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.

Ordinance No.____
Source Water Protection Ordinance

AN ORDINANCE OF ***JURISDICTION*** SETTING FORTH A TITLE AND PURPOSES, DEFINING TERMS, AUTHORIZING ESTABLISHMENT OF SOURCE WATER OVERLAY DESIGNATIONS, DEFINING SUCH DESIGNATIONS, PROVIDING FOR THE ADOPTION OF A MAP DEPICTING SUCH DESIGNATED LOCATIONS, REQUIRING A PERMIT APPLICANT TO DEMONSTRATE COMPLIANCE, PROVIDING PENALTIES, PROVIDING ADMINISTRATIVE PROCEDURES RELATING TO PERMIT APPROVALS, REQUIRING A WRITTEN RECORD OF PERMIT ACTIVITY, AUTHORIZING APPEALS TO THE GOVERNING BOARD, ESTABLISHING THE STATUS OF EXISTING NONCONFORMING USES, PROVIDING FOR SEVERABILITY, PROVIDING FOR REPEAL OF CONFLICTING ORDINANCES, PROVIDING FOR AN EFFECTIVE DATE

Whereas, avoidance of the costs and disruption caused by pollution of the community drinking water supply is the most cost-effective means by which to protect the public interest, and

Whereas, the provision of clean, safe drinking water is one of the most vital assets available to any community, and

Whereas, the presence of hazardous materials and the conduct of certain land-related practices can make the source of community drinking water supply (source water) vulnerable to irreparable harm, and

Whereas, certain natural hydrogeologic conditions can increase the vulnerability of the community source water to contamination, and

Whereas, it is universally recognized that the costs of remediation of source water pollution in both economic and social terms are the most expensive means by which to meet the community's needs for clean water, and

Whereas, certain forms of source water pollution cannot be readily remediated irrespective of cost or need, and

Whereas, treatment of the drinking water supply after it has been collected from the source to meet drinking water quality standards can be costly, and

Whereas, suitable alternatives of drinking water may be costly or not available if the water supply becomes contaminated, and

Whereas, Article XII, section 2 of the Constitution of the State of Idaho authorizes Idaho’s counties and cities to “make and enforce, within its limits, all such local police, sanitary, and other regulations as are not in conflict with its charter or with the general laws,” and

Whereas, Idaho Code 67-65, "Local Land Use Planning," authorizes land-use regulations to implement comprehensive plan policies intended to protect natural resources and maintain the economic health of each community, and

Whereas, the planning and zoning process should be complementary to health and safety requirements that protect the health of individuals and sustain economic well-being within each local jurisdiction.

Now, therefore, be it ordained by the commissioners (Mayor and City Council) of ***Jurisdiction*** as follows:

SECTION I. TITLE AND PURPOSES

A. This ordinance may be referred to as the *Source Water Protection Ordinance.*

B. The purposes of this ordinance include

1. Protecting the health, safety, and general welfare of the public.

2. Fostering economic well-being derived from the availability of clean water.

3. Minimizing public costs related to remediation, treatment, or replacement of the community water supply.

4. Avoiding private costs and economic dislocation as a result of pollution of the public water supply.

5. Providing effective and efficient means for processing administrative permits to implement this ordinance.

SECTION II. DEFINITIONS

Certain defined words and phrases shall have the particular meaning set forth in this section when used within the text of this ordinance or as particularly defined in IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems" adopted by the Idaho Board of Environmental Quality and Idaho Legislature. All other words and phrases contained in this ordinance shall be construed in light of their typical meaning applied in the context of the purpose and intent set forth above and elsewhere herein.

A. **Agricultural Runoff Waste Water**. Water diverted for irrigation, but not applied to crops, or runoff of irrigation water from cropland as a result of irrigation.

B. **Aquifer Remediation-Related Wells**. Wells used to prevent, control, or remediate aquifer pollution, including, but not limited to, wells at Superfund sites.

