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IDAPA 37
TITLE 02
CHAPTER 01

37.02.01 - COMPREHENSIVE STATE WATER PLAN RULES

000. LEGAL AUTHORITY (RULE 0).
The Board promulgates these rules pursuant to authority provided by Sections 42-1734D and 67-5203, Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

01. Title. The 1988 Idaho Legislature passed House Bill 780, 1988 Session Laws, ch. 370, p. 1090, amending Chapter 17, Title 42, Idaho Code, effective July 1, 1988, to provide for the development of a comprehensive state water plan which may include protected rivers designated either as natural or recreational rivers. The legislative purpose states that selected rivers possessing outstanding fish and wildlife, recreational, aesthetic, historic, cultural, natural or geologic values should be protected for the public benefit and enjoyment. The legislation provides that a waterway may be designated as an interim protected river prior to the preparation of a comprehensive plan for the waterway. (7-1-93)

02. Scope. The purpose of these rules is to establish the procedures used by the Idaho Water Resource Board for designating a waterway as an interim protected river, adopting a comprehensive plan for a waterway, and providing adequate notice of any petitions filed or actions contemplated pursuant to the State Comprehensive Water Plan Act, 1988 Sess. Laws, ch. 370, p. 1090, codified as Sections 42-1730--1731 and 42-1734A--1734I, Idaho Code. (7-1-93)

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

01. Alteration. Any activity using mechanized equipment that moves or overturns gravel or earth. (7-1-93)

02. Board. The Idaho Water Resource Board. (7-1-93)

03. Comprehensive State Water Plan. The plan adopted by the Board pursuant to Section 42-1734A, Idaho Code, or a component of such plan developed for a particular water resource, waterway or waterways and approved by the Legislature. (7-1-93)

04. Director. The director of the Idaho Department of Water Resources. (7-1-93)

05. Dredge or Placer Mining. Any dredge or other placer mining operation to recover minerals with the use of a dredge boat or sluice washing plant whether fed by bucket line as a part of such dredge or by a separate dragline or any other method including, but not limited to, suction dredges which are capable of moving more than two (2) cubic yards per hour of earth material. (7-1-93)

06. Hydropower Project. Any development which uses a flow of water as a source of electrical or mechanical power, or which regulates the flow of water for the purpose of generating electrical or mechanical power. A hydropower project development includes all powerhouses, dams, water conduits, transmission lines, water impoundments, roads, and other appurtenant works and structures. (7-1-93)

07. Interim Protected River. A waterway designated pursuant to Section 42-1734D or 42-1734H, Idaho Code, as protected for up to two (2) years while a component of the comprehensive state water plan is prepared for that waterway. (7-1-93)

08. Natural River. A waterway which possesses outstanding fish and wildlife, recreation, geologic or aesthetic values, which is free of substantial existing man-made impoundments, dams or other structures, and of which the riparian areas are largely undeveloped, although accessible in places by trails and roads. (7-1-93)

09. **Publicize**. To notify the public through press releases to the media, published notice in local, regional or statewide publications, and other procedures, as may be appropriate to inform and notify the local and general public of an impending action or decision. (7-1-93)

10. **Protected River**. A waterway protected in the comprehensive state water plan by designation as either a natural river or a recreational river. (7-1-93)

11. **Recreational River**. A waterway which possesses outstanding fish and wildlife, recreation, geologic or aesthetic values, and which might include some man-made development within the waterway or within the riparian area of the waterway. (7-1-93)

12. **Riparian Area**. That area within one hundred (100) feet of the mean highwater mark of a waterway. (7-1-93)

13. **State Agency**. Any board, commission, department or executive agency of the state of Idaho. (7-1-93)

14. **Stream Bed**. A natural water course of perceptible extent with definite bed and banks, which confines and conducts the water of a waterway which lies below and between the ordinary high water mark on either side of that waterway. (7-1-93)

15. **Waterway**. A river, stream, creek, lake or spring, or a portion thereof, and shall not include any tributary thereof. (7-1-93)

