

Dear Senators BURTENSHAW, Adams, Semmelroth, and  
Representatives MENDIVE, Shepherd, Burns:

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 (ZBR Chapter Rewrite) - Proposed Rule  
(Docket No. 37-0302-2401).

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 11/14/2024. 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 12/12/2024.

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:** Legislative Drafter - Alli Olson

**DATE:** October 25, 2024

**SUBJECT:** Idaho Department of Water Resources

IDAPA 37.03.02 - Beneficial Use Examination Rules (ZBR Chapter Rewrite) - Proposed Rule (Docket No. 37-0302-2401)

#### **Summary and Stated Reasons for the Rule**

The Idaho Department of Water Resources submits notice of proposed rulemaking related to the Beneficial Use Examination Rules, IDAPA 37.03.02. The Department states the proposed rulemaking is pursuant to the Zero-Based Regulation initiative, reduces the chapter by approximately 17%, and stems from a combination of IDWR analysis and stakeholder negotiation and comments. The proposed rule changes improve readability by removing unnecessary language and revising language.

#### **Negotiated Rulemaking / Fiscal Impact**

The Department states that negotiated rulemaking was conducted for the proposed rule and notice was published in the April 3, 2024, Idaho Administrative Bulletin, Vol. 24-4, pages 52-53. These rules relate to fees but do not appear to change the fee structure. The Department states the rules governs the certification of water right examiners, the filing of proof of beneficial use, and beneficial use examination reports as well as the collection of fee for the same pursuant to §§ 42-217, 42-217a, 42-218a, and 42-221K Idaho Code. The Department also states that there is no fiscal impact to the General Fund.

#### **Statutory Authority**

The Department of Water Resources appears to have the authority to promulgate the proposed rule pursuant to Section 42-1805(8), Idaho Code.

cc: Idaho Department of Water Resources  
Megan Jenkins

\*\*\* PLEASE NOTE \*\*\*

Paul Headlee, Deputy Director    Matt Drake, Manager    Keith Bybee, Manager    April Renfro, Manager    Norma Clark, 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

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

## 37.03.02 – BENEFICIAL USE EXAMINATION RULES

### DOCKET NO. 37-0302-2401 (ZBR CHAPTER REWRITE)

#### 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 Section(s) § 1805(8), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 16, 2024.

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:

The Idaho Department of Water Resources (IDWR) proposes a new chapter of the “Beneficial Use Examination Rules of the Idaho Department of Water Resources,” IDAPA 37.03.02, consistent with [Executive Order 2020-01](#). The new chapter reduces the length of the rule by 17% due to the removal of unnecessary or obsolete language and modifications that simplify and clarify language. Changes to the rule come through a combination of IDWR analysis and stakeholder negotiation and comments.

The development of the proposed rule text including public participation in meetings and comments can be viewed at: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2024-2025/beneficial-use-exam-rules/>. On the same website, IDWR also developed and published rulemaking support documents, which provide IDWR’s recommendations on rulemaking, rulemaking analysis, and responses to substantive comments received through the negotiated rulemaking process.

Citizens of the state of Idaho, water users, governmental agencies, and environmental groups may be interested in commenting on the proposed rule text. After consideration of public comments received in response to this Proposed Rule, IDWR will present the final rule text to the Idaho Legislature in 2025.

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

The rule governs the certification of water right examiners, the filing of proof of beneficial use, and beneficial use examination reports as well as the collection of fee for the same pursuant to Sections §§ 42-217, 42-217a, 42-218a, and 42-221K, Idaho Code.

**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: N/A

**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 April 3, 2024 Idaho [Administrative Bulletin](#), Vol. 24-4, pages 52-53.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Erik Boe at [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov), or 208-287-4800. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the address below or by email to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov) and must be delivered on or before October 23, 2024.

DATED this 30th day of August, 2024.

