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## MEMORANDUM

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**TO:** Adam Latham, Office Specialist  
Division of Financial Management

**FROM:** Mat Weaver, Deputy Director, RRO  
Idaho Department of Water Resources

**SUBJECT:** Idaho Department of Water Resources and Idaho Water Resource Board, Rules to Allow to Expire

**DATE:** May 10, 2019

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Following are the rules the Idaho Water Resource Board (“Board”) intends to let expire as authorized in the *Resolution to Republish Select Idaho Water Resource Board Administrative Rules as Temporary and Proposed Rules* adopted by the Board on May 7, 2019.

<b>37.02.02 Fund Programs Rules</b>	
<b>Rule</b>	<b>Reason to Eliminate</b>
Whole Chapter	These rules are proposed for elimination for the following reasons: (1) they are largely a re-statement of Idaho Code and have been superseded by statute in many cases; (2) they require a Letter of Intent process within the loan application process that is ineffective and outdated; and (3) they are out of date because they were promulgated before the creation of Board’s Secondary Aquifer Planning Management & Implementation Fund.
<b>37.03.03 Rules and Minimum Standards for the Construction &amp; Use of Injection Wells</b>	
<b>Rule(s)</b>	<b>Reason to Eliminate the Rule</b>
010.07, 010.15, 010.29, 010.30, 010.40, 010.48.a, 010.48.b, 010.49.e, 010.54, 010.56, 010.69, 010.70, 010.75, 010.90, 010.91, 010.92, 010.98, 010.101, 025, 040.02.b, 040.02.d, 045, 048, 051, 054, 057, and 060.	These sub-rules govern Class 2 injection wells. Class 2 wells are the class of wells used to inject: process water from oil and gas pumping; fluids used for enhancing the recovery of oil or natural gas; and liquid hydrocarbons (at standard temperatures and pressures) for underground storage. In 2018, Idaho voluntarily transferred primacy over Class 2 injection wells to the EPA. Class 2 wells are currently administered by the EPA (see 40 CFR Part 147). Now that the EPA administers Class 2 injection wells in Idaho, these sub-rules are contrary to federal rule.

<b>37.03.04 Drilling for Geothermal Resources Rules</b>	
<b>Rule(s)</b>	<b>Reason to Eliminate</b>
025.03	<p>Rule subparts 025.03.a, 025.03.b, and 025.03.c restate fees that are statutorily defined in Idaho Code §§ 42-4003 and 4011. Furthermore, the fee identified in the rules for production wells, exploratory wells, and injections wells are outdated and no longer consistent with the statutorily defined fees.</p> <p>Rule subparts 025.03.d and 025.03.e will be removed from the rules and added to existing IDWR policy governing well drilling permit processes.</p>
<b>37.03.07 Stream Channel Alteration Rules</b>	
<b>Rule(s)</b>	<b>Reason to Eliminate</b>
055.03, 055.05, 055.06, 058, 060, 061, part of rule 056.07, and Appendix E, Appendix F, Appendix G, Appendix L, Appendix M, and part of Appendix K.	<p>These sub-rules cover minimum standard rules for the use of gabions, dikes and levees, and jetties in stream channel alteration activities. These minimum standards are outdated and rarely used in stream channel alteration work. The current Stream Channel Coordinator has rarely permitted alteration activities that include these minimum standards. If gabions, dikes, levees, or jetties are proposed in the future, they can still be permitted as non-minimum standard stream channel alterations.</p>

Following are the rules the Idaho Department of Water Resources (“IDWR”) intends to let expire.

<b>37.03.01 Adjudication Rules</b>	
<b>Rule(s)</b>	<b>Reason to Eliminate the Rule</b>
025.08, 035.02.b.i, 035.02.c.i, 035.03.c.i, 035.04.b.i, 035.06.a, 035.06.b, and 035.07.a.	<p>These rules are unnecessary because per rule subpart 025.08, they “are solely for the purpose of illustration and do not have the effect of rules as stated.” Eliminated rules will be incorporated into existing IDWR Water Right Adjudication policy.</p>

<b>37.03.02 Beneficial Use Examination Rules</b>	
<b>Rule(s)</b>	<b>Reason to Eliminate the Rule</b>
002, 010.19, 025.01, 030.08, 035.01.c, 035.01.g, 035.01.m, 035.01.p, 045.01, and 050.02.b.	<p>These rules have unnecessary words and phrases that add complexity to the rules without affecting the meaning of the rules.</p>
010.12	<p>This rule defines a word that is not used elsewhere in the rules.</p>
055.01	<p>This rule is no longer applicable because there are no more permits with proof submitted before the effective date of the rule and no examination fee has been paid.</p>
045.01	<p>This rule contains an outdated directive about page margins that is no longer needed or enforced.</p>
025.01	<p>This rule is outdated and mandates submittal of information in the form of an affidavit when other forms are acceptable to IDWR.</p>

