

MEMORANDUM

DATE: February 3, 2025

FROM: Shelley W. Keen (SWK)

TO: Mat Weaver

RE: Beneficial Use Examination Rules – Definition of Beneficial Use

On January 27, 2025, IDWR presented the pending Beneficial Use Examination Rules (Docket No. 37-0302-2401) in the Senate Resources and Environment Committee. One series of questions posed to IDWR can be summarized as, “What is the definition of beneficial use in the beneficial use examination context, because the rules do not have one?”

In response, I explained that I was not aware of a statutory definition of beneficial use for IDWR to rely on. It is difficult to write a comprehensive definition of beneficial use. IDWR and Idaho Courts have relied on the record in individual cases to determine whether a proposed or existing water use constitutes beneficial use. This practical approach led to the list of beneficial uses recognized and employed by IDWR and the Courts today.

Since my brief testimony in the Senate committee, we double-checked, and we could find no generally applicable statutory definition of beneficial use in Chapters 1 or 2 of Title 42 of Idaho Code. There is, however, a definition of beneficial use in the Water Appropriation Rules (IDAPA 37.03.08), which establish the process for applying for a new water right. The Water Appropriation Rules were reviewed by the 2024 Legislature.

Rule 10.05 of the Water Appropriation Rules defines beneficial use as:

One (1) or more of the recognized beneficial uses of water including, but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, stockwatering, and fish propagation uses for which permits to appropriate water can be issued as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of

these rules includes, but is not limited to, manufacturing, mining, and processing uses of water.

The key provisions in the definition are “provide a benefit to the user of the water” and “as determined by the Director.”

In my opinion, defining beneficial use in the Water Appropriation Rules is logical and practical. The right time to determine whether a water use is beneficial is when it is first proposed in the permitting process, not after a property owner has invested time and money to develop the water resource. The Beneficial Use Examination Rules are for documenting that the beneficial use authorized in the permitting process was actually accomplished so the state can issue a water right license confirming a property right.