

Dear Senators HEIDER, Brackett, Stennett, and
Representatives GIBBS, Gestrin, Erpelding:

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

IDAPA 37.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking
(Docket No. 37-0000-1900F).

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 07/29/2019. 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 08/26/2019.

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.



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: Deputy Division Manager - Katharine Gerrity

DATE: July 10, 2019

SUBJECT: Department of Water Resources

IDAPA 37.00.00 - Notice of Omnibus Rulemaking - Temporary and Proposed Fee Rulemaking (Docket No. 37-0000-1900F)

The Idaho Department of Water Resources submits notice of temporary and proposed rules that reauthorize and re-publish the following previously approved chapters at:

- **37.01.01**, Rules of Procedure of the Idaho Department of Water Resources
- **37.02.03**, Water Supply Bank Rules
- **37.03.01**, Adjudication Rules – All rules except Subsections: 025.08, 035.02.b.i., 035.02.c.i., 035.03.c.i., 035.04.b.i., 035.06.a., 035.06.b., and 035.07.a. According to the department, these rules are unnecessary because per rule subpart 025.08, they are "solely for the purpose of illustration and do not have the effect of rules as stated." The department notes that eliminated rules will be incorporated into existing IDWR Water Right Adjudication policy.
- **37.03.02**, Beneficial Use Examination Rules – All rules except Subsections 010.12 (which the department indicates defines a word that is not used elsewhere in the rules), 055.01 (the department indicates that the rule is no longer applicable because there are no more permits with proof submitted before the effective date of the rule and no examination fee has been paid), and parts of Section/ Subsections 002., 010.19, 025.01 (the department states that these subparts are outdated and mandates submittal of information in the form of an affidavit when other forms are acceptable to the department), 030.03 (the department indicates that this rule is outdated and states denied applications will be returned to the applicant, when in fact, the department should retain the application as evidence for the record in case of an appeal of the action), 030.08, 035.01.c., 035.01.g., 035.01.m., 035.01.p., 035.03.b., 045.01 (the department indicates that these subparts contain an outdated directive about page margins that is no longer needed or enforced), and 050.02.b. The department states that the remaining omitted parts of rules (without parenthetical notation) have unnecessary words and phrases that add complexity to the rules without affecting the meaning of the rules.
- **37.03.03**, Rules and Minimum Standards for the Construction and Use of Injection Wells – All rules except Subsections/Sections: 010.07, 010.15, 010.29, 010.30, 010.40, 010.48.a., 010.48.b., 010.49.e., 010.54, 010.56,

Kristin Ford, Manager
Research & Legislation

Paul Headlee, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

010.69, 010.70, 010.75, 010.90, 010.91, 010.92, 010.98, 010.101, 025, 040.02.b., 040.02.d., 045, 048, 051, 054, 057, and 060. According to the department, these subparts govern Class 2 injection wells. Class 2 wells are the class of wells used to inject: process water from oil and gas pumping; fluids used for enhancing the recovery of oil or natural gas; and liquid hydrocarbons (at standard temperatures and pressures) for underground storage. The department notes that in 2018, Idaho voluntarily transferred primacy over Class 2 injection wells to the EPA. Class 2 wells are currently administered by the EPA (see 40 CFR Part 147). The department states that now that the EPA administers Class 2 injection wells in Idaho, these subparts are contrary to federal rule.

- **37.03.04**, Drilling for Geothermal Resources Rules – All rules except Subsection: 025.03. The department notes that Rule subparts 025.03.a, 025.03.b, and 025.03.c restate fees that are statutorily defined in Idaho Code Sections 42-4003 and 42-4011. Furthermore, the fee identified in the rules for production wells, exploratory wells, and injections wells are outdated and no longer consistent with the statutorily defined fees. According to the department, rule subparts 025.03.d and 025.03.e will be removed from the rules and added to existing IDWR policy governing well drilling permit processes.

- **37.03.05**, Mine Tailings Impoundment Structures Rules

- **37.03.06**, Safety of Dams Rules

- **37.03.07**, Stream Channel Alteration Rules - All rules except Subsections/Sections 055.03, 055.05, 055.06, 058, 060, and 061, part of rule 056.07, and Appendix E, Appendix F, Appendix G, Appendix L, Appendix M, and part of Appendix K. The department states that these subparts cover minimum standard rules for the use of gabions, dikes and levees, and jetties in stream channel alteration activities. The department states that these minimum standards are outdated and rarely used in stream channel alteration work. The department notes that the current Stream Channel Coordinator has rarely permitted alteration activities that include these minimum standards. If gabions, dikes, levees, or jetties are proposed in the future, they can still be permitted as non-minimum standard stream channel alterations.

- **37.03.08**, Water Appropriation Rules – All rules except Subsections 035.03.a., 035.03.b.xv., 040.01.e. (The department states that these subparts are outdated, IDWR does not require a surety bond from water right applicants.), 040.02.d. (The department states that this rule is no longer consistent with Idaho Code provisions. The opportunity to receive notification by mail was replaced in Section 42-203A, Idaho Code, with a requirement for notice on IDWR’s internet homepage.), 050.07 (The department states that this rule restates unambiguous requirement from Section 42-204, Idaho Code, and is unnecessary.), and parts of rules 030.01.c., 030.03.a., 030.03.c., 035.01.a. (According to the department, these subparts are inconsistent with provisions of the Idaho Code and incorrectly state that certain changes to existing water rights require the filing of an application for permit. The requirement is not consistent with the requirement of Section 42-222, Idaho Code, requiring the filing of an application for transfer to change an existing right.), 035.01.b. (The department notes that this rule is inconsistent with Section 42-111, Idaho Code.), 035.02.a., 035.03.a (According to the department, these subparts repeat a directive in rule subpart 035.01.d and is unnecessary.), 035.03.b.ii. (The department states that this rule is out of date and requires IDWR to use local common names for water sources, but in many instances IDWR does not know the local common name or in other instances multiple names are used locally.), 035.03.b.xv.(According to the department, this rule is outdated and addresses circumstances which do not occur.), 035.04.a., 040.02.a.i., 040.02.a.ii., 045.01.e.iii., 045.02.b.iii., and 050.02 (According to the department, these subparts are out of date and refer to “Policy 32 I” in the State Water Plan and the current state water plan does not contain a “Policy 32 I.”) In addition, the department states that a number of the parts of rules being eliminated have unnecessary words and phrases that add complexity to the rules without affecting the meaning of the rules.

- **37.03.09**, Well Construction Standards and Rules

- **37.03.10**, Well Driller Licensing Rules

These rules were previously analyzed and reviewed by the Legislative Services Office upon their initial promulgation. In addition to the information provided above regarding parts of rules that were omitted, the department also made additional changes that clarify provisions, revise verbiage and reorganize some subsections. No other changes from the existing rules have been noted.

This is a fee rule. According to the department, this rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

The rulemaking appears to be authorized pursuant to Sections 42-238, 42-603, 42-1414, 42-1701A, 42-1714, 42-1709, 42-1721, 42-1734, 42-1761, 42-1762, 42-1765, 42-1805, 42-3803, 42-3913, 42-3914, 42-3915, 42-4010 and 67-5206, Idaho Code.

cc: Department of Water Resources
Gary Spackman

***** 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.

**IDAPA 37 – IDAHO DEPARTMENT OF WATER RESOURCES
IDAHO WATER RESOURCE BOARD**

DOCKET NO. 37-0000-1900F

NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED FEE RULEMAKING

EFFECTIVE DATE: The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 42-238(12), 42-603, 42-1414, 42-1701A(1), 42-1714, 42-1709, 42-1721, 42-1734(19), 42-1761, 42-1762, 42-1765, 42-1414, 42-1805(8), 42-3803, 42-3913, 42-3914, 42-3915, 42-4001 42-4010, 67-2356, and 67-5206(5), Idaho Code.

PUBLIC HEARING SCHEDULE: Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 37, rules of the Idaho Department of Water Resources and Idaho Water Resource Board:

IDAPA 37

- 37.01.01, *Rules of Procedure of the Idaho Department of Water Resources*
- 37.02.03, *Water Supply Bank Rules*
- 37.03.01, *Adjudication Rules* – All rules *except Subsections: 025.08, 035.02.b.i., 035.02.c.i., 035.03.c.i., 035.04.b.i., 035.06.a., 035.06.b., and 035.07.a.*
- 37.03.02, *Beneficial Use Examination Rules* – All rules *except Subsections 010.12, 055.01, and parts of Section/Subsections 002., 010.19, 025.01, 030.03, 030.08, 035.01.c., 035.01.g., 035.01.m., 035.01.p., 035.03.b., 045.01, and 050.02.b.*
- 37.03.03, *Rules and Minimum Standards for the Construction and Use of Injection Wells* – All rules *except Subsections/Sections: 010.07, 010.15, 010.29, 010.30, 010.40, 010.48.a., 010.48.b., 010.49.e., 010.54, 010.56, 010.69, 010.70, 010.75, 010.90, 010.91, 010.92, 010.98, 010.101, 025, 040.02.b., 040.02.d., 045, 048, 051, 054, 057, and 060*
- 37.03.04, *Drilling for Geothermal Resources Rules* – All rules *except Subsection: 025.03*
- 37.03.05, *Mine Tailings Impoundment Structures Rules*
- 37.03.06, *Safety of Dams Rules*
- 37.03.07, *Stream Channel Alteration Rules* - All rules *except Subsections/Sections 055.03, 055.05, 055.06, 058, 060, and 061, part of rule 056.07, and Appendix E, Appendix F, Appendix G, Appendix L, Appendix M, and part of Appendix K*
- 37.03.08, *Water Appropriation Rules* – All rules *except Subsections 035.03.a., 035.03.b.xv., 040.01.e., 040.02.d., 050.07, and parts of rules 030.01.c., 030.03.a., 030.03.c., 035.01.a., 035.01.b., 035.02.a., 035.03.a., 035.03.b.ii., 035.03.b.xv., 035.04.a., 040.02.a.i., 040.02.a.ii., 045.01.e.iii., 045.02.b.iii., and 050.02*
- 37.03.09, *Well Construction Standards and Rules*
- 37.03.10, *Well Driller Licensing Rules*

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of these rules is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the

state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules.

These temporary and proposed rules are necessary for the Idaho Department of Water Resources (IDWR) and the Idaho Water Resource Board (IWRB) to achieve their mission as it relates to serving the citizens of Idaho by ensuring that water is available to appropriate, administered properly, conserved and accounted for in order to sustain Idaho's economy, ecosystems, and resulting quality of life. Specifically, the rules are necessary for IDWR and IWRB to fulfill their respective legislative purposes which include, but are not limited to: approving and denying proposals to appropriate or change existing water rights; recommending adjudicated water rights; regulating the delivery of water in times of shortage; monitoring and measuring the water supplies of the state; ensuring the safety of dams; protecting Idaho's ground water resources; regulating stream channel alterations; authoring and updating state water plans; and holding monetary accounts in trust for the funding of water projects and improvements within Idaho.

The fee or charge imposed by the rules are necessary to avoid immediate danger. The fees and charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget.

Specifically, IDAPA 37.01.01 provides the rules of procedure governing contested case proceedings before IDWR and the IWRB. It also addresses filing fees associated with such proceedings.

IDAPA 37.02.03 governs IWRB's operation and management of the water supply bank provided for in statute. The purpose of the water supply bank is to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water users; and provide a source of funding for improving water user facilities and efficiencies. It also establishes lease and rental fees that are used to carry out the program which are credited to IWRB's revolving development and water management accounts.

IDAPA 37.03.01 implements the filing of notices of claims to water rights claimed under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications. Idaho is currently in the midst of the North Idaho Adjudication (NIA) and IDWR has recently commenced the Palouse Basin Adjudication and anticipates commencing the final phase of the NIA—the Clark Fork-Pend Oreille River Basin adjudication—sometime after 2020. The Rule is integral to the processing of these general adjudications.

IDAPA 37.03.02 governs the examination requirements necessary to consider and determine the extent of application of water to beneficial use accomplished under a water right permit. The Rule also provides that field examinations can be conducted by certified water right examiners appointed by the Director. Finally, the Rule governs licensing examination fees which are used to offset costs incurred by IDWR in reviewing and determining the extent of beneficial use.

IDAPA 37.03.03 governs injection wells in Idaho. The Rule requires all injection wells to be permitted and constructed in accordance with the Well Construction Standards Rules (IDAPA 37.03.09), which protect ground water resources from quality impairment. It is also necessary to maintain this Rule in order for the IWRB to maintain compliance with federal law, under which authority Idaho regulates the permitting, construction, and operation of certain injection wells within the state. Finally, the Rule governs inventory and permit fees which are used to partially fund the operation of the Underground Injection Control program in Idaho.

IDAPA 37.03.04 governs the regulation of geothermal resource exploration and development and ensure that such activities occur in the public interest. The Rule allows Idaho's geothermal policy, "to maximize the benefits to the entire state which may be derived from the utilization of our geothermal resources, while minimizing the detriments and costs of all kinds which could result from their utilization" is met. The Rule also requires fees for geothermal exploratory wells, production wells, injection wells, and amendments to permits, as set forth in Sections

42-4003 and 4011, Idaho Code.

IDAPA 37.03.05 establishes acceptable construction standards and governs IDWR's design and technical review of mine tailing and water impoundment structures. The Rule also supports the collection of a fee to review plans, drawings, and specifications pertaining to any mine tailings impoundment structure.

IDAPA 37.03.06 establishes acceptable standards for construction of dams and establishes guidelines for safety evaluation of new or existing dams. The Rule applies to all new dams, to existing dams to be enlarged, altered or repaired, and maintenance of certain existing dams, as specifically provided in the Rule. It also provides for the collection of a fee to review plans, drawings, and specifications pertaining to the construction, enlargement, alteration, or repair of small high-risk, intermediate, or large dams.

IDAPA 37.03.07 governs the permitting of stream channel alterations that are of a common type, which do not propose alterations which will be a hazard to the stream channel and its environment.

IDAPA 37.03.08 governs appropriations from all sources of unappropriated public water in the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes and groundwater. The rules are also applicable to the reallocation of hydropower water rights (i.e. Swan Falls Trust Water) held in trust by the state of Idaho. The Rule also implements the application, re-advertisement, and mailing fees set forth in Sections 42-221F and 42-203(A)3, Idaho Code.

IDAPA 37.03.09 governs IDWR's statutory responsibility for the statewide administration of the rules governing well construction. These rules establish minimum standards for the construction of all new wells and the modification and decommissioning (abandonment) of existing wells. The intent of the Rule is to protect ground water resources of the state against waste and contamination. The Rule also implements the drilling permit fees set forth in Idaho Code Section 42-235, Idaho Code.

IDAPA 37.03.10 establishes the requirements and procedures for obtaining and renewing authorization to drill wells in the state of Idaho. The rules also establish the requirements and procedures for obtaining authorization to operate drilling equipment under the supervision of a licensed driller. The licensing rules are applicable to all individuals and companies drilling or contracting to drill wells. The rules also implement the application licensing fees set forth in Section 42-238, Idaho Code.

FEE SUMMARY: The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

Fee categories described in the attached rules include: (1) administrative appeals filing fees; (2) water supply bank lease and rental fees; (3) adjudication application fees; (4) water right licensing examination fees; (5) injection well inventory and permit fees; (6) geothermal well permit fees; (7) design review fees for mine tailings impoundment structure and select dams; (8) stream channel alteration permit fees; (9) water right application, re-advertisement, and mailing fees; (10) well drilling permit fees; and (11) application licensing fees for well drillers.

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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached

hereto.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Mathew Weaver Deputy Director at (208) 287-4800.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Gary Spackman, Director
Idaho Department of Water Resources
322 E. Front Street
PO Box 83720
Boise, ID 83720
Phone: (208) 287-4800
Fax: (208) 287-6700

IDAPA 37
TITLE 01
CHAPTER 01

IDAPA 37 – DEPARTMENT OF WATER RESOURCES

37.01.01 – RULES OF PROCEDURE OF THE IDAHO DEPARTMENT OF WATER RESOURCES

**Subchapter A -- General Provisions
(Rules 0 Through 99 -- General Provisions)**

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Sections 42-1701A(1), 42-1734(19), 42-1805(8), 67-2356 and 67-5206(5), Idaho Code. (4-5-00)

001. TITLE AND SCOPE (RULE 1).

01. Title. The title of this chapter is “Rules of Procedure of the Idaho Department of Water Resources.” (4-5-00)

02. Scope. This chapter contains the rules of procedure that govern contested case proceedings before the Department of Water Resources and the Water Resource Board of the state of Idaho. (4-5-00)

002. WRITTEN INTERPRETATIONS – AGENCY GUIDELINES (RULE 2).

Written interpretations to these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments, if any, submitted in the adoption of these rules are available from the Idaho Department of Water Resources, Statehouse, Boise, Idaho 83720. (7-1-93)

003. ADMINISTRATIVE APPEALS (RULE 3).

This chapter governs administrative appeals before and within the Department of Water Resources and the Water Resource Board. (7-1-93)

004. PUBLIC RECORDS ACT COMPLIANCE (RULE 4).

All rules required to be adopted by this chapter are public records. (7-1-93)

005. DEFINITIONS (RULE 5).

As used in this chapter: (7-1-93)

01. Administrative Code. The Idaho administrative code established in Chapter 52, Title 67, Idaho Code. (7-1-93)

02. Agency. The Department of Water Resources or the Water Resource Board acting within their respective authority to make rules or to determine contested cases. (7-1-93)

03. Agency Action. Agency action means: (7-1-93)

a. The whole or part of a rule or order; (7-1-93)

b. The failure to issue a rule or order; or (7-1-93)

c. An agency’s performance of, or failure to perform, any duty placed on it by law. (7-1-93)

04. Agency Head. An individual or body of individuals in whom the ultimate legal authority of the agency is vested by any provision of law. (7-1-93)

05. Board. The Idaho Water Resource Board. (7-1-93)

- 06. Bulletin.** The Idaho administrative bulletin established in Chapter 52, Title 67, Idaho Code. (7-1-93)
- 07. Contested Case.** A proceeding which results in the issuance of an order. (7-1-93)
- 08. Coordinator.** The Administrative Rules Coordinator Prescribed in Section 67-5202, Idaho Code. (7-1-93)
- 09. Department.** The Idaho Department of Water Resources. (7-1-93)
- 10. Director.** The agency head of the Idaho Department of Water Resources. (7-1-93)
- 11. Document.** Any proclamation, executive order, notice, rule or statement of policy of an agency. (7-1-93)
- 12. Electronically Signed Communication.** A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message in accordance with Rules 306 through 311 of these rules. (4-5-00)
- 13. License.** The whole or part of any agency permit, certificate, approval, registration, charter, or similar form of authorization required by law, but does not include a license required solely for revenue purposes. (7-1-93)
- 14. Official Text.** The text of a document issued, prescribed, or promulgated by an agency in accordance with this chapter, and is the only legally enforceable text of such document. (7-1-93)
- 15. Order.** An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (7-1-93)
- 16. Party.** Each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (7-1-93)
- 17. Person.** Any individual, partnership, corporation, association, governmental subdivision or agency, or public or private organization or entity of any character. For purposes of electronic signature rules, a human being or any organization capable of signing a document, either legally or as a matter of fact. (4-5-00)
- 18. Provision of Law.** The whole or a part of the state or federal constitution, or of any state or federal:
- a.** Statute; or (7-1-93)
 - b.** Rule or decision of the court. (7-1-93)
- 19. Publish.** To bring before the public by publication in the bulletin or administrative code, or as otherwise specifically provided by law. (7-1-93)
- 20. Rule.** The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Chapter 52, Title 67, Idaho Code, and that implements, interprets, or prescribes:
- a.** Law or policy, or (7-1-93)
 - b.** The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include: (7-1-93)
 - i.** Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; (7-1-93)

- ii. Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; (7-1-93)
- iii. Intra-agency memoranda; or (7-1-93)
- iv. Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule. (7-1-93)

21. Rulemaking. The process for formulation, adoption, amendment or repeal of a rule. (7-1-93)

22. Signer. A person who signs a communication, including an electronically signed communication with the use of an acceptable technology to uniquely link the message with the person sending it. (4-5-00)

006. (RESERVED)

007. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS (RULE 7).

01. State Office. The mailing address of the state office of the Idaho Department of Water Resources and the office of the Idaho Water Resource Board is P.O. Box 83720, Boise, Idaho 83720-0098; the street address, subject to change, is 322 East Front Street, 6th Floor, Boise, Idaho 83702; the telephone number is (208) 287-4800; and the Facsimile Machine number is (208) 287-6700. Documents may be filed at the state office during regular business hours of 8:00 am to 5:00 pm Monday through Friday. (4-5-00)

008. FILING OF DOCUMENTS -- NUMBER OF COPIES (RULE 8).

In all rulemakings or contested cases, an original of all documents shall be filed with the Director of the Department of Water Resources or the Chairman of the Idaho Water Resource Board, as the case may be, showing service upon all other parties. No copies in addition to the original document need be filed with the agency unless requested by the agency. (7-1-93)

009. -- 049. (RESERVED)

050. PROCEEDINGS GOVERNED (RULE 50).

Rules 100 through 799 govern procedure before the Department and the Board in contested cases, unless otherwise provided by rule, notice or order of the agency. The Department and the Board through the promulgation of these rules decline in whole to adopt the contested case portion of the “Idaho Rules of Administrative Procedure of the Attorney General,” cited as IDAPA 04.11.01.100 through 04.11.01.799. Rulemaking before the Department and the Board shall be governed by Rules 800 through 860 of the “Idaho Rules of Administrative Procedure of the Attorney General,” cited as IDAPA 04.11.01.800 through 04.11.01.860. (7-1-93)

051. REFERENCE TO AGENCY (RULE 51).

Reference to the agency in these rules includes the agency director, the board, hearing officer appointed by the agency or the board, or presiding officer, as context requires. Reference to the agency head means the agency director or the board, as context requires, or such other officer designated by the agency head or the board to review recommended or preliminary orders. (7-1-93)

052. LIBERAL CONSTRUCTION (RULE 52).

The rules in this chapter will be liberally construed to secure just, speedy and economical determination of all issues presented to the agency. Unless prohibited by statute, the agency may permit deviation from these rules when it finds that compliance with them is impracticable, unnecessary or not in the public interest. Unless required by statute, or otherwise provided by these rules, the Idaho Rules of Civil Procedure and the Idaho Rules of Evidence do not apply to contested case proceedings conducted before the agency. (4-5-00)

053. COMMUNICATIONS WITH AGENCY (RULE 53).

All written communications and documents that are intended to be part of an official record for a decision in a contested case must be filed with the officer designated by the agency. Unless otherwise provided by statute, rule, order or notice, documents are considered filed when received by the officer designated to receive them, not when mailed, or otherwise transmitted. (7-1-93)

054. IDENTIFICATION OF COMMUNICATIONS (RULE 54).

Parties' communications addressing or pertaining to a given proceeding should be written under that proceeding's case caption and case number, if applicable. General communications by other persons should refer to case captions, case numbers, permit or license numbers, or the like, if this information is known. (7-1-93)

055. SERVICE BY AGENCY (RULE 55).

Unless otherwise provided by statute or these rules, the officer designated by the agency to serve rules, notices, complaints, and orders issued by the agency may serve these documents by regular mail or by certified mail, return receipt requested, to a party's last known mailing address or by personal service. Unless otherwise provided by statute, these rules, order or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail, or the Statehouse mail if the party is a state employee or state agency. The officer designated by the agency to serve documents in a proceeding must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. (4-5-00)

056. COMPUTATION OF TIME (RULE 56).

Whenever statute, these or other rules, order, or notice requires an act to be done within a certain number of days of a given day, the given day is not included in the count, but the last day of the period so computed is included in the count. If the day the act must be done is Saturday, Sunday or a legal holiday, the act may be done on the first day following that is not Saturday, Sunday or a legal holiday. (7-1-93)

057. ADDITIONAL TIME AFTER SERVICE BY MAIL (RULE 57).

Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three (3) days shall be added to the prescribed period. This rule, however, shall not extend the time for filing a protest, a petition for reconsideration of a preliminary, recommended or final order before the agency, the time for filing exceptions with the agency head to a preliminary or recommended order, or the time for filing an appeal with the district court from a final decision of the agency. (4-5-00)

058. FEES AND REMITTANCES (RULE 58).

If submitted by mail, fees and remittances to the agency may be paid by money order, bank draft or check payable to agency. Remittances in currency or coin, submitted by mail, are strongly discouraged and are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss. The agency may, upon the completion of necessary arrangements by the agency, accept the payment of fees and remittances by credit card. Filings required to be accompanied by a fee are not complete until the fee is paid. (4-5-00)

059. -- 099. (RESERVED)

100. INFORMAL PROCEEDINGS DEFINED (RULE 100).

Informal proceedings are proceedings in contested cases authorized by statute, rule or order of the agency to be conducted using informal procedures, i.e., procedures without a record to be preserved for later agency or judicial review, without the necessity of representation according to Rule 230, without formal designation of parties, without the necessity of hearing examiners or other presiding officers, or without other formal procedures required by these rules for formal proceedings. Unless prohibited by statute, an agency may provide that informal proceedings may precede formal proceedings in the consideration of a rulemaking or a contested case. (7-1-93)

101. INFORMAL PROCEDURE (RULE 101).

Statute authorizes and these rules encourage the use informal proceedings to settle or determine contested cases. Unless prohibited by statute, the agency may provide for the use of informal procedure at any stage of a contested case. Informal procedure may include individual contacts, consistent with Rule 417, by or with the agency staff asking for information, advice or assistance from the agency staff, or proposing informal resolution of formal disputes under the law administered by the agency. Informal procedures may be conducted in writing, by telephone or television, or in person. (7-1-93)

102. FURTHER PROCEEDINGS (RULE 102).

If statute provides that informal procedures shall be followed with no opportunity for further formal administrative

review, then no opportunity for later formal administrative proceedings must be offered following informal proceedings. Otherwise, except as provided in Rule 103, any person participating in an informal proceeding must be given an opportunity for a later formal administrative proceeding before the agency, at which time the parties may fully develop the record before the agency. (7-1-93)

103. INFORMAL PROCEEDINGS DO NOT EXHAUST ADMINISTRATIVE REMEDIES (RULE 103).
Unless all parties agree to the contrary in writing, informal proceedings do not substitute for formal proceedings and do not exhaust administrative remedies, and informal proceedings are conducted without prejudice to the right of the parties to present the matter formally to the agency. Settlement offers made in the course of informal proceedings are confidential and shall not be included in the agency record of a subsequent formal proceeding. (7-1-93)

104. FORMAL PROCEEDINGS (RULE 104).
Formal proceedings, which are governed by rules of procedure other than Rules 100 through 103, must be initiated by a document (generally a notice, order or complaint if initiated by the agency) or another pleading listed in Rules 210 through 280 if initiated by another person. Formal proceedings may be initiated by a document from the agency informing the party(ies) that the agency has reached an informal determination that will become final in the absence of further action by the person to whom the correspondence is addressed, provided that the document complies with the requirements of Rules 210 through 280. Formal proceedings can be initiated by the same document that initiates informal proceedings. (7-1-93)

105. -- 149. (RESERVED)

150. PARTIES TO CONTESTED CASES LISTED (RULE 150).
Parties to contested cases before the agency are called applicants or claimants or appellants, petitioners, complainants, respondents, protestants, or intervenors. On reconsideration or appeal within the agency parties are called by their original titles listed in the previous sentence. (7-1-93)

151. APPLICANTS/CLAIMANTS/APPELLANTS (RULE 151).
Persons who seek any right, license, award or authority from the agency are called “applicants” or “claimants” or “appellants.” (7-1-93)

152. PETITIONERS (RULE 152).
Persons not applicants who seek to modify, amend or stay existing orders or rules of the agency, to clarify their rights or obligations under law administered by the agency, to ask the agency to initiate a contested case (other than an application or complaint), or to otherwise take action that will result in the issuance of an order or rule, are called “petitioners.” (7-1-93)

153. COMPLAINANTS (RULE 153).
Persons who charge other person(s) with any act or omission are called “complainants.” In any proceeding in which the agency itself charges a person with an act or omission, the agency is called “complainant.” (7-1-93)

154. RESPONDENTS (RULE 154).
Persons against whom complaints are filed or about whom investigations are initiated are called “respondents.” (7-1-93)

155. PROTESTANTS (RULE 155).
Persons who oppose an application or claim or appeal and who have a statutory right to contest the right, license, award or authority sought by an applicant or claimant or appellant are called “protestants.” (7-1-93)

156. INTERVENORS (RULE 156).
Persons, not applicants or claimants or appellants, complainants, respondents, or protestants to a proceeding, who are permitted to participate as parties pursuant to Rules 350 through 354 are called “intervenors.” (7-1-93)

157. RIGHTS OF PARTIES AND OF AGENCY STAFF (RULE 157).
Subject to Rules 558, 560, and 600, all parties and agency staff may appear at hearing or argument, introduce evidence, examine witnesses, make and argue motions, state positions, and otherwise fully participate in hearings or arguments. (7-1-93)

158. PERSONS NOT PARTIES -- INTERESTED PERSONS (RULE 158).

Persons other than the persons named in Rules 151 through 156 are not parties for the purpose of any statute or rule addressing rights or obligations of parties to a contested case. Persons not parties who have an interest in a proceeding are called “interested persons.” Interested persons may participate in a proceeding as “public witnesses” in accordance with Rule 355. (7-1-93)

159. -- 199. (RESERVED)

200. INITIAL PLEADING BY PARTY -- LISTING OF REPRESENTATIVES (RULE 200).

The initial pleading of each party at the formal stage of a contested case (be it an application or claim or appeal, petition, complaint, protest, motion, or answer) must name the party’s representative(s) for service and state the representative’s(s’) address(es) for purposes of receipt of all official documents. No more than two (2) representatives for service of documents may be listed in an initial pleading. Service of documents on the named representative(s) is valid service upon the party for all purposes in that proceeding. If no person is explicitly named as the party’s representative, the person signing the pleading will be considered the party’s representative. If an initial pleading is signed by more than one (1) person without identifying the representative(s) for service of documents, the presiding officer may select the person(s) upon whom documents are to be served. If two (2) or more parties or persons file identical or substantially like initial pleadings, the presiding officer may limit the number of parties or persons required to be served with official documents in order to expedite the proceeding and reasonably manage the burden of service upon the parties and the agency. (7-1-93)

201. TAKING OF APPEARANCES -- PARTICIPATION BY AGENCY STAFF (RULE 201).

The presiding officer at a formal hearing or prehearing conference will take appearances to identify the representatives of all parties or other persons. In all proceedings in which the agency staff will participate, or any report or recommendation of the agency staff (other than a recommended order or preliminary order prepared by a hearing officer) will be considered or used in reaching a decision, at the timely request of any party the agency staff must appear at any hearing and be made available for cross-examination and otherwise participate in the hearing, at the discretion of the presiding officer, in the same manner as a party. (7-1-93)

202. REPRESENTATION OF PARTIES AT HEARING (RULE 202).

01. Appearances and Representation. To the extent authorized or required by law, appearances and representation of parties or other persons at formal hearing or prehearing conference must be as follows: (7-1-93)

a. Natural Person. A natural person may represent himself or herself or be represented by a duly authorized employee, attorney, or family member, or by a next friend if the person lacks full legal capacity to act for himself or herself. (4-5-00)

b. A partnership may be represented by a partner, duly authorized employee, or attorney. (7-1-93)

c. A corporation may be represented by an officer, duly authorized employee, or attorney. (7-1-93)

d. A municipal corporation, local government agency, unincorporated association or nonprofit organization may be represented by an officer, duly authorized employee, or attorney. (7-1-93)

e. A state, federal or tribal governmental entity or agency may be represented by an officer, duly authorized employee, or attorney. (7-1-93)

02. Representatives. The representatives of parties at hearing, and no other persons or parties appearing before the agency, are entitled to examine witnesses and make or argue motions. (7-1-93)

203. SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS (RULE 203).

From the time a party files its initial pleading in a contested case, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties’ representatives designated pursuant to Rule 200, unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The presiding

officer may order parties to serve past or future documents filed in the case upon persons not parties to the proceedings before the agency. (7-1-93)

204. WITHDRAWAL OF PARTIES (RULE 204).

Any party may withdraw from a proceeding in writing or at hearing. (7-1-93)

205. SUBSTITUTION OF REPRESENTATIVE -- WITHDRAWAL OF REPRESENTATIVE (RULE 205).

A party's representative may be changed and a new representative may be substituted by notice to the agency and to all other parties so long as the proceedings are not unreasonably delayed. The presiding officer at hearing may permit substitution of representatives at hearing in the presiding officer's discretion. Persons representing a party who wish to withdraw their representation of a party in a proceeding before the agency must immediately file in writing a notice of withdrawal of representation and serve that notice on the party represented and all other parties. (7-1-93)

206. CONDUCT REQUIRED (RULE 206).

Representatives of parties and parties appearing in a proceeding must conduct themselves in an ethical and courteous manner. Smoking is not permitted at hearings. (7-1-93)

207. -- 209. (RESERVED)

210. PLEADINGS LISTED -- MISCELLANEOUS (RULE 210).

Pleadings in contested cases are called applications or claims or appeals, petitions, complaints, protests, motions, answers, and consent agreements. Affidavits or declarations under penalty of perjury may be filed in support of any pleading. A party's initial pleading in any proceeding must comply with Rule 200, but the presiding officer may allow documents filed during informal stages of the proceeding to be considered a party's initial pleading without the requirement of resubmission to comply with this rule. All pleadings filed during the formal stage of a proceeding must be filed in accordance with Rules 300 through 303. A party may adopt or join any other party's pleading. Two (2) or more separately stated grounds, claims or answers concerning the same subject matter may be included in one (1) pleading. (7-1-93)

211. -- 219. (RESERVED)

220. APPLICATIONS/CLAIMS/APPEALS -- DEFINED -- FORM AND CONTENTS (RULE 220).

All pleadings requesting a right, license, award or authority from the agency are called "applications" or "claims" or "appeals." All pleadings must be submitted on Department approved forms if available. Applications or claims or appeals not submitted on Department approved forms should: (7-1-93)

01. Facts. Fully state the facts upon which they are based. (7-1-93)

02. Refer to Provisions. Refer to the particular provisions of statute, rule, order, or other controlling law upon which they are based. (7-1-93)

03. Other. State the right, license, award, or authority sought. (7-1-93)

221. -- 229. (RESERVED)

230. PETITIONS -- DEFINED -- FORM AND CONTENTS (RULE 230).

01. Pleadings Defined. All pleadings requesting the following are called "petitions:" (7-1-93)

a. Modification, amendment or stay of existing orders or rules; (7-1-93)

b. Clarification, declaration or construction of the law administered by the agency or of a party's rights or obligations under law administered by the agency; (7-1-93)

c. The initiation of a contested case not an application, claim or complaint or otherwise taking action that will lead to the issuance of an order or a rule; (7-1-93)

- d. Rehearing; or (7-1-93)
- e. Intervention. (7-1-93)
- 02. **Petitions.** Petitions should: (7-1-93)
 - a. Fully state the facts upon which they are based; (7-1-93)
 - b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; (7-1-93)
 - c. State the relief desired; and (7-1-93)
 - d. State the name of the person petitioned against (the respondent), if any. (7-1-93)

231. -- 239. (RESERVED)

240. COMPLAINTS -- DEFINED -- FORM AND CONTENTS (RULE 240).

- 01. **Complaints - Defined.** All pleadings charging other person(s) with acts or omissions under law administered by the agency are called “complaints.” (7-1-93)
- 02. **Form and Contents.** Complaints must: (7-1-93)
 - a. Be in writing; (7-1-93)
 - b. Fully state the acts or things done or omitted to be done by the persons complained against by reciting the facts constituting the acts or omissions and the dates when they occurred; (7-1-93)
 - c. Refer to statutes, rules, orders or other controlling law involved; (7-1-93)
 - d. State the relief desired; (7-1-93)
 - e. State the name of the person complained against (the respondent). (7-1-93)

241. -- 249. (RESERVED)

250. PROTESTS -- DEFINED -- FORM AND CONTENTS (RULE 250).

- 01. **Protests - Defined.** All pleadings opposing an application or claim or appeal as a matter of right are called “protests.” (7-1-93)
- 02. **Form and Contents.** Protests should: (7-1-93)
 - a. Fully state the facts upon which they are based, including the protestant’s claim of right to oppose the application or claim; (7-1-93)
 - b. Refer to the particular provisions of statute, rule, order or other controlling law upon which they are based; and (7-1-93)
 - c. State any proposed limitation (or the denial) of any right, license, award or authority sought in the application. (7-1-93)

251. -- 259. (RESERVED)

260. MOTIONS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 260).

01. Motions - Defined. All other pleadings requesting the agency to take any other action in a contested case, except consent agreements or pleadings specifically answering other pleadings, are called “motions.” (7-1-93)

02. Form and Contents. Motions should: (7-1-93)

a. Fully state the facts upon which they are based; (7-1-93)

b. Refer to the particular provision of statute, rule, order, notice, or other controlling law upon which they are based; and (7-1-93)

c. State the relief sought. (7-1-93)

03. Other. If the moving party desires oral argument or hearing on the motion, it must state so in the motion. Any motion to dismiss, strike or limit an application or claim or appeal, complaint, petition, or protest must be filed before the answer is due or be included in the answer, if the movant is obligated to file an answer. If a motion is directed to an answer, it must be filed within fourteen (14) days after service of the answer. Other motions may be filed at any time upon compliance with Rule 565. (7-1-93)

261. -- 269. (RESERVED)

270. ANSWERS -- DEFINED -- FORM AND CONTENTS -- TIME FOR FILING (RULE 270).

All pleadings responding to the allegations or requests of applications or claims or appeals, complaints, petitions, or motions are called “answers.” (4-5-00)

01. Answers to Pleadings Other than Motions. Answers to applications, claims, appeals, complaints, or petitions when required to be filed by provision of statute, rule, or order must be filed and served on all parties of record within twenty-one (21) days after service of the pleading being answered, unless order or notice modifies the time within which answer may be made, or a motion to dismiss is made within twenty-one (21) days. When an answer is not timely filed under this rule, the presiding officer may issue a notice of default against the respondent pursuant to Rule 700. Answers to applications or claims, complaints, or petitions, must admit or deny each material allegation of the applications or claims, complaint, or petition. Any material allegation not specifically admitted shall be considered to be denied. Matters alleged by cross-complaint or affirmative defense must be separately stated and numbered. This rule does not prevent a party from filing a responsive pleading in instances not required under these rules. (4-5-00)

02. Answers to Motions. Answers to motions may be filed by persons or parties who are the object of a motion or by parties opposing a motion within fourteen (14) days of the filing of the motion. The time to file an answer to a motion may be enlarged or shortened by the presiding officer upon a showing of good cause by a party. The presiding officer may act upon a prehearing motion under Rule 565. (4-5-00)

271. -- 279. (RESERVED)

280. CONSENT AGREEMENTS -- DEFINED -- FORM AND CONTENTS (RULE 280).

Agreements between the agency or agency staff and another person(s) in which one (1) or more person(s) agree to engage in certain conduct mandated by statute, rule, order, case decision, or other provision of law, or to refrain from engaging in certain conduct prohibited by statute, rule, order, case decision, or other provision of law, are called “consent agreements.” Consent agreements are intended to require compliance with existing law. (7-1-93)

01. Requirements. Consent agreements must: (7-1-93)

a. Recite the parties to the agreement; and (7-1-93)

b. Fully state the conduct proscribed or prescribed by the consent agreement. (7-1-93)

02. Additional. In addition, consent agreements may: (7-1-93)

- a. Recite the consequences of failure to abide by the consent agreement; (7-1-93)
- b. Provide for payment of civil or administrative penalties authorized by law; (7-1-93)
- c. Provide for loss of rights, licenses, awards or authority; (7-1-93)
- d. Provide for other consequences as agreed to by the parties; and (7-1-93)
- e. Provide that the parties waive all further procedural rights (including hearing, consultation with counsel, etc.) with regard to enforcement of the consent agreement. (7-1-93)

281. -- 299. (RESERVED)

300. FILING DOCUMENTS WITH THE AGENCY -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX) -- ELECTRONICALLY SIGNED DOCUMENTS (RULE 300).

An original and necessary copies (if any are required by the agency) of all documents intended to be part of an agency record must be filed with the officer designated by the agency to receive filing in the case. Pleadings and other documents not exceeding ten (10) pages in length requiring urgent or immediate action may be filed by facsimile transmission (FAX). Whenever any document is filed by FAX, the original must be mailed by United States mail or physically delivered to the agency the next working day. A document required to be accompanied by a filing fee shall not be filed with the agency until the fee is received. There shall be no limit as to the number of pages of a facsimile copy which was not transmitted directly to the agency by the facsimile machine process. The Department will accept electronic signatures and electronically signed communications complying with the requirements of Rules 306 through 311 and Sections 67-2351 through 67-2357, Idaho Code, for all communications, filings and transactions with the Department. (4-5-00)

301. FORM OF PLEADINGS (RULE 301).

01. Pleadings. All pleadings, except those on agency forms, submitted by a party and intended to be part of an agency record should: (7-1-93)

- a. Be submitted on white eight and one-half inch (8 1/2") by eleven inch (11") paper copied on one (1) side only; (7-1-93)
- b. State the case caption, case number, if applicable, and title of the document; (7-1-93)
- c. Include on the upper left corner of the first page the name(s), mailing and street address(es), and telephone and FAX number(s) of the person(s) filing the document or the person(s) to whom questions about the document can be directed; and (7-1-93)
- d. Have at least one inch (1") left and top margins. (7-1-93)

02. Form. Documents complying with this rule will be in the following form:

Name of Representative
Mailing Address of Representative
Street Address of Representative (if different)
Telephone Number of Representative
FAX Number of Representative (if there is one)
Attorney/Representative for (Name of Party)

BEFORE THE AGENCY

(Title of Proceeding)) CASE NO.
)
) (TITLE OF DOCUMENT)

)

(7-1-93)

302. SERVICE ON PARTIES AND OTHER PERSONS (RULE 302).

All documents intended to be part of the agency record for decision must be served upon the representatives of each party of record concurrently with filing the original with the officer designated by the agency to receive filings in the case. (7-1-93)

303. PROOF OF SERVICE (RULE 303).

Every document filed with and intended to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have this day of, served the foregoing (name(s) of document(s) upon all parties of record in this proceeding, (by delivering a copy thereof in person: (list names)) (by mailing a copy thereof, properly addressed with postage prepaid, to: (list names)).

(Signature)

(7-1-93)

304. DEFECTIVE, INSUFFICIENT OR LATE PLEADINGS (RULE 304).

Defective, insufficient or late pleadings may be returned or dismissed.

(7-1-93)

305. AMENDMENTS TO PLEADINGS – WITHDRAWAL OF PLEADINGS (RULE 305).

The presiding officer may allow any pleading to be amended or corrected or any omission to be supplied. Pleadings will be liberally construed, and defects that do not affect substantial rights of the parties will be disregarded. A party desiring to withdraw a pleading must file a notice of withdrawal of the pleading and serve all parties with a copy. Unless otherwise ordered by the presiding officer, the notice is effective fourteen (14) days after filing. (7-1-93)

306. ELECTRONICALLY SIGNED COMMUNICATIONS (RULE 306).

The Department will accept electronic signatures and electronically signed communications complying with the requirements of Rules 306 through 311 and Sections 67-2351 through 67-2357, Idaho Code, for all communications, filings and transactions with the Department. For an electronic signature to be valid for use by the Department, it must be created by a technology that is accepted for use by the Department. (4-5-00)

307. CRITERIA FOR ACCEPTABLE ELECTRONIC SIGNATURE TECHNOLOGY (RULE 307).

For an electronic signature technology to be accepted for use by the Department, it must comply with the following criteria: (4-5-00)

01. Statutory Criteria. An acceptable electronic signature technology must be capable of creating signatures that conform to the requirements set forth in Section 67-2354, Idaho Code: (4-5-00)

a. It is unique to the person using it; (4-5-00)

b. It is capable of verification; and (4-5-00)

c. It conforms to the applicable rules promulgated by the Department pursuant to Section 67-2356, Idaho Code. (4-5-00)

02. Additional Criteria. An electronic signature technology acceptable to the Department also must be capable of creating a signature that satisfies the following additional criteria: (4-5-00)

a. It is under the sole control of the person using it; (4-5-00)

b. It is linked to the data in such a manner that if the data are changed, the electronic signature is invalidated; and (4-5-00)

c. It meets International Standards Organization ISO X.509 standard. (4-5-00)

308. PUBLIC KEY CRYPTOGRAPHY (RULE 308).

The technology known as Public Key Cryptography is an accepted technology for use by the Department, provided

that the electronic signature is created consistent with the provisions in these rules. (4-5-00)

01. Terminology. For purposes of Rules 306 through 311, and unless the context expressly indicates otherwise, the following terms shall have the meanings here ascribed to them: (4-5-00)

a. Approved certification authority. The Certification Authority authorized and accepted by the State of Idaho to issue certificates for electronic signature transactions involving the State; (4-5-00)

b. Asymmetric cryptosystem. A computer algorithm or series of algorithms that utilize(s) two (2) different keys with the following characteristics: (4-5-00)

- i. Identifies the certification authority issuing it; (4-5-00)
- ii. One (1) key verifies a given message; and (4-5-00)
- iii. The keys have the property that, knowing one (1) key, it is computationally infeasible to discover the other key. (4-5-00)

c. Certificate. A computer-based record that: (4-5-00)

- i. Identifies the certification authority issuing it; (4-5-00)
- ii. Names or identifies its subscriber; (4-5-00)
- iii. Contains the subscriber's public key; (4-5-00)
- iv. Is electronically signed by the Certification Authority issuing or amending it; and (4-5-00)
- v. Conforms to widely-used industry standards. (4-5-00)

d. Certification authority. A person or entity that issues a certificate, or in the case of certain certification processes, certifies amendments to an existing certificate; (4-5-00)

e. Electronic message. An electronic representation of information intended to serve as a written communication with the Department; (4-5-00)

f. Electronically signed communication. A message that has been processed by a computer in such a manner that ties the message to the individual that signed the message; (4-5-00)

g. Key pair. A private key and its corresponding public key in an asymmetric cryptosystem. The keys have the property that the public key can verify an electronic signature that the private key creates; (4-5-00)

h. Private key. The key of a key pair used to create an electronic signature; (4-5-00)

i. Proof of identification. The document or documents presented to a Certification Authority to establish the identity of a subscriber; (4-5-00)

j. Public key. The key of a pair used to verify an electronic signature; (4-5-00)

k. Subscriber. A person who: (4-5-00)

- i. Is the subject listed in a certificate; (4-5-00)
- ii. Accepts the certificate; and (4-5-00)
- iii. Holds a private key which corresponds to a public key listed in that certificate. (4-5-00)

1. Technology. The computer hardware or software-based method or process used to create electronic signatures. (4-5-00)

02. Electronic Signature to Be Unique. Section 67-2354, Idaho Code, requires that an electronic signature be “unique to the person using it.” A public key-based electronic signature may be considered unique to the person using it if: (4-5-00)

a. The private key used to create the signature on the document is known only to the signer; (4-5-00)

b. The electronic signature is created when a person runs a message through a one-way function, creating a message digest, then encrypting the resulting message digest using an asymmetrical cryptosystem and the signer’s private key; (4-5-00)

c. Although not all electronically signed communications will require the signer to obtain a certificate, the signer is capable of being issued a certificate to certify that he or she controls the key pair used to create the signature; and (4-5-00)

d. It is computationally infeasible to derive the private key from knowledge of the public key. (4-5-00)

03. Signature Capable of Verification. Section 67-2354, Idaho Code, requires that an electronic signature be “capable of verification.” A public-key based electronic signature is capable of verification: (4-5-00)

a. If the acceptor of the electronically signed document can verify the document was electronically signed by using the signer’s public key; (4-5-00)

b. If a certificate is a required component of a transaction, the certificate was valid; and (4-5-00)

c. If a certificate is a required component of a transaction, the issuing Certification Authority identifies which, if any, form(s) of proof of identification it required of the signer prior to issuing the certificate. (4-5-00)

04. Electronic Signature Must Meet ISO X.509 Standards. The electronic signature must meet International Standards Organization ISO X.509 standards. (4-5-00)

05. Approved Certification Authority. The Department shall only accept certificates from an Approved Certification Authority. (4-5-00)

309. CRITERIA FOR ACCEPTING AN ELECTRONIC SIGNATURE (RULE 309). The following criteria shall be used in determining the acceptability of electronic signatures: (4-5-00)

01. Level of Security Used to Identify the Signer. Prior to accepting an electronic signature, the Department shall ensure that the level of security used to identify the signer of a document is sufficient for the transaction being conducted. (4-5-00)

02. Level of Security Used to Transmit the Signature. Prior to accepting an electronic signature, the Department shall ensure that the level of security used to transmit the signature is sufficient for the transaction being conducted. (4-5-00)

03. Certificate Format Used by the Signer. If a certificate is a required component of an electronic signature transaction, the Department shall ensure that the certificate format used by the signer is sufficient for the security and interoperability needs of the Department. (4-5-00)

310. RETENTION OF CERTIFICATES (RULE 310). All electronically signed messages received by the Department in accordance with this rule, as well as any information resources necessary to permit access to the message and to verify the electronic signature, shall be retained by the Department as necessary to comply with applicable law pertaining to records retention requirements

for that message.

(4-5-00)

311. ELECTRONIC SIGNATURE REPUDIATION (RULE 311).

It is the responsibility of the rightful holder of the private key to maintain the private key's security. Repudiation of an electronically signed and transmitted message may only occur by the determination of a court of competent jurisdiction that the private key of the rightful holder was compromised through no fault of the rightful holder and without knowledge on the part of the rightful holder. It is the legal prerequisite for a claim of repudiation that the repudiator have filed a notice of revocation with the Certification Authority prior to making the claim of repudiation.

(4-5-00)

312. -- 349. (RESERVED)

350. ORDER GRANTING INTERVENTION NECESSARY (RULE 350).

Persons not applicants or claimants or appellants, petitioners, complainants, protestants, or respondents to a proceeding who claim a direct and substantial interest in the proceeding may petition for an order from the presiding officer granting intervention to become a party, if a formal hearing is required by statute to be held in the proceeding.

(7-1-93)

351. FORM AND CONTENTS OF PETITIONS TO INTERVENE (RULE 351).

Petitions to intervene must comply with Rules 200, 300, and 301. The petition must set forth the name and address of the potential intervenor and must state the direct and substantial interest of the potential intervenor in the proceeding. If affirmative relief is sought, the petition must state the relief sought and the basis for granting it.

(7-1-93)

352. TIMELY FILING OF PETITIONS TO INTERVENE (RULE 352).

Petitions to intervene must be filed at least fourteen (14) days before the date set for formal hearing, or by the date of the prehearing conference, whichever is earlier, unless a different time is provided by order or notice. Petitions not timely filed must state a substantial reason for delay. The presiding officer may deny or conditionally grant petitions to intervene that are not timely filed for failure to state good cause for untimely filing, to prevent disruption, prejudice to existing parties or undue broadening of the issues, or for other reasons. Intervenors who do not file timely petitions are bound by orders and notices earlier entered as a condition of granting the untimely petition.

(4-5-00)

353. GRANTING PETITIONS TO INTERVENE (RULE 353).

If a timely-filed petition to intervene shows direct and substantial interest in any part of the subject matter of a proceeding and does not unduly broaden the issues, the presiding officer will grant intervention, subject to reasonable conditions, unless the applicant's interest is adequately represented by existing parties. If it appears that an intervenor has no direct or substantial interest in the proceeding, the presiding officer may dismiss the intervenor from the proceeding.

(4-5-00)

354. ORDERS GRANTING INTERVENTION -- OPPOSITION (RULE 354).

No order granting a petition to intervene will be acted upon sooner than seven (7) days after its filing, except in a hearing in which any party may be heard or except where no objection to the intervention is made. Any party opposing a petition to intervene by motion must file the motion within seven (7) days after receipt of the petition to intervene and serve the motion upon all parties of record and upon the person petitioning to intervene.

(4-5-00)

355. PUBLIC WITNESSES (RULE 355).

Persons not parties and not called by a party who testify at hearing are called "public witnesses." Public witnesses do not have parties' rights to examine witnesses or otherwise participate in the proceedings as parties. Public witnesses' written or oral statements and exhibits are subject to examination and objection by parties. Subject to Rules 557 and 559, public witnesses have a right to introduce evidence at hearing by their written or oral statements and exhibits introduced at hearing, except that public witnesses offering expert opinions at hearing or detailed analysis or detailed exhibits must comply with Rule 528 with regard to filing and service of testimony and exhibits to the same extent as expert witnesses of parties. A person intending to present public witness testimony shall provide five (5) days notice prior to the hearing. The notice shall include the name and address of the witness and the general nature or subject matter of the testimony to be given. If the notice is not given, the public testimony will be allowed only at the discretion of the presiding officer upon a finding of good cause.

(4-5-00)

356. -- 399. (RESERVED)

400. FORM AND CONTENTS OF PETITION FOR DECLARATORY RULINGS (RULE 400).

Any person petitioning for a declaratory ruling on the applicability of a statute, rule or order administered by the agency must substantially comply with this rule. (7-1-93)

01. Form. The petition shall: (7-1-93)

a. Identify the petitioner and state the petitioner's interest in the matter; (7-1-93)

b. State the declaratory ruling that the petitioner seeks; and (7-1-93)

c. Indicate the statute, order, rule, or other controlling law, and the factual allegations upon which the petitioner relies to support the petition. (7-1-93)

02. Legal Assertions. Legal assertions in the petition may be accompanied by citations of cases and/or statutory provisions. (7-1-93)

401. NOTICE OF PETITION FOR DECLARATORY RULING (RULE 401).

Notice of petition for declaratory ruling may be issued in a manner designed to call its attention to persons likely to be interested in the subject matter of the petition. (7-1-93)

402. PETITIONS FOR DECLARATORY RULINGS TO BE DECIDED BY ORDER (RULE 402).

01. Final Agency Action. The agency's decision on a petition for declaratory ruling on the applicability of any statute, rule or order administered by the agency is a final agency action decided by order. (7-1-93)

02. Content. The order issuing the declaratory ruling shall contain or must be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a final agency action issuing a declaratory ruling. (7-1-93)

b. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this declaratory ruling may appeal to district court by filing a petition in the District Court in the county in which: (7-1-93)

i. A hearing was held; (7-1-93)

ii. The declaratory ruling was issued; (7-1-93)

iii. The party appealing resides; or (7-1-93)

iv. The real property or personal property that was the subject of the declaratory ruling is located. (7-1-93)

c. This appeal must be filed within twenty-eight (28) days of the service date of this declaratory ruling. See Section 67-5273, Idaho Code. (7-1-93)

403. -- 409. (RESERVED)

410. APPOINTMENT OF HEARING OFFICERS (RULE 410).

A hearing officer is a person other than the agency head appointed to hear contested cases on behalf of the agency. Unless otherwise provided by statute or rule, hearing officers may be employees of the agency or independent contractors. Hearing officers may be (but need not be) attorneys. Hearing officers who are not attorneys should ordinarily be persons with technical expertise or experience in issues before the agency. The appointment of a hearing officer is a public record available for inspection, examination and copying. (7-1-93)

411. HEARING OFFICERS CONTRASTED WITH AGENCY HEAD (RULE 411).

Agency heads are not hearing officers, even if they are presiding at contested cases. The term “hearing officer” as used in these rules refers only to officers subordinate to the agency head. (7-1-93)

412. DISQUALIFICATION OF OFFICERS HEARING CONTESTED CASES (RULE 412).

Pursuant to Section 67-5252, Idaho Code hearing officers are subject to disqualification for bias, prejudice, interest, substantial prior involvement in the case other than as a presiding officer, status as an employee of the agency, lack of professional knowledge in the subject matter of the contested case, or any other reason provided by law or for any cause for which a judge is or may be disqualified. Any party may promptly petition for the disqualification of a hearing officer after receiving notice that the officer will preside at a contested case or upon discovering facts establishing grounds for disqualification, whichever is later. Any party may assert a blanket disqualification for cause of all employees of the agency hearing the contested case, other than the agency head, without awaiting the designation by a presiding officer. A hearing officer whose disqualification is requested shall determine in writing whether to grant the petition for disqualification, stating facts and reasons for the hearing officer’s determination. Disqualification of agency heads, if allowed, will be pursuant to Sections 74-404 and 67-5252(4), Idaho Code. (7-1-93)

413. SCOPE OF AUTHORITY OF HEARING OFFICERS (RULE 413).

The scope of hearing officers’ authority may be restricted in the appointment by the agency. (7-1-93)

01. Scope of Authority. Unless the agency otherwise provides hearing, officers have the standard scope of authority, which is: (7-1-93)

a. Authority to schedule cases assigned to the hearing officer, including authority to issue notices of default, of prehearing conference and of hearing, or to provide for the use of informal procedure, as appropriate; (4-5-00)

b. Authority to schedule and compel discovery, when discovery is authorized before the agency, and to require advance filing of expert testimony, when authorized before the agency; (7-1-93)

c. Authority to preside at and conduct hearings, accept evidence into the record, rule upon objections to evidence, rule on dispositive motions upon completion of the applicant’s or petitioner’s case in chief, and otherwise oversee the orderly presentations of the parties at hearing; and (4-5-00)

d. Authority to issue a written decision of the hearing officer, including a narrative of the proceedings before the hearing officer and findings of fact, conclusions of law, and recommended or preliminary orders by the hearing officer, following the submission of evidence through stipulation of the parties, affidavits, exhibits, or hearing testimony. (4-5-00)

02. Limitation. The hearing officer’s scope of authority may be limited from the standard scope, either in general, or for a specific proceeding. For example, the hearing officer’s authority could be limited to scope in Rule Subsection 413.01.c. (giving the officer authority only to conduct hearing), with the agency retaining all other authority. Hearing officers can be given authority with regard to the agency’s rules as provided in Rule 416. (7-1-93)

414. PRESIDING OFFICER(S) (RULE 414).

One (1) or more members of the agency board, the agency director, or duly appointed hearing officers may preside at hearing as authorized by statute or rule. When more than one (1) officer sits at hearing, they may all jointly be presiding officers or may designate one (1) of them to be the presiding officer. (7-1-93)

415. CHALLENGES TO STATUTES (RULE 415).

A hearing officer in a contested case has no authority to declare a statute unconstitutional. However, when a court of competent jurisdiction whose decisions are binding precedent in the state of Idaho has declared a statute unconstitutional, or when a federal authority has preempted a state statute or rule, and the hearing officer finds that the same state statute or rule or a substantively identical state statute or rule that would otherwise apply has been challenged in the proceeding before the hearing officer, then the hearing officer shall apply the precedent of the court or the preemptive action of the federal authority to the proceeding before the hearing officer and decide the proceeding before the hearing officer in accordance with the precedent of the court or the preemptive action of the federal authority. (7-1-93)

416. REVIEW OF RULES (RULE 416).

When an order is issued by the agency head in a contested case, the order may consider and decide whether a rule of that agency is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure. The agency head may delegate to a hearing officer the authority to recommend a decision on issues of whether a rule is within the agency's substantive rulemaking authority or whether the rule has been promulgated according to proper procedure or may retain all such authority itself. (7-1-93)

417. EX PARTE COMMUNICATIONS (RULE 417).

Unless required for the disposition of a matter specifically authorized by statute to be done ex parte, a presiding officer serving in a contested case shall not communicate, directly or indirectly, regarding any substantive issue in the contested case with any party, except upon notice and opportunity for all parties to participate in the communication. The presiding officer may communicate ex parte with a party concerning procedural matters (e.g., scheduling). Ex parte communications from members of the general public not associated with any party are not required to be reported by this rule. A party to a contested agency proceeding shall not communicate directly or indirectly with the presiding officer or the agency head regarding any substantive issue in the contested case. When a presiding officer or the agency head becomes aware of an ex parte communication regarding any substantive issue from a party or representative of a party during a contested case, the presiding officer or agency head shall place a copy or written summary of the communication in the file for the case and order the party providing the communication to serve a copy of the communication or written summary upon all parties of record. Repeated violations of this rule shall be cause for the presiding officer to dismiss an action or to dismiss a party from an action. Written communications from a party showing service upon all other parties are not ex parte communications. (4-5-00)

418. -- 499. (RESERVED)

500. ALTERNATIVE RESOLUTION OF CONTESTED CASES (RULE 500).

The Idaho Legislature encourages informal means of alternative dispute resolution (ADR). For contested cases, the means of ADR include, but are not limited to, settlement negotiations, mediation, fact finding, minitrials, and arbitration, or any combination of them. These alternatives can frequently lead to more creative, efficient and sensible outcomes than may be attained under formal contested case procedures. An agency may use ADR for the resolution of issues in controversy in a contested case if the agency finds that such a proceeding is appropriate. An agency may, for example, find that using ADR is not appropriate if it determines that an authoritative resolution of the matter is needed for precedential value, that formal resolution of the matter is of special importance to avoid variation in individual decisions, that the matter significantly affects persons who are not parties to the proceeding, or that a formal proceeding is in the public interest. (7-1-93)

501. NEUTRALS (RULE 501).

When ADR is used for all or a portion of a contested case, the agency may provide a neutral to assist the parties in resolving their disputed issues. The neutral may be an employee of the agency or of another state agency or any other individual who is acceptable to the parties to the proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the issues in controversy, unless such interest is disclosed in writing to all parties and all parties agree that the neutral may serve. (7-1-93)

502. CONFIDENTIALITY RULE 502).

Communications in an ADR proceeding shall not be disclosed by the neutral or by any party to the proceeding unless all parties to the proceeding consent in writing, the communication has already been made public, or is required by court order, statute or agency rule to be made public. (7-1-93)

503. -- 509. (RESERVED)

510. PURPOSES OF PREHEARING CONFERENCES (RULE 510).

The presiding officer, or an authorized employee of the agency, may by order or notice issued to all parties convene a prehearing conference in a contested case for the purposes of formulating or simplifying the issues, obtaining concessions of fact or identification of documents to avoid unnecessary proof, scheduling discovery (when discovery is allowed), arranging for the exchange of proposed exhibits or prepared testimony, limiting witnesses, discussing settlement offers or making settlement offers, scheduling hearings, establishing procedure at hearings, and addressing other matters that may expedite orderly conduct and disposition of the proceeding or its settlement. (4-5-00)

511. NOTICE OF PREHEARING CONFERENCE (RULE 511).

Notice of the place, date and hour of a prehearing conference will be served at least fourteen (14) days before the time set for the prehearing conference, unless the presiding officer finds it necessary or appropriate for the conference to be held earlier. Notices for prehearing conference must contain the same information as notices of hearing with regard to an agency's obligations under the American with Disabilities Act. (7-1-93)

512. RECORD OF CONFERENCE (RULE 512).

Prehearing conferences may be held formally (on the record) or informally (off the record) before or in the absence of a presiding officer, according to order or notice. Agreements by the parties to the conference may be put on the record during formal conferences or may be reduced to writing and filed with the agency after formal or informal conferences. (7-1-93)

513. ORDERS RESULTING FROM PREHEARING CONFERENCE (RULE 513).

The presiding officer, or an authorized employee of the agency, may issue a prehearing order or notice based upon the results of the agreements reached at or rulings made at a prehearing conference. A prehearing order will control the course of subsequent proceedings unless modified by the presiding officer for good cause. (4-5-00)

514. FACTS DISCLOSED NOT PART OF THE RECORD (RULE 514).

Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in prehearing conferences in a contested case are not part of the record. (7-1-93)

515. -- 519. (RESERVED)

520. KINDS AND SCOPE OF DISCOVERY LISTED (RULE 520).

01. Kinds of Discovery. The kinds of discovery recognized and authorized by these rules in contested cases are: (7-1-93)

- a. Depositions; (7-1-93)
- b. Production requests or written interrogatories; (7-1-93)
- c. Requests for admission; (7-1-93)
- d. Subpoenas; and (7-1-93)
- e. Statutory inspection, examination (including physical or mental examination), investigation, etc. (7-1-93)

02. Rules of Civil Procedure. Unless otherwise provided by statute, rule, order or notice, the scope of discovery, other than statutory inspection, examination, investigation, etc., is governed by the Idaho Rules of Civil Procedure (see Idaho Rule of Civil Procedure 26(b)). (7-1-93)

521. WHEN DISCOVERY AUTHORIZED (RULE 521).

No party before the agency is entitled to engage in discovery unless the party moves for an order authorizing discovery and the agency issues an order authorizing the requested discovery, or upon agreement of all parties to the discovery that discovery may be conducted. The presiding officer shall provide a schedule for discovery in the order authorizing discovery, but the order authorizing and scheduling discovery need not conform to the timetables of the Idaho Rules of Civil Procedure. A party, upon reasonable notice to other parties and all persons affected thereby, may apply for an order compelling discovery in a manner consistent with the provisions of Rule 37(a) of the Idaho Rules of Civil Procedure. The agency or agency staff may conduct statutory inspection, examination, investigation, etc., at any time without filing a motion to authorize discovery. (4-5-00)

522. RIGHTS TO DISCOVERY RECIPROCAL (RULE 522).

All parties to a proceeding have a right of discovery of all other parties to a proceeding according to Rule 521 and to the authorizing statutes and rules. The presiding officer may by order authorize or compel necessary discovery

authorized by statute or rule.

(7-1-93)

523. DEPOSITIONS (RULE 523).

Depositions may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency.

(7-1-93)

524. PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND REQUESTS FOR ADMISSION (RULE 524).

Production requests or written interrogatories and requests for admission may be taken in accordance with the Idaho Rules of Civil Procedure for any purpose allowed by statute, the Idaho Rules of Civil Procedure, or rule or order of the agency.

(7-1-93)

525. SUBPOENAS (RULE 525).

The agency may issue subpoenas upon a party's motion or upon its own initiative. The agency upon motion to quash made promptly, and in any event, before the time to comply with the subpoena, may quash the subpoena, or condition denial of the motion to quash upon reasonable terms.

(7-1-93)

526. STATUTORY INSPECTION, EXAMINATION, INVESTIGATION, ETC. -- CONTRASTED WITH OTHER DISCOVERY (RULE 526).

This rule recognizes, but does not enlarge or restrict, an agency's statutory right of inspection, examination (including mental or physical examination), investigation, etc. This statutory right of an agency is independent of and cumulative to any right of discovery in formal proceedings and may be exercised by the agency whether or not a person is party to a formal proceeding before the agency. Information obtained from statutory inspection, examination, investigation, etc., may be used in formal proceedings or for any other purpose, except as restricted by statute or rule. The rights of deposition, production request or written interrogatory, request for admission, and subpoena, can be used by parties only in connection with formal proceedings before the agency.

(7-1-93)

527. ANSWERS TO PRODUCTION REQUESTS OR WRITTEN INTERROGATORIES AND TO REQUESTS FOR ADMISSION (RULE 527).

Answers to production requests or written interrogatories and to requests for admission shall be filed or served as provided by the order compelling discovery. Answers must conform to the requirements of the Idaho Rules of Civil Procedure. The order compelling discovery may provide that voluminous answers to requests need not be served so long as they are made available for inspection and copying under reasonable terms.

(7-1-93)

528. FILING AND SERVICE OF DISCOVERY-RELATED DOCUMENTS (RULE 528).

Notices of deposition, cover letters stating that production requests, written interrogatories or requests for admission have been served, cover letters stating answers to production requests, written interrogatories, or requests for admission have been served or are available for inspection under Rule 527, and objections to discovery must be filed and served as provided in the order authorizing discovery.

(4-5-00)

529. EXHIBIT NUMBERS (RULE 529).

The agency assigns exhibit numbers to each party.

(7-1-93)

530. PREPARED TESTIMONY AND EXHIBITS (RULE 530).

Order, notice or rule may require a party or parties to file before hearing and to serve on all other parties prepared expert testimony and exhibits to be presented at hearing. Assigned exhibits numbers should be used in all prepared testimony.

(7-1-93)

531. SANCTIONS FOR FAILURE TO OBEY ORDER COMPELLING DISCOVERY (RULE 531).

The agency may impose all sanctions recognized by statute or rules for failure to comply with an order compelling discovery, including but not limited to the sanctions listed in paragraphs (A), (B), and (C) of Rule 37(b)(2) of the Idaho Rules of Civil Procedure.

(4-5-00)

532. PROTECTIVE ORDERS (RULE 532).

As authorized by statute or rule, the agency may issue protective orders limiting access to information generated during settlement negotiations, discovery, or hearing.

