



AGENDA

IDAHO WATER RESOURCE BOARD

Brad Little
Governor

Roger W. Chase
Chairman
Pocatello
District 4

Jeff Raybould
Vice-Chairman
St. Anthony
At Large

Vince Alberdi
Secretary
Kimberly
At Large

Peter Van Der Meulen
Hailey
At Large

Albert Barker
Boise
District 2

John "Bert" Stevenson
Rupert
District 3

Dale Van Stone
Hope
District 1

Jo Ann Cole-Hansen
Lewiston
At Large

Special Board Meeting No. 7-20

Monday, August 17, 2020

1:00 p.m. (MDT)

Water Center

Conference Room C

322 E. Front St.

BOISE

(This meeting will be conducted using guidance in accordance with Governor Little's Stay Healthy Order issued May 30, 2020 in response to the public health emergency caused by the COVID-19 pandemic. Masks are required & in person attendance is limited. Call or email if you have questions: jennifer.strange@idwr.idaho.gov)

Board Members & the Public may participate via Go-To Meeting
Please join the meeting from your computer, tablet or smartphone.

<https://www.gotomeet.me/IWRB>

You can also dial in using your phone.

United States: **+1 (571) 317-3122**

Access Code: 673-626-773

1. Roll Call
2. Administrative Rules*
3. Non-Action Items for Discussion
4. Next Meeting & Adjourn

* Action Item: A vote regarding this item may be made this meeting. Identifying an item as an action item on the agenda does not require a vote to be taken on the item.

Americans with Disabilities

The meeting will be held telephonically/ online. If you require special accommodations to attend, participate in, or understand the meeting, please make advance arrangements by contacting Department staff by email jennifer.strange@idwr.idaho.gov or by phone at (208) 287-4800.

Memo

To: Idaho Water Resource Board
From: Mat Weaver^{MW}, Brian Patton, and Garrick Baxter
Date: August 14, 2020
Re: **IWRB Administrative Fee Rules**

Requested Action Item

Adopt and authorize the publication of the Idaho Water Resource Board's ("IWRB") current "Temporary Fee Rules" as "Proposed Fee Rules" in the upcoming September Idaho Administrative Bulletin. A resolution to this effect is attached.

Background

The IWRB is the executive branch entity with statutory oversight and authority over nine chapters of Administrative Fee Rules in IDAPA 37, including:

- IDAPA 37.01.01 Rules of Procedure of the IDWR
- IDAPA 27.02.03 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 Mines Tailing 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 and Rules
- IDAPA 37.03.10 Well Driller Licensing Rules

Several other chapters of fee rules related to water right processes and administration are under the control of the Director of the Idaho Department of Water Resources ("IDWR").

Guidance for 2020 Temporary Fee Rules to go Proposed in September Special Bulletin

As last discussed at the IWRB's May 28 Board Meeting under the topic of "Administrative Rules Update," all fee rule chapters of the Idaho Administrative Code are currently temporary. The Governor has directed all state agencies, including the IWRB and IDWR, to take those fee rules proposed, and later pending, and submit them for 2021 legislative review as an omnibus fee rulemaking.

The IWRB and IDWR are now beginning the process of re-publishing existing fee rules by IDAPA chapter, using the current temporary rules. The fee rules will be published as proposed rules in a special edition of the Idaho Administrative Bulletin in September 2020.

It is important to remember that all fee rules are currently in effect as temporary and will continue to have the full force and effect of law until sine die of the 2021 legislative session. The IWRB's and IDWR's temporary fee rules are currently published on the IWRB and IDWR webpage: <https://idwr.idaho.gov/legal-actions/rules.html>.

Preparation of Omnibus Proposed Fee rules

The Department of Financial Management ("DFM") will publish notices of proposed fee rulemaking for each agency in the September special bulletin. To assist DFM with its publications the IWRB and IDWR must adhere to or complete the following tasks:

1. Agencies must submit a completed Notice of Proposed Omnibus Rulemaking form to DFM no later than close of business (5 pm Mountain Time) Wednesday August 19, 2020.
2. One notice is needed per agency head only if the agency previously published an Omnibus Temporary Fee rules in the April 15, 200, Special Edition Bulletin reauthorizing fee chapters.
3. Completed notices shall be submitted to adminrules@dfm.idaho.gov.
4. If rulemaking authority is vested in a board or commission—not agency staff—the board or commission should follow its normal process for advancing the fee rulemaking to a proposed rule.
5. No Administrative Rules Request Form ("ARRF") is required.
6. Pursuant to Section 67-5223, Idaho Code, a *Cost Benefit Analysis* ("CBA") is required. If fees are not changing, agencies shall fill out the CBA template (see attached) showing fees, the statutory authority for the fees, and a very brief description of estimated costs to citizens and agency.
7. Agencies must carefully and thoroughly complete each Notice and closely follow the requirements of the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code.
8. Agencies must post a link to DFM's website (<https://adminrules.idaho.gov>) for each Notice published in the Bulletin onto, or be accessible from, the home page of the agency's website so that interested parties can view it online. Agencies should publish Notice links in September on or around the publication of the special Bulletin.

