

## **IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES**

### **37.03.11 - RULES GOVERNING CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES**

**DOCKET NO. 37-0311-1101**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Chapter 52, Title 67, Idaho Code, the Idaho Administrative Procedure Act, and Section 42-603, Idaho Code, which provides that the Director of IDWR is authorized to adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as shall be necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. The Conjunctive Management Rules are also promulgated pursuant to Section 42-1805(8), Idaho Code, which provides the Director with authority to promulgate the rules implementing or effectuating the powers and duties of the Department.

**PUBLIC HEARING SCHEDULE:** Public hearing concerning this rulemaking will be held as follows:

**Friday, October 24, 2014, at 1:30 p.m.  
Idaho Department of Water Resources  
322 East Front Street, Boise, Idaho 83702  
6<sup>th</sup> Floor Conference Rooms B and C**

The hearing site will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below. Interested parties who wish to attend the public hearing by phone may contact the Department for the teleconference number and pass code.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11) address conjunctive administration of connected ground and surface water supplies. Part 50 of the rules (IDAPA 37.03.11.050) identifies the area on the Eastern Snake Plain Aquifer (ESPA) having a common ground water supply as identified in a 1992 professional paper of the United States Geological Survey (USGS).

Clear Springs Foods filed a petition on November 2, 2010, for the Department to promulgate revisions to Rule 50. The Department determined that Rule 50 did not reflect current technical information and commenced negotiated rulemaking proceedings in January of 2011. Multiple public meetings were held. However, due to ongoing work related to the ESPA model and issues related to delivery calls pending before the Department, the Director stayed the rulemaking proceedings in August of 2011. The Director restarted the negotiated rulemaking process in May of 2014. Four additional public meetings were held and comments received and considered.

Having considered all of the public oral and written comments received, the Department has decided to repeal Rule 50. The Director has concluded that the rule is no longer necessary and that the administrative hearings and deliberations associated with individual delivery calls is the proper venue to address which ground water rights should be subject to administration under a delivery call.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking:

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This rulemaking has no fiscal impact to dedicated funds for the Department or the state general fund.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 7, 2014 Idaho Administrative Bulletin, Vol. 14-5, page 77.

**INCORPORATION BY REFERENCE:** No materials are being incorporated by referenced into this rule.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact: Richard M. Rigby at (208) 287-4839. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Department's web site at the following web address: [www.idwr.idaho.gov](http://www.idwr.idaho.gov).

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before **October 31, 2014**.

DATED this 15<sup>th</sup> of September, 2014.

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