(7-1-93)

533. -- 549. (RESERVED)

550. NOTICE OF HEARING (RULE 550).

Notice of the place, date and hour of hearing will be served on all parties at least fourteen (14) days before the time set for hearing, unless the agency finds by order that it is necessary or appropriate that the hearing be held earlier. Notices must comply with the requirements of Rule 551. Notices must list the names of the parties (or the lead parties if the parties are too numerous to name), the case number or docket number, the names of the presiding officers who will hear the case, the name, address and telephone number of the person to whom inquires about scheduling, hearing facilities, etc., should be directed, and the names of persons with whom the documents, pleadings, etc., in the case should be filed if the presiding officer is not the person who should receive those documents. If no document previously issued by the agency has listed the legal authority of the agency to conduct the hearing, the notice of hearing must do so. The notice of hearing shall state that the hearing will be conducted under these rules of procedure and inform the parties where they may read or obtain a copy. (7-1-93)

551. FACILITIES AT OR FOR HEARING AND A.D.A. REQUIREMENTS (RULE 551).

All hearings must be held in facilities meeting the accessibility requirements of the Americans with Disabilities Act, and all notices of hearing must inform the parties that the hearing will be conducted in facilities meeting the accessibility requirements of the Americans with Disabilities Act. All notices of hearing must inform the parties and other persons notified that if they require assistance of the kind that the agency is required to provide under the Americans with Disabilities Act in order to participate in or understand the hearing, the agency will supply that assistance upon request a reasonable number of days before the hearing. The notice of hearing shall explicitly state the number of days before the hearing that the request must be made. (4-5-00)

552. HOW HEARINGS HELD (RULE 552).

Hearings may be held in person or by telephone or television or other electronic means, if each participant in the hearing has an opportunity to participate in the entire proceeding while it is taking place. (7-1-93)

553. CONDUCT AT HEARINGS (RULE 553).

All persons attending a hearing must conduct themselves in a respectful manner. Smoking is not permitted at hearings. The presiding officer may exclude persons from the hearing who refuse to conduct themselves in a respectful manner. Disruptive conduct that is serious in nature shall be cause for dismissal of a disrupting party from the proceeding. (4-5-00)

554. CONFERENCE AT HEARING (RULE 554).

In any proceeding the presiding officer may convene the parties before hearing or recess the hearing to discuss formulation or simplification of the issues, admissions of fact or identification of documents to avoid unnecessary proof, exchanges of documents, exhibits or prepared testimony, limitation of witnesses, establishment of order of procedure, and other matters that may expedite orderly conduct of the hearing. The presiding officer shall state the results of the conference on the record. (7-1-93)

555. PRELIMINARY PROCEDURE AT HEARING (RULE 555).

Before taking evidence the presiding officer will call the hearing to order, take appearances of parties, and act upon any pending motions or petitions. The presiding officer may allow opening statements as necessary or appropriate to explain a party's presentation. (7-1-93)

556. CONSOLIDATION OF PROCEEDINGS (RULE 556).

The agency may consolidate two (2) or more proceedings for hearing upon finding that they present issues that are related and that the rights of the parties will not be prejudiced. In consolidated hearings the presiding officer determines the order of the proceeding. (7-1-93)

557. STIPULATIONS (RULE 557).

Parties may stipulate among themselves to any fact at issue in a contested case by written statement filed with the presiding officer or presented at hearing or by oral statement at hearing. A stipulation binds all parties agreeing to it only according to its terms. The agency may regard a stipulation as evidence or may require proof by evidence of the facts stipulated. The agency is not bound to adopt a stipulation of the parties, but may do so. If the agency rejects a stipulation, it will do so before issuing a final order, and it will provide an additional opportunity for the parties to present evidence and arguments on the subject matter of the rejected stipulation. (7-1-93)

558. ORDER OF PROCEDURE (RULE 558).

The presiding officer may determine the order of presentation of witnesses and examination of witnesses. (7-1-93)

559. TESTIMONY UNDER OATH (RULE 559).

All testimony presented in formal hearings will be given under oath. Before testifying each witness must swear or affirm that the testimony the witness will give before the agency is the truth, the whole truth, and nothing but the truth. (7-1-93)

560. PARTIES AND PERSONS WITH SIMILAR INTERESTS (RULE 560).

If two (2) or more parties or persons have substantially like interests or positions, to expedite the proceeding and avoid duplication, the presiding officer may limit the number of them who testify, examine witnesses, or make and argue motions and objections. (7-1-93)

561. CONTINUANCE OF HEARING (RULE 561).

The presiding officer may continue proceedings for further hearing. (7-1-93)

562. RULINGS AT HEARINGS (RULE 562).

The presiding officer rules on motions and objections presented at hearing. When the presiding officer is a hearing officer, the presiding officer's rulings may be reviewed by the agency head in determining the matter on its merits and the presiding officer may refer or defer rulings to the agency head for determination. (7-1-93)

563. ORAL ARGUMENT (RULE 563).

The presiding officer may set and hear oral argument on any matter in the contested case on reasonable notice according to the circumstances. (7-1-93)

564. BRIEFS -- MEMORANDA -- PROPOSED ORDERS OF THE PARTIES -- STATEMENTS OF POSITION -- PROPOSED ORDER OF THE PRESIDING OFFICER (RULE 564).

In any contested case, any party may ask to file briefs, memoranda, proposed orders of the parties or statements of position, and the presiding officer may request briefs, proposed orders of the parties, or statements of position. The presiding officer may issue a proposed order and ask the parties for comment upon the proposed order. (7-1-93)

565. PROCEDURE ON PREHEARING MOTIONS (RULE 565).

The presiding officer may consider and decide prehearing motions with or without oral argument or hearing. Unless otherwise provided by the presiding officer upon a showing of good cause by a party, when a motion has been filed, all parties joining in, answering to or responding to the motion(s) will have fourteen (14) days from the time of filing of the motion in which to respond. (4-5-00)

566. JOINT HEARINGS (RULE 566).

The agency may hold joint hearings with federal agencies, with agencies of other states, and with other agencies of the state of Idaho. When joint hearings are held, the agencies may agree among themselves which agency's rules of practice and procedure will govern. (7-1-93)

567. -- 599. (RESERVED)

600. RULES OF EVIDENCE -- EVALUATION OF EVIDENCE (RULE 600).

Evidence should be taken by the agency to assist the parties' development of a record, not excluded to frustrate that development. The presiding officer at hearing is not bound by the Idaho Rules of Evidence. No informality in any proceeding or in the manner of taking testimony invalidates any order. The presiding officer, with or without objection, may exclude evidence that is irrelevant, unduly repetitious, inadmissible on constitutional or statutory grounds, or on the basis of any evidentiary privilege provided by statute or recognized in the courts of Idaho. All other evidence may be admitted if it is of a type commonly relied upon by prudent persons in the conduct of their affairs. The agency's experience, technical competence and specialized knowledge may be used in evaluation of evidence. (7-1-93)

601. DOCUMENTARY EVIDENCE (RULE 601).

Documentary evidence may be received in the form of copies or excerpts. Upon request, parties shall be given an

opportunity to compare the copy with the original if available. (7-1-93)

602. OFFICIAL NOTICE -- AGENCY STAFF MEMORANDA (RULE 602).

Official notice may be taken of any facts that could be judicially noticed in the courts of Idaho and of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified of the specific facts or material noticed and the source of the material noticed, including any agency staff memoranda and data. Notice that official notice will be taken should be provided either before or during the hearing, and must be provided before the issuance of any order that is based in whole or in part on facts or material officially noticed. Parties must be given an opportunity to contest and rebut the facts or material officially noticed. When the presiding officer proposes to notice agency staff memoranda or agency staff reports, responsible staff employees or agents shall be made available for cross-examination if any party timely requests their availability. (7-1-93)

603. DEPOSITIONS (RULE 603).

Depositions may be offered into evidence. (7-1-93)

604. OBJECTIONS -- OFFERS OF PROOF (RULE 604).

Grounds for objection to the admission or exclusion of evidence must be stated briefly at the time the evidence is offered. Formal exceptions to rulings admitting or excluding evidence are unnecessary and need not be taken. An offer of proof for the record consists of a statement of the substance of the excluded evidence. When a party objects to the admission of evidence, the presiding officer will rule on the objection, or, if the presiding officer is a hearing officer, the presiding officer may receive the evidence subject to later ruling by the agency head or refer the matter to the agency head. (7-1-93)

605. PREPARED TESTIMONY (RULE 605).

The presiding officer may order a witness's prepared testimony previously distributed to all parties to be included in the record of hearing as if read. Admissibility of prepared testimony is subject to Rule 600. (7-1-93)

606. EXHIBITS (RULE 606).

Exhibit numbers may be assigned to the parties before hearing. Exhibits prepared for hearing should ordinarily be typed or printed on eight and one-half inch (8 1/2") by eleven inch (11") white paper, except that maps, charts, photographs and non-documentary exhibits may be introduced on the size or kind of paper customarily used for them. A copy of each documentary exhibit must be furnished to each party present and to the presiding officer, except for unusually bulky or voluminous exhibits that have previously been made available for the parties' inspection. Copies must be of good quality. Exhibits identified at hearing are subject to appropriate and timely objection before the close of proceedings. Exhibits to which no objection is made are automatically admitted into evidence without motion of the sponsoring party. Neither motion pictures, slides, opaque projections, videotapes, audiotapes nor other materials not capable of duplication by still photograph or reproduction on paper shall be presented as exhibits without approval of the presiding officer prior to the hearing. (7-1-93)

607. -- 609. (RESERVED)

610. CONFIDENTIALITY OF SETTLEMENT NEGOTIATIONS (RULE 610).

Settlement negotiations in a contested case are confidential, unless all participants to the negotiation agree to the contrary in writing. Facts disclosed, offers made and all other aspects of negotiation (except agreements reached) in settlement negotiations in a contested case are not part of the record. (7-1-93)

611. SUGGESTION FOR OR INQUIRY ABOUT SETTLEMENTS (RULE 611).

Through notice or order or on the record at prehearing conference or hearing, the presiding officer may inquire of the parties in any proceeding whether settlement negotiations are in progress or are contemplated or may invite settlement of an entire proceeding or certain issues. (7-1-93)

612. CONSIDERATION OF SETTLEMENTS (RULE 612).

Settlements must be reviewed under this rule. When a settlement is presented to the presiding officer, the presiding officer will prescribe procedures appropriate to the nature of the settlement to consider the settlement. For example, the presiding officer could summarily accept settlement of essentially private disputes that have no significant implications for administration of the law for persons other than the affected parties. On the other hand, when one (1) or more parties to a proceeding is not party to the settlement or when the settlement presents issues of significant

implication for other persons, the presiding officer may convene an evidentiary hearing to consider the reasonableness of the settlement and whether acceptance of the settlement is consistent with the agency's charge under the law. (7-1-93)

613. BURDENS OF PROOF (RULE 613).

Proponents of a proposed settlement carry the burden of showing that the settlement is in accordance with the law. The presiding officer may require the development of an appropriate record in support of or opposition to a proposed settlement as a condition of accepting or rejecting the settlement. (7-1-93)

614. SETTLEMENT NOT BINDING (RULE 614).

The presiding officer is not bound by settlement agreements that are not unanimously accepted by all parties or that have significant implications for persons not parties. In these instances, the presiding officer will independently review any proposed settlement to determine whether the settlement is in accordance with the law. (7-1-93)

615. -- 649. (RESERVED)

650. RECORD FOR DECISION (RULE 650).

01. Official Record. The agency shall maintain an official record for each contested case and (unless statute provides otherwise) base its decision in a contested case on the official record for the case. (7-1-93)

02. Contents of Record. The record for a contested case shall include: (7-1-93)

- a.** All notices of proceedings; (7-1-93)
- b.** All applications or claims or appeals, petitions, complaints, protests, motions, and answers filed in the proceeding; (7-1-93)
- c.** All intermediate or interlocutory rulings of hearing officers or the agency head; (7-1-93)
- d.** All evidence received or considered (including all transcripts or recordings of hearings and all exhibits offered or identified at hearing); (7-1-93)
- e.** All offers of proof, however made; (7-1-93)
- f.** All briefs, memoranda, proposed orders of the parties or of the presiding officers, statements of position, statements of support, and exceptions filed by parties or persons not parties; (7-1-93)
- g.** All evidentiary rulings on testimony, exhibits, or offers of proof; (7-1-93)
- h.** All staff memoranda or data submitted in connection with the consideration of the proceeding; (7-1-93)
- i.** A statement of matters officially noticed; and (7-1-93)
- j.** All recommended orders, preliminary orders, final orders, and orders on reconsideration. (7-1-93)

651. RECORDING OF HEARINGS (RULE 651).

All hearings shall be recorded on audiotape or videotape at the agency's expense. The agency may provide for a transcript of the proceeding at its own expense. Any party may have a transcript prepared at its own expense. If the transcript prepared at the expense of a party is deemed by the presiding officer to be the official transcript of the hearing, the party shall furnish the agency a transcript without charge. (7-1-93)

652. -- 699. (RESERVED)

700. NOTICE OF PROPOSED DEFAULT AFTER FAILURE TO APPEAR OR RESPOND (RULE 700).

If an applicant or claimant or appellant, petitioner, protestant, complainant, or moving party fails to appear at the time

and place set for hearing, or prehearing conference, on an application or claim or appeal, petition, complaint, or motion, or fails to respond to a written information inquiry, the presiding officer may serve upon all parties a notice of a proposed default order denying the application or claim or appeal, petition, complaint, or motion. The notice of a proposed default order shall include a statement that the default order is proposed to be issued because of a failure of the applicant or claimant or appellant, petitioner, complainant or moving party to appear at the time and place set for hearing or prehearing conference, or to respond to the information inquiry. The notice of proposed default order may be mailed to the last known mailing address of the party proposed to be defaulted. (4-5-00)

701. SEVEN DAYS TO CHALLENGE PROPOSED DEFAULT ORDER (RULE 701).

Within seven (7) days after the service of the notice of proposed default order, the party against whom it was filed may file a written petition requesting that a default order not be entered. The petition must state the grounds why the petitioning party believes that default should not be entered. (7-1-93)

702. ISSUANCE OF DEFAULT ORDER (RULE 702).

The agency shall promptly issue a default order or withdraw the notice of proposed default order after expiration of the seven (7) days for the party to file a petition contesting the default order or receipt of a petition. If a default order is issued, all further proceedings necessary to complete the contested case shall be conducted without participation of the party in default (if the defaulting party is not a movant) or upon the results of the denial of the motion (if the defaulting party is a movant). All issues in the contested case shall be determined, including those affecting the defaulting party. Costs may be assessed against a defaulting party. (7-1-93)

703. -- 709. (RESERVED)

710. INTERLOCUTORY ORDERS (RULE 710).

Interlocutory orders are orders that do not decide all previously undecided issues presented in a proceeding, except the agency may by order decide some of the issues presented in a proceeding and provide in that order that its decision on those issues is final and subject to review by reconsideration or appeal, but is not final on other issues. Unless an order contains or is accompanied by a document containing one (1) of the paragraphs set forth in Rules 720, 730 or 740 or a paragraph substantially similar, the order is interlocutory. The following orders are always interlocutory: orders initiating complaints or investigations; orders joining, consolidating or separating issues, proceedings or parties; orders granting or denying intervention; orders scheduling prehearing conferences, discovery, hearing, oral arguments or deadlines for written submissions; and orders compelling or refusing to compel discovery. Interlocutory orders may be reviewed by the officer issuing the order pursuant to Rules 711, 760, and 770. (7-1-93)

711. REVIEW OF INTERLOCUTORY ORDERS (RULE 711).

Any party or person affected by an interlocutory order may petition the officer issuing the order to review the interlocutory order. The officer issuing an interlocutory order may rescind, alter or amend any interlocutory order on the officer's own motion, but will not on the officer's own motion review any interlocutory order affecting any party's substantive rights without giving all parties notice and an opportunity for written comment. (7-1-93)

712. CONTENTS OF ORDERS (RULE 712).

Pursuant to Section 67-5248, Idaho Code, an order that determines the legal rights or interests of one (1) or more parties must be in writing and shall include the following: (4-5-00)

01. Findings of Fact and Conclusions of Law. An order shall contain a reasoned statement in support of the decision. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts of record supporting the findings. Findings of fact must be based exclusively on the evidence in the record of the contested case and on matters officially noticed in that proceeding. (4-5-00)

02. Statement of Available Procedure. An order shall contain a statement of the available procedures and applicable time limits for seeking reconsideration or other administrative relief. (4-5-00)

713. -- 719. (RESERVED)

720. RECOMMENDED ORDERS (RULE 720).

01. Recommended Orders -- Definition. Recommended orders are orders issued by a person other

than the agency head that will become a final order of the agency only after review of the agency head (or the agency head's designee) pursuant to Section 67-5244, Idaho Code. (7-1-93)

02. Contents of Recommended Orders. Every recommended order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a recommended order of the hearing officer. It will not become final without action of the agency head. Any party may file a petition for reconsideration of this recommended order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this recommended order will dispose of any petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (7-1-93)

b. Within fourteen (14) days after (a) the service date of this recommended order, (b) the service date of a denial of a petition for reconsideration from this recommended order, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration from this recommended order, any party may in writing support or take exceptions to any part of this recommended order and file briefs in support of the party's position with the agency head or designee on any issue in the proceeding. If no party files exceptions to the recommended order with the agency head or designee, the agency head or designee will issue a final order within fifty-six (56) days after: (4-5-00)

- i. The last day a timely petition for reconsideration could have been filed with the hearing officer; (4-5-00)
- ii. The service date of a denial of a petition for reconsideration by the hearing officer; or (4-5-00)
- iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration by the hearing officer. (4-5-00)

c. Written briefs in support of or taking exceptions to the recommended order shall be filed with the agency head (or designee of the agency head). Opposing parties shall have fourteen (14) days to respond. The agency head or designee may schedule oral argument in the matter before issuing a final order. The agency head or designee will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (4-5-00)

721. -- 729. (RESERVED)

730. PRELIMINARY ORDERS (RULE 730).

01. Preliminary Orders -- Definition. Preliminary orders are orders issued by a person other than the agency head that will become a final order of the agency unless reviewed by the agency head (or the agency head's designee) pursuant to Section 67-5245, Idaho Code. (7-1-93)

02. Contents of Preliminary Order. Every preliminary order must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a preliminary order of the hearing officer. It can and will become final without further action of the agency unless any party petitions for reconsideration before the hearing officer issuing it or appeals to the hearing officer's superiors in the agency. Any party may file a petition for reconsideration of this preliminary order with the hearing officer issuing the order within fourteen (14) days of the service date of this order. The hearing officer issuing this order will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5243(3), Idaho Code. (7-1-93)

- b.** Within fourteen (14) days after: (4-5-00)
 - i. The service date of this preliminary order; (4-5-00)

- ii. The service date of the denial of a petition for reconsideration from this preliminary order; or (4-5-00)
- iii. The failure within twenty-one (21) days to grant or deny a petition for reconsideration from this preliminary order, any party may in writing appeal or take exceptions to any part of the preliminary order and file briefs in support of the party's position on any issue in the proceeding to the agency head (or designee of the agency head). Otherwise, this preliminary order will become a final order of the agency. (4-5-00)
- c. If any party appeals or takes exceptions to this preliminary order, opposing parties shall have fourteen (14) days to respond to any party's appeal within the agency. Written briefs in support of or taking exceptions to the preliminary order shall be filed with the agency head (or designee). The agency head (or designee) may review the preliminary order on its own motion. (4-5-00)
- d. If the agency head (or designee) grants a petition to review the preliminary order, the agency head (or designee) shall allow all parties an opportunity to file briefs in support of or taking exceptions to the preliminary order and may schedule oral argument in the matter before issuing a final order. The agency head (or designee) will issue a final order within fifty-six (56) days of receipt of the written briefs or oral argument, whichever is later, unless waived by the parties or for good cause shown. The agency head (or designee) may remand the matter for further evidentiary hearings if further factual development of the record is necessary before issuing a final order. (7-1-93)
- e. Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Department or the Board is otherwise provided by statute, any person aggrieved by any decision, determination, order or action of the director of the Department or any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing. (4-5-00)
- f. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, if this preliminary order becomes final, any party aggrieved by the final order or orders previously issued in this case may appeal the final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (7-1-93)
 - i. A hearing was held; (7-1-93)
 - ii. The final agency action was taken; (7-1-93)
 - iii. The party seeking review of the order resides; or (7-1-93)
 - iv. The real property or personal property that was the subject of the agency action is located. (7-1-93)
- g. This appeal must be filed within twenty-eight (28) days of this preliminary order becoming final. See Section 67-5273, Idaho Code. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (7-1-93)

731. -- 739. (RESERVED)

740. FINAL ORDERS (RULE 740).

01. Final Order -- Definition. Final orders are preliminary orders that have become final under Rule 730 pursuant to Section 67-5245, Idaho Code, or orders issued by the agency head pursuant to Section 67-5246, Idaho Code, or emergency orders, including cease and desist or show cause orders, issued by the agency head pursuant to Section 67-5247, Idaho Code. (7-1-93)

02. Content of Final Order. Every final order issued by the agency head must contain or be accompanied by a document containing the following paragraphs or substantially similar paragraphs: (7-1-93)

a. This is a final order of the agency. Any party may file a petition for reconsideration of this final order within fourteen (14) days of the service date of this order. The agency will dispose of the petition for reconsideration within twenty-one (21) days of its receipt, or the petition will be considered denied by operation of law. See Section 67-5246(4), Idaho Code. (7-1-93)

b. Pursuant to Section 42-1701A(3), Idaho Code, unless the right to a hearing before the Department or the Board is otherwise provided by statute, any person aggrieved by any decision, determination, order or action of the director of the Department or any applicant for any permit, license, certificate, approval, registration, or similar form of permission required by law to be issued by the director, who is aggrieved by a denial or conditional approval ordered by the director, and who has not previously been afforded an opportunity for a hearing on the matter shall be entitled to a hearing before the director to contest the denial or conditional approval upon filing with the director, within fifteen (15) days after receipt of the denial or conditional approval, a written petition stating the grounds for contesting the action by the director and requesting a hearing. (4-5-00)

c. Pursuant to Sections 67-5270 and 67-5272, Idaho Code, any party aggrieved by this final order or orders previously issued in this case may appeal this final order and all previously issued orders in this case to district court by filing a petition in the district court of the county in which: (7-1-93)

- i. A hearing was held; (7-1-93)
- ii. The final agency action was taken; (7-1-93)
- iii. The party seeking review of the order resides; or (7-1-93)
- iv. The real property or personal property that was the subject of the agency action is located. (7-1-93)

d. An appeal must be filed within twenty-eight (28) days (a) of the service date of this final order, (b) of an order denying petition for reconsideration, or (c) the failure within twenty-one (21) days to grant or deny a petition for reconsideration, whichever is later. See Section 67-5273, Idaho Code, and Rule 84 of the Idaho Rules of Civil Procedure. The filing of an appeal to district court does not itself stay the effectiveness or enforcement of the order under appeal. (4-5-00)

741. -- 749. (RESERVED)

750. ORDER NOT DESIGNATED (RULE 750).

If an order does not designate itself as recommended, preliminary or final at its release, but is designated as recommended, preliminary or final after its release, its effective date for purposes of reconsideration or appeal is the date of the order of designation. If a party believes that an order not designated as a recommended order, preliminary order or final order according to the terms of these rules should be designated as a recommended order, preliminary order or final order, the party may move to designate the order as recommended, preliminary or final, as appropriate. (7-1-93)

751. -- 759. (RESERVED)

760. MODIFICATION OF ORDER ON PRESIDING OFFICER'S OWN MOTION (RULE 760).

A hearing officer issuing a recommended or preliminary order may modify the recommended or preliminary order on the hearing officer's own motion within fourteen (14) days after issuance of the recommended or preliminary order by withdrawing the recommended or preliminary order and issuing a substitute recommended or preliminary order. The agency head may modify or amend a final order of the agency (be it a preliminary order that became final because no party challenged it or a final order issued by the agency head itself) at any time before notice of appeal to District Court has been filed or the expiration of the time for appeal to District Court, whichever is earlier, by withdrawing the earlier final order and substituting a new final order for it. (7-1-93)

761. -- 769. (RESERVED)

770. CLARIFICATION OF ORDERS (RULE 770).

Any party or person affected by an order may petition to clarify any order, whether interlocutory, recommended, preliminary or final. Petitions for clarification from final orders do not suspend or toll the time to petition for reconsideration or appeal the order. A petition for clarification may be combined with a petition for reconsideration or stated in the alternative as a petition for clarification and/or reconsideration. (7-1-93)

771. -- 779. (RESERVED)

780. STAY OF ORDERS (RULE 780).

Any party or person affected by an order may petition the agency to stay any order, whether interlocutory or final. Interlocutory or final orders may be stayed by the judiciary according to statute. The agency may stay any interlocutory or final order on its own motion. (7-1-93)

781. -- 789. (RESERVED)

790. PERSONS WHO MAY APPEAL (RULE 790).

Pursuant to Section 67-5270, Idaho Code, any party aggrieved by a final order of an agency in a contested case may appeal to district court. Pursuant to Section 67-5271, Idaho Code, a person is not entitled to judicial review of an agency action in district court until that person has exhausted all administrative remedies available with the agency, but a preliminary, procedural, or intermediate agency action or ruling is immediately reviewable in district court if review of the final agency action would not provide an adequate remedy. (7-1-93)

791. NOTICE OF APPEAL (RULE 791).

The notice of appeal must be filed with the district court and served on the agency and all parties. (4-5-00)

01. Filing Appeal. Pursuant to Section 67-5272, Idaho Code, appeals may be filed in the district court of the county in which: (4-5-00)

- a. The hearing was held; (7-1-93)
- b. The final agency action was taken; (7-1-93)
- c. The party seeking review of the agency action resides; or (7-1-93)
- d. The real property or personal property that was the subject of the agency is located. (7-1-93)

02. Filing Deadline. Pursuant to Section 67-5273, Idaho Code, and Rule 84 of the Idaho Rules of Civil Procedure a petition for judicial review of a final order in a contested case must be filed within twenty-eight (28) days: (4-5-00)

- a. Of the service date of the final order; (7-1-93)
- b. Of the denial of the petition for reconsideration; or (7-1-93)
- c. The failure within twenty-one (21) days to grant or deny the petition for reconsideration. (7-1-93)

792. -- 999. (RESERVED)

**IDAPA 37
TITLE 02
CHAPTER 03**

37.02.03 – WATER SUPPLY BANK RULES

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted under the legal authority of Section 42-1762, Idaho Code. (3-20-04)

001. TITLE AND SCOPE (RULE 1).

01. Title. The title of this chapter is IDAPA 37.02.03, “Water Supply Bank Rules.” (3-20-04)

02. Scope. These rules were first adopted by the Water Resource Board in October 1980 as mandated by Section 42-1762, Idaho Code enacted in 1979. The rules govern the Board’s operation and management of a Water Supply Bank provided for in Sections 42-1761 to 42-1766, Idaho Code. The purposes of the Water Supply Bank, as defined by statute, are to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water uses; and provide a source of funding for improving water user facilities and efficiencies. These rules are to be used by the Water Resource Board in considering the purchase, sale, lease or rental of natural flow or stored water, the use of any funds generated therefrom, and the appointment of local committees to facilitate the lease and rental of stored water. The purchase, sale, lease or rental of water shall be in compliance with state and federal law. The adoption of these rules is not intended to prevent any person from directly selling or leasing water by transactions outside the purview of the Water Supply Bank Rules where such transactions are otherwise allowed by law. (3-20-04)

002. WRITTEN INTERPRETATIONS (RULE 2).

There are no written interpretations of these rules. (3-20-04)

003. (RESERVED)

004. INCORPORATION BY REFERENCE (RULE 4).

No documents have been incorporated by reference into these rules. (3-20-04)

005. OFFICE – OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – WEBSITE (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. (3-20-04)

02. Mailing Address. P.O. Box 83720, Boise, Idaho 83720-0098. (3-20-04)

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. (3-20-04)

04. Web Address. The Department’s website at <http://www.idwr.idaho.gov>. (3-20-04)

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 74, Chapter 1, Idaho Code. (3-20-04)

007. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

01. Board. The Idaho Water Resource Board. (7-1-93)

02. Board's Water Supply Bank. The water exchange market operated directly by the Board to facilitate marketing of water rights. (7-1-93)

- 03. Director.** The Director of the Idaho Department of Water Resources. (7-1-93)
- 04. Department.** The Idaho Department of Water Resources. (7-1-93)
- 05. Lease.** To convey by contract a water right to the Board's water supply bank or stored water to a rental pool operated by a local committee. (7-1-93)
- 06. Local Committee.** The committee which has been designated by action of the Board to facilitate marketing of stored water by operating a rental pool pursuant to Section 42-1765, Idaho Code. (7-1-93)
- 07. Natural Flow.** Water or the right to use water that exists in a spring, stream, river, or aquifer at a certain time and which is not the result of the storage of water flowing at a previous time. (7-1-93)
- 08. Rent.** To convey by contract a water right from the Board's water supply bank or stored water from a rental pool. (7-1-93)
- 09. Rental Pool.** A market for exchange of stored water operated by a local committee. (7-1-93)
- 10. Stored Water.** Water made available by detention in surface reservoirs or storage space in a surface reservoir. (7-1-93)
- 11. Water Right.** The right to divert and beneficially use the public waters of the state of Idaho including any storage entitlement. (7-1-93)
- 12. Water Supply Bank.** The water exchange market operated by the Water Resource Board pursuant to Section 42-1761 through 42-1766, Idaho Code, and these rules and is a general term which includes the Board's water supply bank and rental pools. (7-1-93)
- 13. Year.** A time period of twelve (12) consecutive months. (7-1-93)
- 14. Person.** Any company, corporation, association, firm, agency, individual, partnership, Indian tribe, government or other entity. (7-1-93)
- 011. -- 024. (RESERVED)**

025. ACQUISITION OF WATER RIGHTS FOR THE BOARD'S WATER SUPPLY BANK (RULE 25).

- 01. General.** The Board may purchase, lease, accept as a gift or otherwise obtain rights to natural flow or stored water and credit them to the Board's water supply bank. These water rights may then be divided or combined into more marketable blocks provided that there is no injury to other right holders, or enlargement of use of the water rights, and the change is in the local public interest. Any person proposing to sell or lease water rights to the Board's water supply bank, or to otherwise make water available through the water supply bank for the purposes of Section 42-1763A, Idaho Code, shall file a completed application with the Director on a forms or in a format provided by the Department and provide such additional information as the Board or Director may require in evaluating the proposed transaction. The completed application form shall state the period of time a water right is offered for lease, or the period of time that storage water will be released for fish migration purposes in accordance with Section 42-1763A, Idaho Code, and the payment terms, if any, requested by the applicant. (7-1-93)
- 02. Application.** Submitted with the completed application shall be: (7-1-93)
- a.** Evidence that the water right has been recorded through court decree, permit or license issued by the Department. If the right is included in an ongoing adjudication, a copy of the claim is required; (7-1-93)
- b.** Proof of current ownership of the water right by the applicant; (7-1-93)
- c.** Information that the water right has not been lost through abandonment, or forfeiture as defined by Section 42-222(2), Idaho Code; (7-1-93)

- d. Evidence to demonstrate the relative availability of water in the source to fill the water right; and (7-1-93)
- e. The written consent of such company, corporation or irrigation district to the proposed sale or lease must accompany the application if the right to the use of the water, or the use of the diversion works or irrigation system is represented by shares of stock in a company or corporation, or if such works or system is owned or managed by an irrigation district. (7-1-93)
- f. A lease application filing fee of two hundred fifty dollars (\$250) per water right up to a maximum total of five hundred dollars (\$500.00) for overlapping water rights which have a common place of use or common diversion rate or diversion volume. The lease filing fee described herein shall be deposited in the Water Administration Account and shall not apply to applications to lease stored water into rental pools described in Rule 40. (4-7-11)
- 03. Review.** Upon receipt of the completed application the Director will review it for completeness and make such further review as he deems necessary to adequately brief the Board on the proposed transaction. (7-1-93)
- 04. Inadequate Application.** If an application is not complete, the Director will correspond with the applicant to obtain the needed information. If the requested information is not returned in thirty (30) days, the application will no longer be considered a valid request to place a water right into the Board's water supply bank. (7-1-93)
- 05. Consideration.** The Board may consider an application at any regular or special meeting. (7-1-93)
- 06. Criteria.** The Board will consider the following in determining whether to accept an offered water right into the Board's water supply bank: (7-1-93)
- a. Whether the applicant is the current owner, title holder or contract water user of the water right proposed to be transferred to the Board's water supply bank or has authority to act on behalf of the owner; (7-1-93)
- b. Whether all necessary consents have been filed with the Board; (7-1-93)
- c. Whether the information available to the Board indicates that the water right has been abandoned or forfeited; (7-1-93)
- d. Whether the offering price or requested rental rate is reasonable; (7-1-93)
- e. Whether acquisition of the water right will be contrary to the State Water Plan; (7-1-93)
- f. Whether the application is in the local public interest as defined in Section 42-1763, Idaho Code; (7-1-93)
- g. The probability of selling or renting the water right from the Board's water supply bank. (7-1-93)
- h. Whether there are sufficient funds on hand to acquire the water right for the Board's water supply bank, provided that, if there are insufficient funds, or if in the opinion of the Board, existing funds should not immediately be expended for such acquisition, the Board may find that the water right should be acquired on a contingency basis, with payment to be made to the seller or lessor only after water is subsequently sold or rented from the Board's water supply bank, and (7-1-93)
- i. Such other factors as determined to be appropriate by the Board. (7-1-93)
- 07. Resolution of Board.** The Board may by resolution accept an application to sell or lease a water right to the Board's water supply bank, or to otherwise make water available through the water supply bank for the purposes of Section 42-1763A, Idaho Code. An application to lease together with the resolution accepting it becomes a lease and the water right is placed into the Board's water supply bank upon adoption of the resolution. A resolution

accepting an application to sell a right to the Board's water supply bank will provide authority for the chairman of the Board to enter an agreement to purchase the water right. The resolution may include conditions of approval, including but not limited to, the following: (7-1-93)

a. A condition providing the length of time the water right will be retained in the Board's water supply bank. (7-1-93)

b. A condition describing the terms for payment to the owner of the water right and the sale or rental price from the Board's water supply bank. (7-1-93)

c. Other conditions as the Board determines appropriate, including a condition recognizing that water is being made available through the water supply bank pursuant to the provisions of Section 42-1763A, Idaho Code, for purposes of fish migration. (7-1-93)

08. Placement of Water Right. Effect of placement of a water right into the Board's water supply bank. (7-1-93)

a. Upon acceptance of a water right into the Board's water supply bank, the owner of the right may withdraw the right within thirty (30) days of acceptance into the bank if the owner does not agree with the conditions of acceptance. (7-1-93)

b. Upon acceptance of a water right into the Board's water supply bank, the owner of the water right is not authorized to continue the diversion and use of the right while it is in the Board's water supply bank, unless the water right is for hydropower and is placed in the Board's water supply bank to be released for salmon migration and power production purposes. (7-1-93)

c. A water right which has been accepted shall remain in the Board's water supply bank for the period designated by the Board unless removed by resolution of the Board. (7-1-93)

d. The owner of the water right shall remain responsible to take actions required to claim the water right in an adjudication or other legal action concerning the water right and to pay taxes, fees, or assessments related to the water right. (7-1-93)

e. The forfeiture provisions of Section 42-222(2), Idaho Code are tolled during the time period the water right is in the Board's water supply bank, pursuant to the provisions of Section 42-1764, Idaho Code. (7-1-93)

026. -- 029. (RESERVED)

030. SALE OR RENTAL OF WATER RIGHTS FROM THE BOARD'S WATER SUPPLY BANK (RULE 30).

01. General. The Board may in its discretion initiate the process to sell or rent water rights from the Board's water supply bank to achieve the purposes stated in Rule 1. The Board may from time to time, as water rights are available, authorize the Director to announce the availability of the rights from the Board's water supply bank, establishing a time and date for receiving applications in the office of the Director to purchase or rent the water rights. An application shall be on a form or in a format provided by the Director. The sale or rental price shall be the price, if any, as determined by the Board. The Director will evaluate applications with respect to the purposes of Rule 1, as to whether there will be injury to other water rights, whether the proposal would constitute an enlargement of the water right, whether the water will be put to a beneficial use, whether the water supply available from applicable rights in the Board's water supply bank is sufficient for the use intended, and whether the proposal is in the local public interest. For applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code, the Director will only make an evaluation as to whether the proposed use of water will cause injury to other water rights. The Director may defer the evaluation of potential injury to other water rights conditioned upon the right of any affected water right holder to petition the Director pursuant to Section 42-1766, Idaho Code, to revoke or modify the rental approval upon a showing of injury. (7-1-93)

02. Notice. The Director may give notice of an intended rental as he deems necessary, provided that

prior to approving any application for purchase, or for rental for a period of more than five (5) years, he shall give notice as required in Section 42-222(1), Idaho Code. (7-1-93)

03. Approval. Sale or rental shall be approved only for use of water within the state of Idaho. The Director shall consider in determining whether to approve a rental of water for use outside of the state of Idaho those factors enumerated in Section 42-401(3), Idaho Code, except that this evaluation shall not be required for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code. (7-1-93)

04. Consideration. All applications received on or prior to the announced date for receiving applications shall be considered as having been received at the same time. Applications received after the close of the application date may be considered only if sufficient available water remains in the Board's water supply bank after all acceptable, timely applications have been filed. (7-1-93)

05. Authorized to Rent. The Director is authorized to rent water rights offered by the Board from the Board's water supply bank for a period up to five (5) years, but shall submit applications for purchase, or rental for a period of more than five (5) years to the Board for action. The Director will advise the Board on applications which require Board approval under Rule Subsection 025.06 whether he can approve the application in whole or in part or with conditions to comply with Section 42-1763, Idaho Code. (7-1-93)

06. Board Review. The Board will review applications for purchase or which propose the rental of water rights for a duration of more than five (5) years, and may approve, approve with conditions or may reject the applications as the Board determines to best meet the purposes of Rule 1 and promote the interest of the people of the state of Idaho. (7-1-93)

07. Order of Consideration. When renting water from the bank, the Director and the Board shall consider rental of water rights in the order the rights were leased to the bank, with first consideration for the rights which have continuously been in the bank the longest period of time provided the rights are suitable for the purpose of the renter. (7-1-93)

031. -- 034. (RESERVED)

035. HANDLING OF MONEY ASSOCIATED WITH THE BOARD'S WATER SUPPLY BANK (RULE 35).

Payments received by the Department from the sale or rental of water rights from the Board's water supply bank shall be handled as follows: (7-1-93)

01. Credited Amount. Ten percent (10%) of the gross amount received from the sale or rental of a water right from the Board's water supply bank and the entire lease application fee received pursuant to Rule 025 shall be credited to the Water Administration Account created by Section 42-238a, Idaho Code, or to the federal grant fund if the payment is received from a federal agency, for administrative costs of operating the Water Supply Bank. The ten percent (10%) charge described herein shall not apply to stored water rented from the rental pools described in Rule 040. (4-7-11)

02. Excess Funds. Any funds in excess of the amount needed to compensate the owner of the water right in accordance with the resolution accepting the water right into the Board's water supply bank and the administrative charge of Rule Subsection 035.01 shall be credited to the Water Management Account created by Section 42-1760, Idaho Code, for use by the Board for the purposes of Rule 1. (7-1-93)

036. -- 039. (RESERVED)

040. APPOINTMENT OF LOCAL RENTAL POOL COMMITTEES (RULE 40).

01. Board Meetings for Committee Appointments. The Board may at any regular or special meeting to consider appointing an entity to serve as a local committee to facilitate the lease and rental of stored water. At least ten (10) days prior to the meeting, the entity seeking appointment shall provide to the Director information concerning the organization of the entity, a listing of its officers, a copy of its bylaws and procedures, if applicable, a copy of the proposed local committee procedures, pursuant to which the local committee would facilitate the lease

and rental of stored water, together with a copy of each general lease and rental form proposed to be used by the local committee. The local committee procedures must be approved by the Board and must provide for the following: (7-1-93)

- a. Determination of priority among competing applicants to lease stored water to the rental pool and to rent stored water from the rental pool; (7-1-93)
- b. Determination of the reimbursement schedule for those leasing stored water into the rental pool; (7-1-93)
- c. Determination of the rental price charge to those renting stored water from the rental pool; (7-1-93)
- d. Determination of the administrative charge to be assessed by the local committee; (7-1-93)
- e. Allocation of stored water leased to the bank but not rented; (7-1-93)
- f. Notification of the Department and the watermaster of any rentals where stored water will be moved from the place of use authorized by the permit, license, or decree establishing the stored water right; (7-1-93)
- g. Submittal of applications to rent water from the rental pool for more than five (5) years to the Board for review and approval as a condition of approval by the local committee; (7-1-93)
- h. Prevention of injury to other water rights; (7-1-93)
- i. Protection of the local public interest, except for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code; (7-1-93)
- j. Consistency with the conservation of water resources within the state of Idaho, except for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code; (7-1-93)
- k. Management of rental pool funds as public funds pursuant to the Public Depository Law, Chapter 1, Title 57, Idaho Code. (7-1-93)

02. Local Committee Procedures. The local committee procedures shall provide that a surcharge of ten percent (10%) of the rental fee charged per acre foot of stored water rented from the rental pool shall be assessed and credited to the revolving development account and the water management account established in Sections 42-1752 and 42-1760, Idaho Code, in such proportion as the Board in its discretion shall determine. Such moneys, together with moneys accruing to or earned thereon, shall be set aside, and made available until expended, to be used by the Board for the purposes of Rule 1 unless the surcharge is prohibited by statute, compact or inter-governmental agreement. (7-1-93)

03. Review by Director. The Director will review the local committee procedures and submit them along with the Director's recommendation to the Board. The lease and rental form must receive the Director's approval. The Board may designate the applying entity as the local committee for a period not to exceed five (5) years. A Certificate of Appointment will be issued by the Board. The Board may extend the appointment for additional periods up to five (5) years, upon written request of the local committee. The Board may revoke a designation upon request of the local committee, or after a hearing pursuant to the promulgated Rules of Practice and Procedure of the Board, if the Board determines that the local committee is no longer serving a necessary purpose or is not abiding by its own approved procedures, these rules or applicable statutes. (7-1-93)

04. Annual Report. The local committee shall report annually on the activity of the rental pool on forms provided by the Board. (7-1-93)

05. Submission of Amendments to Procedures to Board. Amendments to the approved procedures of an appointed local committee which change the amount charged for the rental of stored water shall be submitted to the Board by April 1st of any year. The amendment will be considered approved by the Board unless specifically disapproved at the first regular Board meeting following the amendment action of the local committee. The Board

may, upon good cause being determined by the Board, specifically approve of amendments submitted after April 1 of any year. (3-20-04)

041. -- 999. (RESERVED)

**IDAPA 37
TITLE 03
CHAPTER 01**

37.03.01 – ADJUDICATION RULES

000. LEGAL AUTHORITY.

These rules are adopted under the legal authorities of Section 42-1414, and 42-1805(8), Idaho Code. (5-8-09)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 37.03.01, “Adjudication Rules.” (5-8-09)

02. Scope. These rules implement statutes governing the filing of notices of claims to water rights acquired under state law and the collection of fees for filing notices of claims to water rights acquired under state law in general adjudications, as provided in Sections 41-1409, 42-1414 and 42-1415, Idaho Code. (5-8-09)

002. WRITTEN INTERPRETATIONS.

The Idaho Department of Water Resources maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General opinions, and other written interpretations, if applicable, are available for public inspection and copying at the director’s office of the Idaho Department of Water Resources, Boise, Idaho. (5-8-09)

003. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the department is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code. (5-8-09)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated herein by reference. (5-8-09)

005. OFFICE – OFFICE HOURS – MAILING ADDRESS -- STREET ADDRESS.

The principal place of business of the Department of Water Resources is located at 322 East Front Street in Boise, Idaho and it is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. The mailing address is: Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098. The telephone number of the office is (208) 287-4800. (5-8-09)

006. PUBLIC RECORDS ACT COMPLIANCE.

This rule is subject to and in compliance with the provisions of Title 74, Chapter 1, Idaho Code. (5-8-09)

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Amendment Fee. The additional fee payable at the time of filing an amendment to a claim, as provided in Section 42-1414(2), Idaho Code. (5-8-09)

02. Aquaculture. The use of water for propagation of fish, shell fish, and any other animal or plant product naturally occurring in an underwater environment. (7-1-93)

03. Aquaculture Fee. The variable fee payable for aquaculture use, as provided in Section 42-1414(1)(b)(iii), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. (5-8-09)

04. Claim. A notice of claim to a water right acquired under state law, as provided in Section 42-1409(4), Idaho Code. (5-8-09)

- 05. Department.** The Idaho Department of Water Resources. (7-1-93)
- 06. Director.** The Director of the Idaho Department of Water Resources. (7-1-93)
- 07. Domestic Use.** Domestic use as defined in Section 42-1401A(4), Idaho Code. (5-8-09)
- 08. Flat Fee.** The per claim fee for filing claims, as provided in Section 42-1414(1)(a), Idaho Code. (5-8-09)
- 09. Late Fee.** The additional fee payable for the filing of late claims, as provided in Section 42-1414(3), Idaho Code. (5-8-09)
- 10. Per Acre Fee.** The variable fee for irrigation use, as provided in Section 42-1414(1)(b)(i), Idaho Code, which shall be calculated for each acre and fraction thereof rounded to the next whole acre. (5-8-09)
- 11. Per Cfs Fee.** The variable fee payable for other uses, as provided in Section 42-1414(1)(b)(iii), (iv) and (v), Idaho Code, which shall be calculated for each cfs and fraction thereof to the nearest dollar. (5-8-09)
- 12. Per Kilowatt Fee.** The variable fee payable for power generation use, as provided in Section 42-1414(1)(b)(ii), Idaho Code, which shall be calculated for each kilowatt and fraction thereof. (5-8-09)
- 13. State Law Claim Form.** The department's form entitled "Notice of Claim to a Water Right Acquired Under State Law as provided in Section 42-1409(4), Idaho Code. (5-8-09)
- 14. Stock Watering Use.** Stock watering use as defined in Section 42-1401A(11), Idaho Code. (5-8-09)
- 15. Total Fee.** The fee payable for filing a claim, which consists of the flat fee plus any applicable variable fee and late fee. (5-8-09)
- 16. Variable Fee.** The fee payable for filing claims in addition to the flat fee, as provided in Section 42-1414(1)(b), Idaho Code. (5-8-09)
- 17. Water Delivery System.** All structures and equipment used for diversion, storage, transportation, and use of water from the water source to and including each place of use. (7-1-93)
- 18. Water Delivery Organization.** An irrigation district, a water utility, a municipality, or any similar claimant of a water right who diverts water pursuant to the water right claimed and delivers the water to others who make beneficial use of the water diverted by the water delivery organization pursuant to the water right claimed by the water delivery organization. (7-1-93)
- 011. ABBREVIATIONS.**
- 01. AF.** An acre foot (feet). (5-8-09)
- 02. CFS.** Cubic foot (feet) per second. (5-8-09)
- 03. NA.** Not applicable. (5-8-09)
- 04. PIN.** Parcel identification number. (5-8-09)
- 012. -- 024. (RESERVED)**
- 025. GENERAL.**
- 01. Requirement to Pay.** All persons filing claims to water rights acquired under state law or amendments to claims to water rights acquired under state law shall be required to pay filing fees as set forth by

statute and these rules.

(7-1-93)

02. Method of Payment. Fees shall be paid in legal tender of the United States; or by money order, certified check, cashier's check, personal check, or by electronic payment on-line payable to the department in legal tender of the United States. Two-party checks will not be accepted. (5-8-09)

03. Personal Check. If a personal check in payment of a flat fee, a variable fee, or a late fee, is returned unpaid to the department or the debit or credit card payment is rejected by the financial institution, the claims covered by the returned check or the rejected debit or credit card will be rejected and returned to the claimant. If a personal check in payment of an amendment fee is returned unpaid to the department or the debit or credit card payment is rejected by the financial institution, the amended claim will be rejected and returned to the claimant, but the original claim will still be in effect. (5-8-09)

04. Time of Payment. Flat fees and variable fees shall be payable to the department at the time of filing a claim. Amendment fees shall be payable to the department at the time of filing the amended claim. Late fees shall be payable at the time of filing the late claim. (5-8-09)

05. Government Voucher. Fees payable by government agencies (other than agencies of foreign governments) may be paid when due by government voucher. If full payment of the voucher is not received within forty-five (45) days of the date the voucher is received, the unpaid voucher will be treated as a returned check as provided in Subsection 025.03. (5-8-09)

06. Rejection of Claim. Claims submitted without the correct filing fee shall be rejected and returned to the claimant. (5-8-09)

07. Fire-Fighting. A claim is not required to be filed for water used solely to extinguish an existing fire on private or public lands, structures, or equipment, or to prevent an existing fire from spreading to private or public lands, structures, or equipment endangered by an existing fire pursuant to Section 42-201(3), Idaho Code. A claim is required for the use of water for domestic purposes in regularly maintained firefighting stations and for the storage of water for fighting future fires. (5-8-09)

026. -- 029. (RESERVED)

030. FLAT FEES.

01. Small Domestic and Stock Water. A flat fee of twenty-five dollars (\$25) shall be payable for each claim for domestic use and/or stock watering use meeting the definition of domestic use and/or stock watering use in Rule 010. (5-8-09)

02. Other Claims. A flat fee of fifty dollars (\$50) shall be payable for each claim that does not meet the criteria of Subsection 030.01. (5-8-09)

031. -- 034. (RESERVED)

035. VARIABLE FEES.

01. General. For each claim not meeting the criteria of Subsection 030.01, there may be a variable fee in addition to the flat fee. (5-8-09)

02. Per Acre Fee. (7-1-93)

a. A fee of one dollar (\$1.00) per acre shall be required for claims for irrigation use. (5-8-09)

b. The per acre fee shall only be charged once against a particular acre, regardless of the number of claims filed for the irrigation of that acre or the number of claimants filing claims for the irrigation of that acre. (7-1-93)

c. The per acre fee shall be payable by the first person to file a claim for the irrigation of a particular acre. (7-1-93)

d. The per acre fee for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres shall be determined based upon the acreage claimed to be irrigated by the project or irrigation district within the boundaries of the project or irrigation district. (5-8-09)

03. Per Kilowatt Fee. (7-1-93)

a. A per kilowatt of capacity (manufacturer's nameplate rating) fee of three dollars and fifty cents (\$3.50) per kilowatt, or two hundred fifty thousand dollars (\$250,000.00), whichever is less, shall be required for claims for power use. (5-8-09)

b. The per kilowatt fee shall be determined based upon the total generating capacity of all generators in which the water right claimed is used. (7-1-93)

c. The total per kilowatt fee for all claims filed for a single hydropower facility shall not exceed the per kilowatt fee for the total generating capacity of all generators in the hydropower facility. (7-1-93)

04. Per CFS Fee. (7-1-93)

a. A fee of ten dollars (\$10) per cfs for aquaculture shall be required. A fee of one hundred dollars (\$100) per cfs for all other uses shall be required except for irrigation, power, and domestic and stock watering uses meeting the definition of domestic and stock watering use in Section 010. (5-8-09)

b. For a claim to water for more than one (1) public purpose, the per cfs fee shall only be charged once per cfs claimed. Public purposes shall include public in-stream flows, lake level maintenance, wildlife, aesthetic beauty, and recreation. (5-8-09)

c. If there is a seasonal variation in the number of cfs claimed, the per cfs fee shall be based upon the maximum number of cfs claimed for any period during a single calendar year. (7-1-93)

d. The per cfs fee shall apply to claims for water quality improvement, recreation, aesthetic purposes, and any other purpose not expressly listed at Section 42-1414(1), Idaho Code, except as otherwise provided by these rules. (5-8-09)

05. Claims Including Storage. (7-1-93)

a. The variable fee for a claim that includes storage shall be based upon the ultimate use of the water stored. If the claim states purposes other than diversion to storage, storage, and diversion from storage, the total variable fee will be determined as provided in Subsection 035.06. (5-8-09)

b. No variable fee shall be payable for water claimed for ground water recharge purposes. (5-8-09)

c. For purposes of determining the per cfs fee for amounts of water claimed in af, one (1) cfs equals one and ninety-eight one-hundredths (1.98) af per day of diversion to storage. (7-1-93)

d. No variable fee shall be payable for minimum by-pass flows. (7-1-93)

06. Multiple Purpose Claims. If a claimant claims more than one (1) purpose of use on a single claim, the variable fee will be the total of the variable fees payable for each purpose of use. (7-1-93)

07. Exceptions. No variable fee shall be payable for claims or portions of claims for fire-fighting purposes if a claim is required under Subsection 025.07 or for domestic use and/or stock watering use meeting the definitions of domestic use and stock watering use in Section 010. (7-1-93)

036. -- 044. (RESERVED)

045. AMENDMENT FEES.

When a claimant files an amendment to a claim, the total fee shall be recalculated as if the amended claim were the original claim. If the total fee as recalculated is greater than the total fee paid at the time the claim was filed, the amendment fee shall be the difference between the two (2) amounts. No refund shall be made if the total fee as recalculated is less than the total fee paid at the time the claim was filed. (5-8-09)

046. -- 049. (RESERVED)

050. LATE FEES.

01. Late Fee Payable. A late fee shall be payable when a claim is filed after the date set forth in the first commencement notice mailed to the claimant or the claimant's predecessor in interest pursuant to Sections 42-1414(3), Idaho Code. (5-8-09)

02. Waiver. The late fee may be waived by the director for good cause shown. (7-1-93)

051. -- 054. (RESERVED)

055. REFUNDS.

Fees shall not be refunded or returned except where the fee was miscalculated at the time the claim was filed or as expressly provided in these rules. (7-1-93)

056. -- 059. (RESERVED)

060. SUFFICIENCY OF CLAIMS.

01. Single Claim. Except for claims based on both state law and federal law, a single claim may describe only one (1) water right. A claim that describes more than one (1) water right will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (5-8-09)

02. State Law Claim Form -- Minimum Requirements. Claims filed on the state law claim form shall contain the following information: (5-8-09)

a. Name, Address and Phone Number of Claimant. The name, address, and phone number of the claimant and all co-claimants claiming the water right jointly with the claimant shall be listed at item one (1) of the form. (7-1-93)

b. Date of Priority. The date of priority shall be listed at item two (2) of the form, and shall include month, day and year. Only one (1) priority may be stated unless the claim is based upon both state and federal law as provided in Subsection 060.01. If more than one (1) priority date is stated, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (5-8-09)

i. Within thirty (30) days, unless an extension by the director or his designee is approved, the claimant shall provide evidence of the priority date to support the water right claimed. If the claimant fails to provide evidence of priority, the form may be rejected and returned with no refund of the fees paid. (5-8-09)

c. Source of Water Supply. The source of water supply shall be stated at item three (3) of the form. (7-1-93)

i. For surface water sources, the source of water shall be identified by the official name listed on the U.S. Geological Survey Quadrangle map. If no official name has been given, the name in local common usage should be listed. If there is no official or common name, the source should be described as "unnamed stream" or "spring." The first named downstream water source to which the source is tributary shall also be listed. For ground water sources, the source shall be listed as "ground water." (7-1-93)

ii. Only one (1) source shall be listed unless the claim is for a single water delivery system that has more than one (1) source, or the claim is for a single licensed or decreed right that covers more than one (1) water delivery system. If more than one (1) source is listed and the claim is not for a single water delivery system that has more than one (1) source, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (7-1-93)

d. Location of Point of Diversion. For claims other than in-stream flows, the location of the point(s) of diversion shall be listed at item four (4) part (a) of the form. For claims to in-stream flows, the beginning and ending points of the claimed in-stream flow shall be listed at item four (4) part (b) of the form. (5-8-09)

i. The location of the point of diversion shall be described to nearest forty (40) acre tract (quarter-quarter section) or government lot number, and shall include township number (including north or south designations), range number (including east or west designations), section number, and county. (5-8-09)

ii. The claimant shall also list the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor's office for the parcel where the water is diverted unless no Parcel Number or PIN is recorded for the property at the point of diversion. (5-8-09)

iii. If the point of diversion is located in a platted subdivision, a plat of which has been recorded in the county recorder's office for the county in which the subdivision is located, the claimant shall also list the subdivision name, block number and lot number in item thirteen (13) of the form (remarks section). (5-8-09)

iv. A claim to a water right that includes storage shall state the point at which water is impounded (applicable only to on-stream reservoirs) or the point at which water is diverted to storage (applicable only to off-stream reservoirs), the point at which water is released from storage into a natural stream channel (applicable only where a natural stream channel is used to convey stored water), and the point at which water is rediverted (applicable only where a natural channel is used to convey stored water). (5-8-09)

v. Only one (1) point of diversion shall be listed unless the claim is for a single water delivery system that has more than one (1) point of diversion, or the claim is for a single licensed or decreed water right that covers more than one (1) water delivery system. If more than one (1) point of diversion is listed and the claim is not for a single water delivery system that has more than one (1) point of diversion, and the claim is not for a single licensed or decreed water right that covers more than one (1) water delivery system, the claim will be rejected and returned along with any fees paid, and must be refiled as multiple claims. (7-1-93)

e. Description of Diversion Works. The diversion works shall be described at item five (5) of the form. (7-1-93)

i. The description shall include all major components of the water delivery system, such as dams, reservoirs, ditches, pipelines, pumps, wells, headgates, etc. The description shall also include those dimensions of major components which affect the diversion capacity of the water delivery system. The description shall also state whether the ditches are lined and/or covered, the depth of wells, the horsepower capacity of pumps, and whether headgates are automatic or equipped with locks and/or measuring devices. (7-1-93)

ii. The description shall include the dates and a description of any changes in use (including change in point of diversion, place of use, purpose of use, and period of use) or enlargements in use (including an increase in the amount of water diverted, the number of acres irrigated, or additional uses of water), and as to those dimensions required to be described above, the dimensions as originally constructed and as enlarged. (7-1-93)

iii. Water delivery organizations shall describe the water delivery system up to and including the point where responsibility for water distribution is assumed by entities other than the water delivery organization. (7-1-93)

f. Purpose of Use and Period of Use. Each purpose for which water is claimed, the period of use for each purpose for which water is claimed, and the amount of water claimed for each purpose for which water is claimed shall be listed at item six (6) of the form. Period of use shall include the month and day of the first and last

day of use. For example, the period of use for domestic use is often January 1st through December 31st. (5-8-09)

i. The purpose may be described in general terms such as irrigation, industrial, municipal, mining, power generation, fish propagation, domestic, stock watering, etc. (7-1-93)

ii. A claim to a water right that includes storage shall be broken down into component purposes with the ultimate use(s) of the stored water indicated. The component purposes of a storage right are diversion to storage (not applicable to on-stream reservoirs), storage, and diversion from storage (not applicable where the ultimate use is an in-reservoir public purpose). Detention of water in a holding pond that can be filled in less than twenty-four (24) hours at the claimed diversion rate is not required to be claimed as storage. The amount of water claimed shall be limited to the active storage capacity of the reservoir unless a past practice of refilling the reservoir during the water year (October 1 to September 30) is shown or the claim is for a licensed or decreed right that includes refill. If a past practice of refilling the reservoir is shown or if the claim is for a licensed or decreed right that includes refill, the total amount of water claimed for the calendar year and the entire period during which diversion to storage or impoundment occurs shall be indicated. (5-8-09)

iii. The amount of water claimed for each purpose for which water is claimed shall not exceed the amount of water beneficially used for the purpose claimed, and the period of use for each purpose claimed shall not exceed the period in which water is beneficially used for the purpose claimed. (7-1-93)

iv. The amount of water diverted shall be listed in cfs, and the amount of water stored shall be listed in af per annum. (7-1-93)

g. Amount of Water Claimed. The total amount of water claimed shall be listed at item seven (7) of the form. The total amount of water claimed shall not exceed the total of the amounts listed at item six (6) of the form, or the total diversion capacity of the diversion system, whichever is less. (7-1-93)

h. Description of Non-Irrigation Uses. Non-irrigation uses shall be fully described at item eight (8) of the form. For domestic uses, the number of households served shall be described; for stock watering uses, the type of stock and number of each type of stock shall be described. (5-8-09)

i. If the claimant's domestic use does not meet the definition of domestic use in Subsection 010.07, the form will be rejected and returned unless the appropriate variable fee is paid. (5-8-09)

ii. The claimant shall also state whether the stock watering use is in-stream, or whether water is diverted from the source for stock watering. Both types of stock watering cannot be filed on the same claim form; each type requires a separate claim. (5-8-09)

iii. Domestic use for organization camps and public campgrounds shall be fully described, including but not limited to the number of camp units, water faucets, flush toilets, showers, and sewer connections. Description of domestic use for organization camps and public campgrounds shall also include the average and peak number of individuals using the facility, and the periods when peak or average rates of usage occur. (5-8-09)

i. Place of Use. The place of use for each purpose for which water is claimed shall be listed at item nine (9) of the form, except that the place of use for in-stream flows for public purposes need not be listed if the place of use is fully described as the stream between the beginning and ending points listed as the points of diversion. (5-8-09)

i. Except claims for irrigation projects and irrigation districts meeting the criteria described in Subsection 060.i.ii. below, the number of acres irrigated shall be described by entering the appropriate numbers in the appropriate boxes for each forty (40) acre tract or government lot on the form. For other uses, a symbol or letter corresponding to the purpose for which water is claimed shall be placed in the appropriate box for each forty (40) acre tract or government lot on the form. (5-8-09)

ii. Claims for an irrigation project where the canals constructed cover an area of twenty-five thousand (25,000) acres or more, or irrigation districts organized and existing as such under the laws of the state of Idaho, or for beneficial use by more than five (5) water users in an area of less than twenty-five thousand (25,000) acres shall

be accompanied by a map showing the boundaries of the project or irrigation district, and shall state the total number of acres irrigated within the boundaries of the project or irrigations district. The project or district shall submit a map of the boundary of the place of use and, when available, a digital boundary defined in Section 42-202(B)(2), Idaho Code. (5-8-09)

iii. The claimant shall also list the Parcel Number or Parcel Identification Number (PIN) as assigned by the county assessor's office for the parcel where the water is used unless no Parcel Number or PIN is recorded for the property at the place of use or the PIN is the same as the PIN shown in item four (4) for the point of diversion. (5-8-09)

j. County of Place of Use. The county(ies) in which the place(s) of use is (are) located shall be listed at item ten (10) of the form. (5-8-09)

k. Authority to Assert Claim. The claimant shall indicate at item eleven (11) of the form whether the claimant is the owner of the place(s) of use. If the claimant is not the owner of the place(s) of use, the claimant shall describe in the remarks section of the form the claimant's authority to assert the claim. Unless the claimant is a water delivery organization, the claimant shall also state the name, address, and phone number of the owner(s) of the place of use in item thirteen (13) (remarks section) of the form. (5-8-09)

l. Other Water Rights. The claimant shall describe at item twelve (12) of the form any other water rights used at the same place and for the same purpose as the right claimed. If there are no other water rights used at the same place and for the same purpose as the right claimed, the claimant shall state "NA" or "none." (5-8-09)

m. Remarks. At item thirteen (13) of the form, the claimant may submit any additional, relevant information not specifically requested. If the space provided is not sufficient, remarks shall be set forth on a separate piece of paper and attached to the form. All separate attachments must be specifically referenced in the remarks section of the form. (5-8-09)

n. Maps. An aerial photograph or USGS quadrangle map shall be included with the claim, unless the claim meets the definition of domestic use and stock watering use as defined in Section 010 or unless the claim is submitted electronically through the department's online claim filing website. The point(s) of diversion, place(s) of use, and the water delivery system shall be identified on the aerial photograph or USGS quadrangle map. (5-8-09)

o. Basis of Claim. The basis of the claim shall be indicated at item fourteen (14) of the form. If a water right number has been assigned by the department to the right claimed, the water right number shall also be indicated. If a water right number has not been assigned and the water right is based upon a decree, the claimant shall list the title and date of the decree, the case number, and the court that issued the decree. If the basis of claim is a beneficial use (also known as the constitutional method of appropriation), the claimant shall provide a short description of events or history of the development of the water right. (5-8-09)

p. Signature. Each claim must be signed by the claimant at item fifteen (15) of the form, unless the claim is submitted electronically through the department's online claim filing website. Each claimant, through submission of a signed claim or through submission of a claim by means of the department's online claim filing website, solemnly swears or affirms under penalty of perjury that the statements contained in the notice of claim are true and correct. (5-8-09)

i. For claims submitted through the department's online claim filing website, the form shall be submitted by a person listed as the claimant at item one (1) of the form unless the person submitting the form has authority to submit the form for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be submitted by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to submit the form. (5-8-09)

ii. For claims that are not submitted by means of the internet, the form must be signed by each of the persons listed as claimants at item one (1) of the form unless the signatory has authority to sign for the claimant or claimants. Claims by corporations, municipalities or other organizations shall be signed by an officer of the corporation or an elected official of the municipality or an individual authorized by the organization to sign the form. The signatory's title shall be indicated with the signature. (5-8-09)

q. Notice of Appearance. If notices to be sent by the director to the claimant are to be sent to the claimant's attorney, the claimant's attorney shall list the attorney's name and address and sign and date the form at item sixteen (16) of the form. (5-8-09)

03. State Law Claim Form -- Insufficient Claims, Waivers. (5-8-09)

a. Claims filed on the state law claim form that do not contain the information required by Subsection 060.02 shall be rejected and returned along with any fees paid, unless otherwise provided by these rules. (5-8-09)

b. The director may waive the minimum information requirements of Subsection 060.02 and accept the claim for good cause shown. (5-8-09)

04. Further Information. This Rule 060 sets forth minimum requirements for the filing of claims. The director may request further information in support of the assertions contained in a claim as part of the investigation of the water system and the claims pursuant to Section 42-1410, Idaho Code. (7-1-93)

061. -- 064. (RESERVED)

065. REJECTED AND RETURNED CLAIMS.

01. Rejected Claims. Rejected claims shall be returned to the claimant by ordinary mail at the most recent address shown by department records. The rejected claim shall be accompanied by a notice of rejection that states generally the reason(s) for rejection. (7-1-93)

02. Refiled Claims. Claims that have been rejected and returned to the claimant may be refiled with the appropriate fees and appropriate information at any time prior to the deadline for filing the original claim. Claims refiled after the deadline for filing the original claim will be subject to the late fee, unless the claim is refiled within thirty (30) days from the date of mailing the rejected claim by the department. (7-1-93)

066. -- 999. (RESERVED)

**IDAPA 37
TITLE 03
CHAPTER 02**

37.03.02 – BENEFICIAL USE EXAMINATION RULES

000. LEGAL AUTHORITY (RULE 0).

The director of the Department of Water Resources adopts these rules under the authority provided by Section 42-1805(8), Idaho Code. (7-1-93)

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. (7-1-93)

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 director will evaluate any deviation from the standards hereinafter stated as they pertain to the review of any given examination. Water right examiners are encouraged to submit new ideas which will advance the art and provide for the public benefit. (7-1-93)

02. Rules. These rules shall not be construed to deprive or limit the 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 director from any owner of a water right permit or authorized representative for the proper administration of the law. (7-1-93)

002. WRITTEN INTERPRETATIONS (RULE 2).

There are no written interpretations of these rules. (3-29-12)

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." (3-29-12)

004. INCORPORATION BY REFERENCE (RULE 4).

No documents have been incorporated by reference into these rules. (3-29-12)

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. (3-29-12)

02. Mailing Address. P.O. Box 83720, Boise, Idaho 83720-0098. (3-29-12)

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. (3-29-12)

04. Web Address. The Department's website at <http://www.idwr.idaho.gov>. (3-29-12)

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 74, Chapter 1, Idaho Code. (3-29-12)

007. -- 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 department. (3-29-12)

02. Examination. These rules apply to all permits for which an examination has not been conducted. (3-29-12)

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. (3-29-12)

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. (3-29-12)

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. 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 conduct water right examinations at the discretion of the Director. (3-29-12)

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 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. (3-29-12)

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. (7-1-93)

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. (7-1-93)

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. (7-1-93)

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

16. 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)

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. (7-1-93)

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

19. Period of Use. The time period during which water under a given right can be beneficially used. (7-1-93)

20. 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)

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. (7-1-93)

22. Place of Use (P.U. or POU). The location where the beneficial use is made of the diverted water. (3-29-12)

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. (3-29-12)

24. 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)

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

26. Source. The name of the natural water body at the point of diversion. Examples are Snake River, Smith Creek, ground water, spring, etc. (3-29-12)

011. ABBREVIATIONS.

- 01.** **AF.** Acre-Foot or Acre-Feet. (3-29-12)
- 02.** **CFS.** Cubic Foot Per Second. (3-29-12)
- 03.** **P.D. or POD.** Point of Diversion. (3-29-12)
- 04.** **P.U. or POU.** Place of Use. (3-29-12)
- 05.** **USGS.** United States Geological Survey. (3-29-12)
- 012. -- 024.** **(RESERVED)**
- 025.** **AUTHORITY OF REPRESENTATIVE (RULE 25).**
- 01.** **Proof of Beneficial Use.** When the proof of beneficial use, field report, and drawings are filed by the water right examiner on behalf of an owner, written evidence of authority to represent the owner shall be filed with the proof, field report, and drawings. (7-1-93)
- 02.** **Responsibility.** It is the responsibility of the permit holder or authorized representative to submit proof of beneficial use and provide for the timely submission of a completed field report by 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. (7-1-93)
- 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 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. 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.** The Director may authorize sufficiently knowledgeable and experienced

department employees to 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 do not apply to department employees. (3-29-12)

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 or a department employee 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: (3-29-12)

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 described in detail. (3-29-12)

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 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. (3-29-12)

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. 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. (3-29-12)

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 irrigated areas and the location of the project works providing water to each shall be platted on the 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. (3-29-12)

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. (3-29-12)

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 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. (3-29-12)

j. 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: (3-29-12)

