



Well Construction Standards ZBR Rulemaking

January 25, 2024

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Water Compliance Bureau Chief

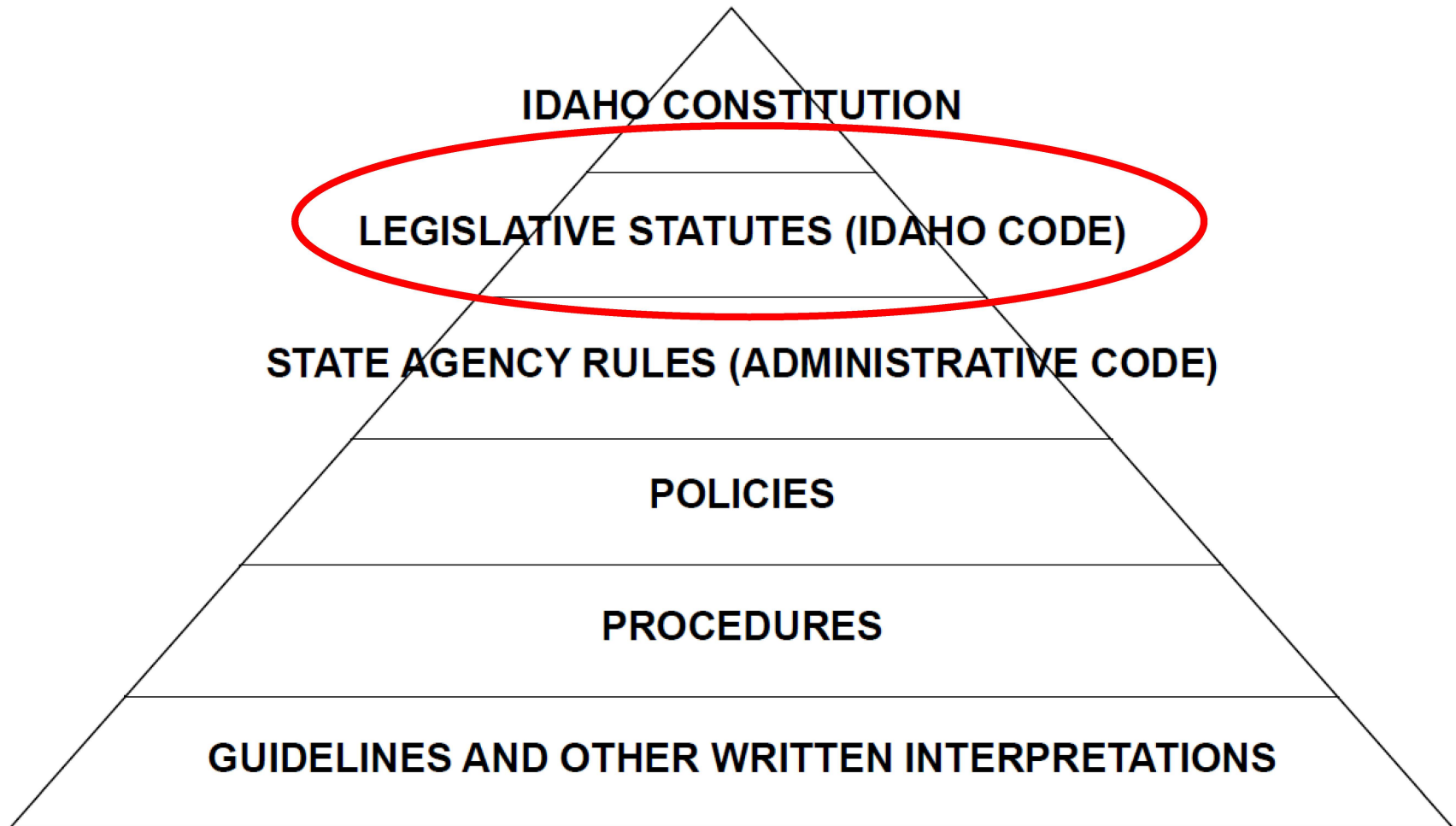


IDAHO DEPARTMENT OF
WATER RESOURCES

Presentation Outline

- Zero-Base Regulation
- Negotiated Rulemaking
- IDWR Rulemaking Webpages
- Timeline and Next Steps
- Today's Meeting
- Well Construction Standards Rules