30.03	This rule is outdated and states denied applications will be returned to the applicant, when in fact IDWR should retain the application as evidence for the record in case of an appeal of IDWR's action.
<b>37.03.08 Water Appropriation Rules</b>	
<b>Rule(s)</b>	<b>Reason to Eliminate the Rule</b>
Parts of rules 030.01.c, 030.03.a, 030.03.c, 035.02.a, 035.04.a, 040.02.a.i, 040.02.a.ii, and 045.02.b.iii.	These rules have unnecessary words and phrases that add complexity to the rules without affecting the meaning of the rules.
035.03.a	This rule repeats a directive in rule subpart 035.01.d and is unnecessary.
035.03.b.xv	This rule is outdated and addresses circumstances which do not occur.
040.01.e	This rule is outdated, IDWR does not require a surety bond from water right applicants.
040.02.d	This rule is no longer consistent with Idaho Statute. The opportunity to receive notification by mail was replaced in Idaho Code § 42-203A(3) with a requirement for notice on IDWR's internet homepage.
050.07	This rule restates unambiguous requirement from Idaho Code § 42-204 and is unnecessary.
Part of rule 035.01.a	This rule is inconsistent with Idaho statute and incorrectly states that certain changes to existing water rights require the filing of an application for permit. The requirement is not consistent with the requirement of Idaho Code § 42-222 requiring the filing of an application for transfer to change an existing right.
Part of rule 035.01.b	This rule is inconsistent with Idaho Code § 42-111(3).
Part of rule 035.03.b.ii	This rule is out of date and requires IDWR to use local common names for water sources, but in many instances IDWR does not know the local common name or in other instances multiple names are used locally.
Part of rule 050.02	This rule is out of date and refers to "Policy 32 I" in the State Water Plan and the current state water plan does not contain a "Policy 32 I."
<b>37.03.12 IDWR Water Distribution Rules - Water District 34</b>	
<b>Rule(s)</b>	<b>Reason to Eliminate the Rule</b>
010.05	This rule is unnecessary and redundant as IDWR has statewide rules for conjunctive administration.
010.14	This rule is unnecessary as all references to the SRBA are being deleted from these rules.
020	This rule is unnecessary as we now have general provisions that govern conjunctive administration and separate streams in Basin 34. Parts of this rule are inconsistent with SRBA Basin 34 general provisions. Furthermore, parts of this rule are restatements of law and are not necessary for administration.
Parts of rules 025.01	Because section 020 is being deleted, the reference to section 020 is being deleted here.
035.02, 035.03, 035.06, and 035.07	These rules are unnecessary as IDWR already has a separate measurement order in place. These rules are not necessary because they are either duplicative of Idaho Code or they are outdated with current IDWR water

	measurement standards. Rules 35.02 and 35.03 are not consistent with current IDWR measurement standards. Rule 35.06 is not necessary since the Director already has inherent authority to allow a measuring device exemption. Rule 35.07 is confusing and redundant with both Rule 35.01 and Idaho Code § 42-701.
Parts of rule 040.01 and 040.01.a,	Sections of these rules are outdated, restatements of law and inconsistent with current, more accurate administrative practices.
Parts of rules 040.03.a	The Hydromet station mentioned in this rule is no longer used.
Parts of rules 040.03.b	Section of this rule is inconsistent with current and more accurate administrative practices.
040.07	This rule is not consistent with SRBA General Provision 2; the rule is actually more restrictive than the General Provision.
045	This rule is outdated as the SRBA Court has decreed all rights in Basin 34 and we are no longer operating on list of water rights approved for interim administration. This rule also contains elements that are restatements of law and already addressed by the state wide rules for conjunctive administration.
050	This rule contains elements that are addressed by general provisions issued by the SRBA Court, are restatements of law, and are already addressed by the state wide rules for conjunctive administration.
055.01	This rule is a restatement of law.
055.02	This is unnecessary. This rule states that the maximum annual field head gate volume is 3.5 AFA. But the rule goes on to state that the volume limit does not apply to water rights for which the limit is not stated on the water right. If the limit is stated on the water right, it is unnecessary to have it mentioned in the rules. Water use is regulated by the total volume and rate of diversion listed on the water right decree or license.
055.03	This rule is unnecessary since water use under combined rights is regulated by the total volume and rate of diversion listed on the water right decree or license, along with combined use limit conditions placed on water rights.
055.04	This rule is unnecessary since water use, including the use of water for conveyance loss, is regulated by the rate of diversion listed on the water right decree or license along with any related water right conditions. Most of the language in this rule amounts to statements of fact or a reiteration of information already included in the water rights. The rule is not necessary for water right administration.
Parts of rules 055.06.	This rule contains references to other sections which are being deleted.