



IDAHO DEPARTMENT OF  
**WATER RESOURCES**



# Negotiated Rulemaking:

## IDAPA 37.03.01 – Adjudication Rules

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Presented by: Craig L. Saxton, Adjudication Section Manager

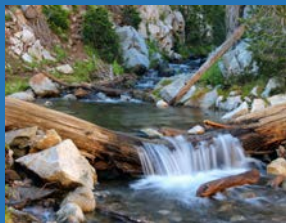
Date: May 16, 2024





## Today's Meeting – Quick Overview

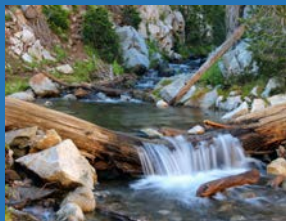
- We are recording the meeting and will publish the recordings to the website. <https://idwr.idaho.gov/legal-actions/rules/>
- IDWR has prepared a Preliminary Draft Rule or “Strawman” available on the website.
- Stakeholders will have an opportunity to provide oral comment on the Strawman rule after this presentation.
- Written comments must be submitted by **Friday, May 31, 2024.**
- IDWR representatives are participating to answer questions.





## Presentation Outline

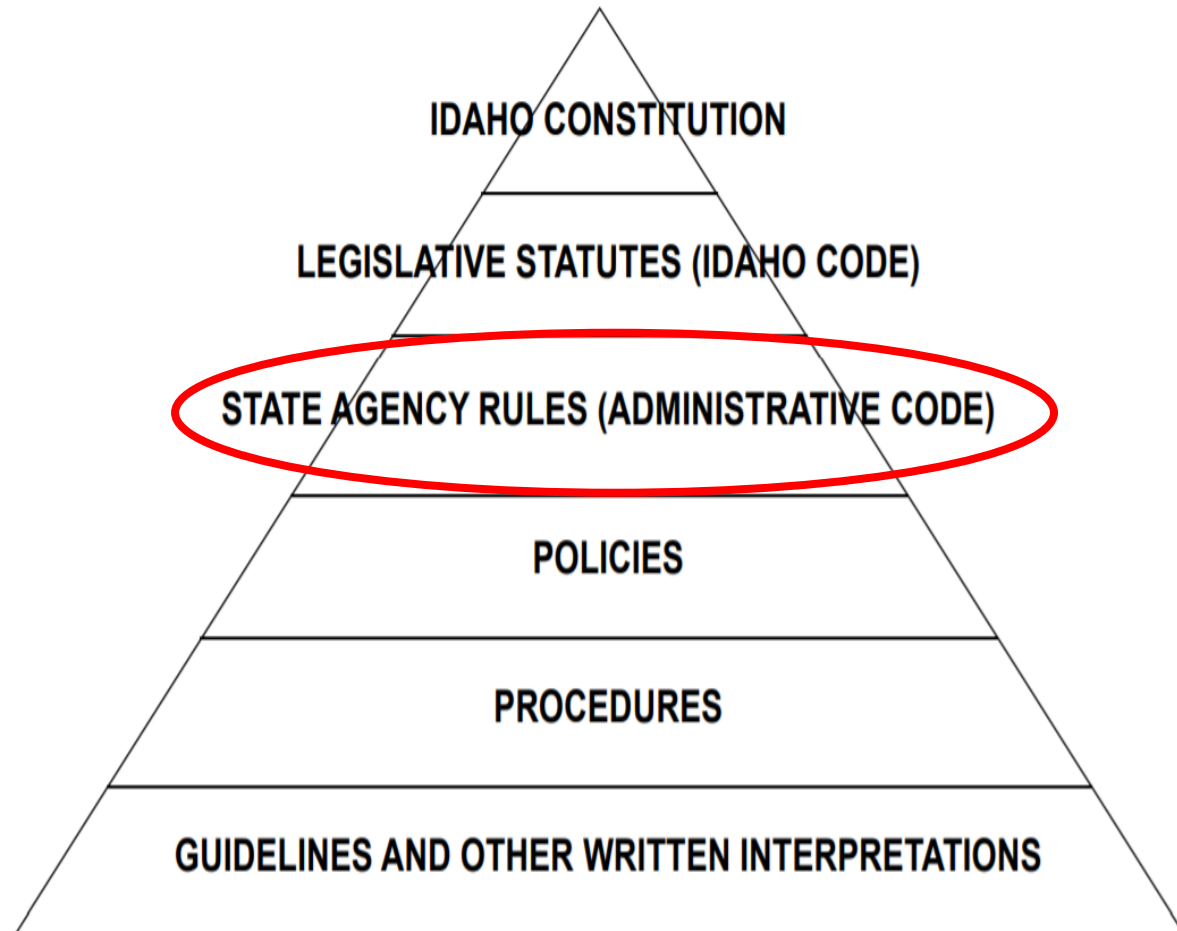
- Adjudication Rules
- Zero-Base Regulation
- Negotiated Rulemaking
- Timeline
- Negotiated Rulemaking Meeting(s)
- IDWR Rulemaking Webpages
- Questions
- Oral Comments