HIERARCHY OF STATE DOCUMENTS



Executive Order 2020-01 Zero-Base Regulation

- Signed by Governor in January 2020

<https://gov.idaho.gov/wp-content/uploads/sites/74/2020/01/eo-2020-01.pdf>

- Requires all agencies to undertake “**zero-base regulation**” review of all their respective rules over a five-year period.
- **2021 marked the first year of the five-year review schedule.**
- “...each agency must publish a notice of proposed rulemaking...to repeal the existing rule chapter.”

Executive Order 2020-01 Zero-Base Regulation

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

Negotiated Rulemaking

Idaho Code § 67-5220(1) – Negotiated Rulemaking

- Agency shall determine if rulemaking is feasible
- Agency shall publish in the bulletin a NOI to promulgate a rule, includes:
 - Purpose
 - Statutory authorization, and supporting federal regulation
 - Principle issues involved

Negotiated Rulemaking

Idaho Code § 67-5220(2) – Negotiated Rulemaking

- NOI to promulgate a rule is intended to facilitate negotiated rulemaking
- Agencies shall, in order to improve the substance of the rule, draw upon shared information, knowledge, expertise, and technical abilities possessed by interested persons

Negotiated Rulemaking

Idaho Code § 67-5220(3) – Negotiated Rulemaking

- To facilitate the achievement of the purposes of this section, agencies shall, at a minimum:
 - Provide a reasonable period of time for interested persons to respond...;
 - Provide notice of meetings to interested persons who responded...;
 - Upon request, make available to persons attending the meetings all information that is considered by the agency in connection with the formulation of the proposed rule...;
 - Consider the recommendations of interested persons concerning the subject of the proposed rule;
 - Establish, maintain and timely update the negotiated rulemaking schedule and a list of written comments and other documents and information pertinent to the proposed rule and make that information available to persons attending the negotiated rulemaking meeting;
 - Prepare a written summary of unresolved issues, key information considered and conclusions reached during and as a result of the negotiated rulemaking...

