

2nd Rule Making Meeting - 37.03.08-20260730_100512-Meeting Recording

July 30, 2026, 4:05PM

21m 50s

● **Hersley, Jean** started transcription

I **IDWR 602 C/D Room** 0:03

Everyone, thank you for attending this meeting. It's the negotiated rulemaking meeting for the water appropriation rules. My name is Phil Hummer. I'm the Water Rights Section Manager here at IDWR. The goal for today's meeting is to give kind of an outline of the process and then to take some a public comment about the water appropriation rules. But before that, I need to go through the tenant sheet and verify everyone that's attending. So if you could Uh...

Turn on your mic and say who you are and who you're representing real quick. We can make sure we have you recorded as attending.

TB **TJ Budge** 0:49

Morning, this is TJ Bodge representing Idaho Groundwater Appropriators.

I **IDWR 602 C/D Room** 0:50

City.

Thank you.

HS **Hannula, Steve** 0:56

No, this is...

AB **Abby Bitzenburg** 0:56

Yeah, Abby, Abby Vitzenberg representing the Surface Water Coalition.

HS **Hannula, Steve** 0:58

Go ahead, Abby.

This is Steve Hanula with HDR Engineering, not representing anybody, but just paying attention to the process.

DD **Darren Damon** 1:13

Darren Damon. I'm the new Bureau Chief of Regulatory and Legislative Affairs over at DFM.

I **IDWR 602 C/D Room** 1:19

Okay.

Thank you. We also have Jean Hersley and Craig Saxton for IDWR. So let's get started.

Why isn't this going? There we go. So here's the outline for today's meeting. We'll do a brief introduction, which we already did. We'll talk about the eight-year rule review schedule, the negotiated rulemaking process in general. We'll talk about the water appropriation rules, what they are, and

and what we're trying to accomplish in this meeting. And then we'll have time for some oral comments if there are any, and then we'll talk next steps.

So just a couple quick points of order. This meeting is being recorded for talking and so please be respectful and as much as we can try to talk over each other. IDWR is here today to

give a summary of the process and answer questions. We're not here to debate the rules or to get into anything like that. So if you're familiar with the rulemaking process, what we're used to do is, or what we were doing previously was a zero-based regulation under Executive Order 2020-01, which was signed by the governor in January of 2020. The water appropriation rules underwent A zero-based review that was completed in 2023, and the resulting rules effective July 1st, 2024.

And so now what we're doing is a eight-year review cycle under the Idaho Code 62 or 67, excuse me, 5292, which states that each rule chapter that's effective on July 1st will undergo

a staggered periodic review, which is known as the eight-year schedule. And you can find the eight-year, the schedule on the rules website, adminrules.idaho.gov.

Yeah.

And here is a snapshot of the schedule for the Department of Water Resources rule sets. And I've highlighted the water appropriation here in red, but you can see in here we're doing 4 rules this year. The rules of procedure, mine tailings, impoundment structure rules, water appropriation rules, and then well

driller licensing rules. We've got, looks like, 6 rules queued up for next year, including the rules of the Soil and Water Conservation Commission.

So that's the schedule.

And the process that we've undergone so far is a regulatory analysis, which was a review of the rules as they are currently. And we found that we don't, because the zero-based rulemaking process was so recent and did a huge overhaul of the rules. We found that in this process where there's no substantial change necessary, but we do think that there is an opportunity to improve.

our process under the rules, specifically the way that the department requests information from applicants.

And so we published a notice of negotiated rulemaking in the June bulletin. We had the first meeting, first public meeting on June 30th.

We provide a direct notice to stakeholders.

prior to that meeting. And then in that meeting had a similar presentation and a similar opportunity for oral comment and then provided the deadline for written comment to be submitted and we received no written comment.

So now we're holding this second meeting.

The purpose of this in the negotiated rulemaking process is for IDWR to seek consensus on the content of the rule by comment from stakeholders that are involved in the process.

So a little bit about the water appropriation rules.

They govern the filing requirements that applicants must satisfy when they're submitting an application to establish a new water right.

So those are both for natural flow and for reallocations of trust water.

And the rules also govern the process by which IDWR evaluates those applications.

