4/1/2025

MaryAnna Peavey, CPM
Grants and Loans Bureau Chief
Idaho Department of Environmental Quality
1410 N Hilton
Boise, Idaho 83706

Dear MaryAnna,

As part of the State of Idaho (State) Governor's "Zero-based Regulation" efforts, the Idaho Department of Environmental Quality (IDEQ) has been tasked to locate and implement efficiencies in the rules that it administers. The IDEQ is reviewing several rules, one of which is *Idaho Administrative Code (IDAPA) 58.01.12 Rules for the Administration of Wastewater and Drinking Water Loan Funds (Rules)*. A discussion of the proposed draft *Rules* took place on March 24, 2025, between IDEQ and Merrick & Company (Merrick). Draft language offered by IDEQ included *Section 58.01.12.021 Disadvantaged Loans and Affordability*, and Section *58.01.12.050 Loan Offer and Acceptance*. The purpose of this letter is to provide feedback for the proposed language that may be used by IDEQ as it works to finalize the *Rules*, in line with the Governor's order.

First, proposed language included in *Section 58.01.12.021 Disadvantaged Loans and Affordability* better defines a "disadvantaged community" (DAC) using median household income (MHI), poverty, unemployment, decreasing population, and user rate data. We would applaud IDEQ in providing this clarity in its definition of what constitutes as a DAC. Further, using the proposed tier process allows Idaho communities to understand whether (and where) they fall within the DAC criteria when planning for debt service, communicating with customers on proposed rate changes, and ultimately the impacts on end user rates.

However, our concern is in the proposed language set forth in *Subsection 01.d. Special Conditions and Adjustments*, that states if a community's service area is not within the boundaries of a municipality, the community may use "*....Census data for the county in which it is located...*". Historically, the Letter of Interest form has allowed an unincorporated community to use the "*...smallest and most representative area for the community...*", which may include a zip code, a school district boundary, or a Census block, all of which better reflects an unincorporated community's demographics. Although the option to use a county's Census data is informative, if used alone, it could inadvertently obscure the local community's ability to provide evidence of economic disparity within its service area. County Census data could include several (hundred or thousand) additional individuals that could skew the MHI for the community members served by the utility. Therefore, we would recommend including the phrase "*...or the smallest and most representative area for the community...*" verbiage into *Subsection 01.d. Special Conditions and Adjustments* to provide this option to unincorporated communities.

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Second, regarding *Section 58.01.12.050 Loan Offer and Acceptance, Subsection 04.d. Requirements for Professional Engineer Liability*, proposed modifications in this subsection intends to provide additional guidance to communities regarding professional engineering liability insurance limits. In addition, the proposed modifications also intend to provide language for a potential waiver of coverage limits. However, the additional language could be viewed as additional bureaucracy by the State, deepening the layers of governance and possibly making decisions outside of its professional expertise as defenders of public health and safety (not as risk management experts). In addition, the language could be deemed as outside the standards of care established by professional engineering best practices. Furthermore, the language excludes liability limits of subconsultants. Finally, the proposed language could inadvertently exclude smaller firms that may not have the resources to carry extended insurance requirements and/or have the expertise necessary to provide the State with justification for any proposed reduced coverage.

Therefore, it is recommended that IDEQ consult with the State's professional risk manager to help craft universal language that could support engineering firms of all sizes, include standard liability limits that are grounded in professional engineering rules and State of Idaho requirements. This could remove any unseen liability on the part of the State acting outside the limits of its expertise. All recommended actions would be in line with the streamlined process of reducing government red tape, as requested by the Governor.

In closing, we appreciate IDEQ's efforts in providing clarification in its Rules. Incorporating external comments from a professional engineering firm that has worked with Idaho communities of all sizes is important to understand how these *Rules* could affect critical infrastructure projects. If upon review of these comments there are any questions and/or clarifications that are required, we are more than happy to provide additional information to IDEQ.

Sincerely,

Merrick & Company



Kristina Gillespie-Jaques
Government Affairs and Funding Services Practice Leader