

BEFORE THE IDAHO WATER RESOURCE BOARD

IN THE MATTER OF PUBLISHING IDAHO
WATER RESOURCE BOARD OMNIBUS
PROPOSED FEE AND NON-FEE RULES

RESOLUTION TO PUBLISH THE IDAHO
WATER RESOURCE BOARD'S CURRENT
TEMPORARY FEE AND NON-FEE RULES AS
PROPOSED RULES

1 WHEREAS, the Idaho Water Resource Board (“IWRB”) is the executive branch entity with
2 either sole or shared statutory oversight and authority over ten chapters of Administrative Non-
3 Fee and Fee Rules in IDAPA 37, including: IDAPA 37.01.01 Rules of Procedure of the IDWR; IDAPA
4 37.02.01 Comprehensive State Water Plan Rules; IDAPA 37.02.03 Water Supply Bank Rules;
5 IDAPA 37.02.04 Shoshone Bannock Tribal Water Supply Bank; IDAPA 37.03.03 Rules and
6 Minimum Standards for the Construction and Use of Injection Wells; IDAPA 37.03.04 Drilling for
7 Geothermal Resources Rules; IDAPA 37.03.05 Mine Tailings Impoundment Structures Rules;
8 IDAPA 37.03.06 Safety of Dams Rules; IDAPA 37.03.07 Stream Channel Alteration Rules; IDAPA
9 37.03.09 Well Construction Standards Rules; and IDAPA 37.03.10 Well Driller Licensing Rules; and
10

11 WHEREAS, the IWRB initially adopted its fee rules as temporary fee rules, effective *sine*
12 *die* of the 2021 legislative session in its Resolution No. 06-2021 on March 2, 2021; and

13 WHEREAS, the 2021 Idaho House of Representatives (“House”) did not adjourn *sine die*
14 and rather recessed on May 12, 2021, without the Idaho Legislature concurrently reauthorizing
15 the IWRB’s administrative rules, or the House establishing a date certain that it would reconvene;
16 and

17 WHEREAS, as a precautionary measure to ensure the continuity of administrative rules
18 and ensure that existing rules remain in effect in Fiscal Year 2022, the Division of Financial
19 Management (“DFM”), acting on behalf of the Governor of Idaho, directed all agencies to adopt
20 all pending fee rules submitted to the 2021 Legislature for review and all non-fee rules as
21 temporary rules effective July 1, 2021; and

22 WHEREAS, the IWRB adopted its non-fee rules as temporary rules, effective July 1, 2021,
23 in its Resolution No. 20-2021 on May 21, 2021; and

24 WHEREAS, the IWRB adopted its fee rules as temporary fee rules, effective July 1, 2021,
25 in its Resolution No. 21-2021 on June 15, 2021; and

26 WHEREAS, DFM published the IWRB’s temporary non-fee rules as Docket No. 37-0000-
27 2100 and its fee rules as Docket No. 37-0000-2100F, on July 21, 2021, in the [Idaho Administrative](#)
28 [Bulletin Vol. 21-7SE](#) (pages 4808-5039); and
29

30 WHEREAS, DFM will begin the process of re-publishing the existing fee and non-fee rules
31 by IDAPA chapter and will publish the now temporary rules as proposed rules in a special edition
32 of the Idaho Administrative Bulletin on October 20, 2021; and
33

34 WHEREAS, on August 24, 2021, DFM directed all state executive agencies to adopt and
35 publish their temporary rules (both fee and non-fee) as proposed rules, and later pending rules,
36 and submit them for 2022 legislative review as an omnibus rulemaking; and
37

38 WHEREAS, in reviewing IDAPA 37.01.02 Comprehensive State Water Plan Rules as part of
39 the Governor's Zero-Base Regulation (ZBR) Rulemaking initiative (Executive Order No. 2020-01),
40 the IWRB determined that it did not need to substantively add to the rule and that it could
41 significantly reduce the rule because large portions of it are redundant to statute or unnecessary;
42 and
43

44 WHEREAS, DFM advised the IWRB that if it is not adding to IDAPA 37.01.02 through the
45 ZBR process and it plans to eliminate parts of the rule through the process, it can terminate the
46 ZBR rulemaking and effectuate changes to the rule through the omnibus non-fee proposed rule
47 publication; and
48

49 WHEREAS, the IWRB's rules implement the duly enacted laws of the state of Idaho,
50 provide citizens with the detailed rules and standards for complying with those laws, and assist
51 in the orderly execution and enforcement of those laws; and
52

53 WHEREAS, the expiration of the IWRB's rules without due consideration and process
54 would undermine the public health, safety, and welfare of the citizens of Idaho and deprive them
55 of the benefit intended by the rules; and
56

57 WHEREAS, the Governor has found that the fee(s) or charge(s) imposed or increased in
58 the fee rules are justified and necessary to avoid immediate danger to the budget of the Idaho
59 Department of Water Resources, to the state budget, to necessary state functions, and services,
60 and to avoid immediate danger of a potential violation of Idaho's constitutional requirement that
61 the state annually balance its budget.
62

63 NOW, THEREFORE BE IT RESOLVED that the IWRB adopts and authorizes the notice and
64 publication of the following fee rules as proposed rules and that they be adopted as published
65 on July 21, 2021, in the [Idaho Administrative Bulletin Vol. 21-7SE](#):

- 66 • 37.01.01, (*Rules of Procedure of the Idaho Department of Water Resources*);
- 67 • 37.02.03, (*Water Supply Bank Rules*);
- 68 • 37.03.03, (*Rules and Minimum Standards for the Construction and Use of Injection*
69 *Wells*);

- 70 • 37.03.04, (*Drilling for Geothermal Resources Rules*);
71 • 37.03.05, (*Mine Tailings Impoundment Structures Rules*);
72 • 37.03.06, (*Safety of Dams Rules*);
73 • 37.03.07, (*Stream Channel Alteration Rules*);
74 • 37.03.09, (*Well Construction Standards Rules*); and
75 • 37.03.10, (*Well Driller Licensing Rules*).

76 NOW, THEREFORE BE IT FURTHER RESOLVED that the IWRB adopts and authorizes the notice
77 and publication of the following non-fee rule chapter as a proposed rule and that it be adopted
78 as attached to this resolution and presented to the IWRB on September 30, 2021:

- 79 • 37.02.01, *Comprehensive State Water Plan Rules*

80 NOW, THEREFORE BE IT FURTHER RESOLVED that the IWRB adopts and authorizes the notice
81 and publication of the following non-fee rule chapter as a proposed rule and that it be adopted
82 as published on July 21, 2021, in the [Idaho Administrative Bulletin Vol. 21-7SE](#):

- 83 • 37.02.04, *Shoshone Bannock Tribal Water Supply Bank*.

84 NOW, THEREFORE BE IT FURTHER RESOLVED that this resolution takes the place of and
85 supersedes resolution No. 31-21 approved by the IWRB on September 16, 2021.

DATED this 30th day of September, 2021.



JEFF RAYBOULD, Chairman
Idaho Water Resource Board

ATTEST 

JO ANN COLE-HANSEN, Secretary
Idaho Water Resource Board