

Dear Senators VICK, Johnson, Stennett, and
Representatives GIBBS, Lickley, Rubel:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the Idaho Department of Water Resources:

IDAPA 37.00.00 - Notice of Omnibus Rulemaking - Proposed Rule (Docket No. 37-0000-2100).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative Services. The final date to call a meeting on the enclosed rules is no later than 11/15/2021. If a meeting is called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting on the enclosed rules is 12/13/2021.

The germane joint subcommittee may request a statement of economic impact with respect to a proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement, and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the memorandum attached below.



Terri Kondeff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee
FROM: Deputy Division Manager - Katharine Gerrity
DATE: October 28, 2021
SUBJECT: Idaho Department of Water Resources

IDAPA 37.00.00 - Notice of Omnibus Rulemaking - Proposed Rule (Docket No. 37-0000-2100)

Summary and Stated Reasons for the Rule

The Idaho Department of Water Resources submits notice of proposed rule at IDAPA 37.00.00 - Notice of Omnibus Rulemaking. According to the department, the rulemaking publishes these rule chapters previously submitted to and reviewed by the Legislature.

- 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; and
- 37.03.12, Idaho Department of Water Resources Water Distribution Rules – Water District 34.

Negotiated Rulemaking/Fiscal Impact

The department states that negotiated rulemaking was not conducted "because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare." The department states that the rule does not impose a fee or charge, or increase a fee or charge and that no fiscal impact is anticipated.

Statutory Authority

The rulemaking appears to be authorized pursuant to sections 42-603, 42-1734D, 42-1762, and 42-1805(8), Idaho Code.

Paul Headlee, Deputy Director Kristin Ford, Manager Keith Bybee, Manager April Renfro, Manager Glenn Harris, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

cc: Idaho Department of Water Resources
Megan Jenkins

***** 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.

**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES
AND IDAHO WATER RESOURCE BOARD**

DOCKET NO. 37-0000-2100

NOTICE OF OMNIBUS RULEMAKING – PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 42-603, 42-1734D, 42-1762, and 42-1805(8), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This proposed rulemaking publishes the following rule chapters previously submitted to and reviewed by the Idaho Legislature under IDAPA 37, rules of the Idaho Water Resource Board and Idaho Department of Water Resources:

IDAPA 37

- 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*; and
- 37.03.12, *Idaho Department of Water Resources Water Distribution Rules – Water District 34*.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2022 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the proposed rules attached hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Mathew Weaver, Deputy Director at (208) 287-4800.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

DATED this October 20, 2021.

Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800

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 42-1734A, Idaho Code. ()

001. SCOPE (RULE 1).

The purpose of these rules is to establish the procedures and notice used by the Idaho Water Resource Board for designating a waterway as an interim protected river. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

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

02. Board. The Idaho Water Resource Board. ()

03. Hydropower Project. Any development that uses a flow of water as a source of electrical or mechanical power, or that regulates the flow of water for the purpose of generating electrical or mechanical power, including powerhouses, dams, water conduits, transmission lines, water impoundments, roads, and other appurtenant works and structures. ()

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

05. Recreational River. A waterway that possesses outstanding fish and wildlife, recreation, geologic or aesthetic values, and might include some man-made development within the waterway or within the riparian area of the waterway. ()

06. Riparian Area. That area within one hundred (100) feet of the mean highwater mark of a waterway. ()

07. Stream Bed. A natural water course of perceptible extent with definite bed and banks that confines and conducts the water of a waterway that lies below and between the ordinary high water mark on either side of that waterway. ()

08. Waterway. A river, stream, creek, lake or spring, or a portion thereof, and does not include any tributary thereof. ()

011. -- 014. (RESERVED)

015. INTERIM PROTECTED RIVERS (RULE 15).

01. Board Initiative. The board may consider a waterway for designation as an interim protected river upon its own initiative. ()

02. 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. ()

03. 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. ()

04. Filing. No petition will be considered by the board at a board meeting unless it is filed at least thirty (30) days prior to such board meeting. ()

05. Board Agenda. The board agenda will include time for representatives of the petitioning agency to describe the agency's reasons for seeking interim protection for that waterway. ()

06. Board Determination. At a board meeting the board shall determine whether the nominated

waterway merits designation as an interim protected river. The determination shall be based on a finding that: ()

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

b. 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. ()

016. -- 024. (RESERVED)

025. PETITIONS TO EXEMPT SPECIFIC PROJECTS FROM INTERIM PROTECTED RIVERS (RULE 25).

01. Petitions to Exempt Specific Action or Projects. Petitions proposing exemption for a specific project from the interim protected river designation shall be in writing, signed by the owner, operator, or designated official of the petitioner, and describe the proposed action or project and its location. No petition will be considered by the board at a board meeting unless filed at least thirty (30) days prior to such board meeting. ()

02. Board Agenda. The board agenda will include time for the petitioner or his representative to describe how the proposed action or project would not significantly impair the values supporting a waterway's designation as an interim protected river. 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. ()

026. -- 999. (RESERVED)

37.02.04 – SHOSHONE-BANNOCK TRIBAL WATER SUPPLY BANK RULES

000. LEGAL AUTHORITY (RULE 0).

These rules have been adopted pursuant to Sections 42-1761 to 42-1765, Idaho Code, Idaho Water Resources Board Water Supply Bank Rule 40 and The 1990 Fort Hall Indian Water Rights Agreement (Agreement) to assure orderly operation of the Shoshone-Bannock Tribal Water Supply Bank. ()

001. TITLE AND SCOPE (RULE 1).

01. Purpose. The purpose of establishing this Shoshone-Bannock Water Supply Bank is to allow for rental for any beneficial use all or any part of the water accruing to the federal contract storage rights in the American Falls Reservoir and the Palisades Reservoir as described in Article 7.3.1 of the Agreement not used on Indian lands or otherwise required to fulfill the exchange established by Article 8 of the Michaud Contract. ()

02. Intent. These rules are not intended to prohibit the Tribes from renting the storage contract water from Palisades and American Fall Reservoirs for any beneficial use within the exterior boundaries of the Reservation. ()

03. Agreement. The Idaho Water Resources Board or its successors, pursuant to Section 7.3.6 of the Agreement, agrees not to take any action that will interfere with the nature, scope, spirit and purposes of the Shoshone-Bannock Water Supply Bank. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

In addition to the definitions set forth below, the definitions in “The 1990 Fort Hall Indian Water Rights Agreement” are incorporated to the extent they are applicable. ()

01. Acre Foot. The amount of water necessary to cover one (1) acre of land to a depth of one (1) foot and is equivalent to forty-three thousand five hundred sixty (43,560) cubic feet or three hundred twenty-five thousand eight hundred fifty-one (325,851) gallons of water. ()

02. Agreement. “The 1990 Fort Hall Indian Water Rights Agreement” as ratified by the Shoshone-Bannock Tribes in June, 1991, and as approved by the United States in Public Law 101-602, 104 Stat. 3061 on November 16, 1990, and by the state of Idaho in 1991 Idaho Session Laws Chapter 228 at 547. ()

03. Annual. The period starting on the day following the first Monday in March of each year and ending on the first Monday of March of the succeeding year. ()

04. Bank. The “Shoshone-Bannock Tribal Water Supply Bank.” ()

05. Beneficial Use. Any use of water for DCMI, irrigation, hydropower generation, recreation, stock watering, fish propagation and instream flow uses as well as any other uses that provide a benefit to the user of the water. ()

06. Bureau. The United States Department of Interior Bureau of Reclamation. ()

07. Chairperson. The person selected by the Tribal Rental Pool Committee to be the head of the Committee. ()

08. Committee. The Tribal Rental Pool Committee. ()

09. Council. The Fort Hall Business Council. ()

10. IDWR. The Idaho Department of Water Resources an executive agency of the state of Idaho created by Section 42-1701, Idaho Code, or any successor agency. ()

