

Rule Making Meeting-20260630_100611-Meeting Recording

June 30, 2026, 4:06PM

33m 30s

● **Hersley, Jean** started transcription

I **IDWR 602 C/D Room** 0:04

Go ahead.

OK.

Hello everyone thanks for attending.

So the negotiated rule making meeting for the water appropriation rules.

My name is Phil Hummer.

I'm the section manager for the Department of Water Resources.

Umm.

Here is kind of the general outline to introduction talk about this rule making process and why we're here.

I'll go through the eight-year schedule.

Talk some more about negotiated rulemaking.

And then I'll talk about the water appropriation rules, specifically in what we're trying to accomplish in the major rules in the subsections that we're focused on.

It'll be a oral comment period and then I'll go over the the next steps in this process and have some time for some final questions.

Yeah. So first, again, my name is Phil Hummer. I'm the.

Water rights section manager and we have in the room Gene Hurley, who's a technical record specialist who's running the the meeting and taking attendance. And then what we need to do is go through and verify that we took notice of everyone that's attending today.

So Gene, if you could just make note of who we have and and make sure we have everybody.

Alright, in person I have Angela Hansen and Courtney Dawson.

Online, we have Abby Bitzenburg.

Brendan nunley.

Bryce Ferris.

Chris Bromley.

Go down here, Katie Wheeler.

Luke quano.

And who am I missing?

Oh, I and I don't know who called in the number.

OK.

Thank you, TJ.

And I just, Luke, who do you represent?

LK **Luke Kawano** 2:37

I'm with Idaho rural water as well.

I **IDWR 602 C/D Room** 2:40

OK.

Did I get everybody?

I believe so.

So yeah, the purpose of this meeting is for idwr to take comment on the water appropriation rules, and specifically we're talking about major Rule 40, which I will explain in a little bit more detail.

As you everyone knows, this meeting is held both in person and online.

And it's being recorded. And so in order to have a clear record of this process and basically.

To accomplish anything, I ask that everyone behave and try as much as possible, that we don't talk over each other.

It'll be a period like I said, for people to give their comments, if any, regarding the rule today.

And just note that Idwr representatives are here to talk about the process and answer questions. We're not here to debate the rule or.

The statutory provisions or anything else that's outside of this meeting.

And.

I'll talk about the schedule for the rest of the process towards the end of the meeting.

And the site.

Looks like we just had Steve Handyla join us.

Also OK.

Great welcome.

So I will to get started for some background.

In 2020, Governor Little signed the executive order for Zero based regulation.

Idaho agencies undertook rulemaking process and for the water appropriation rules that was completed in 2023, and the results of that were a rule that became effective. In 2024.

But now what?

We're under doing or undertaking. Now is a review under Idaho Code 675292 which. Is a sound zero based rule making process, but it does direct the agencies to conduct a periodic review of their rules every eight years.

And.

And also directs the agencies.

That are undertaking this.

Rule review, prepare and submit a report.

The schedule for this process is available on the office of Administrators, Administrative Rules Coordinators website and here. The link is right here, but this is a snapshot of the IDW.

Awr's rules and the schedule for our rulemaking under this provision and we've got 4 rules that we're going through in 2026 and those are the Rules of Procedure.

Mind tailing empowerment, structure rules.

Well drilling licensing rules and then I've highlighted here the water appropriation rules and then for reference, we've got 6 rules.

Scheduled for 2027.

And those are the comprehensive state water plan rules.

Rules for minimum standards for the construction and use of injection wells.

Drilling for geothermal resources, stream channel alteration rules and then well construction standard rules and then also the the rules for the soil and Water Conservation Commission.

So the process so far in March.

We conducted a regulatory analysis.

And found that the rule chapter is necessary because it contains specific details descriptions that are critical for implementing the law that requires new water right to be new, water rights to be established by application.

We also found that the content of the rules necessary to have an orderly, consistent and fair application filing and evaluation process.

And we determined that because of the extension extensive revisions that we made

through the zero based rulemaking process in 2023 that no substantial changes were necessary. But Idwr is committed to improving the application filing and evaluation process.

So we initiated negotiated rulemaking to explore some options that would reduce delay or potentially improve IDW Rs ability to receive and evaluate applications for new water rates.

We think that parts of the rule where revisions might be beneficial is the major sections that govern.

The request for additional application process and I'll describes those rules.

In some later slides.

But the negotiated rule making process provides a methodology for IDW R to engage with interested folks and non agency experts to improve the content of the rule so that it better suits the needs of the public and help IDW R accomplish its goals.

So here are the water appropriation rules.

Sideapa 37 dot O3 dot O 8 and these are the rules that govern.

New water, right application process and specifically.

