

## IDAPA 37.03.08 Water Appropriation Rules – Crosswalk

| Existing Rule  | Proposed Rule   | Comment or Rationale  | Purpose of Rule   |
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| <b>000. LEGAL AUTHORITY (RULE 0).</b><br>The Director of the Department of Water Resources adopts these rules under the authority provided by Section 42-1805(8), Idaho Code.  | <b>000. LEGAL AUTHORITY.</b> The Director of the Idaho Department of Water Resources adopts these rules under the authority of Section 42-1805(8), Idaho Code.  | Clarified agency name and deleted “(RULE 0)” per The Idaho Rule Writer’s Manual instruction.  | Idaho Code § 42-1805(8) authorizes the Director to adopt rules implementing IDWR’s duties. Citation of IDWR’s statutory rulemaking authority. |
| <b>001. TITLE AND SCOPE (RULE 1).</b>  | <b>001. TITLE AND SCOPE.</b>  | Only change proposed is deletion of “(RULE 1)” per The Idaho Rule Writer’s Manual instruction.  | Complete official name of rule chapter and brief description of activities the rule chapter governs and enforces.                             |
| <b>001.01. Title.</b> These rules are titled IDAPA 37.03.08, “Water Appropriation Rules.”  | <b>001.01. Title.</b> These rules are titled IDAPA 37.03.08, “Water Appropriation Rules.”   | No change proposed.   | Complete official name of the rule chapter.   |
| <b>001.02. Scope.</b>  | <b>001.02. Scope.</b> These rules set the procedures for obtaining a permit to divert and use unappropriated public waters or a permit for reallocation of trust water within the Swan Falls Trust Water Area. These rules govern the filing and processing of applications for permits to appropriate water pending on or filed after the adoption of these rules. | Revised to simplify, clarify, and briefly describe the activities the rule chapter governs and enforces. Stakeholder comment(s) considered in proposed rule language. | Chapter 2, Title 42, Idaho Code governs the appropriation of water. Brief description of activities the rule chapter governs and enforces.    |
| <b>001.02.a. Background and Purpose.</b> The 1985 Idaho Legislature authorized reallocation of certain hydropower water rights to new upstream beneficial uses. The reallocation is to be accomplished using statutes designed to provide for the appropriation of unappropriated public water supplemented by a public interest review of those reallocations which | <b>Delete/None</b>  | Key content simplified, clarified, and moved into Rule 001.02.  | Chapter 2, Title 42, Idaho Code governs the appropriation of water. Brief description of activities the rule chapter governs and enforces.    |

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| <p><b>001.02.a. CONTINUED</b></p> <p>significantly reduce existing hydropower generation. These rules provide the procedures for obtaining the right to divert and use unappropriated public water as well as water previously appropriated for hydropower use which has been placed in trust with the State of Idaho and is subject to reallocation. Guidelines are provided for the filing and processing of applications, and criteria are established for determining the actions to be taken by the Director.</p>   |  |  |   |
| <p><b>001.02.b.</b> Scope and Applicability. These rules are applicable to appropriations from all sources of unappropriated public water in the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes and groundwater. The rules are also applicable to the reallocation of hydropower water rights held in trust by the state of Idaho. The rules are applicable to all applications to appropriate water filed with the Department of Water Resources prior to the effective date of these rules upon which an action to approve or deny the application is pending and to all applications filed subsequent to adoption of the rules and regulations. In addition, the rules are applicable to existing permits to appropriate water required to be reviewed under the provisions of Section 42-203D, Idaho Code.</p> | <p><b>001.02. Scope.</b> These rules set the procedures for obtaining a permit to divert and use unappropriated public waters or a permit for reallocation of trust water within the Swan Falls Trust Water Area. These rules govern the filing and processing of applications for permits to appropriate water pending on or filed after the adoption of these rules.</p> | <p>Key content simplified, clarified, and moved into Rule 001.02. Scope. Deleted reference to review of existing permits under Idaho Code § 42-203D, because this process is largely complete. The two remaining permits to reprocess are Desert Land Entry or Carey Act permits currently under moratorium (development hold). Stakeholder comment(s) considered in proposed rule language.</p> | <p>Chapter 2, Title 42, Idaho Code governs the appropriation of water. Brief description of activities the rule chapter governs and enforces.</p> |

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| <b>002. – 009. (RESERVED)</b>  | <b>002. – 009. (RESERVED)</b>  | No change proposed.   | Place holder to allow additional sections to be added when needed without major reorganization or renumbering of rule chapter.  |
| <b>010. DEFINITIONS (RULE 10).</b> Unless the context otherwise requires, the following definitions govern these rules:  | <b>010. DEFINITIONS.</b> The terms “consumptive use,” “digital boundary,” “local public interest,” “municipality,” “municipal provider,” “municipal purposes,” “planning horizon,” “reasonably anticipated future needs,” and “service area” have the meaning given for those terms in Section 42-202B, Idaho Code. The terms “ground water” and “low temperature geothermal resource” have the meaning given for those terms in Section 42-230, Idaho Code. The term “critical ground water area” has the meaning given for that term in Section 42-233a, Idaho Code. | Clarified terms in rules are as defined in statutes. Also deleted “(RULE 10)” per The Idaho Rule Writer’s Manual instruction. Stakeholder comment(s) considered in proposed rule language.  | Idaho Code §§ 42-202B, 42-230, and 42-233a define terms used within the rules. Reference added to clarify terms use in rules is consistent with statutory definitions. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules. |
| <b>010.01. Acre-Foot (AF).</b> A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to forty-three thousand five hundred sixty (43,560) cubic feet.   | <b>010.01. Acre-Foot (af).</b> A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to three hundred twenty-five thousand eight hundred fifty (325,850) gallons.  | Changed “AF” to lower-case “af” based on common usage. Changed reference to equivalent cubic feet to gallons based on common usage.   | Chapter 2, Title 42, Idaho Code uses acre-feet as the volume unit. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.   |
| <b>010.02. Advertisement.</b> The action taken by the Director to provide notice, usually by publication of a legal notice in one (1) or more newspapers, of a proposed appropriation or other notice required in administration of his duties and responsibilities. | <b>Delete/None</b>   | Statutes refer to notice in the newspaper as “publication” not “advertisement.” Revised rules to use the term “publication.” Deleted all existing instances of “advertisement” in rules. Not necessary to define “publication.” Term use in rules is consistent with the commonly understood meaning. | Idaho Code § 42-203A governs the notice of applications by publication in the newspaper(s) and on IDWR’s webpage.   |

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| <b>010.03. Applicant.</b> The person, corporation, association, firm, governmental agency or other entity, or the holder of a permit being reprocessed pursuant to Section 42-203D, Idaho Code, who initiates an appropriation of water or related water matter for the Director's consideration. | <b>010.02. Applicant.</b> The person, corporation, association, firm, governmental entity or agency, or other entity who applies to divert and beneficially use public waters. | Removed "... permit being reprocessed pursuant to Section 42-203D, Idaho Code..." clause as this process is largely complete. The two remaining permits to reprocess are Desert Land Entry or Carey Act permits currently under moratorium. Clarified "applicant" as used in these rules is a person applying to divert and beneficially use water not a different request. Renumbered consistent with The Idaho Rule Writer's Manual given existing Rule 010.02 is proposed for deletion. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-202 requires any person, association, or corporation that intends to acquire the right to beneficially use public waters to file an application to appropriate water. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules. |
| <b>010.04. Application for Permit.</b> The written request to the department on forms furnished by the department proposing to appropriate the public waters or trust waters of the state.  | <b>010.03. Application.</b> An application for permit to appropriate water filed with the Department.  | Revised to be more consistent with term use in rule and statutory language. Renumbered consistent with The Idaho Rule Writer's Manual given existing Rule 010.02 is proposed for deletion.  | Idaho Code § 42-202 requires any person, association, or corporation that intends to acquire the right to beneficially use public waters to file an application to appropriate water. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules. |
| <b>010.05. Board.</b> The Idaho Water Resource Board.   | <b>010.04. Board.</b> The Idaho Water Resource Board.  | No changes proposed. Renumbered consistent with The Idaho Rule Writer's Manual given existing Rule 010.02 proposed for  | Idaho Code § 42-1732 establishes the constitutional water agency within IDWR in accordance with article 15, section 7, of the Idaho  |

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| <b>010.05. CONTINUED</b>   |   | deletion.   | Constitution. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.   |
| <b>010.06. Beneficial Use.</b> One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, stockwatering and fish propagation uses for which permits to appropriate water can be issued as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water. | <b>Delete/None</b>  | Deleted because existing definition is circular, there is no statutory definition, and case law supports a broad interpretation of this term. Stakeholder comment(s) considered in proposed rule language.  | Idaho Code § 42-104 states appropriations of water must be for some beneficial purpose and when the water ceases to be used for a beneficial purpose the water right ceases.   |
| <b>010.07. Cubic Foot Per Second (CFS).</b> A rate of flow approximately equal to four hundred forty-eight and eight-tenths (448.8) gallons per minute and also equals fifty (50) Idaho miner's inches.  | <b>010.05. Cubic Foot Per Second (cfs).</b> A rate of flow approximately equal to four hundred forty-eight and eight-tenths (448.8) gallons per minute and also equals fifty (50) Idaho miner's inches. | Changed "CFS" to lower-case "cfs" based on common usage. Renumbered consistent with The Idaho Rule Writer's Manual given existing Rules 010.02 and 010.06 are proposed for deletion.  | Chapter 2, Title 42, Idaho Code uses cubic foot per second as the flow rate unit. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules. |
| <b>010.08. DCMI.</b> An acronym for domestic, commercial, municipal and industrial. In these rules it designates certain classes of these uses presumed to satisfy public interest requirements. Domestic use, for purposes of this definition, is water for one or more households and water used for all other purposes including irrigation of a residential lot in connection with each of the households where the diversion to each  | <b>Delete/None</b>  | "DCMI" only used three times in existing rules. Clarified usage in rule by spelling out "domestic, commercial, municipal, and industrial" use terms rather than using an acronym. Also, current definition includes rule language that goes beyond the scope of the | Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.   |

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| <b>010.08. CONTINUED</b><br><br>household does not exceed thirteen thousand (13,000) gallons per day. Also for purposes of this definition, commercial, municipal and industrial uses are any such uses which do not deplete the system containing the trust water more than two (2) acre feet per day. |  | acronym being defined.  |   |
| <b>010.09. Department.</b> The Idaho Department of Water Resources.   | <b>010.06. Department.</b> The Idaho Department of Water Resources.  | No changes proposed. Renumbered consistent with The Idaho Rule Writer's Manual given existing Rules 010.02, 010.06, and 010.08 are proposed for deletion.   | Idaho Code § 42-1701 governs the creation of the Idaho Department of Water Resources (IDWR). Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.   |
| <b>010.10. Director.</b> The Director of the Idaho Department of Water Resources.   | <b>010.07. Director.</b> The Director of the Idaho Department of Water Resources. Per Section 42-1701(3), Idaho Code, the Director may delegate authority to perform duties imposed upon the Director by law, including duties described herein, to a Department employee. | Included language to clarify actions described in the rules may be completed by the Director or an employee the Director delegates authority to. Term "Director" or "Department" in rules is consistent with directive statute, i.e. if statute says "Director" will perform the action, "Director" was used in the rule even though the Director may delegate this duty to a Department employee. Renumbered consistent with The Idaho Rule Writer's Manual given existing Rules 010.02, 010.06, and 010.08 are proposed for deletion. | Idaho Code § 42-1701(2) establishes IDWR Director position and qualifications. Idaho Code § 42-1701(3) authorizes the Director to delegate the Director's duties to IDWR employees when necessary for the efficient administration of the Director's duties. Chapters 17 and 18, Title 42, Idaho Code establish Director's duties. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules. |

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| <b>010.10. CONTINUED</b>   |   | Stakeholder comment(s) considered in proposed rule language.   |  |
| <b>010.11. Legal Subdivision.</b> A tract of land described by the government land survey and usually is described by government lot or quarter-quarter, section, township and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the quarter-quarter, section, township and range description. | <b>Delete/None</b>  | Deleted because term is not used in existing or proposed rules.  | Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.   |
| <b>None</b>  | <b>010.08. Generally Described Place of Use.</b> A place of use authorized by an existing water right or permit pursuant to Sections 42-202, 42-219, 42-222, or 42-1411, Idaho Code consisting of a general area or boundary within which water diverted under the water right or permit is used. | Added because term used in proposed rules. Rule language clearer if define this term once and include statutory reference in definition rather than defining and referencing statute in each instance the term is used. Definition consistent with referenced statutes. Stakeholder comment(s) considered in proposed rule language. | Idaho Code §§ 42-202, 42-219, 42-222, and 42-1411 allow IDWR to describe the water right place of use as a general area or boundary for certain types of water rights. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.                        |
| <b>None</b>  | <b>010.09. Idaho State Water Plan.</b> The current comprehensive state water plan formally adopted by the Idaho Water Resource Board pursuant to Sections 42-1734A and 42-1734B, Idaho Code.  | Added because term is used in proposed rules based on stakeholder suggestion. Rule language clearer if define this term once and include statutory reference in definition rather than defining and referencing statute in each instance the term is used. Definition consistent with referenced                                     | Idaho Code § 42-1734A requires the IWRB to adopt a comprehensive state water plan for conservation, development, management, and optimum use of all unappropriated public waters in the public interest. Idaho Code § 42-1734B governs the procedures for adopting the comprehensive state |

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| None CONTINUED  |  | statutes. Stakeholder comment(s) considered in proposed rule language.  | water plan. Idaho Code § 42-1734B(4) requires all state agencies to exercise their duties consistent with the state water plan. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.  |
| None  | <b>010.10. Murphy Gage.</b> The United States Geological Survey stream gage station (site identification number 13172500) located on the right bank of the Snake River at river mile 456.8, approximately 8.5 miles east-northeast of Murphy, Idaho and 0.9 miles downstream from the Swan Falls power plant at latitude 43° 15' 17.33" N, longitude 116° 23' 26.30" W, North American Datum of 1983, in the NW ¼ of the NW ¼ of Section 18, T.2S., R.1E., Boise Meridian, Hydrologic Unit 17050103. | Added because term used multiple places in existing and proposed rules. Rule language clearer if define this term once, then use term rather than defining language each instance. Definition consistent with Remark No. 2 of 2 <sup>nd</sup> amended partial decrees for the water rights held in trust. If gage location changes, partial decrees and this definition will need to change. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203B establishes hydropower water rights in excess of an established minimum flow can be held in trust by the state. The Murphy Gage is the measurement location for the established minimum flows associated with the water rights held in trust on the Snake River (in the Swan Falls Trust Water Area). Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules. |
| <b>010.12. Permit or Water Right Permit.</b> The water right document issued by the Director authorizing the diversion and use of unappropriated public water of the state or water held in trust by the state. | <b>010.11. Permit.</b> The water right document issued by the Director authorizing the diversion and use of unappropriated public waters or reallocated trust water.   | Clarified term. Renumbered consistent with The Idaho Rule Writer's Manual given existing Rules 010.02, 010.06, 010.08, and 010.11 proposed for deletion and proposed addition of "Generally Described Place of Use," "Idaho State Water Plan," and "Murphy Gage" terms with definitions. Stakeholder comment(s)   | Idaho Code § 42-103 states the right to use unappropriated public waters shall be acquired under the application, permit, and license procedures in Title 42, Idaho Code. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.  |



| <b>Existing Rule</b>   | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>   |
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| <b>010.12. CONTINUED</b>   |   | considered in proposed rule language.   |  |
| <b>010.13. Priority, or Priority of Appropriation, or Priority Date.</b> The date of appropriation established in the development of a water right. The priority of a water right for public water or trust water is used to determine the order of water delivery from a source during times of shortage. The earlier or prior date being the better right. | <b>010.12. Priority Date.</b> The date of appropriation established when an application is filed in acceptable form, including the applicable filing fee, unless a later date is set in accordance with applicable law. | Simplified term and definition. Renumbered consistent with The Idaho Rule Writer’s Manual given existing Rules 010.02, 010.06, 010.08, and 010.11 proposed for deletion and proposed addition of “Generally Described Place of Use,” “Idaho State Water Plan,” and “Murphy Gage” terms with definitions. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-106 establishes first in time is first in right. Idaho Code § 42-204 states the priority of a new application shall be determined by the date of receipt. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules. |
| <b>010.14. Project Works.</b> A general term which includes diversion works, conveyance works, and any devices which may be used to apply the water to the intended use. Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works.                               | <b>010.13. Project Works.</b> A general term that includes diversion works, conveyance infrastructure, and any devices used to apply water to the intended use.   | Simplified definition. Renumbered consistent with The Idaho Rule Writer’s Manual given existing Rules 010.02, 010.06, 010.08, and 010.11 proposed for deletion and proposed addition of “Generally Described Place of Use,” “Idaho State Water Plan,” and “Murphy Gage” terms with definitions.   | Idaho Code § 42-202(4) states the application must include a plan of the diversion works. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.   |
| <b>010.15. Single Family Domestic Purposes.</b> Water for household use or livestock and water used for all other purposes including irrigation of up to one half (1/2) acre of land in connection with said household where total use is not in excess of thirteen thousand (13,000) gallons per day.   | <b>Delete/None</b>  | Term only used once in existing rules, Rule 035.01.b. Propose to delete Rule 035.01.b. The exception it affords is found in Idaho Code § 42-227. When possible, avoided redundancy with statutes.   | Idaho Code § 42-111 defines “Domestic Purposes.”   |

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| None  | <b>010.14. Public Interest.</b> The interests that the people of the state of Idaho have in the effects of a proposed reallocation of trust water pursuant to Section 42-203C(2), Idaho Code. For the definition of “local public interest,” see Section 42-202B, Idaho Code. | Added because term used in proposed rules and desire to distinguish this term from similar term “local public interest” also used and defined in proposed rules. Rule language clearer if define this term once and include statutory reference in definition rather than defining and referencing statute in each instance the term is used. Definition consistent with referenced statutes. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203C requires the Director to evaluate public interest when considering applications for reallocation of trust water. Idaho Code § 42-203(2) lists the factors to be evaluated. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.   |
| None  | <b>010.15. Reallocation of Trust Water.</b> Appropriation of trust water for a use other than hydropower generation to the extent the water rights held in trust are subordinated to permits issued for such other uses of water pursuant to Section 42-203C, Idaho Code.     | Added because term used in proposed rules. Rule language clearer if define this term once and include statutory reference in definition rather than defining and referencing statute in each instance the term is used. Definition consistent with reference statutes. Stakeholder comment(s) considered in proposed rule language.  | Idaho Code § 42-203B establishes water rights held in trust for the use and benefit of the hydropower users and the people of Idaho. Idaho Code § 42-203C establishes the criteria the Director will evaluate for an application that proposes a reallocation of trust water. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules. |
| <b>010.16. Subordinated Water Right.</b> A water right used for hydropower generation purposes that is subject to depletion without compensation by upstream water rights which are initiated later in time and which are for a purpose | <b>010.16. Subordinated.</b> Subject to diminishment or depletion without compensation by water rights initiated later in time.   | Simplified term and clarified definition. Subordination is not limited to hydropower water rights. Stakeholder comment(s) considered in proposed rule language.  | Idaho Code § 42-203B authorizes the Director to subordinate water rights for hydropower generation. Idaho Code § 42-203A(5) requires the Director to   |

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| <p><b>010.16. CONTINUED</b></p> <p>other than hydropower generation purposes.</p> |  |  | <p>evaluate if the application's proposed use will reduce the amount of water available to existing water rights. If the Director finds that it will, the Director may still grant the permit upon conditions. Subordination is a condition the Director may use to address injury concerns. Certain minimum stream flow water rights are also subordinated to future uses. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.</p> |
| <p><b>None</b></p>  | <p><b>010.17. Swan Falls Trust Water Area.</b> The reach of the Snake River extending downstream from Milner Dam (located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian) to Swan Falls Dam (located in Section 18, Township 2 South, Range 1 East, Boise Meridian) and all surface and ground water sources tributary to that reach of the Snake River. The area within which ground water is presently designated tributary to the reach of the Snake River extending downstream from Milner Dam to Swan Falls Dam is depicted in APPENDIX A. The Swan Falls Trust Water Area excludes any reach of the Snake River upstream of Milner Dam, any surface or ground water tributary to the Snake River upstream of Milner Dam, the Snake River downstream of Swan Falls Dam, and any surface or ground water tributary to the Snake River downstream of Swan Falls Dam.</p> | <p>Added because term used in proposed rules. Rule language clearer if define this term once rather than defining each instance the term is used. This area is the only area in the state within which Idaho currently holds water rights in trust. If Idaho enters into another trust water agreement, it is likely statutory and rule amendments will be required. Term added and used to classify all applications in a geographic area to facilitate proposed trust water application processing in revised Rules 25, 40, and 45. Stakeholder comment(s) considered in</p> | <p>Idaho Code § 42-203B establishes water rights held in trust for the use and benefit of the hydropower users and the people of Idaho. Idaho Code § 42-203C establishes the criteria the Director will evaluate for an application that proposes a reallocation of trust water. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.</p>  |

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| None CONTINUED   |  | proposed rule language.  |  |
| <b>010.17. Trust Water.</b> That portion of an unsubordinated water right used for hydropower generation purposes which is in excess of a minimum stream flow established by state action either with agreement of the holder of the hydropower right as provided by Section 42-203B(5), Idaho Code or without an agreement as provided by Section 42-203B(3), Idaho Code. | <b>010.18. Trust Water.</b> Water in excess of the state established minimum stream flow at the Murphy Gage that was originally appropriated for hydropower generation purposes pursuant to the water rights now held in trust by the state of Idaho and that is made available for reallocation to uses other than hydropower generation to the extent the water rights held in trust are subordinated to permits issued for such other uses pursuant to Section 42-203C, Idaho Code. | Clarified definition based on statutes, court decisions, and the Idaho State Water Plan. Renumbered consistent with The Idaho Rule Writer's Manual given proposed addition of "Swan Falls Trust Water Area" term with definition. Stakeholder comment(s) considered in proposed rule language.   | Idaho Code § 42-203B establishes water rights held in trust for the use and benefit of the hydropower users and the people of Idaho. Idaho Code § 42-203C establishes the criteria the Director will evaluate for an application that proposes a reallocation of trust water. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules. |
| <b>010.18. Unappropriated Water.</b> The public water of the state of Idaho in streams, rivers, lakes, springs or groundwater in excess of that necessary to satisfy prior rights including prior rights reserved by federal law.  | <b>010.19. Unappropriated Water.</b> The public waters of the state of Idaho in streams, rivers, lakes, springs, other natural surface water bodies, ground water, or low temperature geothermal resources exceeding the amount necessary to satisfy existing water rights.  | Simplified definition. Federal reserved water rights are water rights. Added reference to low temperature geothermal resources because statutes state the right to use low temperature geothermal resources shall be acquired by appropriation. Renumbered consistent with The Idaho Rule Writer's Manual given proposed addition of "Swan Falls Trust Water Right" and "Trust Water Right" terms with definitions. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-101 describes the nature of property in water. Idaho Code § 42-233 states that rights to use low temperature geothermal resources shall be acquired by appropriation. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.   |
| None   | <b>010.20. Water Right Held in Trust.</b> A water right used for hydropower generation   | Added term and definition used in proposed rules.  | Idaho Code § 42-203B governs the opportunity for   |

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| <b>None CONTINUED</b>   | purposes that is in excess of a minimum stream flow established by state action and is held in trust by the state of Idaho pursuant to Subsections (2) or (3) of Section 42-203B, Idaho Code. The water rights held in trust for the Swan Falls Trust Water Area are numbered 02-02001A, 02-02001B, 02-02032B, 02-02036, 02-02056, 02-02057, 02-02059, 02-02060, 02-02064, 02-02065, 02-04000B, 02-04001B, 02-10135, 36-02013, 36-02018, 36-02026, 37-02128, 37-02471, 37-02472, 37-20709, and 37-20710. | Stakeholder comment(s) considered in proposed rule language.  | the state of Idaho to enter into agreements to hold hydropower water rights in trust. Definitions explain the meaning of obscure or difficult terms to clarify terms use in rules.  |
| <b>011. – 024. (RESERVED)</b>   | <b>011. – 024. (RESERVED)</b>  | No change proposed.   | Place holder to allow additional sections to be added when needed without major reorganization or renumbering of rule chapter.  |
| <b>025. GENERAL DESCRIPTION OF THE PROCEDURE TO BE USED FOR ALLOCATION (RULE 25).</b>   | <b>025. GENERAL DESCRIPTION OF THE PROCEDURE FOR APPLICATION REVIEW.</b>   | Deleted “(RULE 25)” per The Idaho Rule Writer’s Manual instruction. Clarified language.   | Idaho Code §§ 42-202 and 42-203A state application content, processing, and evaluation criteria.  |
| <b>025.01. Applications to Appropriate Unappropriated Water and Water Held in Trust.</b> Applications to appropriate unappropriated water and water held in trust as provided by Section 42-203B(3), Idaho Code, will be evaluated using the criteria of Section 42-203A, Idaho Code, which requires an assessment to be made of the impact of the proposed use on water availability for existing water rights, the adequacy of the water supply for the proposed use, whether the application is filed for speculative purposes, the financial ability of the applicant to complete the project, and the effect of the proposed use | <b>025.01. Applications to Appropriate Unappropriated Water.</b> The Department will process an application to appropriate unappropriated public waters under Section 040, and will evaluate the application under Subsection 045.01, using the criteria of Section 42-203A(5), Idaho Code and, for a low temperature geothermal resource, the criteria of Section 42-233, Idaho Code.   | More clearly distinguish process for applications to divert and use unappropriated public waters from applications to divert and use public waters within the Swan Falls Trust Water Area. All applications are reviewed under Idaho Code § 42-203A(5), but only applications to divert and use public waters within the Swan Falls Trust Water Area proposing a reallocation of trust water are reviewed | Idaho Code §§ 42-202 and 42-203A state application content, processing, and evaluation criteria. Idaho Code § 42-233 states additional criteria for use of low temperature geothermal resources. Rule summarizes processing procedure and review criteria references. |

| Existing Rule  | Proposed Rule   | Comment or Rationale   | Purpose of Rule   |
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| <p><b>025.01. CONTINUED</b></p> <p>on the local public interest.</p>   |   | <p>under Idaho Code § 42-203C criteria. An application to use a low temperature geothermal resource must also be evaluated under Idaho Code § 42-233. Stakeholder comment(s) considered in proposed rule language.</p>   |   |
| <p><b>025.02. Applications to Appropriate Water from Sources Held by State in Trust.</b> Applications to appropriate water from sources on which the state holds water in trust, pursuant to Section 203B(5), Idaho Code, will be processed in a three-step analysis. Evaluation will consider the purposes of “trust water” established in Section 42-203B, Idaho Code.</p>   | <p><b>025.02. Applications to Appropriate Water from the Swan Falls Trust Water Area.</b> The Department will process an application to appropriate water from the Swan Falls Trust Water Area under Section 040 and will evaluate the application as follows:</p>  | <p>Clarified applications to divert and use water within the Swan Falls Trust Water Area will first be processed in accordance with Rule 40 like applications to divert and use unappropriated water. Removed inaccurate notion that Idaho holds water in trust rather than water rights. Stakeholder comment(s) considered in proposed rule language.</p>     | <p>Idaho Code §§ 42-202 and 42-203A state application content, processing, and evaluation criteria for all applications regardless of location or source. Rule references procedures and introduces how the Director will evaluate a trust water right application, i.e. an application proposing a reallocation of trust water.</p>  |
| <p><b>025.02.a.</b> First, the proposed use must be evaluated using the procedures and criteria of Section 42-203A, Idaho Code. If all criteria of Section 42-203A(5), Idaho Code, are satisfied, the application may be approved for unappropriated water. If the application does not satisfy the criteria of Section 42-203A(5) b, c, d, and e, Idaho Code, or is found to reduce the water to existing water rights other than those held in trust by the state, the application will be denied. If the application satisfies all criteria of Section 42-203A(5), Idaho Code, except Section 42-203A(5)a, Idaho Code, but is found to reduce water held in</p> | <p><b>025.02.a.</b> First, the Director will evaluate the application under Subsection 045.01 using the criteria of Section 42-203A(5), Idaho Code.</p> <p>i. If the application is seeking to appropriate unappropriated water within the Swan Falls Trust Water Area rather than a reallocation of trust water and it satisfies all criteria of Section 42-203A(5), Idaho Code, the Director may approve the application for unappropriated water. An application for unappropriated water within the Swan Falls Trust Water Area must demonstrate the public waters sought for appropriation exceed the amount necessary to satisfy all existing water</p> | <p>Clarified the action the Director will take when evaluating an application to divert and use water within the Swan Falls Trust Water Area, which is either unappropriated water or a proposed reallocation of water made available by the subordination of the water rights held in trust. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203A(5) criteria are applicable to all applications, regardless of location or source. For an application proposing a reallocation of water made available by the subordination of the water rights held in trust, Idaho Code § 42-203C requires the Director to first consider the criteria of Idaho Code § 42-203A and then evaluate the significant reduction and public interest criteria in</p> |

| Existing Rule  | Proposed Rule  | Comment or Rationale   | Purpose of Rule   |
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| <p><b>025.02.a. CONTINUED</b></p> <p>trust by the state, the application will be reviewed under criteria of Section 42-203C, Idaho Code.</p>   | <p>rights, including the water rights held in trust.</p> <p>ii. If the application does not satisfy the criteria of Section 42-203A(5)(b) through (g), Idaho Code, or is found to reduce the water available to an existing water right other than a water right held in trust, the Director may deny the application.</p> <p>iii. If the application satisfies all criteria of Section 42-203A(5), Idaho Code, except it is found to reduce the amount of water available to a water right held in trust, it is seeking a reallocation of trust water and the Director will review the application under Paragraph 025.02.b.</p>  |  | <p>Idaho Code § 42-203C. Rule explains the procedures and evaluation the Director will follow consistent with the applicable statutes. Use of “may” in proposed rules is consistent with Idaho Code § 42-203A(5) statements of the Director’s action regarding all applications to appropriate water.</p>   |
| <p><b>025.02.b.</b> Second, Section 42-203C, Idaho Code, requires a determination of whether the proposed use will significantly reduce, individually or cumulatively with existing uses and other uses reasonably likely to exist within twelve months of the proposed use, the amount of trust water available to the holder of the water right used for power production that is defined by agreement pursuant to subsection (5) of Section 42-203B, Idaho Code (hereinafter termed “significant reduction”). If a significant reduction will not occur, the application may be approved without an evaluation of the public interest criteria of Section 42-203C(2), Idaho Code.</p> | <p><b>025.02.b.</b> Second, if the application is seeking a reallocation of trust water the Director will evaluate the application under Subsection 045.02 to determine whether it will cause a significant reduction to a water right held in trust pursuant to Section 42-203C(1), Idaho Code.</p> <p>i. If the application will not cause a significant reduction to a water right held in trust pursuant to Section 42-203C(1), Idaho Code, the Director may approve the application without additional evaluation.</p> <p>ii. If the application will cause a significant reduction to a water right held in trust pursuant to Section 42-203C(1), Idaho Code, the Director will review the application under Paragraph 025.02.c.</p> | <p>Clarified the action the Director will take when evaluating an application to divert and use water within the Swan Falls Trust Water Area to determine if the application will result in a significant reduction in the amount of water available to the hydropower water rights Idaho holds in trust. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203C(1) requires the Director to evaluate if applications will reduce the amount of water available to water rights Idaho holds in trust, and if so, if that reduction is a significant reduction, individually or cumulatively, in the amount of water available for use by the hydropower water rights Idaho holds in trust. Proposed rule explains the evaluation the Director will conduct consistent with applicable statute. Use of “may” in proposed rules is consistent with Idaho Code § 42-203A(5) statements of the Director’s action regarding all applications to</p> |

