



# AGENDA

## IDAHO WATER RESOURCE BOARD

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**Special Board Meeting No. 11-21**

**Friday, August 27, 2021**

**12:00 P.M. (MST)**

**Brad Little**

*Governor*

**Jeff Raybould**

*Chairman*

St. Anthony

At Large

**Roger W. Chase**

*Vice-Chairman*

Pocatello

District 4

**Jo Ann Cole-Hansen**

*Secretary*

Lewiston

At Large

**Dale Van Stone**

Hope

District 1

**Albert Barker**

Boise

District 2

**Dean Stevenson**

Paul

District 3

**Peter Van Der Meulen**

Hailey

At Large

**Brian Olmstead**

Twin Falls

At Large

Water Center  
Conference Rooms 602 C & D / Online Zoom Meeting  
322 E. Front St.  
BOISE

**Board Members & the Public may participate via Zoom**

[Click here to join our Zoom Meeting](#)

Dial in Option: 1(253) 215-8782

Meeting ID: 898 0487 3786 Passcode: 517919

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1. Roll Call
2. Administrative Rules\*
3. South Valley Ground Water District Loan\*
4. Non-Action Items for Discussion
5. 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. 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](mailto:jennifer.strange@idwr.idaho.gov) or by phone at (208) 287-4800.

## Memo

To: Idaho Water Resource Board

From: Mat Weaver & Sean Costello

Date: August 26, 2021

Re: **Administrative Rulemaking Update**

### Requested Action Item

Adopt and authorize the publication of the Idaho Water Resource Board's ("IWRB") Stream Channel Alteration Rules (IDAPA 37.03.07) as a *Proposed Rule* in the upcoming September Idaho Administrative Bulletin Vol. 21-9. A resolution to this effect is attached.

Adopt and authorize the publication of the IWRB's and the Idaho Department of Water Resources' ("IDWR") Rules of Procedure (IDAPA 37.01.01) as a *Proposed Rule* in the forthcoming October Idaho Administrative Bulletin Vol. 21-10. A resolution to this effect is attached.

### Background

The 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 IDWR (Fee Rule)
- IDAPA 37.02.01 Comprehensive State Water Plan Rules (Non-Fee Rule)
- IDAPA 27.02.03 Water Supply Bank Rules (Fee Rule)
- IDAPA 37.02.04 Shoshone Bannock Tribal Water Supply Bank Rules (Non-Fee Rule)
- IDAPA 37.03.03 Rules and Minimum Standards for the Construction and Use of Injection Wells (Fee Rule)
- IDAPA 37.03.04 Drilling for Geothermal Resources Rules (Fee Rule)
- IDAPA 37.03.05 Mines Tailing Impoundment Structures Rules (Fee Rule)
- IDAPA 37.03.06 Safety of Dams Rules (Fee Rule)
- IDAPA 37.03.07 Stream Channel Alteration Rules (Fee Rule)
- IDAPA 37.03.09 Well Construction Standards and Rules (Fee Rule)
- IDAPA 37.03.10 Well Driller Licensing Rules (Fee Rule)

Several other chapters of rules related to water right processes and administration are under the control of the Director of IDWR.

## **2021 Zero-Based Regulation (“ZBR”) Rulemaking Update – IDAPA 37.03.07 Stream Channel Alteration Rules, Rule 61 Minimum Standards for Suction Dredges and Non-Powered Sluice Equipment**

At the beginning of this year, IDWR staff initiated negotiated rulemaking for Rule 61 *Suction Dredges and Non-Powered Sluice Equipment* of the IWRB’s IDAPA 37.03.07 Stream Channel Alteration Rules.

The rulemaking team carried out this negotiated rulemaking as part of the Governor’s Executive Order 2020-01 zero-based regulation initiative and in response to concerns raised by certain small-scale suction dredge miners during the 2020 Legislative Session.

The notice of intent to promulgate Rule 61 (Docket No. 37-0307-2101) was published in the April 7 Administrative Bulletin [Vol. 21-4](#). Following the April 7 publication, IDWR’s rulemaking team hosted two negotiated rulemaking public meetings on April 27 and June 2 of 2021. During the negotiation process, the team worked through two rounds of draft rules and comments. Following the last public meeting on June 2, the team allowed for a final round of comments, which were due on June 23. Staff has published all comments received throughout the negotiation to IDWR’s [Rule 61 rulemaking webpage](#).

Based on consideration of all comments—both external and internal—the rulemaking team prepared a Proposed Rule revising Rule 61. A copy of the Proposed Rule and the publication notice proof are included as an attachment to this memo. The rulemaking team also prepared a summary of all comments and agency responses. A copy of the *IDWR IDAPA 37.03.07.61 Rulemaking – Comment and Response Summary Table* is also included as an attachment to this memo.

The Proposed Rule makes certain changes to the existing expedited minimum standard-based *Idaho Recreational Mining Authorization Letter Permit*, replacing it with a similarly functioning *Small Scale Mining Permit*. Most rulemaking stakeholders supported maintaining an expedited permit process for small-scale suction dredge mining and related de minimis activities with some changes to the current requirements. The Proposed Rule maintains and clarifies the expedited permitting processes, clarifies current permit exemptions for select non-powered mining activities, and modifies and updates some of the minimum standards associated with Rule 61 that justify the expedited permit process. Other areas of the Stream Channel Alteration Rules, such as rules 10 (definitions), 30 (Applications Rule), and 35 (Application Review), were also modified as logical outgrowths of the changes made to Rule 61.

## **2021 ZBR Rulemaking Update – IDAPA 37.01.01 Rules of Procedure of the Idaho Department of Water Resources**

At the beginning of this year, IDWR staff also initiated negotiated rulemaking for IDWR’s *Rules of Procedure* (IDAPA 37.01.01), which govern contested case procedures before IDWR and the IWRB. The rulemaking team carried out this negotiated rulemaking as part of the Governor’s Executive Order 2020-01 zero-based regulation initiative.

The notice of intent to promulgate the *Rules of Procedure* (Docket No. 37-0101-2101) was published in the April 7 Administrative Bulletin [Vol. 21-4](#). Following the April 7 publication, IDWR's rulemaking team hosted two negotiated rulemaking public meetings on May 12 and June 23 of 2021. During the negotiation process, the team worked through multiple rounds of draft rules and comments. Staff has published all comments received throughout the negotiation to IDWR's [Rules of Procedure webpage](#).

The proposed procedural rule chapter has decreased in length by approximately 30% as a result of both internal agency analysis and external stakeholder negotiation, commentary, and editing. The reduction came through a combination of (a) removal of obsolete provisions (such as outdated references and processes for electronic signature), (b) the removal of Idaho Administrative Procedures Act provisions inapplicable to contested cases before the Agencies, and (c) a complete overhaul of the contested case process (including the condensing and use of plain language to describe intra-agency appeals, filing and service, and informal versus formal proceedings).

More specifically, definitions previously spread throughout the rule chapter have been clarified and centralized in the definitional section. Distinctions between agency head, presiding officers, and hearing officers have been delineated and clarified. Updates have also been made to comply with the Agencies' understanding of current Idaho law (including clarification of party representation and administrative exhaustion).

The following processes have also been more clearly defined and described: exceptions to final orders, contents of motions and pleadings, intervention versus protestation, and ex parte communication. The Agencies also propose to rename the rule chapter the "Rules of Procedure of the Idaho Department of Water Resources and Idaho Water Resource Board" to clarify that the chapter applies to both Agencies. The new proposed rule also recognizes electronic filing and service in many instances (both by email and through IDWR's website) for the first time.

### **Next Steps**

Once the proposed rules are published, the public will have 14 days to request a public hearing and 21 days to submit written comments. Following these deadlines, the respective rulemaking teams will evaluate comments, decide if and how to respond, and publish any changes in a subsequent pending rule publication. Pending Rules will be published no later than November 3, 2021. Before publishing pending rules, the IWRB will again have an opportunity to review the rules before passing a resolution to adopt and authorize the publication of the pending rules. The Idaho Legislature should consider the pending rules during its 2022 Legislative Session.

Later this fall, the rulemaking regulation officer will assemble rulemaking teams for each of the year-two ZBR rulemaking chapters to initiate negotiated rulemaking in 2022 for the following IDAPA chapters: 37.02.01 Water Supply Bank Rules, 37.03.04 Drilling for Geothermal Resources Rules, 37.03.05 Mine Tailings Impoundment Structures Rules, and 37.03.10 Well Driller Licensing Rules.

**BEFORE THE IDAHO WATER RESOURCE BOARD**

IN THE MATTER OF THE BOARD'S ZERO-BASED REGULATION NEGOTIATED RULEMAKING OF IDAPA 37.03.07 STREAM CHANNEL ALTERATION RULES RULE 61 AND 37.01.01 RULES OF PROCEDURE

RESOLUTION TO PUBLISH THE PROPOSED RULES IN THE SEPTEMBER 1, 2021, IDAHO ADMINISTRATIVE BULLETIN VOL. 21-9 OR THE OCTOBER 6, 2021, IDAHO ADMINISTRATIVE BULLETIN VOL. 21-10

1 WHEREAS, the Idaho Water Resource Board ("IWRB") is the executive branch entity with  
2 statutory oversight and authority over 12 chapters of Administrative Rules in IDAPA 37, including:  
3 IDAPA 37.01.01 Rules of Procedure of the IDWR; IDAPA 37.02.01 Comprehensive State Water  
4 Plan Rules; IDAPA 27.02.03 Water Supply Bank Rules; IDAPA 37.02.04 Shoshone Bannock Tribal  
5 Water Supply Bank Rules; IDAPA 37.03.03 Rules and Minimum Standards for the Construction  
6 and Use of Injection Wells; IDAPA 37.03.04 Drilling for Geothermal Resources Rules; IDAPA  
7 37.03.05 Mines Tailing Impoundment Structures Rules; IDAPA 37.03.06 Safety of Dams Rules;  
8 IDAPA 37.03.07 Stream Channel Alteration Rules; IDAPA 37.03.09 Well Construction Standards  
9 and Rules; and IDAPA 37.03.10 Well Driller Licensing Rules; and

10 WHEREAS, Governor Little's Executive Order 2020-01 Zero Based Regulation ("Executive  
11 Order") directs each agency to comprehensively review all rules under its authority and "if  
12 applicable" to promulgate new rules to take their place where necessary, and to conduct this  
13 zero-based review ("ZBR") over a five year period from 2021 to 2025;

14 WHEREAS, the IWRB adopted a five-year ZBR rulemaking schedule that identifies the  
15 review of IDAPA 37.01.01 Rules of Procedure and 37.03.07 Stream Channel Alteration Rules in  
16 2021;

17 WHEREAS, the Executive Order directs any "agency wishing to renew a rule chapter  
18 beyond [its ZBR] review date" to promulgate a new rule chapter after conducting a "retrospective  
19 analysis" of the rule;

20 WHEREAS, the IWRB has conducted retrospective analysis of its Rules of Procedure and  
21 Stream Channel Alteration rules and concluded that both rules are needed to carry out the  
22 IWRB's statutory duties and responsibilities fairly, efficiently, and consistently;

23 WHEREAS, the Executive Order directs agencies to "start the new rulemaking from a zero-  
24 base, and not seek to simply reauthorize their existing rule chapter without a critical and  
25 comprehensive review";

26 WHEREAS, the IWRB's April 7 notice of intent to promulgate rules clearly stated its intent  
27 to "repeal and promulgate rules" "consistent with Executive Order 2020-01: Zero-Based  
28 Regulation" and where the IWRB has conformed to all ZBR processes and requirements  
29 throughout the rulemaking process:

30 WHEREAS, the Executive Order directs agencies to “publish a notice of intent to  
31 promulgate rules and hold, at a minimum, two public hearings that are designed to maximize  
32 public participation in the rulemaking process”;

33 WHEREAS, the IWRB held two public hearings as part of its negotiated rulemaking of the  
34 Stream Channel Alteration rules on April 27, 2021 and June 2, 2021, and held two public hearings  
35 as part of its negotiated rulemaking of the Rules of Procedure on May 12, 2021, and June 23,  
36 2021;

37 WHEREAS, the Executive Order directs agencies to promulgate new rule chapters that  
38 “reduce the overall regulatory burden, or remain neutral, as compared to the previous chapter”;

39 WHEREAS, the Stream Channel Alterations Proposed Rule has a “neutral” effect on the  
40 rule and only adds 54 words increasing the count from 7,023 to 7,077 words and the Rules of  
41 Procedure Proposed Rule significantly “reduces” the rule by 5,234 words decreasing the word  
42 from 16,144 to 10,910 words;

43 NOW, THEREFORE BE IT RESOLVED that the IWRB adopts the following proposed rules and  
44 directs that they be adopted as submitted to the Idaho Office of Administrative Rules  
45 Coordinator:

- 46 • 37.01.01, *Rules of Procedure of the Idaho Department of Water Resources; and*
- 47 • 37.03.07, *Stream Channel Alteration Rules.*

48 NOW, THEREFORE BE IT RESOLVED that the IWRB authorizes the notice and publication  
49 of the above proposed rules.

DATED this 27 day of August, 2021.

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JEFF RAYBOULD, Chairman  
Idaho Water Resource Board

ATTEST \_\_\_\_\_  
JO ANN COLE-HANSEN, Secretary  
Idaho Water Resource Board

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

**37.03.07 – STREAM CHANNEL ALTERATION RULES**

**DOCKET NO. 37-0307-2101 (NEW CHAPTER, FEE RULE)**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 42-1734(19), 42-1805(8), and 42-3803, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2021.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Idaho Code § 42-3803(c) states that “[r]ules, regulations and orders adopted or issued pursuant to this section may include, but are not limited to, minimum standards to govern projects or activities for which a permit or permits have been received . . . .” Idaho Code § 42-3803(d) states that “the [Idaho Water Resource] Board may, by regulation, dispense with procedural requirements for permit application and approval contained in this chapter for projects and activities which, in all respects, at least meet minimum standards adopted pursuant to this section.”

Existing IDAPA 37.03.07 Rule 61 – Suction Dredges and Non-Powered Sluice Equipment (Rule 61), describes minimum standards that allow the Idaho Department of Water Resources (IDWR) to expedite authorization of select qualifying suction dredge mining operations in Idaho streams and rivers. Proposed projects meeting the minimum standards removes the necessity for IDWR to furnish copies of applications to other state and federal agencies and seek comment from those agencies. IDWR currently expedites authorization of suction dredge operations meeting minimum standards with the Idaho Recreational Mining Authorization Letter Permit (“Letter Permit”). The Letter Permit is an immediate authorization with no agency comment process. The Letter Permit is analogous to an Idaho fishing license; it only requires an applicant to give his or her name, address, the name or names of streams the applicant plans to dredge, and submission of a fee (\$10 for Idaho resident, \$30 for non-resident). The applicant’s signature to the Letter Permit certifies that the applicant agrees to conduct his or her operations in accordance with Letter Permit conditions and instructions, and the minimum standards set forth in Rule 61.

The Proposed Rule incorporates changes to Rule 61 as a result of negotiated rulemaking conducted as a part of the Governor’s Executive Order 2020-01 zero-based regulation initiative and in response to concerns raised by certain small scale suction dredge miners during the 2020 Legislative Session. The Proposed Rule makes certain changes to the existing expedited minimum standard-based Idaho Recreational Mining Authorization Letter Permit (“Letter Permit”), replacing it with a similarly functioning Small Scale Mining Permit regime. The majority of stakeholders expressed support during negotiated rulemaking to maintain an expedited permit process for small scale dredge mining (and similar) de minimis mining activities with some changes to the current requirements. The Proposed Rule maintains and clarifies the expedited permitting processes, clarifies current permit exemptions for select non-powered mining activities, and modifies and updates some of the minimum standards associated with Rule 61 that allow for an expedited permit process. Other areas of the Stream Channel Alteration Rules, such as the definitional section at IDAPA 37.03.07.010, also needed to be updated as a result of changes made to Rule 61.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

Idaho Code § 42-3803(a) authorizes the Idaho Water Resource Board to collect “statutory filing fees” in association with stream channel alteration activities including permitted activities authorized under Rule 61. This Proposed Rule does not change current application filing fee amounts.

**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 resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 7, 2021 Idaho Administrative Bulletin, [Vol. 21-4, pages 53-54](#).

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mathew Weaver at (208) 287-4800.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 22, 2021.

DATED this July 30, 2021.

Gary Spackman, Director  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720  
Boise, ID 83720-0098  
Phone: (208) 287-4800

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 37-0307-2101**  
**(New Chapter – Zero-Based Regulation Rulemaking)**

**37.03.07 – STREAM CHANNEL ALTERATION RULES**

**000. LEGAL AUTHORITY (RULE 0).**

The purpose of these rules and minimum standards is to specify procedures for processing and considering applications for stream channel alterations under the provisions of Title 42, Chapter 38, Idaho Code. ( )

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** These rules are titled IDAPA 37.03.07, “Stream Channel Alteration Rules.” ( )

**02. Scope.** The minimum standards are intended to enable the Director to process, in a short period of time, those applications which are of a common type and which do not propose alterations which will be a hazard to the stream channel and its environment. It is intended that these rules and minimum standards be administered in a reasonable manner, giving due consideration, to all factors affecting the stream and adjacent property. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS (RULE 10).**

**01. Alteration.** To obstruct, diminish, destroy, alter, modify, relocate or change the natural existing shape of the channel or to change the direction of flow of water of any stream channel within or below the mean high water mark. It includes removal of material from the stream channel and emplacement of material or structures in or



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**Proposed (Fee) Rule**

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across the stream channel where the material or structure has the potential to affect flow in the channel as determined by the director. ( )

**02. Applicant.** Any individual, partnership, company, corporation, municipality, county, state or federal agency, their agent, or other entity proposing to alter a stream channel or actually engaged in constructing a channel alteration, whether authorized or not. ( )

**03. Base Flood Elevation.** The Base Flood (BF) is referred to as the one hundred (100) year flood and is a measure of flood magnitude based on probability. The BF has a one percent chance of occurring or being exceeded in any given year, with the Base Flood Elevation (BFE) being the level of flooding reached during the BF or the one hundred (100) year flood event. ( )

**04. Board.** The Idaho Water Resource Board. ( )

**05. Continuously Flowing Water.** A sufficient flow of water that could provide for migration and movement of fish, and excludes those reaches of streams which, in their natural state, normally go dry at the location of the proposed alteration. IDWR will assume, subject to information to the contrary, that the USGS quadrangle maps accurately depict whether a stream reach is continuously flowing, at the location of the proposed alteration. Such exclusion does not apply to minor flood channels that are a part of a stream which is continuously flowing in the reach where the alteration is located. Also, such exclusion does not apply to streams which may be dry as a result of upstream diversion or storage of water. ( )

**06. Department.** The Idaho Department of Water Resources. ( )

**07. Drop Structures, Sills and Barbs.** Physical obstructions placed within a stream channel for the purpose of stabilizing the channel by decreasing stream gradient and velocity and by dissipating stream energy. ( )

**08. Director.** The Director of the Idaho Department of Water Resources. ( )

**09. Human Life Support System.** Any artificial or natural system that provides all or some of the items (such as oxygen, food, water, control of temperature, or disposition of carbon dioxide) necessary for maintaining human life or health. ( )

**10. Mean High Water Mark.** As defined in Idaho Code, § 42-3802(h), the mean high water mark is water level corresponding to the “natural or ordinary high water mark” and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes. ( )

**11. Non-Powered Equipment.** Equipment which is powered only by human strength. ( )

**12. Plans.** Maps, sketches, engineering drawings, photos, work descriptions and specifications sufficient to describe the extent, nature, and location of the proposed stream channel alteration and the proposed method of accomplishing the alteration. ( )

**13. Powered Equipment.** Equipment which is powered by means other than human strength such as a gasoline engine or electric motor. ( )

**14. Repair.** Any work needed or accomplished, to protect, maintain, or restore any water diversion structure and the associated stream channel upstream and downstream as necessary for the efficient operation of the water diversion structure. ( )

**15. Stream Channel.** A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously flowing water. The channel referred to is that which exists at the present time, regardless of where the channel may have been located at any time in the past. For the purposes of these rules only, the beds of lakes and reservoir pool areas are not considered to be stream channels. ( )

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**011. -- 024. (RESERVED)**

**025. EXEMPTIONS (RULE 25).**

**01. Work on Existing or Proposed Reservoir Projects.** Permits are not required under the provisions of Title 42, Chapter 38 for construction work on any existing or proposed reservoir project, including the dam, and such areas downstream as the Director may determine is reasonably necessary for construction and maintenance of the dam. ( )

**02. Snake and Clearwater Rivers.** Permits are not required for work within that portion of the Snake and Clearwater rivers from the state boundary upstream to the upper boundary of the Port of Lewiston Port District as it now exists or may exist in the future. ( )

**03. Cleaning, Maintenance, Construction or Repair Work.** No permit is required of a water user or his agent to clean, maintain, construct, or repair any diversion structure, canal, ditch, or lateral or to remove any obstruction from a stream channel which is interfering with the delivery of any water under a valid existing water right or water right permit. ( )

**04. Removal of Debris.** No permit is required for removal of debris from a stream channel provided that no equipment will be working in the channel and all material removed will be disposed of at some point outside the channel where it cannot again reenter the channel. ( )

**05. Mining Operations Using Non-Powered Equipment.** No permit is required for mining activities using non-powered equipment to move one-quarter (1/4) cubic yard per hour or less below the mean high water mark, except as otherwise described in Rule 61.05. ( )

**026. -- 029. (RESERVED)**

**030. APPLICATIONS (RULE 30).**

**01. Alteration of Stream Channels Permit Required.** No person shall engage in any activity which will alter a stream channel without first applying for a permit as provided by § 42-3803, Idaho Code. ( )

**02. Joint Application Permit Form.** The Department of Water Resources, Department of Lands, and the U.S. Army Corps of Engineers have developed a joint application for permit form which will suffice for the required permit application under the Stream Protection Act. An application should be filed at least sixty (60) days before the applicant proposes to start the construction and shall be upon the joint application form furnished by the Department. The application shall be accompanied by plans which clearly describe the nature and purpose of the proposed work. ( )

**03. Applicant Following Minimum Standards.** In those cases where the applicant intends to follow the minimum standards (Rule 055), detailed plans may be eliminated by referring to the specific minimum standard; however, drawings necessary to adequately define the extent, purpose, and location of the work may be required. Plans shall include some reference to water surface elevations and stream boundaries to facilitate review. The application should show the mean high water mark on the plans; however, any water surface or water line reference available will be helpful as long as this reference is described. (Examples: present water surface, low water, high water.) ( )