What we're looking at is this major rule, section 40 for processing applications.

And those are the that's the section that governs and directs the process by which idwr requests additional information.

From applicants.

And I apologize for this slide.

It has a lot of text on it, but I did it intentionally because.

I didn't have any suggested revisions for the rule at this time, and I needed to use the entire section for the straw man.

And so it wasn't really a good way to indicate ahead of time what.

What sections of the rule we're focused on and and what we were trying to do in this process. So I wanted to include the slide to specifically.

We call out the subsections where.

Revisions might occur that could improve the process and and potentially reduce delays.

So I'm going to go through them individually fairly quickly, but if there are comments or questions I can display the full rule and they can be discussed at that time.

And so we're talking again about.

Intersection 40 in the water appropriation rules.

And rule forty O 4 to A says Idwr may request information from applicants when it's needed to evaluate the proposed use of water, and then in 40 O 4B it states, unless extended information request.

When the department requests additional information, the responses must be filed within 30 days.

And then C&D.

Contain the types of information that idwr might seek when evaluating new applications.

For natural natural flow and for applications proposing reallocations of trust water.

And then subsection D or subsection E&F contain the criteria that must be satisfied to trigger these information requests for when they're required.

So those are the the parts of the water appropriation rules where we are hoping to get comments and opinions where we think there could be some potential.

Room for revisions.

And so that's, that's the ultimate question.

But generally, you know idwr reviews applications for permit.

You know, according to our current workload in in consideration with other filings.

And the actual review process is often interactive with applicants and representatives answering questions and providing clarifying information.

This type of informal kind of back and forth.

4th information gathering process supports the public's ability to file applications with the standard form and establish a priority date.

And it it allows the department some discretion in the in the valuation those applications.

I think it's extremely vital that we have this process because there's just no way to capture all the information that is necessary on a standard form.

And for applicants and those people as consultants and attorneys involved to, to describe their proposal in significant detail, even with extensive reports.

In a way that makes sense to the department.

So I think.

We need to have sort of this informal process for gathering information about the application.

But also recognizing that that there can be some delay from this process and and having the informal process and allowing IDW Rs ability to gather information.

Does or can lead to delays between the filing of an application and a decision?

And so that's the question that we're seeking to answer is can can the appropriation rules and specifically.

Major Section 40 be changed in a way to improve the process which IDWR gathers information from applicants.

And so the goal I listed right here is to make this process more efficient and reduce delay. And as I mentioned.

I didn't at this time have any specific revisions to the rule to make a straw man, but I did have some ideas that we were considering, and I put those on this slide. And so one example would be to add a deadline for information requests such as 40.

Five days, so that would be something like within 45 days that.

The department receives a complete application.

We would submit a formal request asking for additional information.

This addition could reduce some delays by shortening the time frame IDWR has to review new filings, but it also might remove some discretion that IDWR has for their information gathering process and for.

Working on other filings.

The other idea that's listed here.

Is to add in the rule of time frame that any information request.

That the department makes would coincide with the public notice period, so.

As required by Idaho Code 42203, a new applications must be there.

Must be a public notice period and so if we were to require any information request from IDWR.

Or to coincide with that public notice period that could potentially reduce delay that it comes from waiting for a response from the applicant.

And then.

Some other ideas would be, you know, policies and procedures that are not described by a rule or you know, any suggestions from the public from stakeholders that are participating in this meeting.

And so that again is the purpose of this rule. Making is to get comments from from applicants or from consultants, attorneys, agencies, other agencies that are related.

To water rights and get their ideas.

But also if you have.

Opinions that you know the rule is good the way it is and that it it shouldn't be.

Change without negative opinion or impacts. I'll take those comments also.

But while we're yeah looking for is is a comment from the public about ways that

that this rule could be improved.

So that's a lot of background, but we'll go now into the comment period if anybody has any comments. But before that I will take before I take any official comment, I'm available to answer any questions about this process or.

I guess the rules in general, if there are any.

If you're logged in virtually, go ahead and just signal.

Or if you have a comment and person in the room or question.

Happy to try and answer them.

I know it's a lot and I went through it quickly.

Matthew.

See anything?

OK.

Well, I.

There are no questions.

Then I'll open up the meeting to anyone that might have an official comment, but as a reminder, there will be a a period that you can submit a written comments and I'll talk about that process.

After the oral comment period, if anybody has any official.

Oral comments. We'll take them at this time.

Anyone in the room?

 **+12*****26** 17:56

Hey, Phil, this is this is.

This is TJ.

 **IDWR 602 C/D Room** 18:00

Thank you, Jay.

 **+12*****26** 18:03

Did the I apologize?

I'm away from my computer. Did the the draft that you were just discussing has that already been circulated by e-mail or will that come out after this meeting?

