

Types of Water Utilities and who regulates them

The Idaho Public Utilities Commission is given the power and jurisdiction by the Idaho Legislature to supervise and regulate every water company that is a public utility in the State of Idaho. This authority is broad enough to include the power to do all things necessary to carry out the spirit and intent of the provisions of the public utilities' laws. A water company is a public utility if it is a private entity, either corporation or person, that owns, controls, operates or manages any water system for compensation within the state. Both for-profit and non-profit companies may be regulated

IPUC Regulated Water Company - Any small water system serving more than one customer is subject to the regulatory jurisdiction of the Idaho Public Utilities Commission as provided by Idaho Code, Title 61 unless they are organized as a homeowners association, formal water district, municipality or other mutual non-profit organization represented by board members. The Commission's jurisdiction and authority is very broad and include approval of authorized service area, rates and charges, accounting and reporting requirements, service quality, customer relation's rules and customer information rules.

Home Owners Association (HOA) is a legal entity that governs a subdivision, condominium or town home development or planned community. HOA is mandatory for property owners with the development. The HOA is run by a board, which is bound by the HOA bylaws and board positions are filled by election or appointment. The HOA collects a fee assessment from all owners to maintain common areas, address legal and safety issues, and enforce restrictions that are applicable to that particular residential area. The HOA also provides residents with a platform to address common concerns of the community.

Water Association is a not for-profit organization that provides oversight for a water system. Often set up similar to a HOA, with members represented by homeowners and jurisdiction is limited to water issues in a defined area.

Water District - Created by the Idaho Department of Water Resources (IDWR), through division of the state's public streams or water supplies into water districts for which the courts have adjudicated priorities of appropriations. The director also has authority to revise the boundaries of existing districts, combine two or more districts and /or abolish districts if such action is necessary to properly administer water uses. Each active water district in Idaho has a water master who oversees water distribution within the district. Title 42 Irrigation and Drainage – Water Rights and Reclamation, Chapter 6 Distribution of Water Among Appropriators, Section 42-604.

UNREGULATED WATER COMPANIES

- Certain water companies were created using PUC guidance that companies serving one customer are not regulated, and exempt entities are not regulated. This includes HOAs, co-ops, and water districts who serve their members. But the PUC recently rescinded its guidance without notice and without taking any formal action.
- Not being regulated by the PUC has allowed these water companies to construct first-class facilities and respond quickly to market conditions and safety concerns. PUC rules would have required a lengthy, expensive and complicated “rate case” before any of these improvements could occur.
- These water companies have invested millions of dollars and operated at a loss.
- Rate increases are used to recover a portion of the capital investments. Rates are still very reasonable. With PUC regulation, rates would most likely increase.
- These water companies don’t deliver water to the public; they serve one customer, e.g., an exempt entity (HOA, co-op or water district).
- These water companies often do not operate “for profit” and do not anticipate a profit in the foreseeable future.

PUBLIC UTILITIES COMMISSION

- Regulated companies are required to gain PUC approval of debt, construction of facilities and necessary rate changes.
- The PUC has initiated inquiries into the jurisdictional status of these water companies, which have not been regulated.
- The PUC removed the “one customer” guidance from its website without public notice, comment or formal action.

S. 1323 simply codifies the PUC’s own historic guidance, which has been relied upon, and would clarify the regulation of water companies that serve one customer, including exempt entities.