



# IDAHO DEPARTMENT OF WATER RESOURCES



## Negotiated Rulemaking: IDAPA 37.03.08 – Water Appropriation Rules

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Presented by: Angie Hansen, Water Rights Section Manager

Date: April 14, 2023



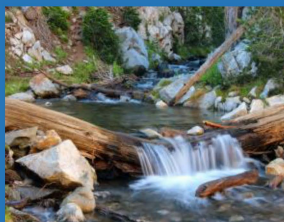
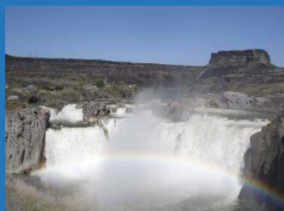


## Presentation Outline

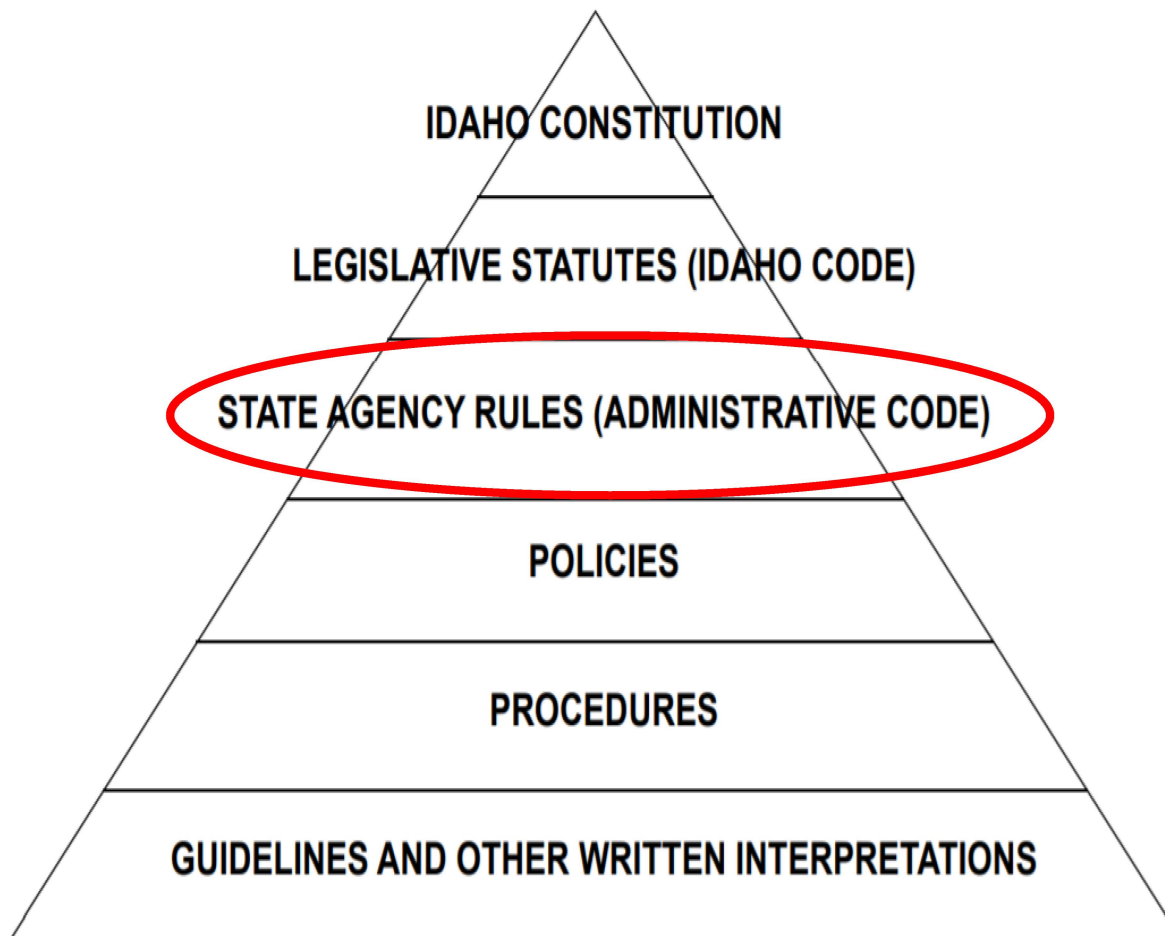
- Water Appropriation Rules
- Zero-Base Regulation
- Negotiated Rulemaking
- Timeline
- Negotiated Rulemaking Meeting(s)
- IDWR Rulemaking Webpages
- Questions







