

37.03.02 – BENEFICIAL USE EXAMINATION RULES

000. LEGAL AUTHORITY.

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

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 37.03.02, “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. ()

03. Examination Requirements. The requirements listed are intended 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 will evaluate any deviation from the standards hereinafter stated as they pertain to the review of any given examination. Certified water right examiners are encouraged to submit new techniques which will advance the practice of examination and accomplish the public benefit.

04. Rules. These rules shall not be construed to deprive or limit the Director 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 from any owner of a water right permit or authorized representative for the proper administration of the law. ()

002. -- 008. (RESERVED)

009. APPLICABILITY.

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. ()

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, stockwater, or any other use for which 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 even though single family domestic use or stockwater use is included as one (1) of the uses on the permit. ()

010. DEFINITIONS.

01. Acre-Foot (af). A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to three hundred twenty-five thousand, eight hundred fifty (325,850) gallons. ()

02. Amendment. A change to 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. ()

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 form provided by the Department or other acceptable document upon which the CWRE or Department employee records the data required by Section 035 gathered during the examination. ()
- 05. Capacity Measurement.** The maximum volume of water impounded in the case of a storage facility or the maximum rate of diversion from the source as determined by actual measurement of the system during normal operation. ()
- 06. Certified Water Right Examiner (CWRE).** An impartial investigator appointed by the Director in accordance with Section 030. ()
- 07. 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. Any storage structure such as a dam, shall be considered part of the conveyance works. ()
- 08. Cubic Foot Per Second (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. ()
- 09. Department.** The Idaho Department of Water Resources. (3-18-22)
- 10. 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. ()
- 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. ()
- 12. Duty of Water.** The quantity of water necessary when economically conveyed and applied to land without unnecessary loss for the successful growing of crops. ()
- 13. Irrigation.** The application of water to cultivated land in sufficient quantity or manner to cause 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 made in conformance with the permit. ()
- 15. License Examination Fee.** The fee prescribed in Section 42-221K, Idaho Code. ()
- 16. Legal Subdivision.** A tract of land described by the 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 Public Land Survey description. ()
- 17. Measuring Device.** A generally accepted structure or apparatus used to determine a rate of flow or volume of water. ()
- 18. Nature of Use.** The purpose of use for which water is applied. ()
- 19. Period of Use.** The time period during which water under a given water right can be beneficially used. ()
- 20. Permit Holder or Owner.** The person, association, or corporation to whom a permit has been issued or conveyed as shown by the records of the Department. ()
- 21. Place of Use (POU).** The location where beneficial use of appropriated water is made. ()

22. Point of Diversion (POD). The location on the public source of water from which water is diverted. ()

23. Project Works. A general term that includes diversion works, conveyance works, and any devices used to measure water or to apply water to the intended use. ()

24. Proof of Beneficial Use (Proof). The submittal required in Section 42-217, Idaho Code. ()

25. Source. The name of the natural water body at the point of diversion. ()

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. -- 024. (RESERVED)

025. AUTHORITY OF REPRESENTATIVE.

01. Proof of Beneficial Use. When the proof of beneficial use, examination report, and drawings are filed by a CWRE on behalf of an owner, written evidence of authority to represent the owner shall be filed with the proof. ()

02. Responsibility. It is the responsibility of the permit holder or authorized representative to submit proof and ensure submission of a completed examination report by the due date in acceptable form to the Director by either paying the required examination fee to the Department or by employing a CWRE. ()

026. -- 029. (RESERVED)

030. QUALIFICATION, EXAMINATION AND APPOINTMENT OF CERTIFIED WATER RIGHT EXAMINER.

01. Consideration. Any professional engineer or geologist qualified and registered in the state of Idaho with the knowledge and experience necessary to satisfactorily complete an examination as determined by the Director shall be considered for appointment as a 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 prescribed in Section 42-217a, Idaho Code. ()

