

## Zero-Based Regulation Prospective Analysis

**Agency Name:**

Idaho Department of Water Resources ("IDWR")

**Rule Docket Number:**

37-0302-2401

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

Statute Section (include direct link)	Is the authority mandatory or discretionary?
Idaho Code §§ 42-217, 42-217a, 42-218a, 42-219, 42-1805(8)	Discretionary
<a href="#">Section 42-217 – Idaho State Legislature</a> , <a href="#">Section 42-217a – Idaho State Legislature</a> , <a href="#">Section 42-218a – Idaho State Legislature</a> , <a href="#">Section 42-219 – Idaho State Legislature</a> , <a href="#">Section 42-1805 – Idaho State Legislature</a>	

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

Idaho Code § 42-217 requires a water right permit holder to submit a statement that the permit holder has used water for the beneficial purpose allowed along with a license examination fee or a field examination report prepared by a certified water right examiner ("CWRE") with the proof of beneficial use statement. Idaho Code § 42-217(3) requires an examination of the water use. Idaho Code § 42-217(4) requires the IDWR or CWRE to prepare a report of the examination. Idaho Code § 42-217a authorizes the Director to adopt rules and regulations to set procedures for appointing a CWRE. Idaho Code § 42-219 states that IDWR will examine all evidence in relation to proof of beneficial use and if satisfied that water is used for the permitted purpose and the use is in compliance with the law a license shall be issued for the water use.

The problem IDWR is attempting to solve with the Beneficial Use Examination Rules ("Rule") is assuring the permit examination includes accurate and definitive evidence demonstrating the beneficial use of water developed. This evidence is necessary to issue accurate and consistent water right licenses necessary for effective water resource administration. Inaccurate water right licenses would create uncertainty in water users' private property rights and in IDWR's administration of those rights. The Beneficial Use Examination Rules establish standards for the evidence that must be recorded to determine the extent of beneficial use. Without this Rule, the evidence water right permit holders and CWREs submit demonstrating proof of use may not be sufficient to determine the extent of use and whether the use occurred in compliance with the law.

IDWR believes the regulatory measures in the Rule are necessary for CWREs' accurate, consistent, conclusive, and efficient examination and documentation of the extent of the beneficial water use developed. However, IDWR believes there is an opportunity to implement non-regulatory measures and will solicit comments from stakeholders to identify and explore those options through the negotiated rule making process.

**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?**

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

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

<b>State</b>	<b>Summary of Law (include direct link)</b>	<b>How is the proposed Idaho rule more stringent? (if applicable)</b>
Washington	<a href="https://app.leg.wa.gov/RCW/default.aspx?cite=90.03">https://app.leg.wa.gov/RCW/default.aspx?cite=90.03</a> RCW 90.03.665 govern qualifications of certified water right examiners. WAC Administrative Code further defines certified examiners responsibilities.	Proposed Idaho rule is similar to WAC, both rule sets clarify statutory requirements.
Oregon	<a href="https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3139">https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=3139</a> OAR 690-014 are the administrative rules regarding appointment of certified examiners and the standards for exams and exam reports.	Proposed Idaho rule is similar to OAR 390-014, both rule sets clarify statutory requirements.
Nevada	<a href="https://www.leg.state.nv.us/NRS/NRS-532.html">https://www.leg.state.nv.us/NRS/NRS-532.html</a> NRS Chapter 533 are the statutes that govern proof of beneficial use. Water measurements are taken by state employed surveyors governed by NRS 533.080.	N/A
Utah	<a href="https://le.utah.gov/xcode/Title73/73.html">https://le.utah.gov/xcode/Title73/73.html</a> Utah Code Title 73 Chapter 4 are the statutes that govern proof of beneficial use. Utah does not have administrative rules governing certified examiners.	N/A
Wyoming	<a href="https://wyoleg.gov/NXT/gateway.dll?f=templates&amp;fn=default.htm">https://wyoleg.gov/NXT/gateway.dll?f=templates&amp;fn=default.htm</a> Wyo Statutes Title 41 governs proof submittal. State employees may examine beneficial use.	N/A
Montana	<a href="https://leg.mt.gov/bills/mca/title_0850/chapters_index.html">https://leg.mt.gov/bills/mca/title_0850/chapters_index.html</a> MCA Title 85 governs proof submittal. State employees may examine beneficial use.	N/A
Alaska	<a href="https://www.akleg.gov/basis/statutes.asp#46.15.010">https://www.akleg.gov/basis/statutes.asp#46.15.010</a> AAC Title 46 Chapter 15 governs proof submittal. AAC Title 11 Chapter 93 describes water right certificate process. State employees may examine beneficial use.	N/A
South Dakota	<a href="https://sdlegislature.gov/Statutes/46-5">https://sdlegislature.gov/Statutes/46-5</a> SDCL Chapter 46-5 governs water right permits and issuance of license. State employees examine beneficial use.	N/A

**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 rule is similar to the rules adopted by other states that authorize members of the private sector to conduct beneficial use examination rules. Several states do not allow beneficial use examinations to be conducted by non-state employed personnel. The proposed rule is more stringent than states that do not allow beneficial use examinations to be conducted by members of the private sector. However, the proposed rule is justified because the opportunity to make use of the expertise and availability of private sector professionals is a valuable benefit.

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

The rule describes the information necessary for IDWR to appoint certified water right examiners and to obtain the information necessary to confirm the extent of the beneficial water use developed to ultimately issue accurate water right licenses. The proposed rule clarifies the language of the rules and removes unnecessary and outdated sections reducing confusion regarding the information required for submitting beneficial use examination reports. Stakeholder comments supported changes made throughout the negotiated rule making process and suggested revised rule content. The proposed rule will promote accurate and conclusive beneficial use examination reports enabling IDWR to efficiently issue accurate water right licenses.

**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	The Rule clarifies fees governed by statute and no fee changes are anticipated. The Rule does not involve federal funds.
Impact to Idaho businesses, with special consideration for small businesses	Establishing clear standards for measuring water and reporting the extent of beneficial use will reduce the time required to issue water right licenses which will reduce uncertainty for water users and administrators. Changes to the Rule may impact businesses that employ certified water right examiners that must comply with the Rule. However, the cost in time and money to meet compliance with the rule will likely be equal or less due to anticipated clarifications and reduced regulatory burden in the Rule.
Impact to any local government in Idaho	Idaho Code § 42-201(7) delegates to IDWR exclusive authority for water appropriation in Idaho. Local governments may own water right permits that require submittal of proof of beneficial use and CWRE examination reports. Municipalities, water districts, tribal entities, and other entities engaged in water use with an

	<p>interest in the measuring and reporting of beneficial use will be encouraged to participate in the rule making process. 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.</p>
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**6. What cumulative regulatory volume does this proposed rule add?**

<b>Category</b>	<b>Impact</b>
Net change in word count	770 (17% reduction)
Net change in restrictive word count	43 (45% reduction)