



IDAHO DEPARTMENT OF WATER RESOURCES



Negotiated Rulemaking:

IDAPA 37.03.02 – Beneficial Use Examination Rules

Presented by: Phill Hummer, Water Rights Section Manager

Date: July 22, 2024





Today's Meeting Process

- We are recording the meeting and will publish the recordings to our website.
- Purpose of today's meeting is to take comment oral comment on the second version of the Preliminary Draft Rule or "Strawman".
- Stakeholders were provided this version and asked to submit written comments before this meeting.
- This is the last scheduled public meeting.





Presentation Outline

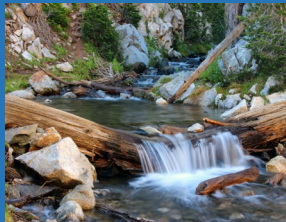
- Review of the Rulemaking Process
- Review of the Strawman
- Question and Answer
- Oral Comment Period
- Rule Making Resources
- Next Steps and Conclusion





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.
- 2024 is the fourth year of the five-year review schedule.





IDWR/IWRB ZBR Rulemaking Approved Five-Year Rulemaking Schedule

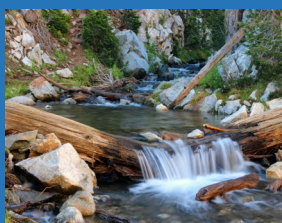
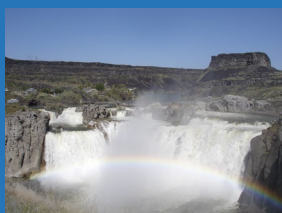
Year 4

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%

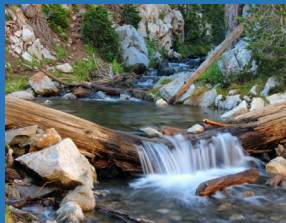
Grand Total: 280 102,323 100%





Negotiated Rulemaking

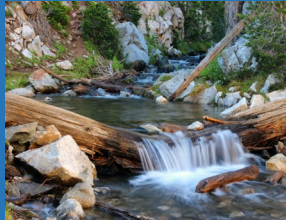
- Purpose is to get feedback from the public.
- Intended to improve the substance of the rule.
- An opportunity for interested parties and the agency to discuss possible changes.
- Informal part of the rulemaking process that precedes all formal rulemaking proceedings.





Beneficial Use Examination Rules

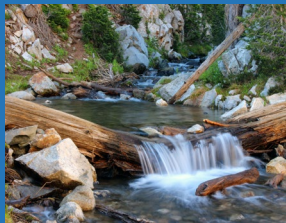
- Section 42-217(1), Idaho Code
 - The permit holder shall submit a statement ... that the permit holder has used such water for the beneficial purpose allowed by the permit.
- Section 42-217(4), Idaho Code
 - The department or the person making such examination ... shall prepare and file a report of the investigation...
- Section 42-217a, Idaho Code
 - The director shall adopt all necessary rules ... to become certified water right examiner.





Beneficial Use Examination Rules

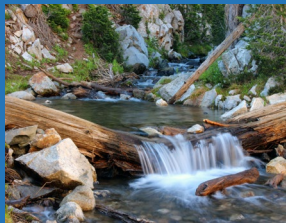
- Section 42-219, Idaho Code
 - Upon receipt ... of all evidence in relation to such final proof, ... if the department is satisfied that the law has been fully complied with and that the water is being used at the place claimed and for the purpose which it was originally intended, the department shall issue ... a license corresponding to the beneficial use.
- Other Sections
 - 42-218a permits lapsed more than 60 days need to have a certified exam to be reinstated.
 - 42-221 filing fees for proof statements.





Rule 035 – “Major” Changes

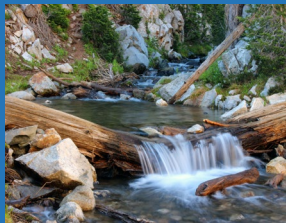
- Strawman Version 1 contained language relating to domestic or municipal use.
 - iv. For multi-home domestic or municipal use, the volume may include up to 0.6 af for in-home use and 0.6 af for developed yard or landscape irrigation for each lot with an existing stub-in water service line and foundation where each home’s use will meet the definition of Section 42-111(a), Idaho Code.
- This language is removed from Strawman Version 2.





Rule 035 – New Content (page 5)

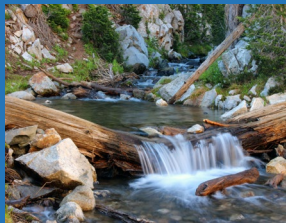
- 01.j.ix. Ground water recharge water right owned by the Idaho Water Resource Board
 - Added based on comments received
- 01.i.ii. For heating, cooling, or commercial snowmaking the volume may be adjusted to account for documented weather conditions...
 - Comments received supported this language





Comments

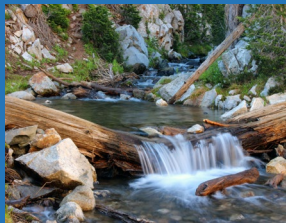
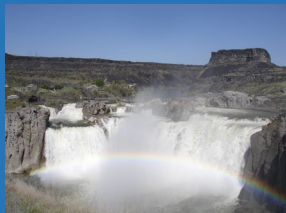
- Questions before comment period.
- Comments from stakeholders attending in person.
- Comments from stakeholders attending via teleconference.
- Follow up comments.

