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Schweitzer Basin v. Schweitzer Fire Dist. Amicus Curiae Dckt. 44249

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INTEREST OF AMICUS CURIAE

The State Fire Marshal has the power and duty, among others, to enforce the International Fire Code (“IFC”).¹ This enforcement authority was granted by the Idaho Legislature for the purpose of protecting human life from fire and for preventing fires.² The Office of the State Fire Marshal is a division of Idaho’s Department of Insurance and is represented by the Office of the Attorney General. The enabling statutes establishing the Office of the State Fire Marshal are found in Idaho’s Insurance Code at Idaho Code §§ 41-253 to 41-269. This case concerns the district court’s application and interpretation of Idaho Code § 41-259, regarding the jurisdictional reach of a local fire district and, by implication, the jurisdictional reach of the State Fire Marshal and, ultimately, the scope of the IFC.

The State Fire Marshal is the state’s chief arson investigative officer.³ Among other duties, he is charged with enforcing the IFC; prescribing regulations in addition to the IFC; and making recommendations for amendments to the IFC.⁴ The State Fire Marshal also maintains review authority over any fire district’s final decision interpreting the IFC.⁵ The enabling statutes establishing the Office of the State Fire Marshal set forth that local fire chiefs or deputies of every city, county, or fire protection district, in which a fire department is established, or if none is

¹ Idaho Code § 41-254. *See also*, Idaho Code § 41-255.

² Idaho Code § 41-253(1)

³ Idaho Code § 41-257

⁴ Idaho Code §§ 41-254 and 41-255

⁵ Idaho Code § 41-256(2)

established, the county sheriff or deputies, shall be assistants to the State Fire Marshal in carrying out the IFC.⁶ Thus, local fire chiefs are effectively the primary enforcers of the IFC.⁷

Local fire protection districts, like Schweitzer Fire District, the appellant in this matter, are corporations formed, not under the State Fire Marshal's enabling statute, but under Idaho's Fire Protection District Law, *i.e.*, Idaho Code §§ 31-1401 to 31-1437. The express purpose of the Fire Protection District Law is "the protection of property against fire and the preservation of life, and enforcement of any of the fire codes and other rules that are adopted by the state fire marshal."⁸ Local fire protection districts are governmental subdivisions and political corporations with express statutory powers⁹ whose board members are initially appointed by the Governor.¹⁰ They may sue and be sued; purchase, hold and sell real property; levy taxes; make contracts; and charge and collect reasonable fees for services provided. Each local fire protection district is expressly authorized "[t]o enforce the fire code and rules adopted by the state fire marshal"¹¹ and "[t]o adopt such rules and resolutions as may be necessary to carry out their duties and responsibilities."¹²

This case concerns a local fire protection district's authority to enforce the IFC as against a private water company which historically failed to maintain fire suppression flows at fire

⁶ Idaho Code § 41-256(1)

⁷ Idaho Code § 41-257

⁸ Idaho Code § 31-1401

⁹ Idaho Code § 31-1416. *See also*, Exhibit A, Certificate of Appointment for the Schweitzer Fire District. This document is a correct copy of the original which is located in the offices of the Schweitzer Fire District. Pursuant to I.R.E. 201, the Court may take judicial notice of this certificate as an official governmental record. *See also*, authority for judicial notice found in *Trautman v. Hill*, 116 Idaho 337, 340, 775 P.2d 651, 654 (Ct. App. 1989)(judicial notice may be taken of official reports of the federal government).

¹⁰ Idaho Code § 31-1408(1)

¹¹ Idaho Code § 31-1417(9)

¹² Idaho Code § 31-1217(5). *See also*, IDAPA 18.01.50, incorporating the IFC.

hydrants that it had authorized to be attached to its water system. In this case, Schweitzer Fire District sought to enforce against the Schweitzer Basin Water Company (the “SBWC”) an IFC provision that requires fire hydrants to maintain constant water pressure of 1000 gallons per minute for one hour.¹³

SBWC supplies potable water to single family residences and multi-family units located within the boundaries of the Schweitzer Fire District. SBWC contends that its potable water system predates the formation of the Schweitzer Fire District, which received its Certificate of Appointment from Governor Cecil Andrus in 1987¹⁴, and is therefore exempt from enforcement of the IFC. Notwithstanding, in 1992¹⁵, SBWC began allowing homeowners to purchase fire hydrants and pay a fee to hook up to its water system.¹⁶ SBWC asserts that it allowed these hydrants to be hooked up to its system “in an effort to support the Schweitzer community’s fire-protection efforts” but contends that its disclaimer in its 1992 rules and regulations clarified that SBWC “could not be responsible for those hydrants or fire flow from them.”¹⁷ The SBWC asserts that the disclaimer states as follows:

¹³ Exhibit C is attached pursuant to IAR 35(f) and contains the 2012 IFC, App. B, B105.1, *Fire-Flow Requirements for Buildings* (2012 Ed). See also, Exhibit B, which is attached pursuant to IAR 35(f) and contains the 1991 Uniform Fire Code, App. III – A, 5(a), *Fire-Flow Requirements for Buildings* (1991 Ed). Cf. R p. 223, ¶ 4.

¹⁴ See Exhibit A, Certificate of Appointment for the Schweitzer Fire District. This document is a correct copy of the original which is located in the offices of the Schweitzer Fire District. Pursuant to I.R.E. 201, the Court may take judicial notice of this certificate as an official governmental record. See also, authority for judicial notice found in *Trautman v. Hill*, 116 Idaho 337, 340, 775 P.2d 651, 654 (Ct. App. 1989)(judicial notice may be taken of official reports of the federal government).

¹⁵ R p. 21, ¶ 3.

¹⁶ R p. 102, ¶ 5. See also, R p. 215, ¶ 1.

¹⁷ Ibid. Cf. *Empire Lumber Co. v. Thermal-Dynamic Towers, Inc.*, 132 Idaho 295, 299, 971 P.2d 1119, 1123 (1999)(the Court finding exculpatory clauses in a land lease did not relieve the tenant from tort liability for negligence.)