Erik Boe, Water Compliance Bureau Chief, Rules Regulation Officer  
Idaho Department of Water Resources  
322 E. Front Street  
PO Box 83720 Boise, ID 83720-0098  
Phone: (208) 287-4800

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 37-0302-2401**  
**(ZBR Chapter Rewrite)**

**37.03.02 – BENEFICIAL USE EXAMINATION RULES**

**000. LEGAL AUTHORITY ~~(RULE 0)~~.**

The ~~d~~Director of the Department of Water Resources adopts these rules under the authority provided by Sections ~~42-217a and~~ 42-1805(8), Idaho Code. ~~(3-18-22)( )~~

**001. TITLE AND SCOPE ~~(RULE 1)~~.**

~~Sections 42-217 and 42-221, Idaho Code, requires a license examination fee be submitted together with the written proof of beneficial use or that a field examination report prepared by a certified water right examiner be submitted together with the written proof of beneficial use. The statutes also provided that field examinations could be conducted by certified water right examiners appointed by the director. These rules set the procedures for appointing certified water right examiners and govern beneficial use examinations and the filing of beneficial use examination reports.~~ ~~(3-18-22)( )~~

**01. Examination Requirements.** The ~~examination~~ requirements listed are intended ~~as a guide~~ to establish acceptable standards to determine the extent of application of water to beneficial use. The requirements are not intended to restrict the application of other sound examination principles by water right examiners. The ~~d~~Director will evaluate any deviation from the standards hereinafter stated as they pertain to the review of any given examination. ~~W~~ Certified water right examiners are encouraged to submit new ~~ideas~~ techniques which will advance the ~~art practice of examination and provide~~ for the public benefit. ~~(3-18-22)( )~~

**02. Rules.** These rules shall not be construed to deprive or limit the ~~d~~Director ~~of the Department of Water Resources~~ of any exercise of powers, duties, and jurisdiction conferred by law, nor to limit or restrict the amount or character of data, or information which may be required by the ~~d~~Director from any owner of a water right permit or authorized representative for the proper administration of the law. ~~(3-18-22)( )~~

**002. -- 008. (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 ~~d~~Department. ~~(3-18-22)( )~~

**02. Examination.** These rules apply to all permits for which an examination has not been conducted. (3-18-22)

**03. Re-Examination.** These rules apply to all permits that have been examined but the license has not been issued due to a request for a re-examination by the permit holder. (3-18-22)

**04. Examination Fee.** The examination fee requirements of these rules do not apply to a permit for

ground water use for single family domestic use, stockwatering, or any other small uses for which the use does not exceed four one hundredths (0.04) cfs or four (4) AF/year a permit is not required by statute. The examination fee is required for multiple use permits which exceed four one-hundredths (0.04) cfs or four (4) AF af/year even though single family domestic use or stockwater use is included as one (1) of the uses on the permit. (3-18-22)( )

**010. DEFINITIONS (RULE 10).**

~~Unless the context otherwise requires, the following definitions govern these rules.~~ (3-18-22)

**01. Acre-Foot (AFaf).** 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~~ three hundred twenty-five thousand, eight hundred fifty (325,850) gallons. (3-18-22)( )

~~02. Acre-Foot/Annum. An annual volume of water that may be diverted under a given use or right.~~ (3-18-22)

~~032. Amendment.~~ A change in to the 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. (3-18-22)( )

**03. Beneficial Use Examination (Examination).** An on-site inspection or other 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. ( )

**04. Beneficial Use Examination Report (Examination Report).** The form provided by the Department or other acceptable document upon which the CWRE or Department employee records the data required by Section 035 gathered during the examination. ( )

**045. Capacity Measurement.** The maximum volume of water impounded in the case of ~~reservoirs a~~ storage facility or the maximum rate of diversion from the source as determined by actual measurement of the system during normal operation. (3-18-22)( )

~~056. Certified Water Right Examiner (CWRE). 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 a~~ An impartial investigator and reporter of the information required appointed by the Director in accordance with Section 030 to determine the extent of beneficial use established in compliance with a permit. Department employees are authorized to conduct water right examinations at the discretion of the Director. (3-18-22)( )

**067. 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.~~ Any storage structure, such as a dam, can be is considered part of the conveyance works. (3-18-22)( )

