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**IDAPA 37
TITLE 03
Chapter 02**

37.03.02 - BENEFICIAL USE EXAMINATION RULES

000. LEGAL AUTHORITY (Rule 0).

The director of the Department of Water Resources adopts these rules under the authority provided by Section 42-1805(8), Idaho Code. (7-1-93)

001. TITLE AND SCOPE (Rule 1).

The 1986 Idaho Legislature amended Sections 42-217 and 42-221, Idaho Code to require a license examination fee be submitted together with the written proof of beneficial use or that a field examination report prepared by a certified water right examiner be submitted together with the written proof of beneficial use. The amended statutes also provided that field examinations could be conducted by certified water right examiners appointed by the director. (7-1-93)

01. Examination Requirements. The examination requirements listed are intended as a guide to establish acceptable standards to determine the extent of application of water to beneficial use. The requirements are not intended to restrict the application of other sound examination principles by water right examiners. The director will evaluate any deviation from the standards hereinafter stated as they pertain to the review of any given examination. Water right examiners are encouraged to submit new ideas which will advance the art and provide for the public benefit. (7-1-93)

02. Rules. These rules shall not be construed to deprive or limit the director of the Department of Water Resources of any exercise of powers, duties and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the director from any owner of a water right permit or authorized representative for the proper administration of the law. (7-1-93)

002. -- 003. (RESERVED).

004. APPLICABILITY (Rule 4).

01. Proof of Beneficial Use. These rules apply to all permits for which proof of beneficial use is not yet due and has not been submitted to the department except as exempted in Rule Subsection 004.04. (7-1-93)

02. Examination. These rules apply to all permits for which an examination has not been conducted except as exempted in Rule Subsection 004.04. (7-1-93)

03. Re-Examination. These rules apply to all permits which have been examined but the license has not been issued due to a request for a re-examination by the permit holder except as exempted in Rule Subsection 004.04. (7-1-93)

04. Examination Fee. The examination fee requirements of these rules do not apply to a permit for single family domestic use, stockwatering, or other small uses for which the use does not exceed four one-hundredths (0.04) cfs or four (4) AF/year. The examination fee is required for multiple use permits which exceed four one-hundredths (0.04) cfs or four (4) AF/year even though single family domestic use or stockwater use is included as one of the uses on the permit. (7-1-93)

005. -- 009. (RESERVED).

010. DEFINITIONS (Rule 10).

Unless the context otherwise requires, the following definitions govern these rules. (7-1-93)

01. Acre-foot (AF). A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to forty three thousand, five hundred sixty (43,560) cubic feet. (7-1-93)

02. Acre-Foot/Annum. An annual volume of water that may be diverted under a given use or right. (7-1-93)

03. Amendment. A change in point of diversion, place, period or nature of use or other substantial change in the method of diversion or use of a permitted water right. (7-1-93)
04. Capacity Measurement. The maximum volume of water impounded in the case of reservoirs or the maximum rate of diversion from the source as determined by actual measurement of the system during normal operation. (7-1-93)
05. Certified Water Right Examiner. An employee of the Department, or a representative of the permit holder who is a professional engineer or professional geologist, qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the Director, and who has been appointed by the Director, Idaho Department of Water Resources as a certified water right examiner. A certified water right examiner is commonly termed a field examiner, water right examiner or examiner. (7-1-93)
06. Conveyance Works. The ditches, pipes, conduits or other means by which water is carried or moved from the point of diversion to the place of use. Storage works, if any, such as a dam can be considered part of the conveyance works. (7-1-93)
07. Cubic Foot Per Second (cfs). A rate of flow approximately equal to four hundred forty-eight and eight tenths (448.8) gallons per minute and also equals fifty (50) miner's inches. (7-1-93)
08. Department. The Idaho Department of Water Resources. (7-1-93)
09. Director. The director of the Idaho Department of Water Resources. (7-1-93)
10. Duty of Water. The quantity of water necessary when economically conducted and applied to land without unnecessary loss as will result in the successful growing of crops. (7-1-93)
11. Examination or Field Examination. An on-site visit to determine the extent of application of water to beneficial use and to determine compliance with terms and conditions of the water right permit. (7-1-93)
12. Expansion. The diversion and/or use of more water than originally allowed by the permit including application of water to a larger tract of land than originally permitted. (7-1-93)
13. Field Report. The form provided by the Department upon which the examiner records the data gathered and describes the extent of diversion of water and application to beneficial use. The report is fully termed beneficial use field report and is also termed a field examination report. (7-1-93)
14. Headworks or Diversion Works. The constructed barriers or devices on the source of water (surface water or ground water) by which water can be diverted from its natural course of flow and/or measured. (7-1-93)
15. License. The certificate issued by the director in accordance with Section 42-219, Idaho Code confirming the extent of diversion and beneficial use of the water that has been made in conformance with the permit conditions. (7-1-93)
16. License Examination Fee. The fee required in Section 42-221K, Idaho Code, and is also termed an examination fee. (7-1-93)
17. Legal Subdivision. A tract of land described by the government land survey and usually is described by government lot or quarter-quarter, section, township and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the government lot, quarter-quarter, section, township and range description. (7-1-93)
18. Measuring Device. A generally accepted structure or apparatus used to determine a rate of flow or volume of water. Examples are weirs, meters, and flumes. Less typical devices may be accepted by the Director on a case-by-case basis. (7-1-93)