11. IWRB. The Idaho Water Resource Board an agency constituted in accordance with Idaho Const. art. XV, Section 7, or any successor agency. ()

12. Rent. A temporary legal conveyance by the Tribes of the right to use storage water pursuant to Section 42-1761, Idaho Code, for a fixed period of time during which ownership of the federal contract storage right is retained for the benefit of the Tribes. ()

13. **Rental Pool.** The Tribal stored water assigned to the Bank. ()
14. **Renter.** The person renting water from the rental pool. ()
15. **Reservation.** The Fort Hall Indian Reservation. ()
16. **Reservation Watermaster.** The Tribal Water Engineer or any successor designated by the Tribes to administer the Tribal water rights under the Tribal Water Code. ()
17. **Snake River Watermaster.** The watermaster of Water District 01 or any successor. ()
18. **Tribal Stored Water.** The storage water accruing to the federal contract storage space identified in Article 7.3.1 of the Agreement. ()
19. **Tribal Water Engineer.** The Tribal officer or any successor designated to administer the Tribal Water Code. ()
20. **Tribes.** The Shoshone-Bannock Tribes. ()
- 011. -- 024. (RESERVED)**
- 025. GENERAL (RULE 25).**
01. **Priority of Use.** Before stored water is assigned to the rental pool, Tribal stored water shall be maintained and made available for Tribal uses as determined by the Council and to meet the commitment of the Tribes under Article 8 of the Michaud Contract. The water is to be rented for beneficial use and may be rented outside the Reservation subject to the provisions of Rule 45 of these Water Supply Bank Rules. ()
02. **Bank Operation.** The operation of the Bank shall be consistent with the Agreement. The Bank shall be for the exclusive purpose of rental of Tribal stored water. ()
03. **Authority of Bank.** The Shoshone-Bannock Water Supply Bank is created pursuant to the provisions of the following Sections 42-1761, 42-1762, 42-1763, 42-1764, and 42-1765, Idaho Code. ()
04. **Incorporation of Articles.** These rules incorporate by reference the provisions set forth in Article 7.3.5, 7.3.10 and 7.3.11 of the Agreement. ()
05. **Consistency.** The operation of the Bank shall be consistent with provisions of the Tribes' spaceholder contracts with the United States. ()
06. **Storage Water.** Tribal stored water rented from the pool shall be deemed storage water of the renter. ()
07. **Evaporation Losses.** Evaporation losses associated with any Tribal stored water assigned to the Bank shall be charged to storage space from which the water is released. ()
- 026. -- 029. (RESERVED)**
- 030. MANAGEMENT (RULE 30).**
01. **Bank Operation.** The Bank shall be operated by the Tribal Rental Pool Committee in conformity with these rules and the Agreement. ()
02. **Committee Composition.** The Tribal Rental Pool Committee shall be composed of the following members: the Bureau Snake River Area Manager, the Snake River Watermaster, the Tribal Reservation Watermaster and three (3) individuals designated by the Council. The composition of this Committee shall only be changed as provided in the Agreement. ()

03. Chairperson Selection. The Committee shall select its own Chairperson from the Committee as determined by a majority vote of the Committee. Each term of the Chairperson of the Committee shall not exceed four (4) years; however, nothing precludes the same person from being re-elected as Chairperson by the members for more than one (1) term. ()

04. Committee Responsibilities. The Tribal Rental Pool Committee shall have the following responsibilities: ()

a. The Committee shall ensure that the Bank is operated in compliance with these rules and the Agreement and shall establish such other policies for the operation of the Bank as are consistent with these rules and the Agreement. ()

b. The Committee shall advise the Fort Hall Business Council on water banking activities upon request. ()

05. Chairperson Duties. The Chairperson shall be responsible for such duties as are delegated by the Committee. ()

031. -- 034. (RESERVED)

035. ASSIGNMENTS OF TRIBAL STORED WATER TO THE BANK (RULE 35).

01. Assignments of Stored Water. Assignments of Tribal stored water to the Bank should identify the reservoir from which the assignment is being made. If no reservoir is identified, the Tribal stored water shall be deemed to come first from the Palisades Reservoir and secondly from American Falls Reservoir. ()

02. Assignment Forms. Assignments of Tribal stored water to the Bank shall be in writing on forms provided by the Committee and shall bear the date received by the Chairperson. Copies of all assignments shall be provided to all the Committee members and a copy shall be provided to the Council. ()

03. Term of Assignment. Assignments of Tribal stored water may be made for any period of time. ()

04. Control of Assigned Water. All Tribal stored water assigned to the Bank by the Council shall be under the control of the Committee for the duration of the term of the assignment to be rented in accordance with these rules and the terms of the assignment. ()

05. Space Assignment. Whenever Tribal stored water is made available for rental, it shall be deemed that it is the intention of the Tribes to assign sufficient space to yield the amount of water designated. ()

06. Return of Unrented Water. Any Tribal stored water assigned to the rental pool that is not rented shall be returned to the credit of the Tribes. ()

036. -- 039. (RESERVED)

040. RENTAL OF WATER FROM THE RENTAL POOL (RULE 40).

01. Rental Priorities. Tribal stored water assigned to the Bank shall be made available for rental in accordance with the priorities established by the Committee, provided that the Fort Hall Indian Irrigation Project water users shall have a right of first refusal to rent any tribal stored water assigned to the rental pool. Notice shall be given in accordance with procedures established by agreement of the Tribes and the Fort Hall Indian Irrigation Project water users. ()

02. Rental Application. A request to rent water shall be in writing on a form provided by the Committee. A copy of the request shall be provided to each member of the Committee and forwarded to the Council. ()

- 03. Content of Agreements.** All rental agreements shall contain the following information: ()
- a.** Name and address of the renter, ()
 - b.** Amount of tribal stored water obligated, ()
 - c.** The beneficial use, ()
 - d.** The rental price, ()
 - e.** The legal description of the point of diversion and place of use, ()
 - f.** The duration of the rental agreement, ()
 - g.** The understanding of responsibilities and exposures if reservoir space does not fill at some time during the term of the rental agreement. ()
 - h.** The understanding that transportation losses occurring between the reservoir and the place of use shall be deducted from water delivered under the rental agreement. ()

041. -- 044. (RESERVED)

045. GEOGRAPHIC SCOPE OF RENTING (RULE 45).

- 01. Palisades Storage.** Tribal stored water from the Palisades Reservoir may be rented for use within the Snake River Basin above Milner Dam. ()
- 02. American Falls Storage.** Tribal stored water from the American Falls Reservoir may be rented for use within the Snake River Basin within the state of Idaho. ()

046. -- 049. (RESERVED)

050. RENTAL PAYMENTS (RULE 50).

- 01. Rental Price.** The price for rental Tribal stored water from the bank shall be set by the Council. ()
- 02. Management of Rental Income.** Rental payments shall be made directly to the Council. The Council shall be responsible for the management of the rental income. The Council shall give written notice to the Committee that payment was properly received and that water may be released under the rental agreement. If payments are made over time, and payment is not received by the Council, the Council shall promptly notify the Committee to hold back on release of the water until payment is properly received. ()

051. -- 054. (RESERVED)

055. TERM OF RENTALS (RULE 55).

The Committee may rent tribal stored water for a period of up to five (5) years. Any request to rent water for a period in excess of five (5) years shall be subject to negotiations between the Tribes and the IWRB. ()

056. -- 059. (RESERVED)

060. LIABILITY (RULE 60).

Nothing in these rules shall be construed as modifying or altering any provisions of the Agreement, including but not limited to Article 7.3.12. ()

061. -- 999. (RESERVED)

**37.03.11 – RULES FOR CONJUNCTIVE MANAGEMENT OF SURFACE
AND GROUND WATER RESOURCES**

000. LEGAL AUTHORITY (RULE 0).

These rules are promulgated pursuant to Chapter 52, Title 67, Idaho Code, the Idaho Administrative Procedure Act, and Section 42-603, Idaho Code, which provides that the Director of the Department of Water Resources is authorized to adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. These rules are also issued pursuant to Section 42-1805(8), Idaho Code, which provides the Director with authority to promulgate rules implementing or effectuating the powers and duties of the department. ()

