

37.03.01 – ADJUDICATION RULES

000. LEGAL AUTHORITY.

These rules are adopted under the legal authorities of Section 42-1805(8), Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 37.03.01, “Adjudication Rules.” (3-18-22)

02. Scope. These rules implement statutes governing the filing of notices of claim to water rights acquired under state law and the collection of fees for filing notices of claim to water rights acquired under state law in general adjudications, pursuant to Sections ~~41-42-1409 and 42-1414~~ and ~~42-1415~~, Idaho Code. ()

Commented [CS1]: Changed from 41-1409 to 42-1409.
Commented [SC2]: Deleted reference to 42-1415. The 1988 Adjudication Rules contained a section about enforcement of filing fees as provided under section 42-1415, for extended payment plans and what happens if fees aren't paid. That portion of the rules has been removed and therefore reference to 42-1415 is not appropriate.

002. -- 009. (RESERVED)

010. DEFINITIONS.

01. Amendment Fee. The additional fee required at the time of filing an amendment to a claim. ()

02. Aquaculture. The use of water for propagation of fish, shellfish, and any other animal or plant product naturally occurring in an underwater environment. (3-18-22)

03. Claim. A notice of claim to a water right acquired under state law, pursuant to Section 42-1409(4), Idaho Code. ()

04. Department. The Idaho Department of Water Resources. ()

05. Director. The Director of the Idaho Department of Water Resources. Per Section 42-1701(3), Idaho Code, the Director may delegate authority to perform duties imposed upon the Director by law, including duties described herein, to a Department employee. ()

06. Domestic Use. Domestic use as defined in Section 42-1401A(4), Idaho Code. ()

07. Flat Fee. The per claim fee for filing a claim, pursuant to Section 42-1414(1)(a), Idaho Code. ()

08. Late Fee. The additional fee required for the filing of a late claim, pursuant to Section 42-1414(3), Idaho Code. ()

09. Public Entity. A state or local government, or any agency, office, or department run by a state or local government. ()

10. Public Purpose. Use of water by a public entity for in-stream flows, lake level maintenance, wildlife, aesthetic, or recreation use. ()

11. Stock Watering Use. Stock watering use as defined in Section 42-1401A(11), Idaho Code. ()

12. Total Fee. The fee required for filing a claim consisting of the flat fee plus any applicable variable fee and late fee. ()

13. Variable Fee. The fee required for filing a claim in addition to the flat fee, pursuant to Section 42-1414(1)(b), Idaho Code. ()

14. Water Delivery System. All structures and equipment used for diversion, storage, transportation, and use of water from the water source to and including each place of use. ()

15. Water Delivery Organization. An irrigation district, water utility, municipality, or any similar claimant of a water right who diverts water pursuant to the water right claimed and delivers the water to others who make beneficial use of the water. ()

011. ABBREVIATIONS.

01. AF. Acre foot (feet). ()

02. CFS. Cubic foot (feet) per second. (3-18-22)

012. -- 024. (RESERVED)

025. GENERAL.

01. Requirement to Pay. All persons filing claims or amendments to claims are required to pay filing fees as set forth by statute and these rules. ()

02. Method of Payment. Fees shall be paid in cash, money order, certified check, cashier's check, personal check, debit or credit card payment, or by electronic payment on-line. ()

03. Personal Check. If a personal check is returned unpaid to the Department or the debit or credit card payment is rejected by the financial institution, the claim will be rejected and returned to the claimant. If a personal check in payment of an amendment fee is returned unpaid to the Department or the debit or credit card payment is rejected by the financial institution, the amended claim will be rejected and returned to the claimant, but the original claim will still be in effect. ()

04. Government Voucher. Fees payable by government agencies (other than agencies of foreign governments) may be paid by government voucher. If full payment of the voucher is not received within forty-five (45) days of the date the voucher is received, the unpaid voucher will be treated as a returned check pursuant to Subsection 025.03. ()

05. Rejection of Claim. Claims submitted without the correct filing fee will be rejected and returned to the claimant along with any fees paid. ()

06. Fire-Fighting. A claim is not required for water used solely to extinguish or prevent spreading of an existing fire on private or public lands, structures, or equipment pursuant to Section 42-201(3), Idaho Code. A claim is required for the use of water for firefighting stations and for the storage of water for fighting future fires. ()

