

## MEMORANDUM

**TO** Transfer 89499  
**FROM** Cody Parker  
**RE** Surface Water First  
**DATE** July 25, 2025

---

IDWR has required the use of surface water as a primary irrigation source where it is available since the mid-1990s. This practice was recently codified in § 42-204A *Idaho Code* for new water right permits. The statute does not address the application of this “surface water first” policy in transfer proceedings. For transfers, IDWR typically applies surface water first conditions to municipal ground water rights. The intent is to discourage the replacement of surface water with ground water for irrigation. IDWR believes in promoting the use of surface water first where available and will continue to apply this condition to water right permit and transfer approvals of municipal water rights held by incorporated cities. However, IDWR should deviate from its historical practice with respect to the approval of Transfer 89499. The surface water first condition would have little impact on whether lands irrigated with surface water within Veolia’s service area will continue to use surface water. Including the condition on the water rights creates an unrealistic expectation that Veolia will comply with the condition.

Veolia is not an incorporated city and lacks the planning and zoning authorities necessary to meaningfully influence either development decisions or end user’s decisions to irrigate with surface water. Veolia says it has no real authority to tell its customers to use surface water. In fact, Veolia says it is obligated to provide water to properties within its service area. It is possible Veolia could implement some influence if they were to amend their Rules and Regulations through the IPUC, but it is likely difficult for Veolia to enforce use of surface water for irrigation on new developments even with additional rules in place.

There are factors promoting the use of surface water first within Veolia’s service area that do not require a condition of approval on a water right: enforcement by local governments during the planning and zoning process, and the economic incentive for property owners to rely on cheaper surface water (when compared to the more expensive municipal water provided by Veolia) for irrigation. Both factors encourage customers within Veolia’s service area to use surface water as the primary source for irrigation whenever it is available.

Additionally, Veolia’s municipal water supply portfolio includes 85 cfs from surface water and 2,100 acre-feet from storage, along with annual storage water rentals. Since Veolia’s surface water rights and permits are relatively junior with respect to other water rights in the basin, Veolia is motivated to maximize their use when they are in priority.