



Amended 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. 10-20

Tuesday, October 13, 2020

9:00 a.m. (MST)

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](tel:+15713173122)

Access Code: 673-626-773

1. Roll Call
2. Riverland Terrace Loan*
3. Administrative Rules*
4. Milepost 31 Recharge Site Modifications*
5. Non-Action Items for Discussion
6. Executive Session: Board will meet pursuant to Idaho Code §74-206(1) subsection (f) to communicate with legal counsel regarding legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. Topic: Water Right Application 01-10645. Executive Session is closed to the public.
7. 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: Kala Golden

Date: October 8, 2020

Subject: Riverland Terrace Nonprofit Water Corporation – Loan Modification Request

Action Item: Increase existing loan from \$190,000 to \$236,000.

1.0 INTRODUCTION

On April 3, 2020, the Idaho Water Resource Board (Board) approved a loan for the Riverland Terrace Nonprofit Water Corporation (Corporation) in the amount of \$190,000 for a project to abandon the Corporation's three existing ground water wells and connect to the existing Suez domestic water supply system (Project).

Due to a rise in construction costs across the Treasure Valley, the final bids for Project construction came back much higher than anticipated at the time of the Corporation's initial request for funding. As such, the Corporation requests a loan increase of \$46,000 to cover increased construction costs and provide for Project contingencies. A copy of the Corporation's request is attached, though it is only requesting an increase in the loan amount and is not requesting a change to the security held under contract to the IWRB in the current loan agreement.

2.0 BACKGROUND

The Corporation operates a domestic water supply system that serves 29 year-round residences within the Riverland Terrace Subdivision. Water quality testing in 2018 revealed that one of the two current operational wells, Well No.1, contains arsenic levels in excess of state water quality standards. The Corporation signed a Water Compliance Agreement with the Idaho Department of Environmental Quality (DEQ) in March, 2019. To comply with the agreement, the Corporation plans to hookup to the Suez water main line on Warm Springs Avenue. The two existing operational wells, and a third well not in operation, will be abandoned upon completion of the Suez water supply connection, along with installation of new water meters and fire hydrants. In addition, pumping equipment for the lots will be removed and sold, and the well lots will revert to residential lots and be sold. The Project is critical for the Corporation to comply with state water quality standards, and to provide a reliable domestic water supply system to meet the needs of the property owners in the Riverland Terrace Subdivision. The Corporation intends to use the Board loan as a short-term 'bridge loan' that will be paid off as soon as the lots are sold.

3.0 PROPOSED PIPELINE REPLACEMENT PROJECT

The Project includes the installation of approximately 100 lineal feet of water main line to connect to the existing Suez water main line in Warm Springs Avenue, new water service meters and fire hydrants, and abandonment of the three existing wells owned and operated by the Corporation. Additional work will need to be done to clear the lots in preparation for sale.

The design of the water system improvements by Suez has been completed, and construction contracts have been executed, with work scheduled to commence mid-October, 2020.

4.0 BENEFITS

The water supply line connection and water system improvements for the Riverland Terrace Subdivision will provide a reliable, long-term domestic water supply system for residents of the development that complies with the state water quality standards.

5.0 WATER RIGHTS

Riverland Terrace Nonprofit Water Corporation water rights are as follows:

WATER RIGHT	SOURCE	FLOW/ STORAGE	WATER USE	BASIS	PRIORITY DATE
63-8379	Ground Water	0.60 cfs	Domestic	Decreed	11/17/1976

6.0 SECURITY

The IWRB currently holds under contract the Corporation's water rights, facilities, equipment, well lots, and all materials associated with this project as security to the loan.

Appraisals for the three well lots, which will be converted to residential lots at the completion of the Project, were performed on March 8, 2020 and submitted to staff prior to loan approval. The total appraised residential value for the three well lots was estimated to be at or above \$510,000, which significantly exceeds the new requested loan amount of \$236,000. In addition, property values have increased in the area since the date of the appraisals. The value of the three lots, along with the Corporation's water right, continue to provide more than adequate security for the Corporation's loan modification request.

7.0 FINANCIAL ANALYSIS

The Corporation is requesting an increase of its existing loan to an amount not to exceed \$236,000.00 with no changes to the current approved interest rate of 3.5%, or the 20-year loan term.

The Corporation's members are currently assessed an annual water user rate of \$666.21 per residence, an amount sufficient to cover costs for the original loan of \$190,000. Given the

total appraised value of the three well lots and other existing loan securities, and the Corporation's intent to sell lots and pay off the loan immediately upon project completion, the Corporation does not intend to make any changes to its current member assessments.

8.0 CONCLUSION AND RECOMMENDATION

This loan will be used to connect to the Suez water system as stated in the DEQ Compliance Agreement to comply with state water quality standards. Staff recommends approval of the Corporation's request to increase the total approved loan amount to \$236,000.

