

Dear Senators PEARCE, BAIR, Stennett, and
Representatives DENNEY, Gibbs, Pence:

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

IDAPA 37.03.11 - Rules for Conjunctive Management of Surface and Ground Water Resources -
Proposed Rule (Docket No. 37-0311-1101).

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 10/24/2014. 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 11/24/2014.

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 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
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: October 6, 2014

SUBJECT: Idaho Department of Water Resources

IDAPA 37.03.11 - Rules for Conjunctive Management of Surface and Ground Water Resources - Proposed Rule (Docket No. 37-0311-1101)

The Idaho Department of Water Resources submits notice of proposed rule at IDAPA 37.03.11 - Rules for Conjunctive Management of Surface and Ground Water Resources. According to the department, Clear Springs Foods filed a petition on November 2, 2010, for the department to promulgate revisions to Rule 50. The department states that it determined that the rule did not reflect current technical information and commenced negotiated rulemaking proceedings in January of 2011. The department notes that due to ongoing work related to the ESPA model and issues related to delivery calls pending before it, rulemaking was stayed in August of 2011. The negotiated rulemaking process was restarted in May of 2014. The department states that following numerous public hearings and review of comments, it decided to repeal the rule because it is no longer necessary, and administrative hearings and deliberations associated with individual delivery calls is the proper venue to address which ground water rights should be subject to administration under a delivery call.

As noted, negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to Sections 42-603 and 42-1805(8), Idaho Code.

cc: Department of Water Resources
Kimi White

IDAPA 37 - IDAHO DEPARTMENT OF WATER RESOURCES

37.03.11 - RULES FOR CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES

DOCKET NO. 37-0311-1101

NOTICE OF RULEMAKING - PROPOSED RULE

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 Chapter 52, Title 67, Idaho Code, the Idaho Administrative Procedure Act, and Section 42-603, Idaho Code, which provides that the Director of IDWR 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 shall be necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. The Conjunctive Management Rules are also promulgated pursuant to Section 42-1805(8), Idaho Code, which provides the Director with authority to promulgate the rules implementing or effectuating the powers and duties of the Department.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Friday, October 24, 2014, at 1:30 p.m. (MDT)

**Idaho Department of Water Resources
322 East Front Street, Boise, ID 83702
6th Floor Conference Rooms B and C**

The hearing site 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. Interested parties who wish to attend the public hearing by phone may contact the Department for the teleconference number and pass code.

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

The rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11) address conjunctive administration of connected ground and surface water supplies. Part 50 of the rules (IDAPA 37.03.11.050) identifies the area on the Eastern Snake Plain Aquifer (ESPA) having a common ground water supply as identified in a 1992 professional paper of the United States Geological Survey (USGS).

Clear Springs Foods filed a petition on November 2, 2010, for the Department to promulgate revisions to Rule 50. The Department determined that Rule 50 did not reflect current technical information and commenced negotiated rulemaking proceedings in January of 2011. Multiple public meetings were held. However, due to ongoing work related to the ESPA model and issues related to delivery calls pending before the Department, the Director stayed the rulemaking proceedings in August of 2011. The Director restarted the negotiated rulemaking process in May of 2014. Four additional public meetings were held and comments received and considered.

Having considered all of the public oral and written comments received, the Department has decided to repeal Rule 50. The Director has concluded that the rule is no longer necessary and that the administrative hearings and deliberations associated with individual delivery calls is the proper venue to address which ground water rights should be subject to administration under a delivery call.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: NA

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 resulting from this rulemaking:

This rulemaking has no fiscal impact to dedicated funds for the Department or the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 7, 2014 Idaho Administrative Bulletin, [Vol. 14-5, page 77](#).

INCORPORATION BY REFERENCE: No materials are being incorporated by referenced into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact: Richard M. Rigby at (208) 287-4839. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Department's web site at the following web address: www.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 31, 2014.

DATED this 15th Day of September, 2014.

Richard M. Rigby, Senior Advisor
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720
Phone: (208) 287-4839
Fax: (208) 287-6700
richard.rigby@idwr.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 37-0311-1101
(Only those Sections being amended are shown.)

044. -- ~~0499.~~ (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. (10-7-94)~~

~~**a.** The Eastern Snake Plain Aquifer supplies water to and receives water from the Snake River. (10-7-94)~~

~~**b.** The Eastern Snake Plain Aquifer is found to be an area having a common ground water supply. (10-7-94)~~

~~**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. (10-7-94)~~

~~**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. (10-7-94)~~

~~051. -- 999. (RESERVED)~~