



IDAHO DEPARTMENT OF  
WATER RESOURCES



Negotiated Rulemaking:

IDAPA 37.03.08 – Water Appropriation Rules – 4<sup>th</sup> Meeting

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Presented by: Angie Hansen, Water Rights Section Manager

Date: July 26, 2023



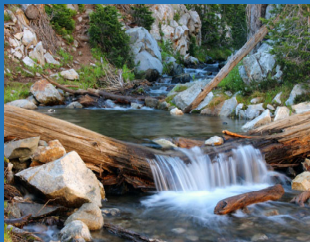
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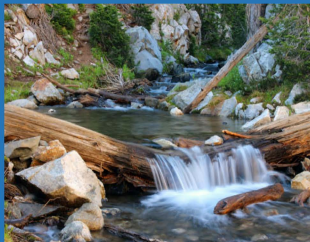




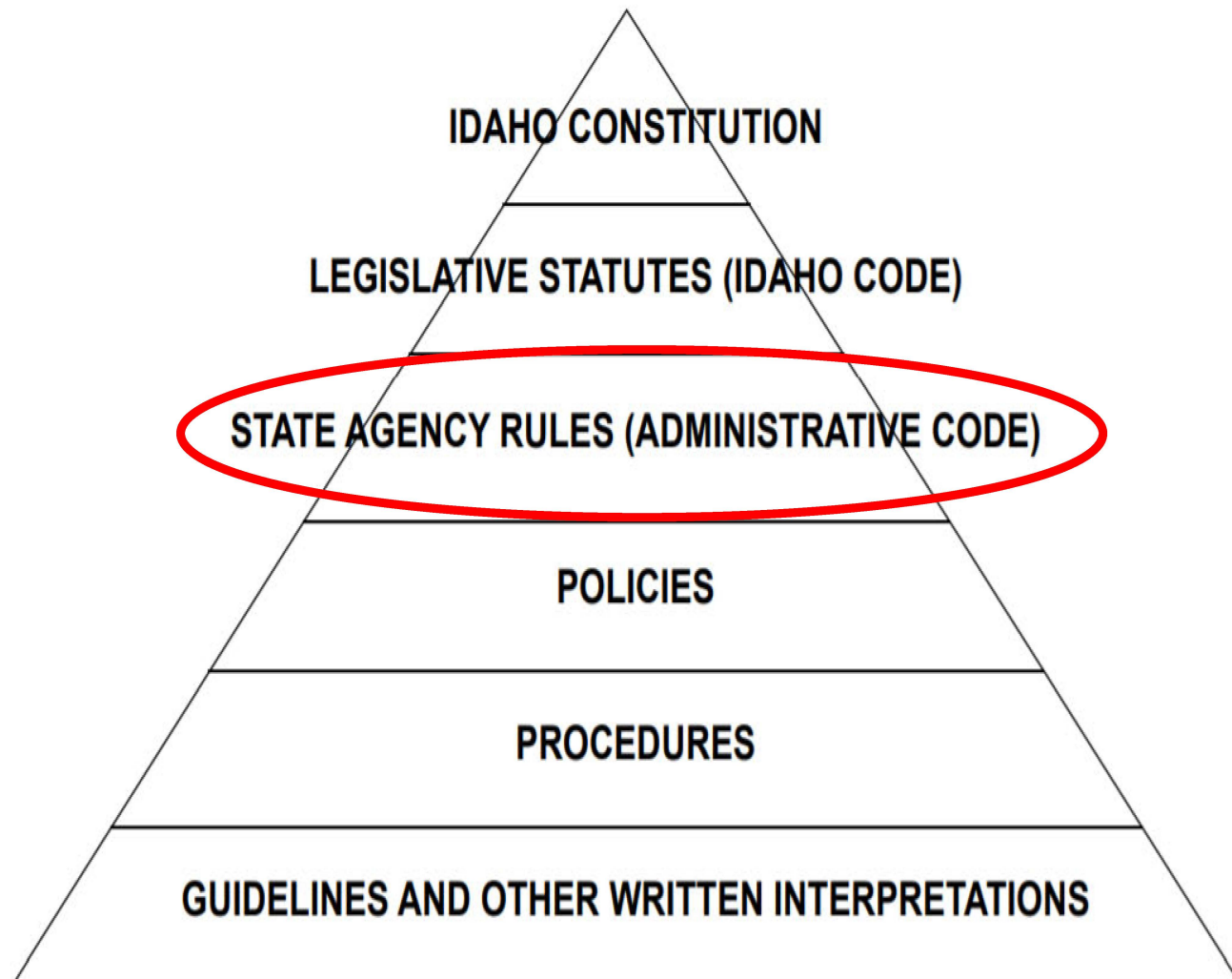
# Meeting Agenda

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





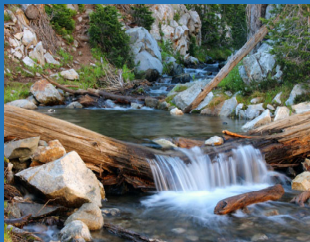
## HIERARCHY OF STATE DOCUMENTS





# Water Appropriation Rules

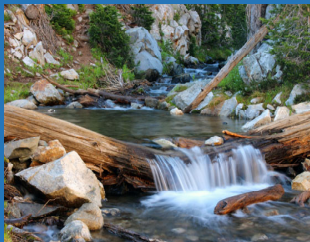
- Idaho Code Title 42, Chapter 2
  - Appropriation of Water – Permits, Certificates, and Licenses - Survey
  - Idaho Code §§ 42-202, 42-202B, 42-203A, 42-203B, 42-203C, and 42-204
- Idaho Code Title 42, Chapter 1
  - Appropriation of Water – General Provisions
- Idaho Code Title 42, Chapter 4
  - Appropriations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

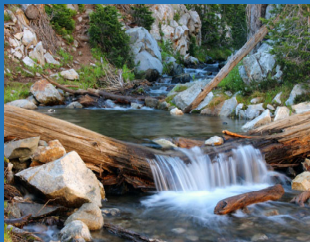






