



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OFFICE OF  
ADMINISTRATION  
AND RESOURCES  
MANAGEMENT

December 20, 2018

**MEMORANDUM**

**SUBJECT:** Exception from 40 CFR §35.3520(e)(2) for the Mores Creek Rim Ranches Water District, Idaho

**FROM:** Laurice Jones, Director *Laurice E. Jones*  
National Policy, Training and Compliance Division

**TO:** Peter Grevatt, Director  
Office of Ground Water and Drinking Water

I am responding to your request for an exception from the prohibition of water rights as an eligible project in 40 CFR §35.3520(e)(2) in implementing the Drinking Water State Revolving Funds (DWSRF) under the Safe Drinking Water Act (SDWA) for the state of Idaho. The exception will allow the state of Idaho to use DWSRF funds for a water rights purchase which would allow the Mores Creek Rim Ranches Water District (the District) to withdraw water from new shallow wells near Mores Creek.

**BACKGROUND**

The DWSRF regulations at 40 CFR §35.3520(e)(2) state that “water rights, except if the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy” are ineligible projects. The intent was that DWSRF funds should only be used for “compliance with the national primary drinking water regulations...or otherwise significantly further the health protection objectives of the Act.” The prohibition is based on the premise that the primary purpose of water rights is to prepare drinking water systems for future population growth, thus detracting from the SDWA public health protection purpose. However, there are compliance, public health, and affordability issues that make the situation in the District unique that justify granting an exception from 40 CFR §35.3520(e)(2) while continuing to meet the public health protection purposes of the SDWA. The District has been designated a disadvantaged community by the state under SDWA 1452(d), meaning it needs adequate and affordable funding and is relying on the DWSRF loan for the low interest rate and additional subsidization.

The District is currently struggling to provide safe drinking water to its existing residents. The District’s four wells are contaminated with arsenic and due to aquifer depletion, the wells are yielding less water. The depleting aquifer concentrates the level of arsenic in the wells, making blending of the well water unsustainable and has caused an inadequate water supply, resulting in low system pressure and depressurization events. Thus, the District is in an extremely vulnerable position resulting in a significant health threat to its residents. The most cost-effective option for the District is to drill five shallow wells

near Mores Creek. Drilling new wells requires the purchase of water rights from the South Boise Water Company. SDWA states that DWSRF funding should focus “on projects needed to address the most serious risk to human health” and “assist those systems with the greatest economic need.” The District meets both criteria. Consistent with SDWA, the principal purpose of this project is to maintain public health protection through adequate water supply for the existing population, not for growth from new development. The new shallow wells will allow the District to reliably provide safe drinking water and improve public health protection for its residents.

### **ACTION**

I have reviewed the request for an exception from 40 CFR §35.3520(e)(2) for the Mores Creek Rim Ranches Water District Groundwater Source Development Project. The new shallow wells will allow the District to reliably provide safe drinking water, thus decreasing public health risks to residents. The project is consistent with the SDWA and the exception is in the best interest of the Agency and the public. I, therefore, approve the exception to allow the state of Idaho to use DWSRF to purchase water rights, which would allow the District to withdraw water from new shallow wells near Mores Creek.

cc: Denise Polk, Office of Grants and Debarment  
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