9. Agencies must accept written comments on the proposed rules for 21 days pursuant to Idaho Code, Section 67-5222. If comments are received or an oral presentation (i.e., public hearing) is requested within 14 days of publication, please contact DFM for additional information prior to scheduling a hearing.
10. Agencies can choose to be proactive and schedule a public hearing in the Notice of proposed fee rulemaking. Determination of whether a public hearing should be preemptively scheduled or not is up to each agency.
11. All rules re-authorized through this process are subject to legislative review during the 2021 Idaho Legislative, as is the case each year.
12. Each agency must keep all records of this rulemaking process for at least two years after the rule is final and effective pursuant to Idaho Code Section 67-5225.
13. Agencies will receive a proof of the rules from DFM before the comprehensive bulleting is published. The proof will be sent to the Agency's Rules Review Office ("RRO") for review and approval, likely in late August or early September.
14. DFM will have limited capacity to make edits at the proof state if they are minor and technical in nature.

Review of Executive Order No. 2020-01 – "Zero-Based Regulation"

Earlier this year the Governor issued Executive Order 2020-01 – Zero Based Regulations ("Executive Order"). This memo was reviewed and discussed by the IWRB at previous Board meetings. As a reminder, the Executive Order, among other things does the following:

1. It seeks to "institutionalize" the previous year's one-off rules reauthorization process as a result of the legislature's failure to reauthorize Idaho Administrative rules at the close of the 2019 Legislative Session.
2. It repealed the Governor's Red Tape Reduction Act, Executive Order 2019-01, which was issued in January 2019.
3. It imposed a one-year moratorium on rulemaking by all agencies through the end of this year December 31, 2020, to "create a more stable regulatory environment and provide businesses with certainty following the significant rulemaking volume undertaking in 2019."
4. It established an on-going rule review schedule whereby, "approximately twenty percent (20-percent) of rule chapters" are subject to review each year, under a "zero-based" rulemaking approach.

As a result of the Executive Order, no negotiated rulemaking will take place in 2020. Publication of temporary fee rules as proposed and eventually pending rules will be the only administrative rulemaking efforts of the IWRB this year. Beyond 2020, staff will coordinate with the Governor's Office and DFM to plan future rulemaking efforts consistent with the Executive Order.

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: _____

Agency Contact: _____ Phone: _____

Date: _____

IDAPA, Chapter and Title Number and Chapter Name:

Fee Rule Status: _____ Proposed _____ Temporary

Rulemaking Docket Number: _____

STATEMENT OF ECONOMIC IMPACT:

Guidance on how to prepare the C/B Analysis – if your fees are remaining the same as they were submitted for legislative review during the 2020 legislative session, simply put what the fee amount is, title for the fee, and that the fees are unchanged from the previous year's temporary fee rule.

If you have are changing from what was submitted for legislative review during the 2020 session, here are some examples of how to prepare the C/B Analysis:

Example 1 from Dentistry

STATEMENT OF ECONOMIC IMPACT: Negative fiscal impact to the Board of Dentistry's dedicated fund is estimated at \$4,000 for costs associated with rulemaking, legal fees, and changes to the Board's licensing database. There is no immediate expectation of revenue from dental therapist license and application fees.

Example 2 from Veterinary Medicine

STATEMENT OF ECONOMIC IMPACT: These fee changes are needed to preserve a cash positive position in order to maintain the operational budget of the Board. The impetus for these fee changes is the incremental increase of business (legal fees, employee benefits, rent, risk insurance, etc.) Pursuant to the authority provided in Section 54-2105, Idaho Code, the Board of Veterinary Medicine is proposing fee increases of \$65 to veterinary license renewals, \$75 veterinary original licenses, and \$10 veterinary technician certification renewals. Veterinary license verification fees of \$20 will be eliminated. The Board is also proposing to eliminate license fees and renewal fees for active or returning from active duty military personnel. The fee increases go along with proposed statutory changes that will allow for endorsement nationwide as well as less restrictive licensing requirements. The Board estimates generating about \$65,000 per year (\$58,500 veterinary license renewal, \$3,300 veterinary original license, \$2,500 veterinary technician certification renewal) and losing roughly \$500 from elimination of license verification fees.

