

MINUTES
SENATE RESOURCES & ENVIRONMENT COMMITTEE

DATE: Monday, January 27, 2025
TIME: 1:30 P.M.
PLACE: Room WW55
MEMBERS PRESENT: Chairman Sessions (Burtenshaw), Vice Chairman Hart, Senators Guthrie, Harris, Okuniewicz, Cook, VanOrden, Kohl, and Taylor
ABSENT/ EXCUSED: None
NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.
CONVENED: **Vice Chairman Hart** called the meeting of the Senate Resources and Environment Committee (Committee) to order at 1:30 p.m.
DOCKET NO. 37-0301-2401 **Adjudication Rules (ZBR Chapter Rewrite) - Pending Rule. Erik Boe,** Compliance Bureau Chief and Rules Review Officer, Idaho Department of Water Resources (IDWR) presented all Dockets on the agenda. He explained reviews for the first four dockets were done in compliance with the Governor's Executive Order No. 2020-01, titled Zero Based Regulation. All dockets were fee rules, although IDWR did not modify any fees in this rulemaking.

Mr. Boe referred the Committee to the 2025 Senate Resources and Environment Pending Rules Review Book, with the notice of rulemaking on page 158 and the rule text beginning on page 160. This rule set minimum requirements for completing a notice of claim to a water right established under state law and established clear criteria for calculating claim filing fees, refunding fees, and rejecting incomplete claims.

Mr. Boe reviewed the rulemaking process for the rule and some of the significant changes made through this rulemaking. Some of the significant changes were:

- Improved overall readability, by removing or replacing antiquated language and shortening complex sentences.
- Removed unnecessary definitions that were defined later in the specific rule in which they were used. An example of this included "variable power fee" associated with claims for power generation in Section 035.03.
- Added necessary definitions defining a "public entity" and "public purpose" to clarify fees associated with claims filed for public purposes.
- Updated references in Section 060.03 to be consistent with both IDWR's new online claim filing system and their older paper filing system, which remained used for complex claims.
- Restructured the minimum requirements for filing claims to improve readability and understanding.
- Added clarification to Section 060.03.e on review criteria for claims filed based on enlargements and expansions.
- Updated language to ensure consistency with other IDWR rules. One of the more important language updates was an update to the description of "surface

water sources” in Section 060.03.c to be consistent with the description in the Water Appropriation Rules.

DISCUSSION: **Vice Chairman Hart** asked if locations with regard to these claims referenced U.S. Geological Survey township range designations, such as in Section 060.03.j, which requested a description of the location of the place of use. **Mr. Boe** responded that they were. **Senator Kohl** asked if the Aquaculture Fee crossed out on page 160 was found to be redundant, placed in other code, or removed. **Craig Saxton**, Water Allocations Bureau Chief, IDWR, responded that the Aquaculture Fee was addressed later on within the rule, and it was taken out of the definition because it was only referred to once or twice within that rule.

MOTION: **Senator Harris** moved to approve **Docket No. 37-0301-2401**. **Senator Taylor** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. **37-0302-2401** **Beneficial Use Examination Rules (ZBR Chapter Rewrite) - Pending Rule.** **Mr. Boe** referred the Committee to the 2025 Senate Resources and Environment Pending Rules Review Book, with the notice of rulemaking on page 171 and the rule text beginning on page 173. He explained the Beneficial Use Examination Rules set procedures and requirements for members of the public to become certified water right examiners, established clear standards for the information that must be recorded in an examination report, and governed licensing examination fees pursuant to Idaho Code §§ 42-217, 42-217a, 42-218a, and 42-221K.

Mr. Boe reviewed the rulemaking process for this rule and some of the significant changes made through this rulemaking. Some of the significant changes were:

- Updated and revised Section 010, Definitions, to remove old and inconsistent terminology.
- Made restructuring and organizational changes to improve readability and clarity.
- Updated Section 035.01.h for permits that authorized commercial snow making, allowing for the use of fifty years of climate data to adjust the volume of water used for beneficial use. This change, supported by stakeholder comments, added to rule what had been IDWR’s common practice.
- Updated language in Section 035.01.i for the “volume-reporting exemption” for municipal use permits. This change replaced vague and outdated terminology with definitions in statute.

