

Zero-Based Regulation Prospective Analysis

Agency Name: Idaho Water Resource Board (“IWRB”)

Rule Docket Number: 37-0204-2501

1. What is the specific Idaho statutory legal authority for this proposed rule?

Statute Section (include direct link)	Is the authority mandatory or discretionary?
Authority in Section 42-1762, Idaho Code	Mandatory
Rules implement portions of Chapter 17, Title 42 including Sections 42-1761 , 42-1762 , 42-1763 , 42-1764 , 42-1765 , and 42-1766 , Idaho Code	
Rules implement portions of the 1990 Fort Hall Indian Water Rights Agreement described in, but not limited to, Article 7.3.	

2. Define the specific problem that the proposed rule is attempting to solve? Can the problem be addressed by non-regulatory measures?

Article 7.3 of the 1990 Fort Hall Indian Water Rights Agreement (Agreement), as approved by the United States in Public Law 101-602, 104 Stat. 3061 on November 16, 1990, and by the State of Idaho in 1991 Idaho Session Laws Chapter 228 at 547, provides the Tribes the right to create a Shoshone-Bannock Water Bank pursuant to Sections 42-1761 through, Idaho Code, and the Agreement shall be effective only upon the occurrence of eight specific events, including Article 18.1.3 that the Idaho Water Resource Board adopt the Shoshone-Bannock Water Bank Rules and Regulations consistent with Article 7.3.

Section 42-1761, Idaho Code, charges the Idaho Water Resource Board (“IWRB”) to operate a “water supply bank.” Section 42-1762, Idaho Code, mandates that the IWRB shall adopt rules governing the water supply bank. The Shoshone Bannock Tribal Water Supply Bank Rules, IDAPA 37.02.04, fulfill the IWRB’s statutory obligation to adopt rules that govern the operation and management of the Tribes water bank.

The rules encourage the highest beneficial use of water, provide a source of adequate water supply to new and existing water users, provide a mechanism for the Tribes to realize the value of their federal contract storage rights resulting from this settlement, and provide a source of Tribal funding for improving water user facilities and efficiencies.

The Tribes must operate and manage the water bank under standardized rules to ensure the application process is clear and fair to all parties, and the authorities of the Tribes water bank are clearly defined.

To support the intent of the zero-based retrospective analysis process, proposing a new set of

procedural and operative rules specific to the Tribes water bank and unique to this process will best serve the goals of the IWRB.

3. How have other jurisdictions approached the problem this proposed rule intends to address?

a. Is this proposed rule related to any existing federal law?

Federal citation	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)

b. How does this proposed rule compare to other state laws?

State	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
Washington		
Oregon		
Nevada		
Utah		
Wyoming		
Montana		
Alaska		
South Dakota		

c. If the Idaho proposed rule has a more stringent requirement than the federal government or the reviewed states, describe the evidence base or unique circumstances that justifies the enhanced requirement:

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4. What evidence is there that the rule, as proposed, will solve the problem?

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5. What is the anticipated impact of the proposed rule on various stakeholders? Include how you will involve stakeholders in the negotiated rulemaking process?

Category	Potential Impact
Fiscal impact to the state General Fund, any dedicated fund, or federal fund	No fiscal impact to the state General Fund or federal fund. The Tribal Water Bank is solely supported by annual revenue from the rental activity of the bank.
Impact to Idaho businesses, with special consideration for small businesses	The Shoshone Bannock Water Bank is an important tool that Idaho water users have utilized to meet a variety of needs, including mitigation of groundwater pumping and environmental flows. In recent years, the Tribes have rented roughly 40,000 to 50,000 acre-feet of water per year to Idaho water users, primarily irrigation districts supporting many small businesses. By clearly defining the rules by which the Bank operates, the Tribes can continue to efficiently process new rental agreements which ultimately support Idaho businesses. Idaho Ground Water Appropriators (IGWA), Irrigation Districts, and other related businesses will be notified of the negotiated rulemaking process and will be invited to participate.
Impact to any local government in Idaho	The proposed rulemaking will have a positive impact on local governments in Idaho. The Shoshone Bannock Water Bank supports the Tribes and provides critical revenue to support the Tribal Water Resources Department. The Tribal Water Resources Department is an important partner to IDWR in water management and data sharing in Eastern Idaho. Additionally, the Tribal Bank has provided the majority of mitigation water for groundwater users since the 2015 settlement. Local governments will be invited to participate in the rulemaking process.

6. What cumulative regulatory volume does this proposed rule add?

Category	Impact
Net change in word count	
Net change in restrictive word count	

7. Should this rule chapter remain as a rule chapter or be moved to statute as suggested in Section [67- 5292](#), Idaho Code?

Category	Impact
What is the cost of publishing this rule chapter annually? (Multiply the number of pages x \$56)	7 pages X \$56/page = \$392
How frequently has this rule chapter been substantively updated over the past 5 years? (Exclude republishing triggered solely by recent sunset dates)	IDAPA 37.02.04 Shoshone Bannock Tribal Water Supply Bank Rules, was promulgated by the Idaho Legislature on July 8, 1994. There have been no proposed updates to these rules since 1994.
What is the benefit of having all related requirements in a single location in Idaho Code?	The Tribal Bank Rules should remain as a rule chapter because they provide a mechanism for the Tribes to realize the value of their federal contract storage rights granted in the 1990 Fort Hall Indian Water Right Agreement.