Attachment(s): *Draft Resolutions, Corporation's Letter of Request, Current Bid SUEZ*

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF RIVERLAND TERRACE
NONPROFIT WATER CORPORATION FUNDING
REQUEST

RESOLUTION TO AUTHORIZE INCREASED
FUNDING FOR NEW WATER MAIN LINE
CONNECTION AND WELL ABANDONMENT

1 WHEREAS, the Riverland Terrace Nonprofit Water Corporation (Corporation) submitted a loan
2 application to the Idaho Water Resource Board (IWRB) in the amount of \$190,000.00 for constructing a
3 new main line water connection to the existing Suez water system, installation of water meters and fire
4 hydrants, and abandoning the three existing ground water wells currently supplying domestic water to
5 the residents of the Riverland Terrace Subdivision; and

6
7 WHEREAS, the Corporation operates and maintains a delivery system to convey potable water
8 to members in Boise, Ada County, for domestic use to the 29 residences in the Riverland Terrace
9 Subdivision; and

10
11 WHEREAS, based on quarterly water samples collected from Well No.1 in March, June,
12 September, and December, 2018, tests revealed exceedance of the arsenic maximum contaminant level
13 per the state's water quality standards; and

14
15 WHEREAS, in March, 2019, the Corporation executed a Compliance Agreement with the Idaho
16 Department of Environmental Quality (DEQ) that outlines the schedule and requirements that the
17 Corporation will need to meet to achieve compliance with the arsenic maximum contaminant level as
18 presented in the Idaho Rules for Public Drinking Water Systems; and

19
20 WHEREAS, the proposed new water main connection to the Suez water system will benefit the
21 Corporation and their members by providing a long-term, reliable domestic water supply system that
22 will comply with the state's water quality standards; and

23
24 WHEREAS, the total estimated cost for the Corporation's domestic water system project was
25 originally estimated to be \$200,000.00; and

26
27 WHEREAS, project construction costs have increased since the time of the original loan
28 approval, and are now estimated to be approximately \$210,000.

29
30 WHEREAS, the Corporation has requested from the IWRB, an increase to its existing loan in the
31 amount of \$46,000 to cover increased construction costs and provide for project contingencies.

32
33 WHEREAS, upon completion of the project, which includes the abandonment of the
34 Corporation's domestic water supply system, the Corporation will be dissolved; and

35 WHEREAS, the Corporation is a qualified applicant and the proposed project qualifies for a loan
36 from the IWRB'S Revolving Development Account; and

38 WHEREAS, the proposed project is in the public interest and is in compliance with the State
39 Water Plan.
40

41 NOW THEREFORE BE IT RESOLVED that the IWRB approves an increase in the existing loan of
42 \$190,000 to an amount not to exceed \$236,000 from the Revolving Development Account at 3.5%
43 interest with a 20-year repayment term and provides authority to the Chairman of the Idaho Water
44 Resource Board, or his designee, to modify existing contracts with the Corporation on behalf of the
45 IWRB. The 20-year term of the loan will remain effective as of April 2020, with obligation of funds and
46 payment requirements as outlined in Condition No.3 below.
47

48 NOW THEREFORE BE IT FURTHER RESOLVED that this resolution and the approval of the loan are
49 subject to the following conditions:
50

- 51 1) The Corporation shall comply with all applicable rules and regulations that apply to the
52 proposed project.
- 53 2) The Corporation will maintain all existing securities currently under contract of its existing
54 loan with the IWRB including, but not limited to, the Corporation's water rights and
55 facilities, portion of Lots 1 and 2, Block 1, Riverland Terrace Subdivision (Well Lot No.1), Lot
56 16, Block 1, Riverland Terrace Subdivision (Well Lot No.2), and Lot 64, Block 4, Riverheights
57 Subdivision No.5 (Well Lot No.3).
- 58 3) The Corporation shall maintain funds in its reserve account in an amount equal to one
59 annual payment.
- 60 4) The Corporation shall obtain approval from its members for the loan modification request.
- 61 5) The Corporation, upon project completion, shall sell well Lots 1, 2, and 3, and the associated
62 well pumping equipment. The Corporation shall use the revenue generated from the sale of
63 the well lots and equipment to fully repay the IWRB loan.

DATED this 13th day of October, 2020.

ROGER W. CHASE, Chairman
Idaho Water Resource Board

ATTEST _____
VINCE ALBERDI, Secretary

Riverland Terrace Nonprofit Water Corporation
2006 S. Eagle Road
Meridian, Idaho 83642

September 21, 2020

Cynthia Clark
Idaho Water Resource Board
Idaho Water Center
322 E. Front St. Suite 648
Boise Id 83702-7371

Dear Ms. Clark,

Riverland Terrace Nonprofit Water Corporation is under Loan Contract IWRB1018 for \$190,000. This contract was signed on April 30, 2020. Thank you to the Idaho Water Resource Board and staff for approving our loan request.