DISCUSSION: **Vice Chairman Hart** asked if the allocation for commercial snow making would increase in a dry year and how that increase would be based on historical weather records. **Mr. Boe** responded that the allocation would be based on the fifty year average, so if the drier year influenced the average over fifty years, the allocation would change. **Vice Chairman Hart** asked if a request for more water in a dry year would be accommodated by IDWR. **Mr. Boe** responded that when operators applied for snow making, they established what they needed, which was a range of values based on climate data.

Senator Harris asked why cubic feet had been changed to gallons under Section 010.01 on page 174. **Phil Hummer**, Water Rights Permits Section Manager, IDWR, responded that the change was made to be consistent with the Water Appropriation Rules that were adopted last year. **Senator Guthrie** asked for the definition of beneficial use. **Mr. Hummer** responded that the term itself was not defined explicitly in the rules, but beneficial use was the use to which water was applied. **Senator Guthrie** and **Senator Harris** expressed concern that IDWR did not have a definition of beneficial use. **Vice Chairman Hart** asked if there was a definition of beneficial use in statute or defined by a court case. **Mr. Hummer** responded that beneficial use was not defined, although certain beneficial uses were defined.

Shelley Keen, Deputy Director, IDWR, stated that there was not a definition of beneficial use in statute that IDWR relied on to define water rights. He stated that in his experience, what was beneficial use from one water source or in one location might not be someplace else. IDWR relied on the record as it was presented to them and the discretion of the Director to determine what was beneficial use in each water right proceeding. **Senator Guthrie** asked if the priority date would change if someone had a water right decree for a certain amount of water for irrigation that had a priority date, and they later wanted to change the use of that water to turn in-line hydro, or would it stay under the umbrella of beneficial use from the original decree. **Mr. Keen** responded that there was an exemption added to statute a few years ago regarding in-line hydros and an in-line hydro that generated power while it was delivered to another beneficial use, such as irrigation in a canal system, did not require a water right permit.

MOTION:

Senator VanOrden moved to hold **Docket No. 37-0302-2401** subject to call of the Chair. **Senator Guthrie** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
37-0303-2301**

Rules and Minimum Standards for the Construction and Use of Injection Wells (ZBR Chapter Rewrite) - Pending Rule. **Erik Boe** referred the Committee to the 2025 Senate Resources and Environment Pending Rules Review Book, with the notice of rulemaking on page 185 and the rule text beginning on page 187. He explained the Injection Well Rules offered a set of procedures and minimum standards for the construction and use of injection wells to ensure they were constructed and operated in a manner that was both protective of ground water resources and public health. These rules were also necessary to maintain state primacy for regulation of Class V Injection Wells pursuant to the federal Safe Drinking Water Act. IDWR obtained primacy of Class V Injection Wells from the Environmental Protection Agency (EPA) in 1985.

Mr. Boe reviewed the rulemaking process for this rule and some of the significant changes made through this rulemaking. Some of the significant changes were:

- Much of the content for this rule was within Section 070, so this was broken into Sections 020, 030, 035, 050, 052, 055, 057, and 058 for ease of use.
- Unnecessary definitions were removed from Section 010.
- Important definitions were clarified in Section 010, such as, Endangerment, Ground Water Quality Standards, and Underground Source Drinking Water.
- Important definitions in Section 010 were aligned with other rules, such as definitions for "Industrial Wastewater", "Municipal Wastewater", and "Recycled Water" in the Department of Environmental Quality (DEQ) Recycled Water Rules.

- Language was modified in Section 055.04.f to make it easier for municipalities to adopt innovative land application methods to managing growing demands on their wastewater systems.
- Section 055.06, Injectate Standards for the Quality of Recycled Water Derived from Municipal or Industrial Wastewater Sources, was added. Due to increasing interest in injecting recycled water directly into drinking water aquifers, IDWR established a framework for this new-to-Idaho concept that was protective of groundwater resources.

DISCUSSION:

Senator Guthrie asked for an exact description of an injection well. **Mr. Boe** responded that the EPA classified injection wells as Class One through Six. Class One was hazardous materials that were injected below underground source drinking water. These were prohibited in the State of Idaho. Class Two was oil and gas wells. These were used to improve productivity of oil and gas and also for storage. These were allowed in Idaho and regulated by the EPA. Class Three wells were for mineral extraction. These were prohibited in Idaho. Class Four wells injected hazardous fluids into or above underground source drinking water. These were now prohibited in Idaho. Class Five wells were injection wells that injected non-hazardous fluids into or above underground source drinking water. These were allowed in Idaho and what IDWR had primacy over and what they regulated. Class Six wells were carbon sequestration, where a carbon slurry was injected above or below a source drinking water. These were prohibited in the State of Idaho. **Mr. Boe** added that Class Five wells could include anything from aquifer recharge to heat pump return flows and ranged from just over 18 feet to thousands of feet deep. **Vice Chairman Hart** asked if the classes of wells that were prohibited were prohibited by statute or in agency regulations. **Mr. Boe** responded that they were prohibited by statute.