- i. Diversion to storage. (Volume should be reported for the storage use, such as irrigation storage.) (3-29-12)
- ii. Domestic uses as defined in Section 42-111, Idaho Code. (3-29-12)
- iii. In-stream watering of livestock. (3-29-12)
- iv. Fire protection. (Volume is required for fire protection storage.) (3-29-12)
- v. On-stream, run-of-the-river, non-consumptive power generation uses. (3-29-12)
- vi. Minimum stream flows established pursuant to Chapter 15, Title 42, Idaho Code. (3-29-12)
- 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: (3-29-12)

(1) The permit or amended permit was approved with a volume limitation; or (3-29-12)

(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. (3-29-12)

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.) (3-29-12)

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. The period during each year that the water is used shall be described for each use. (6-30-19)T

n. For permits having more than one (1) 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. (3-29-12)

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. (3-29-12)

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 permit. Suggested amendments shall be based on actual use, not on potential use. (3-29-12)

q. An aerial photo marked to depict the point(s) of diversion and place(s) of use for each use must accompany each field report unless waived by the Director. If existing photos are not available, the Director will accept a USGS Quadrangle map at the largest scale available. (3-29-12)

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: (3-29-12)

i. Irrigation up to five (5) acres. (3-29-12)

ii. Storage of up to fourteen point six (14.6) acre-feet of water solely for stock watering purposes. (3-29-12)

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. (3-29-12)

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. 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. (3-29-12)

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 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. (3-29-12)

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. (3-29-12)

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 diversion rate up to three one-hundredths (0.03) cfs per acre may be allowed on the license to be issued by the Director. (3-29-12)

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 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. (3-29-12)

e. For irrigation systems which cover 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 describe generally 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. (3-29-12)

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 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. (3-29-12)

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 the flow rate cannot be measured accurately due to the physical characteristics of the diversion and distribution system. (3-29-12)

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)

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. (7-1-93)

01. Submittal of Drawings, Maps, Photos and Schematic Diagrams. Drawings, maps, photos and schematic diagrams used as an attachment to the field report shall be on eight and one-half by eleven (8 1/2 x 11) inch paper whenever possible. (6-30-19)T

02. Attachment Sheets. Attachment sheets shall depict information on one (1) side only. (7-1-93)

03. Scale of Map. The map depicting the point of diversion and place of use shall be of a reasonable scale but not less than two (2) inches equals one (1) mile. The map shall show the location of the point(s) of diversion 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 be shown. (7-1-93)

04. Drawings. Drawings need to generally depict the size and type of diversion works, measuring device, conveyance system, water application method, and the location of any measurements taken. (7-1-93)

05. Photographs. Photographs of the diversion works, the typical distribution works and other prominent features of the system shall be provided with the field report. (7-1-93)

046. -- 049. (RESERVED)

050. LICENSE EXAMINATION FEE (RULE 50).

01. Examinations Conducted by Department Staff. (3-29-12)

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. (3-29-12)

b. The department will not conduct an examination for which the fee has not been paid to the department unless exempted in Rule Subsection 009.04, 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. No examination fee shall be charged for a supplemental examination conducted by the department on its own initiative. (3-29-12)

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 certified water right examiners. (3-29-12)

b. A permit holder may choose to have the examination conducted by the department after selecting a certified water right examiner. (6-30-19)T

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. (3-29-12)

051. -- 054. (RESERVED)

055. PENALTY (RULE 55).

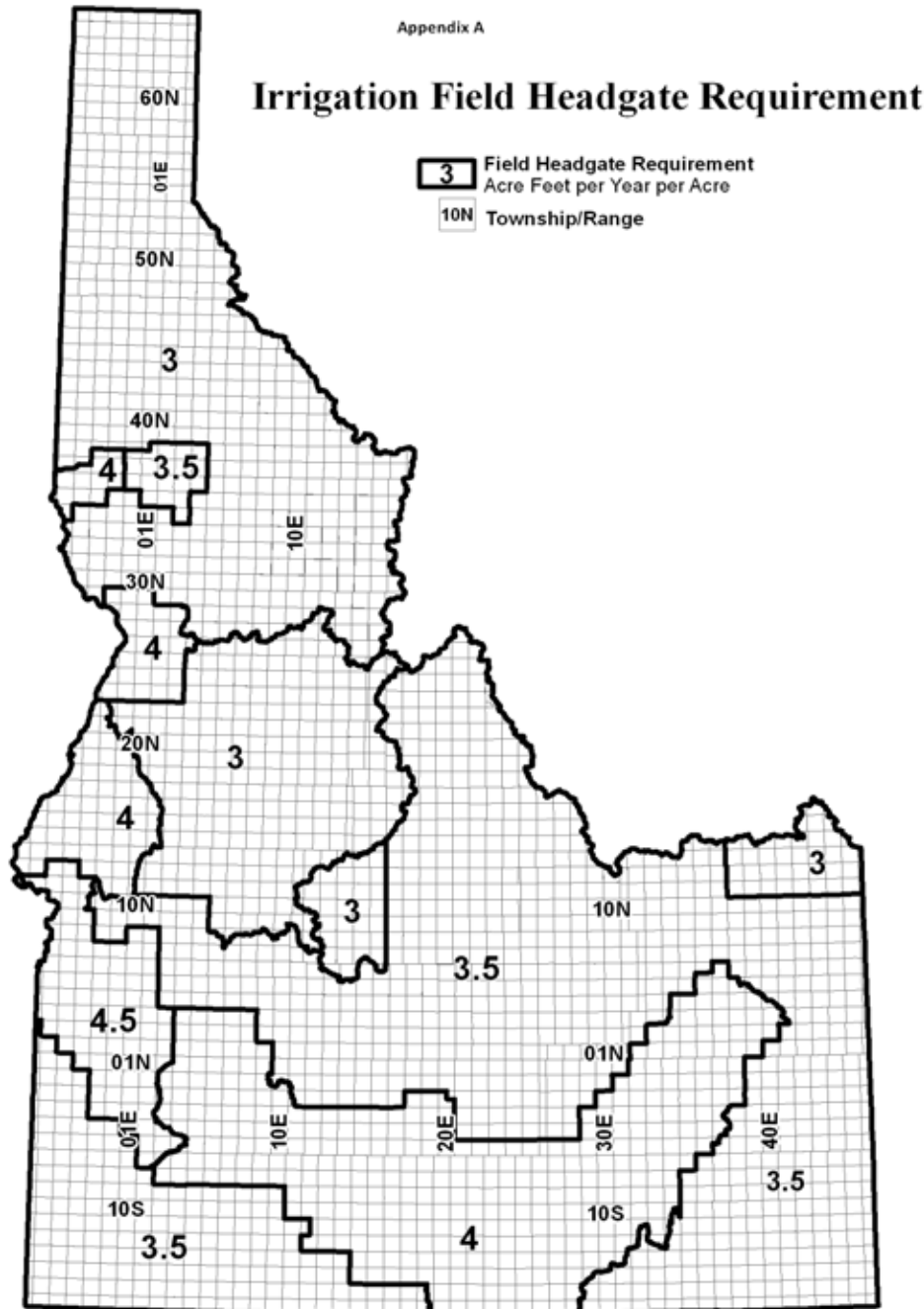
01. Permits for Which Proof Has Not Been Submitted. The submittal required is the proof and the examination fee or the proof and a completed field report. (7-1-93)

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 by the proof due date is cause to lapse the permit pursuant to Section 42-218a, Idaho Code, unless an extension of time pursuant to Section 42-204, Idaho Code, extending the proof of beneficial use due date has been approved. (7-1-93)

056. -- 999. (RESERVED)

Appendix A

Appendix A



**IDAPA 37
TITLE 03
CHAPTER 03**

**37.03.03 – RULES AND MINIMUM STANDARDS FOR THE CONSTRUCTION
AND USE OF INJECTION WELLS**

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authority of Sections 42-3913, 42-3914, and 42-3915, Idaho Code. (5-3-03)

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 37.03.03 “Rules and Minimum Standards for the Construction and Use of Injection Wells.” (5-3-03)

02. Scope. These rules and minimum standards are for construction and use of injection wells in the state of Idaho. Upon promulgation, these rules apply to all injection wells (see Rule Subsection 035.01). The construction and use of Class I, III, IV, or VI injection wells are prohibited by these rules. Class IV wells are also prohibited by federal law. These rules and minimum standards for construction and use of injection wells apply to all injection wells in the state of Idaho, except in Indian lands. All injection wells shall be permitted and constructed in accordance with the “Well Construction Standards Rules” found in IDAPA 37.03.09 which are authorized under Section 42-238, Idaho Code. (4-4-13)

03. Rule Coverage. In the event that a portion of these rules is less stringent than the minimum requirements for injection wells as established by Federal regulations, the correlative Federal requirement will be used to regulate the injection well. (4-4-13)

04. Variance of Methods. The Director may approve the use of a different testing method or technology if it is no less protective of human health and the environment, will not allow the migration of injected fluids into a USDW, meets the intent of the rule, and yields information or data consistent with the original method or technology required. A request for review by the Director must be submitted in writing by the applicant, permit holder, or operator and be included with all pertinent information necessary for the Director to evaluate the proposed testing method or technology. (4-4-13)

002. WRITTEN INTERPRETATIONS (RULE 2).

Written interpretations of these rules, if any, in the form of explanatory comments accompanying the notice of proposed rulemaking, the review of comments submitted in the adoption of these rules, and any declaratory rulings issued subsequent to adoption of these rules are available from the Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098. (5-3-03)

003. ADMINISTRATIVE APPEALS (RULE 3).

Challenges to these rules may be filed pursuant to Title 67, Chapter 52, Idaho Code, or actions taken under these rules may be appealed pursuant to Title 42, Chapter 39, or Section 42-1701A, Idaho Code. (5-3-03)

004. INCORPORATION BY REFERENCE (RULE 4).

01. Incorporated Document. IDAPA 37.03.03 adopts and incorporates by reference those ground water quality standards found in Section 200 of IDAPA 58.01.11, “Ground Water Quality Rule,” of the Department of Environmental Quality. (5-3-03)

02. Document Availability. Copies of the incorporated document may be found at the central office of the Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, 83720-0098 or online through the department or state websites. (5-3-03)

005. OFFICE – OFFICE HOURS – MAILING ADDRESS -- 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. (5-3-03)

02. Mailing Address. The mailing address for the central office is Idaho Department of Water Resources, 322 East Front Street, Boise, Idaho, 83720-0098. (Mailing addresses are subject to change.) (5-3-03)

03. Street Address. The central office of the Idaho Department of Water Resources is located at 322 East Front Street, Boise, Idaho, 83720-0098. (5-3-03)

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code. Unless provided otherwise by statute, all records associated with these rules are open for inspection including the name and address of any applicant or permittee and information pertaining to the existence, absence, or level of contaminants in drinking water. (4-4-13)

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Abandonment. See “permanent decommission. (4-4-13)

02. Abandoned Well. See “permanent decommission”. (4-4-13)

03. Agricultural Runoff Waste. Excess surface water from agricultural fields generated during any agricultural operation, including runoff of irrigation tail water, as well as natural drainage resulting from precipitation, snowmelt, and floodwaters, and is identical to the statutory phrase “irrigation waste water” found in Idaho Code 42-3902. (4-4-13)

04. Applicant. Any owner or operator submitting an application for permit to construct, modify or maintain an injection well to the Director of the Department of Water Resources. (7-1-93)

05. Application. The standard Department forms for applying for a permit, including any additions, revisions or modifications to the forms. (4-4-13)

06. Aquifer. Any formation that will yield water to a well in sufficient quantities to make production of water from the formation reasonable for a beneficial use, except when the water in such formation results solely from fluids deposited through an injection well. (5-3-03)

07. Beneficial Use. One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, aquifer recharge and storage, stockwatering and fish propagation uses, as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water. (5-3-03)

08. Best Management Practice (BMP). A practice or combination of practices that are more effective than other techniques at preventing or reducing contamination of ground water and surface water by injection well operation. (4-4-13)

09. Casing. A pipe or tubing of appropriate material, of varying diameter and weight, lowered into a borehole during or after drilling in order to support the sides of the hole and thus prevent the walls from caving, to prevent loss of drilling fluid into porous ground, or to prevent water, gas, or other fluid from entering or leaving the hole. (4-4-13)

10. Cementing. The operation whereby a cement slurry is pumped into a drilled hole and/or forced behind the casing. (4-4-13)

11. Cesspool. An injection well that receives sanitary waste without benefit of a treatment system or treatment device such as a septic tank. Cesspools sometimes have open bottom and/or perforated sides. (4-4-13)

- 12. Coliform Bacteria.** All of the aerobic and facultative anaerobic, gram-negative, non-spore forming, rod-shaped bacteria that either ferment lactose broth with gas formation within forty-eight (48) hours at thirty-five degrees Celsius (35C), or produce a dark colony with a metallic sheen within twenty-four (24) hours on an Endo-type medium containing lactose. (7-1-93)
- 13. Confining Bed.** A body of impermeable or distinctly less permeable material stratigraphically adjacent to one (1) or more aquifers. (4-4-13)
- 14. Construct.** To create a new injection well or to convert any structure into an injection well. (7-1-93)
- 15. Contaminant.** Any physical, chemical, biological, or radiological substance or matter. (4-4-13)
- 16. Contamination.** The introduction into the natural ground water of any physical, chemical, biological, or radioactive material that may: (4-4-13)
- a.** Cause a violation of Idaho Ground Water Quality Standards found in IDAPA 58.01.11 “Ground Water Quality Rule” or the federal drinking water quality standards, whichever is more stringent; or (4-4-13)
 - b.** Adversely affect the health of the public; or (4-4-13)
 - c.** Adversely affect a designated or beneficial use of the State’s ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use. (4-4-13)
- 17. Conventional Mine.** An open pit or underground excavation for the production of minerals. (4-4-13)
- 18. Decommission.** To remove a well from operation such that injection through the well is not possible. See “permanent decommission” and “unauthorized decommission”. (4-4-13)
- 19. DEQ.** The Idaho Department of Environmental Quality. (5-3-03)
- 20. Deep Injection Well.** An injection well which is more than eighteen (18) feet in vertical depth below land surface. (4-4-13)
- 21. Department.** The Idaho Department of Water Resources. (7-1-93)
- 22. Director.** The Director of the Idaho Department of Water Resources. (7-1-93)
- 23. Disposal Well.** A well used for the disposal of waste into a subsurface stratum. (4-4-13)
- 24. Draft Permit.** A prepared document indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a “permit.” Permit conditions, compliance schedules, and monitoring requirements are typically included in a “draft permit”. A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of “draft permits.” A denial of a request for modification, revocation and reissuance, or termination is not a “draft permit.” (4-4-13)
- 25. Drilling Fluid.** Any number of liquid or gaseous fluids and mixtures of fluids and solids (such as solid suspensions, mixtures and emulsions of liquids, gases, and solids) used in operations to drill boreholes into the earth. (4-4-13)
- 26. Drywell.** An injection well completed above the water table so that its bottom and sides are typically dry except when receiving fluids. (5-3-03)
- 27. Endangerment.** Injection of any fluid which exceeds Idaho ground water quality standards, or federal drinking water quality standards, whichever is more stringent, that may result in the presence of any

contaminant in ground water which supplies or can reasonably be expected to supply any public or non-public water system, and if the presence of such contaminant may result in such a system not complying with any ground water quality standard or may otherwise adversely affect the health of persons or result in a violation of ground water quality standards that would adversely affect beneficial uses. (4-4-13)

28. Exempted Aquifer. An “aquifer” or its portion that meets the criteria in the definition of USDW but which has been recategorized as “other” according to the procedures in IDAPA 58.01.11 “Ground Water Quality Rule”. (4-4-13)

29. Existing Injection Well. An “injection well” other than a “new injection well.” (4-4-13)

30. Experimental Technology. A technology which has not been proven feasible under the conditions in which it is being tested. (4-4-13)

31. Facility or Activity. Any UIC “injection well,” or another facility or activity that is subject to regulation under the UIC program. (4-4-13)

32. Fault. A surface or zone of rock fracture along which there has been displacement. (4-4-13)

33. Flow Rate. The volume per time unit given to the flow of gases or other fluid substance which emerges from an orifice, pump, turbine or passes along a conduit or channel. (4-4-13)

34. Fluid. Any material or substance which flows or moves, whether in a semisolid, liquid, sludge, gaseous or any other form or state. (7-1-93)

35. Formation. A body of consolidated or unconsolidated rock characterized by a degree of lithologic homogeneity which is prevailing, but not necessarily, tabular and is mappable on the earth’s surface or traceable in the subsurface. (4-4-13)

36. Generator. Any person, by site location, whose act or process produces hazardous waste identified or listed in 40 CFR part 261. (4-4-13)

37. Ground Water. Any water that occurs beneath the surface of the earth in a saturated formation of rock or soil. (5-3-03)

38. Ground Water Quality Standards. Standards found in IDAPA 58.01.11, “Ground Water Quality Rule,” Section 200. (5-3-03)

39. Hazardous Waste. Any substance defined by IDAPA 58.01.05, “Rules and Standards for Hazardous Waste.” (5-3-03)

40. Indian Lands. “Indian Country” as defined in 18 U.S.C. 1151. That section defines Indian Country as: (4-4-13)

a. All land within the limits of any Indian reservation under the jurisdiction of the United States government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (4-4-13)

b. All dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a State; and (4-4-13)

c. All Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. (4-4-13)

41. Individual Subsurface Sewage Disposal System. For the purpose of these rules, any standard or alternative disposal system which injects sanitary waste from single family residential septic systems, or non-residential septic systems which are used solely for the disposal of sanitary waste and have the capacity to serve fewer

- than twenty (20) people a day. (4-4-13)
- 42. Improved Sinkhole.** A naturally occurring karst depression or other natural crevice found in volcanic terrain and other geologic settings which have been modified by man for the purpose of directing and emplacing fluids into the subsurface. (4-4-13)
- 43. Injection.** The subsurface emplacement of fluids through an injection well. (4-4-13)
- 44. Injection Well.** Any feature that is operated to allow injection which also meets at least one (1) of the following criteria: (4-4-13)
- a.** A bored, or driven shaft whose depth is greater than the largest surface dimension; (4-4-13)
 - b.** A dug hole whose depth is greater than the largest surface dimension; (4-4-13)
 - c.** An improved sinkhole; or (4-4-13)
 - d.** A subsurface fluid distribution system. (4-4-13)
- 45. Injection Zone.** A geological “formation”, or those sections of a formation receiving fluids through an “injection well.” (4-4-13)
- 46. IWRB.** Idaho Water Resource Board. (5-3-03)
- 47. Large Capacity Cesspools.** Any cesspool used by a multiple dwelling, community or regional system for the disposal of sanitary wastes (for example: a duplex or an apartment building) or any cesspool used by or intended to be used by twenty (20) or more people per day (for example: a rest stop, campground, restaurant or church). (5-3-03)
- 48. Large Capacity Septic System.** Class V wells that are used to inject sanitary waste through a septic tank and do not meet the criteria of an individual subsurface sewage disposal system. (4-4-13)
- 49. Maintain.** To allow, either expressly or by implication, an injection well to exist in such condition as to accept or be able to accept fluids. Unless a well has been permanently decommissioned pursuant to the criteria contained in these rules it is considered to be capable of accepting fluids. (4-4-13)
- 50. Modify.** To alter the construction of an injection well, but does not include cleaning or redrilling operations which neither deepen nor increase the dimensions of the well. (7-1-93)
- 51. Motor Vehicle Waste Disposal Wells.** Injection wells that receive or have received fluids from vehicle repair or maintenance activities, such as an auto body repair shop, automotive repair shop, new and used car dealership, specialty repair shop (transmission and muffler repair shop), or any facility that does any vehicular repair work. (5-3-03)
- 52. New Injection Well.** An “injection well” which began to be used for injection after a UIC program for the State applicable to the well is approved or prescribed. (4-4-13)
- 53. Open-Loop Heat Pump Return Wells.** Injection wells that receive surface water or ground water that has been passed through a heat exchange system for cooling or heating purposes. (4-4-13)
- 54. Operate.** To allow fluids to enter an injection well by action or inaction of the operator. (7-1-93)
- 55. Operator.** Any individual, group of individuals, partnership, company, corporation, municipality, county, state agency, taxing district, federal agency or other entity that operates or proposes to operate any injection well. (7-1-93)
- 56. Owner.** Any individual, group of individuals, partnership, company, corporation, municipality,

county, state agency, taxing district, federal agency or other entity owning land on which any injection well exists or is proposed to be constructed. (7-1-93)

57. **Packer.** A device lowered into a well to produce a fluid-tight seal. (4-4-13)
58. **Perched Aquifer.** Ground water separated from an underlying main body of ground water by an unsaturated zone. (7-1-93)
59. **Permanent Decommission.** The discontinuance of use of an injection well in a method approved by the Director such that the injection well no longer has the capacity to inject fluids and the upward or downward migration of fluid is prevented. This also includes the disposal and proper management of any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the injection well in accordance with all applicable Federal, State, and local regulations and requirements. (4-4-13)
60. **Permit.** An authorization, license, or equivalent control document issued by the Department. (4-4-13)
61. **Person.** Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law. (4-4-13)
62. **Point of Beneficial Use.** The top or surface of a USDW, directly below an injection well, where water is available for a beneficial use. (4-4-13)
63. **Point of Diversion for Beneficial Use.** A location such as a producing well or spring where ground water is taken under control and diverted for a beneficial use. (7-1-93)
64. **Point of Injection.** The last accessible sampling point prior to waste being released into the subsurface environment through an injection well. For example, the point of injection for a Class V septic system might be the distribution box. For a drywell, it is likely to be the well bore itself. (4-4-13)
65. **Pressure.** The total load or force per unit area acting on a surface. (4-4-13)
66. **Radioactive Material.** Any material, solid, liquid or gas which emits radiation spontaneously. Radioactive geologic materials occurring in their natural state are not included. (7-1-93)
67. **Radioactive Waste.** Any fluid which contains radioactive material in concentrations which exceed those established for discharges to water in an unrestricted area by 10 CFR 20.1302.(b)(2)(i) and Table 2 in Appendix B of 10 CFR 20. (5-3-03)
68. **RCRA.** The Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976. (4-4-13)
69. **Remediation Project.** Use of an injection well for the removal, treatment or isolation of a contaminant from ground water through actions or the removal or treatment of a contaminant in ground water as approved by the Director. (4-4-13)
70. **Residential (Domestic) Activities.** Human activities that generate liquid or solid waste in any public, private, industrial, commercial, municipal, or other facility. (4-4-13)
71. **Sanitary Waste.** Any fluid generated through residential (domestic) activities, such as food preparation, cleaning and personal hygiene. This term does not include industrial, municipal, commercial, or other non-residential process fluids. (4-4-13)
72. **Schedule of Compliance.** A schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with the standards. (7-1-93)

- 73. Septic System.** An injection well that is used to inject sanitary waste below the surface. A septic system is typically comprised of a septic tank and subsurface fluid distribution system or disposal system. (5-3-03)
- 74. Shallow Injection Well.** An injection well which is less than or equal to eighteen (18) feet in vertical depth below land surface. (7-1-93)
- 75. Site.** The land or water area where any “facility or activity” is physically located or conducted, including adjacent land used in connection with the facility or activity. (4-4-13)
- 76. State.** The state of Idaho. (7-1-93)
- 77. Stratum (plural strata).** A single sedimentary bed or layer, regardless of thickness, that consists of generally the same kind of rock material. (4-4-13)
- 78. Subsidence.** The lowering of the natural land surface in response to: Earth movements; lowering of fluid pressure; removal of underlying supporting material by mining or solution of solids, either artificially or from natural causes; compaction due to wetting (Hydrocompaction); oxidation of organic matter in soils; or added load on the land surface. (4-4-13)
- 79. Subsurface Fluid Distribution System.** An assemblage of perforated pipes, drain tiles, or other similar mechanisms intended to distribute fluids below the surface of the ground. (4-4-13)
- 80. UIC.** The Underground Injection Control program under Part C of the Safe Drinking Water Act, including an “approved State program.” (4-4-13)
- 81. Unauthorized Decommission.** The decommissioning of any injection well that has not received the approval of the Department prior to decommissioning, or was not decommissioned in a method approved by the Director. These wells may have to be properly decommissioned when discovered by the Director to ensure that the well prevents commingling of aquifers or is no longer capable of injection. (4-4-13)
- 82. Underground Injection.** See “injection.” (4-4-13)
- 83. Underground Source of Drinking Water (USDW).** An aquifer or its portion: (4-4-13)
- a.** Which: (4-4-13)
- i.** Supplies any public water system; or (4-4-13)
- ii.** Contains a sufficient quantity of ground water to supply a public water system; or (4-4-13)
- (1)** Currently supplies drinking water for human consumption; or (4-4-13)
- (2)** Contains fewer than ten thousand (10,000) mg/l total dissolved solids; and (4-4-13)
- b.** Which is not an exempted aquifer. (4-4-13)
- 84. Unreasonable Contamination.** Endangerment of a USDW or the health of persons or other beneficial uses by injection. See “endangerment.” (4-4-13)
- 85. Water Quality Standards.** Refers to those standards found in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, “Water Quality Standards” and IDAPA 58.01.11, “Ground Water Quality Rule.” (5-3-03)
- 86. Well.** For the purposes of these rules, “well” means “injection well.” (5-3-03)
- 011. -- 014. (RESERVED)**

015. VIOLATIONS, FORMAL NOTIFICATION AND ENFORCEMENT.

- 01. Violations.** It shall be a violation of these rules for any owner or operator to: (7-1-93)
- a.** Fail to comply with a permit or authorization, or terms or conditions thereof; (5-3-03)
 - b.** Fail to comply with applicable standards for water quality; (7-1-93)
 - c.** Fail to comply with any permit application notification or filing requirement; (7-1-93)
 - d.** Knowingly make any false statement, representation or certification in any application, report, document or record filed pursuant to these rules, or terms and conditions of an issued permit; (7-1-93)
 - e.** Falsify, tamper with or knowingly render inaccurate any monitoring device or method required to be maintained or utilized by the terms and conditions of an issued permit; (7-1-93)
 - f.** Fail to respond to any formal notification of a violation when a response is required; or (5-3-03)
 - g.** Decommission a well in an unauthorized manner. (4-4-13)
- 02. Additional.** It shall be a violation of these rules for any person to construct, operate, maintain, convert, plug, decommission or conduct any other activity in a manner which results or may result in the unauthorized injection of a hazardous waste or of a radioactive waste by an injection well. (4-4-13)
- 03. Formal Notification.** Formal notification of violations may be communicated to the owner or operator with a letter, a notice of violation, a compliance or enforcement order or other appropriate means. (7-1-93)
- 04. Enforcement.** Violation of any of the provisions of the Injection Well Act (Chapter 39, Title 42, Idaho Code) or of any rule, regulation, standard or criteria pertaining to the Injection Well Act may result in the Director initiating an enforcement action as provided under Chapters 17 and 39, Title 42, Idaho Code. (4-4-13)

016. -- 019. (RESERVED)

020. HEARING BEFORE THE WATER RESOURCE BOARD.

- 01. General.** All hearings before the IWRB will be conducted in accordance with Chapter 52, Title 67, Idaho Code, at a place convenient to the owner and/or operator. For purposes of such hearings, the IWRB or its designated hearing officer shall have power to administer oaths, examine witnesses, and issue in the name of the said Board subpoenas requiring testimony of witnesses and the production of evidence relevant to any matter in the hearing. Judicial review of the final determination by the IWRB may be secured by the owner by filing a petition for review as prescribed by Chapter 52, Title 67, Idaho Code, in the District Court of the county where the injection well is situated or proposed to be located. The petition for review shall be served upon the Chairman of the IWRB and upon the Attorney General. (7-1-93)
- 02. Hearings on Conditional Permits, Disapproved Applications, or Petitions for Exemption.** Any owner or operator aggrieved by the approval or disapproval of an application, or by conditions imposed upon a permit, or any person aggrieved by the Director's decision on a petition for exemption under Section 025 of these rules, shall be afforded an opportunity for a hearing before the IWRB or its designated hearing officer. Written notice of such grievance shall be transmitted to the Director within thirty (30) days after receipt of notice of such approval, disapproval or conditional approval. Such hearing shall be held for the purpose of determining whether the permit shall be issued, whether the conditions imposed in a permit are reasonable, whether a change in circumstances warrants a change in conditions imposed in a valid permit, or whether the Director's decision on a petition for exemption should not be changed. (4-4-13)
- 03. Hearings on Permit Cancellations.** When the Director has reason to believe the operation of an injection well for which a permit has been issued is interfering with the right of the public to withdraw water for beneficial uses, or is causing unreasonable contamination of a drinking or other ground water source as provided for

in Title 42, Chapter 39, Idaho Code, the permit may be canceled by the Director. Prior to the cancellation of such permit there shall be a hearing before the IWRB for the purpose of determining whether or not the permit should be canceled. At such hearing, the Director shall be the complaining party. At least thirty (30) days prior to the hearing, a notice, which shall be in accordance with Chapter 52, Title 67, Idaho Code, shall be sent by certified mail to the owner or operator whose permit is proposed to be canceled. The Board shall affirm, modify, or reject the Director's decision and make its decision in the form of an order to the Director. (7-1-93)

021. -- 034. (RESERVED)

035. CLASSIFICATION OF INJECTION WELLS.

01. Classification of Injection Wells. For the purposes of these rules, injection wells are classified as follows: (7-1-93)

a. Class I: (4-4-13)

i. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water. (4-4-13)

ii. Other industrial and municipal disposal wells which inject fluids beneath the lowermost formation containing, within one-quarter (1/4) mile of the well bore, an underground source of drinking water. (4-4-13)

iii. Radioactive waste disposal wells which inject fluids below the lowermost formation containing an underground source of drinking water within one-quarter (1/4) mile of the well bore. (4-4-13)

b. Class II. Wells used to inject fluids: (4-4-13)

i. Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants, dehydration stations, or compressor stations which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection. (4-4-13)

ii. For enhanced recovery of oil or natural gas; and (4-4-13)

iii. For storage of hydrocarbons which are liquid at standard temperature and pressure. (4-4-13)

c. Class III. Wells used to inject fluids for extraction of minerals including: (4-4-13)

i. Mining of sulfur by the Frasch process; (4-4-13)

ii. In situ production of uranium or other metals; this category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as stopes leaching is included in Class V. (4-4-13)

iii. Solution mining of salts or potash. (4-4-13)

d. Class IV: (4-4-13)

i. Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within one-quarter (1/4) mile of the well contains an underground source of drinking water. (4-4-13)

ii. Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste above a formation which within one-quarter (1/4) mile of the well contains an

underground source of drinking water. (4-4-13)

iii. Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under Subparagraphs 035.01.a.i. or 035.01.d.i. or 035.01.d.ii. of this rule (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to Section 025 of these rules). (4-4-13)

e. Class V -- All injection wells not included in Classes I, II, III, IV, or VI. (4-4-13)

f. Class VI. (4-4-13)

i. Wells that are not experimental in nature that are used for geologic sequestration of carbon dioxide beneath the lowermost formation containing a USDW; or (4-4-13)

ii. Wells used for geologic sequestration of carbon dioxide that have been granted a waiver of the injection depth requirements pursuant to requirements at 40 CFR Section 146.95; or (4-4-13)

iii. Wells used for geologic sequestration of carbon dioxide that have received an expansion to the areal extent of an existing Class II enhanced oil recovery or enhanced gas recovery aquifer exemption pursuant to Section 025 of these rules. (4-4-13)

02. Subclassification. Class V wells are subclassified as follows: (7-1-93)

a. 5A5-Electric Power Generation. (7-1-93)

b. 5A6-Geothermal Heat. (7-1-93)

c. 5A7-Heat Pump Return. (7-1-93)

d. 5A8-Aquaculture Return Flow. (7-1-93)

e. 5A19-Cooling Water Return. (7-1-93)

f. 5B22-Saline Water Intrusion Barrier. (7-1-93)

g. 5D2-Storm Runoff. (7-1-93)

h. 5D3-Improved Sinkholes. (7-1-93)

i. 5D4-Industrial Storm Runoff. (7-1-93)

j. 5F1-Agricultural Runoff Waste. (7-1-93)

k. 5G30-Special Drainage Water. (7-1-93)

l. 5N24¹-Radioactive Waste Disposal. (4-4-13)

m. 5R21-Aquifer Recharge. (7-1-93)

n. 5S23-Subsidence Control. (7-1-93)

o. 5W9-Untreated Sewage. (7-1-93)

p. 5W10-Cesspools. (7-1-93)

q. 5W11-Septic Systems (General). (7-1-93)

- r. 5W12-Waste Water Treatment Plant Effluent. (4-4-13)
- s. 5W20-Industrial Process Water. (7-1-93)
- t. 5W31-Septic Systems (Well Disposal). (7-1-93)
- u. 5W32-Septic System (Drainfield). (7-1-93)
- v. 5X13-Mine Tailings Backfill. (7-1-93)
- w. 5X14-Solution Mining. (7-1-93)
- x. 5X15-In-Situ Fossil Fuel Recovery. (7-1-93)
- y. 5X16-Spent Brine Return Flow. (7-1-93)
- z. 5X25-Experimental Technology. (7-1-93)
- aa. 5X26-Aquifer Remediation. (7-1-93)
- bb. 5X27-Other Wells. (7-1-93)
- cc. 5X28¹-Motor Vehicle Waste Disposal Wells. (4-4-13)
- dd. 5X29-Abandoned Water Wells. (5-3-03)

¹ The construction and operation of wells in these subclasses is currently illegal in Idaho.

036. -- 039. (RESERVED)

040. AUTHORIZATIONS, PROHIBITIONS AND EXEMPTIONS.

01. Authorizations. Construction and use of Class V deep injection wells may be authorized by permit as approved by the Director in accordance with these rules. (4-4-13)

02. Prohibitions. (4-4-13)

a. These rules prohibit the permitting, construction, or use of any Class I, III IV, or VI injection well. (4-4-13)

b. No owner or operator shall construct, operate, maintain, convert, plug, abandon, or conduct any other injection activity in a manner that allows or causes the movement of fluid containing any contaminant into underground sources of drinking water, if the presence of that contaminant may cause a violation of any primary or secondary drinking water regulation, under IDAPA 58.01.11, "Ground Water Quality Rule," Section 200 or may otherwise adversely affect the health of persons. The applicant for a permit shall have the burden of showing that the requirements of Paragraph 040.02.c. are met. (4-4-13)

c. Notwithstanding any other provision of this section, the Director may take emergency action upon receipt of information that a contaminant which is present in or likely to enter a public water system or underground source of drinking water may present an imminent and substantial endangerment to the health of persons. (4-4-13)

d. Construction of large capacity cesspools, motor vehicle waste disposal wells, radioactive waste disposal wells, and untreated sewage disposal wells is prohibited. Construction and use of other Class V shallow injection wells are authorized by these rules without permit provided that: (4-4-13)

i. Required inventory information is submitted to the Director pursuant to Subsection 070.01 of this rule. (4-4-13)

ii. Use of the shallow injection well shall not result in unreasonable contamination of a USDW or cause a violation of surface or ground water quality standards that would affect a beneficial use. (4-4-13)

e. Class IV injection wells used to inject contaminated ground water that has been treated and is being reinjected into the same formation from which it was drawn are not prohibited by these rules if such injection is approved by EPA, or Idaho, pursuant to provisions for cleanup of releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601–9657, or pursuant to requirements and provisions under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901 through 6987. (4-4-13)

f. All large capacity cesspools must be properly decommissioned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a large capacity cesspool is found to be a threat to the ground water resources as described in Paragraph 070.01.c. (4-4-13)

g. All motor vehicle waste disposal wells must be properly decommissioned by January 1, 2005. A cease and desist order may be issued to the owner or the operator when a motor vehicle waste disposal well is found to be a threat to the ground water resources as described in Paragraph 070.01.c. (4-4-13)

h. The Construction, operation or maintenance of any non-experimental Class V geologic sequestration well is prohibited. (4-4-13)

i. Owners or operators of shallow injection wells are prohibited from injecting into the well upon failure to submit inventory information in a timely manner pursuant to Paragraph 070.01.a. of these rules. (4-4-13)

03. Exemptions. (4-4-13)

a. The UIC inventory and fee requirements of these rules do not apply to individual subsurface sewage disposal system wells. These systems are, however, subject to the permitting and fee requirements of IDAPA 58.01.03 “Individual/Subsurface Sewage Disposal Rules,” Title 39, Chapter 1 and Title 39, Chapter 36, Idaho Code. (4-4-13)

b. State or local government entities are exempt from the permit requirements of these rules for wells associated with highway and street construction and maintenance projects, but shall submit shallow injection well inventory information for said wells and shall comply with all other requirements of these rules. (4-4-13)

c. Mine tailings backfill (5X13) wells are authorized by rule as part of mining operations. They are therefore exempt from the ground water quality standards and permitting requirements of these rules provided that their use is limited to the injection of mine tailings only. The use of any 5X13 well(s) shall not result in water quality standards at points of diversion for beneficial use being exceeded or otherwise affect a beneficial use. Should water quality standards be exceeded or beneficial uses be affected, the Director may order the wells to be put under the permit requirements of these rules, or the wells may be required to be remediated or closed. As a condition of their use, the Director may require the construction and sampling of monitoring wells by the owner/operator. 5X13 wells are subject to the inventory requirements of Subsection 070.01. (4-4-13)

041. -- 069. (RESERVED)

070. CLASS V: CRITERIA AND STANDARDS.

01. Class V Shallow Injection Well Requirements. (4-4-13)

a. Authorization. As a condition of authorization, all owners or operators of shallow Class V injection wells, including improved sinkholes used for aquifer recharge, that dispose of nonhazardous and nonradioactive wastes are required to submit a Shallow Injection Well Inventory Form to the Department no later than thirty (30) days prior to commencement of construction for each new well or no later than thirty (30) days after the discovery of an existing injection well that has not previously been inventoried with the Department. Forms are available from any Department office or at the Department website at <http://www.idwr.idaho.gov>. State or local government entities shall submit the following inventory information for wells associated with highway and street construction and

maintenance projects. (4-4-13)

- i. Facility name and location; and (7-1-93)
- ii. County in which the injection well(s) is (are) located; and (7-1-93)
- iii. Ownership of the well(s); and (7-1-93)
- iv. Name, address and phone number of legal contact; and (7-1-93)
- v. Type or function of the well(s); and (7-1-93)
- vi. Number of wells of each type; and (7-1-93)
- vii. Operational status of the well(s). (7-1-93)

b. Inventory Fees. For shallow injection wells constructed after July 1, 1997, the Shallow Injection Well Inventory Form shall be accompanied by a fee as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. State or local government entities are exempt from Shallow Injection Well Inventory Form filing fees for wells associated with highway and street construction and maintenance, but shall comply with all other requirements of these rules. (4-4-13)

c. Permit Requirements. If operation of a shallow Class V injection well is causing or may cause unreasonable contamination of a USDW, or cause a violation of the ground water quality standards at a place of beneficial use, the Director shall require immediate cessation of the injection activity. Where a Class V injection well is owned or operated by an entity other than a state or local entity involved in highway and street construction and maintenance, the Director may authorize continued operation of the well through a permit that specifies the terms and conditions of acceptable operation. (4-4-13)

d. Permanent Decommission. Owners or operators of shallow injection wells shall notify the Director not less than thirty (30) days prior to permanent decommissioning of any shallow injection well. Permanent decommissioning shall be accomplished in accordance with procedures approved by the Director. (4-4-13)

e. Inter-Agency Cooperation. The Department may seek the assistance of other government agencies, including cities and counties, health districts, highway districts, and other departments of state government to inventory, monitor and inspect shallow injection wells, where local assistance is needed to prevent deterioration of ground water quality, and where injection well operation overlaps with water quality concerns of other agencies or local governing entities. Assistance is to be negotiated through a memorandum of understanding between the Department and the local entity, agency, or department, and is subject to the approval of the Director. (5-3-03)

02. Class V Deep Injection Well Requirements. (4-4-13)

a. Application Requirements. (4-4-13)

i. No person shall continue to maintain or use an unauthorized injection well after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit under Subsection 070.02 shall be constructed, modified or maintained after the effective date given in Section 42-3903, Idaho Code, unless a permit therefor has been issued by the Director. No injection well requiring a permit shall continue to be used after the expiration of the permit issued for such well unless another application for permit therefor has been received by the Director. All applications for permit shall be on forms furnished by the Director. (4-4-13)

ii. Each application for permit to construct, modify or maintain an injection well, as required by these rules, shall be accompanied by a filing fee as specified in Section 42-3905, Idaho Code, payable to the Department of Water Resources. For the purposes of these rules, all wells or groups of wells associated with a “Remediation Project” may be administered as one (1) “well” at the discretion of the Director. (5-3-03)

b. Application Information Required. An applicant shall submit the following information to the Director for all injection wells to be authorized by permit, unless the Director determines that it is not needed in whole or in part, and issues a written waiver to the applicant: (5-3-03)

- i. Facility name and location; (7-1-93)
- ii. Name, address and phone number of the well operator; (7-1-93)
- iii. Class, subclass and function of the injection well (see Section 035); (4-4-13)
- iv. Latitude/longitude or legal description of the well location to the nearest ten (10) acre tract; (5-3-03)
- v. Ownership of the well; (7-1-93)
- vi. County in which the injection well is located; (7-1-93)
- vii. Construction information for the well; (7-1-93)
- viii. Quantity and general character of the injected fluids; (7-1-93)
- ix. Status of the well; (4-4-13)
- x. A topographic map or aerial photograph extending one (1) mile beyond property boundaries, depicting:
 - (1) Location of the injection well and associated facilities described in the application; (7-1-93)
 - (2) Locations of other injection wells; (7-1-93)
 - (3) Approximate drainage area, if applicable; (7-1-93)
 - (4) Hazardous waste facilities, if applicable; (7-1-93)
 - (5) All wells used to withdraw drinking water; (7-1-93)
 - (6) All other wells, springs and surface waters. (7-1-93)
- xi. Distance and direction to nearest domestic well; (7-1-93)
- xii. Depth to ground water; and (5-3-03)
- xiii. Alternative methods of waste disposal. (7-1-93)

c. Additional Information. The Director may require the following additional information for Class V injection wells to assess potential effects of injection: (5-3-03)

- i. A topographic map showing locations of the following within a two (2) mile radius of the injection well:
 - (1) All wells producing water; (7-1-93)
 - (2) All exploratory and test wells; (7-1-93)
 - (3) All other injection wells; (7-1-93)
 - (4) Surface waters (including man-made impoundments, canals and ditches); (7-1-93)

- (5) Mines and quarries; (7-1-93)
- (6) Residences; (7-1-93)
- (7) Roads; (7-1-93)
- (8) Bedrock outcrops; and (5-3-03)
- (9) Faults and fractures. (7-1-93)
- ii. Additional maps or aerial photographs of suitable scale to accurately depict the following: (7-1-93)
 - (1) Location and surface elevation of the injection well described in this permit; (7-1-93)
 - (2) Location and identification of all facilities within the property boundaries; (7-1-93)
 - (3) Locations of all wells penetrating the proposed injection zone or within a one-quarter (1/4) mile radius of the injection well; (7-1-93)
 - (4) Maps and cross sections depicting all underground sources of drinking water to include vertical and lateral limits within a one-quarter (1/4) mile radius of the injection well, their position relative to the injection zone and the direction of water movement: local geologic structures; regional geologic setting. (7-1-93)
- iii. A comprehensive report of the following information: (7-1-93)
 - (1) A tabulation of all wells penetrating the proposed injection zone, listing owner, lease holder and operator; well identification (permit) number; size, weight, depth and cementing data for all strings of casing; (7-1-93)
 - (2) Description of the quality and quantity of fluids to be injected; (7-1-93)
 - (3) Geologic, hydrogeologic, and physical characteristics of the injection zone and confining beds; (5-3-03)
 - (4) Engineering data for the proposed injection well; (7-1-93)
 - (5) Proposed operating pressure; (7-1-93)
 - (6) A detailed evaluation of alternative disposal practices; (7-1-93)
 - (7) A plan of corrective action for wells penetrating the zone of injection, but not properly sealed or decommissioned; and (4-4-13)
 - (8) Contingency plans to cope with all shut-ins or well failures to prevent the migration of unacceptable fluids into underground sources of drinking waters. (7-1-93)
- iv. Name, address and phone number of person(s) or firm(s) supplying the technical information and/or designing the injection well; (7-1-93)
- v. Proof that the applicant is financially responsible, through a performance bond or other appropriate means, to decommission the injection well in a manner approved by the Director. (4-4-13)
- d. Other Information. The Director may require of any applicant such additional information as may be necessary to demonstrate that the proposed or existing injection well will not endanger a USDW. The Director will not complete the processing of an application for which additional information has been requested until such time as the additional information is supplied. The Director may return any incomplete application and will not process such

application until such time as the application is received in complete form. (4-4-13)

03. Application Processing. (4-4-13)

a. Draft Permit. After all application information is received and evaluated, the Director will prepare a draft permit or denial, which will include the application for permit, permit conditions or reasons for denial, and any compliance schedules or monitoring requirements. In preparing the draft permit or denial, the Director shall consider the following factors: (4-4-13)

- i. The availability of economic and practical alternative means of disposal; (7-1-93)
- ii. The application of best management practices to the facilities and/or area draining into the well; (7-1-93)
- iii. The availability of economical, practical means of treating or otherwise reducing the amount of contaminants in the injected fluids; (7-1-93)
- iv. The quality of the receiving ground water, its category, its present and future beneficial uses or interconnected surface water; (7-1-93)
- v. The location of the injection well with respect to drinking water supply wells; and (5-3-03)
- vi. Compliance with the IDAPA 58.01.11, “Ground Water Quality Rule.” (5-3-03)

b. Public Notice. The Director will provide public notice of any draft permit to construct, maintain or modify a Class V injection well by means of a legal notice in a newspaper of general circulation in the county in which the well is located. The Director may give additional notice as necessary to adequately inform the interested public and governmental agencies. There shall be a period of at least thirty (30) days following publication for any interested person to submit written comments and to request a fact-finding hearing. The hearing will be held by the Director if deemed necessary. (7-1-93)

c. Review by the Directors of Other State Agencies. The Directors of other state agencies, as determined by the Director, shall be provided the opportunity to review and comment on draft permits. Comments shall be submitted to the Director within thirty (30) days of the public or legal notice. (7-1-93)

d. Open-Loop Heat Pump Return Wells (Subclass 5A7). (4-4-13)

i. An open-loop heat pump return well greater than eighteen (18) feet in depth to be used solely for disposal of heat pump water at a rate not exceeding fifty (50) gpm does not require a draft permit and is not subject to a recurring permit cycle, however, registration of the well with the Department and submittal of a filing fee as specified in Section 42-3905, Idaho Code is required. The Director reserves the right to override the exemptions from the draft permit and permit cycle requirements. (4-4-13)

ii. An open-loop heat pump return well greater than eighteen (18) feet in depth to be used solely for disposal of heat pump return water at a rate exceeding fifty (50) gpm is subject to the requirements of Subsections 070.02 and 070.03 of these rules. (4-4-13)

e. Fact-Finding Hearings. At the Director’s discretion, or upon motion of any interested individual, the Director may elect to hold a fact-finding hearing. Said hearing will be held at a location in the geographical area of the injection well. Notice of said hearing will be provided at least thirty (30) days in advance of the hearing by regular mail to the applicant and to the person or persons requesting the hearing. Public notice of the fact-finding hearing will be made by means of press release to a newspaper of general circulation in the county of the application. (4-4-13)

04. The Director's Action On Draft Permits and Duration Of Approved Permits. The role of the Director is to determine whether or not the injection wells and their respective owners or operators are in compliance with the intent of these rules, thus protecting the ground waters of the state against unreasonable contamination or

- deterioration of quality and preserving them for diversion to beneficial uses. (7-1-93)
- a.** Consideration. The Director will consider the following factors in taking final action on draft permits: (7-1-93)
- i.** The likelihood and consequences of the injection well system failing; (7-1-93)
 - ii.** The long term effects of such disposal or storage; (7-1-93)
 - iii.** The recommendations and related justifications of the Directors of other state agencies and the public; (5-3-03)
 - iv.** The potential for violation of ground water quality standards at the point of injection or the point of beneficial use; and (5-3-03)
 - v.** Compliance with the Idaho Ground Water Quality Plan. (5-3-03)
- b.** Issuance of Permit. After considering the draft permit for construction, modification, or maintenance, and all matters relating thereto, the Director shall issue a permit if the standards and criteria of Subsection 070.05 will be met and USDW's will not otherwise be unreasonably affected. If the Director finds that the standards and criteria cannot be met or that ground water sources cannot otherwise be protected from unreasonable contamination at all times, the draft permit may be denied or a permit may be issued with conditions designed to protect ground water sources. The Director's decision shall be in writing and a copy shall be mailed by regular mail to the applicant and to all persons who commented in writing on the draft permit or appeared at a hearing held to consider the draft permit. (4-4-13)
- c.** Permit Conditions and Requirements. Any permit issued by the Director shall contain conditions to insure that ground water sources will be protected from waste, unreasonable contamination, or deterioration of ground water quality that could result in violations of the ground water quality standards. In addition to specific construction, operation, maintenance and monitoring requirements that the Director finds necessary, each permit shall be subject to the standard conditions and requirements of this rule. (5-3-03)
- d.** Construction Requirements. (7-1-93)
- i.** Well drillers or other persons involved with the construction of any injection well requiring a permit shall not commence construction on the facility until a certified copy of the approved permit is obtained from the Director. (7-1-93)
 - ii.** Deep injection wells shall be constructed by a licensed water well driller to conform with the current Minimum Well Construction Standards and the conditions of the permit, except that a driller's license is not required for the construction of a driven mine shaft or a dug hole. (7-1-93)
 - iii.** Shallow injection wells authorized by permit shall be constructed in accordance with the conditions of the permit. Rule-authorized shallow injection wells shall be constructed as shown or described in the inventory submittal. (5-3-03)
 - iv.** Injection wells shall be constructed to prevent the entrance of any fluids other than specified in the permit. (7-1-93)
 - v.** Injection wells shall be constructed to prevent waste of artesian fluids or movement of fluids from one aquifer into another. (7-1-93)
 - vi.** When construction or modification of an injection well has been completed, the owner or operator shall inform the Director of completion on a form provided by the Department. (7-1-93)
 - vii.** A sampling port shall be provided if the injection well system is enclosed. (5-3-03)

- viii. All new injection wells constructed into alluvial formations shall have a minimum ten (10) foot separation from the bottom of the well and seasonal high ground water. (5-3-03)
- (1) Injection wells installed into fractured basalt are exempt from separation distances. (5-3-03)
- (2) The Director may reduce separation distance requirements if the quality of injected fluids are improved through additional treatment or BMPs. (5-3-03)
- (3) Heat pump return wells (sub-class 5A7) are exempt from the separation distance requirement of this section. (4-4-13)
- e. Operational Conditions. (7-1-93)
- i. The injection well shall not be used until the construction, operation and maintenance requirements of the permit are met and provisions are made for any required inspection, monitoring and record keeping. (7-1-93)
- ii. Injection of any contaminant at concentrations exceeding the standards set in Paragraph 070.05.c. into a present or future drinking or other ground water source that may cause a health hazard or adversely affect a designated and protected use is prohibited. (4-4-13)
- iii. The injection well owner or operator shall develop approved procedures to detect constructional or operational failure in a timely fashion, and shall have contingency plans to cope with the well failure. (7-1-93)
- iv. Authorized representatives of the Department shall be allowed to enter, inspect and/or sample: (7-1-93)
- (1) The injection well and related facilities; (7-1-93)
- (2) The owner or operator's records of the injection operation; (7-1-93)
- (3) Monitoring instrumentation associated with the injection operation; and (7-1-93)
- (4) The injected fluids. (7-1-93)
- v. The injection facilities shall be operated and maintained to achieve compliance with all terms and conditions of this permit. (7-1-93)
- (1) Proper operation and maintenance includes effective performance, adequate funding, operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures; (7-1-93)
- (2) If compliance cannot be met, the owner shall take corrective action as determined by the Director or terminate injection. (4-4-13)
- vi. The owner shall mitigate any adverse effects resulting from non-compliance with the terms and conditions of the permit. (7-1-93)
- vii. If the injection well was constructed prior to issuance of the permit, the well shall be brought into compliance with the terms and conditions of the permit in accordance with the schedule of compliance issued by the Director. (7-1-93)
- viii. The permit shall not convey any property rights. (7-1-93)
- f. Conditions of Permanent Decommissioning. (4-4-13)
- i. Notice of intent to permanently decommission a well shall be submitted to the Director not less than thirty (30) days prior to commencement of the decommissioning activity. (4-4-13)

ii. The method of permanent decommissioning for all injection wells shall be approved by the Director prior to commencement of the decommissioning activity. (4-4-13)

iii. Notice of completion of permanent decommission shall be submitted to the Director within thirty (30) days of completion. (4-4-13)

iv. All deep injection wells that are to be permanently decommissioned shall be plugged in accordance with current Well Construction Standards. (4-4-13)

v. Following permanent cessation of use, or where an injection well is not completed, the Director shall be notified. Decommissioning procedures or other action, as prescribed by the Director, shall be conducted. (4-4-13)

vi. The injection well owner or operator has the responsibility to insure that the injection operation is decommissioned as prescribed. (4-4-13)

g. Duration of Approved Permits. The length of time that a permit may be in effect for Class V wells requiring permits shall not exceed ten (10) years. (7-1-93)

05. Standards For The Quality of Injected Fluids and Criteria For Location and Use. (4-4-13)

a. General. These standards, which are minimum standards that are to be adhered to for all deep injection wells and shallow injection wells requiring permits and rule-authorized wells not requiring permits, are based on the premise that if the injected fluids meet ground water quality standards for physical, chemical and radiological contaminants, and if ground water produced from adjacent points of diversion for beneficial use meets the water quality standards as defined in Section 010 of these rules, then that aquifer will be protected from unreasonable contamination and will be preserved for diversion to beneficial uses. The Director may, however, when it is deemed necessary, require specific injection wells to be constructed and operated in compliance with additional requirements, such as best management practices (BMPs), so as to protect the ground water resource from deterioration and preserve it for diversion to beneficial use. (4-4-13)

b. Waivers. A waiver of one (1) or more standards may be granted by the Director if it can be demonstrated by the applicant that the contaminants in injected fluid will not endanger a ground water source for any present or future beneficial use. (5-3-03)

c. Standards for Quality of Fluids Injected into Class V Wells. (4-4-13)

i. Ground water quality standards for chemical and radiological contaminants in injected fluids. After the effective date of these standards, the following limits shall not be exceeded in injected fluids from a well when such fluids will or are likely to reach a USDW: (4-4-13)

(1) Chemical contaminants. The concentration of each chemical contaminant in the injected fluids shall not exceed the ground water quality standard for that chemical contaminant, or the concentration of each contaminant in the receiving water, whichever requirement is less stringent; and (5-3-03)

(2) Radiological contaminants. Radiological levels of the injected fluids shall not exceed those levels specified by the ground water quality standards. (5-3-03)

ii. Restrictions on injection of fluids containing biological contaminants. The following restrictions apply to biological contaminants included in the ground water quality standard in injected fluids. Coliform bacteria: injected fluids containing coliform bacteria are subject to the following restrictions: (5-3-03)

(1) Contamination of ground water produced at any existing point of diversion for beneficial use, or any point of diversion for beneficial use developed in the future, by injected fluids is prohibited; (4-4-13)

(2) The Director may require the use of best management practices (BMPs) to reduce the concentration

of coliform bacteria in the injected fluids; (5-3-03)

(3) The Director may require the use of water treatment technology, including ozonation and chlorination devices, sand filters, and settling pond specifications to reduce the concentration of coliform bacteria in injected fluids; (5-3-03)

(4) Ground water produced from points of diversion for beneficial use adjacent to injection wells that dispose of fluids containing coliform bacteria in concentrations greater than the current ground water quality standard shall be subject to monitoring for bacteria by the owner/operator of the injection well. A waiver of the monitoring requirement may be granted by the Director when it can be demonstrated that injection will not result in unreasonable contamination of ground water produced from these adjacent points; (5-3-03)

(5) Construction of new Subclass 5F1 injection wells, and other shallow and deep injection wells, as specified by the Director, that are likely to exceed the current ground water quality standard for coliform bacteria at the point of beneficial use is prohibited; and (5-3-03)

(6) At no time shall any fluid containing or suspected of containing fecal contaminants of human origin be injected into any Class V injection well authorized under these rules. (7-1-93)

iii. Physical, visual and olfactory characteristics. The following restrictions apply to physical, visual and olfactory characteristics of injected fluids. Temperature, color, odor, turbidity, conductivity and pH: the temperature, color, odor, conductivity, turbidity, pH or other characteristics of the injected fluid may not result in the receiving ground water becoming less suitable for diversion to beneficial uses, as determined by the Director. (7-1-93)

iv. Contamination by an injection well of ground water produced at an existing point of diversion for beneficial use, or a point of diversion for beneficial use developed in the future, shall not exceed water quality standards defined in Section 010 of these rules. (4-4-13)

d. Criteria for Location and Use of Class V Wells Requiring Permits. (7-1-93)

i. A Class V well requiring a permit may be required to be located a minimum distance, as determined from Table 1, from any point of diversion for beneficial use that could be harmed by bacterial contaminants. This requirement is not applicable to injection wells injecting wastes of quality equal to or better than adopted ground water quality standards in all respects. In addition, Class V wells may be required to be located at such a distance from a point of diversion for beneficial use as to minimize or prevent ground water contamination resulting from unauthorized or accidental injection, as determined by the Director. (5-3-03)

ii. These location requirements in Table 1 may be waived, as per Paragraph 070.05.b., when the applicant can demonstrate that any springs or wells within the calculated perimeter of the generated perched water zone will not be contaminated by the applicant’s waste disposal or injection well. Monitoring by the applicant of the production wells or springs in question may be required to demonstrate that they are not being contaminated.

Determined Radii of Perched Water Zones Based on Maximum Average Weekly Injection Rates (cfs) of Class V Injection Wells *	
Injection (cfs)	Radius of Generated Perched Water Zone (ft)
0 - 0.20	800
0.20 - 0.60	1,400
0.61 - 1.00	1,800
1.01 - 2.00	2,500
2.01 - 3.00	3,000

Determined Radii of Perched Water Zones Based on Maximum Average Weekly Injection Rates (cfs) of Class V Injection Wells *	
Injection (cfs)	Radius of Generated Perched Water Zone (ft)
3.01 - 4.00	3,500
4.01 - 5.00	4,000
Greater than 5.00	As determined by the Director

* Injection rates shall be based on the average volume of wastes injected by the well during the week of greatest injection in an average water year. (4-4-13)

e. Standards for the Quality of Fluids Injected by Subclass 5A7 Wells (Open-Loop Heat Pump Return). (4-4-13)

i. The quality of fluids injected by a Subclass 5A7 injection well shall comply with ground water quality standards or shall be equal to the quality of the ground water source to the heat pump, whichever is less stringent. (4-4-13)

ii. If the quality of the ground water source does not meet ground water quality standards, the injected fluids must be returned to the formation containing the ground water source. (5-3-03)

iii. The temperature of the injected fluids shall not impair the designated beneficial uses of the receiving ground water. (7-1-93)

iv. All Rule-authorized Injection Wells shall conform to the ground water quality standards at the point of injection and not cause any water quality standards to be violated at any point of beneficial use. (5-3-03)

06. Monitoring, Record Keeping and Reporting Requirements. The Director may require monitoring, record keeping and reporting by any owner or operator if the Director finds that the well may adversely affect a ground water source or is injecting a contaminant that could have an unacceptable effect upon the quality of the ground waters of the state. (5-3-03)

a. Monitoring. (7-1-93)

i. Any injection authorized by the Director shall be subject to monitoring and record keeping requirements as conditions of the permit. Such conditions may require the installation, use and maintenance of monitoring equipment or methods. The Director may require where appropriate, but is not limited to, the following: (7-1-93)

(1) Monitoring of injection pressures and pressures in the annular space between casings; (7-1-93)

(2) Flow rate and volumes; (7-1-93)

(3) Analysis of quality of the injected fluids for contaminants that are subject to limitation or reduction under the conditions of the permit; or contaminants which the Director determines could have an unacceptable effect on the quality of the ground waters of the state, and which the Director has reason to believe are in the injected fluids; (7-1-93)

(4) Monitoring of ground water through special monitoring wells or existing points of diversion for beneficial use in the zone of influence as determined by the Director; (7-1-93)

(5) A demonstration of the integrity of the casing, tubing or seal of the injection well. (7-1-93)

ii. The frequency of required monitoring shall be specified in the permit when issued, except that the

Director at any time may, in writing, require additional monitoring and reporting. (7-1-93)

iii. All monitoring tests and analysis required by permit conditions shall be performed in a state certified laboratory or other laboratory approved by the Director. (4-4-13)

iv. Any field instrumentation used to gather data, when specified as a condition of the permit, shall be required by the Director to be tested and maintained in such a manner as to ensure the accuracy of the data. (7-1-93)

v. All samples and measurements taken for the purpose of monitoring shall be representative of the monitoring activity and fluids injected. (7-1-93)

b. Record Keeping. The permittee shall maintain records of all monitoring activities to include: (7-1-93)

i. Date, time and exact place of sampling; (7-1-93)

ii. Person or firm performing analysis; (7-1-93)

iii. Date of analysis, analytical methods used and results of analysis; (7-1-93)

iv. Calibration and maintenance of all monitoring instruments; and (7-1-93)

v. All original tapes, strip charts or other data from continuous or automated monitoring instruments. (7-1-93)

c. Reporting. (7-1-93)

i. Monitoring results obtained by the permittee pursuant to the monitoring requirements prescribed by the Director shall be reported to the Director as required by permit conditions. (7-1-93)

ii. The Director shall be notified in writing by the permittee within five (5) days after the discovery of violation of the terms and conditions of the permit. If the injection activity endangers human health or a public or domestic water supply, use of the injection well shall be immediately discontinued and the owner or operator shall immediately notify the Director. Notification shall contain the following information: (7-1-93)

(1) A description of the violation and its cause; (7-1-93)

(2) The duration of the violation, including dates and times; if not corrected or use of the well discontinued, the anticipated time of correction; and (5-3-03)

(3) Steps being taken to reduce, eliminate and prevent recurrence of the injection. (7-1-93)

iii. Where the owner or operator becomes aware of failure to submit any relevant facts in any permit application or report to the Director, that person shall promptly submit such facts or information. (7-1-93)

iv. The permittee shall furnish the Director, within a time specified by the Director, any information which the Director may request to determine compliance with the permit. (7-1-93)

v. All applications for permits, notices and reports submitted to the Director shall be signed and certified. (7-1-93)

vi. The Director shall be notified in writing of planned physical alterations or additions to any facility related to the permitted injection well operation. (7-1-93)

vii. Additional information to be reported to the Director in writing: (7-1-93)

(1) Transfer of ownership; (7-1-93)

- (2) Any change in operational status not previously reported; (7-1-93)
- (3) Any anticipated noncompliance; and (5-3-03)
- (4) Reports of progress toward meeting the requirements of any compliance schedule attached or assigned to this permit. (7-1-93)

07. Permit Assignable. Permits may be assignable to a new owner or operator of an injection well if the new owner or operator, within thirty (30) days of the change, notifies the Director of such change. The new owner or operator shall be responsible for complying with the terms and conditions of the permit from the time that such change takes place. (4-4-13)

071. -- 999. (RESERVED)

**IDAPA 37
TITLE 03
CHAPTER 04**

37.03.04 – DRILLING FOR GEOTHERMAL RESOURCES RULES

000. LEGAL AUTHORITY (RULE 0).

The Idaho Department of Water Resources, through authority granted by Section 42-4001 through Section 42-4015, Idaho Code, is the regulatory agency for the drilling, operation, maintenance, and abandonment of all geothermal wells in the state. The Department's authority also includes regulatory jurisdiction over other related operations and environmental hazards pertaining to the exploration and development of geothermal resources. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

The geothermal policy of the state of Idaho as stated in Section 42-4001, Idaho Code, is as follows: "It is the policy and purpose of this state to maximize the benefits to the entire state which may be derived from the utilization of our geothermal resources, while minimizing the detriments and costs of all kinds which could result from their utilization. This policy and purpose is embodied in this act which provides for the immediate regulation of geothermal resource exploration and development in the public interest." (7-1-93)

002. WRITTEN INTERPRETATION (RULE 2).

003. ADMINISTRATIVE APPEALS (RULE 3).

Any person who is aggrieved by the order of the Board relative to the Director's decision on an application for a permit may appeal the Board's order to the District Court within thirty (30) days from the issuance of such order, as provided in Section 42-4005(d) of the Idaho Code. (7-1-93)

004. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

For the purpose of these rules, the following definitions apply. (7-1-93)

01. Applicant. Any person submitting an application to the Department of Water Resources for a permit for the construction and operation of any well or injection well. (7-1-93)

02. Board. The Idaho Water Resource Board. (7-1-93)

03. BOPE. An abbreviation for Blow Out Prevention Equipment which is designed to be attached to the casing in a geothermal well in order to prevent a blow out of the drilling mud. (7-1-93)

04. Completion. A well is considered to be completed thirty (30) days after drilling operations have ceased unless a suspension of operation is approved by the Director, or thirty (30) days after it has commenced producing a geothermal resource, whichever occurs first, unless drilling operations are resumed before the end of the thirty (30) day period or at the end of the suspension. (7-1-93)

05. Conductor Pipe. The first and largest diameter string of casing to be installed in the well. This casing extends from land surface to a depth great enough to keep surface waters from entering and loose earth from falling in the hole and to provide anchorage for blow out prevention equipment prior to setting surface casing. (7-1-93)

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

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

08. Drilling Logs. The recorded description of the lithologic sequence encountered in drilling a well. (7-1-93)

09. Drilling Operations. The actual drilling, redrilling, or recompletion of the well for production or injection including the running and cementing of casing and the installation of well head equipment. Drilling

operations do not include perforating, logging, and related operations after the casing has been cemented. (7-1-93)

10. Exploratory Well. A well drilled for the discovery and/or evaluation of geothermal resources either in an established geothermal field or in unexplored areas. Exploratory well does not include holes six (6) inches in diameter or less if they are used for gathering geotechnical data such as, but not limited to, heat flow, earth temperature, temperature gradient and/or seismic measurements, provided said holes are not greater than one thousand (1000) feet in depth below land surface and provided the material medium is not intended to be encountered. (7-1-93)

11. Geothermal Area. The same general land area which in its subsurface is underlain or reasonably appears to be underlain by geothermal resources from or in a single reservoir, pool, or other source or interrelated sources, as such area or areas may be designated from time to time by the Director. (7-1-93)

12. Geothermal Field. An area designated by the Director which contains a well or wells capable of commercial production of geothermal resources. (7-1-93)

13. Geothermal Resource. The natural heat energy of the earth, the energy in whatever form which may be found in any position and at any depth below the surface of the earth, present in, resulting from, or created by, or which may be extracted from such natural heat and all minerals in solution or other products obtained from the material medium of any geothermal resource. Geothermal resources are found and hereby declared to be sui generis, being neither a mineral resource nor a water resource but they are also found and hereby declared closely related to and possibly affecting and affected by water and mineral resources in many instances. (7-1-93)

14. Injection Well. Any special well, converted producing well, or reactivated or converted abandoned well employed for injecting material into a geothermal area or adjacent area to maintain pressures in a geothermal reservoir, pool, or other source, or to provide new material or to serve as a material medium therein, or for reinjecting any material medium or the residue thereof, or any by-product of geothermal resource exploration or development into the earth. (7-1-93)

15. Intermediate String or Casing. The casing installed within the well to seal out brackish water, caving zones, etc., below the bottom of the surface casing. Such strings may either be lapped into the surface casing or extend to land surface. (7-1-93)

16. Material Medium. Any substance including, but not limited to, naturally heated fluids, brines, associated gasses and steam in whatever form, found at any depth and in any position below the surface of the earth, which contains or transmits the natural heat energy of the earth, but excluding petroleum, oil, hydrocarbon gas, or other hydrocarbon substances. (7-1-93)

17. Notice of Intent or Notice. A written statement to the Director that the applicant intends to do work. (7-1-93)

18. Observation Well. A small diameter well drilled strictly for monitoring purposes. In no case shall an observation well be completed for production of geothermal resources or for use as an injection well. (7-1-93)

19. Operator. Any person drilling, maintaining, operating, pumping, or in control of any well. The term operator also includes owner when any well is or has been or is about to be operated by or under the direction of the owner. (7-1-93)

20. Owner. The owner of the geothermal lease or well and includes operator when any well is operated or has been operated or is about to be operated by any person other than the owner. (7-1-93)

21. Permit. A permit issued pursuant to these rules for the construction and operation of any well or injection well. (7-1-93)

22. Person. Any individual natural person, general or limited partnership, joint venture, association, cooperative organization, corporation, whether domestic or foreign, agency or subdivision of this or any other state or municipal or quasi-municipal entity whether or not it is incorporated. (7-1-93)

23. Production String. The casing or tubing through which a geothermal resource is produced. This string extends from the producing zone to land surface. (7-1-93)

24. Production Well. Any well which is commercially producing or is intended for commercial production of a geothermal resource. (7-1-93)

25. Surface Casing. The first string of casing which is run after the conductor pipe to anchor blow out prevention equipment and to seal out all existing groundwater zones. (7-1-93)

26. Suspension of Operations. The cessation of drilling, redrilling, or alteration of casing before the well is officially abandoned or completed. All suspensions must be authorized by the Director. (7-1-93)

