

Dear Senators PEARCE, Bair, Werk, and
Representatives STEVENSON, Shepherd, Pence:

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

IDAPA 37.03.02 - Beneficial Use Examination Rules (Docket No. 37-0302-1101).

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 10/07/2011. 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 11/07/2011.

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 334-4845, or send a written request to the address or FAX number indicated on the memorandum enclosed.



Jeff Youtz
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: Principal Legislative Research Analyst - Katharine Gerrity

DATE: September 20, 2011

SUBJECT: Idaho Department of Water Resources

IDAPA 37.03.02 - Beneficial Use Examination Rules (Docket No. 37-0302-1101)

The Idaho Department of Water Resources submits notice of proposed rulemaking at IDAPA 37.03.02 - Beneficial Use Examination Rules. According to the Department, it processes proofs of beneficial use and issues water right licenses confirming new water rights. Prior to issuing a license, an examination is required that may either be conducted by Department staff or by Certified Water Right Examiners (CWREs). The Department states that the purpose of the rule changes are to modify and clarify examination requirements to make it easier for CWREs to complete reports. The Department also notes that the changes are important at this time to help address a licensing backlog of about 3500 permits. The Department indicates that the most significant of the changes include:

- Clarifying that examinations for some water rights may be conducted without an "on-site" inspection;
- Clarifying when the examiner must report an annual diversion volume and clarifying how annual diversion volumes are to be determined;
- Establishing that an aerial photograph must be submitted with all field reports;
- Removing the water measurement exemption for diversion systems where the Department did not require the permit holder to install a measuring device or access port;
- Clarifying that Department employees are not CWREs, but they may be authorized by the Director to conduct beneficial use examinations;
- Conforming the descriptions of large tracts of irrigated land to the provisions of Section 42-219, Idaho Code;
- Establishing that irrigated acreage shall be reported to the tenth of an acre for parcels of land covering less than 10 acres.

According to the Department, negotiated rulemaking was not conducted due to time limitations but it notes that it will seek input from current CWREs, the Idaho Water Users Association and the general public

Mike Nugent Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

prior to the hearing concerning this rulemaking. A hearing is scheduled for October 25, 2011. The rule appears to be authorized pursuant to Sections 42-217a and 42-1805(8), Idaho Code.

cc: Idaho Department of Water Resources
Shelley Keen

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

37.03.02 - BENEFICIAL USE EXAMINATION RULES

DOCKET NO. 37-0302-1101

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 42-1805(8), Idaho Code, and Section 42-217a, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

**Tuesday, October 25, 2011
at 9:00 am**

**Idaho Department of Water Resources
322 East Front Street, Boise, ID
6th Floor Conference Rooms C and D**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

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

Pursuant to Sections 42-217 through 42-219, Idaho Code, the Department of Water Resources (IDWR) processes proofs of beneficial use and issues water right licenses confirming new water rights. Section 42-217, Idaho Code, requires an examination before a license can be issued. Depending on the water right permit holder's choice, examinations may be conducted by IDWR staff members or by Certified Water Right Examiners (CWREs) from the private sector. The Beneficial Use Examination Rules (IDAPA 37.03.02) establish acceptable standards for conducting examinations and reporting beneficial use. Some of the rules contain ambiguous language that causes confusion about the information to be provided. The proposed rule changes would alter or clarify certain examination requirements to make it easier for CWREs to complete reports. Complete, accurate reports result in water right licenses being issued more quickly. The proposed changes are important at this time because IDWR has a water right licensing backlog of about 3500 permits, and IDWR anticipates more examinations being conducted by CWREs to help address the backlog.

The most significant among the proposed changes are:

- Clarifying that examinations for some water rights may be conducted without an "on-site" inspection.
- Clarifying when the examiner must report an annual diversion volume and clarifying how annual diversion volumes are to be determined.
- Establishing that an aerial photograph must be submitted with all field reports.
- Removing the water measurement exemption for diversion systems where IDWR did not require the permit holder to install a measuring device or access port.
- Clarifying that IDWR employees are not CWREs, but they may be authorized by the Director to conduct beneficial use examinations.
- Conforming the descriptions of large tracts of irrigated land to the provisions of Section 42-219, Idaho Code.
- Establishing that irrigated acreage shall be reported to the tenth of an acre for parcels of land covering less than 10 acres.

