

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 37.03.11 - Rules for Conjunctive Management of Surface and Ground Water Resources -  
Proposed Rule (Docket No. 37-0311-2401).

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 28, 2024

**SUBJECT:** Idaho Department of Water Resources

IDAPA 37.03.11 - Rules for Conjunctive Management of Surface and Ground Water Resources - Proposed Rule (Docket No. 37-0311-2401)

#### Summary and Stated Reasons for the Rule

The Idaho Department of Water Resources submits notice of proposed rulemaking related to the Rules for Conjunctive Management of Surface and Groundwater Resources, IDAPA 37.03.11. The Department states the proposed changes ensures continuity between the statute and rule. The applicable statute, Idaho Code § 42-233c, effective July 1, 2024, clarifies the area having a common groundwater supply for the Eastern Snake River Plain Aquifer. The proposed rule aligns itself with the statute by referring to the statute to define the ESPA.

#### Negotiated Rulemaking / Fiscal Impact

The Department states that negotiated rulemaking was not conducted given the change is necessary to align the rule with the statute. The Department also states that there are no fees associated with this rulemaking and that there is no fiscal impact to the General Fund.

#### Statutory Authority

The Department of Water Resources has 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 \*\*\*

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.

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

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## IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES

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

DOCKET NO. 37-0311-2401

#### 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 42-1805(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) initiated this rulemaking to align IDAPA 37.03.11.050 (Rule 50) with Section 42-233c, Idaho Code. Section 42-233c, Idaho Code, effective on and after July 1, 2024, clarifies the area having a common ground water supply for the Eastern Snake Plain Aquifer (ESPA). This targeted change will ensure continuity between statute and rule.

With this Notice, IDWR proposes an amendment of Rules for Conjunctive Management of Surface and Ground Water Resources.

The proposed rule text may be viewed at: <https://idwr.idaho.gov/legal-actions/rules/idwr-rulemaking-2024-2025/conjunctive-management-rules/>. On the same website, IDWR also published rulemaking support documents, which includes Senate Bill 1341 at: <https://legislature.idaho.gov/sessioninfo/2024/legislation/S1341/>, and Section 42-233c, Idaho Code, at: <https://legislature.idaho.gov/statutesrules/idstat/Title42/T42CH2/SECT42-233c/>.

After consideration of public comments received in response to this Proposed Rule, IDWR will present the final rule text during the 2025 Legislative Session.

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

**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: NA.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the amendment to Rule 50 is necessary to align the rule with the provisions of Section 42-233c, Idaho Code, that came into effect on July 1, 2024. This amendment ensures consistency and continuity between the statute and the rule.

**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: NA.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Erik Boe at [Erik.Boe@idwr.idaho.gov](mailto:Erik.Boe@idwr.idaho.gov), (208) 287-4800.

Anyone may submit written comments regarding this proposed rulemaking by mail to the address below or by email to [rulesinfo@idwr.idaho.gov](mailto:rulesinfo@idwr.idaho.gov). All written comments must be directed to the undersigned and must be delivered on or before October 23, 2024.

DATED this 11th day of September, 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. 37-0311-2401**  
**(Only Those Sections With Amendments Are Shown.)**

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

**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 defined in Section 42-233c, Idaho Code.~~ (3-31-22)(    )

~~**a.** The Eastern Snake Plain Aquifer supplies water to and receives water from the Snake River. (3-31-22)~~

~~**b.** The Eastern Snake Plain Aquifer is found to be an area having a common ground water supply. (3-31-22)~~

~~**e.** 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. (3-31-22)~~

~~**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. (3-31-22)~~