TESTIMONY:

Jason Van Gilder, Public Works Director, City of Middleton, testified in favor of **Docket No. 37-0303-2301**. **Mr. Gilder** expressed his appreciation for IDWR and their staff for their effort ensuring transparency when preparing these rules, and he provided some context on why these rule changes were important to the City of Middleton.

MOTION:

Senator Harris moved to approve **Docket No. 37-0303-2301**. **Senator VanOrden** seconded the motion. The motion carried by **voice vote**.

**DOCKET NO.
37-0309-2401**

Well Construction Standards Rules (ZBR Chapter Rewrite) - Pending Rule. **Mr. Boe** referred the Committee to the 2025 Senate Resources and Environment Pending Rules Review Book, with the notice of rulemaking on page 222 and the rule text beginning on page 224. He explained the Well Construction Standards Rules offered a set of minimum construction standards for the construction of all new wells and the modification and decommissioning of existing wells. The intent of the rule was to protect public health, safety, welfare, and the environment, and to prevent wasting or co-mingling of water from aquifers differing in temperature, pressure, or quality.

Mr. Boe reviewed the rulemaking process for this rule and some of the significant changes made through this rulemaking. Some of the significant changes were:

- Removal of unnecessary definitions in Section 010.
- Clarification of important definitions in Section 010, such as, "Casing" and "Geotechnical Borings."
- Alignment of important definitions in Section 010 with other rules, such as IDWR's Injection Well Rules and IDEQ's Public Drinking Water System Rules.
- Updated language clarifying well seal requirements in Section 025.08.
- In response to concerns from the drilling community, Sections 025 and 030 were updated, which allowed low temperature geothermal wells to be constructed to cold water well standards if they had a bottom hole temperature of less than 140 degrees and did not flow at land surface.

DISCUSSION: **Senator Harris** asked if the language on page 232, under Section 025.02, Waivers, regarding the Director having the ability to request comments was new language or had it been moved from somewhere else. **Mr. Boe** responded that this was new language.

TESTIMONY: **Roger Batt**, representing the Idaho Groundwater Association, which included well drillers and the well construction industry, testified in favor of **Docket No. 37-0309-2401**. He shared that Idaho had the most stringent low geothermal temperature standards in the Western United States and he believed easing these standards would make construction of these wells easier for well drillers and less expensive for homeowners.

DISCUSSION: **Senator Kohl** asked what specifically in these rules changes reduced costs. **Mr. Batt** responded that the current standard was to put two strings of casing down into the well instead of one, which doubled the cost. **Vice Chairman Hart** asked if the revised rule would lead to more geothermal development. **Mr. Batt** responded that he did not know.

MOTION: **Senator Guthrie** moved to approve **Docket No. 37-0309-2401**. **Senator Harris** seconded the motion. The motion carried by **voice vote**.

DOCKET NO. 37-0311-2401 **Rules for Conjunctive Management of Surface and Ground Water Resources - Pending Rule.** **Mr. Boe** explained this pending amendment to Section 050.01, in its final form, could be viewed in the 2025 Senate Resources and Environment Pending Rules Review Book, with the notice of rulemaking on page 264 and the rule text on page 266. IDWR initiated this rulemaking to align **Docket No. 37-0311-2401**, or Rule 50, with Idaho Code § 42-233c, which became effective July 1, 2024, and clarified the area having a common ground water supply for the Eastern Snake Plain Aquifer (ESPA). This change ensured continuity between statute and rule.

DISCUSSION: **Senator VanOrden** asked if these changes were to align the rules with the law that was passed in 2024 concerning Rule 50. **Mr. Boe** responded that this was correct.

MOTION: **Senator Harris** moved to approve **Docket No. 37-0311-2401**. **Senator Cook** seconded the motion. The motion carried by **voice vote**.

ADJOURNED: There being no further business at this time, **Vice Chairman Hart** adjourned the meeting at 2:35 p.m.

Senator Hart
Vice Chair

Shelly Johnson
Secretary