The estimated cost of \$155,000 from Suez was used as a basis for the loan and is dated October 22, 2019. Well plugging, lot clearing, and legal work to sell the lots are additional costs that the loan needs to cover. Increased construction costs over the last year has led us to request two adjustments to our loan contract. One adjustment is to increase the loan amount by \$46,000 to a total of \$236,000. The second adjustment is to release the mortgage on Well Lot #2.

The ongoing construction boom in the greater Boise area has significantly increased construction costs. The lowest cost proposal to Suez totaled approximately \$312,000. After discussing the bids with both Suez and the contractor, some items were removed or adjusted and the total bid amount is now approximately \$175,000. Please see the attached letter from Suez.

One of our members, Heather Richards, also obtained written estimates for well abandonment and these are attached. The total amount is almost \$36,000. Apparently well costs have also increased over the last year. Selling each well lot will cost approximately \$5,000 each for a total of \$15,000. Clearing the lots of infrastructure and the sheds will cost about \$10,000. Our total costs are now approximately \$236,000.

The appraisals dated March 8, 2020 valued each lot at \$170,000. This was much higher than we were expecting when we first applied for the loan. The total security of the three well lots currently held by the Water Resources Board for the loan is \$510,000 plus the value of our water rights. Riverland Terrace would like to have Well Lot #2 released from mortgage because this will be easiest lot to market and sell. The well and pressure tank are not currently being used, so we can have the well plugged and the lot prepared for sale much quicker than the other two lots. Sale of this lot will allow Riverland Terrace to have additional working capital needed to complete the project. Contracting costs are very unpredictable at the current time. Releasing Well Lot #2 from the mortgage will still leave \$340,000 and the water rights as security for the loan.

Thank you for considering our request. Please contact me at 208-954-9553 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric Wilson", with a stylized flourish at the end.

Eric Wilson
President, Riverland Terrace Nonprofit Water Corporation
6668 Glacier Drive
Boise, Idaho 83716



Nate Crofts
8248 W. Victory Road
Boise, ID 83709
Phone (208) 362-7329
Fax (208) 362-3858
Nate.Crofts@suez.com

September 18, 2020

Mr. Eric Wilson
Ms. Heather Richards
Riverland Terrace
Boise, ID 83716

Dear Mr. Eric Wilson & Ms. Heather Richards:

This letter is to advise you of SUEZ Water Idaho Inc. opinion of probable cost to perform work needed to the **Riverland Terrace**. Total costs are summarized below.

This does not include any landscaping repairs.

CONTRACTOR COSTS:

Installation of 490'- 12" PVC Water Main -----	\$	103,070.00
Installation of 29-1" Domestic Services -----	\$	Paid by Suez
Installation of 2-6" Suez Fire Hydrants-----	\$	15,000.00
Total Cost Paid to Contractor -----	\$	118,070.00

SUEZ LABOR AND OVERHEAD COST:

SUEZ Labor and Overheads -----	\$	26,125.61
Total Project Costs -----	\$	144,195.61

Associated Tax Cost @ 21.56% -----	\$	31,088.57
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Total Cost Payable to SUEZ -----	\$	175,284.18
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The cash contribution of **\$175,284.18** must be paid to SUEZ Water Idaho Inc. It is SUEZ' opinion of probable cost will be adjusted to reflect actual costs after the completion of the project. If actual costs are greater than the amount contributed, the difference shall be payable within thirty days of receipt of a statement from SUEZ. If costs are less than the amount contributed, the difference will be refunded to you as soon as final accounting has been completed. This estimate shall be **null** and **void** after **30 days** unless a written extension is obtained from SUEZ. SUEZ will commence construction on these facilities as quickly after receipt of the cash advance as scheduling and material availability permit. (Usually two to three weeks after receipt of cash advance.)


Please feel free to call if you have any questions.

Sincerely,

Nate Crofts
Construction Coordinator

Memo

To: Idaho Water Resource Board

From: Mat Weaver 

Brian Patton

Date: October 8, 2020

Re: **Special Board Meeting No. 10-20 – Administrative Fee Rules Reauthorization Update**

Requested Action Item

Adopt and authorize the publication of the Idaho Water Resource Board's ("IWRB" or "Board") current "Proposed Fee Rules" as "Pending Fee Rules" in the upcoming November 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" or "Department"), they include: IDAPA 37.03.01 Adjudication Rules; IDAPA 37.03.02 Beneficial Use Examination Rules; and 37.03.08 Water Appropriation Rules.

