



IDAHO DEPARTMENT OF
WATER RESOURCES



Negotiated Rulemaking: IDAPA 37.03.01 – Adjudication Rules

Presented by: Craig L. Saxton, Adjudication Section Manager

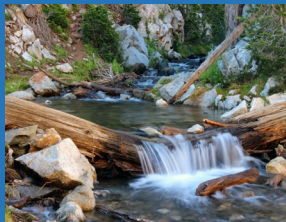
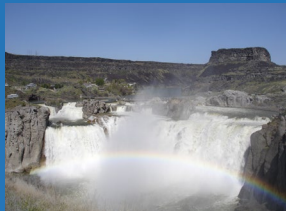
Date: June 18, 2024





Today's Meeting - Agenda

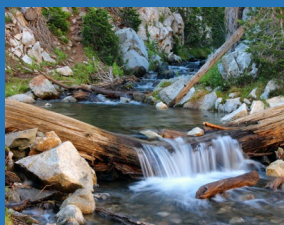
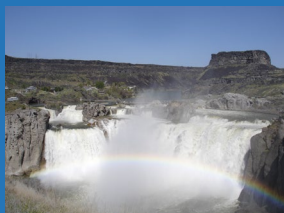
- Introduction & House Keeping
- Presentation
- Review of changes between Strawman Rev1 and Strawman Rev2
- Questions
- Collect Oral Comments





Today's Meeting - Overview

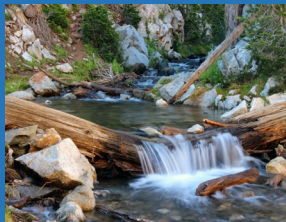
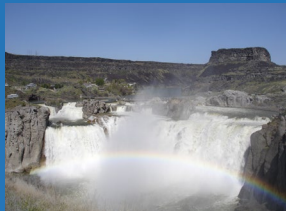
- We are recording the meeting and will publish the recordings to the website. <https://idwr.idaho.gov/legal-actions/rules/>
- Preliminary Draft Rule or “Strawman Rev2” available on the website.
- Stakeholders will have an opportunity to provide oral comments today on the “Strawman Rev2” rule after this presentation.
- Written comments to be submitted by **Wednesday, July 10, 2024**.
- IDWR representatives are participating to answer questions.

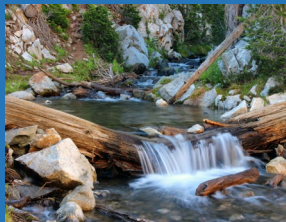
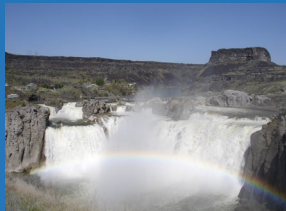




Presentation Outline

- Statutory basis for the Adjudication Rules
- Executive Order 2020-01 - Zero-Base Regulation
- Timeline
- IDWR Rulemaking Webpages
- Next steps
- Questions





Adjudication Rules

Idaho Code Title 42, Chapter 14

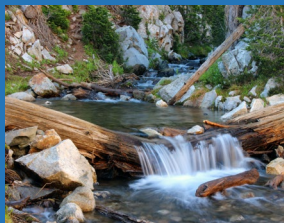
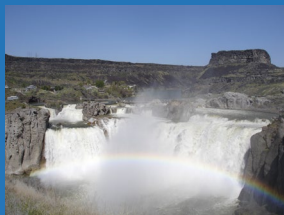
Adjudication of Water Rights

- 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

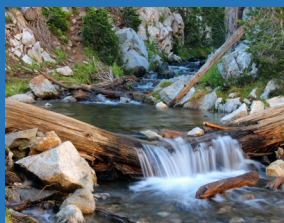
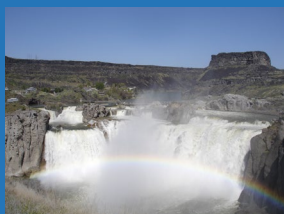
- Signed by Governor in January 2020
<https://gov.idaho.gov/wp-content/uploads/sites/74/2020/01/eo-2020-01.pdf>
- Requires all agencies to undertake “**zero-base regulation**” review of all their respective rules over a five-year period.
- **2021 marked the first year of the five-year review schedule.**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





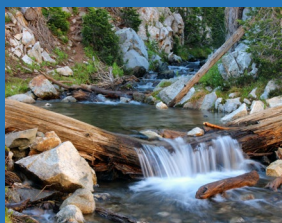
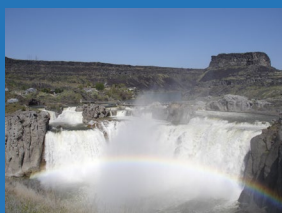
Executive Order 2020-01 Zero-Base Regulation

- “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.”





