



AGENDA

IDAHO WATER RESOURCE BOARD

Special Board Meeting No. 4-21

Tuesday, March 2, 2021

1:00 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

Peter Van Der Meulen
Hailey
At Large

Albert Barker
Boise
District 2

Vacant
District 3

Dale Van Stone
Hope
District 1

Vacant
At Large

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

(This meeting will be conducted using guidance in response to the public health emergency caused by the COVID-19 pandemic. Masks are required & in person attendance is limited. Call or email if you have questions: jennifer.strange@idwr.idaho.gov)

Board Members & the Public may participate via Zoom

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

Dial in Option: 1(253) 215-8782

Meeting ID: 914 3224 5858 Passcode: 274032

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

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

Americans with Disabilities

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

Memo

To: Idaho Water Resource Board
From: Mat Weaver^{MW}, Brian Patton, and Sean Costello
Date: March 2, 2021
Re: **Administrative Rules Update**

Requested Action Item

Adopt and authorize the publication of the Idaho Water Resource Board's ("IWRB") current "Pending Rules" as "Temporary Rules" to be effective upon *sine die* of the 2021 Legislative Session in the event the Pending Rules are not otherwise approved or rejected by the Legislature or not extended pursuant to the Administrative Procedure Act. 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
- IDAPA 37.02.01 Comprehensive State Water Plan Rules
- IDAPA 27.02.03 Water Supply Bank Rules
- IDAPA 37.02.04 Shoshone Bannock Tribal Water Supply Bank Rules
- IDAPA 37.03.03 Rules and Minimum Standards for the Construction and Use of Injection Wells
- IDAPA 37.03.04 Drilling for Geothermal Resources Rules
- IDAPA 37.03.05 Mines Tailing Impoundment Structures Rules
- IDAPA 37.03.06 Safety of Dams Rules
- IDAPA 37.03.07 Stream Channel Alteration Rules
- IDAPA 37.03.09 Well Construction Standards and Rules
- IDAPA 37.03.10 Well Driller Licensing Rules

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

Status of Current Pending Fee Rules before the 2021 Legislature

On October 13, 2020, the IWRB passed resolution 17-2020, authorizing the adoption of all of the IWRB's proposed fee rules as "Pending Rules" and authorizing the notice and publication of the Pending Rules in Idaho Administrative Bulletin Vol. 20-11SE. The pending rules were published under docket 37-0000-2000F (IWRB/IDWR fee rules).

Before the pending fee rules published on November 18, 2020, can become final rules, the 2021 Legislature must review them. Fee rules can only become final and effective after the legislature approves the rules by concurrent resolution.

The House Resource Committee held a hearing on January 25, 2021, to review and approve the IWRB and IDWR omnibus pending rulemaking dockets 37-0000-2000F (fee rules). At the hearing, with minimal discussion, the HRC passed a motion approving the Board's fee rules.

The Senate Resource Committee held a hearing on February 3, 2021, to review and approve the IWRB and IDWR omnibus pending rulemaking dockets 37-0000-2000F (fee rules). At the hearing, with minimal discussion, the SRC passed a motion approving the Board's fee rules.

Although both resource committees approved the Board's pending fee rules, they do not become final and effective until the full bodies of both chambers pass a concurrent resolution to approve the fee rules. As a result, the Board's fee rules are not yet final at this time.

Precautionary Publication of Current Pending Fee Rules as Temporary Rules

On February 4, 2021, the Division of Financial Management ("DFM") issued a memorandum to all executive agencies with the subject line "Preparing Administrative Fee Rules for Post-*Sine Die*." A copy of DFM's February 4 memo is included with this briefing memo. DFM's February 4 memo directs all executive agencies to prepare, adopt, and submit completed *Notice of Adoption of Temporary Rules* to DFM by March 4, 2021. The memo directs agencies to adopt the temporary rules as they submitted them to the 2021 Legislature (i.e., current Pending Rule form).

Agencies will adopt the temporary rules as a precautionary measure to ensure continuity of all agency administrative rules in the event the 2021 Legislature adjourns without reauthorizing the administrative rules as occurred at the close of the 2019 and 2020 Legislative sessions. Adoption of the Temporary Rules is conditional, and they will only become effective at *sine die* "if the pending rules are not otherwise approved or rejected by the Legislature and/or not extended pursuant to the Idaho Administrative Procedures Act, including section 67-5291, and 67-5292, Idaho Code."