**078. Cubic Foot Per Second (CFScfs).** A rate of flow approximately equal to four hundred forty-eight and eight tenths (448.8) gallons per minute and also equals fifty (50) Idaho miner's inches. (3-18-22)( )

**089. Department.** The Idaho Department of Water Resources. (3-18-22)

~~0910. Director.~~ The Director of the Idaho Department of Water Resources. Per Section 42-1701(3), Idaho Code, the Director may delegate authority to perform duties imposed upon the Director by law, including duties described herein, to a Department employee. (3-18-22)( )

**11. Diversion Works.** The constructed barriers or devices on the source of water by which water can be diverted from the natural watercourse. ( )

**102. Duty of Water.** The quantity of water necessary for the successful growing of crops when economically ~~conducted~~ conveyed and applied to land without unnecessary loss ~~as will result in the successful~~

growing of crops. (3-18-22)( )

~~11. Examination or Field Examination. An on-site 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. (3-18-22)~~

~~12. 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. (3-18-22)~~

~~13. 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. (3-18-22)~~

13. Irrigation. The application of water to cultivated land in sufficient quantity or manner to cause plant growth for a useful purpose. ( )

~~14. 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. (3-18-22)( )~~

~~15. License Examination Fee. The fee required prescribed in Section 42-221(K), Idaho Code, and is also termed an examination fee. (3-18-22)( )~~

~~16. Legal Subdivision. A tract of land described by the a 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 land survey description. (3-18-22)( )~~

~~17. 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. (3-18-22)( )~~

~~18. Nature of Use. The characteristic purpose of use for which water is applied. Examples are domestic, irrigation, mining, industrial, fish propagation, power generation, municipal, etc. (3-18-22)( )~~

~~19. Period of Use. The time period during which water under a given water right can be beneficially used. (3-18-22)( )~~

~~20. Permit Holder or Owner. The person, association, or corporation to whom a permit has been issued or assigned conveyed as shown by the records of the Department. (3-18-22)( )~~

~~21. 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. (3-18-22)~~

~~22. Place of Use (P.U. or POU). The location where the beneficial use of appropriated water is made of the diverted water. (3-18-22)( )~~

~~23. 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. (3-18-22)( )~~

~~24. Project Works. A general term which that 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. (3-18-22)( )~~

~~25. Proof of Beneficial Use (Proof). The submittal required in Section 42-217, Idaho Code. This~~

~~submittal is commonly termed proof.~~ (3-18-22)( )

~~265. Source. The name of the natural water body at the point of diversion. Examples are Snake River, Smith Creek, ground water, spring, etc.~~ (3-18-22)( )

~~26. **Water Right Permit (Permit).** The water right document issued by the Director authorizing the diversion and use of unappropriated public water, reallocated trust water, or a low temperature geothermal resource.~~ ( )

~~011. ABBREVIATIONS.~~

~~01. AF. Acre Foot or Acre Feet.~~ (3-18-22)

~~02. CFS. Cubic Foot Per Second.~~ (3-18-22)

~~03. P.D. or POD. Point of Diversion.~~ (3-18-22)

~~04. P.U. or POU. Place of Use.~~ (3-18-22)

~~05. USGS. United States Geological Survey.~~ (3-18-22)

~~0121. -- 024. (RESERVED)~~

~~025. AUTHORITY OF REPRESENTATIVE (RULE 25).~~

~~01. **Proof of Beneficial Use Evidence of Authority.** When the proof of beneficial use, field examination report, and drawings are filed by the water right examiner a CWRE on behalf of an owner, written evidence of authority to represent the owner shall be filed with the proof, field report, and drawings.~~ (3-18-22)( )

~~02. **Responsibility.** It is the responsibility of the permit holder or authorized representative to submit proof of beneficial use and provide for the timely ensure submission of a completed field examination report in acceptable form to the Director by before the due date in acceptable form to the director by either paying the required examination fee to the Department or by employing a certified water right examiner CWRE.~~ (3-18-22)( )