| <b>Existing Rule</b>  | <b>Proposed Rule</b>   | <b>Comment or Rationale</b>  | <b>Purpose of Rule</b>   |
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| <b>025.02.b. CONTINUED</b>  |  |  | appropriate water.   |
| <b>025.02.c.</b> Third, based upon a finding of significant reduction, the proposed use will be evaluated in terms of the public interest criteria of Section 42-203C(2), Idaho Code. | <p><b>025.02.c.</b> Third, if the application is seeking a reallocation of trust water and will cause a significant reduction to a water right held in trust the Director will evaluate the application under Subsection 045.03 to determine if the proposed reduction is in the public interest pursuant to Section 42-203C(2), Idaho Code.</p> <p>i. If the application is in the public interest, the Director may approve the application.</p> <p>ii. If the application is not in the public interest, the Director may deny the application.</p> | Clarified the action the Director will take to evaluate whether an application within the Swan Falls Trust Water Area that will significantly reduce the amount of water available to water rights held in trust is in the public interest. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203C(2) requires the Director to evaluate if the significant reduction of the amount of water available to hydropower water rights Idaho holds is trust caused by applications proposing a reallocation of the trust water is in the public interest. Use of “may” in proposed rules is consistent with Idaho Code § 42-203A(5) statements of the Director’s action regarding all applications to appropriate water. |
| <b>026. – 029. (RESERVED)</b>   | <b>026. – 034. (RESERVED)</b>  | Rule range modified based on proposed deletion of existing Rule 30.  | Place holder to allow additional sections to be added when needed without major reorganization or renumbering of rule chapter.   |
| <b>030. LOCATION AND NATURE OF TRUST WATER (RULE 30).</b>   | <b>Delete/None</b>   | Crucial existing rule content incorporated into other sections in proposed rules. Deleted content that restates statutes or other legal texts such as the Swan Falls Agreement to avoid redundancy. Stakeholder comment(s) considered in proposed rule revisions.  | Idaho Code §§ 42-203B and 42-203C govern Idaho’s ability to hold hydropower water rights in trust and authorize new uses of water made available by subordination provisions of those water rights held in trust. Idaho Code § 42-203C specifies how IDWR should evaluate applications to divert and use water within the Swan Falls Trust Water   |



| Existing Rule   | Proposed Rule   | Comment or Rationale   | Purpose of Rule  |
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| <b>030. CONTINUED</b>   |   |  | Area appropriated to hydropower water rights Idaho now holds in trust.   |
| <p><b>030.01. Snake River Water Rights Agreement.</b> The legislation ratifying the Snake River water rights agreement between the state of Idaho and Idaho Power Company places in trust a part of the flows available to Idaho Power Company under its hydropower water rights in the Snake River Basin between Swan Falls Dam and Milner Dam. The flows subject to the trust water provisions and reallocation under Section 42-203C(2), Idaho Code, are as follows:</p> | <p><b>010.18. Trust Water.</b> Water in excess of the state established minimum stream flow at the Murphy Gage that was originally appropriated for hydropower generation purposes pursuant to the water rights now held in trust by the state of Idaho and that is made available for reallocation to uses other than hydropower generation to the extent the water rights held in trust are subordinated to permits issued for such other uses pursuant to Section 42-203C, Idaho Code.</p>   | <p>Rule 30 deleted to avoid unnecessary repetition or description of language in statute or other legal texts such as the Swan Falls Agreement. With edits to Sections 10 and 25, existing Rule 030.01 is no longer necessary to define the area where permit applications may require review under Idaho Code § 42-203C. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code §§ 42-203B and 42-203C govern Idaho's ability to hold hydropower water rights in trust and authorize new uses of water made available by subordination provisions of those water rights held in trust. Idaho Code § 42-203C specifies how IDWR should evaluate applications to divert and use water within the Swan Falls Trust Water Area appropriated to hydropower water rights Idaho now holds in trust.</p> |
| <p><b>030.01.a.</b> Trust water flows under the Snake River water rights agreement are located in the Snake River between Swan Falls Dam located in Section 18, Township 2 South, Range 1 East, Boise Meridian (B.M.) and Milner Dam located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian (B.M.) and all surface and groundwater sources tributary to the Snake River in that reach.</p>   | <p><b>010.17. Swan Falls Trust Water Area.</b> The reach of the Snake River extending downstream from Milner Dam (located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian) to Swan Falls Dam (located in Section 18, Township 2 South, Range 1 East, Boise Meridian) and all surface and ground water sources tributary to that reach of the Snake River. The area within which ground water is presently designated tributary to the reach of the Snake River extending downstream from Milner Dam to Swan Falls Dam is depicted in APPENDIX A. The Swan Falls Trust Water Area excludes any reach of the Snake River upstream of Milner Dam, any surface or ground water tributary to the Snake River upstream of Milner Dam, the Snake River downstream of</p> | <p>Crucial language in existing rule incorporated into proposed Rule 010.17. Swan Falls Trust Water Area definition. Stakeholder comment(s) considered in proposed rule language.</p>  | <p>Idaho Code §§ 42-203B and 42-203C govern Idaho's ability to hold hydropower water rights in trust and authorize new uses of water made available by subordination provisions of those water rights held in trust. Idaho Code § 42-203C specifies how IDWR should evaluate applications to divert and use water within the Swan Falls Trust Water Area appropriated to hydropower water rights Idaho now holds in trust.</p> |

| Existing Rule   | Proposed Rule   | Comment or Rationale   | Purpose of Rule   |
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| <b>030.01.a. CONTINUED</b>  | Swan Falls Dam, and any surface or ground water tributary to the Snake River downstream of Swan Falls Dam.  |  |   |
| <b>030.01.b.</b> Surface water and groundwater tributary to the Snake River upstream from Milner Dam is not trust water. After giving notice and considering public comment, the Director will designate the area in which groundwater is presumed to be tributary to the Snake River upstream from Milner Dam. Modification or changes in the designated boundary may be made only after providing notice and considering public comment. The area presently designated as tributary to the Snake River in the Milner Dam to Swan Falls Dam reach is appended to these rules (See Attachment A in APPENDIX A located at the end of this chapter), for information purposes only. | <b>010.17. Swan Falls Trust Water Area.</b> The reach of the Snake River extending downstream from Milner Dam (located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian) to Swan Falls Dam (located in Section 18, Township 2 South, Range 1 East, Boise Meridian) and all surface and ground water sources tributary to that reach of the Snake River. The area within which ground water is presently designated tributary to the reach of the Snake River extending downstream from Milner Dam to Swan Falls Dam is depicted in APPENDIX A. The Swan Falls Trust Water Area excludes any reach of the Snake River upstream of Milner Dam, any surface or ground water tributary to the Snake River upstream of Milner Dam, the Snake River downstream of Swan Falls Dam, and any surface or ground water tributary to the Snake River downstream of Swan Falls Dam. | Crucial language in existing rule incorporated into proposed Rule 010.17. Swan Falls Trust Water Area definition. Stakeholder comment(s) considered in proposed rule language.           | Idaho Code §§ 42-203B and 42-203C govern Idaho's ability to hold hydropower water rights in trust and authorize new uses of water made available by subordination provisions of those water rights held in trust. Idaho Code § 42-203C specifies how IDWR should evaluate applications to divert and use water within the Swan Falls Trust Water Area appropriated to hydropower water rights Idaho now holds in trust. |
| <b>030.01.c.</b> Trust water flows under the Snake River water rights agreement are those occurring in the Snake River and tributaries in the geographic area designated in Subsection 030.01.a. that exceed the established minimum stream flows but are less than the water rights for hydropower generating facilities in the Swan Falls Dam to Milner Dam reach of Snake River, to the extent such rights were unsubordinated prior to the Snake River water rights agreement. Minimum average daily flows have been established by   | <b>010.18. Trust Water.</b> Water in excess of the state established minimum stream flow at the Murphy Gage that was originally appropriated for hydropower generation purposes pursuant to the water rights now held in trust by the state of Idaho and that is made available for reallocation to uses other than hydropower generation to the extent the water rights held in trust are subordinated to permits issued for such other uses pursuant to Section 42-203C, Idaho Code.<br><br><b>010.10. Murphy Gage.</b> The United States   | Crucial language in existing rule incorporated into proposed Rules 010.18. Trust Water and 010.10. Murphy Gage definitions. Stakeholder comment(s) considered in proposed rule language. | Idaho Code §§ 42-203B and 42-203C govern Idaho's ability to hold hydropower water rights in trust and authorize new uses of water made available by subordination provisions of those water rights held in trust. Idaho Code § 42-203C specifies how IDWR should evaluate applications to divert and use water within the Swan Falls Trust Water  |

| Existing Rule  | Proposed Rule   | Comment or Rationale  | Purpose of Rule  |
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| <p><b>030.01.c. CONTINUED</b></p> <p>action of the Board and legislature at the U.S. Geological Survey gauging station located near Murphy (Section 35, Township 1 South, Range 1 West B.M.) in the amount of three thousand nine hundred (3900) cfs from April 1 to October 31 and five thousand six hundred (5600) cfs from November 1 to March 31, and at Milner gauging station located in Section 29, Township 10 South, Range 21 East, B.M. in the amount of zero (0) cfs from January 1 to December 31.</p> | <p>Geological Survey stream gage station (site identification number 13172500) located on the right bank of the Snake River at river mile 456.8, approximately 8.5 miles east-northeast of Murphy, Idaho and 0.9 miles downstream from the Swan Falls power plant at latitude 43° 15' 17.33" N, longitude 116° 23' 26.30" W, North American Datum of 1983, in the NW ¼ of the NW ¼ of Section 18, T.2S., R.1E., Boise Meridian, Hydrologic Unit 17050103.</p> |   | <p>Area appropriated to hydropower water rights Idaho now holds in trust.</p>  |
| <p><b>030.02. Trust Water Created by State Action.</b> Section 42-203B(3), Idaho Code, provides that trust water can be created by state action establishing a minimum flow without an agreement with the holder of the hydropower water right. Allocation of trust water so established will be pursuant to state law except the criteria of Section 42-203C, Idaho Code, will not be considered.</p>   | <p><b>Delete/None</b></p>   | <p>Deleted because, since the statute's enactment in 1985, the State of Idaho has never held a water right in trust under Idaho Code § 42-203B(3). It is therefore unnecessary to describe this category of water rights at this time. If this category of water rights is established, statutory and rule changes would likely be necessary.</p> | <p>Idaho Code §§ 42-203B and 42-203C govern Idaho's ability to hold hydropower water rights in trust and authorize new uses of water made available by subordination provisions of those water rights held in trust.</p>   |
| <p><b>030.03. Sources of Public Water Not Trust Water.</b> The following sources of public water are not trust water and are not subject to the public interest provisions of Section 42-203C, Idaho Code:</p>   | <p><b>Delete/None</b></p>   | <p>Deleted because any source outside the defined Swan Falls Trust Water Area is, by definition, not subject to the specific process and evaluation for applications within that area.</p>  | <p>Idaho Code §§ 42-203B and 42-203C govern Idaho's ability to hold hydropower water rights in trust and authorize new uses of water made available by subordination provisions of those water rights held in trust. Idaho Code § 42-203C specifies how IDWR should evaluate applications to</p> |

| Existing Rule  | Proposed Rule      | Comment or Rationale  | Purpose of Rule   |
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| <b>030.03. CONTINUED</b>   |                    |   | divert and use water within the Swan Falls Trust Water Area appropriated to hydropower water rights Idaho now holds in trust.   |
| <b>030.03.a.</b> Sources or tributaries to sources upon which no hydropower generating facilities are located downstream within the state of Idaho.  | <b>Delete/None</b> | Deleted because any source outside the defined Swan Falls Trust Water Area is, by definition, not subject to the specific process and evaluation for applications within that area. | Idaho Code §§ 42-203B and 42-203C govern Idaho's ability to hold hydropower water rights in trust and authorize new uses of water made available by subordination provisions of those water rights held in trust. Idaho Code § 42-203C specifies how IDWR should evaluate applications to divert and use water within the Swan Falls Trust Water Area appropriated to hydropower water rights Idaho now holds in trust. |
| <b>030.03.b.</b> Sources or tributaries to sources which have a state hydropower water right permit or license or Federal Energy Regulatory Commission license which have not been subordinated, and the state of Idaho has not entered into an agreement with the holder of the hydropower water right pursuant to Section 42-203B(2), Idaho Code, and the State of Idaho has not established a minimum stream flow for purposes of protecting hydropower generation. | <b>Delete/None</b> | Deleted because any source outside the defined Swan Falls Trust Water Area is, by definition, not subject to the specific process and evaluation for applications within that area. | Idaho Code §§ 42-203B and 42-203C govern Idaho's ability to hold hydropower water rights in trust and authorize new uses of water made available by subordination provisions of those water rights held in trust. Idaho Code § 42-203C specifies how IDWR should evaluate applications to divert and use water within the Swan Falls Trust Water Area appropriated to hydropower water rights Idaho now holds in trust. |

| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| <p><b>030.03.c.</b> Sources or tributaries to sources for which a state hydropower water right permit or license, or the Federal Energy Regulatory Commission license included a subordination condition. Such flows are considered to be public waters subject to appropriation under the provisions of Section 42-203A, Idaho Code.</p> | <p><b>Delete/None</b></p>  | <p>Deleted because any source outside the defined Swan Falls Trust Water Area is, by definition, not subject to the specific process and evaluation for applications within that area.</p> | <p>Idaho Code §§ 42-203B and 42-203C govern Idaho's ability to hold hydropower water rights in trust and authorize new uses of water made available by subordination provisions of those water rights held in trust. Idaho Code § 42-203C specifies how IDWR should evaluate applications to divert and use water within the Swan Falls Trust Water Area appropriated to hydropower water rights Idaho now holds in trust.</p> |
| <p><b>030.03.d.</b> Flows in excess of established rights including rights used for hydropower purposes. Such flows are unappropriated waters subject to allocation under Section 42-203A, Idaho Code.</p>  | <p><b>Delete/None</b></p>  | <p>Deleted because any source outside the defined Swan Falls Trust Water Area is, by definition, not subject to the specific process and evaluation for applications within that area.</p> | <p>Idaho Code §§ 42-203B and 42-203C govern Idaho's ability to hold hydropower water rights in trust and authorize new uses of water made available by subordination provisions of those water rights held in trust. Idaho Code § 42-203C specifies how IDWR should evaluate applications to divert and use water within the Swan Falls Trust Water Area appropriated to hydropower water rights Idaho now holds in trust.</p> |
| <p><b>030.03.e.</b> Flows in the Snake River upstream from Milner Dam and all surface and groundwater tributaries to that reach. Such flows are subject to allocation under Section 42-203A, Idaho Code, without</p>  | <p><b>010.17. Swan Falls Trust Water Area.</b> The reach of the Snake River extending downstream from Milner Dam (located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian) to Swan Falls</p> | <p>Crucial language from existing rule incorporated into proposed Rule 010.17. Swan Falls Trust Water Area definition. Stakeholder</p>   | <p>Idaho Code §§ 42-203B and 42-203C govern Idaho's ability to hold hydropower water rights in trust and authorize new uses of water</p>   |

| <b>Existing Rule</b>  | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>  |
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| <b>030.03.e. CONTINUED</b><br><br>consideration of water rights existing downstream from Milner Dam (Reference: 42-203B(2), Idaho Code).  | Dam (located in Section 18, Township 2 South, Range 1 East, Boise Meridian) and all surface and ground water sources tributary to that reach of the Snake River. The area within which ground water is presently designated tributary to the reach of the Snake River extending downstream from Milner Dam to Swan Falls Dam is depicted in APPENDIX A. The Swan Falls Trust Water Area excludes any reach of the Snake River upstream of Milner Dam, any surface or ground water tributary to the Snake River upstream of Milner Dam, the Snake River downstream of Swan Falls Dam, and any surface or ground water tributary to the Snake River downstream of Swan Falls Dam. | comment(s) considered in proposed rule language.                    | made available by subordination provisions of those water rights held in trust. Idaho Code § 42-203C specifies how IDWR should evaluate applications to divert and use water within the Swan Falls Trust Water Area appropriated to hydropower water rights Idaho now holds in trust. |
| <b>031. – 034. (RESERVED)</b>   | <b>026. – 034. (RESERVED)</b>   | Rule range modified based on proposed deletion of existing Rule 30. | Place holder to allow additional sections to be added when needed without major reorganization or renumbering of rule chapter.  |
| <b>035. APPLICATION REQUIREMENTS (RULE 35).</b>   | <b>035. APPLICATION REQUIREMENTS.</b>   | Deleted “(RULE 35)” per The Idaho Rule Writer’s Manual.             | Idaho Code § 42-202 governs application content requirements.   |
| <b>035.01. General Provisions.</b>  | <b>035.01. General Provisions.</b>  | No changes proposed.  | Idaho Code § 42-202 governs application content requirements.   |
| <b>035.01.a.</b> No person shall commence the construction of any project works or commence the diversion of the public water or trust water of the state of Idaho from any source without first having filed an application for permit to appropriate the water or other appropriate form with the department and received approval from the | <b>Delete/None</b>  | Restatement of statute. Deleted to avoid redundancy with statute.   | Idaho Code § 42-201(2) governs.   |

| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule   |
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| <b>035.01.a. CONTINUED</b><br><br>Director, unless exempted by these rules or by statute.   |  |  |   |
| <b>035.01.b.</b> Any person proposing to commence a diversion of the public water or the trust water of the state of Idaho from a groundwater source for single family domestic purposes is exempt from the application and permit requirements of Subsection 035.01.a.   | <b>Delete/None</b>   | Restatement of statute. Deleted to avoid redundancy with statute.  | Idaho Code § 42-227 governs.  |
| <b>035.01.c.</b> Any person watering livestock directly from a natural stream or natural lake without the use of a constructed diversion works is exempt from Subsection 035.01.a.  | <b>Delete/None</b>   | Restatement of statute. Deleted to avoid redundancy with statute.  | Idaho Code § 42-113 governs.  |
| <b>035.01.d.</b> All applications for permit to appropriate public water or trust water of the state of Idaho shall be on the form provided by the department entitled “Application for Permit to Appropriate the Public Waters of the State of Idaho” and include all necessary information as described in Subsection 035.03. An application for permit that is not complete as described in Subsection 035.03 will not be accepted for filing and will be returned along with any fees submitted to the person submitting the application. No priority will be established by an incomplete application. Applications meeting the requirements of Subsection 035.03. will be accepted for filing and will be endorsed by the department as to the time and date received. The acceptability of applications requiring clarification or | <b>035.01.a.</b> An application must be filed:<br><br>i. On the Department form titled “Application for Permit to Appropriate the Public Waters of the State of Idaho,” with any applicable attachments;<br><br>iv. With all necessary information under Subsection 035.03.<br><br><b>035.01.c.</b> The Department will determine whether an application is acceptable for filing under Subsection 035.03 or if it requires clarification or correction.<br><br><b>035.01.d.</b> When an application is not acceptable for filing under Subsection 035.03, the Department will not accept the application and will proceed as directed in Section 42-204, Idaho Code. Filing fees for an | Proposed Rule 035.01.a.: Clarified filing requirements and simplified language with bullet list format. Included reference to IDWR’s Rules of Procedures for filing requirements.<br><br>Proposed Rule 035.01.c.: Clarified action IDWR will take.<br><br>Proposed Rule 035.01.d.: Clarified action IDWR will take if an application is not acceptable for filing. Clarified an unacceptable application does not establish a water right priority date. | Idaho Code § 42-202 states an application must be filed with IDWR and submitted with the required filing fee. Idaho Code § 42-221A states the application filing fee. Idaho Code § 42-204(1) governs IDWR’s action regarding an unacceptable application. Proposed rule clarifies how IDWR implements the statutory requirements. |

| <b>Existing Rule</b>  | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>  |
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| <b>035.01.d. CONTINUED</b><br><br>corrections shall be determined by the Director.  | unacceptable application will be refunded to the applicant if the application is not timely clarified or corrected. An unacceptable application does not establish a priority date.   | Renumbered consistent with The Idaho Rule Writer's Manual. Stakeholder comment(s) considered in proposed rule language.   |   |
| <b>None</b>   | <b>035.01.a.</b> An application must be filed:<br><br>ii. In accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources," Section 053, either on paper, digitally in PDF format, or through the Department's online filing process;   | Included reference to other applicable administrative rules with IDWR general filing requirements, which apply to appropriation applications and other filings.   | Idaho Code § 42-202 requires anyone wishing to divert and use the public waters of the state of Idaho to file an application. IDAPA 37.01.01 governs IDWR's filing procedures. Proposed rule references applicable governing documents. |
| <b>None</b>   | <b>035.01.b.</b> The filing fee in Section 42-221A, Idaho Code, is based on the total rate (in cfs) or the total storage volume (in af) to be appropriated. Whenever the application diversion rate and storage volume elements lead to a different filing fee, the higher amount is the applicable filing fee. | Clarified filing fee requirement to ensure applicant is aware of required fee to pay with initial application submittal to avoid advancement of priority date for an incomplete application. Included IDWR Administrative Application Processing Memo No. 66 (est. 2001) filing fee policy in rule, which clarifies applicable fee when applicant proposes diversion rate and storage volume on a single application. | Idaho Code § 42-221A governs the required filing fees. Rule clarifies what the applicable filing fee is for an application proposing both a diversion rate and a storage volume.  |
| <b>035.01.e.</b> The department will correspond with the applicant concerning applications which have been accepted for filing by the department which require clarification or | <b>035.01.e.</b> When an application is accepted for filing but requires clarification or correction of the information required by Subsection 035.03, the Department will proceed as   | Clarified IDWR's action on applications accepted for filing but requiring clarification or correction.  | Idaho Code § 42-204(1) governs IDWR's action regarding acceptable applications requiring  |



| <b>Existing Rule</b>  | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>   |
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| <p><b>035.01.e. CONTINUED</b></p> <p>correction of the information required by Subsection 035.03. If the additional or corrected information is supplied after thirty (30) days, the priority date of the application will be determined by the date the additional or corrected information is received by the department unless the applicant has requested within the thirty (30) day period additional time to provide the information, has shown good reasons for needing additional time, and the Director has granted additional time.</p> | <p>directed in Section 42-204, Idaho Code.</p>  | <p>Stakeholder comment(s) considered in proposed rule language.</p>   | <p>clarification or correction. This rule references applicable statutes and clarifies how IDWR implements the statutory requirements.</p>   |
| <p><b>035.01.f.</b> Failure to submit the additional or corrected information is cause for the Director to void the department's records of the application.</p>  | <p><b>035.01.e.</b> When an application is accepted for filing but requires clarification or correction of the information required by Subsection 035.03, the Department will proceed as directed in Section 42-204, Idaho Code.</p>  | <p>Clarified IDWR's action on applications accepted for filing but requiring clarification or correction. Stakeholder comment(s) considered in proposed rule language.</p>  | <p>Idaho Code § 42-204(1) governs IDWR's action regarding acceptable applications requiring clarification or correction. Proposed rule clarifies how IDWR implements the statutory requirements.</p>                                       |
| <p><b>035.02. Effect of an Application.</b></p>   | <p><b>035.02. Effect of an Application.</b></p>   | <p>No changes proposed.</p>   | <p>Chapter 2, Title 42, Idaho Code governs the effect of an application to appropriate the public waters of the state of Idaho.</p>  |
| <p><b>035.02.a.</b> Any application that seeks to appropriate water from a source upon which the state holds trust water shall be considered an application for appropriation of unappropriated water. If the Director determines unappropriated water is not available, the application, if otherwise approvable, will be reviewed for compliance with provisions of Section 42-</p>   | <p><b>035.03.b.</b> Source of water to be appropriated.</p> <p>v. For an application within the Swan Falls Trust Water Area, state if the application is seeking unappropriated water or a reallocation of trust water.</p> <p><b>025.02. Applications to Appropriate Water from the Swan Falls Trust Water Area.</b> The</p> | <p>Added proposed Rule 035.03.b.v. requiring the applicant to state if the application seeks use of unappropriated water or a reallocation of trust water. Proposed rule replaces existing Rule 035.02.a. directive that IDWR</p> | <p>Idaho Code §§ 42-202, 42-203A, and 42-203C state application content, processing, and evaluation criteria. Idaho Code §§ 42-203B and 42-203C govern Idaho's ability to hold hydropower water rights in trust and authorize new uses</p> |

| Existing Rule  | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| <p><b>035.02.a. CONTINUED</b></p> <p>203C, Idaho Code.</p> | <p>Department will process an application to appropriate water from the Swan Falls Trust Water Area under Section 040 and will evaluate the application as follows:</p> <p><b>a.</b> First, the Director will evaluate the application under Subsection 045.01 using the criteria of Section 42-203A(5), Idaho Code.</p> <p style="padding-left: 40px;">i. If the application is seeking to appropriate unappropriated water within the Swan Falls Trust Water Area rather than a reallocation of trust water and it satisfies all criteria of Section 42-203A(5), Idaho Code, the Director may approve the application for unappropriated water. An application for unappropriated water within the Swan Falls Trust Water Area must demonstrate the public waters sought for appropriation exceed the amount necessary to satisfy all existing water rights, including the water rights held in trust.</p> <p style="padding-left: 40px;">ii. If the application does not satisfy the criteria of Section 42-203A(5)(b) through (g), Idaho Code, or is found to reduce the water available to an existing water right other than a water right held in trust, the Director may deny the application.</p> <p style="padding-left: 40px;">iii. If the application satisfies all criteria of Section 42-203A(5), Idaho Code, except it is found to reduce the amount of water available to a water right held in trust, it is seeking a reallocation of trust water and the Director will review the application under Paragraph 025.02.b.</p> <p><b>b.</b> Second, if the application is seeking a reallocation of trust water the Director will</p> | <p>decide for the applicant. Posing the question to the applicant creates an opportunity for a dialog with a potential water user within the Swan Falls Trust Water Area so IDWR can confirm with the user which category of water is being sought rather than IDWR assuming the applicant's intentions. Proposed Rule 025.02 states how IDWR will process and evaluate an application within the Swan Falls Trust Water Area. Do not need to restate the processing procedure elsewhere in the rules.</p> | <p>of water made available by subordination provisions of those water rights held in trust. Idaho Code § 42-203C governs the evaluation of applications seeking reallocation of trust water. Proposed Rule 035.03.b.v. requires the applicant to clearly state if the application is seeking a reallocation of trust water so IDWR and the public are aware Idaho Code § 42-203C criteria apply.</p> |

| Existing Rule   | Proposed Rule  | Comment or Rationale  | Purpose of Rule   |
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| <p><b>035.02.a. CONTINUED</b></p>   | <p>evaluate the application under Subsection 045.02 to determine whether it will cause a significant reduction to a water right held in trust pursuant to Section 42-203C(1), Idaho Code.</p> <p>i. If the application will not cause a significant reduction to a water right held in trust pursuant to Section 42-203C(1), Idaho Code, the Director may approve the application without additional evaluation.</p> <p>ii. If the application will cause a significant reduction to a water right held in trust pursuant to Section 42-203C(1), Idaho Code, the Director will review the application under Paragraph 025.02.c.</p> <p>c. Third, if the application is seeking a reallocation of trust water and will cause a significant reduction to a water right held in trust the Director will evaluate the application under Subsection 045.03 to determine if the proposed reduction is in the public interest pursuant to Section 42-203C(2), Idaho Code.</p> <p>i. If the application is in the public interest, the Director may approve the application.</p> <p>ii. If the application is not in the public interest, the Director may deny the application.</p> |   |   |
| <p><b>035.02.b.</b> The priority of an application for unappropriated or trust water is established as of the time and date the application is received in complete form along with the statutory fee in any official office of the</p> | <p><b>035.02.a.</b> The priority of an application is the time and date the Department receives the application in a form acceptable for filing with the statutory filing fee. The priority date of the application remains fixed unless</p>   | <p>Simplified existing language. Renumbered consistent with The Idaho Rule Writer's Manual given existing Rule 035.02.a. is</p> | <p>Idaho Code § 42-202 states the priority right is established by filing the application and fee. Idaho Code § 42-204 states the</p> |

| Existing Rule  | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| department. The priority of the application remains fixed unless changed by action of the Director in accordance with applicable law.  | changed by an action of the Director in accordance with applicable law.  | proposed for deletion. Stakeholder comment(s) considered in proposed rule language.  | priority of a corrected application received more than thirty days after the requested corrections shall be treated as a new application and the priority shall be determined by the date of receipt. Rule clarifies how the priority date is established for an application.  |
| <b>035.02.c.</b> An application for permit to appropriate water is not a water right and does not authorize diversion or use of water until approved by the Director in accordance with statutes in effect at the time the application is approved.                          | <b>035.02.b.</b> An application is not a water right and does not authorize diversion or use of water until approved by the Director in accordance with the laws in effect at the time the application is approved.  | Simplified existing language. Renumbered consistent with The Idaho Rule Writer's Manual given existing Rule 035.02.a. proposed for deletion. Stakeholder comment(s) considered in proposed rule language.  | Idaho Code §§ 42-202 and 42-203A(5) govern processing and evaluation required prior to water right permit approval. Proposed rule clarifies that an application is not a water right consistent with the statutes. Diversion and use of water prior to this evaluation has the potential to injury the interests of others.    |
| <b>035.02.d.</b> An applicant's interest in an application for permit to appropriate water is personal property. An assignment of interest in an application must include evidence satisfactory to the Director that the application was not filed for speculative purposes. | <b>035.02.c.</b> An applicant's interest in an application is personal property. An applicant may convey (assign) its interest in an application to another person or entity. The person or entity to whom the application is conveyed must notify the Department of the assignment, in writing, within thirty (30) days after the assignment and notify other parties in the contested case pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources," Section 202. | Clarified existing language so applicant is aware of application conveyance process, IDWR expectation of applicant to inform IDWR of conveyance, and IDWR's action upon being informed. IDWR and any parties to a contested case should be notified of an application assignment in a timely manner to ensure IDWR and other parties are | Idaho Code § 42-248 requires a water right owner or permit holder to notify IDWR when a water right or permit is conveyed. Idaho Code § 42-248 does not speak to water right application conveyance. Idaho Code § 42-202 governs filing of an application. Idaho Code § 42-203A governs processing of an application, but does |