NEGOTIATED RULEMAKING: At the end of fiscal year 2011 the Department re-evaluated its water right programs and recognized an opportunity to shift some emphasis from the diminishing backlog of transfer applications to the chronic backlog of field examinations. On July 30, 2011, the Director decided to request authorization to pursue rule changes that would enhance the Certified Water Right Examiner option to address the examination backlog. Between the Director's decision on July 30, 2011, and the August 31, 2011, deadline for submitting proposed rules, there was insufficient time to conduct negotiated rulemaking. Prior to the hearing concerning this

proposed rulemaking, the Department will seek input from current Certified Water Right Examiners, the Idaho Water Users Association, and the general public.

INCORPORATION BY REFERENCE: No documents are incorporated into this rule by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Shelley Keen at 208-287-4947 or shelley.keen@idwr.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2011.

DATED this 30th day of August, 2011.

Shelley Keen
Water Rights Section Manager
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098
Phone 208-287-4947 / FAX 208-287-6700

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 37-0302-1101

~~002.—003. (RESERVED)~~

002. WRITTEN INTERPRETATIONS (RULE 2).

There are no written interpretations of these rules. ()

003. ADMINISTRATIVE APPEALS (RULE 3).

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Section 42-1701A, Idaho Code, and IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." ()

004. APPLICABILITY INCORPORATION BY REFERENCE (RULE 4).

No documents have been incorporated by reference into these rules. ()

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

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

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

~~**04. Examination Fee. The examination fee requirements of these rules do not apply to a permit for single family domestic use, stockwatering, or other small uses for which the use does not exceed four one-hundredths**~~

~~(0.04) cfs or four (4) AF/year. The examination fee is required for multiple use permits which exceed four one-hundredths (0.04) cfs or four (4) AF/year even though single family domestic use or stockwater use is included as one (1) of the uses on the permit. (7-1-93)~~

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 5).

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

02. Mailing Address. The mailing address for the state office is Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098. ()

03. Street Address. The street address for the state office of the Department of Water Resources, and the regional offices in Idaho Falls, Coeur d'Alene, Twin Falls, and Boise may be obtained by calling the state office at (208) 287-4800, or by visiting the department's website at <http://www.idwr.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE (RULE 6).

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

~~0057. -- 0098. (RESERVED)~~

009. APPLICABILITY (RULE 9).

01. Proof of Beneficial Use. These rules apply to all permits for which proof of beneficial use is not yet due and has not been submitted to the department. ()

02. Examination. These rules apply to all permits for which an examination has not been conducted. ()

03. Re-Examination. These rules apply to all permits which have been examined but the license has not been issued due to a request for a re-examination by the permit holder. ()

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

010. DEFINITIONS (RULE 10).

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

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

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

03. Amendment. A change in point of diversion, place, period or nature of use or other substantial change in the method of diversion or use of a permitted water right. (7-1-93)

04. Capacity Measurement. The maximum volume of water impounded in the case of reservoirs or the maximum rate of diversion from the source as determined by actual measurement of the system during normal operation. (7-1-93)

05. Certified Water Right Examiner. An employee of the Department, or a representative of the permit holder who is a professional engineer or professional geologist, qualified and registered in the state of Idaho

who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the Director, and who has been appointed by the Director, Idaho Department of Water Resources as a certified water right examiner. A certified water right examiner is commonly termed a field examiner, water right examiner or examiner. A certified water right examiner is an impartial investigator and reporter of the information required by the Director to determine the extent of beneficial use established in compliance with a permit. Department employees are authorized to complete water right examinations at the discretion of the Director.