001. SCOPE (RULE 1).

The rules prescribe procedures for responding to a delivery call made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right in an area having a common ground water supply. It is intended that these rules be incorporated into general rules governing water distribution in Idaho when such rules are adopted subsequently. ()

002. OTHER AUTHORITIES REMAIN APPLICABLE (RULE 2).

Nothing in these rules limits the Director's authority to take alternative or additional actions relating to the management of water resources as provided by Idaho law. ()

003. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

For the purposes of these rules, the following terms will be used as defined below. ()

01. Area Having a Common Ground Water Supply. A ground water source within which the diversion and use of ground water or changes in ground water recharge affect the flow of water in a surface water source or within which the diversion and use of water by a holder of a ground water right affects the ground water supply available to the holders of other ground water rights. (Section 42-237a.g., Idaho Code) ()

02. Artificial Ground Water Recharge. A deliberate and purposeful activity or project that is performed in accordance with Section 42-234(2), Idaho Code, and that diverts, distributes, injects, stores or spreads water to areas from which such water will enter into and recharge a ground water source in an area having a common ground water supply. ()

03. Conjunctive Management. Legal and hydrologic integration of administration of the diversion and use of water under water rights from surface and ground water sources, including areas having a common ground water supply. ()

04. Delivery Call. A request from the holder of a water right for administration of water rights under the prior appropriation doctrine. ()

05. Department. The Department of Water Resources created by Section 42-1701, Idaho Code. ()

06. Director. The Director of the Department of Water Resources appointed as provided by Section 42-1801, Idaho Code, or an employee, hearing officer or other appointee of the Department who has been delegated to act for the Director as provided by Section 42-1701, Idaho Code. ()

07. Full Economic Development of Underground Water Resources. The diversion and use of water from a ground water source for beneficial uses in the public interest at a rate that does not exceed the reasonably anticipated average rate of future natural recharge, in a manner that does not result in material injury to senior-priority surface or ground water rights, and that furthers the principle of reasonable use of surface and ground water as set forth in Rule 42. ()

08. Futile Call. A delivery call made by the holder of a senior-priority surface or ground water right that, for physical and hydrologic reasons, cannot be satisfied within a reasonable time of the call by immediately curtailing diversions under junior-priority ground water rights or that would result in waste of the water resource. ()

09. Ground Water Management Area. Any ground water basin or designated part thereof as designated by the Director pursuant to Section 42-233(b), Idaho Code. ()

- 10. Ground Water.** Water under the surface of the ground whatever may be the geological structure in which it is standing or moving as provided in Section 42-230(a), Idaho Code. ()
- 11. Holder of a Water Right.** The legal or beneficial owner or user pursuant to lease or contract of a right to divert or to protect in place surface or ground water of the state for a beneficial use or purpose. ()
- 12. Idaho Law.** The constitution, statutes, administrative rules and case law of Idaho. ()
- 13. Junior-Priority.** A water right priority date later in time than the priority date of other water rights being considered. ()
- 14. Material Injury.** Hindrance to or impact upon the exercise of a water right caused by the use of water by another person as determined in accordance with Idaho Law, as set forth in Rule 42. ()
- 15. Mitigation Plan.** A document submitted by the holder(s) of a junior-priority ground water right and approved by the Director as provided in Rule 043 that identifies actions and measures to prevent, or compensate holders of senior-priority water rights for, material injury caused by the diversion and use of water by the holders of junior-priority ground water rights within an area having a common ground water supply. ()
- 16. Person.** Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. ()
- 17. Petitioner.** Person who asks the Department to initiate a contested case or to otherwise take action that will result in the issuance of an order or rule. ()
- 18. Reasonable Ground Water Pumping Level.** A level established by the Director pursuant to Sections 42-226, and 42-237a.g., Idaho Code, either generally for an area or aquifer or for individual water rights on a case-by-case basis, for the purpose of protecting the holders of senior-priority ground water rights against unreasonable lowering of ground water levels caused by diversion and use of surface or ground water by the holders of junior-priority surface or ground water rights under Idaho law. ()
- 19. Reasonably Anticipated Average Rate of Future Natural Recharge.** The estimated average annual volume of water recharged to an area having a common ground water supply from precipitation, underflow from tributary sources, and stream losses and also water incidentally recharged to an area having a common ground water supply as a result of the diversion and use of water for irrigation and other purposes. The estimate will be based on available data regarding conditions of diversion and use of water existing at the time the estimate is made and may vary as these conditions and available information change. ()
- 20. Respondent.** Persons against whom complaints or petitions are filed or about whom investigations are initiated. ()
- 21. Senior-Priority.** A water right priority date earlier in time than the priority dates of other water rights being considered. ()
- 22. Surface Water.** Rivers, streams, lakes and springs when flowing in their natural channels as provided in Sections 42-101 and 42-103, Idaho Code. ()
- 23. Water District.** An instrumentality of the state of Idaho created by the Director as provided in Section 42-604, Idaho Code, for the purpose of performing the essential governmental function of distribution of water among appropriators under Idaho law. ()
- 24. Watermaster.** A person elected and appointed as provided in Section 42-605, and Section 42-801, Idaho Code, to distribute water within a water district. ()
- 25. Water Right.** The legal right to divert and use or to protect in place the public waters of the state of Idaho where such right is evidenced by a decree, a permit or license issued by the Department, a beneficial or

constitutional use right or a right based on federal law. ()

011. -- 019. (RESERVED)

020. GENERAL STATEMENTS OF PURPOSE AND POLICIES FOR CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES (RULE 20).

01. Distribution of Water Among the Holders of Senior and Junior-Priority Rights. These rules apply to all situations in the state where the diversion and use of water under junior-priority ground water rights either individually or collectively causes material injury to uses of water under senior-priority water rights. The rules govern the distribution of water from ground water sources and areas having a common ground water supply. ()

02. Prior Appropriation Doctrine. These rules acknowledge all elements of the prior appropriation doctrine as established by Idaho law. ()

03. Reasonable Use of Surface and Ground Water. These rules integrate the administration and use of surface and ground water in a manner consistent with the traditional policy of reasonable use of both surface and ground water. The policy of reasonable use includes the concepts of priority in time and superiority in right being subject to conditions of reasonable use as the legislature may by law prescribe as provided in Article XV, Section 5, Idaho Constitution, optimum development of water resources in the public interest prescribed in Article XV, Section 7, Idaho Constitution, and full economic development as defined by Idaho law. An appropriator is not entitled to command the entirety of large volumes of water in a surface or ground water source to support his appropriation contrary to the public policy of reasonable use of water as described in this rule. ()

04. Delivery Calls. These rules provide the basis and procedure for responding to delivery calls made by the holder of a senior-priority surface or ground water right against the holder of a junior-priority ground water right. The principle of the futile call applies to the distribution of water under these rules. Although a call may be denied under the futile call doctrine, these rules may require mitigation or staged or phased curtailment of a junior-priority use if diversion and use of water by the holder of the junior-priority water right causes material injury, even though not immediately measurable, to the holder of a senior-priority surface or ground water right in instances where the hydrologic connection may be remote, the resource is large and no direct immediate relief would be achieved if the junior-priority water use was discontinued. ()

05. Exercise of Water Rights. These rules provide the basis for determining the reasonableness of the diversion and use of water by both the holder of a senior-priority water right who requests priority delivery and the holder of a junior-priority water right against whom the call is made. ()

06. Areas Having a Common Ground Water Supply. These rules provide the basis for the designation of areas of the state that have a common ground water supply and the procedures that will be followed in incorporating the water rights within such areas into existing water districts or creating new districts as provided in Section 42-237a.g., and Section 42-604, Idaho Code, or designating such areas as ground water management areas as provided in Section 42-233(b), Idaho Code. ()