SBWC is without authority to furnish fire protection service and it undertakes to furnish only domestic water. Therefore, SBWC shall not be responsible for loss or damage claimed to have been due to lack of adequate water supply or water pressure and merely agrees to furnish such quantity of water at such pressure as are available in its general distribution system.¹⁸

Between 1992 and 2014, SBWC allowed 22 fire hydrants to hook up to its system.¹⁹ Of the 22 fire hydrants, only one has met the standard for fire suppression flow.²⁰

Early on, the Schweitzer Fire District began alerting SBWC to the fire suppression issues and the lack of adequate fire flow.²¹ The warnings ultimately culminated in an enforcement action. On June 14, 2013, the Schweitzer Fire District issued a Notice of Violations to SBWC (“NOV”), identifying 21 of the 22 fire hydrants hooked up to SBWC’s system that failed to meet the 1000 gallon per minute fire flow standard requirement of the IFC and seeking civil administrative remedies to bring SBWC into compliance, including fines.²² Almost one year later, on May 3, 2014, the Schweitzer Fire District issued an Order Demanding Repair and Remedy of Deficiencies in Water System (“Repair Order”), again identifying the 21 hydrants “to be remedied and repaired to a level consistent with the standard of 1000 GPM water flow as stated in the International Fire Code as stated in Idaho Code 41-253(1) through 41-269 and IDAPA 18.01.50.”²³ The Repair Order also referred to a prior notice to repair that had previously been sent to SBWC on June 25, 2013.²⁴

¹⁸ Ibid. At least one property owner, Donald F. Hutton, who purchased a fire hydrant in 2005, stated that he was not made aware of the lack of fire suppression flows until years after he purchased the hydrant. R p. 215.

¹⁹ R pp. 39-43. Cf. R p. 107.

²⁰ Ibid.

²¹ R pp. 202-209, 212-214, 221-224

²² R pp. 17- 20

²³ R pp. 25-27

²⁴ Ibid. The State Fire Marshal and the Attorney General express no opinion or position as to whether the

On June 3, 2014, SBWC filed a Response to Order for Remedy and Request for Contested Hearing, asserting a number of claims, among them that the Repair Order was incorrectly directed at SBWC when it should have been issued to the owners of real property; that SBWC had consistently provided the fire district with documentation that the water system was not designed for fire hydrants; that the fire district lacked jurisdiction over SBWC; and that SBWC was entitled to grandfather rights from enforcement of the IFC.²⁵

On July 18, 2014, the Schweitzer Fire District issued a Notice of Contested Hearing.²⁶ A second Notice of Contested Hearing was issued almost a year later on March 6, 2015, with a hearing set for March 20, 2015.²⁷ On March 19, 2015, one day before the scheduled administrative hearing, SBWC filed a Petition for Writ of Prohibition in the District Court of the First Judicial District, in Bonner County, Idaho.²⁸ The Honorable District Judge Barbara Buchanan issued an Alternative Writ of Prohibition on March 20, 2015.²⁹ An Order Setting Trial and Pretrial Order was issued on March 26, 2015.³⁰ On November 25, 2015, SBWC filed an Amended Petition for Writ of Prohibition adding a request for attorney fees and a motion requesting a hearing on the pleadings on the issue of jurisdiction.³¹

The district court heard argument on January 20, 2016, based on the parties' pleadings on record. Two days later, the district judge issued a Memorandum Decision and Order Granting

Schweitzer Fire District provided SBWC adequate notice or process.

²⁵ R pp. 29-32

²⁶ R pp. 33-34

²⁷ R pp. 50-51

²⁸ R pp. 385-387

²⁹ R pp. 54-57

³⁰ R pp. 58-63

³¹ R pp. 99-100, 129-131

Writ of Prohibition, determining that Schweitzer Fire District acted outside of the scope of its jurisdiction.³²

The district court limited its examination of the issue of the fire district's jurisdiction to interpretation of Idaho Code § 41-259.³³ In reviewing the statutory language, the district court interpreted the law to limit the fire district's jurisdiction to the inspection of buildings and structures.³⁴ Further, the district court stated that because SBWC's "water system can in no way be construed as a 'building or other structure which, for want of repairs, ... or by reason of age or dilapidated condition, or due to violation of the International Fire Code or from any other, cause is especially liable to fire, ...", SBWC is not regulated within the scope of Idaho Code § 41-259 and therefore not subject to the administrative process.³⁵

The State Fire Marshal respectively asserts that the district court's interpretation and application of Idaho Code § 41-259 is incorrect. Additionally, this Court's affirmation of the district court's ruling would impair the legislative purpose of not only the Fire Protection District Law but also the State Fire Marshal's enabling statutes, as well as severely limit the application and scope of the IFC throughout Idaho. The State Fire Marshal appears as *amicus curiae* in this matter to (a) inform the Court of the statutory scheme under which fire protection is rendered in Idaho; (b) to explain the interaction and roles of the local fire protection districts and the State Fire Marshal; and (c) to clarify the scope of the International Fire Code.

³² R pp. 162-170

³³ Ibid.

³⁴ R p. 166, ¶ 1

³⁵ Ibid (excerpting from Idaho Code § 41-259).

ARGUMENT

I. Jurisdiction for the Enforcement of the IFC is Not Limited to Idaho Code § 41-259 But Must Be Comprehensively Examined in Light of Idaho’s Fire Protection District Law, the State Fire Marshal’s Code, and the IFC as Adopted.

It is worth noting that fire protection districts existed before the Office of the State Fire Marshal was formed and have a broader function than that of the State Fire Marshal. The Legislature enacted the Fire Protection District Law in 1943, establishing fire protection districts.³⁶ They were initially formed for the “protection of property against fire,”³⁷ which purpose was expanded in 1974 to include the “protection of property against fire and the preservation of life.”³⁸ This expanded purpose has been interpreted to authorize fire protection districts to provide emergency ambulance services in addition to fire prevention and suppression.³⁹ In *Big Sky Paramedics, LLC, v. Sagle Fire Districts*, the Honorable Justice Schroeder noted the term “preservation of life” extends beyond the preservation of life from fire.⁴⁰ Arguably, however, until the Office of the State Fire Marshal was formed, fire protection districts were the primary enforcers of fire prevention as they were embodied early on, and still are, with the authority to “make and adopt all necessary rules and regulations for carrying out” their statutory purposes.⁴¹

Minimum fire code standards were not codified until the Legislature established the Office

³⁶ Fire Protection District Law, 1943 Idaho Sess. Laws 324 (codified in Idaho Code § 31-1401)

³⁷ *Ibid* at § 1.

