

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 27th day of August, 2021.



JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST 

JO ANN COLE-HANSEN, Secretary
Idaho Water Resource Board

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.

DATED this 27th day of August, 2021.


JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST 
JO ANN COLE-HANSEN, Secretary