07. Sequence of Actions for Responding to Delivery Calls. Rule 30 provides procedures for responding to delivery calls within areas having a common ground water supply that have not been incorporated into an existing or new water district or designated a ground water management area. Rule 40 provides procedures for responding to delivery calls within water districts where areas having a common ground water supply have been incorporated into the district or a new district has been created. Rule 41 provides procedures for responding to delivery calls within areas that have been designated as ground water management areas. Rule 50 designates specific known areas having a common ground water supply within the state. ()

08. Reasonably Anticipated Average Rate of Future Natural Recharge. These rules provide for administration of the use of ground water resources to achieve the goal that withdrawals of ground water not exceed the reasonably anticipated average rate of future natural recharge. (Section 42-237a.g., Idaho Code) ()

09. Saving of Defenses. Nothing in these rules affects or in any way limit any person's entitlement to assert any defense or claim based upon fact or law in any contested case or other proceeding. ()

10. Wells as Alternate or Changed Points of Diversion for Water Rights from a Surface Water Source. Nothing in these rules prohibits any holder of a water right from a surface water source from seeking, pursuant to Idaho law, to change the point of diversion of the water to an inter-connected area having a common ground water supply. ()

11. Domestic and Stock Watering Ground Water Rights Exempt. A delivery call shall not be effective against any ground water right used for domestic purposes regardless of priority date where such domestic use is within the limits of the definition set forth in Section 42-111, Idaho Code, nor against any ground water right used for stock watering where such stock watering use is within the limits of the definition set forth in Section 42-1401A(11), Idaho Code; provided, however, this exemption shall not prohibit the holder of a water right for domestic or stock watering uses from making a delivery call, including a delivery call against the holders of other domestic or stockwatering rights, where the holder of such right is suffering material injury. ()

021. -- 029. (RESERVED)

030. RESPONSES TO CALLS FOR WATER DELIVERY IN AN UNORGANIZED WATER DISTRICT OR WITH NO GROUND WATER REGULATION (RULE 30).

Responses to calls for water delivery made by the holders of senior-priority surface or ground water rights against the holders of junior-priority ground water rights within areas of the state not in organized water districts or within water districts where ground water regulation has not been included in the functions of such districts or within areas that have not been designated ground water management areas shall be as follows: ()

01. Delivery Call (Petition). When a delivery call is made by the holder of a surface or ground water right (petitioner) alleging that by reason of diversion of water by the holders of one (1) or more junior-priority ground water rights (respondents) the petitioner is suffering material injury, the petitioner shall file with the Director a petition in writing containing, at least, the following in addition to the information required by IDAPA 37.01.01, "Rules of Procedure of the Department of Water Resources," Rule 230: ()

a. A description of the water rights of the petitioner including a listing of the decree, license, permit, claim or other documentation of such right, the water diversion and delivery system being used by petitioner and the beneficial use being made of the water. ()

b. The names, addresses and description of the water rights of the ground water users (respondents) who are alleged to be causing material injury to the rights of the petitioner in so far as such information is known by the petitioner or can be reasonably determined by a search of public records. ()

c. All information, measurements, data or study results available to the petitioner to support the claim of material injury. ()

d. A description of the area having a common ground water supply within which petitioner desires junior-priority ground water diversion and use to be regulated. ()

02. Contested Case. The Department will consider the matter as a petition for contested case under the Department's Rules of Procedure, IDAPA 37.01.01. The petitioner shall serve the petition upon all known respondents as required by IDAPA 37.01.01, "Rules of Procedure of the Department of Water Resources," Rule 203. In addition to such direct service by petitioner, the Department will give such general notice by publication or news release as will advise ground water users within the petitioned area of the matter. ()

03. Informal Resolution. The Department may initially consider the contested case for informal resolution under the provisions of Section 67-5241, Idaho Code, if doing so will expedite the case without prejudicing the interests of any party. ()

04. Petition for Modification of an Existing Water District. In the event the petition proposes regulation of ground water rights conjunctively with surface water rights in an organized water district, and the water rights have been adjudicated, the Department may consider such to be a petition for modification of the organized water district and notice of proposed modification of the water district shall be provided by the Director pursuant to

Section 42-604, Idaho Code. The Department will proceed to consider the matter addressed by the petition under the Department's Rules of Procedure. ()

05. Petition for Creation of a New Water District. In the event the petition proposes regulation of ground water rights from a ground water source or conjunctively with surface water rights within an area having a common ground water supply which is not in an existing water district, and the water rights have been adjudicated, the Department may consider such to be a petition for creation of a new water district and notice of proposed creation of a water district shall be provided by the Director pursuant to Section 42-604, Idaho Code. The Department will proceed to consider the matter under the Department's Rules of Procedure. ()

06. Petition for Designation of a Ground Water Management Area. In the event the petition proposes regulation of ground water rights from an area having a common ground water supply within which the water rights have not been adjudicated, the Department may consider such to be a petition for designation of a ground water management area pursuant to Section 42-233(b), Idaho Code. The Department will proceed to consider the matter under the Department's Rules of Procedure. ()

07. Order. Following consideration of the contested case under the Department's Rules of Procedure, the Director may, by order, take any or all of the following actions: ()

a. Deny the petition in whole or in part; ()

b. Grant the petition in whole or in part or upon conditions; ()

c. Determine an area having a common ground water supply which affects the flow of water in a surface water source in an organized water district; ()

d. Incorporate an area having a common ground water supply into an organized water district following the procedures of Section 42-604, Idaho Code, provided that the ground water rights that would be incorporated into the water district have been adjudicated relative to the rights already encompassed within the district; ()

e. Create a new water district following the procedures of Section 42-604, Idaho Code, provided that the water rights to be included in the new water district have been adjudicated; ()

f. Determine the need for an adjudication of the priorities and permissible rates and volumes of diversion and consumptive use under the surface and ground water rights of the petitioner and respondents and initiate such adjudication pursuant to Section 42-1406, Idaho Code; ()

g. By summary order as provided in Section 42-237 a.g., Idaho Code, prohibit or limit the withdrawal of water from any well during any period it is determined that water to fill any water right is not there available without causing ground water levels to be drawn below the reasonable ground water pumping level, or would affect the present or future use of any prior surface or ground water right or result in the withdrawing of the ground water supply at a rate beyond the reasonably anticipated average rate of future natural recharge. The Director will take into consideration the existence of any approved mitigation plan before issuing any order prohibiting or limiting withdrawal of water from any well; or ()

h. Designate a ground water management area under the provisions of Section 42-233(b), Idaho Code, if it appears that administration of the diversion and use of water from an area having a common ground water supply is required because the ground water supply is insufficient to meet the demands of water rights or the diversion and use of water is at a rate beyond the reasonably anticipated average rate of future natural recharge and modification of an existing water district or creation of a new water district cannot be readily accomplished due to the need to first obtain an adjudication of the water rights. ()

08. Orders for Interim Administration. For the purposes of Rule Subsections 030.07.d. and 030.07.e., an outstanding order for interim administration of water rights issued by the court pursuant to Section 42-1417, Idaho Code, in a general adjudication proceeding shall be considered as an adjudication of the water rights involved. ()

09. Administration Pursuant to Rule 40. Upon a finding of an area of common ground water supply and upon the incorporation of such area into an organized water district, or the creation of a new water district, the use of water shall be administered in accordance with the priorities of the various water rights as provided in Rule 40. ()

10. Administration Pursuant to Rule 41. Upon the designation of a ground water management area, the diversion and use of water within such area shall be administered in accordance with the priorities of the various water rights as provided in Rule 41. ()

031. DETERMINING AREAS HAVING A COMMON GROUND WATER SUPPLY (RULE 31).

01. Director to Consider Information. The Director will consider all available data and information that describes the relationship between ground water and surface water in making a finding of an area of common ground water supply. ()