C. **Community Public Water System**. A public water system (PWS) that serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

D. **Facility**. Any land use, business, or undertaking that is established, constructed, or modified to serve a particular purpose for which potential issues may affect possible degradation of source water.

E. **Hazardous Waste Disposal Facility**. A hazardous waste treatment, storage, or disposal facility that receives hazardous material as described in the Code of Federal Regulations 40 CFR 260.1.

F. **Hazardous Waste or Material**. Any waste or material that because of its quantity, concentration, physical, chemical, or infectious characteristics may

1. Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or,

2. Pose a substantial present or potential hazard to human health or to the environment when improperly treated, stored, transported, disposed of, or otherwise managed; or,

3. Any material or substance designated as a hazardous or toxic substance defined by 40 CFR 261.3, or any material or substance designated as a hazardous or toxic substance by the State of Idaho, acting through the Idaho Department of Environmental Quality (DEQ) or any successor agency.

G. **Idaho Department of Environmental Quality Public Water System Records.** Geographic information system data concerning the location and environmental characteristics of water sources for PWSs maintained on computer systems by DEQ or by those subject to DEQ oversight.

H. **Injection Well**. Any excavation or artificial opening into the ground used for or intended to be used for injection of waters into the ground inclusive of all facilities so defined within the rules of the Idaho Department of Water Resources.

I. **Nontransient Noncommunity Public Water System**. A PWS that does not meet the definition of a community PWS and that serves at least 25 of the same persons over 6 months per year. Examples of nontransient noncommunity systems include schools, offices, and businesses.

J. **Public Water System**. An integrated source and distribution system defined in Idaho code or regulation serving piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals at least 60 days out of the year, or as such definition may subsequently be modified by state law or regulation. A PWS can be either a *community PWS*, a *nontransient noncommunity PWS*, or a *transient noncommunity PWS*.

K. **Sanitary Landfill**. A solid waste disposal operation as defined by Idaho code or regulation.

L. **Source Water.** Any aquifer, surface water body, or watercourse from which water is taken either periodically or continuously by a PWS for drinking or food-processing purposes.

M. **Special Drainage Wells.** Injection wells used for disposing of water from sources other than direct precipitation. Examples of this well type include landslide control drainage wells, potable water tank overflow drainage wells, swimming pool drainage wells, and lake level control drainage wells.

N. **Storm Water Runoff**. Water discharged into the environment as a result of rain, melting snow, or other precipitation.

O. **Time of Travel Areas**. Time of travel (TOT) is land area plotted based on the time required for a particle of water to move from a specific point in the aquifer to a well or spring that serves as a source for a PWS. TOT areas are those calculated or approved by DEQ professionals and maintained in DEQ's public records.

P. **Transient Noncommunity Public Water Systems.** A PWS that does not regularly serve at least 25 of the same persons over 6 months per year (e.g., tavern, restaurant with less than 25 regular employees, motel, church, campground, state or federal park, a recreational vehicle park, or highway rest area).

Q. **Wellhead**. The upper terminus of a well, including adapters, ports, seals, valves, and other attachments.

SECTION III. AUTHORIZATION TO ESTABLISH SOURCE WATER PROTECTION OVERLAY DESIGNATIONS.

A. To protect source water from exposure to hazardous materials or practices that expose a well or spring that supplies water to a PWS, the Source Water Protection Overlay (SWPO) designation established pursuant to this ordinance shall implement certain measures of protection for water sources appropriate to the risk posed by particular conduct or activities. A SWPO designation shall be identified and configured to protect a well, spring, or surface water source from vulnerability to pollutants within a calculated 10-year Time of Travel (TOT) area determined by studies and mapping provided by DEQ. Original data concerning such studies can be obtained from DEQ.