In response to DFM's request, staff has prepared omnibus Docket 37-0000-2100F (IWRB and IDWR omnibus fee rule docket). A copy of the final docket notice is included with this briefing memo. Staff has also prepared a resolution, included with this briefing memo, for the IWRB's consideration. The resolution will adopt the temporary fee rules and authorize their subsequent publication.

Following authorization from the Board, DFM will publish the fee notices of its temporary rulemaking at or shortly after *sine die* with an effective date of *sine die*. For these temporary fee rules only, the Board does not have to accept written comment pursuant to Idaho Code section 67-5222(a). The Board already provided robust opportunity for public input during its related rulemaking efforts in 2019 and 2020. Throughout its process, the Board acted upon the temporary fee rules in open public meetings and hearings that allowed public comment.

Status of Non-Fee Rules

Currently, unlike the Board's fee rules, its non-fee rules are final and effective. To remain final, the legislature is required to statutorily extend the rules each year at the close of the legislative session. The legislature did not pass a *going home bill* renewing all administrative rules in 2019 or 2020. If the 2021 Legislature closes without again passing a *going home bill*, the Board's non-fee rules will expire at the end of the current fiscal year (i.e., June 30, 2021). Should the legislature fail to pass a *going home bill*, the Board will be required to adopt its non-fee rules as temporary rules after *sine die* to prevent them from expiring, similar to the board's current action regarding its fee rules. Stay tuned.

Status of Zero-Based Regulation (ZBR) Rulemaking

In compliance with the Governor's Executive Order 2020-01, staff has initiated "zero-based regulation" rulemaking for the Board's following rule chapters:

- IDAPA 37.01.01 Rules of Procedure
- IDAPA 37.03.06 Safety of Dams Rules
- IDAPA 37.02.01 Comprehensive State Water Plan Rules
- IDAPA 37.03.07 Stream Channel Alteration Rules 61.01 and 61.03 (recreational dredge mining minimums standard rule)

To carry out the ZBR rulemaking effort, staff have created rulemaking teams for each IDAPA chapter. The Governor expects that ZBR rulemaking follows the *negotiated* rulemaking process. To guide the rulemaking teams through the ZBR negotiated rulemaking process, IDWR has implemented a draft "checklist" guide. A copy of the current version of the ZBR draft guide is included with this briefing memo.

Consistent with the draft ZBR guide, each rulemaking team is in the process of reviewing the current rules, preparing the Governor's expected *prospective analysis* of the rules, preparing a rulemaking *recommendation memo*, and drafting a strawman rule for negotiation. Within the next month, the Board will need to review the *prospective analysis* and *recommendation memo* for each of the four chapters and direct each rulemaking team to (1) repeal the rule completely, (2) repeal the rule and publish a replacement rule developed by the rulemaking team consistent with ZBR expectations, or (3) repeal the rule and negotiate a replacement rule consistent with ZBR expectations. Stay tuned.

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF PREPARING TEMPORARY
FEE RULES FOR POST-SINE DIE IN THE EVENT
THE 2021 LEGISLATIVE SESSION ADJOURNS
WITHOUT AUTHORIZATION OF CURRENT
PENDING ADMINISTRATIVE FEE RULES

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

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

11 WHEREAS, as a precautionary measure to ensure the continuity of administrative rules
12 following the adjournment of the 2021 Legislative session, the Division of Financial Management
13 acting on behalf of the Governor of Idaho has directed all agencies to adopt all pending fee rules
14 currently before the Legislature as temporary rules; and
15

16 WHEREAS, pursuant to Section 67-5226, Idaho Code, the Governor has found temporary
17 adoption of the IWRB's rules is appropriate to protect the public health, safety, and welfare of
18 the citizens of Idaho and confer a benefit on its citizens; and
19

20 WHEREAS, the IWRB's rules implement the duly enacted laws of the state of Idaho,
21 provide citizens with the detailed rules and standards for complying with those laws, and assist
22 in the orderly execution and enforcement of those laws; and
23

24 WHEREAS, the expiration of the IWRB's rules without due consideration and processes
25 would undermine the public health, safety and welfare of the citizens of Idaho and deprive them
26 of the benefit intended by these rules; and
27

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

33
34 NOW, THEREFORE BE IT RESOLVED that the IWRB adopts and authorizes the notice and
35 publication of the following fee rules as temporary rules to be effective upon *sine die* of the 2021
36 session of the Idaho Legislature. This approval and adoption is conditional and will only become
37 effective if the rules previously adopted by the IWRB as pending rules currently before the Idaho
38 Legislature are not otherwise effective upon *sine die* pursuant to Idaho Code sections 67-5291
39 and 67-5292.