02. Kinds of Information. The information considered may include, but is not limited to, any or all of the following: ()

a. Water level measurements, studies, reports, computer simulations, pumping tests, hydrographs of stream flow and ground water levels and other such data; and ()

b. The testimony and opinion of expert witnesses at a hearing on a petition for expansion of a water district or organization of a new water district or designation of a ground water management area. ()

03. Criteria for Findings. A ground water source will be determined to be an area having a common ground water supply if: ()

a. The ground water source supplies water to or receives water from a surface water source; or ()

b. Diversion and use of water from the ground water source will cause water to move from the surface water source to the ground water source. ()

c. Diversion and use of water from the ground water source has an impact upon the ground water supply available to other persons who divert and use water from the same ground water source. ()

04. Reasonably Anticipated Average Rate of Future Natural Recharge. The Director will estimate the reasonably anticipated average rate of future natural recharge for an area having a common ground water supply. Such estimates will be made and updated periodically as new data and information are available and conditions of diversion and use change. ()

05. Findings. The findings of the Director will be included in the Order issued pursuant to Rule Subsection 030.07. ()

032. -- 039. (RESERVED)

040. RESPONSES TO CALLS FOR WATER DELIVERY IN AN ORGANIZED WATER DISTRICT (RULE 40).

Responses to calls for water delivery made by the holders of senior-priority surface or ground water rights against the holders of junior-priority ground water rights from areas having a common ground water supply in an organized water district shall be as follows: ()

01. Responding to a Delivery Call. When a delivery call is made by the holder of a senior-priority water right (petitioner) alleging that by reason of diversion of water by the holders of one (1) or more junior-priority ground water rights (respondents) from an area having a common ground water supply in an organized water district the petitioner is suffering material injury, and upon a finding by the Director as provided in Rule 42 that material

injury is occurring, the Director, through the watermaster, shall: ()

a. Regulate the diversion and use of water in accordance with the priorities of rights of the various surface or ground water users whose rights are included within the district, provided, that regulation of junior-priority ground water diversion and use where the material injury is delayed or long range may, by order of the Director, be phased-in over not more than a five-year (5) period to lessen the economic impact of immediate and complete curtailment; or ()

b. Allow out-of-priority diversion of water by junior-priority ground water users pursuant to a mitigation plan that has been approved by the Director. ()

02. Regulation of Uses of Water by Watermaster. The Director, through the watermaster, shall regulate use of water within the water district pursuant to Idaho law and the priorities of water rights as provided in Section 42-604, Idaho Code, and under the following procedures: ()

a. The watermaster shall determine the quantity of surface water of any stream included within the water district which is available for diversion and shall shut the headgates of the holders of junior-priority surface water rights as necessary to assure that water is being diverted and used in accordance with the priorities of the respective water rights from the surface water source. ()

b. The watermaster shall regulate the diversion and use of ground water in accordance with the rights thereto, approved mitigation plans and orders issued by the Director. ()

c. Where a call is made by the holder of a senior-priority water right against the holder of a junior-priority ground water right in the water district the watermaster shall first determine whether a mitigation plan has been approved by the Director whereby diversion of ground water may be allowed to continue out of priority order. If the holder of a junior-priority ground water right is a participant in such approved mitigation plan, and is operating in conformance therewith, the watermaster shall allow the ground water use to continue out of priority. ()

d. The watermaster shall maintain records of the diversions of water by surface and ground water users within the water district and records of water provided and other compensation supplied under the approved mitigation plan which shall be compiled into the annual report which is required by Section 42-606, Idaho Code. ()

e. Under the direction of the Department, watermasters of separate water districts shall cooperate and reciprocate in assisting each other in assuring that diversion and use of water under water rights is administered in a manner to assure protection of senior-priority water rights provided the relative priorities of the water rights within the separate water districts have been adjudicated. ()

03. Reasonable Exercise of Rights. In determining whether diversion and use of water under rights will be regulated under Rule Subsection 040.01.a. or 040.01.b., the Director shall consider whether the petitioner making the delivery call is suffering material injury to a senior-priority water right and is diverting and using water efficiently and without waste, and in a manner consistent with the goal of reasonable use of surface and ground waters as described in Rule 42. The Director will also consider whether the respondent junior-priority water right holder is using water efficiently and without waste. ()

04. Actions of the Watermaster Under a Mitigation Plan. Where a mitigation plan has been approved as provided in Rule 42, the watermaster may permit the diversion and use of ground water to continue out of priority order within the water district provided the holder of the junior-priority ground water right operates in accordance with such approved mitigation plan. ()

05. Curtailment of Use Where Diversions Not in Accord With Mitigation Plan or Mitigation Plan Is Not Effective. Where a mitigation plan has been approved and the junior-priority ground water user fails to operate in accordance with such approved plan or the plan fails to mitigate the material injury resulting from diversion and use of water by holders of junior-priority water rights, the watermaster will notify the Director who will immediately issue cease and desist orders and direct the watermaster to terminate the out-of-priority use of ground water rights otherwise benefiting from such plan or take such other actions as provided in the mitigation plan to ensure protection

of senior-priority water rights. ()

06. Collection of Assessments Within Water District. Where a mitigation plan has been approved, the watermaster of the water district shall include the costs of administration of the plan within the proposed annual operation budget of the district; and, upon approval by the water users at the annual water district meeting, the water district shall provide for the collection of assessment of ground water users as provided by the plan, collect the assessments and expend funds for the operation of the plan; and the watermaster shall maintain records of the volumes of water or other compensation made available by the plan and the disposition of such water or other compensation. ()

041. ADMINISTRATION OF DIVERSION AND USE OF WATER WITHIN A GROUND WATER MANAGEMENT AREA (RULE 41).

01. Responding to a Delivery Call. When a delivery call is made by the holder of a senior-priority ground water right against holders of junior-priority ground water rights in a designated ground water management area alleging that the ground water supply is insufficient to meet the demands of water rights within all or portions of the ground water management area and requesting the Director to order water right holders, on a time priority basis, to cease or reduce withdrawal of water, the Director shall proceed as follows: ()

a. The petitioner shall be required to submit all information available to petitioner on which the claim is based that the water supply is insufficient. ()

b. The Director will conduct a fact-finding hearing on the petition at which the petitioner and respondents may present evidence on the water supply, and the diversion and use of water from the ground water management area. ()

02. Order. Following the hearing, the Director may take any or all of the following actions: ()

a. Deny the petition in whole or in part; ()

b. Grant the petition in whole or in part or upon conditions; ()

c. Find that the water supply of the ground water management area is insufficient to meet the demands of water rights within all or portions of the ground water management area and order water right holders on a time priority basis to cease or reduce withdrawal of water, provided that the Director shall consider the expected benefits of an approved mitigation plan in making such finding. ()

d. Require the installation of measuring devices and the reporting of water diversions pursuant to Section 42-701, Idaho Code. ()

03. Date and Effect of Order. Any order to cease or reduce withdrawal of water will be issued prior to September 1 and shall be effective for the growing season during the year following the date the order is given and until such order is revoked or modified by further order of the Director. ()

04. Preparation of Water Right Priority Schedule. For the purposes of the Order provided in Rule Subsections 041.02 and 041.03, the Director will utilize all available water right records, claims, permits, licenses and decrees to prepare a water right priority schedule. ()