011. -- 014. **(RESERVED)**

015. **INTERIM PROTECTED RIVERS (RULE 15).**

01. **Legislative Directive**. Pursuant to the legislative directive of Section 42-1734H, Idaho Code, the Board by resolution at a regularly scheduled meeting on July 1, 1988, designated the following waterways as interim protected rivers: (7-1-93)

a. Priest River, from the Canadian Border to the confluence of Priest Lake; (7-1-93)

b. South Fork of the Boise River, from Anderson Ranch Dam to Neal Bridge; (7-1-93)

c. Snake River, from Section 5, Township 11 South, Range 20 East, B.M. to King Hill; (7-1-93)

d. The following waterways within the Payette River Basin: (7-1-93)

i. North Fork of the Payette River, from Cabarton Bridge to Banks; (7-1-93)

ii. South Fork of the Payette River, from the Sawtooth Wilderness Boundary to Banks; (7-1-93)

iii. Main Payette River, from Banks to Black Canyon Dam; and (7-1-93)

e. Henry's Fork of the Snake River from its point of origin at Henry's Lake to the point of its confluence with the backwaters of Ashton Reservoir. (7-1-93)

02. **Designation**. Prior to the adoption of a comprehensive plan for a waterway the board may designate a waterway as an interim protected river. (7-1-93)

03. **Board Initiative**. The board may consider a waterway for designation as an interim protected river upon its own initiative. (7-1-93)

04. **Petitions**. The board will accept petitions requesting the board to designate a waterway as an interim protected river only from a state agency. The acceptability of a petition requiring clarification or corrections

shall be determined by the director. (7-1-93)

05. **Form**. Petitions shall be in writing, signed by the agency head, and shall describe the waterway, or portion thereof, requested to be designated as an interim protected river. (7-1-93)

06. **Filing**. Petitions shall be filed with the director. No petition shall be considered by the board at a board meeting unless filed with the director at least thirty (30) days prior to such board meeting. (7-1-93)

07. **Notice of Consideration**. The petitioning agency will be notified at least ten (10) days prior to the meeting of the time, place, and agenda for the board meeting at which the petition will first be considered. (7-1-93)

08. **Board Agenda**. The board agenda will include time for representatives of the petitioning agency to describe the affected waterway and the agency's reasons for seeking interim protection for that waterway. (7-1-93)

09. **Public Notice**. The board shall publicize the proposed interim designation of the waterway. (7-1-93)

10. **Public Input**. The board shall hold either a public information meeting or a hearing, as the board deems appropriate, to obtain public input on the merits of a proposed interim protected river designation. The board shall not be limited to one (1) meeting or hearing, and may elect to hold more than one (1) of each, or any combination thereof, as the board deems appropriate. (7-1-93)

11. **Board Determination**. At a board meeting not more than six (6) months after a petition for interim protected river designation has been filed with the director, the board shall determine whether the nominated waterway merits designation as an interim protected river. The results of the board decision, including identification of any prohibited activities under Rule 25, shall be publicized. (7-1-93)

a. Basis of Determination. Designation of a waterway as an interim protected river shall be based upon a determination by the board that: (7-1-93)

i. It is probable that the waterway would be designated a protected river in the comprehensive state water plan; and (7-1-93)

ii. Interim protected river status is necessary to protect the values that would support such waterway's designation as a protected river in a comprehensive state water plan. (7-1-93)

b. Staff and Funding Considerations. Since the designation of a waterway as an interim protected river is limited to a term of two (2) years, unless extended by law, the board shall consider in its determination process the availability of staff and funding to complete a comprehensive plan for the designated waterway during the two (2) years following designation. (7-1-93)

c. Repeat Filing of Denied Petitions. If the board determines not to afford interim protection to a nominated waterway, the board shall not subsequently entertain petitions seeking interim designation for that same waterway for a period of one (1) year from the date of board action. (7-1-93)

d. Lack of Review. There shall be no review of any board decision rejecting or accepting a nomination for an interim protected waterway. (7-1-93)

12. **Relation to Comprehensive Water Plan**. If a waterway is designated as an interim protected river, then the board shall, pursuant to Subsection 6 of Section 42-1734D, Idaho Code, proceed to prepare a comprehensive state water plan for the waterway. The board shall in preparing the state comprehensive water plan for the waterway consider, after review of all relevant factors contained in Section 42-1734A, Idaho Code, whether the designation should continue or whether modification of the designation is warranted. (7-1-93)

13. **Duration of Interim Protected Status**. The designation of a waterway as an interim protected river shall remain in effect, pursuant to Subsection 4 of Section 42-1734D, Idaho Code, until the earliest of: (7-1-93)

a. The adoption of a comprehensive state water plan for the waterway designated as an interim protected river; (7-1-93)

b. Two (2) years following the designation of an interim protected river unless extended by law. (7-1-93)

c. The revocation of a waterway's interim protected river status by law. (7-1-93)

