of Permit to Nampa on 10/17/2008, which Nampa submitted to IDWR on 12/9/2008. The right was licensed to Nampa on 3/7/2012 (the license incorrectly states 3/7/2011).
- Permit No. 63-31243 issued to UWID 9/24/2001. The right was developed to serve the Belmont Heights subdivision, but the place of use listed on the permit was UWID's service area. UWID executed an Assignment of Permit to

Nampa on 10/17/2008, which Nampa submitted to IDWR on 12/9/2008. A license was issued to Nampa on 3/7/2012.

Conclusion

These examples demonstrate a history of collaborative and efficient service territory adjustments served by non-RAFN rights. In each case, IDWR was informed of these arrangements and the corresponding changes in water right ownership. In turn, each was recognized and implemented by IDWR.²

It is hard to say whether transfers of service area like this will continue to occur in the future. In some areas, service territories appear to be locked in. But in other parts of the Valley, changes in service territory remain possible. These sensible changes aimed at more efficient delivery of service to areas currently being served are not “speculation.” If they are currently served, they are not using the portion of the RAFN right being held for future use. These swaps should not be inadvertently precluded by ambiguous language in the anti-speculation condition that departs from the statutory language.

In contrast, changes in “future” territory (that is, territory not currently served by either municipal provider) would continue to be precluded by the statute and by the condition.

² The circumstances and history of these transactions are documented and explained in the following, each of which is available on IDWR’s website listing for the relevant rights:

- Affidavit of Michael J. Fuss (6/14/2010), addressing No. 63-12506 (Coventry Place) and No. 63-31243 (Belmont Heights).
- Affidavit of Gregory P. Wyatt (6/11/2010), addressing No. 63-12506 (Coventry Place) and 63-31243 (Belmont Heights).
- Grant Deed from UWID to Nampa (12/14/2004), conveying Permit No. 63-12463 (Carriage Hill).
- Letter of 12/22/2004 from Nampa to IDWR submitting 12/14/2004 grant deed for No. 63-12463 (Carriage Hill).
- Assignment of Permit No. 63-12506 (Coventry Place) (from UWID to Nampa) (executed by UWID 10/17/2008) (submitted by Nampa to IDWR on 12/9/2009).
- Assignment of Permit No. 63-31243 (Belmont Heights) (from UWID to Nampa) (executed by UWID 10/17/2008) (submitted by Nampa to IDWR on 12/9/2009).
- Warranty Deed dated 10/17/2008 from UWID to Nampa conveying well lots and associated water rights for Coventry Place (No. 63-12506), Belmont Heights (No. 63-31243), and M&M Mountain View (No. 63-12266).
- Bill of sale dated 10/17/2008 from UWID to Nampa conveying Permit No. 63-12266 (M&M Mountain View).
- Notice of Change in Water Right Ownership for No. 12266 (M&M Mountain View) (executed by Nampa on 2/24/2012, submitted by Nampa to IDWR on 3/1/2012 and again on 5/7/2012). The submission to IDWR included copies of the 10/17/2008 warranty deed and the 10/17/2008 bill of sale. IDWR acknowledged the change in ownership by letter of 5/8/2012.

It bears repeating that none of the conveyances and changes described above are implicated by limitations in Idaho Code §§ 42-219(1) and 42-222(1), because none of the rights involved were RAFN rights. With IMAP approval, however, all IMAP rights (most of Veolia's entire portfolio) will be subject to this constraint. It would be unfortunate for Veolia and its neighboring providers to no longer be able to make adjustments that benefit their customers by providing more efficient and cost-effective service.

Although Veolia continues to prefer the "long version" of the condition, we understand IDWR's hesitation to "litigate" the meaning of these limitations in detailed conditions. Consequently, all we ask is that the short form of the condition be modified to track the language of the statute. How it is applied, may be sorted out later when the situation arises. When that happens, let's work with the language of the statute, not the ambiguous meaning of the current "short version" which might be read to preclude swaps of currently served territory.