³⁸ Fire Protection District Law, 1974 Idaho Sess. Laws 1165 (codified in Idaho Code § 31-1401)

³⁹ *Big Sky Paramedics, LLC, v. Sagle Fire District*, 140 Idaho 435, 437, 95 P.3d 53, 55 (2004) (“The Court is satisfied that the ‘preservation of life’ provision in I.C. § 31-1401 extends beyond the preservation of life from fire. The rights to operate the ambulance service for the preservation of lives of its residents is encompassed within the Fire District’s power set forth in I.C. 31-1401.”)

⁴⁰ *Ibid*.

⁴¹ Fire Protection District Law, 1943 Idaho Sess. Laws 324 at § 16 (codified in Idaho Code § 31-1417(5)) (“To adopt such rules and resolutions as may be necessary to carry out their duties and responsibilities.”)

of the State Fire Marshal in 1970⁴² and set forth minimum standards within the purpose statement as follows:

The purpose of this act is to protect human life from fire, and to prevent fires. This act is intended to prescribe regulations consistent with nationally recognized good practice for the safeguarding of life and property from hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials, and devices, and **from conditions hazardous to life or property in the use or occupancy of buildings or premises**, and there is hereby adopted the ‘Fire Prevention Code’, 1965 edition, as amended, as recommended by the American Insurance Association (formerly the National Board of Fire Underwriters), as **the minimum standard for the protection of life and property of life and property from fire and explosions in the state of Idaho.**⁴³

[Emphasis added]. The current purpose statement found in Idaho Code § 41-253 is essentially the same as it appeared in 1970, with the exception that it references the IFC instead of the “Fire Prevention Code.”⁴⁴ The State Fire Marshal remains charged with enforcing the IFC, among other duties.

In addition to establishing minimum standards for fire protection, the Legislature also established a rubric whereby local fire chiefs in every fire department and fire protection district act as assistants to the State Fire Marshal⁴⁵ and are the primary enforcers of the IFC, subject to the State Fire Marshal’s review authority over their interpretation of the fire code.⁴⁶ The Legislature also established the State Fire Marshal as the state’s chief arson investigator,⁴⁷ however, the State

⁴² State Fire Marshal, 1970 Idaho Sess. Laws 547 (originally codified in Idaho Code § 39-3501; currently codified in Idaho Code § 41-253)

⁴³ Ibid. Note the current version of Idaho Code.

⁴⁴ Idaho Code § 41-253 (The current statute references adoption of the International Fire Code.)

⁴⁵ Idaho Code § 41-256(1)

⁴⁶ Idaho Code § 41-256(2)

⁴⁷ Idaho Code § 41-257(1)

Fire Marshal is prohibited from “interfer[ing] at any time in the operation or administration of any fire department or sheriff’s office except in matters of fire prevention and arson investigation when requested by the local fire jurisdiction, sheriff’s office or ... any person served by the local fire jurisdiction.”⁴⁸

In 1992, the same year that the SBWC began allowing fire hydrants to be hooked up to its system, the State Fire Marshal adopted the 1991 Uniform Fire Code and Appendix III-A thereto.⁴⁹ Paragraph 5 of Appendix III-A, *Fire-Flow Requirements for Buildings*, identified 1,000 gallons per minute as the minimum water pressure standards necessary to fight fires in one and two family dwellings that did not exceed 3,600 square feet.⁵⁰ Essentially, that is still the standard today.⁵¹ Section B105.1 of the currently adopted edition of the IFC, *Fire-Flow Requirements For Buildings*, states as follows:

The minimum fire-flow and flow duration requirements for one- and two-family dwellings having a fire-flow calculation area that does not exceed 3,600 square feet...shall be 1,000 gallons per minute for 1 hour.⁵²

Given Idaho’s interconnected statutory framework with regard to fire protection, the district court’s finding that Schweitzer Fire District had no jurisdiction to enforce the IFC fire flow requirements against a water company providing water to fire hydrants, if upheld, has far reaching

⁴⁸ Idaho Code § 41-257

⁴⁹ See Exhibit D, which is attached hereto pursuant to IAR 35(f), containing Amended Regulation 50, Adoption of 1991 Uniform Fire Code, effective April 1, 1992.

⁵⁰ See Exhibit B, which is attached pursuant to IAR 35(f), containing the 1991 Uniform Fire Code, App. III – A, 5(a), *Fire-Flow Requirements for Buildings* (1991 Ed).

⁵¹ See Exhibit C, containing the 2012 Idaho Fire Code, App.B, B105.1, adopted in IDAPA 18.01.50.

⁵² Ibid. cf. Bonner County Ordinance 12-623(D) requiring a flow of 1000 gallons per minute for a minimum of two hours.

implications for limiting the jurisdiction of the State Fire Marshal, all local fire chiefs, and selected county sheriffs, and defeats the legislative purpose of adopting the IFC pertaining to fire flows.

A. The District Court Erred by Limiting Jurisdictional Authority Under Idaho Code § 41-259 to “Buildings and Structures” When the Statute Expressly Extends Jurisdiction to the Inspection of “Buildings and Premises.”

The Legislature implemented the State Fire Marshal’s enabling with strict instructions that the “act is necessary for the public safety, health, peace and welfare, is remedial and preventive in nature, and shall be construed liberally.”⁵³ The statute at issue in this matter is Idaho Code § 41-259, which states as follows:

The state fire marshal, his deputies or assistants upon the written and signed complaint of any person or whenever he or they shall deem it necessary, may at reasonable hours inspect **buildings and premises** within their jurisdiction, upon the presentation of proper credentials, except the interior of private dwellings, private garages appertaining to such residences, or buildings on farms of more than five (5) acres.