19. Nature of Use. The characteristic use for which water is or is sought to be applied. Examples are domestic, irrigation, mining, industrial, fish propagation, power generation, municipal, etc. (7-1-93)
20. Period of Use. The time period during which water under a given right can be beneficially used. (7-1-93)
21. Permit Holder or Owner. The person, association, or corporation to whom a permit has been issued or assigned as shown by the records of the Department. (7-1-93)
22. Permit or Water Right Permit. The water right document issued by the director authorizing the diversion and use of unappropriated public water of the state or water held in trust by the state. (7-1-93)
23. Place of Use (p.u.). The location where the beneficial use is made of the diverted water. (7-1-93)
24. Point of Diversion (p.d.). The location on the public source of water from which water is diverted. Examples are pump intake, headgate, well locations, and dam locations. (7-1-93)
25. Project Works. A general term which includes diversion works, conveyance works, and any devices which may be used to measure the water or to apply the water to the intended use. Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works. (7-1-93)
26. Proof of Beneficial Use. The submittal required in Section 42-217, Idaho Code. This submittal is commonly termed proof. (7-1-93)
27. Source. The name of the water body at the point of diversion. Examples are Snake River, Smith Creek, ground water, spring, etc. (7-1-93)

011. -- 024. (RESERVED).

025. AUTHORITY OF REPRESENTATIVE (Rule 25).

01. Proof. When the proof of beneficial use, field report, and drawings are filed by the water right examiner on behalf of an owner, written evidence of authority to represent the owner shall be filed in the form of an affidavit with the proof, field report and drawings. (7-1-93)
02. Responsibility. It is the responsibility of the permit holder or authorized representative to submit proof of beneficial use and provide for the timely submission of a completed field report by the due date in acceptable form to the director by either paying the required examination fee to the department or by employing a certified water right examiner. (7-1-93)

026. -- 029. (RESERVED).

030. QUALIFICATION, EXAMINATION AND APPOINTMENT OF CERTIFIED WATER RIGHT EXAMINER (Rule 30).

01. Consideration. Any professional engineer or geologist qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the director shall be considered for appointment as a water right examiner upon application to the director. The application shall be in the form prescribed by the director and shall be accompanied by a non-refundable fee in the amount provided by statute. (7-1-93)
02. Information. The director may require an applicant for appointment to the position of water right examiner to provide detailed information of past experience, provide references, and to satisfactorily complete a written or oral examination. (7-1-93)
03. Denial. If the director determines an applicant is not qualified, the application will be denied and

returned to the applicant. If the director determines an applicant is qualified, a certificate of appointment will be issued. (7-1-93)

04. Expiration. Every water right examiner certificate of appointment shall expire March 31 of each year unless renewed by application in the manner prescribed by the director. A non-refundable fee in the amount provided by statute shall accompany an application for renewal. (7-1-93)

05. Refusal or Revocation. An appointment or renewal may be refused or revoked by the director at any time upon a showing of reasonable cause. A party aggrieved by an action of the director may request an administrative hearing pursuant to Section 42-1701A(3), Idaho Code. (7-1-93)

06. Reconsideration. An application for appointment or renewal which has been refused or revoked by the director may not be reconsidered for six (6) months. (7-1-93)

07. Liability. The state of Idaho shall not be liable for the compensation of any water right examiner other than department employees. The permit holder shall be responsible for costs associated with proof submittal including examination and field report preparation. (7-1-93)