~~026. -- 029. (RESERVED)~~

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

~~01. **Consideration.** Any professional engineer or geologist qualified and registered in the state of Idaho who has with the knowledge and experience necessary to satisfactorily complete water right field examinations an examination as determined by the Director shall be considered for appointment as a water right examiner CWRE 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 prescribed in Section 42-217a, Idaho Code.~~ (3-18-22)( )

~~02. **Information.** The Director may require an applicant for appointment to the position of water right examiner CWRE to provide detailed experience information of past experience, provide submit references, and to satisfactorily complete a written or oral examination.~~ (3-18-22)( )

~~03. **Denial.** If the Director determines an applicant is not qualified, the application will be denied. If the Director determines an applicant is qualified, a certificate of appointment will be issued.~~ (3-18-22)

~~04. **Expiration.** Every water right examiner CWRE 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 prescribed in Section 42-217a, Idaho Code, shall accompany an application for renewal.~~



(3-18-22)( )

**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. (3-18-22)

**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. (3-18-22)

**07. Liability.** The state of Idaho shall not be liable for the compensation of any ~~water right examiner other than department employees.~~ CWRE. The permit holder shall be responsible for costs associated with proof submittal including examination and field examination report preparation. (3-18-22)( )

**08. Examinations.** The Director may authorize sufficiently knowledgeable and experienced ~~d~~Department employees to conduct ~~water right~~ examinations during the course and scope of their employment with the ~~d~~Department. Upon termination of employment with the ~~d~~Department, such examiners, unless ~~re~~appointed as a ~~non department certified examiner~~ CWRE under provisions of these rules, are not authorized to conduct ~~field~~ examinations. ~~The fee provisions of these rules do not apply to department employees.~~ (3-18-22)( )

**09. Ingress or Egress Authority.** Appointment as a ~~water right examiner~~ CWRE does not grant ingress or egress authority ~~to non department examiners~~ and does not convey authority unless explicitly prescribed in these rules. (3-18-22)( )

**10. Reports.** The Director will not accept ~~a field an~~ examination report prepared by a ~~certified water right examiner~~ CWRE or a ~~d~~Department ~~employee 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 t~~ The Director will presume ~~to have~~ an actual or potential conflict of interest exists and ~~from whom he~~ will not accept ~~a field an~~ examination report ~~are from~~ the following: (3-18-22)( )

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~~ family (spouse, parents, grandparents, lineal descendants including those that are adopted, lineal descendants of parents; and spouse of lineal descendants), and their employees. (3-18-22)( )

b. The person ~~or persons~~, who sold or installed the diversion project works ~~or distribution system~~. (3-18-22)( )

**11. Money Received.** All moneys received by the ~~d~~Department under the provisions of these rules shall be deposited in the water administration ~~fund~~ account created under Section 42-238a, Idaho Code. (3-18-22)( )

031. -- 034. (RESERVED)

035. EXAMINATION FOR BENEFICIAL USE ~~(RULE 35)~~.

**01. Field Examination Report.** An examination report must include the following information in sufficient detail for the Director to determine the extent of water use developed consistent with the permit: (3-18-22)( )

~~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. (3-18-22)

~~ba.~~ Permitted uses Each permitted use developed or partially developed, ~~by the permit holder shall be described in detail. Permitted uses which were not developed by the permit holder~~ Note any undeveloped permitted use shall be noted. Uses determined to exist which are and describe any established use that is not authorized by the permit being examined ~~shall also be described in detail.~~ (3-18-22)( )

~~eb.~~ The location for the POD described by legal subdivision, including a concise description of the diversion works and a general description of the ~~distribution conveyance~~ works, ~~shall be given. This~~ The description must trace the water from the ~~point of diversion POD~~ to the ~~place of use POU, 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, describe the timing ~~and of storage~~, method of storage, release, redirection, and conveyance to the ~~place of use POU shall be described. The~~ Describe the make, capacity, serial number, and model number of all pumps, boosters or measuring devices associated with the ~~point of diversion POD~~ at the source of the water supply, ~~shall be described on the field examination report. Schematic~~ Include any schematic diagrams, photographs, digital images, and maps sufficient to locate and describe the diversion, conveyance, and usage systems ~~shall also be provided in the examination report.~~ (3-18-22)(    )