Whenever any of said officers shall find that any building or other structure which, for want of repairs, or lack of or insufficient fire escapes, automatic or other fire alarm apparatus or fire extinguishing equipment, or by reason of age or dilapidated condition, or **due to violation of the International Fire Code or from any other cause, is especially liable to fire, and is so situated as to endanger life, other buildings or structures or said building or structure**, he or they shall order the same to be remedied or removed, and such order shall forthwith be complied with by the owner or occupant of such premises or buildings, unless said owner or occupant avail himself of the appeals procedure set forth in this act. The service of any such order shall be made upon the owner or occupant either by delivering to and leaving with the said person a true copy of the said order, or, by mailing such copy to the owner or occupant’s last known address. All mailings shall be registered or certified, with return receipt.⁵⁴

⁵³ Idaho Code § 41-269

⁵⁴ Idaho Code § 41-259

Idaho Code § 41-259 expressly states in the first paragraph that inspections may be made of “buildings and premises.”⁵⁵ The term “premises” is not defined within chapter 2, title 41, Idaho Code. However, in case law, the Idaho Courts have found the term “premises” to include “the land, the buildings, and other appurtenances which could be considered a part of them”⁵⁶ or to include “the building and contiguous property owned, or leased or used.”⁵⁷ *Black’s Law Dictionary* defines “premises” as “a house or building along with its grounds.”⁵⁸ Each definition has in common that “premises” is not limited to a building or structure, but encompasses the surrounding area.

The statute also expressly states in the second paragraph the conditions or findings upon which an order for remedy or removal may issue.⁵⁹ The inspecting officers must find that a “building or other structure...is especially liable to fire...as to endanger life....”⁶⁰ The statute further identifies the conditions that may be present to make such a finding of endangerment. Those conditions may be due to lack of repair, lack of fire escapes, fire alarms, fire extinguishing equipment, or “due to violation of the International Fire Code or from any other cause.”⁶¹

In this case, the district court failed to give the statute liberal construction. Instead, the district court erred by failing to analyze or give any effect to the “building and premises” language stated in the first paragraph of the statute. To the contrary, the district court ruled that Schweitzer

⁵⁵ *Ibid.*

⁵⁶ *State v. Sapp*, 110 Idaho 153, 156, 715 P.2d 366, 369 (Ct. App.1986)

⁵⁷ *State v. Conant*, 143 Idaho 797, 799, 153 P. 3d 477, 479 (2007)

⁵⁸ *Black’s Law Dictionary* (9th ed., 2009), p. 1300

⁵⁹ Idaho Code § 41-259

⁶⁰ *Ibid.*

⁶¹ *Ibid.*

Fire District had no jurisdiction to enforce the IFC as against SBWC based on a determination that SBWC's water system is not a "building or structure." The district judge stated her findings as follows:

The Court agrees with the testimony in the Bailey and Larsen affidavits that the Company's water system can in no way be construed as a 'building or other structure which, for want of repairs...or by reason of age or dilapidated condition, or due to violation of the International Fire Code or from any other cause, is especially liable to fire....⁶²

The district court's holding essentially places SBWC, and similar water supply companies, beyond the reach of enforcement of the State Fire Marshal, local fire districts, and the IFC. This is contrary to the purpose statements articulated in both the Fire Protection District Law and the State Fire Marshal's enabling statute, as well as the IFC, which purpose is the protection of life and property. Additionally, this contrary to legislative intent that the statute be liberally construed.⁶³

B. The District Court Erred by Failing to Factor the Fire Protection District Law in its Analysis of Schweitzer Fire District's Jurisdictional Authority.

Also absent from the district court's analysis of the jurisdictional reach of the Schweitzer Fire District is any discussion of the District's enabling statute, *i.e.*, the Fire Protection District Law. This absence is of concern given the interconnected matrix established in statute between local fire districts and the State Fire Marshal for the enforcement of the IFC.

As discussed above, the Fire Protection District Law provides local fire districts with a purpose that includes enforcement of the IFC as adopted by the State Fire Marshal. The purpose

⁶² R.p. 166, ¶ 1

⁶³ Idaho Code § 41-269

and policy of the law is stated as follows:

The protection of property against fire and the preservation of life, and enforcement of any of the fire codes and other rules that are adopted by the state fire marshal pursuant to chapter 2, title 41, Idaho Code, are hereby declared to be a public benefit, use and purpose. ⁶⁴

Fire protection districts are governmental subdivisions⁶⁵ independent of the State Fire Marshal, with distinct corporate powers and duties.⁶⁶ These powers and duties include, but are not limited to, the following:

(5) To adopt such rules and resolutions as may be necessary to carry out their duties and responsibilities.

(9) To enforce the fire code and rules adopted by the state fire marshal pursuant to chapter 2, title 41, Idaho Code.⁶⁷

This authority arguably provides an additional jurisdictional basis for local fire protection districts to enforce the IFC as adopted by the State Fire Marshal, including rulemaking authority for establishing procedures to conduct the very same inspections described in Idaho Code § 41-259. (It is noteworthy to emphasize that Idaho Code § 41-253 sets the IFC as the minimum standard for fire protection throughout the state. Local fire districts could arguably enact more stringent ordinances.) In fact, the Bonner County Commissioners adopted its own ordinance incorporating the UFC fire flow standards.⁶⁸ Because the district court failed to include analysis of the Fire

⁶⁴ Idaho Code § 31-1401

⁶⁵ Idaho Code § 31-1416

⁶⁶ Idaho Code § 31-1417

⁶⁷ Ibid.

⁶⁸ Bonner County Ordinance 12-623(D)

Protection District Law before determining that Schweitzer Fire District had no jurisdiction over a water company that admittedly is providing water to support “community fire-protection efforts,”⁶⁹ it is unclear if the district court’s decision is likewise intended to limit jurisdiction under the Fire Protection District Law.

C. SBWC Is Not Exempt From Compliance With the IFC Simply Because It Is a Privately Owned Company.

In its Petition for Writ of Prohibition, SBWC contended that because it is a privately owned water company and not the proper owners of the fire hydrants hooked up to its system, it cannot be compelled to make modifications to comply with the IFC.⁷⁰ This statement is incorrect.

Idaho’s Constitution specifically addresses the private sale of water in Article XV, § 1, as follows:

The use of all waters now appropriated, or that may hereafter be appropriated for sale, rental or distribution; also of all water originally appropriated for private use, but which after such appropriation has heretofore been, or may hereafter be sold, rented, or distributed, is hereby declared to be a public use, and subject to the regulations and control of the state in the manner prescribed by law.⁷¹

It is well established that when water is “taken out, it becomes a public use and the sale or rental of it for pay is a franchise.”⁷² In *Capital Water Co. v. Public Utilities Commission of Idaho, et. al.*, this Court recognized that by the grant of a franchise, a private water company is subject to regulation.⁷³

⁶⁹ Ibid.