IDWR/IWRB ZBR Rulemaking Approved Five-Year Rulemaking Schedule

Year 1

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

Year 2

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

Year 3

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

IDWR/IWRB ZBR Rulemaking Approved Five-Year Rulemaking Schedule

Year 4

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

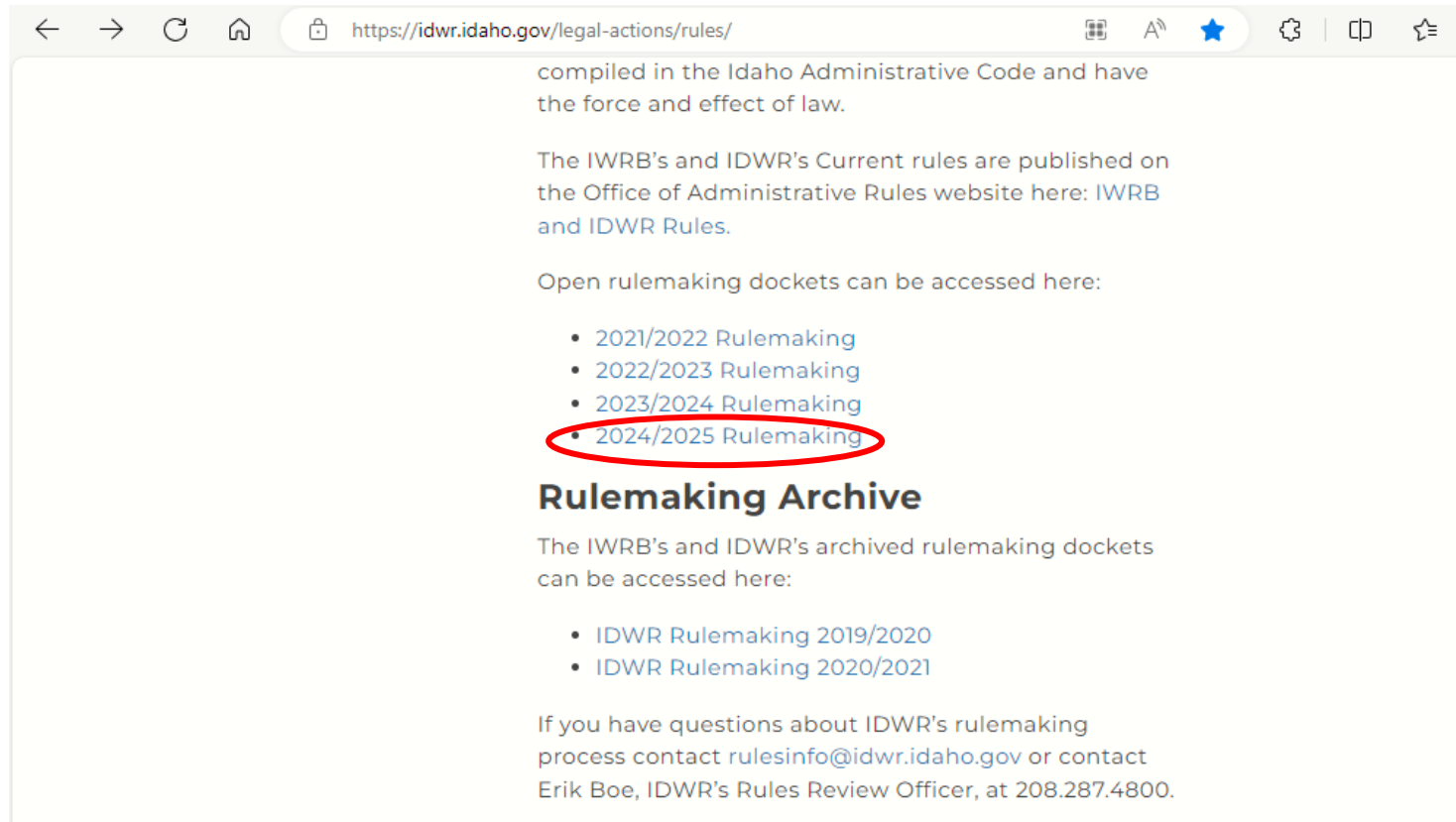
Year 5

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

Grand Total: 280 102,323 100%

IDWR's Rulemaking Webpage

<https://idwr.idaho.gov/legal-actions/rules/>



The screenshot shows a web browser window with the address bar displaying <https://idwr.idaho.gov/legal-actions/rules/>. The page content includes:

- Text: "compiled in the Idaho Administrative Code and have the force and effect of law."
- Text: "The IWRB's and IDWR's Current rules are published on the Office of Administrative Rules website here: [IWRB and IDWR Rules](#)."
- Text: "Open rulemaking dockets can be accessed here:"
- List-Group:
 - [2021/2022 Rulemaking](#)
 - [2022/2023 Rulemaking](#)
 - [2023/2024 Rulemaking](#)
 - [2024/2025 Rulemaking](#)
- Section-Header: **Rulemaking Archive**
- Text: "The IWRB's and IDWR's archived rulemaking dockets can be accessed here:"
- List-Group:
 - [IDWR Rulemaking 2019/2020](#)
 - [IDWR Rulemaking 2020/2021](#)
- Text: "If you have questions about IDWR's rulemaking process contact rulesinfo@idwr.idaho.gov or contact Erik Boe, IDWR's Rules Review Officer, at 208.287.4800."

Legal Actions

Archived Legal Matters

Orders ▾

Settlements ▾

Curtailment Notices and Orders ▾

Guidance Documents ▾

Statutes, Rules, and Hearing Procedures ▾

Administrative Actions

Delivery Call Actions

District Court Actions

Mitigation Plan Actions

IDWR Rulemaking 2024/2025

The following table summarizes the IWRB's and IDWR's rulemaking activities for the 2024/2025 rulemaking period.

