

# Recommendation Memo

**State of Idaho**

**Department of Water Resources**

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Date: March 3, 2025

To: Mathew Weaver, Director

Cc: Brian Patton, Deputy Director  
Erik Boe, Water Compliance Bureau Chief

From: Matt Anders, Technical Services Bureau Chief

Subject: Idaho Department of Water Resources Water Distribution Rules – Water District 34  
(IDAPA 37.03.12) Retrospective Analysis and Recommendation

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## **Executive Order 2020-01 Zero-based Regulation**

State of Idaho Executive Order No. 2020-01 Zero-Based Regulation (“Executive Order”) requires the Idaho Department of Water Resources (“IDWR”) to review all IDWR rule chapters by 2026. Executive Order at 2. The Executive Order instructs IDWR to start the new rulemaking from a zero-base and complete a critical and comprehensive review. *Id.* at 3. Following the Division of Financial Management and IDWR schedule, IDWR must address IDWR’s Water Distribution Rules – Water District 34, IDAPA 37.03.12 (“Water District 34 Rules”) in 2026, the fifth year of the review process. The Executive Order requires IDWR to perform a retrospective analysis of the Rule to decide whether the Rule should be repealed or re-promulgated. *Id.* at 3. This memorandum summarizes the retrospective analysis to support IDWR’s recommendation to re-promulgate the Water District 34 Rules.

## **Retrospective Analysis**

### **1. What are the benefits of the current rules?**

The Water District 34 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, for consistent and efficient distribution of surface water and groundwater to water rights within Water District 34 in the Big Lost River Basin. Highlights of the benefits of the Water District 34 Rules include:

- Defining a method for calculating reach gains.
- Setting criteria for routing the river down the Eastside Canal to reduce seepage losses.
- Setting criteria for rotation of natural flow water rights into storage.

- Establishing a method for charging evaporative and conveyance losses.
- Setting a minimum bypass for Mackay Dam.
- Defining a process for addressing water delivery complaints.

## **2. Do the benefits of the rule justify the costs of the rules?**

The benefits of the Water District 34 Rules justify the cost because the direct cost of the rules is minimal. The cost of publishing the rules is \$448 per year. There are no user fees associated with these rules.

IDWR and Water District 34 both have indirect costs associated with implementing the Water District 34 Rules. IDWR devotes staff time of hydrologists and water agents each year to administer surface water and groundwater water rights in Water District 34. The cost to IDWR varies from year to year based on the water supply but likely averages approximately \$15,000 per year. Water District 34 has a watermaster and administrative assistant who devote all of their time each year to administering surface water and groundwater water rights in Water District 34. The cost to Water District 34 is approximately \$150,000 per year. IDWR and Water District 34 would expend the same amount of staff resources for water administration with or without the Water District 34 Rules.

## **3. Are there less restrictive alternatives to accomplish the benefits of the rules?**

IDWR contemplated repealing the Water District 34 Rules in 2019 and preparing this review. In both cases, the primary reasons IDWR concluded to keep the Water District 34 Rules are because they have been streamlined, the rules that remain describe procedures for water delivery that are unique to the Big Lost River and are not duplicated elsewhere, and a watermaster instructions order issued by IDWR contains references to 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.

IDWR staff are 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.

## **4. Recommendation**

Based on the retrospective analysis, staff recommends the Water District 34 Rules be updated through the negotiated rulemaking process and be re-promulgated because they provide for the effective distribution of surface water and groundwater within Water District 34. Due to the significant revision in 2019, the rules have been streamlined to address the unique methods and processes necessary for water administration in Water District 34. The edits currently being proposed by IDWR are relatively minor and consist of removing unnecessary words, making definitions consistent with other rules, and adding clarifying information. The rulemaking process will enable stakeholders to provide input on IDWR's proposed changes, propose additional edits, and provide input on whether the rules should be repealed.