## HIERARCHY OF STATE DOCUMENTS





# Adjudication Rules

## Idaho Code Title 42, Chapter 14

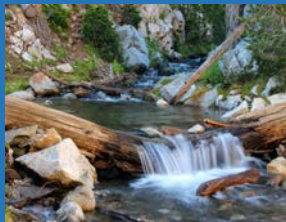
### Adjudication of Water Rights

- Section 42-1409 – Notice of Claim
- Section 42-1414 – Fees for Filing Notice of Claims with the Director



## Executive Order 2020-01 Zero-Base Regulation

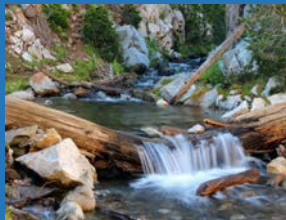
- Signed by Governor in January 2020  
<https://gov.idaho.gov/wp-content/uploads/sites/74/2020/01/eo-2020-01.pdf>
- Requires all agencies to undertake “**zero-base regulation**” review of all their respective rules over a five-year period.
- **2021 marked the first year of the five-year review schedule.**
- “...each agency must publish a notice of proposed rulemaking...to repeal the existing rule chapter.”





# Executive Order 2020-01 Zero-Base Regulation

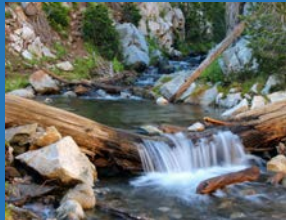
- “An agency wishing to renew a rule chapter...must promulgate a new rule...”
  - “The agency must perform a retrospective analysis of the rule chapter to determine whether the benefits the rule intended to achieve are being realized.”
  - “...whether [the benefits of the rule] justify the costs of the rule,”
  - “...whether there are less restrictive alternatives to accomplish [the rule’s] benefits.”





# Review Negotiated Rulemaking

- Idaho Code § 67-5220 – Notice of Intent to Promulgate Rules – Negotiated Rulemaking
- (2) The notice of intent to promulgate a rule is intended to facilitate negotiated rulemaking, a process in which all interested persons and the agency seek consensus on the content of a rule. Agencies shall proceed through such informal rulemaking whenever it is feasible to do so in order to improve the substance of proposed rules by drawing upon shared information, knowledge, expertise and technical abilities possessed by interested persons and to expedite formal rulemaking.
- (3) To facilitate the achievement of the purposes of this section, agencies shall, at a minimum:
  - a. Provide a reasonable period of time for interested persons to respond...;
  - b. Provide notice of meetings to interested persons who responded...;
  - c. Upon request, make available to persons attending the meetings all information that is considered by the agency in connection with the formulation of the proposed rule...;
  - d. Consider the recommendations of interested persons concerning the subject of the proposed rule;
  - e. Establish, maintain and timely update the negotiated rulemaking schedule and a list of written comments and other documents and information pertinent to the proposed rule and make that information available to persons attending the negotiated rulemaking meeting;
  - f. Prepare a written summary of unresolved issues, key information considered and conclusions reached during and as a result of the negotiated rulemaking...