| Existing Rule  | Proposed Rule  | Comment or Rationale   | Purpose of Rule   |
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| <p><b>035.02.d. CONTINUED</b></p>  |  | <p>corresponding with the correct person or entity. Renumbered consistent with The Idaho Rule Writer's Manual given existing Rule 035.02.a. is proposed for deletion. Stakeholder comment(s) considered in proposed rule language.</p>   | <p>not state what an applicant does if they wish to convey ownership of an acceptable application. This rule clarifies how an applicant may convey an application. The rule does not include a consequence if the assignment is received after thirty (30) days. The consequence depends on the circumstances and current status of the application. Therefore, rather than dictating the consequence in rule, it is left up to the Director, hearing officer, or other IDWR employee processing the application to decide based on the specific circumstances.</p> |
| <p><b>035.03. Requirements for Applications to Be Acceptable for Filing.</b></p> <p><b>035.03.a.</b> The following information shall be shown on an application for permit form and submitted together with the statutory fee to an office of the department before the application for permit may be accepted for filing by the department.</p> | <p><b>035.01.a.</b> An application must be filed:</p> <p style="padding-left: 40px;">i. On the Department form titled "Application for Permit to Appropriate the Public Waters of the State of Idaho," with any applicable attachments;</p> <p style="padding-left: 40px;">iii. With the applicable filing fee prescribed in Section 42-221A, Idaho Code; and</p> <p style="padding-left: 40px;">iv. With all necessary information under Subsection 035.03.</p> <p><b>035.03. Requirements for Applications to Be Acceptable for Filing.</b> An application is acceptable for filing if it is filed in a manner</p> | <p>Reformatted to delete redundant language previously stated elsewhere in rules and move content in existing Rule 035.03.a. up into Rule 035.03 to consolidate language levels consistent with The Idaho Rule Writer's Manual instruction. Referenced previous rule subparagraph rather than duplicate language. Rephrased to clarify items listed below are required for an acceptable application. Stakeholder comment(s) considered in</p> | <p>Idaho Code § 42-202 states minimal required application items. Additional project information is necessary for IDWR to complete review of Idaho Code § 42-203A(5) criteria and the public to understand the proposed water use and its potential impacts, if any.</p>  |

| Existing Rule  | Proposed Rule   | Comment or Rationale   | Purpose of Rule   |
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| <b>035.03. CONTINUED</b>   | stated in Paragraph 035.01.a. and includes the following information:   | proposed rule language.  |   |
| <b>035.03.a.i.</b> The name and post office address of the applicant shall be listed. If the application is in the name of a corporation, the names and addresses of its directors and officers shall be provided. If the application is filed by or on behalf of a partnership or joint venture, the application shall provide the names and addresses of all partners and designate the managing partner, if any.        | <b>035.03.a.</b> Applicant's name and mailing address.<br><br>i. If the applicant is a corporation, also include the names of all directors.<br><br>ii. If the applicant is a partnership, limited liability company, or joint venture, also include the names of all partners or members and the name of the managing partner or member, if any. | Reformatted to move language in existing Rule 035.03.a. up a language level into Rule 035.03. Moved language in existing Rule 035.03.a.i. up into Rule 035.03.a. Simplified each application requirement description into short, incomplete sentences in list format. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-202(1)(a) requires an applicant to state its name and mailing address. Idaho Code § 42-202(5) requires an applicant to state the names and places of residence for its directors for an application involving more than 25 cfs or development of more than 500 theoretical horsepower, or more than 10,000 af of active storage capacity. Proposed Rule 035.03.a. consistent with requirement. Proposed Rules 035.03.a.i. and ii. require the names of individual(s) authorized to act on behalf of applicants that are entities rather than individuals to ensure IDWR is conversing with individuals authorized to make decisions on behalf of the applicant. |
| <b>035.03.a.ii.</b> The name of the water source sought to be appropriated shall be listed. For surface water sources, the source of water shall be identified by the official geographic name listed on the U.S. Geological Survey Quadrangle map. If the source has not been named, it can be described as "unnamed," but the system or river to which it is tributary shall be identified. For groundwater sources, the | <b>035.03.b.</b> Source of water to be appropriated.<br><br>i. Identify only one water source unless the application is for a single interconnected system that will divert water from more than one source.<br><br>ii. For a surface water source, include the official geographic name listed on the United States Geological Survey (USGS)     | Reformatted to move language in existing Rule 035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.ii. can be renumbered as proposed Rule 035.03.b. and list specific source-related requirements as proposed Rule 035.03.b.i. through iv. Proposed Rule 035.03.b.i.  | Idaho Code § 42-202(1)(b) requires an applicant to state the source name. Proposed Rule 035.03.b. is consistent with requirement. Proposed Rule 035.03.b.i. through iv. ensure the source of water is clearly stated on the application so IDWR and the public can evaluate the   |

| Existing Rule   | Proposed Rule   | Comment or Rationale   | Purpose of Rule   |
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| <p><b>035.03.a.ii. CONTINUED</b></p> <p>source shall be listed as “groundwater.” Only one source shall be listed on an application unless the application is for a single system which will have more than one source.</p>  | <p>Quadrangle map. If the surface water source is not named on the USGS Quadrangle map, describe it as an unnamed water body, such as “unnamed stream.” For surface water sources, also identify the first named stream or river to which the source is tributary. If the water source sinks into the ground prior to reaching a stream named on the USGS Quadrangle map, describe the “tributary to” stream as “sinks.” If the water source flows into a stream named on the USGS Quadrangle map for part of the year and sinks into the ground for the other part of the year, identify the “tributary to” stream as the named stream on the USGS Quadrangle map.</p> <p>iii. For a water source under the ground surface, identify the source as “ground water.”</p> | <p>clarifies application requirement consistent with IDWR Administrative Application Processing Memo No. 58 (est. 1993). Proposed Rule 035.03.b.ii. clarifies existing rule language. Proposed Rule 035.03.b.iii. clarifies existing rule language. Stakeholder comment(s) considered in proposed rule language.</p> | <p>application impact, if any.</p>  |
| <p><b>None</b></p>  | <p><b>035.03.b.</b> Source of water to be appropriated.</p> <p>iv. For a low temperature geothermal resource, state how the source will be used primarily for its heat value and secondarily for its value as water or how the use qualifies for an exemption pursuant to Section 42-233(1), Idaho Code.</p>  | <p>Proposed Rule 035.03.b.iv. requests statutorily required information for use of low temperature geothermal resources. Stakeholder comment(s) considered in proposed rule language.</p>  | <p>Idaho Code § 42-233 governs the use of low temperature geothermal resources. Proposed Rule 035.03.b.iv. specifically requires information IDWR needs to ensure a proposed water use is consistent with the statutory requirement.</p>                        |
| <p><b>035.03.a.iii.</b> The legal description of the point of diversion and place of use shall be listed. The location of the point(s) of diversion and the place of use shall be described to the nearest forty (40) acre subdivision or U.S. Government Lot of the Public Land Survey System. The location of springs shall be described to the nearest ten (10) acre tract. Subdivision names, lot</p> | <p><b>035.03.c.</b> Legal description of the point of diversion and place of use.</p> <p>i. Describe the location of the point of diversion and the place of use to the nearest forty (40) acre subdivision or United States Government Lot of the Public Land Survey System.</p>   | <p>Reformatted to move language in existing Rule 035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.iii. can be renumbered as proposed Rule 035.03.c. and list specific point of diversion-related requirements as</p>  | <p>Idaho Code § 42-202(1)(d) requires an applicant to state the location of the proposed point of diversion. Idaho Code § 42-202(2) states a reasonably anticipated future needs municipal purposes application need not describe the service area by legal</p> |

| Existing Rule  | Proposed Rule   | Comment or Rationale   | Purpose of Rule   |
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| <p><b>035.03.a.iii. CONTINUED</b></p> <p>and block numbers and any name in local common usage for the point of diversion, or place of use shall be included in the comments section of the application form. If irrigation is listed as a purpose of use, the number of acres in each forty (40) acre subdivision of the place of use shall be listed.</p> | <p>ii. Subdivision names, lot and block numbers, and any name in local common usage for the point of diversion or place of use may be included.</p> <p>iii. If irrigation use is proposed, state the number of acres to be irrigated to the nearest whole acre in each forty (40) acre subdivision of the place of use. For an application proposing irrigation of less than ten (10) acres, acreage shall be shown to the nearest one-tenth (0.1) acre. The number of acres per forty (40) acre subdivision is not required when the place of use is a generally described place of use for an existing water right or permit. If the proposed place of use is a generally described place of use with an established digital boundary authorized by a water right or permit, state the name of the generally described place of use, list the water right number serving the generally described place of use, attach a map depicting the generally described place of use boundary, and state the total number of acres to be irrigated.</p> <p>iv. If the application proposes water use for municipal purposes or fire protection by a municipal provider within a service area, the service area need not be described by legal description. Describe the service area in terms sufficient to identify the general location where water will be used and attach a map depicting the service area.</p> | <p>proposed Rule 035.03.c.i. through iii. Proposed Rule 035.03.c.i. clarifies application requirement and removes existing requirement to describe spring-source points of diversion to the 10-acre tract. Given currently available location and mapping technology, IDWR no longer needs to require the 10-acre tract location information from the applicant to discern which spring source the applicant proposes to use. Proposed Rule 035.03.c.ii. removes existing requirement to provide subdivision names, lot and block numbers, and local area source name. Proposed Rule 035.03.c.iii. removes existing requirement to list irrigation acres by forty (40) acre subdivision for applications that propose additional water for a generally described place of use associated with an existing water right or permit. Proposed Rule 035.03.c.iv. clarifies the place of use for any municipal purposes application, whether for immediate needs or reasonably anticipated future needs, and fire protection</p> | <p>description. Idaho Code § 42-202(4) requires an applicant to state the location of the proposed place of use. Idaho Code § 42-202(6) requires the applicant to give the legal subdivisions of land proposed to be irrigated. Proposed Rule 035.03.c. is consistent with statutory requirements. Proposed Rule 035.03.c.i. clarifies the applicant must describe the point of diversion location consistent with the way other water rights (licensed and decreed) describe points of diversion. Proposed Rule 035.03.c.ii. gives the applicant an option to include subdivision names, lot and block numbers, and names of common usage to further specify the point of diversion and place of use location. Proposed Rule 035.03.c.iii. requires an applicant to describe the irrigation place of use in compliance with Idaho Code § 42-202(6). Proposed Rule 035.03.c.iv. clarifies a municipal use application, whether for immediate need or future needs, and fire protection application for a municipal provider can describe the place of use as a service area without</p> |



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| <b>035.03.a.iii. CONTINUED</b>   |   | use provided by a municipal provider can be described as a named service area with a map depicting the service area boundary. Stakeholder comment(s) considered in proposed rule language.   | including a legal description in conformance with established practices for describing municipal and fire protection water rights held by municipal providers. The proposed requirements clarify the water use location so IDWR and the public can evaluate the application impact(s), if any.   |
| <b>035.03.a.iv.</b> The quantity of water to be diverted shall be listed as a rate of flow in cubic feet per second and/or as a volume to be stored in acre-feet per year for each purpose of use requested.   | <b>035.03.d.</b> Quantity of water to be diverted.<br><br>i. Include the rate of flow in cfs or the volume of water to be stored in af per year for each beneficial use proposed, using values with a maximum of three significant figures with no more precision than hundredths for rate and tenths for volume. | Reformatted to move language in existing Rule 035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.iv. through vi. regarding quantity of water proposed to be used can be grouped together and renumbered as proposed Rule 035.03.d.i. through iii. Proposed Rule 035.03.d.i. is consistent with existing rule language, but proposes to add language requiring applicants to specify quantities consistent with IDWR Administrative Application Processing Memo No. 6 (est. 1975). | Idaho Code § 42-202(1)(d) requires an applicant to state the quantity of water to be used. Chapter 2, Title 42, Idaho Code uses cubic feet per second as the flow rate unit and acre-feet as the volume unit. Proposed Rule 035.03.d. is consistent with statutory requirements and units. Proposed Rule 035.03.d.i. ensures the quantity of water is clearly stated on the application so IDWR and the public can evaluate the application impact(s), if any. |
| <b>035.03.a.v.</b> Impoundment (storage) applications shall show the maximum acre-feet requirement per year which shall not exceed the storage capacity of the impoundment structure unless the application describes a plan of operation for filling the reservoir more than once per | <b>035.03.d.</b> Quantity of water to be diverted.<br><br>ii. For an application to store water, the maximum af per year may not exceed the storage facility capacity unless the application includes a plan of operation for filling the facility more than once per year. The refill                            | Reformatted to move language in existing Rule 035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.iv. through vi. regarding quantity of water proposed to be used can be   | Idaho Code § 42-202(1)(d) requires an applicant to state the quantity of water to be used. Proposed Rule 035.03.d. is consistent with statutory requirements. Proposed Rule 035.03.d.ii.   |

| Existing Rule   | Proposed Rule   | Comment or Rationale  | Purpose of Rule  |
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| <p><b>035.03.a.v. CONTINUED</b></p> <p>year.</p>  | <p>plan may include refills for seepage, evaporation, use from storage, and other purposes the applicant intends to replace in the storage facility throughout the year.</p>  | <p>grouped together and renumbered as proposed Rule 035.03.d.i. through iii. Proposed Rule 035.03.d.ii. is consistent with existing rule language, but added language clarifying refill plan elements consistent with IDWR Administrative Application Processing Memo No. 76 (est. 2015).</p> | <p>ensures the quantity of water is clearly stated on the application so IDWR and the public can evaluate the application impact(s), if any.</p>   |
| <p><b>035.03.a.vi.</b> Every offstream storage impoundment application shall show a maximum rate of diversion to storage as well as the total storage volume.</p>   | <p><b>035.03.d.</b> Quantity of water to be diverted.</p> <p>iii. For an application to store water in an off-stream storage facility, include a maximum rate of diversion to storage and the total storage volume.</p>   | <p>Reformatted to move language in existing Rule 035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.iv. through vi. regarding quantity of water proposed to be used can be grouped together and renumbered as proposed Rule 035.03.d.i. through iii.</p>                                     | <p>Idaho Code § 42-202(1)(d) requires an applicant to state the quantity of water to be used. Proposed Rule 035.03.d. is consistent with statutory requirements. Proposed Rule 035.03.d.iii. ensures the quantity of water is clearly stated on the application so IDWR and the public can evaluate the application impact(s), if any.</p> |
| <p><b>035.03.a.vii.</b> The nature of the proposed beneficial use or uses of the water shall be listed. While the purpose may be described in general terms such as irrigation, industrial or municipal, a description sufficient to identify the proposed use or uses of the water shall also be included.</p> | <p><b>035.03.e.</b> Beneficial use of water.</p> <p>i. Describe the proposed use of water. When a narrative or other application material describes details of the proposed use, the description used in the purpose of use field may be in general terms such as irrigation, industrial, or municipal.</p> | <p>Reformatted to move language in existing Rule 035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.vii. regarding nature of water use can be renumbered as proposed Rule 035.03.e.i. Clarified existing rule language. Stakeholder comment(s) considered in proposed rule language.</p>     | <p>Idaho Code § 42-202(1)(c) requires an applicant to state the nature of the water use. Proposed Rule 035.03.e.i. is consistent with statutory requirement.</p>   |

| Existing Rule | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| None          | <p><b>035.03.e.</b> Beneficial use of the water.</p> <p>ii. For a municipal purposes application, attach a complete “Municipal Water Right Application Checklist.” The “Municipal Water Right Application Checklist” is a form available on the Department’s website or from the Department upon request.</p> <p>iii. For a municipal purposes application that proposes to appropriate water for reasonably anticipated future needs, include justification for the planning horizon, the anticipated service area at the end of the planning horizon, the anticipated population within the anticipated service area at the end of the planning horizon, and the anticipated water demand within the anticipated service area at the end of the planning horizon. Also include a gap analysis showing the extent to which an existing water right will not be sufficient to meet the anticipated water demand at the end of the planning horizon.</p> <p>iv. For a municipal purposes application that does not propose to appropriate water for reasonably anticipated future needs, include a water requirement narrative with a map of the service area, current water needs, water needs after five years, and any existing plan for conveying ownership of the water right to a subdivision homeowners association or entity other than individual land parcel owners.</p> <p>v. For an application proposing multi-home domestic use where the applicant intends to convey a portion of the place of use</p> | <p>Added Rule 035.03.e.ii thru iv. to require information for reasonably anticipated future needs (RAFN) municipal purposes applications consistent with applicable statutes, IDWR Administrative Application Processing Memo No. 74 (est. 2013), and additional information to aid IDWR and the public in evaluating the application impact(s), if any. Idaho Code § 42-203A(5) requires the Director to find what uses the water sought can be and are intended to be applied. Proposed addition of Rule 035.03.e.v. to ensure applicant is prepared to meet statutory requirements for development of an approved application resulting in a water right permit. Historically, water right permits issued to subdivision or other land developers are often not conveyed to system operators, such as homeowner’s associations, prior to sale of individual lots. If this occurs, the individual lot owners, rather than the system operator, become owners of the water right permit, or portion thereof, prior to the proof of beneficial submittal. If</p> | <p>Idaho Code § 42-202(2) requires the applicant to submit specific information for reasonably anticipated future needs (RAFN) municipal purposes applications. Idaho Code § 42-202B defines terms listed in Idaho Code § 42-202(2) requirements. Idaho Code § 42-203A(5)(c) requires the Director to find the application is made in good faith and not for speculative purposes. Idaho Code § 42-204(3) requires the Director to condition a permit requiring the application of water and full beneficial use occur within specific timeframes. Idaho Code § 55-616(1) states an appurtenant water right permit is conveyed with real property. Proposed Rules 035.03.e.ii. through v. summarize statutory requirements for RAFN applications and seeks to ensure applicants proposing multi-home domestic uses can comply with proof of beneficial use submittal requirements if the place of use land is conveyed during the permit development period.</p> |

| Existing Rule   | Proposed Rule   | Comment or Rationale   | Purpose of Rule  |
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| None - CONTINUED  | land to an individual parcel or lot owner, describe the applicant's plan, if any, to keep the permit in single ownership by conveying the permit to a homeowner's association, water system operator, or other entity prior to conveying an individual parcel or lot with an appurtenant portion of the permit.   | IDWR is not notified of the conveyance, the request for proof of beneficial use will go to the developer and the permit might lapse, because the developer no longer has authority to file proof. This is often an unintended consequence of poor planning. IDWR would like to avoid these unintended consequences by requiring submittal of a conveyance plan. Stakeholder comment(s) considered in proposed rule language.   |  |
| <p><b>035.03.a.viii.</b> The period of each year during which water will be diverted, stored and beneficially used shall be listed. The period of use for irrigation purposes shall coincide with the annual periods of use shown in Figure 1 in APPENDIX B (located at the end of this chapter), unless it can be shown to the satisfaction of the Director that a different period of use is necessary.</p> | <p><b>035.03.f.</b> Period of use.</p> <p>i. A period of use must be listed for each beneficial use proposed in the application.</p> <p>ii. For irrigation use, the period must coincide with the annual season of use established by the Department. The Department established irrigation season of use is available on the Department's website or from the Department upon request. If a longer season of use is proposed, the application must justify that the longer season of use is necessary.</p> | <p>Reformatted to move language in existing Rule 035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.viii. regarding period of use can be renumbered as proposed Rule 035.03.f. Proposed Rules 035.03.f. and 035.03.f.i. clarify existing rule language. Added proposed Rule 035.03.f.i. to clarify a period of use must be provided for each proposed use. Revised Rule 035.03.f.ii. to clarify the period of use for an irrigation application must coincide with the IDWR standard season of use available on the Department's website rather</p> | <p>Idaho Code § 42-202(1)(c) requires the applicant to state the period of year during which the proposed water will be used. Proposed Rule 035.03.f. is consistent with the statute. Proposed Rule 035.03.f.i. requires an irrigation application's season of use be consistent with licensed water rights' standard irrigation season of use. This aids IDWR and the public in evaluating the application impact(s), if any.</p> |

| Existing Rule   | Proposed Rule   | Comment or Rationale  | Purpose of Rule  |
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| <b>035.03.a.viii. CONTINUED</b>   |   | than referencing a static map within the rules that would require a rulemaking process to update if needed in the future. Also, applicants generally use IDWR's website mapping services to determine the standard irrigation season of use rather than the existing rules.   |  |
| <b>035.03.a.ix.</b> The proposed method of diversion, conveyance system and system for distributing and using the water shall be described. | <b>035.03.g.</b> Description of the project works.  | Reformatted to move language in existing Rule 035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.ix. regarding diversion works can be renumbered as proposed Rule 035.03.g. Proposed Rule 035.03.g. simplified existing rule language.   | Idaho Code §§ 42-202(1)(d) and 42-202(4) require the applicant to describe the proposed diversion works. Proposed Rule 035.03.g. is consistent with the statute.   |
| <b>None</b>   | <b>035.03.h.</b> Any other water right used at the place of use for the same purpose. Include the water right number or name of the delivery organization, such as a municipal provider, canal company, irrigation district, or other delivery entity that supplies water for the proposed use at the proposed place of use. Also state if the applicant is entitled to distribution of water from a water delivery entity, but the entity's distribution system is not capable of delivering water to the proposed place of use. | Added proposed Rule 035.03.h. to require information regarding other water rights for the same use. This information is needed to consider the nature of the proposed water use, whether the amount of water applied for is necessary for the beneficial use, and whether an irrigation ground water use should be supplemental. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-202(1)(c) requires the applicant to describe the nature of the proposed use(s). Idaho Code § 42-202(6) states no one shall be authorized to divert more than one (1) cfs of water for each fifty (50) acres of land to be irrigated. Idaho Code § 42-203A(5)(f) requires the Director to determine whether the application is contrary to the conservation of water resources. Idaho Code § 42-204A requires the Director to determine if the proposed |

| Existing Rule  | Proposed Rule   | Comment or Rationale   | Purpose of Rule   |
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| None CONTINUED   |   |  | place of use has appurtenant surface water rights for irrigation or is entitled to irrigation water from a delivery entity. Proposed rule is consistent with statutes.  |
| None   | <b>035.03.i.</b> Ownership or other legal access to the point of diversion, place of use, and conveyance system. If a person or entity other than the applicant owns the land at the point of diversion, place of use, or where the conveyance system will be established, include a description of the arrangement enabling the applicant to access the land for the purposes proposed in the application. | Proposed Rule 035.03.i. is information IDWR currently requests on the standard application form. A water right cannot lawfully be established in trespass. IDWR must know this information to determine if the application is made in good faith. Stakeholder comment(s) considered in proposed rule language.   | Idaho Code § 42-203A(5)(c) requires the Director to determine whether the application is made in good faith. Per Idaho case law (Lemmon v. Hardy, et. al.), lack of possessory interest in the application place of use or point of diversion is speculation.   |
| <b>035.03.a.x.</b> The period of time required for completion of the project works and application of water to the proposed use shall be listed. This period of time shall not exceed the time required to diligently and uninterruptedly apply the water to beneficial use and shall not exceed five (5) years. | <b>035.03.j.</b> Period of time required to complete project works and apply water to beneficial use. While a permit holder may request a permit development period extension pursuant to Section 42-204, Idaho Code, the period of time stated on an application may not exceed five (5) years unless the application proposes municipal purposes for reasonably anticipated future needs.                 | Reformatted to move language in existing Rule 035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.x. regarding period of time for development can be renumbered as proposed Rule 035.03.j. Proposed Rule 035.03.j. simplifies existing rule language, clarifies the period of time for reasonably anticipated needs municipal use, and informs applicants of the opportunity to request further extensions of time in the development period after the permit is approved. | Idaho Code § 42-202(1)(e) requires the applicant to state the time required to complete the project and put the water to beneficial use. Idaho Code § 42-204 requires IDWR to require construction and application of water to the full beneficial use within five (5) years. Idaho Code § 42-204 affords permit holders an opportunity to request extensions of time to complete development and submit proof of beneficial use. |

| Existing Rule   | Proposed Rule   | Comment or Rationale  | Purpose of Rule  |
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| <b>035.03.a.x. CONTINUED</b>  |   | Stakeholder comment(s) considered in proposed rule language.  |  |
| <b>035.03.a.xi.</b> A map or plat of sufficient scale (not less than two (2) inches equal to one (1) mile) to show the project proposed shall be included. The map or plat shall agree with the legal descriptions and other information shown on the application.  | <b>035.03.k.</b> Map or plat of sufficient scale to show the proposed project.  | Reformatted to move language in existing Rule 035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.xi. regarding a map can be renumbered as proposed Rule 035.03.k. Proposed Rule 035.03.k. removes requirements regarding map size and agreement with other elements of the application, such as the place of use legal description required in proposed Rule 035.03.c. Given current mapping tools, it is no longer necessary to specify a required map scale. | Idaho Code § 42-202(4) requires the application to be accompanied by a map. A map confirms the location of the proposed water use.   |
| <b>035.03.a.xii.</b> The application form shall be signed by the applicant listed on the application or evidence must be submitted to show that the signator has authority to sign the application. An application in more than one (1) name shall be signed by each applicant unless the names are joined by “or” or “and/or.” | <b>035.03.l.</b> Applicant’s signature or evidence to show the signatory has authority to sign on behalf of the applicant.<br><br>i. For an application in more than one (1) name, each applicant must sign the application unless “or” connects the applicant names. | Reformatted to move language in existing Rule 035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.xii. regarding applicant signature can be renumbered as proposed Rules 035.03.l. and 035.03.l.i. Proposed Rule 035.03.l. and 035.03.l.i. clarify who must sign an application.  | Idaho Code § 42-203A(5)(c) requires IDWR to determine if the application is made in good faith. The signature element on the standard IDWR application form requires the signatory to attest the information is true. If the application is not truthful, IDWR cannot determine whether the application is made in good faith. |
| <b>035.03.a.xiii.</b> Applications by corporations, companies or municipalities   | <b>035.03.l.</b> Applicant’s signature or evidence to show the signatory has authority to sign on   | Reformatted to move language in existing Rule   | Idaho Code § 42-203A(5)(c) requires IDWR to determine  |

| <b>Existing Rule</b>   | <b>Proposed Rule</b>   | <b>Comment or Rationale</b>  | <b>Purpose of Rule</b>  |
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| <p><b>035.03.a.xiii. CONTINUED</b></p> <p>or other organizations shall be signed by an officer of the corporation or company or an elected official of the municipality or an individual authorized by the organization to sign the application. The signator’s title shall be shown with the signature.</p> | <p>behalf of the applicant.</p> <p>ii. For an application by a corporation, company, municipality, governmental entity or organization, or other organization, include the signature and title of an officer of the corporation or company or an elected official of the municipality or an individual authorized by the governmental entity or agency or other organization to sign the application. Alternatively, the application may be signed by an authorized agent of the applicant in accordance with Subparagraph 035.03.l.iii.</p> | <p>035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.xiii. regarding applicant entity signature can be renumbered as proposed Rule 035.03.l.ii. Proposed Rule 035.03.l.ii clarifies who has authority to sign an application on behalf of various entity types. Stakeholder comment(s) considered in proposed rule language.</p>   | <p>if the application is made in good faith. The signature element on the standard IDWR application form requires the signatory to attest the information is true. If the application is not truthful, IDWR cannot determine whether the application is made in good faith.</p>   |
| <p><b>035.03.a.xiv.</b> Applications may be signed by a person having a current “power of attorney” authorized by the applicant. A copy of the “power of attorney” shall be included with the application.</p>   | <p><b>035.03.l.</b> Applicant’s signature or evidence to show the signatory has authority to sign on behalf of the applicant.</p> <p>iii. If the signatory is an authorized agent of the applicant, include a power of attorney or other documentation demonstrating the signatory has authority to sign on behalf of the applicant. If the signatory is a licensed attorney, power of attorney or other documentation is not required.</p>  | <p>Reformatted to move language in existing Rule 035.03.a.i. up into Rule 035.03.a. so Rule 035.03.a.xiv. regarding applications signed on behalf of the applicant can be renumbered as proposed Rule 035.03.l.iii. Proposed Rule 035.03.l.iii. clarifies who has authority to sign an application on behalf of an applicant. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203A(5)(c) requires IDWR to determine if the application is made in good faith. The signature element on the standard IDWR application form requires the signatory to attest the information is true. If the application is not truthful, IDWR cannot determine whether the application is made in good faith.</p> |
| <p><b>035.03.a.xv.</b> Applications to appropriate water in connection with Carey Act or Desert Land Entry proposals shall include evidence that appropriate applications have been filed for the lands involved in the proposed project.</p>  | <p><b>Delete/None</b></p>  | <p>IDWR has not received a new Carey Act or Desert Land Entry application in decades. The few applications IDWR has pending are being held in moratorium areas. This access criterion is covered</p>   | <p>Idaho Code § 42-203A(5)(c) requires IDWR to determine if the application is made in good faith. Idaho law cannot authorize anyone to trespass upon federal land (Joyce Livestock Company v. United States of America,</p>  |



| <b>Existing Rule</b>  | <b>Proposed Rule</b>   | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>   |
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| <b>035.03.a.xv. CONTINUED</b>   |  | under proposed Rule 040.04.c. and evaluated under proposed Rule 045.01.c.   | 2007). The applicant must demonstrate it does not intend to establish a water right in trespass to find the application made in good faith.  |
| <b>035.03.a.xvi.</b> The application form shall be accompanied with a fee in the amount required by Section 42-221A, Idaho Code.  | <b>035.01.a.</b> An application must be filed:<br><br>iii. With the applicable filing fee prescribed in Section 42-221A, Idaho Code; and   | Requirement to pay filing fee moved to general application revisions. Do not need to restate in application form requirements rule section.   | Idaho Code § 42-202 states application must be filed with IDWR and submitted with the required filing fee. Idaho Code § 42-221A states application filing fee.   |
| <b>035.04. Amended Applications.</b>  | <b>035.04. Amended Applications.</b>   | No changes proposed.  | Clarify requirements and procedures for amending an application.   |
| <b>035.04.a.</b> Applications for permit shall be amended whenever significant changes to the place, period or nature of the intended use, method or location of diversion or proposed use of the water or other substantial changes from that shown on the pending application are intended. An application shall be amended if the proposed change will result in a greater rate of diversion or depletion (see Subsection 035.04.c.), if the point of diversion, place of use, or point of discharge of the return flow are to be altered, if the period of the year that water will be used is to be changed, or if the nature of the use is to be changed. | <b>035.04.a.</b> An applicant or the applicant's agent must amend an application if the applicant intends to change the purpose of use, period of use, amount of diversion, point of diversion, place of use, or make other substantial changes. The Department may clarify a source or tributary name or the irrigation period of use that do not meet Paragraphs 035.03.b. and 035.03.f. requirements by documenting the official record without requiring the applicant to amend the application. | Removed "or if point of discharge of the return flow are to be altered" from existing rule in proposed rule. The point of discharge of the return flow is not an application requirement. Also, any change to the point of discharge of the return flow would likely be the result of changes to the method or location of diversion and proposed use, which are already included in the rule. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-202(1) requires the application to state the nature or purpose of use, period of use, point of diversion, and amount of diversion. Idaho Code § 42-202(4) requires the application to state the method or location of the proposed diversion works and the place of use. Idaho Code § 42-211 governs amending an application. Proposed rule clarifies what changes require an application amendment. A clear understanding of the applicant's planned diversion and use is necessary for the evaluation of Idaho Code § 42-203A(5) criteria. |