## HIERARCHY OF STATE DOCUMENTS





# Water Appropriation Rules

- Idaho Code Title 42, Chapter 2
  - Appropriation of Water – Permits, Certificates, and Licenses - Survey
  - Idaho Code §§ 42-202, 42-202B, 42-203A, 42-203B, 42-203C, and 42-204
- Idaho Code Title 42, Chapter 1
  - Appropriation of Water – General Provisions
- Idaho Code Title 42, Chapter 4
  - Appropriations for Use Outside State
- Idaho Code Title 42, Chapter 18
  - Director of Department of Water Resources
  - Idaho Code § 42-1805(8)





## Executive Order 2020-01 Zero-Base Regulation

- Signed by Governor in January 2020  
<https://gov.idaho.gov/wp-content/uploads/sites/74/2020/01/eo-2020-01.pdf>
- Requires all agencies to undertake “**zero-base regulation**” review of all their respective rules over a five-year period.
- **2021 marked the first year of the five-year review schedule.**
- “...each agency must publish a notice of proposed rulemaking...to repeal the existing rule chapter.”





# Executive Order 2020-01 Zero-Base Regulation

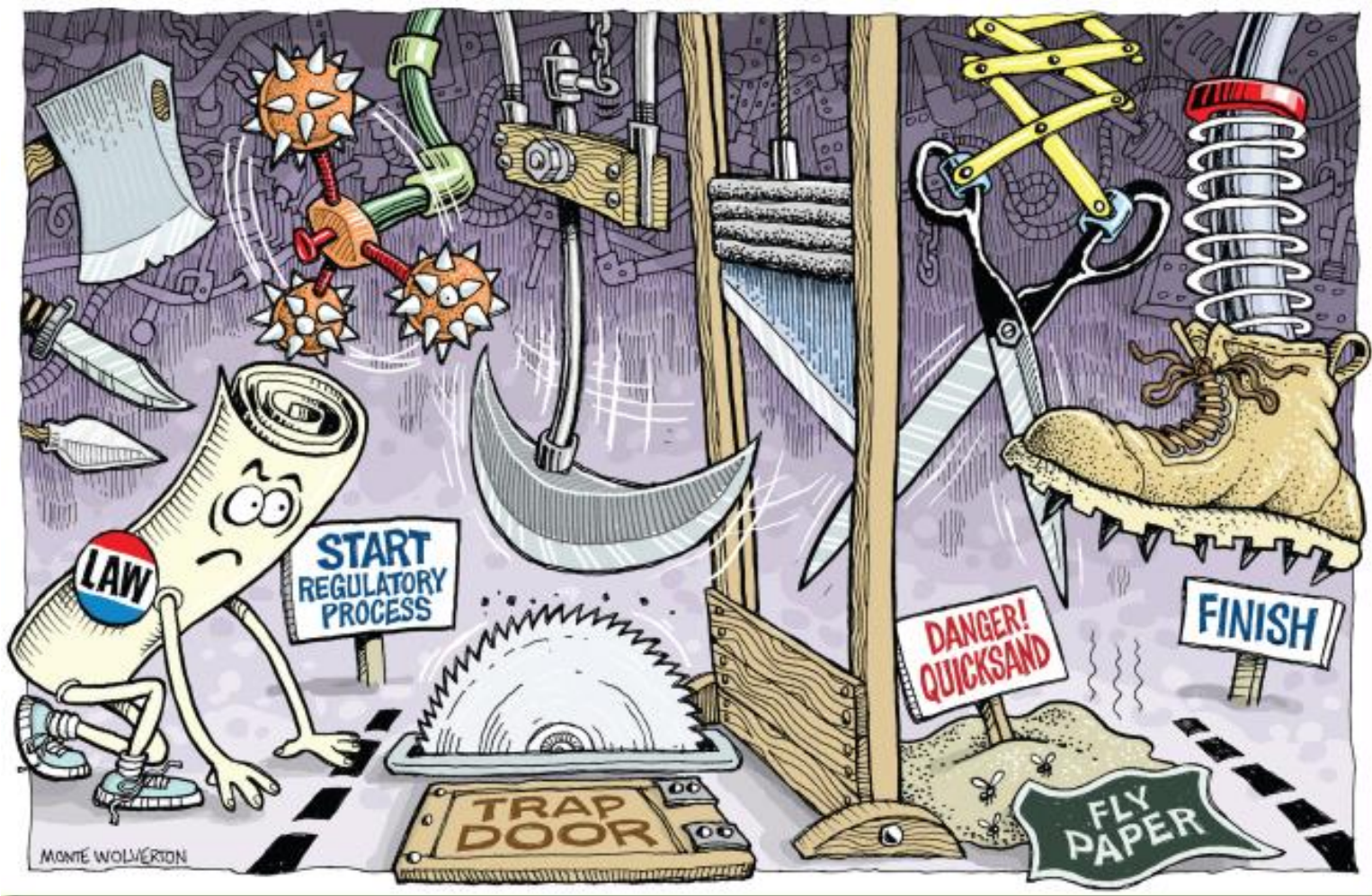
- “An agency wishing to renew a rule chapter...must promulgate a new rule...”
  - “The agency must perform a retrospective analysis of the rule chapter to determine whether the benefits the rule intended to achieve are being realized.”
  - “...whether [the benefits of the rule] justify the costs of the rule,”
  - “...whether there are less restrictive alternatives to accomplish [the rule’s] benefits.”