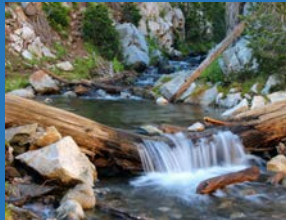






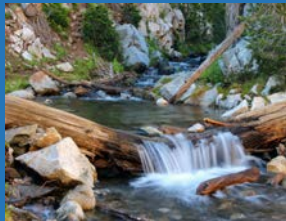
# Review Negotiated Rulemaking

- Rule Writer's Manual:  
[https://adminrules.idaho.gov/rulemaking\\_templates/RuleWriterManual.pdf](https://adminrules.idaho.gov/rulemaking_templates/RuleWriterManual.pdf)
- Negotiated Rulemaking, when determined by the agency to be feasible, “must be conducted by the agency with interested parties.”
- Negotiated Rulemaking is “intended to improve the substance of the rule through a consensus building process.”
- Negotiated Rulemaking “provides an opportunity for all interested and affected persons and the agency to discuss possible changes to the rule and attempt to reach a consensus on the proposed amendments...”
- Negotiated Rulemaking “is an informal part of the rulemaking process that precedes all formal rulemaking proceedings.”
- Negotiated Rulemaking is a negotiation with “stakeholders [about] the very provisions of the rule that they (stakeholders) will be subject to and regulated by.”
- Negotiated Rulemaking is an opportunity for stakeholders to “provide input and ideas on the changes the agency is considering.”





# IDWR/IWRB ZBR Rulemaking Approved Five-Year Rulemaking Schedule



## Year 1

Rule No.	Title	Date	Page Count	Word Count	
37.01.01	Rules of Procedure of the IDWR	2000	35	6,440	
37.03.06	Safety of Dams Rules	1993	17	7,708	
37.02.01	Comprehensive State Water Plan Rules	1993	8	3,123	
37.03.07	Stream Channel Alteration Rules 61.01, 61.03	1993	1	83	
<b>Total</b>			<b>61</b>	<b>17,354</b>	<b>17%</b>

## Year 2

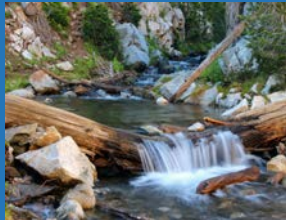
Rule No.	Title	Date	Page Count	Word Count	
37.02.03	Water Supply Bank Rules	1997	9	3,450	
37.03.10	Well Driller Licensing Rules	2000	15	6,416	
37.03.04	Drilling for Geothermal Resources Rules	1993	13	6,197	
37.03.05	Mine Tailings Impoundment Structures Rules	1993	12	4,850	
<b>Total</b>			<b>49</b>	<b>20,913</b>	<b>20%</b>

## Year 3

Rule No.	Title	Date	Page Count	Word Count	
37.03.08	Water Appropriation Rules	1993	24	10,718	
37.03.03	Rules and Minimum Standards for the Construction and Use of Injection Wells	2013	26	10,488	
<b>Total</b>			<b>50</b>	<b>21,206</b>	<b>21%</b>



# IDWR/IWRB ZBR Rulemaking Approved Five-Year Rulemaking Schedule



## Year 4

Rule No.	Title	Date	Page Count	Word Count	
37.03.01	Adjudication Rules	2009	11	4,968	
37.03.02	Beneficial Use Examination Rules	2012	13	5,107	
37.03.09	Well Construction Standards and Rules	2009	40	13,225	
Total			64	23,300	23%

