

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF REAUTHORIZING IDAHO
WATER RESOURCE BOARD ADMINISTRATIVE
RULES

RESOLUTION TO ADOPT AND PUBLISH
THE IDAHO WATER RESOURCE BOARD'S
CURRENT PROPOSED RULES AS PENDING
RULES

1 WHEREAS, the Idaho Water Resource Board ("IWRB") is the executive branch entity with
2 statutory oversight and authority over 11 chapters of Administrative Rules in IDAPA 37,
3 including:

- 4 • IDAPA 37.01.01 Rules of Procedure of the Idaho Department of Water Resources
- 5 ("IDWR");
- 6 • IDAPA 37.02.01 Comprehensive State Water Plan Rules;
- 7 • IDAPA 37.02.03 Water Supply Bank Rules;
- 8 • IDAPA 37.02.04 Shoshone-Bannock Tribal Water Supply Bank Rules;
- 9 • IDAPA 37.03.03 Rules and Minimum Standards for the Construction and Use of
- 10 Injection Wells;
- 11 • IDAPA 37.03.04 Drilling for Geothermal Resources Rules;
- 12 • IDAPA 37.03.05 Mine Tailings Impoundment Structures Rules;
- 13 • IDAPA 37.03.06 Safety of Dams Rules;
- 14 • IDAPA 37.03.07 Stream Channel Alteration Rules;
- 15 • IDAPA 37.03.09 Well Construction Standards Rules;
- 16 • IDAPA 37.03.10 Well Driller Licensing Rules; and
- 17

18 WHEREAS, as stated in Idaho Code § 67-5292, "*every rule adopted and becoming*
19 *effective after June 30, 1990, shall automatically expire on July 1 of the following year unless the*
20 *rule is extended by statute*" and the extension of Idaho's administrative rules by statute
21 requires the Idaho Legislature to pass a bill every year reauthorizing Idaho's administrative rules
22 for another year prior to adjourning the legislative session; and
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24 WHEREAS, at the adjournment of the 2019 regular legislative session the Idaho
25 Legislature did not reauthorize the existing administrative rules, and without reauthorization,
26 Idaho's administrative rules would have expired on July 1, 2019; and
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28 WHEREAS, on April 23, 2019, the Governor directed the Division of Financial
29 Management and all state executive agencies, including the IWRB and IDWR, to exercise
30 necessary executive authority to minimize the impact on state agencies and the public by
31 republishing existing rules by IDAPA chapter as both temporary and proposed rules
32 concurrently in a special edition of the Idaho Administrative Bulletin in June 2019; and
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34 WHEREAS, Governor Brad Little signed Executive Order 2019-02, titled the Red
35 Tape Reduction Act ("RTRA"), requiring each executive department to undertake a "*critical and*
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36 *comprehensive review of the agency's administrative rules to identify costly, ineffective, or*
37 *outdated regulations*" for elimination by the end of fiscal year 2021; and

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39 WHEREAS, in fulfillment of the RTRA and the Governor's June 23 directive, IWRB and IDWR staff
40 completed a comprehensive review of IDAPA 37 Titles 01, 02, and 03, and identified certain
41 rules and rule subparts for elimination due to those certain rules and rule subparts being
42 ineffective, outdated, contrary to existing Idaho Code, contrary to federal law, or contrary to
43 current court rulings; and

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45 WHEREAS, the IWRB and IDWR published IDAPA 37 Titles 01, 02, and 03 as temporary
46 and proposed rules, excluding those rules identified for elimination as part of their RTRA
47 comprehensive review, in a special edition of the Idaho Administrative Bulletin, Vol. 19-6SE;
48 and

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50 WHEREAS, the temporary rules went into effect on July 1, 2019; and

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52 WHEREAS, the proposed rules must be adopted as pending rules prior to the 2020
53 legislative session; and

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55 WHEREAS, Idaho Code § 67-5222 requires state agencies prior to adopting, amending,
56 or repealing a rule to "*afford all interested persons reasonable opportunity to submit data,*
57 *views and arguments, orally or in writing*"; and