27. Waste. Any physical waste including, but not limited to: (7-1-93)

a. Underground waste resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any geothermal resource pool, reservoir, or other source; or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results, or tends to result in reducing the quantity of geothermal energy to be recovered from any geothermal area in the state; (7-1-93)

b. The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well. (7-1-93)

28. Well. Any excavation or other alteration in the earth's surface or crust by means of which the energy of any geothermal resource and/or its material medium is sought or obtained. (7-1-93)

011. -- 024. (RESERVED)

025. DRILLING (RULE 25).

01. General. All wells shall be drilled in such a manner as to protect or minimize damage to the environment, waters usable for all beneficial purposes, geothermal resources, life, health, or property. (7-1-93)

02. Permits and Notices. (7-1-93)

a. Permit to Drill for Geothermal Resources. Any person, owner, or operator who proposes to construct a well for the production of or exploration for geothermal resources or to construct an injection well shall first apply to the Director for permit. Application for permit shall be on department form 4003-1. Any person, owner, or operator who proposes to construct a hole for the gathering of geotechnical data shall file a notice of intent with the Director twenty (20) days prior to construction. Written approval of the Director is required before construction may begin. The notice of intent shall show the hole location, proposed depth, hole size, construction methods, intended use and abandonment plan together with other information as required by the Director. (7-1-93)

b. Permit to Deepen or Modify an Existing Well. If the owner or operator plans to deepen, redrill, plug, or perform any operation that will in any manner modify the well, an application shall be filed with the Director and written approval must be received prior to beginning work. Application for permit to alter a geothermal well shall be on department form 4003-2. (7-1-93)

c. Application for Permit to Convert to Injection. If the owner or operator plans to convert an existing geothermal well into an injection well with no change of mechanical condition, an application for permit shall be filed with the Director and written approval must be received prior to beginning injection. Application for permit shall be made on department form 4003-3. (7-1-93)

d. Amendment of Permit. No well may be owned or operated by any person whose name does not appear on the permit or permit application and no changes in departure from the procedures, location, data, or persons

specified on the face of a permit shall be allowed until an amendment to such permit is approved by the Director. Application for amendment shall be made on department form 4003-1. (7-1-93)

e. Notice to Other Agencies. Notice of applications, permits, orders, or other actions received or issued by the Director may be given to any other agency or entity which may have information, comments, or jurisdiction over the activity involved. The Director may enter into a memorandum of understanding with other agencies to eliminate duplication of applications or other efforts. (7-1-93)

f. No filing fee shall be charged for filing a notice of intent to construct a hole for gathering geotechnical data, for abandonment, or for the drilling of an observation well. (7-1-93)

g. No application shall be accepted and filed by the Director until such filing fee has been deposited with the Director. (7-1-93)

03. Bonds. (7-1-93)

a. The Director shall require as a condition of every permit every operator or owner who engages in the construction, alteration, testing, or operation of the well to file with the Director on a form prescribed by the Director a bond indemnifying the state of Idaho providing good and sufficient security conditioned upon the performance of the duties required by these regulations and the Geothermal Resource Act and the proper abandonment of any well covered by such permit. Such bond shall be in an amount which is not less than ten thousand dollars (\$10,000) for each individual well. (7-1-93)

b. Bonds remain in force for the life of the well or wells and may not be released until the well or wells are properly abandoned or another valid bond is substituted therefor. Any person who acquires the ownership or operation of any well or wells shall within five (5) days after acquisition file with the Director an indemnity bond in the sum of ten thousand dollars (\$10,000) for each well acquired. The Director reserves the right to request additional bonding prior to abandonment if deemed necessary. (7-1-93)

04. Well Spacing. (7-1-93)

a. Any well drilled for the discovery and production of geothermal resources or as an injection well shall be located more than one hundred (100) feet from and within the outer boundary of the parcel of land on which the well is situated, or more than one hundred (100) feet from a public road, street, or highway dedicated prior to the commencement of drilling. This requirement may be modified or waived by the Director upon written request. (7-1-93)

b. For several contiguous parcels of land in one or different ownerships that are operated as a single geothermal field, the term outer boundary line means the outer boundary line of the land included in the field. In determining the contiguity of any such parcels of land, no street, road, or alley lying within the lease or field shall be determined to interrupt such contiguity. (7-1-93)

c. The Director shall approve the proposed well spacing programs or prescribe such modifications to the programs as he deems necessary for proper development giving consideration to such factors as, but not limited to, topographic characteristics of the area, hydrologic, geologic, and reservoir characteristics of the area, the number of wells that can be economically drilled to provide the necessary volume of geothermal resources for the intended use, minimizing well interference, unreasonable interference with multiple use of lands, and protection of the environment. (7-1-93)

d. Directional Drilling. Where the surface of the parcel of land containing one acre or more is unavailable for drilling, the surface well location may be located upon property which may or may not be contiguous. Such surface well locations shall not be less than twenty five (25) feet from the outer boundary of the parcel on which it is located, nor less than twenty-five (25) feet from an existing street or road. The production or injection interval of the well shall not be less than one hundred (100) feet from the outer boundary of the parcel into which it is drilled. Directional surveys must be filed with the Director for all wells directionally drilled. (7-1-93)

05. Casing. (7-1-93)

a. General. All wells shall be cased in such a manner as to protect or minimize damage to the environment, usable ground waters, geothermal resources, life, health, and property. The permanent well head completion equipment shall be attached to the production casing or to the intermediate casing if production casing does not reach the surface. No permanent well head equipment may be attached to any conductor or surface casing alone. The specification for casing strength shall be determined by the Director on a well-to-well basis. All casing reaching the surface shall provide adequate anchorage for blow out prevention equipment, hole pressure control, and protection for natural resources. Sufficient casing shall be run to reach a depth below all known or reasonably estimated groundwater levels to prevent blow outs or uncontrolled flows. The following casing requirements are general but should be used as guidelines in submitting applications for permit to drill. (7-1-93)

b. Conductor Pipe. A minimum of forty (40) feet of conductor pipe shall be installed. The annular space is to be cemented solid to the surface. A twenty-four (24) hour cure period for the grout must be allowed prior to drilling out the shoe unless additives sufficient, as determined by the Director, are used to obtain early strength. An annular blow out preventer shall be installed on all exploratory wells and on development wells when deemed necessary by the Department. (7-1-93)

c. Surface Casing. The surface casing hole shall be logged with an induction electrical log or equivalent or gamma-neutron log before running casing. This requirement may be waived by the Director. Permission to waive this requirement must be granted by the Director in writing prior to running surface casing. This casing shall provide for control of formation fluids, protection of shallow usable groundwater, and for adequate anchorage for blow out prevention equipment. All surface casing shall be cemented solid to the surface. A twenty-four (24) hour cure period shall be allowed prior to drilling out the shoe of the surface casing unless additives sufficient, as determined by the Director, are used to obtain early strength. (7-1-93)

i. A minimum of two hundred (200) feet of surface casing shall be set in areas where pressures and formations are unknown. In no case may surface casing be set at a depth less than ten percent (10%) of the proposed total depth of the well. (7-1-93)

ii. In areas of known high formation pressure, surface casing shall be set at the depth determined by the Director after a study of geologic conditions in the area. (7-1-93)

iii. In areas where subsurface geological conditions are variable or unknown, surface casing shall be in accordance with specifications as outlined in a. above. The casing must be seated through a sufficient series of low permeability, competent lithologic units such as claystone, siltstone, basalt, etc., to insure a solid anchor for blow out prevention equipment and to protect usable groundwater from contamination. Additional casing may be required if the first string has not been cemented through a sufficient series of such beds, or a rapidly increasing thermal gradient or formation pressures are encountered. (7-1-93)

iv. The temperature of the return drilling mud shall be monitored continuously during the drilling of the surface casing hole. Either a continuous temperature-monitoring device shall be installed and maintained in a working condition or the temperature shall be read manually. In either case, the return temperature shall be entered into the log book for each thirty (30) feet of depth drilled. (7-1-93)

v. Blow out prevention equipment capable of shutting in the well during any operation shall be installed on the surface casing and maintained ready for use at all times. BOPE pressure tests shall be performed by the operator for department personnel on all exploratory wells prior to drilling out the shoe of the surface casing. The decision to perform BOPE pressure tests on other types of wells shall be made on a well-to-well basis by the Director. The Director must be notified five (5) days in advance of a scheduled pressure test. Permission to proceed with the test sooner may be given orally by the Director upon request by the operator. (7-1-93)

d. Intermediate Casing. Intermediate casing shall be required for protection against anomalous pressure zones, cave-ins, washouts, abnormal temperature zones, uncontrollable lost circulation zones or other drilling hazards. Intermediate casing strings when installed shall be cemented solidly to the surface or to the top of the casing. (7-1-93)

e. Production Casing. Production casing may be set above or through the producing or injection zone

and cemented either below or just above the objective zones. Sufficient cement shall be used to exclude overlying formation fluids from the geothermal zone, to segregate zones, and to prevent movement of fluids behind the casing into possible fresh groundwater zones. Production casing shall either be cemented solid to the surface or lapped into the intermediate casing if run. If the production casing is lapped into an intermediate string, the casing overlap shall be at least fifty (50) feet, the lap shall be cemented solid, and the lap shall be pressure tested to insure its integrity. (7-1-93)

06. Electric Logging. All wells except observation wells shall be logged with an induction electrical log or equivalent or gamma-neutron log from the bottom of the hole to the bottom of the conductor pipe. This requirement may be modified or waived by the Director upon written request. (7-1-93)

026. -- 029. (RESERVED)

030. RECORDS (RULE 30).

01. General. The owner or operator of any well shall keep or cause to be kept a careful and accurate log, core record, temperature logs, and history of the drilling of the well. These records shall be kept in the nearest office of the owner or operator or at the well site and together with all other reports of the owner and operator regarding the well shall be subject to inspection by the Director during business hours. All records unless otherwise specified must be filed with the Director within thirty (30) days of completion of the well. (7-1-93)

02. Records to Be Filed with the Director. (7-1-93)

a. Drilling Logs and Core Record. The drilling log shall include the lithologic characteristics and depths of formations encountered, the depth and temperatures of water-bearing and steam-bearing strata, the temperatures, chemical compositions and other chemical and physical characteristics of fluids encountered from time to time so far as ascertained. The core record shall show the depth, lithologic character, and fluid content of cores obtained so far as determined. (7-1-93)

b. Well History. The history shall describe in detail in chronological order on a daily basis all significant operations carried out and equipment used during all phases of drilling, testing, completion, and abandonment of any well. (7-1-93)

c. Well Summary Report. The well summary report shall accompany the core record and well history reports. It is designed to show data pertinent to the condition of a well at the time of completion of work done. (7-1-93)

d. Production Records. The owner or operator of any well producing geothermal resources shall file with the Director on or before the 20th day of each month for the preceding month a statement of production utilized in such a form as the Director may designate. Copies of monthly geothermal energy report forms are available from the Director; however, production data can be submitted on non-department forms such as computer print-outs if they have been approved by the Director. (7-1-93)

e. Injection Records. The owner or operator of any well injecting geothermal fluids or waste water for any purpose shall file with the Director on or before the twentieth day of each month for the preceding month a report of the injection in such form as the Director may designate. Copies of monthly injection report forms are available from the Director. Injection data may be submitted on non-department forms if they have been approved by the Director. (7-1-93)

f. Electric Logs and Directional Surveys, If Conducted. Electric logs and directional surveys shall be filed with the Director within sixty (60) days of completion, cessation of drilling operations, excluding any approved suspension of operations, or abandonment of any well. Like copies shall be filed upon recompletion of any well. Upon a showing of hardship, the Director may extend the time within which to comply for a period not to exceed six (6) additional months. (7-1-93)

03. Confidential Status. Information on file with the Director is open to public inspection except any reports, logs, records, or histories derived from the drilling of a well and filed with the Director shall not be available

for public inspection and shall be kept confidential by the Director for a period of one year from receipt provided, however, that the Director may use any such reports, logs, records, or histories in any action in any court to enforce the provisions of the Geothermal Act or any order or regulation adopted hereunder. (7-1-93)

04. Inspection of Records. The records filed by an operator with the Director which relates to the data gathered from the drilling operation shall be open to inspection only to those authorized in writing by the operator and designated personnel. The records of any operator filed for a completed or producing well that has been transferred by sale, lease, or otherwise shall be available to the new owner or lessee for his inspection or copying and shall be available for inspection or copying by others upon written authorization of such new owner or lessee. (7-1-93)

031. -- 034. (RESERVED)

035. BLOW OUT PREVENTION (RULE 35).

01. Unexplored Areas. (7-1-93)

a. A department employee may be present at the well at any time during the initial phases of drilling until the surface casing has been cemented and the BOPE has been satisfactorily pressure tested. The Department employee may be present during any drilling operations at the well and if in his opinion conditions warrant he may order additional casing to be run. (7-1-93)

b. A logging unit equipped to continuously record the following data shall be installed and operated continuously by a technician approved by the Director after drilling out the shoe of the conductor pipe until the well has been drilled to the total depth. (7-1-93)

i. Drilling mud temperature (in and out). (7-1-93)

ii. Drilling mud pit level. (7-1-93)

iii. Drilling mud pump volume. (7-1-93)

iv. Drilling mud weight. (7-1-93)

v. Drilling rate. (7-1-93)

vi. Hydrocarbon and hydrogen sulfide gas volume (with alarm). (7-1-93)

c. An annular BOPE with a minimum working pressure of one thousand (1,000) PSI shall be installed on the surface casing. If unusual conditions are anticipated, a BOPE may be required on the conductor pipe. (7-1-93)

d. If drilling mud temperature out, reaches one hundred twenty-five (125) Degrees C (Celsius), drilling operations shall cease, drilling mud circulation will continue and the Director must be notified immediately. The operator must obtain the Director's approval of his proposed course of action prior to resuming drilling operations. (7-1-93)

e. The above requirements for BOPE may be modified by the Director and any proposed modification by the applicant must be approved by the Director in writing. (7-1-93)

02. Explored Areas. (7-1-93)

a. A gate valve with a minimum working pressure rating of three hundred (300) PSI must be installed on the well head. (7-1-93)

b. The temperature of the return mud shall be monitored continuously. Either a continuous temperature monitoring device shall be installed and maintained in working condition or the temperature shall be read manually. In either case, return mud temperatures shall be entered into the log book for each thirty (30) feet of depth drilled. (7-1-93)

c. An annular BOPE with a minimum working pressure of one thousand (1,000) PSI shall be installed on the surface casing. (7-1-93)

d. Additional requirements may be set forth by the Director depending upon the knowledge of the area. Such requirements will be set forth on the approved application for permit to drill a geothermal well. Modification of said requirements may be made in the field by Department personnel monitoring construction of the well. (7-1-93)

036. -- 039. (RESERVED)

040. INJECTION WELLS (RULE 40).

01. Construction. The owner or operator of a proposed injection well or series of injection wells shall provide the Director with such information he deems necessary for evaluation of the impact of such injection on the geothermal reservoir and other natural resources. Such information shall include existing reservoir conditions, method of injection, source of injection fluid, estimates of daily amount of material medium to be injected, zones or formations affected, and analysis of fluid to be injected and of the fluid from the intended zone of the injection. Such information shall be on department form 4003-3. (7-1-93)

02. Surveillance. (7-1-93)

a. When an operator or owner proposes to drill or modify an injection well or convert a producing or idle well to an injection well, he shall be required to demonstrate to the Director by means of a test that the casing has complete integrity. This test shall be conducted in a method approved by the Director. (7-1-93)

b. To establish the integrity of the annular cement above the shoe of the casing, the owner or operator shall make sufficient surveys within thirty (30) days after injection is started into a well to prove that all the injected fluid is confined to the intended zone of injection. Thereafter, such surveys shall be made at least every two (2) years or more often if necessary. The Director shall be notified forty-eight (48) hours in advance of such surveys in order that a representative may be present if deemed necessary. If in the Director's opinion such tests are not necessary, he may grant a waiver excepting the operator from such tests. (7-1-93)

c. After the well has been placed on injection, the injection well site will be visited periodically by Department personnel. The operator or owner will be notified of any necessary remedial work. Unless modified by the Director, this work must be performed within ninety (90) days or approval for the injection well issued by the Director will be rescinded. (7-1-93)

041. -- 044. (RESERVED)

045. ABANDONMENT (RULE 45).

01. Objectives. The objectives of abandonment are to block interzonal migration of fluids so as to: (7-1-93)

a. Prevent contamination of fresh water or other natural resources; (7-1-93)

b. Prevent damage to geothermal reservoirs; (7-1-93)

c. Prevent loss of reservoir energy; (7-1-93)

d. Protect life, health, environment and property. (7-1-93)

02. General Requirements. The following are general requirements which are subject to review and modification for individual wells or field conditions. (7-1-93)

a. A notice of intent to abandon geothermal resource wells is required to be filed with the Director

five (5) days prior to beginning abandonment procedures. A permit to abandon may be given orally by the Director provided the operator submits a written request for said abandonment on a form approved by the Director within twenty-four (24) hours of the oral request. (7-1-93)

b. A history of geothermal resource wells shall be filed within sixty (60) days after completion of abandonment procedures. (7-1-93)

c. All wells abandoned shall be monumented and the description of the monument shall be included in the history of well report. Such monument shall consist of a four (4) inch diameter pipe ten (10) feet in length of which four (4) feet shall be above ground. The remainder shall be imbedded in concrete. The name, number, and location of the well shall be shown on the monument. Alternate methods of monumentation may be approved by the Director where land surface use indicates the above described method is not satisfactory. (7-1-93)

d. Good quality heavy drilling fluid shall be used to replace any water in the hole and to fill all portions of the hole not plugged with cement. (7-1-93)

e. All cement plugs with a possible exception of the surface plug shall be pumped into the hole through drill pipe or tubing. (7-1-93)

f. All open annuli shall be filled solid with cement to the surface. (7-1-93)

g. A minimum of one hundred (100) feet of cement shall be emplaced straddling the interface or transition zone at the base of groundwater aquifers. (7-1-93)

h. One hundred (100) feet of cement shall straddle the placement of the shoe plug on all casings including conductor pipe. (7-1-93)

i. A surface plug of either neat cement or concrete mix shall be in place from the top of the casing to at least fifty (50) feet below the top of the casing. (7-1-93)

j. All casing shall be cut off at least five (5) feet below land surface. (7-1-93)

k. Cement plugs shall extend at least fifty (50) feet over the top of any liner installed in the well. (7-1-93)

l. Abandonment. Injection wells are required to be abandoned in the same manner as other wells. (7-1-93)

m. Other abandonment procedures may be approved by the Director if the owner or operator can demonstrate that the geothermal resource, groundwaters, and other natural resources will be protected. Such approval must be given in writing by the Director prior to the beginning of any abandonment procedures. (7-1-93)

n. Within five (5) days after the completion of the abandonment of any well or injection well, the owner or operator of the abandoned well or injection well shall report in writing to the Director on such form as may be prescribed by the Director on all work done with respect to the abandonment. (7-1-93)

046. -- 049. (RESERVED)

050. MAINTENANCE (RULE 50).

01. General. All well heads, separators, pumps, mufflers, manifolds, valves, pipelines, and other equipment used for the production of geothermal resources shall be maintained in good condition in order to prevent loss of or damage to life, health, property, and natural resources. (7-1-93)

02. Corrosion. All surface well head equipment and pipelines and subsurface casing and tubing will be subject to periodic corrosion surveillance in order to safeguard health, life, property, and natural resources. (7-1-93)

03. Tests. The Director may require such tests or remedial work as in his judgment are necessary to prevent damage to life, health, property, and natural resources, to protect geothermal reservoirs from damage or to prevent the infiltration of detrimental substances into underground or surface water suitable for irrigation or other beneficial uses to the best interest of the neighboring property owners and the public. Such tests may include, but are not limited to, casing tests, cementing tests, and equipment tests. (7-1-93)

051. -- 054. (RESERVED)

055. HEARINGS, NOTICE, PROCEDURE (RULE 55).

Any applicant or the Director shall have the right to a hearing concerning the propriety of issuing a permit for which an application has been filed. Any applicant who desires a hearing pursuant to Section 42-4004, Idaho Code, must file a written request therefor with the Director of the Department of Water Resources. Any person may file a petition with the Director requesting that the Director hold a hearing concerning the propriety of issuing a permit for which an application has been filed. The petitioner must serve a copy of the petition upon the applicant and set forth in the petition all reasons for requesting the hearing. The applicant may respond to the petition within ten (10) days of its service. However, failure of the applicant to respond shall not be prejudicial to his right to appear at the hearing and present such evidence as he deems proper, if the Director grants the petition for such hearing. The hearing shall be set by the Director at any location deemed appropriate. Notice of the time and location shall be served on the applicant and/or the petitioner by the Director at least twenty (20) days before said date by certified mail addressed to applicant's address as stated in the application and to the petitioner at the address given in the petition. The hearing shall be conducted in the manner prescribed in the general rules and procedures of the Department. (7-1-93)

056. -- 059. (RESERVED)

060. HEARINGS ON REFUSED, LIMITED, OR CONDITIONED PERMIT (RULE 60).

Any applicant who is granted a limited or conditioned permit, or who is denied a permit or any person aggrieved by a decision of the Director may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within thirty (30) days of service of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in Rule 055 above. Any applicant may appeal the decision of the Board to the District Court within thirty (30) days of service of the decision. All hearings under this rule shall be conducted in the manner prescribed in the general rules and procedures of the Department. (7-1-93)

061. -- 064. (RESERVED)

065. PENALTIES (RULE 65).

01. Order by Director. If the Director finds that any person is constructing, operating, or maintaining any hole, well or injection well not in accordance with any applicable permit or in a fashion so as to involve an unreasonable risk of, or so as to cause, damage to life or property or subsurface, surface, or atmospheric resources, the Director may issue an order to such person to correct or to stop such practices as are found to be improper and to mitigate any injury of any sort caused by such practices. (7-1-93)

02. Enforcement by Director. The Director may enforce any provision of this act or any order or regulation issued or adopted pursuant thereto by an appropriate action in the District Court. The Director may bring action in the District Court to have enjoined any threatened noncompliance with any provision of this act or any order or regulation adopted pursuant hereto or any threatened harm to life, property, or surface, subsurface or atmospheric resources which would be caused by such noncompliance. (7-1-93)

03. Willful Violations or Failure to Comply. Any willful violations of or failure to comply with any provision of these rules, or if such order or regulation has been served on such person or is otherwise known to him, any valid order or regulation issued or adopted hereto shall be a misdemeanor punishable by fine of up to five thousand dollars (\$5,000) for each offense or a sentence of up to six (6) months in a county jail or both; each day of a continuing violation shall be a separate offense under this subdivision. A responsible or principal executive officer or any corporate person may be liable under this subdivision if such corporate person is not in compliance with any provision of this act or with any valid order or regulation adopted pursuant hereto. (7-1-93)

066. -- 069. (RESERVED)

070. FORMS (RULE 70).

Forms required by these rules. (7-1-93)

01. Samples of Forms. Samples of all forms required by these rules are available from the Department to interested parties upon request. (7-1-93)

02. Forms. The forms include the following: (7-1-93)

a. Form 4003-1, Application for Permit to Drill for Geothermal Resources; (7-1-93)

b. Form 4003-2, Application for Permit to Alter a Geothermal Well; (7-1-93)

c. Form 4003-3, Application for Permit to Convert a Well to a Geothermal Injection Well; (7-1-93)

d. Form 4005, Geothermal Resources Surety Bond; (7-1-93)

e. Form 4007, Notice of Intent to Abandon a Well; (7-1-93)

f. Form 4009, Report of Abandonment of a Well; (7-1-93)

g. Form 4010-1, Monthly Injection Report for Geothermal Wells; and (7-1-93)

h. Form 4010-2, Monthly Energy Report for Geothermal Wells. (7-1-93)

071. -- 999. (RESERVED)

**IDAPA 37
TITLE 03
CHAPTER 05**

37.03.05 – MINES TAILINGS IMPOUNDMENT STRUCTURES RULES

000. LEGAL AUTHORITY (RULE 0).

These rules are adopted pursuant to Section 42-1714, Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are titled IDAPA 37.03.05, "Mine Tailings Impoundment Structures Rules." (7-1-93)

02. Scope. (7-1-93)

a. These rules and standards will only apply to structures upon which construction, lift construction, enlargement, or alteration is underway on or after July 1, 1978. Under no circumstances shall these rules be construed to deprive or limit the 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 Director from any owner of a mine tailings impoundment structure for the proper administration of the law. (7-1-93)

b. The design requirements listed are intended as a guide to establish acceptable standards of construction. They are not intended to restrict the application of other sound design principles by engineers. The Director will evaluate any deviation from the standards hereinafter stated as they pertain to the safety of any given mine tailings impoundment structure. Engineers are encouraged to submit new ideas which will advance the art and provide for the public safety. (7-1-93)

002. WRITTEN INTERPRETATION (RULE 2).

003. ADMINISTRATIVE APPEALS (RULE 3).

004. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

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

01. Board. The Idaho Water Resource Board. (7-1-93)

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

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

04. Mine Tailings Impoundment Structure. Any artificial embankment which is or will be more than thirty (30) feet in height measured from the lowest elevation of the toe to the maximum crest elevation constructed for the purpose of storing mine tailings slurry. (7-1-93)

05. Mine Tailings Slurry. All slurry wastes from a mineral processing or mining operation. (7-1-93)

06. Mine Tailings Storage Capacity. The total storage volume of the impoundment when filled with tailings to the maximum approved design storage elevation. (7-1-93)

07. Borrowed Fill Embankment. Any embankment constructed of borrowed earth materials and which is designed for construction by conventional earth moving equipment. (7-1-93)

08. Reservoir. Any basin which contains or will contain the material impounded by the mine tailings impoundment structure. (7-1-93)

09. Owner. Includes any of the following who own, control, operate, maintain, manage, or propose to construct a mine tailings impoundment structure or reservoir. (7-1-93)

a. The state of Idaho and any of its departments, agencies, institutions and political subdivisions; (7-1-93)

b. The United States of America and any of its departments, bureaus, agencies and institutions; provided that the United States of America are not required to pay any of the fees required by Section 42-1713, Idaho Code, and shall submit plans, drawings and specifications as required by Section 42-1721, Idaho Code, for information purposes only; (7-1-93)

c. Every municipal or quasi-municipal corporation; (7-1-93)

d. Every public utility; (7-1-93)

e. Every person, firm, association, organization, partnership, business, trust, corporation or company; (7-1-93)

f. The duly authorized agents, lessees, or trustees of any of the foregoing; (7-1-93)

g. Receivers or trustees appointed by any court for any of the foregoing. (7-1-93)

10. Alterations, Repairs or Either of Them. Only such alterations or repairs as may directly affect the safety of the mine tailings impoundment structure or reservoir, as determined by the Director. (7-1-93)

11. Enlargement. Any change in or addition to an existing mine tailings impoundment structure or reservoir, which raises or may raise the storage capacity of the structure, as defined in Rule Subsection 010.06. (7-1-93)

12. Days Used in Establishing Deadlines. Calendar days including Sundays and holidays. (7-1-93)

13. Certificate of Approval. A certificate issued by the Director for the mine tailings impoundment structure listing restrictions imposed by the Director, and without which no new mine tailings impoundment structures shall be allowed to impound mine tailings slurry or water and no existing impoundment shall be allowed to impound water or continue deposition of mine tailings slurry. The structure will be recertified every two (2) years, unless the Director determines that the structure is unsafe. (7-1-93)

14. Engineer. A registered professional engineer, licensed as such by the state of Idaho. (7-1-93)

011. -- 024. (RESERVED)

025. AUTHORITY OF REPRESENTATIVE (RULE 25).

When plans, drawings and specifications are filed by another person in behalf of an owner, written evidence of authority to represent the owners shall be filed with the plans, drawings and specifications. (7-1-93)

026. -- 029. (RESERVED)

030. FORMS (RULE 30).

Forms required by these rules. (7-1-93)

01. Samples of Forms. Samples of all forms required by these rules are available from the Department to interested parties upon request. (7-1-93)

02. Form 1721. Construction of a mine tailings impoundment structure requires the filing of Form 1721. (7-1-93)

031. -- 034. (RESERVED)

035. PLANS, DRAWINGS, AND SPECIFICATIONS (RULE 35).

The following provisions apply in submitting plans, drawings, and specifications. (7-1-93)

01. Submission of Plans, Drawings, and Specification. Any owner who shall desire to construct, or enlarge, or alter or repair any mine tailings impoundment structure shall submit duplicate copies of plans, drawings, and specifications prepared by an engineer for the proposed work to the Director with required fees. An owner who desires to construct a continuously raised tailings impoundment structure shall submit duplicate copies of plans, drawings, and specifications prepared by an engineer, showing the stages of lift height, by periods of time, and ultimate design height. (7-1-93)

02. Application for and Receipt of Written Approval. Construction of a new mine tailings impoundment structure or enlargement, or non-emergency alteration or repairs on existing mine tailings impoundment structures shall not be commenced until the owner has applied and obtained written approval of the plans, drawings, and specifications covering the work. In emergency situations, the owner shall make the required alterations or repairs necessary to relieve the emergency, and notify the Director. (7-1-93)

03. Preparation and Submission of Plans. Plans must be prepared on a good grade of tracing linen or a good quality vellum or mylar. Transparent copies reproducible by standard duplicating processes, if accurate, legible and permanent, will be accepted. Plans may initially be submitted in the form of nonreproducible paper prints. After reviewing the plans, the Director will notify the owner of any required changes. (7-1-93)

04. Scale of Plans and Drawings. Plans and drawings shall be of sufficiently large scale with an adequate number of views and proper dimensions, so that drawings may be readily interpreted and studied. (7-1-93)

05. Dimensions of Plans. All sheets for a set of plans shall have an outside dimension of twenty-four by thirty-six (24 x 36) inches. A margin of two (2) inches on the left-hand end and a margin of one-half (1/2) inch on the other three sides must be provided, making the available work space twenty-three (23) x thirty-three and one-half (33 1/2) inches. (7-1-93)

06. Plans. The plans shall include the following: (7-1-93)

a. A topographic map of the mine tailings impoundment structure site showing the location of the proposed mine tailings impoundment structure by section, township and range, and location of spillway or diversion structures, outlet works, and all borings, test pits, borrow pits; (7-1-93)

b. A profile along the mine tailings impoundment structure axis showing the locations, elevations, and depths of borings or test pits, including logs of bore hole and/or test pits; (7-1-93)

c. A maximum cross-section of the mine tailings impoundment structure showing elevation and width of crest, slopes of upstream and downstream faces, thickness of any proposed riprap, zoning of the earth embankment (if any), location of cutoff and bonding trenches, elevations, size and type of decant systems, valves, operating mechanism, and dimensions of all other essential structural elements such as cutoff walls, filters, embankment zones, etc.; (7-1-93)

d. Detailed drawings describing the outlet system, i.e., decant line, barge pump system, siphon system; (7-1-93)

e. If a spillway is used, a curve showing the discharge capacity in cubic feet per second of the spillway vs. gage height of the storage pool level above the spillway crest up to the maximum high water level, and the formula used in making such determinations; (7-1-93)

f. If a stream diversion is created, a tabulation of the discharge capacity in cubic feet per second of any diversion works and of the diversion channel vs. flow depth through the diversion works or channel up to maximum capacity of the system, and the formulas used in making such determinations; (7-1-93)

g. Where staged construction will take place and no spillway exists, a curve showing maximum safe operating level for the tailings as a function of embankment height and the design criteria used to arrive at this; (7-1-93)

h. Detailed plans, including cross-sections and profile, of the spillway or diversion works and any associated channels; (7-1-93)

i. Plans for monitoring and/or recovering seepage from the reservoir in those instances where safety of the impoundment may be affected; (7-1-93)

j. An operation plan; (7-1-93)

k. An emergency procedure plan for protection of life and property; (7-1-93)

l. An abandonment plan that assures the Director to his satisfaction that, upon completion of the mining operation, the site will be in a safe maintenance-free condition. (7-1-93)

07. Specifications. Specifications shall include provisions acceptable to the Director for adequate observation, inspection and control of the work by a registered professional engineer during the period of construction. (7-1-93)

08. Provision Included with Plans. The specifications shall provide that the plans and specifications may not be materially changed without prior written consent of the Director. (7-1-93)

09. Provisions Included with Specifications. The specifications shall provide that certain stages of construction shall not proceed without the approval of the Director. Those stages requiring approval are as follows: (7-1-93)

a. After clearing and excavation of foundation and prior to placing any fill material; (7-1-93)

b. After installation of the decant conduit and any proposed collars and before placing any backfill material around conduit; (7-1-93)

c. After construction is completed (first stage starter dike if staged construction) and before any water or mine tailings slurry is stored in the reservoir; (7-1-93)

d. Before each successive enlargement of the impoundment structure; (7-1-93)

e. After each stage of enlargement of the impoundment structure is completed and before storage is allowed to exceed the level approved for the previous approved stage; (7-1-93)

f. At such other times as determined necessary by the Director. The Director will, within seven (7) days after notification by the engineer, inspect and if satisfactory, approve the completed stage of construction. Owners are encouraged to give prior notice to the Department, so that the inspection can be scheduled to prevent delays. (7-1-93)

10. Inspections, Examinations, and Tests. All materials and workmanship may be subject to inspection, examination and test by the Director at any and all reasonable times during manufacture and/or construction and at any and all places where such manufacture and/or construction are carried on. (7-1-93)

11. Rejection of Defective Material. The Director shall have the right to require the owner or engineer to reject defective material and workmanship or require its correction. Rejected workmanship shall be corrected and rejected material shall be replaced with proper material. (7-1-93)

12. Suspension of Work. The Director may order the engineer to suspend any work that may be subject to damage by climatic conditions. (7-1-93)

13. Responsibility of Engineer. These provisions shall not relieve the engineer of his responsibility to assure that construction is accomplished in accordance to approved plans and specifications or to suspend work on his own motion. (7-1-93)

14. Detailing Provisions of Specifications. The specifications shall state in sufficient detail, all provisions necessary to ensure that construction is accomplished in an acceptable manner and provide needed control for construction to ensure that a safe structure is constructed. (7-1-93)

15. Required Information. The following information shall be submitted with the plans and specifications. (7-1-93)

16. Engineer's Report. An engineer's report giving details necessary for analysis of the structure and appurtenances. Included as a part of the report where applicable shall be the following: (7-1-93)

a. Formulas and assumptions used in designs; (7-1-93)

b. Hydrologic data used in determining runoff from the drainage areas; (7-1-93)

c. Engineering properties of each type of material to be used in the embankment and of the foundation areas; (7-1-93)

d. Stability analysis, including an evaluation of overturning, sliding, upstream and downstream slopes and foundation stability; (7-1-93)

e. Geologic description of reservoir area, including evaluation of landslide potential; (7-1-93)

f. Chemical analysis of all materials composing the slurry; (7-1-93)

g. Earthquake design loads must be evaluated at all sites located east of Range 22 E., Boise Meridian. This area corresponds to Seismic Zone 3 as designated by the Recommended Guidelines of the National Dam Safety Program. Earthquake analysis may be required at other impoundment structure sites if deemed necessary by the Director; (7-1-93)

h. A seepage analysis of the embankment and reservoir bottom; (7-1-93)

i. A hydraulic analysis of the outlet system and spillway, diversion work or diversion channel; (7-1-93)

j. Engineering properties and the weathering characteristics of the proposed tailings to be stored in the impoundment; (7-1-93)

k. Other information which would aid in evaluating the safety of the design. (7-1-93)

17. Filing of Additional Information. The Director may require the filing of such additional information which in his opinion is necessary to assess safety or waive any requirement herein cited if in his opinion it is unnecessary. (7-1-93)

036. -- 039. (RESERVED)

040. BONDING (RULE 40).

An active surety bond or other means of acceptable surety payable to the Director of the Department of Water Resources shall be on file with the Director throughout the active life of the tailings disposal site. The purpose of this bond is to provide a means by which the tailings impoundment can be placed in a safe maintenance-free condition if abandoned by the owner without conforming to an abandonment plan approved by the Director. (7-1-93)

01. Filing of Bond. The bond shall be filed prior to any issuance by the Director of a certificate of approval for use of the mine tailings impoundment structure to impound mine tailings slurry and shall run for the two

(2) year approval period covered on the certificate of approval. (7-1-93)

02. Provisions of Bond. Bond provisions shall provide that the surety may be held liable for a period of up to five (5) years following notice of default on the bond. (7-1-93)

03. Amount of Bond. The bond amount will be set by the Director and is subject to revision each time it is renewed. The owner must obtain approval for the amount of his surety bond prior to each renewal. (7-1-93)

04. Cost Estimate Submitted by Engineer. In order to provide a basis for setting the bond amount, the engineer shall submit a cost estimate acceptable to the Director, together with conceptual details needed to arrive at the estimate, for abandonment of the facility at each proposed stage of its construction. (7-1-93)

05. Current Costs for Abandonment. Bond amount will be based on current costs for abandonment of the facility based on the approved cost estimate for abandonment at the present construction condition or the next approved proposed stage, whichever represents the larger bond amount. (7-1-93)

06. Determination of Bond Amount. If the final abandonment is determined to be the most costly condition, the owner may elect to use this as a basis for bonding throughout the life of the project. The Director may, however, revise the bonding amount to reflect updated costs when he feels it is necessary in order to maintain a realistic bond. (7-1-93)

07. Filing Initial Bond. The initial bond shall be filed upon completion of the first stage of construction and before the required certificate of approval is issued to allow storage of mine tailings slurry in the impoundment. No certificate of approval shall be renewed prior to filing by the owner of a bond renewal in an amount approved by the Director. (7-1-93)

08. Filing Copy of Performance Bond. Upon the filing of a copy of a performance bond with the Director, covering the terms and conditions of a state of Idaho mineral lease or an approved reclamation plan, in which these documents specify compliance with a plan of restoration of all mining operations, including the tailings impounding structure, the Director may determine the bond required of this section has been met, if the amount of the bond accurately reflects the cost associated with the abandonment plan provided by the owner. (7-1-93)

041. -- 044. (RESERVED)

045. MINE TAILINGS IMPOUNDMENT STRUCTURES DESIGN CRITERIA (RULE 45).
The following minimum design criteria shall be used for all mine tailings impoundment structures designed for installation in Idaho. These limitations are intended to serve as guidelines for a broad range of circumstances, and engineers should not consider them as a restriction to the use of other sound design criteria. Deviation from this established criteria will be considered by the Director in approving plans and specifications. (7-1-93)

01. Embankment Slopes. (7-1-93)

a. For construction of borrowed fill embankments, in the absence of a stability analysis, the slopes shall be:

Upstream slope	2:1 or flatter
Downstream slope	2:1 or flatter

(7-1-93)

b. Construction by the upstream method shall not be used in the area of the state east of Range 22 E., Boise Meridian, unless the engineer can provide evidence that the construction and operation of the tailings impoundment will achieve a relative density of sixty percent (60%) or greater in the embankment and tailings to prevent liquefaction during earthquake loading. (7-1-93)

c. Safety factors for the embankment shall be at least one and five-tenths (1.5) for static loads and a minimum of one (1) for the static plus the appropriate earthquake load. (7-1-93)

d. To insure sufficient permeability and stability of the embankment, designs will require utilizing materials other than the tailings, when the tailings materials: (7-1-93)

i. Contain greater than seventy-five percent (75) passing the #200 standard U.S. sieve, or fifty percent (50%) passing the #325 standard U.S. sieve; (7-1-93)

ii. Contain phosphate clays; (7-1-93)

iii. The design calls for the water to be impounded against the embankment; (7-1-93)

iv. Have other properties which makes them unsuitable for use as construction materials. (7-1-93)

e. Embankments designed for the storage of hazardous levels of radioactive materials shall, in addition to any requirements of these regulations, meet the criteria outlined in the Nuclear Regulatory Commission Regulatory Guide 3.11 and the Idaho Radiation Control Regulations administered by the Idaho Department of Environmental Quality. (7-1-93)

f. The design shall consider the need for drains and/or operational procedures to promote consolidation and insure that a low phreatic surface is maintained within the embankment. Drainage pipe shall not be used beneath embankments where excessive or differential settlement may cause failure of the pipes and subsequent piping of the tailings or embankment. When the quality of the mine tailings slurry is such that it will adversely affect the quality of the existing groundwater, the design should be coordinated with the Department and the Department of Environmental Quality to insure that all applicable permits are obtained. (7-1-93)

g. Instrumentation of the embankment and/or foundation will be required to insure that the structure is functioning satisfactorily. Standpipe piezometers with an inside diameter greater than one-half (1/2) inch will not be acceptable for use in fine-grained or cohesive soils in order to minimize response time. (7-1-93)

h. Tailings impoundment structures which are constructed using the tailings shall not be constructed or raised during freezing weather to prevent frost lenses in the embankment. Sufficient freeboard must be provided during the summer construction season if the disposal operation is to continue during the winter. (7-1-93)

i. If tailings are to be discharged during times of freezing weather and the embankment is to be constructed using either the upstream or centerline method, the pond shall be of sufficient size to insure that any ice formed in the tailings pond area melts during the next warm season. (7-1-93)

02. Top Width Embankment. (7-1-93)

a. In the absence of a stability analysis, the minimum top width for mine tailings impoundment structures shall be:

$$W = 2 (H \text{ to } 1/2 \text{ power}) + 4, \text{ minimum}$$

W = Top width
H = Embankment height (7-1-93)

b. The minimum top width for any tailings embankment is ten (10) feet. (7-1-93)

03. Cutoff Trenches or Walls. (7-1-93)

a. Cutoff trenches, if needed, shall be used to bond the fill through relatively pervious material to an impervious stratum or zone. The bond area shall extend up the abutments to the maximum high water or tailings impoundment elevation. Cutoff (keylock) trenches which are to be backfilled with compacted fill shall be wide enough to allow the free movement of excavation and compaction equipment. Side slopes shall be no steeper than 1:1 for depths up to twelve (12) feet, and no steeper than one and one-half (1 1/2) to one (1) for greater depths to provide for proper compaction. Flatter slopes may be required for safety and stability. (7-1-93)

b. Concrete cutoff walls may be used to bond fills to smooth rock surfaces in a similar manner as cutoff trenches and they shall be entrenched in the rock to a depth approximately one-half (1/2) the thickness of the cutoff wall. Concrete cutoff walls shall be doweled into the rock a minimum of twelve (12) inches with a maximum spacing of eighteen (18) inches for three-quarter (3/4) inch steel dowels. Concrete walls shall have a minimum projection of three (3) feet perpendicular to the rock surface and shall have a minimum thickness of twelve (12) inches. (7-1-93)

04. Borrowed Fill Embankment. (7-1-93)

a. The approved earth materials (silt soils are seldom acceptable) shall be zoned as shown in the plans and placed in the embankment in continuous, approximately level layers. Compaction shall be based on ASTM D-698 for cohesive soils and a minimum compaction of ninety-five percent (95%) of the laboratory Standard Proctor dry density is required. Compaction of cohesionless soils shall insure a relative density of sixty percent (60%) or greater. (7-1-93)

b. An acceptable working range of moisture content for the fill material shall be established and maintained. (7-1-93)

c. The material shall be compacted by means of a loaded sheepfoot roller, vibratory roller, or other acceptable means, to the required density. (7-1-93)

d. No rock shall be left in the fill material which has a maximum dimension exceeding the lift thickness. The fill material shall be free of brush and organic materials. (7-1-93)

e. The fill shall be carried up simultaneously the full design width of the structure, and the top of the fill shall be kept substantially level at all times or slope slightly toward the reservoir. (7-1-93)

f. No frozen or cloddy fill material shall be used, and no material shall be placed upon frozen, muddy or unscarified surfaces. (7-1-93)

g. All materials used in the embankment shall meet all the stability and seepage requirements as shown by a design analysis of the structure and shall be properly installed to meet these requirements. (7-1-93)

05. Riprap. (7-1-93)

a. All dams shall be protected from wave action. In cases where water is stored directly against the mine tailings impoundment structure or where wave action at maximum pool level during design inflow events would affect the integrity of the embankment, the Director may require use of riprap or other protective measures. (7-1-93)

b. If riprap is used the design shall specify the rock size and extent of blanket required to prevent erosion. (7-1-93)

06. Outlet Systems. (7-1-93)

a. Reservoirs must safely handle the design inflow for all areas draining into the reservoir. This may be done either by storing the entire design inflow or by having an outlet system or combination of systems adequate to safely pass the design inflow. If the tailings reservoir is situated on a stream channel, an outlet system or an approved alternative system capable of meeting downstream flow requirements must be provided. (7-1-93)

b. The minimum design inflow for all reservoirs shall be the flood with one percent (1%) probability of occurrence. The Director may require a greater design inflow be used in instances of high hazard, for larger mine tailings impoundment structures, or when the inflow is to be entirely stored in the reservoir during the flood period. (7-1-93)

c. The outlet system may be composed of one (1) or a combination of the following: decant line, spillway, stream channel diversion to bypass the reservoir. The system will be determined by individual reservoir conditions. Unless removal of the mine tailings impoundment structure and reservoir is part of the abandonment plan,

the outlet system shall be maintained in perpetuity, unless it is demonstrated that an outlet system is not needed. (7-1-93)

d. Outlet systems will not be allowed if their use would release toxic, highly turbid, radioactive or otherwise hazardous flows from the reservoir. In these cases the design inflow must either be entirely stored or diverted around the reservoir. (7-1-93)

e. All spillways shall be stabilized to discharge flow through the use of concrete, masonry, riprap or sod, if not constructed in resistant rock. (7-1-93)

f. Wherever possible, the spillway shall be constructed independent of the impoundment structure. It shall lead the water far enough away from the mine tailings impoundment structure so as not to endanger the structure. (7-1-93)

g. A diversion system must not subject the mine tailings impoundment structure to erosion during the design inflow event. All stream diversions shall conform to the minimum standards for stream channel alterations as written by this Department. (7-1-93)

h. Decant conduits, if under the embankment, shall be laid on a firm, stable foundation and normally must not be placed on fill. They shall have a minimum inside diameter of twelve (12) inches and one (1) of the following provisions included in the design: (7-1-93)

i. The owner shall have the conduit inspected by photographic or video tape equipment and a copy of the inspection provided to the Department, if a problem is suspected; or (7-1-93)

ii. The conduit shall be completely plugged with concrete and/or suitable material, for that portion which extends through the embankment, if a nonrepairable problem occurs within the conduit. The conduit shall consist of material which has been shown to possess the qualities necessary to perform in the environment of the specific tailings impoundment. The design life of the conduit shall be greater than the life of the mine tailings impoundment structure. The portion of the conduit through the embankment shall be completely filled with concrete, or other suitable material, and the riser portion of the conduit capped, upon abandonment of the mine tailings impoundment structure. (7-1-93)

i. All decant conduits, if under the embankment, shall have a seepage path through the impervious zone at least equivalent in length to the maximum head above the downstream end of the system. Only one third (1/3) the horizontal distance through the impervious zone will be utilized when calculating the length of the seepage path. Collars may be used to satisfy this requirement, but all collars shall extend a minimum of three (3) feet outside the conduit. Collars shall be spaced at intervals of at least seven (7) times their height and no collar may be closer to the outer surface of the impervious zone than the distance it extends out from the conduit. (7-1-93)

j. More than two (2) decant conduits are not to be used, unless special conditions warrant. (7-1-93)

07. Freeboard. A minimum freeboard of two (2) feet plus wave height (H) shall be provided on the crest of the mine tailings impoundment structure during passage of the design inflow.

$H = 1.95 (F \text{ to } 1/2 \text{ power})$
F = Fetch in miles across water surface at a design maximum level. (7-1-93)

08. Records. All instrumentation shall be read and recorded on a regular basis, and all records must be available for inspection by Department personnel on request. (7-1-93)

09. Inspection and Completion Reports. (7-1-93)

a. It is the responsibility of the engineer to submit test reports along with periodic inspection and progress reports to the Director. (7-1-93)

b. Upon completion of each approved stage of construction, a letter shall be sent to the Director,

giving a short, narrative account covering all items of work. As-built plans shall be submitted to the Director if the completed project was substantially changed from the plans originally approved. (7-1-93)

10. Abandonment. An abandonment plan which provides a stable, maintenance-free condition when the mine tailings impoundment is no longer being regularly maintained by the owner or the owner has ceased to use the site for disposal of mine tailings slurry, shall be submitted to the Director by the owner. The plan shall provide a safe condition by providing for removal of the tailings, or construction of a maintenance-free spillway or diversion works where needed to accommodate runoff. The plan shall include provisions to prevent water storage behind, and erosion of, the mine tailings impoundment structure and the impounded tailing. A conceptual plan which includes an engineering design report, detailed enough to provide the required cost estimate for bonding purposes, will be required prior to the approval of the proposed project. Detailed construction plans must be approved by the Director prior to implementation of any abandonment work. The Director shall notify the owner upon acceptance of completion of abandonment in accordance with the approved plan. (7-1-93)

046. -- 049. (RESERVED)

050. DAMS STORING TAILING AND WATER (RULE 50).

Construction of dams intended to store water in excess of the water being decanted in the tailing placement operation shall also meet the requirements for water storage reservoirs specified in the Department's Rules for the Safety of Dams. The Director may waive any or all of these requirements if, in the opinion of the Director, sound engineering design supplied by the owner indicates such requirements are not applicable. (7-1-93)

051. -- 054. (RESERVED)

055. PROVISIONS OF CHAPTER 17, TITLE 42, IDAHO CODE (RULE 55).

The provisions of Sections 42-1709 through 42-1721, Idaho Code, are a part of these rules. (7-1-93)

056. -- 999. (RESERVED)

**IDAPA 37
TITLE 03
CHAPTER 06**

37.03.06 – SAFETY OF DAMS RULES

000. LEGAL AUTHORITY (RULE 0).

These rules are adopted pursuant to Chapter 17, Section 42-1714, Idaho Code, and implement the provisions of Sections 42-1709 through 42-1721, Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are titled IDAPA 37.03.06, "Safety of Dams Rules." (7-1-93)

02. Scope. (7-1-93)

a. The requirements that follow are intended as a guide to establish acceptable standards for construction and to provide guidelines for safety evaluation of new or existing dams. The rules apply to all new dams, to existing dams to be enlarged, altered or repaired, and maintenance of certain existing dams, as specifically provided in the rules. The Director will evaluate any deviation from the standards hereinafter stated as they pertain to the safety of any given dam. The standards are not intended to restrict the application of other sound engineering design principles. Engineers are encouraged to submit new ideas which will advance the state of the art and provide for the public safety. (7-1-93)

b. Under no circumstances shall these rules be construed to deprive or limit the 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 Director from any owner of a dam for the proper administration of the law. State sovereignty as expressed in Policy 1A of the adopted State Water Plan for independent review and approval of dam construction, operation and maintenance will not be waived due to any overlapping jurisdiction from federal agencies. (7-1-93)

002. WRITTEN INTERPRETATION (RULE 2).

003. ADMINISTRATIVE APPEALS (RULE 3).

Any owner who is aggrieved by a determination or order of the Director may request a hearing pursuant to the provisions of Section 42-1701A(3), Idaho Code, and the Department's adopted Rules of Procedure. (7-1-93)

004. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

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

01. Active Storage. The water volume in the reservoir stored for irrigation, water supply, power generation, flood control, or other purposes but does not include flood surcharge. Active storage is the total reservoir capacity in acre-feet, less the inactive and dead storage. (7-1-93)

02. Alterations, Repairs or Either of Them. Only such alterations or repairs as may directly affect the safety of the dam or reservoir, as determined by the Director. Alterations, repairs does not include routine maintenance items. (See Rule Subsections 055.02.a. and 055.02.b.) (7-1-93)

03. Appurtenant Structures. Ancillary features (e.g. outlets, tunnels, gates, valves, spillways, auxiliary barriers) used for operation of a dam, which are owned by the dam owner or the owner has responsible control. (7-1-93)

04. Board. The Idaho Water Resource Board. (7-1-93)

05. Certificate of Approval. A certificate issued by the Director for all dams listing restrictions imposed by the Director, and without which no new dams shall be allowed by the owner to impound water. A

certificate of approval is also required for existing dams before impoundment of water is authorized. (7-1-93)

06. Dam. Any artificial barrier together with appurtenant works, which is or will be ten (10) feet or more in height or has or will have an impounding capacity at maximum storage elevation of fifty (50) acre-feet or more. Height of a dam is defined as the vertical distance from the natural bed of the stream or watercourse at the downstream toe of the barrier, as determined by the Director, or from the lowest elevation of the outside limit of the barrier, if it is not across a stream channel or watercourse, to the maximum water storage elevation. (7-1-93)

07. Small Dams. Artificial barriers twenty (20) feet or less in height that are capable of storing less than one hundred (100) acre-feet of water. (7-1-93)

08. Intermediate Dams. Artificial barriers more than twenty (20) feet, but less than forty (40) feet in height, or are capable of storing one hundred (100) acre-feet or more, but less than four thousand (4,000) acre-feet of water. (7-1-93)

09. Large Dams. Artificial barriers forty (40) feet or more in height or are capable of storing four thousand (4,000) acre-feet or more of water. (7-1-93)

10. Department Jurisdiction. The following are not subject to department jurisdiction: (7-1-93)

a. Artificial barriers constructed in low risk areas as determined by the Director, which are six (6) feet or less in height, regardless of storage capacity. (7-1-93)

b. Artificial barriers constructed in low risk areas as determined by the Director, which impound ten (10) acre-feet or less at maximum water storage elevation, regardless of height. (7-1-93)

c. Artificial barriers in a canal used to raise or lower water therein or divert water therefrom. (7-1-93)

d. Fills or structures determined by the Director to be designed primarily for highway or railroad traffic. (7-1-93)

e. Fills, retaining dikes or structures, which are under jurisdiction of the Department of Environmental Quality, designed primarily for retention and treatment of municipal, livestock, or domestic wastes, or sediment and wastes from produce washing or food processing plants. (7-1-93)

f. Levees, that store water regardless of storage capacity. Levee means a retaining structure alongside a natural lake which has a length that is two hundred (200) times or more greater than its greatest height measured from the lowest elevation of the toe to the maximum crest elevation of the retaining structure. (7-1-93)

11. Days Used in Establishing Deadlines. Calendar days including Sundays and holidays. (7-1-93)

12. Dead Storage. The water volume in the bottom of the reservoir stored below the lowest outlet and generally is not withdrawn from storage. (7-1-93)

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

14. Design Evaluation. The engineering analysis required to evaluate the performance of a dam relative to earthquakes, floods or other site specific conditions that are anticipated to affect the safety of a dam or operation of appurtenant facilities. (7-1-93)

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

16. Engineer. A registered professional engineer, licensed as such by the state of Idaho. (7-1-93)

17. Enlargement. Any change in or addition to an existing dam or reservoir, which raises or may raise the water storage elevation of the water impounded by the dam. (7-1-93)

18. **Factor of Safety.** A ratio of available shear strength to shear stress, required for stability. (7-1-93)
19. **Flood Surge.** A variable volume of water temporarily detained in the upper part of a reservoir, in the space (or part thereof) that is filled by excess runoff or flood water, above the maximum storage elevation. Flood surge cannot be retained either because of physical or administrative factors but is passed through the reservoir and discharged by the spillway(s) until the reservoir level has been drawn down to the maximum storage elevation. (7-1-93)
20. **Inflow Design Flood (IDF).** The flood specified for designing the dam and appurtenant facilities. (7-1-93)
21. **Maximum Credible Earthquake.** The largest earthquake that reasonably appears capable of occurring under the conditions of the presently known geological environment. (7-1-93)
22. **Operation Plan.** A specific plan that will assure the project is safely managed for its intended purpose and which provides reservoir operating rule curves or specific limits and procedures for controlling inflow, storage, and/or release of water, diverted into, passed through or impounded by a dam. (7-1-93)
23. **Owner.** Includes any of the following who own, control, operate, maintain, manage, hold the right to store and use water from the reservoir or propose to construct a dam or reservoir. (7-1-93)
- a. The state of Idaho and any of its departments, agencies, institutions and political subdivisions; (7-1-93)
 - b. The United States of America and any of its departments, bureaus, agencies and institutions; provided that the United States of America are not required to pay any of the fees required by Section 42-1713, Idaho Code, and shall submit plans, drawings and specifications as required by Section 42-1712, Idaho Code, for information purposes only; (7-1-93)
 - c. Every municipal or quasi-municipal corporation. (7-1-93)
 - d. Every public utility; (7-1-93)
 - e. Every person, firm, association, organization, partnership, business trust, corporation or company; (7-1-93)
 - f. The duly authorized agents, lessees, or trustees of any of the foregoing; (7-1-93)
 - g. Receivers or trustees appointed by any court for any of the foregoing. (7-1-93)
24. **Reservoir.** Any basin which contains or will contain the water impounded by a dam. (7-1-93)
25. **Storage Capacity.** The total storage in acre-feet at the maximum storage elevation. (7-1-93)
26. **Water Storage Elevation.** The maximum elevation of the water surface which can be obtained by the dam or reservoir. It is further defined as the storage level attained when the reservoir is filled to capacity (i.e. to the spillway crest) or an authorized storage level attained by installing flashboards to increase the reservoir capacity, or a specified upper storage limit, which is attained by operation of moveable gates that raises the reservoir to a controlled operating level. The maximum storage elevation is an equivalent term of water storage elevation. (7-1-93)
27. **Release Capability.** The ability of a dam to pass excess water through the spillway(s) and outlet works and otherwise discharge. (7-1-93)

011. -- 024. (RESERVED)

025. **DAM SIZE CLASSIFICATION AND RISK CATEGORY (RULE 25).**

01. Size Classification. The following table defines the height and storage capacity limits used by the Department to classify dams:

Size Classification	Height (ft)		Storage Capacity
Small	20 ft. or less	and	Less than 100 acre-ft.
Intermediate	More than 20 ft. but less than 40 ft.	or	100 Acre-ft or more, but less than 4000 acre ft
Large	40 ft. or more	or	4000 acre-ft., or more

(7-1-93)

02. Risk Category. The following table describes categories of risk used by the Department to classify losses and damages anticipated in down-stream areas, that could be attributable to failure of a dam during typical flow conditions.

Risk Category	Dwellings	Economic Losses
Low	No permanent structures for human habitation.	Minor damage to land, crops, agricultural, commercial or industrial facilities, transportation, utilities or other public facilities or values.
Significant	No concentrated urban development, 1 or more permanent structures for human habitation which are potentially inundated with flood water at a depth of 2 ft. or less or at a velocity of 2 ft. per second or less.	Significant damage to land, crops, agricultural, commercial or industrial facilities, loss of use and/or damage to transportation, utilities or other public facilities or values.
High	Urban development, or any permanent structure for human habitation which are potentially inundated with flood water at a depth of more than 2 ft. or at a velocity of more than 2 ft. per second.	Major damage to land, crops, agricultural, commercial or industrial facilities, loss of use and/or damage to transportation, utilities or other public facilities or values.

(7-1-93)

03. Determination of Size and Risk Category. The Director shall determine the size and risk category of a new or existing dam. (7-1-93)

026. -- 029. (RESERVED)

030. AUTHORITY OF REPRESENTATIVE (RULE 30).

When plans, drawings and specifications are filed by another person on behalf of an owner, written evidence of authority to represent the owner shall be filed with the plans, drawings and specifications. (7-1-93)

031. -- 034. (RESERVED)

035. FORMS (RULE 35).

Forms required by these rules are available from the Department to interested parties upon request. Construction of a small dam requires the filing of Form 1710 and construction of an intermediate or large dam requires the filing of Form 1712. (7-1-93)

036. -- 039. (RESERVED)

040. CONSTRUCTION PLANS, DRAWINGS AND SPECIFICATIONS (RULE 40).

The following provisions shall apply in submitting plans, drawings and specifications. (7-1-93)

01. Submission of Duplicate Plans, Drawings and Specifications. Any owner who shall desire to construct, enlarge, alter or repair any intermediate or large dam, shall submit duplicate plans, drawings and specifications prepared by an engineer for the proposed work to the Director with required fees. The Director may, however, require the submittal of plans, drawings and specifications prior to the construction of any dam. (7-1-93)

02. Applying for and Obtaining Written Approval. Construction of a new dam or enlargement, alteration or repairs on existing dams shall not be commenced until the owner has applied for and obtained written approval of the plans, drawings and specifications. Alteration or repairs do not include routine maintenance for which prior approval is not required. (See Rule Subsections 055.02.a and 055.02.b) (7-1-93)

03. Plans Shall Be Prepared on a Good Quality Vellum or Mylar. Transparent copies reproducible by standard duplicating processes, if accurate, legible and permanent, will be accepted. Plans may initially be submitted in the form of nonreproducible paper prints. After reviewing the plans, the Director will notify the owner of any required changes. (7-1-93)

04. Preparation and Submission of Plans. Plans and drawings shall be of a sufficient scale with an adequate number of views showing proper dimensions, so that the plans and drawings may be readily interpreted and so that the structure and appurtenances can be built in conformance with the plans and drawings. (7-1-93)

05. Information Included with Plans. Plans for new dams shall include the following information and plans for enlargement, alteration or repair of an existing dam shall include as much of the following information as required by the Director to adequately describe the enlargement, alteration or repair and the affect on the existing dam or its appurtenant facilities: (7-1-93)

a. A topographic map of the dam site showing the location of the proposed dam by section, township and range, and location of spillway, outlet works, and all borings, test pits, borrow pits; (7-1-93)

b. A profile along the dam axis showing the locations, elevations, and depths of borings or test pits, including logs of bore holes and/or test pits; (7-1-93)

c. A maximum cross-section of the dam showing elevation and width of crest, slopes of upstream and downstream faces, thickness of riprap, zoning of earth embankment, location of cutoff and bonding trenches, elevations, size and type of outlet conduit, valves, operating mechanism and dimensions of all other essential structural elements such as cutoff walls, filters, embankment zones, etc.; (7-1-93)

d. Detailed drawings showing plans, cross and longitudinal sections of the outlet conduits, valves and controls for operating the same, and trash racks; (7-1-93)

e. A curve or table showing the capacity of the reservoir in acre-feet vs gauge height (referenced to a common project datum) of the reservoir storage level, and the computations used in making such determinations. (7-1-93)

f. A curve or table showing the outlet discharge capacity in cubic feet per second vs gauge height of reservoir storage level, and the equation used in making such determination; (7-1-93)

g. A curve showing the spillway discharge capacity in cubic feet per second vs gauge height of the reservoir or flood surcharge level above the spillway crest and the equation used in making such determinations; (7-1-93)

h. Detailed drawings of spillway structure(s), cross-sections of the channel heading to and from the spillway and a spillway profile; (7-1-93)

i. Plans for flow measuring devices capable of providing an accurate determination of the flow of the stream above and below the reservoir, and a permanent reservoir or staff gauge near the outlet of the reservoir plainly

marked in feet and tenths of a foot referenced to a common project datum; (7-1-93)

j. Plans or drawings of instruments, recommended by the owner's engineer to monitor performance of intermediate or large dams to assure safe operation, or as may be required by the Director to monitor any dam regardless of size, that is situated upstream of a high risk area. (7-1-93)

06. Specifications. Specifications shall include provisions acceptable to the Director for adequate observation, inspection and control of the work by a registered professional engineer, during the period of construction. (7-1-93)

07. Changes to Specifications. The specifications shall not be materially changed without prior written consent of the Director. Significant design changes, while construction is underway, shall be submitted for the Director's review and approval. (7-1-93)

08. Inspections. The owner shall provide for and allow inspections by the Department to assure the dam and appurtenant structures are constructed in conformance with the approved plans and specifications, or as may be revised by the engineer and approved by the Director if there are unforeseen conditions discovered during site excavation or construction of the dam which potentially jeopardize the future integrity and safety of the dam. Certain stages of construction shall not proceed without inspection and approval by the Director, including the following: (7-1-93)

a. After clearing and excavation of the foundation area and cutoff trench and prior to placing any fill material. (7-1-93)

b. After installation of the outlet conduit and collars and before placing any backfill material around the conduit; (7-1-93)

c. After construction is completed and before any water is stored in the reservoir. (7-1-93)

d. At such other times as determined necessary by the Director. The Director will, upon seven (7) days notice, inspect and if satisfactory, approve the completed stage of construction. The Director may conduct inspections upon shorter notice upon good reason being shown or upon a schedule jointly agreed upon by the Director and the owner. (7-1-93)

09. Inspection, Examination and Testing of Materials. All materials and workmanship shall be subject to inspection, examination and testing by the Director at any and all times. (7-1-93)

10. Rejection of Defective Material. The Director shall have the right to require the owner or engineer to reject defective material and workmanship or require its removal or correction respectively. Rejected workmanship shall be corrected and rejected material shall be replaced with proper material. (7-1-93)

11. Suspension of Work. The Director may order the engineer to suspend any work that may be subject to damage by inclement weather conditions. (7-1-93)

12. Responsibility of Engineer. These provisions shall not relieve the engineer of his responsibility to assure that construction is accomplished in accordance with the approved plans and specifications or to suspend work on his own motion. (7-1-93)

13. Detailing Provisions of Specifications. The specifications shall state in sufficient detail, all provisions necessary to insure that construction is accomplished in an acceptable manner and provide needed control of construction to insure that a safe structure is constructed. (7-1-93)

14. Design Report. Owners proposing to construct, enlarge, alter or repair an intermediate or large dam shall submit an engineering or design evaluation report with the plans and specifications. The engineering report shall include as much of the following information as necessary to present the technical basis for the design and to describe the analyses used to evaluate performance of the structure and appurtenances. (7-1-93)

- a. All technical reference(s); equations and assumptions used in the design; (7-1-93)
- b. Hydrologic data used in determining runoff from the drainage areas; reservoir flood routing(s); and hydraulic evaluations of the outlet(s) and the spillway(s). (7-1-93)
- c. Engineering properties of the foundation area and of each type of material to be used in the embankment. (7-1-93)
- d. A stability analysis, including an evaluation of overturning, sliding, slope and foundation stability and a seepage analysis; (7-1-93)
 - i. Seismic design loads shall be evaluated and applied at all large dams to be located in significant or high risk areas, in Seismic Zone 3, which for purposes of these rules is the area in Idaho east of Range 22 East, Boise Meridian. The evaluation required of large dams, that are classified significant or high risk, shall use the maximum ground motion/ acceleration generated by the maximum credible earthquake, which could affect the dam site. (7-1-93)
 - ii. Seismic analysis may be required as determined by the Director for large dams located above high risk areas in Seismic Zone 2, which for purposes of these rules is the area in Idaho west of Range 22 East, Boise Meridian. (7-1-93)

15. Additional Information/Waiver. The Director may require the filing of such additional information which in his opinion is necessary or waive any requirement herein cited if in his opinion it is unnecessary. (7-1-93)

16. Alternate Plans. The Director may accept plans and specifications or portions thereof prepared for other agencies which are determined to meet the requirements of Rule 40. (7-1-93)

041. -- 044. (RESERVED)

045. OPERATION PLAN (RULE 45).

An operation plan is required as described in the following rules and shall provide procedures for emergency operations and include guidelines and procedures for inspection, operation and maintenance of the dam and appurtenances, including any instruments required to monitor performance of the dam during normal operating cycles, critical filling or flood periods, or as may be required to monitor new or existing dams subject to earthquake effects. (7-1-93)

01. New, Reconstructed or Enlarged Dams. Prior to the initial filling of the reservoir or refilling the reservoir for a reconstructed or enlarged dam in the following categories, the owner shall file with the Director an operation plan for review and approval: (7-1-93)

- a. Small, high risk. (7-1-93)
- b. Intermediate, significant risk. (7-1-93)
- c. Intermediate, high risk. (7-1-93)
- d. Large, any risk category. (7-1-93)

02. Existing Dams. Unless exempted by the Director, owners of the following categories of dams shall file an operation plan with the Director on or before July 1, 1992 for review and approval: (7-1-93)

- a. Intermediate, high risk. (7-1-93)
- b. Large, significant risk. (7-1-93)
- c. Large, high risk. (7-1-93)

03. Alternate Plans. The Director may accept existing studies or plans in lieu of an operation plan if the Director determines the information provided fulfills the requirements of Rule 45. (7-1-93)

046. -- 049. (RESERVED)

050. NEW INTERMEDIATE OR LARGE DAMS (RULE 50).

The following minimum criteria shall be used to evaluate the design of intermediate or large earthfill dams in Idaho. These standards are intended to serve as guidelines for a broad range of circumstances, and engineers should not consider them as a restriction to the use of other sound engineering design principles. Exclusion from this established criteria will be considered by the Director on a case-by-case basis in approving plans and specifications and evaluating dams. Dams constructed of other materials shall comply with these criteria as found appropriate by the Director and with other engineering criteria approved by the Director. (7-1-93)

01. Embankment Stability. Slope stability analyses shall determine the appropriate upstream and downstream slopes. Unless slope stability analysis determines otherwise, the embankment slopes shall be:

Upstream slope	3:1 or flatter
Downstream slope	2:1 or flatter

(7-1-93)

a. For large high and significant hazard dams and intermediate high hazard dams the embankment shall be designed, constructed and maintained to assure stability under static loads and prevent instability due to seepage or uplift forces, or drawdown conditions. Transmission of seepage through the embankment, abutments and foundation shall be controlled to prevent internal removal of material and instability where seepage erodes or emerges. (7-1-93)

b. The design analysis shall consider the need for installing filters, filter fabric and/or toe drains to stabilize the fill and protect against piping of the embankment fill material. (7-1-93)

c. The minimum factor of safety for a dam under steady state condition shall be 1.5. During rapid drawdown of the reservoir, the minimum factor of safety for the embankment shall be 1.2. For dams constructed in Seismic Zone 3, the minimum factor of safety under seismic load shall be 1.0. (7-1-93)

d. The stability of an embankment subjected to earthquake ground motions can be analyzed by dynamic response or pseudo-static analyses. Pseudo-static analyses are acceptable for embankment dams constructed of soils that will not build-up excess pore pressures due to shaking, nor sustain more than fifteen percent (15%) strength loss during earthquake events, otherwise the stability of an embankment dam shall be analyzed by a dynamic response method. A pseudo-static analysis simplifies the structural analysis (i.e. the resultant force of the seismic occurrence is represented by a static horizontal force applied to the critical section to derive the factor of safety against sliding along an assumed shear surface). The value of the horizontal force used in the pseudo-static analysis, is the product of the seismic coefficient and the weight of the assumed sliding mass. (7-1-93)

e. Slope deformation analyses are required for dams located in Seismic Zone 3, that are constructed of cohesionless soils and/or on foundations which are subject to liquefaction, when the peak acceleration at the site is anticipated to exceed 0.15g. (7-1-93)

f. The design analyses for new dams located in high risk areas (in Seismic Zone 2 or 3) shall include geologic and seismic reports, location of faults and history of seismicity. (7-1-93)

g. Where in the opinion of the Director, embankment design or conditions warrant, instrumentation of the embankment and/or foundation will be required. (7-1-93)

h. The design analyses for new large dams located in high risk areas (in Seismic Zone 3) shall include an evaluation of potential landslides in the vicinity of the dam or immediate area of the reservoir, which could cause

damage to the dam or appurtenant structures, obstruct the spillway or suddenly displace water in the reservoir causing the dam to overtop. If potential landslides pose such a threat, they shall be stabilized against sliding, with a minimum factor of safety of 1.5. (7-1-93)

02. Top Width. The crest width shall be sufficient to provide a safe percolation gradient through the embankment at the level of the maximum storage elevation. The minimum crest width (top of embankment) shall be determined by:

$$W = H / 5 + 10$$

W = Width, in feet
H = Structural Height, in feet

The minimum top width for any dam is twelve (12) feet. (7-1-93)

03. Cutoff Trenches or Walls. Cutoff trenches shall be excavated through relatively pervious foundation material to an impervious stratum or zone. The trench shall be backfilled with suitable material, compacted to the specified density. The cutoff trench shall extend up the abutments to the maximum storage elevation. (7-1-93)

a. Cutoff trenches shall be wide enough to allow the free movement of excavation and compaction equipment. Side slopes shall be no steeper than one to one (1:1) for depths up to twelve (12) feet, and no steeper than one and one half to one (1 1/2:1) for greater depths to provide for proper compaction. Flatter slopes may be required for safety and stability. (7-1-93)

b. Concrete cutoff walls may be used to bond fills to smooth rock surfaces in a similar manner as cutoff trenches and shall be entrenched in the rock to a depth approximately one-half the thickness of the cutoff wall. Concrete cutoff walls shall be doweled into the rock a minimum of eight (8) inches with a maximum spacing of eighteen (18) inches for three-fourths (3/4) inch steel dowels. Concrete walls shall have a minimum projection of three (3) feet perpendicular to the rock surface and shall have a minimum thickness of twelve (12) inches. (7-1-93)

04. Impervious Core Material. The approved earth materials (silt soils are seldom acceptable) shall be zoned as shown in the plans and placed in the embankment in continuous, approximately level layers, having a thickness of not more than six (6) inches before compaction. Compaction shall be based on ASTM D-698. A minimum compaction of ninety-five percent (95%) is required. (7-1-93)

a. An acceptable working range of moisture content for the core material shall be established and maintained. (7-1-93)

b. The material shall be compacted by means of a loaded sheepfoot or pneumatic roller to the required density. (7-1-93)

c. No rock shall be left in the core material which has a maximum dimension of more than four (4) inches. The core material shall be free of organic and extraneous material. (7-1-93)

d. The core material shall be carried up simultaneously the full width and length of the dam, and the top of the core material shall be kept substantially level at all times, or slope slightly toward the reservoir. (7-1-93)

e. No frozen or cloddy material shall be used, and no material shall be placed upon frozen, muddy or unscarified surfaces. (7-1-93)

f. All materials used in the dam shall meet the stability and seepage requirements as shown by a design analysis of the structure and shall be properly installed to meet these requirements. (7-1-93)

05. Drains. Toe or chimney drains or free draining downstream material shall be installed where necessary to maintain the phreatic line within the downstream toe. (7-1-93)

a. Filter design for chimney drains, filter blankets and toe drains in clay and silt soils shall be selected using the following design criteria, unless deviations are substantiated by laboratory tests. All tests are subject to

review and approval by the Director.