~~ec.~~ Any interconnection of ~~the water use being examined~~ with an other water rights or ~~with other~~ conveyance systems ~~shall be described on the field report.~~ Interconnection includes, but is not limited to, sharing the same ~~point of diversion POD~~, distribution system, ~~place of use POU~~, or beneficial use. The examination report shall ~~also~~ include an evaluation ~~of how that demonstrates~~ the water use ~~being examined~~ is distinct from ~~prior other~~ existing water rights, ~~and provides is~~ an alternate source of water for a beneficial use served by an existing water right, or is an increment of beneficial use not authorized by ~~prior another~~ existing water rights. (3-18-22)(    )

~~ed.~~ If water is returned directly to a public water source after use, a description of the conveyance system and the 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.~~ (3-18-22)(    )

~~ef.~~ The method of compliance with each permit condition of approval, ~~of a permit shall be shown on the field report by the examiner.~~ (3-18-22)(    )

~~ef.~~ The POU location for each use described by legal subdivision. (    )

i. For irrigation, describe the irrigated acreage to the nearest whole acre in each forty (40) acre legal subdivision. For irrigation of less than ten (10) acres, describe the acreage to the nearest one-tenth (0.10) acre. (    )

~~ii.~~ If the water is used for irrigation, the For irrigation, submit a map depicting the boundaries of the irrigated areas and the project works location ~~of the project works providing that conveys~~ water to each area, ~~shall be platted on the maps submitted with the report and the~~ Show the full or partial acreage in each legal subdivision of forty (40) acres or government lot ~~shall be shown.~~ (3-18-22)(    )

~~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 less than ten (10) acres. (3-18-22)

~~ig.~~ 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 maps 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. If more than one (1) POD is developed with separate diversion works and conveyance works, a description of each separate system. For irrigation, submit a map depicting the boundary of irrigated acres and the number of acres per legal subdivision for each separate system. (3-18-22)(    )

~~jh.~~ For each use of water the examiner shall report an The annual diversion volume based on actual beneficial use during the development period ~~for the permit for each permitted use. The~~ Describe the method ~~of used~~ for 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:~~ (3-18-22)(\_\_\_\_)

~~i. For irrigation, the volume shall be based on the standard field headgate requirement as determined by the Director. The Department established irrigation standard field headgate requirement is available on the Department's website or from the Department upon request.~~ (\_\_\_\_)

~~ii. For heating, cooling, or commercial snowmaking, the volume may be adjusted to account for documented weather conditions during any single season from among the fifty (50) years immediately prior to submitting proof for the permit.~~ (\_\_\_\_)

~~iii. For storage use that includes refill, a use from storage, or both, the volume shall be the sum of the amount used for fill and in priority refill. If the volume exceeds the capacity of the storage facility, describe the amount, method, and timing of refill.~~ (\_\_\_\_)

~~i. The following water uses are exempt from the volume reporting requirement:~~ (\_\_\_\_)

~~i. Diversion to storage. (Volume should be reported for the storage use, such as irrigation storage.)~~ (3-18-22)(\_\_\_\_)

~~ii. Domestic uses from ground water as defined in Section 42-111, Idaho Code.~~ (3-18-22)(\_\_\_\_)

~~iii. In-stream watering of livestock.~~ (3-18-22)

~~iv. Fire protection. (Volume is required for fire protection storage.)~~ (3-18-22)

~~v. On-stream, run-of-the-river, non-consumptive on-stream power generation uses.~~ (3-18-22)(\_\_\_\_)

~~vi. Minimum stream flows established pursuant to Chapter 15, Title 42, Idaho Code.~~ (3-18-22)

~~vii. Municipal use by an incorporated city or other entity serving users throughout an incorporated city; a municipal provider as defined in Section 42-202B(5), Idaho Code that is serving users within a municipality's service area as defined in Section 42-202B(9), Idaho Code, except the following situations that do require a volume to be reported:~~ (3-18-22)(\_\_\_\_)

~~(1) The permit or amended permit was approved with a volume limitation; or~~ (3-18-22)

~~(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.~~ (3-18-22)