(7-1-93)()

06. Conveyance Works. The ditches, pipes, conduits or other means by which water is carried or moved from the point of diversion to the place of use. Storage works, if any, such as a dam can be considered part of the conveyance works. (7-1-93)

07. Cubic Foot Per Second (CFS). A rate of flow approximately equal to four hundred forty-eight and eight tenths (448.8) gallons per minute and also equals fifty (50) miner's inches. (7-1-93)

08. Department. The Idaho Department of Water Resources. (7-1-93)

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

10. Duty of Water. The quantity of water necessary when economically conducted and applied to land without unnecessary loss as will result in the successful growing of crops. (7-1-93)

11. Examination or Field Examination. An on-site ~~visit~~ inspection or investigation to determine the extent of application of water to beneficial use and to determine compliance with terms and conditions of the water right permit. (7-1-93)()

12. Expansion. The diversion and/or use of more water than originally allowed by the permit including application of water to a larger tract of land than originally permitted. (7-1-93)

13. Field Report. The form provided by the Department upon which the examiner records the data gathered and describes the extent of diversion of water and application to beneficial use. The report is fully termed beneficial use field report and is also termed a field examination report. (7-1-93)

14. Headworks or Diversion Works. The constructed barriers or devices on the source of water (surface water or ground water) by which water can be diverted from its natural course of flow and/or measured. (7-1-93)

15. License. The certificate issued by the director in accordance with Section 42-219, Idaho Code confirming the extent of diversion and beneficial use of the water that has been made in conformance with the permit conditions. (7-1-93)

16. License Examination Fee. The fee required in Section 42-221K, Idaho Code, and is also termed an examination fee. (7-1-93)

17. Legal Subdivision. A tract of land described by the government land survey and usually is described by government lot or quarter-quarter, section, township and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the government lot, quarter-quarter, section, township and range description. (7-1-93)

18. Measuring Device. A generally accepted structure or apparatus used to determine a rate of flow or volume of water. Examples are weirs, meters, and flumes. Less typical devices may be accepted by the Director on a case-by-case basis. (7-1-93)

19. Nature of Use. The characteristic use for which water is or is sought to be applied. Examples are domestic, irrigation, mining, industrial, fish propagation, power generation, municipal, etc. (7-1-93)

20. Period of Use. The time period during which water under a given right can be beneficially used.

(7-1-93)

21. Permit Holder or Owner. The person, association, or corporation to whom a permit has been issued or assigned as shown by the records of the Department. (7-1-93)

22. Permit or Water Right Permit. The water right document issued by the director authorizing the diversion and use of unappropriated public water of the state or water held in trust by the state. (7-1-93)

23. Place of Use (P.U. or POU). The location where the beneficial use is made of the diverted water. (7-1-93)(____)

24. Point of Diversion (P.D. or POD). The location on the public source of water from which water is diverted. Examples are pump intake, headgate, well locations, and dam locations. (7-1-93)(____)

25. Project Works. A general term which includes diversion works, conveyance works, and any devices which may be used to measure the water or to apply the water to the intended use. Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works. (7-1-93)

26. Proof of Beneficial Use. The submittal required in Section 42-217, Idaho Code. This submittal is commonly termed proof. (7-1-93)

27. Source. The name of the natural water body at the point of diversion. Examples are Snake River, Smith Creek, ground water, spring, etc. (7-1-93)(____)

011. ABBREVIATIONS.

01. AF. Acre-Foot or Acre-Feet. (____)

02. CFS. Cubic Foot Per Second. (____)

03. P.D. or POD. Point of Diversion. (____)

04. P.U. or POU. Place of Use. (____)

05. USGS. United States Geological Survey. (____)

~~014.~~ -- 024. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

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

01. Consideration. Any professional engineer or geologist qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the director shall be considered for appointment as a water right examiner upon application to the director. The application shall be in the form prescribed by the director and shall be accompanied by a non-refundable fee in the amount provided by statute. (7-1-93)

02. Information. The director may require an applicant for appointment to the position of water right examiner to provide detailed information of past experience, provide references, and to satisfactorily complete a written or oral examination. (7-1-93)

03. Denial. If the director determines an applicant is not qualified, the application will be denied and returned to the applicant. If the director determines an applicant is qualified, a certificate of appointment will be issued. (7-1-93)

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

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

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

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

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

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

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

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

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

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

031. -- 034. (RESERVED)