D15 filter/D15 base > 5 but < 20

D15 filter/D85 base < 5

D50 filter/D50 base < 25

D85 filter > 2 times diameter of pipe perforations, or 1.2 times width of pipe slots. (7-1-93)

b. Filter material requirements are determined by comparing the particle size distribution of the filter to the particle size distribution of the materials to be protected;

e.g. D50 filter
D50 material to be protected

Where D is the particle size passing a mechanical (sieve) analysis expressed as a percentage by weight. (7-1-93)

c. The base material should be analyzed considering the portion of the material passing the No. 4 sieve, for designing filters for base materials that contain gravel size particles. To assure internal stability and prevent segregation of the filter material, the coefficient of uniformity (D60/D10) shall not be greater than 20. (7-1-93)

d. The minimum thickness of filter blankets and chimney drains shall be twelve (12) inches, with the maximum size particle passing the one (1) inch sieve. The maximum particle size may be increased with increasing thickness of the filter, by the rate of one (1) inch per foot of filter. However, the maximum particle shall not exceed three (3) inches. Zoned filters and chimney drains must not be less than twelve (12) inches thick per each zone. The width of granular filters shall not be less than the width of the installation equipment unless the plans and specifications include construction procedures adequate to insure the integrity of a narrower width. (7-1-93)

e. Perforated drain pipes must have a minimum of six (6) inches of drain material around the pipe. The maximum particle size shall not exceed one-half (1/2) inch unless the layer thickness is increased at the rate of one (1) inch per foot of filter. Underdrains and collection pipes must be constructed of noncorrosive material. (7-1-93)

06. Freeboard. The elevation of the top of the embankment shall be constructed and maintained above the flood surcharge level to prevent the dam from overtopping during passage of the inflow design flood and to provide freeboard for wind generated waves. Camber shall be included in the design and incorporated in the construction of the top of the embankment, unless waived by the Director. Camber may be estimated by multiplying the structural height of the dam by five percent (5%). (7-1-93)

a. The height of wind generated waves (H) moving across a surcharged reservoir can be estimated by the following equation:

$H = 1.95 (F/2)$ where F = fetch, the distance in miles across the reservoir, measured perpendicular to the major axis of the dam. (7-1-93)

b. For large, high risk dams the minimum freeboard shall be two (2) feet plus wave height during passage of the one percent (1%) flood or equal to the surcharge elevation of the reservoir during passage of the inflow design flood whichever is greater. (7-1-93)

c. Estimation of the height of the wind generated wave using the empirical equation in Rule 050.06.a. shall not preclude a more conservative design including consideration of fill materials, embankment zoning, slope surface protection, drainage or other safety factors. (7-1-93)

07. Riprap. All dams which are subject to erosion shall be protected from wave action. The design engineer, with approval of the Director, shall determine whether or not rock riprap or other protection is necessary. (7-1-93)

a. Where rock riprap is used, it shall be placed on a granular bedding material, and extend up the slope, from three (3) feet below the normal minimum operating level to the top of the dam. (7-1-93)

b. Where riprap is required by Rule Subsection 055.07, pipes, cables, brush, tree growth, dead growth, logs, or floating debris are not acceptable substitutes for rock riprap and granular bedding material. (7-1-93)

08. Outlet Conduits. All reservoirs shall be provided with an outlet conduit of sufficient capacity to prevent interference with natural streamflow through the reservoir to the injury of downstream appropriators unless waived by the Director. In addition to any natural flow releases, the outlet conduit should be of sufficient capacity to pass at the same time, the maximum water requirement of the owner. A larger outlet conduit may be required to provide adequate release capability as determined by the Director. (7-1-93)

a. Outlet conduits shall be laid on a firm, stable foundation and normally not be placed on fills which can consolidate, allow differential settlement, and cause separation or misalignment of the pipe. Unless otherwise required, the outlet shall have a minimum inside diameter of twelve (12) inches. The conduits shall be of reinforced concrete or of metal pipe encased in concrete, poured with a continuous seal between the concrete and the trench except as otherwise approved by the Director. Void spaces and uncompacted areas shall not be covered over when the outlet trench is backfilled. Outlets shall be properly aligned on an established grade and may be supported on a concrete cradle, or otherwise supported and kept aligned when the outlet is covered. (7-1-93)

b. Asphalt dipped or other metal pipe is not acceptable unless it is encased in concrete. Exceptions may be made only where conditions warrant, but in no case shall the reasonable life expectancy of the pipe be less than the design life of the dam. (7-1-93)

c. All outlet conduits shall have a seepage path through the impervious zone at least equivalent in length to the maximum head above the downstream end of the system. Only one-third (1/3) the horizontal distance through the impervious zone will be utilized when calculating the length of the seepage path. Collars may be used to satisfy this requirement but all collars shall extend a minimum of two (2) feet outside the conduit for dams up to thirty (30) feet in height and a minimum of three (3) feet for dams above that height. Collars shall be spaced at intervals of at least seven (7) times their height and no collar may be closer to the outer surface of the impervious zone than the distance it extends out from the conduit. (7-1-93)

d. The use of multiple conduits is allowed only upon the written approval of the Director. (7-1-93)

09. Gates. All conduits shall be gated on the upstream end, unless otherwise approved by the Director, with either a vertical or an inclined gate. All conduits shall be vented directly behind the gate unless otherwise determined by the Director. Reservoirs storing water during the winter and subject to severe ice conditions shall have inclined gate controls enclosed in a protective sleeve which is buried. All gate stem pedestals shall be made of concrete. All trash racks shall slope toward the reservoir. At least one (1) of the sides of the inlet structure shall be open to allow water to flow into the outlet conduit and shall be covered with a trash rack. Trash racks should be designed with bars primarily in one (1) direction so they can be cleaned. If fish screens are used, they shall be placed over the trash rack and shall be removable for cleaning, or of the self-cleaning type. (7-1-93)

10. Outlet Controls. Outlet controls shall be installed at a stable location, on the crest or on an elevated platform, or within an enclosure when required, which is readily accessible, but secured to prevent unauthorized operation. (7-1-93)

11. Release Capability. Based on the size of the dam and on the risk category assigned by the Director, the release capability of a dam shall equal or exceed the inflow design flood in the following table:

Downstream Risk Category	Size Classification	Inflow Design Flood
Low	Small	Q50
	Intermediate	Q100

Downstream Risk Category	Size Classification	Inflow Design Flood
	Large	Q500
Significant	Small	Q100
	Intermediate	Q500
	Large	0.5 PMF
High	Small	Q100
	Intermediate	0.5 PMF
	Large	PMF

NOTE: The inflow design flood(s) indicated in the table include specific frequency floods (2%/50yr, 1%/100 yr.) expressed in terms of exceedance with a probability the flood will be equaled or exceeded in any given year (a fifty (50) year flood has a two percent (2%) chance of occurring in any given year and a one hundred (100) year flood has a one percent (1%) chance of occurring in any given year); or PMF - probable maximum flood, which may be expected from the most severe combination of meteorologic and hydrologic conditions that are reasonably possible in the region. The PMF is derived from the probable maximum precipitation (PMP) which is the greatest theoretical depth of precipitation for a given duration that is physically possible over a particular drainage area at a certain time of year. (7-1-93)

a. All spillways shall be stabilized for the discharge of flow by the use of concrete, masonry, riprap or sod, if not constructed in resistant rock. (7-1-93)

b. Where site conditions allow, the spillway shall be constructed independent of embankment dams. The spillway(s) shall guide the discharge of water away from the dam embankment so as not to erode or endanger the structure. (7-1-93)

c. The minimum base width of an open-channel spillway shall be ten (10) feet. Conduits or siphon pipes other than glory hole spillways are not acceptable substitutes for an open-channel spillway. (7-1-93)

d. The effectiveness of spillways shall be undiminished by bridges, fences, pipelines or other structures. (7-1-93)

e. Unless expressly authorized in writing by the Director, or approved as an integral part of an operation plan, stop logs or flashboards shall not be installed in spillways. (7-1-93)

12. Reservoir Site. The dam site shall be cleared of all trees, brush, large rocks, and debris unless otherwise waived by the Director. The reservoir site shall be cleared of all woody material, growth or debris that is large enough to lodge in the spillway, or outlet works, except as otherwise approved by the Director. (7-1-93)

13. Inspection and Completion Reports. As construction proceeds, it is the responsibility of the engineer to submit test reports (e.g. soil material analyses, density tests, concrete strength tests) along with periodic inspection and progress reports to the Director. (7-1-93)

a. Upon completion of construction the owner or his engineer shall provide the Director a short, written narrative account of all items of work. Record drawings and revised specifications shall be submitted to the Director if the completed project has been substantially changed from the plans and construction specifications originally approved. (7-1-93)

b. The engineer representing the owner shall certify that construction, reconstruction, enlargement, replacement or repair of the dam and appurtenances was completed in accordance with the record drawings and specifications, or as revised. (7-1-93)

051. -- 054. (RESERVED)

055. EXISTING INTERMEDIATE OR LARGE DAMS (RULE 55).

All dams regulated by the department shall be operated and maintained to retain the embankment dimensions and the hydraulic capacity of the outlet works and spillway(s) as designed and constructed, or as otherwise required by these rules. (7-1-93)

01. Analyses Required. The analyses required by Rule 40 are not applicable to existing dams except as required in Rule Subsections 055.01.a. and 055.01.e. unless for good cause, the Director specifically requires the analyses. Dams constructed of other than earth material shall comply with these criteria, as determined by the Director, or with other engineering criteria approved by the Director. (7-1-93)

a. For large, significant or high risk dams, the release capability required by Rule Subsection 050.11 shall be evaluated and applied to the structure. Dams of other size and risk are required to provide the release capability of Rule Subsection 050.11 but are not required to conduct the analyses. (7-1-93)

b. Every dam, unless exempted by the Director shall have a spillway with a capacity to pass a flood of one percent (1%) (two percent (2%) for small low hazard dams) occurring with the reservoir full to the spillway crest at the beginning of the flood while maintaining the freeboard required by Rule Subsection 050.06. (7-1-93)

c. The Director may waive the spillway requirement for dams proposing off stream storage or upon a showing acceptable to the Director. (7-1-93)

d. The release capability can include the capacity of spillway(s) and outlet(s), diversion facilities, or other appurtenant structures, and any approved operating procedures which utilize upstream storage, diversion and flood routing storage to pass flood events. The remainder of the required release capacity, if any, may be met by the following: (7-1-93)

i. Reconstruction, enlargement or addition of spillway(s), outlet(s), diversion facilities or other appurtenant structures. (7-1-93)

ii. A showing acceptable to the Director that failure of the dam during a flood of the specified magnitude described in Rule Subsection 050.11 would not substantially increase downstream damages over and above the losses and damages that would result from any natural flood up to that magnitude. (7-1-93)

iii. A showing acceptable to the Director that the release capability of the dam together with other emergency release modes such as a controlled failure or overtopping of the dam would not result in a larger rate of discharge than the rate of inflow to the reservoir. (7-1-93)

iv. A showing acceptable to the Director that limiting physical factors unique to the dam site exist that prevent construction of a spillway or other release capability mechanisms during a flood of the specified magnitude described in Rule Subsection 050.11 provided the owner implements storage operational procedures and/or provides for emergency warning to protect life and property. (7-1-93)

e. For large, high risk dams, the seismic design loads shall be evaluated and applied to dams located east of Range 22E, B.M. The evaluation shall use the maximum ground motion/acceleration generated by the maximum credible earthquake. (7-1-93)

f. The Director may accept existing studies relative to requirements of Rule Subsections 055.01.a. and 055.01.e., if the Director determines the information provided fulfills the requirements of Rule Subsections 055.01.a. and 055.01.e. (7-1-93)

g. The Director may allow until July 1, 1992 for completion of the analyses required in Rule Subsections 055.01.a. and 055.01.g. and may allow the owner of an existing dam a compliance period of up to ten years for completing the studies, to complete structural modifications or implement other improvements necessary to provide the release capability determined to be required (Rule Subsection 055.01.a.) or complete structural

modifications necessary to assure the dam and appurtenant facilities will safely function under earthquake loads (Rule Subsection 055.01.g.). (7-1-93)

h. Within thirty (30) days after completing the analyses required in Rule Subsection 055.01.a. or 055.01.g., the owner of an existing dam that is deficient in either case (Rule Subsection 055.01.a. or 055.01.g.) shall file with the Director a schedule outlining the dates work or construction items will be completed. (7-1-93)

02. Other Requirements. (7-1-93)

a. Routine maintenance items include the following: (7-1-93)

i. Eradication of rodents and filling animal burrows. (7-1-93)

ii. Removal of vegetation and debris from the dam. (7-1-93)

iii. Restoring original dimensions of the dam by the addition of fill material. (7-1-93)

iv. Addition of bedding or riprap material which will not increase the height or storage capacity. (7-1-93)

v. Repair or replacement of gates, gate stems, seals, valves, lift mechanisms or vent pipes with similar equipment. (7-1-93)

vi. Repair or replacement of wingwalls, headwalls or aprons including spalling concrete. (7-1-93)

b. The following are not routine maintenance items: (7-1-93)

i. Reconstruction of embankment slopes. (7-1-93)

ii. Replacement, reconstruction or extension of outlets. (7-1-93)

iii. Foundation stabilization. (7-1-93)

iv. Filter or drain construction or replacement. (7-1-93)

v. Spillway size alteration or modification. (7-1-93)

vi. Installation of instrumentation or piezometers. (7-1-93)

vii. Release capability modification. (7-1-93)

c. Items not specifically described in Rule Subsections 055.02.a. and 055.02.b. will be determined by the Director to be included in one rule or the other upon receipt of a written request from the owner or his representative seeking such a determination. (7-1-93)

d. Where riprap is required to prevent erosion and to maintain a stable embankment, pipes, cables, brush, tree growth, logs, or floating debris are not acceptable substitutes for rock riprap and granular bedding material. Dams or portions thereof which are stable without riprap, are not required to have riprap. (7-1-93)

e. Upon completion of reconstruction of a dam or feature of a dam included in Rule Subsection 055.02.b., the owner or his engineer shall provide the Director a short written narrative account of all items of work. Record drawings and revised specifications shall be submitted to the Director if the completed project has been substantially changed from the plans and construction specifications originally approved. (7-1-93)

f. Upon request, the owner of every dam shall provide his name and address to the Director and shall advise the Director of future changes in ownership. If the owner does not reside in Idaho, the owner shall provide the name and address of the person residing in Idaho who is responsible for the operation, maintenance and repair of the

dam. (7-1-93)

056. -- 061. (RESERVED)

060. SMALL DAM DESIGN CRITERIA (RULE 60).

The following provisions apply to small dams. (7-1-93)

01. Design and Construction of Small Dams. Design and construction of small dams located in high risk areas as determined by the Director require submittal of fees, plans and specifications prepared by an engineer and shall follow the same general criteria established under Rules 40, 45, 50, and 55. Other small dams not determined to be in a high risk area shall follow the same general criteria established under Rules 50 and 55 or larger dams, except that submittal of plans, specifications and test results is not required. (7-1-93)

02. Notification Prior to Construction. The owner shall notify the Director in writing ten (10) calendar days prior to commencing construction. (7-1-93)

03. Approval Required. The owner shall not proceed with the following stages of construction without approval from the Director. (7-1-93)

a. After clearing and excavation of the foundation area and cutoff trench, and prior to placing any fill material; (7-1-93)

b. After installation of the outlet conduit, and before placing any backfill material around the conduit; (7-1-93)

c. After construction is completed, and before any water is stored in the reservoir; (7-1-93)

d. At such other times as determined necessary by the Director. The Director, will, upon seven (7) day notice, inspect and, if satisfactory, approve the completed stage of construction. (7-1-93)

04. Notification upon Completion of Construction. The owner shall in writing notify the Director upon completion of construction. (7-1-93)

061. -- 064. (RESERVED)

065. DAMS STORING TAILINGS AND WATER (RULE 65).

01. Construction of Dams Storing Fifty Acre-Feet or More. Construction of dams intended to store or likely to store fifty (50) acre-feet or more of water in excess of the water contained in the tailings material shall meet the requirements specified in Rules 40, 45, 50 and 55 of these rules. The Director may waive any or all of these requirements if, in the opinion of the Director, sound engineering design provided by the owner indicates such requirements are not applicable. (7-1-93)

02. Abandonment Plan. An abandonment plan which provides a stable, maintenance-free condition at any time tailings are not being actively placed for an extended period of time, as determined by the Director, shall be submitted to the Director by the owner of a dam storing tailings and water. This rule may be waived by the Director if determined not to be applicable. (7-1-93)

066. -- 999. (RESERVED)

**IDAPA 37
TITLE 03
CHAPTER 07**

37.03.07 – STREAM CHANNEL ALTERATION RULES

000. LEGAL AUTHORITY (RULE 0).

The purpose of these rules and minimum standards is to specify procedures for processing and considering applications for stream channel alterations under the provisions of Title 42, Chapter 38, Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are titled IDAPA 37.03.07, “Steam Channel Alteration Rules.” (7-1-93)

02. Scope. The minimum standards are intended to enable the Director to process, in a short period of time, those applications which are of a common type and which do not propose alterations which will be a hazard to the stream channel and its environment. It is intended that these rules and minimum standards be administered in a reasonable manner, giving due consideration, to all factors affecting the stream and adjacent property. (7-1-93)

002. WRITTEN INTERPRETATION (RULE 2).

003. ADMINISTRATIVE APPEALS (RULE 3).

Any owner who is aggrieved by a determination or order of the Director may request a hearing pursuant to the provisions of Section 42-1701A(3), Idaho Code, and the Department’s adopted Rules of Procedure. (7-1-93)

004. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

01. Alteration. To obstruct, diminish, destroy, alter, modify, relocate or change the natural existing shape of the channel or to change the direction of flow of water of any stream channel within or below the mean high water mark. It includes removal of material from the stream channel and emplacement of material or structures in or across the stream channel where the material or structure has the potential to affect flow in the channel as determined by the director. (7-1-93)

02. Applicant. Any individual, partnership, company, corporation, municipality, county, state or federal agency, their agent, or other entity proposing to alter a stream channel or actually engaged in constructing a channel alteration, whether authorized or not. (7-1-93)

03. Board. The Idaho Water Resource Board. (7-1-93)

04. Continuously Flowing Water. A sufficient flow of water that could provide for migration and movement of fish, and excludes those reaches of streams which, in their natural state, normally go dry at the location of the proposed alteration. IDWR will assume, subject to information to the contrary, that the USGS quadrangle maps accurately depict whether a stream reach is continuously flowing, at the location of the proposed alteration. Such exclusion does not apply to minor flood channels that are a part of a stream which is continuously flowing in the reach where the alteration is located. Also, such exclusion does not apply to streams which may be dry as a result of upstream diversion or storage of water. (7-1-93)

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

06. Drop Structures, Sills and Barbs. Physical obstructions placed within a stream channel for the purpose of stabilizing the channel by decreasing stream gradient and velocity and by dissipating stream energy. (7-1-93)

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

08. Mean High Water Mark. A water level corresponding to the “natural or ordinary high water

mark” as defined in Section 58-104(9), Idaho Code, and is the line which the water impresses on the soil by covering it for sufficient periods of time to deprive the soil of its terrestrial vegetation and destroy its value for commonly accepted agricultural purposes. (7-1-93)

09. Non-Powered Sluice Equipment. Equipment which is powered only by human strength. (7-1-93)

10. Plans. Maps, sketches, engineering drawings, photos, work descriptions and specifications sufficient to describe the extent, nature, and location of the proposed stream channel alteration and the proposed method of accomplishing the alteration. (7-1-93)

11. Repair. Any work needed or accomplished, to protect, maintain, or restore any water diversion structure and the associated stream channel upstream and downstream as necessary for the efficient operation of the water diversion structure. (7-1-93)

12. Stream Channel. A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously flowing water. The channel referred to is that which exists at the present time, regardless of where the channel may have been located at any time in the past. For the purposes of these rules only, the beds of lakes and reservoir pool areas are not considered to be stream channels. (7-1-93)

13. Base Flood Elevation. The Base Flood (BF) is referred to as the one hundred (100) year flood and is a measure of flood magnitude based on probability. The base flood has a one percent chance of occurring or being exceeded in any given year, with the Base Flood Elevation (BFE) being the level of flooding reached during the BF or the one hundred (100) year flood event. (7-1-93)

011. -- 024. (RESERVED)

025. EXEMPTIONS (RULE 25).

01. Work on Existing or Proposed Reservoir Projects. Permits are not required under the provisions of Title 42, Chapter 38 for construction work on any existing or proposed reservoir project, including the dam, and such areas downstream as the Director may determine is reasonably necessary for construction and maintenance of the dam. (7-1-93)

02. Snake and Clearwater Rivers. Permits are not required for work within that portion of the Snake and Clearwater rivers from the state boundary upstream to the upper boundary of the Port of Lewiston Port District as it now exists or may exist in the future. (7-1-93)

03. Cleaning, Maintenance, Construction or Repair Work. No permit is required of a water user or his agent to clean, maintain, construct, or repair any diversion structure, canal, ditch, or lateral or to remove any obstruction from a stream channel which is interfering with the delivery of any water under a valid existing water right or water right permit. (7-1-93)

04. Removal of Debris. No permit is required for removal of debris from a stream channel provided that no equipment will be working in the channel and all material removed will be disposed of at some point outside the channel where it cannot again reenter the channel. (7-1-93)

026. -- 029. (RESERVED)

030. APPLICATIONS (RULE 30).

01. Joint Application Permit Form. The Department of Water Resources, Department of Lands, and the U.S. Army Corps of Engineers have developed a joint application for permit form which will suffice for the required application under the Stream Protection Act. An application should be filed at least sixty (60) days before the applicant proposes to start the construction and shall be upon the joint application form furnished by the Department. The application shall be accompanied by plans which clearly describe the nature and purpose of the proposed work. (7-1-93)

02. Applicant Following Minimum Standards. In those cases where the applicant intends to follow the minimum standards (Rule 055), detailed plans may be eliminated by referring to the specific minimum standard; however, drawings necessary to adequately define the extent, purpose, and location of the work will still be required. Plans shall include some reference to water surface elevations and stream boundaries to facilitate review. The application should show the mean high water mark on the plans; however, any water surface or water line reference available will be helpful as long as this reference is described. (Examples: present water surface, low water, high water.) (7-1-93)

03. Submission of Copies. The applicant shall submit one (1) copy of all necessary plans along with the application form. When drawings submitted are larger than eight and one half by eleven (8 1/2 x 11), the applicant shall provide the number of copies specified by the department. (7-1-93)

04. Stream Channel Alteration Permit. Any applicant proposing to operate a vacuum or suction dredge within or below the mean high water mark of a stream channel shall apply for and obtain a stream channel alteration permit. The vacuum or suction dredge shall only be operated in accordance with the conditions of the permit and with the applicable rules. (7-1-93)

031. -- 034. (RESERVED)

035. APPLICATION REVIEW (RULE 35).

01. Prior to Issuance of Permit. The following items shall be among those considered by the Director prior to issuing a permit: (7-1-93)

- a. What is the purpose of doing the work? (7-1-93)
- b. What is the necessity and justification for the proposed alteration? (7-1-93)
- c. Is the proposal a reasonable means of accomplishing the purpose? (7-1-93)
- d. Will the alteration be a permanent solution? (7-1-93)
- e. Will the alteration pass anticipated water flows without creating harmful flooding or erosion problems upstream or downstream? (7-1-93)
- f. What effect will the alteration have on fish habitat? (7-1-93)
- g. Will the materials used or the removal of ground cover create turbidity or other water quality problems? (7-1-93)
- h. Will the alteration interfere with recreational use of the stream? (7-1-93)
- i. Will the alteration detract from the aesthetic beauty of the area? (7-1-93)
- j. What modification or alternative solutions are reasonably possible which would reduce the disturbance to the stream channel and its environment and/or better accomplish the desired goal of the proposed alteration? (7-1-93)
- k. Is the alteration to be accomplished in accordance with the adopted minimum standards? (7-1-93)
- l. Are there public safety factors to consider? (7-1-93)

02. Proposed Alteration Which Does Not Follow Minimum Standards. In those cases where a proposed alteration does not follow the minimum standards, a copy of the application will be sent for review to those state agencies requesting notification. The Director shall provide for review by the Department of Lands, copies of applications on navigable rivers. The Director will provide a copy of any other application requested by the Department of Lands and may request review by other state agencies regardless of whether or not the proposed

alteration will comply with the minimum standards. (7-1-93)

036. -- 039. (RESERVED)

040. APPROVAL (RULE 40).

01. Conformance to Application. All work shall be done in accordance with the approved application, subject to any conditions specified by the department. (7-1-93)

02. Permits Allowed Without Review. A permit may be approved by the Director of the Department of Water Resources without review by other agencies in situations where the work is of a nature not uncommon to the particular area and where it is clear that the work will not seriously degrade the stream values except on navigable rivers which require review by the Department of Lands. All work approved in this manner shall be accomplished in accordance with the minimum standards. (7-1-93)

03. Reinstatement of Expired Permit. A permit which has expired may be reinstated by the Director after review by other agencies as determined by the Director. (7-1-93)

041. -- 044. (RESERVED)

045. ENFORCEMENT OF ACT (RULE 45).

01. Written Orders Issued by Designated Employees of Department. Employees of the Department designated by the Director may issue written orders directing an applicant to cease and desist, to ensure proper notice to applicants who are found to be altering a stream without a permit or not in compliance with the conditions of a permit. Such orders shall be in effect immediately upon issuance and will continue in force until a permit is issued or until the order is rescinded by the Director. (7-1-93)

02. Failure to Comply with Stream Protection Act. Failure to comply with any of the provisions of the Stream Protection Act (Chapter 38, Title 42, Idaho Code), may result in issuance of an Idaho uniform citation and/or the cancellation of any permit by the Director without further notice and the pursuit in a court of competent jurisdiction, such civil or criminal remedies as may be appropriate and provided by law. The Director may allow reasonable time for an applicant to complete stabilization and restoration work. (7-1-93)

046. -- 049. (RESERVED)

050. EMERGENCY WAIVER (RULE 50).

01. Waiver of Provisions of Stream Protection Act. Section 42-3808, Idaho Code, provides for waiver of the provisions of the Stream Protection Act in emergency situations where immediate action must be taken to protect life or property including growing crops. The Director will not consider failure to submit an application for a stream channel alteration far enough ahead of the desired starting time of the construction work as an emergency situation. (7-1-93)

02. Verbal Waivers. A verbal waiver may be granted initially; however, all verbal requests for waivers shall be followed up by the applicant in writing within fifteen (15) days of any initial authorization to do work. If the applicant is unable to contact the Director to obtain an emergency waiver, he may proceed with emergency work; however, he must contact the Director as soon as possible thereafter. Proving that a bonafide emergency did actually exist will be the responsibility of the applicant. (7-1-93)

03. Emergency Waiver. Work authorized by an emergency waiver shall be limited to only that which is necessary to safeguard life or property, including growing crops, during the period of emergency. (7-1-93)

04. Conformance to Conditions of Waiver. The applicant shall adhere to all conditions set by the Director as part of a waiver. (7-1-93)

05. Waivers Granted by Designated Employees. The Director may delegate the authority to grant

waivers to designated employees of the Department. Names and telephone numbers of such employees will be made available to any interested applicant upon request. (7-1-93)

051. -- 054. (RESERVED)

055. MINIMUM STANDARDS (RULE 55).

These standards are intended to cover the ordinary type of stream channel alteration and to prescribe minimum conditions for approval of such construction. Unless otherwise provided in a permit, these standards shall govern all stream channel alterations in this state. An applicant should not assume that because an application utilizes methods set forth in these standards it will automatically be approved. These minimum standards include the following items: (7-1-93)

- 01. Construction Procedures.** (7-1-93)
- 02. Dumped Rock Riprap.** (7-1-93)
- 03. Drop Structures, Sills and Barbs.** (7-1-93)
- 04. Culverts and Bridges.** (7-1-93)
- 05. Removal of Sand and Gravel Deposits.** (7-1-93)
- 06. Suction Dredges and Non-Powered Sluice Equipment.** (7-1-93)
- 07. Piling.** (7-1-93)
- 08. Pipe Crossings.** (7-1-93)
- 09. Concrete Plank Boat Launch Ramps.** (7-1-93)

056. CONSTRUCTION PROCEDURES (RULE 56).

01. Conformance to Procedures. Construction shall be done in accordance with the following procedures unless specific approval of other procedures has been given by the Director. When an applicant desires to proceed in a manner different from the following, such procedures should be described on the application. (7-1-93)

02. Operation of Construction Equipment. No construction equipment shall be operated below the existing water surface without specific approval from the Director except as follows: Forging the stream at one (1) location only will be permitted unless otherwise specified; however, vehicles and equipment will not be permitted to push or pull material along the streambed below the existing water level. Work below the water which is essential for preparation of culvert bedding or approved footing installations shall be permitted to the extent that it does not create unnecessary turbidity or stream channel disturbance. Frequent fording will not be permitted in areas where extensive turbidity will be created. (7-1-93)

03. Temporary Structures. Any temporary crossings, bridge supports, cofferdams, or other structures that will be needed during the period of construction shall be designed to handle high flows that could be anticipated during the construction period. All structures shall be completely removed from the stream channel at the conclusion of construction and the area shall be restored to a natural appearance. (7-1-93)

04. Minimizing Disturbance of Area. Care shall be taken to cause only the minimum necessary disturbance to the natural appearance of the area. Streambank vegetation shall be protected except where its removal is absolutely necessary for completion of the work adjacent to the stream channel. (7-1-93)

05. Disposal of Removed Materials. Any vegetation, debris, or other material removed during construction shall be disposed of at some location out of the stream channel where it cannot reenter the channel during high stream flows. (7-1-93)

06. New Cut of Fill Slopes. All new cut or fill slopes that will not be protected with some form of riprap shall be seeded with grass and planted with native vegetation to prevent erosion. (7-1-93)

07. Fill Material. All fill material shall be placed and compacted in horizontal lifts. Areas to be filled shall be cleared of all vegetation, debris and other materials that would be objectionable in the fill. (6-30-19)T

08. Limitations on Construction Period. The Director may limit the period of construction as needed to minimize conflicts with fish migration and spawning, recreation use, and other uses. (7-1-93)

057. DUMPED ROCK RIPRAP (RULE 57).

01. Placement of Riprap. Riprap shall be placed on a granular bedding material or a compact and stable embankment. (7-1-93)

02. Sideslopes of Riprap. Sideslopes of riprap shall not be steeper than 2:1 (2' horizontal to 1' vertical) except at ends of culverts and at bridge approaches where a 1 1/2:1 sideslope is standard. (7-1-93)

03. Minimum Thickness of Riprap. The minimum thickness of the riprap layer shall equal the dimension of the largest size riprap rock used or be eighteen (18) inches, whichever is greater. When riprap will be placed below high water level, the thickness of the layer shall be fifty percent (50%) greater than specified below. (7-1-93)

04. Riprap Protection. Riprap protection must extend at least one (1) foot above the anticipated high water surface elevation in the stream. (7-1-93)

05. Rock Used for Riprap. Rock for riprap shall consist of sound, dense, durable, angular rock fragments, resistant to weathering and free from large quantities of soil, shale, and organic matter. The length of a rock shall not be more than three (3) times its width or thickness. Rounded cobbles, boulders, and streambed gravels are not acceptable as dumped riprap. (7-1-93)

06. Size and Gradation of Riprap. Riprap size and gradation are commonly determined in terms of the weight of riprap rock. The average size of riprap rock shall be at least as large as the maximum size rock that the stream is capable of moving. The maximum size of riprap rock used shall be two (2) to five (5) times larger than the average size. (7-1-93)

07. Methods Used for Determining Gradation of Riprap. There are many methods used for determining the gradation of riprap rock. One of these many acceptable methods is shown in Table 1 below the Far West States (FWS) method shown in APPENDIX A - Table 1A at the end of this chapter.

GRADATION OF RIPRAP IN POUNDS		
Max. Weight of Stone required (lbs)	Min. and Max. Range in weight of Stones (lbs)	Weight Range 75 percent of Stones (lbs)
150	25 - 150	50 - 150
200	25 - 200	50 - 200
250	25 - 250	50 - 250
400	25 - 400	100 - 400
600	25 - 600	150 - 600
800	25 - 800	200 - 800
1000	50 - 1000	250 - 1000
1300	50 - 1300	325 - 1300

GRADATION OF RIPRAP IN POUNDS		
Max. Weight of Stone required (lbs)	Min. and Max. Range in weight of Stones (lbs)	Weight Range 75 percent of Stones (lbs)
1600	50 - 1600	400 - 1600
2000	75 - 2000	600 - 2000
2700	100 - 2700	800 - 2700

(7-1-93)

08. Use of Filter Material. A blanket of granular filter material or filter fabric shall be placed between the riprap layer and the bank in all cases where the bank is composed of erodible material that may be washed out from between the riprap rock. Filter material shall consist of a layer of well-graded gravel and coarse sand at least six (6) inches thick. (7-1-93)

09. Toe Protection. Some suitable form of toe protection shall be provided for riprap located on erodible streambed material. (7-1-93)

a. Various acceptable methods of providing toe protection are shown in APPENDIX B at the end of this chapter. (7-1-93)

b. In addition to the approved methods of providing toe protection as shown in APPENDIX B at the end of this chapter, any other reasonable method will be considered by the Director during review of a proposed project. (7-1-93)

10. Extension of Riprap Area. Riprap shall extend far enough upstream and downstream to reach stable areas, unless protected against undermining at ends by the method shown in APPENDIX C, Figure 3 at the end of this chapter. On extremely long riprap sections, it is recommended that similar cutoff sections be used at several intermediate points to reduce the hazard that would be created if failure of the riprap occurred at any one (1) location. (7-1-93)

11. Finished Surface. Placement shall result in a smooth, even finished surface. Compaction is not necessary. (7-1-93)

12. Placement of Riprap. The full course thickness of the riprap shall be placed in one (1) operation. Dumping riprap long distances down the bank or pushing it over the top of the bank with a dozer shall be avoided if possible. Material should be placed with a backhoe, loader, or dragline. Dumping material near its final position on the slope or dumping rock at the toe and bulldozing it up the slope is a very satisfactory method of placement, if approval is obtained for the use of equipment in the channel. (7-1-93)

13. Design Procedure. Design procedure using the Far West States (FWS) method. (7-1-93)

a. The FWS method uses a single equation to deal with variables for riprap. (7-1-93)

$$D_{75} = 3.5/CK \text{ WDS for Channel Banks}$$

where: D_{75} = Size of the rock at seventy five percent (75%) is finer in gradation, in inches.

W	=	Specific weight of water, usually 62.4 lbs./cu.ft.
D	=	Depth of flow in stream, in feet in flood stage
S	=	Channel slope or gradient, in ft/ft.
C	=	A coefficient relating to curvature in the stream

K = A coefficient relating to steepness of bank slopes
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(7-1-93)

b. The coefficient, C, is based on the ratio of the radius of curvature of the stream, (CR), to the water surface width, (WSW), so it is necessary for the user to make field determination of these values. The coefficient varies from 0.6 for a curve ratio of 4 to 6, up to 1.0 for a straight channel. If the computed ratio for a particular project is less than 4, the designer should consider some modification less than 4.

CR/WSW	C
4 - 6	0.60
6 - 9	0.75
9 - 12	0.90
Straight Channel	1.00

(7-1-93)

c. The coefficient, K, ranges from 0.5 for a 1.5:1 sideslope to 0.87 for 3:1 sideslope. No values are given for steeper or flatter slopes. Slopes steeper than 1.5:1 are not recommended. If slopes flatter than 3:1 are desired, it would be conservative to use the K-value for 3:1 slopes.

Bankslope	K
1.5:1	0.50
1.75:1	0.63
2.0:1	0.72
2.5:1	0.80
3.0:1	0.87

(7-1-93)

Table 1A in APPENDIX A, located at the end of this chapter.

058. DROP STRUCTURES, SILLS AND BARBS (RULE 58).

01. Drop Structures. A drop structure shall be constructed of rocks, boulders and/or logs placed within a stream channel to act as a low level dam. Placement of a drop structure perpendicular to stream flow will decrease the stream gradient, dissipate stream energy and decrease stream velocity through an increase in water surface elevation immediately above the structure. Drop structures shall comply with the following criteria: (7-1-93)

a. Maximum water surface differential across (upstream water surface elevation minus downstream water surface elevation) a drop structure shall not exceed two (2) feet. The department shall approve the final elevation of any structure. (7-1-93)

b. Rock drop structures shall be constructed of clean, sound, dense, durable, angular rock fragments, and/or boulders of size and gradation, such that the stream is incapable of moving the material during peak flows. Rocks shall be keyed into the stream banks to minimize the likelihood of bank erosion, (See Figure 8 in APPENDIX H located at the end of this chapter). (7-1-93)

c. Log drop structures are acceptable in four (4) designs including the single log dam, the stacked log dam, the three (3) log dam, and the pyramid log dam. Log ends shall be keyed into both banks at least one-third (1/3)

of the channel width or a distance sufficient to prevent end erosion. To prevent undercutting, the bottom log shall be imbedded in the stream bed or hardware cloth, cobbles or boulders shall be placed along the upper edge. Minimum log size for a single log structure shall be determined by on-site conditions and shall be placed to maintain flow over the entire log to prevent decay. Each log drop structure must be accompanied by downstream scour protection, such as a rock apron (See Figure 9 in APPENDIX I located at the end of this chapter). (7-1-93)

d. All drop structures shall be constructed to facilitate fish passage and centralized scour pool development. (7-1-93)

02. Sills. A sill shall be constructed of the same material and in the same manner as a drop structure. The top of the sill may not exceed the elevation of the bottom of the channel. The purpose of a sill is to halt the upstream movement of a headcut, thus precluding the widening or deepening of the existing channel. (See Figure 10 in APPENDIX J located at the end of this chapter). (7-1-93)

03. Barb or Partial Drop Structure. A barb or partial drop structure shall be constructed in the same manner and of the same material as a drop structure and placed into the stream channel to act as a low level dam and grade control structure. The barb will decrease stream gradient, dissipate stream energy and redirect stream flow. (7-1-93)

a. Barbs shall be constructed of clean, sound, dense, angular rock fragments, of size and gradation such that the stream is incapable of moving the material during peak flows. (7-1-93)

b. Barbs shall be constructed with a downstream angle of no less than one hundred (100) degrees and no greater than one hundred thirty-five (135) degrees unless otherwise specified. (7-1-93)

c. Barbs shall "extend" into the channel a distance of not more than twenty percent (20%) of the width of the channel unless otherwise specified by the Director. (7-1-93)

d. Barbs shall be keyed into the bank a distance equal to or greater than the width of the structure and down to bed level. Whenever moisture is encountered in the construction of the keyways, willow cuttings or clumps shall be placed before and during rock placement in such a manner that the base of the cutting is in permanent moisture and the top extends a minimum of six (6) inches above grade (see Figure 11 in APPENDIX K located at the end of this chapter). (7-1-93)

059. CULVERTS AND BRIDGES (RULE 59).

01. Culverts and Bridges. Culverts and bridges shall be capable of carrying streamflows and shall not significantly alter conditions upstream or downstream by causing flooding, turbidity, or other problems. The appearance of such installations shall not detract from the natural surroundings of the area. (7-1-93)

02. Location of Culverts and Bridges. Culverts and bridges should be located so that a direct line of approach exists at both the entrance and exit. Abrupt bends at the entrance or exit shall not exist unless suitable erosion protection is provided. (7-1-93)

03. Ideal Gradient. The ideal gradient (bottom slope) is one which is steep enough to prevent silting but flat enough to prevent scouring due to high velocity flows. It is often advisable to make the gradient of a culvert coincide with the average streambed gradient. (7-1-93)

a. Where a culvert is installed on a slope steeper than twenty percent (20%), provisions to anchor the culvert in position will be required. Such provisions shall be included in the application and may involve the use of collars, headwall structures, etc. Smooth concrete pipe having no protruding bell joints or other irregularities shall have such anchoring provisions if the gradient exceeds ten percent (10%). (7-1-93)

04. Size of Culvert or Bridge Opening. The size of the culvert or bridge opening shall be such that it is capable of passing design flows without overtopping the streambank or causing flooding or other damage. (7-1-93)

a. Design flows shall be based upon the following minimum criteria:

Drainage Area	Design Flow Frequency
Less than 50 sq. mi.	25 Years
Over 50 sq. mi. or more	50 years or greatest flow of record, whichever is more

(7-1-93)

b. For culverts and bridges located on U.S. Forest Service or other federal lands, the sizing should comply with the Forest Practices Act as adopted by the federal agencies or the Department of Lands. (7-1-93)

c. For culverts or bridges located in a community qualifying for the national flood issuance program, the minimum size culvert shall accommodate the one hundred (100) year design flow frequency. (7-1-93)

d. If the culvert or bridge design is impractical for the site, the crossing may be designed with additional flow capacity outside the actual crossing structure, provided there is no increase in the Base Flood Elevation.

(NOTE: When flow data on a particular stream is unavailable, it is almost always safe to maintain the existing gradient and cross-section area present in the existing stream channel. Comparing the proposed crossing size with others upstream or downstream is also a valuable means of obtaining information regarding the size needed for a proposed crossing.) (7-1-93)

e. Minimum clearance shall be at least one (1) foot at all bridges. This may need to be increased substantially in the areas where ice passage or debris may be a problem. Minimum culvert sizes required for stream crossings: (7-1-93)

i. Eighteen (18) inch diameter for culverts up to seventy (70) feet long; (7-1-93)

ii. Twenty-four (24) inch diameter for all culverts over seventy (70) feet long. (7-1-93)

f. In streams where fish passage is of concern as determined by the director, an applicant shall comply with the following provisions and/or other approved criteria to ensure that passage will not be prevented by a proposed crossing. (7-1-93)

g. Minimum water depth shall be approximately eight (8) inches for salmon and steelhead and at least three (3) inches in all other cases. (7-1-93)

h. Maximum flow velocities for streams shall not exceed those shown in Figure 17 in APPENDIX N, located at the end of this chapter, for more than a forty-eight (48) hour period. The curve used will depend on the type of fish to be passed. (7-1-93)

i. Where it is not feasible to adjust the size or slope to obtain permissible velocities, the following precautions may be utilized to achieve the desired situation. (7-1-93)

j. Baffles downstream or inside the culvert may be utilized to increase depth and reduce velocity. Design criteria may be obtained from the Idaho Fish and Game Department. (7-1-93)

k. Where multiple openings for flow are provided, baffles or other measures used in one (1) opening only shall be adequate provided that the opening is designed to carry the main flow during low-flow periods. (7-1-93)

05. Construction of Crossings. When crossings are constructed in erodible material, upstream and downstream ends shall be protected from erosive damage through the use of such methods as dumped rock riprap, headwall structures, etc., and such protection shall extend below the erodible streambed and into the banks at least two (2) feet unless some other provisions are made to prevent undermining. (7-1-93)

a. Where fish passage must be provided, upstream drops at the entrance to a culvert will not be permitted and a maximum drop of one (1) foot will be permitted at the downstream end if an adequate jumping pool is maintained below the drop. (7-1-93)

b. Downstream control structures such as are shown in Figure 18 in APPENDIX O, located at the end of this chapter, can be used to reduce downstream erosion and improve fish passage. They may be constructed with gabions, pilings and rock drop structures. (7-1-93)

06. Multiple Openings. Where a multiple opening will consist of two (2) or more separate culvert structures, they shall be spaced far enough apart to allow proper compaction of the fill between the individual structures. The minimum spacing in all situations shall be one (1) foot. In areas where fish passage must be provided, only one (1) opening shall be constructed to carry all low flows. Low flow baffles may be required to facilitate fish passage. (7-1-93)

07. Areas to be Filled. All areas to be filled shall be cleared of vegetation, topsoil, and other unsuitable material prior to placing fill. Material cleared from the site shall be disposed of above the high water line of the stream. Fill material shall be reasonably well-graded and compacted and shall not contain large quantities of silt, sand, organic matter, or debris. In locations where silty or sandy material must be utilized for fill material, it will be necessary to construct impervious sections both upstream and downstream to prevent the erodible sand or silt from being carried away (see Figure 19, APPENDIX P, located at the end of this chapter), Sideslopes for fills shall not exceed one and one half to one (1.5:1). Minimum cover over all culvert pipes and arches shall be one (1) foot. (7-1-93)

08. Installation of Pipe and Arch Culvert. All pipe and arch culverts shall be installed in accordance with manufacturer's recommendations. (7-1-93)

a. The culvert shall be designed so that headwaters will not rise above the top of the culvert entrance unless a headworks is provided. (7-1-93)

060. REMOVAL OF SAND AND GRAVEL DEPOSITS (RULE 60).

01. Removal of Sand and Gravel. This work consists of removal of sand and gravel deposits from within a stream channel. The following conditions shall be adhered to unless other methods have been specified in detail on the application and approved by the Director. (7-1-93)

02. Removal Below Water Surface. Sand and gravel must not be removed below the water surface existing at the time of the work. Where work involves clearing a new channel for flow, removal of material below water level will be permitted to allow this flow to occur; however, this must not be done until all other work in the new channel has been completed. (7-1-93)

03. Buffer Zone. A buffer zone of undisturbed streambed material at least five (5) feet in width or as otherwise specified by the Director shall be maintained between the work area and the existing stream. The applicant shall exercise reasonable precautions to ensure that turbidity is kept to a minimum and does not exceed state water quality standards. (7-1-93)

04. Movement of Equipment. Equipment may cross the existing stream in one (1) location only, but shall not push or pull material along the streambed while crossing the existing stream. (7-1-93)

05. Disturbing Natural Appearance of Area. Work must be done in a manner that will least disturb the natural appearance of the area. Sand and gravel shall be removed in a manner that will not leave unsightly pits or other completely unnatural features at the conclusion of the project. (7-1-93)

061. SUCTION DREDGES AND NON-POWERED SLUICE EQUIPMENT (RULE 61).

01. Standards for Suction Dredges. The following standards shall apply only to uses of suction dredges with nozzle diameter of five (5) inches or less and rated at fifteen (15) HP or less and non-powered sluice equipment moving more than one-quarter (1/4) cubic yard per hour. (7-1-93)

02. Operating Permit. A permit for the operation of a suction dredge may authorize the use of the dredge within a drainage basin or a large portion of a drainage basin except as otherwise determined by the Director. (7-1-93)

03. Mechanized Equipment Prohibited Below High Water Mark. There shall be no use of mechanized equipment below the mean high water mark except for the dredge itself, and any life support system necessary to operate the dredge. (7-1-93)

04. Operation of Dredge. The operation of the dredge shall be done in a manner so as to prevent the undercutting of streambanks. (7-1-93)

05. Permit Required for Non-Powered Operation -- More Than Five People. A permit shall be required for any non-powered operation in which more than five (5) people are working the same area. (7-1-93)

06. Permit Required for Non-Powered Operation -- More Than Thirty-Three Percent of Stream Width. A permit shall be required for any non-powered operation if the disturbed area exceeds thirty-three percent (33%) of the stream width at the mining location. (7-1-93)

07. Limitation of Mining Sites. Only one (1) mining site per one hundred (100) linear feet of stream channel shall be worked at one (1) time unless waived by the Director. (7-1-93)

062. PILING (RULE 62).

01. Standards for Pilings. The following standards apply to a piling associated with a boat or swimming dock, a log boom, a breakwater, or bridge construction. (7-1-93)

02. Replacement of Pilings. In replacing a piling the old piling shall be completely removed from the channel, secured to the new piling or cut at stream bed level. (7-1-93)

03. Condition of Pilings. Chemicals or compounds used for protection of piles and lumber shall be thoroughly dried to prevent bleeding, weeping or dissolution before placing such piles and lumber over, in or near water. (7-1-93)

04. Prohibited Materials. The application of creosote, arsenicals or pentachlorophenol (Penta) to timber shall not occur in, or over water. (7-1-93)

063. PIPE CROSSINGS (RULE 63).

01. Standards for Pipe Crossings. The following standards apply to pipe crossings to be installed below the bed of a stream or river such as utility crossings of a gas line, sewer line, electrical line, communication line, water line or similar line. (7-1-93)

02. Depth of Line. The line shall be installed below the streambed to a depth which will prevent erosion and exposure of the line to free flowing water. In areas of high stream velocity where scouring may occur, the pipe shall be encased in concrete or covered with rock riprap to prevent the pipeline from becoming exposed. (7-1-93)

03. Pipe Joints. The joints shall be welded, glued, cemented or fastened together in a manner to provide a water tight connection. (7-1-93)

04. Construction Methods. Construction methods shall provide for eliminating or minimizing discharges of turbidity, sediment, organic matter or toxic chemicals. A settling basin or cofferdam may be required for this purpose. (7-1-93)

05. Cofferdam. If a cofferdam is used, it shall be completely removed from the stream channel upon completion of the project. (7-1-93)

06. Revegetation of Disturbed Areas. Areas disturbed as a result of the alteration shall be revegetated with plants and grasses native to these areas. (7-1-93)

064. CONCRETE PLANK BOAT LAUNCH RAMPS (RULE 64).

01. Construction of Concrete Plank Boat Launch Ramps. Concrete plank boat launch ramps, shall be constructed with individual sections of precast, reinforced concrete planks linked together to provide a stable non-erosive water access. Typical plank size is twelve feet by fourteen inches by four inches (12' x 14" x 4"). (See Figure 20, APPENDIX Q, located at the end of this chapter). (7-1-93)

02. Construction of Planks. All planks shall be constructed with Type II low alkali cement. (7-1-93)

03. Concrete Planks. All concrete planks shall have a smooth form finish, free of rock pockets and loose materials. Figure 22 shows a typical launch plank detail. (See Figures 21 and 22 in APPENDIXES R and S). (7-1-93)

04. Assembly of Planks. The planks shall be assembled out of the water and slid into place on a constructed launch ramp where water velocities do not exceed two (2) feet per second. In waters exceeding (2) feet per second the ramp sections shall be linked together and fastened to pre-positioned stringers anchored into the launch ramp. (See Figure 23, APPENDIX T, located at the end of this chapter). (7-1-93)

05. Water Depth. The water depth above the lower end of the ramp section shall not be less than three (3) feet during low level or low flow periods. (See Figure 20, APPENDIX Q, located at the end of this chapter). (7-1-93)

06. Construction of Boat Ramp. The boat launch ramp shall have a base constructed of sound, dense, durable, angular rock resistant to weathering and free from soil, shale and organic materials. Rounded cobbles, boulders and streambed material are not acceptable as base material in areas with stream flow velocities greater than two (2) fps. Base materials shall be covered with a layer of (three-fourths inches (3/4") min.) crushed rock with a minimum depth of two inches (2"). The ramp shall have a minimum and maximum slope of ten percent (10%) and fifteen percent (15%) respectively, and shall be constructed in a manner to avoid long incursions into the stream channel. All ramps and fill material shall be protected with rock riprap in accordance with Rule 057 when stream flow velocities exceed two (2) fps. (See Figure 24, APPENDIX U, located at the end of this chapter). (7-1-93)

065. -- 069. (RESERVED)

070. HEARINGS ON DENIED, LIMITED, OR CONDITIONED PERMIT OR OTHER DECISIONS OF THE DIRECTOR (RULE 70).

Any applicant who is granted a limited or conditioned permit, or who is denied a permit, may seek a hearing on said action of the Director by serving on the Director written notice and request for a hearing before the Board within fifteen (15) days of receipt of the Director's decision. Said hearing will be set, conducted, and notice given as set forth in the Rules promulgated by the Board under the provisions of Title 67, Chapter 52, Idaho Code. (7-1-93)

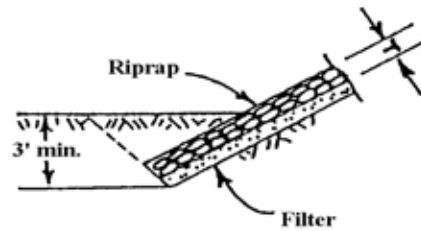
071. -- 999. (RESERVED)

APPENDIX A
Table 1A

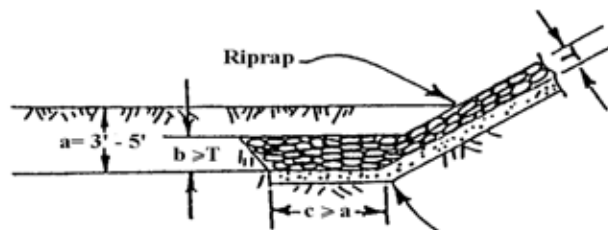
Riprap Gradation Using FWS Method

% Finer by Weight (Lbs.)	Minimum Size (Lbs.)	Maximum Size (Lbs.)
D ₁₀₀	1.33 X D ₇₅	2.0 X D ₇₅
D ₇₅	1.0 X D ₇₅	1.67 X D ₇₅
D ₅₀	0.67 X D ₇₅	1.17 X D ₇₅
D ₂₅	0.33 X D ₇₅	0.77 X D ₇₅
D ₀	None	0.33 X D ₇₅

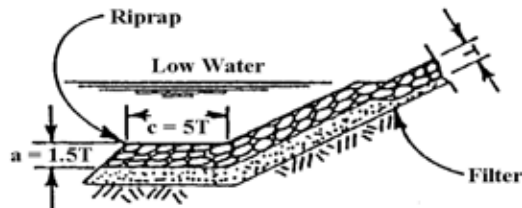
APPENDIX B



METHOD 1: This is most suited to areas where the toe is dry during construction.



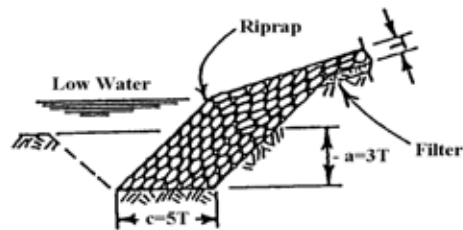
METHOD 2: Used when streambed is very wet or groundwater present makes using Method 1 impractical.



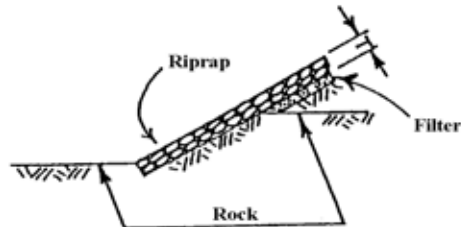
METHOD 3: Often used when toe is underwater during construction. Both Methods 2 and 3 utilize the idea that undermining will cause rock at toe blanket to settle into eroded area providing protection during scouring.

FIGURE 2. Acceptable toe protection

APPENDIX B (CONTINUED)



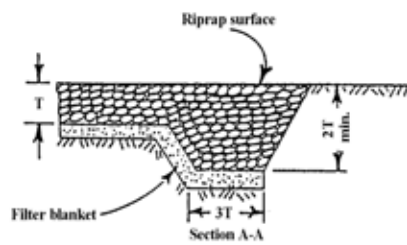
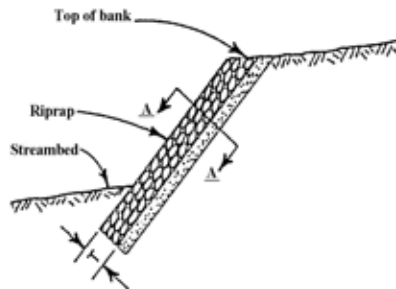
METHOD 4: Used underwater in areas with extremely bad streambed erosion conditions which make Method 3 unfeasible. This method may also be preferred where Method 3 would destroy fish spawning beds.



METHOD 5: When the streambed is non-erodible, no special provisions for toe protection are needed other than insuring that the riprap is well keyed to the rock.

FIGURE 2. Acceptable toe protection *continued*

APPENDIX C

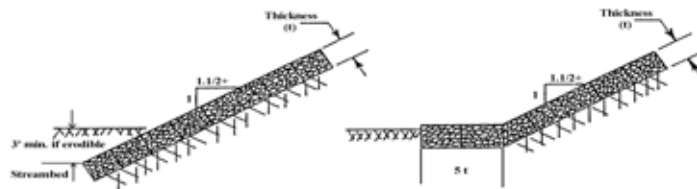


View shown above is cross section at end of riprap looking down along the sideslope toward streambed.

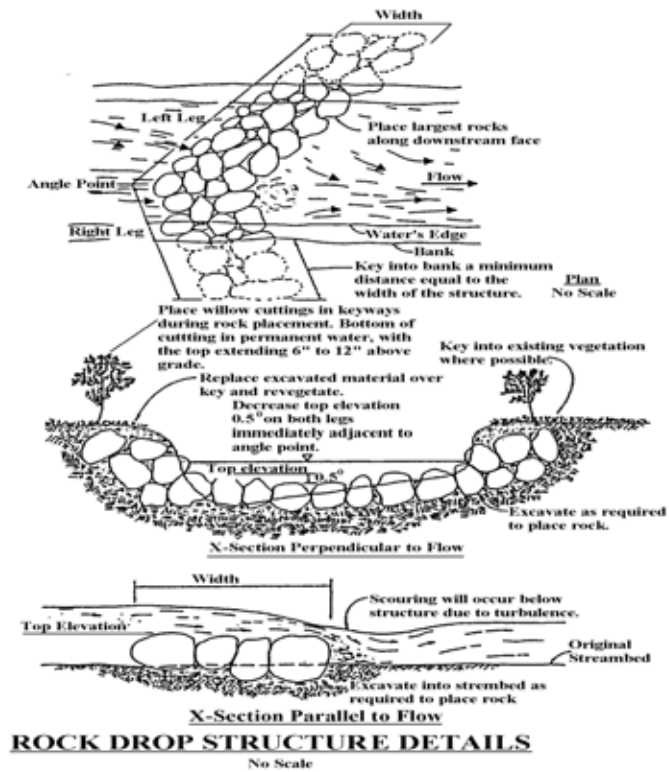
FIGURE 3. Protection against undermining

APPENDIX D

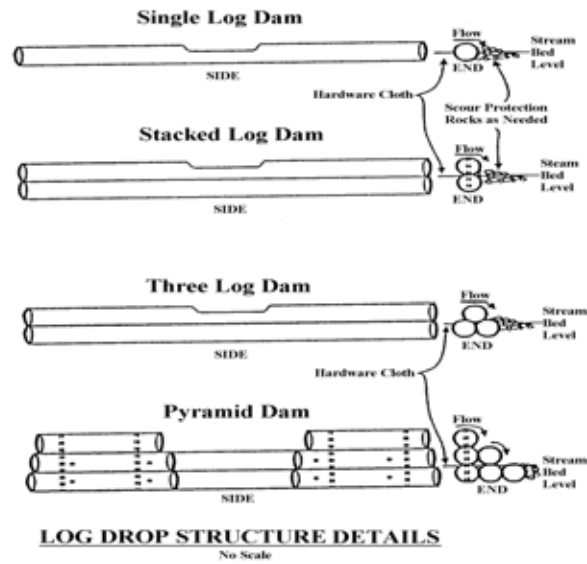
FIGURE 4. Mattress Construction



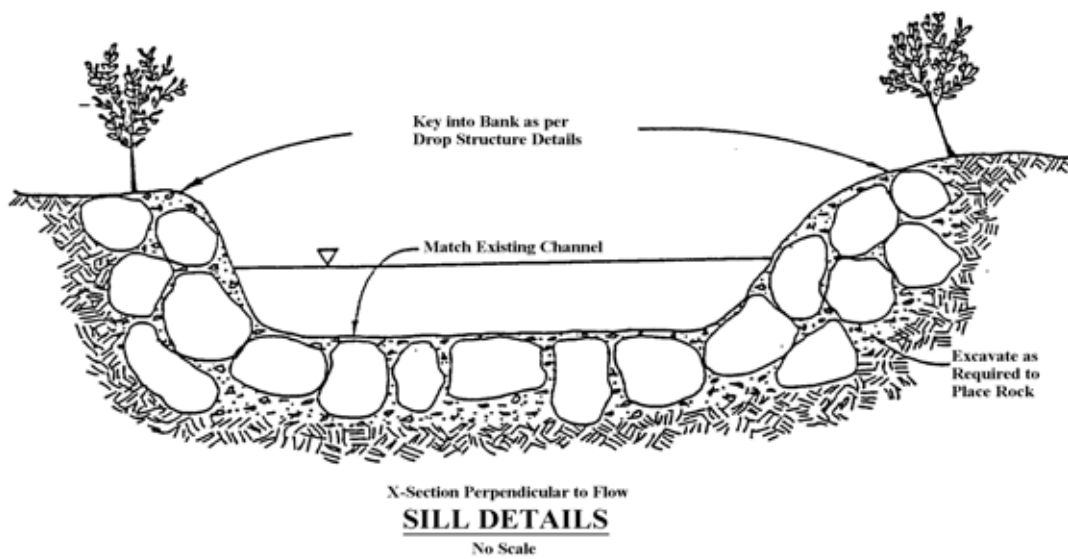
APPENDIX E



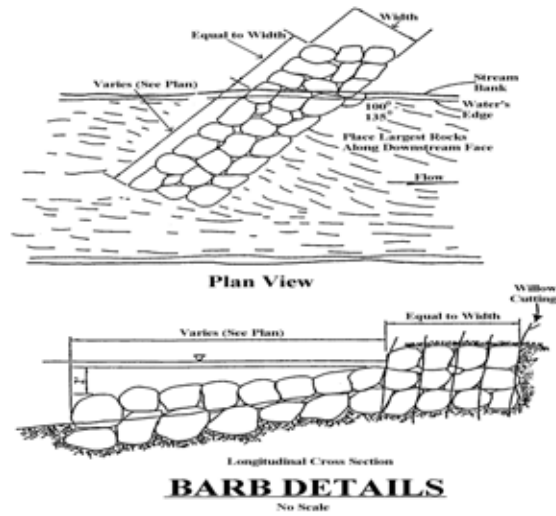
APPENDIX F



APPENDIX G



APPENDIX H



APPENDIX I

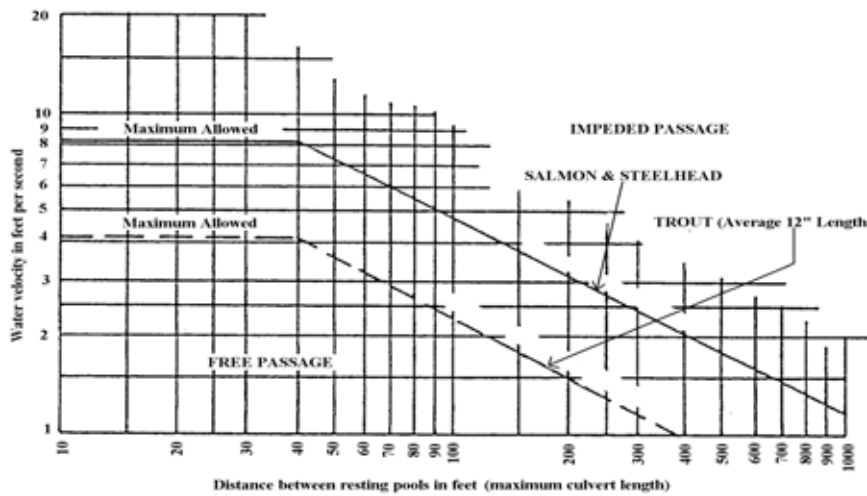
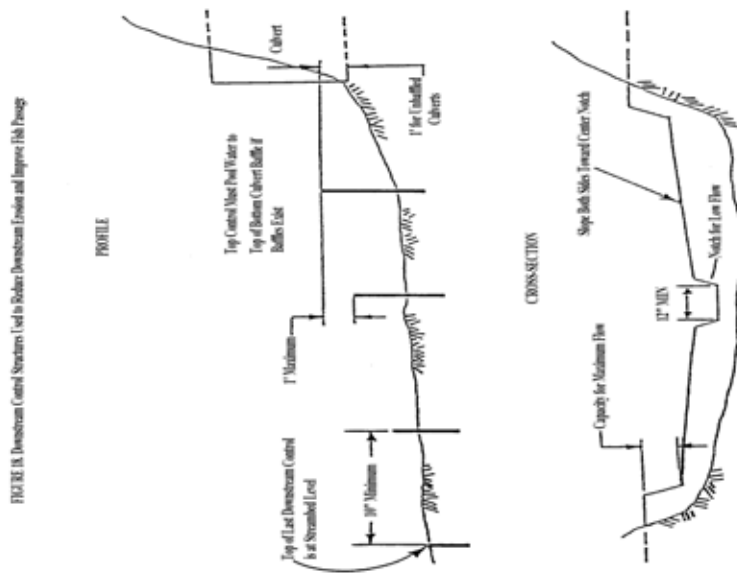


FIGURE 17. Swimming capability of migrating salmon and trout (Alaskan Curve)

APPENDIX J



APPENDIX K

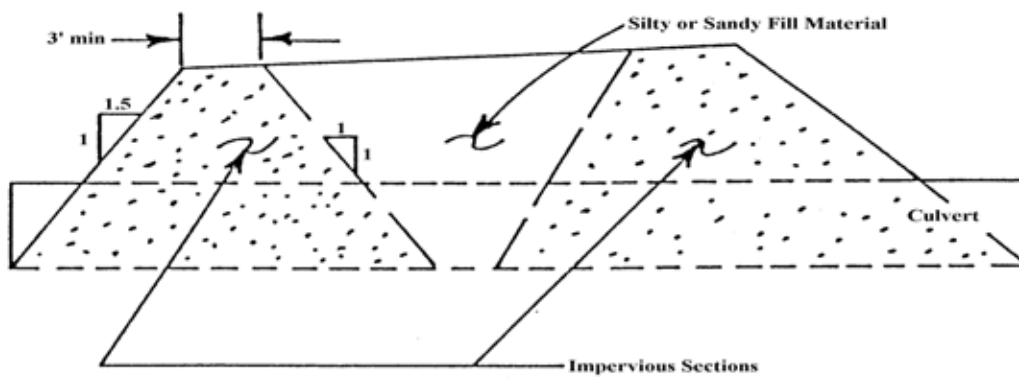
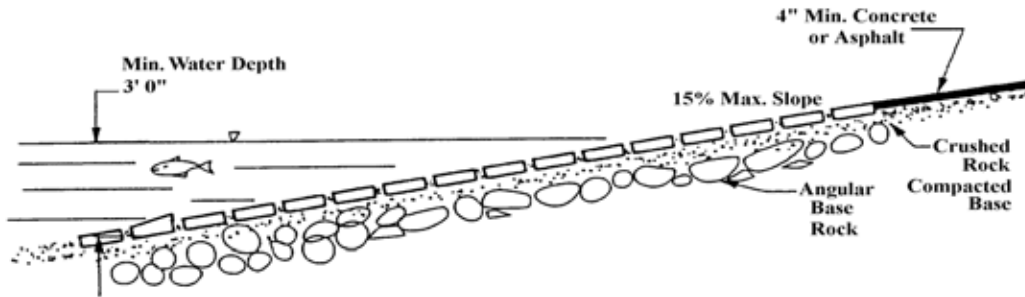


FIGURE 19. Culvert Backfill Using Silty or Sandy Material

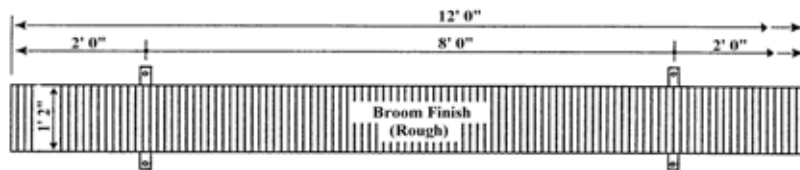
APPENDIX L



LAUNCH RAMP SECTION

No Scale
Figure 20

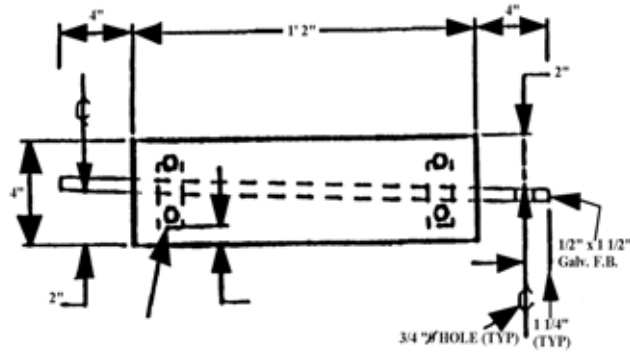
APPENDIX M



CONCRETE PLANK

No Scale
Figure 21

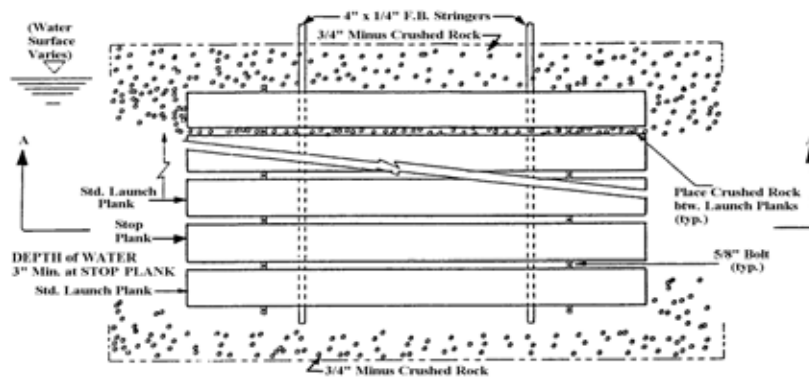
APPENDIX N



CONCRETE LAUNCH PLANK DETAIL

No Scale
Figure 22

APPENDIX O

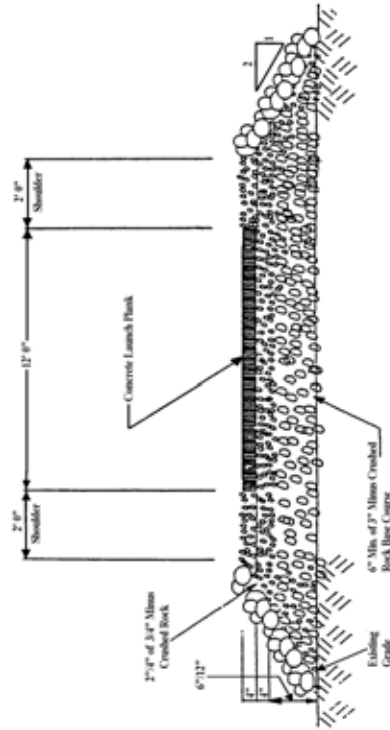


Place crushed rock as shown. Position stringers under planks in order shown and secure with 5/8" bolts. Slide planks on stringers, adding planks as needed, to desired water depth. Stringers consist of 2 - 4" x 1/4" x 20' lng. stl. flat bar w/ clevis pin hole one end. Pull flat bar stringers up grade from water when planks are positioned and bolted together, remove when last plank has been set in place.

