

# Recommendation Memo

**State of Idaho**

**Department of Water Resources**

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**Date:** January 13, 2023

**To:** Idaho Water Resource Board

**Thru:** Gary Spackman, Director, and Mat Weaver, Deputy Director

**From:** Tim Luke, Water Compliance Bureau Chief *TJL*

**Subject:** Memorandum re: IDWR's Rules and Minimum Standards for the Construction and Use of Injection Wells, IDAPA 37.03.03 with Retrospective Analysis and Recommendation.

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## **Executive Order 2020-01**

Executive Order No. 2020-01 (the "EO") requires the Idaho Department of Water Resources ("IDWR") and the Idaho Water Resource Board ("IWRB") (collectively "Agencies") to review all rule chapters under the Agencies' purview by 2026. The review must be a critical and comprehensive review. EO at 2.

Pursuant to the schedule already determined by the Division of Financial Management ("DFM") and the Agencies, IDWR's *Rules and Minimum Standards for the Construction and Use of Injection Wells* ("Injection Well Rules" or "Rules"; IDAPA 37.03.03) must be analyzed in the third year of the review process.

Therefore, the EO requires the Agencies to review the Injection Well Rules to determine whether they should be repealed altogether or re-promulgated. If the Agencies desire to re-promulgate the Injection Well Rules, the Agencies must retrospectively analyze the rules and determine whether the rules need to be re-promulgated, and, if so, to recommend an approach. *Id* at 3.

This Recommendation Memorandum ("Memo") provides analysis and recommendations for the Director and Board.

## **Retrospective Analysis**

### **1. What are the benefits of the current rule?**

The Injection Well Rules provide minimum standards for the construction and use of injection wells to protect groundwater resources from contamination or deterioration and preserve groundwater resources for diversion to beneficial uses (*see Idaho Code § 42-3901*). The Rules require all injection wells to be permitted and constructed in accordance with the Well Construction Standards Rules (IDAPA 37.03.09). The Injection Well Rules are necessary to maintain state primacy for regulation of injection wells pursuant to the federal Safe Drinking Water Act, under which authority Idaho regulates the permitting,

construction, and operation of certain injection wells within the state. Additional benefits of the current Rules include:

- A clear classification of injection wells consistent with federal law and identification of classifications that are either authorized or prohibited. Currently, the state is authorized to permit construction and abandonment of Class V deep and shallow injection wells only. Class II injection wells (oil and gas) in Idaho are regulated by the US Environmental Protection Agency (“EPA”).
- Clarification of permit requirements and processing procedures for Class V shallow and deep injection wells, including information necessary to review and process permit applications.
- Identification of exemptions or exceptions to permit requirements. For example, an open-loop heat pump injection well greater than 18 feet in depth used solely for disposal of heat pump water at a rate not exceeding 50 gallons per minute does not require a permit and is not subject to a recurring permit cycle.
- Outlines procedures for hearings regarding agency decisions for approval, disapproval, or cancellation of permit applications, or decisions addressing petitions for exemption from permit requirements.
- Outlines violations and procedures for notice and enforcement of violations.
- Establishes minimum standards for quality of injected fluids using existing Idaho Ground Water Quality Standards, IDAPA 58.01.11, administered by the Idaho Department of Environmental Quality.
- Establishes criteria for location and use of injection wells.
- Establishes minimum monitoring, record, and reporting requirements for deep injection wells to assure that injection activities do not endanger human health or a public or domestic water supply.
- Allows IDWR to seek assistance, through memorandums of understanding, from other state and local government agencies or jurisdictions to inventory, monitor and inspect shallow injection wells.

## 2. Do the benefits of the rule justify the costs of the rule?

Idaho relies on groundwater for over 95% of its drinking water. Ground water is vital for irrigation to support Idaho’s large agricultural economy, as well as the commercial, domestic, municipal, and industrial economic sectors of the State. The Rules add clarification and flexibility to statutes authorizing certain injection activities that benefit the state economy while protecting the quality of state groundwater resources. The Rules are therefore important to the public interest of the State.

Injection well permit fees are nominal (\$75 to \$100 per permit application), and are controlled by statute, not rule. Rule modifications will not include new fees or changes to fees set by statute. Potential rule modifications should not result in added costs or time necessary for inventory, permitting or monitoring of injection wells. IDWR employs one to one and one-half full-time employees to manage the injection well program. Seventy-five percent of the cost of the program is offset by a grant administered by the EPA. The grant aids with maintaining state primacy of the program under the federal Safe Water Drinking Act.

Construction and use of injection wells in Idaho is a somewhat limited activity. IDWR generally receives about 71 applications or renewals per year for deep injection wells, and about 330 shallow injection well inventory forms per year. There are currently about 3,000 deep injection wells on record in the state (not including exempt open-loop heat pump return or injection wells). Many annual shallow injection well inventory forms, and \$75 inventory form fees, are collected by local jurisdictions on behalf of the UIC Program through memorandums of understanding with IDWR; IDWR collects 33% of the shallow injection well fees to support administrative services for the program.

Based on the information summarized above, IDWR concludes that the benefits of the Rules justify the costs of the Rules. The additional protection to ground water resources in Idaho afforded by these rules justifies the relatively minor costs attributed to minimum standards imposed by the Rules.

**3. Are there less restrictive alternatives to accomplish the benefits of the rule?**

The current Well Injection Rules add clarification to the Injection Well Act (Chapter 40, Title 42, Idaho Code), authorize flexibility in the application of statutes, and establish minimum standards for construction and use of both shallow and deep injection wells.

IDWR will propose removing certain sub-rules that are unnecessary or obsolete, including sub-rules that reiterate current statutes. The negotiated rulemaking process will determine whether the Rules are necessary or require substantive modification. The negotiated rulemaking process is an opportunity for IDWR to consider all suggested alternatives or other recommendations related to these Rules.

**4. Recommendation**

Idaho Code § 42-3903 requires the construction and use of deep injection wells be authorized by permit issued by the Director. Idaho Code § 42-3903A requires the construction and use of shallow injections wells be authorized by the IWRB. Idaho Code § 42-3905 requires that all deep injection well applications and shallow injection well inventory forms be accompanied by specified filing fees. Idaho Code § 42-3913 requires the IWRB to adopt rules establishing minimum standards for the construction or abandonment of deep injection wells to protect groundwater from waste and unreasonable contamination. Idaho Code § 42-3914 requires the IWRB to develop criteria and standards for the injection of fluids, while Idaho Code § 42-3915 requires the IWRB not to adopt regulations regarding the inventory of shallow injection wells that are more stringent than federal law. Given these statutory mandates, and to maintain state primacy for regulation of injection wells under the federal Safe Drinking Water Act, IDWR staff recommends the Rules be repealed and replaced through the negotiated rulemaking process.

Pursuant to the negotiated rule process, IDWR staff will seek comment on whether any non-regulatory measures can be implemented in lieu of the Injection Well Rules. IDWR will propose some minor rule changes or updates for purposes of clarification and consistency with current statutes.