08. Examinations. Department employees who have the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the director, may be appointed as water right examiners for the purpose of completing water right examinations during the course and scope of their employment with the department. Upon termination of employment with the department, such examiners, unless reappointed as a non-department certified examiner under provisions of these rules, are not authorized to conduct field examinations. The fee provisions of these rules are waived for appointments of department employees. (7-1-93)

09. Ingress or Egress Authority. Appointment as a water right examiner does not grant ingress or egress authority to non-department examiners and does not convey authority unless explicitly prescribed in these rules. (7-1-93)

10. Reports. The director will not accept a field examination report prepared by a certified water right examiner who has any past or present interest, direct or indirect, in either the water right permit, the land or any enterprise benefiting, or likely to benefit, from the water right. Among those that the director will presume to have an actual or potential conflict of interest and from whom he will not accept a field examination report are the following: (7-1-93)

a. The person or persons owning the water right permit or the land or enterprise benefiting from the water right permit, members of their families (spouse, parents, grandparents, lineal descendants including those that are adopted, lineal descendants of parents; and spouse of lineal descendants), and their employees. (7-1-93)

b. The person or persons, who sold or installed the diversion works or distribution system. (7-1-93)

11. Money Received. All moneys received by the department under the provisions of these rules shall be deposited in the water administration fund created under Section 42-238a, Idaho Code. (7-1-93)

031. -- 034. (RESERVED).

035. EXAMINATION FOR BENEFICIAL USE (Rule 35).

01. Field Report. (7-1-93)

a. All items of the field report must be completed and must provide sufficient information for the director to determine the extent of the water right developed in order for the report to be acceptable to the director. (7-1-93)

b. Permitted uses partially developed by the permit holder shall be described. Permitted uses which were not developed by the permit holder shall be noted. Uses determined to exist which are not authorized by the permit being examined shall also be noted. (7-1-93)

- c. A concise description of the diversion works and a general description of the distribution works shall be given. This description must trace the water from the point of diversion to and including the place of use and the return to a public water source, if any. The make, capacity, serial number and model number of all pumps, boosters or measuring devices associated with the point of diversion at the source of the water supply shall be described on the field report. (7-1-93)
- d. Any interconnection of the water use being examined with other water rights or with other conveyance systems shall be described on the field report. Any reservoir, diversion dam, headgate, well, canal, flume, pump and other related structure shall be included. This description shall be in the form of a concise word picture of the storage of water, if stored, its release, redirection and conveyance to the place of use. A schematic diagram of the project works shall also be provided in the field report. (7-1-93)
- e. If water is returned to a public water source after use, a legal description of the point where the water is returned and source to which discharge is made shall be provided. Examples of uses which generally have an effluent discharge include fish propagation and power facilities. (7-1-93)
- f. The method of compliance with each condition of approval of a permit shall be shown on the field report by the examiner. (7-1-93)
- g. If the water is used for irrigation, the boundaries of the various irrigated areas and the location of the project works providing water to each shall be platted on the proof maps and the full or partial acreage in each legal subdivision of forty (40) acres or government lot shall be shown. (7-1-93)
- h. Irrigated acreage shall be shown on the field report to the nearest whole acre in a legal subdivision except the acreage shall be shown to the nearest one-tenth (0.10) acre for permits covering land of five (5) acres or less. (7-1-93)
- i. Where a permit has been developed as separate distribution systems from more than one point of diversion, the separate areas irrigated from each point of diversion shall be shown on the proof maps as described herein before and the legal subdivisions embracing the irrigated areas for each such respective point of diversion together with the total irrigated area shall be described. (7-1-93)
- j. The field examiner does not need to show total volume of water for municipal and fire protection uses on the field report unless the project works provide for storage of water. (7-1-93)
- k. The total number of holding/rearing ponds and the dimensions and volume of the ponds shall be shown on the field report for fish rearing or fish propagation use. The annual volume shall be calculated based on the changes of water per hour. (7-1-93)
- l. Information shall be submitted concerning the beneficial use that has been made of the water unless the purpose of use is for irrigation. For example, for stockwater use, the number and type of stock watered shall be provided. Similar indications of the extent of beneficial use shall be provided for all other non-irrigation uses. (7-1-93)
- m. Information on the period during each year that the water is used shall be described for each use. (7-1-93)
- n. For permits having more than one use, the diversion rate measured for each use shall be described. (7-1-93)
- o. The amount (rate and/or volume) of water shall be limited by the smaller of the permitted amount, the amount upon which the license examination fee is paid, the capacity of the diversion works or the amount beneficially used, including any statutory limitation of the duty of water. (7-1-93)
- p. Suggested amendments shall be noted on the field report when the place of use, point of diversion, period or nature of use is different from the approved permit or from previously approved amendments. (7-1-93)

q. An aerial photo must accompany field reports involving ten (10) or more irrigated acres unless waived by the director. If existing photos are not available, the director will accept a USGS Quadrangle map at the largest scale available. (7-1-93)