# Review Negotiated Rulemaking



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# Review Negotiated Rulemaking

- Idaho Code § 67-5220 – Notice of Intent to Promulgate Rules – Negotiated Rulemaking
- (2) The notice of intent to promulgate a rule is intended to facilitate negotiated rulemaking, a process in which all interested persons and the agency seek consensus on the content of a rule. Agencies shall proceed through such informal rulemaking whenever it is feasible to do so in order to improve the substance of proposed rules by drawing upon shared information, knowledge, expertise and technical abilities possessed by interested persons and to expedite formal rulemaking.
- (3) To facilitate the achievement of the purposes of this section, agencies shall, at a minimum:
  - a. Provide a reasonable period of time for interested persons to respond...;
  - b. Provide notice of meetings to interested persons who responded...;
  - c. Upon request, make available to persons attending the meetings all information that is considered by the agency in connection with the formulation of the proposed rule...;
  - d. Consider the recommendations of interested persons concerning the subject of the proposed rule;
  - e. Establish, maintain and timely update the negotiated rulemaking schedule and a list of written comments and other documents and information pertinent to the proposed rule and make that information available to persons attending the negotiated rulemaking meeting;
  - f. Prepare a written summary of unresolved issues, key information considered and conclusions reached during and as a result of the negotiated rulemaking...







# Review Negotiated Rulemaking

- Rule Writer's Manual:  
[https://adminrules.idaho.gov/rulemaking\\_templates/RuleWriterManual.pdf](https://adminrules.idaho.gov/rulemaking_templates/RuleWriterManual.pdf)
- Negotiated Rulemaking, when determined by the agency to be feasible, “must be conducted by the agency with interested parties.”
- Negotiated Rulemaking is “intended to improve the substance of the rule through a consensus building process.”
- Negotiated Rulemaking “provides an opportunity for all interested and affected persons and the agency to discuss possible changes to the rule and attempt to reach a consensus on the proposed amendments...”
- Negotiated Rulemaking “is an informal part of the rulemaking process that precedes all formal rulemaking proceedings.”
- Negotiated Rulemaking is a negotiation with “stakeholders [about] the very provisions of the rule that they (stakeholders) will be subject to and regulated by.”
- Negotiated Rulemaking is an opportunity for stakeholders to “provide input and ideas on the changes the agency is considering.”