~~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.)~~ (3-18-22)

~~ix. For fish propagation, 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 each pond. The annual volume shall be calculated based on the changes of water per hour.~~ (3-18-22)(\_\_\_\_)

~~x. Information shall be submitted concerning Description of the beneficial use that has been made of the water unless the purpose of use is for irrigation for all non-irrigation use. 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.~~ (3-18-22)(\_\_\_\_)

~~xi. The period during each year that the water is used shall be described for each permitted use.~~ (3-18-22)(\_\_\_\_)

~~nm.~~ For permits having more than one (1) use, ~~t~~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.~~ 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. (3-18-22)(    )

~~on.~~ The amount ~~(rate and/or volume)~~ of water ~~shall~~ will 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. (3-18-22)(    )

~~po.~~ ~~Suggested amendments~~ Amendment recommendations based on actual use shall be noted on the field report when if the place of use POU, point of diversion POD, period of use, or nature of use is different from the permit. Suggested amendments shall be based on actual use, not on potential use. (3-18-22)

~~qp.~~ An aerial photo marked to depict the point(s) of diversion and place(s) of use for each use ~~must accompany each field report~~ A map consistent with Subsection 045.03 unless waived by the Director. ~~If existing photos are not available, the Director will accept a USGS Quadrangle map at the largest scale available.~~ (3-18-22)(    )

~~rg.~~ Unless required as a condition of permit approval, an on-site examination and direct measurement of the diversion rate ~~are is~~ not required for the following water uses if the extent of 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~~ imagery, or other records: (3-18-22)(    )

i. Irrigation up to five (5) acres. (3-18-22)

ii. Storage of up to fourteen point six (14.6) ~~acre-feet~~ af of water ~~solely for stock watering purposes~~ stockwater, aesthetic, recreation, or wildlife. (3-18-22)(    )

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~~ cfs. (3-18-22)(    )

**02. ~~Field~~ Examination Report Acceptability.** (3-18-22)(    )

a. All ~~field examination~~ reports shall be prepared by or under the supervision of ~~certified water right examiners a CWRE~~ or authorized ~~d~~Department employees. ~~Reports~~ An examination report submitted by ~~certified water right examiners a CWRE~~ must be properly endorsed with ~~an the CWRE's~~ engineer or geologist seal and signature. ~~Field reports~~ An examination report received from ~~certified water right examiners a CWRE~~ will be accepted if the report includes all the information required ~~to complete the report and provides, including~~ the information required by ~~Rule~~ Subsection 035.01. (3-18-22)(    )

b. ~~Field reports~~ An examination report 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, t~~ The penalty provisions of ~~Rule Section~~ 055 ~~shall~~ will apply. (3-18-22)(    )

c. If the Director determines that ~~a field an examination~~ report prepared by a ~~certified water right examiner~~ CWRE is acceptable but ~~that~~ additional information is needed to clarify the ~~field examination~~ report, the Director will notify the ~~examiner~~ CWRE 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 Director will return the examination report and proof to the permit holder, 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 ~~d~~Department's request is cause for the Director to take action to ~~cancel the permit~~ apply the provisions of Section 055. (3-18-22)(    )

d. ~~Field reports which indicate that~~ An examination report that indicates a measuring device or

lockable controlling works, required as a condition of approval of the permit, ~~has is not been installed, are or is~~ not acceptable ~~and~~ will be returned ~~to the examiner~~ unless the Director has formally waived the measuring device requirement or lockable controlling works requirement ~~has been formally waived or modified by the Director.~~  
(3-18-22)(\_\_\_\_)