Review of September 2020 Proposed Fee Rules Publication

At the IWRB's August 17, 2020, Special Board Meeting No. 7-20, the IWRB passed a resolution adopting its temporary fee rules as proposed fee rules and authorized the notice and republication of the proposed fee rules. The proposed fee rules were published in Special Administrative Bulletin Vol. 20-9SE on September 16, 2020. Following publication, per [Idaho Code § 67-5222](#), the public had until September 30, 2020, to request a public hearing and until October 7, 2020, to submit written comments regarding the proposed rule publication. As of October 8, 2020, the Department has not received a single request for hearing or written comment regarding the September publication.

Guidance for 2020 Temporary Fee Rules to go Pending in November Special Bulletin

On September 16, 2020, a special edition of the Idaho Administrative Bulletin published the Board's existing temporary fee rule chapters as proposed. The proposed rules must now be adopted as pending fee rules by the agency head (i.e. Board, Commission, or Director with vested rulemaking authority,) prior to the 2021 legislative session. DFM intends to release a special edition of the Idaho Administrative Bulletin to publish pending fee rules on **November 18, 2020**.

DFM has outlined "two action steps" for the Board and the Department to take in preparing to publish their pending fee rules in November. First, agencies must submit a completed *Notice of Omnibus Rulemaking – Adoption of Pending Fee Rule* ("Notice") form. Second, the pending fee rules must be adopted by November 6, 2020. When rulemaking authority is vested in a board or commission—not agency staff—the board or commission must convene to properly authorize and adopt the notice.

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 Pending Fee rules

The Department of Financial Management ("DFM") will publish notices of pending fee rulemaking for each agency in the November 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 form to DFM no later than close of business (5 p.m. Mountain Time) Wednesday October 28, 2020.
2. Completed Notices shall be submitted to adminrules@dfm.idaho.gov.
3. 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.

4. No Administrative Rules Request Form (“ARRF”) is required.
5. 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.
6. 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.
7. All rules re-authorized through this process are subject to legislative review during the 2021 Idaho Legislative, as is the case each year.
8. 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.
9. Agencies will receive a proof of the rules from DFM before the comprehensive bulletin is published. The proof will be sent to the Agency’s Rules Review Office (“RRO”) for review and approval, likely in early November.
10. DFM will have limited capacity to make edits at the proof state if they are minor and technical in nature.

The RRO has completed the Notice document, which is attached to this memo for reference. Pending the Board’s adoption of its proposed fee rules as pending fee rules and direction from the Board authorizing the publication of the fee rules, the RRO will submit the Notice to DFM for publication in the November Administrative Bulletin.

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.

In September 2020, DFM required IDWR to submit a five-year rulemaking schedule detailing which rule chapters will go through the rulemaking process, as part of the Zero-Based Regulation effort, for the years 2021 – 2025. The RRO met with the Director of IDWR and Bureau Chiefs and established a five-year schedule, which was submitted to DFM on September 22, 2020. DFM notified IDWR on September 30, 2020, that its five-year schedule was approved. The rulemaking schedule is attached to this memo for reference. Consistent with the approved schedule, IDWR and IWRB staff will undertake rulemaking, consistent with Zero-Based Regulation guidelines, for the following chapters in 2021:

- IDAPA 37.01.01 Rules of Procedure
- IDAPA 37.03.06 Safety of Dams Rules
- IDAPA 37.02.01 Comprehensive State Water Plan Rules
- IDAPA 37.03.07 Stream Channel Alteration Rules 61.01 and 61.03

BEFORE THE IDAHO WATER RESOURCE BOARD

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

RESOLUTION TO PUBLISH THE IDAHO
WATER RESOURCE BOARD'S CURRENT
PROPOSED FEE RULES AS PENDING 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
9

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
14

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
17

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
22

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
26

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
30

31 WHEREAS, the IWRB passed resolution number 13-2020 on August 17, 2020, adopting its
32 temporary fee rules as proposed fee rules and authorizing the notice and republication of the

proposed fee rules; and

WHEREAS, all of the IWRB's and the Idaho Department of Water Resources' ("IDWR") temporary fee rules were published as proposed fee rules on September 16, 2020, in Special Administrative Bulletin Vol. 20-9SE; and

WHEREAS, no requests for public hearing or written comments as authorized in Idaho Code Section 67-5222 were received by IDWR in relation to the publication of Special Administrative Bulletin Vol. 20-9SE; and

WHEREAS, on September 28, 2020, DFM further directed all boards and commissions with vested rulemaking authority to follow their normal processes to take their proposed fee rules to pending fee 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 IDWR, 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 pending rules and that they be adopted as published on September 16, 2020, in the Idaho Administrative Bulletin Vol. 20-9SE:

- 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)*;

- 71 • 37.03.09, (*Well Construction Standards Rules*); and
72 • 37.03.10, (*Well Driller Licensing Rules*).
73

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

DATED this XX day of October, 2020.