**04. Submission of Copies.** The applicant shall submit one (1) copy of all necessary plans along with the application form. When drawings submitted are larger than eight and one half by eleven (8 1/2 x 11), the applicant shall provide the number of copies specified by the department. ( )

**031. -- 034. (RESERVED)**

**035. APPLICATION REVIEW (RULE 35).**

**01. Prior to Issuance of Permit.** The following items shall be among those considered by the Director

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**Proposed (Fee) Rule**

- prior to issuing a permit: ( )
- a. What is the purpose of doing the work? ( )
  - b. What is the necessity and justification for the proposed alteration? ( )
  - c. Is the proposal a reasonable means of accomplishing the purpose? ( )
  - d. Will the alteration be a permanent solution? ( )
  - e. Will the alteration pass anticipated water flows without creating harmful flooding or erosion problems upstream or downstream? ( )
  - f. What effect will the alteration have on fish habitat? ( )
  - g. Will the materials used or the removal of ground cover create turbidity or other water quality problems? ( )
  - h. Will the alteration interfere with recreational use of the stream? ( )
  - i. Will the alteration detract from the aesthetic beauty of the area? ( )
  - j. What modification or alternative solutions are reasonably possible which would reduce the disturbance to the stream channel and its environment and/or better accomplish the desired goal of the proposed alteration? ( )
  - k. Is the alteration to be accomplished in accordance with the adopted minimum standards? ( )
  - l. Are there public safety factors to consider? ( )

**02. Proposed Alteration Which Does Not Follow Minimum Standards.** In those cases where a proposed alteration does not follow the minimum standards, a copy of the application will be sent for review to those state agencies requesting notification. The Director shall provide for review by the Department of Lands, copies of applications on navigable rivers. The Director will provide a copy of any other application requested by the Department of Lands and may request review by other state agencies regardless of whether or not the proposed alteration will comply with the minimum standards. ( )

**036. -- 039. (RESERVED)**

**040. APPROVAL (RULE 40).**

**01. Conformance to Application.** All work shall be done in accordance with the approved application, subject to any conditions specified by the department. ( )

**02. Permits Allowed Without Review.** A permit may be approved by the Director of the Department of Water Resources without review by other agencies in situations where the work is of a nature not uncommon to the particular area and where it is clear that the work will not seriously degrade the stream values except on navigable rivers which require review by the Department of Lands. All work approved in this manner shall be accomplished in accordance with the minimum standards. ( )

**03. Reinstatement of Expired Permit.** A permit which has expired may be reinstated by the Director after review by other agencies as determined by the Director. ( )

**041. -- 044. (RESERVED)**

**045. ENFORCEMENT OF ACT (RULE 45).**

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**Proposed (Fee) Rule**

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**01. Written Orders Issued by Designated Employees of Department.** Employees of the Department designated by the Director may issue written orders directing an applicant to cease and desist, to ensure proper notice to applicants who are found to be altering a stream without a permit or not in compliance with the conditions of a permit. Such orders shall be in effect immediately upon issuance and will continue in force until a permit is issued or until the order is rescinded by the Director. ( )

**02. Failure to Comply with Stream Protection Act.** Failure to comply with any of the provisions of the Stream Protection Act (Chapter 38, Title 42, Idaho Code), may result in issuance of an Idaho uniform citation and/or the cancellation of any permit by the Director without further notice and the pursuit in a court of competent jurisdiction, such civil or criminal remedies as may be appropriate and provided by law. The Director may allow reasonable time for an applicant to complete stabilization and restoration work. ( )

**046. -- 049. (RESERVED)**

**050. EMERGENCY WAIVER (RULE 50).**

**01. Waiver of Provisions of Stream Protection Act.** Section 42-3808, Idaho Code, provides for waiver of the provisions of the Stream Protection Act in emergency situations where immediate action must be taken to protect life or property including growing crops. The Director will not consider failure to submit an application for a stream channel alteration far enough ahead of the desired starting time of the construction work as an emergency situation. ( )

**02. Verbal Waivers.** A verbal waiver may be granted initially; however, all verbal requests for waivers shall be followed up by the applicant in writing within fifteen (15) days of any initial authorization to do work. If the applicant is unable to contact the Director to obtain an emergency waiver, he may proceed with emergency work; however, he must contact the Director as soon as possible thereafter. Proving that a bonafide emergency did actually exist will be the responsibility of the applicant. ( )

**03. Emergency Waiver.** Work authorized by an emergency waiver shall be limited to only that which is necessary to safeguard life or property, including growing crops, during the period of emergency. ( )

**04. Conformance to Conditions of Waiver.** The applicant shall adhere to all conditions set by the Director as part of a waiver. ( )

**05. Waivers Granted by Designated Employees.** The Director may delegate the authority to grant waivers to designated employees of the Department. Names and telephone numbers of such employees will be made available to any interested applicant upon request. ( )

**051. -- 054. (RESERVED)**

**055. MINIMUM STANDARDS (RULE 55).**

These standards are intended to cover the ordinary type of stream channel alteration and to prescribe minimum conditions for approval of such construction. Unless otherwise provided in a permit, these standards shall govern all stream channel alterations in this state. An applicant should not assume that because an application utilizes methods set forth in these standards it will automatically be approved. These minimum standards include the following items: ( )

- 01. Construction Procedures.** ( )
- 02. Dumped Rock Riprap.** ( )
- 03. Drop Structures, Sills and Barbs.** ( )
- 04. Culverts and Bridges.** ( )
- 05. Removal of Sand and Gravel Deposits.** ( )

**IDAHO DEPARTMENT OF WATER RESOURCES**  
**Stream Channel Alteration Rules**

**Docket No. 37-0307-2101**  
**Proposed (Fee) Rule**

- 06. Small Scale Mining with Suction Dredges, Powered Sluices, or Non-Powered Equipment. ( )
- 07. Piling. ( )
- 08. Pipe Crossings. ( )
- 09. Concrete Plank Boat Launch Ramps. ( )

**056. CONSTRUCTION PROCEDURES (RULE 56).**

**01. Conformance to Procedures.** Construction shall be done in accordance with the following procedures unless specific approval of other procedures has been given by the Director. When an applicant desires to proceed in a manner different from the following, such procedures should be described on the application. ( )

**02. Operation of Construction Equipment.** No construction equipment shall be operated below the existing water surface without specific approval from the Director except as follows: Fording the stream at one (1) location only will be permitted unless otherwise specified; however, vehicles and equipment will not be permitted to push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or approved footing installations shall be permitted to the extent that it does not create unnecessary turbidity or stream channel disturbance. Frequent fording will not be permitted in areas where extensive turbidity will be created. ( )

**03. Temporary Structures.** Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction shall be designed to handle high flows that could be anticipated during the construction period. All structures shall be completely removed from the stream channel at the conclusion of construction and the area shall be restored to a natural appearance. ( )

**04. Minimizing Disturbance of Area.** Care shall be taken to cause only the minimum necessary disturbance to the natural appearance of the area. Streambank vegetation shall be protected except where its removal is absolutely necessary for completion of the work adjacent to the stream channel. ( )

**05. Disposal of Removed Materials.** Any vegetation, debris, or other material removed during construction shall be disposed of at some location out of the stream channel where it cannot reenter the channel during high stream flows. ( )

**06. New Cut of Fill Slopes.** All new cut or fill slopes that will not be protected with some form of riprap shall be seeded with grass and planted with native vegetation to prevent erosion. ( )

**07. Fill Material.** All fill material shall be placed and compacted in horizontal lifts. Areas to be filled shall be cleared of all vegetation, debris and other materials that would be objectionable in the fill. ( )

**08. Limitations on Construction Period.** The Director may limit the period of construction as needed to minimize conflicts with fish migration and spawning, recreation use, and other uses. ( )

**057. DUMPED ROCK RIPRAP (RULE 57).**

**01. Placement of Riprap.** Riprap shall be placed on a granular bedding material or a compact and stable embankment. ( )

**02. Sideslopes of Riprap.** Sideslopes of riprap shall not be steeper than 2:1 (2' horizontal to 1' vertical) except at ends of culverts and at bridge approaches where a 1 1/2:1 sideslope is standard. ( )

**03. Minimum Thickness of Riprap.** The minimum thickness of the riprap layer shall equal the dimension of the largest size riprap rock used or be eighteen (18) inches, whichever is greater. When riprap will be placed below high water level, the thickness of the layer shall be fifty percent (50%) greater than specified below. ( )

**04. Riprap Protection.** Riprap protection must extend at least one (1) foot above the anticipated high water surface elevation in the stream. ( )

**05. Rock Used for Riprap.** Rock for riprap shall consist of sound, dense, durable, angular rock fragments, resistant to weathering and free from large quantities of soil, shale, and organic matter. The length of a rock shall not be more than three (3) times its width or thickness. Rounded cobbles, boulders, and streambed gravels are not acceptable as dumped riprap. ( )

**06. Size and Gradation of Riprap.** Riprap size and gradation are commonly determined in terms of the weight of riprap rock. The average size of riprap rock shall be at least as large as the maximum size rock that the stream is capable of moving. The maximum size of riprap rock used shall be two (2) to five (5) times larger than the average size. ( )

**07. Methods Used for Determining Gradation of Riprap.** There are many methods used for determining the gradation of riprap rock. One of these many acceptable methods is shown in Table 1 below. Another acceptable method is the Far West States (FWS) method shown in APPENDIX A - Table 1A.

Table 1 – GRADATION OF RIPRAP IN POUNDS		
Max. Weight of Stone required (lbs)	Min. and Max. Range in weight of Stones (lbs)	Weight Range 75 percent of Stones (lbs)
150	25 - 150	50 - 150
200	25 - 200	50 - 200
250	25 - 250	50 - 250
400	25 - 400	100 - 400
600	25 - 600	150 - 600
800	25 - 800	200 - 800
1000	50 - 1000	250 - 1000
1300	50 - 1300	325 - 1300
1600	50 - 1600	400 - 1600
2000	75 - 2000	600 - 2000
2700	100 - 2700	800 - 2700

**08. Use of Filter Material.** A blanket of granular filter material or filter fabric shall be placed between the riprap layer and the bank in all cases where the bank is composed of erodible material that may be washed out from between the riprap rock. Filter material shall consist of a layer of well-graded gravel and coarse sand at least six (6) inches thick. ( )

**09. Toe Protection.** Some suitable form of toe protection shall be provided for riprap located on erodible streambed material. ( )

**a.** Various acceptable methods of providing toe protection are shown in APPENDIX B, Figure 2 at the end of this chapter. ( )

**b.** In addition to the approved methods of providing toe protection as shown in APPENDIX B, any other reasonable method will be considered by the Director during review of a proposed project. ( )

**10. Extension of Riprap Area.** Riprap shall extend far enough upstream and downstream to reach stable areas, unless the riprap is protected against undermining at its ends by the method shown in APPENDIX C, Figure 3 at the end of this chapter. On extremely long riprap sections, it is recommended that similar cutoff sections be used at several intermediate points to reduce the hazard that would be created if failure of the riprap occurred at any one (1) location. ( )

**11. Finished Surface.** Placement shall result in a smooth, even finished surface. Compaction is not necessary. ( )

**12. Placement of Riprap.** The full course thickness of the riprap shall be placed in one (1) operation. Dumping riprap long distances down the bank or pushing it over the top of the bank with a dozer shall be avoided if possible. Material should be placed with a backhoe, loader, or dragline. Dumping material near its final position on the slope or dumping rock at the toe and bulldozing it up the slope is a very satisfactory method of placement, if approval is obtained for the use of equipment in the channel. ( )

**13. Design Procedure.** Design procedure using the Far West States (FWS) method. ( )

**a.** The FWS method uses a single equation to deal with variables for riprap. ( )

$D75 = 3.5/CK$  WDS for Channel Banks

where:  $D75$  = Size of the rock at seventy five percent (75%) is finer in gradation, in inches.

W	=	Specific weight of water, usually 62.4 lbs./cu.ft.
D	=	Depth of flow in stream, in feet in flood stage
S	=	Channel slope or gradient, in ft/ft.
C	=	A coefficient relating to curvature in the stream
K	=	A coefficient relating to steepness of bank slopes

( )

**b.** The coefficient, C, is based on the ratio of the radius of curvature of the stream, (CR), to the water surface width, (WSW), so it is necessary for the user to make field determination of these values. The coefficient varies from 0.6 for a curve ratio of 4 to 6, up to 1.0 for a straight channel. If the computed ratio for a particular project is less than 4, the designer should consider some modification less than 4.

CR/WSW	C
4 - 6	0.60
6 - 9	0.75
9 - 12	0.90
Straight Channel	1.00

( )

**c.** The coefficient, K, ranges from 0.5 for a 1.5:1 sideslope to 0.87 for 3:1 sideslope. No values are given for steeper or flatter slopes. Slopes steeper than 1.5:1 are not recommended. If slopes flatter than 3:1 are desired, it would be conservative to use the K-value for 3:1 slopes.

Bankslope	K
1.5:1	0.50

Bankslope	K
1.75:1	0.63
2.0:1	0.72
2.5:1	0.80
3.0:1	0.87

( )

**058. DROP STRUCTURES, SILLS AND BARBS (RULE 58).**

**01. Drop Structures.** A drop structure shall be constructed of rocks, boulders and/or logs placed within a stream channel to act as a low level dam. Placement of a drop structure perpendicular to stream flow will decrease the stream gradient, dissipate stream energy and decrease stream velocity through an increase in water surface elevation immediately above the structure. Drop structures shall comply with the following criteria: ( )

**a.** Maximum water surface differential across (upstream water surface elevation minus downstream water surface elevation) a drop structure shall not exceed two (2) feet. The department shall approve the final elevation of any structure. ( )

**b.** Rock drop structures shall be constructed of clean, sound, dense, durable, angular rock fragments, and/or boulders of size and gradation, such that the stream is incapable of moving the material during peak flows. Rocks shall be keyed into the stream banks to minimize the likelihood of bank erosion, (See APPENDIX D located at the end of this chapter). ( )

**c.** Log drop structures are acceptable in four (4) designs including the single log dam, the stacked log dam, the three (3) log dam, and the pyramid log dam. Log ends shall be keyed into both banks at least one-third (1/3) of the channel width or a distance sufficient to prevent end erosion. To prevent undercutting, the bottom log shall be imbedded in the stream bed or hardware cloth, cobbles or boulders shall be placed along the upper edge. Minimum log size for a single log structure shall be determined by on-site conditions and shall be placed to maintain flow over the entire log to prevent decay. Each log drop structure must be accompanied by downstream scour protection, such as a rock apron (See APPENDIX E located at the end of this chapter). ( )

**d.** All drop structures shall be constructed to facilitate fish passage and centralized scour pool development. ( )

**02. Sills.** A sill shall be constructed of the same material and in the same manner as a drop structure. The top of the sill may not exceed the elevation of the bottom of the channel. The purpose of a sill is to halt the upstream movement of a headcut, thus precluding the widening or deepening of the existing channel. (See APPENDIX F located at the end of this chapter). ( )

**03. Barb or Partial Drop Structure.** A barb or partial drop structure shall be constructed in the same manner and of the same material as a drop structure and placed into the stream channel to act as a low level dam and grade control structure. The barb will decrease stream gradient, dissipate stream energy and redirect stream flow. ( )

**a.** Barbs shall be constructed of clean, sound, dense, angular rock fragments, of size and gradation such that the stream is incapable of moving the material during peak flows. ( )

**b.** Barbs shall be constructed with a downstream angle of no less than one hundred (100) degrees and no greater than one hundred thirty-five (135) degrees unless otherwise specified. ( )

**c.** Barbs shall “extend” into the channel a distance of not more than twenty percent (20%) of the width of the channel unless otherwise specified by the Director. ( )



d. Barbs shall be keyed into the bank a distance equal to or greater than the width of the structure and down to bed level. Whenever moisture is encountered in the construction of the keyways, willow cuttings or clumps shall be placed before and during rock placement in such a manner that the base of the cutting is in permanent moisture and the top extends a minimum of six (6) inches above grade (see APPENDIX G located at the end of this chapter). ( )

#### 059. CULVERTS AND BRIDGES (RULE 59).

01. **Culverts and Bridges.** Culverts and bridges shall be capable of carrying streamflows and shall not significantly alter conditions upstream or downstream by causing flooding, turbidity, or other problems. The appearance of such installations shall not detract from the natural surroundings of the area. ( )

02. **Location of Culverts and Bridges.** Culverts and bridges should be located so that a direct line of approach exists at both the entrance and exit. Abrupt bends at the entrance or exit shall not exist unless suitable erosion protection is provided. ( )

03. **Ideal Gradient.** The ideal gradient (bottom slope) is one which is steep enough to prevent silting but flat enough to prevent scouring due to high velocity flows. It is often advisable to make the gradient of a culvert coincide with the average streambed gradient. ( )

a. Where a culvert is installed on a slope steeper than twenty percent (20%), provisions to anchor the culvert in position will be required. Such provisions shall be included in the application and may involve the use of collars, headwall structures, etc. Smooth concrete pipe having no protruding bell joints or other irregularities shall have such anchoring provisions if the gradient exceeds ten percent (10%). ( )

04. **Size of Culvert or Bridge Opening.** The size of the culvert or bridge opening shall be such that it is capable of passing design flows without overtopping the streambank or causing flooding or other damage. ( )

a. Design flows shall be based upon the following minimum criteria:

Drainage Area	Design Flow Frequency
Less than 50 sq. mi.	25 Years
Over 50 sq. mi. or more	50 years or greatest flow of record, whichever is more

( )

b. For culverts and bridges located on U.S. Forest Service or other federal lands, the sizing should comply with the Forest Practices Act as adopted by the federal agencies or the Department of Lands. ( )

c. For culverts or bridges located in a community qualifying for the national flood issuance program, the minimum size culvert shall accommodate the one hundred (100) year design flow frequency. ( )

d. If the culvert or bridge design is impractical for the site, the crossing may be designed with additional flow capacity outside the actual crossing structure, provided there is no increase in the Base Flood Elevation.  
(NOTE: When flow data on a particular stream is unavailable, it is almost always safe to maintain the existing gradient and cross-section area present in the existing stream channel. Comparing the proposed crossing size with others upstream or downstream is also a valuable means of obtaining information regarding the size needed for a proposed crossing.) ( )

e. Minimum clearance shall be at least one (1) foot at all bridges. This may need to be increased substantially in the areas where ice passage or debris may be a problem. Minimum culvert sizes required for stream crossings: ( )

i. Eighteen (18) inch diameter for culverts up to seventy (70) feet long; ( )

- ii. Twenty-four (24) inch diameter for all culverts over seventy (70) feet long. ( )
- f. In streams where fish passage is of concern as determined by the director, an applicant shall comply with the following provisions and/or other approved criteria to ensure that passage will not be prevented by a proposed crossing. ( )
- g. Minimum water depth shall be approximately eight (8) inches for salmon and steelhead and at least three (3) inches in all other cases. ( )
- h. Maximum flow velocities for streams shall not exceed those shown in Figure 17 in APPENDIX H, located at the end of this chapter, for more than a forty-eight (48) hour period. The curve used will depend on the type of fish to be passed. ( )
- i. Where it is not feasible to adjust the size or slope to obtain permissible velocities, the following precautions may be utilized to achieve the desired situation. ( )
- j. Baffles downstream or inside the culvert may be utilized to increase depth and reduce velocity. Design criteria may be obtained from the Idaho Fish and Game Department. ( )
- k. Where multiple openings for flow are provided, baffles or other measures used in one (1) opening only shall be adequate provided that the opening is designed to carry the main flow during low-flow periods. ( )
- 05. Construction of Crossings.** When crossings are constructed in erodible material, upstream and downstream ends shall be protected from erosive damage through the use of such methods as dumped rock riprap, headwall structures, etc., and such protection shall extend below the erodible streambed and into the banks at least two (2) feet unless some other provisions are made to prevent undermining. ( )
- a. Where fish passage must be provided, upstream drops at the entrance to a culvert will not be permitted and a maximum drop of one (1) foot will be permitted at the downstream end if an adequate jumping pool is maintained below the drop. ( )
- b. Downstream control structures such as are shown in Figure 18 in APPENDIX I, located at the end of this chapter, can be used to reduce downstream erosion and improve fish passage. They may be constructed with gabions, pilings and rock drop structures. ( )
- 06. Multiple Openings.** Where a multiple opening will consist of two (2) or more separate culvert structures, they shall be spaced far enough apart to allow proper compaction of the fill between the individual structures. The minimum spacing in all situations shall be one (1) foot. In areas where fish passage must be provided, only one (1) opening shall be constructed to carry all low flows. Low flow baffles may be required to facilitate fish passage. ( )
- 07. Areas to be Filled.** All areas to be filled shall be cleared of vegetation, topsoil, and other unsuitable material prior to placing fill. Material cleared from the site shall be disposed of above the high water line of the stream. Fill material shall be reasonably well-graded and compacted and shall not contain large quantities of silt, sand, organic matter, or debris. In locations where silty or sandy material must be utilized for fill material, it will be necessary to construct impervious sections both upstream and downstream to prevent the erodible sand or silt from being carried away (see Figure 19, APPENDIX J, located at the end of this chapter), Sideslopes for fills shall not exceed one and one half to one (1.5:1). Minimum cover over all culvert pipes and arches shall be one (1) foot. ( )
- 08. Installation of Pipe and Arch Culvert.** All pipe and arch culverts shall be installed in accordance with manufacturer's recommendations. ( )
- a. The culvert shall be designed so that headwaters will not rise above the top of the culvert entrance unless a headworks is provided. ( )

**060. REMOVAL OF SAND AND GRAVEL DEPOSITS (RULE 60).**

**01. Removal of Sand and Gravel.** This work consists of removal of sand and gravel deposits from within a stream channel. The following conditions shall be adhered to unless other methods have been specified in detail on the application and approved by the Director. ( )

**02. Removal Below Water Surface.** Sand and gravel must not be removed below the water surface existing at the time of the work. Where work involves clearing a new channel for flow, removal of material below water level will be permitted to allow this flow to occur; however, this must not be done until all other work in the new channel has been completed. ( )

**03. Buffer Zone.** A buffer zone of undisturbed streambed material at least five (5) feet in width or as otherwise specified by the Director shall be maintained between the work area and the existing stream. The applicant shall exercise reasonable precautions to ensure that turbidity is kept to a minimum and does not exceed state water quality standards. ( )

