

## IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

### 37.03.08 – WATER APPROPRIATION RULES

#### DOCKET NO. 37-0308-2301 (ZBR CHAPTER REWRITE)

#### NOTICE OF INTENT TO PROMULGATE RULES – ZERO-BASED REGULATION (ZBR) NEGOTIATED RULEMAKING

**AUTHORITY:** In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that the Idaho Department of Water Resources (“IDWR”) intends to repeal and promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Section 42-1805(8), Idaho Code. This action is consistent with Executive Order 2020-01: Zero-Based Regulation, which directs agencies to review all administrative rules over the five-year period of 2021-2025 (completing review no later than Idaho Legislature sine die 2026).

**MEETING SCHEDULE:** A negotiated rulemaking meeting has been scheduled. Any additional meeting dates will be posted on IDWR’s website at <https://idwr.idaho.gov/legal-action/rules/idwr-rulemaking-2023-2024/water-appropriation-rules/>.

**\*PUBLIC MEETING\***  
**Friday, April 14, 2023 at 2:00 p.m. (MT)**

**In Person:**  
**Idaho Dept. of Water Resources**  
**322 E Front St.**  
**Boise, ID 83720-0098**  
**(Meeting to be held at IDWR Office Conference Rooms B, C & D,**  
**located on the 6th Floor of the University of Idaho Water Center)**

**To sign up for attendance via telephone/videoconference, Contact Jean Hersley at 208-287-4942 or [jean.hersley@idwr.idaho.gov](mailto:jean.hersley@idwr.idaho.gov) by April 10, 2023.**

**Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the agency web site at the following web address: <https://idwr.idaho.gov/legal-action/rules/idwr-rulemaking-2023-2024/water-appropriation-rules/>.**

The meeting site(s) will be accessible to persons with disabilities, if needed. Requests for accommodation must be made not later than five (5) days prior to the meeting to the agency address below.

**METHOD OF PARTICIPATION:** Persons wishing to participate in the negotiated rulemaking must either attend the above-scheduled meeting or identify themselves to IDWR using the phone number or email address listed above in advance of the above-scheduled meeting. Upon conclusion of negotiated rulemaking, any unresolved issues, all key issues considered, and conclusions reached during the negotiated rulemaking will be addressed in a written summary. The summary will be made available to interested persons who contact IDWR or, if IDWR chooses, the summary may be posted on IDWR’s website listed above.

Should a reasonable number of persons respond to this notice, additional negotiated meetings may be scheduled, and all scheduled meetings shall be posted and made accessible on IDWR’s website listed in this notice.

A lack of a sufficient number of responses to this notice of intent may result in the discontinuation of further informal proceedings. In either event, IDWR has sole discretion in determining the feasibility of scheduling and conducting informal negotiated rulemaking and may proceed directly to formal rulemaking if proceeding with negotiated rulemaking is deemed infeasible.

**DESCRIPTIVE SUMMARY AND STATEMENT OF PURPOSE:** The following is a statement in nontechnical language of the substance and purpose of the intended negotiated rulemaking and the principal issues involved:

This rulemaking will review the “Water Appropriation Rules of the Idaho Department of Water Resources,” IDAPA 37.03.08, consistent with [Executive Order 2020-01](#). This chapter governs procedures for obtaining a right to divert and use the unappropriated public water in the state of Idaho and hydropower water rights held in trust by the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. IDWR reviewed these rules pursuant to the zero-based regulation process and is considering the re-promulgation of this chapter with substantive modifications.

IDWR identified the following areas as potential changes from the existing chapter:

- Simplify, condense, and modernize rule language;
- Remove obsolete or unnecessarily duplicative rule language;
- Address relevant statutes adopted or amended since 1986, including but not limited to Idaho Code §§ 42-202, 42-202B, 42-203A, 42-203B, 42-204, 42-230, 42-233, and 42-401; and
- Clarify rule language not adequately explained.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING DRAFT COPIES:** For assistance on technical questions concerning this negotiated rulemaking or to obtain a preliminary draft copy of the rule text, contact [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov) or contact Mathew Weaver, IDWR Rules Review Officer at (208) 287-4800.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments on topics covered during the April 14, 2023 meeting must be directed to the undersigned and must be delivered on or before April 29, 2023. Information regarding any additional public comment opportunities will be posted on IDWR’s website listed above.

DATED this 1st day of April, 2023.

Mathew Weaver, Deputy Director  
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