⁷⁰ R pp. 14, ¶ 9; 386, ¶ 4

⁷¹ Idaho Const. art. XV, § 1

⁷² *Capital Water Co. v. Public Utilities Commission of Idaho, et. al.*, 44 Idaho 1, 262 P. 863, 868 (1926) (citing to *Wilterding v. Green*, 4 Idaho 773, 45P. 134 (1896)).

⁷³ Ibid.

Idaho's Public Utilities Law establishes that the Public Utilities Commission ("PUC") is charged with overseeing the regulation of the rates charged by water systems.⁷⁴ Although the PUC has the authority to order improvements to a water company and to enforce such order, the PUC does not conduct safety inspections nor any inspections regarding compliance with the IFC.⁷⁵

Likewise, Idaho's Department of Environmental Quality ("DEQ"), which oversees water quality, but not fire suppression sufficiency, defers to the local fire districts for enforcement of the IFC, but nonetheless regulates local water companies. In its administrative rules that regulate modifications to existing drinking water systems, the DEQ specifically nods to the local fire authorities with regard to determinations of whether a water company has sufficient fire suppression capabilities.⁷⁶ Section 501.18 of IDAPA 58.01.08 states as follows:

- a. Public water systems that provide fire flow shall be designed to provide maximum day demand plus fire flow. Fire flow requirements and system adequacy shall be determined by the local fire authority ... to establish required fire flows in accordance with the International Fire Code as adopted by the State Fire Marshal.⁷⁷

This interconnection between the regulatory roles of the PUC, the DEQ and local fire authorities to ensure public safety and compliance with the IFC are just two illustrative examples of the far-reaching impact of the district court's decision, if affirmed. By limiting the jurisdiction of the fire protection district, and by default the State Fire Marshal, to the inspection of only "buildings and structures" as opposed to "buildings and premises," the district court has judicially

⁷⁴ Idaho Code § 61-101, *et. seq.*

⁷⁵ *Ibid.* See also, Idaho Code § 61-508.

⁷⁶ IDAPA 58.01.08.501.18(a). See also, R p. 88, ¶ 5.

⁷⁷ *Ibid.*

exempted SBWC, and similar water companies, from compliance with the fire flow, fire suppression and fire hydrant requirements found in the IFC, as adopted. This is contrary to legislative intent.

II. SBWC Changed the Character of Its Services Such that its Grandfather Status, if Any, Has Been Effectively Waived.

SBWC raised in its supporting documents that it has “grandfathered rights” that exempt it from enforcement of the IFC. This argument was used to bolster SBWC’s contention that it is a private company, providing only potable water services and as such, falls outside the jurisdictional reach of the Schweitzer Fire District. The district court relied heavily on SBWC’s assertions of private ownership and grandfathered rights to determine that only a legal question as to jurisdiction existed. In doing so, the district court granted petitioner’s motion for hearing on the pleadings. The district court erred in failing to consider the questions of fact that existed in the record as to whether SBWC had changed the character of its services from providing only potable water to also providing fire suppression services.

Idaho Courts have recognized the concept of “grandfathered rights” as Due Process rights whereby an existing use is protected from enforcement of a subsequent regulation that would make such use unlawful.⁷⁸ In essence, a grandfathered right “simply protects the owner from abrupt termination of what had been a lawful condition or activity....”⁷⁹ Grandfathered rights are likewise recognized by the IFC except when such existing conditions are a hazard.⁸⁰ Section 102.1

⁷⁸ *Baxter v. City of Preston*, 115 Idaho 607, 609, 768 P.2d 1340, 1342 (1989).

⁷⁹ *Ibid.*

⁸⁰ *See*, Exhibit C: 2012 Idaho Fire Code Excerpts at Chap. 1, § 102.1.

of the 2012 Edition of the IFC, the latest version adopted by the State Fire Marshal, states as follows:

The construction and design provisions of this code shall apply to:

1. Structures, facilities and conditions arising after the adoption of this code.
2. Existing structures, facilities and **conditions not legally in existence at the time of adoption of this code.**
3. Deleted.
4. **Existing structures, facilities and conditions which, in the opinion of the fire code official, constitutes a distinct hazard to life or property.**⁸¹

[Emphasis added]. However, the Idaho Courts have also recognized that “[t]he owner of a nonconforming use may lose the protected grandfathered right if the use is enlarged or expanded in violation of a valid zoning ordinance.”⁸²

The record in this matter is replete with examples of SBWC’s expansion and change of use. These examples include, but are not limited to:

- On or about 1990, SBWC joined forces with Schweitzer Resort Water to develop a joint fire protection plan with the objectives of increasing the amount of water available and to have fire hydrants installed throughout the area.
- Installation of an “emergency water main between SBWC and Schweitzer Resort Water to provide Resort Water with an emergency water supply in case of fire or other emergency.”
- SBWC’s authorization of fire hydrants to be hooked up to its system despite being aware that fire flows did not meet IFC standards.
- From 1992 when the initial fire hydrant was allowed to 2013 when fire district issued its Notice of Violations, the number of fire hydrants increased from 1 to 22.
- SBWC’s knowledge that insurance companies are relying on the presence of the fire hydrants to reduce the rating for property owners’ fire insurance premiums.

⁸¹ Ibid. See also, *Stevens v. Fleming*, 116 Idaho 523, 526, 777 P.2d 1196, 1199 (1989).

⁸² *Baxter v. City of Preston*, 115 Idaho 607, 609, 768 P.2d 1340, 1342 (1989).

- SBWC added improvements to its system “by connecting water mains through loops to provide water from two directions to increase fire flow” and by removing valves that restricted water flow.
- SBWC’s addition of a 120,000 gallon reservoir and an additional well to increase available water for fire suppression.⁸³

Additionally, the record is replete with the fire district’s measured concern over the years as it witnessed this expansion and change of use culminating in the fire district’s ultimate enforcement efforts.⁸⁴ Notwithstanding these opposite positions and questions of fact regarding SBWC’s alternative theory of exemption from regulation based on private company status and grandfathered rights, the district court granted SBWC’s motion for a ruling on the pleadings without trial. The district court erred in narrowly focusing the issues as only the legal question of jurisdiction without further investigation of the record.

