

**Zero-Based Regulation
Prospective Analysis**

- **Fill out entire form to the best of your ability, unless submitting a Notice to Negotiate only fill out 1, 2, 5, and 7. The rest of the form must be completed prior to the adoption of the proposed rule.**

Agency Name:

Rule Docket Number:

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 42-603 , Idaho Code Appropriation of Water - Distribution of Water Among Appropriators: Supervision of Water Distribution- Rules & Regulations	Discretionary
Rules implement portions of Chapter 2, Title 42 including Sections 42-111 , 42-222 , 42-603 , 42-604 , 42-605 , 42-606 , and 42-701 , Idaho Code	
Rules implement portions of the Snake River Basin Adjudication General Provisions for Hydrologic Basin 34.	

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

<p>The problem IDWR is trying to solve with the proposed IDAPA 37.03.12 rules ("Water District 34 Rules") is the consistent and efficient distribution of surface and groundwater to water rights within Water District 34 in the Big Lost River Basin. Citizens in the Mackay and Arco areas rely on Idaho's water resources for agricultural, municipal, commercial, and industrial uses that are the backbone of the local economy.</p> <p>The Idaho Legislature promulgated the Water District 34 Rules on October 26, 1994. Water delivery is complex in this basin due to significant water seepage through the riverbed and a unique historical practice of rotating water rights into storage that only occurs on the Big Lost River. Due to controversies resulting from these and other factors, IDWR worked with water users to develop the Water District 34 Rules. Examples of the topics addressed in the rules include reach gain calculations, routing the river down the Eastside Canal to reduce seepage losses, rotation of natural flow water rights into storage, the method for charging evaporative and conveyance losses, the Mackay Dam minimum bypass, and the process for addressing water delivery complaints.</p>
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There has only been one revision of the Water District 34 Rules since 1994. IDWR reviewed and removed approximately six pages (approximately 40%) of these rules in 2019 as directed by the Red Tape Reduction Act and Licensing Freedom Act of 2019. Due to the significant revision in 2019, the edits currently being proposed are relatively minor and consist of removing unnecessary words, making definitions consistent with other rules, and adding clarifying information.

IDWR believes the Water District 34 Rules provide for consistent and efficient distribution of surface water and groundwater to water rights in Water District 34 in the Big Lost River Basin. IDWR has contemplated the need for the Water District 34 Rules. A fact supporting repealing the rules is that none of the other approximately one hundred active water districts in Idaho have water distribution rules. Conversely, reasons for keeping the rules include a watermaster instructions order issued by IDWR contains references to the Water District 34 Rules and the rules describe procedures for water delivery that are unique to the Big Lost River. IDWR is not comfortable unilaterally repealing these rules. IDWR will seek stakeholder input during the negotiated rulemaking process on whether the Water District 34 Rules are necessary or can be repealed.

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:

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

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	<p>No impact is anticipated on the General Fund or any other dedicated fund of the State of Idaho.</p> <p>No federal funds are used to distribute water in Water District 34.</p>
Impact to Idaho businesses, with special consideration for small businesses	<p>These rules provide predictable and consistent distribution of water in Water District 34. They impact businesses of all sizes that own surface water or groundwater water rights in the district. A majority of the businesses impacted are family-owned farms and ranches, but some commercial and industrial businesses are also impacted. All water right owners are members of Water District 34, Big Lost River Irrigation District, or Big Lost River Groundwater District. IDWR will notify these entities to ensure water rights owners have an opportunity to participate in the negotiated rulemaking process.</p>

Category	Potential Impact
Impact to any local government in Idaho	These rules only impact the City of Mackay, Custer County, City of Arco, and Butte County. Section 42-602 , Idaho Code, delegates exclusive authority to IDWR for water administration. These local governmental entities cannot regulate surface water and groundwater. However, as water users, they might have an interest in this negotiated rulemaking process. IDWR will notify the City of Mackay, Custer County, City of Arco, and Butte County to ensure they have an opportunity to participate in the negotiated 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)	8 pages X \$56/page = \$448
How frequently has this rule chapter been substantively updated over the past 5 years? (Exclude republishing triggered solely by recent sunset dates)	IDAPA 37.03.12 Idaho Department of Water Resources Water Distribution Rules – Water District 34, was promulgated by the Idaho Legislature on October 26, 1994. IDWR reviewed and removed approximately six pages (approximately 40%) of these rules in 2019 as directed by the Red Tape Reduction Act and Licensing Freedom Act of 2019. There have been no proposed updates to these rules since 2019.
What is the benefit of having all related requirements in a single location in Idaho Code?	The Water District 34 Rules should remain as a rule chapter because they provide procedures and guidelines for implementing the legal framework in Chapter 6, Title 42, Idaho Code, for effective distribution of surface water and groundwater within Water District 34.