



IDAHO DEPARTMENT OF
WATER RESOURCES



Negotiated Rulemaking:

IDAPA 37.03.08 – Water Appropriation Rules – 3rd Meeting

Presented by: Angie Hansen, Water Rights Section Manager

Date: June 15, 2023

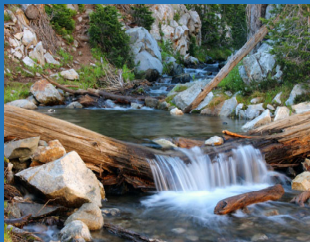


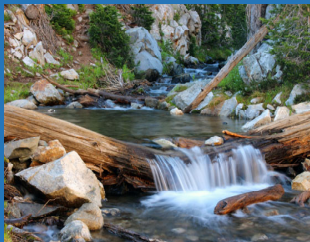
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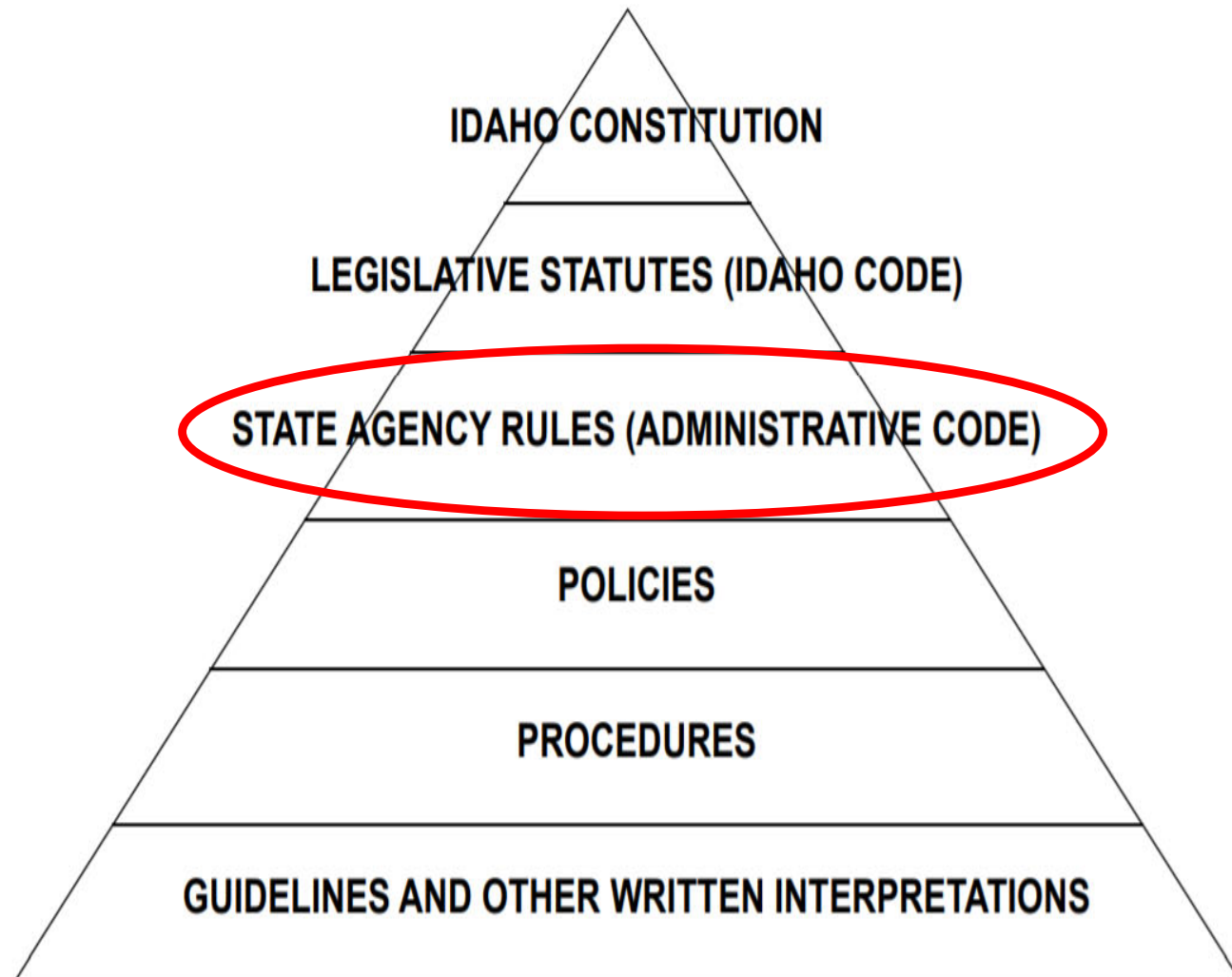
Meeting Agenda