02. Field Report Acceptability. (7-1-93)

a. All field reports shall be prepared by or under the supervision of certified water right examiners. The report must be properly endorsed with an engineer or geologist seal and signature. Field reports received from certified water right examiners will be accepted if the report includes all the information required to complete the report and provides the information required by Rule Subsection 035.01. (7-1-93)

b. Field reports not completed as required by these rules will be returned to the certified water right examiner for completion. If the date for submitting proof of beneficial use has passed, the penalty provisions of Rule 055 shall apply. (7-1-93)

c. If the director determines that a field report is acceptable but that additional information is needed to clarify the field report, he will notify the certified water right examiner in writing of the information required. If the additional information is not submitted within thirty (30) days or within the time specified in the written notice, the priority date of the permit will be advanced one day for each day the information submittal is late. Failure to submit the required information within one year of the date of the department's request is cause for the director to take action to cancel the permit. (7-1-93)

d. Field reports which indicate that a measuring device, required as a condition of approval of the permit, has not been installed, are not acceptable and will be returned to the examiner unless the measuring device requirement has been formally waived by the director. (7-1-93)

03. General. (7-1-93)

a. For irrigation purposes, the duty of water shall not exceed five (5) acre feet of stored water for each acre of land to be irrigated or more than one (1) cubic foot per second for each fifty (50) acres of land to be irrigated unless it can be shown to the satisfaction of the director that a greater amount is necessary. (7-1-93)

b. For irrigated acreage of five (5) acres or less, a rate of diversion not in excess of three one-hundredths (0.03) cfs per acre may be allowed on the license to be issued by the director. (7-1-93)

c. Conveyance losses of water from the point of diversion to the place of use which are determined by actual measurement may be allowed by the director if the loss is determined by the director to be reasonable. (7-1-93)

d. The duty of water described in Rule 035.03.a. may be exceeded if the department has authorized a greater diversion rate when the permit was issued and good cause acceptable to the director has been demonstrated. (7-1-93)

e. For irrigation systems which cover more than twenty-five thousand (25,000) acres, the field report does not need to describe the irrigated land by legal subdivision, but may be described generally as the lands under the project works if the total irrigated acres has been accurately determined and is shown on the field report. The amount of water beneficially used under such projects must be shown on the field report. (7-1-93)

04. Requests. Requests to the department for computerized data, copies, or other information involving research of department records must be accompanied by a fee as required in Section 42-221, Idaho Code. (7-1-93)

036. -- 039. (RESERVED).

040. WATER MEASUREMENT (Rule 40).

01. Measurement Terminology. (7-1-93)

a. Rate of flow measurements shall be shown in units of cubic feet per second (cfs) with three (3) significant figures and no more precision than hundredths. (7-1-93)

b. Volume measurements shall be shown in units of acre-feet (AF) with three (3) significant figures, and no more precision than tenths. (7-1-93)

02. Rate of Diversion. The rate of diversion measurement shall be conducted as close as reasonably possible to the source of supply and shall be measured with the project works fully in place operating at normal capacity. For example, if a sprinkler system is used for irrigation purposes, discharge from the pump must be measured with the sprinkler system connected. (7-1-93)

03. Measurements. Water measurements may be made by vessel, weir, meter, rated flume, reservoir capacity table or other accepted standard method of measurement. The field report shall describe the method used in making the measurement, the date when made, the name of the person making the measurement, the legal description of the location where the measurement was taken and shall include sufficient information, including current meter notes, rating tables, and/or calibration information to enable the director to check the quantity of water measured in each case. (7-1-93)

04. Unacceptable Measurements. Theoretical diversion rates or theoretical carrying capacities are not acceptable as a measure of the rate of diversion except for some diversion systems where an exception is granted by the director. Systems for which a measuring device, access port, or certified water measurement is not a permit requirement, are considered exempt from this rule. (7-1-93)

05. Method. Rate of flow measurements shall be determined using equipment and methods capable of obtaining an accuracy of plus or minus ten percent (10%). (7-1-93)

041. -- 044. (RESERVED).

