

37.03.02 – BENEFICIAL USE EXAMINATION RULES

000. LEGAL AUTHORITY ~~(RULE 0)~~.

The ~~director~~Director of the Department of Water Resources adopts these rules under the authority provided by ~~Section~~Sections 42-217a and 42-1805(8), Idaho Code. (3-18-22)()

001. TITLE AND SCOPE ~~(RULE 1)~~.

~~Sections 42-217 and 42-221, Idaho Code, requires a license examination fee be submitted together with the written proof of beneficial use or that a field examination report prepared by a certified water right examiner be submitted together with the written proof of beneficial use. The statutes also provided that field examinations could be conducted by certified water right examiners appointed by the director.~~ (3-18-22)

~~01. Title. These rules are titled IDAPA 37.03.08, "Beneficial Use Examination Rules." ()~~

~~02. Scope. These rules set the procedures for appointing certified water right examiners and govern beneficial use examinations and the filing of beneficial use examination reports. ()~~

~~0103. Examination Requirements. The examination requirements listed are intended as a guide to establish acceptable standards to determine the extent of application of water to beneficial use. The requirements are not intended to restrict the application of other sound examination principles by water right examiners. The director~~Director will evaluate any deviation from the standards hereinafter stated as they pertain to the review of any given examination. ~~Water~~Certified water right examiners are encouraged to submit new ~~idea~~techniques which will advance the ~~art and provide for practice of examination and accomplish~~ the public benefit. (3-18-22)()

~~0204. Rules. These rules shall not be construed to deprive or limit the director~~Director of the ~~Department of Water Resources~~ of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the ~~director~~Director from any owner of a water right permit or authorized representative for the proper administration of the law. (3-18-22)()

002. -- 008. (RESERVED)

009. APPLICABILITY ~~(RULE 9)~~.

~~01. Proof of Beneficial Use. These rules apply to all permits for which proof of beneficial use is not yet due and has not been submitted to the department~~Department. (3-18-22)()

~~02. Examination. These rules apply to all permits for which an examination has not been conducted. (3-18-22)~~

~~03. Re-Examination. These rules apply to all permits that have been examined but the license has not been issued due to a request for a re-examination by the permit holder. (3-18-22)~~

~~04. Examination Fee. The examination fee requirements of these rules do not apply to a permit for ground water use for single family domestic use, in-stream stockwatering, or other small-uses for which the use does not exceed four one hundredths (0.04) cfs~~CFS or four (4) AF/year a permit is not required by statute. The examination fee is required for multiple use permits which exceed four one-hundredths (0.04) cfs or four (4) AF/year ~~af of storage~~ even though single family domestic use or stockwater use is included as one (1) of the uses on the permit. (3-18-22)()

010. DEFINITIONS ~~(RULE 10)~~.

~~Unless the context otherwise requires, the following definitions govern these rules. (3-18-22)~~

~~01. Acre-Foot (AFaf). A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to forty three thousand, five hundred sixty (43,560) cubic feet.~~three hundred twenty-five thousand, eight hundred fifty (325,850) gallons. (3-18-22)()

~~02. Acre-Foot/Annum. An annual volume of water that may be diverted under a given use or right. (3-18-22)~~

~~0302. Amendment. A change ~~into the~~ point of diversion, place, period, or nature of use, or other substantial change in the method of diversion or use of a permitted water right. (3-18-22)()~~

~~03. Beneficial Use Examination (Examination). An on-site inspection or other investigation to determine the extent of application of water to beneficial use and to determine compliance with terms and conditions of the water right permit. ()~~

~~04. Beneficial Use Examination Report (Examination Report). The Department prescribed form or other document upon which the CWRE or Department employee records the examination data required by Section 035 in a consistent manner. ()~~

~~0405. Capacity Measurement. The maximum volume of water impounded in the case of ~~reservoirs~~ storage facility or the maximum rate of diversion from the source as determined by actual measurement of the system during normal operation. (3-18-22)()~~

~~0506. Certified Water Right Examiner (CWRE). A professional engineer or professional geologist, qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the Director, and who has been appointed by the Director, Idaho Department of Water Resources as a certified water right examiner. A certified water right examiner is commonly termed a field examiner, water right examiner or examiner. A certified water right examiner is an impartial investigator and reporter of the information required appointed by the Director in accordance with Section 030 to determine the extent of beneficial use established in compliance with a permit. Department employees are authorized to conduct water right examinations at the discretion of the Director. (3-18-22)()~~