035. EXAMINATION FOR BENEFICIAL USE (RULE 35).

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

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

b. Permitted uses partially developed by the permit holder shall be described in detail. Permitted uses

which were not developed by the permit holder shall be noted. Uses determined to exist which are not authorized by the permit being examined shall also be ~~noted~~ described in detail. (7-1-93)(____)

c. A concise description of the diversion works and a general description of the distribution works shall be given. This description must trace the water from the point of diversion to and including the place of use and the return to a public water source, if any. Any reservoir, diversion dam, headgate, well, canal, flume, pump and other related structure shall be included. If water is stored, the timing and method of storage, release, redirection and conveyance to the place of use shall be described. The make, capacity, serial number and model number of all pumps, boosters or measuring devices associated with the point of diversion at the source of the water supply shall be described on the field examination report. Schematic diagrams, photographs, and maps sufficient to locate and describe the diversion, conveyance and usage systems shall also be provided in the examination report. (7-1-93)(____)

d. Any interconnection of the water use being examined with other water rights or with other conveyance systems shall be described on the field report. ~~Any reservoir, diversion dam, headgate, well, canal, flume, pump and other related structure shall be included. This description shall be in the form of a concise word picture of the storage of water, if stored, its release, redirection and conveyance to the place of use. A schematic diagram of the project works shall also be provided in the field report.~~ Interconnection includes, but is not limited to, sharing the same point of diversion, distribution system, place of use, or beneficial use. The examination report shall also include an evaluation of how the water use being examined is distinct from prior existing water rights and provides an alternate source of water or increment of beneficial use not authorized by prior existing water rights. (7-1-93)(____)

e. If water is returned to a public water source after use, a legal description of the point where the water is returned and source to which discharge is made shall be provided. Examples of uses which generally have an effluent discharge include fish propagation and power facilities. (7-1-93)

f. The method of compliance with each condition of approval of a permit shall be shown on the field report by the examiner. (7-1-93)

g. If the water is used for irrigation, the boundaries of the various irrigated areas and the location of the project works providing water to each shall be platted on the ~~proof~~ maps submitted with the report and the full or partial acreage in each legal subdivision of forty (40) acres or government lot shall be shown. (7-1-93)(____)

h. Irrigated acreage shall be shown on the field report to the nearest whole acre in a legal subdivision except the acreage shall be shown to the nearest one-tenth (0.10) acre for permits covering land of ~~five (5) acres or less than ten (10) acres.~~ (7-1-93)(____)

i. Where a permit has been developed as separate distribution systems from more than one point of diversion, the separate areas irrigated from each point of diversion shall be shown on the ~~proof~~ maps ~~as described herein before~~ submitted with the report and the legal subdivisions embracing the irrigated areas for each such respective point of diversion together with the total irrigated area shall be described. (7-1-93)(____)

j. ~~The field examiner does not need to show total volume of water for municipal and fire protection uses on the field report unless the project works provide for storage of water.~~ For each use of water the examiner shall report an annual diversion volume based on actual beneficial use during the development period for the permit. The method of determining the annual diversion volume shall be shown. The annual diversion volume shall account for seasonal variations in factors affecting water use, including seasonal variations in water availability. For irrigation, the volume shall be based on the field headgate requirements in the map titled Irrigation Field Headgate Requirement appended to these rules (see Appendix A located at the end of this chapter). Annual diversion volumes for heating and cooling uses may be adjusted to account for documented weather conditions during any single heating or cooling season from among the fifty (50) years immediately prior to submitting proof of beneficial use for the permit. For storage uses that include filling the reservoir and periodically replenishing evaporation and seepage losses throughout the year, the annual diversion volume shall be the sum of the amounts used for filling and for replenishment. Volumes may include reasonable conveyance losses actually incurred by the water user. The following water uses are exempt from the volume reporting requirement: (7-1-93)(____)

i. Diversion to storage. (Volume should be reported for the storage use, such as irrigation storage.)