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59 WHEREAS, Idaho Code § 67-5222 requires state to receive "*written comments for no less*
60 *than twenty-one (21) days after the date of publication of the notice of proposed rulemaking,*"
61 which established a July 10, 2019, deadline to receive written comments; and

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63 WHEREAS, Idaho Code § 67-5222 requires state agencies to "*provide an opportunity for*
64 *oral presentation if requested by twenty-five (25) persons, a political subdivision, or an*
65 *agency...within fourteen (14) days of the date of publication of the notice of proposed*
66 *rulemaking in the bulletin, or within fourteen (14) days prior to the end of the comment*
67 *period, whichever is later,*" which established a July 3, 2019, deadline to receive requests for
68 an opportunity to present oral presentation; and

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70 WHEREAS, the IWRB and IDWR received two timely written comments; and

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72 WHEREAS, the IWRB and IDWR received many timely requests to "*provide an*
73 *opportunity for oral presentation*" and those requests came on petitions with 25 or more
74 signatures from Ada, Bonner, Fremont, Jefferson, Idaho, Kootenai, and Shoshone counties; and

76 WHEREAS, the IWRB and IDWR held three public hearings to allow the public to orally
77 present on its proposed rules and published notice of those public hearings on August 7, 2019,
78 in the Idaho Administrative Bulletin, Vol. 19-8; and
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80 WHEREAS, the IWRB and IDWR received two comments in association with the public
81 hearings; and
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83 WHEREAS, the Governor directed agencies to "consider fully all written and oral
84 submissions respecting [its] proposed rules, per § 67-5224" prior to adopting its pending rules;
85 and
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87 WHEREAS, the IWRB and IDWR considered fully all written comments and comments
88 submitted during the public hearings and concluded that they could not modify the proposed
89 rules as suggested because the changes were not "logical outgrowths" of the proposed rules as
90 required by Idaho Code § 67-5227 and because there was insufficient time to fulfill the public
91 hearing and involvement process required by the Governor and Idaho Code prior to the
92 Governor's October 16, 2019, publishing notice deadline.
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94 NOW, THEREFORE BE IT RESOLVED that the IWRB adopts the following fee rules as
95 pending rules, and that they be adopted as originally proposed in the June 16, 2019, Idaho
96 Administrative Bulletin, Vol. 19-6SE:
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- 98 • 37.01.01, *Rules of Procedure of the Idaho Department of Water Resources;*
- 99 • 37.02.03, *Water Supply Bank Rules;*
- 100 • 37.03.03, *Rules and Minimum Standards for the Construction & Use of Injection Wells;*
- 101 • 37.03.04, *Drilling for Geothermal Resources Rules;*
- 102 • 37.03.05, *Mines Tailings Impoundment Structures Rules;*
- 103 • 37.03.06, *Safety of Dams Rules;*
- 104 • 37.03.07, *Stream Channel Alteration Rules;*
- 105 • 37.03.09, *Well Construction Standards Rules; and*
- 106 • 37.03.10, *Well Driller Licensing Rules.*

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108 NOW, THEREFORE BE IT RESOLVED that the IWRB authorizes the notice and
109 republication of the above referenced fee rules as pending rules.
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111 NOW, THEREFORE BE IT RESOLVED that the IWRB adopts the following non-fee rules as
112 pending rules, and that they be adopted as originally proposed in the June 16, 2019, Idaho
113 Administrative Bulletin, 19-6SE:
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- 115 • 37.02.01, *Comprehensive State Water Plan Rules; and*
- 116 • 37.02.03, *Shoshone-Bannock Tribal Water Supply Bank Rules.*

118 NOW, THEREFORE BE IT RESOLVED that the IWRB authorizes the notice and publication
119 of the above referenced non-fee rules as pending rules.
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122 DATED this 4th day of October, 2019.



ROGER W. CHASE, Chairman
Idaho Water Resource Board

ATTEST



VINCE ALBERDI, Secretary