14. Subsequent Designations. If the designation of a waterway as an interim protected river is either revoked by law, or terminated as provided in Section 42-1734D, Idaho Code, then the waterway shall not be eligible for designation as an interim protected river for a period of two (2) years following the revocation or termination of its interim protected river status. (7-1-93)

016. -- 024. (RESERVED)

025. PROHIBITED ACTIVITIES ON INTERIM PROTECTED RIVERS (RULE 25).

01. Board Identification. Upon designating a waterway for interim protected river status, the board shall indicate which of the following activities listed in Subsection 5 of Section 42-1734A, Idaho Code, shall be prohibited: (7-1-93)

a. Construction or expansion of dams or impoundments; (7-1-93)

b. Construction of hydropower projects; (7-1-93)

c. Construction of water diversion works; (7-1-93)

d. Dredge or placer mining; (7-1-93)

e. Alterations of the stream bed; and (7-1-93)

f. Mineral or sand and gravel extraction within the stream bed. (7-1-93)

02. Petitions to Exempt Specific Action or Projects. Any person who is the owner, operator, or authorized official of an organization proposing to undertake or construct a prohibited activity or project may petition the board seeking a determination that the particular proposed action or project will not significantly impair the values supporting a waterway's designation as an interim protected river. (7-1-93)

a. Form. Petitions shall be in writing, signed by the owner, operator, or designated official of the petitioner, and shall describe the proposed action or project and its location. (7-1-93)

b. Filing. Petitions shall be filed with the director. No petition shall be considered by the board at a board meeting unless filed with the director at least thirty (30) days prior to such board meeting. (7-1-93)

03. Notice of Consideration. Petitioning parties will be notified at least ten (10) days prior to the meeting of the time, place, and agenda for the board meeting at which their petition will first be considered. (7-1-93)

04. Board Agenda. The board agenda will include time for the petitioner or his representative to describe the affected waterway or stream reach and to explain how the particular proposed action or project would not significantly impair the values supporting a waterway's designation as an interim protected river. (7-1-93)

05. Public Notice. The board shall publicize the fact that the board is considering exempting the particular proposed action or project from one or more of the activities prohibited by the designation of the waterway as an interim protected river. (7-1-93)

06. Public Input. The board shall hold a public hearing, and may hold one (1) or more information meetings in the affected area if the board deems this to be appropriate, to obtain public input on the merits of a

proposed exemption. The public hearing may be scheduled in conjunction with the board meeting provided for in Rule Subsection 025.07. (7-1-93)

07. Board Determination. At a board meeting not more than four (4) months after a petition for exemption from the prohibitions of interim protected river status has been received by the director, the board shall determine whether the proposed action or project would impair those values being protected by interim designation. In unusual circumstances, the board may extend the four (4) month period allowed for board action. (7-1-93)

a. Basis of Determination. In determining whether a particular proposed action or project will significantly impair the values supporting a waterway's designation as an interim protected river, the board may consider any relevant information including environmental impact statements, technical studies and any other relevant comments or recommendations prepared for use before other state or federal agencies. The burden shall be on the petitioner to show that the proposed action will not impair those values supporting a waterway's designation as an interim protected river. (7-1-93)

b. Approved Exemptions -- Conditions. If the board determines the proposed action or project will not significantly impair the values supporting the waterway's designation as an interim protected river, then the proposed action or project shall be allowed to proceed, except that the board, after consultation with relevant state agencies, may impose appropriate conditions on such action or project, and shall advise any affected regulatory agency of such conditions. (7-1-93)

c. Emergency Waiver. The board delegates to the director the authority to determine if immediate action is required because of a potential for loss of life, damage to structures, or damage to public utilities or thoroughfares. In such cases alterations of a stream bed shall be allowed even though otherwise prohibited by board action. Such alterations shall meet all other applicable state law. (7-1-93)

08. Judicial Review. Pursuant to Subsection 5 of Section 42-1734D, Idaho Code, an aggrieved party may seek judicial review of the board's decision in accordance with Sections 67-5215 and 67-5216, Idaho Code. (7-1-93)

026. -- 029. (RESERVED)