| Existing Rule  | Proposed Rule  | Comment or Rationale  | Purpose of Rule  |
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| <p><b>035.04.b.</b> An application can be amended to clarify the name of the source of water but may not be amended to change the source of water.</p> | <p><b>035.04.b.</b> An applicant or the applicant's agent may amend an application to clarify the name of the source of water but may not amend an application to change the source of water.</p>  | <p>Clarified existing language to include who can amend the application, but retained existing rule prohibition on source changes. A change in source is viewed as a new application and priority date.</p> | <p>Idaho Code § 42-211 governs amending an application. Proposed rule clarifies an amendment may not change the source of water, because the statute does not include the authority to change the source.</p>  |
| <p><b>None</b></p>   | <p><b>035.04.c.</b> An applicant or the applicant's agent may not amend a municipal purposes application not originally seeking water for reasonably anticipated future needs to seek water for reasonably anticipated future needs.</p> | <p>Added to clarify that a non-RAFN municipal use application cannot be amended to a RAFN municipal use consistent with IDWR Administrative Application Processing Memo No. 18 (est. 2009).</p>             | <p>Idaho Code § 42-202(2) requires an applicant seeking a RAFN municipal use permit to submit information demonstrating the applicant qualifies as a municipal provide and that the reasonably anticipated future needs, service area, and planning horizon are consistent with Idaho Code § 42-202B. Idaho Code § 42-211 states if an application is amended in a manner that will result in the use of more water the priority of the right shall be changed to the date of the amendment. Prohibiting an applicant from amending a non-RAFN application to RAFN ensures the applicant is informed of the additional information required for RAFN applications and ensures the proposed use is assigned the correct priority date in compliance with Idaho Code § 42-211.</p> |

| <b>Existing Rule</b>   | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>  |
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| <b>035.04.c.</b> An amendment which increases the rate of diversion, increases the volume of water diverted per year or the volume of water depleted, lengthens the period of use, or adds an additional purpose of use shall result in the priority of the application for permit being changed to the date the amended application is received by the department.  | <b>035.04.d.</b> An amendment that increases the rate of diversion, increases the volume of water diverted per year, lengthens the period of use, or adds an additional beneficial use will result in the Department changing the priority date to the date the Department received the amended application.                          | Clarified existing language, but retained existing list of changes that will result in the Department advancing the priority date. Removed “the volume of water depleted” because volume depleted is not an element of a water right and is not information the applicant is required to submit. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-211 governs amendments to an application. Proposed rule clarifies what amendments will “result in the use of more water than originally asked...” that will result in an advancement of priority date as required by statute. |
| <b>035.04.d.</b> An application for permit may be amended by endorsement by the applicant or his agent on the original application for permit form which endorsement shall be initialed and dated. If the changes required to the information on the application are, in the judgment of the Director, substantial enough to cause confusion in interpreting the application form, the amended application shall be submitted on a new application for permit form to be designated as an amended application. | <b>035.04.e.</b> An applicant or the applicant’s agent may amend an application by: <ul style="list-style-type: none"> <li>i. Striking each item to be changed on the original application form and initialing and dating each change;</li> <li>ii. Filing a new application form designated as an amended application; or</li> </ul> | Simplified language describing how an applicant or the applicant’s agent can amend an application. Stakeholder comment(s) considered in proposed rule language.   | Idaho Code § 42-211 governs amendments to an application. Proposed rule clarifies how an applicant or the applicant’s agent can accomplish the amendment.   |
| <b>None</b>  | <b>035.04.e.</b> An applicant or the applicant’s agent may amend an application by: <ul style="list-style-type: none"> <li>iii. Changing an application electronically via the Department’s online filing process.</li> </ul>   | Added to clarify that an application filed via IDWR’s online filing process may be amended electronically.  | Idaho Code § 42-211 governs amendments to an application. Proposed rule clarifies how an applicant or the applicant’s agent can accomplish the amendment.   |
| <b>035.04.e.</b> An amended application shall be accompanied by the additional fee required  | <b>035.04.f.</b> If an amendment increases the total diversion rate or total storage volume   | Moved republication fee requirement to proposed   | Idaho Code § 42-211 governs amendments to an  |

| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| <p><b>035.04.e. CONTINUED</b></p> <p>by Section 42-221A, Idaho Code, if the total rate of diversion or total volume of storage requested is increased and by the fee required by Section 42-221F, Idaho Code, for readvertising if notice of the original application has been published.</p> | <p>requested, the amended application must include any additional filing fee required by Section 42-221A, Idaho Code.</p> <p><b>040.01.e.</b> An application amended under Paragraph 035.04.a. after publication requires republication. The applicant must file the amended application with the republication fee required by Section 42-221F, Idaho Code.</p>   | <p>Rule 040.01 with other application publication rule content.</p>  | <p>application and the requirement to pay the applicable fee for an increase in diversion rate or storage volume and a republication fee. Idaho Code § 42-221A sets the application fee. Idaho Code § 42-221F sets the republication fee. Proposed rule implements requirements consistent with statutes.</p>                        |
| <p><b>035.04.f.</b> If the applicant's name or mailing address changes, the applicant shall in writing notify the department of the change.</p>   | <p><b>035.04.g.</b> If the applicant's name or mailing address changes, the applicant or the applicant's agent must notify the Department of the change in writing.</p>  | <p>Clarified existing rule language.</p>   | <p>Idaho Code § 42-202 requires the applicant name and address on the application. IDAPA 37.01.01.200 requires parties to update IDWR of any changes to contact information for service of documents. Proposed rule implements these requirements if the applicant name or address changes.</p>                                      |
| <p><b>036. – 039. (RESERVED)</b></p>  | <p><b>036. DELAYED PROCESSING.</b> An applicant may request in writing that the Department delay commencement or interrupt processing of the applicant's application for a period not to exceed one (1) year. The Department may approve the request unless the delay will injure existing water rights, the applicant seeks the delay for speculative purposes, or the delay does not serve the interest of the people of Idaho. The Department may approve a request for delay for a shorter period or upon conditions. Upon</p> | <p>Delayed processing procedures moved from existing Rule 040.01.d. into its own section to clarify an applicant may request a delay in processing prior to the Department processing the application as described in proceeding Rule 40. A delay in processing is often required when the applicant needs time to provide a</p> | <p>Idaho Code § 42-204 states IDWR can request a corrected application or additional information to be submitted within thirty (30) days. Idaho Code § 42-204 affords the applicant the opportunity to request an extension of time to submit the corrected application or additional information that the Director may grant if</p> |

| <b>Existing Rule</b>   | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>  | <b>Purpose of Rule</b>  |
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|  | written request, the Department may renew the authorized delay successive times as long as the delay meets the requirements stated above. | corrected application or collect additional information requested by IDWR. There is no statutory limit to the amount of time the Director can give an applicant to supply a corrected application or additional information. Stakeholder comment(s) considered in proposed rule language.  | good cause for the delay exists. Proposed rule implements opportunity and clarifies what the Director may consider when evaluating good cause.            |
| <b>036. – 039. (RESERVED)</b>  | <b>037. – 039. (RESERVED)</b>   | Used previously reserved Section 036 for “Delayed Processing” procedures previously described in existing Rule 040.01.d. Sections 037. – 039. remain reserved.   | Reserved sections serve as place holder to allow additional sections to be added when needed without major reorganization or renumbering of rule chapter. |
| <b>040. PROCESSING APPLICATIONS FOR PERMIT AND REPROCESSING PERMITS (RULE 40).</b> | <b>040. PROCESSING APPLICATIONS.</b>  | Revised to reflect proposed Rule 010.03. Application and removal of reprocessing permits procedures. Reprocessing permits work effort is largely complete. The two remaining permits to reprocess are Desert Land Entry or Carey Act permits currently under moratorium. Deleted “(RULE 40)” to format consistent with The Idaho Rule Writer’s Manual. | Idaho Code § 42-203A governs the processing of applications. Proposed rule clarifies statutory requirements.  |
| <b>040.01. General.</b>  | <b>Delete/None</b>  | Deleted existing Rule 040.01 in its entirety. IDWR believes the generalization of  | Idaho Code § 42-203A governs the processing of applications. A generalized  |

| Existing Rule   | Proposed Rule      | Comment or Rationale   | Purpose of Rule  |
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| <b>040.01. CONTINUED</b>  |                    | processing steps in existing Rules 040.01.a. and 040.01.b. is not appropriate in administrative rules. Existing Rule 040.01.c. content moved to proposed Rule 040.01.h. Existing Rule 040.01.d. content moved into proposed Rule 36. Stakeholder comment(s) considered in proposed rule language.  | list of steps IDWR takes to process an application is not necessary in rule. Excluding such a list from rule allows IDWR to improve efficiency in processing procedures without requiring rule changes. Efficiency improvements can lead to decreases in application processing timeframes.  |
| <p><b>040.01.a.</b> Unprotested applications, whether for unappropriated water or trust water, will be processed using the following general steps:</p> <p style="padding-left: 40px;">i. Advertisement and protest period;</p> <p style="padding-left: 40px;">ii. Department review of applications and additional information, including department field review if determined to be necessary by the Director;</p> <p style="padding-left: 40px;">iii. Fact finding hearing if determined to be necessary by the Director;</p> <p style="padding-left: 40px;">iv. Director's decision;</p> <p style="padding-left: 40px;">v. Section 42-1701A, Idaho Code, hearing, if requested; and</p> <p style="padding-left: 40px;">vi. Director's decision affirmed or modified.</p> | <b>Delete/None</b> | Deleted existing Rule 040.01 in its entirety. IDWR believes the generalization of processing steps in existing Rules 040.01.a. and 040.01.b. is not appropriate in administrative rules. IDWR can supply general processing information to the public in another medium that IDWR can improve to accommodate future efficiencies without requiring an administrative rule change. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203A governs the processing of applications. A generalized list of steps IDWR takes to process an application is not necessary in rule. Excluding such a list from rule allows IDWR to improve efficiency in processing procedures without requiring rule changes. Efficiency improvements can lead to decreases in application processing timeframes. |

| Existing Rule  | Proposed Rule  | Comment or Rationale  | Purpose of Rule   |
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| <p><b>040.01.b.</b> Protested applications, whether for unappropriated water or trust water, will be processed using the following general steps:</p> <ul style="list-style-type: none"> <li>i. Advertisement and protest period;</li> <li>ii. Hearing and/or conference;</li> <li>iii. Department review of applications, hearing record and additional information including department field review if determined to be necessary by the Director.</li> <li>iv. Proposed decision (unless waived by parties);</li> <li>v. Briefing or oral argument in accordance with the department's adopted Rules of Procedure.</li> <li>vi. Director's decision accepting or modifying the proposed decision.</li> </ul> | <p><b>Delete/None</b></p>  | <p>Deleted existing Rule 040.01 in its entirety. IDWR believes the generalization of processing steps in existing Rules 040.01.a. and 040.01.b. is not appropriate in administrative rules. IDWR can supply general processing information to the public in another medium that IDWR can improve to accommodate future efficiencies without requiring an administrative rule change. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203A governs the processing of applications. A generalized list of steps IDWR takes to process an application is not necessary in rule. Excluding such a list from rule allows IDWR to improve efficiency in processing procedures without requiring rule changes. Efficiency improvements can lead to decreases in application processing timeframes.</p> |
| <p><b>040.01.c.</b> The Director's decision rejecting and denying approval of an application for permit filed for diversion from a source previously designated as a critical groundwater area or upon which a moratorium has previously been entered may be issued without advertisement of the application.</p>  | <p><b>040.01.h.</b> The Director may deny approval of an application filed for diversion of ground water in a designated critical ground water area without publication of the application if the Director believes that there is insufficient water available for the proposed water use. An application that includes a mitigation plan proposing to offset injury to existing water rights will be published prior to the Director's evaluation of the application under Subsection 045.01.</p> | <p>Existing Rule 040.01.c. content moved to proposed Rule 040.01.h. with other publication-related rule content. Rule allows the Director to deny an application filed within a critical ground water area without the unnecessary step of publication if the Director believes that there is insufficient water available for the proposed use. IDWR</p>   | <p>Idaho Code § 42-233a states the Director may deny an application filed within a critical ground water area if the Director has reason to believe that there is insufficient water available for the proposed use. It is not necessary to publish such an application prior to denial.</p>  |

| Existing Rule  | Proposed Rule   | Comment or Rationale   | Purpose of Rule  |
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| <b>040.01.c. CONTINUED</b>   |   | will seek publication of an application that includes a mitigation plan before evaluating the mitigation plan's ability to offset injury to existing water rights. Stakeholder comment(s) considered in proposed rule language.  |  |
| <b>040.01.d.</b> An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The Director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The Director may approve a request for delay for a shorter period of time or upon conditions, and may renew the approval upon written request. | <b>036. DELAYED PROCESSING.</b> An applicant may request in writing that the Department delay commencement or interrupt processing of the applicant's application for a period not to exceed one (1) year. The Department may approve the request unless the delay will injure existing water rights, the applicant seeks the delay for speculative purposes, or the delay does not serve the interest of the people of Idaho. The Department may approve a request for delay for a shorter period or upon conditions. Upon written request, the Department may renew the authorized delay successive times as long as the delay meets the requirements stated above. | Delayed processing procedures moved from existing Rule 040.01.d. into own section to clarify an applicant may request a delay in processing prior to the Department processing the application as described in proceeding proposed Rule 40. A delay in processing is often required when the applicant needs time to provide a corrected application or collect additional information requested by IDWR. There is no statutory limit to the amount of time the Director can give an applicant to supply a corrected application or additional information. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-204 states IDWR can request a corrected application or additional information to be submitted within thirty (30) days. Idaho Code § 42-204 affords the applicant the opportunity to request an extension of time to submit the corrected application or additional information that the Director may grant if good cause for the delay exists. Proposed rule implements opportunity and clarifies what the Director may consider when evaluating good cause. |
| <b>040.02. Public Notice Requirement.</b>  | <b>040.01. Public Notice Requirement.</b>   | Deleted existing Rule 040.01. Renumbered from 040.02 to 040.01.  | Idaho Code § 42-203A governs application publication requirements.   |



| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule   |
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| <p><b>040.02.a.</b> Applications for permit which have not been advertised.</p>   | <p><b>Delete/None</b></p>  | <p>Deleted existing rules governing reprocessing of previously published applications and previously processed permits in the Swan Falls Trust Water Area, because this work effort is considered complete. It is no longer necessary for rules to differentiate between unpublished and published applications.</p>   | <p>Idaho Code § 42-203A governs application publication requirements.</p>   |
| <p><b>040.02.a.i.</b> Advertisement of applications for permit proposing a rate of diversion of ten (10) cfs or less or storage of one thousand (1000) AF or less shall comply with Section 42-203A, Idaho Code. The first required advertisement will be published on the first or third Thursday of a month when published in daily newspapers and on the first or third publishing day of the month for weekly newspapers.</p> | <p><b>040.01.a.</b> Publication of an application will be pursuant to Section 42-203A, Idaho Code.</p> | <p>Deleted specific reference to applications 10 cfs or less or for storage of 1000 AF or less, because it is unnecessary. All applications must be advertised in compliance with Idaho Code § 42-203A. Also removed day, week, and newspaper issue-related restrictions to afford IDWR the opportunity to publish applications in a more expeditious manner and to accommodate changing publication schedules of various newspapers. Applications being published are available on IDWR's website for the public to view once the publication request is sent to the newspaper and until the protest period ends negating</p> | <p>Idaho Code § 42-203A governs application publication requirements. Proposed rule references governing statute.</p> |

| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| <b>040.02.a.i. CONTINUED</b>  |  | the need to dictate the newspaper edition within which application publication occurs.   |  |
| <b>040.02.a.ii.</b> Advertisement of applications for permit in excess of the amounts in Subsection 040.02.a.i. shall comply with Subsection 040.02.a.i. and shall also be published in a newspaper or newspapers to achieve statewide circulation.   | <b>040.01.b.</b> For an application that proposes diversion in excess of ten (10) cfs or storage of one thousand (1,000) af, the Department will accomplish statewide circulation pursuant to Section 42-203A(2), Idaho Code, by publication of a legal notice at least once each week for two (2) successive weeks in;  | Replaced reference to a different rule with quantity thresholds. Added statutory reference. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203A(2) requires statewide publication of applications in excess of 10 cfs or 1,000 af. Proposed rule references governing statute.  |
| <b>040.02.a.iii.</b> Statewide circulation with respect to Section 42-203A(2), Idaho Code, shall be obtained by publication of a legal notice at least once each week for two (2) successive weeks in a newspaper, as defined in Section 60-106, Idaho Code, of general circulation in the county in which the point of diversion is located and by publication of a legal notice at least once each week for two (2) successive weeks in at least one (1) daily newspaper, as defined in Section 60-107, Idaho Code, published in each of the department's four (4) administrative regions and determined by the Director to be of general circulation within the department's region within which it is published. The administrative regions of the department are identified on Figure 2 in APPENDIX C (located at the end of this chapter). The names of newspapers used for statewide publication are available from any department office. | <b>040.01.b.</b> For an application that proposes diversion in excess of ten (10) cfs or storage of one thousand (1,000) af, the Department will accomplish statewide circulation pursuant to Section 42-203A(2), Idaho Code, by publication of a legal notice at least once each week for two (2) successive weeks in;<br><br>i. A newspaper, as defined in Section 60-106, Idaho Code, of general circulation in the county in which the point of diversion is located; and<br><br>ii. At least one (1) daily newspaper, as defined in Section 60-107, Idaho Code, that the Director determines is of general circulation within each of the Department's four (4) administrative regions. | Reformatted in list format to clarify content.   | Idaho Code § 42-203A(2) requires statewide publication of applications in excess of 10 cfs or 1,000 af. Proposed rule references governing statute and clarifies how statutorily required statewide publication is accomplished. |
| <b>None</b>   | <b>040.01.c.</b> The Department shall make an application accepted for filing available on the   | Added rule to reference statutory change since   | Idaho Code § 42-203A(3) requires IDWR to make  |

| <b>Existing Rule</b>  | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>  |
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| <b>None CONTINUED</b>   | Department's website pursuant to Section 42-203A(3), Idaho Code.  | existing rules adoption.  | accepted applications available on IDWR's website. Proposed rule is consistent with statute.  |
| <b>None</b>   | <b>040.01.d.</b> Publication in the newspaper pursuant to Section 42-203A(2), Idaho Code, constitutes the official notice of the application.   | Added rule to reference statutory change since existing rules adoption.   | Idaho Code § 42-203A(2) states publication in the newspaper is the official notice. Proposed rule is consistent with statute. With multiple forms of notice (publication and website), designation of the official notice is necessary to confirm due process is afforded to applicants and others that may wish to protest an application. |
| <b>040.02.b.</b> Applications for permit which have been advertised.  | <b>Delete/None</b>  | Existing rule adopted to address specific applications published, but then held unprocessed pending the outcome of the Swan Falls Settlement. The applications were subsequently processed and this existing rule is no longer necessary.             | Idaho Code § 42-203A governs application publication requirements.  |
| <b>040.02.b.i.</b> Notice of applications for permit for water from the Snake River between Swan Falls Dam and Milner Dam or surface and groundwater tributaries to that reach of Snake River which were advertised prior to July 1, 1985 and have been held without final action by the department due to the Swan Falls controversy shall be readvertised by the Director in accordance with Subsection | <b>040.01.f.</b> If a moratorium order is amended or repealed allowing the Director to continue processing an application previously held without final action, the Department will republish an application that was published prior to being held for the moratorium. Before republication, the applicant must pay the republication fee required by Section 42-221F, Idaho Code. | Existing rule was adopted to address specific applications previously published, but then held unprocessed pending the outcome of the Swan Falls Settlement. Those specific applications were subsequently processed. However, modified rule language | Idaho Code § 42-203A governs application publication requirements. Idaho Code § 42-221F sets the republication fee. Idaho Code § 42-1805(7) authorizes the Director to suspend further action on applications to protect existing water rights. The   |

| Existing Rule   | Proposed Rule             | Comment or Rationale   | Purpose of Rule  |
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| <p><b>040.02.b.i. CONTINUED</b></p> <p>040.02.a. as appropriate to allow opportunity for protests to be entered with respect to the public interest criteria of Section 42-203C(2), Idaho Code.</p>   |                           | <p>to broaden applicability and require republication of previously published applications held in a moratorium area prior to issuing a decision on the application. Republication will afford the public an opportunity to consider the effect a previously held application might have based on current circumstances and file a protest if desired. Also, the requirement to pay the republication fee in existing Rule 040.02.b.iii. was moved into this proposed rule to clarify requirements. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Director establishes moratorium areas within which action on applications is suspended under this statutory authority. Statutes currently do not allow IDWR to return applications filed in established moratorium areas, only to suspend further action on applications. Therefore, IDWR holds applications filed in moratorium areas unprocessed or suspends processing on already published applications. These applications may be held for decades as a result of a moratorium. The proposed rule requirement to republish previously held applications affords the public an opportunity to consider the application effect(s), if any, based on current circumstances. Proposed rule implements fee requirement consistent with statute.</p> |
| <p><b>040.02.b.ii.</b> Applications for permit from the Snake River or surface and groundwater sources upstream from Milner Dam which have been held without action due to the Swan Falls controversy may be processed without readvertisement.</p> | <p><b>Delete/None</b></p> | <p>Existing rule adopted to address specific applications published, but then held unprocessed pending the outcome of the Swan Falls Settlement. The applications were subsequently processed and this existing rule is no longer necessary.</p>   | <p>Idaho Code § 42-203A governs application publication requirements.</p>  |

| Existing Rule  | Proposed Rule   | Comment or Rationale  | Purpose of Rule   |
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| <p><b>040.02.b.iii.</b> The applicant shall pay the readvertisement fee provided in Section 42-221F, Idaho Code, prior to the readvertisement.</p> | <p><b>040.01.e.</b> An application amended under Paragraph 035.04.a. after publication requires republication. The applicant must file the amended application with the republication fee required by Section 42-221F, Idaho Code.</p> <p><b>040.01.f.</b> If a moratorium order is amended or repealed allowing the Director to continue processing an application previously held without final action, the Department will republish an application that was published prior to being held for the moratorium. Before republication, the applicant must pay the republication fee required by Section 42-221F, Idaho Code.</p> | <p>Existing rule was adopted to address specific applications previously published, but then held unprocessed pending the outcome of the Swan Falls Settlement. Those specific applications were subsequently processed. However, modified language in proposed Rule 040.01.e. to require republication of an application substantively amended after publication. Also modified language in proposed Rule 040.01.f. to broaden applicability and require republication of previously published applications held in a moratorium area prior to issuing a decision on the application. Republication will afford the public an opportunity to consider the effect a substantively amended application or a previously held application might have based on current circumstances and file a protest if desired. Also, the requirement to pay the republication fee in existing Rule 040.02.b.iii. was moved into these proposed rules to clarify requirements. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203A governs application publication requirements. Idaho Code § 42-221F sets the republication fee. Idaho Code § 42-211 governs application amendments and republication of applications amended after publication. Idaho Code § 42-1805(7) authorizes the Director to suspend further action on applications to protect existing water rights. The Director establishes moratorium areas within which action on applications is suspended under this statutory authority. Statutes currently do not allow IDWR to return applications filed in established moratorium areas, only to suspend further action on applications. Therefore, IDWR holds applications filed in moratorium areas unprocessed or suspends processing on already published applications. These applications may be held for decades as a result of a moratorium. The proposed rule requirement to republish previously held applications affords the public an opportunity to consider the application effect(s), if any, based on</p> |

| <b>Existing Rule</b>  | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>  | <b>Purpose of Rule</b>   |
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| <b>040.02.b.iii. CONTINUED</b>  |   |  | current circumstances.<br>Proposed rule implements fee requirement consistent with statute.  |
| <b>040.02.b.iv.</b> Failure to pay the readvertising fee within thirty (30) days after the applicant is notified to do so is cause for the Director to void the application.  | <b>040.01.g.</b> Failure to pay a required republication fee within thirty (30) days after the applicant is notified to do so is cause for the Director to void the application, unless a processing delay is approved under Section 036. | Retained consequence for non-payment of republication fee from existing rule.  | Idaho Code § 42-221F sets the republication fee. Proposed rule implements fee requirement and sets consequence for non-payment.  |
| <b>040.02.c.</b> Notice of existing permits.  | <b>Delete/None</b>  | Existing rule adopted to address specific permits requiring review under statutes resulting from the Swan Falls Settlement. Deleted existing rule, because reprocessing permits work effort is largely complete. The two remaining permits to reprocess are Desert Land Entry or Carey Act permits currently under moratorium. Therefore, this existing rule is no longer necessary. | Idaho Code § 42-203D governs reprocessing of permits issued in the Swan Falls Trust Water Area prior to the Swan Falls Settlement. This reprocessing work is considered complete so a related rule is no longer necessary. |
| <b>040.02.c.i.</b> Existing permits appropriating water held in trust by the state of Idaho issued prior to July 1, 1985, unless exempted by Subsection 040.02.c.ii. shall be subject to the review requirements of Section 42-203D, Idaho Code, and shall be readvertised in accordance with Subsection 040.02.a. as appropriate. The review is limited to the criteria described in Section 42-203C(2), Idaho Code. | <b>Delete/None</b>  | Existing rule adopted to address specific permits requiring review under statutes resulting from the Swan Falls Settlement. Deleted existing rule, because reprocessing permits work effort is largely complete. The two remaining permits to reprocess are Desert Land  | Idaho Code § 42-203D governs reprocessing of permits issued in the Swan Falls Trust Water Area prior to the Swan Falls Settlement. This reprocessing work is considered complete so a related rule is no longer necessary. |

| Existing Rule   | Proposed Rule      | Comment or Rationale   | Purpose of Rule  |
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| <b>040.02.c.i. CONTINUED</b>  |                    | Entry or Carey Act permits currently under moratorium. Therefore, this existing rule is no longer necessary.   |  |
| <p><b>040.02.c.ii.</b> Permits exempt from the provisions of Section 42-203D, Idaho Code, include:</p> <p>(1) Permits appropriating water not held in trust by the state of Idaho;</p> <p>(2) Permits for DCMi uses, stockwater uses and other essentially non-consumptive uses as determined by the Director; and</p> <p>(3) Permits for which an acceptable proof of beneficial use submittal was received by the department prior to July 1, 1985, or permits for which an acceptable proof of beneficial use was submitted after July 1, 1985, if evidence satisfactory to the Director has been received to show that the permit was fully developed prior to July 1, 1985 to the extent claimed on the proof of beneficial use.</p> | <b>Delete/None</b> | Existing rule adopted to address specific permits requiring review under statutes resulting from the Swan Falls Settlement. Deleted existing rule, because reprocessing permits work effort is largely complete. The two remaining permits to reprocess are Desert Land Entry or Carey Act permits currently under moratorium. Therefore, this existing rule is no longer necessary. | Idaho Code § 42-203D governs reprocessing of permits issued in the Swan Falls Trust Water Area prior to the Swan Falls Settlement. This reprocessing work is considered complete so a related rule is no longer necessary. |
| <b>040.02.c.iii.</b> Holders of permits subject to the review requirement of Section 42-203D, Idaho Code, shall pay in advance, upon the request of the Director, the readvertising fee required by Section 42-221F, Idaho Code.  | <b>Delete/None</b> | Existing rule adopted to address specific permits requiring review under statutes resulting from the Swan Falls Settlement. Deleted existing rule, because reprocessing permits work effort is largely complete. The two remaining permits to  | Idaho Code § 42-203D governs reprocessing of permits issued in the Swan Falls Trust Water Area prior to the Swan Falls Settlement. This reprocessing work is considered complete so a related rule is no longer necessary. |

| <b>Existing Rule</b>  | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>  | <b>Purpose of Rule</b>   |
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| <b>040.02.c.iii. CONTINUED</b>  |   | reprocess are Desert Land Entry or Carey Act permits currently under moratorium. Therefore, this existing rule is no longer necessary.   |  |
| <b>040.02.c.iv.</b> Failure to pay the readvertising fee within thirty (30) days after the applicant is notified to do so is cause for the Director to cancel the permit. | <b>Delete/None</b>  | Existing rule adopted to address specific permits requiring review under statutes resulting from the Swan Falls Settlement. Deleted existing rule, because reprocessing permits work effort is largely complete. The two remaining permits to reprocess are Desert Land Entry or Carey Act permits currently under moratorium. Therefore, this existing rule is no longer necessary. | Idaho Code § 42-203D governs reprocessing of permits issued in the Swan Falls Trust Water Area prior to the Swan Falls Settlement. This reprocessing work is considered complete so a related rule is no longer necessary.                     |
| <b>040.03. Protests, Intervention, Hearings, and Appeals.</b>   | <b>040.02. Protests, Intervention, Hearings, and Appeals.</b> | Renumbered due to proposed deletion of existing Rule 040.01.   | Idaho Code § 42-203A governs protests of and hearings for applications. IDAPA 37.01.01 “Rules of Procedure” govern IDWR contested case procedures. Proposed rule implements procedures consistent with statute and other administrative rules. |
| <b>040.03.a.</b> Protests.  | <b>Delete/None</b>  | Deleted unnecessary one word rule and moved content in existing Rule 040.03.a.i. up into Rule 040.02.a. to consolidate language levels consistent with The Idaho   | Idaho Code § 42-203A governs protests of applications.   |



| Existing Rule   | Proposed Rule  | Comment or Rationale  | Purpose of Rule  |
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| <b>040.03.a. CONTINUED</b>  |  | Rule Writer's Manual instruction.   |  |
| <b>040.03.a.i.</b> Protests against the approval of an application for permit or against a permit being reprocessed shall comply with the requirements for pleadings as described in the department's adopted Rules of Procedure.   | <b>040.02.a.</b> Section 42-203A, Idaho Code governs protests against application approval. The Department will treat a protest as a pleading filed pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." | Reformatted to move language in existing Rule 040.03.a.i. up into Rule 040.02.a. Deleted reference to permit being reprocessed, because it references workload related to the Swan Falls Settlement that is considered complete. Added statute and Rules of Procedure references to proposed rule, because those are the governing documents IDWR relies upon when processing protests and conducting contested cases.  | Idaho Code § 42-203A governs protests of and hearings for applications. IDAPA 37.01.01 "Rules of Procedure" govern IDWR contested case procedures. Proposed rule references statute and other applicable administrative rules. |
| <b>040.03.a.ii.</b> Protests against the approval of an application for permit or against a permit being reprocessed will only be considered if received by the department after receipt of the application by the department and prior to the expiration of the protest period announced in the advertisement unless the protestant successfully intervenes in the proceeding. | <b>040.02.a.</b> Section 42-203A, Idaho Code governs protests against application approval. The Department will treat a protest as a pleading filed pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." | Reformatted to move language in existing Rule 040.03.a.i. up into Rule 040.02.a. Deleted reference to permit being reprocessed, because it references workload related to the Swan Falls Settlement that is considered complete. Added statute and Rules of Procedure references to proposed rule, because those are the governing documents IDWR relies upon when processing protests and conducting contested cases. Content in this existing rule is addressed in the referenced governing | Idaho Code § 42-203A governs protests of and hearings for applications. IDAPA 37.01.01 "Rules of Procedure" govern IDWR contested case procedures. Proposed rule references statute and other applicable administrative rules. |