Show entries

Search:

Authorizing Authority	Section	Docket Description	Status
IDWR	Water Allocations Bureau	ZBR* Rulemaking – IDAPA 37.03.01 Adjudication Rules	In Negotiation
IDWR	Water Allocations Bureau	ZBR* Rulemaking – IDAPA 37.03.03 Beneficial Use Exam Rules	In Negotiation
IWRB	Water Compliance Bureau	ZBR* Rulemaking – IDAPA 37.03.09 Well Construction Rules	In Negotiation

Showing 1 to 3 of 3 entries

◀ Previous Next ▶

*ZBR stands for “zero-base” rulemaking or rulemaking by the IWRB and IDWR conducted in compliance with the Governor’s Zero-Based Regulation Executive Order 2020-01.

If you have questions about IDWR's rulemaking process contact rulesinfo@idwr.idaho.gov or contact Erik Boe, IDWR's Rules Review Officer, at 208.287.4800.

IDWR's Rulemaking Webpage

The screenshot shows a web browser window with the URL <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2024-2025/well-construction-ru...>. The page title is "Well Construction Rules". On the left is a navigation menu with categories: Legal Actions, Archived Legal Matters, Orders, Settlements, Curtailment Notices and Orders, Guidance Documents, Statutes, Rules, and Hearing Procedures, Administrative Actions, Delivery Call Actions, District Court Actions, and Mitigation Plan Actions. The main content area is titled "Well Construction Rules" and includes sections for "IDAPA 37.03.09", "Scheduled Meetings and Deadlines", "Documents", and "Comments". The "Documents" and "Comments" sections are circled in red. On the right, there is a "Terminology" section with expandable items: "Curtailment", "Delivery Call", and "Mitigation Plan". Below that is a "Statutes & Rules" section and an "Idaho Constitution" section with a link to "Article XV: Water Rights".

Legal Actions

- Archived Legal Matters
- Orders ▾
- Settlements ▾
- Curtailment Notices and Orders ▾
- Guidance Documents ▾
- Statutes, Rules, and Hearing Procedures ▾
- Administrative Actions
- Delivery Call Actions
- District Court Actions
- Mitigation Plan Actions

Well Construction Rules

IDAPA 37.03.09

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

Scheduled Meetings and Deadlines

- [Notice of Intent, Negotiated Rulemaking](#) – April 25, 2024
- [Public Meeting Agenda](#) – April 25, 2024

Documents

- [Draft Well Construction Standards Rules \(Strawman REV1 Clean\)](#) – April 22, 2024
- [Draft Well Construction Standards Rules \(Strawman REV1 with Redlines\)](#)– April 22, 2024

Comments

Comments may be sent by email or mail to rulesinfo@idwr.idaho.gov or

Terminology

- Curtailment
 - Reducing or restricting the use of surface or groundwater based on priority date.
- + Delivery Call
- + Mitigation Plan

Statutes & Rules

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

Idaho Constitution

- [Article XV: Water Rights](#)

Idaho Statute

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

ZBR Rulemaking Timeline – 37.03.09

37.03.09 Well Construction Rules ZBR		
1	Recommendation Memo (RM) with Retrospective Analysis (RA)	1/26/24
2	Prospective Analysis (PA)(Preliminary)	1/26/24
3	Notice of Intent (NOI) to Negotiate Rules	1/12/24, 3/1/24
4	IWRB Presentation (Informal Approval)	1/12/24-2/29/24
5	NOI Submittal to DFM (Publication in April Bulletin)	3/10/24
6	Strawman Rule	4/19/24
7	Public Negotiated Rulemaking Meetings	4/25/24-8/1/24
8	IWRB Presentation (Formal Approval)	8/1/24*
9	Prospective Analysis (Complete)	8/30/24
10	AARF	8/30/24
11	Proposed Rule Submittal (Publication in October Bulletin)	8/30/24
12	Pending Rule Submittal (Publication in January Bulletin)	11/29/24
13	House and Senate Committees (Review/Presentation)	1/6/25-4/26/25**

*Date is TBD, but must occur in August, 2024.

**Occurs during the 2025 Legislative session, date range TBD.

Next Steps...