~~0607. Conveyance Works. The ditches, pipes, conduits, or other means by which water is carried or moved from the point of diversion to the place of use. Storage works, if any Any storage structure, such as a dam, ~~can~~ shall be considered part of the conveyance works. (3-18-22)()~~

~~0708. Cubic Foot Per Second (CFS/cfs). A rate of flow approximately equal to four hundred forty-eight and eight tenths (448.8) gallons per minute and also equals fifty (50) Idaho miner's inches. (3-18-22)()~~

~~0809. Department. The Idaho Department of Water Resources. (3-18-22)~~

~~0910. 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. (3-18-22)()~~

~~11. Diversion Works. The constructed barriers or devices on the source of water by which water can be diverted from the natural course of flow. ()~~

~~1012. Duty of Water. The quantity of water necessary when economically ~~conducted~~ conveyed and applied to land without unnecessary loss as will result in for the successful growing of crops. (3-18-22)()~~

~~11. Examination or Field Examination. An on site inspection or investigation to determine the extent of application of water to beneficial use and to determine compliance with terms and conditions of the water right permit. (3-18-22)~~

~~12. Field Report. The form provided by the Department upon which the examiner records the data gathered and describes the extent of diversion of water and application to beneficial use. The report is fully termed beneficial use field report and is also termed a field examination report. (3-18-22)~~

~~13. Headworks or Diversion Works. The constructed barriers or devices on the source of water~~

~~(surface water or ground water) by which water can be diverted from its natural course of flow and/or measured.~~
~~(3-18-22)~~

~~**13. Irrigation.** The application of water to cultivated land in sufficient quantity or manner to facilitate plant growth for a useful purpose. ()~~

~~**14. License.** The certificate issued by the Director in accordance with Section 42-219, Idaho Code confirming the extent of diversion and beneficial use of the water ~~that has been~~ made in conformance with the permit ~~conditions~~. (3-18-22)()~~

~~**15. License Examination Fee.** The fee ~~required~~prescribed in Section 42-221K, Idaho Code, ~~and is also termed an examination fee~~. (3-18-22)()~~

~~**16. Legal Subdivision.** A tract of land described by the ~~government land survey and usually is described by government lot or quarter-quarter, section, township and range~~ nearest forty (40) acre subdivision or Government Lot of the Public Land Survey System. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the ~~government lot, quarter-quarter, section, township and range~~ Public Land Survey description. (3-18-22)()~~

~~**17. Measuring Device.** A generally accepted structure or apparatus used to determine a rate of flow or volume of water. ~~Examples are weirs, meters, and flumes. Less typical devices may be accepted by the Director on a case-by-case basis.~~ (3-18-22)()~~

~~**18. Nature of Use.** The ~~characteristic~~purpose of use for which water is applied. ~~Examples are domestic, irrigation, mining, industrial, fish propagation, power generation, municipal, etc.~~ (3-18-22)()~~

~~**19. Period of Use.** The time period during which water under a given water right can be diverted or beneficially used. (3-18-22)()~~

~~**20. Permit Holder or Owner.** The person, association, or corporation to whom a permit has been issued or ~~assigned~~conveyed as shown by the records of the Department. (3-18-22)()~~

~~**21. Permit or Water Right Permit.** The water right document issued by the Director authorizing the diversion and use of unappropriated public water of the state or water held in trust by the state. (3-18-22)~~

~~**2221. Place of Use (P.U. or POU).** The location where ~~the~~ beneficial use of diverted water is made, ~~of the diverted water~~. (3-18-22)()~~

~~**2322. Point of Diversion (P.D. or POD).** The location on the public source of water from which water is diverted. ~~Examples are pump intake, headgate, well locations, and dam locations.~~ (3-18-22)()~~

~~**2423. Project Works.** A general term ~~which~~that includes diversion works, conveyance works, and any devices ~~which may be~~ used to measure ~~the~~ water or to apply ~~the~~ water to the intended use. ~~Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works.~~ (3-18-22)()~~

~~**2524. Proof of Beneficial Use (Proof).** The submittal required in Section 42-217, Idaho Code. ~~This submittal is commonly termed proof.~~ (3-18-22)()~~

~~**2625. Source.** The name of the natural water body at the point of diversion. ~~Examples are Snake River, Smith Creek, ground water, spring, etc.~~ (3-18-22)()~~

~~**26. Water Right Permit (Permit).** The water right document issued by the Director authorizing the diversion and use of unappropriated public water or reallocated trust water. ()~~

011. — ABBREVIATIONS.