**04. Movement of Equipment.** Equipment may cross the existing stream in one (1) location only, but shall not push or pull material along the streambed while crossing the existing stream. ( )

**05. Disturbing Natural Appearance of Area.** Work must be done in a manner that will least disturb the natural appearance of the area. Sand and gravel shall be removed in a manner that will not leave unsightly pits or other completely unnatural features at the conclusion of the project. ( )

**061. SMALL SCALE MINING WITH SUCTION DREDGES, POWERED SLUICES, OR NON-POWERED EQUIPMENT (RULE 61).**

**01. Small Scale Mining Permit.** The Director may issue a permit for the operation of a powered suction dredge or power sluice, or certain qualified non-powered mining activities that follow minimum standards (Rule 61), within stream channels designated as open by the Department or Board. A powered suction dredge or power sluice shall only be operated in accordance with the conditions of the Small Scale Mining Permit. A power sluice and a high-banker are synonymous for the purposes of these rules. ( )

**02. Standards for Small Scale Mining Permits.** The following standards shall apply only to uses of suction dredges and power sluices below the mean high water mark with nozzle diameters of five (5) inches or less and powered equipment rated at fifteen (15) HP or less, or the use of non-powered sluice equipment moving more than one-quarter (1/4) cubic yard per hour. ( )

**03. Powered Equipment Prohibited Below High Water Mark.** There shall be no use of powered equipment below the mean high water mark except for the suction dredge, or power sluice and any human life support system necessary to operate the suction dredge or power sluice. ( )

**04. Protection of Streambanks.** The operation of a suction dredge or power sluice, or the use of non-powered equipment shall be carried out in a manner that prevents the undercutting of streambanks. ( )

**05. Permit Required for Certain Non-Powered Operations.** A Small Scale Mining Permit is required for non-powered mining activities when those activities include: (1) the use of non-powered equipment by more than five (5) people mining the same area; or (2) the use of non-powered equipment where the disturbed area at the mining location exceeds thirty three (33) percent of the width of the wetted stream channel. ( )

**06. Limitation of Mining Sites.** Only one (1) mining site per one hundred (100) linear feet of stream channel shall be worked at one (1) time unless waived by the Director. ( )

**062. PILING (RULE 62).**

**01. Standards for Pilings.** The following standards apply to a piling associated with a boat or swimming dock, a log boom, a breakwater, or bridge construction. ( )

**02. Replacement of Pilings.** In replacing a piling the old piling shall be completely removed from the channel, secured to the new piling or cut at stream bed level. ( )

**03. Condition of Pilings.** Chemicals or compounds used for protection of piles and lumber shall be thoroughly dried to prevent bleeding, weeping or dissolution before placing such piles and lumber over, in or near water. ( )

**04. Prohibited Materials.** The application of creosote, arsenicals or phentachlorophenol (Penta) to timber shall not occur in, or over water. ( )

**063. PIPE CROSSINGS (RULE 63).**

**01. Standards for Pipe Crossings.** The following standards apply to pipe crossings to be installed below the bed of a stream or river such as utility crossings of a gas line, sewer line, electrical line, communication line, water line or similar line. ( )

**02. Depth of Line.** The line shall be installed below the streambed to a depth which will prevent erosion and exposure of the line to free flowing water. In areas of high stream velocity where scouring may occur, the pipe shall be encased in concrete or covered with rock riprap to prevent the pipeline from becoming exposed. ( )

**03. Pipe Joints.** The joints shall be welded, glued, cemented or fastened together in a manner to provide a water tight connection. ( )

**04. Construction Methods.** Construction methods shall provide for eliminating or minimizing discharges of turbidity, sediment, organic matter or toxic chemicals. A settling basin or cofferdam may be required for this purpose. ( )

**05. Cofferdam.** If a cofferdam is used, it shall be completely removed from the stream channel upon completion of the project. ( )

**06. Revegetation of Disturbed Areas.** Areas disturbed as a result of the alteration shall be revegetated with plants and grasses native to these areas. ( )

**064. CONCRETE PLANK BOAT LAUNCH RAMPS (RULE 64).**

**01. Construction of Concrete Plank Boat Launch Ramps.** Concrete plank boat launch ramps, shall be constructed with individual sections of precast, reinforced concrete planks linked together to provide a stable non-erosive water access (see Figure 20, APPENDIX K, located at the end of this chapter). ( )

**02. Construction of Concrete Planks.** Typical concrete plank size is twelve feet by fourteen inches by four inches (12' x 14" x 4"). All planks shall be constructed with Type II low alkali cement. All planks shall have a broom form finish, free of rock pockets and loose materials. Figures 21 and 22 shows a typical launch plank detail. (See APPENDIXES L and M). ( )

**03. Assembly of Planks.** The planks shall be assembled out of the water and slid into place on a constructed launch ramp where water velocities do not exceed two (2) feet per second. In waters exceeding (2) feet per second the ramp sections shall be linked together and fastened to pre-positioned stringers anchored into the launch ramp. (See Figure 23, APPENDIX N, located at the end of this chapter). ( )

**04. Water Depth.** The water depth above the lower end of the ramp section shall not be less than three (3) feet during low level or low flow periods. (See Figure 20, APPENDIX K, located at the end of this chapter). ( )

**05. Construction of Boat Ramp.** The boat launch ramp shall have a base constructed of sound, dense, durable, angular rock resistant to weathering and free from soil, shale and organic materials. Rounded cobbles, boulders and streambed material are not acceptable as base material in areas with stream flow velocities greater than two (2) fps. Base materials shall be covered with a layer of (three-fourths inches (3/4") min.) crushed rock with a

minimum depth of two inches (2"). The ramp shall have a minimum and maximum slope of ten percent (10%) and fifteen percent (15%) respectively, and shall be constructed in a manner to avoid long incursions into the stream channel. All ramps and fill material shall be protected with rock riprap in accordance with Rule 057 when stream flow velocities exceed two (2) fps. (See Figure 24, APPENDIX O, located at the end of this chapter). ( )

**065. -- 069. (RESERVED)**

**070. HEARINGS ON DENIED, LIMITED, OR CONDITIONED PERMIT OR OTHER DECISIONS OF THE DIRECTOR (RULE 70).**

Any applicant who is granted a limited or conditioned permit, or who is denied a permit, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within fifteen (15) days of receipt of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code. ( )

**071. -- 999. (RESERVED)**

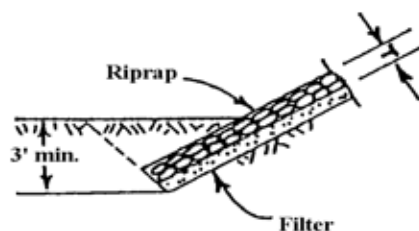
**APPENDIX A**

**Table 1A**

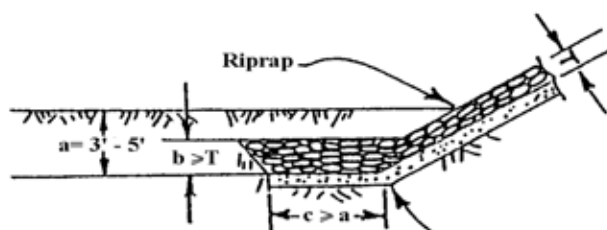
**Riprap Gradation Using FWS Method**

<b>% Finer by Weight (Lbs.)</b>	<b>Minimum Size (Lbs.)</b>	<b>Maximum Size (Lbs.)</b>
D <sub>100</sub>	1.33 X D <sub>75</sub>	2.0 X D <sub>75</sub>
D <sub>75</sub>	1.0 X D <sub>75</sub>	1.67 X D <sub>75</sub>
D <sub>50</sub>	0.67 X D <sub>75</sub>	1.17 X D <sub>75</sub>
D <sub>25</sub>	0.33 X D <sub>75</sub>	0.77 X D <sub>75</sub>
D <sub>0</sub>	None	0.33 X D <sub>75</sub>

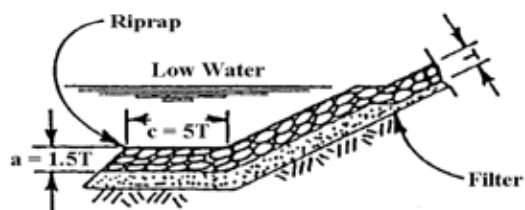
APPENDIX B



METHOD 1: This is most suited to areas where the toe is dry during construction.



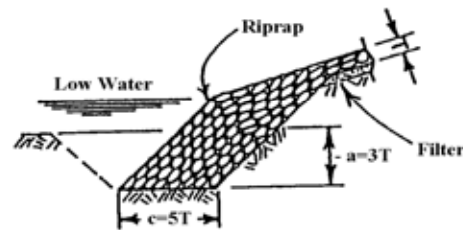
METHOD 2: Used when streambed is very wet or groundwater present makes using Method 1 impractical.



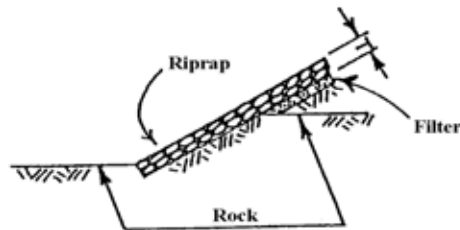
METHOD 3: Often used when toe is underwater during construction. Both Methods 2 and 3 utilize the idea that undermining will cause rock at toe blanket to settle into eroded area providing protection during scouring.

FIGURE 2. Acceptable toe protection

APPENDIX B (CONTINUED)



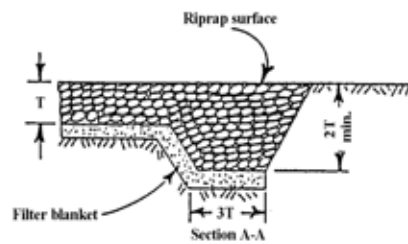
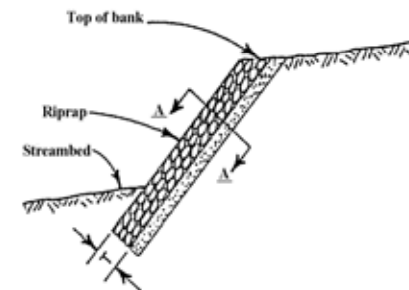
METHOD 4: Used underwater in areas with extremely bad streambed erosion conditions which make Method 3 unfeasible. This method may also be preferred where Method 3 would destroy fish spawning beds.



METHOD 5: When the streambed is non-erodible, no special provisions for toe protection are needed other than insuring that the riprap is well keyed to the rock.

FIGURE 2. Acceptable toe protection *continued*

APPENDIX C

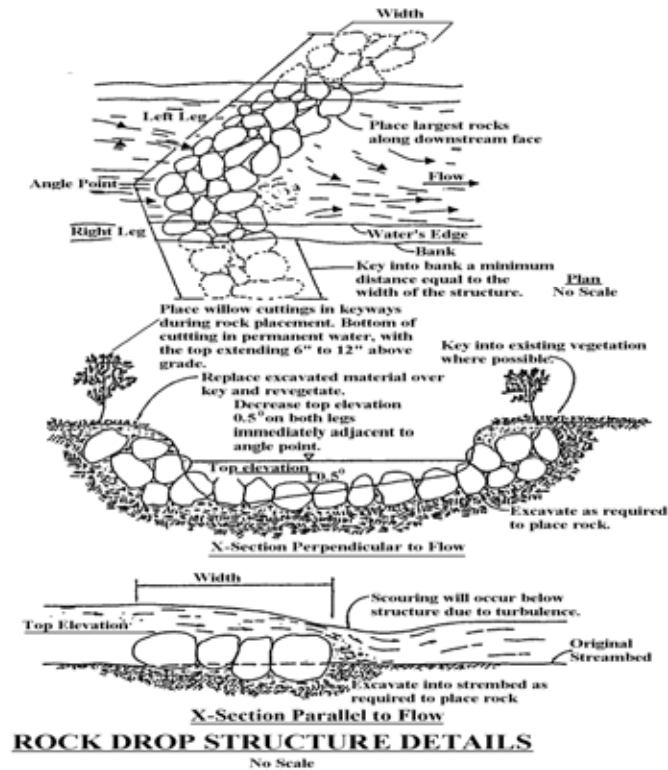


View shown above is cross section at end of  
riprap looking down along the sideslope toward  
streambed.

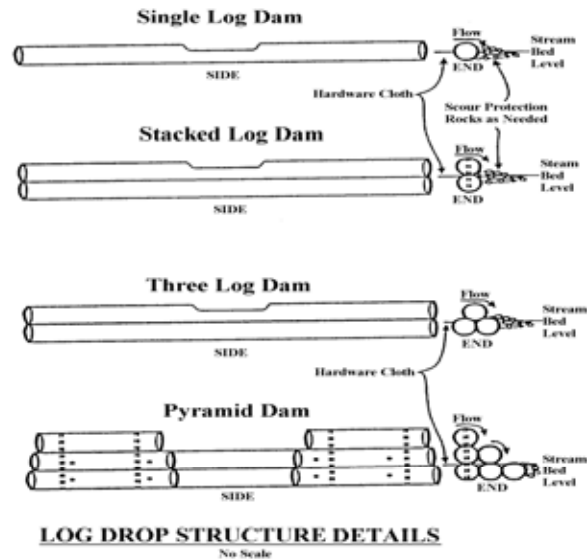
FIGURE 3. Protection against undermining



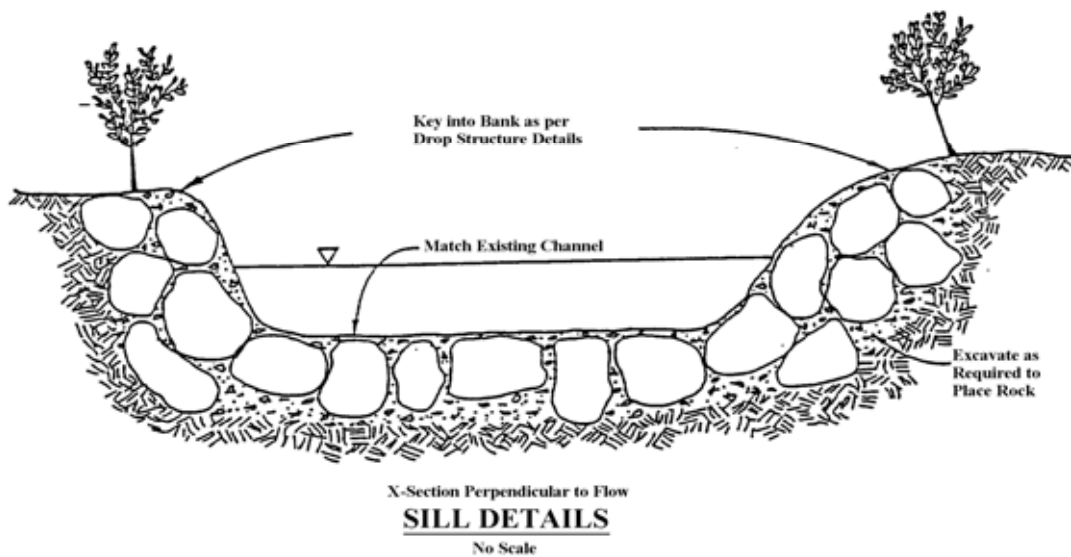
APPENDIX D



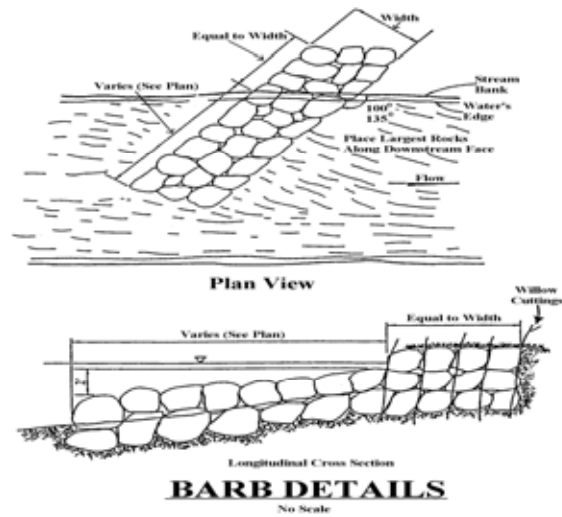
## APPENDIX E



## APPENDIX F



## APPENDIX G



## APPENDIX H

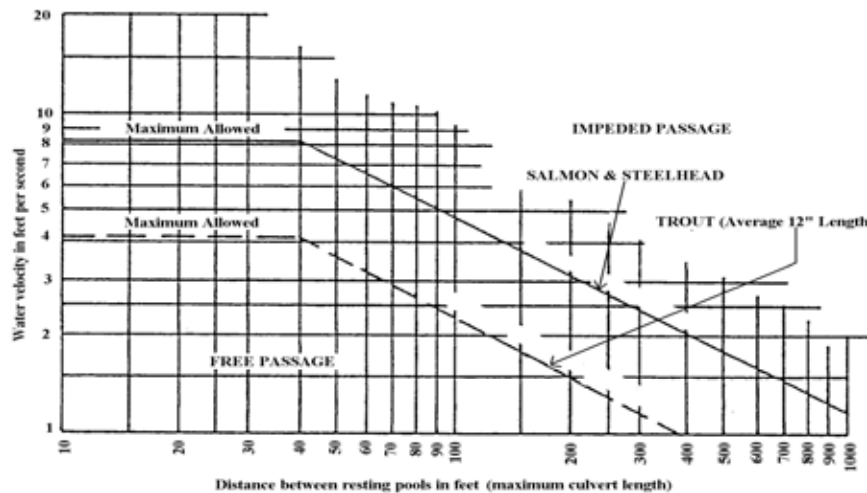
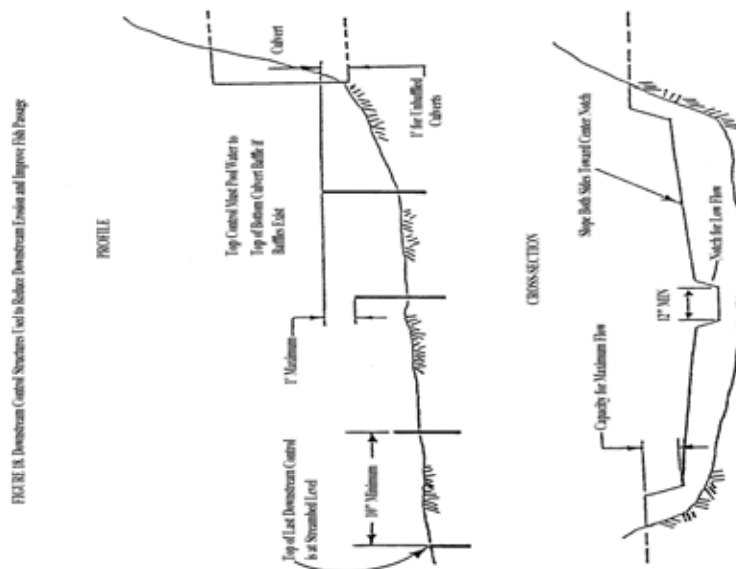
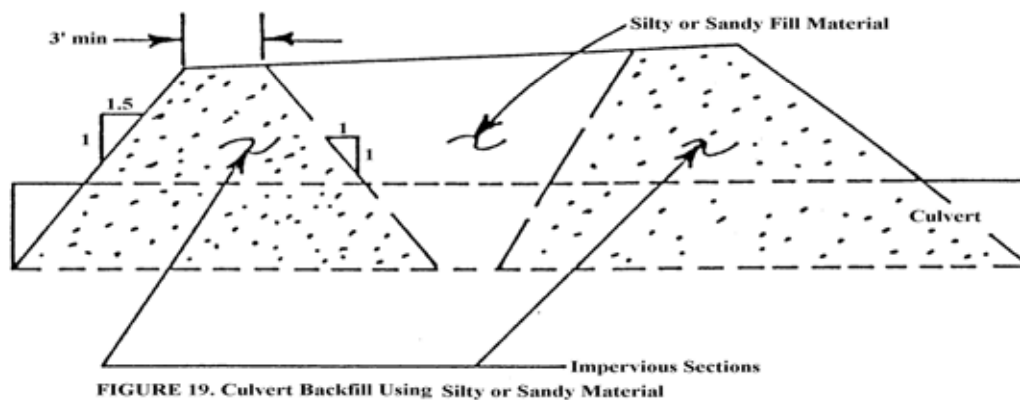


FIGURE 17. Swimming capability of migrating salmon and trout  
(Alaskan Curve)

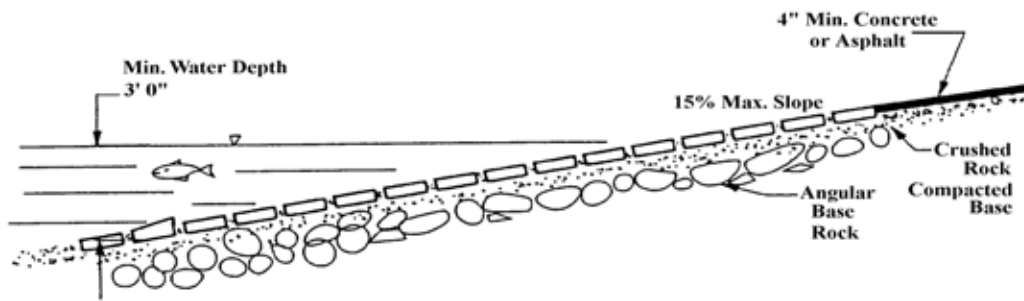
# APPENDIX I



# APPENDIX J



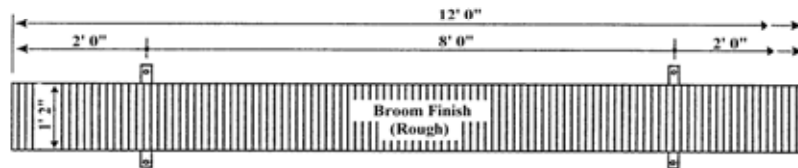
APPENDIX K



**LAUNCH RAMP SECTION**

No Scale  
Figure 20

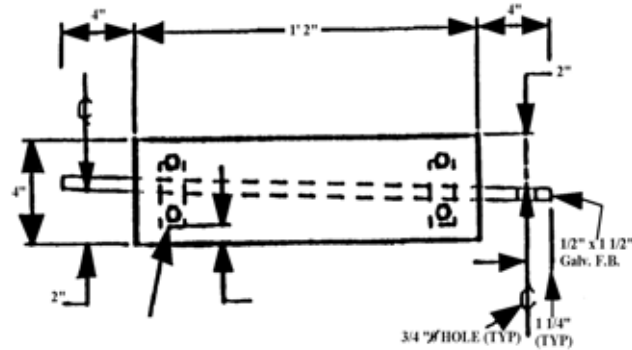
APPENDIX L



**CONCRETE PLANK**

No Scale  
Figure 21

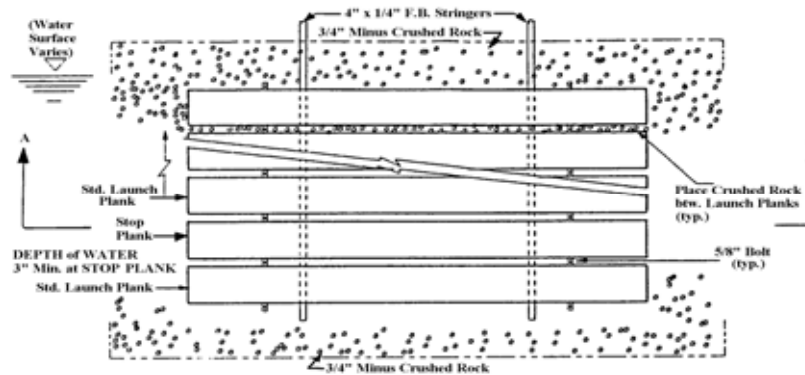
APPENDIX M



**CONCRETE LAUNCH PLANK DETAIL**

No Scale  
Figure 22

APPENDIX N

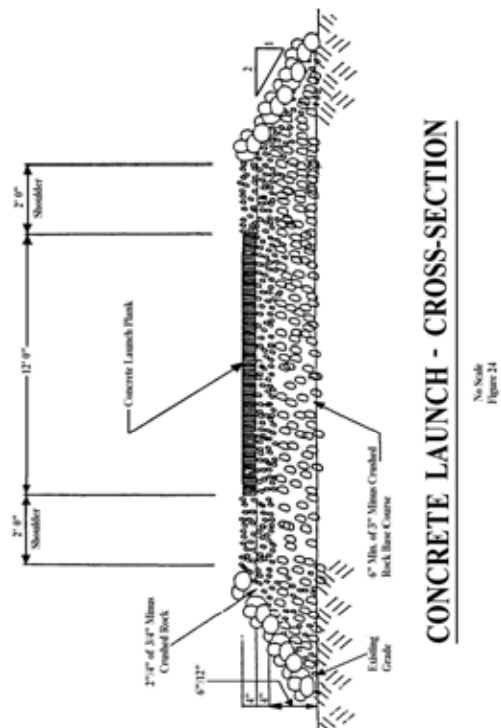


Place crushed rock as shown. Position stringers under planks in order shown and secure with 5/8" bolts. Slide planks on stringers, adding planks as needed, to desired water depth. Stringers consist of 2 - 4" x 1 1/4" x 20' lng. std. flat bar w/ clevis pin hole one end. Pull flat bar stringers up grade from water when planks are positioned and bolted together, remove when last plank has been set in place.

