

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 – ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. 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.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

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 part 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.

After considering the public oral and written comments received, the Director concluded Rule 50 should be repealed. The Director concluded the rule is no longer necessary and that 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.

On October 24, 2014, a public hearing was held on the proposal to repeal Rule 50. The Department provided interested parties an extended comment period to submit comments on this rulemaking.

Additionally, the Department discovered an oversight after the publication of the proposed rule whereby a reference to Rule 50 was found in Section 020. of the Rules for Conjunctive Management of Surface and Ground Water Resources, specifically 37.03.11.020.07. As a matter of administration, the reference to Rule 50 should also

be deleted in conjunction with the repeal of Rule 50.

The rule has been adopted by the agency and is now pending. The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. As stated above, 37.03.11.020.03 has been added to this rulemaking to delete the reference to Rule 50. No other changes have been made to the pending rule as it was published. The complete text of the proposed rule was published in the October 1, 2014 issue of the Idaho Administrative Bulletin, Vol. 14-10, pages 447-448.

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:

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending 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.

DATED this 7th of November, 2014.

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