And specifically, what we're looking for in this negotiated rulemaking process in the comment period is for a major section 40, which is talking about

Um...

how we process those applications. The section that we're interested in governs how IDWR interacts with applicants to get the information they need to evaluate the application. So this slide has a lot of text, but it highlights specific parts of Rule 40 in the water appropriation rules that talk about how IDWR requests information and what's required as applicants to respond to those requests.

So the ultimate question that we want to answer is, can Rule 40 be changed in a way

to improve the process that the IDWR requests information from applicants? And our goal in asking stakeholders to provide their input is to make the process more efficient and reduce delay. And at this time, we don't have a straw man proposed with changes, but we do have some ideas we're considering and we're hoping to get some feedback on.

And those ideas are outlined on the slide, so the...

The first one is to add a deadline for IDWR to send their information request to applicants within 45 days of receiving the application.

Then the second idea is to add a time frame for information requests so that the department would seek information from the applicant at the same time the application is being advertised during the public notice period.

Then just any other suggestion that that

public or any other stakeholder might have to improve the rule to meet those two goals.

Let's see here.

So like I said before, we don't have a straw man proposing any changes, but we are looking for input on rule 40 of that subsection of the water appropriation rules. And so if anybody has a comment at this time, either about

changes that they think should be made to improve the process or even just comments about the rule itself. Now is the time. We'll take those comments now.

And like I said earlier, we also will have a week or two following this meeting for people to submit.

A written comment, if that's their preference.

Um, so I'll open it up to...

I was attending the meeting, if there are any public comments at this time.

We have a couple, TJ.

TB **TJ Budge** 10:24

Yeah, hey Phil, I've got a couple of comments or thoughts. One of them relates to the department's approval of permit applications. I have a client actually right now who's really frustrated because a number of years ago,

They filed the change application to change their place of use. And when the department approved it, the department reduced the storage water volume of their, of the, they've got a storage water component of their water right. And the client now, who knows what really happened, because it's been,

more than a decade. But the client does not recall ever receiving like any notice that the department was going to change that element of the water right. And so they're frustrated. And it got me thinking, you know, when the department approves permits, my practice is to go compare that with the application to see if anything changed that we weren't anticipating. And I could understand why maybe folks that aren't represented or less sophisticated may not understand the need to do that or may not, you know, know how to do that effectively. And I thought it would be useful if the department ever approves an application under terms that are different than what was contained in the application, that the order approving it include an explanation of those changes. So that was one of my thoughts. And then my second thought, which pertains to Rule 40. I had a case where the department requested additional information at a Rule 40.

And then...

What resulted is like several months of motions and responses among the protestants and the parties about whether enough information was provided. And it kind of like turned into trying to prejudge the application or get it denied because there wasn't enough information provided or something like that. And And we got through all of that and the applicant, you know, was fine, but it was kind of a painful and expensive process. And it got me thinking, you know, what is the purpose of the additional information disclosure? And, you know, my assumption is it's to give the department additional information upon which to judge the statutory criteria.

I **IDWR 602 C/D Room** 12:41
Oh.

TB **TJ Budge** 12:56
for its final decision. And that's especially important in an unprotested context. But even if there's a protested application, then the department ought to be able to have that ability. But it shouldn't be used to prejudge compliance with the statutory criteria.
And I don't know how to, you know, incorporate that under Rule 40. I've not put enough thought into that. But it might be worth clarifying that this is like an

information gathering process. And it's not a, you know, prejudgment of whether the applicant complied with the statutory criteria. So I just had that second thought.

I **IDWR 602 C/D Room** 13:35

Yeah.

Yeah, that's a good comment. Thanks, TJ. Yeah, I think that was one thing we were trying to figure out is, is that timing of the request and how that relates to protested applications. So, well, look, I can consider that more. And if you...

Think it through some more and have, you know, more thought-out written comment, and please submit that in the next couple weeks.

Thank you. And then Steve.

TB **TJ Budge** 14:09

Yep, happy to do that. Thanks, Phil.

I **IDWR 602 C/D Room** 14:13

Yeah, Steve, I think you have a hand motion raised.

