

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE BOARD'S 2022
ZERO-BASED REGULATION NEGOTIATED
RULEMAKING OF IDAPA 37

RESOLUTION TO PUBLISH FIVE IDAPA 37
CHAPTERS AS PROPOSED RULES IN THE
OCTOBER 5, 2022, IDAHO
ADMINISTRATIVE BULLETIN VOL. 22-10

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;

3 WHEREAS, Governor Little's Executive Order 2020-01 Zero Based Regulation ("Executive
4 Order") directs each agency to comprehensively review all rules under its authority and "if
5 applicable" to promulgate new rules to take their place where necessary, and to conduct this
6 zero-based review ("ZBR") over a five year period from 2021 to 2025;

7 WHEREAS, the IWRB adopted a five-year ZBR rulemaking schedule that identifies the
8 review of the following rules by the end of the second year, or 2022:

- 9 • IDAPA 37.02.03 Water Supply Bank Rules;
- 10 • IDAPA 37.03.04 Drilling for Geothermal Resources Rules;
- 11 • IDAPA 37.03.05 Mine Tailings Impoundment Structures Rules;
- 12 • IDAPA 37.03.06 Safety of Dams Rules; and
- 13 • IDAPA 37.03.10 Driller Licensing Rules.

14 WHEREAS, the Executive Order directs any "agency wishing to renew a rule chapter
15 beyond [its ZBR] review date" to promulgate a new rule chapter after conducting a "retrospective
16 analysis" of the rule;

17 WHEREAS, the IWRB has conducted retrospective analyses of its Water Supply Bank Rules,
18 Drilling for Geothermal Resources Rules, Mine Tailings Impoundment Structures Rules, Safety of
19 Dams Rules, and Driller Licensing Rules and concluded they are all needed to carry out the IWRB's
20 statutory duties and responsibilities fairly, efficiently, and consistently;

21 WHEREAS, the Executive Order directs agencies to "start the new rulemaking from a zero-
22 base, and not seek to simply reauthorize their existing rule chapter without a critical and
23 comprehensive review";

24 WHEREAS, the IWRB's notices of intent to promulgate rules for each chapter clearly
25 stated its intent to "repeal and promulgate rules" "consistent with Executive Order 2020-01:
26 Zero-Based Regulation" and where the IWRB has conformed to all ZBR processes and
27 requirements throughout the rulemaking process;

28 WHEREAS, the Executive Order directs agencies to "publish a notice of intent to
29 promulgate rules and hold, at a minimum, two public hearings that are designed to maximize
30 public participation in the rulemaking process";

31 WHEREAS, the IWRB published notice of negotiated rulemaking for its Water Supply Bank
32 Rules and Drilling for Geothermal Resources Rules in Admin. Bulletin Vol. 22-3, its Driller Licensing
33 Rules in Admin. Bulletin Vol. 22-4, and its Mine Tailing Impoundment Structures Rules and Safety
34 of Dams Rules in Admin. Bulletin Vol. 22-5;

35 WHEREAS, the IWRB held two public hearings or more as part of its negotiated rulemaking
36 of the Water Supply Bank Rules, Mine Tailings Impoundment Structures Rules, Safety of Dams
37 Rules, and Well Driller Licensing Rules during the springs and summer of 2022, and will hold a
38 second public hearing for the Drilling for Geothermal Resources Rules if requested after
39 publication of the proposed rule on October 2022;

40 WHEREAS, the Executive Order directs agencies to promulgate new rule chapters that
41 “reduce the overall regulatory burden, or remain neutral, as compared to the previous chapter”;

42 WHEREAS, in combination, the Water Supply Bank Rules, Drilling for Geothermal
43 Resources Rules, Mine Tailings Impoundment Structures Rules, Safety of Dams Rules, and Well
44 Driller Licensing Rules were reduced by more than 4,500 words, resulting in a combined reduction
45 of 15.5%;

46 NOW, THEREFORE BE IT RESOLVED that the IWRB adopts the following proposed rules and
47 directs that they be adopted as submitted to the Idaho Office of Administrative Rules
48 Coordinator:


- 49 • 37.02.03, *Water Supply Bank Rules*;
- 50 • 37.03.04, *Drilling for Geothermal Resources Rules*;
- 51 • 37.03.05, *Mine Tailings Impoundment Structures Rules*;
- 52 • 37.03.06, *Safety of Dams Rules*; and
- 53 • 37.03.10, *Well Driller Licensing Rules*.

54 NOW, THEREFORE BE IT RESOLVED that the IWRB authorizes the notice and publication
55 of the above proposed rules.

DATED this 6th day of September 2022.



JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST 

JO ANN COLE-HANSEN, Secretary
Idaho Water Resource Board