**CONCRETE LAUNCH-PLAN VIEW**

Figure 23  
No Scale

APPENDIX O



**IDWR IDAPA 37.03.07.61 Rulemaking - Comment and Response Summary Table**

Comment No.	Name	Agency or Organization	Type of Comment	Date of Comment	Comment	IDWR Response to Comment
1	Barry Turner	N/A	Oral	06/02/21	Mr. Turner commented that he appreciates the opportunity for miners to engage in rulemaking in Idaho, to implement a permit process.	The Idaho Department of Water Resources ("IDWR") appreciates public engagement in all of its negotiated rulemaking efforts.
2					Mr. Turner commented that he supports the proposed rule changes and the draft rule.	IDWR acknowledges the support.
3	Brian Koch	N/A	Oral	06/02/21	Mr. Koch commented that he is confused by the permitting process on the South Fork of the Clearwater River and the 15 permit limit. He generally questioned how the permit process for the three agencies (IDWR, IDEQ, US Forest Service) worked with respect to the permit limit, permit sequencing, and the timing of filing permit applications.	Rule 61 is not applicable to dredge mining activities on the South Fork of the Clearwater River. The State Water Plan regulates the permitting process required on the SFCWR.
4					Mr. Koch commented that the Idaho Conservation League ("ICL") does not "make the rules" in Idaho and they do not "enforce the rules" in Idaho.	IDWR agrees with this comment, however, the rulemaking process is negotiated and involves all parties desiring to participate.
5					Mr. Koch commented, that the term "mechanized equipment" is hard to define. He referenced paddles in a raft as an example of a "mechanical lever." He also commented that standards for mechanized equipment should not "single out" dredge miners or treat them unfairly in comparison to other recreational user groups.	See applicable response above. IDWR generally agrees that all recreational activities that modify stream channels should be regulated equitably.
6	David Arthaud	The National Oceanic and Atmospheric Administration ("NOAA")	Written	05/14/21	NOAA commented "[g]enerally, these rules promoting instream suction dredge mining and its discharge of metals and sediment pollutants are expected to cause take of ESA-listed salmonids and degradation of their critical habitat. Section 9 of the ESA prohibits the unpermitted take of listed species and destruction of their designated critical habitat."	IDWR does not agree that Rule 61 will necessarily cause "take" of ESA-listed salmonids and degradation of their critical habitat. IDWR regulates the impacts of small scale dredge mining activities on ESA-listed species and critical habitat through the opening and closure of waterways in the state. Furthermore, Section 9 of the ESA prohibits the "unpermitted" take of listed species and this rulemaking affects minimum standards for the "permit process" governing small scale suction dredge mining.
7					NOAA commented "deleting "sluice" does not technically prevent the use of machines. As proposed in 061.03, mechanized equipment would be allowed to alter stream channels. Machines (pulleys, winches, wires, sluices, etc.) are not precluded by the proposed language and together could be allowed to work with suction dredges to excavate/fill/disturb 33% (061.06) of critical habitat throughout large reaches of rivers and streams. Engines of unlimited size above the ordinary high water mark ("OHWM") would technically also be allowed to power such machines."	IDWR proposes to remove the term "sluice" only from the definition of "non-powered equipment" as defined in proposed rule 01.11 IDWR proposes to include the term "power sluices" and "power sluice" in proposed Rule 61. The term powered equipment is clarified in proposed rule 01.13 as "equipment which is powered by means other than human strength such as a gasoline engine or electric motor." Proposed rule 61.03 still limits the use of powered equipment to the suction dredge or power sluice and any life support equipment necessary to operate the dredge or power sluice. Ropes, pulleys, cables, chains, and the like located below the mean high water mark ("MHW") and attached to any powered equipment, whether the powered equipment is located above or below the MHW, is prohibited under Rule 61. IDWR therefore disagrees that engines of unlimited size above the MHW could be allowed or used with attached cables, ropes, pulleys, wires or similar equipment below the MHW.
8					NOAA commented that IDWR should keep the following text in the current rule, "moving more than one-quarter (1/4) cubic yards per hour."	The 1/4 CY per hour limitation in the current Rule 61.01 is a limitation applied to non-powered equipment. In the proposed rule, this limit has not been removed but relocated to Rule 25.03 where it is still used as a de minimis threshold permit requirement for non-powered equipment.
9					NOAA commented that "IDWR suction dredge permits would be issued at a drainage basin scale or at a large portion thereof (061.02). If spawning/incubation areas exist anywhere within a drainage basin, the proposed language would not limit harm to these critical habitats or the sensitive life stages of listed fish that may be present."	Rule 61.02 has been revised. The terms "drainage basin" and "large portion of a drainage basin" are deleted from the proposed sub-rule.
10					NOAA commented that Rule 61.04 should be modified to "prevent damage to streambanks; require revegetation and reclamation."	The proposed rule prohibits the undercutting of the streambank. If that permit limitation is violated IDWR would pursue enforcement that may include revegetation, reclamation, or other mitigating activities.
11	Don Dorman	Idaho Gold Prospectors Assoc. (682 individuals)	Oral	04/27/21	Mr. Dorman testified that he generally supports the changes to the "non-powered" and "powered" equipment distinction and the rules as drafted.	IDWR acknowledges the support.
12	Don Dorman	Idaho Gold Prospector's Assoc.	Oral	6/2/201	Mr. Dorman testified that he liked the changes in the rules so far, and likes "where [the rules] are sitting right now."	IDWR interprets this comment as support for the draft rule.
13					Mr. Dorman commented, people use "high bankers" below the MHW and feed the equipment with a shovel...sometimes in the stream sometimes on the bank...in the past he has directed members to get a letter permit for high banking activity. He also commented that high bankers are powered equipment with a "motorized sluice." He commented that he wants to ensure that the letter permit covers high banking activity conducted below the MHW, as has been allowed in the past. He emphasized that he does not want Rule 61 to exclude high banking.	IDWR agrees that it has historically used the minimum standard rule for dredge mining to permit high banking activity conducted below the MHW. The Proposed Rule will continue to allow this practice and rule 61.01 authorizes the issuance of an expedited permit for "power sluicing." Rule 61.01 further states, "[a] power sluice and high-banker are synonymous for the purposes of this rule."
14					Mr. Dorman commented on "mechanical equipment" language in the rule indicating IDWR should modify the wording to clarify that anything that uses "gas" or "electricity" is not "human powered."	In its Proposed Rule, IDWR modified the definition of powered equipment from previous drafts to be, "[e]quipment which is powered by means other than human strength such as a gasoline engine or electric motor."
15					Mr. Dorman commented on high banking, noting that high banking should be treated like dredging when its below the MHW, but that most high banking occurs above the MHW. High banking below the MHW should be treated like dredging and not get into vegetation. Typically, high bankers have intake hoses that are 1-2 inches in diameter, their discharge "is much smaller than dredge," and you use a "shovel" not "suction" to feed the rock material into the machine.	IDWR agrees that high banking activity is authorized under the minimum standard rule and should be limited to the area below the MHW. IDWR modified Rule 61.03 to clarify this issue.
16					Mr. Dorman commented on high banking, noting that high bankers need to get a "Temporary Application for Temporary Approval of Water Use" if they are working above the MHW.	IDWR concurs.
17					Mr. Dorman commented, under Rule 30.04, change language to add "high banker" to the language "...operate a vacuum or suction dredge" so that it read "...operate a vacuum or suction dredge or a high banker." And also add "high banker" to the end of the rule. He commented that Rule 61 could also be modified to include "high banker" with the "suction dredge" terms to be consistent through out the rules.	See previous comments.
18					Mr. Dorman commented that he considers a "power sluice" to be the same thing as a "high banker." He commented that power sluices are almost always used in a stream because you have to suck water in through a hose to operate them.	See previous comments.



**IDWR IDAPA 37.03.07.61 Rulemaking - Comment and Response Summary Table**

Comment No.	Name	Agency or Organization	Type of Comment	Date of Comment	Comment	IDWR Response to Comment
19	Eric Wilson	IDL	Written	05/14/21	IDL supports the retention of the 5-inch diameter nozzle standard to keep dredging activities to a "de minimis level."	IDWR interprets this comment as support for the draft rule.
20					IDL supports the draft rule language on "powered equipment."	IDWR interprets this comment as support for the draft rule.
21					IDL noted that Rule 61 "does not conflict with IDL authorities."	IDWR views IDL's concurrence in this rulemaking effort as essential as a result of the agencies' shared permitting responsibilities related to stream channel alteration.
22	Eric Wilson	IDL	Written	06/17/21	IDL commented that an "a" should be added to Rule 61.01.	IDWR notes that the "a" IDL proposes is unnecessary as stream channels is plural in the proposed rule.
23	Gary Bowling	N/A	Oral	04/27/21	Mr. Bowling testified that he generally supports the draft strawman rule as written.	IDWR acknowledges the support.
24	Gary Bowling	N/A	Written	05/13/21	Mr. Bowling generally supports the draft rules as written.	IDWR acknowledges the support.
25					Mr. Bowling noted dredges will "not" typically move the amount of material claimed by the manufacturers.	No response.
26					Mr. Bowling noted that "wilderness restrictions" should not apply to Rule 61.	IDWR did not consider "wilderness restrictions" in drafting its Proposed Rule.
27					Mr. Bowling supports the delineation of acceptable machinery between human powered and non-human powered machines.	No response.
28					Mr. Bowling supports regulation of filling current dredge hole before moving to another one as adequate limitations on moving rocks.	No response.
29					Mr. Bowling does not support regulating mining to the point that is "impossible to do."	No response.
30	Gary Bowling	N/A	Written	06/02/21	Mr. Bowling interpreted the proposed rule 61.01 to require a permit for any non-powered operation, which would be a departure from IDWR's historical practices. To address his concern, he suggested removing "non" from "non-powered" at the end of rule 61.01.	Mr. Bowling's comment was to Strawman V.1. Rule 60.01 was updated in subsequent rule drafts. In the Proposed Rule draft, rule 25.05 clarifies that an exemption from permitting requirements exists for certain qualifying non-powered activities as set forth in the rule.
31	Gary Bowling	N/A	Oral	06/02/21	He commented regarding motorized equipment, is a "come along considered mechanized equipment." He commented that he thinks "non powered equipment" includes a come along, a pry bar, a shovel, a pick, which are human powered and not mechanized equipment.	IDWR proposes to remove reference to "mechanized" equipment and instead draw a regulatory distinction between "powered" and "non-powered" equipment. The key is whether the equipment is human powered or not.
32					He questioned, where is the line, how can we word the rule, to address/define what is mechanized.	See previous comments.
33					He commented that he supports and "is good with" the rule distinction as written.	IDWR acknowledges the support.
34					He commented that there needs to be additional number, language, or paragraph to address high banking and its treatment under Rule 61. Does a "gravity syphon" with a high banker legal? When there is no permit	IDWR agrees the rules need to address high-banking and has modified Rule 61.01 to clarify that power sluicing and high banking are synonymous activities. The use of a gravity syphon, therefore, would depend on whether it was powered or non-powered. Rule 61 clarifies when the use of powered equipment is permitted below the MHW.
35					He commented that in 61.01, and the language "and non-powered equipment" be interpreted to mean a permit is required to "pan" or "hand sluice"? He commented that 61.01 should not limit or require a permit for panning or hand sluice boxing.	IDWR agrees that non-powered mining activities such as panning do not require a permit when moving less than 1/4 cubic foot per hour as stated in Rule 25.03.
36	Gary Bowling	N/A	Written	06/22/21	Written Comment 1	IDWR modified Rule 25.05 to include specific citation to Rule 61.05.
37					Written Comment 2	The Director has the statutory, discretionary authority to permit the alteration of stream channels pursuant to I.C. 42-3803. However, to avoid ambiguity in proposed Rule 61.01, the clause "or as otherwise determined by the Director" has been removed.
38					Written Comment 3	It is through the negotiated rulemaking process that stakeholders may provide input on rulemaking. The comments provided are used to alter and amend and affect the rules governing the regulated activity. However, to avoid confusion in proposed Rule 61.01, the clause "and all applicable rules" has been removed.
39					Written Comment 4	IDWR disagrees with this comment and will keep reference to non-powered equipment in proposed Rule 61.02.
40					Written Comment 5	Rule 61 addresses minimum standards for suction dredging and power sluices. Any activity not covered by the minimum standard would be subject to the joint application for permit (3804B).
41	Gay Richardson	N/A	Oral	06/02/21	He commented that he wants "more time" or a longer season to mine on the SFCWR and the ability to use a power winch.	Rule 61 is not applicable to dredge mining activities on the South Fork of the Clearwater River. The State Water Plan regulates the permitting process required on the SFCWR.
42					He commented that on-site claim surveys should be expanded so that the survey includes the whole claim with multiple identified segments so that when the permitted segments don't bare gold, and they want to move to a new segment, they don't have to wait for another site survey before they can move.	See previous response.

**IDWR IDAPA 37.03.07.61 Rulemaking - Comment and Response Summary Table**

Comment No.	Name	Agency or Organization	Type of Comment	Date of Comment	Comment	IDWR Response to Comment
43	Jan Higdem	N/A	Written	05/14/21	She supports the "rescission of Rule 61 in [total], with NO replacement."	IDWR continues to conclude that suction dredge mining alters stream channels and should be permitted pursuant to the Stream Channel Alteration Act. See I.C. 42-3801 et seq. As a result of its conclusion, IDWR notes that the removal of Rule 61 would not result in the elimination of the permitting of these activities. Instead, the removal of Rule 61 would likely result in IDWR using the Joint Application Permit (3804B) as the de facto permitting process.
44					She supports the legislative revision of the word "alter" to exclude "suction dredge mining," because the activity does not permanently alter the stream channel.	Modification of the statutory definition of "alter" (I.C. 42-3802(b)) is outside the scope of this rulemaking. Further, IDWR continues to conclude that suction dredge mining alters stream channels and should be permitted pursuant to the Stream Channel Alteration Act. See I.C. 42-3801 et seq.
45	Jeff Bowman	Mount Pigsah Mining District	Written	05/14/21	MPMD supports the "standard regulation of 5" and 15 horse power."	IDWR interprets this comment as support for the draft rule.
46	Jeff Bowman	Mount Pigsah Mining District	Oral	06/02/21	Mr. Bowman commented that his mining district met (38 members/claim owners) and they agreed to support the 5"/15 hp minimum standards included in the rule. And they have submitted a letter stating their support of the draft rule.	The Proposed rule maintains the 5" and 15 hp standard.
47					Mr. Bowman commented that he wants to reinstate the "letter permit" process on McCoy Creek for qualifying dredging activities. He commented that miners should have to use the standard joint application permit for activity in excess of 5"/15 hp. Don stated the Forest Service would support reinstating the letter permit process. He commented that the FS has issued a new EA that loosened restrictions.	The scope of this rulemaking is limited to Rule 61 and does not address the opening or closing of specific waterways. However, IDWR staff are open to meeting with miners, the forest service, and other interested parties to explore changes to current permitting limitation on McCoy Creek.
48	Jonathan Oppenheimer	Idaho Conservation League ("ICL")	Written	05/06/21	ICL noted it is important that the rule be written to ensure protection of public resources from the more intensive mining operations and activities that could be permitted pursuant to the (short form) Letter Permit.	IDWR agrees with this comment and concludes that the Proposed Rule will continue to facilitate the expedited permitting of certain qualifying mining activities that meet an acceptable level of de minimis impact to the stream.
49					ICL noted the current "1/4 cubic yard per hour" limit is an important protection and the removal of this protection may result in direct impacts to Public Trust Water and Submerged Lands.	The 1/4 CY per hour limitation in the current Rule 61.01 is a limitation applied to non-powered equipment. In the proposed rule, this limit has not been removed but relocated to Rule 25.05 where it is still used as a de minimis threshold permit requirement for non-powered equipment.
50					ICL commented, the definition of powered "equipment" should properly include any connected cables, ropes, pulleys, or connections.	The current and proposed Rule 61.03 limits the use of powered equipment below the MHW to the suction dredge or power sluice, and any human life support equipment necessary to operate the dredge or power sluice. Proposed Rule 61.03 does not authorize the use of any ropes, cables, chains, and the like, attached to the dredge or power sluice (powered equipment). IDWR agrees with ICL that ropes, cables, chains, and the like located below the mean high water mark ("MHW") and attached to any powered equipment, whether the powered equipment is located above or below the MHW, is prohibited under Rule 61.
51					ICL noted, IDWR should provide information on the evaluation of current use of winches, whether hand, or powered.	IDWR does not have record of any specific or general impacts to stream channels from past winching associated with dredge mining conducted under Rule 61. IDWR staff has not observed the use of hand or powered winches when inspecting suction dredge operations although some miners have anecdotally told staff they occasionally use hand winches or come-along to move larger rocks. Several miners commented at the April 27, 2021 public meeting that most miners do not use hand or powered winches to move larger rocks or boulders because it is not practical to do so.
52					ICL commented, the definition of "powered equipment" should appropriately include hand-operated mechanical winches, pulley, or other instruments.	IDWR disagrees with ICL's comment. The proposed rule attempts to distinguish un-permitted (Rule 25.05) and prohibited activities (Rule 61.03), associated with Rule 61, on the basis of whether the piece of mining equipment is "powered" or "non-powered." Where proposed rule 01.11 defines "non-powered" as "equipment which is powered by only human strength," hand operated "winches," "pulleys," or "come-along" are powered by human strength and therefore are defined as "non-powered" equipment under the proposed rule.
53					ICL noted, IDWR is modifying Rule 61 without adequate justification, analysis, or consideration.	IDWR is only considering changes to the long standing rule governing minimum standards for small scale suction dredging where such activity can be approved using the Letter Permit.
54					ICL commented, the published rules should be updated to include legible figures and diagrams on pages 15-23 of the rules in Appendix B through Appendix P.	IDWR agrees that all figures and diagrams in the proposed rule should be legible and will work with the Office of the Administrative Rules Coordinator to ensure the final published rule is legible throughout.