**03. General.** (3-18-22)

a. For irrigation ~~purposes~~, the duty of water shall not exceed five (5) ~~acre feet~~ af of stored water for each acre of land to be irrigated or more than one (1) ~~cubic foot per second~~ cfs 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. (3-18-22)(\_\_\_\_)

b. For irrigated acreage of five (5) acres or less, a diversion rate up to three one-hundredths (0.03) cfs per acre may be allowed on the license to be issued by the Director. (3-18-22)

c. Conveyance losses ~~of water~~ from the ~~point of diversion~~ POD to the ~~place of use~~ POU which are determined by actual measurement may be allowed ~~by the Director~~ if the diversion rate does not exceed the permitted rate and the loss is determined by the Director to be reasonable. (3-18-22)(\_\_\_\_)

d. The duty of water described in ~~Subsections Paragraph~~ 035.03.a. or 035.03.b. may be exceeded if the ~~department has authorized~~ permit or amended permit was approved with a greater diversion rate per acre ~~when the permit was issued~~ and good cause acceptable to the Director has been demonstrated. (3-18-22)(\_\_\_\_)

e. For irrigation, ~~systems which the irrigated areas may be generally described if the project works~~ cover twenty-five thousand (25,000) acres or more, are within irrigation districts organized and existing under the laws of the state of Idaho, ~~and for irrigation projects or were~~ developed under a permit held by an association, company, corporation, or the United States authorized 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 describe generally the lands under the project works if and~~ the total irrigated acres ~~has been~~ are accurately determined and ~~is shown on in the field examination~~ report. The amount of water beneficially used under such projects must be shown ~~on in the field examination~~ report. (3-18-22)(\_\_\_\_)

**036. -- 039. (RESERVED)**

**040. WATER MEASUREMENT (~~RULE 40~~).**

**01. Measurement ~~Terminology~~.** A rate of flow measurement shall be shown in units of cfs with three (3) significant figures and no more precision than hundredths. A volume measurement shall be shown in units of af with three (3) significant figures and no more precision than tenths. (3-18-22)(\_\_\_\_)

~~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.~~ (3-18-22)

~~b. Volume measurements shall be shown in units of acre-feet (AF) with three (3) significant figures, and no more precision than tenths.~~ (3-18-22)

**02. Diversion Rate of Diversion.** The ~~rate of~~ diversion rate measurement ~~shall must~~ be conducted as close as reasonably possible to the source of supply and ~~shall must~~ 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.~~ (3-18-22)(\_\_\_\_)

**03. Measurements.** Water measurements may be made by vessel, weir, meter, rated flume, reservoir capacity table or other standard method of measurement acceptable to the Director. The field examination report ~~shall~~ must describe the method used in making the measurement, the date when made, the name of the person making the measurement, ~~the legal a~~ 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~~. (3-18-22)(\_\_\_\_)

04. **Unacceptable Measurements.** Theoretical diversion rates or theoretical carrying capacities are not acceptable as a measure of the ~~rate of~~ diversion ~~rate~~ except as indicated in these rules and for ~~some~~ diversion ~~systems~~ ~~works~~ where the flow rate cannot be measured accurately due to the physical characteristics of the diversion and distribution system. (3-18-22)(    )

05. **Method.** ~~R~~Flow ~~rate of flow~~ measurements shall be determined using equipment and methods capable of obtaining an accuracy of plus or minus ten percent (10%). (3-18-22)(    )

041. -- 044. (RESERVED)

045. **DRAWINGS, MAP, AND SCHEMATIC DIAGRAM (RULE 45).**

~~The following provisions shall apply to the submittal of drawings, maps, photos and the schematic diagrams.~~ (3-18-22)

01. **Submittal of Drawings, Maps, Photos and Schematic Diagrams.** Drawings, maps, photos and schematic diagrams used as an attachment to the ~~field examination~~ report ~~shall~~ should be on eight and one-half by eleven (8 1/2 x 11) inch paper whenever possible. (3-18-22)(    )

02. **Attachment Sheets.** ~~Attachment sheets shall~~ depict information on one (1) side ~~only of attached documents.~~ (3-18-22)(    )

03. **Scale of Map.** ~~The map~~ An aerial image or United States Geological Survey Quadrangle map depicting the ~~point of diversion~~ POD and ~~place of use~~ POU ~~shall~~ must be of a reasonable scale ~~but not less than two (2) inches equals one (1) mile. The map shall~~ and show the location of the ~~point(s) of diversion~~ POU and POD to the nearest forty (40) acre tract ~~or to a ten (10) acre tract for springs.~~ The location of ~~ditches, canals, mainlines, distribution systems and the place of use by forty (40) acre tract~~ must ~~any ditch, canal, mainline, or other conveyance work~~ must be shown. (3-18-22)(    )