CONCRETE LAUNCH-PLAN VIEW

Figure 23
No Scale

APPENDIX P



CONCRETE LAUNCH - CROSS-SECTION

No Scale
Figure 24

**IDAPA 37
TITLE 03
CHAPTER 08**

37.03.08 – WATER APPROPRIATION RULES

000. LEGAL AUTHORITY (RULE 0).

The Director of the Department of Water Resources adopts these rules under the authority provided by Section 42-1805(8), Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are titled IDAPA 37.03.08, “Water Appropriation Rules.” (7-1-93)

02. Scope. (7-1-93)

a. Background and Purpose. The 1985 Idaho Legislature authorized reallocation of certain hydropower water rights to new upstream beneficial uses. The reallocation is to be accomplished using statutes designed to provide for the appropriation of unappropriated public water supplemented by a public interest review of those reallocations which significantly reduce existing hydropower generation. These rules provide the procedures for obtaining the right to divert and use unappropriated public water as well as water previously appropriated for hydropower use which has been placed in trust with the State of Idaho and is subject to reallocation. Guidelines are provided for the filing and processing of applications, and criteria are established for determining the actions to be taken by the Director. (7-1-93)

b. Scope and Applicability. These rules are applicable to appropriations from all sources of unappropriated public water in the state of Idaho under the authority of Chapter 2, Title 42, Idaho Code. Sources of public water include rivers, streams, springs, lakes and groundwater. The rules are also applicable to the reallocation of hydropower water rights held in trust by the state of Idaho. The rules are applicable to all applications to appropriate water filed with the Department of Water Resources prior to the effective date of these rules upon which an action to approve or deny the application is pending and to all applications filed subsequent to adoption of the rules and regulations. In addition, the rules are applicable to existing permits to appropriate water required to be reviewed under the provisions of Section 42-203D, Idaho Code. (7-1-93)

002. WRITTEN INTERPRETATIONS.

The Idaho Department of Water Resources maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General opinions, and other written interpretations, if applicable, are available for public inspection and copying at the director’s office of the Idaho Department of Water Resources, Boise, Idaho. (6-30-19)T

003. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the department shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code. (6-30-19)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated herein by reference. (6-30-19)T

005. OFFICE – OFFICE HOURS – MAILING ADDRESS -- STREET ADDRESS.

The principal place of business of the Department of Water Resources is located at 322 East Front Street in Boise, Idaho and it is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. The mailing address is: Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098. The telephone number of the office is (208) 287-4800. (6-30-19)T

006. PUBLIC RECORDS ACT COMPLIANCE.

This rule is subject to and in compliance with the provisions of Title 74, Chapter 1, Idaho Code. (6-30-19)T

007. -- 009. (RESERVED)

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. Advertisement. The action taken by the Director to provide notice, usually by publication of a legal notice in one (1) or more newspapers, of a proposed appropriation or other notice required in administration of his duties and responsibilities. (7-1-93)

03. Applicant. The person, corporation, association, firm, governmental agency or other entity, or the holder of a permit being reprocessed pursuant to Section 42-203D, Idaho Code, who initiates an appropriation of water or related water matter for the Director's consideration. (7-1-93)

04. Application for Permit. The written request to the department on forms furnished by the department proposing to appropriate the public waters or trust waters of the state. (7-1-93)

05. Board. The Idaho Water Resource Board. (7-1-93)

06. Beneficial Use. One (1) or more of the recognized beneficial uses of water including but not limited to, domestic, municipal, irrigation, hydropower generation, industrial, commercial, recreation, stockwatering and fish propagation uses for which permits to appropriate water can be issued as well as other uses which provide a benefit to the user of the water as determined by the Director. Industrial use as used for purposes of these rules includes, but is not limited to, manufacturing, mining and processing uses of water. (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) Idaho miner's inches. (7-1-93)

08. DCMI. An acronym for domestic, commercial, municipal and industrial. In these rules it designates certain classes of these uses presumed to satisfy public interest requirements. Domestic use, for purposes of this definition, is water for one or more households and water used for all other purposes including irrigation of a residential lot in connection with each of the households where the diversion to each household does not exceed thirteen thousand (13,000) gallons per day. Also for purposes of this definition, commercial, municipal and industrial uses are any such uses which do not deplete the system containing the trust water more than two (2) acre feet per day. (7-1-93)

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

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

11. 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 quarter-quarter, section, township and range description. (7-1-93)

12. 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)

13. Priority, or Priority of Appropriation, or Priority Date. The date of appropriation established in the development of a water right. The priority of a water right for public water or trust water is used to determine the order of water delivery from a source during times of shortage. The earlier or prior date being the better right. (7-1-93)

14. Project Works. A general term which includes diversion works, conveyance works, and any devices which may be used 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)

15. Single Family Domestic Purposes. Water for household use or livestock and water used for all other purposes including irrigation of up to one half (1/2) acre of land in connection with said household where total use is not in excess of thirteen thousand (13,000) gallons per day. (7-1-93)

16. Subordinated Water Right. A water right used for hydropower generation purposes that is subject to depletion without compensation by upstream water rights which are initiated later in time and which are for a purpose other than hydropower generation purposes. (7-1-93)

17. Trust Water. That portion of an unsubordinated water right used for hydropower generation purposes which is in excess of a minimum stream flow established by state action either with agreement of the holder of the hydropower right as provided by Section 42-203B(5), Idaho Code or without an agreement as provided by Section 42-203B(3), Idaho Code. (7-1-93)

18. Unappropriated Water. The public water of the state of Idaho in streams, rivers, lakes, springs or groundwater in excess of that necessary to satisfy prior rights including prior rights reserved by federal law. (7-1-93)

011. -- 024. (RESERVED)

025. GENERAL DESCRIPTION OF THE PROCEDURE TO BE USED FOR ALLOCATION (RULE 25).

01. Applications to Appropriate Unappropriated Water and Water Held in Trust. Applications to appropriate unappropriated water and water held in trust as provided by Section 42-203B(3), Idaho Code, will be evaluated using the criteria of Section 42-203A, Idaho Code, which requires an assessment to be made of the impact of the proposed use on water availability for existing water rights, the adequacy of the water supply for the proposed use, whether the application is filed for speculative purposes, the financial ability of the applicant to complete the project, and the effect of the proposed use on the local public interest. (7-1-93)

02. Applications to Appropriate Water from Sources Held by State in Trust. Applications to appropriate water from sources on which the state holds water in trust, pursuant to Section 203B(5), Idaho Code, will be processed in a three-step analysis. Evaluation will consider the purposes of "trust water" established in Section 42-203B, Idaho Code. (7-1-93)

a. First, the proposed use must be evaluated using the procedures and criteria of Section 42-203A, Idaho Code. If all criteria of Section 42-203A(5), Idaho Code, are satisfied, the application may be approved for unappropriated water. If the application does not satisfy the criteria of Section 42-203A(5) b, c, d, and e, Idaho Code, or is found to reduce the water to existing water rights other than those held in trust by the state, the application will be denied. If the application satisfies all criteria of Section 42-203A(5), Idaho Code, except Section 42-203A(5)a, Idaho Code, but is found to reduce water held in trust by the state, the application will be reviewed under criteria of Section 42-203C, Idaho Code. (7-1-93)

b. Second, Section 42-203C, Idaho Code, requires a determination of whether the proposed use will significantly reduce, individually or cumulatively with existing uses and other uses reasonably likely to exist within twelve months of the proposed use, the amount of trust water available to the holder of the water right used for power production that is defined by agreement pursuant to subsection (5) of Section 42-203B, Idaho Code (hereinafter termed "significant reduction"). If a significant reduction will not occur, the application may be approved without an evaluation of the public interest criteria of Section 42-203C(2), Idaho Code. (7-1-93)

c. Third, based upon a finding of significant reduction, the proposed use will be evaluated in terms of the public interest criteria of Section 42-203C(2), Idaho Code. (7-1-93)

026. -- 029. (RESERVED)

030. LOCATION AND NATURE OF TRUST WATER (RULE 30).

01. Snake River Water Rights Agreement. The legislation ratifying the Snake River water rights

agreement between the state of Idaho and Idaho Power Company places in trust a part of the flows available to Idaho Power Company under its hydropower water rights in the Snake River Basin between Swan Falls Dam and Milner Dam. The flows subject to the trust water provisions and reallocation under Section 42-203C(2), Idaho Code, are as follows: (7-1-93)

a. Trust water flows under the Snake River water rights agreement are located in the Snake River between Swan Falls Dam located in Section 18, Township 2 South, Range 1 East, Boise Meridian (B.M.) and Milner Dam located in Sections 28 and 29, Township 10 South, Range 21 East, Boise Meridian (B.M.) and all surface and groundwater sources tributary to the Snake River in that reach. (7-1-93)

b. Surface water and groundwater tributary to the Snake River upstream from Milner Dam is not trust water. After giving notice and considering public comment, the Director will designate the area in which groundwater is presumed to be tributary to the Snake River upstream from Milner Dam. Modification or changes in the designated boundary may be made only after providing notice and considering public comment. The area presently designated as tributary to the Snake River in the Milner Dam to Swan Falls Dam reach is appended to these rules (See Attachment A in APPENDIX A located at the end of this chapter), for information purposes only. (7-1-93)

c. Trust water flows under the Snake River water rights agreement are those occurring in the Snake River and tributaries in the geographic area designated in Subsection 030.01.a. that exceed the established minimum stream flows but are less than the water rights for hydropower generating facilities in the Swan Falls Dam to Milner Dam reach of Snake River, to the extent such rights were unsubordinated prior to the Snake River water rights agreement. Minimum average daily flows have been established by action of the Board and legislature at the U.S. Geological Survey gauging station located near Murphy (Section 35, Township 1 South, Range 1 West B.M.) in the amount of three thousand nine hundred (3900) cfs from April 1 to October 31 and five thousand six hundred (5600) cfs from November 1 to March 31, and at Milner gauging station located in Section 29, Township 10 South, Range 21 East, B.M. in the amount of zero (0) cfs from January 1 to December 31. (7-1-93)

02. Trust Water Created by State Action. Section 42-203B(3), Idaho Code, provides that trust water can be created by state action establishing a minimum flow without an agreement with the holder of the hydropower water right. Allocation of trust water so established will be pursuant to state law except the criteria of Section 42-203C, Idaho Code, will not be considered. (7-1-93)

03. Sources of Public Water Not Trust Water. The following sources of public water are not trust water and are not subject to the public interest provisions of Section 42-203C, Idaho Code: (7-1-93)

a. Sources or tributaries to sources upon which no hydropower generating facilities are located downstream within the state of Idaho. (7-1-93)

b. Sources or tributaries to sources which have a state hydropower water right permit or license or Federal Energy Regulatory Commission license which have not been subordinated, and the state of Idaho has not entered into an agreement with the holder of the hydropower water right pursuant to Section 42-203B(2), Idaho Code, and the State of Idaho has not established a minimum stream flow for purposes of protecting hydropower generation. (7-1-93)

c. Sources or tributaries to sources for which a state hydropower water right permit or license, or the Federal Energy Regulatory Commission license included a subordination condition. Such flows are considered to be public waters subject to appropriation under the provisions of Section 42-203A, Idaho Code. (7-1-93)

d. Flows in excess of established rights including rights used for hydropower purposes. Such flows are unappropriated waters subject to allocation under Section 42-203A, Idaho Code. (7-1-93)

e. Flows in the Snake River upstream from Milner Dam and all surface and groundwater tributaries to that reach. Such flows are subject to allocation under Section 42-203A, Idaho Code, without consideration of water rights existing downstream from Milner Dam (Reference: 42-203B(2), Idaho Code). (7-1-93)

031. -- 034. (RESERVED)

035. APPLICATION REQUIREMENTS (RULE 35).

01. General Provisions. (7-1-93)

a. No person shall commence the construction of any project works or commence the diversion of the public water or trust water of the state of Idaho from any source without first having filed an application for permit to appropriate the water or other appropriate form with the department and received approval from the Director, unless exempted by these rules or by statute. (7-1-93)

b. Any person proposing to commence a diversion of the public water or the trust water of the state of Idaho from a groundwater source for single family domestic purposes is exempt from the application and permit requirements of Subsection 035.01.a. (6-30-19)T

c. Any person watering livestock directly from a natural stream or natural lake without the use of a constructed diversion works is exempt from Subsection 035.01.a. (7-1-93)

d. All applications for permit to appropriate public water or trust water of the state of Idaho shall be on the form provided by the department entitled "Application for Permit to appropriate the Public Waters of the State of Idaho" and include all necessary information as described in Subsection 035.03. An application for permit that is not complete as described in Subsection 035.03 will not be accepted for filing and will be returned along with any fees submitted to the person submitting the application. No priority will be established by an incomplete application. Applications meeting the requirements of Subsection 035.03. will be accepted for filing and will be endorsed by the department as to the time and date received. The acceptability of applications requiring clarification or corrections shall be determined by the Director. (7-1-93)

e. The department will correspond with the applicant concerning applications which have been accepted for filing by the department which require clarification or correction of the information required by Subsection 035.03. If the additional or corrected information is supplied after thirty (30) days, the priority date of the application will be determined by the date the additional or corrected information is received by the department unless the applicant has requested within the thirty (30) day period additional time to provide the information, has shown good reasons for needing additional time, and the Director has granted additional time. (7-1-93)

f. Failure to submit the additional or corrected information is cause for the Director to void the department's records of the application. (7-1-93)

02. Effect of an Application. (7-1-93)

a. Any application that seeks to appropriate water from a source upon which the state holds trust water shall be considered an application for appropriation of unappropriated water. If the Director determines unappropriated water is not available, the application, if otherwise approvable, will be reviewed for compliance with provisions of Section 42-203C, Idaho Code. (6-30-19)T

b. The priority of an application for unappropriated or trust water is established as of the time and date the application is received in complete form along with the statutory fee in any official office of the department. The priority of the application remains fixed unless changed by action of the Director in accordance with applicable law. (7-1-93)

c. An application for permit to appropriate water is not a water right and does not authorize diversion or use of water until approved by the Director in accordance with statutes in effect at the time the application is approved. (7-1-93)

d. An applicant's interest in an application for permit to appropriate water is personal property. An assignment of interest in an application must include evidence satisfactory to the Director that the application was not filed for speculative purposes. (7-1-93)

03. Requirements for Applications to Be Acceptable for Filing. (7-1-93)

- a. The following information shall be shown on an application for permit form and submitted together with the statutory fee to an office of the department before the application for permit may be accepted for filing by the department. (7-1-93)
- i. The name and post office address of the applicant shall be listed. If the application is in the name of a corporation, the names and addresses of its directors and officers shall be provided. If the application is filed by or on behalf of a partnership or joint venture, the application shall provide the names and addresses of all partners and designate the managing partner, if any. (7-1-93)
- ii. The name of the water source sought to be appropriated shall be listed. For surface water sources, the source of water shall be identified by the official geographic name listed on the U.S. Geological Survey Quadrangle map. If the source has not been named, it can be described as “unnamed,” but the system or river to which it is tributary shall be identified. For groundwater sources, the source shall be listed as “groundwater.” Only one source shall be listed on an application unless the application is for a single system which will have more than one source. (6-30-19)T
- iii. The legal description of the point of diversion and place of use shall be listed. The location of the point(s) of diversion and the place of use shall be described to the nearest forty (40) acre subdivision or U.S. Government Lot of the Public Land Survey System. The location of springs shall be described to the nearest ten (10) acre tract. Subdivision names, lot and block numbers and any name in local common usage for the point of diversion, or place of use shall be included in the comments section of the application form. If irrigation is listed as a purpose of use, the number of acres in each forty (40) acre subdivision of the place of use shall be listed. (7-1-93)
- iv. The quantity of water to be diverted shall be listed as a rate of flow in cubic feet per second and/or as a volume to be stored in acre-feet per year for each purpose of use requested. (7-1-93)
- v. Impoundment (storage) applications shall show the maximum acre-feet requirement per year which shall not exceed the storage capacity of the impoundment structure unless the application describes a plan of operation for filling the reservoir more than once per year. (7-1-93)
- vi. Every offstream storage impoundment application shall show a maximum rate of diversion to storage as well as the total storage volume. (7-1-93)
- vii. The nature of the proposed beneficial use or uses of the water shall be listed. While the purpose may be described in general terms such as irrigation, industrial or municipal, a description sufficient to identify the proposed use or uses of the water shall also be included. (7-1-93)
- viii. The period of each year during which water will be diverted, stored and beneficially used shall be listed. The period of use for irrigation purposes shall coincide with the annual periods of use shown in Figure 1 in APPENDIX B (located at the end of this chapter), unless it can be shown to the satisfaction of the Director that a different period of use is necessary. (7-1-93)
- ix. The proposed method of diversion, conveyance system and system for distributing and using the water shall be described. (7-1-93)
- x. The period of time required for completion of the project works and application of water to the proposed use shall be listed. This period of time shall not exceed the time required to diligently and uninterruptedly apply the water to beneficial use and shall not exceed five (5) years. (7-1-93)
- xi. A map or plat of sufficient scale (not less than two (2) inches equal to one (1) mile) to show the project proposed shall be included. The map or plat shall agree with the legal descriptions and other information shown on the application. (7-1-93)
- xii. The application form shall be signed by the applicant listed on the application or evidence must be submitted to show that the signator has authority to sign the application. An application in more than one (1) name shall be signed by each applicant unless the names are joined by “or” or “and/or.” (7-1-93)

xiii. Applications by corporations, companies or municipalities or other organizations shall be signed by an officer of the corporation or company or an elected official of the municipality or an individual authorized by the organization to sign the application. The signator's title shall be shown with the signature. (7-1-93)

xiv. Applications may be signed by a person having a current "power of attorney" authorized by the applicant. A copy of the "power of attorney" shall be included with the application. (7-1-93)

xv. Applications to appropriate water in connection with Carey Act or Desert Land Entry proposals shall include evidence that appropriate applications have been filed for the lands involved in the proposed project. (7-1-93)

xvi. The application form shall be accompanied with a fee in the amount required by Section 42-221A, Idaho Code. (7-1-93)

04. Amended Applications. (7-1-93)

a. Applications for permit shall be amended whenever significant changes to the place, period or nature of the intended use, method or location of diversion or proposed use of the water or other substantial changes from that shown on the pending application are intended. An application shall be amended if the proposed change will result in a greater rate of diversion or depletion (see Subsection 035.04.c.), if the point of diversion, place of use, or point of discharge of the return flow are to be altered, if the period of the year that water will be used is to be changed, or if the nature of the use is to be changed. (7-1-93)

b. An application can be amended to clarify the name of the source of water but may not be amended to change the source of water. (7-1-93)

c. An amendment which increases the rate of diversion, increases the volume of water diverted per year or the volume of water depleted, lengthens the period of use, or adds an additional purpose of use shall result in the priority of the application for permit being changed to the date the amended application is received by the department. (7-1-93)

d. An application for permit may be amended by endorsement by the applicant or his agent on the original application for permit form which endorsement shall be initialed and dated. If the changes required to the information on the application are, in the judgment of the Director, substantial enough to cause confusion in interpreting the application form, the amended application shall be submitted on a new application for permit form to be designated as an amended application. (7-1-93)

e. An amended application shall be accompanied by the additional fee required by Section 42-221A, Idaho Code, if the total rate of diversion or total volume of storage requested is increased and by the fee required by Section 42-221F, Idaho Code, for readvertising if notice of the original application has been published. (7-1-93)

f. If the applicant's name or mailing address changes, the applicant shall in writing notify the department of the change. (7-1-93)

036. -- 039. (RESERVED)

040. PROCESSING APPLICATIONS FOR PERMIT AND REPROCESSING PERMITS (RULE 40).

01. General. (7-1-93)

a. Unprotested applications, whether for unappropriated water or trust water, will be processed using the following general steps: (7-1-93)

i. Advertisement and protest period; (7-1-93)

ii. Department review of applications and additional information, including department field review if determined to be necessary by the Director; (7-1-93)

- iii. Fact finding hearing if determined to be necessary by the Director; (7-1-93)
- iv. Director's decision; (7-1-93)
- v. Section 42-1701A, Idaho Code, hearing, if requested; and (7-1-93)
- vi. Director's decision affirmed or modified. (7-1-93)
- b.** Protested applications, whether for unappropriated water or trust water, will be processed using the following general steps: (7-1-93)
 - i. Advertisement and protest period; (7-1-93)
 - ii. Hearing and/or conference; (7-1-93)
 - iii. Department review of applications, hearing record and additional information including department field review if determined to be necessary by the Director. (7-1-93)
 - iv. Proposed decision (unless waived by parties); (7-1-93)
 - v. Briefing or oral argument in accordance with the department's adopted Rules of Procedure. (7-1-93)
 - vi. Director's decision accepting or modifying the proposed decision. (7-1-93)
- c.** The Director's decision rejecting and denying approval of an application for permit filed for diversion from a source previously designated as a critical groundwater area or upon which a moratorium has previously been entered may be issued without advertisement of the application. (7-1-93)
- d.** An applicant may request in writing that commencement of processing of his or her application be delayed for a period not to exceed one (1) year or that processing be interrupted for a period not to exceed six (6) months. The Director at his discretion may approve the request unless he determines that others will be injured by the delay or that the applicant seeks the delay for the purpose of speculation, or that the public interest of the people of Idaho will not be served by the delay. The Director may approve a request for delay for a shorter period of time or upon conditions, and may renew the approval upon written request. (7-1-93)
- 02. Public Notice Requirement.** (7-1-93)
 - a.** Applications for permit which have not been advertised. (7-1-93)
 - i. Advertisement of applications for permit proposing a rate of diversion of ten (10) cfs or less or storage of one thousand (1000) AF or less shall comply with Section 42-203A, Idaho Code. The first required advertisement will be published on the first or third Thursday of a month when published in daily newspapers and on the first or third publishing day of the month for weekly newspapers. (7-1-93)
 - ii. Advertisement of applications for permit in excess of the amounts in Subsection 040.02.a.i. shall comply with Subsection 040.02.a.i. and shall also be published in a newspaper or newspapers to achieve statewide circulation. (7-1-93)
 - iii. Statewide circulation with respect to Section 42-203A(2), Idaho Code, shall be obtained by publication of a legal notice at least once each week for two (2) successive weeks in a newspaper, as defined in Section 60-106, Idaho Code, of general circulation in the county in which the point of diversion is located and by publication of a legal notice at least once each week for two (2) successive weeks in at least one (1) daily newspaper, as defined in Section 60-107, Idaho Code, published in each of the department's four (4) administrative regions and determined by the Director to be of general circulation within the department's region within which it is published. The administrative regions of the department are identified on Figure 2 in APPENDIX C (located at the end of this

chapter). The names of newspapers used for statewide publication are available from any department office. (7-1-93)

b. Applications for permit which have been advertised. (7-1-93)

i. Notice of applications for permit for water from the Snake River between Swan Falls Dam and Milner Dam or surface and groundwater tributaries to that reach of Snake River which were advertised prior to July 1, 1985 and have been held without final action by the department due to the Swan Falls controversy shall be readvertised by the Director in accordance with Subsection 040.02.a. as appropriate to allow opportunity for protests to be entered with respect to the public interest criteria of Section 42-203C(2), Idaho Code. (7-1-93)

ii. Applications for permit from the Snake River or surface and groundwater sources upstream from Milner Dam which have been held without action due to the Swan Falls controversy may be processed without readvertisement. (7-1-93)

iii. The applicant shall pay the readvertisement fee provided in Section 42-221F, Idaho Code, prior to the readvertisement. (7-1-93)

iv. Failure to pay the readvertising fee within thirty (30) days after the applicant is notified to do so is cause for the Director to void the application. (7-1-93)

c. Notice of existing permits. (7-1-93)

i. Existing permits appropriating water held in trust by the state of Idaho issued prior to July 1, 1985, unless exempted by Subsection 040.02.c.ii. shall be subject to the review requirements of Section 42-203D, Idaho Code, and shall be readvertised in accordance with Subsection 040.02.a. as appropriate. The review is limited to the criteria described in Section 42-203C(2), Idaho Code. (7-1-93)

ii. Permits exempt from the provisions of Section 42-203D, Idaho Code, include: (7-1-93)

(1) Permits appropriating water not held in trust by the state of Idaho; (7-1-93)

(2) Permits for DCMI uses, stockwater uses and other essentially non-consumptive uses as determined by the Director; and (7-1-93)

(3) Permits for which an acceptable proof of beneficial use submittal was received by the department prior to July 1, 1985, or permits for which an acceptable proof of beneficial use was submitted after July 1, 1985, if evidence satisfactory to the Director has been received to show that the permit was fully developed prior to July 1, 1985 to the extent claimed on the proof of beneficial use. (7-1-93)

iii. Holders of permits subject to the review requirement of Section 42-203D, Idaho Code, shall pay in advance, upon the request of the Director, the readvertising fee required by Section 42-221F, Idaho Code. (7-1-93)

iv. Failure to pay the readvertising fee within thirty (30) days after the applicant is notified to do so is cause for the Director to cancel the permit. (7-1-93)

03. Protests, Intervention, Hearings, and Appeals. (7-1-93)

a. Protests. (7-1-93)

i. Protests against the approval of an application for permit or against a permit being reprocessed shall comply with the requirements for pleadings as described in the department's adopted Rules of Procedure. (7-1-93)

ii. Protests against the approval of an application for permit or against a permit being reprocessed will only be considered if received by the department after receipt of the application by the department and prior to the expiration of the protest period announced in the advertisement unless the protestant successfully intervenes in the proceeding. (7-1-93)

iii. General statements of protest (blanket protests) against appropriations for a particular class of use or from a particular source of water will not be considered as valid protests by the Director. (7-1-93)

b. Intervention. Requests to intervene in a proceeding pending before the department shall comply with the Department's adopted Rules of Procedure. (7-1-93)

c. Hearings. Hearings will be scheduled and held in accordance with the department's adopted Rules of Procedure. (7-1-93)

d. Appeals. Any final decision of the Director may be appealed in accordance with Section 42-1701A, Idaho Code. (7-1-93)

04. Burden of Proof. (7-1-93)

a. Burden of proof is divided into two (2) parts: first, the burden of coming forward with evidence to present a prima facie case, and second, the ultimate burden of persuasion. (7-1-93)

b. The burden of coming forward with evidence is divided between the applicant and the protestant as follows: (7-1-93)

i. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criteria (a) through (d) of Section 42-203A(5), Idaho Code; (7-1-93)

ii. The applicant shall bear the initial burden of coming forward with evidence for the evaluation of criterion (e) of Section 42-203A(5), Idaho Code, as to any factor affecting local public interest of which he is knowledgeable or reasonably can be expected to be knowledgeable. The protestant shall bear the initial burden of coming forward with evidence for those factors relevant to criterion (e) of Section 42-203A(5), Idaho Code, of which the protestant can reasonably be expected to be more cognizant than the applicant. (7-1-93)

iii. The protestant shall bear the initial burden of coming forward with evidence for the evaluation of the public interest criteria of Section 42-203C(2), Idaho Code, and of demonstrating a significant reduction, except that the applicant shall provide details of the proposed design, construction, and operation of the project and directly associated operations to allow the impact of the project to be evaluated. (7-1-93)

c. The applicant has the ultimate burden of persuasion for the criteria of Section 42-203A, Idaho Code, and the protestant has the ultimate burden of persuasion for the criteria of Section 42-203C, Idaho Code. (7-1-93)

d. For unprotested applications or permits to be reprocessed, the Director will evaluate the application, information submitted pursuant to Subsection 040.05.c. and information in the files and records of the department, and the results of any studies the department may conduct to determine compliance with the appropriate criteria. (7-1-93)

e. In protested matters the Director will take official notice of information as described in the department's adopted Rules of Procedure, and will, prior to considering, circulate to the parties information from department studies and field examinations concerning the protested application or permit being reprocessed, if such information has not otherwise been made a part of the hearing record. (7-1-93)

05. Additional Information Requirements. (7-1-93)

a. For unprotested applications and permits being reprocessed, the additional information required by Subsection 040.05.c. shall be submitted within thirty (30) days after the Director notifies the applicant that the application or permit is being reviewed for decision. The Director may extend the time within which to submit the information upon request by the applicant and upon a showing of good cause. Failure to submit the required information within the time period allowed will be cause for the Director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. The Director will

provide opportunity for hearing as provided in Section 42-1701A, Idaho Code. (7-1-93)

b. For protested applications or protested permits being reprocessed, the information required by Subsection 040.05.c. may be requested by the Director to be submitted within thirty (30) days after notification by the Director, may be made a part of the record of the hearing held to consider the protest, or may be made available in accordance with any pre-hearing discovery procedures. Failure to submit the required information within the time period allowed will be cause for the Director to void an application or to advance the priority of a permit being reprocessed by the number of days that the information submittal is late. (7-1-93)

c. The following information shall be submitted for applications to appropriate unappropriated water or trust water and for permits being reprocessed for trust water. The additional information submittal requirements of this rule are waived for filings which seek to appropriate five (5) cfs or less or storage of five hundred acre-feet (500 AF) or less and for filings seeking reallocation of trust water which the Director determines will reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. However, the Director may specifically request submittal of any of the following information for any filing, as he determines necessary. Information relative to the effect on existing water rights, Section 42-203A(5)(a), Idaho Code, shall be submitted as follows: (7-1-93)

i. For applications appropriating springs or surface streams with five (5) or fewer existing users, either the identification number, or the name and address of the user, and the location of the point of diversion and nature of use for each existing water right shall be submitted. (7-1-93)

ii. For applications appropriating groundwater, a plat shall be submitted locating the proposed well relative to all existing wells and springs and permitted wells within a one-half mile radius of the proposed well. (7-1-93)

iii. Information shall be submitted concerning any design, construction, or operation techniques which will be employed to eliminate or reduce the impact on other water rights. (7-1-93)

d. Information relative to sufficiency of water supply, Section 42-203A(5)(b), Idaho Code, shall be submitted as follows: (7-1-93)

i. Information shall be submitted on the water requirements of the proposed project, including, but not limited to, the required diversion rate during the peak use period and the average use period, the volume to be diverted per year, the period of year that water is required, and the volume of water that will be consumptively used per year. (7-1-93)

ii. Information shall be submitted on the quantity of water available from the source applied for, including, but not limited to, information concerning flow rates for surface water sources available during periods of peak and average project water demand, information concerning the properties of the aquifers that water is to be taken from for groundwater sources, and information on other sources of supply that may be used to supplement the applied for water source. (7-1-93)

e. Information relative to good faith, delay, or speculative purposes of the applicant, Section 42-203A(5)(c), Idaho Code, shall be submitted as follows: (7-1-93)

i. The applicant shall submit copies of deeds, leases, easements or applications for rights-of-way from federal or state agencies documenting a possessory interest in the lands necessary for all project facilities and the place of use or if such interest can be obtained by eminent domain proceedings the applicant must show that appropriate actions are being taken to obtain the interest. Applicants for hydropower uses shall also submit information required to demonstrate compliance with Sections 42-205 and 42-206, Idaho Code. (7-1-93)

ii. The applicant shall submit copies of applications for other needed permits, licenses and approvals, and must keep the department apprised of the status of the applications and any subsequent approvals or denials. (7-1-93)

f. Information Relative to Financial Resources, Section 42-203A(5)(d), Idaho Code, shall be submitted as follows: (7-1-93)

i. The applicant shall submit a current financial statement certified to show the accuracy of the information contained therein, or a financial commitment letter along with the financial statement of the lender or other evidence to show that it is reasonably probable that financing will be available to appropriate the water and apply it to the beneficial use proposed. (7-1-93)

ii. The applicant shall submit plans and specifications along with estimated construction costs for the project works. The plans shall be definite enough to allow for determination of project impacts and implications. (7-1-93)

g. Information Relative to Conflict with the Local Public Interest, Section 42-203A(5)(e), Idaho Code, shall be submitted as follows: The applicant shall seek comment and shall submit all letters of comment on the effects of the construction and operation of the proposed project from the governing body of the city and/or county and tribal reservation within which the point of diversion and place of use are located, the Idaho Department of Fish and Game, the Idaho Department of Environmental Quality, and any irrigation district or canal company within which the proposed project is located and from other entities as determined by the Director. (7-1-93)

h. The following information Relative to the Public Interest Criteria of Section 42-203C(2), Idaho Code, shall be submitted by an applicant seeking reallocation of trust water for a project which the Director determines will reduce the flow of the Snake River by more than two (2) acre-feet per day. For filings proposing irrigation as a purpose of use, the additional information is required if more than two hundred (200) acres will be irrigated. The Director may request any or all of the following information for any filing seeking the reallocation of trust water. (7-1-93)

i. A project design and estimate of cost of development shall be submitted. For applications appropriating more than twenty-five (25) cfs, or ten thousand (10,000) AF of storage, or generating more than five (5) megawatts, the information shall be prepared and submitted by a qualified engineer licensed under the provisions of Chapter 12, Title 54, Idaho Code, unless waived by the Director. The design shall be definite enough to reflect the project's impacts and implications as required in subsequent rules. (7-1-93)

ii. If the project proposes development for irrigation purposes, information shall be submitted on crop rotation, including acreages, for lands when newly developed. (7-1-93)

iii. Information shall be submitted concerning the number and kinds of jobs that will be created or eliminated as a direct result of project development including both the construction and operating phases of the project. If jobs are seasonal, the estimated number of months per year of employment shall be submitted. (7-1-93)

iv. For applications or permits being reprocessed for more than twenty-five (25) cfs, or more than ten thousand (10,000) AF of storage, or more than five (5) megawatts, information shall be submitted concerning the changes to community services that will be required during the construction and operation phases of the project including, but not limited to, changes to schools, roads, housing, public utilities and public health and safety facilities, if any. (7-1-93)

v. Information shall be submitted concerning the source of energy for diverting and using water for the project, the estimated instantaneous demand and total amount of energy that will be used, the efficiency of use, and energy conservation methods. (7-1-93)

vi. Information shall be submitted concerning the location, amount, and quality of return flow water, and any water conservation features of the proposed project. (7-1-93)

vii. If the project proposes irrigation as a use, information shall be submitted concerning the kinship, if any, of the operator of the land to be irrigated by the project to the applicant, the location and acreage of other irrigated lands owned, leased, or rented by the applicant, the names, addresses and number of shares held by each shareholder if the applicant is a corporation, evidence of tax-exempt status if a corporation is so claiming, a soil survey prepared in accordance with the U.S. Soil Conservation Service irrigatable land classification system, and a

schedule for bringing into production the project lands. (7-1-93)

041. -- 044. (RESERVED)

045. EVALUATION CRITERIA (RULE 45).

01. Criteria for Evaluating All Applications to Appropriate Water. The Director will use the following criteria in evaluating whether an application to appropriate unappropriated water or trust water should be approved, denied, approved for a smaller amount of water or approved with conditions. (7-1-93)

a. Criteria for determining whether the proposed use will reduce the quantity of water under existing water rights. A proposed use will be determined to reduce the quantity of water under an existing water right (i.e., injure another water right) if: (7-1-93)

i. The amount of water available under an existing water right will be reduced below the amount recorded by permit, license, decree or valid claim or the historical amount beneficially used by the water right holder under such recorded rights, whichever is less. (7-1-93)

ii. The holder of an existing water right will be forced to an unreasonable effort or expense to divert his existing water right. Protection of existing groundwater rights are subject to reasonable pumping level provisions of Section 42-226, Idaho Code; or (7-1-93)

iii. The quality of the water available to the holder of an existing water right is made unusable for the purposes of the existing user's right, and the water cannot be restored to usable quality without unreasonable effort or expense. (7-1-93)

iv. An application that would otherwise be denied because of injury to another water right may be approved upon conditions which will mitigate losses of water to the holder of an existing water right, as determined by the Director. (7-1-93)

v. The provisions of Subsection 045.01.a.v. are not intended to require compensation or mitigation for loss of flow to holders of subordinated hydropower rights or those from which trust water is reallocated. (7-1-93)

b. Criteria for determining whether the water supply is insufficient for the proposed use. The water supply will be determined to be insufficient for the proposed use if water is not available for an adequate time interval in quantities sufficient to make the project economically feasible (direct benefits to applicant must exceed direct costs to applicant), unless there are noneconomic factors that justify application approval. In assessing such noneconomic factors, the Director will also consider the impact on other water rights if the project is abandoned during construction or after completion, the impact on public resource values, and the cost to local, state and federal governments of such an abandonment. (7-1-93)

c. Criteria for determining whether the application is made in good faith. The criteria requiring that the Director evaluate whether an application is made in good faith or whether it is made for delay or speculative purposes requires an analysis of the intentions of the applicant with respect to the filing and diligent pursuit of application requirements. The judgment of another person's intent can only be based upon the substantive actions that encompass the proposed project. Speculation for the purpose of this rule is an intention to obtain a permit to appropriate water without the intention of applying the water to beneficial use with reasonable diligence. Speculation does not prevent an applicant from subsequently selling the developed project for a profit or from making a profit from the use of the water. An application will be found to have been made in good faith if: (7-1-93)

i. The applicant shall have legal access to the property necessary to construct and operate the proposed project, has the authority to exercise eminent domain authority to obtain such access, or in the instance of a project diverting water from or conveying water across land in state or federal ownership, has filed all applications for a right-of-way. Approval of applications involving Desert Land Entry or Carey Act filings will not be issued until the United States Department of Interior, Bureau of Land Management has issued a notice classifying the lands suitable for entry; and (7-1-93)

- ii. The applicant is in the process of obtaining other permits needed to construct and operate the project; and (7-1-93)
- iii. There are no obvious impediments that prevent the successful completion of the project. (7-1-93)
- d. Criteria for determining whether the applicant has sufficient financial resources to complete the project. (7-1-93)
 - i. An applicant will be found to have sufficient financial resources upon a showing that it is reasonably probable that funding is or will be available for project construction or upon a financial commitment letter acceptable to the Director. This showing is required as described in Subsection 040.05.c. or at the time the hearing provided by Subsection 040.05.c. is conducted. (7-1-93)
 - ii. A governmental entity will be determined to have satisfied this requirement if it has the taxing, bonding or contracting authority necessary to raise the funds needed to commence and pursue project construction in accordance with the construction schedule. (7-1-93)
- e. Criteria for determining whether the project conflicts with the local public interest. The Director will consider the following, along with any other factors he finds to be appropriate, in determining whether the project will conflict with the local public interest: (7-1-93)
 - i. The effect the project will have on the economy of the local area affected by the proposed use as determined by the employment opportunities, both short and long term, revenue changes to various sectors of the economy, short and long term, and the stability of revenue and employment gains; (7-1-93)
 - ii. The effect the project will have on recreation, fish and wildlife resources in the local area affected by the proposed use; and (7-1-93)
 - iii. An application which the Director determines will conflict with the local public interest will be denied unless the Director determines that an over-riding state or national need exists for the project or that the project can be approved with conditions to resolve the conflict with the local public interest. (7-1-93)

02. Criteria for Evaluating Whether a Proposed Use of Trust Water Will Cause a Significant Reduction. Reference: Section 42-203C(1), Idaho Code and Subsection 025.02.b. For purposes of reallocating trust water made available by the Snake River water rights agreement, an application for permit or a permit being reprocessed, will be presumed to not cause a significant reduction if the Director determines that it complies with both the individual and cumulative tests for evaluating significant reduction as provided in Subsections 045.02.a. and 045.02.b. (7-1-93)

a. Individual test for evaluating significant reduction. A proposed use will be presumed to not cause a significant reduction if when fully developed and its impact is fully felt, the use will individually reduce the flow of the Snake River measured at Murphy Gauge by not more than two (2) acre-feet per day. An irrigation project of two hundred (200) acres or less located anywhere in the Snake River Basin above Murphy Gauge proposing to use trust water is presumed to not reduce the flow at Murphy Gauge by more than two (2) acre-feet per day. The presumption of this section is not applicable to applications or permits to be reprocessed which the Director determines to be part of a larger development. (7-1-93)

b. Cumulative test for evaluating significant reduction. A proposed use will be presumed to not cause a significant reduction, if the use, when fully developed and its impact is fully felt and when considered cumulatively with other existing uses and other uses reasonably likely to exist within twelve (12) months of the proposed use, will not deplete the flow of Snake River measured at Murphy Gauge by more than: (7-1-93)

i. Forty thousand (40,000) acre-feet per calendar year when considered with all other uses approved for development of trust water during that calendar year; (7-1-93)

ii. Forty thousand (40,000) acre-feet per calendar year using a four (4) year moving average when considered with all other uses approved for development of trust water during that four (4) year period; and (7-1-93)

iii. Twenty thousand (20,000) acre-feet per calendar year from filings approved for reallocation of trust water which meet the criteria of Subsection 045.02.a. (6-30-19)T

c. The Director will determine on a case-by-case basis from available information whether a permit to be reprocessed or an application for trust water which exceeds the flow depletion limits of Subsection 045.02, or one which meets the flow depletion limits but has been protested, will cause a significant reduction. In making this determination, the Director will consider: (7-1-93)

i. The amount of the reduction in hydropower generation that the proposed use will cause individually and cumulatively with other uses expected to be developed within twelve (12) months of the proposed use as compared to the existing hydropower generation output of the affected facility or facilities. (7-1-93)

ii. The relative importance of the affected hydropower facility or facilities to other sources of electrical power generation available to the holder of the facility or facilities. (7-1-93)

iii. The timing of the reduction in hydropower generation both on an annual basis and on a long-term basis considering the lag time between the beginning of diversion by the proposed use and the resulting reduction in hydropower generation. (7-1-93)

iv. The effect of the reduction in hydropower generation on the unit cost of hydropower from the facility or facilities and the average cost of electrical power offered by the holder of the facility. (7-1-93)

v. The terms of contracts, mortgages, or regulatory permits and licenses which require the holder of the hydropower generation facility to retain the capability to produce hydroelectric power at a specific level. (7-1-93)

d. Other provisions of these rules notwithstanding, applications or permits to be reprocessed proposing a direct diversion of water for irrigation purposes from the Snake River between Milner Dam and Swan Falls Dam or from tributary springs in this reach are presumed to cause a significant reduction. (7-1-93)

e. Other provisions of these rules notwithstanding, applications or permits to be reprocessed for DCMI purposes are presumed to not cause a significant reduction. (7-1-93)

03. Criteria for Evaluating Public Interest. If the Director determines that a proposed use of trust water held by the state pursuant to Section 42-203B(5), Idaho Code, will cause a significant reduction, the Director will consider the criteria of Section 42-203C(2), Idaho Code, before acting on the application or permit being reprocessed. The Director shall consider and balance the relative benefits and detriments for each factor required to be weighed under Section 42-203C(2), Idaho Code, to determine whether a proposed reduction of the amount of water available for power production serves the greater public interest. The Director shall evaluate whether the proposed use sought in the permit being reprocessed or the application will provide the greater benefit to the people of the state of Idaho when balanced against other uses for the same water resource. In evaluating the public interest criteria, the Director will use the following guidelines: (7-1-93)

a. The Director will consider the potential benefits both direct and indirect, and that the proposed use would provide to the state and local economy. The economic appraisal shall be based upon generally accepted economic analysis procedures which uniformly evaluate the following factors within the state of Idaho and the county or counties directly affected by the project: (7-1-93)

i. Direct project benefits. (7-1-93)

ii. Indirect benefits including net revenues to the processing, transportation, supply, service and government sectors of the economy. (7-1-93)

iii. Direct project costs, to include the opportunity cost of previous land use. (7-1-93)

iv. Indirect project costs, including verifiable costs to government in net lost revenue and increased regulation costs, verifiable reductions in net revenue resulting from losses to other existing instream uses, and the

increased cost of replacing reduced hydropower generation from unsubordinated hydropower generating facilities. (7-1-93)

b. The Director will consider the impact the proposed use would have upon the electric utility rates in the state of Idaho, and the availability, foreseeability and cost of alternative energy sources to ameliorate such impact. These evaluations will include the following considerations: (7-1-93)

i. Projections of electrical supply and demand for Idaho and the Pacific Northwest made by the Bonneville Power Administration and the Northwest Power Planning Council and information available from the Idaho Public Utilities Commission or from the electric utility from whose water right trust water is being reallocated. (7-1-93)

ii. The long term reliability of the substitute source and the cost of alternatives including the resulting impact on electrical rates. (7-1-93)

c. The Director will consider whether the proposed use will promote the family farming tradition in the state of Idaho. For purposes of this evaluation, the Director will use the following factors. (7-1-93)

d. If the total land to be irrigated by the applicant, including currently owned and leased irrigated land and land proposed to be irrigated in the application and other applications and permits of the applicant, do not exceed nine hundred sixty (960) acres, the application will be presumed to promote the family farming tradition. (7-1-93)

e. If the requirement of Subsection 045.03.c.i. is not met, the Director will consider the extent the applicant conforms to the following characteristics: (7-1-93)

i. The farming operation developed or expanded as a result of the application is operated by the applicant or a member of his family (spouse, parents or grandparents, lineal descendants, including those that are adopted, lineal descendants of parents; and spouse of lineal descendants); (7-1-93)

ii. In the event the application is filed in the name of a partnership, one or more of the partners shall operate the farming operation; and (7-1-93)

iii. If the application is in the name of a corporation, the number of stockholders does not exceed fifteen (15) persons, and one or more of the stockholders operates the farming operation unless the application is submitted by an irrigation district, drainage district, canal company or other water entity authorized to appropriate water for landowners within the district or for stockholders of the company all of whom shall meet the family farming criteria. (7-1-93)

f. The Director will consider the promotion of full economic and multiple use development of the water resources of the state of Idaho. In this regard, the extent to which the project proposed complies with the following factors will be considered: (7-1-93)

i. Promotes and conforms with the adopted State Water Plan; (7-1-93)

ii. Provides for coordination of proposed and existing uses of water to maximize the beneficial use of available water supplies; (7-1-93)

iii. Utilizes technology economically available to enhance water and energy use efficiency; (7-1-93)

iv. Provides multiple use of the water, including multipurpose storage; (7-1-93)

v. Allows opportunity for reuse of return flows; (7-1-93)

vi. Preserves or enhances water quality, fish, wildlife, recreation and aesthetic values; (7-1-93)

vii. Provides supplemental water supplies for existing uses with inadequate supplies. (7-1-93)

g. The Director will consider whether a proposed use, which includes irrigation, will conform to a staged development policy of up to twenty thousand (20,000) acres per year or eighty thousand (80,000) acres in any four (4) year period in the Snake River drainage above Murphy Gauge. In applying this criteria, the Director will consider the following: (7-1-93)

i. “Above Murphy gauge” means the Snake River and any of its surface or groundwater tributaries upstream from Murphy gauge which gauge is located on the Snake River approximately four (4) miles downstream from Swan Falls Dam from which trust water is to be reallocated; (7-1-93)

ii. Twenty thousand (20,000) acres per year or eighty thousand (80,000) acres per four (4) year period is a four (4) year moving average of Twenty thousand (20,000) acres/year of permits issued during a calendar year for irrigation development. If permits for development of less than twenty-thousand (20,000) acres are issued in a year, additional development in excess of twenty-thousand (20,000) acres can be permitted in succeeding years. Likewise, if more than twenty thousand (20,000) acres is permitted in one year (recognizing that a single large project could exceed twenty thousand (20,000) acres) the permitted development in succeeding years must be correspondingly less to maintain no greater than a twenty thousand (20,000) acres/year average for any four (4) year period; (7-1-93)

iii. The criteria of Subsection 045.03.g. applies to multiple-use projects with irrigation as a principal purpose. Projects which use irrigation as only an incidental purpose, such as the land treatment of waste, shall not be included within this policy; and (7-1-93)

iv. An application determined by the Director to be otherwise approvable but found to exceed the acreage limitations, when considered with other project applications approved for development, may be approved with conditions providing for the construction of project works and beneficial use of water to be commenced in a future year. (7-1-93)

h. No single public interest criterion will be entitled to greater weight than any other public interest criterion. (7-1-93)

i. Until such time as the studies prescribed in Policy 32 I of the State Water Plan are completed and accepted by the Idaho Water Resource Board, applications and permits reprocessed which propose to divert water to surface storage from the Snake River and surface tributaries upstream from Murphy Gauging Station shall be presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code. Applications or reprocessed permits which are approved prior to completion of the studies, will not be subject to additional reprocessing. (7-1-93)

j. Applications for permit for trust water sources filed prior to July 1, 1985, for projects for which diversion and beneficial use was complete prior to October 1, 1984, are presumed to satisfy the public interest criteria of Section 42-203C(2), Idaho Code. (7-1-93)

k. Applications or permits to be reprocessed proposing a direct diversion of water for irrigation purposes from the Snake River between Milner Dam and Swan Falls Dam or from tributary springs in this reach are presumed not to be in the public interest as defined by Section 42-203C, Idaho Code. Such proposals, are presumed to prevent the full economic and multiple use of water in the Snake River Basin and to adversely affect hydropower availability and electrical energy rates in the state of Idaho. (7-1-93)

l. Proposed DCMI uses which individually do not have a maximum consumptive use of more than two acre-feet/day are presumed to meet the public interest criteria of Section 42-203C(2), Idaho Code, unless protested. (7-1-93)

046. -- 049. (RESERVED)

050. CONDITIONS OF APPROVAL (RULE 50).

01. Issuance of Permits with Conditions. The Director may issue permits with conditions to insure compliance with the provisions of Title 42, Chapter 2, Idaho Code, other statutory duties, the public interest, and specifically to meet the criteria of Section 42-203A, Idaho Code, and to meet the requirements of Section 42-203C, Idaho Code, to the fullest extent possible including conditions to promote efficient use and conservation of energy

and water. (7-1-93)

02. Requirements to Mitigate Impact of Flow Depletion. Permits to be reprocessed or applications approved to appropriate water from the main stem of the Snake River between Milner and Murphy gauging station for diversion to off-stream storage during the period November 1 to March 31 shall include requirements to mitigate, in accordance with the State Water Plan, the impact of flow depletions on downstream generation of hydropower. (7-1-93)

03. Applications and Existing Permits That Are Junior and Subordinate. Applications and existing permits approved for hydropower generation shall be junior and subordinate to all rights to the use of water, other than hydropower, within the state of Idaho that are initiated later in time than the priority of the application or existing hydropower permit. A subordinated permit shall not give rise to any right or claim against future rights to the use of water, other than hydropower, within the state of Idaho initiated later in time than the priority of the application or existing hydropower permit. A permit issued for hydropower purposes shall contain a term condition on the hydropower use in accordance with Section 42-203B(6), Idaho Code. (7-1-93)

04. Permanent Flow Measuring Device Requirement. Applications approved for on-stream storage reservoirs will, unless specifically waived by the Director, require permanent flow measuring devices both upstream and downstream from the reservoir. (7-1-93)

05. Well Spacing and Well Construction Requirements. Applications approved for diversion of groundwater may include conditions requiring well spacing and well construction requirements. (7-1-93)

06. Reprocessed Permits. Permits reprocessed pursuant to Section 42-203D, Idaho Code, may be cancelled, modified or conditioned by the Director to make the permit comply in every way with any permit that would be issued for the same purpose based upon a new application processed under these rules. (7-1-93)

07. Voiding Approval of Permit. Permits may be conditioned to authorize the Director to void the approval of the permit if he determines that the applicant submitted false or misleading information on the application or supporting documents. (7-1-93)

08. Retention of Jurisdiction. The Director may condition permits to retain jurisdiction to insure compliance with the design, construction and operation provisions of the permit. (7-1-93)

09. Insuring Minimum Stream Flows and Prior Rights. The Director may condition permits to insure that established minimum stream flows and prior rights including prior rights reserved by federal law are not injured. (7-1-93)

10. Insuring Compliance with Water Quality Standards. The Director may condition permits to insure compliance with Idaho's water quality standards. (7-1-93)

11. Insuring Assignment of Interest. The Director may condition a permit issued for trust water to require that any amendment (Section 42-211, Idaho Code), transfer (Section 42-222, Idaho Code), or assignment of interest in the permit by any method whatsoever shall not result in the project failing to meet the public interest criteria of Section 42-203C, Idaho Code except, however, lenders obtaining title to the project through default will have a reasonable period of time, as determined by the Director, to meet such criteria or to convey the project to a person or entity that does meet the criteria. (7-1-93)

051. -- 054. (RESERVED)

055. MORATORIUM (RULE 55).



01. Applications for Permit. (7-1-93)

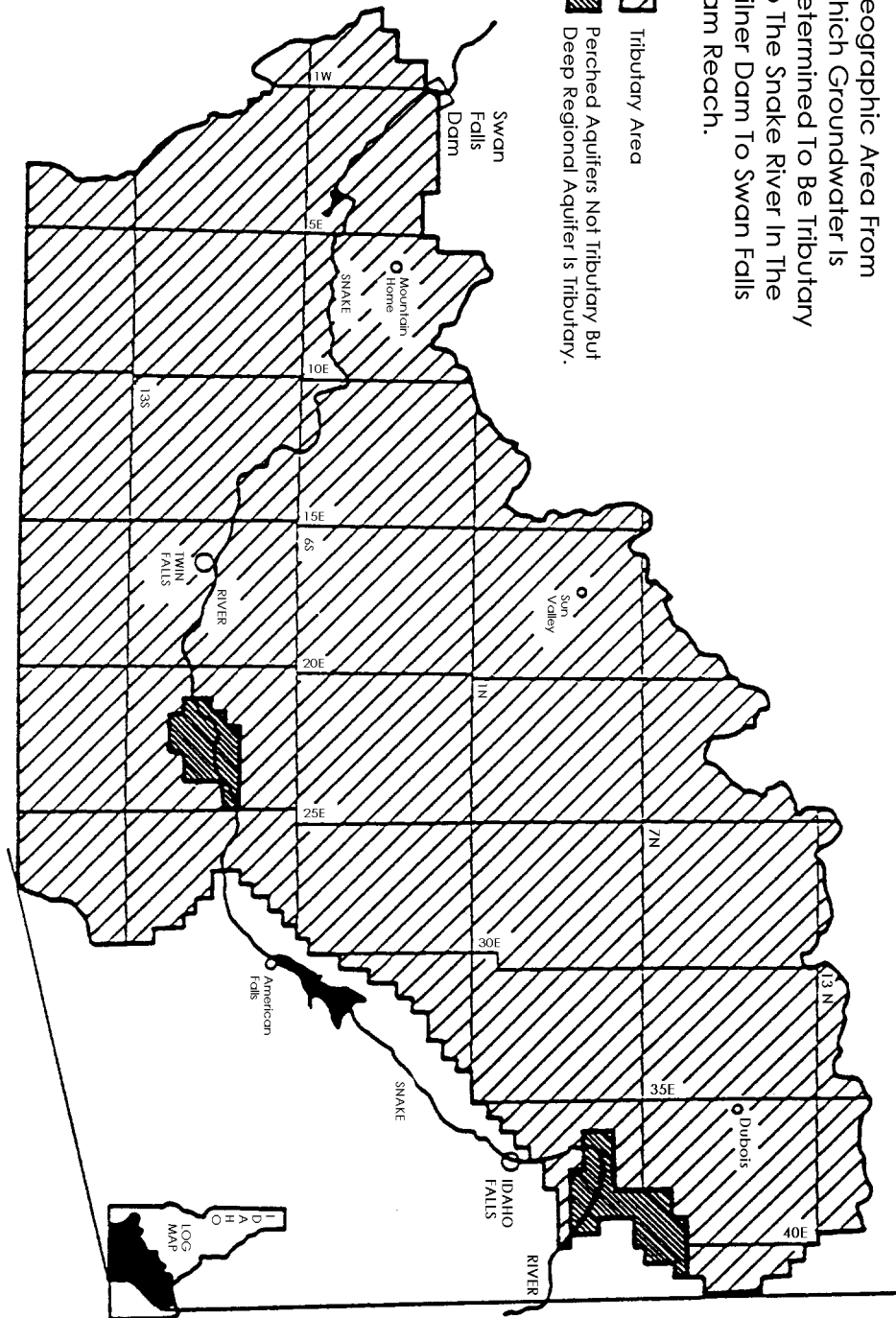
a. The Director may cease to approve applications for permit in a designated geographical area upon finding a need to: (7-1-93)

- i. Protect existing water rights; (7-1-93)
- ii. Insure compliance with the provisions of Chapter 2, Title 42, Idaho Code; and (7-1-93)
- iii. Prevent reduction of flows below a minimum stream flow which has been established by the Director or the board pursuant to applicable law. (7-1-93)
- b.** Notice of the Director's action to cease application approval will be by: (7-1-93)
 - i. Summary Order served by certified mail upon the then existing affected applicants; and (7-1-93)
 - ii. Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area affected. (7-1-93)
- c.** Objections to the Director's action shall be considered under the department's adopted Rules of Procedure and applicable law. (7-1-93)
- 02. Permits.** (7-1-93)
 - a.** To the extent a permit has not been developed, the Director may cancel, or modify permits for which proof of beneficial use has not been submitted in a designated geographical area as an extension of Subsection 055.01. (7-1-93)
 - b.** Notice of the Director's action to cancel or modify permits shall be by: (7-1-93)
 - i. Summary Order served by certified mail upon the affected permit holders in the designated area. (7-1-93)
 - ii. Publication of the order for three (3) consecutive weeks in a newspaper or newspapers of general circulation in the area. (7-1-93)
 - c.** Objections to the Director's action shall be considered under the department's adopted Rules of Procedure and applicable law. (7-1-93)
- 056. -- 999. (RESERVED)**

APPENDIX A

Geographic Area From Which Groundwater Is Determined To Be Tributary To The Snake River In The Milner Dam To Swan Falls Dam Reach.

-  Tributary Area
-  Perched Aquifers Not Tributary But Deep Regional Aquifer Is Tributary.

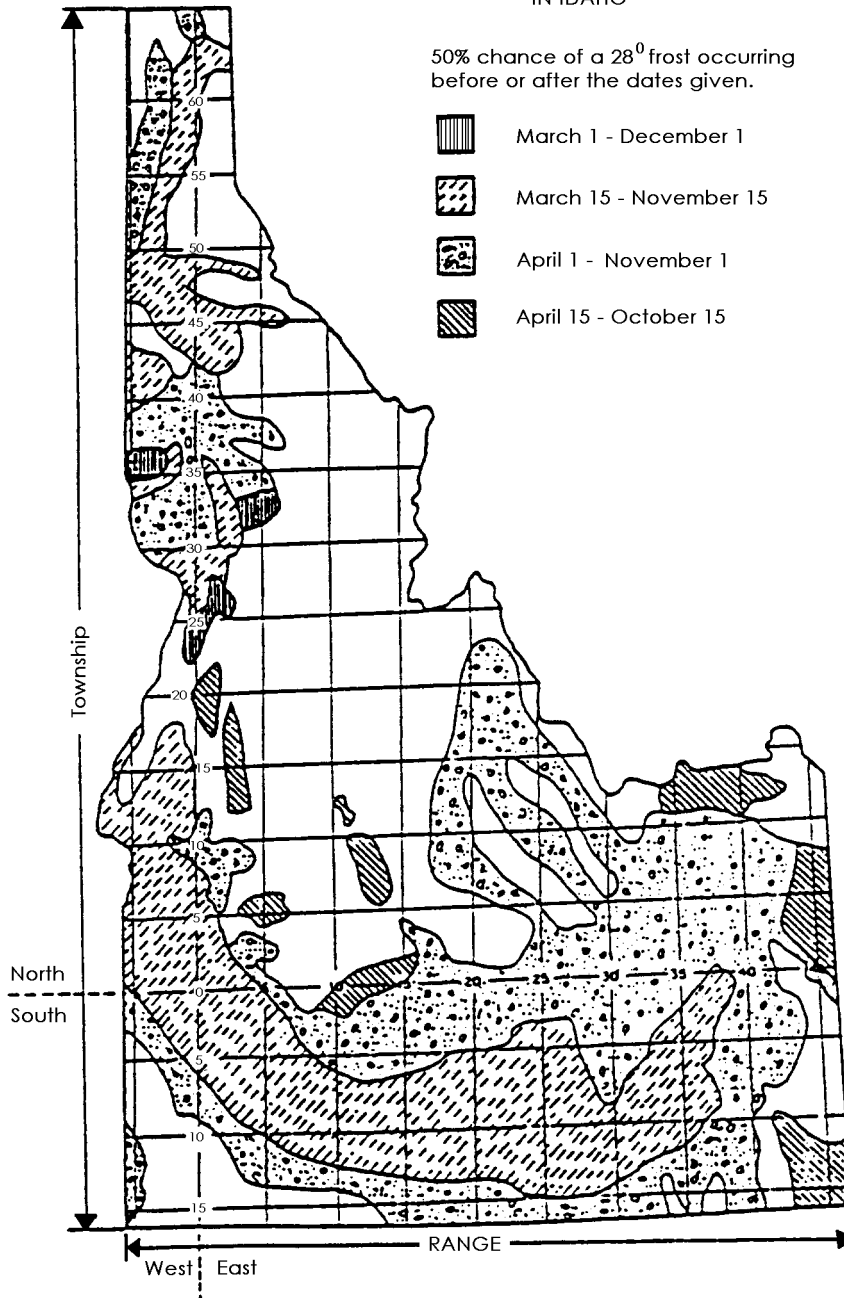


APPENDIX B

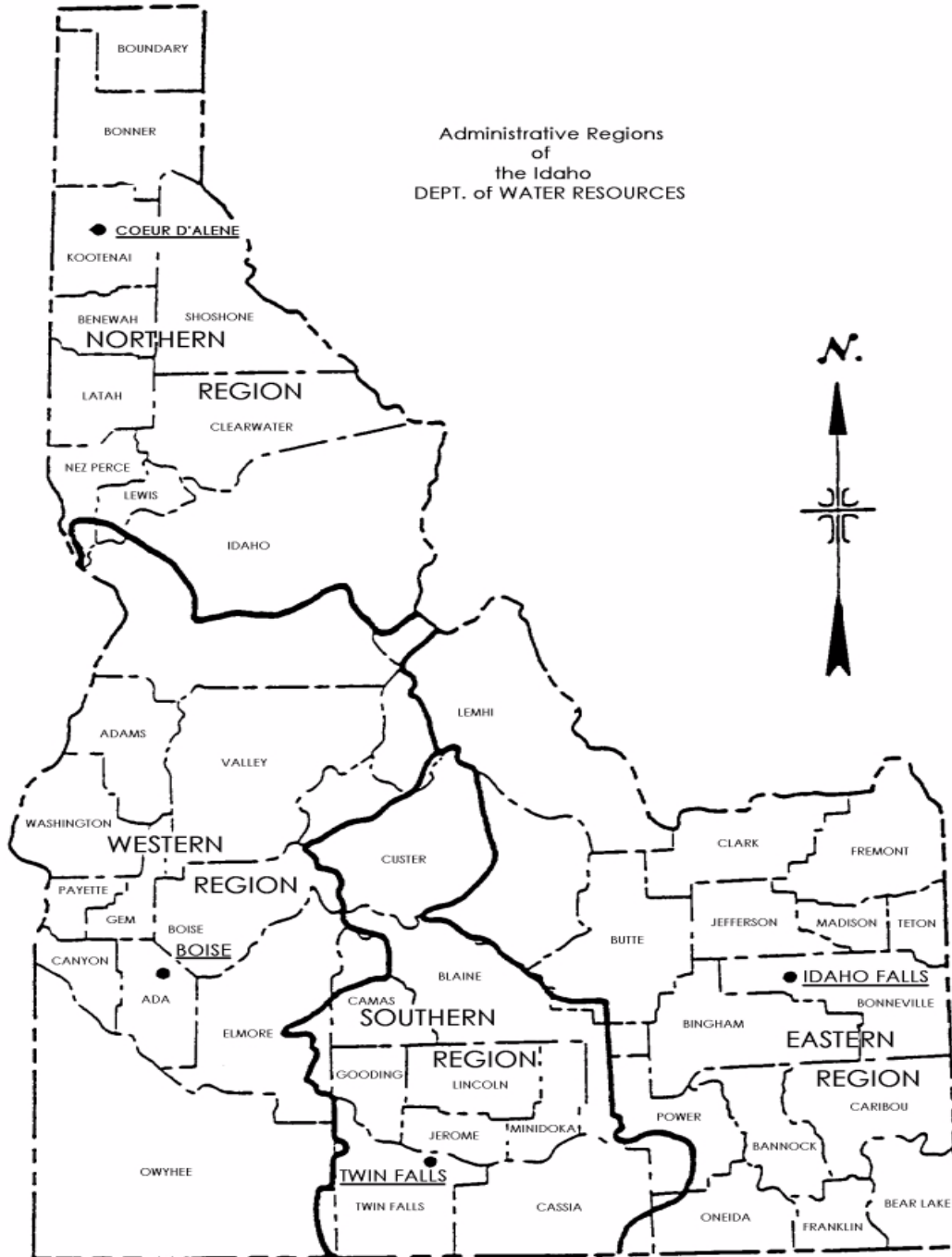
SUGGESTED IRRIGATION SEASONS
IN IDAHO

50% chance of a 28⁰ frost occurring
before or after the dates given.