# Review Negotiated Rulemaking

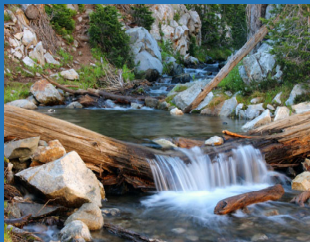
- Idaho Code § 67-5220 – Notice of Intent to Promulgate Rules – Negotiated Rulemaking
- (2) The notice of intent to promulgate a rule is intended to facilitate negotiated rulemaking, a process in which all interested persons and the agency seek consensus on the content of a rule. Agencies shall proceed 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...





# Draft (Strawman v 2.0) Rule Comments

- Comments prior to 7/26/2023
  - Written Comments on Strawman v 2.0:
    - 3 entities offered a total of 26 comments or questions.
    - Rule 10 – “Idaho State Water Plan” & “Ground Water Management Area”
    - Rule 25 – “may” vs “shall”
    - Rule 35 – Assignment of Application
    - Rule 36 – Allowance of multiple successive delays
    - Rule 40 – Clarify publication procedure for mitigated application & project plan and access information requests
    - Rule 45.02 & 45.03 – Presumptions about irrigation directly from the Snake River or tributary springs.

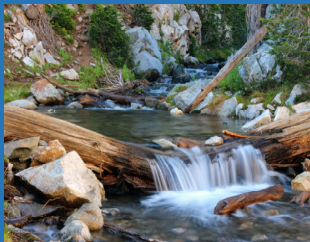
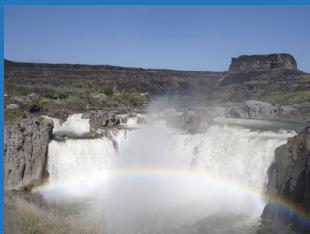




