

RECOMMENDATION MEMO

TO:	Idaho Water Resource Board
FROM:	Ann Vonde, Deputy Attorney General
DATE:	September 20, 2021
RE:	Comprehensive State Water Plan Rules of the IWRB, IDAPA 37.02.01 with Retrospective Analysis and Recommendation

Executive Order 2020-01

Executive Order No. 2020-01 (the “EO”) requires the Idaho Water Resource Board (“IWRB”) to review all rule chapters under the agency’s purview by 2026. The review must be a critical and comprehensive review. EO at 2.

Pursuant to the schedule already determined by the Division of Financial Management (“DFM”) and the IWRB, the Comprehensive State Water Plan Rules (“Rules”; IDAPA 37.02.01) must be analyzed in the first year of the review process.

Therefore, the EO requires the IWRB to review the Rules to determine whether they should be repealed altogether or re-promulgated. If the IWRB desires to re-promulgate the Rules, the IWRB must retrospectively analyze the rules and determine whether the rules need to be re-promulgated, and, if so, to recommend an approach. *Id.*

This recommendation memo provides analysis and recommendations for the IWRB.

Enabling Statutes

The IWRB has authority to issue procedural and operative rules as may be necessary for the conduct of its business. I.C. § 42-1734(19). The IWRB is also directed under I.C. § 42-1734D to promulgate rules for the designation of interim protected rivers. Therefore, the legislature has expressly provided authority to the IWRB to promulgate rules to provide process and procedure to conduct its business.

Retrospective Analysis

To analyze the Rules pursuant to the EO, the IWRB assigned a team of IWRB employees and OAG personnel to analyze the costs, benefits, and needs relative to the Rules. That team consisted of a deputy attorney general and IWRB Staff Neeley Miller.

The team analyzed whether the Rules should be repealed altogether or whether the Rules should be re-promulgated via negotiated rulemaking pursuant to the EO and the Idaho APA. The team determined that many of the rules were unnecessary or redundant.

But that a portion of the rules needed to be maintained to comply with the directive in I.C. § 42-1734D(1) that the IWRB promulgate rules for designation of interim rivers.

Recommendation

The Team recommends a dramatic reduction of the rules that are redundant or unnecessary. However, the Team recommends the retention of a limited number of rules dealing with the designation of interim protected rivers so as to comply with I.C. § 42-1734D(1).