**IDWR IDAPA 37.03.07.61 Rulemaking - Comment and Response Summary Table**

Comment No.	Name	Agency or Organization	Type of Comment	Date of Comment	Comment	IDWR Response to Comment
55	Jonathan Oppenheimer	ICL	Oral	06/02/21	ICL commented that the proposed rule change would authorize the use of mechanical equipment below the ordinary high water mark ("OHWM") that is prohibited by the current rule. Current rule prohibition applies to winches, come alongs, cables, ropes, chains, ties, hooks, pulleys, and other attachment to the mechanized equipment are part of the equipment.	IDWR disagrees that the current rule clearly prohibited the use of all mechanical equipment below the MHW. The term "mechanical equipment" was not defined in the previous rule, and was interpreted differently by different parties. Dredge miners have informed IDWR in the past of the use of varying degrees of hand powered mechanical equipment such as a come-along. The lack of clarity and uniform enforcement of the use of mechanical equipment is why IDWR is proposing a new standard of "powered" vs. "non-powered" equipment in the proposed rule. Dredge miners have reported that the use of hand operated mechanical equipment is sometimes a necessary safety precaution.
56					ICL commented that the current rules allow "take" of ESA species and this new rule would propose to "modify and weaken" the rules and could cause "more take."	IDWR disagrees that the changes to the rule would necessarily result in increased "take" of ESA species. IDWR regulates the impacts of dredge mining activities on ESA species through the opening or closing of waterways. Refer to IDWR responses above to related comments by NOAA.
57					ICL commented that it is concerned with the draft Rule 61.01 because the removal of the "1/4 CY per hour" limit will lead to increased impact to the waters of Idaho as it relates to the Clean Water Act, the Endangered Species Act, and other concerns.	The 1/4 CY per hour limitation in the current Rule 61.01 is a limitation applied to non-powered equipment. In the proposed rule, this limit has not been removed but relocated to Rule 25.03 where it is still used as a de minimis threshold permit requirement for non-powered equipment.
58					ICL commented on high banking, noting that IDEQ's general permit for small scale placer mining in Idaho does not cover high banking. And any discharge from a high banking operation to waters of the US will require an individual IPDES permit.	Rule 61 is part of IDWR's regulatory regime governing stream channel alteration. A "discharge" under the Clean Water Act is governed by DEQ's IPDES permitting regime. IDWR's letter permit is conditioned to require the permittee to obtain an IPDES permit from DEQ before carrying out any mining activities authorized by the permit. See Letter Permit Condition 6.
59					ICL commented that high banking operations "could be authorized" when they are not discharging to water of the US.	See IDWR response directly above.
60					ICL commented that the issuance of permits by IDWR, which conflict with permits issued by other agencies, is prohibited as determined by the ISC in its Shokal v. Dunn decision, 1979.	See IDWR response directly above.
61	Jonathan Oppenheimer	ICL	Written	06/09/21	ICL commented, that the IDEQ's IPDES "Suction Dredge Inter-Agency Coordination Meeting Agenda" permit documents states "high banking is not covered under the suction dredge permit. Return water should not be directly routed to water of the United States or could require a permit."	See IDWR response directly above.
62					Does IDWR interpret the prohibition on powered equipment below the OHWM to include ropes, cables, chains or other attachments to the powered device?	IDWR agrees the term powered equipment under proposed Rule 61.03 includes any ropes, cables, chains, and the like, attached to the powered equipment.
63	Jonathan Oppenheimer	ICL	Written	06/22/21	ICL commented that IDWR failed to provide a rationale, basis or justification for the proposed rule changes. ICL argues "IDWR has failed to demonstrate how the agency can better meet its statutory duties by loosening existing rules and restrictions related to suction dredge mining and moving large rocks in stream channels. Specifically, IDWR has authority under Title 42, Chapter 38, Idaho Code, to regulate the alteration of stream channels for the health, safety and welfare of the public and to protect stream channels from alteration for protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality."	IDWR disagrees that it is "loosening" existing rules and restrictions. IDWR's intent with this rulemaking is to clarify the minimum standards related to small scale dredge mining in Idaho. While IDWR has reframed certain terms (i.e., mechanized vs. powered), it has not substantively changed the underlying meaning and intent of the rule which is to establish an expedited de minimus dredging activities permit process.
64					ICL commented that IDWR did not provide any evidence of the effects of current winching practices associated with Rule 61 activities, specifically whether winching has obstructed the "free navigation of the channel."	IDWR is not aware of any specific or general impacts to stream channels from past winching associated with dredge mining conducted under Rule 61.
65					ICL commented that the Idaho Department of Lands ("IDL") failed to provide analysis or evidence related to small scale mining and its relation to public trust responsibilities, including navigation, fisheries, and other public trust uses.	Consistent with I.C. 42-3803(c), IDL was offered, and did participate in the rulemaking effort. IDL provided specific comment regarding Rule 61. IDWR's response to these comments are included in this Comment and Response Summary Table.
66					ICL argues the proposed rule will increase ESA take and, therefore, increases the State of Idaho's potential liability under the ESA.	Please see IDWR response to NOAA's Comment located within this Comment and Response Summary Table.
67	Josh Collette	N/A	Oral	06/02/21	Josh, commented that his understanding was that under the existing and proposed rule, non-powered equipment (e.g., panning and sluicing) that meet the requirements 61.05 and 61.06 do not require any type of permit.	See applicable response above and new Rule 25.03.

**IDWR IDAPA 37.03.07.61 Rulemaking - Comment and Response Summary Table**

Comment No.	Name	Agency or Organization	Type of Comment	Date of Comment	Comment	IDWR Response to Comment
68	Ken Byers	N/A	Oral	06/02/21	Mr. Byers commented on "spill bag" requirements in the rule. Generally, he does not agree with spill bag requirements because they are impractical. He commented that spill kits are useless in a moving body of water, even if its on the dredge, "ready to go." He commented that if there is a spill the gas goes directly into the water where it can't be cleaned up and as a result the spill bag has no practical use. He also commented that he doesn't have to carry a "spill kit" on his jet ski, even though you refill jet skis on the water too. He acknowledged that spill bag requirements are not part of Rule 61.	The scope of this rulemaking is limited to Rule 61 and does not address the use of spill bags. However, IDWR disagrees that the use of a spill kit is impractical or ineffective. IDWR views the use of a spill kit as a reasonable best management practice to mitigate the risk of fuel spills.
69					Mr. Byers commented that IDWR should not have the 1/4 CY per hour limit in rule 61.01 because it is unenforceable.	IDWR disagrees with this comment. It believes the 1/4 CY per hour limit is enforceable and is an appropriate permitting threshold for non-powered equipment. IDWR did however, relocate the 1/4 CY per hour limit from rule 61.01 to rule 25.05.
70					Mr. Byers commented that when a dredge miner is dealing with big boulders, a winch is the safest way to move large boulders. Without the ability to safely move large rocks dredge miners could get killed.	Dredge mining is an activity that has inherent risk to the miner. It is the responsibility of the miner to avoid engaging in mining activities that put himself/herself or the public at risk, such as destabilizing a boulder to the point that it could roll onto and crush the miner.
71					Mr. Byers, commented that in "boulder filled" stream beds it would be hard to meet the 1/4 CY per hour limit. He also commented that he does not support any limit because it is an "unenforceable regulation" because staff can't confirm the rate of material moved by a dredge miner.	Refer to IDWR's previous response to Mr. Byers' related comment above.
72					Mr. Byers commented that there is a lot of confusion on which rivers are closed and by which agency.	IDWR acknowledges that different state and federal agencies tasked with regulating suction dredge mining activities have inconsistent stream closures. This inconsistency is due to the fact that different agencies have different authorities and different considerations when closing streams to suction dredge mining. For example, IDWR regulations may designate a stream as closed, or as having special limits, to conform the Stream Channel Alteration permitting process with the Idaho State Water Plan, where as this may not be a consideration for other agencies.
73					Mr. Byers commented that he doesn't agree that dredge mining activities constitute a "takings" of endangered species.	Refer to IDWR's responses above that address comments submitted by NOAA regarding ESA takings.
74					Mr. Byers commented that generally, IDWR should not promulgate rules that are unenforceable.	Generally, IDWR promulgates regulatory rules that are enforceable.
75	Larry Domingo	N/A	Written	04/29/21	He noted, dredge nozzles typically suck up material considerably smaller in diameter than the nozzle diameter.	No response.
76					He noted, when dredging is done efficiently only 1/10th of the nozzle diameter is sucking up material.	No response.
77					He stated, overall the first rulemaking meeting achieved what was intended to present a rule that stands to reduce the onerous language and procedures from the mining permitting process.	IDWR interprets this comment as support for the draft rule.
78	Larry Lorenzo	N/A	Oral	04/27/21	Mr. Lorenzo testified that he supports the draft strawman rule as written. "You've done a good job."	IDWR acknowledges the support.
79	Michael Edmondson	N/A	Written	05/11/21	Mr. Edmondson commented that IDWR should remove the phrase "to alter the stream channel" from the proposed rules 61.03.	IDWR's Proposed Rule draft of Rule 61 does not include the phrase "to alter the stream channel" in sub-rule 61.03.
80					Mr. Edmondson noted that he does not support a rule 10.01 definition of "alteration" that is ultimately "determined by the director."	IDWR has not proposed any changes to sub-rule 10.01 through this rulemaking process and does not support the removal of the phrase "determined by the director" through this rulemaking process.
81					Mr. Edmondson commented that he does not support the idea that the mere use of a dredge "alters a stream channel."	IDWR's acknowledges Mr. Edmondson's comment but continues to conclude that suction dredge mining alters stream channels and should be permitted pursuant to the Stream Channel Alteration Act. See I.C. 42-3801 et seq.
82	Richard Wist	N/A	Written	05/28/21	Mr. Wist noted, if rule does not allow boulders to be moved, dredging will not be feasible on many claims.	The Small Scale Mining Permit allows for use of non-powered equipment to move boulders. Further, powered equipment may be used to move boulders when permitted under the Joint Application Permit (38048).
83					Mr. Wist noted, on streams with few boulders its possible to move up to one cubic yard of material an hour, but on other claims you can't move the same amount of material without moving boulders.	IDWR agrees that the rate of material movement is likely a function of the streambed's particle size distribution at any given mining location.
84					Mr. Wist noted, it is impossible to move large boulders, to maintain a rate of one cubic yard of dredged material an hour without "power."	No response.
85					Mr. Wist noted, moving a cubic yard of material comprised of boulders is no less "disruptive than moving a cubic yard of material without boulders."	No response.
86					Mr. Wist noted that by limiting the size/amount of boulders that can be moved under the rule IDWR would be discriminating against claims where lots of boulders are present.	Some of the discussion during the two rulemaking public meetings focused on if and how to limit the movement or removal of rocks associated with mining activities authorized by Rule 61. There was not unanimous support for any one approach to limiting rock removal. In the end, Proposed Rule 61 addresses rock removal by prohibiting the use of "powered" equipment to move rocks and allowing the use of "non-powered" equipment, such as a come-along, to move rocks. Further, powered equipment may be used to move boulders when permitted under the Joint Application Permit (38048).

**IDWR IDAPA 37.03.07.61 Rulemaking - Comment and Response Summary Table**

Comment No.	Name	Agency or Organization	Type of Comment	Date of Comment	Comment	IDWR Response to Comment
87	Robert Taylor	N/A	Written	05/14/21	Mr. Taylor supports a rule change in favor of using mechanical methods to move rocks "over 24 inches."	See IDWR response directly above.
88					Mr. Taylor supports a rule because "suction dredgers should be allowed..."	IDWR acknowledges the support.
89	Ron Miller	N/A	Written	04/28/21	Expressed desire and commitment to testify at the second negotiated rulemaking meeting.	IDWR appreciates all stakeholder participation during the negotiated rulemaking process.
90					Mr. Finnegan noted that he did not object to the proposed strawman rule.	IDWR interprets this comment as support for the draft rule.
91	Pat Finnegan	N/A	Written	06/02/21	Mr. Finnegan commented that regarding dredge mining under a "letter permit", IDWR's permit process and guidance are confusing, and perhaps contradictory to other related state and federal permit processes, making it unclear to the public which rivers are open or closed to dredge mining. E.g., Salmon River from Cherry Creek to Hammer Creek.	IDWR, IDEQ, and other state and federal regulatory agencies have distinct regulatory authorities related to suction dredging. As a result, IDWR recognizes some discrepancies exist between its permit regulations and the related suction dredging permit regulations of other state and federal agencies. Regardless, IDWR is committed to working with stakeholders and other regulatory entities to establish as much consistency and agreement as is possible but it expects that complete agreement is unfeasible.
92					Mr. Finnegan noted that he has personally observed dredge miners conducting dredge mining without all required permits. E.g., IPDES/NPDES permit.	In the past, IDWR has brought enforcement action against dredge miners who were mining inconsistent with or contrary to conditions and limitations of their stream channel alteration permit. In the future, IDWR will continue to enforce against miners who violate the conditions of their permit.
93					Mr. Finnegan noted he has personally observed unclaimed dredge mine sites.	See previous response.
94	Pat Finnegan	N/A	Oral	06/02/21	Mr. Finnegan testified that he supports IDWR's effort to "strengthen and clarify" the regulation. He does not "object" to the Rule 61 draft.	IDWR acknowledges the support.
95					Mr. Finnegan commented that he objects to the current letter permit guidance because it is confusing and contradictory and identifies some stream reaches as open in some documents, which should be closed. Conflict between written documents and mapping tools. Also, the guidance conflicts with DEQ IPDES permit guidance.	IDWR agrees its guidance and mapping tools should be consistent in identifying open and closed waterways. IDWR will review and update its guidance as needed. IDWR, IDEQ, and other state and federal regulatory agencies have distinct regulatory authorities related to suction dredging. As a result, IDWR recognizes some discrepancies exist between its permit regulations and the related suction dredging permit regulations of other state and federal agencies. Regardless, IDWR is committed to working with stakeholders and other regulatory entities to establish as much consistency and agreement as is possible but it expects that complete agreement is unfeasible.
96	Troy Smith	Idaho Department of Environmental Quality ("IDEQ")	Written	05/04/21	IDEQ, supports draft rule's attempt to align IDWR permitting processes with IDEQ's Idaho Pollution Discharge Elimination System ("IPDES") permitting processes to the extent practical.	No response.
97					IDEQ noted that there is no "one quarter (1/4) cubic yard per hour" standard in the current IPDES General Permit IDG37000, except that section II.B.1 limits GEM (Grimes, Elk, and Mores) creeks permittees to "...processing an average of 2 cubic yards per hour..."	IDWR acknowledges differences in permit requirements between its Small Scale Mining Permit process and DEQ's IPDES General Permit for Small Suction Dredge Miners (IDG37000) process.
98					IDEQ noted that IPDES General Permit IDG37000 Section II.D.8 prohibits, "Explosives, motorized winches, or other motorized equipment to move boulders, logs, or other natural obstructions..."	IDWR acknowledges differences in permit requirements between its Small Scale Mining Permit process and DEQ's IPDES IDG37000 process.
99					IDEQ noted the IPDES General Permit IDG370000 Section II.D.9 prohibits, "mechanized equipment" below the mean high water mark, with the exception of the dredge. Note that IDEQ plans to reissue IPDES General Permit IDG37000 before its expiration in 2023.	IDWR looks forward to the opportunity to participate in DEQ's IPDES IDG37000 permit re-issuance process scheduled for 2023. The prohibition of motorized equipment in the IPDES GP is consistent with IDWR's prohibition of powered equipment below the mean high water mark in Rule 61.03 except for the dredge and any human life support system.
100	Troy Smith	IDEQ	Oral	06/02/21	Mr. Smith clarified that high banking that does not return water to the stream does not require an IPDES permit.	See IDWR response to IDEQ's 6/22/21 written comments below.
101					Mr. Smith stated that if high banking activities are returning water to the stream, the activity (1) may be covered under the general permit, or (2) it may require an individual permit.	See IDWR response to IDEQ's 6/22/21 written comments below.
102	Troy Smith	IDEQ	Written	06/22/21	IDEQ expressed appreciation for being a part of the rulemaking process and working to better align IDWR's rules with IDEQ IPDES permitting processes.	No response.
103					IDEQ noted typos in rule 61.01 (an "or" for an "of") and 61.02 (unnecessary "and").	IDWR fixed both typos in the Proposed Rule draft.
104					IDEQ commented that "power sluices" that do not "fit the definition of a small suction dredge in the IPDES General Permit IDG370000 and accompanying fact sheet are not covered by the General Permit as currently written" and would "need to apply for an IPDES individual permit."	No response.
105					IDEQ commented that it plans to reissue the current IPDES General Permit IDG370000 before it expires in 2023 and that there will be a public comment and review period before it is issued.	IDWR will plan to participate in the review and reissuance process for IPDES General Permit IDG37000 and hopes that it can work to IDEQ to address the "power sluice" permitting issue and more generally align IDEQ and IDWR permitting processes.

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 37-0101-2101**  
**(New Chapter – Zero-Based Regulation Rulemaking)**

**37.01.01 – RULES OF PROCEDURE OF THE IDAHO DEPARTMENT OF WATER RESOURCES**

**000. LEGAL AUTHORITY (RULE 0).**

This chapter is adopted under the legal authority of Sections 42-1701A(1), 42-1734(19), 42-1737(c), 42-1805(8), and 67-5206(5), Idaho Code. ( )

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** The title of this chapter is “Rules of Procedure of the Idaho Department of Water Resources.” ( )

**02. Scope.** This chapter contains the rules of procedure that govern contested case proceedings before the Idaho Department of Water Resources and the Idaho Water Resource Board. These rules do not apply to enforcement actions under Section 42-1701B, Idaho Code. ( )

**002. DEFINITIONS (RULE 2).**

**01. Agency.** The Idaho Department of Water Resources or the Idaho Water Resource Board acting within their respective authority to determine contested cases. The term “agency” may include the Director of the Department, members of the Board, employees of the Department or Board, and any duly appointed hearing officers. ( )

**02. Agency Action.** Agency action means: ( )

**a.** The whole or part of an order; ( )

**b.** The failure to issue an order; or ( )

**c.** An agency’s performance of, or failure to perform, any duty placed on it by law. ( )

**03. Agency Head.** The Board or Director of the Department. ( )

**04. Board.** The Idaho Water Resource Board. ( )

**05. Contested Case.** A formal or informal proceeding which results in the issuance of an order. ( )

**06. Department.** The Idaho Department of Water Resources. ( )

**07. Director.** The director of the Idaho Department of Water Resources. ( )

**08. Exceptions.** A petition asking the agency head to review a recommended or preliminary order. ( )

**09. Hearing Officer.** A hearing officer is a person other than the agency head appointed to preside over a formal proceeding in a contested case on behalf of the agency. Agency heads are not hearing officers, even if they are presiding at contested cases. The term “hearing officer” as used in these rules refers only to officers subordinate to the agency head.

( )

**10. License.** The whole or part of any agency permit, license, approval, or similar form of authorization required by law, but does not include a license required solely for revenue purposes. ( )

**11. Order.** An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. ( )

**12. Party.** Each person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including an applicant, petitioner, respondent, protestant or intervenor. ( )

**13. Person.** Any individual, partnership, corporation, association, governmental subdivision, or public or private organization or entity of any character. ( )

**14. Petition.** A pleading requesting a modification, amendment or stay of an existing order of the agency, the clarification, declaration or construction of the law administered by the agency, the clarification, declaration or construction of a person's rights or obligations under law administered by the agency, rehearing of a contested case, or intervention, or to otherwise request the agency take action that will result in the issuance of an order. ( )

**15. Presiding Officer.** One (1) or more members of the Board, the Director, or duly appointed hearing officer presiding over a formal proceeding as authorized by statute or rule. When more than one (1) member of the Board conducts a formal proceeding, they may all jointly be presiding officers or may designate one (1) of them to be the presiding officer. ( )

**16. Protest.** A pleading opposing or seeking to alter the outcome of an application. ( )

**17. Response.** A pleading responding to a motion or petition. ( )

**18. Rulemaking.** The process for formulation, adoption, amendment or repeal of a rule. ( )

**003. -- 049. (RESERVED)**

**050. PROCEEDINGS GOVERNED (RULE 50).**

These rules govern contested cases before the Department and the Board, unless otherwise provided by order of the agency. The Department and the Board through the promulgation of these rules decline to adopt in whole the contested case portions of the "Idaho Rules of Administrative Procedure of the Attorney General," IDAPA 04.11.01.100 through 04.11.01.799. However, the majority of the rules adopted here are consistent with the provisions of the Attorney General Rules. Certain provisions of the Attorney General Rules are not adopted or are modified to reflect both the statutory authority of and administrative practice before the Department and the Board. Rulemaking before the Department and the Board shall be governed by the Attorney General Rules, at IDAPA 04.11.01.05 and 04.11.01.800 through 860. ( )

**051. LIBERAL CONSTRUCTION (RULE 51).**

The rules in this chapter will be liberally construed to ensure just, speedy and economical determination of all issues presented to the agency. The agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. Unless required by statute, or otherwise provided by these rules, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested cases before the agency. ( )

**052. IDENTIFICATION OF CASE (RULE 52).**

Communications pertaining to a contested case before the agency should include a reference to the case number or case name. ( )

**053. FILING AND SERVICE OF DOCUMENTS (RULE 53).**

**01. Filing of Documents with the Agency.**

**a.** Documents may be filed with the agency by mail or personal delivery to the Department's main office or any of the Department's regional or field offices. See <https://idwr.idaho.gov/contact-us.html> for address and contact information. The agency will not accept filings by facsimile. A document sent by mail is considered filed on the date received by the agency. A document required to be accompanied by a filing fee shall not be considered filed with the agency until the fee is received. ( )

**b.** Documents may be filed by email as an alternative to filing by mail or personal delivery, at the following email address: [file@idwr.idaho.gov](mailto:file@idwr.idaho.gov). For purposes of filing by email, a "day" begins at 12:01 a.m. and ends at midnight, Mountain Time. Unless otherwise provided by statute, rule, order or notice, a document is considered filed on the day the email is sent if done so before midnight, Mountain Time, unless that date is a Saturday, Sunday or legal holiday, in which case it is deemed filed on the next available business day. Documents filed by email shall include the case number or, if none, other identifying information in the email caption. A document required to be accompanied by a filing fee shall not be considered filed with the agency until the fee is received. ( )

**c.** If the Department establishes an online process for filing specific applications or notices, filings may occur through the specific online data submittal portal. ( )

**02. Service on Parties and Other Persons.**

**a.** All documents filed with the agency must be sent by mail or delivered personally to the representatives of each party concurrently with filing the original with the agency. ( )

**b.** If authorized by the presiding officer, documents that must be sent by mail or delivered personally to the representatives of each party may be served by email as an alternative to service by mail or personal service. It is not necessary to serve copies by mail or personal service if service is completed by email. ( )

**03. Service of Documents by Agency.**

**a.** Any person designated by the agency to serve notices or orders issued by the agency shall serve these documents by regular mail, or by certified mail, return receipt requested, or by personal service on the representatives of each party designated pursuant to these rules. ( )

**b.** If authorized by the presiding officer, the person designated to serve notices and orders in a contested case may serve those notices and orders by email as an alternative to service by mail or personal service. It is not necessary to serve copies by mail or personal service if service is completed by email. ( )

**04. Format for Electronic Service.** Documents served by email must be in Portable Document Format (PDF) and be text searchable. Each email serving a document cannot be larger than 15 megabytes in size. Documents exceeding 15 megabytes in size may be divided into multiple documents and served in multiple emails. ( )

**05. Proof of Service.** Every document filed or served must be accompanied by a proof of service similar to the following certificate: ( )



## CERTIFICATE OF SERVICE

I certify that on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, I served or caused to be served the *[insert title of document]* to the parties by the following method(s):

*[Insert name of party or attorney]*  
*[Insert email address or mailing address]*

- ☐ Email
- ☐ USPS Mail (postage paid)
- ☐ Certified Mail / Return Receipt Requested
- ☐ Hand Delivery

\_\_\_\_\_  
*[Signature of Person Responsible for*

*Service]*

**06. When Service Complete.** Unless otherwise provided by statute, these rules, order or notice, service is complete when a copy, properly addressed and stamped, is deposited in the United States mail or the Statehouse mail, if the party is a State employee or State agency, or when there is an electronic verification that an email has been sent. ( )