| <b>Existing Rule</b>  | <b>Proposed Rule</b>   | <b>Comment or Rationale</b>  | <b>Purpose of Rule</b>  |
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| <b>040.03.a.ii. CONTINUED</b>   |  | documents.   |   |
| <b>None</b>   | <b>040.02.b.</b> A protest may be filed on a form supplied by the Department or in any other format that includes the same information as the Department's form.   | Added based on stakeholder request in negotiated rulemaking process. Also added to address questions IDWR received from the public in the past. Stakeholder comment(s) considered in proposed rule language.               | Idaho Code § 42-203A governs protests of applications. Proposed rule implements statute and clarifies the form for a protest.   |
| <b>None</b>   | <b>040.02.c.</b> If a single protest names more than one individual protestant and does not identify a representative, the Department will consider the first person listed to be the spokesperson and primary contact for service of documents for the group of individuals named as protestants. | Added to clarify which protestant IDWR and other parties in the contested case will serve documents upon if multiple protestants are named on a single protest.  | Idaho Code § 42-203A governs protests of applications. IDAPA 37.01.01.202 requires service of all documents filed upon all contested case parties. Proposed rule implements statute and applicable administrative rule.   |
| <b>040.03.a.iii.</b> General statements of protest (blanket protests) against appropriations for a particular class of use or from a particular source of water will not be considered as valid protests by the Director. | <b>040.02.d.</b> The Department will not consider a general protest (blanket protest) against applications for a particular class of use or from a particular source of water a valid protest. A protest must identify the specific application being protested.                                   | Clarified that a protest must identify a specific application rather than generally protesting all applications on a specific source or for a particular use. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203A governs protests of applications. IDAPA 37.01.01.300.01.a. requires parties to identify the case name for all pleadings and motions. IDAPA 37.01.01.210 states protests are pleadings. Proposed rule implements statute and applicable administrative rules. |
| <b>None</b>   | <b>040.02.e.</b> The Department will not accept a protest or petition to intervene unless the protest or petition to intervene is filed with the   | Added based on stakeholder request in negotiated rulemaking process. Also  | Idaho Code § 42-203A governs protests of applications. Idaho Code §   |

| <b>Existing Rule</b>  | <b>Proposed Rule</b>   | <b>Comment or Rationale</b>  | <b>Purpose of Rule</b>   |
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| <b>None CONTINUED</b>   | statutory filing fee required by Section 42-221L, Idaho Code, except any subdivision of the state, as defined in Section 67-2301, Idaho Code, is exempt from paying filing fees. | added to address questions IDWR received in the past. Stakeholder comment(s) considered in proposed rule language.   | 42-221L governs the filing fee for a protest. Idaho Code § 67-2301 exempts subdivisions of the state from paying filing fees. Proposed rule implements statutes.   |
| <b>040.03.b.</b> Intervention. Requests to intervene in a proceeding pending before the department shall comply with the Department's adopted Rules of Procedure. | <b>040.02.f.</b> Petitions to intervene in a protested application matter must comply with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources."      | Clarified that an application must be protested before someone can file a petition to intervene. Also added reference to "Rules of Procedure," because those are the rules IDWR relies upon when processing protests, petitions to intervene, and conducting contested cases.  | Idaho Code § 42-203A governs protests of and hearings for applications. IDAPA 37.01.01 "Rules of Procedure" govern IDWR contested case procedures. Intervention is a motion that can be filed in a contested case. Proposed rule references other applicable administrative rules. |
| <b>040.03.c.</b> Hearings. Hearings will be scheduled and held in accordance with the department's adopted Rules of Procedure.                                    | <b>040.02.g.</b> Hearings will be scheduled and held pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources."                                | Added reference to "Rules of Procedure," because those are the rules IDWR relies upon when processing protests and conducting contested cases. Hearings are held for protested applications, if the protests are not resolved in a settlement. Hearings can also be requested and held for unprotested applications, but that is a hearing request that typically occurs after a decision is issued on the application and the instructions on how to request a hearing under those circumstances are provided | Idaho Code § 42-203A governs hearings for protested applications. IDAPA 37.01.01 "Rules of Procedure" govern IDWR contested case procedures. Proposed rule references other applicable administrative rules.   |

| Existing Rule   | Proposed Rule  | Comment or Rationale  | Purpose of Rule   |
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| <b>040.03.c. CONTINUED</b>  |  | to the applicant with the application decision. Stakeholder comment(s) considered in proposed rule language.  |   |
| <b>040.03.d.</b> Appeals. Any final decision of the Director may be appealed in accordance with Section 42-1701A, Idaho Code. | <b>040.02.h.</b> A decision of the Department may be appealed pursuant to IDAPA 37.01.01, “Rules of Procedure of the Idaho Department of Water Resources.” | Added reference to “Rules of Procedure,” because those are the rules IDWR relies upon when processing protests and conducting contested cases. Hearings are held for protested applications, if the protests are not resolved in a settlement. Hearings can also be requested and held for unprotested applications, but that is a hearing request that typically occurs after a decision is issued on the application. Appeals of final decisions regarding an application occur after the decision is issued and the instructions on how to appeal the final decision are provided to the applicant with the application decision. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203A governs protests of and hearings for protested applications. IDAPA 37.01.01 “Rules of Procedure” govern IDWR contested case procedures including decision appeals. Proposed rule references other applicable administrative rules. |
| <b>040.04. Burden of Proof.</b>   | <b>040.03. Burden of Proof.</b>  | Renumbered due to proposed deletion of existing Rule 040.01.  | Idaho Code §§ 42-203A(5), 42-203C, and other statutes require the applicant and protestant to submit evidence and fulfill various burdens of proof. Proposed rule   |

| <b>Existing Rule</b>   | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>   |
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| <b>040.04. CONTINUED</b>   |   |   | implements statutes.   |
| <b>040.04.a.</b> Burden of proof is divided into two (2) parts: first, the burden of coming forward with evidence to present a prima facie case, and second, the ultimate burden of persuasion.  | <b>040.03.a.</b> Burden of proof has two (2) parts: first, the burden of producing evidence to present a prima facie case, and second, the ultimate burden of persuasion.   | Simplified language. Renumbered due to proposed deletion of existing Rule 040.01.   | Idaho Code §§ 42-203A(5), 42-203C, and other statutes require the applicant and protestant to submit evidence and fulfill various burdens of proof. Proposed rule summarizes two parts of the burden of proof.                               |
| <b>040.04.b.</b> The burden of coming forward with evidence is divided between the applicant and the protestant as follows:  | <b>Delete/None</b>  | Simplified burden of proof rule content with reformat to clarify the applicant's and protestant's burdens for specific statutory criteria. Stakeholder comment(s) considered in proposed rule language.             | Idaho Code §§ 42-203A(5), 42-203C, and other statutes require the applicant and protestant to submit evidence and fulfill various burdens of proof. Proposed rule explains the applicant's burden and the protestant's burden.               |
| <b>040.04.b.i.</b> The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criteria (a) through (d) of Section 42-203A(5), Idaho Code;   | <b>040.03.b.</b> For evaluation of Section 42-203A(5), Idaho Code criteria for a protested application:<br><br>i. The applicant has the initial burden of producing evidence for the evaluation of Section 42-203A(5)(a) through (d) and (f) through (g), Idaho Code criteria and of producing evidence of which the applicant is knowledgeable for the evaluation of Section 42-203A(5)(e), Idaho Code criteria. | Reformatted to clarify the burdens of the applicant for Idaho Code § 42-203A(5) criteria. Renumbered due to proposed deletion of existing Rule 040.01. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203A(5) requires the Director to evaluate the statutory criteria based on available evidence. Proposed rule requires the applicant, as the petitioner, to submit evidence that the application meets the statutory criteria. |
| <b>040.04.b.ii.</b> The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criterion (e) of Section 42-203A(5), Idaho Code, as to any factor affecting local public interest of which he is knowledgeable or reasonably | <b>040.03.b.</b> For evaluation of Section 42-203A(5), Idaho Code criteria for a protested application:<br><br>i. The applicant has the initial burden of producing evidence for the evaluation of  | Reformatted to clarify the burdens of the applicant and the protestant for Idaho Code § 42-203A(5) criteria. Renumbered due to proposed deletion of existing  | Idaho Code § 42-203A(5) requires the Director to evaluate the statutory criteria based on available evidence. Proposed rule requires the applicant, as the petitioner,   |

| Existing Rule  | Proposed Rule   | Comment or Rationale  | Purpose of Rule  |
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| <p><b>040.04.b.ii. CONTINUED</b></p> <p>can be expected to be knowledgeable. The protestant shall bear the initial burden of coming forward with evidence for those factors relevant to criterion (e) of Section 42-203A(5), Idaho Code, of which the protestant can reasonably be expected to be more cognizant than the applicant.</p>   | <p>Section 42-203A(5)(a) through (d) and (f) through (g), Idaho Code criteria and of producing evidence of which the applicant is knowledgeable for the evaluation of Section 42-203A(5)(e), Idaho Code criteria.</p> <p>ii. The protestant has the initial burden of producing evidence of which the protestant can reasonably be expected to be more cognizant than the applicant for Section 42-203A(5)(e), Idaho Code criteria.</p>   | <p>Rule 040.01. Stakeholder comment(s) considered in proposed rule language.</p>  | <p>to submit evidence that the application meets the statutory criteria. Proposed rule also requires the protestant to submit evidence of which the protestant is more knowledgeable regarding the local public interest.</p>  |
| <p><b>040.04.b.iii.</b> The protestant shall bear the initial burden of coming forward with evidence for the evaluation of the public interest criteria of Section 42-203C(2), Idaho Code, and of demonstrating a significant reduction, except that the applicant shall provide details of the proposed design, construction, and operation of the project and directly associated operations to allow the impact of the project to be evaluated.</p> | <p><b>040.03.c.</b> For evaluation of Section 42-203C, Idaho Code criteria for a protested application:</p> <p>i. The protestant has the initial burden of producing evidence under Subsection 045.02, that the application will cause a significant reduction, except that the applicant has the initial burden of producing evidence of the proposed project design, construction, operation, and directly associated operations of which the applicant is knowledgeable or can reasonably be expected to be knowledgeable.</p> | <p>Reformatted to clarify the burdens of the protestant and the applicant for Idaho Code § 42-203C criteria. Renumbered due to proposed deletion of existing Rule 040.01. Stakeholder comment(s) considered in proposed rule language.</p>                                      | <p>Idaho Code § 42-203C requires the Director to evaluate the statutory criteria based on available evidence. Proposed rule requires the protestant to submit evidence as required by the statute. Proposed rule also requires the applicant to submit evidence likely only available to the applicant that is necessary for evaluation of the statutory criteria.</p> |
| <p><b>040.04.c.</b> The applicant has the ultimate burden of persuasion for the criteria of Section 42-203A, Idaho Code, and the protestant has the ultimate burden of persuasion for the criteria of Section 42-203C, Idaho Code.</p>   | <p><b>040.03.b.</b> For evaluation of Section 42-203A(5), Idaho Code criteria for a protested application:</p> <p>iii. The applicant has the ultimate burden of persuasion of Section 42-203A(5)(a) through (g), Idaho Code criteria.</p> <p><b>040.03.c.</b> For evaluation of Section 42-203C, Idaho Code criteria for a protested application:</p>   | <p>Reformatted to clarify the burdens of the applicant for Idaho Code § 42-203A(5) criteria and the protestant for Idaho Code § 42-203C criteria. Renumbered due to proposed deletion of existing Rule 040.01. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code §§ 42-203A(5), 42-203C, and other statutes require the applicant and protestant to submit evidence and fulfill various burdens of proof. Proposed rule clarifies the applicant's burden and the protestant's burden.</p>   |

| Existing Rule  | Proposed Rule   | Comment or Rationale   | Purpose of Rule  |
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| <b>040.04.c. CONTINUED</b>   | ii. The protestant has the ultimate burden of persuasion on whether the application causes a significant reduction under Subsection 045.02 and whether it meets the public interest criteria in Section 42-203C(2), Idaho Code under Subsection 045.03.   |  |  |
| <b>040.04.d.</b> For unprotested applications or permits to be reprocessed, the Director will evaluate the application, information submitted pursuant to Subsection 040.05.c. and information in the files and records of the department, and the results of any studies the department may conduct to determine compliance with the appropriate criteria.  | <b>040.03.d.</b> For an unprotested application or an application for which all protests have been resolved, the Director will evaluate the application, any information submitted pursuant to Subsections 040.04, 045.01, 045.02, and 045.03, and information in the Department's files and records to determine compliance with Sections 42-203A(5) and 42-203C, Idaho Code. For an unprotested application or an application for which all protests have been resolved, the applicant has the burden of producing evidence and the ultimate burden of persuasion on whether the application satisfies the applicable statutory criteria. | Clarified burdens of proof for an unprotested application or an application where all protests are resolved. Renumbered due to proposed deletion of existing Rule 040.01. Stakeholder comment(s) considered in proposed rule language. | Idaho Code §§ 42-203A(5), 42-203C, and other statutes require the applicant to submit evidence and fulfill various burdens of proof. Proposed rule clarifies the applicant's burden for an unprotested application.  |
| <b>040.04.e.</b> In protested matters the Director will take official notice of information as described in the department's adopted Rules of Procedure, and will, prior to considering, circulate to the parties information from department studies and field examinations concerning the protested application or permit being reprocessed, if such information has not otherwise been made a part of the hearing record. | <b>Delete/None</b>  | Official notice is part of a contested case proceeding under IDAPA 37.01.01 "Rules of Procedure."<br>Deleted to avoid redundancy with other administrative rules.  | Idaho Code §§ 42-203A(5), 42-203C, and other statutes require the Director to evaluate the statutory criteria based on available evidence. That evidence can include information IDWR already has. If the Director is going to consider this evidence, the parties to the contested case must be informed of the information to be considered and given a chance to rebut the evidence. IDAPA 37.01.01 "Rules of |

| Existing Rule   | Proposed Rule  | Comment or Rationale  | Purpose of Rule   |
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| <b>040.04.e. CONTINUED</b>  |  |   | Procedure” govern how the Director takes official notice of the evidence. It is not necessary to reiterate this process in two sets of administrative rules.  |
| <b>040.05. Additional Information Requirements.</b>   | <b>040.04. Additional Information Requirements.</b>  | Renumbered due to proposed deletion of existing Rule 040.01.  | Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rules explain the information the Director may request to fulfill the Director’s obligation to evaluate the statutory criteria.                              |
| <b>040.05.a.</b> For unprotested applications and permits being reprocessed, the additional information required by Subsection 040.05.c. shall be submitted within thirty (30) days after the Director notifies the applicant that the application or permit is being reviewed for decision. The Director may extend the time within which to submit the information upon request by the applicant and upon a showing of good cause. Failure to submit the required information within the time period allowed will be cause for the Director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. | <b>040.04.b.</b> Unless the Department extends the time for filing, the additional information must be filed within thirty (30) days after the Department notifies the applicant of the additional information requirements.<br><br>i. The Department may grant an extension of time to file the required additional information if the applicant files a written request showing good cause.<br><br>ii. If the required additional information is not filed within the time allowed, including any extensions granted, the Department may void the application. | Reformatted to clarify requirement the applicant submit the information in a timely manner to allow IDWR to evaluate the applicable statutory criteria. The information can be requested for an unprotected or protested application. It is not necessary to differentiate between unprotected and protested applications in this rule. Renumbered due to proposed deletion of existing Rule 040.01. Stakeholder comment(s) considered in | Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit that information in a timely manner. A deadline facilitates timely information submittals and reviews to avoid speculative |



| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| <p><b>040.05.a. CONTINUED</b></p> <p>The Director will provide opportunity for hearing as provided in Section 42-1701A, Idaho Code.</p>   |  | proposed rule language.  | applications securing a priority date. Proposed rule allows for deadline extensions, for good cause, if the applicant needs additional time to gather required information.  |
| <p><b>040.05.b.</b> For protested applications or protested permits being reprocessed, the information required by Subsection 040.05.c. may be requested by the Director to be submitted within thirty (30) days after notification by the Director, may be made a part of the record of the hearing held to consider the protest, or may be made available in accordance with any pre-hearing discovery procedures. Failure to submit the required information within the time period allowed will be cause for the Director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late.</p> | <p><b>040.04.b.</b> Unless the Department extends the time for filing, the additional information must be filed within thirty (30) days after the Department notifies the applicant of the additional information requirements.</p> <p>ii. If the required additional information is not filed within the time allowed, including any extensions granted, the Department may void the application.</p> | <p>Reformatted to clarify requirement the applicant submit the information in a timely manner to allow IDWR to evaluate the applicable statutory criteria. The information can be requested for an unprotested or protested application. It is not necessary to differentiate between unprotested and protested applications in this rule. Renumbered due to proposed deletion of existing Rule 040.01. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request the applicant submit additional information within thirty (30) days. Proposed rule requires applicant to submit that information in a timely manner. A deadline facilitates timely information submittals and reviews to avoid speculative applications securing a priority date. Proposed rule allows for deadline extensions, for good cause, if the applicant needs additional time to gather required information.</p> |
| <p><b>040.05.c.</b> The following information shall be submitted for applications to appropriate unappropriated water or trust water and for permits being reprocessed for trust water. The additional information submittal requirements of this rule are waived for filings which seek to</p>   | <p><b>040.04.a.</b> The Department may require the applicant to file any of the additional information under Paragraph 040.04.c. or 040.04.d. if the official record for the application does not contain sufficient information to evaluate the applicable criteria in Section 045 and other statutory criteria. The</p>  | <p>Reformatted to clarify when IDWR may require additional information necessary to evaluate the statutory criteria. Rephrased to afford IDWR the flexibility to require only the</p>  | <p>Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to</p>  |

| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| <p><b>040.05.c. CONTINUED</b></p> <p>appropriate five (5) cfs or less or storage of five hundred acre-feet (500 AF) or less and for filings seeking reallocation of trust water which the Director determines will reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. However, the Director may specifically request submittal of any of the following information for any filing, as he determines necessary. Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows:</p> | <p>Department will notify the applicant of the additional information required.</p> <p><b>040.04.c.</b> For purposes of evaluating the application under Subsection 045.01, the Department may request additional information including, but not limited, to the following:</p> <p><b>040.04.d.</b> For purposes of evaluating the application under Subsections 045.02 and 045.03, the Department may request additional information including, but not limited to, the following:</p> <p><b>040.04.e.</b> Unless the Director determines otherwise, information under Paragraph 040.04.c. or 040.04.d. is not required for:</p> <p style="padding-left: 40px;">i. An application that seeks to appropriate five (5) cfs or less, or store five hundred (500) af or less of unappropriated water.</p> <p style="padding-left: 40px;">ii. An application that proposes to use water from a source in the Swan Falls Trust Water Area to irrigate two hundred (200) acres or less or any other use that the Director determines will reduce the flow of the Snake River measured at the Murphy Gage by two (2) af per day or less.</p> <p><b>040.04.f.</b> Unless the Director determines otherwise, information under Paragraph 040.04.d. is required for an application that proposes to use water from a source in the Swan Falls Trust Water Area to irrigate more than two hundred (200) acres or any other use that the Director determines will reduce the</p> | <p>information necessary, if the record does not already contain sufficient evidence to evaluate the statutory criteria rather than always requiring all of the information for specific applications. Set an initial standard for which applications will require additional information. Renumbered due to proposed deletion of existing Rule 040.01. Stakeholder comment(s) considered in proposed rule language.</p> | <p>request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria.</p> |

| <b>Existing Rule</b>  | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>  | <b>Purpose of Rule</b>   |
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| <b>040.05.c. CONTINUED</b>  | flow of the Snake River measured at the Murphy Gage by more than two (2) af per day.  |  |  |
| <b>040.05.c.i.</b> For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted. | <b>Delete/None</b>  | Deleted because the information is readily available to IDWR. Deletion lessens the applicant's burden.     | Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence.   |
| <b>040.05.c.ii.</b> For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well.   | <b>Delete/None</b>  | Deleted because the information is readily available to IDWR. Deletion lessens the applicant's burden.     | Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence.   |
| <b>040.05.c.iii.</b> Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights.  | <b>040.04.c.i.</b> Project design, construction, operation techniques, or mitigation measures that the applicant will employ to eliminate or reduce the impact on other water rights. | Clarified language. Renumbered due to proposed deletion of existing Rule 040.01.                           | Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria. |
| <b>040.05.d.</b> Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows:   | <b>Delete/None</b>  | Deleted because information listed under this rule heading may be used to evaluate more than one statutory | Idaho Code § 42-203A(5) includes criteria the Director is required to evaluate based on available evidence.  |

| Existing Rule  | Proposed Rule   | Comment or Rationale  | Purpose of Rule  |
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| <b>040.05.d. CONTINUED</b>   |   | criterion.  |  |
| <b>040.05.d.i.</b> Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.  | <b>040.04.c.ii.</b> The proposed project water requirements including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year.  | Clarified language. Renumbered due to proposed deletion of existing Rule 040.01 and reformat to move all additional information items to facilitate evaluation of Idaho § Code 42-203A(5) criteria into one list within proposed Rules 040.04.c.i. through xii. | Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria. |
| <b>040.05.d.ii.</b> Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source. | <b>040.04.c.iii.</b> The quantity of water available from the source applied for, including, but not limited to, the flow rates for surface water sources available during periods of peak and average project water demand, the properties of the aquifers from which water is to be taken from for ground water sources, and other sources of supply that may be used to supplement the water source proposed in the application. | Clarified language. Renumbered due to proposed deletion of existing Rule 040.01 and reformat to move all additional information items to facilitate evaluation of Idaho § Code 42-203A(5) criteria into one list within proposed Rules 040.04.c.i. through xii. | Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria. |
| <b>040.05.e.</b> Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows:  | <b>Delete/None</b>  | Reformatted to delete reference to specific statutory criterion, because information requested in rule may be used to evaluate more than one statutory criterion.   | Idaho Code § 42-203A(5) includes criteria the Director is required to evaluate based on available evidence.  |

| Existing Rule   | Proposed Rule   | Comment or Rationale   | Purpose of Rule  |
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| <p><b>040.05.e.i.</b> The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code.</p> | <p><b>040.04.c.iv.</b> Evidence documenting an interest in the lands necessary for all project works and the place of use including, but not limited to, copies of deeds, leases, easements, or well sharing agreements. In the instance the land necessary to construct and operate the proposed project is privately-owned land not in the applicant’s ownership, the applicant must submit evidence documenting that the applicant has an interest in the land, has authority to exercise eminent domain to obtain the interest, or has another arrangement with the landowner establishing an interest. In the instance of a project diverting water from or conveying water across federally owned land, the applicant must submit evidence documenting that the applicant filed the appropriate form to request or initiate access and that access is authorized or a decision is pending.</p> <p><b>040.04.c.v.</b> For hydropower use, evidence demonstrating compliance with Sections 42-205 and 42-206, Idaho Code.</p> | <p>Reformatted and clarified language. Updated information requirements based on applicable case law for specific circumstances. In Idaho, a water right cannot be established in trespass and the requirements to find the application is not speculative vary depending upon whether the application point of diversion or place of use property is privately owned or publicly owned land and if the applicant possess eminent domain authority. Renumbered due to proposed deletion of existing Rule 040.01 and reformat to move all additional information items to facilitate evaluation of Idaho § Code 42-203A(5) criteria into one list within proposed Rules 040.04.c.i. through xii. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203A(5)(c) requires the Director to evaluate if the application is made in good faith and not for delay or speculative purposes. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Idaho law, (<i>Lemmon v. Hardy</i>, et. al.) prohibits a person from establishing a water right in trespass. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria.</p> |
| <p><b>040.05.e.ii.</b> The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials.</p>   | <p><b>040.04.c.vi.</b> Requests for other needed permits, licenses, and approvals. The applicant must keep the Department apprised of the status of the requests and any subsequent approvals or denials.</p>   | <p>Clarified language. Renumbered due to proposed deletion of existing Rule 040.01 and reformat to move all additional information items to facilitate evaluation of Idaho § Code 42-203A(5) criteria into one list within proposed</p>  | <p>Idaho Code § 42-203A(5)(c) requires the Director to evaluate if the application is made in good faith and not for delay or speculative purposes. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from</p>  |

| <b>Existing Rule</b>   | <b>Proposed Rule</b>   | <b>Comment or Rationale</b>  | <b>Purpose of Rule</b>  |
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| <b>040.05.e.ii. CONTINUED</b>  |  | Rules 040.04.c.i. through xii. Stakeholder comment(s) considered in proposed rule language.  | the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria.   |
| <b>040.05.f.</b> Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows:  | <b>Delete/None</b>   | Deleted this rule and its reference to specific statutory criterion, because information requested in rule may be used to evaluate more than one statutory criterion.  | Idaho Code § 42-203A(5) includes criteria the Director is required to evaluate based on available evidence.   |
| <b>040.05.f.i.</b> The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed. | <b>040.04.c.vii.</b> Evidence to show that it is reasonably probable that financing will be available to appropriate the water and put it to the beneficial use proposed.  | Simplified language and eliminated portion of previously required information to lessen applicant's burden, because IDWR does not need it to evaluate the statutory criteria. Renumbered due to proposed deletion of existing Rule 040.01 and reformatted to move all additional information items to facilitate evaluation of Idaho § Code 42-203A(5) criteria into one list within proposed Rules 040.04.c.i. through xii. | Idaho Code § 42-203A(5)(d) requires the Director to evaluate if the applicant has sufficient financial resources to complete the project. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria. |
| <b>None</b>  | <b>040.04.c.viii.</b> If the applicant is a governmental entity proposing to use taxing, bonding, or contracting authority to raise the funds needed to commence and pursue project construction, a proposed project construction schedule and a plan describing how the applicant intends to utilize its taxing, bonding, | Added additional information requirement necessary for IDWR to evaluate existing Rule 045.01.d.ii., retained in proposed rules with same number, to determine if an applicant with taxing,   | Idaho Code § 42-203A(5)(d) requires the Director to evaluate if the applicant has sufficient financial resources to complete the project. Idaho Code § 42-204 affords IDWR the opportunity to request additional  |

| Existing Rule  | Proposed Rule   | Comment or Rationale  | Purpose of Rule   |
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| <b>None CONTINUED</b>  | or contracting authority in connection with the proposed project construction schedule.   | bonding, or contracting authority will secure the financial resources necessary to develop the water use project in a timely manner. Stakeholder comment(s) considered in proposed rule language.   | information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria.  |
| <b>040.05.f.ii.</b> The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications.  | <b>040.04.c.ix.</b> Plans, specifications, and estimated construction costs for the project works definite enough to allow for determination of project impacts and implications.   | Clarified language. Rule allows IDWR the flexibility to request information regarding the project works to facilitate the evaluation of statutory criteria. Renumbered due to proposed deletion of existing Rule 040.01 and reformatted to move all additional information items to facilitate evaluation of Idaho § Code 42-203A(5) criteria into one list within proposed Rules 040.04.c.i. through xii. Stakeholder comment(s) considered in proposed rule language. | Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-202(4) requires the applicant to supply information regarding the project diversion works. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria. |
| <b>040.05.g.</b> Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows: The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of | <b>040.04.c.x.</b> Letters requesting comment and any responding comment on the proposed project construction and operation from the governing body of the city, county, or tribal reservation within which the point of diversion and place of use are located: any irrigation district, canal company, or other water delivery entity within which the proposed project is located; and from other people, entities, or agencies with interests in the local area that may be affected by the | Clarified language. Renumbered due to proposed deletion of existing Rule 040.01 and reformatted to move all additional information items to facilitate evaluation of Idaho § Code 42-203A(5) criteria into one list within proposed Rules 040.04.c.i. through xii. Stakeholder comment(s)   | Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit  |

| Existing Rule   | Proposed Rule   | Comment or Rationale   | Purpose of Rule   |
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| <p><b>040.05.g. CONTINUED</b></p> <p>Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the Director.</p> | <p>proposed water use as determined by the Department.</p>  | <p>considered in proposed rule language.</p>   | <p>necessary information to facilitate evaluation of the statutory criteria.</p>  |
| <p><b>None</b></p>  | <p><b>040.04.c.xi.</b> Design, construction, operation techniques, or mechanical equipment that will be employed to achieve efficiency in conveyance or use of water and to minimize waste.</p> | <p>Added information requirement necessary for the Director to evaluate if the proposed water use is contrary to the conservation of water resources. Conservation of water resources is a statutory criterion effectuated after adoption of the existing rules.</p>   | <p>Idaho Code § 42-203A(5)(f) requires the Director to evaluate if the application is contrary to the conservation of water resources. Idaho Code § 42-202(4) requires the applicant to supply information regarding the project diversion works. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria.</p> |
| <p><b>None</b></p>  | <p><b>040.04.c.xii.</b> Evidence demonstrating compliance with the Idaho State Water Plan.</p>  | <p>Added information requirement suggested by stakeholder(s) as it is necessary for the Director to determine if the applicant's proposed water use is in compliance with the Idaho State Water Plan. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-1734B(3) requires all state agencies to exercise duties consistent with the Idaho State Water Plan, including issuance of permits. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to</p>  |



| Existing Rule  | Proposed Rule   | Comment or Rationale   | Purpose of Rule   |
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| <b>None CONTINUED</b>  |   |  | facilitate evaluation of the statutory criterion.   |
| <p><b>040.05.h.</b> The following information Relative to the Public Interest Criteria of Section 42-203C(2), Idaho Code, shall be submitted by an applicant seeking reallocation of trust water for a project which the Director determines will reduce the flow of the Snake River by more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. The Director may request any or all of the following information for any filing seeking the reallocation of trust water.</p> | <p><b>040.04.d.</b> For purposes of evaluating the application under Subsections 045.02 and 045.03, the Department may request additional information including, but not limited to, the following:</p> <p><b>040.04.f.</b> Unless the Director determines otherwise, information under Paragraph 040.04.d. is required for an application that proposes to use water from a source in the Swan Falls Trust Water Area to irrigate more than two hundred (200) acres or any other use that the Director determines will reduce the flow of the Snake River measured at the Murphy Gage by more than two (2) af per day.</p> | <p>Rephrased to afford IDWR the flexibility to require only the information necessary, if the record does not already contain sufficient evidence, to evaluate the statutory criteria rather than always requiring all of the information for every application. Reformatted to clarify when IDWR may require additional information necessary to evaluate the statutory criteria. Set an initial standard for which applications will require additional information. Renumbered due to proposed deletion of existing Rule 040.01 and other proposed reformatting within proposed Rule 040.04. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203C includes criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria.</p> |
| <p><b>040.05.h.i.</b> A project design and estimate of cost of development shall be submitted. For applications appropriating more than twenty-five (25) cfs, or ten thousand (10,000) AF of storage, or generating more than five (5) megawatts, the information shall be prepared and submitted by a qualified engineer licensed under the provisions of Chapter 12, Title 54, Idaho</p>   | <p><b>Delete/None</b></p>   | <p>Deleted requirement for projects of a certain size to have design and cost estimates prepared by an engineer. Removed to avoid redundancy with statutes, because projects of this size are rare and if they are proposed, they are typically</p>  | <p>Idaho Code § 42-203C includes criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-202(5) affords the Director the opportunity to require the applicant to submit a financial resource statement and estimated</p>   |

