
MEMORANDUM

TO: INTERESTED PERSONS
FROM: JERRY MASON, LAWYER
SUBJECT: SOURCE WATER PROTECTION ORDINANCE PROTOTYPE
DATE: 10/18/2012
CC: IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY

This memorandum provides a general description of the approach taken to draft a prototype source water protection ordinance that strikes a balance between potential effectiveness and ease of administration. The prototype employs two ordinance styles. The primary ordinance is a general health and safety ordinance as authorized by article XII, section 2 of the Idaho Constitution. This ordinance provides a regulatory approach based on the respective tiers of influence of land-based activities, either a well site or an intake for a surface water source. The ordinance prototype also references an official Source Water Protection Ordinance (SWPO) designation map (different from the zoning map) on which any public water system source is generally identified. The source identifiers used in the health and safety ordinance and depicted on the official SWPO designation map are intended to tie to the geographic information system, operated by the Idaho Department of Environmental Quality (DEQ), allowing those sources to be precisely located. In DEQ records, information about time of travel of source water and location of potential pollutants has been more thoroughly analyzed. Specifics about location and characteristics of land conditions are contained in specific DEQ files, unique to each public water system source.

The second ordinance prototype provides for restrictions developed by the city or county zoning ordinance if certain lands fall within the specific time of travel area established by DEQ's research and record keeping. Protecting the water source from potentially harmful activities is established by linking the zoning ordinance elements and the identifying information provided by the health and safety ordinance and DEQ records. Accordingly, a county or city need not engage in elaborate mapping activities on its zoning map—a task that would be administratively complex and time-consuming. The health and safety ordinance requirements are just another variable to be considered when contemplating land-use activities irrespective of the land-use zone applied.

This approach is not intended to be a one-size-fits-all, off-the-shelf solution for everyone. Each jurisdiction should carefully scrutinize the location and methodology of its own system of public water supply protection. Jurisdictions are reminded that the doctrine of separate sovereignty applies in Idaho local government—meaning that counties have exclusive jurisdiction in unincorporated areas, while cities are the sole local source of zoning regulation within city limits. No two jurisdictions are identical in the nature of the sources they rely on for drinking water or

the underlying land use and economic reality that affect private landowners and the establishment of public policy.

The intent of the prototype is to assist city and county government in taking steps to protect public water systems irrespective of whether the entity itself is a purveyor of water. Cities and counties have unique constitutional authority to take action to protect the public health and safety. Often water purveyors are special purpose districts that are limited in their ability to protect themselves against influences that might have significant adverse consequences for the water supply upon which everyone relies. Agency officials are encouraged to cooperate because water resources do not respect political boundaries on the surface of the land.

Information about the technical data supporting this approach can be obtained from the DEQ state office. It may be desirable to involve the professional engineering firm that works with water service development and operation for any particular system when contemplating establishment of any regulatory system, including the methods set forth in the accompanying prototype. Statewide local government associations and the Idaho Rural Water Association may also be sources to help shape the most effective methodology for accomplishing public water system protection. This approach is not the only one that should be considered but is a choice based on sound scientific information and administrative steps that are intended to be minimally complicated. Further community conversations about this matter are encouraged.