B. Source Water Protection Overlay (SWPO) designations shall be depicted on a map of ***Jurisdiction*** that is designated as the official SWPO designation map. Each spring, well, or surface water intake that serves as a source for a PWS shall be located on the SWPO map. The official SWPO map of like date with the initial effective date of this ordinance is hereby adopted as a component of this ordinance and as a complement to the zoning ordinance of ***Jurisdiction***. Each subsequently identified PWS well, spring, or surface water intake shall hereby be automatically added to the SWPO map with the well, spring, or surface water intake location identified by its Global Positioning System coordinates, or by the same means that other wells, springs, or surface water intakes are located within DEQ records concerning PWS wells, springs, or surface water intakes as soon as DEQ studies concerning such PWS are complete. Even if a PWS well, spring, or surface water intake is not depicted on the SWPO map, it shall nonetheless be subject to the protection and limitations afforded by this ordinance. No amendment of this ordinance or map shall be necessary to apply the requirements of this ordinance to any PWS source. Corrective amendments to the SWPO map can be made by administrative staff of ***Jurisdiction*** upon a determination of factual propriety.

SECTION IV. WELL OR SPRINGWATER PROTECTION TIERS—AUTHORIZATION, ESTABLISHMENT, AND LIMITATIONS

Establishment of Wellhead or Spring-Related Vulnerability Tiers. Surrounding each PWS well or spring shall be 4 functional tiers that correlate with the vulnerability of a PWS well or spring to contamination. Each tier shall be subject to the functional use and activity limitations prescribed by the ***Jurisdiction*** zoning ordinance.

1. Wellsite/Springsite Tier

The land that immediately surrounds the wellhead or the point of capture of water flowing from a spring and having a radius of not less than 50 feet from the well or spring center, or as otherwise depicted in DEQ's PWS records, shall be known and designated as the Wellsite/Springsite Tier. Irrespective of the local land-use zone applied within the Wellsite/Springsite Tier, uses permitted therein shall be limited to necessary public water supply wellhead equipment, which may include pump houses, wellhead facility buildings, water storage tanks, disinfection equipment, disinfection chemical storage, and approved landscaping. No uses otherwise permitted by the underlying land-use zone shall be permitted in the Wellsite/Springsite Tier unless approved by DEQ. The area encompassed by the Wellsite/Springsite Tier shall include, at a minimum, the land circumscribed by the 50-foot radius referenced above.

2. Inner Vulnerability Tier

The PWS Inner Vulnerability Tier constitutes those lands located outside the Wellsite/Springsite Tier, extending outward to the inside boundary of the Intermediate Vulnerability Tier. The inside boundary of the Intermediate Vulnerability Tier coincides with the outer limit of the area determined to circumscribe the 0 to 3-year TOT area for community and nontransient noncommunity PWSs, or a 1,000-foot radius for transient noncommunity PWSs as determined by site-specific DEQ evaluation. In addition to the land-use standards made applicable by the

underlying land-use zone and general restrictions supplied by the ***Jurisdiction*** zoning ordinance, the land uses, physical installations, or conditions established by ***Section (X***) of the ***Jurisdiction*** zoning ordinance shall be restricted or prohibited within the Inner Vulnerability Tier as determined within the applicable DEQ records for each PWS.

3. **Intermediate Vulnerability Tier**

The PWS Intermediate Vulnerability Tier constitutes those lands located outside the Inner Vulnerability Tier, extending outward to the inside boundary of the Outer Vulnerability Tier. The inside boundary of the Outer Vulnerability Tier coincides with the outer limit of the area determined to circumscribe the 3 to 6-year TOT area as determined by site-specific DEQ evaluation. In addition to the land-use standards made applicable by the underlying land-use zone and general restrictions supplied by the ***Jurisdiction*** zoning ordinance, the land uses, physical installations, or conditions established by ***Section (X)*** of the ***Jurisdiction*** zoning ordinance shall be restricted or prohibited within the Intermediate Vulnerability Tier as determined within the applicable DEQ records for each PWS.

