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

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

- IDAPA 37.01.01 Rules of Procedure of the Idaho Department of Water Resources ("IDWR");
- IDAPA 37.02.01 Comprehensive State Water Plan Rules;
- IDAPA 37.02.03 Water Supply Bank Rules;
- IDAPA 37.02.04 Shoshone-Bannock Tribal Water Supply Bank Rules;
- IDAPA 37.03.03 Rules and Minimum Standards for the Construction and Use of Injection Wells;
- IDAPA 37.03.04 Drilling for Geothermal Resources Rules;
- IDAPA 37.03.05 Mine Tailings Impoundment Structures Rules;
- IDAPA 37.03.06 Safety of Dams Rules;
- IDAPA 37.03.07 Stream Channel Alteration Rules;
- IDAPA 37.03.09 Well Construction Standards Rules;
- IDAPA 37.03.10 Well Driller Licensing Rules; and

WHEREAS, as stated in Idaho Code § 67-5292, "every rule adopted and becoming effective after June 30, 1990, shall automatically expire on July 1 of the following year unless the rule is extended by statute" and the extension of Idaho’s administrative rules by statute requires the Idaho Legislature to pass a bill every year reauthorizing Idaho’s administrative rules for another year prior to adjourning the legislative session; and

WHEREAS, at the adjournment of the 2019 regular legislative session the Idaho Legislature did not reauthorize the existing administrative rules, and without reauthorization, Idaho’s administrative rules would have expired on July 1, 2019; and

WHEREAS, on April 23, 2019, the Governor directed the Division of Financial Management and all state executive agencies, including the IWRB and IDWR, to exercise necessary executive authority to minimize the impact on state agencies and the public by republishing existing rules by IDAPA chapter as both temporary and proposed rules concurrently in a special edition of the Idaho Administrative Bulletin in June 2019; and

WHEREAS, Governor Brad Little signed Executive Order 2019-02, titled the Red Tape Reduction Act ("RTRA"), requiring each executive department to undertake a "critical and effective action"
comprehensive review of the agency's administrative rules to identify costly, ineffective, or outdated regulations” for elimination by the end of fiscal year 2021; and

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

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

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

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

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

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

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

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

WHEREAS, the IWRB and IDWR received many timely requests to “provide an opportunity for oral presentation” and those requests came on petitions with 25 or more signatures from Ada, Bonner, Fremont, Jefferson, Idaho, Kootenai, and Shoshone counties; and
WHEREAS, the IWRB and IDWR held three public hearings to allow the public to orally present on its proposed rules and published notice of those public hearings on August 7, 2019, in the Idaho Administrative Bulletin, Vol. 19-8; and

WHEREAS, the IWRB and IDWR received two comments in association with the public hearings; and

WHEREAS, the Governor directed agencies to “consider fully all written and oral submissions respecting [its] proposed rules, per § 67-5224” prior to adopting its pending rules; and

WHEREAS, the IWRB and IDWR considered fully all written comments and comments submitted during the public hearings and concluded that they could not modify the proposed rules as suggested because the changes were not “logical outgrowths” of the proposed rules as required by Idaho Code § 67-5227 and because there was insufficient time to fulfill the public hearing and involvement process required by the Governor and Idaho Code prior to the Governor’s October 16, 2019, publishing notice deadline.

NOW, THEREFORE BE IT RESOLVED that the IWRB adopts the following fee rules as pending rules, and that they be adopted as originally proposed in the June 16, 2019, Idaho Administrative Bulletin, Vol. 19-6SE:

• 37.01.01, Rules of Procedure of the Idaho Department of Water Resources;
• 37.02.03, Water Supply Bank Rules;
• 37.03.03, Rules and Minimum Standards for the Construction & Use of Injection Wells;
• 37.03.04, Drilling for Geothermal Resources Rules;
• 37.03.05, Mines Tailings Impoundment Structures Rules;
• 37.03.06, Safety of Dams Rules;
• 37.03.07, Stream Channel Alteration Rules;
• 37.03.09, Well Construction Standards Rules; and
• 37.03.10, Well Driller Licensing Rules.

NOW, THEREFORE BE IT RESOLVED that the IWRB authorizes the notice and republication of the above referenced fee rules as pending rules.

NOW, THEREFORE BE IT RESOLVED that the IWRB adopts the following non-fee rules as pending rules, and that they be adopted as originally proposed in the June 16, 2019, Idaho Administrative Bulletin, 19-6SE:

• 37.02.01, Comprehensive State Water Plan Rules; and
• 37.02.03, Shoshone-Bannock Tribal Water Supply Bank Rules.

Resolution No. 26-2019
NOW, THEREFORE BE IT RESOLVED that the IWRB authorizes the notice and publication of the above referenced non-fee rules as pending rules.

DATED this 4th day of October, 2019.

[Signature]
ROGER W. CHASE, Chairman
Idaho Water Resource Board

ATTEST
[Signature]
VINCE ALBERDI, Secretary