- 40 • 37.01.01, *Rules of Procedure for the Idaho Department of Water Resources*
- 41 • 37.02.03, *Water Supply Bank Rules*
- 42 • 37.03.03, *Rules of Minimum Standards for the Construction & Use of Injection Wells*
- 43 • 37.03.04, *Drilling for Geothermal Resources Rules*
- 44 • 37.03.05, *Mines Tailings Impoundment Structures Rules*
- 45 • 37.03.06, *Safety of Dams Rules*
- 46 • 37.03.07, *Stream Channel Alteration Rules*
- 47 • 37.03.09, *Well Construction Standards and Rules*
- 48 • 37.03.10, *Well Driller Licensing Rules*

DATED this 2ND day of MARCH, 2021.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST _____
JO ANN COLE-HANSEN, Secretary



State of Idaho
DIVISION OF FINANCIAL MANAGEMENT
Executive Office of the Governor

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

February 4, 2021

MEMORANDUM

TO: Executive Branch Agency/Department Heads
Rules Review Officers

FROM: Alex J. Adams

Handwritten signature of Alex J. Adams in cursive.

SUBJECT: **Preparing Administrative Fee Rules for Post-Sine Die**

In order to ensure the continuity of administrative rules following the adjournment of the 2021 Legislative session, this memo outlines the process that agencies will need to complete prior to **March 4, 2021**. While each agency must take these steps now, these temporary fee rules are conditional and will only become effective at *sine die* if the pending fee rules are not otherwise approved or rejected by the Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including sections 67-5291 and 67-5292, Idaho Code.

1. Agencies must submit a completed Notice of Adoption of Temporary Rule form to DFM by March 4th.
 - A template Notice is enclosed for fee rules only.
 - Rules should be adopted as submitted to the 2021 Legislature.
 - a. The Fee Rules expire upon Sine Die if not approved by the legislature via concurrent resolution of both the Senate and House Floor.
 - b. The Non-Fee Rules that became final rules after the 2020 legislative session, expire on June 30th, 2021, if the legislature does not extend them pursuant to the Idaho Administrative Procedure Act, section 67-5292, Idaho Code. Guidance will be forthcoming to re-adopt non-fee rule chapters if they are allowed to expire. Non-fee rules will be addressed by DFM after *sine die*.
 - No ARRF will be required.
 - Please submit completed Notices to adminrule@dfm.idaho.gov.
2. If rulemaking authority is vested in a board or commission – not agency staff – the board or commission must convene to properly authorize the Notice. This is required by law. Please work closely with your attorney to ensure the Notice is properly authorized.
 - The meeting must be scheduled in a timeframe to submit a completed Notice of Temporary Fee Rulemaking to DFM prior to the March 4 deadline.
 - The motion should be made as follows:

“Pursuant to Section 67-5226, Idaho Code, the Governor has found that temporary adoption of this rule is appropriate to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens.

These rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws.

The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

The Governor has also found that the fee(s) or charge(s) being imposed or increased is/are justified and necessary to avoid immediate danger to the agency/department/board/commission's budget, to the state budget, to necessary state functions and services, and to avoid immediate danger of a potential violation of Idaho's constitutional requirement that it balance its budget.

Therefore, we are adopting this/these temporary fee rule(s) to be effective upon *sine die* of the 2021 session of the Idaho Legislature. The approval is conditional and will only become effective if the rules are not otherwise approved or rejected by the Legislature and/or not extended pursuant to the Idaho Administrative Procedure Act, including sections 67-5291 and 67-5292, Idaho Code.”

