



AGENDA

IDAHO WATER RESOURCE BOARD

Special Board Meeting No. 9-21

Tuesday, June 15, 2021

11:00 a.m. (MST)

Water Center

Conference Room 648A / Online Zoom Meeting

322 E. Front St.

BOISE

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

Board Members & the Public May Participate via Zoom

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

Dial in Option: 1(253) 215-8782

Meeting ID: 915 6422 5104 Passcode: 512995

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

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

Americans with Disabilities

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

Memo

To: Idaho Water Resource Board

From: Mat Weaver ^{MW}

Date: June 14, 2021

Re: **Administrative Rulemaking Update**

Requested Action Item

Rescind the Idaho Water Resource Board's ("IWRB") current temporary fee rules which only become effective on *sine die* of the 2021 legislative session and replace them with newly adopted and authorized temporary fee rules to be effective July 1, 2021. 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 the Idaho Department of Water Resources ("IDWR").

Publication of Fee Rules as Temporary Rules Effective July 1, 2021

On March 2, 2021, the IWRB adopted a resolution authorizing the publication of its pending fee rules as temporary fee rules effective *sine die* of the 2021 legislative session assuming the legislature did not take action to approve the pending fee rules.

On May 12, 2021, the Idaho Senate adjourned *sine die* and the Idaho House of Representatives (“House”) recessed “subject to the call of the Speaker, no later than December 31.” The Attorney General noted this scenario is unique and without precedent in Idaho. Because the House recessed the session, and has not yet adjourned *sine die*, there is uncertainty as to when the IWRB’s currently adopted temporary fee rules will take effect.

To address temporary fee rule uncertainty, the Division of Financial Management (“DFM”) issued a guidance memorandum to all executive agencies on May 20, 2021. The guidance memorandum had the subject line “Current status of Administrative Rules and what agencies need to do.” A copy of DFM’s May 20 memo is included with this briefing memo.

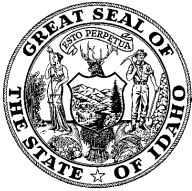
To minimize confusion and guard against the uncertainty of a future *sine die* date that could result in major practical impediments to re-promulgation of fee rules at the end of the year, DFM’s May 20 memo directs all executive agencies to rescind temporary fee rules that take effect *sine die* of the 2021 legislative session and readopt temporary fee rules that take effect July 1, 2021. Agencies must submit new temporary rulemaking materials to DFM by June 22, 2021.

In response to DFM’s request, staff previously prepared omnibus Docket 37-0000-2100F (IWRB and IDWR omnibus fee rule docket). A copy of the final signed docket notice was previously submitted to the IWRB for review. Staff has also prepared a new resolution, included with this briefing memo, for the IWRB’s consideration. The resolution will rescind the current fee rules with the *sine die* qualifier and adopt new temporary fee rules effective July 1, 2021, and authorize their subsequent publication.

Following authorization from the Board, DFM will publish the notice of the IWRB’s temporary rulemaking in a special edition of the Idaho Administrative Bulletin on or around July 21, 2021.

2021 Zero-Based Regulation Rulemaking Update

No update at this time.



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

BRAD LITTLE
Governor

ALEX J. ADAMS
Administrator

May 20, 2021

MEMORANDUM

**TO: Executive Branch Agency/Department Heads
Rules Review Officers**

FROM: Alex J. Adams 

SUBJECT: Current Status of Administrative Rules and What Agencies Need to Do

As you all know by now, the Senate adjourned *sine die* on May 12th and the House recessed subject to the call of the Speaker, no later than December 31st.

The Attorney General's office noted that this scenario is unique and without precedent in Idaho. This action places the state's administrative rules in a precarious state.

Naturally, many of you have reached out with questions about the current status of administrative rules, and this memo intends to summarize the FAQs and the action agencies need to take.

1. Have the rule changes we presented to the Legislature taken effect?

No, the rule changes presented to the 2021 legislature have not taken effect. Rule changes would traditionally take effect upon *sine die* (if properly acted on by the legislature), which could be as late as December 31st.

2. Are our administrative rules still in effect?

Yes, all *existing* state administrative rules remain in full force and effect as of today.

- Existing non-fee rules will expire on June 30th due to legislative inaction.
- All current temporary rules (which includes all existing fee rules) will expire upon *sine die*, which could be as late as December 31st.

Thus, while all administrative rules continue in full force and effect today, this starts to change on June 30th, first for the non-fee rules. As a result, executive administrative action is needed to ensure existing rules remain in effect.