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

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 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 prescribed in Section 42-217a, Idaho Code, shall accompany an application for renewal. ()

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 CWRE. The permit holder shall be responsible for costs associated with proof submittal including examination and examination report

preparation. ()

08. Examinations. The Director may authorize sufficiently knowledgeable and experienced Department employees to conduct examinations during the course and scope of their employment with the Department. Upon termination of employment with the Department, such examiners, unless appointed as a CWRE under provisions of these rules, are not authorized to conduct examinations. ()

09. Ingress or Egress Authority. Appointment as a CWRE does not grant ingress or egress authority and does not convey authority unless explicitly prescribed in these rules. ()

10. Reports. The Director will not accept an examination report prepared by a CWRE or a 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. The Director will presume an actual or potential conflict of interest exists and will not accept an examination report from the following: ()

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

b. The person who sold or installed the project works. ()

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

031. -- 034. (RESERVED)

035. EXAMINATION FOR BENEFICIAL USE.

01. Examination 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: ()

a. Each permitted use developed or partially developed. Any undeveloped permitted use shall be noted. Any use determined to exist which are not authorized by the permit being examined shall be described in detail. ()

b. The location of the POD described by legal subdivision and a concise description of the diversion works and a general description of the conveyance works. This description must trace the water from the POD to the POU. 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 POD at the source of the water supply shall be described. Any schematic diagrams, photographs, digital images, and maps sufficient to locate and describe the diversion, conveyance and usage systems shall be included. ()

c. Any interconnection of water use with another water right or conveyance system. Interconnection includes, but is not limited to, sharing the same POD, distribution system, POU, or beneficial use. The examination report shall include an evaluation that demonstrates the water use is distinct from an existing water right, is an alternate source of water, or is an increment of beneficial use not authorized by an existing water right. ()

d. 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. ()

e. The method of compliance with each permit condition of approval. ()

f. The location of the POU of each use described by legal subdivision. ()

- g.** The number of irrigated acreage shall be described to the nearest whole acre in each forty (40) acre legal subdivision. For irrigation of less than ten (10) acres, acreage shall be described to the nearest one-tenth (0.10) acre. ()
- i.** The boundaries of the irrigated area and the location of the project works providing water to each area shall be shown on a map submitted with the examination report. The full or partial acreage in each legal subdivision of forty (40) acres or government lot shall be shown. ()
- h.** If more than one (1) POD is developed with separate diversion works and conveyance works, a description of each separate system. 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. ()
- i.** The annual diversion volume based on actual beneficial use during the development period for each permitted use. The method of determining the annual diversion volume shall be described. The annual diversion volume shall account for seasonal variations in factors affecting water use, including seasonal variations in water availability. Volumes may include reasonable conveyance losses actually incurred by the water user. ()
 - 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. ()
- j.** The following water uses are exempt from the volume reporting requirement: ()
 - i.** Diversion to storage. ()
 - ii.** Domestic use from ground water as defined in Section 42-111, Idaho Code. ()
 - iii.** In-stream watering of livestock. (3-18-22)
 - iv.** Fire protection. (Volume is required for fire protection storage.) (3-18-22)
 - v.** Non-consumptive on-stream power generation. ()
 - 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 require a volume to be reported: ()
 - (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)
 - ix.** Ground water recharge water rights owned by the Idaho Water Resource Board. ()

k. For fish propagation, the total number of holding/rearing ponds and the dimensions and volume of each pond. The annual volume shall be calculated based on the changes of water per hour. ()

l. Description of the extent of beneficial use made of the water for all non-irrigation use. ()

m. The period during each year that water is used for each permitted use. ()

n. 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. ()

o. The amount 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. ()

p. Amendment recommendations based on actual use if the POU, POD, period of use, or nature of use is different from the permit. ()

q. A map consistent with Subsection 045.03 unless waived by the Director. ()

r. Unless required as a condition of permit approval, an on-site examination and direct measurement of the diversion rate 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, photographs, aerial imagery, or other records: ()