3. DFM will publish the fee notices of temporary rulemaking at or shortly after *sine die* with the rules having an effective date as of *sine die*.
4. For these temporary fee rules only, agencies do not have to accept written comments pursuant to 67-5222(a) as its requirement and deadline applies to “publication of the notice of *proposed* rulemaking in the bulletin” (emphasis added). Robust opportunity for public input on the fee rules occurred during 2020 rulemaking. The 2020 temporary fee rules were acted upon in open public meetings/hearings that allowed public comment throughout the rulemaking process.
5. Each agency must keep all records of this rulemaking process for at least two (2) years pursuant to Idaho Code § 67-5225. Please ensure the record is thorough and complete.

STAFF RULEMAKING GUIDANCE MEMO

To: Rulemaking Teams

From: Mat Weaver (current RRO) and Sean Costello (current LC)

Date: February 22, 2021

RE: Draft, Zero-based Regulation Rulemaking Guidance

The following guidance details the general procedures rulemaking teams should reference and follow while carrying out rulemaking related to Executive Order 2020-01 on behalf of the Idaho Department of Water Resources (“IDWR” or “Department”) or the Idaho Water Resource Board (“IWRB” or “Board”).

1. Executive Order 2020-01 (“EO”), states “each rule chapter effective on June 30, 2020, shall be reviewed by the agency that promulgated the rule according to a schedule established by the Division of Financial Management (“DFM”)....” The EO calls this effort “zero-based regulation” (“ZBR”).
2. For each ZBR effort, IDWR’s Rules Regulation Officer (“RRO”) will create a rulemaking team typically consisting of subject matter experts, an executive manager, administrative support, and legal support.
 - a. The rulemaking team should identify a team “lead,” who will be the primary responsible party for coordinating team rulemaking efforts.
 - b. The rulemaking team must save all work product at the following network directory in the appropriate folder: **N:\Administrative Reports\Rules**.
3. The rulemaking team should start the new rulemaking from a zero-base, and not seek to simply reauthorize their existing rule chapter without a critical and comprehensive review.
 - a. The ZBR requires the rulemaking team to perform a retrospective analysis (“RA”) of the rule chapter to determine whether:
 - i. The benefits the rule intended to achieve are being realized;
 - ii. The benefits justify the costs of the rule, and
 - iii. There are less-restrictive alternatives to accomplish the benefits.
 - iv. This analysis should be guided by the legislative intent articulated in the statute or act giving the agency the authority to promulgate the rule.

4. Based upon the RA, the team will then draft and submit a Recommendation Memo (“RM”) to IDWR’s RRO (currently Mat Weaver) and the Legal Team Rules Coordinator (“LC”) (currently Sean Costello).
 - a. The memo must summarize the results of the RA and recommend a rulemaking path forward. Potential outcomes include:
 - i. Repealing the rule completely;
 - ii. Repealing the rule and publishing a replacement rule developed by the rulemaking team consistent with the ZBR EO; or
 - iii. Repealing the rule and negotiating a replacement rule consistent with the ZBR EO.
5. The RRO, LC and the Director or Board, will review the RM and approve the recommendation, deny the recommendation, or approve the recommendations with modifications. Director or Board approval is necessary to start the rulemaking process.
6. Following approval of the RM, the team will complete a Prospective Analysis (“PA”) for the rule. PA forms and guidance can be found on the Office of the Administrative Rules Coordinator’s (“OAR”) Templates Webpage:
https://adminrules.idaho.gov/rulemaking_templates/index.html.
 - a. The promulgation of a non-negotiated rule requires the team to complete all steps in the PA.¹
 - b. Negotiated rulemaking only requires the rulemaking team to complete steps 1, 2, and 5 of the PA.
7. Teams must ensure all work product is saved to the correct network directory and documents are finalized (track changes turned off, edits accepted or denied, metadata removed, etc.) prior to submittal for publication.
8. Each team will designate a member to control and upload/submit pertinent rulemaking documents (e.g., RA, RM, PA, or AARF) to DFM’s rulemaking portal for its review and approval.
 - a. Access to DFM’s rulemaking portal requires the creation of an “Agency access” account. DFM’s account creation instructions, portal user guidance, and “log on” screen are located at the following link: <http://apps.dfm.idaho.gov/dfmforms/>

¹ Unless otherwise determined by the team in coordination with the RRO and LC, all ZBR rulemaking shall be negotiated. Refer to [Idaho Code § 67-5220](#) Notice of Intent to Promulgate Rules – Negotiated Rulemaking for statutory requirements associated with negotiated rulemaking.