- ~~01. AF. Acre Foot or Acre Feet. (3-18-22)~~
- ~~02. CFSCFS. Cubic Foot Per Second. (3-18-22)~~
- ~~03. P.D. or POD. Point of Diversion. (3-18-22)~~
- ~~04. P.U. or POU. Place of Use. (3-18-22)~~
- ~~05. USGS. United States Geological Survey. (3-18-22)~~

01211. -- 024. (RESERVED)

025. AUTHORITY OF REPRESENTATIVE ~~(RULE 25).~~

01. Proof of Beneficial Use. When the proof of beneficial use, ~~field examination~~ report, and drawings are filed by ~~the water right examiner~~ a CWRE on behalf of an owner, written evidence of authority to represent the owner shall be filed with the proof, ~~field report, and drawings.~~ (3-18-22)()

02. Responsibility. It is the responsibility of the permit holder or authorized representative to submit proof ~~of beneficial use~~ and ~~provide for the timely~~ ensure submission of a completed ~~field examination~~ report by the due date in acceptable form to the ~~director~~ Director by either paying the required examination fee to the ~~department~~ Department or by employing a ~~certified water right examiner~~ CWRE. (3-18-22)()

026. -- 029. (RESERVED)

030. QUALIFICATION, EXAMINATION AND APPOINTMENT OF CERTIFIED WATER RIGHT EXAMINER ~~(RULE 30).~~

01. Consideration. Any professional engineer or geologist qualified and registered in the state of Idaho ~~who has with~~ the knowledge and experience necessary to satisfactorily complete ~~water right field examinations~~ an examination as determined by the Director shall be considered for appointment as a ~~water right examiner~~ CWRE upon application to the Director. The application shall be in the form prescribed by the Director and shall be accompanied by a non-refundable fee in the amount ~~provided by statute~~ prescribed in Section 42-217a, Idaho Code. (3-18-22)()

02. Information. The Director may require an applicant for appointment to the position of ~~water right examiner~~ CWRE to provide detailed information of past experience, provide references, and ~~to~~ satisfactorily complete a written or oral examination. (3-18-22)()

03. Denial. If the Director determines an applicant is not qualified, the application will be denied. If the Director determines an applicant is qualified, a certificate of appointment will be issued. (3-18-22)

04. Expiration. Every ~~water right examiner~~ CWRE certificate of appointment shall expire March 31 of each year unless renewed by application in the manner prescribed by the Director. A non-refundable fee in the amount ~~provided by statute~~ prescribed in Section 42-217a, Idaho Code. shall accompany an application for renewal. (3-18-22)()

05. Refusal or Revocation. An appointment or renewal may be refused or revoked by the Director at any time upon a showing of reasonable cause. A party aggrieved by an action of the Director may request an administrative hearing pursuant to Section 42-1701A (3), Idaho Code. (3-18-22)

06. Reconsideration. An application for appointment or renewal which has been refused or revoked by the Director may not be reconsidered for six (6) months. (3-18-22)

07. Liability. The state of Idaho shall not be liable for the compensation of any ~~water right examiner other than department employees~~CWRE. The permit holder shall be responsible for costs associated with proof submittal including examination and ~~field~~examination report preparation. (3-18-22)(____)

08. Examinations. The Director may authorize sufficiently knowledgeable and experienced ~~department~~Department employees to conduct ~~water right~~ examinations during the course and scope of their employment with the ~~department~~Department. Upon termination of employment with the ~~department~~Department, such examiners, unless ~~reappointed~~appointed as a ~~non-department certified examiner~~CWRE under provisions of these rules, are not authorized to conduct ~~field~~ examinations. ~~The fee provisions of these rules do not apply to department employees.~~ (3-18-22)(____)

09. Ingress or Egress Authority. Appointment as a ~~water right examiner~~CWRE does not grant ingress or egress authority ~~to non-department examiners~~ and does not convey authority unless explicitly prescribed in these rules. (3-18-22)(____)