-  March 1 - December 1
-  March 15 - November 15
-  April 1 - November 1
-  April 15 - October 15



APPENDIX C



**IDAPA 37
TITLE 03
CHAPTER 09**

37.03.09 – WELL CONSTRUCTION STANDARDS RULES

000. LEGAL AUTHORITY (RULE 0).

The Idaho Water Resource Board adopts these administrative rules with the authority provided by Section 42-238(12), Idaho Code. (5-8-09)

001. TITLE AND SCOPE (RULE 1).

01. Title. These rules are cited as IDAPA 37.03.09, “Well Construction Standards Rules.” (5-8-09)

02. Scope. The Department of Water Resources has statutory responsibility for the statewide administration of the rules governing well construction. These rules establish minimum standards for the construction of all new wells and the modification and decommissioning (abandonment) of existing wells. The intent of the rules is to protect the ground water resources of the state against waste and contamination. These rules are applicable to all water wells, monitoring wells, low temperature geothermal wells, injection wells, cathodic protection wells, closed loop heat exchange wells, and other artificial openings and excavations in the ground that are more than eighteen (18) feet in vertical depth below land surface as described in these rules pursuant to Section 42-230 Idaho Code. Some artificial openings and excavations do not constitute a well. For the purposes of these rules, artificial openings and excavations not defined as wells are described in Subsection 045.03 of these rules. Any time that such an artificial opening or excavation is constructed, modified, or decommissioned (abandoned) the intent of these rules must be observed. If waste or contamination is attributable to this type of artificial opening or excavation, the artificial opening or excavation must be modified, or decommissioned (abandoned) as determined by the Director. (5-8-09)

002. WRITTEN INTERPRETATION (RULE 2).

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, the Idaho Department of Water Resources may draft and implement written statements that pertain to the interpretation of these rules, or to the documentation of compliance with these rules. (5-8-09)

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” (5-8-09)

004. INCORPORATION BY REFERENCE (RULE 4).

No documents have been incorporated by reference into this chapter. (5-8-09)

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

01. Office Hours. Office hours are 8 a.m. to 5 p.m. local time, Monday through Friday, except holidays designated by the state of Idaho. (5-8-09)

02. Mailing Address. The mailing address for the state office is: Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098. (5-8-09)

03. Street Address. The street addresses for the state office of the Department of Water Resources, the regional offices in Idaho Falls, Coeur d’Alene, Twin Falls, and Boise, and the satellite offices in Salmon, and Soda Springs 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>. (5-8-09)

006. PUBLIC RECORDS ACT COMPLIANCE (RULE 6).

Records maintained by the Department of Water Resources are subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Sections 74-101 through 74-126, Idaho Code. (5-8-09)

007. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions apply to these rules. (5-8-09)

01. Approved Seal or Seal Material. Seal material must consist of bentonite chips, pellets, or granules, bentonite grout, neat cement, or neat cement grout as defined by these rules. No other materials may be used unless specifically authorized by the Director (5-8-09)

02. Annular Space. The space, measured as one-half (1/2) the difference in diameter between two (2) concentric cylindrical objects, one of which surrounds the other, such as the space between the walls of a drilled hole (borehole) and a casing or the space between two (2) strings of casing. (5-8-09)

03. Aquifer. Any geologic formation(s) that will yield water to a well in sufficient quantities to make the production of water from the formation feasible for beneficial use. (5-8-09)

04. Area of Drilling Concern. An area designated by the Director in which drillers must comply with additional standards to prevent waste or contamination of ground or surface water due to such factors as aquifer pressure, vertical depth of the aquifer, warm or hot ground water, or contaminated ground or surface waters, in accordance with Section 42-238(7), Idaho Code. (5-8-09)

05. Artesian Water. Any water that is confined in an aquifer under pressure so that the water will rise in the well casing or drilled hole above the elevation where it was first encountered. This term includes water of flowing and non-flowing wells. (5-8-09)

06. Artificial Filter Pack. Clean, rounded, smooth, uniform, sand or gravel placed in the annular space around a perforated well casing or well screen. A filter pack is frequently used to prevent the movement of finer material into the well casing and to increase well efficiency. (5-8-09)

07. Bentonite. A commercially processed and packaged, low permeability, sodium montmorillonite clay certified by the NSF International for use in well construction, sealing, plugging, and decommissioning (abandonment). All bentonite products used in the construction or decommissioning (abandoning) of wells must have a permeability rating not greater than 10^{-7} (ten to the minus seven) cm/sec. (5-8-09)

a. Chips. Bentonite composed of pieces ranging in size from one-quarter (1/4)-inch to one (1) inch on their greatest dimension. (5-8-09)

b. Granules (also Granular). Bentonite composed of pieces ranging in size from one thirty-seconds (1/32) inch (#20 standard mesh) to seven thirty-seconds (7/32) inch (#3 standard mesh) on their greatest dimension. (5-8-09)

c. Bentonite Grout. A mixture of bentonite specifically manufactured for use as a well sealing or plugging material and potable water to produce a grout with an active solids content not less than twenty-five percent (25%) by weight e.g., (twenty-five percent (25%) solids content by weight = fifty (50) pounds bentonite per eighteen (18) gallons of water). (5-8-09)

d. Pellets. Bentonite manufactured for a specific purpose and composed of uniform sized, one-quarter (1/4) inch, three-eighths (3/8) inch, or one-half (1/2) inch pieces on their greatest dimension. (5-8-09)

08. Board. The Idaho Water Resource Board. (7-1-93)

09. Bore Diameter. The diameter of the hole in the formation made by the drill bit or reamer. (7-1-93)

10. Borehole (also Well Bore). The subsurface hole created during the drilling process. (5-8-09)

11. Bottom Hole Temperature of an Existing or Proposed Well. The temperature of the ground water encountered in the bottom of a well or borehole. (5-8-09)

12. Casing. The permanent conduit installed in a well to provide physical stabilization, prevent caving or collapse of the borehole, maintain the well opening and serve as a solid inner barrier to allow for the installation of an annular seal. Casing does not include temporary surface casing, well screens, liners, or perforated casing as otherwise defined by these rules. (5-8-09)

13. Cathodic Protection Well. Any artificial excavation in excess of eighteen (18) feet in vertical depth constructed for the purpose of protecting certain metallic equipment in contact with the ground. Commonly referred to as cathodic protection. (7-1-93)

14. Closed Loop Heat Exchange Well. A ground source thermal exchange well constructed for the purpose of installing any underground system through which fluids are circulated but remain isolated from direct contact with the subsurface or ground water. (5-8-09)

15. Conductor Pipe. The first and largest diameter string of permanent casing to be installed in a low temperature geothermal resource well. (5-8-09)

16. Confining Layer. A subsurface zone of low-permeability earth material that naturally acts to restrict or retard the movement of water or contaminants from one zone to another. The term does not include topsoil. (5-8-09)

17. Consolidated Formations. Naturally-occurring geologic formations that have been lithified (turned to stone) such as sandstone and limestone, or igneous rocks such as basalt and rhyolite, and metamorphic rocks such as gneiss and slate. (5-8-09)

18. Contaminant. Any physical, chemical, ion, radionuclide, synthetic organic compound, microorganism, waste, or other substance that does not occur naturally in ground water or that naturally occurs at a lower concentration. (5-8-09)

19. Contamination. The introduction into the natural ground water of any physical, chemical, biological or radioactive material that may: (7-1-93)

a. Cause a violation of Idaho Ground Water Quality Standards; or (5-8-09)

b. Adversely affect the health of the public; or (7-1-93)

c. Adversely affect a designated or beneficial use of the State's ground water. Contamination includes the introduction of heated or cooled water into the subsurface that will alter the ground water temperature and render the local ground water less suitable for beneficial use, or the introduction of any contaminant that may cause a violation of IDAPA 58.01.11, "Ground Water Quality Rule." (5-8-09)

20. Decommissioned (Abandoned) Well. Any well that has been permanently removed from service and filled or plugged in accordance with these rules so as to meet the intent of these rules. A properly decommissioned well will not: (5-8-09)

a. Produce or accept fluids; (5-8-09)

b. Serve as a conduit for the movement of contaminants inside or outside the well casing; or (5-8-09)

c. Allow the movement of surface or ground water into unsaturated zones, into another aquifer, or between aquifers. (5-8-09)

21. Decontamination. The process of cleaning equipment intended for use in a well in order to prevent the introduction of contaminants into the subsurface and contamination of natural ground water. (5-8-09)

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

- 23. Dewatering Well.** A well constructed for the purpose of improving slope stability, drying up borrow pits, or intercepting seepage that would otherwise enter an excavation. (5-8-09)
- 24. Director.** The Director of the Idaho Department of Water Resources or his duly authorized representatives. (7-1-93)
- 25. Disinfection.** The introduction of chlorine or other agent or process approved by the Director in sufficient concentration and for the time required to inactivate or kill fecal and Coliform bacteria, indicator organisms, and other potentially harmful pathogens. (5-8-09)
- 26. Draw Down.** The difference in vertical distance between the static water level and the pumping water level. (5-8-09)
- 27. Drive Point (also known as a Sand Point).** A conduit pipe or casing through which ground water of any temperature is sought or encountered created by joining a “drive point unit” to a length of pipe and driving the assembly into the ground. (5-8-09)
- 28. Exploratory Well.** A well drilled for the purpose of discovering or locating new resources in unproven areas. They are used to extract geological, hydrological, or geophysical information about an area. (5-8-09)
- 29. Global Positioning System (GPS).** A global navigational receiver unit and satellite system used to triangulate a geographic position. (5-8-09)
- 30. Hydraulic Conductivity.** A measurement of permeability. (5-8-09)
- 31. Hydraulic Fracturing.** A process whereby water or other fluid is pumped under high pressure into a well to further fracture the reservoir rock or aquifer surrounding the production zone of a well to increase well yield. (5-8-09)
- 32. Injection Well.** Any excavation or artificial opening into the ground which meets the following three (3) criteria: (7-1-93)
- a.** It is a bored, drilled or dug hole, or is a driven mine shaft or driven well point; and (7-1-93)
 - b.** It is deeper than its largest straight-line surface dimension; and (7-1-93)
 - c.** It is used for or intended to be used for subsurface placement of fluids. (7-1-93)
- 33. Intermediate String or Casing.** The casing installed and sealed below the surface casing within a low temperature geothermal resource well to isolate undesirable water or zones below the bottom of the surface casing. Such strings may either be lapped into the surface casing or extend to land surface. (5-8-09)
- 34. Liner.** (5-8-09)
- a.** A conduit pipe that can be removed from the borehole or well that is used to serve as access and protective housing for pumping equipment and provide a pathway for the upward flow of water within the well. (5-8-09)
 - b.** Liner does not include casing required to prevent caving or collapse, or both, of the borehole or serve as a solid inner barrier to allow for the installation of an annular seal. (5-8-09)
- 35. Mineralized Water.** Any naturally-occurring ground water that has an unusually high amount of chemical constituents dissolved within the water. Water with five thousand (5000) mg/L or greater total dissolved solids is considered mineralized. (5-8-09)
- 36. Modify.** To deepen a well, increase or decrease the diameter of the casing or the well bore, install a

liner, place a screen, perforate existing casing or liner, alter the seal between the casing and well bore, or alter the well to not meet well construction standards. (5-8-09)

37. Monitoring Well. Any well more than eighteen (18) feet in vertical depth constructed to evaluate, observe or determine the quality, quantity, temperature, pressure or other characteristics of the ground water or aquifer. (7-1-93)

38. Neat Cement. A mixture of water and cement in the ratio of not more than six (6) gallons of water to ninety-four (94) pounds of Portland cement (neat cement). Other cement grout mixes may be used if specifically approved by the Director. (5-8-09)

39. Neat Cement Grout. Up to five percent (5%) bentonite by dry weight may be added per sack of cement (neat cement grout) and the water increased to not more than six and one-half (6.5) gallons per sack of cement. Other neat cement mixes may be used if specifically approved by the Director. These grouts must be mixed and installed in accordance with the American Petroleum Institute Standards - API Class A through H. As found in API RP10B, "Recommended Practice for Testing Oil Well Cements and Cement Additives," current edition or other approved standards. (5-8-09)

40. Oxidized Sediments. Sediments, characterized by distinct coloration, typically shades of brown, red, or tan, caused by the alteration of certain minerals in an environment with a relative abundance of oxygen. (5-8-09)

41. Perforated Well Casing. Well casing that has been modified by the addition of openings created by drilling, torch cutting, saw cutting, mechanical down-hole perforator, or other method. (5-8-09)

42. Pitless Adaptor or Pitless Unit. An assembly of parts designed for attachment to a well casing which allows buried pipe to convey water from the well or pump and allows access to the interior of the well casing for installation or removal of the pump or pump appurtenances, while maintaining a water tight connection through the well casing and preventing contaminants from entering the well. (5-8-09)

43. Potable Water. Water of adequate quality for human consumption. (5-8-09)

44. Pressure Grouting (Grouting). The process of pumping and placing an approved grout mixture into the required annular space, by positive displacement from bottom to top using a tremie pipe, Halliburton method, float shoe, or other method approved by the Director. (5-8-09)

45. Production Casing. The casing or tubing through which a low temperature geothermal resource is produced. This string extends from the producing zone to land surface. (5-8-09)

46. Public Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: (5-8-09)

a. Any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and (5-8-09)

b. Any collection or pretreatment storage facilities not under such control that are used primarily in connection with such system. (5-8-09)

c. Such term does not include any "special irrigation district." (5-8-09)

d. A public water system is either a "community water system" or a "non-community water system." (5-8-09)

47. Reduced Sediments. Sediments, characterized by distinct coloration, typically shades of blue,

black, gray, or green, caused by the alteration of certain minerals in an oxygen poor environment. (5-8-09)

48. Remediation Well. A well used to inject or withdraw fluids, vapor, or other solutions approved by the Director for the purposes of remediating, enhancing quality, or controlling potential or known contamination. Remediation wells include those used for air sparging, vapor extraction, or injection of chemicals for remediation or in-situ treatment of contaminated sites. (5-8-09)

49. Sand. Any sediment particle retained on a U.S. standard sieve #200 (Seventy-five hundredths (0.075) mm to two (2) mm). (5-8-09)

50. Screen (Well Screen). A commercially produced structural tubular retainer with standard sized openings to facilitate production of sand free water. (5-8-09)

51 Seal or Sealing. The placement of approved seal material in the required annular space between a borehole and casing, between casing strings, or as otherwise required to create a low permeability barrier and prevent movement or exchange of fluids. Seals are required in the construction of new wells, repair of existing wells, and in the decommissioning (abandonment) of wells. Seals are essential to the prevention of waste and contamination of ground water. (5-8-09)

52. Start Card. An expedited drilling permit process for the construction of cold water, single-family residential wells. (5-8-09)

53. Static Water Level. The height at which water will rise in a well under non-pumping conditions. (5-8-09)

54. Surface Casing. The first string of casing in a low temperature geothermal resource well which is set and sealed after the conductor pipe to anchor blow out prevention equipment and to case and seal out all existing cold ground water zones. (5-8-09)

55. Temporary Surface Casing. Steel pipe used to support the borehole within unstable or unconsolidated formations during construction of a well that will be removed following the installation of the permanent well casing and prior to or during placement of an annular seal. (5-8-09)

56. Thermoplastic/PVC Casing. Plastic piping material meeting the requirements of ASTM F 480 and specifically designed for use as well casing. (5-8-09)

57. Transmissivity. The capacity of an aquifer to transmit water through its entire saturated thickness. (5-8-09)

58. Tremie Pipe. A small-diameter pipe used to convey grout, dry bentonite products, or filter pack materials into the annular space, borehole, or well from the bottom to the top of a borehole or well. (5-8-09)

59. Unconfined Aquifer. An aquifer in which the water table is in contact with and influenced by atmospheric pressure through pore spaces in the overlying formation(s). (5-8-09)

60. Unconsolidated Formation. A naturally-occurring earth formation that has not been lithified. Alluvium, soil, sand, gravel, clay, and overburden are some of the terms used to describe this type of formation. (7-1-93)

61. Unstable Unit. Unconsolidated formations, and those portions of consolidated formations, that are not sufficiently hard or durable enough to sustain an open borehole without caving or producing obstructions without the aid of fluid hydraulics or other means of chemical or physical stabilization. (5-8-09)

62. Unusable Well. Any well that can not be used for its intended purpose or other beneficial use authorized by law. (5-8-09)

63. Waiver. Approval in writing by the Director of a written request from the well driller and the well

owner proposing specific variance from the minimum well construction standards. (5-8-09)

64. Waste. The loss, transfer, or subsurface exchange of a ground water resource, thermal characteristic, or natural artesian pressure from any aquifer caused by improper construction, misuse, or failure to properly maintain a well. Waste includes: (5-8-09)

a. The flow of water from an aquifer into an unsaturated subsurface zone; (5-8-09)

b. The transfer or mixing, or both, of waters from one aquifer to another (aquifer commingling); or (5-8-09)

c. The release of ground water to the land surface whenever such release does not comply with an authorized beneficial use. (5-8-09)

65. Water Table. The height at which water will rise in a well; also the upper surface of the zone of saturation in an unconfined aquifer. This level will change over time due to changes in water supply and aquifer impacts. (5-8-09)

66. Well. (5-8-09)

a. An artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained. The depth of a well is determined by measuring the maximum vertical distance between the land surface and the deepest portion of the well. Any water encountered in the well is considered to be obtained for the purpose of these rules; or (5-8-09)

b. Any waste disposal and injection well, as defined in Section 42-3902, Idaho Code. (5-8-09)

c. Well does not mean: (5-8-09)

i. A hole drilled for mineral exploration; or (5-8-09)

ii. Holes drilled for oil and gas exploration which are subject to the requirements of Section 47-320, Idaho Code; or (5-8-09)

iii. Holes drilled for the purpose of collecting soil samples above the water table. (5-8-09)

67. Well Development. The act of bailing, jetting, pumping, or surging water in a well to remove drilling fluids, fines, and suspended materials from within a completed well and production zone in order to establish the optimal hydraulic connection between the well and the aquifer. (5-8-09)

68. Well Driller or Driller. Any person who operates drilling equipment, or who controls or supervises the construction of a well, and is licensed under Section 42-238, Idaho Code (5-8-09)

69. Well Drilling or Drilling. The act of constructing a new well or modifying or changing the construction of an existing well. (5-8-09)

70. Well Owner. Any person, firm, partnership, co-partnership, corporation, association, or other entity, or any combination of these, who owns the property on which the well is or will be located or has secured ownership of the well by means of a deed, covenant, contract, easement, or other enforceable legal instrument for the purpose of benefiting from the well. (5-8-09)

71. Well Rig (Drill Rig). Any power driven percussion, rotary, boring, digging, jetting or auguring machine used in the construction of a well. (5-8-09)

011. -- 024. (RESERVED)

025. CONSTRUCTION OF COLD WATER WELLS (RULE 25).

All persons constructing wells must comply with the requirements of Section 42-238, Idaho Code, and IDAPA 37.03.10, "Well Driller Licensing Rules." The standards specified in Rule 25 apply to all wells with a bottom hole temperature of eighty-five (85) degrees Fahrenheit or less. Wells with a bottom hole temperature greater than eighty-five (85) degrees Fahrenheit, but less than two hundred twelve (212) degrees Fahrenheit, must meet the requirements of Rule 30 in addition to meeting the requirements of Rule 25. These standards also apply to any waste disposal and injection well as defined in Section 42-3902, Idaho Code. (5-8-09)

01. General. The well driller must construct each well as follows: (5-8-09)

a. In accordance with these rules and with the conditions of approval of any drilling permit issued pursuant Section 42-235, Idaho Code, and in a manner that will prevent waste and contamination of the ground water resources of the state of Idaho. The adopted standards are minimum standards which must be adhered to in the construction of all new wells, and in the modification or decommissioning (abandonment) of existing wells. The well driller is charged with the responsibility of preventing waste or contamination of the ground water resources during the construction, modification or abandonment of a well. The Director may add conditions of approval to a drilling permit issued pursuant to Rule 45 of these rules to require that a well be constructed, modified, or decommissioned (abandoned) in accordance with additional standards when necessary to protect ground water resources and the public health and safety from existing contamination and waste or contamination during the construction, modification or decommissioning (abandonment) of a well. (5-8-09)

b. In consideration of the geologic and ground water conditions known to exist or anticipated at the well site. (5-8-09)

c. Such that it is capable of producing, where obtainable, the quantity of water to support the allowed or approved beneficial use of the well, subject to law; (5-8-09)

d. Meet the siting and separation distance requirements in the table in this Subsection (025.01.d.). Additional siting and separation distance requirements are set forth by the governing district health department and the Idaho Department of Environmental Quality rules at IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules," and IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems".

Separation of Well from:	Minimum Separation Distance (feet)
Existing Public Water Supply well, separate ownership	- 50
Other existing well, separate ownership	- 25
Septic drain field	- 100
Septic tank	- 50
Drainfield of system with more than 2,500 GPD of sewage inflow	- 300*
Sewer line - main line or sub-main, pressurized, from multiple sources	- 100
Sewer line - main line or sub-main, gravity, from multiple sources	- 50
Sewer line - secondary, pressure tested, from a single residence or building	- 25
Effluent pipe	- 50
Property line	- 5
Permanent buildings, other than those to house the well or plumbing apparatus, or both	- 10
Above ground chemical storage tanks	- 20
Permanent (more than six months) or intermittent (more than two months) surface water	- 50

Separation of Well from:	Minimum Separation Distance (feet)
Canals, irrigation ditches or laterals, & other temporary (less than two months) surface water	- 25
*This distance may be less if data from a site investigation demonstrates compliance with IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules," separation distances.	

(5-8-09)

02. Waivers. In unique cases where the Director concludes that the ground water resources will be protected against waste and contamination and the public health and safety are not compromised, a waiver of specific standards required by these rules may be approved prior to constructing, decommissioning, or modifying a well.

(5-8-09)

a. To request a waiver the well driller and well owner must:

(5-8-09)

i. Jointly submit a detailed plan and written request identifying a specific Rule or Rules proposed to be waived. Additionally, the plan must detail the well construction process that will be employed in lieu of complete Rule compliance:

(5-8-09)

ii. Prior to submittal, the well driller and the well owner must sign the plan and written request acknowledging concurrence with the request; and

(5-8-09)

iii. Submit the plan and request by facsimile, e-mail, or letter.

(5-8-09)

b. The Director will evaluate and respond to the request within ten (10) business days of receiving the request.

(5-8-09)

i. If the request for waiver is approved, the intent of the rules will be served and all standards not waived will apply. Waivers approved by the Director will not supersede requirements of other regulatory agencies without specific concurrence from that agency. Work activity related to a waiver request will not proceed until a written or verbal approval is granted by the Director.

(5-8-09)

ii. Any verbal approval will be followed by a written approval.

(5-8-09)

03. Records. In order to enable a comprehensive survey of the extent and occurrence of the state's ground water resource, the coordinates of every newly constructed, modified or decommissioned (abandoned) well location must be identified by latitude and longitude with a global positioning system (GPS) and recorded on the driller's report in degrees and decimal minutes and within the nearest 40 acre parcel using the Public Land Survey System. Every well driller must maintain records as described in IDAPA 37.03.10 "Well Driller Licensing Rules," pursuant to Section 42-238(11), Idaho Code, and provide the well owner with a copy of the approved well drilling permit and a copy of the well driller's report when submitted to the Director.

(5-8-09)

04. Casing. The well driller must install casing in every well. Steel or thermoplastic casing may be installed in any well with a bottom hole temperature of eighty-five (85) degrees Fahrenheit or less. Thermoplastic pipe must not be installed in a well with a bottom hole temperature greater than eighty-five (85) degrees Fahrenheit. All casing to be installed must be new or in like-new condition, free of defects, and clearly marked by the manufacturer with all specifications required by these rules. For all wells the casing must extend at least twelve (12) inches above land surface and finished grade and to a minimum depth below land surface as required by these rules. Concrete slabs around a well casing will be considered finished grade (Figure 01, Appendix A). The well driller must install casing of sufficient strength to withstand calculated and anticipated subsurface forces and corrosive effects. The well driller must install casings sufficiently plumb and straight to allow the installation or removal of screens, liners, pumps and pump columns without causing adverse effects on the operation of the installed pumping

equipment.

(5-8-09)

a. **Steel Casing.** When steel casing lengths are joined together, they must be joined by welded joints or screw-couple joints. All connection must be water tight. If steel casing joints are welded, the weld must be at least as thick as the well casing and fully penetrating. Welding rods or flux core wire of at least equal quality to the casing metal must be used. Casing ends to be joined by welding must be properly prepared, beveled and gapped to allow full penetration of the weld. All stick welded joints must have a minimum of two (2) passes including a “root” pass and have minimal undercut when complete.

(5-8-09)

i. In addition to meeting these standards, all wells that are constructed for public water systems must meet all of the casing wall thickness requirements set forth by the Idaho Department of Environmental Quality Rules, IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems.”

(5-8-09)

ii. The well driller must install steel casing that meets or exceeds the American Society of Testing and Materials (ASTM) standard A53, Grade B or American Petroleum Institute (API) 5L Grade B, and that meets the following specifications for wall thickness:

Minimum Single-Wall Steel Well Casing Thickness¹ for Selected Diameters (inches)													
Nominal Diameter (in.)³	6²	8	10	12	14	16	18	20	22	24	26	28	30
Depth (ft.)	Nominal Wall Thickness (in.) ¹												
<100	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250
100-200	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250
200-300	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250
300-400	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.375	0.375	0.375	0.375
400-600	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.250	0.375	0.375	0.375	0.375	0.375
600-800	0.250	0.250	0.250	0.250	0.250	0.250	0.375	0.375	0.375	0.375	0.375	0.375	0.375
800-1000	0.250	0.250	0.250	0.250	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375
1000-1500	0.280	0.322	0.365	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375
1500-2000	0.280	0.322	0.365	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375
<p>1 Compliance with the minimum nominal wall thicknesses listed is required for any depth or location where casing is used to prevent caving or collapse, or both, of the borehole or serves as a solid inner barrier to allow for the installation of an annular seal.</p> <p>2 For nominal casing diameters less than six (6) inches, the minimum nominal wall thickness must be equivalent to ASTM Schedule 40.</p> <p>3 For any other casing diameter not addressed herein, prior approval by the Director is required.</p>													

b. **Thermoplastic Casing.** Thermoplastic casing may be used in monitoring wells and cold water wells if drilling of the borehole confirms its suitability for use.

(5-8-09)

i. Thermoplastic casing must conform to ASTM F 480 and NSF-WC. The well driller must not use thermoplastic casing under any condition where the manufacturer’s resistance to hydraulic collapse pressure (RHCP) or total depth specifications are exceeded. Thermoplastic casing extending above-ground must be protected from physical and ultraviolet light damage by enclosing it within steel casing extending at least twelve (12) inches above land surface and finished grade and to a minimum depth of eighteen (18) feet below land surface or five (5) feet

below land surface for monitoring wells. (5-8-09)

ii. Thermoplastic pipe used in wells as casing or liner must have a minimum rating of SDR-21. For nominal diameters of four (4) inches or less, a minimum rating of Schedule 40 is required. If used as casing within unconsolidated or unstable consolidated formations, thermoplastic pipe must be centralized and fully supported throughout the unstable zone(s) with filter pack or seal material as required by these rules. (5-8-09)

iii. All thermoplastic casing and liner must be installed in accordance with the manufacturer's recommendations and specifications, and as required by these rules. The well driller will not treat thermoplastic pipe in any manner that would adversely affect its structural integrity. The well driller must: (5-8-09)

(1) Ensure that the weight of the pump assembly, if secured to the thermoplastic pipe, does not exceed the weight limitations per manufacturer's recommendations or cause damage to the pipe resulting in breaks or leaks. (5-8-09)

(2) Not use Type III (high-early strength) Portland cement-based seal materials in direct contact with thermoplastic pipe unless approved by the Director. (5-8-09)

(3) Not drive, drop, force, or jack thermoplastic pipe into place. Thermoplastic pipe must be lowered or floated into an oversized, obstruction-free borehole. (5-8-09)

c. Perforated Well Casing. Perforated well casing may be used in the construction or decommissioning of a well when such application does not violate any standards required by these rules. (5-8-09)

05 Liner. In addition to well casing, liners may be installed in wells to prevent damage to pumping equipment. Steel or thermoplastic pipe may be installed as liner in a well with a bottom hole temperature of eighty-five (85) degrees Fahrenheit or less. Thermoplastic liner must conform to ASTM F 480 and NSF-WC. Thermoplastic liners must not be used in unconsolidated formations or unstable units. (5-8-09)

06. Screen. Well screens must be used in constructing a well when necessary to avoid sand production (see sand production, Rule 25, Subsection 025.24). Well screens must be commercially manufactured, be slotted, louvered or wire wrapped, and be installed according to the manufacturer's specifications. (5-8-09)

a. Screens may require a filter pack consisting of sand or gravel to further reduce the quantity of sand produced from the well. (5-8-09)

b. The well driller will not install well screens, perforated casing or filter pack across a confining layer(s) separating aquifers of different pressure, temperature, or quality. (5-8-09)

07. Use of Approved Sealing Materials and Required Annular Space. Well casings must be sealed in the required annular space with approved material to prevent the possible downward movement of contaminated surface waters or other fluids in any annular space around the well casing (Figure 02, Appendix A). Proper sealing is also required to prevent the movement of groundwater either upward or downward from zones of different pressure, temperature or quality within the well or outside the casing. The well driller must notify by phone the Department's appropriate Region Office at least four (4) hours in advance of placing any annular seal to provide Department staff the opportunity to observe seal placement. (5-8-09)

a. All casing to be sealed must be adequately centralized to ensure uniform seal thickness around the well casing. Surface seals must extend to not less than thirty-eight (38) feet below land surface for well depths greater than thirty-eight (38) feet. For well depths less than thirty-eight (38) feet, seals must extend to depths as hereafter required. (5-8-09)

b. Seals are required at depths greater than thirty-eight (38) feet in artesian wells or to seal through confining layers separating aquifers of differing pressure, temperature, or quality in any well. (5-8-09)

c. When a well is modified and the existing casing is moved or the original seal is damaged, or a well driller discovers that a seal was not installed or has been damaged, the well driller must repair, replace, or install a

seal around the permanent casing that is equal to or better than required when the well was originally constructed. (5-8-09)

d. Manufactured packers and shale traps may be used as devices to retain approved seal material when installing a required annular seal. Whenever these devices are used to retain seal material, the well driller must comply with the manufacturer's recommendations for installation. (5-8-09)

e. If a temporary casing has been installed, upon completion of the drilling, the annular space must be filled with approved seal material and kept full while withdrawing the temporary casing. Bentonite chips should be used with caution when the annular space between a temporary casing and permanent casing is filled with water. (5-8-09)

i. When attempts at removing a temporary casing are unsuccessful, the casing must be sealed in place by a method approved by the department. (5-8-09)

ii. The well driller must notify the department whenever a temporary casing can not be removed and propose a plan to adequately seal the casing to prevent waste and contamination of the ground water. The plan must detail how the casing will be sealed on the outside to a sufficient depth below land surface in addition to placement of any required formation seals through the interval at which the casing will remain. (5-8-09)

f. For mixed grout seals the minimum annular space required must provide for a uniform seal thickness not less than one (1) inch on all sides of the casing or a borehole at least two (2) inches larger than the outside diameter (OD) of the casing to be sealed (Figure 02, Appendix A). (Note: a seven and seven-eighths (7 7/8) inch diameter (eight (8) inch nominal) borehole around a six and five-eighths (6 5/8) inch OD (six (6) inch nominal casing does not satisfy the minimum annular space requirements). (5-8-09)

i. When placing grout seals with a removable tremie pipe between casing strings or between a borehole and casing, the required annular space must be at least one (1) inch or equal to the OD of the tremie pipe whichever is greater. Permanent tremie pipes will be considered as a casing string and subject to minimum annular space requirements in addition to the annular space requirements around the well casing (Figure 03, Appendix A). (5-8-09)

ii. All grout seals must be placed from the bottom up, by using an approved method. Bentonite grout must not be used above the water table unless specifically designed and manufactured for such use and approved by the Director in advance. (5-8-09)

iii. If cement-based grout (neat cement or neat cement grout) is used to create a seal, the casing string sealed must not be moved or driven after the initial set. Construction must not resume for a minimum of twenty-four (24) hours following seal placement; (5-8-09)

g. For dry bentonite seals the minimum annular space required must provide for a uniform seal thickness not less than one and five-eighths (1 5/8) inches on all sides of the casing or a borehole at least four (4) inches larger than the "nominal diameter" of the casing to be sealed. e.g., (six and five-eighths (6 5/8) inch OD (six (6) inch nominal) casing requires a ten and three fourths (10 3/4) inch OD (ten (10) inch nominal) temporary casing or a nine and seven-eighths (9 7/8) inch (ten (10) inch nominal) minimum borehole). Listed below are additional annular space requirements and limitations for placement of dry bentonite seals: (5-8-09)

i. All dry bentonite seals must be tagged during placement and consider volumetric calculations to verify placement. (5-8-09)

ii. Installation of dry bentonite seals must be consistent with the manufacturers' recommendations and specifications for application and placement. (5-8-09)

iii. Granular bentonite must not be placed through water. (5-8-09)

iv. If a granular bentonite seal is placed deeper than two hundred (200) feet, the minimum annular space must be increased by at least one (1) inch e.g., (six and five-eighths (6 5/8) inch OD (six (6) inch nominal)

casing requires a twelve and three fourths (12 3/4) inch OD (twelve (12) inch nominal) temporary casing or an eleven and seven eighths (11 7/8) inch (twelve (12) inch nominal) minimum borehole. (5-8-09)

v. Bentonite chips may be placed through water or drilling fluid of appropriate viscosity. Bentonite chip seals placed through more than fifty (50) feet of water or drilling fluid will require the minimum annular space to be increased by at least one (1) inch e.g., (six and five-eighths (6 5/8) inch OD (six (6) inch nominal) casing requires a twelve and three fourths (12 3/4) inch OD (twelve (12) inch nominal) temporary casing or an eleven and seven eighths (11 7/8) inch (twelve (12) inch nominal) minimum borehole. (5-8-09)

08. Sealing of Wells. Sealing requirements described herein are minimum standards that apply to all wells. The Director may establish alternate minimum sealing requirements in specific areas when it can be determined through detailed studies of the local hydrogeology that a specific alternate minimum will provide protection of the ground water from waste and contamination. (5-8-09)

a. Consolidated Formations. When a water well is drilled into and acquires water from an aquifer that consists of consolidated formations that are above the water table, casing must be installed so that it extends and is sealed to a depth not less than thirty-eight (38) feet (Figure 04, Appendix A). If the well depth is less than thirty-eight (38) feet from land surface, well casing must be installed and sealed five (5) feet into the consolidated formation or to a depth of eighteen (18) feet, whichever is greater. (5-8-09)

b. Unconsolidated Formations without Confining Layers of Clay. When a water well is drilled into and acquires water from an unconfined aquifer that is overlain with unconsolidated formations, such as sand and gravel without confining layers of clay, well casing must extend to at least five (5) feet below the water table and be sealed to a depth not less than thirty-eight (38) feet (Figure 05, Appendix A). If the well depth is less than thirty-eight (38) feet well casing must extend to at least five (5) feet below the water table or eighteen (18) feet, whichever is greater, and be sealed to a depth of at least eighteen (18) feet. (5-8-09)

i. The extensive (for example, one hundred fifty (150) feet thick or more) unconsolidated, non-stratified, sand and gravel of the Rathdrum Prairie are characterized by extremely high transmissivity and hydraulic conductivity. Under these conditions, sealing wells to depths greater than eighteen (18) feet may not be additionally protective. When a water well is drilled within the boundaries of the Rathdrum Prairie, (shown in Figure 06, Appendix A of these rules), well casing must extend to at least five (5) feet below the water table and be sealed to a depth not less than eighteen (18) feet (Figure 07, Appendix A). (5-8-09)

c. Unconsolidated Formations with Confining Layers of Clay. When a well is drilled into and acquires water from an aquifer that is overlain by unconsolidated deposits such as sand and gravel, and there are confining layers of clay above the water table, well casing must be installed from the land surface to the confining layer immediately above and in contact with the production zone and sealed to a depth not less than thirty-eight (38) feet (Figure 08, Appendix A). If the well depth is less than thirty-eight (38) feet from land surface, well casing must extend and be sealed into the first confining layer or to a depth of eighteen (18) feet, whichever is greater. (5-8-09)

09. Sealing Artesian Wells. (5-8-09)

a. Unconsolidated Formations. When artesian water is encountered in unconsolidated formations, the production zone or open interval must be limited to zones of like pressure, temperature, and quality. Water encountered in oxidized sediments must not be comingled with water encountered in reduced sediments. Well casing must extend from land surface into the lower most confining layer above the production zone, and must be sealed: (5-8-09)

i. From land surface to a depth of at least thirty-eight (38) feet; and (5-8-09)

ii, Through all confining layer(s); and (5-8-09)

(1) A minimum of five (5) feet of seal material must be placed into or through the lower most confining layer above the production zone (Figure 09, Appendix A); or (5-8-09)

(2) Five (5) feet into or through the lowermost confining layer above the production zone and continuously to land surface (Figure 09, Appendix A). (5-8-09)

iii. If the well depth is less than thirty-eight (38) feet, the well must be cased and sealed from land surface to the confining layer in direct contact with the production zone or to a depth of eighteen (18) feet, whichever is greater. (5-8-09)

b. Consolidated Formations. When artesian water is encountered in a consolidated formation, well casing must be installed and sealed from land surface to a depth of at least thirty-eight (38) feet; and (5-8-09)

i. If the consolidated formation is overlain by a permeable formation(s) and water will rise above the consolidated formation, well casing must extend and be sealed at least five (5) feet into the confining portion of the consolidated formation (Figure 10, Appendix A). (5-8-09)

ii. If the well depth is less than thirty-eight (38) feet, the well must be cased and sealed from land surface five (5) feet into the confining consolidated formation or to a depth of eighteen (18) feet, whichever is greater. (5-8-09)

c. Control Device. Pursuant to Section 42-1603, Idaho Code, if the well flows at land surface, it must be equipped with a control device approved by the Director, so that the flow can be completely stopped. If leaks occur around the well casing or adjacent to the well, the well must be completed with seals, casing or cement grout to eliminate the leakage. (5-8-09)

i. Flowing artesian wells must be equipped with an approved pressure gage fitting that will allow access for measurement of shut-in pressure of a flowing well. All pressure gage fittings must include control valves such that the pressure gage can be removed without resulting in artesian flow from the well. (5-8-09)

ii. The well driller must not move his well drilling rig from the site until all requirements have been satisfied. Some mixing of water may be allowed to develop an adequate water well; however, the mixing must be restricted to water zones of similar pressure, temperature and quality. The driller must take precautions to case and seal out zones which may lead to waste or contamination. (5-8-09)

10. Alternative Methods for Sealing Wells. To accommodate for new technology, and in consideration of the wide variety of drilling equipment used to construct wells, other methods of sealing wells not specifically addressed in these rules may be allowed. The Director may consider specific proposals for alternative methods of sealing on a case by case basis. Director approval or acceptance of such procedures will not constitute a “waiver” of any requirements of these rules. In such cases, the well driller must provide sufficient information for the Director to determine that the full intent of the sealing requirements will be satisfied if an alternative method is employed. If it is determined that a specific alternate method will provide protection of the ground water from waste and contamination, the Director may issue a statement of acceptance qualifying the use and implementation of such methods. (5-8-09)

11. Injection Wells. In addition to meeting the requirements of Rule 25 of these rules, the construction, modification, or decommissioning (abandonment) of all injection wells over eighteen (18) feet in vertical depth must also comply with the IDAPA 37.03.03, “Rules for the Construction and Use of Injection Wells,” and the injection well permit. Drillers must obtain from the Director a certified copy of the permit authorizing construction or modification of an injection well before beginning work. (5-8-09)

12. Cathodic Protection Wells. All cathodic protection wells must be constructed by a licensed well driller in compliance with these rules. A detailed construction plan must be included with the drilling permit application. (5-8-09)

13. Monitoring and Remediation Wells. All monitoring wells and remediation wells must be constructed and maintained in a manner that will prevent waste or contamination and as otherwise required by these rules. When a monitoring well or a remediation well is no longer useful or needed, the owner or operator of the well must decommission (abandon) the well in accordance with Rule 25, Subsection 025.16 of these rules. No person may divert ground water from a monitoring well or a remediation well for any purpose not authorized by the Director. The

application for a permit for all monitoring wells and all remediation wells must include a design proposal prepared by a licensed engineer or registered geologist pursuant to Section 42-235, Idaho Code. Blanket permits for monitoring well and remediation well networks may be approved for site-specific monitoring and remediation programs. The designs and specification for monitoring wells and remediation wells must demonstrate that: (5-8-09)

- a. The ground water resources are protected against waste and contamination; (5-8-09)
- b. The well(s) will inject or withdraw only fluids, gasses or solutions approved by the Director; (5-8-09)
- c. The well(s) will be constructed so as to prevent aquifer commingling; and (5-8-09)
- d. The well(s) will be properly decommissioned (abandoned) upon project completion and in accordance with these rules. (5-8-09)

14. Closed Loop Heat Exchange Wells. The well driller must construct closed loop heat exchange wells consistent with these rules. The well driller is not required to install steel casing in such wells. When constructing a closed loop heat exchange well, the well driller must: (5-8-09)

- a. Construct each borehole of sufficient size to provide the annular space required by these rules. (5-8-09)
- b. Seal the annular space of each borehole with approved seal material in accordance with these rules; (5-8-09)
- c. Install fluid-tight circulating pipe, composed of high-density polyethylene, grade PE3408, minimum cell classifications PE355434C or PE345434C conforming to ASTM Standard D3350, or other Director-approved pipe; (5-8-09)
- d. Join pipe using thermal fusion techniques according to ASTM Standards D-3261 or D-2683. All personnel creating such system joints must be trained in the appropriate thermal fusion technologies; (5-8-09)
- e. Use only propylene glycol, or other circulating fluid approved by the Director; (5-8-09)
- f. Ensure that any other system additive is NSF approved and has prior approval from the Director; (5-8-09)
- g. Pressure test each loop with potable water prior to grout installation; (5-8-09)
- h. Pressure test the system with potable water prior to installation of the circulating fluid at one hundred percent (100%) of the designed system operating pressure for a minimum duration of twenty-four (24) hours; and (5-8-09)
- i. Properly repair or decommission (abandon) all loops failing the test by pressure pumping approved seal material through the entire length of each failed loop. After grouting, loop ends must be fused together or capped. (5-8-09)

15. Access Port or Pressure Gage. Upon completion of a well and before removal of the well rig from the site, the well must be equipped with an access port that will allow for measurement of the depth to water or an approved pressure gage fitting that will allow access for measurement of shut-in pressure of an artesian flowing well. All pressure gage fittings must include control valves such that the pressure gage can be removed. Approved access ports are illustrated in Figure 11, APPENDIX A, together with approved locations for pressure gage fittings. Air lines are not a satisfactory substitution for an access port. Nonflowing domestic and stock water wells that are to be equipped with a sanitary seal with a built-in access port are exempt from this requirement. (5-8-09)

16. Decommissioning (Abandoning) of Wells. (5-8-09)

a. The well owner is charged with maintaining and properly decommissioning (abandoning) a well in a manner that will prevent waste or contamination, or both, of the ground water. No person is allowed to decommission a well in Idaho without first obtaining a driller's license or receiving a waiver of the license requirement from the Director of the Department of Water Resources. Authorization is required from the Director prior to decommissioning any well. Upon decommissioning, the person who decommissioned the well must submit to the Director a report describing the procedure. (5-8-09)

b. The Director may require decommissioning of a well in compliance with the provisions of these rules, if the well: (5-8-09)

- i. Does not meet minimum well construction standards; (5-8-09)
- ii. Meets the definition of an unusable well; (5-8-09)
- iii. Poses a threat to human health and safety; (5-8-09)
- iv. Is in violation of IDAPA 58.01.11, "Ground Water Quality Rule"; or (5-8-09)
- v. Has no valid water right or other authorization acceptable to the Director for use of the well. (5-8-09)

c. When required by the Director, decommissioning must be done in accordance with the following: (5-8-09)

i. Cased wells and boreholes without a continuous seal from the top of the intakes or screen to the surface. The well driller must use one (1) of the following methods as applicable: (5-8-09)

(1) The Director may require that well casing be perforated every five (5) feet from the bottom of the casing to within five (5) feet of the surface. Perforations made must be adequate to allow the free flow of seal material into any voids outside the well casing. There must be at least four equally spaced perforations per section circumference. Approved grout must be pressure pumped to fill any voids outside of the casing. A sufficient volume must be used to completely fill the well and annular space; or (5-8-09)

(2) Fill the borehole with approved seal material as the casing is being removed. (5-8-09)

ii. Cased wells and boreholes with full-depth seals. If the well is cased and sealed from the top of the screen or production zone to the land surface, the well must be completely filled with approved seal material. (5-8-09)

iii. Uncased wells must be completely filled with approved seal material. (5-8-09)

iv. Dry hole wells or wells from which the quantity of water to meet a beneficial use cannot be obtained must be decommissioned with cement grout, concrete or other approved seal material in accordance with these rules. (5-8-09)

17. Completion of a Well. The Director will consider that every well is completed when the well drilling equipment has been removed, unless written notice has been given to the Director by the well driller that he intends to return and do additional work on the well within a specified period of time. Upon completion of the well, the well must meet all of the required standards. (5-8-09)

a. Upon completion of drilling and prior to removal of well drilling equipment from a water well site, the top of the casing must be completely covered with: (5-8-09)

i. A one-fourth inch (1/4") thick solid, new or like-new steel plate with a three-fourths inch (3/4) threaded and plugged access port, welded to and completely covering the casing (Figure 12, Appendix A); or (5-8-09)

- ii. A threaded cap, or a commercially manufactured watertight sanitary well cap (Figure 12, Appendix A); or (5-8-09)
 - iii. A commercially manufactured water-tight, snorkel-vented or non-vented well cap on any well susceptible to submergence; or (5-8-09)
 - iv. A control device approved by the Director per Section 42-1603, Idaho Code, on any well that flows at land surface (Figure 11, Appendix A). (5-8-09)
- b.** Upon the completion of every well, the well driller must permanently affix the stainless steel well tag to the steel surface casing in a manner and location that maintains tag legibility. For closed loop heat exchange wells, the well driller must obtain approval for the well tag placement and method of attachment. The well driller must secure each tag by: (5-8-09)
- i. A full-length weld across the top and down each side of the tag; or (5-8-09)
 - ii. Using one (1) stainless steel, closed-end domed rivet near each of the four (4) corners of the tag. (5-8-09)
 - iii. Prior to welding or riveting, the tag must be pre-shaped to fit the casing such that both sides to be welded or riveted touch the casing and no gaps exist between the tag and casing. (5-8-09)

18. Pitless Adapters. When a pitless adaptor is used (Figure 12, Appendix A), the adaptor should be of the type approved by the NSF International testing laboratory or the approval code adopted by the Pitless Adaptor Division of the Water Systems Council. The pitless adaptor, including the cap or cover, casing extension, and other attachments, must be so designed and constructed to be water tight and to prevent contamination of the potable water supply from external sources. If a permanent surface or outer casing is installed and is cut off or breached to install the pitless adapter on an inner well casing or liner, the space between the permanent outer casing and the liner or inner casing must be sealed. The well owner or person installing the pitless adaptor must then seal the excavation surrounding the pitless adaptor using an approved seal material. (5-8-09)

19. Pump Installation. No person is allowed to install a pump into any well that would cause a violation of Rule 25, of these rules or other applicable rules or state law. (5-8-09)

20. Explosives. Explosives used in well construction must never be detonated inside the required well casing. Approved explosive casing perforators may be exempted by the Director. (5-8-09)

21. Hydraulic Fracturing. Hydraulic fracturing must be performed only by well drillers licensed in Idaho. The pressure must be transmitted through a drill string and must not be transmitted to the well casing. The driller must provide a report to the Director of the fracturing work which must include well location, fracturing depth, fracturing pressures and other data as requested by the Director. (5-8-09)

22. Drilling Fluids or Drilling Additives. The well driller must use only potable water and drilling fluids or drilling additives that are manufactured for use in water wells, are NSF International, American Petroleum Institute (API), or ASTM/ANSI approved; and do not contain a concentration of any substance in excess of Primary Drinking Water Standards, as set forth in IDAPA 58.01.08, "Rules for Public Drinking Water Systems," according to manufacturer's specifications. The well driller may seek approval from the Director to use specific, non-certified products on a case-by-case basis. In addition, the well driller must ensure the containment of all drilling fluids and materials used or produced to the immediate drilling site, and will not dispose of such fluids or materials into any streams, canals, boreholes, wells, or other subsurface pathways. (5-8-09)

23. Disinfection and Decontamination. Upon completion of a well, the driller is responsible for adding the appropriate amount of disinfecting chemical compound and distributing it throughout the well to achieve a uniform concentration for "in place" disinfection of the well. Chlorine compounds used in accordance with the table listed below will satisfy this requirement. Other methods may be used if approved by the Director in advance.

Amount of Chlorine Needed Per 100 Feet of Water in Well			
Casing Diameter (in.)	Gallons of water in casing per 100 ft. of water depth	Amount of 5.25% Sodium Hypochlorite (Unscented Laundry Bleach)	Amount of 65% Calcium Hypochlorite (Chlorine Granules)
6	147	2 ¼ cups	3 tbsp
8	261	4 cups	5 tbsp
10	408	6 ¼ cups	½ cup
12	588	9 cups	¾ cup
16	1044	1 gal	1 ¼ cup

Note: 1 gal = 4 qt = 8 pt = 16 cups; 1 cup = 16 tbsp

Chlorine granules or tablets must be dissolved and placed into the well as a solution.

If another concentration of hypochlorite solution is used, the following equation should be used for calculating amounts.

(Volume of water in gallons) X (0.08) / % Hypochlorite (e.g. 50% = 50) = cups of hypochlorite

Example: To treat 147 gallons of water using a 50% concentration of hypochlorite solution:
 (147 gallons water) X (0.08) / 50 = .23 (or approximately 1/4) cup of 50% Hypochlorite solution

(5-8-09)

24. Sand Production. The maximum sand content produced from a well after initial well development must not exceed fifteen (15) ppm. For the purpose of this rule, sand is considered to be any sediment particle retained on a U.S. standard sieve #200 (seventy-five hundredths (0.075) mm to two (2) mm). (5-8-09)

- a. When necessary to mitigate sand production the well driller must: (5-8-09)
 - i. Construct each well with properly sized casing, screen(s) or perforated intake(s); and (5-8-09)
 - ii. Install properly sized filter pack(s); or (5-8-09)
 - iii. Install pre-packed well screens; or (5-8-09)
 - iv. Employ other methods approved by the Director. (5-8-09)

b. The Director may grant a waiver exempting a well producing water that exceeds the maximum sand content only if the well driller has met the requirements of Rule 25, Subsection 025.24.a. (5-8-09)

c. Sand production in public water system wells. Wells used in connection with a public water system have more stringent requirements. See IDAPA 58.01.08, "Idaho Rules for Public Water Systems." (5-8-09)

25. Well Development and Testing. For each well the well driller must measure and record the static (non-pumping) water level and the pumping water level, and the production rate. The production rate will be determined by a pump, bailer, air-lift, or other industry approved test of sufficient duration to establish production from the well. For wells with no returns the driller must report no returns and the static water level. This information must be documented on the well driller's report. (5-8-09)

026. -- 029. (RESERVED)

030. CONSTRUCTION OF LOW TEMPERATURE GEOTHERMAL RESOURCE WELLS AND BONDING (RULE 30).

01. General. Drillers constructing low temperature geothermal resource wells (bottom hole temperature more than eighty-five (85) degrees Fahrenheit and less than two hundred twelve (212) degrees Fahrenheit) must be qualified under the Well Driller Licensing Rules. All low temperature geothermal resource wells must be constructed in such a manner that the resource will be protected from waste due to lost artesian pressure and temperature. The owner or well driller is required to provide bottom hole temperature data, but the Director may make the final determination of bottom hole temperature, based upon information available to him. (5-8-09)

a. All standards and guidelines for construction and decommissioning (abandonment) of cold water wells apply to low temperature geothermal resource wells except as modified by Rule 30, Subsections 030.03, 030.04, and 030.06. (5-8-09)

b. A drilling prospectus must be submitted to and approved by the Director prior to the construction, modification, deepening or decommissioning (abandonment) of any low temperature geothermal resource well. The well owner and the well driller are responsible for the prospectus and subsequent well construction. (5-8-09)

02. Well Owner Bonding. The owner of any low temperature geothermal resource well must file a surety bond or cash bond as required by Section 42-233, Idaho Code, with the Director in an amount not less than five thousand dollars (\$5,000) nor more than twenty thousand dollars (\$20,000) payable to the Director prior to constructing, modifying or deepening the well after July 1, 1987. The bond amount will be determined by the Director within the following guidelines. The bond will be kept in force for one (1) year following completion of the well or until released in writing by the Director, whichever occurs first. (5-8-09)

a. Any well less than three-hundred (300) feet deep with a bottom hole temperature of less than one hundred twenty (120) degrees Fahrenheit and a shut-in pressure of less than ten (10) pounds per square inch gage (psig) at land surface must maintain a bond of five thousand dollars (\$5,000). (5-8-09)

b. The owner of any well three hundred (300) feet to one thousand (1,000) feet deep with a bottom hole temperature of less than one hundred fifty (150) degrees Fahrenheit and a shut-in pressure of less than fifty (50) psig at land surface must maintain a bond of ten thousand dollars (\$10,000). (5-8-09)

c. The owner of any low temperature geothermal resource well not covered by Rule 30, Subsections 030.02.a. and 030.02.b. must maintain a bond of twenty thousand dollars (\$20,000). (5-8-09)

d. The Director may decrease or increase the bonds required if it is shown to his satisfaction that well construction or other conditions merit an increase or decrease. (7-1-93)

e. The bond requirements of Section 42-233, Idaho Code, are applicable to wells authorized by water right permits or licenses having a priority date earlier than July 1, 1987, if the well authorized by the permit or license was not constructed prior to July 1, 1987 or if an existing well constructed within the terms of the permit or license is modified, deepened or enlarged on or after July 1, 1987. (7-1-93)

03. Casing. Low temperature geothermal resource wells must be properly cased and sealed to protect from cooling by preventing intermingling with cold water aquifers. (5-8-09)

a. Steel casing which meets or exceeds the minimum specifications for permanent steel casing of Rule 25, Subsection 025.04 must be installed in every well. The Director may require a more rigid standard for collapse and burst strength as depths or pressures may dictate. Every low temperature geothermal resource well which flows at land surface must have a minimum of forty (40) feet of conductor pipe set and cemented its entire length. (5-8-09)

b. Casing must be installed from twelve (12) inches above land surface into the overlying confining strata of the thermal aquifer. The casing schedule may consist of several different casing strings (i.e. conductor pipe, surface casing, intermediate casing, production casing) which may all extend to land surface or may be overlapped and sealed or packed to prevent fluid migration out of the casing at any depth (Figure 13, Appendix A). (5-8-09)

i. Low temperature geothermal resource wells less than one thousand (1,000) feet deep and which encounter a shut-in pressure of less than fifty (50) psig at land surface must have two (2) strings of casing set and cemented to land surface. Conductor pipe must be a minimum of forty (40) feet in length or ten percent (10%) of the total depth of the well whichever is greater. Surface casing must extend into the confining stratum overlying the aquifer. (5-8-09)

ii. Low temperature geothermal resource wells one thousand (1,000) feet or more in depth or which will likely encounter a shut-in pressure of fifty (50) psig or more at land surface require prior approval of the drilling plan by the Director and must have three strings of casing cemented their total length to land surface. Conductor pipe must be a minimum length of forty (40) feet. Surface casing must be a minimum of two hundred (200) feet in length or ten percent (10%) of the total depth of the well, whichever is greater. Intermediate casing must extend into the confining stratum overlying the aquifer. (5-8-09)

c. Subsection 030.03.b. may be waived if it can be demonstrated to the Director through the lithology, electrical logs, geophysical logs, injectivity tests or other data that formations encountered below the last casing string set, will neither accept nor yield fluids at anticipated pressure to the borehole. (5-8-09)

d. A nominal borehole size of two (2) inches in diameter larger than the Outside Diameter (O.D.) of the casing or casing coupler (whichever is larger) must be drilled. All casing designations must be by O.D. and wall thickness and must be shown to meet a given specification of the American Petroleum Institute, the American Society for Testing and Materials, the American Water Works Association or the American National Standards Institute. The last string of casing set during drilling operations must, at the Director's option, be flanged and capable of mounting a valve or blow out prevention equipment to control flows at the surface before drilling resumes. (5-8-09)

04. Sealing of Casing. All casing must be sealed its entire length with cement or a cement grout mixture unless waived by the Director. The seal material must be placed from the bottom of the casing to land surface either through the casing or tubing or by use of a tremie pipe. The cement or cement grout must be undisturbed for a minimum of twenty-four (24) hours or as needed to allow adequate curing. (5-8-09)

a. A caliper log may be run for determining the volume of cement to be placed with an additional twenty-five (25%) percent on site ready for mixing. If a caliper log is not run, an additional one hundred (100%) percent of the calculated volume of cement must be on site ready for placement. (5-8-09)

b. If there is no return of cement or cement grout at the surface after circulating all of the cement mixture on site, the Director will determine whether remedial work should be done to insure no migration of fluids around the well bore. (5-8-09)

c. The use of additives such as bentonite, accelerators, retarders, and lost circulation material must follow manufacturer's specifications. (5-8-09)

05. Blow Out Prevention Equipment. The Director may require the installation of gate valves or annular blow out prevention equipment to prevent the uncontrolled blow out of drilling mud and geothermal fluid. (7-1-93)

06. Repair of Wells. The well driller must submit a drilling prospectus to the Director for review and approval prior to the repair or modification of a low temperature geothermal resource well. (5-8-09)

07. Decommissioning (Abandoning) of Wells. Proper decommissioning (abandonment) of any low temperature geothermal resource well requires the following: (5-8-09)

a. All cement plugs must be pumped into the hole through drill pipe or tubing. (5-8-09)

b. All open annuli must be completely filled with cement. (5-8-09)

c. A cement plug at least one hundred (100) feet in vertical depth must be placed straddling (fifty (50) feet above and fifty (50) feet below) the zone where the casing or well bore meets the upper boundary of each ground water aquifer. (5-8-09)

d. A minimum of one hundred (100) feet of cement must be placed straddling each drive shoe or guide shoe on all casing including the bottom of the conductor pipe. (5-8-09)

e. A surface plug of either cement grout or concrete must be placed from at least fifty (50) feet below the top of the casing to the top of the casing. (5-8-09)

f. A cement plug must extend at least fifty (50) feet above and fifty (50) feet below the top of any liner installed in the well. The Director may waive this rule upon a showing of good cause. (5-8-09)

g. Other decommissioning (abandonment) procedures may be approved by the Director if the owner or operator can demonstrate that the low temperature geothermal resource, ground waters, and other natural resources will be protected. (5-8-09)

h. Approval for decommissioning (abandonment) of any low temperature geothermal well must be in writing by the Director prior to the beginning of any decommissioning (abandonment) procedures. (5-8-09)

031. -- 034. (RESERVED)

035. HEALTH STANDARDS (RULE 35).

01. Public Water System Wells. In addition to meeting these standards, all wells that are constructed for public supply of domestic water must meet all of the requirements set forth by the Idaho Department of Environmental Quality Rules, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems." (5-8-09)

02. Special Standards for Construction of Wells When Mineralized or Contaminated Water Is Encountered. Any time in the construction of a well that mineralized or contaminated water is encountered, the well driller must take the appropriate steps necessary to prevent the poor quality waters from entering the well or moving up or down the annular space around the well casing. The method employed to case and seal out this water will be determined by the well driller, provided all other minimum standards are met. The well driller will take special precautions in the case of filter-packed wells to prevent water of inferior quality from moving vertically in the filter packed portions of the well. All actions taken will be clearly documented on the well driller's report. (5-8-09)

03. Distances From Contaminant Sources. All water wells constructed for domestic use must comply with minimum distances from septic tanks, drain fields, drainfield replacement area and other siting requirements as set forth in Rule 25, Subsection 025.01.d. (5-8-09)

036. OWNERS RESPONSIBILITIES FOR WELL USE AND MAINTENANCE (RULE 36).

After a well is completed the well owner is responsible for water quality testing, properly maintaining the well, and reporting problems with a well to the Director. All wells must be capped, covered and sealed such that debris cannot enter the well, persons or animals cannot fall into the well, and water cannot enter the well around the outside of the casing. Pursuant to Section 42-1603, Idaho Code, the owner of any artesian well that will flow at land surface is required to apply to the Director for approval of a flow control device. (5-8-09)

01. Use. The well owner must not operate any well in a manner that causes waste or contamination of the ground water resource. Failure to operate, maintain, knowingly allow the construction of any well in a manner that violates these rules, or failure to repair or properly decommission (abandon) any well as herein required will subject the well owner to civil penalties as provided by statute. (5-8-09)

02. Maintenance. The well owner must: (5-8-09)

a. Not allow modification to wells under their control without first obtaining an approved Idaho Department of Water Resources (IDWR) permit, pursuant to Section 42-235, Idaho Code; (5-8-09)

b. Maintain the minimum casing height of twelve (12) inches above land surface and finished grade; (5-8-09)

- c. Maintain the appropriate well cap, and control device if required, according to these Rules; and (5-8-09)
- d. Not install or allow the installation of any well pump that would cause a violation of the sand production requirements in accordance with these Rules or allow the well to pump in excess of that allowed by a valid water right or domestic exemption. (5-8-09)
- e. Maintain the well to prevent waste or contamination of ground waters through leaky casings, pipes, fittings, valves, pumps, seals or through leakage around the outside of the casings, whether the leakage is above or below the land surface. Any person owning or controlling a non-compliant well must have the well repaired by a licensed well driller under a permit issued by the Director in accordance with these Rules. (5-8-09)
- 03. New Construction.** The well owner must not construct or allow construction of any permanent building, except for buildings to house a well or plumbing apparatus, or both, closer than ten (10) feet from an existing well. (5-8-09)
- 04. Maintain All Other Separation Distances.** The well owner must not construct or install, or allow the construction or installation of any object listed in a location closer than that allowed by the table of Rule 25, Subsection 025.01.d. (5-8-09)
- 05. Unusable Wells.** The well owner must have any unusable well repaired or decommissioned (abandoned) by a licensed well driller under a permit issued by the Director in accordance with these Rules. (5-8-09)
- 06. Wells Posing a Threat to Human Health and Safety or Causing Contamination of the Ground Water Resource.** The well owner must have any well shown to pose a threat to human health and safety or cause contamination of the ground water resource immediately repaired or decommissioned (abandoned) by a licensed well driller under a permit issued by the Director in accordance with these Rules. (5-8-09)
- 037. -- 039. (RESERVED)**
- 040. AREAS OF DRILLING CONCERN (RULE 40).**

 - 01. General.** (7-1-93)

 - a. The Director may designate an “area of drilling concern” to protect public health, or to prevent waste and contamination of ground or surface water, or both, because of factors such as aquifer pressure, vertical depth to the aquifer, warm or hot ground water, or contaminated ground or surface waters. (7-1-93)
 - b. The designation of an area of drilling concern does not supersede or preclude designation of part or all of an area as a Critical Ground Water Area (Section 42-233a, Idaho Code), Ground Water Management Area (Section 42-233b, Idaho Code), or Geothermal Resource Area (Sections 42-4002 and 42-4003, Idaho Code). (7-1-93)
 - c. The designation of an area of drilling concern can include certain aquifers or portions thereof while excluding others. The area of drilling concern may include low temperature geothermal resources while not including the shallower cold ground water systems. (7-1-93)
 - 02. Bond Requirement.** (7-1-93)

 - a. The minimum bond to be filed by the well driller with the Director for the construction or modification of any well in an area of drilling concern is ten thousand dollars (\$10,000) unless it can be shown to the satisfaction of the Director that a smaller bond is sufficient. (5-8-09)
 - b. The Director may determine on a case-by-case basis if a larger bond is required based on the estimated cost to repair, complete or properly decommission (abandon) a well. (5-8-09)
 - 03. Additional Requirements.** (7-1-93)

a. A driller must demonstrate to the satisfaction of the Director that he has the experience and knowledge to adequately construct or decommission (abandon) a well which encounters warm water or pressurized aquifers. (5-8-09)

b. A driller must demonstrate to the satisfaction of the Director that he has, or has immediate access to, specialized equipment or resources needed to adequately construct or decommission (abandon) a well. (5-8-09)

041. -- 044. (RESERVED)

045. DRILLING PERMIT REQUIREMENTS (RULE 45).

01. General Provisions. (7-1-93)

a. Drilling permits are required pursuant to Section 42-235, Idaho Code, prior to construction or modification of any well. (5-8-09)

b. Drilling permits will not be issued for construction of a well which requires another separate approval from the department, such as a water right permit, transfer, amendment or injection well permit, until the other separate permitting requirements have been satisfied. (5-8-09)

c. The Director may allow the use of a start card permit or give verbal approval to a well driller for the construction of cold water single family domestic wells. Start cards must be received by the Department at least two office hours prior to commencing construction of the well. (5-8-09)

d. The Director may give verbal approval to a well driller for the construction of a well for which other permitting requirements have been met, provided that the driller or owner has filed the drilling permit application and appropriate fee. (5-8-09)

e. The Director will not give a verbal approval or allow the use of a start card permit for wells constructed in a designated Area of Drilling Concern, Critical Ground Water Area, or Ground Water Management Area. (5-8-09)

f. A well driller will not construct, drill or modify any well until a drilling permit has been issued, or verbal approval granted. (5-8-09)

02. Effect of a Permit. (7-1-93)

a. A drilling permit authorizes the construction or modification of a well in compliance with these rules and the conditions of approval on the permit. (5-8-09)

b. A drilling permit does not constitute a water right, injection well permit or other authorization which may be required, authorizing use of water from a well or discharge of fluids into a well. (5-8-09)

c. A drilling permit may not be assigned from one owner to another or from one driller to another. (5-8-09)

d. A drilling permit authorizes the construction of one (1) well, except for blanket monitoring well and blanket remediation well drilling permits. (5-8-09)

03. Exclusions. For the purposes of these Rules, artificial openings and excavations that do not constitute a well and are not subject to the drilling permit requirements must be modified, constructed, or decommissioned (abandoned) in accordance with minimum well construction standards. The Director may require decommissioning (abandonment) of artificial openings and excavations constructed pursuant to Rule 45, Subsection 045.03 of these rules, when the use ceases or if the holes may contribute to waste or contamination of the ground water. The following types of artificial openings and excavations are not considered wells: (5-8-09)

- a. Artificial openings and excavations with total depth less than eighteen (18) feet. (5-8-09)
- b. Artificial openings and excavations for collecting soil or rock samples, determining geologic properties, or mineral exploration or extraction, including gravel pits. (5-8-09)
- c. Artificial openings and excavations for oil and gas exploration for which a permit has been issued pursuant to Section 47-320, Idaho Code. (5-8-09)
- d. Artificial openings and excavations constructed for de-watering building or dam foundation excavations. (5-8-09)

04. Converting an Artificial Openings or Excavations Not Constructed as a Well for Use as a Well. Artificial openings and excavations that were not constructed as a well pursuant to a drilling permit, if subsequently converted to obtain water, monitor water quantity or quality, or to dispose of water or other fluids, must be reconstructed by a licensed driller in compliance with well construction standards and drilling permit requirements. (5-8-09)

05. Fees. (7-1-93)

- a. Drilling permit fees are as prescribed by Section 42-235, Idaho Code. (5-8-09)
- b. The difference between the drilling permit fee required by Section 42-235 Idaho Code as applicable, must be paid when an existing well constructed on or after July 1, 1987, for which the lower drilling permit fee was paid, is authorized by the Director for a use which would require the larger drilling permit fee. (5-8-09)

046. -- 049. (RESERVED)

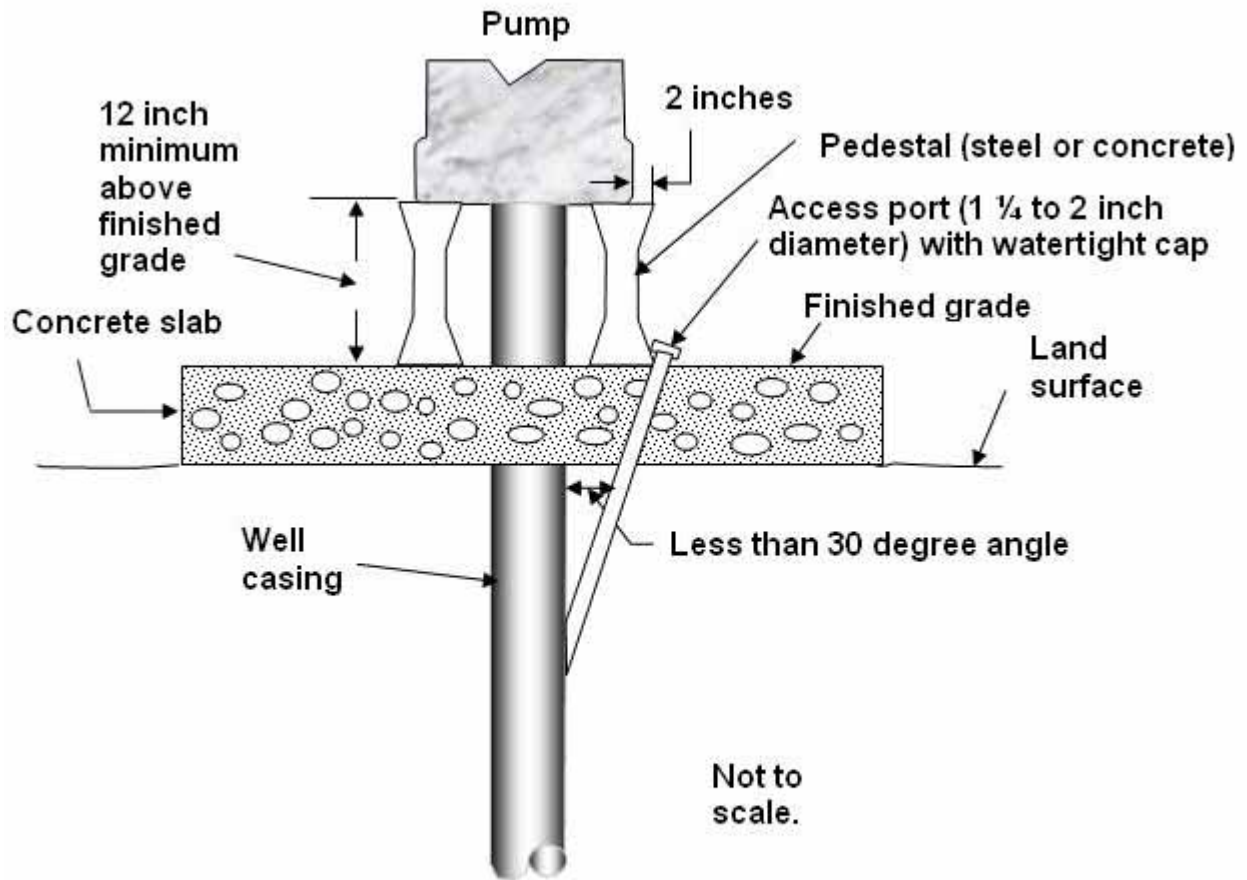
050. PENALTIES (RULE 50).