- Submit written comments on Rules following today's meeting by 5/9/2024 (14 days)
- Comments submitted to rulesinfo@idwr.idaho.gov
- Reference the rule chapter: IDAPA 37.03.09
- 2nd Public Meeting on 5/30/2023 (tentative)
- **Deadline:** Publish a Proposed Rule in October Bulletin
→ Due to DFM by **8/30/2024**

Today's Meeting Process

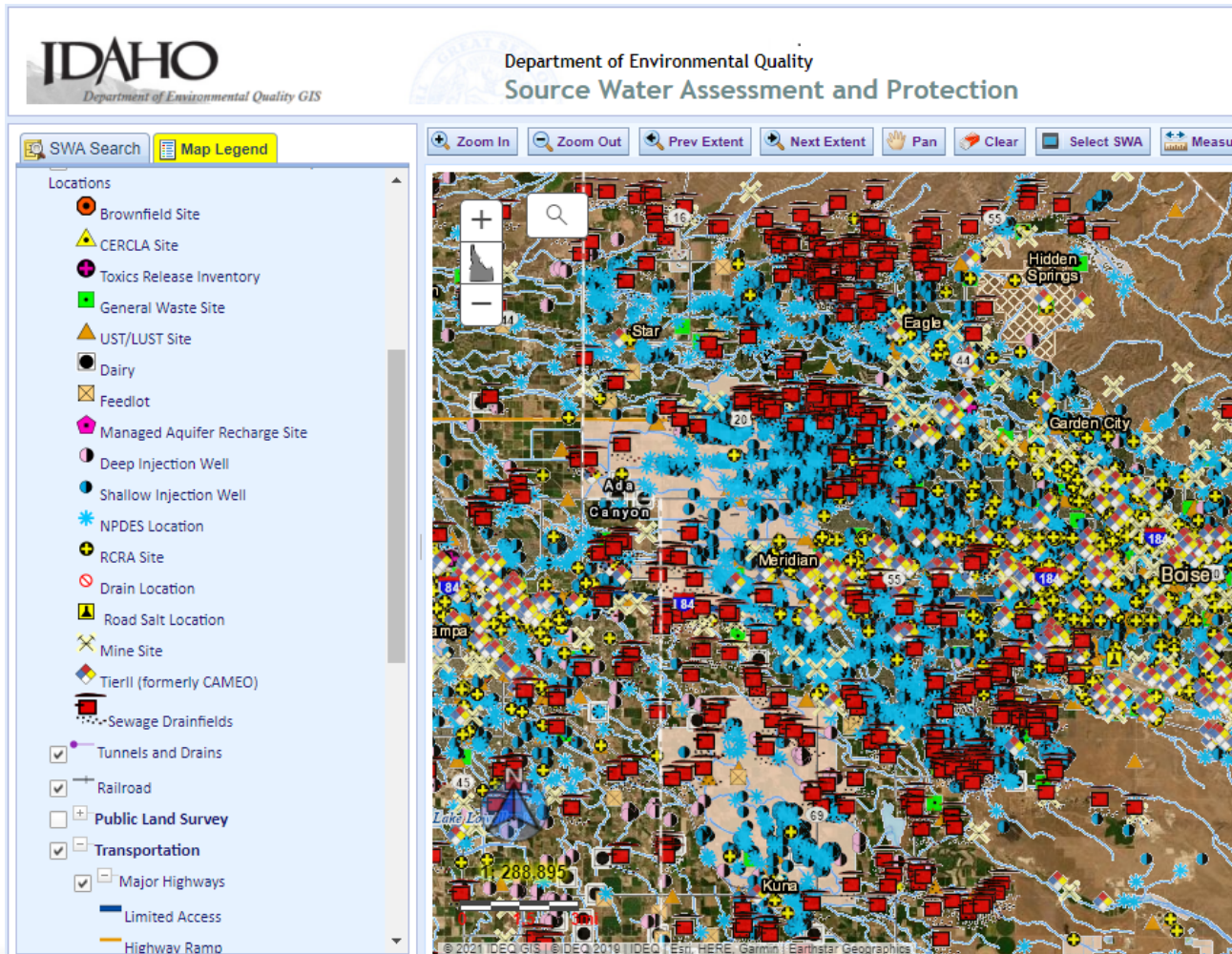
1. Requires polite and respectful engagement.
2. We are recording today's proceedings and we will publish the recordings to our website.
3. IDWR has prepared a Preliminary Draft Rule or "Strawman".
4. Stakeholders will have an opportunity to comment regarding the Strawman rule, including submittal of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