# Draft (Strawman v 2.0) Rule Comments Continued

- Follow Up Questions

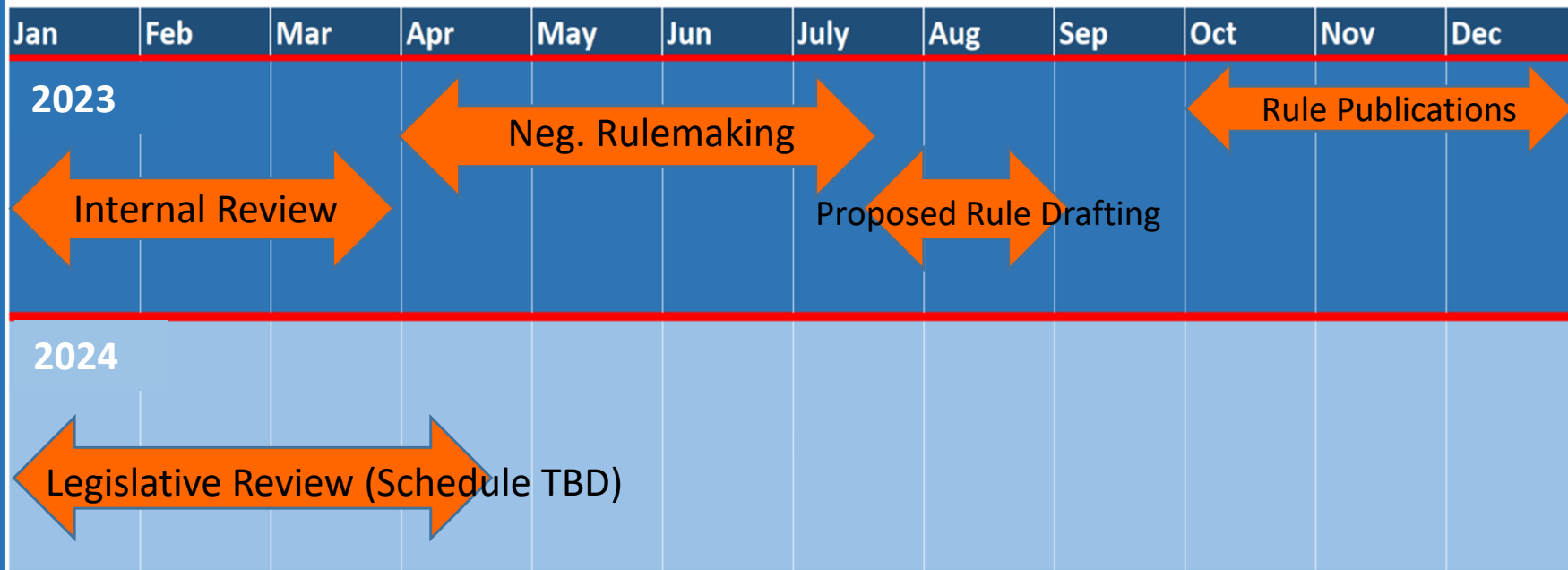
- Is 'public interest' used in the Idaho State Water Plan the same as 'public interest' outlined in Idaho Code § 42-203C?
- Should IDWR call out public land access vs private land access requirements or leave the rule more general as drafted now?





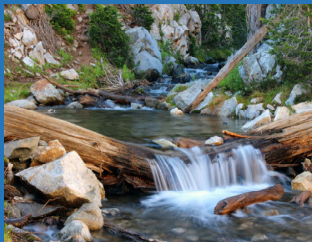


# ZBR Rulemaking Timeline – Water Appropriation Rules



## 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:

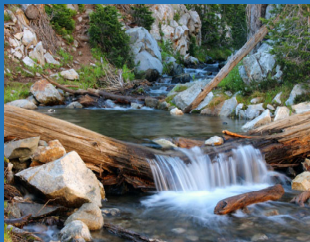
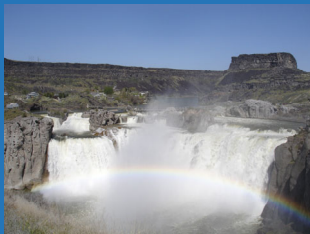
- Emphasis: Rules 10, 25, 35, 40.01-05.g, 45.01, 050, and 055 Rules 40.05.a-g. and 45.01
  - 5/11/2023 Written Comment Deadline
  - 5/22/2023 Held Public Meeting

## 3. Trust Water Application Review:

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

## 4. Final Strawman Review:

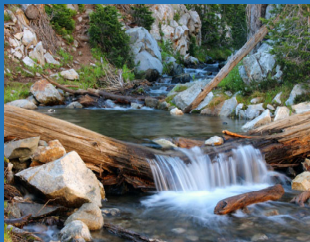
- 6/30/2023 Strawman v 2.0 Distributed
- 7/18/2023 Written Comment Deadline
- 7/26/2023 Public Meeting





## Next Steps

- Negotiated Rulemaking Phase ends today
- Final Comments on Strawman v 2.0, if necessary, by July 28, 2023, submitted to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov)
- Reference the rule chapter: IDAPA 37.03.08
- Proposed Rule Pkg to DFM and OAR by September 1, 2023 for publication in October 4, 2023 Bulletin
- Proposed Rule Public Hearing Request due October 18, 2023 and Written Comments due October 25, 2023

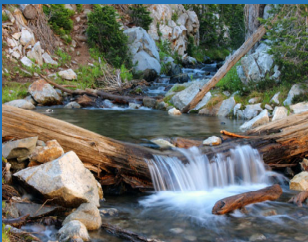






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# Questions?



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