| Existing Rule  | Proposed Rule   | Comment or Rationale  | Purpose of Rule   |
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| <p><b>040.05.h.i. CONTINUED</b></p> <p>Code, unless waived by the Director. The design shall be definite enough to reflect the project's impacts and implications as required in subsequent rules.</p>   |   | <p>designed by a qualified engineer. Project design and cost information requested in existing rule incorporated into proposed Rule 040.04.c.ix.</p>  | <p>construction cost for projects involving more than 25 cfs, or 500 theoretical horsepower, or a storage capacity greater than 10,000 af.</p>  |
| <p><b>040.05.h.ii.</b> If the project proposes development for irrigation purposes, information shall be submitted on crop rotation, including acreages, for lands when newly developed.</p>   | <p><b>040.04.d.i.</b> If the project proposes irrigation use, the crop rotation, including acres under each crop type, for newly developed land. Also the kinship, if any, of the operator of the land to be irrigated by the project to the applicant; the location and acreage of other irrigated land owned, leased, or rented by the applicant; a soil survey prepared in accordance with the Natural Resources Conservation Service irrigable land classification system; a schedule for bringing into production the project land; the name, address, and number of shares held by each shareholder if the applicant is a corporation; and evidence of tax-exempt status if the applicant is a corporation so claiming.</p> | <p>Clarified language. Proposed crop type and rotation information is necessary to estimate the potential economic benefits of an irrigation project. Renumbered due to proposed deletion of existing Rule 040.01 and other proposed reformatting within proposed Rule 040.04 including reformat to move all irrigation use additional information requirements for evaluation of Idaho Code § 42-203C criteria into one rule. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203C includes criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria.</p> |
| <p><b>040.05.h.iii.</b> Information shall be submitted concerning the number and kinds of jobs that will be created or eliminated as a direct result of project development including both the construction and operating phases of the project. If jobs are seasonal, the estimated number of months per year of employment shall be submitted.</p> | <p><b>040.04.d.ii.</b> The number and kinds of jobs created or eliminated as a direct result of project development including both the construction and operating phases of the project. If jobs are seasonal, the estimated number of months per year of employment.</p>   | <p>Clarified language. Information is necessary to estimate the potential economic benefits of a project. Renumbered due to proposed deletion of existing Rule 040.01 and other proposed reformatting within proposed Rule 040.04. Stakeholder comment(s) considered in proposed rule</p>   | <p>Idaho Code § 42-203C includes criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to</p>  |

| <b>Existing Rule</b>  | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>  | <b>Purpose of Rule</b>   |
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| <b>040.05.h.iii. CONTINUED</b>  |   | language.  | facilitate evaluation of the statutory criteria.   |
| <b>040.05.h.iv.</b> For applications or permits being reprocessed for more than twenty-five (25) cfs, or more than ten thousand (10,000) AF of storage, or more than five (5) megawatts, information shall be submitted concerning the changes to community services that will be required during the construction and operation phases of the project including, but not limited to, changes to schools, roads, housing, public utilities and public health and safety facilities, if any. | <b>040.04.d.iii.</b> For an application that proposes appropriating more than twenty-five (25) cfs, or more than ten thousand (10,000) af of storage, or generating more than five (5) megawatts of power, the changes to community services required during the construction and operation phases of the project including, but not limited to, changes to schools, roads, housing, public utilities, and public health and safety facilities, if any. | Clarified language.<br>Information is necessary to estimate the potential secondary effects on the economy for larger projects. Renumbered due to proposed deletion of existing Rule 040.01 and other proposed reformatting within proposed Rule 040.04. | Idaho Code § 42-203C includes criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria. |
| <b>040.05.h.v.</b> Information shall be submitted concerning the source of energy for diverting and using water for the project, the estimated instantaneous demand and total amount of energy that will be used, the efficiency of use, and energy conservation methods.   | <b>040.04.d.iv.</b> The source of energy for diverting and using water for the project, the estimated instantaneous demand and total amount of energy that will be used, the efficiency of use, and energy conservation methods.  | Clarified language.<br>Information is necessary to estimate the potential power use of a project. Renumbered due to proposed deletion of existing Rule 040.01 and other proposed reformatting within proposed Rule 040.04.                               | Idaho Code § 42-203C includes criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria. |
| <b>040.05.h.vi.</b> Information shall be submitted concerning the location, amount, and quality of return flow water, and any water conservation features of the proposed project.  | <b>040.04.d.v.</b> The location, amount, and quality of return flow water, and any water conservation features of the project.  | Clarified language.<br>Information is necessary to estimate impact of a project. Renumbered due to proposed deletion of existing Rule 040.01 and other proposed reformatting within proposed Rule 040.04.  | Idaho Code § 42-203C includes criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the   |

| Existing Rule   | Proposed Rule  | Comment or Rationale  | Purpose of Rule  |
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| <b>040.05.h.vi. CONTINUED</b>   |  |   | applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria.  |
| <b>040.05.h.vii.</b> If the project proposes irrigation as a use, information shall be submitted concerning the kinship, if any, of the operator of the land to be irrigated by the project to the applicant, the location and acreage of other irrigated lands owned, leased, or rented by the applicant, the names, addresses and number of shares held by each shareholder if the applicant is a corporation, evidence of tax-exempt status if a corporation is so claiming, a soil survey prepared in accordance with the U.S. Soil Conservation Service irrigatable land classification system, and a schedule for bringing into production the project lands. | <b>040.04.d.i.</b> If the project proposes irrigation use, the crop rotation, including acres under each crop type, for newly developed land. Also the kinship, if any, of the operator of the land to be irrigated by the project to the applicant; the location and acreage of other irrigated land owned, leased, or rented by the applicant; a soil survey prepared in accordance with the Natural Resources Conservation Service irrigable land classification system; a schedule for bringing into production the project land; the name, address, and number of shares held by each shareholder if the applicant is a corporation; and evidence of tax-exempt status if the applicant is a corporation so claiming. | Clarified language. Information is necessary to estimate project's promotion of the family farming tradition. Renumbered due to proposed deletion of existing Rule 040.01 and other proposed reformatting within proposed Rule 040.04 including reformat to move all irrigation use additional information requirements for evaluation of Idaho Code § 42-203C criteria into one rule. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203C includes criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria. |
| <b>None</b>   | <b>040.04.d.vi.</b> The availability, foreseeability, and cost of alternative energy sources to ameliorate the economic impact the proposed use will have on electric utility rates in the state of Idaho.   | Added information requirement necessary for the Director to evaluate the proposed water use project's economic impact on power utility rates, if any.   | Idaho Code § 42-203C includes criteria the Director is required to evaluate based on available evidence. Idaho Code § 42-204 affords IDWR the opportunity to request additional information from the applicant. Proposed rule requires applicant to submit necessary information to facilitate evaluation of the statutory criteria. |

| <b>Existing Rule</b>   | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>   |
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| <b>041. – 044. (RESERVED)</b>  | <b>041. – 044. (RESERVED)</b>   | No change proposed.   | Place holder to allow additional sections to be added when needed without major reorganization or renumbering of rule chapter.   |
| <b>045. EVALUATION CRITERIA (RULE 45).</b>   | <b>045. EVALUATION CRITERIA.</b>  | No change proposed except deleted “(RULE 45)” per The Idaho Rule Writer’s Manual instruction. | Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence. Proposed rules state measures the water use, application, and applicant must meet to satisfy statutory criterion. Establishing measures that satisfy statutory criteria in proposed rules sets expectations and facilitates consistent and expeditious application decisions. |
| <b>045.01. Criteria for Evaluating All Applications to Appropriate Water.</b> The Director will use the following criteria in evaluating whether an application to appropriate unappropriated water or trust water should be approved, denied, approved for a smaller amount of water or approved with conditions. | <b>045.01. Criteria for All Applications to Appropriate Water.</b> The Director will use the following criteria in evaluating whether an application should be approved, denied, approved for a smaller amount of water, or approved with conditions. | Clarified language.   | Idaho Code §§ 42-203A(5), 42-203C, and other statutes include criteria the Director is required to evaluate based on available evidence. Proposed rule introduces list of measures the water use must meet to satisfy statutory criterion and actions the Director may take as a result of the evaluation.   |
| <b>045.01.a.</b> Criteria for determining whether the proposed use will reduce the quantity of water under existing water rights. A proposed use will be determined to reduce  | <b>045.01.a.</b> Reduction of water available under an existing water right (injury) criteria. A proposed use will be determined to reduce the quantity of water under an existing water right  | Clarified language.   | Idaho Code § 42-203A(5)(a) requires the Director to evaluate if the water use will reduce the water available to   |

| <b>Existing Rule</b>   | <b>Proposed Rule</b>   | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>  |
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| <b>045.01.a. CONTINUED</b><br><br>the quantity of water under an existing water right (i.e., injure another water right) if:   | if:  |   | existing water users.<br>Proposed rule introduces list of measures the water use must meet to satisfy statutory criteria.   |
| <b>045.01.a.i.</b> The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less. | <b>045.01.a.i.</b> The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree, claim, or the historical amount beneficially used by the water right holder of such permit, license, decree, or claim, whichever is less; | Clarified language.   | Idaho Code § 42-203A(5)(a) requires the Director to evaluate if the water use will reduce the water available to existing water users.<br>Proposed rule states measure the water use must meet to satisfy statutory criteria. |
| <b>045.01.a.ii.</b> The holder of an existing water right will be forced to an unreasonable effort or expense to divert his existing water right. Protection of existing groundwater rights are subject to reasonable pumping level provisions of Section 42-226, Idaho Code; or       | <b>045.01.a.ii.</b> The holder of an existing water right will be forced to an unreasonable effort or expense to divert water for an existing water right. The reasonable pumping level provisions of Section 42-226, Idaho Code govern protection of existing ground water rights; or         | Clarified language.   | Idaho Code § 42-203A(5)(a) requires the Director to evaluate if the water use will reduce the water available to existing water users.<br>Proposed rule states measure the water use must meet to satisfy statutory criteria. |
| <b>045.01.a.iii.</b> The quality of the water available to the holder of an existing water right is made unusable for the purposes of the existing user's right, and the water cannot be restored to usable quality without unreasonable effort or expense.                            | <b>045.01.a.iii.</b> The proposed use would make the quality of the water available unusable by an existing water right and could not be restored to usable quality without unreasonable effort or expense.  | Clarified language.<br>Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203A(5)(a) requires the Director to evaluate if the water use will reduce the water available to existing water users.<br>Proposed rule states measure the water use must meet to satisfy statutory criteria. |
| <b>045.01.a.iv.</b> An application that would otherwise be denied because of injury to another water right may be approved upon conditions which will mitigate losses of water to the holder of an existing water right, as determine by the Director.                                 | <b>045.01.a.iv.</b> An application that would otherwise be denied because of injury to another water right may be approved upon conditions that mitigate losses of water for an existing water right, as determined by the Director.   | Clarified language.   | Idaho Code § 42-203A(5)(a) requires the Director to evaluate if the water use will reduce the water available to existing water users.<br>Proposed rule states action   |

| Existing Rule   | Proposed Rule   | Comment or Rationale   | Purpose of Rule   |
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| <b>045.01.a.iv. CONTINUED</b>   |   |  | the applicant can take to avoid denial of the application if statutory criteria are not otherwise met.  |
| <b>045.01.a.v.</b> The provisions of Subsection 045.01.a.v. are not intended to require compensation or mitigation for loss of flow to holders of subordinated hydropower rights or those from which trust water is reallocated.  | <b>045.01.a.v.</b> If an existing water right is subordinated to future beneficial uses which include the application's proposed use, the existing subordinated water right cannot be injured.  | Clarified language.  | Idaho Code § 42-203A(5)(a) requires the Director to evaluate if the water use will reduce the water available to existing water users. Proposed rule clarifies how the Director will consider subordinated water rights when evaluating the statutory criteria. |
| <b>045.01.b.</b> Criteria for determining whether the water supply is insufficient for the proposed use. The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient to make the project economically feasible (direct benefits to applicant must exceed direct costs to applicant), unless there are noneconomic factors that justify application approval. In assessing such noneconomic factors, the Director will also consider the impact on other water rights if the project is abandoned during construction or after completion, the impact on public resource values, and the cost to local, state and federal governments of such an abandonment. | <b>045.01.b.</b> Sufficiency of water supply. The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient to accomplish the proposed beneficial use. | Clarified language. Deleted evaluation criteria related to economic and noneconomic factors, because the relevant statutory criteria do not require consideration of economic factors. | Idaho Code § 42-203A(5)(b) requires the Director to evaluate if the water supply is sufficient for the water use. Proposed rule states measure the water use must meet to satisfy statutory criteria.   |
| <b>045.01.c.</b> Criteria for determining whether the application is made in good faith. The  | <b>045.01.c.</b> Good faith criteria. The evaluation of whether an application is not made in good  | Clarified language. Rephrased to be more in-line   | Idaho Code § 42-203A(5)(c) requires the Director to   |

| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| <p><b>045.01.c. CONTINUED</b></p> <p>criteria requiring that the Director evaluate whether an application is made in good faith or whether it is made for delay or speculative purposes requires an analysis of the intentions of the applicant with respect to the filing and diligent pursuit of application requirements. The judgment of another person's intent can only be based upon the substantive actions that encompass the proposed project. Speculation for the purpose of this rule is an intention to obtain a permit to appropriate water without the intention of applying the water to beneficial use with reasonable diligence. Speculation does not prevent an applicant from subsequently selling the developed project for a profit or from making a profit from the use of the water. An application will be found to have been made in good faith if:</p> | <p>faith or whether it is made for delay or speculative purposes requires an analysis of the applicant's intent to follow application requirements and diligently pursue permit development. Speculation for this rule is an intention to obtain a water right permit without the intention of putting the water to beneficial use with reasonable diligence. Speculation does not prevent an applicant from subsequently selling the project for a profit or from making a profit from the use of the water. An application will be found to have not been made in good faith if:</p> | <p>with statutory criteria. Stakeholder comment(s) considered in proposed rule language.</p>   | <p>evaluate if the application is not made in good faith and if it is made instead for delay or speculative purposes. Proposed rule states how the speculation criteria will be evaluated and introduces measures the application must meet to satisfy statutory criteria.</p>   |
| <p><b>045.01.c.i.</b> The applicant shall have legal access to the property necessary to construct and operate the proposed project, has the authority to exercise eminent domain authority to obtain such access, or in the instance of a project diverting water from or conveying water across land in state or federal ownership, has filed all applications for a right-of-way. Approval of applications involving Desert Land Entry or Carey Act filings will not be issued until the United States Department of Interior, Bureau of Land Management has issued a notice classifying the lands suitable for entry; and</p>   | <p><b>045.01.c.i.</b> In the instance the land necessary to construct and operate the proposed project is privately owned and not in the applicant's ownership, the applicant does not have an interest in the land at the time of the application filing or the authority to exercise eminent domain; or</p> <p><b>045.01.c.ii.</b> In the instance of a project diverting water from or conveying water across federally owned land, the applicant has not filed the appropriate form to request access; or</p>  | <p>Clarified language. Rephrased to be more in-line with statutory criteria. In Idaho, a water right cannot be established in trespass and the requirements to find the application is not speculative vary depending upon whether the application point of diversion or place of use property is privately owned or publicly owned land and if the applicant has eminent domain authority. Stakeholder comment(s) considered in proposed rule</p> | <p>Idaho Code § 42-203A(5)(c) requires the Director to evaluate if the application is made in good faith and not for delay or speculative purposes. Idaho law, (<i>Lemmon v. Hardy</i>, et. al.) prohibits a person from establishing a water right in trespass and states an application filed without possessory interest in the point of diversion or place of use property, if privately owned, is speculative. Proposed rule states measure</p> |



| <b>Existing Rule</b>   | <b>Proposed Rule</b>   | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>   |
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| <b>045.01.c.i. CONTINUED</b>   |  | language.   | the application must meet to satisfy statutory criteria.   |
| <b>045.01.c.ii.</b> The applicant is in the process of obtaining other permits needed to construct and operate the project; and  | <b>045.01.c.iii.</b> The applicant is not in the process of obtaining other permits, licenses, and approvals needed to construct and operate the project; or | Clarified language.<br>Rephrased to be more in-line with statutory criteria.  | Idaho Code § 42-203A(5)(c) requires the Director to evaluate if the application is made in good faith and not for delay or speculative purposes. Proposed rule states measure application must meet to satisfy statutory criteria.           |
| <b>045.01.c.iii.</b> There are no obvious impediments that prevent the successful completion of the project.   | <b>045.01.c.iv.</b> There are obvious impediments that prevent the successful completion of the project.   | Clarified language.<br>Rephrased to be more in-line with statutory criteria.  | Idaho Code § 42-203A(5)(c) requires the Director to evaluate if the application is made in good faith and not for delay or speculative purposes. Proposed rule states measure the application must meet to satisfy statutory criteria.       |
| <b>045.01.d.</b> Criteria for determining whether the applicant has sufficient financial resources to complete the project.  | <b>045.01.d.</b> Financial resources criteria. The Director will find an applicant does not have sufficient financial resources:                             | Clarified language.<br>Rephrased to be more in-line with statutory criteria.  | Idaho Code § 42-203A(5)(d) requires the Director to evaluate if the applicant has sufficient financial resources to complete the water use project. Proposed rule introduces measures the applicant must meet to satisfy statutory criteria. |
| <b>045.01.d.i.</b> An applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the | <b>045.01.d.i.</b> Upon a showing that it is not reasonably probable that funding is or will be available for project construction; or                       | Clarified language.<br>Rephrased to be more in-line with statutory criteria.<br>Deleted reference to timing of showing, because existing language is not definitive | Idaho Code § 42-203A(5)(d) requires the Director to evaluate if the applicant has sufficient financial resources to complete the water use project. Proposed rule  |

| Existing Rule  | Proposed Rule  | Comment or Rationale  | Purpose of Rule   |
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| <p><b>045.01.d.i. CONTINUED</b></p> <p>Director. This showing is required as described in Subsection 040.05.c. or at the time the hearing provided by Subsection 040.05.c. is conducted.</p>   |  | <p>and the language is unnecessary.</p>   | <p>Introduces measures the applicant must meet to satisfy statutory criteria.</p>   |
| <p><b>045.01.d.ii.</b> A governmental entity will be determined to have satisfied this requirement if it has the taxing, bonding or contracting authority necessary to raise the funds needed to commence and pursue project construction in accordance with the construction schedule.</p>                                  | <p><b>045.01.d.ii.</b> If the applicant is a governmental entity without taxing, bonding, or contracting authority necessary to raise the funds needed to commence and pursue project construction consistent with the proposed project construction schedule.</p> | <p>Clarified language. Rephrased to be more in-line with statutory criteria. Stakeholder comment(s) considered in proposed rule language.</p>   | <p>Idaho Code § 42-203A(5)(d) requires the Director to evaluate if the applicant has sufficient financial resources to complete the water use project. Proposed rule introduces measures the applicant must meet to satisfy statutory criteria.</p>                               |
| <p><b>045.01.e.</b> Criteria for determining whether the project conflicts with the local public interest. The Director will consider the following, along with any other factors he finds to be appropriate, in determining whether the project will conflict with the local public interest:</p>                           | <p><b>045.01.e.</b> Local public interest criteria. The Director will consider the following in determining whether the project will conflict with the local public interest:</p>  | <p>Clarified language. Stakeholder comment(s) considered in proposed rule language.</p>   | <p>Idaho Code § 42-203A(5)(e) requires the Director to evaluate if the water use will conflict with the local public interest. Idaho Code § 42-202B defines “local public interest.” Proposed rule introduces measures the water use must meet to satisfy statutory criteria.</p> |
| <p><b>045.01.e.i.</b> The effect the project will have on the economy of the local area affected by the proposed use as determined by the employment opportunities, both short and long term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains;</p> | <p><b>Delete/None</b></p>  | <p>Deleted, because language is no longer consistent with statutory definition of “local public interest” and 2003 statutory amendment Statement of Purpose. IDWR should no longer consider the economy when evaluating local public interest. Stakeholder comment(s) considered in</p> | <p>Idaho Code § 42-203A(5)(e) requires the Director to evaluate if the water use will conflict with the local public interest. Idaho Code § 42-202B defines “local public interest.”</p>  |

| Existing Rule   | Proposed Rule  | Comment or Rationale  | Purpose of Rule   |
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| <b>045.01.e.i. CONTINUED</b>  |  | proposed rule language.   |   |
| <b>045.01.e.ii.</b> The effect the project will have on recreation, fish and wildlife resources in the local area affected by the proposed use; and | <b>045.01.e.i.</b> The direct effect the project will have on public water resources that are of interest to people in the local area directly affected by the proposed water use including, but not limited to, fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, transportation, navigation, water quality, and the effect of such use on the availability of water for alternative water uses that might be made within a reasonable time; and | Revised to ensure rule is consistent with statutory definition of “local public interest” and associated 2003 statutory amendment’s Statement of Purpose. Stakeholder comment(s) considered in proposed rule language.                                | Idaho Code § 42-203A(5)(e) requires the Director to evaluate if the water use will conflict with the local public interest. Idaho Code § 42-202B defines “local public interest.” Proposed rule states measure the water use must meet to satisfy statutory criteria.   |
| <b>None</b>   | <b>045.01.e.ii.</b> Whether the proposed water use is consistent with Idaho’s policy of securing the maximum use and benefit from the public water resources.  | Added as suggested by stakeholder(s) to ensure rules are consistent with statutory definition of “local public interest” and associated 2003 statutory amendment’s Statement of Purpose. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203A(5)(e) requires the Director to evaluate if the water use will conflict with the local public interest. Idaho Code § 42-202B defines “local public interest.” Case law ( <i>Mountain Home Irr. Dist. v. Duffy</i> , 1957, et. al.) establishes it is the policy of the state to secure the “maximum use and benefit” of Idaho’s water resources. Proposed rule states measure that water use must meet to satisfy statutory criteria. |
| <b>None</b>   | <b>045.01.e.iii.</b> Although the Director has independent responsibility for the overall assessment and balancing of factors weighing on the local public interest, the Director will give due regard to expertise of other state and federal regulatory agencies charged with assessing individual issues under Subparagraphs 045.01.e.i. and ii., recognizing that it is not the primary job of the   | Added as suggested by stakeholder(s) to ensure rules are consistent with statutory definition of “local public interest” and associated 2003 statutory amendment’s Statement of Purpose. Stakeholder comment(s) considered in                         | Idaho Code § 42-203A(5)(e) requires the Director to evaluate if the water use will conflict with the local public interest. Idaho Code § 42-202B defines “local public interest.” Proposed rule states measure the water use must meet to satisfy   |

| Existing Rule  | Proposed Rule   | Comment or Rationale  | Purpose of Rule   |
|--|---|---|---|
| <b>None CONTINUED</b>  | Department to protect all aspects of the health and welfare of Idaho's citizens and visitors.   | proposed rule language.   | statutory criteria.   |
| <b>None</b>  | <b>045.01.e.iv.</b> The Director may condition approval of an application on compliance with orders, rules, requirements, and authorizations issued or to be issued by state and federal regulatory agencies with jurisdiction over subject matter relevant to the local public interest. | Added as suggested by stakeholder to recognize IDWR's authority to consider other state or federal agencies' decisions regarding local public interest factors when conditioning approval of an application. Stakeholder comment(s) considered in proposed rule language.   | Idaho Code § 42-203A(5)(e) requires the Director to evaluate if the water use will conflict with the local public interest. Idaho Code § 42-202B defines "local public interest." Idaho Code § 42-203A(5) authorizes the Director to approve a permit upon conditions. Proposed rule states the Director may consider other agencies decisions regarding local public interest criteria when issuing application decisions. |
| <b>045.01.e.iii.</b> An application which the Director determines will conflict with the local public interest will be denied unless the Director determines that an over-riding state or national need exists for the project or that the project can be approved with conditions to resolve the conflict with the local public interest. | <b>045.01.e.v.</b> The Director will deny an application that conflicts with the local public interest unless the project can be approved with conditions to resolve the local public interest conflict.  | Revised to ensure rule is consistent with statutory definition of "local public interest" and associated 2003 statutory amendment's Statement of Purpose. Deleted Director's ability to determine there is an over-riding state or national need that warrants approval of an application that the Director otherwise found to conflict with the local public interest. There is no express statutory authority granting the Director this discretion and there are no statutory criteria for the Director to base such a decision on. Stakeholder comment(s) considered in | Idaho Code § 42-203A(5)(e) requires the Director to evaluate if the water use will conflict with the local public interest. Idaho Code § 42-202B defines "local public interest." Idaho Code § 42-203A(5) authorizes the Director to approve a permit upon conditions. Proposed rule states the Director may approve an application upon conditions to resolve local public interest conflict(s).                           |

| Existing Rule                  | Proposed Rule  | Comment or Rationale  | Purpose of Rule   |
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| <b>045.01.e.iii. CONTINUED</b> |  | proposed rule language.   |   |
|                                | <b>045.01.f.</b> Conservation of water resources within the state of Idaho criteria. The application will be determined contrary to the conservation of water resources if:  | Added because the Director is statutorily required to evaluate if the proposed water use is contrary to the conservation of water resources. Conservation of water resources is a statutory criterion effectuated after adoption of the existing rules. Stakeholder comment(s) considered in proposed rule language.                                      | Idaho Code § 42-203A(5)(f) requires the Director to evaluate if the water use conflicts with the conservation of water resources. Proposed rule introduces measures the water use must meet to satisfy statutory criteria.  |
| <b>None</b>                    | <b>045.01.f.i.</b> A diversion rate greater than 0.02 cfs per acre is proposed, but is not necessary for irrigation use;   | Added because the Director is statutorily required to evaluate if the proposed water use is contrary to the conservation of water resources. Conservation of water resources is a statutory criterion effectuated after adoption of the existing rules. Proposed rule consistent with IDWR Administrative Application Processing Memo No. 17 (est. 1979). | Idaho Code § 42-203A(5)(f) requires the Director to evaluate if the water use conflicts with the conservation of water resources. Idaho Code § 42-202(3) states an application cannot exceed one (1) cfs for every 50 acres to be irrigated unless a greater rate is justified. Proposed rule states measure water use must meet to satisfy statutory criteria. |
| <b>None</b>                    | <b>045.01.f.ii.</b> Design, construction, operation techniques, or mechanical equipment will not be employed to achieve a water use efficiency consistent with contemporary engineering, industry, and regulatory standards; | Added because the Director is statutorily required to evaluate if the proposed water use is contrary to the conservation of water resources. Conservation of water resources is a statutory criterion effectuated after adoption of the existing  | Idaho Code § 42-203A(5)(f) requires the Director to evaluate if the water use conflicts with the conservation of water resources. Idaho Code § 42-202(4) requires the applicant to supply information regarding the project   |

| Existing Rule  | Proposed Rule   | Comment or Rationale  | Purpose of Rule   |
|----------------|---|---|---|
| None CONTINUED |   | rules.  | diversion works. Proposed rule states measure the water use must meet to satisfy statutory criteria.  |
| None           | <b>045.01.f.iii.</b> A proposed storage facility will exceed a seepage rate of 0.2 feet per day. This criterion does not apply if the proposed storage facility will be used as an infiltration basin for ground water recharge, an excavated pond filled by intercepting ground water, or an impoundment for irrigation use not exceeding five (5) af of stored water per acre of irrigation; or | Added because the Director is statutorily required to evaluate if the proposed water use is contrary to the conservation of water resources. Conservation of water resources is a statutory criterion effectuated after adoption of the existing rules. Proposed rule is consistent with IDWR Administrative Application Processing Memo No. 76 (est. 2015). Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203A(5)(f) requires the Director to evaluate if the water use conflicts with the conservation of water resources. Proposed rule states measure the water use must meet to satisfy statutory criteria.   |
| None           | <b>045.01.f.iv.</b> The proposed irrigation use is not consistent with the requirements of Section 42-204A, Idaho Code.   | Added because the Director is statutorily required to evaluate if the proposed water use is contrary to the conservation of water resources. Conservation of water resources is a statutory criterion effectuated after adoption of the existing rules. Proposed rule is consistent with IDWR Administrative Application Processing Memo No. 79 (est. 2023).  | Idaho Code § 42-203A(5)(f) requires the Director to evaluate if the water use conflicts with the conservation of water resources. Idaho Code § 42-204A requires the Director to conserve ground water resources by requiring the use of surface water first for irrigation. Proposed rule states measure the water use must meet to satisfy statutory criteria. |
| None           | <b>045.01.g.</b> In the case where the place of use is outside the watershed or local area where the  | Added because the Director is statutorily required to   | Idaho Code § 42-203A(5)(g) requires the Director to   |

| Existing Rule  | Proposed Rule  | Comment or Rationale  | Purpose of Rule   |
|--|--|---|---|
| <b>None CONTINUED</b>  | source of water originates, the project effect on the local economy or local area criteria. The Director will consider the extent of adverse effect on the local economy of the watershed or local area within which the source of water for the proposed use originates.  | evaluate the effect on the local economy when the place of use is outside the watershed where the source of the water originates. This statutory criterion was effectuated after adoption of the existing rules. Language mirrors statutory language without specific measures, because IDWR has not evaluated this criterion for many applications to establish specific measures that satisfy the statutory criterion. Stakeholder comment(s) considered in proposed rule language. | evaluate the effect on the local economy if the water use place of use is outside the watershed where the source of water originates. Proposed rule states requirement to meet the statutory criteria.  |
| <b>None</b>  | <b>045.01.h.</b> Idaho State Water Plan criteria. The Director will consider whether the proposed diversion and use of water complies with the Idaho State Water Plan, including plans developed for specific geographic areas.  | Added as suggested by stakeholder(s), because the water use must be consistent with the Idaho State Water Plan based on applicable statutes. Stakeholder comment(s) considered in proposed rule language.   | Idaho Code § 42-1734B(3) requires all state agencies to exercise duties consistent with the Idaho State Water Plan, including issuance of permits. Proposed rule states requirement for the Director to consider in compliance with the statute.                |
| <b>045.02. Criteria for Evaluating Whether a Proposed Use of Trust Water Will Cause a Significant Reduction.</b><br>Reference: Section 42-203C(1), Idaho Code and Subsection 025.02.b. For purposes of reallocating trust water made available by the Snake River water rights agreement, an application for permit or a permit being reprocessed, will be presumed to not cause a significant | <b>045.02. Criteria for Evaluating Whether an Application for Reallocation of Trust Water in the Swan Falls Trust Water Area Will Cause a Significant Reduction Under Section 42-203C(1), Idaho Code.</b> The Director will find an application for a reallocation of trust water within the Swan Falls Trust Water Area will cause a significant reduction when the proposed use, individually or cumulatively with other existing uses and | Clarified language and intent of rule. Used newly defined terms “Reallocation of Trust Water” and “Swan Falls Trust Water Area” to ensure applicants understand which applications are subject to this criteria. Stakeholder comment(s) considered in proposed rule language.   | Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. Proposed rule introduces requirements the Director will consider and associated presumptions when evaluating the |

| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule   |
|---|--|--|---|
| <p><b>045.02. CONTINUED</b></p> <p>reduction if the Director determines that it complies with both the individual and cumulative tests for evaluating significant reduction as provided in Subsections 045.02.a. and 045.02.b.</p>  | <p>uses reasonably likely to exist within twelve months of the proposed use, would significantly reduce the amount of trust water available to the user for hydropower generation purposes under a water right held in trust. The Director will presume an application for a reallocation of trust water within the Swan Falls Trust Water Area will not cause a significant reduction if the Director determines that the application meets both the individual and cumulative tests for evaluating significant reduction under Paragraphs 045.02.a. and 045.02.b.</p>  |  | <p>statutory criteria.</p>  |
| <p><b>045.02.a.</b> Individual test for evaluating significant reduction. A proposed use will be presumed to not cause a significant reduction if when fully developed and its impact is fully felt, the use will individually reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. An irrigation project of two hundred (200) acres or less located anywhere in the Snake River Basin above Murphy Gauge proposing to use trust water is presumed to not reduce the flow at Murphy Gauge by more than two (2) acre-feet per day. The presumption of this section is not applicable to applications or permits to be reprocessed which the Director determines to be part of a larger development.</p> | <p><b>045.02.a.</b> Individual test. The Director will presume:</p> <p>i. A proposed use, when fully developed and its impact is fully felt, that individually does not reduce the flow of the Snake River at the Murphy Gage by more than two (2) acre-feet per day does not cause a significant reduction; and</p> <p>ii. An irrigation project of two hundred (200) acres or less diverting water from a source other than the Snake River or springs directly tributary to the Snake River located in the Swan Falls Trust Water Area will not reduce the flow at Murphy Gage by more than two (2) acre-feet per day and does not cause a significant reduction. However, this presumption is not applicable to an application the Director determines to be part of a larger development.</p> | <p>Clarified and simplified language but retained presumptions and criteria from existing rules. Presumptions in existing Rules 045.02.d. and 045.02.e. See Comment or Rationale sections below for notes on the origins of these presumptions. IDWR believes these presumptions were negotiated between the State of Idaho, Idaho Power, and others in 1986 when they were established in adoption of the rules originally. Rather than remove the presumptions, retained them, because IDWR does not plan to renegotiate these presumptions given the presumptions are rebuttable and the Swan Falls Trust Water Area is under</p> | <p>Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. Proposed rule states presumption the Director will make when evaluating the statutory criteria.</p> |



| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule   |
|---|--|--|---|
| <b>045.02.a. CONTINUED</b>  |  | moratorium. Stakeholder comment(s) considered in proposed rule language.   |   |
| <b>045.02.b.</b> Cumulative test for evaluating significant reduction. A proposed use will be presumed to not cause a significant reduction, if the use, when fully developed and its impact is fully felt and when considered cumulatively with other existing uses and other uses reasonably likely to exist within twelve (12) months of the proposed use, will not deplete the flow of Snake River measured at Murphy Gauge by more than: | <b>045.02.b.</b> Cumulative test. The Director will presume a proposed use meets the cumulative test if the use, when fully developed and its impact is fully felt and when considered cumulatively with other existing uses and other uses reasonably likely to exist within twelve (12) months of the proposed use, will not deplete the flow of Snake River measured at Murphy Gage by more than: | Clarified and simplified language. Stakeholder comment(s) considered in proposed rule language.  | Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. More specifically, Idaho Code § 42-203C(1) also requires the Director to evaluate a proposed use cumulatively with other existing uses or uses proposed for development within twelve (12) months. Proposed rule states presumption the Director will make when evaluating the statutory criteria. |
| <b>045.02.b.i.</b> Forty thousand (40,000) acre-feet per calendar year when considered with all other uses approved for development of trust water during that calendar year;   | <b>045.02.b.i.</b> Forty thousand (40,000) af per calendar year when considered with all other uses approved for development of trust water during that calendar year;   | Simplified language but retained presumption from existing rules. Unable to find origins of the presumption. However, believe the presumption was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than remove the presumptions, retained it, because IDWR does not plan to renegotiate the presumption given the presumption is rebuttable and the Swan Falls Trust | Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. Proposed rule states presumption the Director will make when evaluating the statutory criteria.  |

| Existing Rule  | Proposed Rule   | Comment or Rationale   | Purpose of Rule  |
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| <b>045.02.b.i. CONTINUED</b>   |   | Water Area is under moratorium.  |  |
| <b>045.02.b.ii.</b> Forty thousand (40,000) acre-feet per calendar year using a four (4) year moving average when considered with all other uses approved for development of trust water during that four (4) year period; and | <b>045.02.b.ii.</b> Forty thousand (40,000) af per calendar year using a four (4) year moving average when considered with all other uses approved for development of trust water during that four (4) year period; and | Simplified language but retained presumption from existing rules. Unable to find origins of the presumption. However, believe the presumption was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than remove the presumptions, retained it, because IDWR does not plan to renegotiate the presumption given the presumption is rebuttable and the Swan Falls Trust Water Area is under moratorium. | Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. Proposed rule states presumption the Director will make when evaluating the statutory criteria. |
| <b>045.02.b.iii.</b> Twenty thousand (20,000) acre-feet per calendar year from filings approved for reallocation of trust water which meet the criteria of Subsection 045.02.a.  | <b>045.02.b.iii.</b> Twenty thousand (20,000) af per calendar year from filings approved for reallocation of trust water that meet the criteria of Paragraph 045.02.a.  | Simplified language but retained presumption from existing rules. Unable to find origins of the presumption. However, believe the presumption was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than remove the presumption, retained it, because IDWR does not plan to renegotiate the presumption given the presumption is rebuttable   | Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. Proposed rule states presumption the Director will make when evaluating the statutory criteria. |

| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| <b>045.02.b.iii. CONTINUED</b>  |  | and the Swan Falls Trust Water Area is under moratorium.   |  |
| <b>045.02.c.</b> The Director will determine on a case-by-case basis from available information whether a permit to be reprocessed or an application for trust water which exceeds the flow depletion limits of Subsection 045.02, or one which meets the flow depletion limits but has been protested, will cause a significant reduction. In making this determination, the Director will consider: | <b>045.02.c.</b> The presumptions in Subsection 045.02, Paragraph 045.02.a., and Paragraph 045.02.b. may be rebutted by the protestant. In rebutting the presumptions that an application does not cause a significant reduction, the Director may consider:   | Clarified language. Added language to inform parties of their opportunity to rebut presumptions. Stakeholder comment(s) considered in proposed rule language.  | Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. Proposed rule summarizes references to presumptions the Director will make when evaluating the statutory criteria, states protestants opportunity to rebut those presumptions, and introduces criteria the Director may consider in evaluating the rebuttals. |
| <b>045.02.c.i.</b> The amount of the reduction in hydropower generation that the proposed use will cause individually and cumulatively with other uses expected to be developed within twelve (12) months of the proposed use as compared to the existing hydropower generation output of the affected facility or facilities.  | <b>045.02.c.i.</b> The amount of the reduction in hydropower generation that the proposed use will cause individually and cumulatively with other uses expected to be developed within twelve (12) months of the proposed use as compared to the existing hydropower generation output of the affected facility. | Simplified language but retained criterion from existing rules. IDWR believes it is very likely criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. Proposed rule states criterion the Director may consider in evaluating rebuttals to significant reduction rule presumptions.  |

| Existing Rule   | Proposed Rule   | Comment or Rationale  | Purpose of Rule  |
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| <p><b>045.02.c.ii.</b> The relative importance of the affected hydropower facility or facilities to other sources of electrical power generation available to the holder of the facility or facilities.</p>   | <p><b>045.02.c.ii.</b> The relative importance of the affected hydropower facility to other sources of electrical power generation available to the holder of the facility.</p>   | <p>Simplified language but retained criterion from existing rules. IDWR believes it is very likely criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. Proposed rule states criterion the Director may consider in evaluating rebuttals to significant reduction rule presumptions.</p> |
| <p><b>045.02.c.iii.</b> The timing of the reduction in hydropower generation both on an annual basis and on a long-term basis considering the lag time between the beginning of diversion by the proposed use and the resulting reduction in hydropower generation.</p> | <p><b>045.02.c.iii.</b> The timing of the reduction in hydropower generation both on an annual basis and on a long-term basis considering the lag time between the beginning of diversion by the proposed use and the resulting reduction in hydropower generation.</p> | <p>No change proposed. Retained criterion from existing rules. IDWR believes it is very likely criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.</p>     | <p>Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. Proposed rule states criterion the Director may consider in evaluating rebuttals to significant reduction rule presumptions.</p> |

| Existing Rule   | Proposed Rule  | Comment or Rationale  | Purpose of Rule  |
|---|--|---|--|
| <p><b>045.02.c.iv.</b> The effect of the reduction in hydropower generation on the unit cost of hydropower from the facility or facilities and the average cost of electrical power offered by the holder of the facility.</p>              | <p><b>045.02.c.iv.</b> The effect of the reduction in hydropower generation on the unit cost of hydropower from the facility and the average cost of electrical power offered by the facility holder.</p>                            | <p>Simplified language but retained criterion from existing rules. IDWR believes it is very likely criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. Proposed rule states criterion the Director may consider in evaluating rebuttals to significant reduction rule presumptions.</p> |
| <p><b>045.02.c.v.</b> The terms of contracts, mortgages, or regulatory permits and licenses which require the holder of the hydropower generation facility to retain the capability to produce hydroelectric power at a specific level.</p> | <p><b>045.02.c.v.</b> The terms of contracts, mortgages, or regulatory permits and licenses which require the hydropower generation facility holder to retain the capability to produce hydroelectric power at a specific level.</p> | <p>Simplified language but retained criterion from existing rules. IDWR believes it is very likely criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. Proposed rule states criterion the Director may consider in evaluating rebuttals to significant reduction rule presumptions.</p> |

| Existing Rule  | Proposed Rule   | Comment or Rationale  | Purpose of Rule   |
|--|---|---|---|
| <p><b>045.02.d.</b> Other provisions of these rules notwithstanding, applications or permits to be reprocessed proposing a direct diversion of water for irrigation purposes from the Snake River between Milner Dam and Swan Falls Dam or from tributary springs in this reach are presumed to cause a significant reduction.</p> | <p><b>045.02.a.ii.</b> An irrigation project of two hundred (200) acres or less diverting water from a source other than the Snake River or springs directly tributary to the Snake River located in the Swan Falls Trust Water Area will not reduce the flow at Murphy Gage by more than two (2) acre-feet per day and does not cause a significant reduction. However, this presumption is not applicable to an application the Director determines to be part of a larger development.</p> | <p>Clarified language, but retained presumption from existing rules. It is IDWR's understanding the presumption is based on the overarching principle that above Milner preference should be given to uses diverting water from the Snake River, but below preference should be given to hydropower or instream uses. This principle is discussed in several documents describing the origins of the "two rivers" concept including the Idaho State Water Plan, the <i>Memorandum in Support of State of Idaho's Amended Motion for Summary Judgement on Issue Recharge Subordination</i> in Re SRBA Case No. 39576, and <i>Memorandum in Support of State of Idaho's Motion for Partial Summary Judgement Re: Milner Zero Minimum Flow</i> in Re SRBA Case No. 39576. IDWR believes it is likely the presumption was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than remove the presumption, retained it, because IDWR</p> | <p>Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. Proposed rule states presumption the Director will make when evaluating the statutory criteria.</p> |

| Existing Rule  | Proposed Rule      | Comment or Rationale   | Purpose of Rule  |
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| <b>045.02.d. CONTINUED</b>   |                    | does not plan to renegotiate the presumption given the presumption is rebuttable and the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.   |  |
| <b>045.02.e.</b> Other provisions of these rules notwithstanding, applications or permits to be reprocessed for DCMi purposes are presumed to not cause a significant reduction. | <b>Delete/None</b> | Deleted because IDWR could not confirm origins of the existing rule presumption. IDWR did find supporting information to retain public interest presumption in existing Rule 045.03.l. for domestic, commercial, municipal, and industrial uses, but that information did not support retaining existing Rule 045.02.e. presumption considering significant reduction is more of a quantitative criterion than public interest. IDWR believes the presumption was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. However, IDWR does not plan to renegotiate the presumption given the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule | Idaho Code § 42-203C(1) requires the Director to consider whether the proposed reallocation of trust water will cause a significant reduction. |

| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| <b>045.02.e. CONTINUED</b>  |  | language.  |  |
| <p><b>045.03. Criteria for Evaluating Public Interest.</b> If the Director determines that a proposed use of trust water held by the state pursuant to Section 42-203B(5), Idaho Code, will cause a significant reduction, the Director will consider the criteria of Section 42-203C(2), Idaho Code, before acting on the application or permit being reprocessed. The Director shall consider and balance the relative benefits and detriments for each factor required to be weighed under Section 42-203C(2), Idaho Code, to determine whether a proposed reduction of the amount of water available for power production serves the greater public interest. The Director shall evaluate whether the proposed use sought in the permit being reprocessed or the application will provide the greater benefit to the people of the state of Idaho when balanced against other uses for the same water resource. In evaluating the public interest criteria, the Director will use the following guidelines:</p> | <p><b>045.03. Criteria for Evaluating Whether an Application for Reallocation of Trust Water in the Swan Falls Trust Water Area is in the Public Interest Under Section 42-203C(2), Idaho Code.</b> If the Director determines that an application for reallocation of trust water within the Swan Falls Trust Water Area will cause a significant reduction, the Director will consider the criteria of Section 42-203C(2), Idaho Code, before approving or denying the application. The Director will presume an application is in the public interest if it proposes a use consistent with Paragraph 045.03.f. The Director will presume an application is not in the public interest if it proposes a use consistent with Paragraph 045.03.g. In evaluating the public interest criteria, no single public interest criterion will be entitled to greater weight than any other public interest criterion. When evaluating the public interest criteria, the Director will consider:</p> | <p>Clarified language and intent of rule. Used newly defined terms “Reallocation of Trust Water” and “Swan Falls Trust Water Area” to ensure applicants understand which applications are subject to these criteria. Retained presumptions from existing rules. Presumptions in existing Rules 045.03.i. through 045.03.l. See Comment or Rationale sections below for notes on the origins of these presumptions. IDWR believes these presumptions were negotiated between the State of Idaho, Idaho Power, and others in 1986 when they were established in adoption of the rules originally. Rather than remove the presumptions, retained them, because IDWR does not plan to renegotiate these presumptions given the presumptions are rebuttable and the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states presumptions the Director will make and introduces the criteria the Director will consider when evaluating the statutory criteria.</p> |
| <b>045.03.a.</b> The Director will consider the potential benefits both direct and indirect,  | <b>045.03.a.</b> The potential benefits, both direct and indirect, that the proposed use would   | Clarified language. Retained criterion from existing rules.  | Idaho Code § 42-203C(1) requires the Director to   |



| Existing Rule   | Proposed Rule   | Comment or Rationale  | Purpose of Rule  |
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| <p><b>045.03.a. CONTINUED</b></p> <p>and that the proposed use would provide to the state and local economy. The economic appraisal shall be based upon generally accepted economic analysis procedures which uniformly evaluate the following factors within the state of Idaho and the county or counties directly affected by the project:</p> | <p>provide to the state and local economy. The economic evaluation will be based upon generally accepted economic analysis procedures which uniformly evaluate the following factors within the state of Idaho and the county directly affected by the project:</p> | <p>IDWR believes criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.</p> | <p>consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.</p>   |
| <p><b>045.03.a.i.</b> Direct project benefits.</p>  | <p><b>045.03.a.i.</b> Direct project benefits.</p>  | <p>No change proposed. Retained criterion from existing rules. IDWR believes criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium.</p>  | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.</p> |
| <p><b>045.03.a.ii.</b> Indirect benefits including net revenues to the processing, transportation, supply, service and government sectors of the economy.</p>   | <p><b>045.03.a.ii.</b> Indirect benefits including net revenues to the processing, transportation, supply, service, and government sectors of the economy.</p>  | <p>No change proposed. Retained criterion from existing rules. IDWR believes criterion was negotiated between the State of Idaho, Idaho Power, and</p>  | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria</p>   |

| Existing Rule  | Proposed Rule   | Comment or Rationale   | Purpose of Rule  |
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| <b>045.03.a.ii. CONTINUED</b>  |   | others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium.  | the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.   |
| <b>045.03.a.iii.</b> Direct project costs, to include the opportunity cost of previous land use.   | <b>Delete/None</b>  | Deleted as stakeholder(s) suggested. Idaho Code § 42-203C(2) does not require IDWR to evaluate the direct project cost, only the economic benefits compared to the costs of reduced hydropower production. Stakeholder comment(s) considered in proposed rule language.  | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations.  |
| <b>045.03.a.iv.</b> Indirect project costs, including verifiable costs to government in net lost revenue and increased regulation costs, verifiable reductions in net revenue resulting from losses to other existing instream uses, and the increased cost of replacing reduced hydropower generation from unsubordinated hydropower generating facilities. | <b>045.03.a.iii.</b> Indirect project costs, including verifiable costs to government in net lost revenue and increased regulation costs, verifiable reductions in net revenue resulting from losses to other existing instream uses, and the increased cost of replacing reduced hydropower generation from unsubordinated hydropower generating facilities. | No proposed change except renumbered due to proposed deletion of existing Rule 045.03.a.iii. Retained criterion from existing rules. IDWR believes criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest. |

| Existing Rule  | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| <b>045.03.a.iv. CONTINUED</b>  |  | Water Area is under moratorium.  |  |
| <b>045.03.b.</b> The Director will consider the impact the proposed use would have upon the electric utility rates in the state of Idaho, and the availability, foreseeability and cost of alternative energy sources to ameliorate such impact. These evaluations will include the following considerations:                                      | <b>045.03.b.</b> The economic impact the proposed use would have upon the electric utility rates in the state of Idaho, and the availability, foreseeability, and cost of alternative energy sources to ameliorate such impact. These evaluations will include the following considerations:   | Clarified language. Retained criterion from existing rules. IDWR believes criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest. |
| <b>045.03.b.i.</b> Projections of electrical supply and demand for Idaho and the Pacific Northwest made by the Bonneville Power Administration and the Northwest Power Planning Council and information available from the Idaho Public Utilities Commission or from the electric utility from whose water right trust water is being reallocated. | <b>045.03.b.i.</b> Projections of electrical supply and demand for Idaho and the Pacific Northwest made by the Bonneville Power Administration and the Northwest Power Planning Council and information available from the Idaho Public Utilities Commission or from the electric utility from whose water right trust water is being reallocated. | No change proposed. Retained criterion from existing rules. IDWR believes criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium.  | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest. |

| Existing Rule  | Proposed Rule  | Comment or Rationale   | Purpose of Rule   |
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| <p><b>045.03.b.ii.</b> The long term reliability of the substitute source and the cost of alternatives including the resulting impact on electrical rates.</p>   | <p><b>045.03.b.ii.</b> The long-term reliability of the substitute source and the cost of alternatives including the resulting impact on electrical rates.</p>   | <p>Clarified language. Retained criterion from existing rules. IDWR believes criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium.</p>   | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.</p>                                       |
| <p><b>045.03.c.</b> The Director will consider whether the proposed use will promote the family farming tradition in the state of Idaho. For purposes of this evaluation, the Director will use the following factors.</p> | <p><b>045.03.c.</b> Whether the proposed use will promote the family farming tradition in the state of Idaho. For purposes of this evaluation the Director will presume the application promotes the family farming tradition if the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, does not exceed nine hundred sixty (960) acres. For an application proposing to divert water within the service area of a water delivery organization or to divert water through infrastructure shared by otherwise independent farming operations, the Director will evaluate this presumption on an individual basis within the relevant service area or place of use. This presumption may be rebutted by the protestant under Paragraph 040.03.c.ii. If the presumption above does not apply, the Director will consider whether the proposed use has the following characteristics:</p> | <p>Clarified language to ensure applicant understands the presumption the Director is making based on the factors listed and that the presumption is rebuttable. Retained factors in existing rules. Retained presumption from existing rules. IDWR believes the presumption was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove presumption, retained it, because IDWR does not plan to renegotiate it given the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in</p> | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states presumption the Director will make and specific criteria the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.</p> |

| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule   |
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| <b>045.03.c. CONTINUED</b>  |  | proposed rule language.  |   |
| <p><b>045.03.d.</b> If the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, do not exceed nine hundred sixty (960) acres, the application will be presumed to promote the family farming tradition.</p> | <p><b>045.03.c.</b> Whether the proposed use will promote the family farming tradition in the state of Idaho. For purposes of this evaluation the Director will presume the application promotes the family farming tradition if the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, does not exceed nine hundred sixty (960) acres. For an application proposing to divert water within the service area of a water delivery organization or to divert water through infrastructure shared by otherwise independent farming operations, the Director will evaluate this presumption on an individual basis within the relevant service area or place of use. This presumption may be rebutted by the protestant under Paragraph 040.03.c.ii. If the presumption above does not apply, the Director will consider whether the proposed use has the following characteristics:</p> | <p>Reformatted and clarified language to ensure applicant understands the presumption the Director is making based on the factors listed and that the presumption is rebuttable. Retained factors in existing rules. Retained presumption from existing rules. IDWR believes the presumption was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove presumption, retained it, because IDWR does not plan to renegotiate it given the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.</p> | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states presumption the Director will make and specific criteria the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.</p> |
| <p><b>045.03.e.</b> If the requirement of Subsection 045.03.c.i. is not met, the Director will consider the extent the applicant conforms to the following characteristics:</p>   | <p><b>045.03.c.</b> Whether the proposed use will promote the family farming tradition in the state of Idaho. For purposes of this evaluation the Director will presume the application promotes the family farming tradition if the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, does not exceed nine hundred sixty (960) acres. For an application</p>   | <p>Reformatted and clarified language to ensure applicant understands the presumption the Director is making based on the factors listed and that the presumption is rebuttable. Retained factors in existing rules. Retained presumption from existing rules. IDWR believes the presumption was negotiated</p>  | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states presumption the Director will make and</p>  |

| <b>Existing Rule</b>   | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>  | <b>Purpose of Rule</b>   |
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| <b>045.03.e. CONTINUED</b>   | proposing to divert water within the service area of a water delivery organization or to divert water through infrastructure shared by otherwise independent farming operations, the Director will evaluate this presumption on an individual basis within the relevant service area or place of use. This presumption may be rebutted by the protestant under Paragraph 040.03.c.ii. If the presumption above does not apply, the Director will consider whether the proposed use has the following characteristics: | between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove presumption, retained it, because IDWR does not plan to renegotiate it given the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.   | specific criteria the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.   |
| <b>045.03.e.i.</b> The farming operation developed or expanded as a result of the application is operated by the applicant or a member of his family (spouse, parents or grandparents, lineal descendants, including those that are adopted, lineal descendants of parents; and spouse of lineal descendants); | <b>045.03.c.i.</b> The farming operation developed or expanded as a result of the application is operated by the applicant or a member of the applicant's family (spouse, parents or grandparents, lineal descendants, including those that are adopted, lineal descendants of parents, and spouse of lineal descendants);  | Reformatted and clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest. |
| <b>045.03.e.ii.</b> In the event the application is filed in the name of a partnership, one or more of the partners shall operate the farming operation; and   | <b>045.03.c.ii.</b> In the event the application is filed in the name of a partnership, one or more of the partners operates the farming operation; and   | Reformatted and clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it  | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in   |

| Existing Rule  | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
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| <b>045.03.e.ii. CONTINUED</b>  |  | was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium.   | making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.  |
| <b>045.03.e.iii.</b> If the application is in the name of a corporation, the number of stockholders does not exceed fifteen (15) persons, and one or more of the stockholders operates the farming operation unless the application is submitted by an irrigation district, drainage district, canal company or other water entity authorized to appropriate water for landowners within the district or for stockholders of the company all of whom shall meet the family farming criteria. | <b>045.03.c.iii.</b> If the application is in the name of a corporation, the number of stockholders does not exceed fifteen (15) persons, and one or more of the stockholders operates the farming operation unless the application is filed by an irrigation district, drainage district, canal company, or other entity authorized to appropriate water for landowners within the district or for stockholders of the company all of whom satisfy the presumption in Paragraph 045.03.c. | Reformatted and clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest. |
| <b>045.03.f.</b> The Director will consider the promotion of full economic and multiple use development of the water resources of the state of Idaho. In this regard, the extent to which the project proposed complies with the following factors will be considered:   | <b>045.03.d.</b> Whether the proposed project will promote full economic and multiple use development of the water resources of the state of Idaho:  | Renumbered due to reformatting of other rules in proposed Rule 045.03. Clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather   | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the   |

| <b>Existing Rule</b>   | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>   |
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| <b>045.03.f. CONTINUED</b>   |   | than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium.  | proposed reallocation of trust water is in the public interest.  |
| <b>045.03.f.i.</b> Promotes and conforms with the adopted State Water Plan;  | <b>045.03.d.i.</b> Promoting and conforming with the adopted Idaho State Water Plan;  | Renumbered due to reformatting of other rules in proposed Rule 045.03. Clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest. |
| <b>045.03.f.ii.</b> Provides for coordination of proposed and existing uses of water to maximize the beneficial use of available water supplies; | <b>045.03.d.ii.</b> Providing for coordination of proposed and existing uses of water to maximize the beneficial use of available water supplies; | Renumbered due to reformatting of other rules in proposed Rule 045.03. Clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of   | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider   |



| <b>Existing Rule</b>  | <b>Proposed Rule</b>   | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>   |
|---|--|---|--|
| <b>045.03.f.ii. CONTINUED</b>   |  | the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium.   | when evaluating whether the proposed reallocation of trust water is in the public interest.  |
| <b>045.03.f.iii.</b> Utilizes technology economically available to enhance water and energy use efficiency; | <b>045.03.d.iii.</b> Utilizing technology economically available to enhance water and energy use efficiency; | Renumbered due to reformatting of other rules in proposed Rule 045.03. Clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest. |
| <b>045.03.f.iv.</b> Provides multiple use of the water, including multipurpose storage;                     | <b>045.03.d.iv.</b> Providing multiple use of the water, including multipurpose storage;                     | Renumbered due to reformatting of other rules in proposed Rule 045.03. Clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was  | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion  |

| Existing Rule   | Proposed Rule   | Comment or Rationale  | Purpose of Rule  |
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| <b>045.03.f.iv. CONTINUED</b>   |   | established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium.  | the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.   |
| <b>045.03.f.v.</b> Allows opportunity for reuse of return flows;  | <b>045.03.d.v.</b> Allowing opportunity for reuse of return flows;  | Renumbered due to reformatting of other rules in proposed Rule 045.03. Clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest. |
| <b>045.03.f.vi.</b> Preserves or enhances water quality, fish, wildlife, recreation and aesthetic values; | <b>045.03.d.vi.</b> Preserving or enhancing water quality, fish, wildlife, recreation, and aesthetic values; or | Renumbered due to reformatting of other rules in proposed Rule 045.03. Clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and   | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed   |

| Existing Rule  | Proposed Rule   | Comment or Rationale  | Purpose of Rule  |
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| <b>045.03.f.vi. CONTINUED</b>  |   | others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium.   | rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.  |
| <b>045.03.f.vii.</b> Provides supplemental water supplies for existing uses with inadequate supplies.  | <b>045.03.d.vii.</b> Providing supplemental water supplies for existing uses with inadequate supplies.  | Renumbered due to reformatting of other rules in proposed Rule 045.03. Clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest. |
| <b>045.03.g.</b> The Director will consider whether a proposed use, which includes irrigation, will conform to a staged development policy of up to twenty thousand (20,000) acres per year or eighty thousand (80,000) acres in any four (4) year period in the Snake River drainage above Murphy Gauge. In applying this | <b>045.03.e.</b> Whether a proposed irrigation development will conform to a staged development policy of up to twenty thousand (20,000) acres per year or eighty thousand (80,000) acres in any four (4) year period in the Swan Falls Trust Water Area. In applying these criteria, the Director will consider the following: | Renumbered due to reformatting of other rules in proposed Rule 045.03. Clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State  | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest  |

| Existing Rule   | Proposed Rule   | Comment or Rationale  | Purpose of Rule   |
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| <p><b>045.03.g. CONTINUED</b></p> <p>criteria, the Director will consider the following:</p>  |   | <p>of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.</p>  | <p>determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.</p>   |
| <p><b>045.03.g.i.</b> “Above Murphy gauge” means the Snake River and any of its surface or groundwater tributaries upstream from Murphy gauge which gauge is located on the Snake River approximately four (4) miles downstream from Swan Falls Dam from which trust water is to be reallocated;</p>  | <p><b>Delete/None</b></p>   | <p>Deleted because “Above Murphy gauge” language replaced with defined term “Swan Falls Trust Water Area” to clarify intent of existing rule criteria in proposed rules.</p>  | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations.</p>  |
| <p><b>045.03.g.ii.</b> Twenty thousand (20,000) acres per year or eighty thousand (80,000) acres per four (4) year period is a four (4) year moving average of Twenty thousand (20,000) acres/year of permits issued during a calendar year for irrigation development. If permits for development of less than twenty-thousand (20,000) acres are issued in a year, additional development in excess of twenty-thousand (20,000) acres can be permitted in succeeding years. Likewise, if more than twenty thousand (20,000) acres is permitted in one year (recognizing that a single large project could exceed twenty</p> | <p><b>045.03.e.i.</b> Twenty thousand (20,000) acres per year or eighty thousand (80,000) acres per four (4) year period is a four (4) year moving average of twenty thousand (20,000) acres per year of permits issued during a calendar year for irrigation development. If permits for development of less than twenty thousand (20,000) acres are issued in a year, additional development in excess of twenty thousand (20,000) acres can be permitted in succeeding years. Likewise, if more than twenty thousand (20,000) acres is permitted in one year (recognizing that a single large project could exceed twenty thousand (20,000) acres) the permitted development in succeeding years</p> | <p>Renumbered due to reformatting of other rules in proposed Rule 045.03. Clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to</p> | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.</p> |

| Existing Rule  | Proposed Rule  | Comment or Rationale   | Purpose of Rule   |
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| <p><b>045.03.g.ii. CONTINUED</b></p> <p>thousand (20,000) acres) the permitted development in succeeding years must be correspondingly less to maintain no greater than a twenty thousand (20,000) acres/year average for any four (4) year period;</p>  | <p>must be correspondingly less to maintain no greater than a twenty thousand (20,000) acres per year average for any four (4) year period;</p>  | <p>renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium.</p>  |   |
| <p><b>045.03.g.iii.</b> The criteria of Subsection 045.03.g. applies to multiple-use projects with irrigation as a principal purpose. Projects which use irrigation as only an incidental purpose, such as the land treatment of waste, shall not be included within this policy; and</p>  | <p><b>045.03.e.ii.</b> The criteria of Paragraph 045.03.e. applies to multiple-use projects with irrigation as a principal purpose. Projects which use irrigation as only an incidental purpose, such as the land treatment of waste, will not be included within this policy; and</p>   | <p>Renumbered due to reformatting of other rules in proposed Rule 045.03. Clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium.</p> | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider when evaluating whether the proposed reallocation of trust water is in the public interest.</p> |
| <p><b>045.03.g.iv.</b> An application determined by the Director to be otherwise approvable but found to exceed the acreage limitations, when considered with other applications approved for development, may be approved with conditions providing for the construction of project works and beneficial use of water to be commenced in a future year.</p> | <p><b>045.03.e.iii.</b> The Director may approve an application determined to be otherwise approvable but found to exceed the acreage limitations of Paragraph 045.03.e., when considered with other applications approved for development, with conditions prescribing the construction of project works and beneficial use of water commence in a future year.</p> | <p>Renumbered due to reformatting of other rules in proposed Rule 045.03. Clarified language but retained criterion from existing rules. IDWR believes the criterion was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of</p>   | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states specific criterion the Director will consider</p>   |