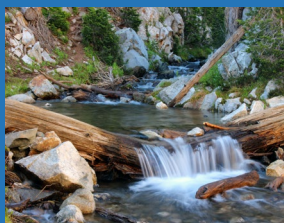
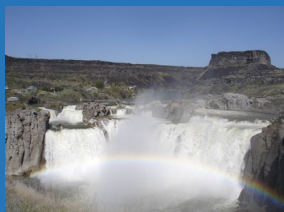




Negotiated Rulemaking Next Steps

- Written comments on Strawman can still be submitted
 - Submitted to rulesinfo@idwr.idaho.gov
 - Reference the rule chapter: IDAPA 37.03.02.
- IDWR will create a Proposed Rule from the Strawman and received comments.
- The Proposed Rule will be published in the Administrative Bulletin in October.
 - 21 day comment period.
 - Comment deadline for October publication is October 23, 2024.
- IDWR will create and submit a Pending Rule to be reviewed by legislature.





Current Topics

Visit IDWR's [News Page](#) to view current press releases.

- ▶ **Methodology for Determining Material Injury**
- ▶ **Priest Lake Water Levels and Outlet Dam Operations**
- ▶ **Treasure Valley Groundwater Flow Model**
- ▶ **FAQs – Groundwater Resources and Domestic Wells**

IDWR Negotiated Rulemaking

The Department is reviewing its administrative rules, consistent with the Governor's Zero Based Regulation, Executive Order 2020-01. For more information visit, [IDWR's Rulemaking page](#) or follow the links below for specific rulemaking activities.

[2024/2025 Rulemaking](#)

Upcoming Events

06 MAY 9:00 am
PUBLIC NEGOTIATED RULEMAKING MEETING | IDAPA 37.03.02 BENEFICIAL USE EXAM RULES
 Monday, Conf. Rooms 602B, C, and D

06 MAY 10:00 am
WATER STORAGE PROJECTS COMMITTEE MEETING NO. 1-24
 Monday, Boise/Zoom

08 MAY 9:00 am - 12:00 pm
MAY WATER SUPPLY MEETING
 Wednesday

09 MAY 10:00 am
UPPER SNAKE RIVER ADVISORY COMMITTEE MEETING NO. 5-24
 Thursday, Idaho Falls/Zoom

[See All Events](#)





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:

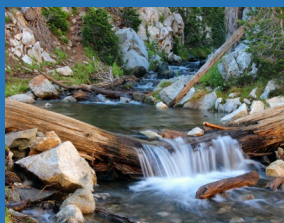
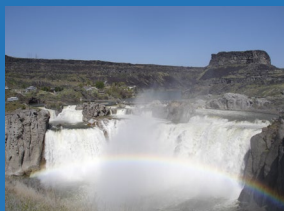
Authorizing Authority	Section	Docket Description	Status
IDWR	Water Allocations Bureau	ZBR* Rulemaking – IDAPA 37.03.01 Adjudication Rules	In Negotiation
IDWR	Water Allocations Bureau	ZBR* Rulemaking – IDAPA 37.03.02 Beneficial Use Exam Rules	In Negotiation
IWRB	Water Compliance Bureau	ZBR* Rulemaking – 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 [PDF](#), 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.





[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](#)

Beneficial Use Exam Rules

IDAPA 37.03.02

IDWR 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

- Public Meeting Agenda – July 22, 2024
- Notice of Intent, Negotiated Rulemaking – May 6, 2024
- Public Meeting Agenda – May 6, 2024

Documents

- Draft Beneficial Use Exam Rules (Strawman REV2 Clean) – July 22, 2024
- Draft Beneficial Use Exam Rules (Strawman REV2 with Redlines) – July 22, 2024
- Negotiated Rulemaking Meeting Audio – May 06, 2024
 - Negotiated Rulemaking Meeting In-Person Attendance Sheet -May 06, 2024
 - Negotiated Rulemaking Meeting Virtual Attendees -May 06, 2024
- Draft Beneficial Use Exam Rules (Strawman REV1 Clean) – May 3, 2024
- Draft Beneficial Use Exam Rules (Strawman REV1 with Redlines) – May 3, 2024

Comments

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

IDWR Rules Review Officer
PO Box 83720
Boise, ID 83720

When submitting comments, please cite the docket number or IDAPA rule chapter to which your remarks apply. Please be aware that your comments will become part of the public

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 irrigation, and floodplain management in Idaho

Idaho Constitution

- Article XV: Water Rights

Idaho Statute

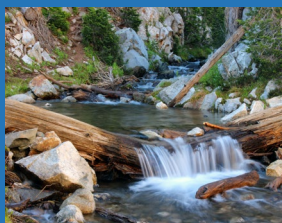
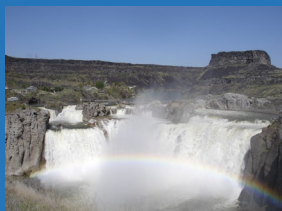
- Title 42: Irrigation and Drainage — Water Reclamation
- Title 43: Irrigation Districts
- Title 46, Chapter 10: State Disaster Preparedness

Idaho Administrative Code

- IDAPA Chapter 37: Idaho Water Resource Board
- Idaho Dept. of Water Resources

Hearing Procedures

Overview of IWRB & IDWR Contested Case Proc





IDAHO DEPARTMENT OF
WATER RESOURCES

Final Questions?

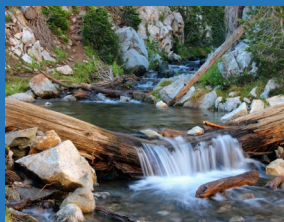
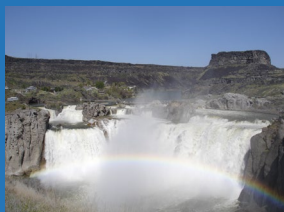


Last Chance Canal Company Diversion, Bear River

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