042. DETERMINING MATERIAL INJURY AND REASONABLENESS OF WATER DIVERSIONS (RULE 42).

01. Factors. Factors the Director may consider in determining whether the holders of water rights are suffering material injury and using water efficiently and without waste include, but are not limited to, the following: ()

a. The amount of water available in the source from which the water right is diverted. ()

b. The effort or expense of the holder of the water right to divert water from the source. ()

c. Whether the exercise of junior-priority ground water rights individually or collectively affects the quantity and timing of when water is available to, and the cost of exercising, a senior-priority surface or ground water right. This may include the seasonal as well as the multi-year and cumulative impacts of all ground water withdrawals from the area having a common ground water supply. ()

d. If for irrigation, the rate of diversion compared to the acreage of land served, the annual volume of water diverted, the system diversion and conveyance efficiency, and the method of irrigation water application. ()

e. The amount of water being diverted and used compared to the water rights. ()

f. The existence of water measuring and recording devices. ()

g. The extent to which the requirements of the holder of a senior-priority water right could be met with the user's existing facilities and water supplies by employing reasonable diversion and conveyance efficiency and conservation practices; provided, however, the holder of a surface water storage right shall be entitled to maintain a reasonable amount of carry-over storage to assure water supplies for future dry years. In determining a reasonable amount of carry-over storage water, the Director shall consider the average annual rate of fill of storage reservoirs and the average annual carry-over for prior comparable water conditions and the projected water supply for the system. ()

h. The extent to which the requirements of the senior-priority surface water right could be met using alternate reasonable means of diversion or alternate points of diversion, including the construction of wells or the use of existing wells to divert and use water from the area having a common ground water supply under the petitioner's surface water right priority. ()

02. Delivery Call for Curtailment of Pumping. The holder of a senior-priority surface or ground water right will be prevented from making a delivery call for curtailment of pumping of any well used by the holder of a junior-priority ground water right where use of water under the junior-priority right is covered by an approved and effectively operating mitigation plan. ()

043. MITIGATION PLANS (RULE 43).

01. Submission of Mitigation Plans. A proposed mitigation plan shall be submitted to the Director in writing and contain the following information: ()

a. The name and mailing address of the person or persons submitting the plan. ()

b. Identification of the water rights for which benefit the mitigation plan is proposed. ()

c. A description of the plan setting forth the water supplies proposed to be used for mitigation and any circumstances or limitations on the availability of such supplies. ()

d. Such information as will allow the Director to evaluate the factors set forth in Rule Subsection 043.03. ()

02. Notice and Hearing. Upon receipt of a proposed mitigation plan the Director will provide notice, hold a hearing as determined necessary, and consider the plan under the procedural provisions of Section 42-222, Idaho Code, in the same manner as applications to transfer water rights. ()

03. Factors to Be Considered. Factors that may be considered by the Director in determining whether a proposed mitigation plan will prevent injury to senior rights include, but are not limited to, the following: ()

a. Whether delivery, storage and use of water pursuant to the mitigation plan is in compliance with Idaho law. ()

b. Whether the mitigation plan will provide replacement water, at the time and place required by the senior-priority water right, sufficient to offset the depletive effect of ground water withdrawal on the water available in the surface or ground water source at such time and place as necessary to satisfy the rights of diversion from the surface or ground water source. Consideration will be given to the history and seasonal availability of water for diversion so as not to require replacement water at times when the surface right historically has not received a full supply, such as during annual low-flow periods and extended drought periods. ()

c. Whether the mitigation plan provides replacement water supplies or other appropriate compensation to the senior-priority water right when needed during a time of shortage even if the effect of pumping is spread over many years and will continue for years after pumping is curtailed. A mitigation plan may allow for multi-season accounting of ground water withdrawals and provide for replacement water to take advantage of variability in seasonal water supply. The mitigation plan must include contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable. ()

d. Whether the mitigation plan proposes artificial recharge of an area of common ground water supply as a means of protecting ground water pumping levels, compensating senior-priority water rights, or providing aquifer storage for exchange or other purposes related to the mitigation plan. ()

e. Where a mitigation plan is based upon computer simulations and calculations, whether such plan uses generally accepted and appropriate engineering and hydrogeologic formulae for calculating the depletive effect of the ground water withdrawal. ()

f. Whether the mitigation plan uses generally accepted and appropriate values for aquifer characteristics such as transmissivity, specific yield, and other relevant factors. ()

g. Whether the mitigation plan reasonably calculates the consumptive use component of ground water diversion and use. ()

h. The reliability of the source of replacement water over the term in which it is proposed to be used under the mitigation plan. ()

i. Whether the mitigation plan proposes enlargement of the rate of diversion, seasonal quantity or time of diversion under any water right being proposed for use in the mitigation plan. ()

j. Whether the mitigation plan is consistent with the conservation of water resources, the public interest or injures other water rights, or would result in the diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge. ()

k. Whether the mitigation plan provides for monitoring and adjustment as necessary to protect senior-priority water rights from material injury. ()

l. Whether the plan provides for mitigation of the effects of pumping of existing wells and the effects of pumping of any new wells which may be proposed to take water from the areas of common ground water supply. ()

m. Whether the mitigation plan provides for future participation on an equitable basis by ground water pumpers who divert water under junior-priority rights but who do not initially participate in such mitigation plan. ()

n. A mitigation plan may propose division of the area of common ground water supply into zones or segments for the purpose of consideration of local impacts, timing of depletions, and replacement supplies. ()

o. Whether the petitioners and respondents have entered into an agreement on an acceptable mitigation plan even though such plan may not otherwise be fully in compliance with these provisions. ()

044. -- 049. (RESERVED)

050. AREAS DETERMINED TO HAVE A COMMON GROUND WATER SUPPLY (RULE 50).

01. Eastern Snake Plain Aquifer. The area of coverage of this rule is the aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408-F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian. ()

a. The Eastern Snake Plain Aquifer supplies water to and receives water from the Snake River. ()

b. The Eastern Snake Plain Aquifer is found to be an area having a common ground water supply. ()

c. The reasonably anticipated average rate of future natural recharge of the Eastern Snake Plain Aquifer will be estimated in any order issued pursuant to Rule 30. ()

d. The Eastern Snake Plain Aquifer area of common ground water supply will be created as a new water district or incorporated into an existing or expanded water district as provided in Section 42-604, Idaho Code, when the rights to the diversion and use of water from the aquifer have been adjudicated, or will be designated a ground water management area. ()

051. -- 999. (RESERVED)

**37.03.12 – IDAHO DEPARTMENT OF WATER RESOURCES WATER DISTRIBUTION RULES –
WATER DISTRICT 34**

000. LEGAL AUTHORITY (RULE 0).

The Idaho Department of Water Resources (IDWR) is authorized under Section 42-603, Idaho Code, to adopt rules for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources. ()

001. SCOPE (RULE 1).

This rule governs the distribution of surface and ground water within Water District 34, the Big Lost River Basin, by the duly appointed watermaster pursuant to the provisions of Chapter 6, Title 42, Idaho Code, and applicable court decrees. This chapter does not limit the authority of the Director of the Idaho Department of Water Resources in exercising the duties and responsibilities in other provisions of Idaho law. ()

002. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

For the purposes of these rules, the following terms will be used as defined below. ()

01. 2-B Gage. The U.S. Geological Survey gaging station located below Mackay Dam in the SW1/4SW1/4NE1/4, Section 18, Township 7 North, Range 24 East, B.M. ()

02. Acre-Foot (AF). The unit commonly used to measure a volume of water which is equal to the amount of water 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 or three hundred twenty-five thousand eight hundred fifty-one (325,851) gallons. ()

03. Acre-Foot Per Year (AFY). Acre foot per calendar year. ()

04. Arco Gage. The U.S. Geological Survey gaging station located near the town of Arco in the SW1/4SE1/4SW1/4, Section 17, Township 3 North, Range 27 East, B.M. ()

05. Cubic Foot Per Second (CFS). The unit used to express a rate of flow of water equal to fifty (50) miner's inches or about four hundred forty-eight and eight tenths (448.8) gallons per minute. ()

06. Delivery Call. A request from the holder of a water right for administration of water rights under the prior appropriation doctrine. ()

07. Director. The Director of the Idaho Department of Water Resources (IDWR) or the director's duly authorized designee. ()