| Existing Rule  | Proposed Rule   | Comment or Rationale  | Purpose of Rule   |
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| <b>045.03.g.iv. CONTINUED</b>  |   | the rules originally. Rather than modify or remove criterion, retained it, because IDWR does not plan to renegotiate the criterion given the Swan Falls Trust Water Area is under moratorium.                                 | when evaluating whether the proposed reallocation of trust water is in the public interest.   |
| <b>045.03.h.</b> No single public interest criterion will be entitled to greater weight than any other public interest criterion.  | <b>045.03. Criteria for Evaluating Whether an Application for Reallocation of Trust Water in the Swan Falls Trust Water Area is in the Public Interest Under Section 42-203C(2), Idaho Code.</b> If the Director determines that an application for reallocation of trust water within the Swan Falls Trust Water Area will cause a significant reduction, the Director will consider the criteria of Section 42-203C(2), Idaho Code, before approving or denying the application. The Director will presume an application is in the public interest if it proposes a use consistent with Paragraph 045.03.f. The Director will presume an application is not in the public interest if it proposes a use consistent with Paragraph 045.03.g. In evaluating the public interest criteria, no single public interest criterion will be entitled to greater weight than any other public interest criterion. When evaluating the public interest criteria, the Director will consider: | Moved into introductory paragraph because the statement is generally applicable to the entirety of Rule 045.03. Retained existing rule language in new location. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states presumptions the Director will make and introduces the criteria the Director will consider when evaluating the statutory criteria. |
| <b>045.03.i.</b> Until such time as the studies prescribed in Policy 32 I of the State Water Plan are completed and accepted by the Idaho Water Resource Board, applications and permits reprocessed which propose to divert water to surface storage from the Snake River and surface tributaries | <b>045.03.f.</b> The Director will presume an application is in the public interest if it proposes:<br><br>i. To store surface water from the Snake River and surface tributaries upstream  | Studies referenced in existing rules are largely complete. Revised rule language to retain intent of original presumption. IDWR was unable to find documentation regarding the  | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in  |

| Existing Rule   | Proposed Rule   | Comment or Rationale   | Purpose of Rule  |
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| <p><b>045.03.i. CONTINUED</b></p> <p>upstream from Murphy Gauging Station shall be presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code. Applications or reprocessed permits which are approved prior to completion of the studies, will not be subject to additional reprocessing.</p> | <p>from the Murphy Gage consistent with the Idaho State Water Plan; or</p>  | <p>origins of this presumption. However, believe the presumption was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Rather than remove the presumption, retained, because IDWR does not plan to renegotiate the presumption given the presumption is rebuttable and the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.</p> | <p>making public interest determinations. Proposed rule states presumption the Director will make when evaluating the statutory criteria.</p>  |
| <p><b>None</b></p>  | <p><b>045.03.f.</b> The Director will presume an application is in the public interest if it proposes:</p> <p>ii. A state of Idaho-sponsored ground water recharge project that is consistent with the Idaho State Water Plan; or</p> | <p>New rule proposed based on stakeholder's suggestion. No other stakeholder expressed concerns regarding the proposed addition of this new presumption. IDWR proposes rule language to clarify that all presumptions in rules are rebuttable. Presumptions in proposed rules facilitate efficient and consistent evaluation of statutory criteria. Stakeholder comment(s) considered in proposed rule language.</p>   | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states presumption the Director will make when evaluating the statutory criteria.</p> |
| <p><b>None</b></p>  | <p><b>045.03.f.</b> The Director will presume an application is in the public interest if it proposes:</p>  | <p>New rule proposed based on stakeholder's suggestion. Presumptions in proposed</p>   | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed</p>  |

| Existing Rule  | Proposed Rule  | Comment or Rationale  | Purpose of Rule   |
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| <b>None CONTINUED</b>  | iv. The presumptions of Subparagraphs 045.03.f.i. through iii. may be rebutted by the protestant under Paragraph 040.03.c. In evaluating a proposed rebuttal to these presumptions, the Director may consider the criteria in Paragraphs 045.03.a. through e.  | rules facilitate efficient and consistent evaluation of statutory criteria, but there may be circumstances for specific applications where the presumptions should not be made. Proposed rule language states the opportunity for the protestant(s) to rebut the presumptions. Stakeholder comment(s) considered in proposed rule language.                                 | significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states presumptions the Director will make when evaluating the statutory criteria are rebuttable.  |
| <b>045.03.j.</b> Applications for permit for trust water sources filed prior to July 1, 1985, for projects for which diversion and beneficial use was complete prior to October 1, 1984, are presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code.   | <b>Delete/None</b>   | Deleted based on stakeholder suggestion and comment that the Snake River Basin Adjudication decreed water rights delineated in this existing rule. Stakeholder comment(s) considered in proposed rule language.   | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations.   |
| <b>045.03.k.</b> Applications or permits to be reprocessed proposing a direct diversion of water for irrigation purposes from the Snake River between Milner Dam and Swan Falls Dam or from tributary springs in this reach are presumed not to be in the public interest as defined by Section 42-203C, Idaho Code. Such proposals, are presumed to prevent the full economic and multiple use of water in the Snake River Basin and to adversely affect hydropower availability and electrical energy rates in the state of Idaho. | <b>045.03.g.</b> The Director will presume an application is not in the public interest if it proposes an irrigation project diverting water directly from the Snake River or from springs directly tributary to the Snake River in the Swan Falls Trust Water Area. Such proposals are presumed to prevent the full economic and multiple use of water in the Snake River Basin and to adversely affect hydropower availability and electrical energy rates in the state of Idaho. This presumption may be rebutted by the applicant. In evaluating a rebuttal to this presumption, the Director may consider the criteria in Paragraphs 045.03.a. through e. | Clarified language and ensured party is aware of opportunity to rebut presumption. It is IDWR's understanding, the presumption is based on the overarching principle that above Milner preference should be given to uses diverting water from the Snake River, but below preference should be given to hydropower or instream uses. This principle is discussed in several | Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code § 42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states presumption the Director will make when evaluating the statutory criteria. |



| Existing Rule  | Proposed Rule  | Comment or Rationale   | Purpose of Rule   |
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| <p><b>045.03.k. CONTINUED</b></p>  |  | <p>documents describing the origins of the “two rivers” concept including the Idaho State Water Plan, the <i>Memorandum in Support of State of Idaho’s Amended Motion for Summary Judgement on Issue Recharge Subordination</i> in Re SRBA Case No. 39576, and <i>Memorandum in Support of State of Idaho’s Motion for Partial Summary Judgement Re: Milner Zero Minimum Flow</i> in Re SRBA Case No. 39576. IDWR believes the presumption was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Retained rather than removed the presumption, because IDWR does not plan to renegotiate the presumption given the presumption is rebuttable and the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.</p> |   |
| <p><b>045.03.l.</b> Proposed DCMIs which individually do not have a maximum consumptive use of more than two acre-feet/day are presumed to meet the public</p> | <p><b>045.03.f.</b> The Director will presume an application is in the public interest if it proposes:</p> | <p>Clarified language but retained presumption from existing rules. It is IDWR’s understanding, the presumption is based on</p>  | <p>Idaho Code § 42-203C(1) requires the Director to consider whether a proposed significant reduction is in the public interest. Idaho Code §</p> |

| Existing Rule   | Proposed Rule  | Comment or Rationale  | Purpose of Rule   |
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| <p><b>045.03.1. CONTINUED</b></p> <p>interest criteria of Section 42-203C(2), Idaho Code, unless protested.</p> | <p>iii. Domestic, commercial, municipal, or industrial use that does not have a maximum consumptive use of more than two (2) af per day.</p> | <p>Policy 32B of the 1985 Idaho State Water Plan. The current, 2012 Idaho State Water Plan policy 4G does not contain a policy statement that a specific amount of trust water be reallocated to meet future domestic, commercial, municipal, and industrial uses as the 1985 plan did. IDWR was unable to find documentation regarding the origins of this presumption. However, IDWR believes the presumption was negotiated between the State of Idaho, Idaho Power, and others in 1986 when it was established in adoption of the rules originally. Retained rather than removed the presumption, because IDWR does not plan to renegotiate the presumption given the presumption is rebuttable and the Swan Falls Trust Water Area is under moratorium. Stakeholder comment(s) considered in proposed rule language.</p> | <p>42-203C(2) states the criteria the Director shall consider in making public interest determinations. Proposed rule states presumption the Director will make when evaluating the statutory criteria.</p> |
| <p><b>046. – 049. (RESERVED)</b></p>  | <p><b>046. – 049. (RESERVED)</b></p>   | <p>No change proposed.</p>  | <p>Place holder to allow additional sections to be added when needed without major reorganization or renumbering of rule chapter.</p>   |

| <b>Existing Rule</b>   | <b>Proposed Rule</b>   | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>  |
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| <b>050. CONDITIONS OF APPROVAL (RULE 50).</b>  | <b>050. CONDITIONS OF APPROVAL.</b>  | No change proposed except deleted “(RULE 50)” per The Idaho Rule Writer’s Manual instruction.   | Idaho Code § 42-203A(5) gives the Director the authority to grant a water right permit upon conditions.   |
| <b>050.01. Issuance of Permits with Conditions.</b> The Director may issue permits with conditions to insure compliance with the provisions of Title 42, Chapter 2, Idaho Code, other statutory duties, the public interest, and specifically to meet the criteria of Section 42-203A, Idaho Code, and to meet the requirements of Section 42-203C, Idaho Code, to the fullest extent possible including conditions to promote efficient use and conservation of energy and water. | <b>050.01. Issuance of Permit with Conditions.</b> The Director may issue a permit with conditions to ensure compliance with: <ul style="list-style-type: none"> <li>a. Chapter 2, Title 42, Idaho Code, and other applicable laws and statutes;</li> <li>d. The criteria of Section 42-203A, Idaho Code;</li> <li>f. Requirements of Section 42-203C, Idaho Code, including conditions to promote efficient use and conservation of water;</li> </ul> | Simplified language. Stakeholder comment(s) considered in proposed rule language.   | Idaho Code § 42-203A(5) gives the Director the authority to grant a water right permit upon conditions. Proposed rule specifies relevant statutes that the Director may address by imposing conditions on permits.  |
| <b>050.02. Requirements to Mitigate Impact of Flow Depletion.</b> Permits to be reprocessed or applications approved to appropriate water from the main stem of the Snake River between Milner and Murphy gauging station for diversion to off-stream storage during the period November 1 to March 31 shall include requirements to mitigate, in accordance with the State Water Plan, the impact of flow depletions on downstream generation of hydropower.                      | <b>050.01. Issuance of Permit with Conditions.</b> The Director may issue a permit with conditions to ensure compliance with: <ul style="list-style-type: none"> <li>c. The Idaho State Water Plan as required by Section 42-1734B(4), Idaho Code;</li> </ul>  | Simplified and broadened scope of language to reference Idaho State Water Plan as a whole, rather than just specific components. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-203A(5) gives the Director the authority to grant a water right permit upon conditions. Idaho Code § 42-1734B(3) requires all state agencies to exercise duties consistent with the Idaho State Water Plan, including issuance of permits. Proposed rule is consistent with these statutes. |
| <b>050.03. Applications and Existing Permits That Are Junior and Subordinate.</b> Applications and existing permits approved for hydropower generation shall be junior and subordinate to all rights to the use of water, other than hydropower, within the state of Idaho that  | <b>050.01. Issuance of Permit with Conditions.</b> The Director may issue a permit with conditions to ensure compliance with: <ul style="list-style-type: none"> <li>e. Requirements of Section 42-203B, Idaho Code including conditions to subordinate a permit for hydropower</li> </ul>   | Simplified language and deleted subsection in statutory reference to Idaho Code § 42-203B to reference the statute authorizing the Director to subordinate hydropower permits and             | Idaho Code § 42-203A(5) gives the Director the authority to grant a water right permit upon conditions. Idaho Code § 42-203B grants the Director the authority to subordinate   |

| <b>Existing Rule</b>  | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>  |
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| <b>050.03. CONTINUED</b><br><br>are initiated later in time than the priority of the application or existing hydropower permit. A subordinated permit shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the state of Idaho initiated later in time than the priority of the application or existing hydropower permit. A permit issued for hydropower purposes shall contain a term condition on the hydropower use in accordance with Section 42-203B(6), Idaho Code. | generation to all rights to the use of water, other than hydropower, and limit a permit for hydropower generation to a term in connection with the power project;   | impose term limits.   | hydropower water rights and include term limit conditions on hydropower water rights. Proposed rule is consistent with these statutes and clarifies that hydropower water rights are not subordinated to other hydropower water rights.   |
| <b>050.04. Permanent Flow Measuring Device Requirement.</b> Applications approved for on-stream storage reservoirs will, unless specifically waived by the Director, require permanent flow measuring devices both upstream and downstream from the reservoir.  | <b>050.01. Issuance of Permit with Conditions.</b><br>The Director may issue a permit with conditions to ensure compliance with:<br><br>b. Efficient administration of water rights by priority date;               | Simplified and broadened scope of language based on IDWR's practice of issuing permits with conditions requiring measuring and other devices to administer water rights by priority date.             | Idaho Code § 42-203A(5) gives the Director the authority to grant a water right permit upon conditions. Idaho Code § 42-701 authorizes the Director to require controlling works and measuring devices for regulating and measuring the flow of water. Proposed rule is consistent with these statutes. |
| <b>050.05. Well Spacing and Well Construction Requirements.</b><br>Applications approved for diversion of groundwater may include conditions requiring well spacing and well construction requirements..  | <b>050.01. Issuance of Permit with Conditions.</b><br>The Director may issue a permit with conditions to ensure compliance with:<br><br>a. Chapter 2, Title 42, Idaho Code, and other applicable laws and statutes; | Simplified language to rely on more generalized statement. Well spacing and well construction requirements are included in Chapter 2, Title 42, Idaho Code and other statutory and regulatory duties. | Idaho Code § 42-203A(5) gives the Director the authority to grant a water right permit upon conditions. Proposed rule is consistent with this statutory authority.  |
| <b>050.06. Reprocessed Permits.</b> Permits reprocessed pursuant to Section 42-203D,  | <b>Delete/None</b>  | This existing rule was adopted to address specific  | Idaho Code § 42-203A(5) gives the Director the  |

| Existing Rule  | Proposed Rule  | Comment or Rationale  | Purpose of Rule   |
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| Idaho Code, may be cancelled, modified or conditioned by the Director to make the permit comply in every way with any permit that would be issued for the same purpose based upon a new application processed under these rules.                             |  | permits requiring review under statutes resulting from the Swan Falls Settlement. Deleted existing rule, because this reprocessing work is considered complete so a related rule is no longer necessary. The two remaining permits to re-process are Desert Land Entry or Carey Act permits currently under moratorium. | authority to grant a water right permit upon conditions. Idaho Code § 42-203D governs reprocessing of permits issued in the Swan Falls Trust Water Area prior to the Swan Falls Settlement.   |
| <b>050.07. Voiding Approval of Permit.</b> Permits may be conditioned to authorize the Director to void the approval of the permit if he determines that the applicant submitted false or misleading information on the application or supporting documents. | <b>050.02. Voiding Approval of Permit.</b> Permits may be conditioned to authorize the Director to void the permit if the Director determines that the applicant submitted false or misleading information on the application or supporting documents. | Clarified language. Although IDWR does not routinely condition permits based on this rule, retaining existing rule language, because IDWR may condition a permit in this manner if necessary.   | Idaho Code § 42-203A(5) includes criteria the Director must evaluate and gives the Director the authority to grant a water right permit upon conditions. Proposed rule ensures if the Director issues a permit based on false information, the Director has the authority to void the permit. |
| <b>050.08. Retention of Jurisdiction.</b> The Director may condition permits to retain jurisdiction to insure compliance with the design, construction and operation provisions of the permit.   | <b>Delete/None</b>   | Deleted because IDWR does not need to retain jurisdiction to alter the permit approval. IDWR must confirm the manner in which a permit is developed in the water right licensing process.   | Idaho Code § 42-203A(5) gives the Director the authority to grant a water right permit upon conditions. Idaho Code § 42-219 governs licensing of water right permits.   |
| <b>050.09. Insuring Minimum Stream Flows and Prior Rights.</b> The Director may condition permits to insure that established minimum stream flows and prior rights including prior rights reserved by federal law are not injured.                           | <b>050.01. Issuance of Permit with Conditions.</b> The Director may issue a permit with conditions to ensure compliance with:<br><br>b. Efficient administration of water rights by priority date;   | Simplified and broadened scope of language.   | Idaho Code § 42-203A(5) gives the Director the authority to grant a water right permit upon conditions. Proposed rule is consistent with these statutes.  |

| <b>Existing Rule</b>  | <b>Proposed Rule</b>   | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>  |
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| <b>050.10. Insuring Compliance with Water Quality Standards.</b> The Director may condition permits to insure compliance with Idaho's water quality standards.  | <b>050.01. Issuance of Permit with Conditions.</b><br>The Director may issue a Permit with conditions to ensure compliance with:<br><br>a. Chapter 2, Title 42, Idaho Code, and other applicable laws and statutes;  | Simplified language to rely on more generalized statement. Water quality standards are included in other statutory and regulatory duties.   | Idaho Code § 42-203A(5) gives the Director the authority to grant a water right permit upon conditions. Idaho Code § 39-126(2) authorizes state agencies to consider the effect proposed permits may have on ground water quality and may condition approvals to mitigate potential adverse effects. Proposed rule is consistent with these statutes. |
| <b>050.11. Insuring Assignment of Interest.</b><br>The Director may condition a permit issued for trust water to require that any amendment (Section 42-211, Idaho Code), transfer (Section 42-222, Idaho Code), or assignment of interest in the permit by any method whatsoever shall not result in the project failing to meet the public interest criteria of Section 42-203C, Idaho Code except, however, lenders obtaining title to the project through default will have a reasonable period of time, as determined by the Director, to meet such criteria or to convey the project to a person or entity that does meet the criteria. | <b>050.01. Issuance of Permit with Conditions.</b><br>The Director may issue a permit with conditions to ensure compliance with:<br><br>f. Requirements of Section 42-203C, Idaho Code, including conditions to promote efficient use and conservation of water;   | Simplified and broadened scope of language.   | Idaho Code § 42-203A(5) gives the Director the authority to grant a water right permit upon conditions. Idaho Code § 42-203C states the criteria for reallocation of trust water. Proposed rule is consistent with these statutes.  |
| <b>None</b>   | <b>050.01. Issuance of Permit with Conditions.</b><br>The Director may issue a permit with conditions to ensure compliance with:<br><br>g. The intent of agreements entered into by and between the state of Idaho and holders of water rights for power purposes and the state of Idaho's obligation to | Added based on stakeholder suggestion. IDWR has conditioned trust water right permits to facilitate the continual review the stakeholder referenced in its comment. The proposed rule facilitates the continued | Idaho Code § 42-203A(5) gives the Director the authority to grant a water right permit upon conditions. Idaho Code § 42-203 authorizes the state of Idaho to enter into agreements to hold hydropower water   |

| <b>Existing Rule</b>                    | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>   |
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| <b>None CONTINUED</b>                   | continually review the reallocation of trust water consistent with Section 42-203, Idaho Code; or | conditioning of trust water right permits based on the state of Idaho's agreement(s) and statutes. Stakeholder comment(s) considered in proposed rule language.             | rights in trust to reallocate the water made available by the subordination provisions of the hydropower water rights to water uses other than hydropower. Proposed rule is consistent with these statutes.  |
| <b>051. – 054. (RESERVED)</b>           | <b>051. – 054. (RESERVED)</b>   | No change proposed.   | Place holder to allow additional sections to be added when needed without major reorganization or renumbering of rule chapter.   |
| <b>055. MORATORIUM (RULE 55).</b>       | <b>055. MORATORIUM.</b>   | No change proposed except deleted "(RULE 55)" per The Idaho Rule Writer's Manual instruction.   | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits.   |
| <b>055.01. Applications for Permit.</b> | <b>055.01. Applications or Permits.</b>   | Combined rule language regarding permits with rule language regarding applications to avoid redundant content. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits. Proposed rule is consistent with statute and applicable case law. |

| <b>Existing Rule</b>   | <b>Proposed Rule</b>   | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>   |
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| <b>055.01.a.</b> The Director may cease to approve applications for permit in a designated geographical area upon finding a need to: | <b>055.01.a.</b> The Director may cease action on an application or stay further development of a permit for which the permit holder has not submitted proof of beneficial use in a designated geographical area upon finding a need to: | Combined rule language regarding permits with rule language regarding applications to avoid redundant content. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits. Proposed rule introduces the basis for establishing a moratorium. |
| <b>055.01.a.i.</b> Protect existing water rights;  | <b>055.01.a.i.</b> Protect existing water rights;  | No change from existing rule language proposed. This criterion is based on statute.   | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits. Proposed rule states a reason a moratorium may be established.    |
| <b>055.01.a.ii.</b> Insure compliance with the provisions of Chapter 2, Title 42, Idaho Code; and                                    | <b>055.01.a.ii.</b> Ensure compliance with Chapter 2, Title 42, Idaho Code; or   | Clarified language. This criterion is based on statute. Changed conjunction to reflect IDWR's authority to issue a moratorium if only one of the criteria listed are found. | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits.   |



| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
|---|--|--|--|
| <b>055.01.a.ii. CONTINUED</b>   |  |  | Proposed rule states a reason a moratorium may be established.   |
| <b>055.01.a.iii.</b> Prevent reduction of flows below a minimum stream flow which has been established by the Director or the board pursuant to applicable law. | <b>055.01.a.iii.</b> Prevent reduction of flows below a minimum stream flow held by the Board pursuant to applicable law.                      | Clarified language but retained the criterion that specifically references the protection for minimum stream flows held by the IWRB. This criterion is based on statutes stating a minimum stream flow is a water right that the IWRB can seek and establish. Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits. Minimum stream flows are established pursuant to Idaho Code § 42-1503 by the IWRB. Proposed rule states a reason a moratorium may be established and is consistent with statutes. |
| <b>055.01.b.</b> Notice of the Director's action to cease application approval will be by:  | <b>055.01.b.</b> Notice of the Director's action to cease further action on an application or stay further development of a permit will be by: | Combined rule language regarding permits with rule language regarding applications to avoid redundant content.   | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits. Proposed rule introduces how applicants, permit holders, and the general public will be notified when the Director establishes a moratorium.                                      |

| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule   |
|---|--|--|---|
| <p><b>055.01.b.i.</b> Summary Order served by certified mail upon the then existing affected applicants; and</p>  | <p><b>055.01.b.i.</b> Order served by certified mail upon the then affected applicant or permit holder; and</p>  | <p>Clarified language.</p>   | <p>Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law (<i>Kugler v IDWR</i>) affirms the Director's authority to suspend development on existing water right permits. Proposed rule states how applicants and permit holders will be notified when the Director establishes a moratorium.</p> |
| <p><b>055.01.b.ii.</b> Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area affected.</p> | <p><b>055.01.b.ii.</b> Publication for three (3) consecutive weeks in a newspaper of general circulation in the area affected.</p>   | <p>Clarified language based on IDWR's historic interpretation and implementation of existing rule. Rather than publish the entire moratorium order, IDWR publishes notice of the order issuance, a summary of the order's effect, the area affected, how the public can acquire more information including the entire order, and how the public can challenge the order.</p> | <p>Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law (<i>Kugler v IDWR</i>) affirms the Director's authority to suspend development on existing water right permits. Proposed rule states how members of the general public will be notified when the Director establishes a moratorium.</p> |
| <p><b>None</b></p>  | <p><b>055.01.c.</b> The order of the Director's action to stay further development of a permit will require a permit holder to file, within sixty (60) days of order issuance, either;</p> | <p>Added based on stakeholder comment. Proposed rule reflects IDWR practice to allow permit holders the opportunity to submit proof of beneficial use for permit (or portion of permit)</p>  | <p>Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law (<i>Kugler v IDWR</i>) affirms</p>  |

| Existing Rule  | Proposed Rule   | Comment or Rationale   | Purpose of Rule  |
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| None CONTINUED   | <p>i. Proof of beneficial use for the extent of diversion and beneficial use accomplished prior to issuance of the order; or</p> <p>ii. A response with supporting information demonstrating the permit holder made a substantial investment, prior to receipt of the order, in project works to divert and beneficially use water under the permit that merits the granting of additional time to complete all or part of the project.</p> <p>iii. Failure to submit proof of beneficial use or a response will result in suspension of further development of the permit.</p> | development that occurred prior to issuance of the moratorium. This proof filing allows permit holders to inform IDWR of the water use occurring under the permit so IDWR may issue a license per Idaho Code § 42-219. The sixty-day timeline is consistent with the Idaho Code § 42-204 requirement that IDWR send notice to the permit holder sixty days before proof of beneficial use is due. Stakeholder comment(s) considered in proposed rule language. | the Director's authority to suspend development on existing water right permits. Propose rule requires IDWR to provide permit holders the opportunity to submit proof of beneficial use for water use developed prior to establishment of the moratorium. Proposed rule is consistent with statutes.   |
| <b>055.01.c.</b> Objections to the Director's action shall be considered under the department's adopted Rules of Procedure and applicable law. | <b>055.01.d.</b> Objections to the Director's action will be considered pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources" and applicable law.   | Clarified language.  | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits. IDAPA 37.01.01 governs the procedures to be followed in a contested case. Proposed rule references the administrative rules IDWR follows for contested case procedures. |
| <b>055.02. Permits.</b>  | <b>055.01. Applications or Permits.</b>   | Combined rule language regarding permits with rule language regarding  | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or  |

| Existing Rule   | Proposed Rule  | Comment or Rationale   | Purpose of Rule  |
|---|--|--|--|
| <b>055.02. CONTINUED</b>  |  | applications to avoid redundant content.<br>Stakeholder comment(s) considered in proposed rule language.   | further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits. Proposed rule is consistent with statute and applicable case law.   |
| <b>055.02.a.</b> To the extent a permit has not been developed, the Director may cancel, or modify permits for which proof of beneficial use has not been submitted in a designated geographical area as an extension of Subsection 055.01. | <b>055.01.a.</b> The Director may cease action on an application or stay further development of a permit for which the permit holder has not submitted proof of beneficial use in a designated geographical area upon finding a need to: | Combined rule language regarding permits with rule language regarding applications to avoid redundant content.<br>Stakeholder comment(s) considered in proposed rule language. | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits. Proposed rule is consistent with statute and applicable case law.                                     |
| <b>055.02.b.</b> Notice of the Director's action to cancel or modify permits shall be by:   | <b>055.01.b.</b> Notice of the Director's action to cease further action on an application or stay further development of a permit will be by:   | Combined rule language regarding permits with rule language regarding applications to avoid redundant content.   | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits. Proposed rule introduces how applicants, permit holders, and the general public will be notified when |

| <b>Existing Rule</b>   | <b>Proposed Rule</b>  | <b>Comment or Rationale</b>   | <b>Purpose of Rule</b>   |
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| <b>055.02.b. CONTINUED</b>   |   |   | the Director establishes a moratorium.   |
| <b>055.02.b.i.</b> Summary Order served by certified mail upon the affected permit holders in the designated area.                             | <b>055.01.b.i.</b> Order served by certified mail upon the then affected applicant or permit holder; and  | Clarified language.   | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits. Proposed rule states how applicants and permit holders will be notified when the Director establishes a moratorium. |
| <b>055.02.b.ii.</b> Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area.  | <b>055.01.b.ii.</b> Publication for three (3) consecutive weeks in a newspaper of general circulation in the area affected.   | Clarified language based on IDWR's historic interpretation and implementation of existing rule. Rather than publish the entire moratorium order, IDWR publishes notice of the order issuance, a summary of the order's effect, the area affected, how the public can acquire more information including the entire order, and how the public can challenge the order. | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits. Proposed rule states how members of the general public will be notified when the Director establishes a moratorium. |
| <b>055.02.c.</b> Objections to the Director's action shall be considered under the department's adopted Rules of Procedure and applicable law. | <b>055.01.d.</b> Objections to the Director's action will be considered pursuant to IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources" and | Clarified language.   | Idaho Code § 42-1805(7) authorizes the Director to suspend the issuance of or further action on permits or   |

| <b>Existing Rule</b>          | <b>Proposed Rule</b>          | <b>Comment or Rationale</b>  | <b>Purpose of Rule</b>   |
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| <b>055.02.c. CONTINUED</b>    | applicable law.               |  | applications to protect existing water rights. Case law ( <i>Kugler v IDWR</i> ) affirms the Director's authority to suspend development on existing water right permits. IDAPA 37.01.01 governs the procedures to be followed in a contested case. Proposed rule references the administrative rules IDWR follows for contested case procedures.  |
| <b>056. – 999. (RESERVED)</b> | <b>056. – 999. (RESERVED)</b> | No change proposed.  | Place holder to allow additional sections to be added when needed without major reorganization or renumbering of rule chapter.   |
| <b>APPENDIX A</b>             | <b>APPENDIX A</b>             | No changes proposed. Retained Appendix A map from existing rules. Appendix A is referenced in Proposed Rule 010 Swan Falls Trust Water Area. Stakeholder comment(s) considered in proposed rule. | Idaho Code § 42-203B establishes water rights held in trust for the use and benefit of the hydropower users and the people of Idaho. Idaho Code § 42-203C establishes the criteria the Director will evaluate for an application that proposes a reallocation of trust water. Appendix A is a map illustrating the area where ground water is presently designated tributary to the reach of the Snake River extending downstream from Milner Dam to Swan Falls Dam. |

| Existing Rule     | Proposed Rule      | Comment or Rationale  | Purpose of Rule   |
|-------------------|--------------------|---|---|
| <b>APPENDIX B</b> | <b>Delete/None</b> | Deleted, because proposed Rule 035.03.f.ii. clarifies the period of use for an irrigation application must coincide with the IDWR standard season of use available on the Department's website rather than referencing a static map within the rules that would require a rulemaking process to update if needed in the future. Also, applicants generally use IDWR's website mapping services to determine the standard irrigation season of use rather than the existing rules. | Idaho Code § 42-202(1)(c) requires the applicant to state the period of year during which the proposed water will be used.  |
| <b>APPENDIX C</b> | <b>Delete/None</b> | Deleted, because IDWR's administrative region boundary information is available on IDWR's website. Also, applicants and the public generally use IDWR's website to determine the administrative region rather than looking in the administrative rules.   | Idaho Code § 42-203A(2) requires statewide publication of applications in excess of 10 cfs or 1,000 af. Proposed Rule 040.01.b. establishes statewide publication practices to implement the statute. |