10. Reports. The Director will not accept a ~~field~~an examination report prepared by a ~~certified water right examiner~~CWRE or a ~~department employee~~Department examiner who has any past or present interest, direct or indirect, in either the water right permit, the land or any enterprise benefiting, or likely to benefit, from the water right. ~~Among those that the~~The Director will presume ~~to have~~ an actual or potential conflict of interest ~~exists~~ and ~~from whom he~~ will not accept a ~~field~~an examination report ~~are from~~ the following: (3-18-22)(____)

a. The person ~~or persons~~ owning the water right permit or the land or enterprise benefiting from the water right permit, members of their ~~families~~family (spouse, parents, grandparents, lineal descendants including those that are adopted, lineal descendants of parents; and spouse of lineal descendants), and their employees. (3-18-22)(____)

b. The person ~~or persons~~; who sold or installed the ~~diversion project~~ works ~~or distribution system.~~ (3-18-22)(____)

11. Money Received. All moneys received by the ~~department~~Department under the provisions of these rules shall be deposited in the water administration fund created under Section 42-238a, Idaho Code. (3-18-22)(____)

031. -- 034. (RESERVED)

035. EXAMINATION FOR BENEFICIAL USE ~~(RULE 35).~~

01. FieldExamination Report. ~~An examination report must include the following information in sufficient detail for the Director to determine the extent of water use developed consistent with the permit;~~(3-18-22)(____)

~~a. All items of the field report must be completed and must provide sufficient information for the Director to determine the extent of the water right developed in order for the report to be acceptable to the Director.~~ (3-18-22)

~~ba. Permitted uses~~Each permitted use developed or partially developed, by the permit holder shall be described in detail. ~~Permitted uses which were not developed by the permit holder~~Any undeveloped permitted use shall be noted. ~~Uses~~Any use determined to exist which are not authorized by the permit being examined shall ~~also~~ be described in detail. (3-18-22)(____)

~~eb.~~ A concise description of the diversion works and a general description of the ~~distribution~~conveyance works shall be given. This description must trace the water from the ~~point of diversion~~POD to the ~~place of use~~POU and the return to a public water source, if any. ~~Any reservoir, diversion dam, headgate, well, canal, flume, pump and other related structure shall be included.~~ If water is stored, the timing and method of storage, release, redirection and conveyance to the place of use shall be described. The make, capacity, serial number and model number of all pumps, boosters or measuring devices associated with the ~~point of diversion~~POD at the source of the water supply shall be described. ~~on the field examination report.~~ ~~Schematic~~Any schematic diagrams, photographs, and maps sufficient to locate and describe the diversion, conveyance and usage systems shall ~~also~~ be provided in the examination report ~~included.~~ (3-18-22)(____)

~~dc.~~ Any interconnection of ~~the water use being examined~~ with ~~another~~ water ~~rights~~ or with ~~other conveyance system~~ shall be described on the field report. Interconnection includes, but is not limited to, sharing the same ~~point of diversion~~ POD, distribution system, ~~place of use~~ POU, or beneficial use. The examination report shall also include an evaluation of ~~how that demonstrates~~ the water use being examined is distinct from ~~prior~~ an existing water ~~rights~~, and provides ~~is~~ an alternate source of water, or ~~is an~~ increment of beneficial use not authorized by ~~prior~~ existing water ~~rights~~. (3-18-22)()

~~ed.~~ If water is returned ~~directly~~ to a public water source after use, ~~a description of the conveyance system and the~~ legal description of the point where the water is returned, ~~and source to which discharge is made shall be provided.~~ Examples of uses which generally have an effluent discharge include fish propagation and power facilities. (3-18-22)()

~~fe.~~ The method of compliance with each ~~permit~~ condition of approval, ~~of a permit shall be shown on the field report by the examiner.~~ (3-18-22)()

~~gf.~~ ~~If the water is used for~~ For irrigation, the boundaries of the irrigated ~~areas~~ area and the location of the project works providing water to each ~~area~~ shall be ~~platted~~ shown on ~~the maps~~ a map submitted with the ~~examination~~ report and the full or partial acreage in each legal subdivision of forty (40) acres or government lot, shall be shown. (3-18-22)()

~~hg.~~ Irrigated acreage ~~shall be shown on the field report~~ described to the nearest whole acre, ~~if the acreage is ten (10) acres or more, in each forty (40) acre legal subdivision, except the~~ For irrigation of less than ten (10) acres, acreage shall be ~~shown~~ described to the nearest one-tenth (0.10) acre, ~~for permits covering land of less than ten (10) acres.~~ ()