026. -- 029. (RESERVED)

030. FLAT FEES.

01. Domestic and Stock Water. A flat fee of twenty-five dollars (\$25) is required for each claim for domestic use or stock watering use meeting the definition of domestic use or stock watering use in Section 010. Filing fees for stock watering use only claims are assessed for the first four claims filed by a claimant. ()

02. Other Claims. A flat fee of fifty dollars (\$50) is required for each claim that does not meet the criteria of Subsection 030.01. ()

031. -- 034. (RESERVED)

035. VARIABLE FEES.

01. General. A variable fee in addition to the flat fee is required for each claim not meeting the criteria of Subsection 030.01, unless otherwise stated in these rules. ()

02. Per Acre Fee. The variable fee for irrigation use, pursuant to Section 42-1414(1)(b)(i), Idaho Code, is calculated for each acre and fraction thereof rounded to the next whole acre. ()

a. A fee of one dollar (\$1.00) per acre is required for an irrigation use claim. ()

b. The per acre fee is only charged once against a particular acre, regardless of the number of claims filed for the irrigation of that acre or the number of claimants filing claims for the irrigation of that acre. ()

c. The per acre fee is payable by the first person to file a claim for the irrigation of a particular acre. ()

d. The per acre fee for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres will be determined based upon the acreage claimed to be irrigated by the project or irrigation district within the boundaries of the project or irrigation district. ()

03. Per Kilowatt Fee. The variable fee for power **use-generation** pursuant to Section 42-1414(1)(b)(ii), Idaho Code, calculated for each kilowatt and fraction thereof. ()

Commented [CS3]: 42-1414(1)(b)(ii) refers to power generation. IDWR corrected "power use" to "power generation".

a. A per kilowatt of capacity (manufacturer's nameplate rating) fee of three dollars and fifty cents (\$3.50) per kilowatt, or two hundred fifty thousand dollars (\$250,000.00), whichever is less, is required for a power use claim. ()

b. The per kilowatt fee is determined based upon the total generating capacity of all generators in which the water right claimed is used. ()

c. The total per kilowatt fee for all claims filed for a single hydropower facility will not exceed the per kilowatt fee for the total generating capacity of all generators in the hydropower facility. ()

04. Per CFS Fee. The variable fee for a use other than those identified in Subsections 030.01, 035.01, 035.02, and 035.03, pursuant to Section 42-1414(1)(b)(iii), (iv), and (v), Idaho Code, calculated for each cfs and fraction thereof to the nearest dollar. ()

a. A fee of ten dollars (\$10) per cfs is required for an aquaculture use claim. A fee of one hundred dollars (\$100) per cfs is required for all other uses except for irrigation, power, and domestic and stock watering uses meeting the definition of domestic and stock watering use in Section 010. ()

b. For a claim for more than one (1) public purpose, the per cfs fee will be charged only once per cfs claimed. ()

c. If there is a seasonal variation in the number of cfs claimed, the per cfs fee is based upon the maximum number of cfs claimed for any period during a single calendar year. ()

05. Claims Including Storage. ()

a. The ultimate use of the water stored determines the variable fee for a claim that includes storage. If a claim states a purpose other than diversion to storage, storage, and diversion from storage, the total variable fee will be determined pursuant to Subsection 035.06. ()

b. For purposes of determining the per cfs fee for the amount of water claimed in af, one (1) cfs equals one and ninety-eight one-hundredths (1.98) af per day of diversion to storage. ()

06. Multiple Purpose Claims. If a claim includes more than one (1) purpose of use, the variable fee will be the total of the variable fees required for each purpose of use. ()

07. Exceptions. No variable fee is required for a claim or portion of a claim for ground water recharge purposes, fire-fighting purposes or for domestic use or stock watering use meeting the definitions of domestic use and stock watering use in Section 010. ()

036. -- 044. (RESERVED)

045. AMENDMENT FEES.

When a claimant files an amendment to a claim, if the total fee as recalculated is greater than the total fee paid at the time the claim was originally filed, the amendment fee is the difference between the two (2) amounts. No refund is issued if the total fee as recalculated is less than the total fee paid at the time the claim was originally filed. ()

046. -- 049. (RESERVED)