08. Eastside Canal. The Eastside Canal diverts from the east side of the Big Lost River in the NW1/4SE1/4, Section 4, Township 5 North, Range 26 East, B.M. and extends southerly to the point it discharges back into the Big Lost River in the NW1/4NW1/4NW1/4, Section 26, Township 4 North, Range 26 East, B.M. ()

09. Holder of a Water Right. The legal owner or user pursuant to lease or contract of a right to divert or to protect in place surface or ground water of the state for a beneficial use or purpose. ()

10. Howell Gage. The U.S. Geological Survey gaging station located above Mackay Reservoir in the SE1/4NE1/4NW1/4, Section 30, Township 8 North, Range 21 East, B.M. ()

11. Rotation Credit. Water impounded in Mackay Reservoir pursuant to a water right whose source of water is the Big Lost River and which does not include storage as a purpose of use. The impoundment of water as rotation credit is described in Rule Subsection 040.02. ()

12. Small Domestic and Stock Water Uses. Water uses meeting the definition of Section 42-111 or Section 42-1401A(12), Idaho Code. ()

13. Storage Water. Water impounded in a storage facility, including Mackay Reservoir, pursuant to a water right which includes storage as a purpose of use. ()

14. Watermaster. The duly elected and appointed state watermaster of Water District 34 who is authorized to perform duties pursuant to Chapters 6 and 8, Title 42, Idaho Code, and the decree, or order for interim administration, of water rights for Basin 34. ()

011. -- 024. (RESERVED)

025. RIVER REACHES (RULE 25).

01. Divisions of the Big Lost River. For the purposes of quantifying river gains, losses, and calculating and accounting for natural flow, the Big Lost River is divided into the reaches identified below. Reference to a specific river reach will be by the name of the downstream station or terminus point. ()

a. Above Howell Gage. ()

b. Howell Gage to Chilly Bridge located in the NW1/4NE1/4NW1/4, Section 5, Township 8 North, Range 22 East, B.M. ()

c. Chilly Bridge to the 2-B Gage. ()

d. 2-B Gage to Leslie Gage located in the NW1/4SW1/4SE1/4, Section 10, Township 6 North, Range 25 East, B.M. ()

e. Leslie Gage to Moore diversion located in the NW1/4SE1/4SE1/4, Section 4, Township 5 North, Range 26 East, B.M. ()

f. Moore diversion to Arco diversion located in the NW1/4NW1/4NW1/4, Section 26, Township 4 North, Range 26 East, B.M. ()

g. Below Arco diversion to the Arco Gage. ()

02. River Reach Computations. For each reach of the river the natural flow will be computed as the natural flow entering the reach plus gains entering the reach minus losses from the reach. The natural flow thus calculated will be allocated as described in Rule 40. ()

03. Gage Station or Other Flow Measuring Facility. A gage station or other flow measuring facility, as approved by the director, is located at the Howell Gage, Chilly Bridge, 2-B Gage, Leslie Gage, Moore diversion, Arco diversion and Arco Gage. The Howell, 2-B and Arco gages shall be maintained as part of the USGS Cooperative Program, or equivalent measurement program, and operated continuously. Water District 34 shall continue to contribute to the maintenance and operation of these gage sites in the same proportion as is currently contributed. All other gages shall be operated when water diversions, other than solely storage in Mackay Reservoir, are being made from the river. The cost of installation, operation and maintenance of these other measuring facilities is the responsibility of Water District 34. ()

026. -- 029. (RESERVED)

030. NATURAL FLOWS (RULE 30).

Natural flow shall be delivered through the natural river channel to the point of diversion of record except as provided in these rules. ()

01. Eastside Canal. The watermaster, with the approval of the director and after consultation with the Big Lost River Irrigation District, may elect to deliver the natural flow of the river through the Eastside Canal when the following conditions are met: ()

a. The full flow of the river, including impounded water, to be delivered downstream of the Moore diversion is not greater than the capacity of the Eastside Canal. ()

b. More natural flow water can be delivered to calls for natural flow than could be delivered by using the natural river channel. ()

c. No water right is injured. ()

d. Measuring devices of a type acceptable to the director are installed and maintained where the flow leaves the river channel and where it returns to the river channel. ()

e. When used for the delivery of natural flow to the Arco diversion, the Eastside Canal is considered to be the river channel for water delivery accounting purposes and the watermaster shall protect the natural flow for delivery to prior water rights. Water rights diverting water from the river channel downstream from the point the Eastside Canal returns to the river channel shall be measured at their point of diversion from the river downstream from the Eastside Canal return. ()

f. Conveyance losses in the Eastside Canal, when considered to be the river channel, shall be proportioned between the river flow, the diversions from the Eastside and pumps that inject ground water into the Eastside Canal. The proportioning will be based upon the ratio of total Eastside diversions and injected ground water to the total inflow to the canal. ()

02. Alternate Point of Diversion. The watermaster may elect, with the approval of the director, to deliver natural flow water rights to the alternate point of diversion described in Rule Subsection 030.02.a. below when conditions in Rule Subsections 030.02.b. through 030.02.f. below are met: ()

a. This rule may be used to deliver water rights through the Munsey diversion located in the NW1/4NW1/4NW1/4, Section 26, Township 4 North, Range 26 East, B.M. as an alternate point of diversion for water rights with a recorded point of diversion at the McLaughlin diversion located in the NE1/4NW1/4SE1/4, Section 12, Township 3 North, Range 26 East, B.M. ()

b. The additional delivery losses through the natural channel to the recorded point of diversion for a water right prevents delivery of natural flow to one (1) or more other water rights then calling for water. ()

c. The user receives the same amount of water at the field headgate from the natural flow water right that would be delivered to the field headgate had the natural flow right been delivered at the recorded point of diversion. ()

d. Delivery of the water right at the alternate point of diversion is limited to the period of time the water right could have been delivered to the recorded point of diversion based upon the natural flow available at any time delivery is called for and the loss of the river channel at the time the alternate point of diversion began to be used for the delivery of this water right. ()

e. No water right is injured by the use of the alternate point of diversion. ()

f. The owner of the diversion works at the alternate point of diversion and the ditch(es) used to deliver the water to the field headgate from the alternate point of diversion concurs in the use of those facilities. ()

031. -- 034. (RESERVED)

035. MEASURING DEVICES AND CONTROL WORKS (RULE 35).

01. Installation and Maintenance of Measuring Devices and Control Works. In addition to measuring devices or control works specifically described in the listing of the water right, each water user, except small domestic and stock water users from ground water, shall, at the water user's expense, install and maintain measuring devices and control works of a type acceptable to the director, at all points of diversion and any other points, as determined necessary by the director for the proper administration of the use of water. The director may prohibit or prevent the diversion of water by a water user who refuses or fails to comply with this rule in accordance with the provisions of Chapter 7, Title 42, Idaho Code. ()

02. Access to Diversion Works. Water users shall provide the water district staff continual access to all diversion works, measuring devices and control structures, except ground water diversions for small domestic and stock water uses. ()

03. Diversions Which May Be Exempt. Diversions below the Chilly Bridge and above the Mackay Reservoir that divert water from the Big Lost River, whose place of use is within the flood plain of the Big Lost River as determined by the director, may be exempt from the requirement for measuring devices and control works with the approval of the director. Flow rates through exempt diversions will be estimated by the watermaster for accounting purposes by assuming the recorded flow rate of the water right is being diverted. ()

036. -- 039. (RESERVED)

040. ALLOCATION OF NATURAL FLOW (RULE 40).

01. Administration of Surface Water Rights. Water not diverted or rotated for credit is available for the next in time water right. Natural flow rights are delivered to the point of diversion with no conveyance loss assessment. A natural flow water right delivered through a lateral or canal of a water conveyance entity shall be assessed the conveyance loss for the canal through which the water right is delivered. ()

a. All water deliveries must be called for by the water user at least forty-eight (48) hours in advance of the actual water delivery. Water which can be delivered by the watermaster in less than forty-eight (48) hours may be used by the water user. ()

b. The water user must notify the watermaster of the water users intent to use water as required by Rule Subsection 040.05. ()