Rest assured, Governor Little is committed to ensuring continuity of the services citizens expect. To minimize confusion and guard against the uncertainty of a future *sine die* date that could provide some major practical impediments to re-promulgation of rules at the end of the year, here's the plan:

- Agencies will rescind all current temporary state administrative rules, including fee chapters presented to the 2021 legislature, effective July 1, 2021.
- We will then republish all necessary rules with an effective date of July 1, 2021 with the changes presented to the 2021 legislature. This will make all changes in effect as of July 1 and ensure the continuity of all state administrative rules through the end of the 2022 legislature.

- A special bulletin will publish on July 21, 2021, that will include each of these temporary rules with an effective date of July 1st.

3. What action does our agency need to take to ensure the continuity of our rules?

Luckily, agencies have already taken action to prepare for this event (see DFM memos from February 4 and April 27). Here's the next steps:

- You will receive a proof of your administrative rules on or around **June 10th**. The proof will be based on the feedback you submitted to DFM pursuant to the prior memos. The proof will be structured to carry out the aforementioned plan of rescinding current rules and replacing with the new temporary rules.
- You will need to review the proof and apprise DFM of any necessary changes. Please work closely with your legal counsel if your agency/board/commission needs to take formal action on the proof. In discussing this with your counsel, please note if your previous motion was for the temporary rule to take effect on *sine die* or July 1. If the former, additional action may be necessary. A sample motion you may make is attached as **Appendix A**.
- All proofs must be returned to DFM no later than COB on **June 22nd**. If your legal counsel determines that board/commission approval is necessary, please proactively schedule your public meeting for the week of June 14th. Given the volume of rules DFM is dealing with, no exceptions will be made to the June 22nd deadline. Any response not received by this date will be presumed to mean the agency is letting the rule expire as of June 30th.

Appendix A. Sample Motion.

“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.

Therefore, we are adopting this temporary rule to be effective upon July 1, 2021. We are also rescinding our existing temporary rule with an effective date of July 1, 2021.”

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF RESCINDING CURRENT
TEMPORARY FEE RULES AND PREPARING
NEW TEMPORARY FEE RULES TO BE
EFFECTIVE JULY 1, 2021

RESOLUTION TO PUBLISH THE IDAHO
WATER RESOURCE BOARD'S CURRENT
PENDING ADMINISTRATIVE FEE RULES AS
TEMPORARY FEE RULES EFFECTIVE
JULY 1, 2021

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, the IWRB adopted its fee rules as temporary fee rules, effective *sine die* of the
11 2021 legislative session in its Resolution No. 06-2021 on March 2, 2021; and

12 WHEREAS, the 2021 Idaho House of Representatives (“House”) has not adjourned *sine die*
13 and rather recessed on May 12, 2021, without the Idaho Legislature reauthorizing the IWRB’s
14 administrative rules, or the House establishing a date certain that it would reconvene; and

15 WHEREAS, as a precautionary measure to ensure the continuity of administrative rules
16 and ensure that existing rules remain in effect in Fiscal Year 2022, the Division of Financial
17 Management acting on behalf of the Governor of Idaho has directed all agencies to adopt all
18 pending fee rules currently before the Legislature as temporary rules to be effective July 1, 2021;
19 and

20 WHEREAS, pursuant to Section 67-5226, Idaho Code, the Governor has found temporary
21 adoption of the IWRB’s rules is appropriate to protect the public health, safety, and welfare of
22 the citizens of Idaho and confer a benefit on its citizens; and

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

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

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

35 NOW, THEREFORE BE IT RESOLVED that the IWRB rescinds its existing temporary fee rules
36 effective July 1, 2021.

37 NOW, THEREFORE BE IT FURTHER RESOLVED that the IWRB adopts and authorizes the notice
38 and publication of the following fee rules as temporary rules to be effective July 1, 2021. This
39 approval and adoption is conditional and will only become effective if the rules previously
40 adopted by the IWRB as pending rules currently before the Idaho Legislature are not otherwise
41 effective upon *sine die* pursuant to Idaho Code sections 67-5291 and 67-5292.

- 42 • 37.01.01, *Rules of Procedure for the Idaho Department of Water Resources*
- 43 • 37.02.03, *Water Supply Bank Rules*
- 44 • 37.03.03, *Rules of Minimum Standards for the Construction & Use of Injection Wells*
- 45 • 37.03.04, *Drilling for Geothermal Resources Rules*
- 46 • 37.03.05, *Mines Tailings Impoundment Structures Rules*
- 47 • 37.03.06, *Safety of Dams Rules*
- 48 • 37.03.07, *Stream Channel Alteration Rules*
- 49 • 37.03.09, *Well Construction Standards and Rules*
- 50 • 37.03.10, *Well Driller Licensing Rules*

DATED this 15th day of June, 2021.

JEFF RAYBOULD, Chairman
Idaho Water Resource Board

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