050. LATE FEES.

01. Late Fee. A late fee is required for a claim filed after the date set forth in the first commencement notice mailed to the claimant or the claimant's predecessor in interest pursuant to Section 42-1414(3), Idaho Code. ()

02. Waiver. The late fee may be waived by the Director for good cause shown. ()

051. -- 054. (RESERVED)

055. REFUNDS.

Fees will not be refunded or returned except where the fee was miscalculated at the time the claim was filed or as expressly provided in these rules. ()

056. -- 059. (RESERVED)

060. SUFFICIENCY OF CLAIMS.

01. Single Claim. Except for claims based on both state law and federal law, a single claim may describe only one (1) water right. ()

02. Claim Form. A claim must be filed: ()

a. On the Department's form entitled "Notice of Claim to a Water Right Acquired Under State Law" or an equivalent form approved by the Department, with any applicable attachments. ()

b. In accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources," Section 053, either on paper, digitally in PDF format, or through the Department's online filing process. ()

c. With required filing fees pursuant to Subsections 030 and 035. ()

d. In accordance with the minimum requirements pursuant to Subsection 060.03. ()

03. Minimum Requirements. Claims filed on the claim form must contain the following information: ()

Commented [CS4]: Section added as some federal entities file claims on non-department forms, but still contain all the required elements including the adjudication name, civil case number, etc.

a. Name and mailing address of the claimant and all co-claimants filing the notice of claim to a water right jointly. ()

b. Date of priority, including month, day and year. ()

i. List only one (1) priority date unless the claim is based upon both state and federal law pursuant to Subsection 060.01. ()

c. Source of Water Supply. ()

i. For a surface water source, include the official geographic name listed on the United States Geological Survey (USGS) Quadrangle map. If the source of water is not named on the USGS Quadrangle map, describe it as an unnamed water body, such as "unnamed stream." For surface water sources, also identify the first named stream or river to which the source is tributary. If the water source sinks into the ground before reaching a stream named on the USGS Quadrangle map, describe the "tributary to" stream as "sinks." If the water source flows into a stream named on the USGS Quadrangle map for part of the year and sinks into the ground for the other part of the year, identify the "tributary to" stream as the named stream on the USGS Quadrangle map. ()

ii. Identify only one (1) water source unless the claim is for a single interconnected water delivery system that diverts water from more than one (1) source. ()

iii. For a water source under the ground surface, identify the source as "ground water." ()

d. ~~Legal description of the p~~Point of diversion. _____ ()

~~i.~~ Describe the location of the point of diversion to the nearest forty (40) acre ~~subdivision tract~~ (quarter-quarter section) or government lot number, and include township number (including north or south designations), range number (including east or west designations), section number and county. ()

ii. Describe the beginning and ending points of in-stream flow use, if claimed. ()

iii. List the Parcel Identification Number (PIN) as assigned by the county assessor's office for the parcel where the water is diverted unless no PIN is recorded for the property at the point of diversion. ()

iv. List the subdivision name, block number, and lot number, if the point of diversion is located in a platted subdivision where the plat is recorded in the county recorder's office. ()

v. A claim that includes storage must include the point at which water is impounded (for an on-stream reservoir) or the point at which water is diverted to storage (for an off-stream reservoir). For a claim where a natural stream channel is used to convey stored water, include the point at which water is diverted into a natural channel, and the point where water is rediverted from the natural channel. ()

vi. List only one (1) point of diversion unless the claim is for a single water delivery system that has more than one (1) point of diversion, or the claim is for a single licensed or decreed water right that covers more than one (1) water delivery system. ()

e. Description of Diversion Works ()

i. Describe all major components of the water delivery system, such as dams, reservoirs, ditches, pipelines, pumps, wells, headgates, etc. Include the dimensions of major components which affect the diversion capacity of the water delivery system. Include the depth of wells, the horsepower ~~rating of installed capacity of~~ pumps, and whether headgates are automatic or equipped with locks or measuring devices. ()

ii. For a claim asserting an accomplished transfer pursuant to Section 42-1425, Idaho Code, include the dates and a description of any changes in use (including change in point of diversion, place of use, purpose of use, and period of use). Describe the diversion works before and after the accomplished transfer. ()

Commented [CS5]: Merged 37.060.03.d and 37.060.03.d.i into one paragraph and removed reference to the "legal description...". Subsections provide guidance for specific situations and identify the required action if it is relevant.

