

Memorandum

To: Adjudication Rules – IDAPA 37.03.01

From: Dave Shaw

Re: Comments on Adjudication Rules

These comments are prepared based on the redline draft of the rules dated 5-16-24.

In Section 001.02 the rules reference Section 41-1409, Idaho Code, but that Section does not exist.

Section 035.03 and 03.a refer to power **use**, but the claims are for power **production**, not power use.

Section 060.03.d is not clear if one of the following methods of describing the point of diversion is satisfactory or if all must be used. Presumably “Legal description” refers to the location of the point of diversion, perhaps “Legal description of the location of the point of diversion.” would be clearer.

Section 060.03.e.i horsepower “capacity” of pumps is confusing since pumping capacity is normally determined by a rate of discharge, perhaps “installed pumping horsepower rating” or simply “installed pumping horsepower” would be a better descriptor.

Section 060.03.e.iii too many “pursuant to” and “enlargement in use” in first sentence, can use some word smithing.

Section 060.03.v.ii how does the term “diversion from storage” apply to an on-stream storage where the storage water is released and delivered through the natural channel?

Section 060.03.h.i be consistent with stock water and stock watering being 2 words, I know “stockwatering” got slipped into §42-113, I.C., but the term is not in the dictionary and Title 42 is otherwise consistent with the use of 2 words or with “livestock watering.”

Sections 060.03.j not sure what describe ... to the “nearest forty (40) acre subdivision” means, aren’t your asking to “describe the location of the place of use by the forty (40) acre subdivision(s) or government lot(s) where the water use is occurring?”

Section 060.03.j.i the rule describes an acreage to the nearest one-tenth but the example shows to the hundredth (0.01).

Section 060.03.o mentions aerial photographs that may be useful for showing historical water use but current technology is primarily imagery. The most recent aerial images and from NAIP, “National Agricultural Imagery Program” are images by definition. Photography is defined as exposing light to a sensitized surface, not the process used by modern digital cameras, either handheld or aircraft mounted. Perhaps add a definition that photographs include images obtained using digital means.

Thank you for the opportunity to provide comments on the proposed Adjudication Rules, please let me know if you have any questions.