- Abbreviated Overview of Rulemaking
- Next Steps
- Questions
- Written Comments and Clarifying Questions Handout
- Oral Comments
- Closing Remarks





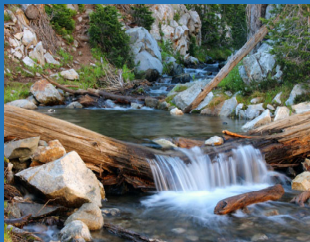
HIERARCHY OF STATE DOCUMENTS





Water Appropriation Rules

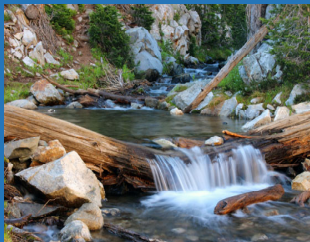
- Idaho Code Title 42, Chapter 2
 - Appropriation of Water – Permits, Certificates, and Licenses - Survey
 - Idaho Code §§ 42-202, 42-202B, 42-203A, 42-203B, 42-203C, and 42-204
- Idaho Code Title 42, Chapter 1
 - Appropriation of Water – General Provisions
- Idaho Code Title 42, Chapter 4
 - Appropriations 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

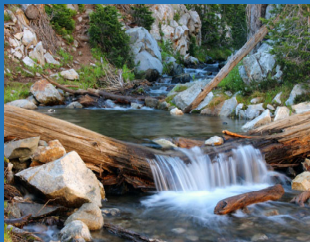
- Signed by Governor in January 2020
<https://gov.idaho.gov/wp-content/uploads/sites/74/2020/01/eo-2020-01.pdf>
- Requires all agencies to undertake “**zero-base regulation**” review of all their respective rules over a five-year period.
- **2021 marked the first year of the five-year review schedule.**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





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...

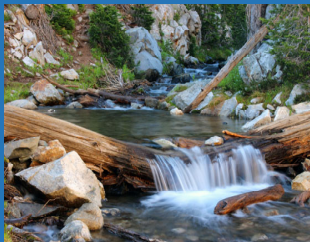




Comments Summary and Clarifying ?'s for Rules 25, 40.05.f, and 45.02-03

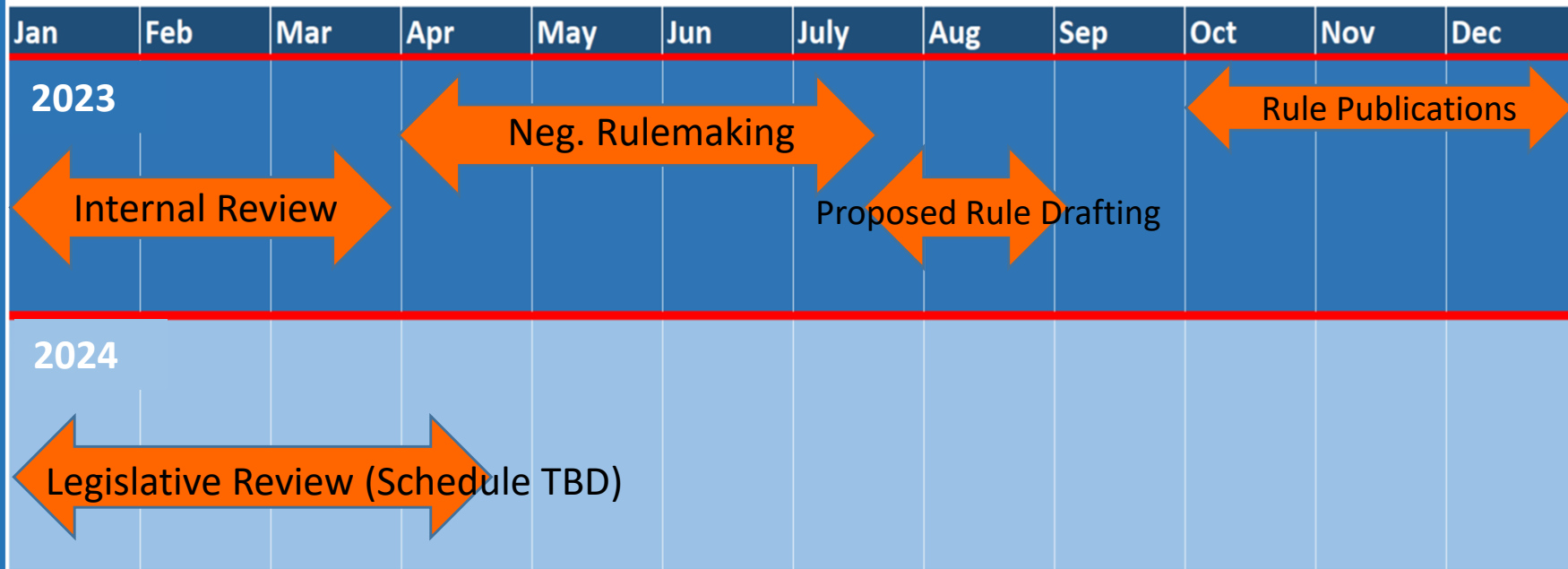
(See 6/13/23 Meeting Handout)