~~ih.~~ Where a permit has been developed as separate distribution systems from more than one point of diversion, the separate areas irrigated from each point of diversion shall be shown on the maps submitted with the report and the legal subdivisions embracing the irrigated areas for each such respective point of diversion together with the total irrigated area shall be described. A description of the diversion system and number of acres irrigated per legal subdivision for each separate diversion system developed when a separate diversion system is developed from more than one (1) POD. The boundary of irrigated acres and number of acres per legal subdivision for each separate system shall be shown on a map submitted with the examination report. (3-18-22)()

~~ji.~~ For each use of water, the examiner shall report ~~an~~ The annual diversion volume based on actual beneficial use during the development period ~~for the permit~~ for each permitted use. The method of determining the annual diversion volume shall be ~~shown~~ described. The annual diversion volume shall account for seasonal variations in factors affecting water use, including seasonal variations in water availability. ~~For irrigation, the volume shall be based on the field headgate requirements in the map titled Irrigation Field Headgate Requirement appended to these rules (see Appendix A located at the end of this chapter). Annual diversion volumes for heating and cooling uses may be adjusted to account for documented weather conditions during any single heating or cooling season from among the fifty (50) years immediately prior to submitting proof of beneficial use for the permit. For storage uses that include filling the reservoir and periodically replenishing evaporation and seepage losses throughout the year, the annual diversion volume shall be the sum of the amounts used for filling and for replenishment. Volumes may include reasonable conveyance losses actually incurred by the water user. The following water uses are exempt from the volume reporting requirement:~~ (3-18-22)()

i. ~~For irrigation, volume shall be based on the standard field headgate requirement as determined by the Director.~~ ()

ii. ~~For heating, cooling, or commercial snowmaking, the volume may be adjusted to account for documented weather conditions during any single season from among the fifty (50) years immediately prior to submitting proof for the permit.~~ ()

iii. ~~For storage use that includes refill, a use from storage, or both, the volume shall be the sum of the amount used for fill and refill. A description of the amount, method, and timing of refill shall be included when the total volume exceeds the capacity of the storage facility.~~ ()

- iv. ~~For multi-home domestic or municipal use, the volume may include up to 0.6 af for in-home use and 0.6 af for developed yard or landscape irrigation for each lot with an existing stub-in water service line and foundation where each home's use will meet the definition of Section 42-111(a), Idaho Code. NEW CONTENT TO BE NEGOTIATED~~ ()
- j. ~~The following water use are exempt from the volume reporting requirement:~~ ()
- i. ~~Diversion to storage. (Volume should be reported for the storage use, such as irrigation storage.)~~ (3-18-22)()
- ii. ~~Domestic uses use from ground water~~ as defined in Section 42-111, Idaho Code. (3-18-22)()
- iii. In-stream watering of livestock. (3-18-22)
- iv. Fire protection. (Volume is required for fire protection storage.) (3-18-22)
- v. On-stream, run-of-the-river, non-consumptive power generation uses. (3-18-22)
- vi. Minimum stream flows established pursuant to Chapter 15, Title 42, Idaho Code. (3-18-22)
- vii. Municipal use by an incorporated city or other entity serving users throughout an incorporated city, except the following situations that ~~do~~ require a volume to be reported: (3-18-22)()
- (1) The permit or amended permit was approved with a volume limitation; or (3-18-22)
- (2) The permit was not approved for municipal use but can be amended and licensed for a municipal use established during the authorized development period for the permit. (3-18-22)
- viii. Irrigation using natural stream flow diverted from a stream or spring. (Volumes must be reported for irrigation uses from ponds, lakes and ground water and for irrigation storage and irrigation from storage.) (3-18-22)
- k. ~~The~~For fish propagation, the total number of holding/rearing ponds and the dimensions and volume of ~~the ponds shall be shown on the field report for fish rearing or fish propagation use each pond.~~ The annual volume shall be calculated based on the changes of water per hour. (3-18-22)()
- l. ~~Information shall be submitted concerning~~Description of the extent of beneficial use ~~that has been made of the water unless the purpose of use is for irrigation for all non-irrigation use. For example, for stockwater use, the number and type of stock watered shall be provided. Similar indications of the extent of beneficial use shall be provided for all other non-irrigation uses.~~ ()
- m. The period during each year that ~~the~~water is used ~~shall be described~~ for each permitted use.(3-18-22)()
- n. ~~For permits having more than one (1) use, the~~The diversion rate measured for each use, the annual diversion volume determined for each use (unless specifically exempted by rule or statute), and the place of use for each use ~~shall be described.~~ (3-18-22)()
- o. The amount (~~rate and/or volume~~) of water shall be limited by the smaller of the permitted amount, the amount upon which the license examination fee is paid, the capacity of the diversion works, or the amount beneficially used prior to submitting proof of beneficial use, including any statutory limitation of the duty of water. (3-18-22)()
- p. ~~Suggested amendments~~Amendment recommendations based on actual use ~~shall be noted on the field report when~~if the place of use POU, point of diversion POD, period of use, or nature of use is different from the permit. ~~Suggested amendments shall be based on actual use, not on potential use.~~ (3-18-22)()