Well Construction Standards Rules

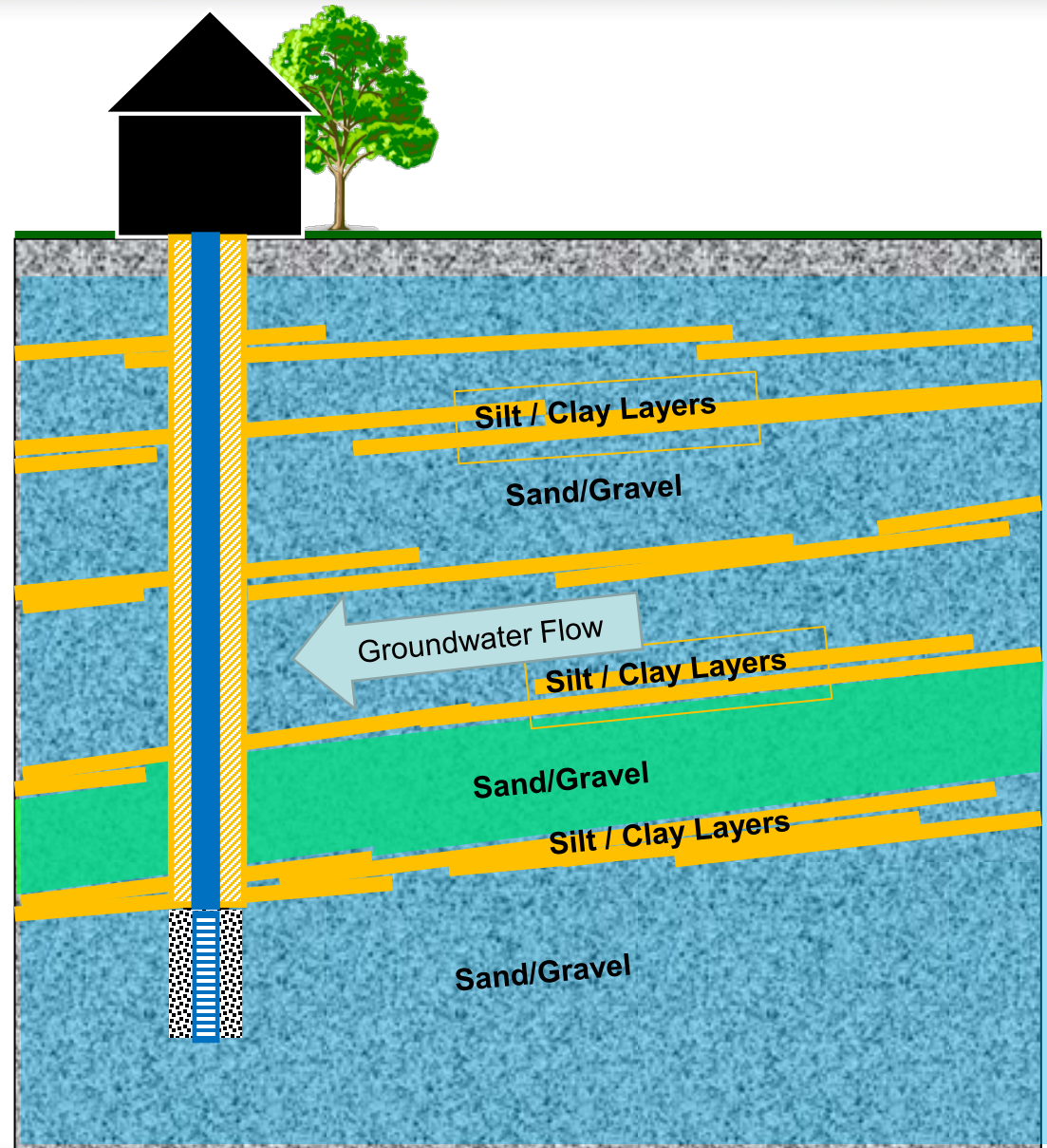
The intent of IDAPA 37.03.09

Idaho Code § 42-235... *“to protect the public health, safety and welfare and the environment, and to prevent the waste of water or mixture of water from different aquifers.”*