## Year 5

Rule No.	Title	Date	Page Count	Word Count	
37.03.11	Conjunctive Management Rules	1994	13	6,405	
37.03.12	IDWR Water Distribution Rules - Water District 34	1994	9	3,692	
37.03.07	Stream Channel Alteration Rules, entire chapter	1993	27	7,681	
37.02.04	Shoshone Bannock Tribal Water Supply Bank Rules	1994	7	1,772	
Total			56	19,550	19%

Grand Total: 280 102,323 100%



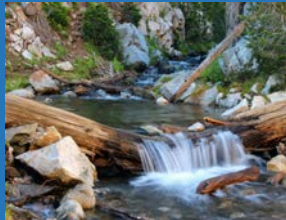


# ZBR Rulemaking Timeline – Water Appropriation Rules

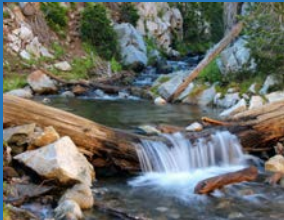


## Rulemaking Process Key Dates:

- April 23, 2024: Notice of Rulemaking Publication
- May 16, 2024: First Public Meeting
- June 18, 2024: Second Public Meeting
- October 2, 2024: Proposed Rule Publication (to DFM by 8/30/2024)
- January 1, 2025: Pending Rule Publication (to DFM by 11/29/2024)







## Current Topics

Visit IDWR's [News Page](#) to view current press releases.

- ▶ **Surface Water Coalition Delivery Call Proceedings**
- ▶ **Lemhi Basin Deadline to File: July 1, 2024**
- ▶ **Priest Lake Water Levels and Outlet Dam Operations**
- ▶ **Treasure Valley Groundwater Flow Model**
- ▶ **FAQs – Groundwater Resources and Domestic Wells**

### ▼ IDWR Negotiated Rulemaking

The Department is reviewing its administrative rules, consistent with the Governor's Zero Based Regulation, Executive Order 2020-01. For more information visit, [IDWR's Rulemaking page](#) or follow the links below for specific rulemaking activities.

[2024/2025 Rulemaking](#)

## Upcoming Events

**13**  
MAY 1:00 pm  
**FINANCE COMMITTEE MEETING NO. 3-24**

Monday, Boise / Zoom

**15**  
MAY 10:00 am - 2:00 pm  
**BIG WOOD RIVER GROUNDWATER MANAGEMENT AREA ADVISORY COMMITTEE**

Wednesday, Blaine County Community Campus

**15**  
MAY 1:00 pm - 4:00 pm  
**PUBLIC NEGOTIATED RULEMAKING MEETING | IDAPA 37.03.03 UIC RULES**

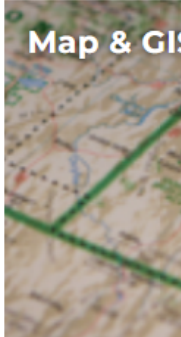
Wednesday, Boise/Zoom IDWR Room 602 C/D

**16**  
MAY 1:00 pm - 3:00 pm  
**LEWISTON AQUIFER ADVISORY COMMITTEE MEETING**

Thursday, Lewiston City Library Event Space - Second Floor

[See All Events](#)

Map & GIS



Water Re





# IDWR Rulemaking 2024/2025

The following table summarizes the IWRB's and IDWR's rulemaking activities for the 2024/2025 rulemaking period.

Show  entries

Search:

Authorizing Authority	Section	Docket Description	Status
IDWR	Water Allocations Bureau	ZBR* Rulemaking – IDAPA 37.03.01 Adjudication Rules	In Negotiation
IDWR	Water Allocations Bureau	ZBR* Rulemaking – IDAPA 37.03.02 Beneficial Use Exam Rules	In Negotiation
IWRB	Water Compliance Bureau	ZBR* Rulemaking – IDAPA 37.03.09 Well Construction Rules	In Negotiation

Showing 1 to 3 of 3 entries

◀ Previous Next ▶

\*ZBR stands for "zero-base" rulemaking or rulemaking by the IWRB and IDWR conducted in compliance with the Governor's Zero-Based Regulation [Executive Order 2020-01](#).