- **4/14/2023 Meeting Oral Comments**
 - 1 entity offered a total of 2 comments
 - Rules 10 and 25
- **Written Comments prior to 6/13/2023**
 - 7 entities offered a total of 63 comments and/or questions
 - Rules 10, 25, 30, 40.05.h/f., 45.02-03, and 50
- **Follow-Up Questions**
 - Is the procedure for processing applications in the trust water area clear?
 - Origins of significant reduction and public interest presumptions?



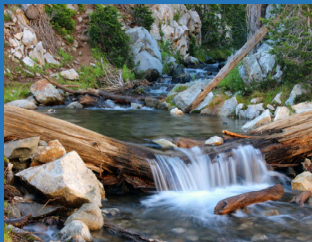


ZBR Rulemaking Timeline – Water Appropriation Rules



Rulemaking Process Key Dates:

- 4/5/2023: Notice of Rulemaking Publication
- 4/14/2023: First Public Meeting
- May-July/2023: Additional Public Meetings
- 10/4/2023: Proposed Rule Publication (to DFM by 9/1/2023)
- 1/3/2024: Pending Rule Publication (to DFM by 11/27/2023)





Negotiated Rulemaking Meetings

1. Intro to process: Held 4/14/2023

2. Application Processing and Review:

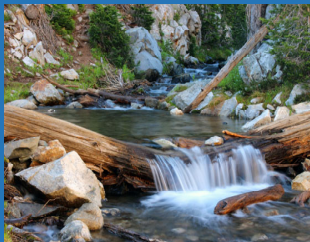
- Emphasis: Rules 10, 25, 35, 40.01-05.g, 45.01, 050, and 055 Rules 40.05.a-g. and 45.01
 - 5/11/2023 Written Comment Deadline
 - 5/22/2023 Held Public Meeting

3. Trust Water Application Review:

- Emphasis: Rules 30, 40.05.h, and 45.02-03
 - 5/30/2023 Written Comment Deadline
 - 6/15/2023 Public Meeting

4. Final Strawman Review:

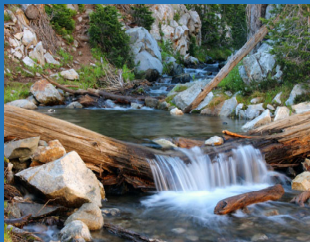
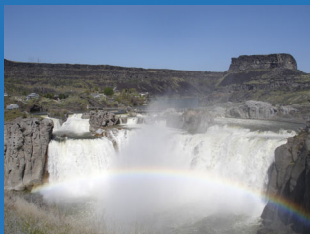
- 6/26/2023 Strawman v2 Distributed
- 7/10/2023 Written Comment Deadline
- 7/17/2023 Public Meeting





Negotiated Rulemaking Next Steps

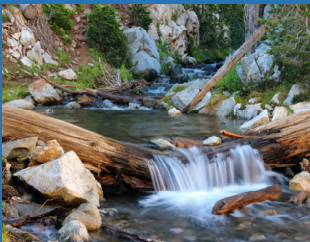
- Assuming Strawman v2 is distributed by June 26, 2023, submit written comments on Strawman v2 by July 10, 2023
- Comments submitted to rulesinfo@idwr.idaho.gov
- Reference the rule chapter: IDAPA 37.03.08
- IDWR will hold the next meeting 7/17/23 after written comments received on Strawman Rule v2 (due 7/10/23)
- Goal: Proposed Rule to DFM for publication in October Bulletin





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Questions?



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