4. **Outer Vulnerability Tier**

The Outer Vulnerability Tier constitutes those lands located outside the Intermediate Vulnerability Tier extending outward to the outside boundary of the Outer Vulnerability Tier. The outside boundary of the Outer Vulnerability Tier coincides with the outer limit of the area determined to circumscribe the 6 to 10-year TOT area as determined by site-specific DEQ evaluation.

In addition to the land-use standards made applicable by the underlying land-use zone and general restrictions supplied by the ***Jurisdiction*** zoning ordinance, the land uses, physical installations, or conditions established by ***Section (X)*** of the ***Jurisdiction*** zoning ordinance shall be restricted or prohibited within the Outer Vulnerability Tier as determined within the applicable DEQ records for each PWS.

SECTION V. SURFACE WATER SOURCE PROTECTION

Establishment of Surface Water Intake Vulnerability Tiers. Surrounding each PWS surface water intake shall be 2 functional tiers that correlate with the vulnerability of a PWS surface water source to contamination. Each tier shall be subject to the functional, use, and activity limitations prescribed by the ***Jurisdiction*** zoning ordinance.

1. **Site of Surface Water Intake Tier**

The land that immediately surrounds the point of intake of water from a surface water body and having a radius of 1,000 feet from the center of the intake shall be known and designated as the Surface Water Intake Tier. Irrespective of the land-use zone applied to lands located within 1,000 feet of a PWS surface water intake, uses permitted at a vertical elevation at or above the elevation of the surface water intake within the Surface Water Intake Tier shall be limited to necessary public water supply intake equipment. No uses otherwise permitted by the underlying

land-use zone shall be permitted in the Surface Water Intake Tier unless site design practices have been employed to prevent discharge of contaminants into the PWS surface water intake by gravity or by means of pressure.

2. **Surface Water Watershed Tier**

Within the jurisdictional limits of ***Jurisdiction***, the lands within watersheds that influence the quality of waters that supply the surface water intake, but outside the Site of Surface Water Intake Tier, shall be known and designated as the Surface Water Watershed Tier. Irrespective of the land-use zone applied to lands located within the watershed that feeds any PWS surface water intake, land-use activities permitted by the ***Jurisdiction*** zoning ordinance subsequent to the enactment of this ordinance shall comply with best management practices (BMPs), which define methods to prevent surface water contamination. Such BMPs shall be adopted by resolution of the governing board.

SECTION VI. DEMONSTRATION OF COMPLIANCE REQUIRED

Any request for a building or zoning permit to ***Jurisdiction*** that falls within a designated Vulnerability Tier requires the applicant to demonstrate compliance with the provisions of this ordinance.

SECTION VII. ADMINISTRATIVE REQUIREMENTS

A. All permit requests shall be in writing. The obligation to demonstrate compliance with the requirements of this ordinance shall lie with the permit applicant. Whenever any permit request calls for proof of compliance, the administrator of this ordinance shall maintain written records of the compliance process from the point of initial application to its conclusion.

B. Whenever an administrative authorization is required to demonstrate compliance with standards established by this ordinance or whenever an administrative authorization decision is appealed to the governing board of ***Jurisdiction***, written notice of the hearing shall be given to the entity(ies) operating the public water supply(ies) within the regulatory distance called for pursuant to this ordinance. Any administrative determination shall comply with any procedural requirements established by the ***Jurisdiction*** zoning ordinance and this ordinance. Said determination shall be in writing and shall state the basis in fact and law for the approval or denial of a permit. An applicant is authorized to request reconsideration of any permit decision by the administrator, provided that an affected PWS shall be notified of any such request and shall be allowed to participate in any such proceedings. The permit applicant and affected PWS shall be promptly notified of the final decision.

C. Any permit decision made by the administrator may be appealed by the permit applicant or the PWS to the governing board of ***Jurisdiction***. Any such appeal must be filed within 28 days of the mailing date of the final decision by the administrator and shall state the legal basis therefor. The appellant, any opposing party, and the administrator shall be entitled to be heard by the governing board. Any decision on appeal made by the governing board of ***Jurisdiction*** shall be in writing and shall state the facts and legal standards relied upon.