CONCLUSION

The district court incorrectly concluded that fire protection districts are limited in their jurisdiction to the inspection of “buildings and structures.” This is a narrow reading of statute contrary to the legislative instruction that the statute be liberally construed. If affirmed, the district court’s decision will have the effect of limiting not only the jurisdiction of fire protection districts but also that of the State Fire Marshal, who was not a party, as well as defeating IFC regulations with regard to fire hydrants, fire flow and fire suppression requirements applicable to water companies. Based on the unequivocal language of the statute and the supporting case law set forth


⁸³ R pp. 17-18; 21 ¶ 3; 25-28; 42-46; 79; 83-92; 101-105; 107

⁸⁴ R pp. 17-20; 25-51; 73; 93; 106-107; 202-228

above, the State Fire Marshal asks this Court to correct the lower court's misinterpretation and misapplication of Idaho Code § 41-259 and to find that the scope of jurisdiction includes "premises" as stated in the statute.

Respectfully submitted this 1st day of March, 2017.

**LAWRENCE G. WASDEN
IDAHO ATTORNEY GENERAL**

By 
JUDY L. GEIER
Deputy Attorney General
Consumer Protection Division

CERTIFICATE OF SERVICE


I hereby certify that on the 1st day of March, 2017, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Angela R. Marshall
Marshall Law Office
P.O. Box 1133
1315 Hwy. 2, Suite #3
Sandpoint, ID 83864

- Hand Delivery
- U.S. Mail
- Overnight Mail
- Facsimile
- Certified Mail
- Electronic Mail

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Attorney at Law
102 Superior Street
P.O. Box C
Sandpoint, ID 83864

- Hand Delivery
- U.S. Mail
- Overnight Mail
- Facsimile
- Certified Mail
- Electronic Mail



JUDY L. GEIER
Deputy Attorney General

EXHIBIT A

State of Idaho



THE OFFICE OF THE GOVERNOR
EXECUTIVE DEPARTMENT
BOISE, IDAHO

CERTIFICATE OF APPOINTMENT

KNOW ALL MEN, by these presents that the Board of County Commissioners of
Bonner County, State of Idaho, has duly made its Order creating the
Schweitzer Fire District

and dividing it into three sub-districts as a result of the election held December 31, 1986.

NOW, THEREFORE, I, CECIL D. ANDRUS, Governor of the State of Idaho, by virtue of the authority vested in me as Governor, do hereby appoint the following named persons to be Commissioners each to serve a term as prescribed by law, Idaho Code, 31-1409.

Sub-District No. 1	<u>DEAN FEIDLER</u>
Sub-District No. 2	<u>TOM CORBY</u>
Sub-District No. 3	<u>TIM HINDERMAN</u>

IN WITNESS WHEREOF, I have hereunto set my hand this

8th day of March, 1987

Cecil D. Andrus, Governor



EXHIBIT B

UNIFORM FIRE CODE™

1991 Edition



First Printing

Publication date: May 1, 1991

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by

INTERNATIONAL CONFERENCE OF BUILDING OFFICIALS
5360 SOUTH WORKMAN MILL ROAD
WHITTIER, CALIFORNIA 90601

and

WESTERN FIRE CHIEFS ASSOCIATION
PALM BROOK CORPORATE CENTER
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ONTARIO, CALIFORNIA 91764

DIRECT INQUIRIES AND COMMENTS TO:
UNIFORM FIRE CODE COORDINATOR
5360 SOUTH WORKMAN MILL ROAD
WHITTIER, CALIFORNIA 90601


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Preface


It is the intent of the International Conference of Building Officials (ICBO) and the Western Fire Chiefs Association (WFCA) to correlate the provisions of the Uniform Fire Code™ and the Uniform Building Code™ so that there is no conflict between them. Neither code is intended to stand alone; rather, the total package, i.e., the Uniform Fire Code, the Uniform Building Code, the Uniform Mechanical Code™, the Uniform Plumbing Code and the National Electrical Code®, will give cities, counties and states a complete and comprehensive program of model codes that are compatible with each other.

The Uniform Fire Code was initially developed by the California Fire Chiefs Association and was first published by the International Conference of Building Officials and the Western Fire Chiefs Association in 1971. A revised edition was published in 1973 and subsequent editions have been published at three-year intervals. New editions incorporate changes approved at annual meetings of the Western Fire Chiefs Association.

Anyone may propose amendments to this code. For more information, write to the International Conference of Building Officials or the Western Fire Chiefs Association at the addresses on the copyright page. Code changes are processed each year and published in supplement form, permitting ready adoption by local communities. Changes are carefully reviewed in public hearings by professional experts in the field of fire and life safety.

The following marking  printed vertically in the margin indicates a change in the requirement from the 1988 edition. Editorial changes due to reformatting are not identified.

Vertical lines in the margin that are interrupted by the letter B indicate the provision is an excerpt of requirements in the Uniform Building Code. Changes to such provisions are processed through the International Conference of Building Officials.

Deletion indicators () are provided in the margin where a paragraph or item in a listing has been deleted.

Division III
FIRE PROTECTION
APPENDIX III-A
FIRE-FLOW REQUIREMENTS FOR BUILDINGS

1. SCOPE

The procedure determining fire-flow requirements for buildings or portions of buildings hereafter constructed shall be in accordance with this appendix. This appendix does not apply to structures other than buildings.

2. DEFINITIONS

For the purpose of this appendix, certain terms are defined as follows:

FIRE AREA is the floor area, in square feet, used to determine the required fire flow.

FIRE FLOW is the flow rate of a water supply, measured at 20 psi residual pressure, that is available for firefighting.

3. MODIFICATIONS

(a) **Decreases.** Fire-flow requirements may be modified downward by the chief for isolated buildings or a group of buildings in rural areas or small communities where the development of full fire-flow requirements is impractical.

(b) **Increases.** Fire flow may be modified upward by the chief where conditions indicate an unusual susceptibility to group fires or conflagrations. An upward modification shall not be more than twice that required for the building under consideration.

4. FIRE AREA

(a) **General.** The fire area shall be the total floor area of all floor levels within the exterior walls, and under the horizontal projections of the roof of a building, except as modified in this section.

(b) **Area Separation.** Portions of buildings which are separated by one or more four-hour area separation walls constructed in accordance with the Building Code, without openings and provided with a 30-inch parapet, are allowed to be considered as separate fire areas.

(c) **Type I and Type II-F.R. Construction.** The fire area of buildings constructed of Type I and Type II-F.R. construction shall be the area of the three largest successive floors.