 **IDWR 602 C/D Room** 18:18

Of the the draft of the rule.

 **+12*****26** 18:21
Yeah.

 **IDWR 602 C/D Room** 18:23
It it wasn't circulated.

It was posted on the website but it it is just the rule as it exists currently.

What's on the website is just the is just section or just section 40, because that's kind of the limited scope of this process.

But it there is no, there's no revisions proposed at this time. I'm just.

I just so the straw man is the rule as it exists currently.

 **+12*****26** 18:54

And then and OK, you were talking about just a few ideas that you had.

Is that like up on a PowerPoint or something like that, or is that? Is there something I can look at since I didn't and not at my computer right now?

 **IDWR 602 C/D Room** 19:03
Yeah, it.

Yeah, it the idea is that I briefly went through are in this presentation that I will post to the website at the at the end of this meeting.

But I can go through them again.

But there wasn't.

There wasn't language specific to any change proposed.

It was just kind of some ideas where we had thought that.

It might help or might improve some ways, but we're just trying to get some comment on those.

So I'll I'll post that to the website and then you can you can go back to the presentation and look at it.

 **+12*****26** 19:49

I think that sounds great.

I.

I guess while I'm talking I I don't any official comment and I haven't put a lot of thought into it frankly. But I do appreciate you kind of flagging the discussion about.

Rule 45 and how to make that more efficient and I guess one unofficial thought or something. I'm thinking about that. I'll flag for others to also think about is whether there's any difference in how.

That process works in a protested versus a non protested format application and the reason I ask that is I did have a case where the department requested the rule forty O 5 information and then we spent, you know, months and months fighting over like the adequacy of that.

Information and and really just got into kind of like the merit of the application, which is the stuff that would normally be decided.

After the hearing.

And it.

And it was a frustrating process.

And so, you know, I'm thinking about this process.

Look any different in a A protested versus non protested setting.

 **IDWR 602 C/D Room** 21:03

Yeah.

 **+12*****26** 21:03

Or, you know, do we clarify how this information you know is utilized?

You know, in those contexts.

 **IDWR 602 C/D Room** 21:09

Mm-hmm.

 **+12*****26** 21:10

So I appreciate your flagging the issue and I'll put some thought into it and look forward to further discussion about that with the group.

 **IDWR 602 C/D Room** 21:21

Yeah.

Yeah. Thanks.

That's a that's a good comment. I hadn't thought about that fully and that's something I can put some time into also for the next meeting.

Is there anybody else have a question or comment?

BF Bryce Farris 21:50

Bill, this is Bryce Faris.

I guess I haven't.

I haven't come up with any proposed revisions or anything, but I just want to understand the process. So right now the straw man is existing rule as is. If there are proposals from folks.

There will be another round of a meeting to discuss those and and engage. If there are proposals to make any changes.

I IDWR 602 C/D Room 22:22

Yeah, that's a good question.

There'll be.

There's a two week comment period and I can just kinda skip forward actually so.

So today's meeting the the comments that that the written comment deadline will be July 17th and then following that I'll take those comments and if appropriate generate a straw man that will be posted to the website and then circulated and then we'll have a second public meeting T.

Schedule for July 27th to discuss any comments and any proposed revisions.

And then following that, you know, make an update to the straw man and turn that into a proposed rule.

And then you can see the rest of the schedule.

Submit that for publication and then submit the pending rule to the for the 2027 legislative session.

So to answer your question, yeah, if if there are comments and then revision.

Be posted and circulate, and then we'll have a second meeting on the 27th of July to to discuss those.

BF Bryce Farris 23:34

And if there are none.

Either revisions or proposals then I I guess will you just submit those as is or how how's that work?

What's the process if you don't get any proposed revisions?

I IDWR 602 C/D Room 23:51

That's a great question. If if there are no comments, there are no suggested revisions to the rule in the department doesn't come up with our own then yeah, I would. I would follow through the rest of the process and submit the proposal. Rule would be at the rule as it is. And then just I'll have to support that some way.

BN Brenda Nunley 24:18

Hi, Phil, this is Brenda with the office of Administrative Rules Coordinator.

I IDWR 602 C/D Room 24:23

Hi.

BN Brenda Nunley 24:23

We do offer a termination of rulemaking, so if you decide that you don't need any changes made, you could always switch to the.

Just submitting that report that's due to the legislature and then we could terminate rulemaking if you actually don't need to make any changes to it.

I IDWR 602 C/D Room 24:44

OK.

That's good to know. Thank you.

BN Brenda Nunley 24:46

Yeah. If you do get to the proposed rule stage where you propose a rule and then you know, you get feedback and say, actually never mind, there is another different process to to vacate that proposed rule as well.