SECTION VIII. PENALTY FOR VIOLATION

Failure to demonstrate compliance with applicable provisions of this ordinance, failure to demonstrate compliance with the ***Jurisdiction*** zoning ordinance, or express noncompliance with this ordinance shall constitute a violation of this ordinance subject to a misdemeanor criminal fine of up to $1,000 per day of violation, 6 months of incarceration per day of violation, or both such fine and incarceration for each day that a violation continues.

SECTION IX. STATUS OF LAWFUL EXISTING FACILITIES

Any lawful use existing at the time of the adoption of this ordinance and characterized as a prohibited or restricted use herein, shall be recognized as a lawful nonconforming facility. Any such nonconforming facility may not be expanded or modified except as otherwise provided in the zoning ordinance and in accordance with provisions of this ordinance. Mitigation or preventive measures may be required as a precondition for allowing modification or expansion of nonconforming facilities located within any designated tier.

SECTION X. SEVERABILITY

The ordinance is hereby declared to be severable. Should any portion of this ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect and shall be read to carry out the purpose(s) of the ordinance before the declaration of partial invalidity.

SECTION XI. REPEAL OF CONFLICTING PROVISIONS

All provisions of the current ***Jurisdiction*** code or ordinances of ***Jurisdiction*** that conflict with the provisions of this ordinance are hereby repealed to the extent of such conflict.

SECTION XII. EFFECTIVE DATE

This ordinance shall be effective upon its passage and publication as provided by law.

Enacted by the Board of Commissioners/City Council as an ordinance of the ***Jurisdiction*** on the ___ day of _____, 201__.

Approved by the Mayor on the ____ day of _____, 201__. (for cities)

Attest: _____
County or City Clerk

Proposed addition to *Jurisdiction* Zoning Ordinance:

Section (X). Protection of Public Water System Sources

Irrespective of the zoning designation applied to any land or land use governed by this ordinance, such zoning designation shall be subject to the limitations established by this section pursuant to the complementary ordinance of ***Jurisdiction***, which is intended to protect source water that supplies public water systems (PWS) within ***Jurisdiction***. By reference to the provisions and accompanying map that comprise Ordinance No.___ (or code section reference), the following requirements and limitations apply within any land-use zone:

A. As respects the Inner Vulnerability Tier designated by Ordinance No._____, the following uses are hereby prohibited:

i. Sanitary landfill.
ii. Confined Animal Feeding Operation (CAFO) as defined by code or rule.
iii. Hazardous Waste Storage or Disposal Facility as defined herein.
iv. Injection well except for closed systems, certified as such by a licensed professional engineer.
v. New sanitary sewer system components and sewer lines closer than 150 feet from a PWS wellhead.
vi. Any newly installed septic tanks or drainfields less than 200 feet away from a PWS wellhead.
vii. Junk or salvage yards as defined by this zoning ordinance.
viii. Activities providing disposal of waste oil, oil filters, tires, and all other petroleum products.
ix. All manufacturing or industrial businesses involving the collection, handling, manufacture, use, storage, transfer, or disposal of any hazardous solid or liquid material or waste that is not positively contained such that it cannot migrate into the earth, ground water, or surface water, thereafter presenting the potential impact of polluting ground water. Any such application denied a permit may seek an administrative authorization by demonstrating with clear and convincing evidence that the activity prohibited would pose no material risk of polluting the water source for a potentially affected PWS. Any decision on an administrative appeal may be appealed to the governing board of ***Jurisdiction***.
x. *Note to **Jurisdiction**: This is not an exhaustive list of all potential source water contaminants. You are encouraged to add additional prohibitions to this tier depending on local land-use issues and concerns. Examples of additional land uses, industries, etc. to be considered for prohibition or restriction are included in supporting documentation.*