- ()
- ii. Domestic uses as defined in Section 42-111, Idaho Code. ()
 - iii. In-stream watering of livestock. ()
 - iv. Fire protection. (Volume is required for fire protection storage.) ()
 - v. On-stream, run-of-the-river, non-consumptive power generation uses. ()
 - vi. Minimum stream flows established pursuant to Chapter 15, Title 42, Idaho Code. ()
 - vii. Municipal use by an incorporated city or other entity serving users throughout an incorporated city, except the following situations that do require a volume to be reported: ()
 - (1) The permit or amended permit was approved with a volume limitation; or ()
 - (2) The permit was not approved for municipal use but can be amended and licensed for a municipal use established during the authorized development period for the permit. ()
 - viii. Irrigation using natural stream flow diverted from a stream or spring. (Volumes must be reported for irrigation uses from ponds, lakes and ground water and for irrigation storage and irrigation from storage.) ()
- k.** The total number of holding/rearing ponds and the dimensions and volume of the ponds shall be shown on the field report for fish rearing or fish propagation use. The annual volume shall be calculated based on the changes of water per hour. (7-1-93)
- l.** Information shall be submitted concerning the beneficial use that has been made of the water unless the purpose of use is for irrigation. For example, for stockwater use, the number and type of stock watered shall be provided. Similar indications of the extent of beneficial use shall be provided for all other non-irrigation uses. (7-1-93)
- m.** Information on the period during each year that the water is used shall be described for each use. (7-1-93)
- n.** For permits having more than one use, the diversion rate measured for each use, the annual diversion volume determined for each use (unless specifically exempted by rule or statute), and the place of use for each use shall be described. (7-1-93)()
- o.** The amount (rate and/or volume) of water shall be limited by the smaller of the permitted amount, the amount upon which the license examination fee is paid, the capacity of the diversion works or the amount beneficially used prior to submitting proof of beneficial use, including any statutory limitation of the duty of water. (7-1-93)()
- p.** Suggested amendments shall be noted on the field report when the place of use, point of diversion, period or nature of use is different from the approved permit or from previously approved amendments. Suggested amendments shall be based on actual use, not on potential use. (7-1-93)()
- q.** An aerial photo marked to depict the point(s) of diversion and place(s) of use for each use must accompany each field reports involving ten (10) or more irrigated acres unless waived by the director. If existing photos are not available, the director will accept a USGS Quadrangle map at the largest scale available. (7-1-93)()
- r.** Unless required as a condition of permit approval, an on-site examination and direct measurement of the diversion rate are not required for the following water uses if the beneficial use, place of use, season of use, and point of diversion can be confirmed by documentary means such as well driller reports, property tax records, receipts

and other records of the permit holder, or photographs, including aerial photographs: ()

- i. Irrigation up to five (5) acres. ()
- ii. Storage of up to fourteen point six (14.6) acre-feet of water solely for stock watering purposes. ()
- iii. Any uses other than irrigation or storage if the total combined diversion rate for all the uses established in connection with the permit does not exceed twenty-four one hundredths (0.24) cubic feet per second. ()

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

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

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

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

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

03. General. (7-1-93)

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

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

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

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

e. For irrigation systems which cover ~~more than~~ twenty-five thousand (25,000) acres; or more, within irrigation districts organized and existing under the laws of the state of Idaho, and for irrigation projects developed under a permit held by an association, company, corporation, or the United States to deliver surface water to more than five (5) water users under an annual charge or rental, the field report does not need to describe the irrigated land by legal subdivision, but may ~~be described~~ generally ~~as~~ the lands under the project works if the total irrigated acres

has been accurately determined and is shown on the field report. The amount of water beneficially used under such projects must be shown on the field report. (7-1-93)(____)

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

036. -- 039. (RESERVED)

040. WATER MEASUREMENT (RULE 40).

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

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

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

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

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

04. **Unacceptable Measurements.** Theoretical diversion rates or theoretical carrying capacities are not acceptable as a measure of the rate of diversion except as indicated in these rules and for some diversion systems where ~~an exception is granted by the director. Systems for which a measuring device, access port, or certified water measurement is not a permit requirement, are considered exempt from this rule~~ the flow rate cannot be measured accurately due to the physical characteristics of the diversion and distribution system. (7-1-93)(____)

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

(BREAK IN CONTINUITY OF SECTIONS)

050. LICENSE EXAMINATION FEE (RULE 50).

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

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

b. The department will not conduct an examination for which the fee has not been paid to the department unless exempted in Rule Subsection 0049.04, except that for any prior examination, whether conducted by a certified water right examiner or by department staff, the department may conduct a supplemental examination on its own initiative at any time. (7-1-93)(____)

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

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

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

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

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

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

c. After submitting proof of beneficial use and paying an examination fee to the department, but before the department's actual examination, a permit holder may submit an examination report completed by a certified water right examiner. Because the examination fee is an essential component of timely proof submittal, the department will not refund the examination fee. ()

Appendix A

