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

WHEREAS, the Idaho Water Resource Board ("IWRB") is the executive branch entity with statutory oversight and authority over 12 chapters of Administrative Rules in IDAPA 37, including:

1. IDAPA 37.01.01 Rules of Procedure of the IDWR; IDAPA 37.02.01 Comprehensive State Water Plan Rules; IDAPA 27.02.03 Water Supply Bank Rules; IDAPA 37.02.04 Shoshone Bannock Tribal Water Supply Bank Rules; IDAPA 37.03.03 Rules and Minimum Standards for the Construction and Use of Injection Wells; IDAPA 37.03.04 Drilling for Geothermal Resources Rules; IDAPA 37.03.05 Mines Tailing Impoundment Structures Rules; IDAPA 37.03.06 Safety of Dams Rules; IDAPA 37.03.07 Stream Channel Alteration Rules; IDAPA 37.03.09 Well Construction Standards and Rules; and IDAPA 37.03.10 Well Driller Licensing Rules; and

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

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

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

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

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

WHEREAS, the IWRB’s April 7 notice of intent to promulgate rules clearly stated its intent to “repeal and promulgate rules” “consistent with the [Executive Order]” and where the IWRB has conformed to all ZBR processes and requirements throughout the rulemaking process; and
WHEREAS, the Executive Order directs agencies to “publish a notice of intent to promulgate rules and hold, at a minimum, two public hearings that are designed to maximize public participation in the rulemaking process”; and

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

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

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

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

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

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

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

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

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