Commented [CS6]: Changed "subdivision" to "tract" as the result of public comment.

Commented [CS7]: Clarified language around "horsepower".

iii. For claim describing an enlargement in use pursuant to ~~enlargement in use pursuant to~~ Section 42-1426, Idaho Code, identify the base water right enlarged and the date the enlargement occurred. Identify the enlarged element of the base right including number of acres irrigated, extended season of use, or additional uses of water. Describe the diversion works as originally constructed and as enlarged. ()

Commented [CS8]: Removed duplicate language.

iv. For claims describing an expansion in use pursuant to Section 42-1416B, Idaho Code, identify the base water right expanded and the date the expansion occurred. Identify the expanded element of the base right including number of acres irrigated, or additional uses of water. Describe the diversion works as originally constructed and as expanded. ()

v. Water delivery organizations must describe the water delivery system up to and including the point where responsibility for water distribution is assumed by entities other than the water delivery organization. ()

f. Purpose of Use ()

i. Describe each purpose of use in general terms such as irrigation, industrial, municipal, mining, power, ~~generation~~, fish propagation, domestic, ~~stock-watering~~, etc. ()

Commented [CS9]: Deleted “generation” because in this section the rules are instructing the claimant on how to describe the purpose of use. IDWR’s claim form instructions and practice is to describe the use of water for power generation as “power”.

ii. A storage use must be separated into component purposes with the ultimate use of the stored water indicated. The component purposes of a storage right are diversion to storage (not applicable to an on-stream reservoir), storage, and diversion from storage (not applicable where the ultimate use is an in-reservoir purpose). Detention of water in a holding pond, where the pond is not the end use of the water, that can be filled in less than twenty-four (24) hours at the claimed diversion rate is not required to be claimed as storage. ()

Commented [CS10]: Changed from “stock watering” to “stockwater” because in this section the rules are instructing the claimant on how to describe the purpose of use. IDWR’s claim form instructions and standard practice is to describe stock watering uses as “stockwater”.

g. Quantity of Water ()

i. Include the flow rate in cfs or the volume of water to be stored in af per year for each purpose of use, using values with a maximum of three significant figures with no more precision than hundredths for rate and tenths for volume. ()

ii. For claims to store water, the maximum af per year may not exceed the storage facility capacity unless the claim includes a description explaining the past practice of filling the storage facility more than once per year, or the claim is for a licensed or decreed right that includes refill. The description of past refill practices may include refills for seepage, evaporation, or use from storage. ()

iii. The amount of water claimed for each purpose for which water is claimed must not exceed the amount of water beneficially used for the purpose claimed. ()

iv. The total amount of water claimed must not exceed the sum total of the quantity listed for each water use, or the total diversion capacity of the diversion system, whichever is less. ()

h. Period of Use. A period of use must be listed for each purpose of use and must include the month and day of the first and last day of use. ()

i. Description of Non-Irrigation Uses. Fully describe any non-irrigation use. Domestic use must describe the number of households served and any irrigation associated with the domestic use. Stock watering use must describe the type of stock and number of each type of stock. ()

i. Claims for ~~stock watering uses~~ must identify if the stock watering use is in-stream, or if water is diverted from the source. In-stream stock watering and diverted stock watering cannot be filed on the same claim form unless the claim is for in-stream stock watering for which a ~~“Notice of Diversion as an Alternative to Instream Stockwater use-Use”~~ has been filed pursuant to Section 42-113, Idaho Code. ()

Commented [CS11]: Changed from “stockwater” to “stock watering” to be consistent with definition of “stock watering use” in section 010.