9. The RRO will coordinate with DFM to obtain its denial or approval decision and documentation and forward it to the rulemaking team.
10. For negotiated rulemaking, the team should prepare a “strawman” draft rule. A strawman is a working, or preliminary draft, of the rule text meant to facilitate negotiated rulemaking meetings and public comment.
 - a. Please include the LC in the “strawman” process, in order to identify and address legal issues as soon as possible. If the team is revising or editing an existing rule, contact the RRO for OAR’s official rule draft in MSWord format. However, when it is time to distribute the strawman to the public, the team shall only distribute it in PDF format.
 - i. Step 10 can be completed in parallel with steps 6-9.
11. The EO requires any replacement rule to reduce the overall regulatory burden, or remain neutral, as compared to the previous rule. If the team determines this requirement is infeasible, in other words, if the “regulatory burden” must increase, the team must coordinate with the RRO before proceeding.
12. Upon completion of Step 11, the team should ensure all final work products are posted to the proper network directory and published to IDWR’s Rulemaking Webpage (<https://idwr.idaho.gov/legal-actions/rules.html>). All final documents, signed or submitted as a part of the rulemaking process, become part of the “official rulemaking record.”
13. Next, the team will draft the initial rulemaking notice (Notice to Promulgate Rules, Notice to Negotiate Rules, etc.) and must coordinate with the RRO and LC to identify the Administrative Bulletin in which to publish. Note, the Administrative Bulletin is typically published once per month with proofs due to OAR the month prior to date of publication.
 - a. Refer to OAR’s On-Line Bulletin Publication Schedule:
https://adminrules.idaho.gov/bulletin/bulletin_pub_schedule.pdf
 - b. The following page contains all of OAR’s current Rulemaking templates:
http://adminrules.idaho.gov/rulemaking_templates/index.html. If you have any questions about which template to use, contact the LC.
14. Pursuant to Idaho Code § 67-5223, to properly incorporate changes to materials or information already incorporated into the text of a rule by reference:

An agency proposing to adopt amendments to materials previously incorporated by reference in a rule shall prepare for inclusion with the filing of the proposed rule change a brief written synopsis that details the

substantive differences between the previously incorporated material and the latest revised edition or version of the incorporated material being proposed for incorporation by reference. This synopsis shall accompany the submission to the director of legislative services and shall be provided to the germane joint subcommittee created in section 67-454, Idaho Code.

Rulemaking teams shall submit this synopsis to the RRO and LC if it applies to their rule.

15. Once finalized, the team will send the Notice to the RRO for signature. The RRO will present the notice and accompany materials to the Director or the Board for review and approval. Following Director or Board approval, the RRO will submit the final Notice to OAR for publication. OAR will always publish the Notice in the next available Administrative Bulletin.
16. As soon as feasible, prior to any scheduled negotiated rulemaking meeting published in the relevant Notice, the team must prepare a spreadsheet of stakeholder contact information (name, address, city, zip, and email) to submit to the RRO. Issues related to the breadth of stakeholder outreach should be coordinated through the RRO.
17. As soon as feasible, prior to any scheduled negotiated rulemaking meeting published in the initial Notice, the rulemaking team must provide the strawman or preliminary rule text to the RRO and the LC.
 - a. The LC will provide a publication review to ensure the rule text is in legislative format and OAR-defined layout and will coordinate with the team to post the strawman to the relevant rulemaking webpage.
18. ZBR negotiated rulemaking requires a minimum of two public negotiated rulemaking meetings to be scheduled and held. A copy of the RM and prospective analysis must be published on the agency's website prior to the public hearings.
 - a. The LC should be present at all negotiated rulemaking meetings for purposes of documenting the meeting for the official record. Minutes will be taken by a designated member of the rulemaking team.
 - b. Following the negotiated rulemaking process, the text of the rule should be edited and finalized. This should be done in coordination with the LC.
 - c. When communicating with stakeholders outside of IDWR or the Board, always place a "Draft" watermark on any document; then convert it to a PDF file prior to distribution. Never send a Word version of a rulemaking document outside to stakeholders participating in the negotiated rulemaking process.