# IDWR/IWRB ZBR Rulemaking Approved Five-Year Rulemaking Schedule

## Year 1

Rule No.	Title	Date	Page Count	Word Count	
37.01.01	Rules of Procedure of the IDWR	2000	35	6,440	
37.03.06	Safety of Dams Rules	1993	17	7,708	
37.02.01	Comprehensive State Water Plan Rules	1993	8	3,123	
37.03.07	Stream Channel Alteration Rules 61.01, 61.03	1993	1	83	
		Total	61	17,354	17%

## Year 2

Rule No.	Title	Date	Page Count	Word Count	
37.02.03	Water Supply Bank Rules	1997	9	3,450	
37.03.10	Well Driller Licensing Rules	2000	15	6,416	
37.03.04	Drilling for Geothermal Resources Rules	1993	13	6,197	
37.03.05	Mine Tailings Impoundment Structures Rules	1993	12	4,850	
		Total	49	20,913	20%

## Year 3

Rule No.	Title	Date	Page Count	Word Count	
37.03.08	Water Appropriation Rules	1993	24	10,718	
37.03.03	Rules and Minimum Standards for the Construction and Use of Injection Wells	2013	26	10,488	
		Total	50	21,206	21%





# IDWR/IWRB ZBR Rulemaking Approved Five-Year Rulemaking Schedule

## Year 4

Rule No.	Title	Date	Page Count	Word Count	
37.03.01	Adjudication Rules	2009	11	4,968	
37.03.02	Beneficial Use Examination Rules	2012	13	5,107	
37.03.09	Well Construction Standards and Rules	2009	40	13,225	
Total			64	23,300	23%

## Year 5

Rule No.	Title	Date	Page Count	Word Count	
37.03.11	Conjunctive Management Rules	1994	13	6,405	
37.03.12	IDWR Water Distribution Rules - Water District 34	1994	9	3,692	
37.03.07	Stream Channel Alteration Rules, entire chapter	1993	27	7,681	
37.02.04	Shoshone Bannock Tribal Water Supply Bank Rules	1994	7	1,772	
Total			56	19,550	19%

