



RILEY STEGNER AND ASSOCIATES

Jason Pappani
Idaho Department of Environmental Quality
1410 North Hilton St.
Boise, ID 83706
Via email

RE: DEQ Rulemaking related to Domestic Water Supply. Docket 58-0102-1730

May 10, 2018

Dear Mr. Pappani,

Thank you for the opportunity to comment on the second draft negotiated rule concerning Domestic Water Supply, Docket 58-0102-1730. I write on behalf of large timberland owners Stimson Lumber Company, Hancock Forest Management, and Molpus Woodlands Group, each of which is actively engaged in the planting, management, and harvesting of timber throughout northern Idaho. We support DEQ's efforts to update domestic water supply use designation to ensure the protection of surface waters used for public drinking water systems. However, we are concerned the language proposed in draft no. 2 may cause further confusion.

The Department's April 2018 Discussion Paper highlights ambiguity with the current DWS definition:

This definition carries further implications relative to when DWS would be considered an existing use requiring the application of the appropriate human health criteria. For example, does a single diversion for drinking water supply for a private home constitute an existing DWS use? Would the presence of a domestic water right suffice to establish an existing use? We would like to clarify this.

The paper goes on to state: "Idaho historically interprets the DWS use as intended for the protection of source water for public water systems that are regulated by the federal Safe Drinking Water Act and the State of Idaho." Updating the DWS language presents an opportunity to provide clarity. However, as written, it is even less clear whether "a single diversion for drinking water supply for a private home constitute[s] an existing DWS use." Draft No. 2 provides:

- a. Domestic (DWS): water quality appropriate for use as untreated raw water (as defined under IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems") for public drinking water supplies ~~after appropriate treatment~~.

The proposed language cites the definition of "raw water" in IDAPA 58.01.08, which states:

"115. **Raw Water.** Raw water is any ground water, spring water, or surface water utilized as source water prior to treatment for the purpose of producing potable water."

Understanding the definition of “raw water” requires understanding the definition of “potable water,” which is further defined as:

"104. **Potable Water.** Water for human consumption. See the definition of Water for Human Consumption in Section 003."

Understanding the definition of “potable water” requires understanding the definition of “water for human consumption”, defined as:

155. **Water for Human Consumption.** Water that is used by humans for drinking, bathing for purposes of personal hygiene (including hand-washing), showering, cooking, dishwashing, and maintaining oral hygiene. In common usage, the terms “culinary water,” “drinking water,” and “potable water” are frequently used as synonyms.

The language of proposed draft no. 2 presents a problem because it inherently relies on the definition of “water for human consumption,” which does not include a limitation on the number of diversions or users. Based on the above definition of “water for human consumption,” which informs our understanding of what constitutes “raw water” a pipe placed in a stream by a single user could qualify as “raw water” and thus, a domestic water supply subject to the rule. At worst, this language could be read to exceed the limitations of SDWA; at best, it creates greater uncertainty, which we do not believe is DEQ’s intention.

In the interest of clarification, we request that you consider changing the final word in the proposed language from “supplies” to “systems”:

a. Domestic (DWS): water quality appropriate for use as untreated raw water (as defined under IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems”) for public drinking water systems ~~supplies after appropriate treatment.~~

Public Drinking Water System is defined as:

110. **Public Drinking Water System.** A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public water system is either a “community water system” or a “noncommunity water system” as further defined as: (5-8-09)

a. **Community water system.** A public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. (5-8-09)

b. **Noncommunity water system.** A public water system that is not a community water system. A non-community water system is either a transient noncommunity water system or a non-transient noncommunity water system. (5-8-09)

c. **Nontransient noncommunity water system.** A public water system that is not a

community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (5-8-09)

d. Transient noncommunity public water system. A noncommunity water system which does not regularly serve at least twenty-five (25) of the same persons over six (6) months per year. (5-8-09)

IDAPA 58.01.08.003.110.

By referencing “public drinking water *systems*” the rule would more clearly conform to SDWA, alleviating some of the ambiguity and clarifying that it does not apply to “a single diversion for drinking water supply for a private home” as an existing DWS use, consistent with SDWA and, we believe, DEQ’s intent. Though we recognize other entities may treat this differently, clear and consistent language within DEQ’s rules will provide further guidance and predictability for forest owners.

Again, thank you for the opportunity to comment. Please do not hesitate to contact me if you have any questions or would like to discuss these comments further.

Sincerely,

Emily McClure