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

ii. Storage of up to fourteen point six (14.6) acre-feet of water for stockwater, aesthetic, recreation, or wildlife. ()

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. Examination Report Acceptability. ()

a. An examination report shall be prepared by or under the supervision of a CWRE or authorized Department employee. An examination report submitted by a CWRE must be properly endorsed with the CWRE's engineer or geologist seal and signature. An examination report received from a CWRE will be accepted if the report includes all the information required including the information required by Subsection 035.01. ()

b. An examination report not completed as required by these rules will be returned for completion. The penalty provisions of Section 055 shall apply. ()

c. If the Director determines that an examination report prepared by a CWRE is acceptable but that additional information is needed to clarify the examination report, the Director will notify the 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. ()

d. An examination report that indicates a measuring device or lockable controlling works, required as a condition of approval of the permit, is not installed or is not acceptable will be returned unless the Director has formally waived the measuring device requirement or lockable controlling works requirement. ()

03. General. (3-18-22)

a. For irrigation, 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. ()

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 from the POD to the POU which are determined by actual measurement may be allowed if the diversion rate does not exceed the permitted rate and the loss is determined by the Director to be reasonable. ()

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

e. For irrigation, the irrigated areas may be generally described if 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, 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 irrigated acres may be described generally if the total irrigated acres has been accurately determined and are shown in the examination report. The amount of water beneficially used under such projects must be shown in the examination report. ()

036. -- 039. (RESERVED)

040. WATER MEASUREMENT.

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. ()

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 operating at normal capacity. ()

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 examination report shall describe the method used in making the measurement, the date when made, the name of the person making the measurement, a description of the location where the measurement was taken and shall include sufficient information, including current meter notes, rating tables, or calibration information to enable the Director to check the quantity of water measured in each case. ()

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 diversion works where the flow rate cannot be measured accurately due to the physical characteristics of the diversion and distribution system. ()

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.

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

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

03. Map. An aerial image or United States Geological Survey Quadrangle map depicting the POD and POU shall be of a reasonable scale and show the location of the POU and POD to the nearest forty (40) acre tract. The location of any ditch, canal, mainline, or other conveyance work must be shown. ()

04. Drawings. Drawings 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. ()

05. Photographs. Photographs of the diversion works, conveyance works, and other prominent features of the project works shall be clearly labeled and attached to the examination report. ()

046. -- 049. (RESERVED)

050. LICENSE EXAMINATION FEE.

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

a. The examination fee shall be payable to the Department unless the examination is conducted by a CWRE. ()

b. The Department will not conduct an examination for which the fee has not been paid to the Department unless exempted in Subsection 009.04, except that for any prior examination, whether conducted by a CWRE or by a Department employee, the 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 on its own initiative. ()

c. The Department will not 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. If payment is received within the thirty (30) day period, the Department will not reduce the rate or volume licensed 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 based on the original examination fee paid. For the purpose of determining advancement of priority for late 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. ()

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

e. An examination fee equal to the initial examination fee paid to the Department shall be paid for a reexamination made at the request of the permit holder except upon a showing of error by the Department on the initial examination. ()

02. Examinations Conducted by Certified Water Right Examiners. ()

a. The examination fee required by Section 42-217, Idaho Code is not applicable for an examination conducted by or under the supervision of a CWRE. ()

b. A permit holder may not choose to have the examination conducted by the Department after selecting a CWRE. ()

c. After submitting proof of beneficial use and paying an examination fee to the Department, but before the examination, a permit holder may submit an examination report completed by a CWRE. Because the examination fee is an essential component of timely proof submittal, the Department will not refund the examination

fee. ()

051. -- 054. (RESERVED)

055. PENALTY.

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

02. Failure to Submit. Failure to submit either the license examination fee or an acceptable examination report prepared by or under the supervision of a 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. ()

056. -- 999. (RESERVED)