- d. Public comments received in response to each rulemaking docket must be posted on IDWR’s rulemaking website and considered by IDWR or the Board when writing the final rule text.
19. Following conclusion of the negotiated rulemaking process or public hearings, the rulemaking team will prepare a proposed rule incorporating the requisite changes to the draft rule text identified by the negotiations or public meetings.
20. Simultaneously, the team will prepare a Notice of Rulemaking - Proposed Rule² and submit it to the RRO, along with the finalized rule text and prospective analysis.
21. The RRO will present the proposed rule and accompanying materials to the Director or Board for consideration. Review, approval, and adoption of the pending rule and the “Notice of Rulemaking – Proposed Rule,” by the Director or the Board, is required before the proposed rule is submitted for publication.
22. Following approval by the Director or Board, the RRO will submit the proposed rule package to DFM.
 - a. DFM will review the proposed rulemaking materials and approve or clarify the text of the rule. A proof copy will then be sent to the RRO and LC for approval. The RRO or LC will then forward the proof to the rulemaking team lead for review. Each team lead will then send the RRO and LC an email indicating approval or rejection for further editing.
23. The RRO will then communicate agency approval to OAR and the proposed rule will be published in the next available administrative bulletin.
24. Following publication of the proposed rule in the bulletin, pursuant to [Idaho Code § 67-5222](#), the public will have 14 days to request an “oral presentation” (i.e., public hearing on the proposed rules) and 21 days to submit written comments.
 - a. IDWR “shall provide an opportunity for oral presentation if requested by twenty-five (25) persons, a political subdivision, or an agency.” Otherwise, IDWR’s decision to host an oral presentation is discretionary.
25. Each team is responsible for scheduling and holding public hearing(s) when requested by the public. The team should coordinate with the RRO and LC to determine if, when, and how many public hearings the team should host. A copy of documents associated

² There are a number of proposed rulemaking notice templates published by DFM at the following link: https://adminrules.idaho.gov/rulemaking_templates/index.html. The team will determine which notice template to use based on the individual facts of its rulemaking effort and in coordination with the RRO and LC.

with all public hearings, including comments from the public, must be provided to the RRO and LC and will be published to the relevant IDWR rulemaking webpage.

26. The proposed rule comment period will end a minimum of 21 days from publication date. A copy of all comments must be provided to the RRO and LC and will be published to the relevant IDWR rulemaking webpage.
27. Following the end of the proposed rule comment period, the team will review all comments, determine if and how to modify the proposed rules, coordinate with the RRO and LC as necessary, and prepare a draft pending rule that may or may not include changes based on public comment.
 - a. Pursuant to [Idaho Code § 67-5227](#), changes to the proposed rules as a result of oral or written public comment may only be made if “the subject matter of the rule remains the same,” and the changes are a “logical outgrowth of the proposed rule” text.
28. The RRO will then present the pending rule and text to the Director or Board for consideration. Review, approval, and adoption of the pending rule text and the “Notice of Rulemaking – Pending Rule,”³ by the Director or the Board, is required before the pending rule is published.
29. Following Director or Board approval, the RRO will submit the pending rule notice to OAR via email and hard copy with the RRO’s signature.
30. OAR will then review the pending rule notice (and text, if changed) and send the notice proof back to the RRO. The RRO will then forward the OAR-approved proof to the rulemaking team lead for final review.
31. The rulemaking team lead will then send the RRO and LC an e-mail with approval or edits to the pending rule notice, and text, as necessary.
32. The pending rule notice is then published in the Administrative Bulletin. The pending rule remains unenforceable until reviewed and approved by the Legislature. The pending rule becomes final upon approval by the Legislature, unless the rule has been adopted by IDWR or the Board as a temporary rule.
33. After publication of the pending rule notice and prior to the next legislative session, the RRO and LC will meet with each rulemaking team lead to review the rules to be

³ There are a number of pending rulemaking notice templates published by DFM at the following link. https://adminrules.idaho.gov/rulemaking_templates/index.html. The team shall determine which notice template to use based on the individual facts of its rulemaking effort and in coordination with RRO and LC.

presented to the legislature using DFM prepared Rules Review Books and will help the presenters prepare for the relevant legislative committee meetings.

The internal process stops here. You can refer to Page 20 of the Rule Writer's Manual (https://adminrules.idaho.gov/rulemaking_templates/RuleWriterManual.pdf) to see the remainder of the process.