So there are steps along the way if you have a a change of heart.

I IDWR 602 C/D Room 25:05

OK.

And that's good to know.

Thank you.

I hadn't thought that all the way through because I figured there would be.

Comments and proposed revisions.

So that's good to. I'll work with Eric if it comes to that.

BN Brenda Nunley 25:22

Good.

I IDWR 602 C/D Room 25:35

OK. Are there any other questions or anyone like to give a comment at this time?

OK, hearing nothing else.

I'll move on.

So I, as I already talked about, I'll just go over again following the meeting.

I'll post material to the website and there'll be a written comment deadline on the rule topics covered today.

The deadline is July 17th.

And then you can submit these written comments to this e-mail address.

That's on the on the slides right now, but I'll show you where you can and talk where that is on the new website. If you're submitting written comment, please reference this rule chapter.

It's adapa 37 dot O3O8.

As I mentioned earlier, we're doing rulemaking for four other.

Rules this year, so make sure you reference this particular rule.

And then as I mentioned, there'll be a second public meeting on the 27th and another two week deadline for submitting written comments.

And then as of right now, the plan is to take those comments and make a proposed rule and submit that at the end of August for publication in October Bulletin.

That will put me on on schedule to submit a pending rule.

And.

Have that reviewed in the 2027 legislative session.

So if you haven't already noticed, or the I DWR website has been updated and so the location for the rulemaking is still in the legal drop down, but.

It's kind of got its own rule making link, so if you're looking for these materials.

On the main page, click on the legal drop down and then click rulemaking.

Phil Steve Hanuel has a question.

Oh, OK. Yes, Steve.

HS Hannula, Steve 27:57

Hi. Yeah, this is Steve Anula.

Real quick questions.

You mentioned that the comments would be on the the rule 370308 just on the Rule 40 or.

Those comments would would they just be on the subsection of Rule 40 or the entire?
370308.

I IDWR 602 C/D Room 28:27

Yeah, that's a good question.

So in in this negotiated rulemaking process, the entire rule it it can be reviewed.

As I mentioned earlier, we think our IDW R believes that the rule after the extensive revisions that occurred in 2023. We think the rule is in a good place.

And we, but we're exploring options.

Or, you know, suggestions for revising ways to to make to reduce our delay.

It could be incorporated into the rule, but if if you have comments about the entire rule it is it is being reviewed, the whole rule is being reviewed at this time.

HS Hannula, Steve 29:16

OK. But but generals sense of today's session, we're narrowing it down to the Rule 40.

I IDWR 602 C/D Room 29:26

Correct. I think that that that is the section where if there are revisions to be made that that would reduce, that would help us reduce delay, become more efficient.

That's the section where I think it it can be done. But like I said, the whole rule is being reviewed at this time.

HS Hannula, Steve 29:42

OK.

OK.

Thank you. Appreciate it.

I IDWR 602 C/D Room 29:49

No problem.

So on the website, on the legal drop down, there's a link. I circled it for rulemaking

and if you click on that, you'll come to this page.

And for this rulemaking process, you want to click on the link that I circled here for the water appropriation rules. Just as a note, make sure that it's the rule making years 20/26/2027.

If you Scroll down, or if you get to a different place, there might be some old, older rulemaking processes there.

And then he'll get to a page that looks like this.

And you can see what's posted there at the time I did the screenshot, but there all the documents will be there. This this meeting presentation.

The straw man for Rule 40 is posted there and then. Any comments?

We receive will also get posted there and then the future documents will be here also and then again I circled the e-mail address that can be used for submitting written comments.

And.

That's basically all I had. If there any remaining questions, I'll take those now.

Yes.

OK.

So I have a question, yes.

Angie, so just next steps question. So if written comments are due July 17th, if there are written comments, will the department post those so that we can see others comments?

Yeah, if you are to make a straw man revision, when would that be posted?

Before the next meeting.

Good question.

So what I tried to do is give two weeks for the comment period and then I gave myself essentially one week to review those comments and make a straw man. So the the following week would be the time that I'm spending looking at those comments and then I.

Get posted that Friday and circulated before the meeting.

That we are because.

It's we're required to do 2 meetings.

And we're kind of on a tight window, so there's.

Yeah, there's two weeks for the the comment review period and then the one week I'll spend looking at it and then posting those the revisions.

But if there are, if there are revisions and a straw man, those will be sent directly to

stakeholders.

Thank you.

Any other questions?

OK.

Well, I look forward to getting written comments and looking through those and and seeing if there's a way to improve this rule.

Thanks everyone for attending.

And it's the conclusion of the meeting.

 **Hannula, Steve** 33:23

Thank you, Phil.

● **Hersley, Jean** stopped transcription