ROGER W. CHASE, Chairman
Idaho Water Resource Board

ATTEST _____
VINCE ALBERDI, Secretary

IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES AND IDAHO WATER RESOURCE BOARD

DOCKET NO. 37-0000-2000F (FEE RULE)

NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 42-238(12), 42-603, 42-1414, 42-1701A(1), 42-1714, 42-1709, 42-1721, 42-1734(19), 42-1761, 42-1762, 42-1765, 42-1414, 42-1805(8), 42-3803, 42-3913, 42-3914, 42-3915, 42-4001, 42-4010, 67-2356, and 67-5206(5), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed fee rule and the text of the pending fee rule with an explanation of the reasons for the change.

This pending fee rule adopts and re-publishes the following existing and previously approved and codified chapter(s) under IDAPA 37, rules of the Idaho Department of Water Resources and Idaho Water Resource Board:

IDAPA 37

- 37.01.01, *Rules of Procedure of the Idaho Department of Water Resources*
- 37.02.03, *Water Supply Bank Rules*
- 37.03.01, *Adjudication Rules*
- 37.03.02, *Beneficial Use Examination 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*
- 37.03.08, *Water Appropriation Rules*
- 37.03.09, *Well Construction Standards and Rules*
- 37.03.10, *Well Driller Licensing Rules*

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

IDAPA 37.01.01 establishes the rules of procedure governing contested case proceedings before IDWR and the IWRB. The rule also addresses filing fees associated with such proceedings. This chapter was adopted under the legal authority of Sections 42-1701A(1), 42-1734(19), 42-1805(8), 67-2356 and 67-5206(5), Idaho Code.

IDAPA 37.02.03 governs IWRB's operation and management of the water supply bank authorized by statute. The purpose of the water supply bank is to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water users; and provide a source of funding for improving water user facilities and efficiencies. The rule also establishes lease and rental fees that are used to carry out the program which are credited to IWRB's revolving development and water management accounts. This chapter was adopted under the legal authority of Section 42-1762, Idaho Code.

IDAPA 37.03.01 implements the filing of notices of claims to water rights claimed under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications. Idaho is currently in the midst of the North Idaho Adjudication (NIA) and IDWR has recently commenced the Palouse Basin Adjudication and anticipates commencing the final phase of the NIA—the Clark Fork-Pend Oreille River Basin

adjudication—sometime after 2020. The rule is integral to the processing of these general adjudications. This chapter was adopted under the legal authority of Sections 42-1414, and 42-1805(8), Idaho Code.

IDAPA 37.03.02 governs the examination requirements necessary to consider and determine the extent of application of water to beneficial use accomplished under a water right permit. The rule also establishes that field examinations can be conducted by certified water right examiners appointed by the Director. Finally, the rule governs licensing examination fees which are used to offset costs incurred by IDWR in reviewing and determining the extent of beneficial use. This chapter was adopted under the legal authority of Section 42-1805(8), Idaho Code.

IDAPA 37.03.03 governs injection wells in Idaho. The rule requires all injection wells to be permitted and constructed in accordance with the Well Construction Standards Rules (IDAPA 37.03.09), which protect ground water resources from quality impairment. This rule is also necessary for the IWRB to maintain compliance with federal law, under which authority Idaho regulates the permitting, construction, and operation of certain injection wells within the state. Finally, the rule governs inventory and permit fees which are used to partially fund the operation of the Underground Injection Control program in Idaho. This chapter was adopted under the legal authority of Sections 42-3913, 42-3914, and 42-3915, Idaho Code.

IDAPA 37.03.04 governs the regulation of geothermal resource exploration and development and ensures that such activities occur in the public interest. The rule ensures Idaho's geothermal policy, "to maximize the benefits to the entire state which may be derived from the utilization of our geothermal resources, while minimizing the detriments and costs of all kinds which could result from their utilization" is met. The rule also requires fees for geothermal exploratory wells, production wells, injection wells, and amendments to permits, as set forth in Sections 42-4003 and 42-4011, Idaho Code.

IDAPA 37.03.05 establishes acceptable construction standards and governs IDWR's design and technical review of mine tailing and water impoundment structures. The rule also supports the collection of a fee to review plans, drawings, and specifications pertaining to any mine tailings impoundment structure as set forth in Section 42-1713, Idaho Code. This chapter was adopted under the legal authority of Section 42-1714, Idaho Code.

IDAPA 37.03.06 establishes acceptable standards for construction of dams and establishes guidelines for safety evaluation of new or existing dams. The rule applies to all new dams, existing dams to be enlarged, altered or repaired, and maintenance of certain existing dams, as specifically provided in the rule. This chapter also establishes the collection of a fee to review plans, drawings, and specifications pertaining to the construction, enlargement, alteration, or repair of small high-risk, intermediate, or large dams as set forth in Section 42-1713, Idaho Code. This chapter was adopted pursuant to Section 42-1714, Idaho Code.