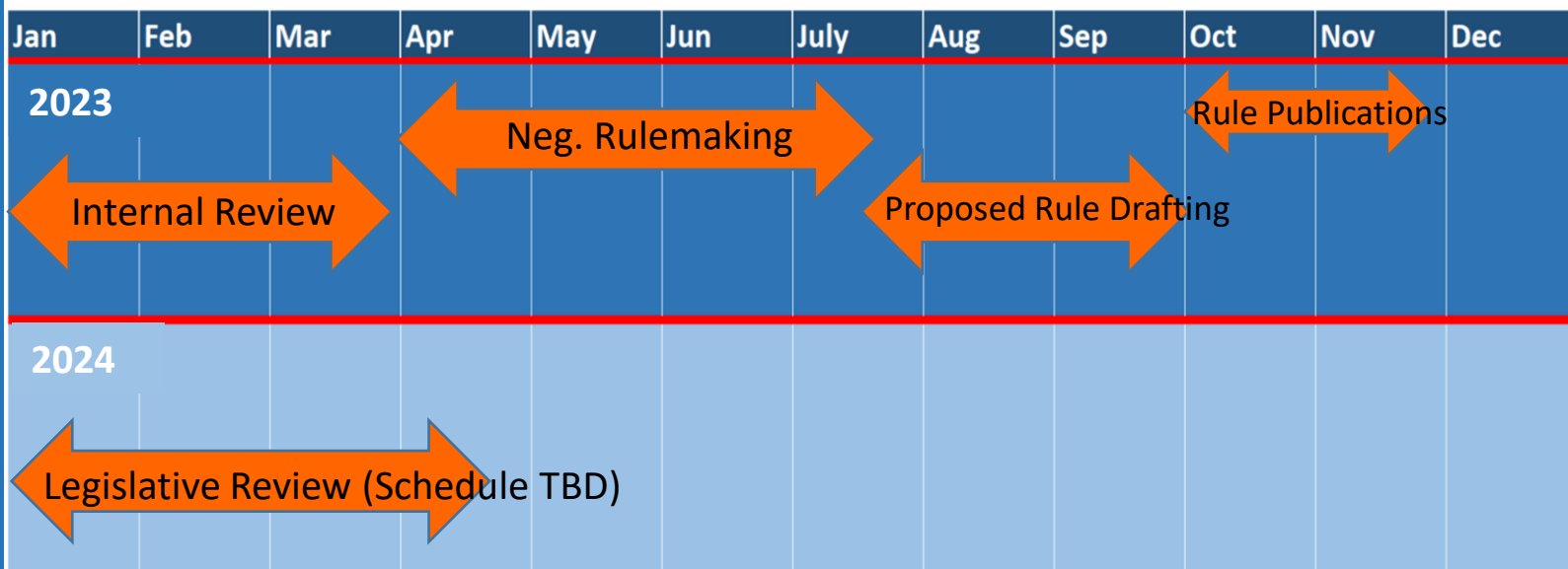
Grand Total: 280 102,323 100%







# ZBR Rulemaking Timeline – Water Appropriation Rules



## Rulemaking Process Key Dates:

- 4/5/2023: Notice of Rulemaking Publication
- 4/14/2023: First Public Meeting
- May-June/2023: Additional Public Meetings (as needed)
- 10/4/2023: Proposed Rule Publication (to DFM by 8/11/2023)
- 12/16/2023: Pending Rule Publication (to DFM by 9/1/2023)



# Negotiated Rulemaking Meetings

## 1. Application Processing:

- Emphasis: Rules 10, 25, 35, 40.01-04, 050, and 055
  - 4/14/2023 Public Meeting
  - 4/29/2023 Written Comment Deadline (tentative)

## 2. Application Review:

- Emphasis: Rules 40.05.a-g. and 45.01
  - 5/12/2023 Public Meeting (tentative)
  - 5/26/2023 Written Comment Deadline (tentative)

## 3. Trust Water Application Review:

- Emphasis: Rules 30, 40.05.h, and 45.02-03
  - 6/1/2023 Public Meeting (tentative)
  - 6/12/2023 Written Comment Deadline (tentative)

## 4. Final Strawman Review:

- 6/30/2023 Public Meeting (tentative)
- 7/14/2023 Written Comment Deadline (tentative)



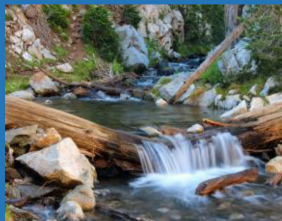


## Today's Meeting Process

1. Requires polite and respectful engagement.
2. We are recording today's proceedings and we will publish the recordings to our website.
3. IDWR has prepared a Preliminary Draft Rule or "Strawman".
4. Stakeholders will have an opportunity to comment regarding the Strawman rule, including submittal of written comments.
5. IDWR representatives are participating to answer some questions.
6. Today is not a debate of the Strawman rule.
7. At the end of the meeting, we will determine whether additional meetings are needed.







**PLEASE NOTE:** Due to a high search traffic, IDWR is experiencing document search issues across multiple online applications (Well Construction, Water Districts). Document searches are more successful early in the morning and later in the evening when traffic is lighter. We are working to resolve the issue as soon as possible and we appreciate your patience. If you require immediate assistance, please contact one of IDWR's Offices and ask to speak to the [Agent of the Day](#).

