



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

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MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee

FROM: Deputy Division Manager - Katharine Gerrity

DATE: June 27, 2019

SUBJECT: Department of Water Resources

IDAPA 37.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Rulemaking (Docket No. 37-0000-1900)

The Idaho Department of Water Resources submits notice of temporary and proposed rules that reauthorize and re-publish the following previously approved chapters at:

- 37.02.01, Comprehensive State Water Plan Rules;
- 37.02.04, Shoshone-Bannock Tribal Water Supply Bank Rules;
- 37.03.11, Rules for Conjunctive Management of Surface and Ground Water Resources;
- 37.03.12, Idaho Department of Water Resources Water Distribution Rules - Water District 34 – All rules except Subsections/Sections 010.05, 010.14, 020, 035.02, 035.03, 035.06, 035.07, 040.01.a., 045., 050., 055.01, 055.02, 055.03, and 055.04; and parts of Subsections 025.01, 040.01, 040.03.a., 040.03.b., and 055.06.

According to the department, the exceptions noted above have not been included for the following reasons:

Subsections/Sections 010.05 - This rule is unnecessary and redundant as IDWR has statewide rules for conjunctive administration.

010.14 - This rule is unnecessary as all references to the SRBA are being deleted from these rules.

020 - This rule is unnecessary as we now have general provisions that govern conjunctive administration and separate streams in Basin 34. Parts of this rule are inconsistent with SRBA Basin 34 general provisions. Furthermore, parts of this rule are restatements of law and are not necessary for administration.

025.01 - Because section 020 is being deleted, the reference to section 020 is being deleted here.

035.02; 035.03; 035.06; 035.07 - These rules are unnecessary as IDWR already has a separate measurement order in place. These rules are not necessary because they are either duplicative of Idaho Code or they are outdated with current IDWR water measurement standards. Rules 35.02 and 35.03 are not consistent with current IDWR measurement standards. Rule 35.06 is not necessary since the Director already has inherent authority to allow a measuring device exemption. Rule 35.07 is confusing and redundant with both Rule 35.01 and Idaho Code § 42-701.

040.01 and 040.01.a. - Sections of these rules are outdated, restatements of law and inconsistent with current,

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more accurate administrative practices.

040.03.a - The Hydromet station mentioned in this rule is no longer used.

040.03.b - Section of this rule is inconsistent with current and more accurate administrative practices.

045 - This rule is outdated as the SRBA Court has decreed all rights in Basin 34 and we are no longer operating on list of water rights approved for interim administration. This rule also contains elements that are restatements of law and already addressed by the state wide rules for conjunctive administration.

050 - This rule contains elements that are addressed by general provisions issued by the SRBA Court, are restatements of law, and are already addressed by the state wide rules for conjunctive administration.

055.01 - This rule is a restatement of law.

055.02 - This is unnecessary. This rule states that the maximum annual field head gate volume is 3.5 AFA. But, the rule goes on to state that the volume limit does not apply to water rights for which the limit is not stated on the water right. If the limit is stated on the water right, it is unnecessary to have it mentioned in the rules. Water use is regulated by the total volume and rate of diversion listed on the water right decree or license.

055.03 - This rule is unnecessary since water use under combined rights is regulated by the total volume and rate of diversion listed on the water right decree or license, along with combined use limit conditions placed on water rights.

055.04 - This rule is unnecessary since water use, including the use of water for conveyance loss, is regulated by the rate of diversion listed on the water right decree or license along with any related water right conditions. Most of the language in this rule amounts to statements of fact or a reiteration of information already included in the water rights. The rule is not necessary for water right administration.

055.06 - This rule contains references to other sections which are being deleted.

These rules were previously analyzed and reviewed by the Legislative Services Office upon their initial promulgation. Changes from the previously approved rules are noted above. Rulemaking appears to be authorized pursuant to Sections 42-238, 42-603, 42-1414, 42-1701A, 42-1714, 42-1709, 42-1721, 42-1734D, 42-1761, 42-1762, 42-1765, 42-1414, 42-1805(8), 42-3803, 42-3913, 42-39-14, 42-3915, 42-4001, and 42-4015 Idaho Code.

cc: Department of Water Resources
Gary Spackman
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***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.