### **054. COMPUTATION OF TIME (RULE 54).**

Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count, but the last day of the period so computed is included in the count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not Saturday, Sunday or a legal holiday. ( )

### **055. FEES (RULE 55).**

If submitted by mail or in person, fees paid to the agency may be paid by cash, money order, bank draft or check payable to the agency. Payments in cash, submitted by mail, are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. Fees may also be paid by credit card or other digital methods, if allowed by the agency. Filings required to be accompanied by a fee are not complete until the fee is paid. ( )

### **056. -- 099. (RESERVED)**

### **100. INFORMAL AND FORMAL PROCEEDINGS (RULE 100).**

Contested cases before the agency shall be conducted as informal or formal proceedings. ( )

**01.** Informal proceedings are wholly administrative evaluations and processes, without a presiding officer and hearing record to be preserved for later agency or judicial review, and with representation according to Rule 201.01. ( )

**02.** Formal proceedings are quasi-judicial proceedings conducted by a presiding officer, with a hearing record to be preserved for later agency or judicial review, and with representation according to Rule 201.02. ( )

**03.** Unless otherwise directed by the agency, informal proceedings will be used first in an effort to resolve the issues presented in a contested case. If, after the agency has commenced a formal proceeding, the parties to a contested case settle or resolve the issues of the case, the case may return to an informal proceeding. The agency may also utilize informal proceedings, such as settlement conferences, any time after commencement of a formal proceeding. ( )

### **101. INFORMAL PROCEEDINGS (RULE 101).**

**01.** Informal proceedings include correspondence and the exchange of information between the agency and an applicant or petitioner during the agency's review of an application or petition. If a protest is filed opposing an application, or a response is filed to a petition, the agency will issue a Notice of Informal Settlement Conference. The agency may also issue a Notice of Informal Settlement Conference in un-protested one-party contested cases, where

a party has requested a hearing before the agency. ( )

**02.** All parties to a contested case or their representatives must attend the informal settlement conference. The informal settlement conference may be conducted by an agency employee. Informal settlement conferences are used to discuss applications or pleadings, explore settlement options, discuss the commencement and scheduling of formal proceedings, discuss additional informational needs, and evaluate the need for additional informal proceedings or alternative dispute resolution options such as mediation. The agency may conduct additional informal proceedings, which all parties or their representatives must attend, to assess the potential for settlement or resolution of all or a portion of the issues in a contested case. ( )

**03.** During informal proceedings the agency may stay the contested case at the request of the applicant or petitioner, upon stipulation of the parties, when the agency determines that such delay will assist the agency in resolving or deciding the contested case, or when an agency moratorium prevents consideration of the application or petition. ( )

**102. FORMAL PROCEEDINGS (RULE 102).**

When the agency determines that informal proceedings are unlikely to resolve a contested case, the agency will initiate formal proceedings by issuing a Notice of Prehearing Conference and identifying a presiding officer. Representation of parties and other persons in formal proceedings is governed by Rule 201.02. ( )

**103. -- 149. (RESERVED)**

**150. PARTIES TO CONTESTED CASES LISTED (RULE 150).**

Parties to contested cases before the agency are called applicants, petitioners, respondents, protestants, or intervenors. On reconsideration or exceptions within the agency parties are called by their original titles from the previous sentence. ( )

**151. APPLICANTS (RULE 151).**

Persons who seek any right, license, award or authority from the agency. ( )

**152. PETITIONERS (RULE 152).**

Persons not applicants who seek to modify, amend or stay existing orders of the agency, to clarify or have the agency declare or construe the law administered by the agency or a person's rights or obligations under law administered by the agency, to ask the agency to initiate or rehear a contested case (other than an application), to intervene in a contested case, or to otherwise take action that will result in the issuance of an order. ( )

**153. RESPONDENTS (RULE 153).**

Persons who file responses to a petition. ( )

**154. PROTESTANTS (RULE 154).**

Persons who oppose or seek to alter an application and who have a statutory right to contest or seek to alter the right, license, or authority sought by an applicant. ( )

**155. INTERVENORS (RULE 155).**

Persons, not applicants, petitioners, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354. ( )

**156. RIGHTS OF PARTIES AND OF AGENCY STAFF (RULE 156).**

Subject to Rules 558, 559, and 600, all parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in a contested case before the agency. ( )

**157. -- 199. (RESERVED)**

**200. IDENTIFICATION OF REPRESENTATIVES AND ADDRESS FOR SERVICE (RULE 200).**

The initial pleading of a party (be it application, petition, protest, or motion) must identify the party's representative, if any, and state the mailing address and email address, if any, to be used for service of all documents. If a representative is identified, service of documents on the named representative is considered valid service upon the party. If an initial pleading is signed by more than one (1) person without identifying a representative for service of documents, the agency may select the person upon whom documents are to be served. A party is responsible for updating the agency with changes to its contact information for service of documents. ( )

**201. REPRESENTATION OF PARTIES (RULE 201).**

**01. Representation at Informal Proceedings.** Appearances and representation of parties or other persons at an informal proceeding described in Rule 100 and Rule 101 must be as follows: ( )

**a.** Natural Person. A natural person may represent himself or herself or be represented by an authorized employee, attorney, or family member, or by a next friend if the person lacks full legal capacity to act for himself or herself. ( )

**b.** A partnership may be represented by a partner, authorized employee, or attorney. ( )

**c.** A corporation may be represented by an officer, authorized employee, or attorney. ( )

**d.** A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an official, officer, authorized employee, or attorney. ( )

**e.** A state, federal or tribal governmental entity or agency may be represented by an officer, authorized employee, or attorney. ( )

**02. Appearances and Representation at Formal Proceedings.** Appearances and representation of parties or other persons at a formal proceeding described in Rule 100 and Rule 102 must be as follows:: ( )

**a.** A party who is a natural person may represent himself or herself or be represented by an attorney. ( )

**b.** A federal or tribal governmental entity or agency may be represented as provided by law.

**c.** All other parties shall appear and be represented by an attorney admitted to practice and in good standing in the state of Idaho. ( )

**d.** Only parties or their representatives at hearing are entitled to examine witnesses and file, make or argue motions. ( )

**202. SERVICE ON PARTIES AND THEIR REPRESENTATIVES (RULE 202).**

From the time a party files its initial pleading in a contested case, that party must serve all documents filed with the agency upon all other parties or their designated representatives unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon parties or their representatives. ( )

**203. WITHDRAWAL OF PARTIES (RULE 203).**

Any party may withdraw from a contested case in writing or by confirming the withdrawal on record at a conference or hearing. ( )

**204. SUBSTITUTION OF REPRESENTATIVE -- WITHDRAWAL OF REPRESENTATIVE (RULE 204).**

A party's representative may be changed by notice to the agency and all other parties. A presiding officer, if assigned, may reject the substitution of representative if the substitution would result in an unreasonable delay of the proceeding. Persons representing a party in a contested case before the agency who wish to withdraw their representation must immediately file with the agency a notice of withdrawal of representation and serve that notice on the party represented, and all other parties. ( )

**205. STANDARDS OF CONDUCT (RULE 205).**

All persons participating in or attending a contested case proceeding before the agency must conduct themselves in an ethical, courteous, and respectful manner during all phases of the proceeding. The presiding officer may exclude a person from a proceeding who in manner or appearance is disruptive or disrespectful. Disruptive conduct or appearance that is serious in nature may be cause for dismissal of the disrupting party from the proceeding. ( )

**206. -- 209. (RESERVED)**

**210. PLEADINGS LISTED (RULE 210).**

Pleadings allowed in contested cases are applications, petitions, protests, and responses. ( )

**211. -- 219. (RESERVED)**

**220. MOTIONS (RULE 220).**

**01. Motion - Defined.** A "motion" is a request to the agency to take an action in a contested case. ( )

**02. Procedure on Written Motions.**

**a.** A written motion, affidavit(s) supporting the motion, and briefs supporting the motion, if any, must be filed with the agency and served on the parties. ( )

**b.** Briefs or affidavits responding to the motion, if any, must be filed with the agency and served on the parties within 14 days of the filing of a motion. ( )

**c.** The moving party may file a reply brief, which must be filed with the agency and served on the parties within 7 days of the filing of the responsive affidavits or briefs. ( )

**d.** The moving party must indicate on the face of the motion whether oral argument is desired. ( )

**e.** If oral argument has been requested on any motion, the presiding officer may grant or deny oral argument by written or oral notice. The presiding officer may limit oral argument at any time. ( )

**f.** Modifications to the time limits in this rule may be granted by the presiding officer for good cause shown. ( )

**03. Motions for Summary Judgment.** Motions for summary judgment may be filed in any contested case. Rules 56(a), (c), (d), (e), and (f) of the Idaho Rules of Procedure, shall apply to such motions before the agency. ( )

**221. -- 299. (RESERVED)**

**300. FORM AND CONTENT OF PLEADINGS AND WRITTEN MOTIONS (RULE 300).**

**01. Form.** Pleadings should be filed on standard forms created by the agency, if available. Pleadings and written motions not filed on standard forms should include a caption identifying the case at the top of the first page and shall:

- a.** Be submitted on white, eight and one-half inch (8 1/2") by eleven inch (11") paper printed on one (1) side only; ( )
- b.** Identify the case name, case number, if applicable, and title of the document; ( )
- c.** Include the mailing address, telephone number, and email address of the person(s) filing the document; and ( )
- d.** Have at least one inch (1") left and top margins. ( )

**02. Content of Pleadings and Written Motions.** A pleading or written motion shall fully state:

- ( )
- a.** The facts upon which it is based, ( )
- b.** The provision of statute, rule, order or other controlling law upon which it is based, and ( )
- c.** The relief sought, including any proposed limitation (or the denial) of any right, license, or permit sought in an application. ( )
- d.** Petitions for declaratory orders shall state the declaratory ruling that the petitioner seeks. ( )

**301. NOTICE OF PETITION FOR DECLARATORY RULING (RULE 301).**

The agency may provide notice of a petition for declaratory ruling in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition. ( )

**302. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 302).**

Defective, insufficient or late pleadings may be returned or dismissed. ( )

**303. AMENDMENTS TO PLEADINGS -- WITHDRAWAL OF PLEADINGS (RULE 303).**

The agency may allow amendments to pleadings during informal proceedings. The presiding officer may allow amendments to pleadings during formal proceedings. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective seven (7) days after filing. ( )

**304. -- 349. (RESERVED)**

**350. PETITIONS TO INTERVENE (RULE 350).**

A person who is not already a party to a contested case and who has a direct and substantial interest in the proceeding may petition for an order granting intervention as a party to the contested case. ( )

**351. FORM AND CONTENTS OF PETITIONS TO INTERVENE (RULE 351).**

Petitions to intervene must comply with Rules 52, 200, and 300. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. ( )

**352. TIMELY FILING OF PETITIONS TO INTERVENE (RULE 352).**

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the initial prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions filed after this deadline are considered late and must state a good cause for delay. ( )

**353. DECIDING PETITIONS TO INTERVENE (RULE 353).**

**01. Timely-Filed Petitions.** If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a contested case and does not unduly broaden the issues, the agency shall grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. ( )

**02. Late Petitions.** The agency may grant late petitions to intervene for good cause shown or may deny or conditionally grant petitions to intervene that are late for failure to state good cause for the late filing, to prevent disruption, to prevent prejudice to existing parties, to prevent undue broadening of the issues, or for other reasons. ( )

**03. Order and Notices Issued Prior to Intervention.** Intervenors are bound by orders and notices entered in the contested case prior to the approval of the petition to intervene. ( )

**354. ORDERS GRANTING INTERVENTION -- OPPOSITION (RULE 354).**

Any party opposing a petition to intervene must file an objection within (7) days of the date the petition is filed. Responses to the objection must be filed within seven (7) days of the service date of the objection. The objection and responses to the proposed intervention must be served on all parties of record and on the person petitioning to intervene. ( )

**355. PUBLIC WITNESSES (RULE 355).**

A person who is not a party and is not called by a party as a witness who desires to testify at hearing is a public witness. Public witnesses do not have the right to examine witnesses or otherwise participate in the proceedings as parties. Subject to Rules 555 and 557, public witnesses have a right to introduce evidence at hearing by written or oral statements and to offer exhibits at hearing. Public witnesses are bound by scheduling orders issued in a contested case regarding disclosure of expert reports and exhibits prior to the hearing. A person intending to present public witness testimony shall notify the agency in writing at least five (5) days prior to the hearing. The notice shall include the name and address of the witness and the general nature or subject matter of the testimony to be given. If the notice is not given, the public witness testimony will only be allowed at the discretion of the presiding officer upon a finding of good cause. Public witnesses are subject to cross-examination and exhibits offered by public witnesses are subject to objection. Public witnesses have no right to seek reconsideration, file exceptions, or appeal. ( )

**356. -- 409. (RESERVED)**

**410. APPOINTMENT OF HEARING OFFICERS (RULE 410).**

Unless otherwise provided by statute or rule, hearing officers may be employees of the agency or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. The appointment of a hearing officer is a public record available for inspection, examination and copying. ( )

**411. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 411).**

Presiding officers may be disqualified as provided in Section 67-5252, Idaho Code. ( )

**412. SCOPE OF AUTHORITY OF HEARING OFFICERS (RULE 412).**

The scope of hearing officers' authority may be restricted in the appointment by the agency. ( )

**01. Scope of Authority.** Unless specified in an order from the agency, hearing officers have the authority to: ( )

- a. Decide petitions to intervene and motions; ( )
- b. Schedule cases assigned to the hearing officer, including authority to issue notices of default, of prehearing conference and of hearing; ( )
- c. Schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; ( )
- d. Consider stipulations and settlements; ( )
- e. Preside at and conduct conferences and hearings, accept evidence into the record, rule upon objections to evidence, rule on dispositive motions, and otherwise oversee the orderly presentation of evidence at hearing in accordance with these Rules; and ( )
- f. Issue a written decision for a contested case, including a narrative of the proceedings, findings of fact, conclusions of law, and a recommended or preliminary order. ( )

**02. Limitation.** The officer's scope of authority may be limited from the standard scope, either in general, or for a specific proceeding. ( )

#### **413. CHALLENGES TO STATUTES (RULE 413).**

A hearing officer in a contested case has no authority to declare a statute unconstitutional. However, when a court of competent jurisdiction whose decisions are binding precedent in the state of Idaho has declared a statute unconstitutional, or when a federal authority has preempted a state statute or rule, and the hearing officer finds that the same state statute or rule or a substantively identical state statute or rule that would otherwise apply has been challenged in the proceeding before the hearing officer, then the hearing officer shall apply the precedent of the court or the preemptive action of the federal authority to the proceeding before the hearing officer and decide the proceeding before the hearing officer in accordance with the precedent of the court or the preemptive action of the federal authority. ( )

#### **414. EX PARTE COMMUNICATIONS (RULE 414).**

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Communications with a presiding officer regarding non-substantive issues from members of the general public not associated with any party are not required to be reported by this rule. A party to a contested case before the agency shall not communicate directly or indirectly with the presiding officer or the agency head regarding any substantive issue in the contested case. When a presiding officer or the agency head becomes aware of a communication regarding any substantive issue from a party or representative of a party or a member of the general public during a contested case, the presiding officer shall place a copy or written summary of the communication in the file for the case and order the party providing the communication to serve a copy of the communication or written summary upon all parties of record. Repeated violations of this rule shall be cause for the presiding officer to dismiss an action or to dismiss a party from a contested case. Written communications from a party showing service upon all other parties are not ex parte communications. ( )

#### **415. -- 509. (RESERVED)**

#### **510. PURPOSES OF PREHEARING CONFERENCE (RULE 510).**

To initiate formal proceedings in a contested case pursuant to Rule 102, the agency will issue a Notice of Prehearing Conference, identifying the presiding officer for the case and setting the date and time for prehearing conference. The prehearing conference shall be convened for purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. ( )

**511. ADDITIONAL CONFERENCES (RULE 511).**

The presiding officer may, following the initial prehearing conference, convene additional conferences. Additional conferences will address the topics identified in Rule 510, unless the topics are further defined in the notice of such conference. ( )

**512. NOTICE OF CONFERENCE (RULE 512).**

Notice of the place, date and hour of a conference will be served on all parties at least fourteen (14) days before the time set for the conference, unless the presiding officer finds it necessary or appropriate for the notice period to be shortened. Notices must contain the same information as notices of hearing with regard to an agency's obligations under the American with Disabilities Act. ( )

**513. RECORD OF CONFERENCE (RULE 513).**

Prehearing conferences or status conferences may be held on the record or off the record. Agreements entered into by the parties during a conference may be put on the record during the conference or may be reduced to writing and filed with the agency after the conference. ( )

**514. ORDERS RESULTING FROM CONFERENCE (RULE 514).**

The presiding officer may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a conference. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. ( )

**515. FACTS DISCLOSED NOT PART OF THE RECORD (RULE 515).**

Facts disclosed, settlement offers made and all other aspects of negotiation (except agreements reached) in conferences in a contested case are not part of the record unless ordered by the presiding officer upon a stipulation by all parties to a contested case. ( )

**516. -- 519. (RESERVED)**

**520. DISCOVERY IN CONTESTED CASES (RULE 520).**

**01. Kinds of Discovery.** The following kinds of discovery may be authorized by presiding officers in contested cases before the agency: ( )

- a. Deposition through oral examination or written questions; ( )
- b. Written interrogatories; ( )
- d. Requests for Admission. ( )
- d Requests for production of documents, electronically stored information or tangible things; ( )
- e. Entry upon land or other property for inspection or other purposes; ( )

**02. Rules of Civil Procedure.** Unless otherwise provided by statute, rule, order or notice, the scope of discovery is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26). ( )

**521. WHEN DISCOVERY AUTHORIZED (RULE 521).**

No party in a contested case before the agency is entitled to engage in discovery unless the presiding officer issues an order authorizing discovery, or upon agreement of all parties that discovery may be conducted. The presiding officer may provide a schedule for discovery in an order authorizing discovery, but the order authorizing and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. The order authorizing discovery may provide that voluminous records need not be served in a discovery response so long as the records are made available for inspection and copying under reasonable terms. A party, upon reasonable notice to other parties and all



persons affected thereby, may seek an order compelling discovery in a manner consistent with the provisions of Rule 37(a) of the Idaho Rules of Civil Procedure. The presiding officer may limit the type and scope of discovery. ( )

**522. RIGHTS TO DISCOVERY RECIPROCAL (RULE 522).**

All parties to a proceeding have a right of discovery of all other parties to a proceeding according to Rule 521 and to the authorizing statutes and rules. ( )

**523. SUBPOENAS (RULE 523).**

The presiding officer may issue subpoenas upon a party's motion or upon its own initiative. The presiding officer upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms. ( )

**524. STATUTORY INSPECTION, EXAMINATION, INVESTIGATION, ETC. (RULE 524).**

This rule recognizes, but does not enlarge or restrict, the agency's statutory right of inspection, examination, or investigation. This statutory right of the agency is independent of any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, examination, or investigation may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. ( )

**525. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS (RULE 525).**

Parties shall send the presiding officer copies of any notices of deposition or certificates of service stating that discovery requests or responses have been served. Parties shall serve discovery requests and responses on all other parties. Parties shall not serve the presiding officer copies of discovery responses unless it is part of a motion to compel discovery. A motion to compel discovery must be filed within twenty-one (21) days from the day a discovery response was due or twenty-one (21) days from the day a deficient response was served on the moving party. ( )

**526. PREPARED TESTIMONY AND REPORTS (RULE 526).**

Presiding officers may require parties to exchange prepared testimony, expert witness reports or rebuttal reports, prior to the hearing. ( )

**527. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 527).**

The presiding officer may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery, including but not limited to the sanctions listed in paragraphs (A), (B), and (C) of Rule 37(b)(2) of the Idaho Rules of Civil Procedure. ( )

**528. PROTECTIVE ORDERS (RULE 528).**

As authorized by statute or rule, the presiding officer may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing. ( )

**529. -- 549. (RESERVED)**

**550. NOTICE OF HEARING (RULE 550).**

Notice of the place, date and hour of hearing will be served on all parties at least fourteen (14) days before the time set for hearing, unless the presiding officer finds by order that it is necessary or appropriate that the notice period to be shortened. Notices must comply with the requirements of Rule 551. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number or docket number, the names of the presiding officer(s) who will hear the case, the name, address and telephone number of the person to whom inquiries about scheduling, hearing facilities, etc., should be directed, and the names of persons with whom the documents, pleadings, etc., in the case should be filed if the presiding officer is not the person who should receive those documents. If no document previously issued by the agency has listed the legal authority of the agency to conduct the hearing, the notice of hearing must do so. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy. ( )

**551. FACILITIES AT OR FOR HEARING AND A.D.A. REQUIREMENTS (RULE 551).**

All hearings must be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act,

and all notices of hearing must inform the parties that the hearing will be conducted in facilities meeting the accessibility requirements of the Americans with Disabilities Act. All notices of hearing must inform the parties and other persons notified that if they require assistance of the kind that the agency is required to provide under the Americans with Disabilities Act in order to participate in or understand the hearing, the agency will supply that assistance upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the hearing that the assistance request must be made. ( )

**552. METHODS FOR CONDUCTING HEARINGS (RULE 552).**

Hearings may be held in person or by telephone, video or other electronic means, as long as each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. ( )

**553. CONFERENCE AT HEARING (RULE 553).**

In any proceeding the presiding officer may hold a conference with the parties before hearing or during a recess at the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer shall state the results of the conference on the record. ( )

**554. PRELIMINARY PROCEDURE AT HEARING (RULE 554).**

Before taking evidence the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements as necessary or appropriate to explain a party's presentation of evidence. ( )

**555. CONSOLIDATION OF PROCEEDINGS (RULE 555).**

The agency may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings the presiding officer determines the order of the proceeding. ( )

**556. STIPULATIONS (RULE 556).**

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the agency or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The presiding officer may regard a stipulation as evidence or may require additional evidence supporting the facts stipulated. The presiding officer is not required to adopt the facts set forth in a stipulation of the parties, but may do so. If the presiding officer rejects a stipulation, they will do so before issuing a final order, and will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. ( )

**557. ORDER OF PROCEDURE (RULE 557).**

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. ( )

**558. TESTIMONY UNDER OATH (RULE 558).**

All testimony presented in formal hearings will be given under oath. Before testifying each witness must swear or affirm that the testimony the witness will give before the agency is the truth, the whole truth, and nothing but the truth. ( )

