

Memorandum

To: Beneficial Use Exam Rules – IDAPA 37.03.02

From: Dave Shaw

Re: Comments on BU Examination Rules

These comments are prepared based on the redline draft of the rules dated 5-3-24.

In Section 001.01 the rules are referred to as IDAPA 37.03.08 which is inconsistent with the title shown on the draft.

In Section 009.04 and elsewhere, the term “stockwatering” or “stockwater” is used, neither of which is in the dictionary or the Idaho statutes. Both terms should be 2 words and to be consistent with the Idaho statutes should be “livestock watering” or “livestock water.”

Section 010.01 the Acre-Foot definition now compares to gallons, but the number used is less precise than the former 43,560 cubic feet. Why is this change important?

Section 010.11 definition of Diversion Works does not appear to include a ground water well.

Section 010.13 why is irrigation limited to cultivated land, does this preclude me from irrigating the natural vegetation around my home for fire protection or to improve the growth rate of my tree reforestation that is required to not be cultivated?

Section 010.16 should not be described “by the nearest forty ...” but “by the forty ...”

Section 010.19 when would a water right allow water to be diverted that is not beneficially used? Suggest removing the added “diverted or” language.

Sections 010.21 & 22 POU and POD should be described by Legal Subdivision when available.

Section 030.07 add to the first sentence “... unless the CWRE has been retained by a state agency holding a water right permit.”

Section 035.01.b mentions photographs and other locations refer to aerial photographs, none of which are likely used any more. Most CWRE’s as well as IDWR employees use digital cameras and 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.

Section 035.01.c include a note that if there is no interconnected water sources to so state or provide a box to check on the field exam form.

Section 035.01.f suggest changing "... examination report and the full or partial acreage ..." to "... examination report along with the full or partial acreage ..." to make clear the intent is for both to be the same map.

Section 035.01.g clarify if one 40 acre tract of a large project is less than 10 acres, are all acreages to be reported to the nearest 0.10 acres, or just those tracts with less than 10 acres.

Section 035.01.h is not clear if "diversion system" includes "distribution system," neither are defined, however "project works" is defined but does not include "distribution system." Need to allow for multiple diversions, primarily wells, to divert into a common distribution system (conveyance works).

Section 035.01.j "uses are"

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