HS **Hannula, Steve** 14:17

Yeah, thank you. So it's a comment, not so much specific to the Rule 40, but it could be applied where I have a current Rule 40 response with the department. And my comment comes in.

relating to, from my side, tracking where it is in the process. And I compared to a recent change by DEQ, they have a new submittal process where I submit designs to them. And there's a web portal.

I **IDWR 602 C/D Room** 14:39

Mm.

HS **Hannula, Steve** 14:53

Application that they have where I when I submitted.

Yeah, you can track who's who has it, who it's been assigned to, and the status of it somewhat, and wondering if his department may want to consider some sort of a ability to, once a rule 40 or an application is assigned to somebody, that it that that's tracked and.

consultant like myself could find out who has it, where is it in the process. Right now, it's a bit of a black box, like this rule 40 that I've turned in. It's been sitting for a few months. I haven't heard, is it acceptable, unacceptable? Is it assigned to anybody or waiting for more information?

A little bit of a...

Once I submitted it, it seems to get lost a little bit in terms of, you know, am I submitting things correctly and is it in the right hands at the moment, having some ability to track that?

from my perspective would be kind of a handy aspect. It doesn't really affect the rule 40 necessarily, but more of a tool for interacting with the rules.

I **IDWR 602 C/D Room** 16:09

Yeah.

I'm taking some notes.

Yeah, I'm not sure how that fits into the rules, but I appreciate your comment. I do understand how sometimes the department could be a little more open in our process.

HS **Hannula, Steve** 16:36

It.

I don't want to throw on another task, because they're already overloaded and got plenty of work to do just to keep up with things. I don't want to throw another thing in the hat, but if there ever was an opportunity.

I **IDWR 602 C/D Room** 16:49

Okay.

I

HS **Hannula, Steve** 16:58

ability to track all these applications.

I **IDWR 602 C/D Room** 16:59

Google.

HS **Hannula, Steve** 17:04

Track their status.

Thanks.

I IDWR 602 C/D Room 17:06

Yeah.

I appreciate the comment.

Any other comments?

About the water appropriation rules.

Okay.

Hearing none, I'll move on.

Um...

It's like I forgot to update the slides. So the next steps in our process, we'll have a written comment period. So if anyone wants to submit a follow-up or something different in written form or

People that did not attend the meeting also have the opportunity to submit a written comment. We'll do a deadline of two weeks from today.

Not sure what the date is off the top of my head. August 13th. August 13th. Thank you, Jean. The comments can be submitted to the e-mail that's shown on the screen, screen, rulesinfo@idwr.idaho.gov. And please reference the rule chapter.

This is IDAPA 37.03.08. We are doing other rulemaking at the same time, so we need to specify which rule you're commenting on. And at this time, we have no additional public meetings planned.

And so then the next step would be to consider the comments and to submit a notice of proposed rule in August.

If we are considering changes, I believe if we're not considering any changes, there's a different process for that to conclude the negotiated rule making process where we're still trying to figure out exactly that process for that.

But if we do submit, if we do propose any rule changes, then the follow up to the proposed rule will be a pending rule and then a review in the legislative session for next year.

And then this is just a quick screenshot of the department's website. And you can see here in the dropdown for legal on the banner, there's a link for rulemaking circled in red.

and it will take you to this website. And you can find the resources for the negotiated rulemaking process for the water appropriation rules and our other rule sets that

we're going through on this page. Make sure you have the 2026-2027 year, unless you want to go back in time and look at what we had done previously. But if you click on this link for the water appropriation rules, it'll take you to a site that looks like this. It's been updated since I took the screenshot that has this presentation and the other rulemaking documents to date. And here's a link circled in red for, again, that e-mail address where you can submit written comment. Written comments that we do receive will be posted here as well. So I just wanted to demonstrate that location.

And that will conclude this meeting unless there are any other questions or comments that people have. I'm available to try and answer them.

I forget.

Okay, if there are no questions or comments, then I will conclude this meeting. Thank you, everyone, for attending and for providing your comment. Again, look on the website for any written comments that come in and any follow-up to that.

 **Hannula, Steve** 21:40
Thank you.

 **IDWR 602 C/D Room** 21:40
Thank you, everyone.

 **TJ Budge** 21:40
Thanks, Phil.

 **IDWR 602 C/D Room** 21:42
Seven.

 **Hersley, Jean** stopped transcription