

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF THE BOARD'S ZERO-BASED REGULATION NEGOTIATED RULEMAKING OF IDAPA 37.03.07 STREAM CHANNEL ALTERATION RULES RULE 61 AND 37.01.01 RULES OF PROCEDURE

RESOLUTION TO PUBLISH THE PROPOSED RULES IN THE SEPTEMBER 1, 2021, IDAHO ADMINISTRATIVE BULLETIN VOL. 21-9 OR THE OCTOBER 6, 2021, IDAHO ADMINISTRATIVE BULLETIN VOL. 21-10

1 WHEREAS, the Idaho Water Resource Board (“IWRB”) is the executive branch entity with
2 statutory oversight and authority over 12 chapters of Administrative Rules in IDAPA 37, including:
3 IDAPA 37.01.01 Rules of Procedure of the IDWR; IDAPA 37.02.01 Comprehensive State Water
4 Plan Rules; IDAPA 27.02.03 Water Supply Bank Rules; IDAPA 37.02.04 Shoshone Bannock Tribal
5 Water Supply Bank Rules; IDAPA 37.03.03 Rules and Minimum Standards for the Construction
6 and Use of Injection Wells; IDAPA 37.03.04 Drilling for Geothermal Resources Rules; IDAPA
7 37.03.05 Mines Tailing Impoundment Structures Rules; IDAPA 37.03.06 Safety of Dams Rules;
8 IDAPA 37.03.07 Stream Channel Alteration Rules; IDAPA 37.03.09 Well Construction Standards
9 and Rules; and IDAPA 37.03.10 Well Driller Licensing Rules; and

10 WHEREAS, Governor Little’s Executive Order 2020-01 Zero Based Regulation (“Executive
11 Order”) directs each agency to comprehensively review all rules under its authority and “if
12 applicable” to promulgate new rules to take their place where necessary, and to conduct this
13 zero-based review (“ZBR”) over a five year period from 2021 to 2025;

14 WHEREAS, the IWRB adopted a five-year ZBR rulemaking schedule that identifies the
15 review of IDAPA 37.01.01 Rules of Procedure and 37.03.07 Stream Channel Alteration Rules in
16 2021;

17 WHEREAS, the Executive Order directs any “agency wishing to renew a rule chapter
18 beyond [its ZBR] review date” to promulgate a new rule chapter after conducting a “retrospective
19 analysis” of the rule;

20 WHEREAS, the IWRB has conducted retrospective analysis of its Rules of Procedure and
21 Stream Channel Alteration rules and concluded that both rules are needed to carry out the
22 IWRB’s statutory duties and responsibilities fairly, efficiently, and consistently;

23 WHEREAS, the Executive Order directs agencies to “start the new rulemaking from a zero-
24 base, and not seek to simply reauthorize their existing rule chapter without a critical and
25 comprehensive review”;

26 WHEREAS, the IWRB’s April 7 notice of intent to promulgate rules clearly stated its intent
27 to “repeal and promulgate rules” “consistent with Executive Order 2020-01: Zero-Based
28 Regulation” and where the IWRB has conformed to all ZBR processes and requirements
29 throughout the rulemaking process:

30 WHEREAS, the Executive Order directs agencies to “publish a notice of intent to
31 promulgate rules and hold, at a minimum, two public hearings that are designed to maximize
32 public participation in the rulemaking process”;

33 WHEREAS, the IWRB held two public hearings as part of its negotiated rulemaking of the
34 Stream Channel Alteration rules on April 27, 2021 and June 2, 2021, and held two public hearings
35 as part of its negotiated rulemaking of the Rules of Procedure on May 12, 2021, and June 23,
36 2021;

37 WHEREAS, the Executive Order directs agencies to promulgate new rule chapters that
38 “reduce the overall regulatory burden, or remain neutral, as compared to the previous chapter”;

39 WHEREAS, the Stream Channel Alterations Proposed Rule has a “neutral” effect on the
40 rule and only adds 54 words increasing the count from 7,023 to 7,077 words and the Rules of
41 Procedure Proposed Rule significantly “reduces” the rule by 5,234 words decreasing the word
42 from 16,144 to 10,910 words;

43 NOW, THEREFORE BE IT RESOLVED that the IWRB adopts the following proposed rules and
44 directs that they be adopted as submitted to the Idaho Office of Administrative Rules
45 Coordinator:

- 46 • 37.01.01, *Rules of Procedure of the Idaho Department of Water Resources; and*
- 47 • 37.03.07, *Stream Channel Alteration Rules.*

48 NOW, THEREFORE BE IT RESOLVED that the IWRB authorizes the notice and publication
49 of the above proposed rules.

DATED this 27th day of August, 2021.



JEFF RAYBOULD, Chairman
Idaho Water Resource Board



ATTEST
JO ANN COLE-HANSEN, Secretary
Idaho Water Resource Board