

BEFORE THE IDAHO WATER RESOURCE BOARD

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

RESOLUTION TO ADOPT AND PUBLISH
PENDING ZBR RULES IN THE DECEMBER 1,
2021, IDAHO ADMINISTRATIVE BULLETIN
VOL. 21-12

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; and

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; and

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; and

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; and

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”; and

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 the [Executive Order]” and where the IWRB
28 has conformed to all ZBR processes and requirements throughout the rulemaking process; and

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

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

36 WHEREAS, following negotiations and after taking due consideration of all comments
37 received during negotiations, the IWRB adopted and authorized for publication IDAPA 37.01.01
38 Rules of Procedure and IDAPA 37.03.07 Stream Channel Alteration Rules as proposed rules in its
39 Resolution No. 29-2021 on August 27, 2021; and

40 WHEREAS, DFM published IDAPA 37.03.07 Stream Channel Alteration Rules (Docket No.
41 37-0307-2101) as proposed rules, on September 1, 2021, in [Idaho Administrative Bulletin Vol. 21-
42 9](#) (pages 108-132); and

43 WHEREAS, the period for the public to submit written comment or oral comment
44 regarding rulemaking Docket No. 37-0307-2101 tolled on September 22, 2021, with one
45 comment received; and

46 WHEREAS; the single comment received opposed all changes to IDAPA 37.03.07 Stream
47 Channel Alteration Rules contained in the proposed rule and was contrary to the support and
48 approval for the changes expressed by most of the stakeholders that participated and
49 commented in the rulemaking negotiations; and

50 WHEREAS, DFM published IDAPA 37.01.01 Rules of Procedure (Docket No. 37-0101-2101)
51 as proposed rules, on October 6, 2021, in [Idaho Administrative Bulletin Vol. 21-10](#) (pages 86-105);
52 and

53 WHEREAS, the period for the public to submit written comment or oral comment
54 regarding rulemaking Docket No. 37-0101-2101 tolled on October 27, 2021, with no comments
55 received; and

56 NOW, THEREFORE BE IT RESOLVED that the IWRB adopts and authorizes the notice and
57 publication of the proposed IDAPA 37.03.07 Stream Channel Alteration Rules (Docket No. 37-
58 0307-2101) as pending rules and directs their adoption as published on September 1, 2021, in
59 Idaho Administrative Bulletin Vol. 21-9.

60 NOW, THEREFORE BE IT FURTHER RESOLVED that the IWRB adopts and authorizes the
61 notice and publication of the proposed IDAPA 37.01.01 Rules of Procedure (Docket No. 37-0101-
62 2101) as pending rules and directs their adoption as published on October 6, 2021, in Idaho
63 Administrative Bulletin Vol. 21-10.

DATED this 19th day of November 2021.



JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST



JO ANN COLE-HANSEN, Secretary
Idaho Water Resource Board