IDAPA 37.03.07 governs the permitting of stream channel alterations that are of a common type, which do not propose alterations which will be a hazard to the stream channel and its environment. This chapter also establishes the collection of stream channel alteration statutory filing fees as authorized in Section 42-3803, Idaho Code. This chapter was adopted pursuant to Section 42-3803, Idaho Code.

IDAPA 37.03.08 governs appropriations from all sources of unappropriated public water in the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes and groundwater. The rules are also applicable to the reallocation of hydropower water rights (i.e. Swan Falls Trust Water) held in trust by the state of Idaho. The rule also implements the application, re-advertisement, and mailing fees set forth in Sections 42-221F and 42-203(A)3, Idaho Code.

IDAPA 37.03.09 governs IDWR's statutory responsibility for the statewide administration of the rules governing well construction. These rules establish minimum standards for the construction of all new wells and the modification and decommissioning (abandonment) of existing wells. The intent of the rule is to protect ground water resources of the state against waste and contamination. The rule also implements the drilling permit fees set forth in Section 42-235, Idaho Code. This chapter was adopted pursuant to Section 42-235, Idaho Code.

IDAPA 37.03.10 establishes the requirements and procedures for obtaining and renewing authorization to drill wells in the state of Idaho. The rules also establish the requirements and procedures for obtaining authorization to operate drilling equipment under the supervision of a licensed driller. The licensing rules are applicable to all individuals and companies drilling or contracting to drill wells. The rules also implement the application licensing fees set forth in Section 42-238, Idaho Code.

In summary, the fee categories described in the attached rules include: (1) administrative appeals filing fees; (2) water supply bank lease and rental fees; (3) adjudication application fees; (4) water right licensing examination fees; (5) injection well inventory and permit fees; (6) geothermal well permit fees; (7) design review fees for mine tailings impoundment structure and select dams; (8) stream channel alteration statutory filing fees; (9) water right application,

re-advertisement, and mailing fees; (10) well drilling permit fees; and (11) application licensing fees for well drillers.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Mathew Weaver, Deputy Director at 208-287-4800

Dated this 18th day of November, 2020.

Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800

Memorandum

To: Idaho Water Resource Board
From: Paul Thomas & Wesley Hipke
Date: October 6, 2020
Re: Mile Post 31 Recharge Site Embankment Project



REQUIRED ACTION: Consider Funding Resolution for the construction of an embankment to protect a BLM road at the Mile Post 31 Recharge Site.

I. Project Summary

The potential Mile Post 31 (MP31) Embankment project was designed by Quadrant Engineering in coordination with Bureau of Land Management (BLM) Shoshone Field Office. This project is in response to BLM's request (May 4, 2020), to reduce the overall pool inundation footprint to stop the seasonal flooding of an access road on the north side of the basin (Figure 1). As per the MP31 Recharge Site right-of-way agreement with the BLM (IBI-32771), the IWRB is responsible for the "free and unrestricted public access to and upon the right-of-way". The flooding of the BLM road became an issue after construction of the Oberyemeyer Weir and new headgate structure, the higher flows resulted in using the full extent of the right-of-way and thus flooding the roadway in question. Along with the seasonal inundation of the roadway, a length of cattle fence has also been impacted, due to saturated ground and has failed, letting cattle out of their designated rangeland.

II. Design Plans

Quadrant Engineering has produced 60% design plans (Figure 2) and have concluded that the embankment will be approximately 14 foot in height to prevent 12 acres being inundated when flows are greater than 350 cfs at the headgate. This embankment was designed in coordination with the Idaho Dept. of Water Resources Dam Safety Division as it is over the 10 foot threshold for being a non-permitted retention structure. This structure will allow AFRD2 to operate MP31 at normal max capacity (650 cfs) instead of being limited to 350 cfs to prevent road inundation.

In the event that waters being diverted into MP31 exceed 650 cfs (during canal max flow), there will be a spill way to prevent the embankment from fully being overtopped and potentially damaged. Overall this will do little to the projects maximum infiltration capacity and will assist with the ongoing good relationship between the Board and the BLM.

III. Cost Estimate

The project is estimated to cost \$320,000 and will include requests by the BLM, such as, reseeding of impacted roadways and road bypass that has been created due to the inundation and realigning and repairing the impacted cattle fence. It will also include road repair, highlighted in Figure 1, back to its normal state before proposed construction and inundation.