Example 3 from the Brands Board

STATEMENT OF ECONOMIC IMPACT: This will not have a negative fiscal impact on the State General Fund, as we are dedicated funds. An estimated \$473,000 will be generated by the Idaho Livestock Industry.

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF PUBLISHING IDAHO
WATER RESOURCE BOARD PROPOSED FEE
RULES

RESOLUTION TO PUBLISH THE IDAHO
WATER RESOURCE BOARD'S CURRENT
TEMPORARY FEE RULES AS PROPOSED
FEE RULES

1 WHEREAS, the Idaho Water Resource Board (“IWRB”) is the executive branch entity with
2 either sole or shared statutory oversight and authority over nine chapters of Administrative Fee
3 Rules in IDAPA 37, including: IDAPA 37.01.01 Rules of Procedure of the IDWR; IDAPA 37.02.03
4 Water Supply Bank Rules; IDAPA 37.03.03 Rules and Minimum Standards for the Construction
5 and Use of Injection Wells; IDAPA 37.03.04 Drilling for Geothermal Resources Rules; IDAPA
6 37.03.05 Mine Tailings Impoundment Structures Rules; IDAPA 37.03.06 Safety of Dams Rules;
7 IDAPA 37.03.07 Stream Channel Alteration Rules; IDAPA 37.03.09 Well Construction Standards
8 Rules; and IDAPA 37.03.10 Well Driller Licensing Rules; and
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10 WHEREAS, as a precautionary measure to ensure the continuity of administrative rules
11 following the adjournment of the 2020 Legislative session, the IWRB adopted its Pending fee
12 rules as temporary rules on February 19, 2020, to conditionally become effective in the event the
13 2020 Idaho Legislature adjourned without reauthorizing its administrative fee rules; and
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15 WHEREAS, the Idaho 2020 Legislature adjourned *sine die* on March 20, 2020, without
16 passing a concurrent resolution approving any of the IWRB’s pending fee rules; and
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18 WHEREAS, because the 2020 Legislature adjourned without passing a concurrent
19 resolution approving any of the IWRB’s fee rules, the IWRB’s temporary fee rules adopted on
20 February 19, 2020, became effective on March 20, 2020, and remain in effect until *sine die* of the
21 2021 Legislative Session; and
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23 WHEREAS, the Division of Financial Management (“DFM”) published the IWRB’s
24 temporary fee rules as Docket No. 37-0000-2000F, on April 15, 2020, in the Idaho Administrative
25 Bulletin Vol. 20-4SE (pages 1961-2167); and
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27 WHEREAS, on July 30, 2020, DFM directed all state executive agencies to take their
28 temporary fee rules proposed, and later pending, and submit them for 2021 legislative review as
29 an omnibus fee rulemaking; and
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31 WHEREAS, DFM will begin the process of re-publishing existing fee rules by IDAPA
32 chapter, using current temporary rules to be published as proposed rules in a special edition of
33 the Idaho Administrative Bulletin in September 2020; and

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WHEREAS, on July 30, 2020, DFM further directed all boards and commissions with vested rulemaking authority to follow their normal processes to advance temporary fee rules to proposed rules; and

WHEREAS, the IWRB’s rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws; and

WHEREAS, the expiration of the IWRB’s rules without due consideration and processes would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules; and

WHEREAS, the Governor has also found that the fee(s) or charge(s) imposed or increased are justified and necessary to avoid immediate danger to the budget of the Idaho Department of Water Resources, to the state budget, to necessary state functions, and services, and to avoid immediate danger of a potential violation of Idaho’s constitutional requirement that it balance its budget;

NOW, THEREFORE BE IT RESOLVED that the IWRB adopts the following fee rules as proposed rules and that they be adopted as published on April 15, 2020, in the Idaho Administrative Bulletin Vol. 20-4SE:

- 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 and Use of Injection Wells)*;
- 37.03.04, *(Drilling for Geothermal Resources Rules)*;
- 37.03.05, *(Mine 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 temporary fee rules as proposed rules.

DATED this 17th day of August, 2020.

ROGER W. CHASE, Chairman
Idaho Water Resource Board

ATTEST _____
VINCE ALBERDI, Secretary