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	
Total			61	17,354	17%

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	
Total			49	20,913	20%

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	
Total			50	21,206	21%





IDWR/IWRB ZBR Rulemaking Approved Five-Year Rulemaking Schedule

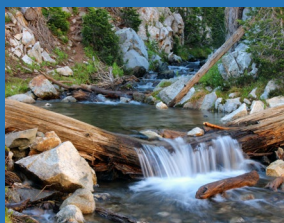
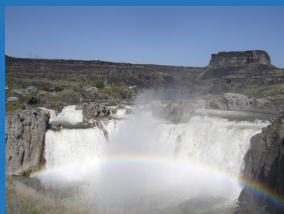
Year 4

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

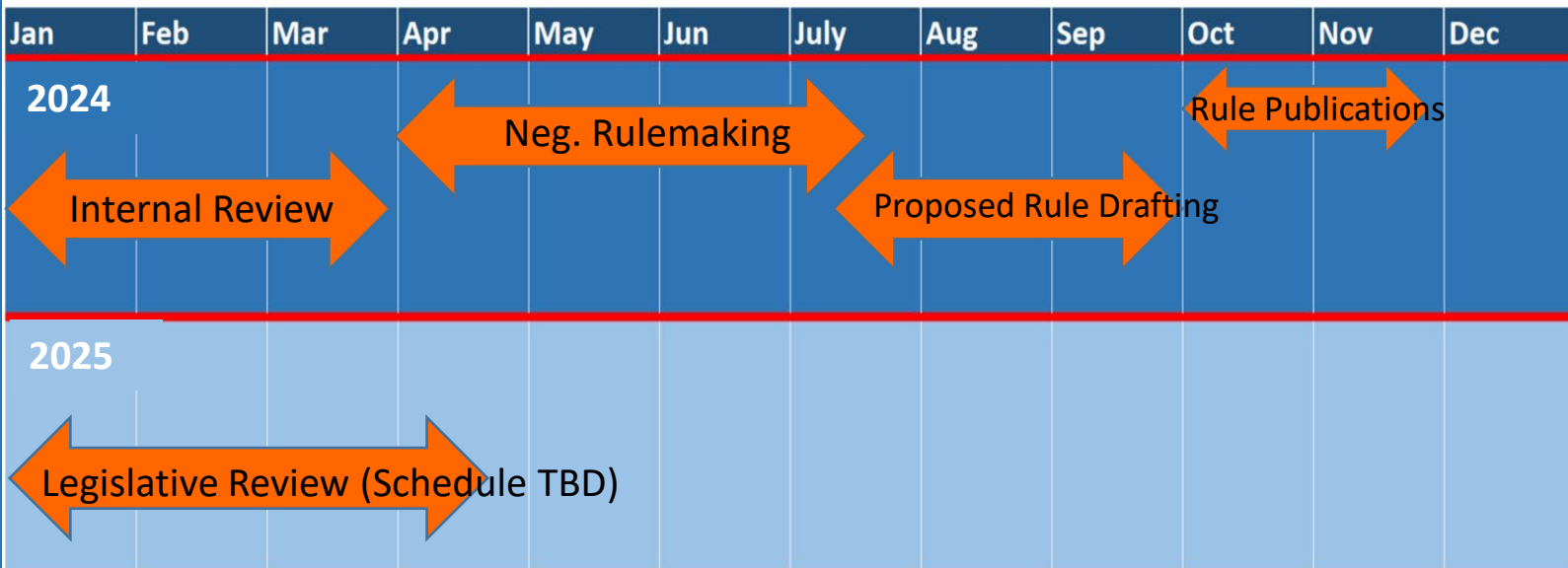
Rule No.	Title	Date	Page Count	Word Count	
37.03.11	Conjunctive Management Rules	1994	13	6,405	
37.03.12	IDWR Water Distribution Rules - Water District 34	1994	9	3,692	
37.03.07	Stream Channel Alteration Rules, entire chapter	1993	27	7,681	
37.02.04	Shoshone Bannock Tribal Water Supply Bank Rules	1994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