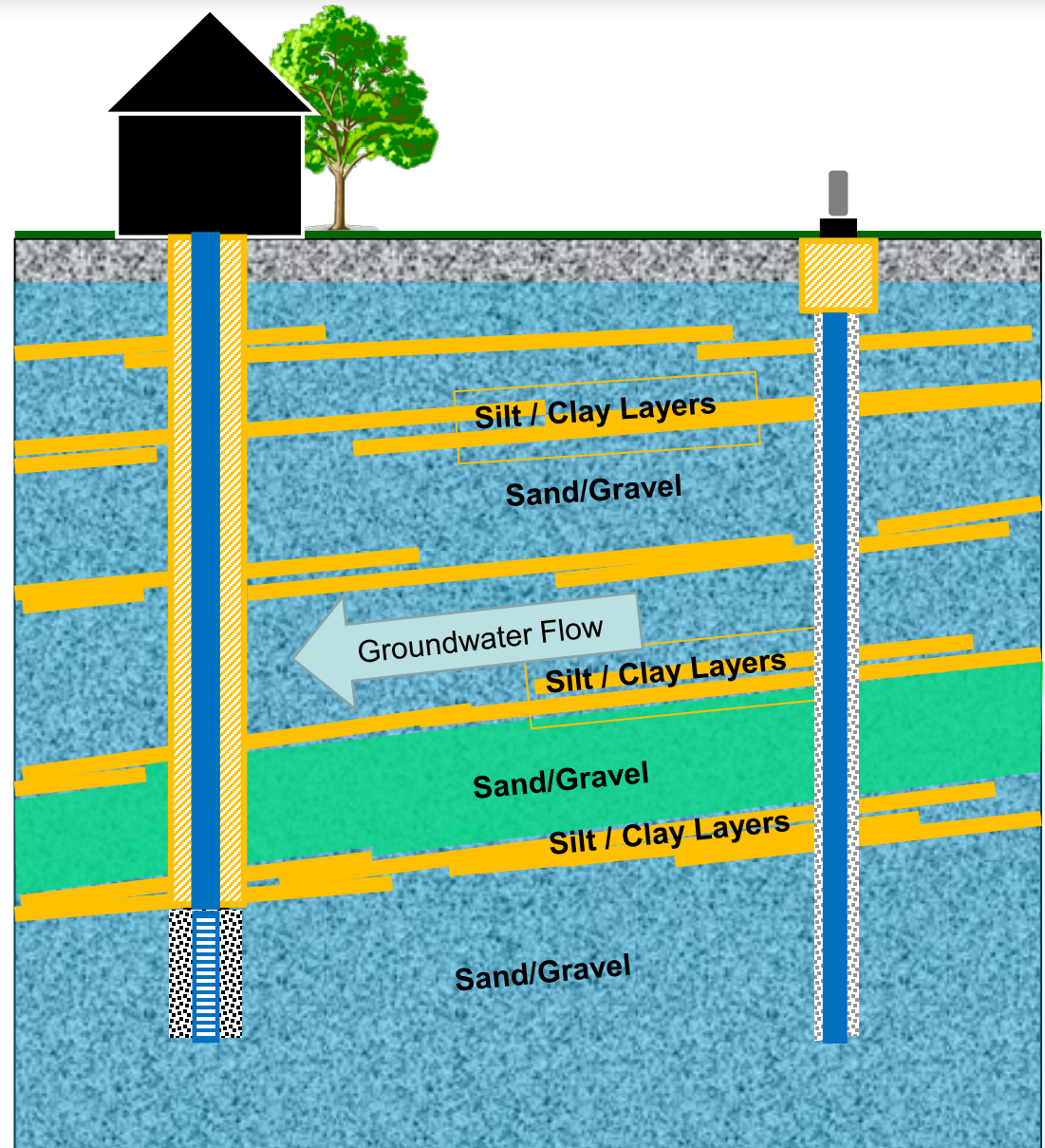
Why have Rules and Regulations?