04. **Drawings.** Drawings ~~need to~~ must include a scale and generally depict the size and type of diversion works, measuring device, conveyance system, water application method, and the location of any measurements taken. (3-18-22)(    )

05. **Photographs.** Photographs of the diversion works, ~~the typical distribution~~ conveyance works, and other prominent features of the ~~system~~ shall project works must be ~~provided with the field~~ clearly labeled and attached to the examination report. (3-18-22)(    )

046. -- 049. (RESERVED)

050. **LICENSE EXAMINATION FEE (RULE 50).**

01. **Examinations Conducted by Department Staff.** (3-18-22)

a. The examination fee shall be payable to the Department ~~of Water Resources~~ unless the ~~field~~ examination is conducted by a ~~certified water right examiner~~ CWRE. (3-18-22)(    )

b. The ~~d~~Department will not conduct an examination for which the fee has not been paid to the ~~d~~Department unless exempted in ~~Rule~~ Subsection 009.04, except that for any prior examination, whether conducted by a ~~certified water right examiner~~ CWRE or by a ~~d~~Department ~~staff~~ employee, the department may conduct a supplemental examination on its own initiative at any time. No examination fee ~~shall~~ will be charged for a supplemental examination conducted by the ~~d~~Department on its own initiative. (3-18-22)(    )

c. ~~A license shall~~ The Department will not ~~be issued~~ issue a license for an amount of water in excess of the amount covered by the examination fee. Subsequent to the examination and prior to issuing 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

~~Department will not reduce the~~ rate or volume licensed ~~shall not be reduced by reason of~~ based on the examination fee. If payment is not received within the thirty (30) day period, the Department will limit the rate or volume licensed ~~shall be limited by~~ based on the original examination fee paid. For the purpose of determining advancement of priority for late fees ~~as provided in accordance with~~ in Section 42-217, Idaho Code, fees ~~shall will~~ not be considered as having been paid until paid in full, including any subsequent fee. (3-18-22)(    )

d. Excess examination fees are non-refundable. (3-18-22)

e. An examination fee equal to the initial examination fee paid to the ~~e~~D Department shall be paid for a re-examination made at the request ~~for of~~ the permit holder except upon a showing of error by the ~~e~~D Department on the initial examination. (3-18-22)(    )

**02. Examinations Conducted by ~~Non-Department~~ Certified Water Right Examiners.** (3-18-22)(    )

a. The examination fee required by Section 42-217, Idaho Code is not applicable for an examination conducted by or under the supervision of ~~certified water right examiners~~ a CWRE. (3-18-22)(    )

b. A permit holder may not choose to have the examination conducted by the ~~e~~D Department after selecting a ~~certified water right examiner~~ a CWRE. (3-18-22)(    )

c. After submitting proof of beneficial use and paying an examination fee to the ~~e~~D Department, but before the ~~department's actual~~ examination, a permit holder may submit an examination report completed by a ~~certified water right examiner~~ CWRE. Because the examination fee is an essential component of timely proof submittal, the ~~e~~D Department will not refund the examination fee. (3-18-22)(    )

**051. -- 054. (RESERVED)**

**055. PENALTY (~~RULE 55~~).**

**01. Permits for Which Proof Has Not Been Submitted.** The submittal required is the proof and the examination fee or the proof and ~~a completed field~~ an examination report completed by a CWRE. (3-18-22)(    )

**02. Failure to Submit.** Failure to submit either the license examination fee or an acceptable ~~field~~ examination report prepared by or under the supervision of a ~~certified water right examiner~~ CWRE by the proof due date is cause to lapse the permit pursuant to Section 42-218a, Idaho Code, unless the Department approved an extension of time pursuant to Section 42-204, Idaho Code, extending the proof of beneficial use due date ~~has been~~ approved. (3-18-22)(    )

**056. -- 999. (RESERVED)**

**Appendix A**

Appendix A

### Irrigation Field Headgate Requirement