045. DRAWINGS, MAP, AND SCHEMATIC DIAGRAM (Rule 45).

01. Submission. The following provisions shall apply to the submittal of drawings, maps, photos and the schematic diagrams. (7-1-93)

a. Drawings, maps, photos and schematic diagrams used as an attachment to the field report shall be on eight and one-half by eleven (8 1/2 x 11) inch paper whenever possible. A margin of two (2) inches at the top and one-half (1/2) inch on the other three (3) sides should be provided. (7-1-93)

b. Attachment sheets shall depict information on one (1) side only. (7-1-93)

c. The map depicting the point of diversion and place of use shall be of a reasonable scale but not less than two (2) inches equals one (1) mile. The map shall show the location of the point(s) of diversion to the nearest forty (40) acre tract or to a ten (10) acre tract for springs. The location of ditches, canals, mainlines, distribution systems and the place of use by forty (40) acre tract must be shown. (7-1-93)

d. Drawings need to generally depict the size and type of diversion works, measuring device, conveyance system, water application method, and the location of any measurements taken. (7-1-93)

e. Photographs of the diversion works, the typical distribution works and other prominent features of the system shall be provided with the field report. (7-1-93)

046. -- 049. (RESERVED).

050. LICENSE EXAMINATION FEE (Rule 50).

01. Examinations Conducted by Department Certified Water Right Examiners. (7-1-93)

a. The examination fee shall be payable to the Department of Water Resources unless the field examination is conducted by a non-department water right examiner. (7-1-93)

b. The department will not conduct an examination for which the fee has not been paid to the department unless exempted in Rule Subsection 004.04. (7-1-93)

c. A license shall not be issued for an amount of water in excess of the amount covered by the examination fee. Subsequent to the examination and prior to a license being issued, the director will notify the permit holder that the licensed amount will be limited because an insufficient examination fee was paid. The permit holder will be allowed thirty (30) days after the notice is mailed to pay the additional examination fee, along with a late payment penalty of twenty-five dollars (\$25) or twenty percent (20%) of the amount of the additional required fee whichever is more. If payment is received within the thirty (30) day period, the rate or volume licensed shall not be reduced by reason of the examination fee. If payment is not received within the thirty (30) day period, the rate or volume licensed shall be limited by the original examination fee paid. For the purpose of determining advancement of priority for late fee as provided in Section 42-217, Idaho Code, fees shall not be considered as having been paid until paid in full, including any subsequent fee. (7-1-93)

d. Excess examination fees are non-refundable. (7-1-93)

e. An examination fee equal to the initial examination fee paid to the department shall be paid for a re-examination made at the request for the permit holder except upon a showing of error by the department on the initial examination. (7-1-93)

02. Examinations Conducted by Non-Department Certified Water Right Examiners. (7-1-93)

a. The examination fee required by Section 42-217, Idaho Code is not applicable for examination conducted by or under the supervision of non-department certified water right examiners. (7-1-93)

b. A permit holder may change from one (1) non-department certified water right examiner to another but may not choose to have the examination conducted by the department after selecting a non-department examiner. (7-1-93)

051. -- 054. (RESERVED).

055. PENALTY (Rule 55).

01. Permits for Which Proof Has Been Submitted Prior to the Effective Date of These Rules. The submittal required is the examination fee or a statement. (7-1-93)

a. Failure to submit within sixty (60) days of notification by the director, either the license examination fee or a statement verifying that a non-department certified water right examiner has been retained to conduct the examination is cause to advance the priority of the permit one (1) day for each day the submittal is late. The submittal is late beginning on the sixty-first (61st) day after notification by the director that submittal is due. (7-1-93)

b. Failure to submit either the license examination fee or an acceptable field examination report prepared by or under the supervision of a certified water examiner within one (1) year of the sixty-first (61st) day after notification by the director that the submittal is due is cause for the director to reject the proof of beneficial use and lapse the permit. (7-1-93)

02. Permits for Which Proof Has Not Been Submitted. The submittal required is the proof and the examination fee or the proof and a completed field report. (7-1-93)

a. Failure to submit either the license examination fee or an acceptable field examination report prepared by or under the supervision of a certified water right examiner by the proof due date is cause to lapse the permit pursuant to Section 42-218a, Idaho Code, unless an extension of time pursuant to Section 42-204, Idaho Code, extending the proof of beneficial use due date has been approved. (7-1-93)

056. -- 999. (RESERVED).