IWRB/IDWR Proposed Five-Year Rulemaking Schedule, September 22, 2020**Year 1**

Rule No.	Title	Date	Page Count	Word Count	
37.01.01	Rules of Procedure of the IDWR	2000	35	6,440	
37.03.06	Safety of Dams Rules	1993	17	7,708	
37.02.01	Comprehensive State Water Plan Rules	1993	8	3,123	
37.03.07	Stream Channel Alteration Rules 61.01, 61.03	1993	1	83	
		Total	61	17,354	17%

Year 2

Rule No.	Title	Date	Page Count	Word Count	
37.02.03	Water Supply Bank Rules	1997	9	3,450	
37.03.10	Well Driller Licensing Rules	2000	15	6,416	
37.03.04	Drilling for Geothermal Resources Rules	1993	13	6,197	
37.03.05	Mine Tailings Impoundment Structures Rules	1993	12	4,850	
		Total	49	20,913	20%

Year 3

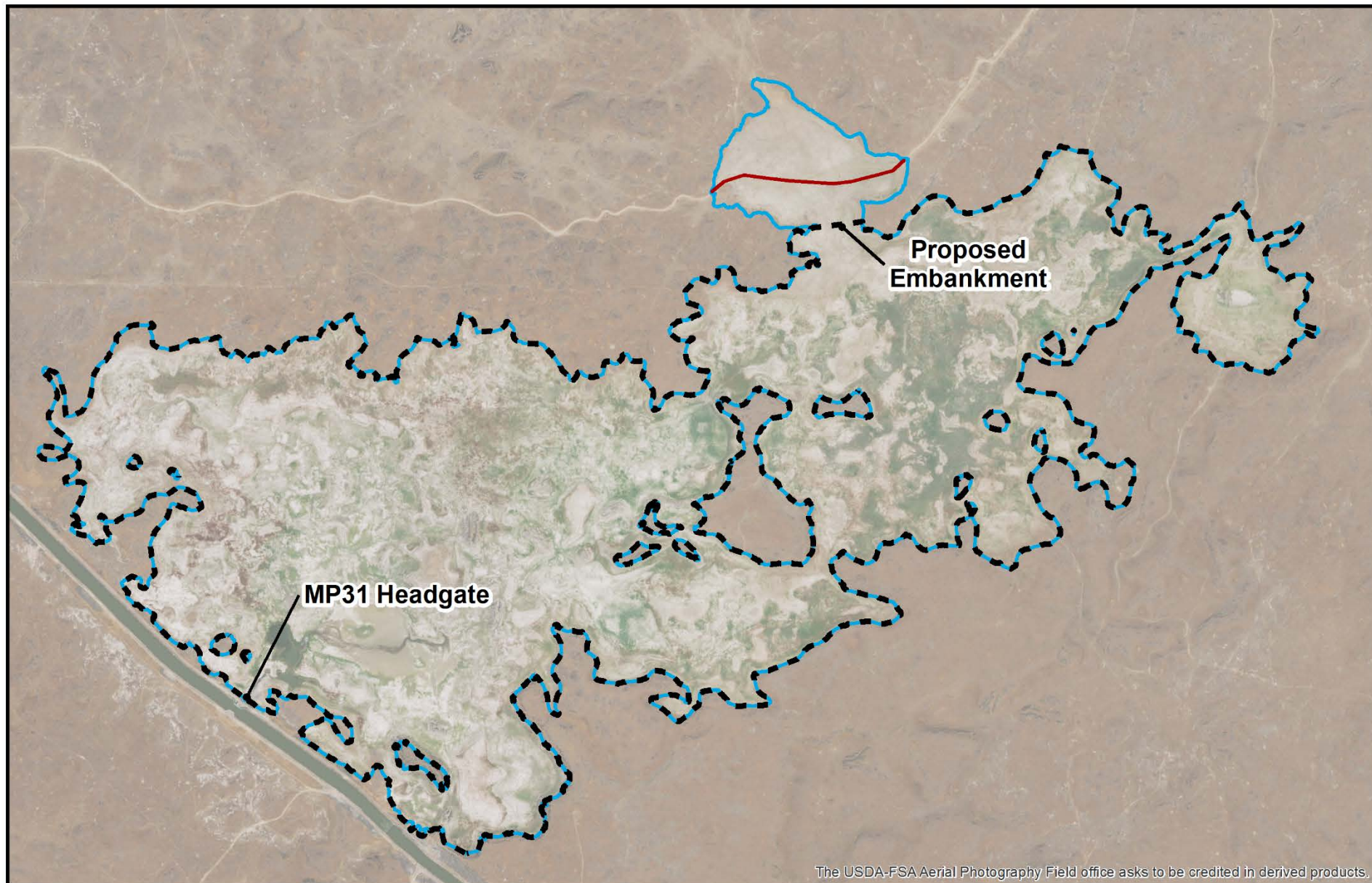
Rule No.	Title	Date	Page Count	Word Count	
37.03.08	Water Appropriation Rules	1993	24	10,718	
37.03.03	Rules and Minimum Standards for the Construction and Use of Injection Wells	2013	26	10,488	
		Total	50	21,206	21%

Year 4

Rule No.	Title	Date	Page Count	Word Count	
37.03.01	Adjudication Rules	2009	11	4,968	
37.03.02	Beneficial Use Examination Rules	2012	13	5,107	
37.03.09	Well Construction Standards and Rules	2009	40	13,225	
		Total	64	23,300	23%

Year 5

Rule No.	Title	Date	Page Count	Word Count	
37.03.11	Conjunctive Management Rules	1994	13	6,405	
37.03.12	IDWR Water Distribution Rules - Water District 34	1994	9	3,692	
37.03.07	Stream Channel Alteration Rules, entire chapter	1993	27	7,681	
37.02.04	Shoshone Bannock Tribal Water Supply Bank Rules	1994	7	1,772	
		Total	56	19,550	19%
Grand Total:			280	102,323	100%



The USDA-FSA Aerial Photography Field office asks to be credited in derived products.