Commented [CS12]: Added quotation marks around the proper name of IDWR’s Form 113 and capitalized “Use”.

ii. Describe domestic use for organization camps and public campgrounds, including, but not limited to, the number of camp units, water faucets, flush toilets, showers, and sewer connections. Description of domestic

use for organization camps and public campgrounds shall also include the average and peak number of individuals using the facility, and the periods when peak or average rates of usage occur. ()

j. Place of Use. Describe the location of the place of use to the nearest forty (40) acre ~~subdivision tract~~ or government lot and include township number (including north or south designations), range number (including east or west designations), section number and county. The place of use for in-stream flows for public purposes need not be listed if the place of use is fully described as the stream between the beginning and ending points listed as the points of diversion. ()

Commented [CS13]: Changed "subdivision" to "tract". This reference is consistent with 060.03.d. and 060.03.j.i.

i. Except claims for irrigation projects and irrigation districts meeting the criteria described in Subsection 060.k.ii. below, describe the number of acres irrigated to the nearest whole acre in each forty (40) acre tract or government lot. For irrigation of less than ten (10) acres, acreage must be shown to the nearest one-tenth (0.1) acre. ()

Commented [CS14]: Removed zero to accurately reflect one-tenth rather than one-hundredth.

ii. Claims for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres must be accompanied by a map showing the boundaries of the project or irrigation district, and must state the total number of acres irrigated within the boundaries of the project or irrigation district. When available, claims should include a digital boundary defined in Section 42-202(B)(2), Idaho Code. ()

iii. Include the Parcel Identification Number (PIN) as assigned by the county assessor's office for the parcel where the water is used unless no PIN is recorded for the property at the place of use. ()

k. County of Place of Use. List the county in which the place of use is located. ()

l. Authority to Assert Claim. Indicate whether the claimant is the owner of the place of use. If not the owner of the place of use, describe the authority to assert the claim. Unless the claimant is a water delivery organization, include the name, and address of the owner of the place of use. ()

m. Other Water Rights. Describe any other water right used at the same place and for the same purpose as the water right claimed. Include the existing water right number, if known. ()

n. Remarks. The claimant may submit any additional, relevant information not specifically requested. If the space provided on the claim form is insufficient, remarks shall be set forth on a separate piece of paper and attached to the form. All separate attachments must be specifically referenced in the remarks section of the claim form. ()

o. Map. Include an aerial photograph, ~~digital image~~, or USGS quadrangle map with the claim, unless the claim meets the definition of domestic use or stock watering use as defined in Section 010 or unless the claim is submitted electronically through the Department's claim filing website. Identify the point of diversion, place of use, and the water delivery system on the aerial photograph or USGS quadrangle map. ()

Commented [CS15]: Added "digital image", as the result of public comments.

p. Basis of Claim. Include the basis of the claim. Include any water right number previously assigned by the Department to the water right claimed. If the claimed water right is based upon a decree that does not have a previously assigned water right number, list the title and date of the decree, the case number, and the court that issued the decree. ()

q. Signature. Each claim must be signed by each claimant, submitted electronically by the claimant, or signed and submitted with evidence to show the signatory has authority to sign on behalf of the claimant. Each claimant solemnly swears or affirms under penalty of perjury that the statements contained in the notice of claim are true and correct. ()

i. A claim by a corporation, municipality or other organization must be submitted by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to submit the form. The signatory's title must be stated with the signature. ()

r. Notice of Appearance. An attorney submitting a claim on behalf of their client must include a notice of appearance listing the attorney's name and address. ()

04. Insufficient Claims and Waivers. ()

a. A claim filed on the claim form that does not contain the information required by Subsection 060.03 may be rejected and returned along with any fees paid, unless otherwise provided by these rules. ()

b. The Director may waive the minimum information requirements of Subsection 060.03 and accept the claim for good cause shown. ()

05. Further Information. Section 060 sets forth minimum requirements for the filing of a claim. The Director may request further information in support of the assertions contained in a claim as part of the investigation of the water system and the claim pursuant to Section 42-1410, Idaho Code. ()

061. -- 064. (RESERVED)

065. REJECTED AND RETURNED CLAIMS.

01. Rejected Claims. The Department may return a rejected claim, or a copy of a generated claim record for claims filed electronically, to the claimant by ordinary mail at the most recent address shown by Department records with the notice of rejection that states generally the reason(s) for rejection. ()

02. Refiled Claims. Claimants may refile rejected claims with the appropriate fees and appropriate information at any time prior to the deadline for filing the original claim. Claims refiled after the deadline for filing the original claim will be subject to the late fee unless the claim is refiled within thirty (30) days from the date of mailing the rejected claim by the Department. ()

066. -- 999. (RESERVED)