5. FIRE-FLOW REQUIREMENTS FOR BUILDINGS

(a) **One- and Two-Family Dwellings.** The minimum fire flow and flow duration requirements for one- and two-family dwellings having a fire area which does not exceed 3,600 square feet shall be 1,000 gallons per minute. Fire flow and flow duration for dwellings having a fire area in excess of 3,600 square feet shall not be less than that specified in Table No. A-III-A-1.

EXCEPTION: A reduction in required fire flow of 50 percent, as approved by the chief, is allowed when the building is provided with an approved automatic sprinkler system.

(b) **Buildings other than One- and Two-Family Dwellings.** The minimum fire flow and flow duration for buildings other than one- and two-family dwellings shall be as specified in Table No. A-III-A-1.

EXCEPTION: A reduction in required fire flow of up to 75 percent, as approved by the chief, is allowed when the building is provided with an approved automatic sprinkler system. The resulting fire flow shall not be less than 1,500 gallons per minute.

**TABLE NO. A-III-A-1
MINIMUM REQUIRED FIRE FLOW AND FLOW DURATION FOR BUILDINGS**

FIRE AREA (square feet)					FIRE FLOW (gallons per minute)	FLOW DURATION (hours)
Type I-F.R. ¹ II-F.R. ¹	Type II One-HR. III One-HR. ¹	Type IV-H.T. V-One-HR. ¹	Type II-N III-N ¹	Type V-N ¹		
22,700	12,700	8,200	5,900	3,600	1,500	2
30,200	17,000	10,900	7,900	4,800	1,750	
38,700	21,800	12,900	9,800	6,200	2,000	
48,300	24,200	17,400	12,600	7,700	2,250	
59,000	33,200	21,300	15,400	9,400	2,500	
70,900	39,700	25,500	18,400	11,300	2,750	
83,700	47,100	30,100	21,800	13,400	3,000	3
97,700	54,900	35,200	25,900	15,600	3,250	
112,700	63,400	40,600	29,300	18,000	3,500	
128,700	72,400	46,400	33,500	20,600	3,750	
145,900	82,100	52,500	37,900	23,300	4,000	4
164,200	92,400	59,100	42,700	26,300	4,250	
183,400	103,100	66,000	47,700	29,300	4,500	
203,700	114,600	73,300	53,000	32,600	4,750	
225,200	126,700	81,100	58,600	36,000	5,000	
247,700	139,400	89,200	65,400	39,600	5,250	
271,200	152,600	97,700	70,600	43,400	5,500	
295,900	166,500	106,500	77,000	47,400	5,750	
Greater	Greater	115,800	83,700	51,500	6,000	
"	"	125,500	90,600	55,700	6,250	
"	"	135,500	97,900	60,200	6,500	
"	"	145,800	106,800	64,800	6,750	
"	"	156,700	113,200	69,600	7,000	
"	"	167,900	121,300	74,600	7,250	
"	"	179,400	129,600	79,800	7,500	
"	"	191,400	138,300	85,100	7,750	
"	"	Greater	Greater	Greater	8,000	

¹Types of construction are based upon the Building Code.

EXHIBIT C



2012

IDAHO FIRE CODE

Based on the 2012 International Fire Code®

Idaho Fire Code 2012 Edition

First Printing: October 2014

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by
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Part I—Administrative

CHAPTER 1

SCOPE AND ADMINISTRATION

PART 1—GENERAL PROVISIONS

SECTION 101 SCOPE AND GENERAL REQUIREMENTS

[A] **101.1 Title.** These regulations shall be known as the *Fire Code* of [NAME OF JURISDICTION], hereinafter referred to as “this code.”

[A] **101.2 Scope.** This code establishes regulations affecting or relating to structures, processes, premises and safeguards regarding:

1. The hazard of fire and explosion arising from the storage, handling or use of structures, materials or devices;
2. Conditions hazardous to life, property or public welfare in the occupancy of structures or premises;
3. Fire hazards in the structure or on the premises from occupancy or operation;
4. Matters related to the construction, extension, repair, alteration or removal of fire suppression or alarm systems; and
5. Conditions affecting the safety of fire fighters and emergency responders during emergency operations.

[A] **101.2.1 Appendices.** Provisions in the appendices shall not apply unless specifically adopted.

[A] **101.3 Intent.** The purpose of this code is to establish the minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection from the hazards of fire, explosion or dangerous conditions in new and existing buildings, structures and premises, and to provide safety to fire fighters and emergency responders during emergency operations.

[A] **101.4 Severability.** If a section, subsection, sentence, clause or phrase of this code is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this code.

[A] **101.5 Validity.** In the event any part or provision of this code is held to be illegal or void, this shall not have the effect of making void or illegal any of the other parts or provisions hereof, which are determined to be legal; and it shall be presumed that this code would have been adopted without such illegal or invalid parts or provisions.

SECTION 102 APPLICABILITY

[A] **102.1 Construction and design provisions.** The construction and design provisions of this code shall apply to:

1. Structures, facilities and conditions arising after the adoption of this code.
2. Existing structures, facilities and conditions not legally in existence at the time of adoption of this code.
3. Deleted.
4. Existing structures, facilities and conditions which, in the opinion of the *fire code official*, constitute a distinct hazard to life or property.

[A] **102.2 Administrative, operational and maintenance provisions.** The administrative, operational and maintenance provisions of this code shall apply to:

1. Conditions and operations arising after the adoption of this code.
2. Existing conditions and operations.

[A] **102.3 Change of use or occupancy.** No change shall be made in the use or occupancy of any structure that would place the structure in a different division of the same group or occupancy or in a different group of occupancies, unless such structure is made to comply with the requirements of this code and the *International Building Code*. Subject to the approval of the *fire code official*, the use or occupancy of an existing structure shall be allowed to be changed and the structure is allowed to be occupied for purposes in other groups without conforming to all of the requirements of this code and the *International Building Code* for those groups, provided the new or proposed use is less hazardous, based on life and fire risk, than the existing use.

[A] **102.4 Application of building code.** The design and construction of new structures shall comply with the *International Building Code*, and any *alterations*, additions, changes in use or changes in structures required by this code, which are within the scope of the *International Building Code*, shall be made in accordance therewith.

[A] **102.5 Application of residential code.** Where structures are designed and constructed in accordance with the *International Residential Code*, the provisions of this code shall apply as follows:

APPENDIX B

FIRE-FLOW REQUIREMENTS FOR BUILDINGS

The provisions contained in this appendix are not mandatory unless specifically referenced in the adopting ordinance.