## Current Topics

Visit IDWR's [News Page](#) to view current press releases.

**Claims Taking Workshops in Sandpoint, April 4th – 6th** – The Department is hosting a 3-day workshop in Sandpoint to assist the public with filing claims in the Clark Fork – Pend Oreille River Basin Adjudication. Visit IDWR's [News Page](#) for more information.

**Groundwater FAQs** – Recently, IDWR has received many questions regarding the management of groundwater resources in the state. To help answer those questions and more, IDWR compiled this [Groundwater Frequently Asked Questions \(FAQs\)](#) document.

**IDWR Negotiated Rulemaking** – The Department is reviewing its administrative rules, consistent with the Governor's Zero Based Regulation, Executive Order 2020-01. For more information visit, IDWR's [Rulemaking](#) page or follow the links below for specific rulemaking activities.

[2022/2023 Rulemaking](#)

[2023/2024 Rulemaking](#)

## Upcoming Events

**12**  
APR

9:00 am - 11:00 pm

**APRIL WATER SUPPLY  
MEETING**

Wednesday

**13**  
APR

10:00 am

**UPPER SNAKE RIVER  
ADVISORY COMMITTEE  
MEETING NO. 4-23**

Thursday, Idaho Falls/Zoom

**14**  
APR

2:00 pm - 3:00 pm

**PUBLIC NEGOTIATED  
RULEMAKING MEETING |  
IDAPA 37.03.08 WATER**

**APPROPRIATION RULES**

Friday, IDWR State Office, Conf. Rms. 602C&D

**19**  
APR

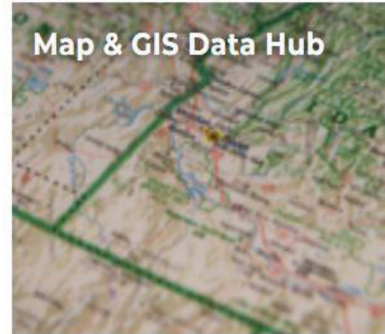
9:00 am - 12:00 pm

**WOOD RIVER VALLEY MTAC**

Wednesday, Boise / Zoom

[See All Events](#)

## Map & GIS Data Hub



## Water Resource Board





## IDAHO DEPARTMENT OF WATER RESOURCES

[Water Rights](#) • [Wells](#) • [Streams/Dams/Floods](#) • [Forms](#) • [Water Data](#) • [Maps/Spatial Data](#) • [Legal](#) • [Board](#) • [About IDWR](#)

[Home](#) / [Legal Actions](#) / [Statutes, Rules, and Hearing Procedures](#) / [IDWR Rulemaking 2023/2024](#)

### Legal Actions

### Archived Legal Matters

### Orders ▾

### Settlements ▾

### Curtailment Notices and Orders ▾

### Guidance Documents

### Statutes, Rules, and Hearing Procedures ▾

### Administrative Actions

### Delivery Call Actions

### District Court Actions

### Mitigation Plan Actions

## IDWR Rulemaking 2023/2024

The following table summarizes the IWRB's and IDWR's rulemaking activities for the 2023/2024 rulemaking period.

Show  entries

Search:

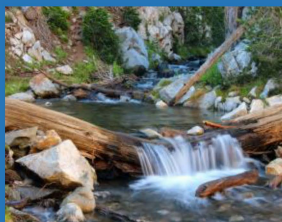
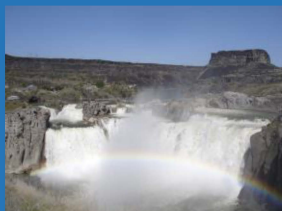
Authorizing Authority	Section	Docket Description	Status
IWRB	Water Compliance Bureau	ZBR* Rulemaking – IDAPA 37.03.03 UIC Rules	Pending Initiation
IWRB	Water Allocations Bureau	ZBR* Rulemaking – IDAPA 37.03.08 Water Appropriation Rules	Pending Initiation

Showing 1 to 2 of 2 entries

[Previous](#) [Next](#)

\*ZBR stands for "zero-base" rulemaking or rulemaking by the IWRB and IDWR conducted in compliance with the Governor's Zero-Based Regulation [Executive Order 2020-01](#).

