

IDWR RESPONSE TO PUBLIC COMMENTS
DOCKET NO. 37-0308-2301
IDAPA 37.03.01 ADJUDICATION RULES
XX-XX-XXX

Note: Rule numbers referenced in the Comment section of this document are based on Preliminary Draft Rule (Strawman v 1.0), dated May 16th, 2024. Rule numbers referenced in the IDWR Response section of this document are based on Draft Rule (Strawman v 2.0), dated June 30th, 2023. Comments are listed roughly in the order received.

Dave Shaw

1. Comment: Regarding Rule 37.001.02 – Typo:

In Section 001.02 the rules reference Section 41-1409, Idaho Code, but that Section does not exist.

IDWR Response: IDWR corrected Section 41-1409 to 42-1409.

2. Comment: Regarding use of “power use” instead of “power production”

Section 035.03 and 03.a refer to power **use**, but the claims are for power **production**, not power use.

IDWR Response: 42-1414(1)(b)(ii) refers to power generation. IDWR corrected “power use” to “power generation”.

3. Comment: Regarding Rule 37.060.03.d – Clarification of “legal description”:

Section 060.03.d is not clear if one of the following methods of describing the point of diversion is satisfactory or if all must be used. Presumably “Legal description” refers to the location of the point of diversion, perhaps “Legal description of the location of the point of diversion.” would be clearer.

IDWR Response: Merged 37.060.03.d and 37.060.03.d.i into one paragraph and removed reference to the “legal description...”. Subsections provide guidance for specific situations and identify the required action if it is relevant.

4. Comment: Regarding Rule 37.060.03.e.i – horsepower clarification

Section 060.03.e.i horsepower “capacity” of pumps is confusing since pumping capacity is normally determined by a rate of discharge, perhaps “installed pumping horsepower rating” or simply “installed pumping horsepower” would be a better descriptor.

IDWR Response: Changed language from "...the horsepower capacity of pumps,..." to "...the horsepower rating of installed pumps,..."

5. Comment: Regarding Rule 37.060.03.e.iii – typo

Section 060.03.e.iii too many “pursuant to” and “enlargement in use” in first sentence, can use some word smithing.

IDWR Response: IDWR removed duplicate “enlargement in use pursuant to” in the first sentence.

6. Comment: Regarding 37.060.03.vf¹.ii:

Section 060.03.v.ii how does the term “diversion from storage” apply to an on-stream storage where the storage water is released and delivered through the natural channel?

IDWR Response: I believe this question is addressed in section 060.03.d.iv.

7. Comment: Regarding Rule 37.060.03.h.i – Use of “watering stock” and “stockwater”

Section 060.03.h.i be consistent with stock water and stock watering being 2 words, I know “stockwatering” got slipped into §42-113, I.C., but the term is not in the dictionary and Title 42 is otherwise consistent with the use of 2 words or with “livestock watering.”

IDWR Response: In the first sentence of rule 060.03.h.i, IDWR changed from “stockwater” to “stock watering” to be consistent with definition of “stock watering use” in section 010. In the second sentence of rule 060.03.h.i, IDWR left “stockwater” as one word as it is referencing the name of IDWR Form 113, which the name lists “stockwater” as one word.

8. Comment: Regarding Rule 37.060.03.j:

Sections 060.03.j not sure what describe ... to the “nearest forty (40) acre subdivision” means, aren’t your asking to “describe the location of the place of use by the forty (40) acre subdivision(s) or government lot(s) where the water use is occurring?”

¹ (Based on the context of the comment it appears that the intent was to reference 37.060.03.f.ii. There is no section 37.060.03.v.ii)

IDWR Response: Changed “subdivision” to “tract”. This reference is consistent with 060.03.j.i.

9. Comment: Regarding Rule 37.060.03.j.i:

Section 060.03.j.i the rule describes an acreage to the nearest one-tenth but the example shows to the hundredth (0.01).

IDWR Response: IDWR revised draft rule based on suggestion. IDWR Changed (0.01) to (0.1).

10. Comment: Regarding Rule 37.060.03.o:

Section 060.03.o mentions aerial photographs that may be useful for showing historical water use but current technology is primarily imagery. The most recent aerial images and from NAIP, “National Agricultural Imagery Program” are images by definition.

Photography is defined as exposing light to a sensitized surface, not the process used by modern digital cameras, either handheld or aircraft mounted. Perhaps add a definition that photographs include images obtained using digital means.

IDWR Response: IDWR revised the draft rule to include “digital image” based on suggestion.