q. An aerial ~~photograph or United States Geological Survey Quadrangle map consistent with Subsection 045.03, marked to depict the point(s) of diversion and place(s) of use for each use must accompany each field report unless waived by the Director. If existing photos are not available, the Director will accept a USGS Quadrangle map at the largest scale available.~~ (3-18-22)()

r. Unless required as a condition of permit approval, an on-site examination and direct measurement of the diversion rate ~~are~~ is not required for the following water uses if the extent of beneficial use, place of use, season of use, and point of diversion can be confirmed by documentary means such as well driller reports, property tax records, receipts, ~~and other records of the permit holder,~~ or photographs, including aerial photographs: (3-18-22)()

i. Irrigation up to five (5) acres. (3-18-22)

ii. Storage of up to fourteen point six (14.6) acre-feet of water ~~solely for stock watering purposes~~ stockwater, aesthetic, recreation, or wildlife. (3-18-22)()

iii. Any uses other than irrigation or storage if the total combined diversion rate for all the uses established in connection with the permit does not exceed twenty-four one hundredths (0.24) cubic feet per second. (3-18-22)

02. Field Examination Report Acceptability. (3-18-22)()

a. ~~All field reports~~ An examination report shall be prepared by or under the supervision of ~~certified water right examiners~~ a CWRE or authorized ~~department employees~~ Department employee. ~~Reports~~ An examination report submitted by ~~certified water right examiners~~ a CWRE must be properly endorsed with ~~an~~ the CWRE's engineer or geologist seal and signature. ~~Field reports~~ An examination report received from ~~certified water right examiners~~ a CWRE will be accepted if the report includes all the information required ~~to complete the report and provides~~ including the information required by ~~Rule~~ Subsection 035.01. (3-18-22)()

b. ~~Field reports~~ An examination report not completed as required by these rules will be returned ~~to the certified water right examiner~~ for completion. ~~If the date for submitting proof of beneficial use has passed, the~~ The penalty provisions of ~~Rule~~ Section 055 shall apply. (3-18-22)()

c. If the Director determines that ~~a field~~ an examination report prepared by a ~~certified water right examiner~~ CWRE is acceptable but that additional information is needed to clarify the ~~field~~ examination report, ~~he~~ the Director will notify the ~~examiner~~ CWRE in writing of the information required. If the additional information is not submitted within thirty (30) days or within the time specified in the written notice, the ~~Director will return the examination report and proof to the permit holder.~~ priority date of the permit will be advanced one (1) day for each day the information submittal is late. Failure to submit the required information within one (1) year of the date of the department's request is ~~becomes~~ cause for the Director to take action to cancel the permit. (3-18-22)()

d. ~~Field reports~~ An examination report which ~~indicates that~~ indicates that a measuring device or lockable controlling works, required as a condition of approval of the permit, ~~has~~ is not been installed; ~~are~~ or is not acceptable ~~and~~ will be returned ~~to the examiner~~ unless ~~the Director formally waived~~ the measuring device requirement or lockable controlling works requirement. ~~has been formally waived or modified by the Director.~~ (3-18-22)()