02. Rotation Credit. Water rights that do not include storage as a purpose of use may not be stored. Water rights whose source is Big Lost River with their point of diversion below the Mackay Dam may, however, be rotated for credit when such practice improves the efficiency of water use as contemplated by the Big Lost River Irrigation District's plan of operation subject to the following conditions: ()

a. Rotation for credit must be approved by the director as provided by these rules. ()

b. Rotation for credit must be pursuant to the Big Lost River Irrigation District's approved plan of operation. ()

c. Any water credited under such a rotation, if not used in the same irrigation season in which it is credited, shall become storage water of the Big Lost River Irrigation District at the end of the irrigation season. ()

d. Rotation for credit cannot occur prior to the need for irrigation water on the land, as determined pursuant to these rules, in any year. ()

i. Natural flow must be available at the river headgate point of diversion for the water right requesting rotation credit. ()

ii. The water user must have operable delivery and use facilities and an actual need for the water on the land in the year rotation is sought. ()

iii. If natural flow can not be delivered to a point of diversion at the beginning of the irrigation season and the watermaster determines rotation credit is needed to make possible the delivery of water rights being called for, and there is room in Mackay Reservoir for rotation credit, the watermaster may rotate natural flow rights, which would not otherwise be deliverable to their point of diversion, for credit of up to a combined total of three thousand five hundred (3,500) AF to be released from the reservoir under the control of the watermaster to make natural flow rights deliverable to their point of diversion. The watermaster may use storage water to assist the delivery of natural flow water rights at the beginning of the irrigation season when requested to do so by the storage holder. ()

e. Water rotated for credit may only be used on the land to which the water right being rotated is appurtenant (water rotated for credit may not be marketed) except under the provisions of Section 42-222A, Idaho Code. ()

f. If the reservoir fills after rotation has begun in any year, (or would have filled except for flood operations) and the natural flow is sufficient to allow diversion of water by 1905 or junior water rights while the reservoir is full, all rotation credits accrued at that time are lost and all water in Mackay Reservoir at that time becomes storage water of the Big Lost River Irrigation District for reallocation. For purposes of this rule Mackay Reservoir will be considered full when the elevation of the water in the reservoir reaches or exceeds a four (4) day average of six thousand sixty-six and twelve one hundredths (6,066.12) feet MSL (spillway crest). Rotation for credit stops at the time Mackay Reservoir fills, and while it remains full, but if the natural flow does not increase sufficiently to allow 1905 or junior water rights to divert after the reservoir fills the rotation credit in the reservoir shall remain the credit of the water user(s) who accrued the rotation credit. ()

g. Water rights being rotated must be identified to the watermaster as being rotated into Mackay Reservoir. Water rights identified as such will have the Mackay Reservoir as the temporary point of diversion during the time rotation is occurring. ()

h. The rate of diversion for a water right being rotated for credit combined with other water rights for the same place of use being diverted at the same time cannot exceed the combined diversion limit specified in the listing of water rights. This rule does not limit the rate at which rotation credit, once impounded, can be used. ()

03. Assessment of Evaporation and Conveyance Losses to Impounded Water. ()

a. Evaporation losses from Mackay Reservoir shall be estimated daily by the watermaster by applying correlated evapotranspiration data and shall be assessed to all impounded water. ()

b. Conveyance losses in the natural channel shall be proportioned by the watermaster between natural flow and impounded water. The proportioning shall be done on a river reach basis. Impounded water flowing through a river reach that does not have a conveyance loss will not be assessed a loss for that reach. Impounded water flowing through any river reach that does have a conveyance loss will be assessed the proportionate share of the loss for each losing reach through which the impounded water flows. ()

i. An exception is made for impounded water delivered through the Beck and Evan diversion located in the SW1/4SE1/4SW1/4, Section 11, Township 6 North, Range 25 East, B.M. Conveyance loss for this impounded water will be assessed the conveyance loss of the Leslie reach, if any, and the additional conveyance loss to the Beck and Evan diversion but not the conveyance loss of the entire Moore reach. ()

04. Initiation and Duration of Surface Water Allocation for Irrigation. Any time after May 1 an irrigation water user can make a delivery call on the natural flow if the water user can make beneficial use of the water for irrigation. If sufficient natural flow exists to deliver the called for water right in a useable amount to the water users place of use, the watermaster shall deliver the right. In addition, the director may allow the diversion of rights or portions of rights for irrigation use from the Big Lost River as early as April 20 and as late as October 31, and from surface water tributaries to the Big Lost River either before or after the period of use for irrigation described in the water right where: ()

a. The water so diverted is applied to a beneficial use resulting in an immediate benefit to growing plants or is necessary to allow performance of an agricultural practice generally accepted in the community, as determined by the director. ()

b. All surface water rights, regardless of priority, unless subordinated to the water right or class of rights being called for, (now existing or developed subsequent to these rules), existing at the time of diversion that are within their period of use can be satisfied. ()

c. The diversion and use of the water does not conflict with the public interest as determined by the director. ()

05. Notice to Initiate Delivery. Water users must initiate delivery of their water right(s) by notifying the watermaster that they are ready to put water to beneficial use. ()

06. Diversion of Additional Flows. The director may allow the diversion of surface water in addition to the quantity of surface water described in a water right for irrigation use to be diverted for irrigation of the described place of use where: ()

a. The waters so diverted are applied to a beneficial use, as determined by the director. ()

b. All surface water rights, regardless of priority, unless subordinated to the water right or class of water rights being called for, (now existing or developed subsequent to these rules), existing at the time of diversion that are within their period of use can be satisfied. ()

c. The diversion and use of the water does not conflict with the public interest as determined by the director. ()

d. Additional flows diverted pursuant to Rule 040.06 are natural flows and will not be assessed as impounded water. ()

07. Mackay Dam Minimum By-Pass. Mackay Dam and Reservoir shall be operated to maintain a minimum flow of fifty (50) CFS at the 2-B gage. ()

08. Canal or Lateral Delivery. In the event a water user feels inappropriate delivery of natural flow water is occurring on any lateral or canal, the water user can request the watermaster to investigate. In the event the watermaster determines that delivery of natural flow water rights within a lateral or canal is being improperly conducted he shall: ()

a. Notify the ditch rider and the water delivery entity of the results of his investigation and coordinate efforts to make proper delivery of the natural flow. ()

b. If the situation has not been sufficiently resolved within twenty-four (24) hours the watermaster will notify the director who may take all actions authorized by law to remedy the situation. ()

041. -- 054. (RESERVED)

055. WATER USAGE (RULE 55).

01. Incidental Stock Water. When stock water is not specifically included for a water right that includes irrigation, a portion of the quantity described for irrigation use may be diverted and used, from the same point of diversion and at the same place of use as the irrigation use, for purposes of maintaining a reasonable water supply for stock watering use during the period of use for irrigation described in the water right. ()

02. Winter (Non-Irrigation Season) Stock Water. During the non-irrigation season, from October 16 through April 30 except as modified by Rule 040.04, the storage of water in Mackay Reservoir is superior to all rights from the Big Lost River with points of diversion downstream from Mackay Dam, subject to minimum release. ()

a. Winter stock water can be called for and delivered pursuant to the list of water rights if it does not interfere with storage in Mackay Reservoir. ()

b. A right holder calling for delivery of stock water must have access to a diversion point and delivery system to convey the right to the place of use recorded in the list of water rights. If the headgate and delivery system are controlled by an entity other than the water user, the watermaster will only deliver the water with the concurrence of the owner of the headgate and delivery system and then only when such delivery does not constitute unreasonable waste as determined by the director. ()

056. -- 059. (RESERVED)

060. ACCOUNTING FOR WATER DELIVERY (RULE 60). Water diversions shall be accounted for continuously, throughout the year by the watermaster. ()

061. -- 999. (RESERVED)