**559. PARTIES AND PERSONS WITH SIMILAR INTERESTS (RULE 559).**

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. ( )

**560. CONTINUANCE OF HEARING (RULE 560).**

The presiding officer may continue proceedings for further hearing. ( )

**561. ORAL ARGUMENT (RULE 561).**

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. ( )

**562. BRIEFS -- MEMORANDA -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE PRESIDING OFFICER (RULE 562).**

In any contested case, any party may ask to file briefs, memoranda, proposed orders of the parties or statements of position, and the presiding officer may request briefs, proposed orders of the parties, or statements of position. The presiding officer may issue a proposed order and ask the parties for comment upon the proposed order. ( )

**563. -- 599. (RESERVED)**

**600. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 600).**

Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that development. The presiding officer is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any resulting order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute, rule or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence. ( )

**601. DOCUMENTARY EVIDENCE (RULE 601).**

Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an opportunity to compare the copy with the original if available. ( )

**602. OFFICIAL NOTICE -- AGENCY STAFF MEMORANDA (RULE 602).**

The presiding officer may take official notice of any facts that could be judicially noticed in the courts of Idaho, of generally recognized technical or scientific data or facts within the agency's specialized knowledge and records of the agency. The presiding officer may ask agency staff to prepare reports or memoranda to be used in deciding a contested case, and all such reports and memoranda shall be officially noticed by the presiding officer. The presiding officer shall notify the parties of specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. This notice should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material officially noticed. Parties must be given an opportunity to contest and rebut the facts or material officially noticed. When the presiding officer proposes to take official notice of agency staff memoranda or agency staff reports, responsible staff employees or agents shall be made available for cross-examination if any party timely requests their availability. ( )

**603. OBJECTIONS -- OFFERS OF PROOF (RULE 603).**

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection. ( )

**604. EXHIBITS (RULE 604).**

The presiding officer may assign exhibit numbers to be used by the parties in preparation of proposed exhibits. Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except that maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. ( )

**605. -- 609. (RESERVED)**

**610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS (RULE 610).**

Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in

settlement negotiations in a contested case are not part of the record unless ordered by the presiding officer upon a stipulation by all parties to a contested case. If the parties to a contested case participate in mediation, I.R.E. 507 applies and the mediation privilege is recognized. ( )

**611. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS (RULE 611).**

Through notice or order or on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite the parties to consider settlement of an entire proceeding or certain issues. ( )

**612. CONSIDERATION OF SETTLEMENTS (RULE 612).**

The presiding officer is not bound by settlement agreements and will independently review any proposed settlement. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. ( )

**613. -- 649. (RESERVED)**

**650. RECORD FOR DECISION (RULE 650).**

**01. Official Record.** The agency shall maintain an official record for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case. The record shall include those items described in section 67-5249, Idaho Code. ( )

**651. RECORDING OF HEARINGS (RULE 651).**

The agency shall make an audio or video recording of all hearings at the agency's expense. The agency may provide a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. If the transcript prepared at the expense of a party is deemed by the presiding officer to be the official transcript of the hearing, the party shall furnish the agency a copy of the transcript without charge. ( )

**652. -- 699. (RESERVED)**

**700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR OR RESPOND (RULE 700).**

If a party fails to appear at the time and place set for hearing, prehearing conference, status conference, or informal settlement conference, or fails to respond to a written information inquiry, the agency may serve upon all parties a notice of a proposed default against the absent or non-responsive party. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the subject party to appear at the time and place set for hearing or prehearing conference, or informal settlement conference or to respond to an information inquiry. The notice of proposed default order shall be served consistent with Rule 53. ( )

**701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER (RULE 701).**

Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered. ( )

**702. ISSUANCE OF DEFAULT ORDER (RULE 702).**

The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven (7) day time period to file a petition challenging the proposed default order. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default. All issues in the contested case shall be determined, including those affecting the defaulting party. ( )

**703. -- 709. (RESERVED)**

**710. INTERLOCUTORY ORDERS (RULE 710).**

Interlocutory orders or intermediate orders are orders that do not decide all previously undecided issues presented in a proceeding, except the presiding officer may by order decide some of the issues presented in a proceeding and provide that the decision on those issues is final and subject to review by reconsideration or exceptions filed with the

agency head, or judicial review in district court, but is not final on other issues. Unless an order contains or is accompanied by a document containing one (1) of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders authorizing, compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the presiding officer issuing the order pursuant to Rules 711, 760, and 770. ( )

**711. REVIEW OF INTERLOCUTORY ORDERS (RULE 711).**

Any party or person affected by an interlocutory order may petition the presiding officer to review the interlocutory order. The presiding officer may rescind, alter or amend any interlocutory order on the presiding officer's own motion, but will not on the presiding officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. ( )

**712. CONTENTS OF ORDERS (RULE 712).**

The contents of an order shall comply with Section 67-5248, Idaho Code. ( )

**713. -- 719. (RESERVED)**

**720. RECOMMENDED ORDERS (RULE 720).**

**01. Definition.** Recommended orders are orders issued by a person other than the agency head that will become a final order of the agency only after review of the agency head (or the agency head's designee) pursuant to Section 67-5244, Idaho Code. ( )

**02. Contents.** Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ( )

**a.** This is a recommended order of the hearing officer. It will not become final without action of the agency head. ( )

**b.** Any party may file a petition for reconsideration of this recommended order with the hearing officer within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. ( )

**c.** Any party may in writing support or file exceptions to any part of this recommended order and file briefs in support of the party's position with the agency head or designee on any issue in the proceeding within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order. ( )

**d.** If no party files exceptions to the recommended order with the agency head or designee, the agency head or designee will issue a final order within fifty-six (56) days after: ( )

i. The last day a timely petition for reconsideration could have been filed with the hearing officer; ( )

ii. The service date of a denial of a petition for reconsideration by the hearing officer; or ( )

iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer. ( )

**e.** Written briefs in support of or taking exceptions to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have fourteen (14) days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee

will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head or designee may hold additional hearings or may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. ( )

**721. -- 729. (RESERVED)**

**730. PRELIMINARY ORDERS (RULE 730).**

**01. Definition.** Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head or designee pursuant to Section 67-5245, Idaho Code. ( )

**02. Contents.** Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: ( )

**a.** This is a preliminary order of the agency. It can and will become final without further action of the agency unless a party petitions for reconsideration, files exceptions with the agency head, or requests a hearing pursuant to Section 42-1701A(3), Idaho Code. Filing exceptions to the agency head is not required in order to exhaust administrative remedies. ( )

**b.** A party shall file a petition for reconsideration of this preliminary order with the agency within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. ( )

**c.** Any party may in writing file exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head) within fourteen (14) days after: ( )

i. The service date of this preliminary order; ( )

ii. The service date of the denial of a petition for reconsideration from this preliminary order; or ( )

iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order. ( )

**d.** If any party files exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's exceptions. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head or designee. The agency head or designee may review the preliminary order on its own motion. ( )

**e.** The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless extended for good cause. The agency head or designee may hold additional hearings or may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. ( )

**f.** Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Director or the Board is otherwise provided by statute, any person aggrieved by any action of the Director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the Director, who is aggrieved by the action of the Director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the Director to contest the action. The person shall file with the Director, within fifteen (15) days

after receipt of written notice of the action issued by the Director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the Director and requesting a hearing. A preliminary order shall not become final if a request for hearing under Section 42-1701A(3), Idaho Code is filed with the Department within the time prescribed for filing a petition for reconsideration. ( )

**g.** Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, all administrative remedies shall be deemed exhausted, and any party aggrieved by the final order or orders previously issued in this case may file a petition for judicial review of the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: ( )

i. A hearing was held; ( )

ii. The final agency action was taken; ( )

iii. The party seeking review of the order resides; or ( )

iv. The real property or personal property that was the subject of the agency action is located. ( )

**h.** A petition for judicial review must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. The filing of a petition for judicial review does not stay the effectiveness or enforcement of the order under review. ( )

#### **731. -- 739. (RESERVED)**

#### **740. FINAL ORDERS (RULE 740).**

**01. Definition.** Final orders are preliminary orders that have become final pursuant to Section 67-5245, Idaho Code, or orders issued by the agency head pursuant to Section 67-5246, Idaho Code, or emergency orders, including cease and desist or show cause orders, issued by the agency head pursuant to Section 67-5247, Idaho Code. ( )

**02. Content.** Every final order issued by the agency head must contain or be accompanied by a document containing the following, or substantially similar, paragraphs: ( )

**a.** This is a final order of the agency. ( )

**b.** Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code. ( )

**c.** Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Director or the Board is otherwise provided by statute, any person aggrieved by any action of the Director, including any decision, determination, order or other action, including action upon any application for a permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the Director, who is aggrieved by the action of the Director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the Director to contest the action. The person shall file with the Director, within fifteen (15) days after receipt of written notice of the action issued by the Director, or receipt of actual notice, a written petition stating the grounds for contesting the action by the Director and requesting a hearing. This order shall not be subject to judicial review in district court if a request for hearing under Section 42-1701A(3), Idaho Code is filed with the Department within the time prescribed for filing a petition for reconsideration. ( )

**d.** Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case shall be deemed to have exhausted all administrative remedies and may file a

petition for judicial review of this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: ( )

- i. A hearing was held; ( )
- ii. The final agency action was taken; ( )
- iii. The party seeking review of the order resides; or ( )
- iv. The real property or personal property that was the subject of the agency action is located. ( )

e. A petition for judicial review must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code, and Rule 84 of the Idaho Rules of Civil Procedure. The filing of a petition for judicial review does not stay the effectiveness or enforcement of the order under review. ( )

**741. -- 749. (RESERVED)**

**750. ORDER NOT DESIGNATED (RULE 750).**

If an order does not designate itself as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate. ( )

**751. -- 759. (RESERVED)**

**760. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION (RULE 760).**

A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order or by issuing a substitute recommended or preliminary order. The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order or by substituting a new final order for it. ( )

**761. -- 769. (RESERVED)**

**770. CLARIFICATION OF ORDERS (RULE 770).**

Any party may petition to clarify any order, whether interlocutory, recommended, preliminary or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal the order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration. ( )

**771. -- 779. (RESERVED)**

**780. STAY OF ORDERS (RULE 780).**

Any party may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion. ( )



**781. -- 789. (RESERVED)**

**790. PERSONS WHO MAY FILE A PETITION FOR JUDICIAL REVIEW (RULE 790).**

Pursuant to Section 67-5270, Idaho Code, any party aggrieved by a final order of an agency in a contested case may file a petition for judicial review with the district court. Pursuant to Section 67-5271, Idaho Code, a party is not entitled to judicial review of an agency action in district court until that person has exhausted all administrative remedies available with the agency, but a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable in district court if review of the final agency action would not provide an adequate remedy. ( )

**791. -- 799. (RESERVED)**

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

**37.01.01 – RULES OF PROCEDURE OF THE IDAHO DEPARTMENT OF WATER RESOURCES AND  
THE WATER RESOURCE BOARD**

**DOCKET NO. 37-0101-2101 (NEW CHAPTER, FEE RULE)**

**NOTICE OF RULEMAKING – PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking. This action is authorized by Sections 42-1701A(1), 42-1734(19), 42-1805(8), and 67-5206(5), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 28, 2021.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a non-technical explanation of the substance and purpose of the proposed rule.

The Idaho Department of Water Resources (IDWR) and the Idaho Water Resource Board (IWRB) (the “Agencies”) initiated this rulemaking in compliance with [Executive Order No. 2020-01](#), Zero-Based Regulation (ZBR) (EO 2020-01), issued by Governor Little on January 16, 2020. Pursuant to EO 2020-01, each rule chapter effective on June 30, 2020, must be reviewed by the promulgating agency over a five year period. This review is being conducted according to a schedule established by the Division of Financial Management, Office of the Governor (DFM), posted at [https://adminrules.idaho.gov/forms\\_menu.html](https://adminrules.idaho.gov/forms_menu.html). This rule chapter was scheduled for review in 2021.

With this Notice, the Agencies propose a new chapter of procedural rules. The new chapter is approximately 30% shorter than the existing chapter of procedural rules as a result of both internal agency analysis and external stakeholder negotiation, commentary, and editing. This reduction comes through a combination of: (a) removal of obsolete provisions (such as outdated references and processes for electronic signature); (b) the removal of Idaho Administrative Procedures Act provisions inapplicable to contested cases before the Agencies; and (c) a complete overhaul of the contested case process (including the condensing and use of plain language to describe intra-agency appeals, filing and service, and informal versus formal proceedings). Definitions previously spread throughout the rule chapter have been clarified and centralized in the definitional section. Distinctions between agency head, presiding officers, and hearing officers have been delineated and clarified. Updates have also been made to comply with the Agencies' understanding of current Idaho law (including clarification of party representation and administrative exhaustion). The following processes have also been more clearly defined and described: petitions exceptions to final orders, contents of motions and pleadings, intervention versus protestation, and ex parte communications. The Agencies also propose to rename the rule chapter the “Rules of Procedure of the Idaho Department of Water Resources and Idaho Water Resource Board” to clarify that the chapter applies to both Agencies. The new proposed rule also recognizes electronic filing and service in many instances (both by email and through IDWR’s website).

Pursuant to the ZBR process, this Notice represents the promulgation of a new rule chapter. As a result, the proposed rule does not contain strike-out/underline text in legislative format. The old rule has been repealed and replaced in its entirety. However, the development of the proposed rule text through two publicly-released preliminary rule draft iterations may be viewed at: <https://idwr.idaho.gov/legal-actions/rules/procedure-rules.html>. At the same website, the Agencies also developed and provided two exhaustive response documents, which provide the Agencies’ responses to each substantive comment received through the negotiated rulemaking process.

Citizens of the state of Idaho, the Idaho Water Bar and other attorneys and judges, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, the Agencies will present the final rule

text to the Idaho Legislature in the late fall of 2021.

**FISCAL IMPACT STATEMENT:** 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: N/A.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the April 7, 2021, Idaho Administrative Bulletin, Vol. 21-4, pages 51-52.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the incorporation by reference is necessary: N/A.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on questions concerning this proposed rulemaking, contact Mathew Weaver at [mathew.weaver@idwr.idaho.gov](mailto:mathew.weaver@idwr.idaho.gov), (208) 287-4800.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before October 28, 2021.

Dated this 30th day of August, 2021

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

# MEMO



**To:** Idaho Water Resource Board

**From:** Kala Golden

**Date:** August 20, 2021

**Subject:** South Valley Ground Water District– New Loan Application

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**Action Item: \$150,000 loan request**

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## 1.0 INTRODUCTION

South Valley Groundwater District (District) is requesting a new loan in the amount of \$150,000 from the Idaho Water Resource Board (Board) to provide for costs associated with an approved mitigation plan that resulted from recent administrative proceedings in Basin 37.

## 2.0 BACKGROUND

Located in Blaine County, the District represents approximately 110 groundwater users in the Wood River Valley south of Bellevue, known as the Bellevue Triangle. In April of 2021, the Director (Director) of the Idaho Department of Water Resources (Department) initiated an administrative proceeding in Water District 37 to determine if groundwater pumping from junior-priority ground water rights in the Bellevue Triangle would injure senior surface water rights in the Little Wood River-Silver Creek drainage during the 2021 irrigation season. A hearing was held in June 2021, after which the Director issued a Final Order curtailing groundwater rights within the Bellevue Triangle, starting July 1, 2021. The District was a party in the proceedings.

Ground water users subsequently filed a petition to stay the curtailment order, and requested an expedited decision and hearing on a proposed mitigation plan (*South Valley Ground Water District's and Galena Ground Water District's Petition to Stay Curtailment/Request for Expedited Hearing/Request for Hearing on Proposed Mitigation Plan*, June 28, 2021). On July 1, 2021 the Director issued a Notice of Hearing on the mitigation plan, scheduled for July 6-8, 2021. Prior to the commencement of the hearings, the parties requested time to conduct settlement discussions instead of proceeding with the hearings. On July 7, 2021 the parties entered into a settlement agreement (Agreement) which included three principal components: (1) maintain the delivery of 23 CFS of water to Station 10 on the Little Wood River; (2) acquisition of 2500AF of storage water rights for delivery through the Milner-Gooding Canal; and (3) a reduction in the irrigation season.

The settlement agreement was submitted to the Department as *South Valley Ground Water District and Galena Water District's Revised and Amended Proposed Mitigation Plan* on July 7, 2021. The Director ultimately issued a final order approving the Agreement and

staying curtailment (*Final Order Approving Amendment to Mitigation Plan*, August 15, 2021). The agreement additionally required ground water users party to the proceedings to provide a detailed analysis and expert review on the use of ground water and the effects on the aquifer and associated effects on flows in Silver Creek. The analysis is intended to support longer-term mitigation efforts and the development of a Ground Water Management Plan for the Big Wood Ground Water Management Area.

The loan application requests funding to address water acquisition and delivery requirements of the agreement.

### **3.0 PRIOR LOANS**

The District has not previously held a water project loan with the Board.

### **4.0 PROPOSED**

Funding will be used to purchase and deliver water for mitigation in accordance with the approved agreement. A breakdown of costs are as follows:

\$60,570.00	Reimbursement of costs associated with the purchase of 900 acre feet (AF) of surface water from Yellowstone Earth Science (Paid to Lower Little Wood River Water Users LLC)
\$30,000.00	Purchase of 500 AF of Water North Fork Reservoir Company
\$20,000.00	Wheeling Fees
\$30,000.00	Power Costs Associated with Injection Wells
\$2,131.60	Water Supply Bank rental and water right transfer fees
\$30,000.00	Hydrologic Analysis

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**\$172,701.60 Total**

***\$150,000.00 Requested Loan from IWRB (86.9%)***

***\$22,701.60 SVGWD (13.1%)***

Alternative considerations for funding include an emergency increase of assessments for members of the District. This option would impose a significant financial burden on the members of the District. Acquisition of a loan from the IWRB would allow costs associated with the agreement to be distributed over time.

### **5.0 BENEFITS**

The benefits of this proposal include the support for a settlement agreement that allows for the continued use of water by junior groundwater pumpers and meets the water supply needs

of senior surface water users, preventing the need for curtailment of water on valuable agricultural lands. The agreement was approved by the Director and is intended to resolve conflict while protecting water uses.

## **6.0 FINANCIAL ANALYSIS**

The total costs associated with the settlement agreement are estimated to be approximately \$172,701.60. The District will provide approximately \$22,701.60 towards costs associated with the mitigation plan, and seeks to acquire a loan from the Board to cover the remaining \$150,000. The District currently holds no other outstanding debts.

The District has been advised by its legal counsel of the statutory requirements for incurring debt, and is in process of completing the necessary steps to obtain debt authorization. The District understands that any Board approval of funding will be subject to compliance with all statutory requirements.

The District is requesting a new loan of \$150,000 for a 5-year term. The following analysis reflects the Board's current interest rate of 3.5%.

### **Payment Analysis**

<b>Term (Years)</b>	<b>Estimated Annual Payment- Revolving Account Loan</b>	<b>Previous Assessments Cost/CFS/Year</b>	<b>New Assessments Cost/CFS/Year</b>
5	\$33,222.21	\$210.00	\$1365.00

## **7.0 SECURITY**

As collateral for the loan, the Board is authorized to hold lien against the District's membership assessments. The Idaho Office of Attorney General's Office has indicated that assessments are an acceptable form of collateral under current statutes.

## **8.0 CONCLUSION AND RECOMMENDATION**

This loan will be used to cover costs associated with an approved mitigation plan. South Valley Groundwater District is a qualified applicant, and the District's proposal is consistent with the goals of the Board as identified within the Idaho State Water Plan. Staff recommend approval of the loan request by the District, for the total amount of \$150,000.



Barker Rosholt  
& Simpson LLP

RECEIVED  
AUG 13 2021  
DEPARTMENT OF  
WATER RESOURCES

**Boise**

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(1937-2019)

**Albert P. Barker**

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August 12, 2021

***Via U.S. Mail and E-mail: Kala.Golden@idwr.gov***

Kala Golden  
Project Manager  
Planning and Water Project Bureau  
Idaho Department of Water Resources  
322 E. Front Street, Suite 648  
Boise, ID 83702-7371

**Re: South Valley Ground Water District Loan Request**

Dear Ms. Golden:

South Valley Ground Water District has requested a loan from the Idaho Water Resources Board. You requested that the District provide you with an opinion of counsel that the District is engaged in the process of assuring that its statutory mandates for entering into indebtedness have been met or in the process of being met.

The Board of Directors of South Valley Ground Valley District passed a resolution at a special meeting on July 26, 2021, authorizing the District to make an application for a loan from Water Resource Board. A copy of the minutes of that meeting approving the resolution is attached.

Under Idaho Code § 42-5233 a ground water district has the power to incur indebtedness to secure funds for mitigation plans or for other plans of the District, if the District first approves the indebtedness by resolution adopted and entered upon the minutes.

Idaho Code § 42-5254 provides that a resolution adopted by 2/3 majority of the Board is necessary to authorize indebtedness for the development of mitigation plan. By the minutes of the July 26, 2021 board meeting that resolution by the Board was adopted by a unanimous vote in compliance with Idaho Code § 42-5234.

The next step in approval of a plan relates to indebtedness where the obligation for a repayment term exceeds one year. South Valley Ground Water District's application is seeking a repayment term of longer than one year. Accordingly, under Idaho Code § 42-5234 the

resolution of the Board authorizing such indebtedness is subject to a potential referendum election to be held by the members of the District, if a referendum petition is signed by the electors of the District holding at least 10% of the aggregated ground water rights within the District and submitted to the secretary of the District. Such a referendum petition is required to be submitted within 15 days after the passage of the resolution. The Board resolution was enacted in an open meeting of the Board on July 26, 2021, and a copy of the resolution was made available to all of the members of the District. Fifteen days have elapsed since the resolution was passed, and no referendum petition has been presented to the secretary of the District. Therefore an election on a referendum petition is not required to be held, under Idaho Code § 42-5234.

The next step after determining whether a referendum petition has been filed and an election is required is that the District must seek judicial examination and approval of indebtedness when the repayment term is greater than one year. Idaho Code § 42-5235.

The District understands that the District must file a petition for judicial examination and approval of the debt and intends to do so within 30 days after approval by the Water Resource Board of the loan application. The District does not wish to incur the cost of seeking and filing for a judicial examination if the loan application will not be approved or the funds would not be available. The District understands that the loan documentation cannot be executed and funds cannot be disbursed until after judicial confirmation has been obtained from the District Court in Blaine County.