Grand Total: 280 102,323 100%



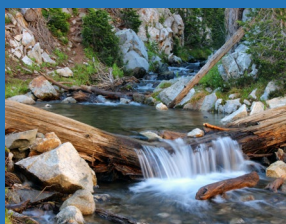
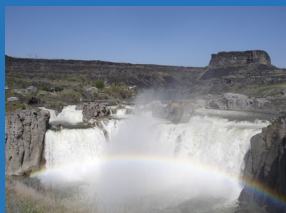


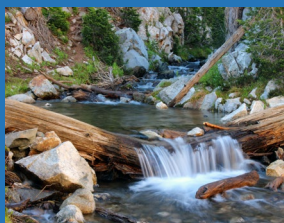
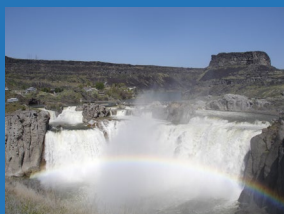
ZBR Rulemaking Timeline – Water Appropriation Rules



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

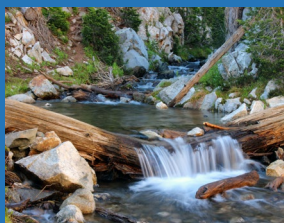
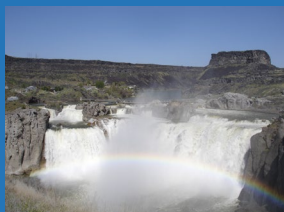
16
MAY

1:00 pm - 3:00 pm
LEWISTON AQUIFER ADVISORY COMMITTEE MEETING

Thursday, Lewiston City Library Event Space - Second Floor

[See All Events](#)





IDWR Rulemaking 2024/2025

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

Show 10 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

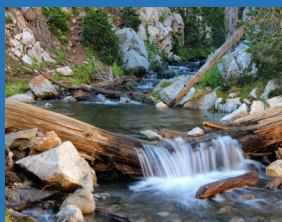
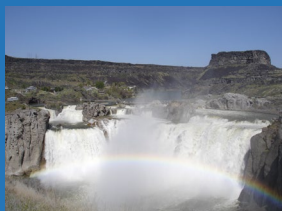
Showing 1 to 3 of 3 entries

◀ 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 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 Executive Order 2020-01.

Scheduled Meetings and Deadlines

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

Documents

- [PDF](#) Draft Adjudication Rules (Strawman Rev2 without redlines) – June 12, 2024
- [PDF](#) Draft Adjudication Rules (Strawman Rev2 with Redlines) – June 12, 2024
- **June 18, 2024 – Meeting Documents**
 - [PDF](#) Public Meeting Agenda – June 18, 2024
- **May 16, 2024 – First Public Meeting Documents**
 - [PDF](#) Public Meeting Agenda – May 16, 2024
 - [PDF](#) Public Meeting Presentation – May 16, 2024
 - [MP3](#) Negotiated Rulemaking Meeting Audio – May 16, 2024
 - [PDF](#) Virtual Attendance Sheet – May 16, 2024
 - [PDF](#) In-Person Attendance Sheet – May 16, 2024
 - [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 or

IDWR Rules Review Officer
PO Box 83720

Terminology

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

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

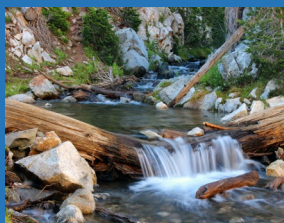
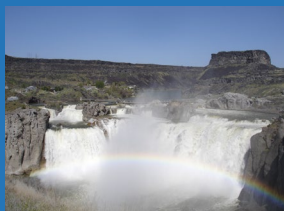
Hearing Procedures

Overview of IWRB & IDWR Contested Case Processes



Negotiated Rulemaking – Next Steps

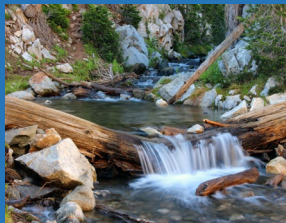
- Deadline for written comments in connection with Strawman Rev2 is **July 10, 2024**.
 - Submitted to rulesinfo@idwr.idaho.gov
 - Reference the rule chapter: **IDAPA 37.03.01**.
- IDWR will respond to written comments and will post on our website.
- Depending on the number of comments we received, we will determine if we should do a Revision 3 strawman or not. If there are no substantial changes, we will move forward to publish the proposed rule.
- Goal: Publish Proposed Rule in October 2024 Bulletin.





IDAHO DEPARTMENT OF
WATER RESOURCES

Questions?



Craig Saxton, Adjudication Section Manager
Idaho Department of Water Resources
Craig.Saxton@idwr.idaho.gov
208-287-4916



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