0 600 1,200 Feet

Legend

- Current Inundation Area
- - - Inundation Area with Embankment
- Impacted Road

Figure 1.
Proposed Embankment Location
and
Inundation Map





BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE MP31 RECHARGE SITE
BLM ROAD EMBANKMENT CONSTRUCTION

RESOLUTION TO APPROVE FUNDS FROM THE
SECONDARY AQUIFER PLANNING,
MANAGEMENT, AND IMPLEMENTATION
FUND AND PROVIDE SIGNATORY AUTHORITY

1 WHEREAS, the Eastern Snake Plain Aquifer (ESPA) has been losing approximately 216,000 acre-
2 feet annually from aquifer storage since the 1950's resulting in declining ground water levels in the aquifer
3 and reduced spring flows to the Snake River; and
4

5 WHEREAS, House Bill 547 passed and approved by the 2014 Legislature allocates \$5 million from
6 the Cigarette Tax to the Idaho Water Resource Board's (IWRB) Secondary Aquifer Planning, Management,
7 and Implementation Fund (Secondary Aquifer Fund) for statewide aquifer stabilization; and
8

9 WHEREAS, Senate Bill 1402 passed and approved by the 2016 Legislature allocated \$5 million in
10 ongoing General Fund dollars and \$2.5 million in Economic Recovery Reserve Funds to the IWRB's
11 Secondary Aquifer Fund for statewide water sustainability and aquifer stabilization; and
12

13 WHEREAS, the 2016 Idaho Legislature passed and approved Senate Concurrent Resolution 136
14 directing the IWRB to develop the capacity to achieve 250,000 acre-feet of annual average managed
15 recharge to the ESPA by December 31, 2024; and
16

17 WHEREAS, the IWRB obtained a right-of-way grant (IDI-32771) on September 2009 from the
18 United States Department of the Interior, Bureau of Land Management (BLM) to construct, operate, and
19 maintain a water facility for recharging the aquifer on public lands; and
20

21 WHEREAS, since 2014 the IWRB, in partnership with American Falls Reservoir District No. 2, has
22 constructed, operated, and maintain the Mile Post 31 Recharge Site on BLM right-of-way IDI-32771; and
23

24 WHEREAS, the right-of-way grant IDI-32771 under Exhibit A, Stipulations 13 states "Holder shall
25 maintain the right-of-way in a safe, usable condition, as directed by the authorized officer." and under
26 Stipulations 16 states "The holder shall permit free and unrestricted public access to and upon the right-
27 of-way for all lawful purposes except for those specific areas designated as restricted by the authorized
28 officer to protect the public, wildlife, livestock, or facilitates constructed within the right-of-way."; and
29

30 WHEREAS, on May 4, 2000, the BLM requested that public access not be restricted (a road that
31 crosses a portion of the MP31 recharge site) and other uses of the land not be impacted as stipulated in
32 right-of-way grant IDI-32771; and
33

34 WHEREAS, on May 28, 2020, the IWRB adopted Resolution 9-2020, the Secondary Aquifer Fund
35 Fiscal Year 2020 Budget, which included \$500,000 for the development of additional ESPA Managed
36 Recharge Infrastructure Projects; and
37

38 WHEREAS, on September 4, 2020, Quadrant Consulting Inc. provided sixty percent design
39 documents and an associated construction cost estimate of \$310,000 for the required infrastructure to
40 protect the BLM road;

41
42 NOW THEREFORE BE IT RESOLVED that the IWRB authorizes expenditures not to exceed \$320,000
43 from the Secondary Aquifer Fund for the development of an embankment to keep water from the MP31
44 recharge site off of the BLM road (\$310,000) and to support reestablishing fencing that will assist in
45 keeping people and livestock out of the recharge site when it is in operation (\$10,000); and
46

47 NOW, THEREFORE BE IT RESOLVED that the IWRB authorizes its chairman or designee, Brian
48 Patton, Executive Officer to the IWRB, to execute the necessary agreements or contracts to complete
49 development of the ABID injection wells.

DATED this 13th day of October, 2020.

ROGER W. CHASE, Chairman
Idaho Water Resource Board

ATTEST _____
VINCE ALBERDI, Secretary