I hope this answers your questions about the loan application process for the South Valley Ground Water District. If you need any further information, please let me know.

To be clear, I personally will not have any involvement in or take any action on South Valley Ground Water District's application in my capacity as a member of the Water Resources Board.

Very truly yours,



**BARKER ROSHOLT & SIMPSON LLP**

cc: SVGWD

APB/aje



Barker Rosholt  
& Simpson LLP



**BEFORE THE DEPARTMENT OF WATER RESOURCES  
OF THE STATE OF IDAHO**

IN THE MATTER OF BASIN 37  
ADMINISTRATIVE PROCEEDING

Docket No. AA-WRA-2021-001

**FINAL ORDER APPROVING  
AMENDMENT TO MITIGATION  
PLAN**

**BACKGROUND**

On May 4, 2021, the Director of the Idaho Department of Water Resources (“Department”) issued a *Notice of Administrative Proceeding, Pre-Hearing Conference, and Hearing* (“Notice”). The *Notice* stated that a drought is predicted for the 2021 irrigation season, and the water supply in Silver Creek and its tributaries may be inadequate to meet the needs of surface water users. *Id.* at 1. The *Notice* stated the Director was initiating an administrative proceeding, pursuant to Idaho Code § 42-237a.g. and IDAPA 37.01.01.104, to determine whether water is available to fill the ground water rights within the Wood River Valley south of Bellevue. *Id.*

A hearing was held starting on June 7, 2021, and ending on June 12, 2021. On June 28, 2021, the Director issued a *Final Order* curtailing ground water rights within the area known as the Bellevue Triangle, starting July 1, 2021. The Director instructed the watermaster for Water District 37 to curtail the ground water rights listed in Exhibit A to the *Final Order* unless notified by the Department that this order of curtailment has been modified or rescinded.

Prior to the issuance of the *Final Order*, on June 24, 2021, South Valley Ground Water District (“South Valley”) and Galena Ground Water District (“Galena”) filed *South Valley Ground Water District and Galena Ground Water District’s Proposed Mitigation Plan* (“Mitigation Plan”).

After the Director issued the *Final Order*, on June 28, 2021, South Valley and Galena filed *South Valley Ground Water District’s and Galena Ground Water District’s Petition to Stay Curtailment/Request for Expedited Decision/Request for Hearing on Proposed Mitigation Plan* (“Petition”).<sup>1</sup> In response, on June 29, 2021, the Director issued *Final Order Denying Petition to Stay Curtailment/Granting Request for Expedited Decision/ Granting Request for Hearing* granting the hearing request. On July 1, 2021, the Director issued a *Notice of Hearing* setting the hearing on the *Mitigation Plan* for July 6-8, 2021.

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<sup>1</sup> South Valley and Galena emailed the Director a copy of the *Petition* and mailed the official filing on June 28, 2021. The official filing was received by the Department on July 2, 2021.

On the morning of July 6, prior to commencing the hearing on the Mitigation Plan, the parties requested time to conduct settlement discussions instead of proceeding with the hearing. Those discussions proved fruitful and that same day, South Valley and Galena submitted three applications for temporary transfer and one water supply bank rental application.

On July 7, 2021, South Valley, Galena, Big Wood & Little Wood Water Users Association, Big Wood Canal Company, and Lawrence Schoen entered into an agreement<sup>2</sup>, referred to herein as the *Term Sheet Agreement*, whereby ground water users agreed to undertake certain actions to mitigate for injury to senior surface water rights that divert water from Silver Creek and the Little Wood River. The *Term Sheet Agreement* has four principal components: (1) maintaining the delivery of 23 cfs flow to Station 10 on the Little Wood; (2) acquisition of 2,500 AF of storage water rights for delivery through the Milner-Gooding Canal; (3) a reduction in the irrigation season; and (4) a commitment by groundwater users to work with surface water users to develop and submit to IDWR a ground water management plan by December 1, 2021.

On July 7, 2021, South Valley and Galena also submitted the agreement to the Department as *South Valley Ground Water District and Galena Groundwater District's Revised and Amended Proposed Mitigation Plan* ("Amended Mitigation Plan").<sup>3</sup> The *Amended Mitigation Plan* explains that the three applications for temporary transfer and the one water supply bank rental application submitted on July 6 are necessary to implement the agreement. *Amended Mitigation Plan* at 2-3.

On July 8, 2021, the Director issued a *Final Order Approving Mitigation Plan and Staying Curtailment* ("Order Approving Mitigation").

On or about August 12, 2021, the parties to the *Term Sheet Agreement* amended item 2.c. of the *Term Sheet Agreement* to allow additional exceptions to the irrigation season reduction for specific ground water rights used to irrigate landscape nursery stock, and specific ground water rights used for commercial and industrial purposes. See *Amended Term Sheet Agreement* attached herein as Exhibit B.

## DISCUSSION

The parties to the *Term Sheet Agreement*, including South Valley and Galena, agree to amend item 2.c. of the *Term Sheet Agreement*. The Director finds that the *Amended Term Sheet*

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<sup>2</sup> The agreement is titled Big Wood and Little Wood Water Users Association ("BWLWWUA"), Big Wood Canal Company ("BWCC"), South Valley Ground Water District ("SVGWD"), and Galena Ground Water District ("GGWD") – Final 2021 Term Sheet. A copy is attached as Exhibit A.

<sup>3</sup> In the *Amended Mitigation Plan*, South Valley and Galena gave their interpretation of the *Term Sheet Agreement*. *Amended Mitigation Plan* at 1-5. Some parties have voiced concern that the ground water districts' narrative does not give a full description of the *Term Sheet Agreement*. The Director wants to make it clear that by issuing his *Order Approving Mitigation Plan*, the Director did not approve or adopt the ground water districts' narrative describing the *Term Sheet Agreement*. The *Term Sheet Agreement* speaks for itself.

*Agreement* is approvable. Therefore, pursuant to the Director's discretionary authority in this matter, the Director should approve the amendment.

### ORDER

Based on the foregoing, IT IS HEREBY ORDERED that the amendment to the Mitigation Plan, documented by the *Amended Term Sheet Agreement*, is APPROVED.

IT IS FURTHER ORDERED that if the terms of the *Term Sheet Agreement*, as amended by the *Amended Term Sheet Agreement*, are not met, the Watermaster for Water District 37 shall curtail the ground water users as provided in the agreement.

DATED this 15<sup>th</sup> day of August 2021.



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GARY SPACKMAN  
Director

**BIG WOOD AND LITTLE WOOD WATER USERS ASSOCIATION ("BWLWWUA"), BIG WOOD CANAL COMPANY ("BWCC")<sup>1</sup>, SOUTH VALLEY GROUND WATER DISTRICT ("SVGWD"), AND GALENA GROUND WATER DISTRICT ("GGWD")<sup>2</sup> – FINAL 2021 TERM SHEET**

1. Objectives

- a. Mitigate for material injury to senior surface water rights that divert water from Silver Creek and the Little Wood River reaches between "Silver Creek at Sportsman's Access NR Picabo ID" and the confluences of the Little Wood and Big Wood rivers;
- b. Provide safe harbor to Groundwater Users on the Bellevue Triangle that divert groundwater within the Basin 37 Administrative Proceeding curtailment boundary;
- c. Minimize economic impact to water users and the economy arising from water supply shortages; and
- d. Develop and submit an approved Ground Water Management Plan for the Big Wood Ground Water Management Area ("BWGWMA").

2. 2021 Irrigation Season Mitigation Practices

- a. Delivery of Natural Flow Water as Measured at Station 10: Through September 1, 2021, the Groundwater Users shall ensure a minimum of 23 cfs of flow at Station 10 to support senior surface water right diversions from the Little Wood River above the Milner-Gooding Canal (flows below 20 cfs will enact full curtailment, after a 48-hour "cure" period, total cure period during the 2021 Irrigation Season not to exceed 144 hours).
  - i. This could consist of pumped groundwater, some amount of water generated from flexibly-applied self-curtailment and incidental reach gains.
  - ii. "Monsoon" Exception: Picabo Livestock ("PL") will not divert its 1883 surface water rights, unless (1) 23 cfs of flow at Station 10 is occurring without any SVGWD pumping to sustain the 23 cfs; and (2) PL's 1883 surface water rights are in priority.
- b. Fixed Storage Water Delivery: For delivery to Surface Water Users diverting from the Little Wood River below the Milner-Gooding Canal, the Groundwater Users will take the following actions:
  - i. Reimburse the full cost of 1,000 acre-feet of storage water already acquired by the senior Surface Water Users during the 2021 irrigation season; and
  - ii. Acquire an additional 1,500 acre-feet of storage water, for 2,500 acre-fee total, and deliver it to senior Surface Water Users upon request. The Groundwater Users are responsible for acquiring storage water and wheeling contracts to deliver the water via the Milner-Gooding Canal.
- c. Irrigation Season Reduction: Groundwater Users agree to end groundwater diversions on August 15, 2021. An exception is allowed for the use of groundwater to irrigate seed potatoes within the curtailment area to the extent that surface water rights for the acreages are not available.

3. Long Term Ground Water Management Plan

- a. Ground Water Management Plan: the Groundwater Users agree to work through the BWGWMA Advisory Committee and in coordination with senior Surface Water Users to develop and submit to the

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<sup>1</sup> The BWLWWUA and the BWCC, along with Lawrence Schoen are collectively referred to as the "Surface Water Users."

<sup>2</sup> The SVGWD and the GGWD are collectively referred to as the "Groundwater Users."

Director of IDWR a Ground Water Management Plan ("Plan"). The Plan shall be submitted to the Director by December 1, 2021.

- b. Resumption of Basin 37 Proceeding: If a Plan is not submitted, or a Plan is submitted that is unacceptable to the Director, per the Director's July 3 letter<sup>3</sup>, he will resume the Basin 37 proceedings to determine what actions he should take to ensure that groundwater diversions within the "Wood River Basin" don't negatively affect surface water use.
4. 2021 Safe Harbor – Consistent with Section 2 of this agreement, the Groundwater Users will not be subject to curtailment by the Water District, as long as the provisions of this Term Sheet are met. Consistent with I.C. § 42-5244B, individual groundwater users not in compliance with an approved mitigation plan may be subject to curtailment.

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<sup>3</sup> Letter from Director Gary Spackman to Brad Little Governor of Idaho and Scott Bedke Speaker of the House dated July 3, 2021, with the subject line "Curtailment of Ground Water Rights in the Bellevue Triangle."

**AMENDMENT TO BIG WOOD AND LITTLE WOOD WATER USERS ASSOCIATION ("BWLWWUA"), BIG WOOD CANAL COMPANY ("BWCC"), SOUTH VALLEY GROUND WATER DISTRICT ("SVGWD"), AND GALENA GROUND WATER DISTRICT ("GGWD")-FINAL 2021 TERM SHEET & MITIGATION PLAN**

WHEREAS, BWLWWUA, BWCC, SVGWD, GGWD entered into a FINAL 2021 TERM SHEET on July 7, 2021, and;

WHEREAS, SVGWD AND GGWD submitted a Mitigation Plan to IDWR reflecting the conditions of the FINAL 2021 TERM SHEET on July 7, 2021; and

WHEREAS, on July 8, 2021 the Director of the Department of Water Resources issued a FINAL ORDER APPROVING MITIGATION PLAN AND STAYING CURTAILMENT; and

WHEREAS, the Parties to the FINAL 2021 TERM SHEET wish to amend the FINAL 2021 TERM SHEET to include additional conditions of water use after August 15, 2021; and

NOW THEREFORE the Parties hereby agree to amend Section 2.c of the FINAL 2021 TERM SHEET to provide for specific additional use of water after August 15, 2021, to agree to amend SVGWD and GGWD's MITIGATION PLAN to incorporate that additional water use, and to jointly seek the Director's approval of this amendment to the FINAL 2021 TERM SHEET and MITIGATION PLAN by amending Section 2.c to read as follows:

Irrigation Season Reduction: the Groundwater Users agree to end groundwater diversions on August 15, 2021. An exception is allowed for the use of groundwater to irrigate seed potatoes within the curtailment area to the extent that surface water rights for the acreages are not available. Additional exceptions are allowed for:

1. "irrigation" groundwater rights identified in Attachment A of this Amendment that are used to irrigate nursery stock. These irrigation groundwater rights may be used in accordance with the authorized season of use described in the rights, and shall be limited to a maximum combined total use of ten (10) acre-feet between August 15 and the end of the irrigation season described on the water rights; and
2. "commercial" or "industrial" groundwater rights identified in Attachment A of this Amendment. These rights may be used in accordance with the authorized season of use and annual volumes described in the rights.

Dated: August 12, 2021

A handwritten signature in black ink, appearing to read "Jerry Rigby", is written over a horizontal line.

Jerry Rigby, Big Wood and Little Wood Water Users Association



**IDAHO WATER RESOURCE BOARD**

322 East Front Street, Statehouse Mail

Boise, Idaho 83720

Tel: (208) 287-4800

FAX: (208) 287-6700



**APPLICATION FOR FINANCIAL ASSISTANCE FOR POTABLE WATER  
SYSTEM CONSTRUCTION PROJECT**

Answer the following questions and provide the requested material as directed. All pertinent information provided. Additional information may be requested by the Idaho Water Resource Board (IWRB) depending on the scope of the project and amount of funding requested. For larger funding amounts an L.I.D. may be required.

**Incomplete documents will be returned and no further action taken will be taken by IWRB staff. All paperwork must be in twenty eight (28) working days prior to the next bi-monthly Board meeting.**

Board meeting agendas can be found at: <http://www.idwr.idaho.gov/waterboard/>

**I. Prepare and attach a "Loan Application Document".**

The Loan Application Document requirements are outlined in the Water Project Loan Program Guidelines. The guidelines can be found at:

<http://www.idwr.idaho.gov/waterboard/Financial%20program/financial.htm>.

You can also obtain a copy by contacting IWRB staff.

**II. General Information:**

**A. Type of organization: (Check box)**

- ☐ Municipality  
☐ Water and/or Sewer District  
☐ Non-Profit Water Company  
☐ For-Profit Water Company

- ☐ Homeowner's Association  
☐ Water Association  
☒ Other

Explain: Groundwater District

South Valley Ground Water District

Organization name

P.O. Box 223

PO Box/Street Address

Bellevue, ID 83313

City, County, State, Zip Code

Project location legal description South Valley Ground Water District boundary (map attached)

Kristy Molyneux, Chair

Name and title of Contact Person

208-309-0203

Contact telephone number

jkmoly78@gmail.com

e-mail address

**B. Is your organization registered with the Idaho Secretary of State's office? Yes ☒ No ☐**

C. Purpose and name of project for this loan application.

- ☐ New Project  
☐ Rehabilitation or replacement of existing facility  
☐ DEQ requirement  
☒ Other: expenses per - 2021 Settlement Agreement

D. Briefly describe the existing water supply facilities and describe any existing operational or maintenance problems. Attach map of the service area and a separate sheet if necessary to complete the explanation.

Brief explanation and breakdown of expenses on attached appendix

### III. WATER SYSTEM:

A. Source of water:

- ☐ Stream ☒ Groundwater  
☐ Reservoir ☐ Other

B. Water Right Numbers:

Water Right	Stage	Priority Date	Source	Amount

Note: Stage refers to how the water right was issued. (License, Decree, or Permit)

C. Hook-ups on the system:

Approximate number of residential hook-ups: \_\_\_\_\_  
Approximate number of commercial hook-ups: \_\_\_\_\_  
Approximate number of industrial hook-ups: \_\_\_\_\_

D. On average, how much water is provided per day? description in attached Appendix

### IV. USER RATES:

A. How does you organization charge user rates

- ☐ Per Hook up ☒ Other  
☐ Per Volume Used Explain: per cfs on individual groundwater right

B. Current user rate? \$210.00 per cfs annually  
(gallons used, monthly, yearly, etc.)

If a graduated or progressive rate structure or different rates for different classes of users are used, attach a separate sheet with explanation.

C. When was the last rate change? adjusted annually in September (month/year)



D. Does your organization measure water use? Yes ☒ No ☐

If yes, how?

☐

Meters at User Hook-ups

☐

Master Meter

☒

Other (explain) Flow meters on 85% of individual wells per IDWR requirement

E. Does your organization have a regular assessment for a reserve fund? Yes ☒ No ☐

If yes, explain how it is assessed:

Annual Budget is approved with regular expenses and contingency for reserve amount

F. Does your organization have an assessment for some future special need? Yes ☒ No ☐

If yes, explain for what purpose and how it is assessed:

Annual assessments are adjusted to anticipate yearly needs

---

#### **V. PROPOSED METHOD FOR PAYING LOAN PAYMENTS**

How will you pay the annual loan payments? Check revenue sources below:

☐

Tax Levies

☐

Capital Improvement Reserve Account or Sinking Fund

☐

User Fees and Tap/Hookup Fees

☒

Other (explain) Budget in annual assessments

Will an increase in assessment be required? Yes ☒ No ☐

When will new assessments start and how long will they last?

2022 Budget approved in September 2021-term payments would be budgeted until paid in full

---

#### **VI. SECUREMENT OF LOAN**

List all land, buildings, waterworks, reserve funds, and equipment with estimated value that will be used as collateral for the loan:

Property

Estimated Value

Assessment Income

---

**Please attach a legal description of the property being offered along with a map referencing the property.**

---

#### **VII. PROOF OF OWNERSHIP**

Please provide proof of ownership, easements or agreements that are held or can be acquired for the construction and operation of the project.

---

#### **VIII. FINANCIAL INFORMATION:**

A. Attach a copy of each of the last 3 year's financial statement. (Copies must be attached)

B. Reserve fund (current) 0

C. Current cash on hand 55,077.00 - 2021 assessments balance

D. Outstanding indebtedness:

To Whom	Annual Payment	Amt. Outstanding	Years Left
none			

G. Have you done business with the Idaho Water Resource Board before? Yes ☐ No ☒

If yes what was the loan for? \_\_\_\_\_

How much was the loan for? \_\_\_\_\_

Is the loan paid off? Yes ☐ No ☐

If no what is the payment and expected payoff date. \_\_\_\_\_

I. What other sources of funding have been explored to fund the project? (example: NRCS, USDA Rural Development, Banks, Local Government, etc.)

none

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#### VIII. ORGANIZATION APPROVAL:


Is a vote of the shareholders, members, etc. required for loan acquisition? Yes ☒ No ☐

If yes, a record of the vote must be attached.

Amount of funds requested: 150,000.00

*By signing this document you verify that all information provided is correct and the document is filled out to the best of your ability.*

Authorized signature & date:

 7/28/21

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE SOUTH VALLEY GROUND  
WATER DISTRICT LOAN REQUEST

RESOLUTION TO AUTHORIZE LOAN FUNDING  
FOR COSTS RELATED TO APPROVED  
MITIGATION PLAN

1 WHEREAS, South Valley Ground Water District (District) submitted a loan application to the  
2 Idaho Water Resource Board (IWRB) in the amount of \$150,000.00 to cover costs associated with a  
3 recently approved mitigation plan (Project); and  
4

5 WHEREAS, in April of 2021 the Director of the Department of Water Resources (Director)  
6 initiated an Administrative Proceeding in Water District 37 to determine if ground water pumping from  
7 junior-priority ground water rights in the Wood River Valley south of Bellevue (Bellevue Triangle) would  
8 injure senior surface water rights in the Little Wood River-Silver Creek drainage during the 2021  
9 irrigation season; and  
10

11 WHEREAS, the Director issued an order on June 28, 2021 curtailing ground water rights in the  
12 Bellevue Triangle, starting July 1, 2021; and  
13

14 WHEREAS, the parties in the proceeding initiated settlement discussions to identify actions to  
15 mitigate for injury to senior surface water rights that divert from Silver Creek and the Little Wood River,  
16 and ensure they receive sufficient supply for the 2021 irrigation season; and  
17

18 WHEREAS, a settlement agreement was reached between the surface water and ground water  
19 users, and on August 15, 2021, the Director issued a final order approving an amended mitigation plan  
20 and term sheet, and staying the curtailment (*Final Order Approving Amendment to Mitigation Plan,*  
21 *IDWR Docket No. AA-WRA-2021-001*); and  
22

23 WHEREAS, the approved mitigation plan requires that the District provide a hydrologic analysis,  
24 with expert input, on the use of ground water and its effect on the aquifer and associated effect on the  
25 flows in Silver Creek. In addition, the plan requires the District to provide or pay for 2500 Acre Feet (AF)  
26 of water, cover costs associated with the wheeling of water, and cover power costs associated with  
27 injection wells; and  
28

29 WHEREAS, the total costs associated with the mitigation plan are estimated to be approximately  
30 \$172,701.60; and  
31

32 WHEREAS, the District will provide funding in the amount of \$22,701.60, and is requesting a loan  
33 from the IWRB in the amount of \$150,000 to cover the remaining costs associated with the mitigation  
34 plan; and  
35

36 WHEREAS, the District is a qualified applicant and the proposed Project qualifies for a loan from  
37 the IWRB'S Revolving Development Account; and

38  
39 WHEREAS, the proposed Project is in the public interest and is in compliance with the State  
40 Water Plan; and  
41

42 NOW THEREFORE BE IT RESOLVED that the IWRB approves a loan not to exceed \$150,000. The  
43 loan will be approved at 3.5% interest with a 5-year repayment term.  
44

45 NOW THEREFORE BE IT FURTHER RESOLVED that the IWRB provides authority to the Chairman  
46 of the Idaho Water Resource Board, or his designee, to enter into contracts, to effectuate the loan, with  
47 the District on behalf of the IWRB.  
48

49 NOW THEREFORE BE IT FURTHER RESOLVED that this resolution and the approval of the loan are  
50 subject to the following conditions:  
51

- 52 1) The District shall comply with all applicable terms under the approved mitigation plan under  
53 IDWR Docket No. AA-WRA-2021-001.  
54 2) Prior to the disbursement of any funds, the District shall comply with all statutory  
55 requirements for incurring debt, including but not limited to those defined under Idaho  
56 Code §42-5233, §42-5234, §42-5235.  
57 3) Prior to the disbursement of any funds, the District will provide acceptable security for the  
58 loan to the IWRB, including but not limited to the assessment income which the District  
59 collects from its members.  
60

DATED this 27<sup>th</sup> day of August, 2021.

\_\_\_\_\_  
JEFF RAYBOULD, Chairman  
Idaho Water Resource Board

ATTEST \_\_\_\_\_  
JO ANN COLE-HANSEN, Secretary