03. General. (3-18-22)

a. For irrigation ~~purposes,~~ the duty of water shall not exceed five (5) acre feet of stored water for each acre of land to be irrigated or more than one (1) cubic foot per second for each fifty (50) acres of land to be irrigated unless it can be shown to the satisfaction of the Director that a greater amount is necessary. (3-18-22)()

b. For irrigated acreage of five (5) acres or less, a diversion rate up to three one-hundredths (0.03) cfs per acre may be allowed on the license to be issued by the Director. (3-18-22)

c. Conveyance losses ~~of water~~ from the ~~point of diversion~~ POD to the ~~place of use~~ POU which are

determined by actual measurement may be allowed ~~by the Director~~ if the diversion rate does not exceed the permitted rate and the loss is determined by the Director to be reasonable. ~~(3-18-22)()~~

d. The duty of water described in Subsections 035.03.a. or 035.03.b. may be exceeded if the ~~department has authorized permit or amended permit was approved with~~ a greater diversion rate per acre ~~when the permit was issued~~ and good cause acceptable to the Director has been demonstrated. ~~(3-18-22)()~~

e. For irrigation, the irrigated areas may be generally described if ~~systems which~~ the project works cover twenty-five thousand (25,000) acres or more, are within irrigation districts organized and existing under the laws of the state of Idaho, ~~and for irrigation projects or~~ were developed under a permit held by an association, company, corporation, or the United States authorized to deliver surface water to more than five (5) water users under an annual charge or rental, the ~~field report does not need to irrigated acres may be describe the irrigated land by legal subdivision, but may describe~~ described generally ~~the lands under the project works~~ if the total irrigated acres has been accurately determined and is ~~are~~ shown ~~on~~ in the field examination report. The amount of water beneficially used under such projects must be shown ~~on~~ in the field examination report. ~~(3-18-22)()~~

036. -- 039. (RESERVED)

040. WATER MEASUREMENT ~~(RULE 40)~~.

01. **Measurement Terminology.** A rate of flow measurement shall be shown in units of cubic feet per second (cfs) with three (3) significant figures and no more precision than hundredths. A volume measurement shall be shown in units of acre-feet (af) with three (3) significant figures and no more precision than tenths. ~~(3-18-22)()~~

~~a. Rate of flow measurements shall be shown in units of cubic feet per second (cfs) with three (3) significant figures and no more precision than hundredths. (3-18-22)~~

~~b. Volume measurements shall be shown in units of acre feet (AF) with three (3) significant figures, and no more precision than tenths. (3-18-22)~~

02. **Rate of Diversion.** The rate of diversion measurement shall be conducted as close as reasonably possible to the source of supply and shall be measured with the project works fully in place and operating at normal capacity. ~~For example, if a sprinkler system is used for irrigation purposes, discharge from the pump must be measured with the sprinkler system connected. (3-18-22)()~~

03. **Measurements.** Water measurements may be made by vessel, weir, meter, rated flume, reservoir capacity table or other standard method of measurement acceptable to the Director. The field examination report shall describe the method used in making the measurement, the date when made, the name of the person making the measurement, ~~the legal~~ description of the location where the measurement was taken and shall include sufficient information, including current meter notes, rating tables, ~~and~~ or calibration information to enable the Director to check the quantity of water measured in each case. ~~(3-18-22)()~~

04. **Unacceptable Measurements.** Theoretical diversion rates or theoretical carrying capacities are not acceptable as a measure of the rate of diversion except as indicated in these rules and for ~~some~~ diversion systems ~~works~~ where the flow rate cannot be measured accurately due to the physical characteristics of the diversion and distribution system. ~~(3-18-22)()~~

05. **Method.** Rate of flow measurements shall be determined using equipment and methods capable of obtaining an accuracy of plus or minus ten percent (10%). (3-18-22)

041. -- 044. (RESERVED)

045. **DRAWINGS, MAP, AND SCHEMATIC DIAGRAM** ~~(RULE 45)~~. ~~THE FOLLOWING PROVISIONS SHALL APPLY TO THE SUBMITTAL OF DRAWINGS, MAPS, PHOTOS AND THE SCHEMATIC DIAGRAMS.~~

~~(3-18-22)~~

01. Submittal of Drawings, Maps, Photos and Schematic Diagrams. Drawings, maps, photos and schematic diagrams used as an attachment to the field examination report shall be on eight and one-half by eleven (8 1/2 x 11) inch paper whenever possible. (3-18-22)()

02. Attachment Sheets. Attachment sheets shall depict information on one (1) side only. (3-18-22)

03. Scale of Map or Aerial Photograph. The map or aerial photograph depicting the point of diversionPOD and place of usePOU shall be of a reasonable scale but not less than two (2) inches equals one (1) mile. The map shall and show the location of the point(s) of diversionPOU and POD to the nearest forty (40) acre tract or to a ten (10) acre tract for springs. The location of ditches, canals, mainlines, distribution systems and the place of use by forty (40) acre tract any ditch, canal, mainline, or other conveyance work must be shown.(3-18-22)()