Attachments:

Executive Order 2020-01

Prospective Analysis Template

DFM Five-Year Plan

DRAFT

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

DOCKET NO. 37-0000-2100F

NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule(s) being adopted through this omnibus rulemaking is upon the adjournment date of the second regular session of the 65th Idaho State Legislature (sine die).

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

This temporary rule adopts the following chapter(s) under IDAPA 37:

- 37.01.01 – Rules of Procedure of the Idaho Department of Water Resources.
- 37.02.03 – Water Supply Bank Rules.
- 37.03.01 – Adjudication Rules.
- 37.03.02 – Beneficial Use Examination Rules.
- 37.03.03 – Rules and Minimum Standards for the Construction and Use of Injection Wells.
- 37.03.04 – Drilling for Geothermal Resources Rules.
- 37.03.05 – Mine Tailings Impoundment Structures Rules.
- 37.03.06 – Safety of Dams Rules.
- 37.03.07 – Stream Channel Alteration Rules.
- 37.03.08 – Water Appropriation Rules.
- 37.03.09 – Well Construction Standards and Rules.
- 37.03.10 – Well Driller Licensing Rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These temporary rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The Idaho Water Resource Board and the Department of Water Resources find these rules are necessary for the continued efficient and consistent execution of contested case proceedings, implementing the water supply bank program, adjudicating water rights, issuing water rights (permits, licenses, transfers, etc.), implementing the underground injection well program, protecting geothermal resources, protecting ground water resources, ensuring regulated dams and mine tailing and water impoundment structures do not pose a health or safety risk to the public, ensuring stream channel alteration activities do not impair the resources or pose a health or safety risk to the public, and issuing well driller licenses.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee(s) or charge(s) being imposed or increased is justified and necessary to avoid immediate danger and the fee(s) is described herein:

The fees or charges, authorized in Title 42, Idaho Code, as further specified below, are part of the agency's 2021 budget that relies upon the existence of these fees or charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these temporary rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget.

The following is a specific description of the fees or charges:

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

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

IDAPA 37.03.01 implements the filing of notices of claims to water rights claimed under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications. Idaho is currently in the midst of the North Idaho Adjudication (NIA) and IDWR has recently commenced the Palouse Basin Adjudication and anticipates commencing the final phase of the NIA—the Clark Fork-Pend Oreille River Basin adjudication—sometime after 2020. The Rule is integral to the processing of these general adjudications. This chapter was adopted under the legal authority of Sections 42-1414, and 42-1805(8), Idaho Code.

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

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

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

IDAPA 37.03.05 establishes acceptable construction standards and governs IDWR's design and technical review of mine tailing and water impoundment structures. The Rule also supports the collection of a fee to review plans, drawings, and specifications pertaining to any mine tailings impoundment structure.

IDAPA 37.03.06 establishes acceptable standards for construction of dams and establishes guidelines for safety evaluation of new or existing dams. The Rule applies to all new dams, to existing dams to be enlarged, altered or repaired, and maintenance of certain existing dams, as specifically provided in the Rule. This chapter also establishes the collection of a fee to review plans, drawings, and specifications pertaining to the construction,

enlargement, alteration, or repair of small high-risk, intermediate, or large dams. This chapter was adopted pursuant to Section 42-1714, Idaho Code.

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

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

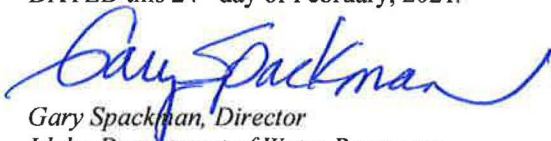
IDAPA 37.03.09 governs IDWR's statutory responsibility for the statewide administration of the rules governing well construction. These rules establish minimum standards for the construction of all new wells and the modification and decommissioning (abandonment) of existing wells. The intent of the Rule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

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

In summary, the fee categories described in the attached rules include: (1) administrative appeals filing fees; (2) water supply bank lease and rental fees; (3) adjudication application fees; (4) water right licensing examination fees; (5) injection well inventory and permit fees; (6) geothermal well permit fees; (7) design review fees for mine tailings impoundment structure and select dams; (8) stream channel alteration statutory filing fees; (9) water right application, re-advertisement, and mailing fees; (10) well drilling permit fees; and (11) application licensing fees for well drillers.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact Mathew Weaver Deputy Director at (208) 287-4800.

DATED this 24th day of February, 2021.



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