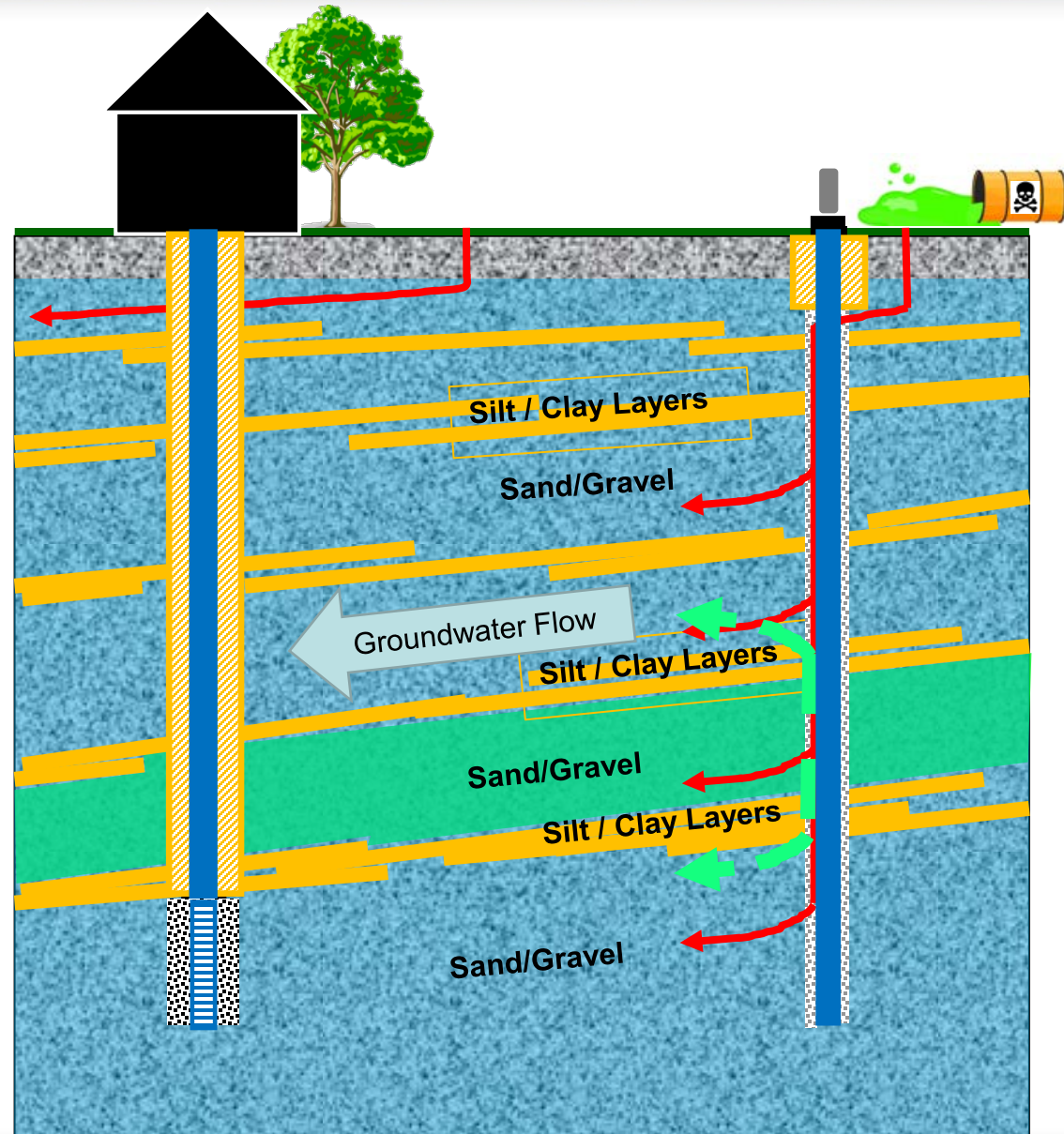
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Questions?

Erik Boe, Water Compliance Bureau Chief, RRO
Idaho Department of Water Resources

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208-287-4935