B. As respects the Intermediate Vulnerability Tier designated by Ordinance No._____, the following uses are hereby prohibited:

i. Sanitary landfill.
ii. CAFO as defined by code or rule.

iii. Hazardous Waste Storage or Disposal Facility as defined herein.
iv. Deep injection well (18 feet in depth or more), except when designed and used for geothermal heat, heat pump return flow, and uncontaminated cooling water return flow certified as such by a licensed professional engineer or other qualified professional including a public agency building inspector.
v. Shallow injection well (less than 18 feet in depth), if the depth to ground water is less than 25 feet. All shallow injection wells shall use best management practice (BMP) options, such as those included in the most current version of DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*. The following injection wells are exempt: aquifer recharge flow, aquifer remediation-related well, and septic tank and drainfield systems permitted and constructed according to law.
vi. All manufacturing or industrial businesses involving the collection, handling, manufacture, use, storage, transfer, or disposal of any hazardous solid or liquid material or waste that is not positively contained such that it cannot migrate into the earth, ground water, or surface water, thereafter presenting the potential impact of polluting ground water. Any such application denied a permit may seek an administrative authorization by demonstrating with clear and convincing evidence that the activity prohibited would pose no material risk of polluting the water source for a potentially affected PWS. Any decision on an administrative appeal may be appealed to the governing board of ***Jurisdiction***.
vii. *Note to **Jurisdiction**: This is not an exhaustive list of all potential source water contaminants. You are encouraged to add additional prohibitions to this tier depending on local land-use issues and concerns. Examples of additional land uses, industries, etc. to be considered for prohibition or restriction are included in supporting documentation.*

C. As respects the Outer Vulnerability Tier designated by Ordinance No._____, the following uses are hereby prohibited:

i. Sanitary landfill.
ii. Hazardous Waste Storage or Disposal Facility as defined herein.
iii. Deep injection well (18 feet in depth or more), except when designed and used for geothermal heat, heat pump return flow, and uncontaminated cooling water return flow certified as such by a licensed professional engineer or other qualified professional including a public agency building inspector.
iv. Shallow injection well (less than 18 feet in depth), if the depth to ground water is less than 25 feet. All shallow injection wells shall use BMPs, such as those included in the most current version of DEQ's *Catalog of Stormwater Best Management Practices for Idaho Cities and Counties*. The following injection wells are exempt: aquifer recharge flow, aquifer remediation-related well, and septic tank and drainfield systems permitted and constructed according to law.
v. All manufacturing or industrial businesses involving the collection, handling, manufacture, use, storage, transfer, or disposal of any hazardous solid or liquid material or waste that is not positively contained such that it cannot migrate into the earth, ground water, or surface water, thereafter presenting the potential

impact of polluting ground water. Any such applicant denied a permit may seek an administrative authorization by demonstrating with clear and convincing evidence that the activity prohibited would pose no material risk of polluting the water source for a potentially affected PWS. Any decision on an administrative appeal may be appealed to the governing board of ***Jurisdiction***.

vi. *Note to **Jurisdiction**: This is not an exhaustive list of all potential source water contaminants. You are encouraged to add additional prohibitions to this tier depending on local land-use issues and concerns. Examples of additional land uses, industries, etc. to be considered for prohibition or restriction are included in supporting documentation.*

D. As respects the Surface Water Vulnerability Tiers designated by Ordinance No._____, the following uses are hereby prohibited or restricted:

i. Within the Surface Water Intake Tier, all uses that are not part of the public water supply intake apparatus and related equipment or facilities are prohibited unless such uses are downgradient from the water intake or do not pose any threat to the quality of water entering the surface water intake.

ii. Within the Surface Water Watershed Tier, all land uses established or materially modified from their current state that are upgradient from the surface water intake shall be modified in ways that comply with BMPs adopted by resolution of the governing board.