030. COMPREHENSIVE STATE WATER PLAN (RULE 30).

01. Planning Authority. Pursuant to the provisions of Sections 42-1734A and 42-1734B, Idaho Code, the board shall, subject to legislative approval, progressively formulate, adopt and implement a comprehensive state water plan for conservation, development, management and optimum use of all unappropriated water resources and waterways of the state in the public interest. As part of the comprehensive state water plan, the board may designate selected waterways as protected rivers. The comprehensive state water plan shall contain a description of existing and planned uses, and the impact of such uses at the local, state, and regional level for those resources and uses identified in Subsection 3 of Section 42-1734A, Idaho Code. The plan shall quantify, insofar as possible, the unappropriated waters of the planning area, and shall plan the allocation of such waters among the various competing uses. (7-1-93)

a. Coordination. The comprehensive state water plan shall be based upon studies and public hearings in affected areas. In addition, the board shall encourage the cooperation, participation and assistance of the state departments of Lands, Parks and Recreation, Fish and Game, Health and Welfare, and Transportation, as well as federal agencies, local units of government, and affected Indian tribes. (7-1-93)

b. Local Advisory Group. The board shall seek the involvement of volunteers from the geographic area to be affected by a portion of the comprehensive water plan. These volunteers shall constitute a local advisory group which shall inform the board of local concerns. (7-1-93)

02. Public Hearings. Prior to developing a comprehensive plan for any waterway, river basin, drainage area, river reach, ground water aquifer or other geographic area, the board shall hold at least one information meeting in the affected area at which all interested parties shall be given the opportunity to advise the board on the scope of the proposed planning effort. Prior to adopting a comprehensive plan for any area the board shall hold at least one (1) hearing in the affected area at which all interested parties shall be given the opportunity to appear or to present written

testimony in response to published proposals for adoption of a comprehensive plan. (7-1-93)

a. Public Notice. The board shall publicize both information meetings and hearings that impact on the development or adoption of a comprehensive plan for any area. (7-1-93)

b. Written Comments. A minimum of sixty (60) days shall be allowed by the board between the announcing of a proposal for the adoption of a comprehensive state water plan or any component thereof and the close of the comment period for such proposed action. (7-1-93)

03. Legislative Review. Upon adoption of a comprehensive state water plan or any component thereof, the board shall present such plan for review to the Idaho legislature at the next regular legislative session following adoption. (7-1-93)

031. -- 034. (RESERVED)

035. AMENDING THE COMPREHENSIVE STATE WATER PLAN (RULE 35).

01. Petitions. The board will accept written petitions seeking amendment of the comprehensive state water plan only from a state agency. (7-1-93)

02. Form. Petitions shall be in writing, signed by the agency head, and shall describe those portions of the comprehensive water plan to be amended and the reasons for the proposed amendments. (7-1-93)

03. Filing. Petitions shall be filed with the director. No petition shall be considered by the board at a board meeting unless filed with the director at least thirty (30) days prior to such board meeting. (7-1-93)

04. Notice of Consideration. The petitioning state agency will be notified at least ten (10) days prior to the meeting of the time, place, and agenda for the board meeting at which the agency's petition will first be considered. (7-1-93)

05. Board Agenda. The board agenda will include time for representatives of the petitioning agency to explain why amending the comprehensive state water plan is considered necessary. (7-1-93)

06. Board Determination. At a board meeting not more than six (6) months after a petition to amend the comprehensive state water plan has been filed with the director, the board shall either commence action to amend the comprehensive plan or set forth its reason for denying the request in writing. (7-1-93)

07. Amending Procedure. If the board chooses to amend the comprehensive state water plan, the board shall do so in the same manner as provided for adoption of the original plan. (7-1-93)

08. Amendment by Board Initiative. Nothing in these rules shall prevent the board from reviewing and reevaluating portions of the plan upon its own initiative, and amending the plan in the same manner as provided for adoption of the original plan. (3-15-02)

09. Requests to Amend. The board will entertain requests from individuals to amend a component of the comprehensive state water plan. (7-1-93)

10. Board Evaluation. The board shall determine whether to consider a proposed amendment based on those factors contained in Section 42-1734A(3), Idaho Code, and their charge to plan for the conservation, development, management and optimum use of all unappropriated water resources and waterways of the state in the public interest. (7-1-93)

11. Legislative Review. The board shall submit the comprehensive state water plan and any component thereof for a particular waterway, or any modification of the plan, to the legislature for review and possible amendment by law at the next regular legislative session following adoption by the board. (7-1-93)

036. -- 999. (RESERVED)

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