04. Drawings. Drawings need to~~must include a scale and~~ generally depict the size and type of diversion works, measuring device, conveyance system, water application method, and the location of any measurements taken. (3-18-22)()

05. Photographs. Photographs of the diversion works; the typical distribution works and other prominent features of the systemproject works shall be provided with the fieldclearly labeled and attached to the examination report. (3-18-22)()

046. -- 049. (RESERVED)

050. LICENSE EXAMINATION FEE ~~(RULE 50).~~

01. Examinations Conducted by Department Staff. (3-18-22)

a. The examination fee shall be payable to the Department ~~of Water Resources~~ unless the field examination is conducted by a ~~certified water right examiner~~CWRE. (3-18-22)()

b. The ~~department~~Department will not conduct an examination for which the fee has not been paid to the ~~department~~Department unless exempted in ~~Rule~~ Subsection 009.04, except that for any prior examination, whether conducted by a ~~certified water right examiner~~CWRE or by ~~department staff~~ Department employee, the ~~department~~Department may conduct a supplemental examination on its own initiative at any time. No examination fee shall be charged for a supplemental examination conducted by the ~~department~~Department on its own initiative.(3-18-22)()

c. ~~A license shall~~The Department will not ~~be issued~~issue a license for an amount of water in excess of the amount covered by the examination fee. Subsequent to the examination and prior to a license being issued, the Director will notify the permit holder that the licensed amount will be limited because an insufficient examination fee was paid. The permit holder will be allowed thirty (30) days after the notice is mailed to pay the additional examination fee, ~~along with a late payment penalty of twenty five dollars (\$25) or twenty percent (20%) of the amount of the additional required fee whichever is more.~~ If payment is received within the thirty (30) day period, the ~~Department will not reduce the~~ rate or volume licensed ~~shall not be reduced by reason of~~based on the examination fee. If payment is not received within the thirty (30) day period, ~~The Department will limit~~ the rate or volume licensed ~~shall be limited by~~based on the original examination fee paid. ~~For the purpose of~~When determining advancement of priority for late ~~fee as provided~~fees ~~in accordance with~~ Section 42-217, Idaho Code, fees shall not be considered as having been paid until paid in full, including any subsequent fee. (3-18-22)()

d. Excess examination fees are non-refundable. (3-18-22)

e. An examination fee equal to the initial examination fee paid to the ~~department~~Department shall be paid for a re-examination made at the request ~~for of~~ the permit holder except upon a showing of error by the ~~department~~Department on the initial examination. (3-18-22)()

02. Examinations Conducted by ~~Non-Department~~ Certified Water Right Examiners.(3-18-22)()

a. The examination fee required by Section 42-217, Idaho Code is not applicable for an examination conducted by or under the supervision of ~~certified water right examiner~~a CWRE. (3-18-22)()

b. A permit holder may not choose to have the examination conducted by the ~~department~~Department after selecting a ~~certified water right examiner~~CWRE. (3-18-22)()

c. After submitting proof of beneficial use and paying an examination fee to the ~~department~~Department, but before the ~~department's actual~~ examination, a permit holder may submit an examination report completed by a ~~certified water right examiner~~CWRE. Because the examination fee is an essential component of timely proof submittal, the ~~department~~Department will not refund the examination fee. (3-18-22)()

051. -- 054. (RESERVED)

055. PENALTY ~~(RULE 55)~~.

01. Permits for Which Proof Has Not Been Submitted. The submittal required is the proof and the examination fee or the proof and ~~a completed field~~an examination report completed by a CWRE. (3-18-22)()

02. Failure to Submit. Failure to submit either the license examination fee or an acceptable ~~field~~ examination report prepared by or under the supervision of a ~~certified water right examiner~~CWRE by the proof due date is cause to lapse the permit pursuant to Section 42-218a, Idaho Code, unless the Department approved an extension of time pursuant to Section 42-204, Idaho Code, extending the proof of beneficial use due date. ~~has been approved~~. (3-18-22)()

056. -- 999. (RESERVED)

Appendix A

Appendix A

Irrigation Field Headgate Requirement

- 3** Field Headgate Requirement
Acre Feet per Year per Acre
- 10N Township/Range