SECTION B101 GENERAL

B101.1 Scope. The procedure for determining fire-flow requirements for buildings or portions of buildings hereafter constructed shall be in accordance with this appendix. This appendix does not apply to structures other than buildings.

SECTION B102 DEFINITIONS

B102.1 Definitions. For the purpose of this appendix, certain terms are defined as follows:

FIRE-FLOW. The flow rate of a water supply, measured at 20 pounds per square inch (psi) (138 kPa) residual pressure, that is available for fire fighting.

FIRE-FLOW CALCULATION AREA. The floor area, in square feet (m²), used to determine the required fire flow.

SECTION B103 MODIFICATIONS

B103.1 Decreases. The fire chief is authorized to reduce the fire-flow requirements for isolated buildings or a group of buildings in rural areas or small communities where the development of full fire-flow requirements is impractical.

B103.2 Increases. The fire chief is authorized to increase the fire-flow requirements where conditions indicate an unusual susceptibility to group fires or conflagrations. An increase shall not be more than twice that required for the building under consideration.

B103.3 Areas without water supply systems. For information regarding water supplies for fire-fighting purposes in rural and suburban areas in which adequate and reliable water supply systems do not exist, the *fire code official* is authorized to utilize NFPA 1142 or the *International Wildland-Urban Interface Code*.

SECTION B104 FIRE-FLOW CALCULATION AREA

B104.1 General. The fire-flow calculation area shall be the total floor area of all floor levels within the *exterior walls*, and under the horizontal projections of the roof of a building, except as modified in Section B104.3.

B104.2 Area separation. Portions of buildings which are separated by *fire walls* without openings, constructed in

accordance with the *International Building Code*, are allowed to be considered as separate fire-flow calculation areas.

B104.3 Type IA and Type IB construction. The fire-flow calculation area of buildings constructed of Type IA and Type IB construction shall be the area of the three largest successive floors.

Exception: Fire-flow calculation area for open parking garages shall be determined by the area of the largest floor.

SECTION B105 FIRE-FLOW REQUIREMENTS FOR BUILDINGS

B105.1 One- and two-family dwellings. The minimum fire-flow and flow duration requirements for one- and two-family *dwellings* having a fire-flow calculation area that does not exceed 3,600 square feet (344.5 m²) shall be 1,000 gallons per minute (3785.4 L/min) for 1 hour. Fire-flow and flow duration for *dwellings* having a fire-flow calculation area in excess of 3,600 square feet (344.5 m²) shall not be less than that specified in Table B105.1.

Exception: A reduction in required fire-flow of 50 percent, as *approved*, is allowed when the building is equipped with an *approved automatic sprinkler system*.

B105.2 Buildings other than one- and two-family dwellings. The minimum fire-flow and flow duration for buildings other than one- and two-family *dwellings* shall be as specified in Table B105.1.

Exception: A reduction in required fire-flow of up to 75 percent, as *approved*, is allowed when the building is provided with an *approved automatic sprinkler system* installed in accordance with Section 903.3.1.1 or 903.3.1.2. The resulting fire-flow shall not be less than 1,500 gallons per minute (5678 L/min) for the prescribed duration as specified in Table B105.1.

SECTION B106 REFERENCED STANDARDS

ICC	IBC—12	International Building Code	B104.2, Table B105.1
ICC	IWUIC—12	International Wildland-Urban Interface Code	B103.3
NFPA	1142—12	Standard on Water Supplies for Suburban and Rural Fire Fighting	B103.3

EXHIBIT D

AMENDED REGULATION 50

(IDAPA 18.G,50)

ADOPTION OF 1991 UNIFORM FIRE CODE

Effective Date: April 1, 1992

Pursuant to the authority provided by Idaho Code Section 41-253 the Idaho Fire Marshal hereby adopts the 1991 edition of the Uniform Fire Code as published by the Western Fire Chiefs Association and the International Conference of Building Officials with the following revisions, additions, deletions, and appendixes:

a. Sec 4.108 Uniform Fire Code, be, and the same is amended to read as follows:

Sec 4.108 a permit may be obtained from the bureau of fire prevention prior to engaging in the following activities, operations, practices or functions:

b. Sec 9.105 Uniform Fire Code, be, and the same is amended by the addition of, and to read as follows:

CHIEF is the Idaho State Fire Marshal.

c. That Article 78 "Fire Works" 1991 Uniform Fire Code be deleted with the exception of:

Sec 78.203 through Sec 78.309

d. Sec 79.116(e) Uniform Fire Code, be, and the same is amended by the addition of, and to read as follows:

Exception: Underground tanks that comply with the performance standards for new or upgraded underground tanks set forth in 40 CFR 280.20 or 40 CFR 280.21 E.P.A. final rule may remain out of service indefinitely so long as they remain in compliance with the operation, maintenance, and release detection requirements of the final rule.

e. Sec 80.303(a)6.D(i) Uniform Fire Code, be, and the same is amended by the addition of, and to read as follows:

Exception: Upon approval of the fire chief, emergency response kits recommended by the Chlorine Institute may be used for chlorine gas product leaks in lieu of the treatment system requirements of this section as long as there are two responders who are trained in their use locally available.

f. The following appendixes, thereto, of the 1991 Uniform Fire Code be adopted:

- i. Appendix II C "Marinas"
- ii. Appendix II F "Above ground Storage Tanks For Motor Vehicle Fuel-dispensing Stations"
- iii. Appendix IIIA "Fire Flow Requirements"
- iv. Appendix IIIB "Fire Hydrant Location and Distribution"
- v. Appendix IIIC "Testing Automatic Sprinkler and Standpipe Systems"
- vi. Appendix V A "Standards of Good Practice"
- vii. Appendix VI A "Haz Mat Classification"
- viii. Appendix VI D "Reference Tables"

The 1991 edition of the Uniform Fire Code, incorporated by reference, is adopted under Idaho Code Section 67-5203A. Copies of the 1991 Uniform Fire Code may be procured by writing the Western Fire Chiefs Association, Palm Brook Corporate Center, 3602 Inland Empire Boulevard, Ontario, CA 91764.

Copies of the 1991 Uniform Fire Code are available for public inspection at the office of the State Fire Marshal, the State Law Library, and the State Legislative Council.

Effective date April 1, 1992.