If you have questions about IDWR's rulemaking process contact [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov) or contact Erik Boe, IDWR's Rules Review Officer, at 208.287.4800.





# Adjudication Rules

## IDAPA 37.03.01

IDWR is negotiating these rules as part of its requirement to review each rule every 5 years consistent with the Governor's Zero-Based Regulation [PDF](#) Executive Order 2020-01.

### Scheduled Meetings and Deadlines

- [PDF](#) Notice of Intent to Promulgate Rules – Negotiated Rulemaking– April 3, 2024
- [PDF](#) Public Meeting Agenda – May 16, 2024

### Documents

- [PDF](#) Draft Adjudication Rules (Strawman Rev1 Clean) – May 16, 2024
- [PDF](#) Draft Adjudication Rules (Strawman Rev1 with Redlines) – May 16, 2024
- [PDF](#) IDAPA 37.03.01 – Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking (Admin. Bulletin Vol. 24-4) – April 3, 2024
- [PDF](#) IDAPA 37.03.01 Prospective Analysis – February 23, 2024
- [PDF](#) IDAPA 37.03.01 Recommendation Memo – February 15, 2024

### Comments

Comments may be sent by email or mail to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov) or

IDWR Rules Review Officer  
PO Box 83720  
Boise, ID 83720

When submitting comments, please cite the docket number

## Terminology

– <b>Curtailment</b>
Reducing or restricting the use of surface or groundwater based on priority date.
+ <b>Delivery Call</b>
+ <b>Mitigation Plan</b>

## Statutes & Rules

Listed below are legal considerations regarding water rights, irrigation, and floodplain management in Idaho.

### Idaho Constitution

- Article XV: Water Rights

### Idaho Statute

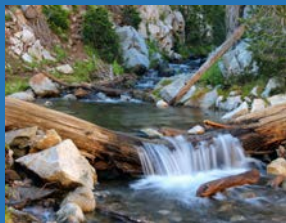
- Title 42: Irrigation and Drainage — Water Rights and Reclamation
- Title 43: Irrigation Districts
- Title 46, Chapter 10: State Disaster Preparedness Act

### Idaho Administrative Code

- IDAPA Chapter 37: Idaho Water Resource Board and Idaho Dept. of Water Resources

## Hearing Procedures

[Overview of IWRB & IDWR Contested Case Processes](#)





## Negotiated Rulemaking Recap - Timeline

- Deadline for written comments in connection with this first Strawman is May 31, 2024.
  - Submitted to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov)
  - Reference the rule chapter: **IDAPA 37.03.01.**
- IDWR will create a revised Strawman Rule based on comments and distribute it by June 12, 2024.
  - May include new content based on comments and internal discussion.
- Hold a second public meeting on June 18, 2024.
  - Discuss revised strawman and take oral comments.
- Deadline for written comments to 2nd Strawman is July 10, 2024.
- Additional meetings will be scheduled if needed.
- Goal: Publish Proposed Rule in October 2024 Bulletin.

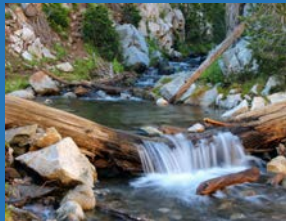






## Next Steps

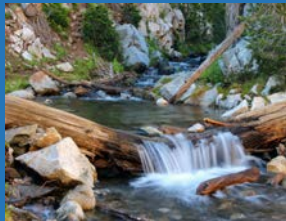
1. General questions.
2. Collect Oral Comments.
  - IDWR has prepared a Preliminary Draft Rule or “Strawman” available on the website.
  - Requires polite and respectful engagement.





IDAHO DEPARTMENT OF  
**WATER RESOURCES**

# Questions?



Craig Saxton, Adjudication Section Manager  
Idaho Department of Water Resources  
[Craig.Saxton@idwr.idaho.gov](mailto:Craig.Saxton@idwr.idaho.gov)  
208-287-4916



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