

**Zero-Based Regulation
Prospective Analysis**

- **Fill out entire form to the best of your ability, unless submitting a Notice to Negotiate only fill out 1, 2, and 5**

Agency Name:

Rule Docket Number:

1. What is the specific legal authority for this proposed rule?

Statute Section (include direct link)	Is the authority mandatory or discretionary?
Authority in Idaho Code § 42-1805(8)	Discretionary
Implements Idaho Code § 42-1409 , 42-1409A , and 42-1414	

2. Define the specific problem that the proposed rule is attempting to solve? Can the problem be addressed by non-regulatory measures?

Idaho relies on its public water resources for agricultural, aquacultural, industrial, commercial, municipal, and other projects that boost Idaho's prosperity. Inventorying and defining water rights through the adjudication process protects private property rights so that they can be defended and administered by priority in a time of water shortage. Claimants need to know what information is required to file claims for existing water rights acquired under state law through the statutory process or by diversion and beneficial use. IDWR needs sufficient, reliable, and detailed information to define the elements of the claimed water rights. IDWR also needs sufficient information to evaluate claims efficiently because delayed processing and decision-making slow the State of Idaho's ability to review claims and prepare recommendations for the Idaho Water Adjudications Court. Incomplete claims slow processing, reduce efficiency, and cost the taxpayers time and money.

IDWR believes the regulatory measures in the Rule are necessary for the orderly, consistent, and efficient processing of adjudication claims filed in connection with any of the five separate ongoing general stream adjudications and any future adjudications. IDWR will seek stakeholder input to identify non-regulatory measures it can implement to fulfill the adjudication statutory provisions. It may also be appropriate to use the Rule to address statutory requirements adopted after 2009 and to clarify items not adequately explained in the current Rule. IDWR proposes repealing the Rule and replacing it through formal rulemaking, after negotiated rulemaking is complete.

3. How have other jurisdictions approached the problem this proposed rule intends to address?

a. Is this proposed rule related to any existing federal law?

Federal citation	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
N/A	N/A	N/A

b. How does this proposed rule compare to other state laws?

State	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
Washington	RCW 90.03 and 90.14 are the statutes for claiming a water right. RCW 90.54 is the statute for water resource policy. WAC 173-500 through 599 are rules that implement RCW 90.54 setting guidelines for allocations by basin. WAC 173-152 are rules that implement water rights statute. WAC 508-12 is specific to adjudication.	Proposed Idaho rule is similar to Washington's administrative rules in the sense that they clarify statutory requirements. Idaho's proposed rule defines claim requirements more stringently.
Oregon	ORS 537 & 539 are the statutes for claiming a water right. OAR 690-028 are administrative rules regarding surface and groundwater adjudications.	Proposed Idaho rule is similar to OAR 690-028 in the sense both rule sets clarify statutory requirements. Idaho's proposed rule is less stringent by requiring fewer items on claim forms.
Nevada	NRS 533 are the statutes for adjudicating water rights. NAC 533 are administrative rules regarding adjudication of vested water rights.	Proposed Idaho rule is similar to NAC 533 in the sense that both rule sets clarify statutory requirements. Nevada sets forth requirements for processes not defined by Idaho's adjudication rules, making Idaho's less stringent.
Utah	UC 73-4 are the statutes for adjudication and determination of water rights. Utah does not have administrative rules implementing those statutes.	N/A
Wyoming	WC 37-106 are the statutes for adjudication of water rights. 037-4 Wyo. Code R. § 4-1 through 4-4 are the administrative code for adjudicating water rights.	Proposed Idaho rule is similar to 037-4 Wyo. Code R. § 4-1 through 4-4 in the sense both rule sets clarify statutory requirements. Wyoming sets forth requirements for processes not defined by Idaho's adjudication rules, making Idaho's less stringent.
Montana	MC 85-2-201 through 283 are the statutes for adjudication of water rights. ARM 36.12 is the administrative code	Proposed Idaho rule is similar to ARM 36.12 but is more stringent as it clarifies statutory requirements for filing adjudication claims.
Alaska	AS 46.15.010 through 260 are the statutes for adjudication of water rights. AAC 11.93.01 through 030 are the administrative rules regarding adjudication of water rights.	Proposed Idaho rule is similar to AAC 11.93.01-030 but is more stringent as it clarifies statutory requirements for filing adjudication claims.
South Dakota	SDLC 46-10-1 through 28 are the statutes for adjudicating water rights. SDAR 74:02:01:20 through 20.01 are administrative rules that implement those	Proposed Idaho rule is more stringent than SDAR 74:02:01:20-20.01 in the sense that it clarifies statutory

	statutes.	requirements for filing adjudication claims.
--	-----------	--

c. If the Idaho proposed rule has a more stringent requirement than the federal government or the reviewed states, describe the evidence base or unique circumstances that justifies the enhanced requirement:

The proposed Idaho rule's scope is similar to many states in the sense that it clarifies statutory requirements. Idaho's proposed rule is more stringent in some instances due to the intent in clarifying statutory requirements for general adjudications and defining claim requirements to promote an efficient and fair adjudication.

4. What evidence is there that the rule, as proposed, will solve the problem?

The existing Adjudication Rules have been in effect since 2009, largely unchanged. IDWR received 11 comments from two stakeholder in the negotiated rulemaking process evaluating the effectiveness of existing rule content, considering applicable statutory changes and case law, and proposing rule content to promote efficient claim processing and clarify claim requirements. The stakeholders were supportive of retaining adjudication rules and suggested revised rule content. This collaborative effort resulted in a proposed rule that will facilitate orderly, consistent and efficient processing and evaluation of adjudication claims.

5. What is the anticipated impact of the proposed rule on various stakeholders? Include how you will involve stakeholders in the negotiated rulemaking process?

Category	Potential Impact
Fiscal impact to the state General Fund, any dedicated fund, or federal fund	No impact to government funds is anticipated. Adjudication claim filing fees are set by statute. IDWR anticipates minor rule modifications to fee requirement provisions that will not impact state funds. No federal funds are used to fulfill water adjudication duties.
Impact to Idaho businesses, with special consideration for small businesses	Detailed information provided by water users enables IDWR to evaluate water uses, promotes good decision-making, and reduces delays caused by indecision. This leads to a more predictable and efficient claim and recommendation process. Rulemaking may impact Idaho businesses as they gather and report information when filing claims. Consistent with the current Rule, IDWR will consider waiving information requirements for smaller water uses. IDWR will notify industry representatives of the rulemaking by contacting the Farm Bureau, ID Assoc. of Commerce and Industry, ID Water Users Assoc., and others.
Impact to any local government in Idaho	I.C. § 42-1401B assigns to IDWR exclusive authority to serve as the independent expert and technical assistant charged with reviewing claims to water rights acquired under state law and reporting, to the court, the recommendation as to the extent of

	beneficial use developed for each claim. Local governments cannot regulate water adjudication directly. Consequently, they have an interest in the adjudication proceedings before IDWR and the Court administering a general stream adjudication. IDWR will notify county, tribal, and municipal government entities of the rulemaking by contacting the ID Assoc. of Cities, ID Assoc. of Counties, and others.
--	---

6. What cumulative regulatory volume does this proposed rule add?

Category	Impact
Net change in word count	Reduction of 831 words (17%).
Net change in restrictive word count	Reduction in 80 restrictive words.