

# Recommendation Memo

## State of Idaho

### Department of Water Resources

322 E Front Street, P.O. Box 83720, Boise, Idaho 83720-0098

Phone: (208) 287-4800 Fax: (208) 287-6700

---

**Date:** January 31, 2022

**To:** Idaho Water Resource Board

**Thru:** Gary Spackman, Director, and Mat Weaver, Deputy Director

**From:** Tim Luke, Water Compliance Bureau Chief *TL*

**Subject:** Memorandum re: IDWR's Well Driller Licensing Rules, IDAPA 37.03.10 with Retrospective Analysis and Recommendation.

---

## Executive Order 2020-01

Executive Order No. 2020-01 (the "EO") requires the Idaho Department of Water Resources ("IDWR") and the Idaho Water Resource Board ("IWRB") (collectively "Agencies") to review all rule chapters under the Agencies' purview by 2026. The review must be a critical and comprehensive review. EO at 2.

Pursuant to the schedule already determined by the Division of Financial Management ("DFM") and the Agencies, IDWR's Well Driller Licensing Rules ("Well Driller Rules" or "Rules"; IDAPA 37.03.10) must be analyzed in the second year of the review process.

Therefore, the EO requires the Agencies to review the Well Driller Rules to determine whether they should be repealed altogether or re-promulgated. If the Agencies desire to re-promulgate the Well Driller Rules, the Agencies must retrospectively analyze the rules and determine whether the rules need to be re-promulgated, and, if so, to recommend an approach. *Id* at 3.

This Recommendation Memorandum ("Memo") provides analysis and recommendations for the Director and Board.

## Retrospective Analysis

### 1. What are the benefits of the current rule?

The Department's Well Driller Rules establish minimum qualifications for obtaining and renewing authorization to drill wells and operate well drilling equipment in Idaho, including minimum levels of well drilling experience, written examinations to test knowledge of drilling and well construction, and continuing education. The Rules also establish procedures for testing and processing of applications to renew a license or operator permit. The Rules further set duties and responsibilities of drillers, operators, and drilling companies to protect public health and groundwater resources. There are currently about 465 driller licenses and operator permits on record in Idaho.

Additional benefits of the current rule include:

- Provides detail and clarification for filing and processing of well driller license and permit operator applications and renewals beyond the statutory descriptions and requirements.
- Provides detail, clarification, and flexibility to earn and document continuing education credits during license and permit periods that aid in renewal of licenses and permits. For example, in 2020 and 2021, IDWR relied on a specific sub-rule to exempt licensed drillers and permitted operators from continuing education requirements due to impacts of the COVID-19 pandemic that prevented the drilling community's ability to complete continuing education units.
- The Rules allow the Idaho well driller industry representative, the Idaho Ground Water Association ("IGWA"), to develop and implement a continuing education program subject to IDWR approval,

2. Do the benefits of the rule justify the costs of the rule?

IDWR evaluated costs of licensure requirements for Idaho well drillers and operators in 2018 pursuant to Executive Order 2017-06 ("EO 2017-06"). At that time, IDWR documented that IDWR's well driller licensure costs were more than double the collected fees or revenue from license and permit applications and renewals. During FY2018, IDWR received \$13,360 in licensure fees, and spent more than \$31,000 to administer the licensing program. The cost to administer licensing was about \$155 per applicant in FY2018. From FY2018 through FY2021, the number of licensed drillers and permitted operators increased by about 17%. IDWR estimates that current agency costs for licensure are somewhat higher than FY2018 due to the increased number of licensed drillers and increases in certain staff salaries.

Licensing of well drillers in Idaho is important to the public interest of the State. Idaho relies on ground water for over 95% of its drinking water. Ground water is vital for irrigation to support Idaho's large agricultural economy, as well as the commercial, municipal, and industrial economic sectors of the State. The IGWA supports a continued well driller licensure program to promote public health and safety of Idaho's ground water drinking supply. *Letter from Lynn Tominaga, IGWA Executive Director, to Gary Spackman, IDWR Director, May 31, 2018.* This endorsement, plus the very limited feedback from the public outreach conducted to comply with EO2017-06, indicates that the well drilling community strongly supports the need for driller licensure in Idaho.

Licensing fee and bonding requirements for licensed drillers and companies are established by statute, not rule. Rule modifications will not include new licensing fees or bonding rates, or changes to fees and bond rates set by statute. Potential rule modifications should not result in added costs or time necessary for licensing, bonding, or continuing education.

Based on the information summarized above, IDWR concludes that the benefits of the Rules justify the costs of the Rules.

3. Are there less restrictive alternatives to accomplish the benefits of the rule?

The current Rules add clarification to statutory requirements given in Idaho Code § 42-238 and allow for some flexibility in procedures for renewal of licenses and permits, testing, and earning continuing education credits.

IDWR will propose removing certain sub-rules that are unnecessary or obsolete, including sub-rules that reiterate current statutes.

4. Recommendation

Idaho Code § 42-238(1) requires the IWRB to adopt rules establishing qualifications for well drillers and operators in Idaho, including the "licensing of well drillers and operators of well drilling equipment"..."to protect the ground water resources against waste and contamination." Given this statutory mandate, IDWR staff recommends the Well Driller Rules be repealed and replaced through the negotiated rulemaking process. Pursuant to the negotiated rule process, IDWR staff will seek comment on whether any non-regulatory measures can be implemented in lieu of certain Well Driller Rules.