If you have questions about IDWR's rulemaking process contact [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov) or contact Mat Weaver, IDWR's Rules Review Officer, at 208.287.4800.







## Legal Actions

### Archived Legal Matters

#### Orders ▾

#### Settlements ▾

#### Curtailment Notices and Orders ▾

#### Guidance Documents

#### Statutes, Rules, and Hearing Procedures ▾

#### Administrative Actions

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# Water Appropriation Rules

## IDAPA 37.03.08

The IWRB is negotiating these rules as part of its requirement to review each rule every 5 years consistent with the Governor's Zero-Based Regulation [Executive Order 2020-01](#).

### Scheduled Meetings and Deadlines

- [Public Meeting: Friday, April 14, 2023](#) – Written Comment Deadline Saturday, April 29, 2023
- [Agenda](#) – April 14, 2023

### Documents

- [Preliminary Draft Rule \(Strawman v1.0\)](#) – April 10, 2023
- [Preliminary Draft Rule \(Strawman v1.0\) with Redline](#) – April 10, 2023
- [IDAPA 37.03.08 – Notice of Intent to Promulgate Rules](#) – Zero-Based Regulation Negotiated Rulemaking (Admin. Bulletin Vol. 23-4) – April 5, 2023
- [IDAPA 37.03.08 Prospective Analysis](#) – December 5, 2022
- [IDAPA 37.03.08 Recommendation Memo](#) – November 30, 2022

### Comments

Comments may be sent by email or mail to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov) or

IDWR Rules Review Officer  
PO Box 83720  
Boise, ID 83720

When submitting comments, please cite the docket number or IDAPA rule chapter to which your remarks apply. Please be aware that your comments will become part of the public rulemaking record, and may be published to IDWR's

## Terminology

- [+ Curtailment](#)
- [+ Delivery Call](#)
- [+ Mitigation Plan](#)

## Statutes & Rules

Listed below are legal considerations regarding water rights, irrigation, and floodplain management in Idaho.

### Idaho Constitution

- [Article XV: Water Rights](#)

### Idaho Statute

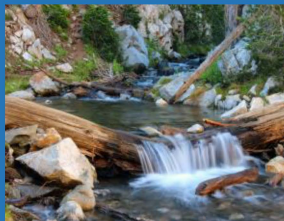
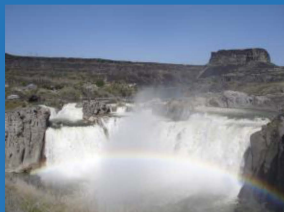
- [Title 42: Irrigation and Drainage — Water Rights and Reclamation](#)
- [Title 43: Irrigation Districts](#)
- [Title 46, Chapter 10: State Disaster Preparedness Act](#)

### Idaho Administrative Code

- [IDAPA Chapter 37: Idaho Water Resource Board and Idaho Dept. of Water Resources](#)

## Hearing Procedures

[Overview of IWRB & IDWR Contested Case Processes](#)







## Negotiated Rulemaking Next Steps

- Submit written comments on Rules covered in today's meeting by April 29, 2023 (tentative)
- Comments submitted to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov)
- Reference the rule chapter: IDAPA 37.03.08
- If appropriate, IDWR will hold additional meetings and revise the Strawman Rule based on comments
- Goal: Publish a Proposed Rule in October Bulletin





IDAHO DEPARTMENT OF  
**WATER RESOURCES**

# Questions?



Angie Hansen, Water Rights Section Manager  
Idaho Department of Water Resources  
[Angela.Hansen@idwr.idaho.gov](mailto:Angela.Hansen@idwr.idaho.gov)  
208-287-4951



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