A person owning or controlling a well that allows waste or contamination of the state's ground water resources or causes a well not to meet the construction standards provided in these Rules is subject to the civil penalties as provided by statute. A driller who violates the foregoing provisions of these well construction standards Rules is subject to enforcement action and the penalties as provided by Statute. (5-8-09)

051. -- 999. (RESERVED)

APPENDIX A

Figure 01. Concrete Slabs and Finished Grade



Note. Pedestal shall not extend more than two (2) inches past pump base in horizontal direction.

Figure 02. Annular Space and Overbore

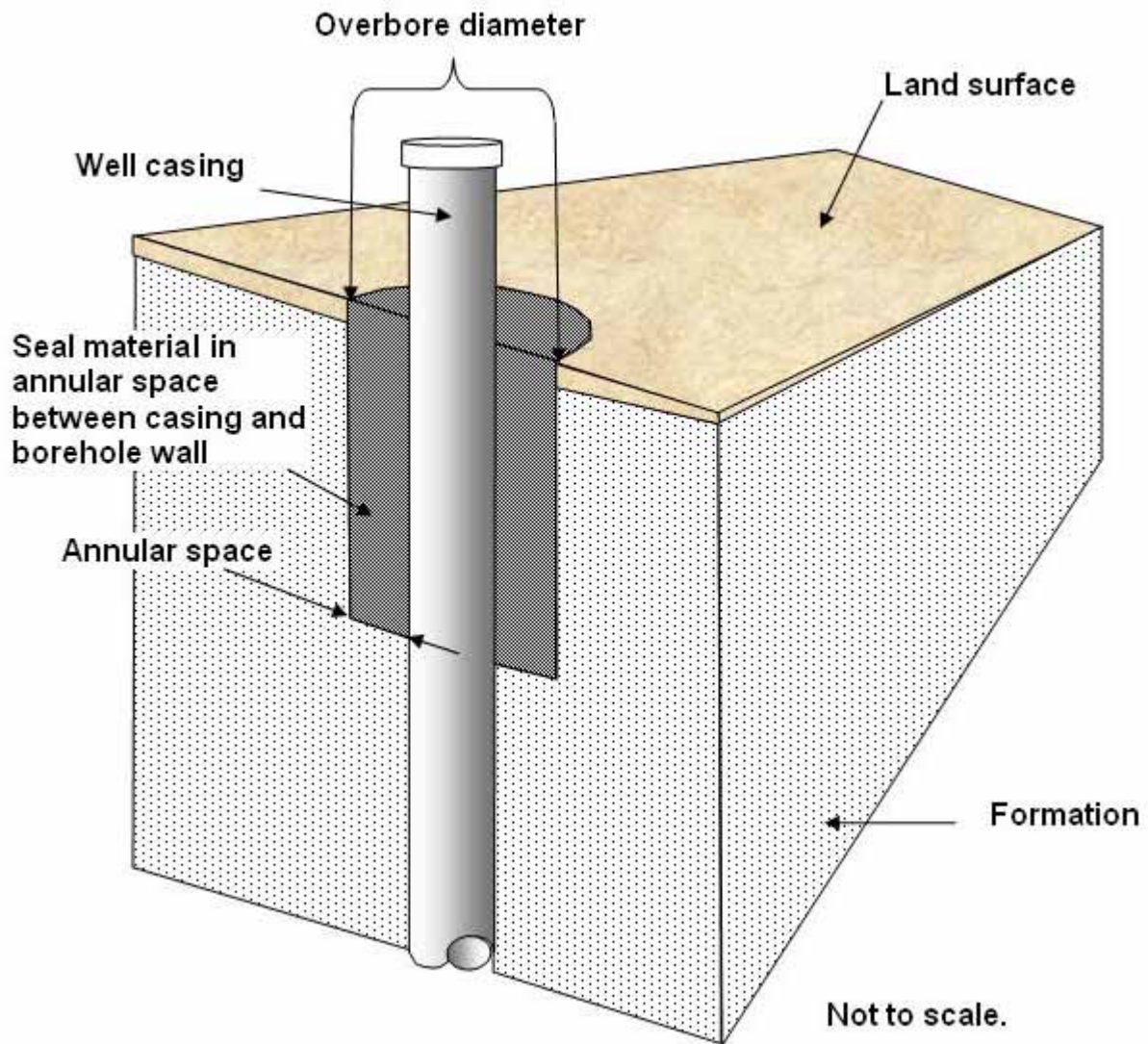


Figure 03. Overbore Requirements When a Tremie Pipe is Left in Place and A Grout Seal Installed

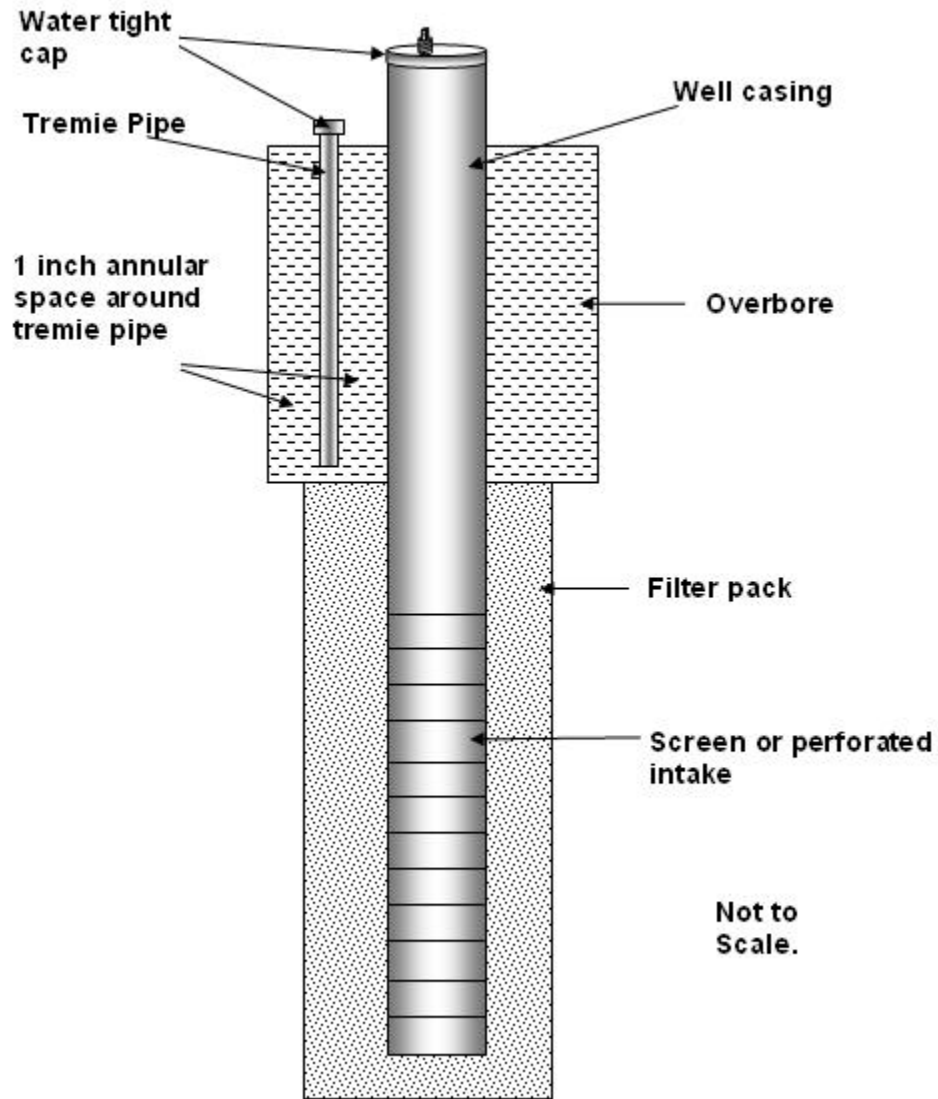


Figure 04. Sealing Requirements in Consolidated Formations

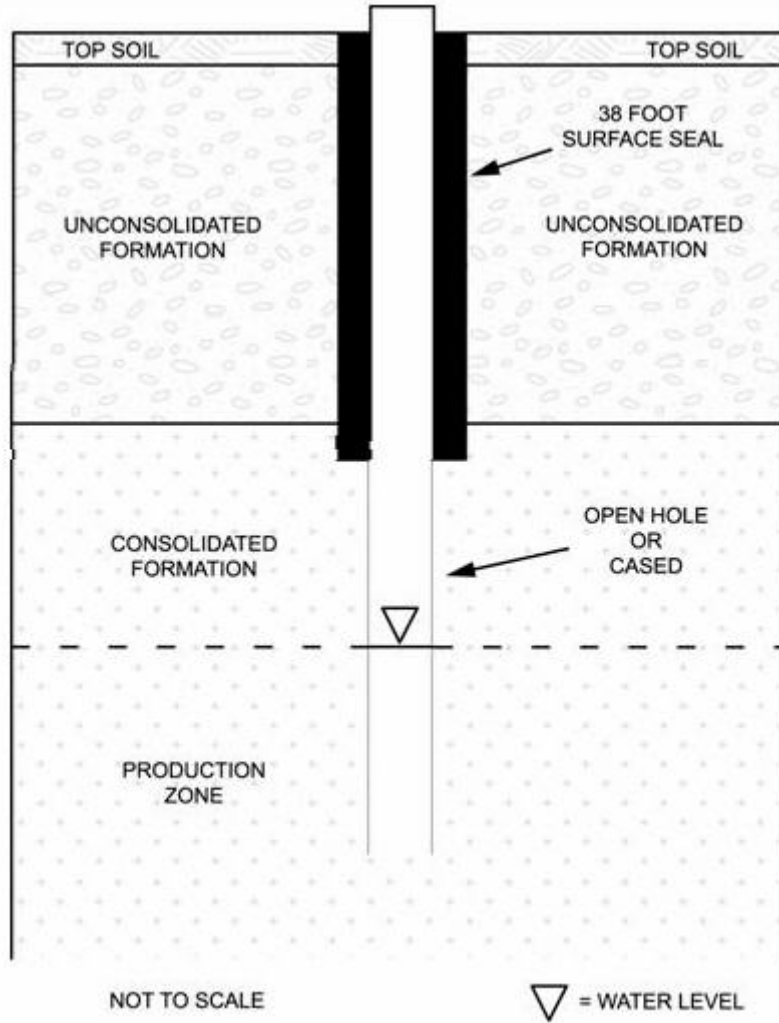


Figure 05. Sealing Requirements in Unconsolidated Formation without Confining Layers

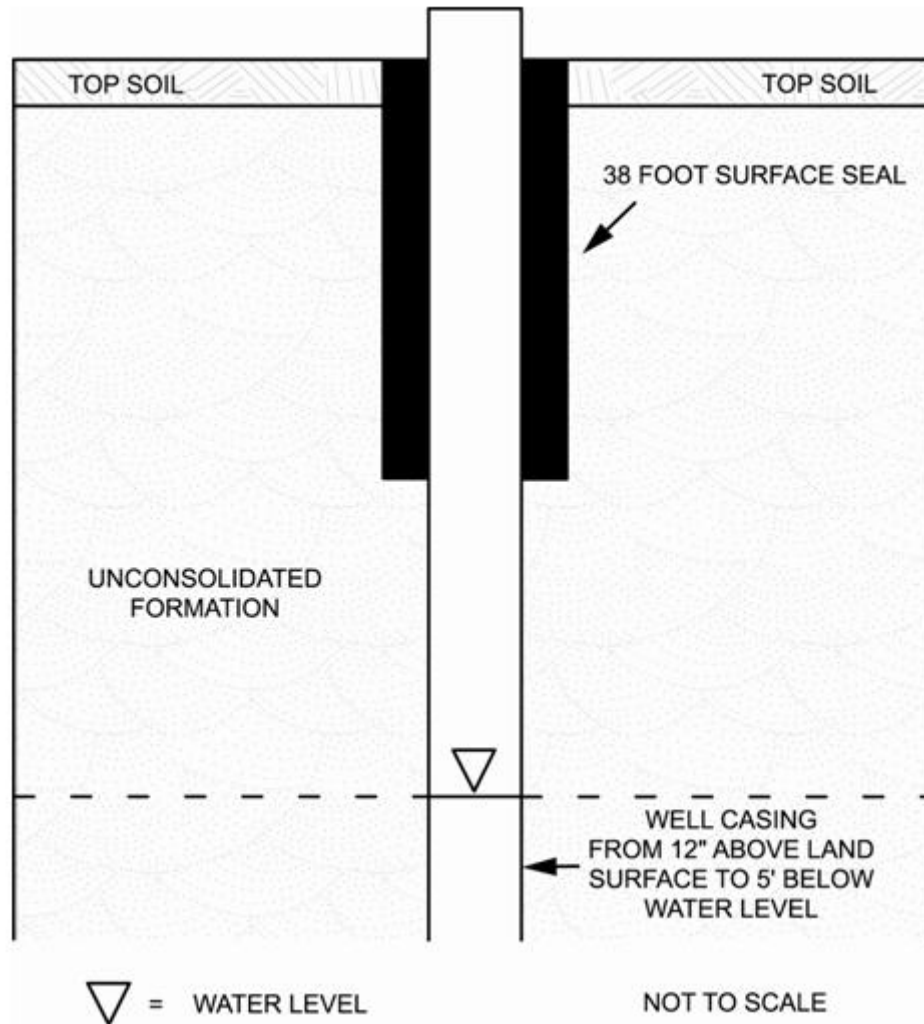


Figure 06. Rathdrum Prairie Boundary

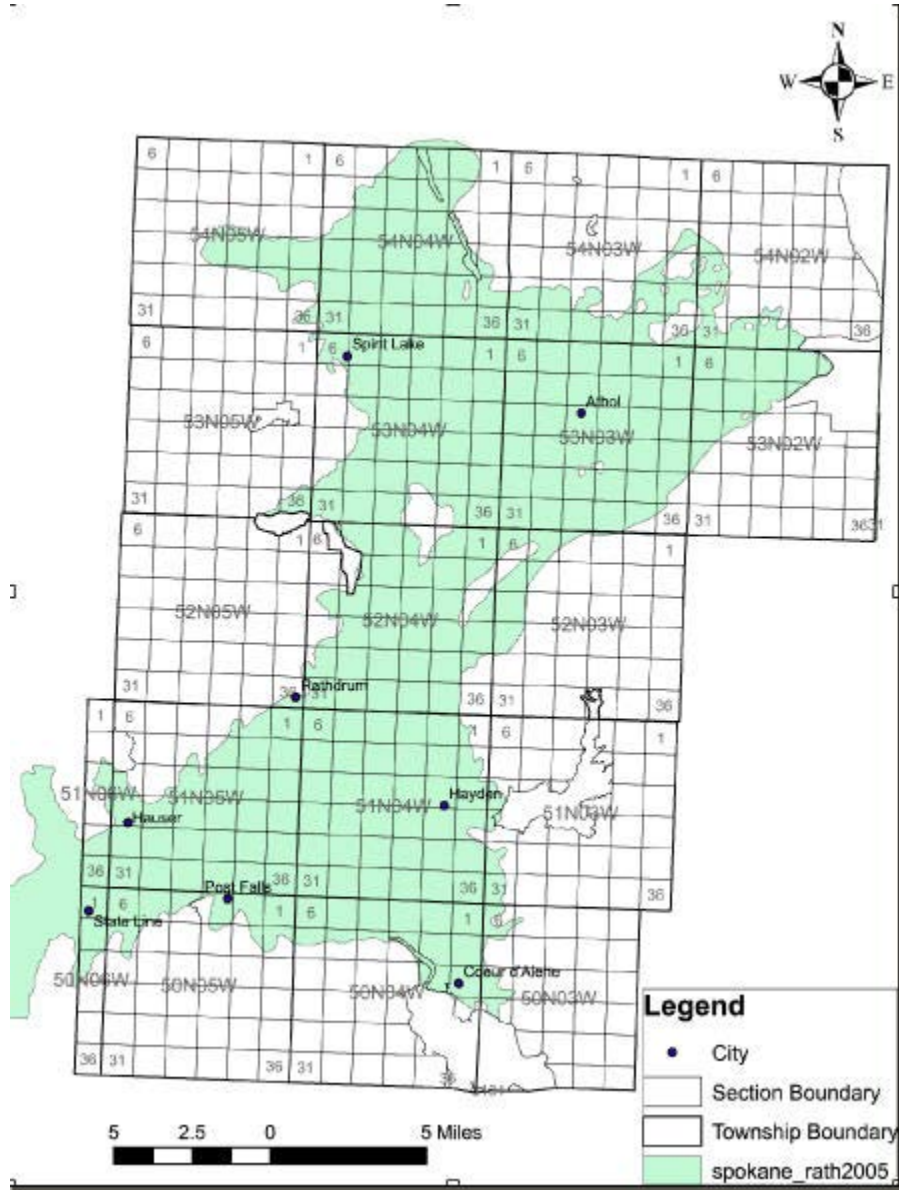


Figure 07. Sealing Requirements in the Rathdrum Prairie

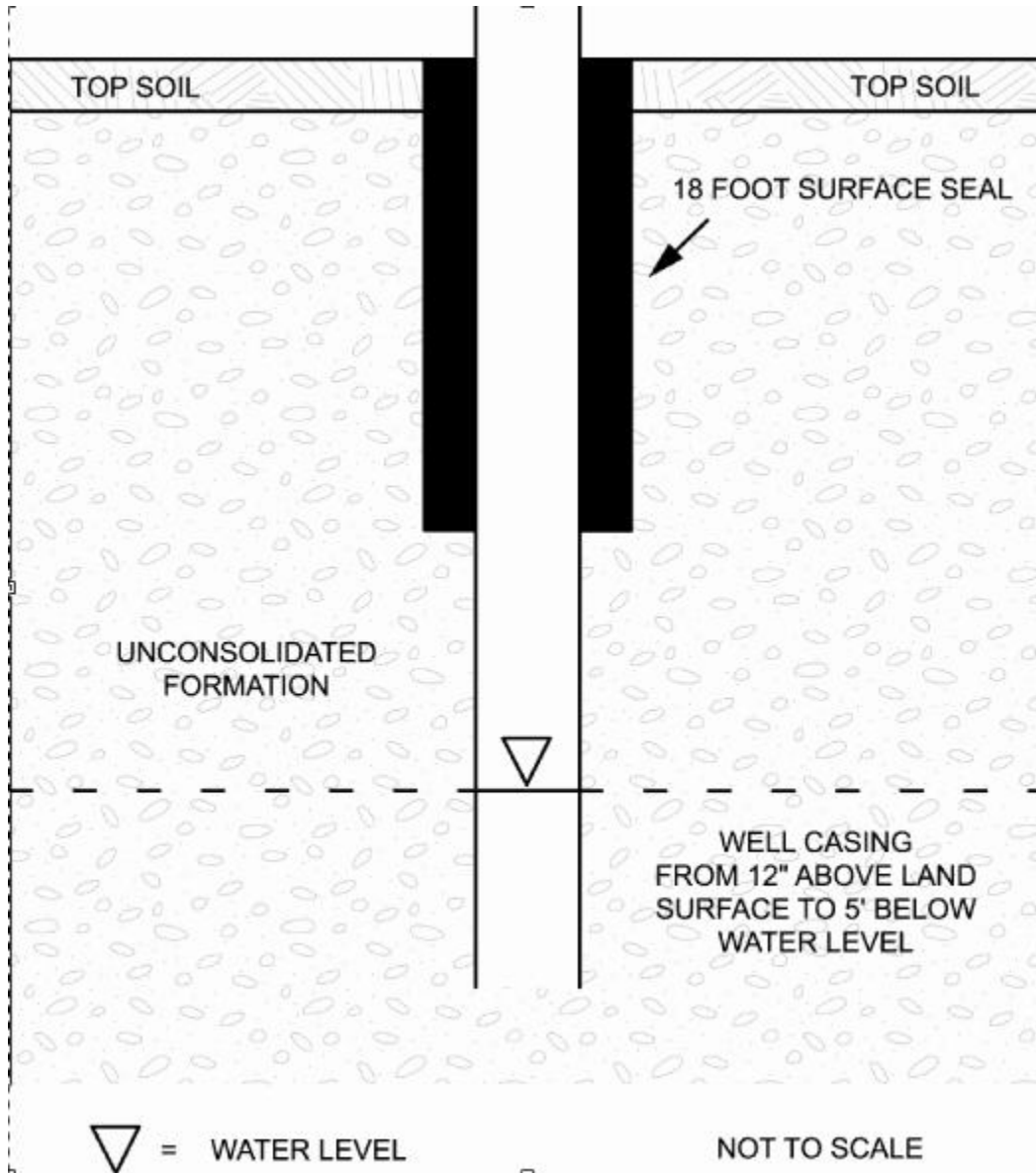


Figure 08. Sealing Requirements in Unconsolidated Formations with Confining Layers

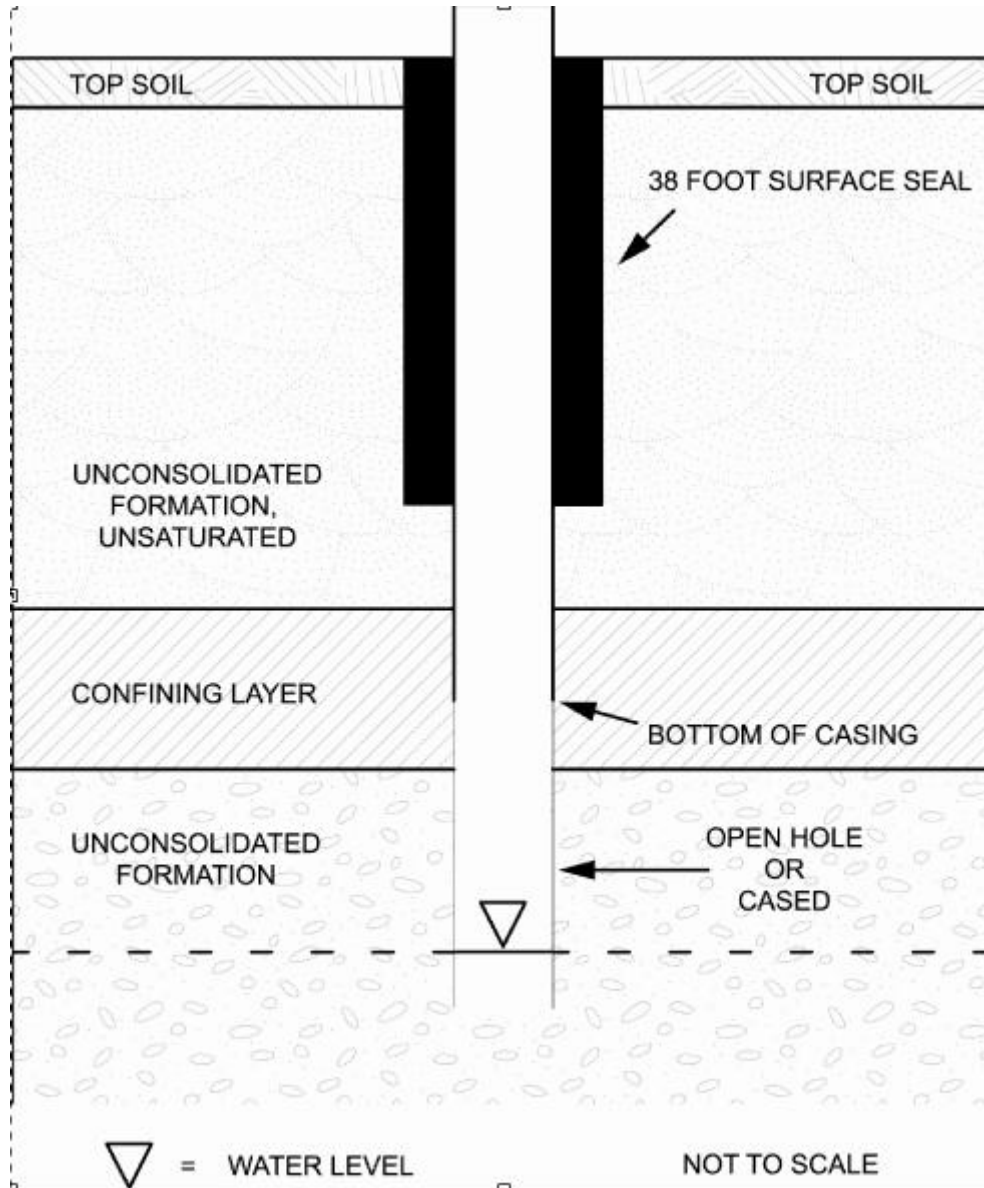


Figure 09. Sealing Requirements for Artesian Wells in Unconsolidated Formations

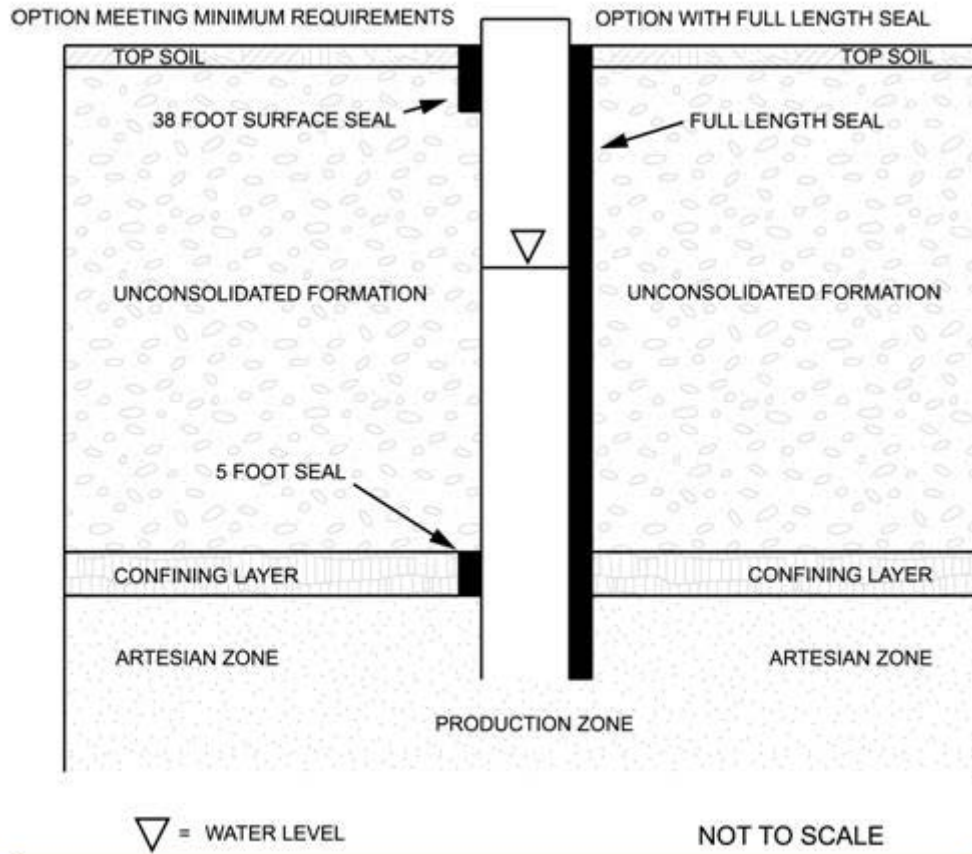


Figure 10. Sealing Requirements for Artesian Wells in Consolidated Formations

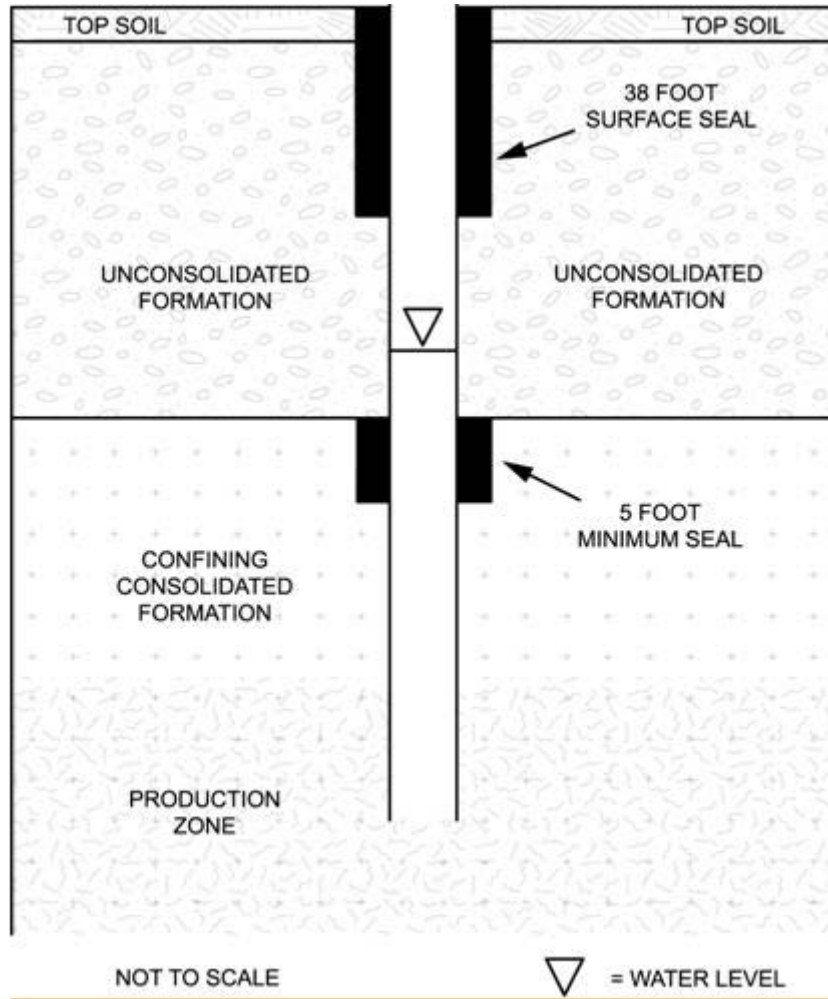
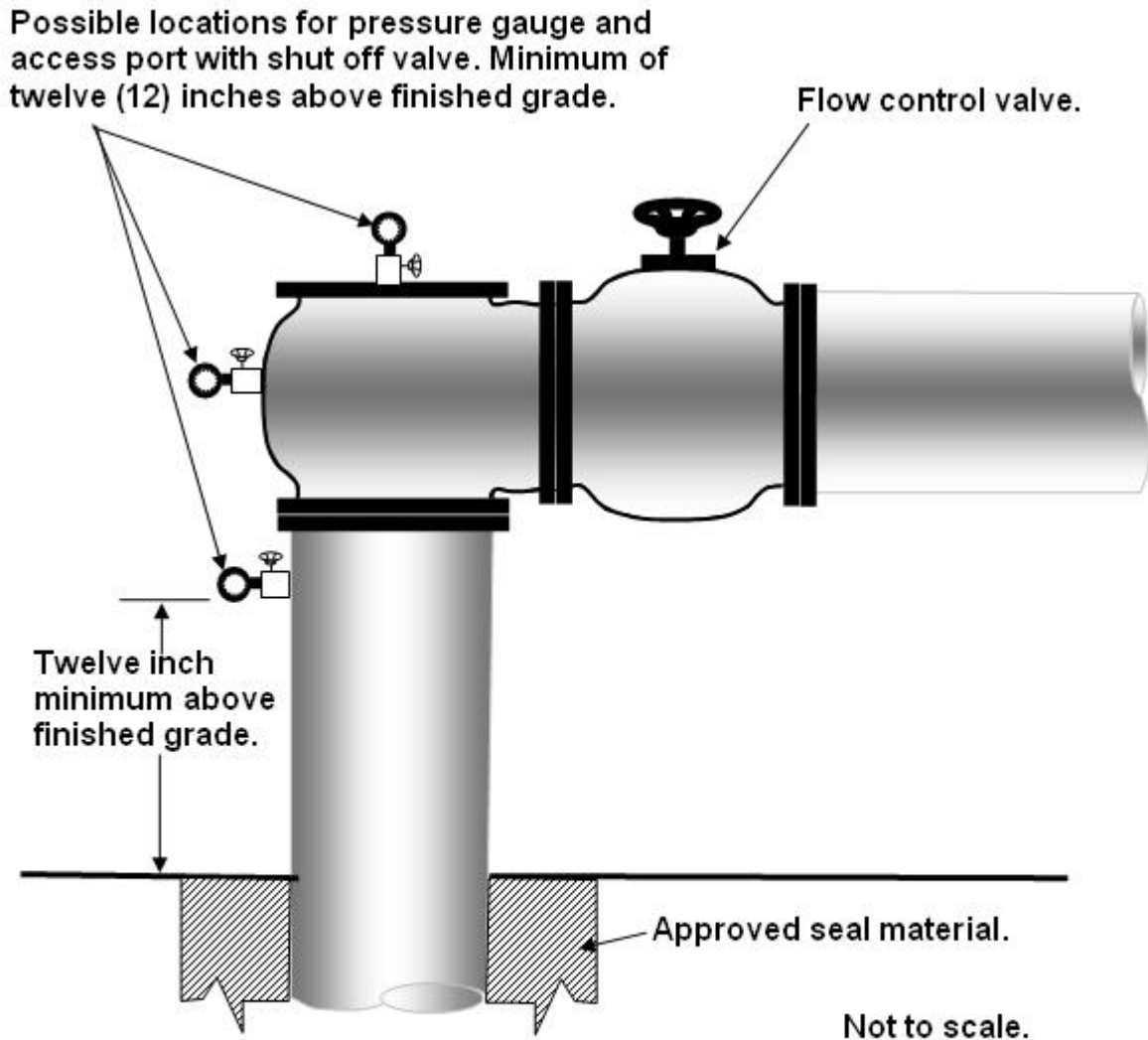


Figure 11. Access Ports, Pressure Gauges, and Control Valves



Note. Application and approval of control device is required on any flowing artesian well per Section 42-1603, Idaho Code.

Figure 12. Well Cap and Access Port

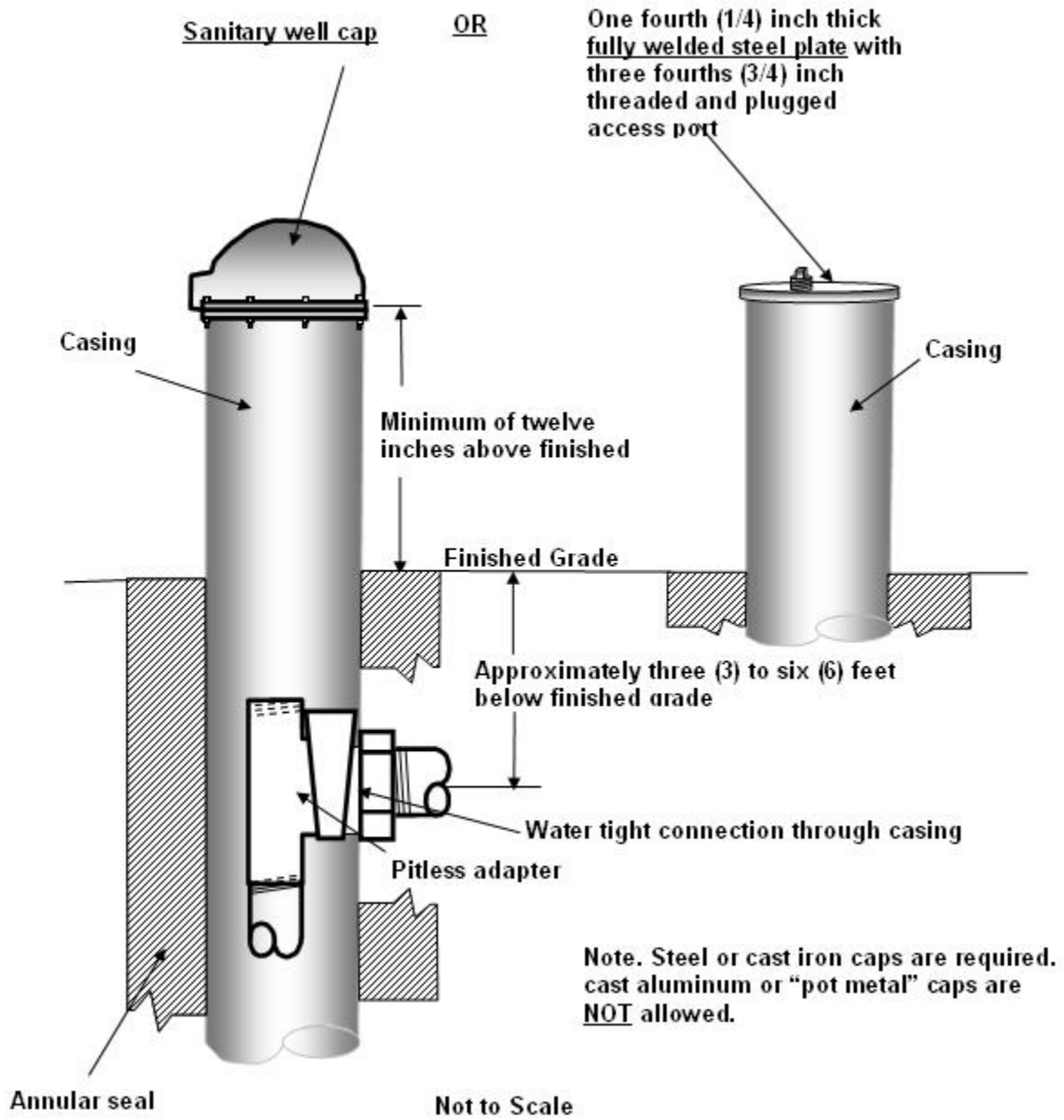
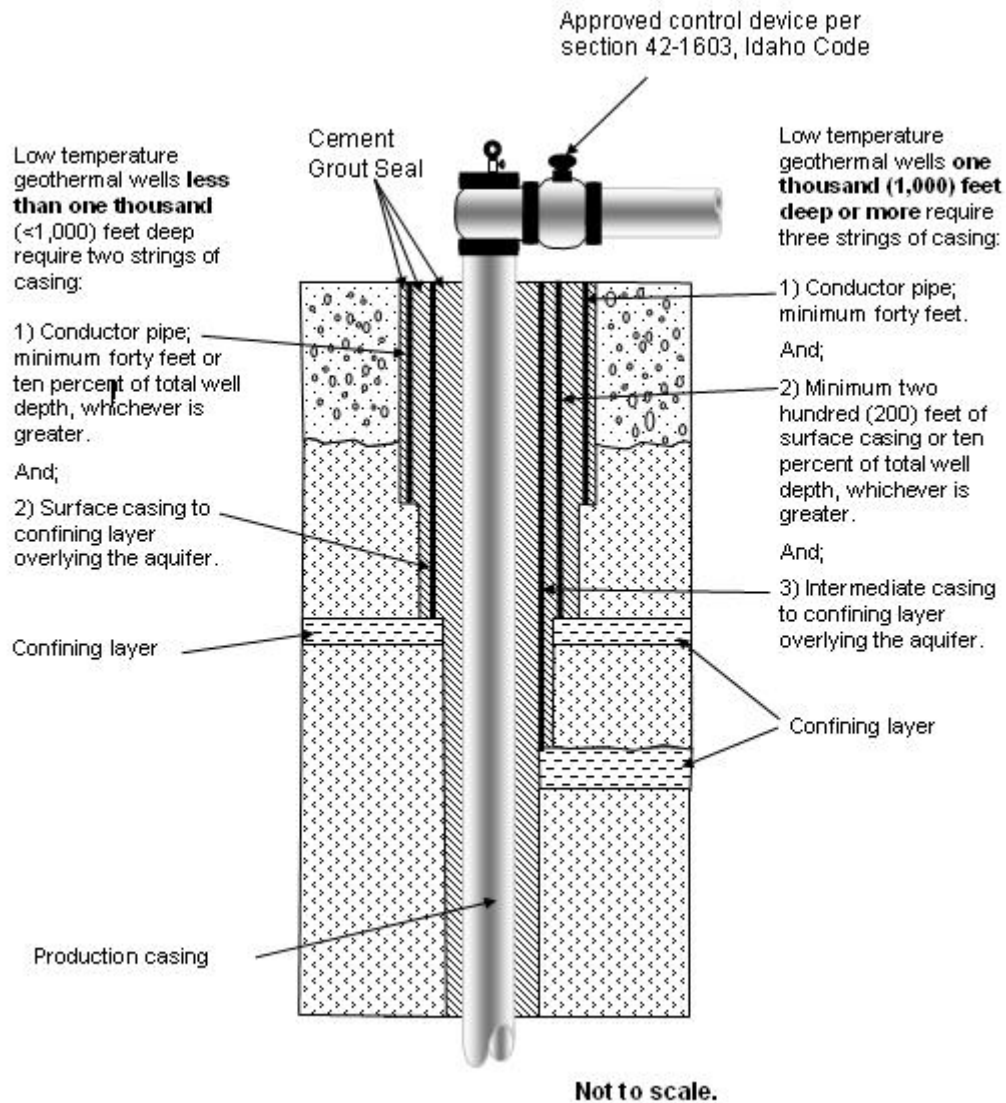


Figure 13. Casing Requirements for Low Temperature Geothermal Wells



**IDAPA 37
TITLE 03
CHAPTER 10**

37.03.10 – WELL DRILLER LICENSING RULES

000. LEGAL AUTHORITY (RULE 0).

The Idaho Water Resource Board adopts these rules under the authority provided by Section 42-238, Idaho Code. (4-5-00)

001. TITLE AND SCOPE (RULE 1).

01. Title. The title of this chapter is “Well Driller Licensing Rules.” (4-5-00)

02. Scope. These rules establish the requirements and procedures for obtaining and renewing authorization to drill wells in the state of Idaho. The rules also establish the requirements and procedures for obtaining authorization to operate drilling equipment under the supervision of a licensed driller. The licensing rules are applicable to all individuals and companies drilling or contracting to drill wells. (4-5-00)

002. WRITTEN INTERPRETATION (RULE 2).

As described in Section 67-5201, Idaho Code, the Department of Water Resources may have written statements that pertain to the interpretation of these rules. If available, such statements can be inspected and copied at cost at the Idaho Department of Water Resources, 322 E. Front Street, Boise, Idaho 83720-0098. (4-5-00)

003. ADMINISTRATIVE APPEALS (RULE 3).

Administrative and judicial review may be taken pursuant to Section 42-1701A, Idaho Code, and IDAPA 37.01.01, “Rules of Procedure of the Idaho Department of Water Resources.” (4-5-00)

004. OTHER AUTHORITIES REMAIN APPLICABLE (RULE 4).

Nothing in these rules limits the director’s authority to take alternative or additional actions relating to the licensing of well drillers and permitting of operators as provided by Idaho law. (4-5-00)

005. -- 009. (RESERVED)

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions govern these rules. (4-5-00)

01. Abandonment. See Decommissioned Well. (4-7-11)

02. Adequate Supervision. Inspection and observation of each drilling operation and the associated drilling site by the licensed driller that has responsible charge during the critical phases of drilling to assure compliance with well construction standards and drilling permit conditions. (4-5-00)

03. Applicant. An individual that submits to the department a complete application for a license or operator’s permit or a company that submits a complete application for a license. (4-5-00)

04. Area of Drilling Concern. An area designated by the director in accordance with Section 42-238, Idaho Code, within which special drilling procedures and equipment are needed to prevent waste or contamination of the ground water. (4-5-00)

05. Auxiliary Equipment. Powered equipment, other than the drill rig, used for grouting, installing or advancing casing, welding casings and screens, and other tasks necessary for drilling a well. (4-5-00)

06. Board. The Idaho Water Resource Board. (4-5-00)

07. Bond. A cash or surety bond obtained by a licensed driller or company payable to the director to provide funding for abandonment or repair should the driller fail to comply with well construction standards, and to allow information to be collected concerning the drilling of the well if the driller fails to submit a timely, accurate

- driller's report. (4-5-00)
- 08. Bottom Hole Temperature of an Existing or Proposed Well.** The temperature of the ground water encountered in the bottom of a well or borehole. (4-7-11)
- 09. Company.** A firm, co-partnership, corporation or association licensed in accordance with these rules to drill or contract to drill wells. (4-5-00)
- 10. Compliance History.** An applicant's record of compliance with the laws and rules of Idaho and other states relating to drilling of wells. The record includes, but is not limited to, the applicant's record of obtaining and complying with drilling permits; filing accurate and complete well driller's reports on time; adhering to well construction standards and other rules relating to drilling; and the number, nature and resolution of violations of laws, rules and conditions on licenses, operator's permits and drilling permits. (4-5-00)
- 11. Continuing Education.** Education or training pertinent to the drilling industry and the construction, modification or decommissioning of wells. (4-7-11)
- 12. Continuing Education Committee (CEC).** A committee whose purpose is to review and approve activities related to continuing education credit. (4-7-11)
- 13. Credit Unit.** The unit of measurement for continuing education requirements. (4-5-00)
- 14. Critical Phases of Drilling.** Drilling tasks that require the added experience of a licensed driller to assure completion of the well in accordance with the well construction standards and conditions of drilling permits. These tasks include, but are not limited to, placement of required casings and seals, testing of casings and seals, and resolving problems such as casing or joint failures, heaving formations, lost circulation, and encountering high pressure or high temperature water. (4-5-00)
- 15. Decommissioned (Abandoned) Well.** Any well which has been permanently removed from service and filled or plugged in accordance with these rules so as to meet the intent of these rules. A properly decommissioned well will not: (4-7-11)
- a. Produce or accept fluids; (4-7-11)
 - b. Serve as a conduit for the movement of contaminants inside or outside the well casing; or (4-7-11)
 - c. Allow the movement of surface or ground water into unsaturated zones, into another aquifer, or between aquifers. (4-7-11)
- 16. Department.** The Idaho Department of Water Resources. (4-5-00)
- 17. Director.** The director of the Idaho Department of Water Resources or his duly authorized representative. (4-5-00)
- 18. Drilling or Well Drilling.** The act of constructing a new well, or modifying, changing the construction, or decommissioning an existing well. (4-7-11)
- 19. Drilling Permit.** Authorization by the department to drill a well as provided in Section 42-235, Idaho Code. (4-5-00)
- 20. Drilling Site.** The location of the drill rig and immediate area where the drill rig and auxiliary equipment are set up to drill a well. (4-5-00)
- 21. Global Positioning System (GPS).** A global navigational receiver unit and satellite system used to triangulate a geographic position. (4-7-11)
- 22. License.** A certificate issued by the director to an individual or a company upon meeting the

requirements of Section 42-238, Idaho Code, and these rules authorizing the drilling of wells permitted in accordance with Section 42-235, Idaho Code. (4-5-00)

23. Licensed Driller. An individual having a license to drill wells and is authorized and required to supervise operators in the state of Idaho. (4-7-11)

24. Modify. To deepen a well, increase or decrease the diameter of the casing or the well bore, install a liner, place a screen, perforate existing casing or liners, alter the seal between the casing and the well bore, or alter the well to not meet well construction standards. (4-5-00)

25. Operator. An individual holding either a class I or class II operator's permit issued in accordance with these rules. (4-5-00)

26. Operator's Permit. A certificate issued by the director upon meeting the requirements of Section 42-238, Idaho Code, and these rules allowing the holder to operate a drill rig as provided in these rules. (4-5-00)

27. Principal Driller. A licensed driller in responsible charge of a company's drilling activities, which has been designated the principal driller by the company with the department. (4-5-00)

28. Responsible Charge. The responsibility for direction and control of a drilling operation to meet the requirements of these rules including, but not limited to, the following activities: (4-5-00)

- a.** Contracting to drill a well; (4-5-00)
- b.** Coordinate with property owner to locate a well to comply with applicable well construction standards; (4-5-00)
- c.** Setting up drilling equipment at the drilling site; (4-5-00)
- d.** Drilling operations; and (4-5-00)
- e.** Testing the adequacy of casing and seal; (4-5-00)
- f.** Properly completing the well. (4-7-11)

29. Start Card. An expedited drilling permit process for the construction of cold water Single Family residential wells. (4-7-11)

30. Well. An artificial excavation or opening in the ground more than eighteen (18) feet in vertical depth below land surface by which ground water of any temperature is sought or obtained. The depth of a well is determined by measuring the maximum vertical distance between the land surface and the deepest portion of the well. Any water encountered in the well is considered to be obtained for the purpose of these rules. Well also means any waste disposal and injection well as defined by Section 42-3902, Idaho Code. (4-5-00)

31. Well Construction Standards. IDAPA 37.03.09, "Well Construction Standards Rules," adopted by the board. (4-5-00)

32. Well Driller's Report or Driller's Report. A report required by Section 42-238, Idaho Code, describing drilling of the well and supplying information required on forms provided by the department. (4-5-00)

33. Well Log. A diary maintained at the drilling site consistent with Section 42-238, Idaho Code. (4-7-11)

34. Well Rig or Drill Rig. Any power-driven percussion, rotary, boring, digging, jetting, or augering machine used in the drilling of a well. (4-5-00)

011. -- 019. (RESERVED)

020. APPLICABILITY OF LICENSING REQUIREMENTS (RULE 20).

01. Licensing Requirements. A well shall only be drilled by or under the responsible charge of a licensed driller except that a property owner, who is not licensed, can construct a well on his property for his own use without the aid of power-driven mechanical equipment. (4-5-00)

02. Driller to Have Responsible Charge of Other Workers. A licensed driller shall have responsible charge of all others engaged in a well drilling operation. (4-5-00)

03. Operators to Have Permits. An individual assisting a licensed driller whose duties include operation of a drill rig or auxiliary equipment shall possess an operator's permit as provided in these rules. If the driller is not present at the well site at all times that drilling operations are being conducted, one or more of those operating the equipment in the driller's absence shall have a class II operator's permit. The driller shall provide adequate supervision of class II operators. An individual having a class I operator permit shall be supervised by a licensed driller or a class II operator at all times when operating the drill rig or auxiliary equipment. (4-5-00)

04. Laborer Exempted. An individual whose duties at the drilling site do not include operation of the drill rig or auxiliary equipment at any time is not required to have either a driller's license or an operator's permit. (4-5-00)

05. Company to be Licensed. No company shall drill or contract to drill a well or wells unless the company has been issued a license and has employed a principal driller as described in accordance with these rules. (4-5-00)

06. Drillers to Decommission (Abandon) Wells. Only licensed drillers may decommission (abandon) wells, except that wells may be decommissioned (abandoned) by the owner after receiving a specific waiver from the Director. (4-7-11)

021. CONSTRUCTION AND USE OF HOLES THAT ARE NOT WELLS (RULE 21).

01. When a License Is Not Required. A person drilling a hole that does not meet the definition of a well does not need a driller's license or operator's permit. (4-5-00)

02. Holes Not Defined as Wells. The following list describes the types of holes that are not wells for purposes of these rules: (4-5-00)

a. Holes with total depth less than eighteen (18) feet. (4-5-00)

b. Holes for collecting soil or rock samples, determining geologic properties, or mineral exploration or extraction, including gravel pits. (4-5-00)

c. Holes for oil and gas exploration for which a permit has been issued pursuant to Section 47-320, Idaho Code. (4-5-00)

d. Holes for constructing building foundations or de-watering building or dam foundation excavations. (4-5-00)

e. Holes for the installation of standpipes or piezometers to monitor the saturation of dam embankments or foundations or to measure uplift forces on buildings, dams and other structures. (4-5-00)

03. Converting a Hole Not Constructed as a Well for Use as a Well. A hole that was not constructed as a well by or under the responsible charge of a driller, if subsequently converted to obtain water, to monitor water quantity or quality, or to dispose of water or other fluids, shall be reconstructed by a driller to comply with well construction standards and drilling permit conditions. The owner shall obtain a drilling permit, a water right or other approval if needed, and have the hole inspected and modified by a licensed driller as necessary to meet well construction standards. The driller shall file a driller's report for the well. (4-5-00)

022. -- 029. (RESERVED)

030. OBTAINING A LICENSE FOR AN INDIVIDUAL DRILLER (RULE 30).

01. Application Requirements. An individual desiring a license shall file with the department a completed application on a form provided by the department accompanied by the following: (4-5-00)

- a. The application fee required by Section 42-238, Idaho Code. (4-5-00)
- b. Written documentation of drilling experience, compliance history, and the names and addresses of three (3) references to confirm the applicant's drilling experience. (4-5-00)
- c. A list of all drill rigs used by or under the responsible charge of the applicant providing the make, model, and type. (4-5-00)
- d. The names and addresses of all licensed drillers and permitted operators that will work under the responsible charge of the applicant. (4-5-00)

02. Experience Requirements. (4-5-00)

a. An applicant shall have a minimum of twenty-four (24) months of drilling experience. An applicant will be credited with one (1) month of drilling experience for each one hundred sixty (160) hours of employment as a driller or operator, or the equivalent, as determined by the director. Experience drilling monitoring wells, geothermal wells or other cased wells will be credited as experience by the Director if the equipment and drilling methods are applicable to water well construction. (4-7-11)

b. An applicant for driller's license shall submit evidence to establish that the applicant, as an operator or driller, has successfully constructed a sufficient number of wells within the preceding twenty-four (24) months to demonstrate competency. Evidence of this experience can be demonstrated by the submission of driller's reports bearing the applicant's signature, well reports upon which the driller having responsible charge attests that the applicant drilled the wells or other documentation acceptable to the director. (4-7-11)

c. Twelve (12) of the twenty-four (24) months drilling experience must have occurred within the five (5) year period immediately preceding the filing of the application. (4-7-11)

d. Successful completion of classroom study in geology, well drilling, map reading, and other related subjects may be substituted for up to, but not exceeding, twelve (12) months of drilling experience. The director will determine the number of months of classroom study, up to twelve (12), to be credited as experience. (4-5-00)

03. Examination. An applicant determined by the director to have adequate experience and an acceptable compliance history, as confirmed by references acceptable to the director, is eligible to take a written examination. The examination may include separate sections and shall test the applicant's knowledge of the following: (4-5-00)

a. Idaho statutes and rules relating to appropriation and use of ground water, well drilling, construction and use of injection wells and geothermal wells, and well driller licensing under the provisions of Title 42, Idaho Code. (4-5-00)

b. Land description by government lot, quarter-quarter, section, township and range, and the use of portable GPS units. (4-7-11)

c. Geologic material identification including the use of correct terminology in describing the geologic material. (4-5-00)

d. Well construction principles relating to the proper design, construction, development, and abandonment of wells. (4-5-00)

- e. The occurrence, nature, and movement of ground water. (4-5-00)
- f. The use of various types of drill rigs and auxiliary equipment. (4-5-00)

031. OBTAINING A LICENSE FOR A COMPANY (RULE 31).

01. Application Requirements. A company shall file with the department a complete application for a company license upon a form provided by the department to be accompanied by the following: (4-5-00)

a. The names and addresses of three (3) persons not affiliated with the company, whom the department can contact for information regarding the company's past well drilling operations, if any, and related business activities. (4-7-11)

b. A complete record of the compliance history of the company and the owners and employees of the company. (4-5-00)

c. Designation of a principal driller who shall be a full time employee of the company and shall drill wells only for the company. A licensed driller who renders only occasional, part-time or consulting drilling services to or for a company may not be designated as the principal driller. (4-5-00)

d. The names and addresses of drillers and operators presently employed. (4-5-00)

e. A list of all drill rigs and other related equipment owned or used by the company providing the make, model, and type. (4-5-00)

02. Application Processing. Applications received under this rule will be processed in accordance with Rule 33. (4-5-00)

032. OBTAINING AN OPERATOR'S PERMIT (RULE 32).

01. Application for Class I Operator's Permit. A licensed driller or company proposing to employ a class I operator shall submit a completed application on a form provided by the director. The application shall: (4-5-00)

a. Be accompanied by the fee required by Section 42-238, Idaho Code. (4-5-00)

b. Be signed by the individual seeking the operator's permit and the licensed driller or principal driller of the company proposing to employ the operator. (4-5-00)

02. Application for Class II Operator's Permit. A licensed driller or company proposing to employ an individual who does not currently hold a class II operator's permit shall submit the following: (4-5-00)

a. A completed application on a form provided by the department. (4-5-00)

b. The fee required by Section 42-238, Idaho Code. No fee is required if the applicant is presently permitted as a class I operator, but the expiration date of the permit when converted to a class II operator's permit will remain as originally issued. (4-5-00)

c. Documentation that the operator has successfully constructed a sufficient number of wells, or has constructed wells for a sufficient length of time, or a combination of both to demonstrate competency. (4-5-00)

03. Written Examination. An examination is not required for a class I operator's permit. An otherwise qualified applicant for a class II operator's permit shall obtain a satisfactory score on an examination as provided in Rule 34. The examination may be comprised of separate sections and shall test the applicant's knowledge of the following: (4-5-00)

a. Idaho statutes and rules relating to appropriation and use of ground water, well drilling, construction and use of injection wells and geothermal wells, and well driller licensing under the provisions of Title 42, Idaho Code. (4-5-00)

b. Land description by government lot, quarter-quarter, section, township, and range, and the use of portable GPS units. (4-7-11)

c. Geologic material identification including the use of correct terminology in describing geologic material. (4-5-00)

d. Well drilling principles relating to proper design, construction, development, and abandonment of wells. (4-5-00)

e. The occurrence, nature, and movement of ground water. (4-5-00)

04. Operator Drills Only for Licensed Driller or Company. An operator shall only drill for the licensed driller or company approved by the director. If an operator changes employment to another licensed driller or company, an application for an operator's permit shall be filed as provided in this rule. (4-7-11)

05. Processing an Application for Operator's Permit. The department will process an application for operator's permit in accordance with Rule 33. (4-5-00)

033. PROCESSING APPLICATION FOR A DRILLER'S LICENSE OR OPERATOR'S PERMIT (RULE 33).

01. Incomplete Application. If an application is incomplete, not properly signed, or does not include the information required by these rules, the department will advise the applicant in writing of the deficiency. If the deficiencies are not satisfied within ninety (90) days of sending the notice of the deficiency, the application will be void. The application fee is not refundable. (4-7-11)

02. Issuance of License. If the director, upon review of the application, determines that an applicant for license is qualified and the driller has subsequently taken and passed an examination, a notice will be sent to the applicant requesting a bond in an amount determined in accordance with Rule 60 be filed with the department. Upon receipt of a satisfactory bond, the director will issue a license to the applicant. (4-5-00)

03. Issuance of Operator's Permits. If the director determines that an applicant is qualified and has passed an examination, if required, the department will mail a notice and operator's permit card to the principal driller on behalf of the applicant. (4-5-00)

04. Driller's License or Operator's Permit Issued With Conditions or Denial of License or Operator's Permit. The Director may issue a license or operator's permit with specific conditions or limitations based on the applicant's experience and compliance history. The Director may refuse to issue or renew a driller's license permanently or for a designated period of time if the driller has previously constructed wells improperly or constructed a well without a valid driller's license. If the Director determines that the applicant is not qualified, the Director will deny the application. Notice of a denied application or a conditioned license or operator's permit will be given to the applicant in accordance with IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." (4-7-11)

034. EXAMINATION PROCEDURES (RULE 34).

01. Written Examination. Written examinations will be offered at department offices on the first Monday of each quarter. If the first Monday is a legal holiday, written examination will be offered on the first Tuesday. Re-examination may be taken at a regularly scheduled examination date during a following quarter and shall be scheduled with the department office originally testing the applicant. (4-7-11)

02. Oral Examination. Successful passage of an oral examination may satisfy all or a part of the written testing requirements under the following circumstances: (4-5-00)

a. The applicant requests an oral rather than a written examination and shows cause acceptable to the director why the examination should be oral rather than written. Applicants desiring to take the examination orally shall request that an oral examination be scheduled allowing at least fifteen (15) days to set an examination date. (4-5-00)

b. The director determines that because of the applicant's compliance history, additional testing is needed to determine the applicant's qualifications. (4-5-00)

03. Examination Scoring. The applicant shall pass each section of the examination with a score of seventy percent (70%) or higher. (4-5-00)

04. Assistance Must Be Authorized. The use of written materials, equipment or other individuals to assist an applicant during an examination is prohibited unless specifically authorized by the department. An applicant receiving unauthorized assistance during an examination may be disqualified and the application may be rejected. An application filed by a disqualified applicant will not be processed for a period of up to one (1) year from the time of disqualification. (4-5-00)

035. EXPIRATION AND RENEWAL OF LICENSE (RULE 35).

01. Expiration of Licenses. All licenses expire at the end of the licensing period for which they are issued. The licensing period begins April 1 and ends March 31 of the second year following issuance. (4-7-11)

02. Renewal Application. A license may be renewed by submitting a license renewal application including the following: (4-5-00)

a. A completed application on a form provided by the department. An application to renew a license for an individual licensed driller shall be signed by the individual and an application to renew a license for a company shall be signed by the principal driller. (4-5-00)

b. The renewal fee required by Section 42-238, Idaho Code. (4-5-00)

c. A new bond or continuation certificate for an existing bond covering the licensed driller or company. (4-5-00)

d. If the application is for renewal of a license held by an individual, the application shall include verification that the applicant has obtained the required continuing education credits. (4-5-00)

03. Continuing Education Requirements. Fourteen (14) credit units are required for renewal of a license for an individual for any licensing period beginning on or after April 1, 2011. (4-7-11)

04. Welding Competency. A driller that has been issued a Notice of Violation for welding that does not comply with the well construction standards may be required to obtain a certificate of welding competency from the American Welding Society or similar organization. (4-7-11)

036. EXPIRATION AND RENEWAL OF AN OPERATOR'S PERMIT (RULE 36).

01. Expiration of Operator's Permits. Class I and class II operator's permits shall expire on March 31 of the same year that the license of the licensed driller and company employing the operator expires. (4-5-00)

02. Renewal Application. An operator's permit may be renewed by submitting to the department an application for renewal including the following: (4-5-00)

a. A completed application on a form provided by the department. The operator seeking renewal and the driller under whose responsible charge the operator works shall sign the form. (4-5-00)

b. The renewal fee required by Section 42-238, Idaho Code. (4-5-00)

c. For renewal of a class II operator's permit, verification of the required continuing education credit units. (4-5-00)

03. Continuing Education Required for Renewals. Fourteen (14) credit units are required for renewal of a class II operator's permit for a licensing period beginning on or after April 1, 2011. (4-7-11)

04. Welding Competency. An operator's work that has resulted in a Notice of Violation for welding that does not comply with the Well Construction Standards may be required to obtain a certificate of welding competency from the American Welding Society or similar organization. (4-7-11)

037. PROCESSING APPLICATION TO RENEW LICENSE OR OPERATOR'S PERMIT (RULE 37).

01. Processing Applications for Renewal. Applications for renewal will be processed in the order received by the department. The department shall receive a complete application for renewal no later than March 15 to assure that the license or operator's permit will remain in force without interruption. If the director determines that the application is complete and the applicant is qualified, the license or operator's permit will be renewed for the period ending on March 31 of the second year after approval of the renewal. (4-5-00)

02. Regulatory Compliance Required for Renewals. A license or operator's permit will not be renewed if the applicant has not submitted all required driller's reports, applications for drilling permits, fees, agreed civil penalties, has not complied with all orders requiring repair or abandonment of improperly constructed wells or is not otherwise in compliance with Sections 42-235 and 42-238, Idaho Code, and the applicable rules. (4-5-00)

03. Compliance History. If the Director determines that the applicant has exhibited an unacceptable compliance history, the Director may deny renewal, refuse renewal for a specified time, or renew with conditions, including but not limited to an increased bond amount. (4-7-11)

04. Renewal of Expired Licenses or Operator's Permits. A license or an operator's permit which has expired or otherwise not been in effect for a period not exceeding three (3) years shall be renewed in accordance with the requirements of Rule 35 or Rule 36 as appropriate. An applicant for renewal shall provide verification of earned credit units required for the entire period since the license or class II operator's permit was last issued. If a license or operator's permit has been expired or otherwise not effective for a period of more than three (3) years, an application for a new license shall be submitted in accordance with Rule 30 for an individual license, Rule 31 for a company or Rule 32 for an operator's permit. The director may waive the examination requirement if the applicant has been previously licensed or permitted in the state of Idaho. (4-5-00)

05. Reuse of Identification Numbers. The identification number assigned to a license by the department will not be reused if the license has been expired or otherwise not in effect for three (3) years or more except, at the director's discretion, the number may be reissued to the original owner. (4-5-00)

06. Condition or Denial of an Application for Renewal. If the Director determines that the applicant has not or cannot fully comply with these rules, a license or operator's permit may be issued with conditions. If the Director determines that the applicant is not qualified, the Director will deny the application. When there are documented violations of well drilling laws and/or rules, including well construction standards, the Director may consult with the Driller's Advisory Committee, created in accordance with Rule 80, prior to making a decision to issue a conditional license or operator's permit or to deny an application based on the applicant's compliance history. Notice of a denied application or a conditioned license will be given as provided in IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources." (4-7-11)

038. -- 049. (RESERVED)

050. DUTIES AND RESPONSIBILITIES OF DRILLERS, COMPANIES AND OPERATORS (RULE 50).

01. Licensed Drillers and Principal Drillers. All licensed drillers and principal drillers shall:(4-5-00)

- a.** Allow drilling only by those authorized by and under the supervision required by these rules and according to any conditions of the license or permit. (4-5-00)
- b.** Complete each well in compliance with IDAPA 37.03.09, “Well Construction Standards Rules,” and drilling permit conditions. (4-7-11)
- c.** Have a valid cash or surety bond in effect, as defined in Rule 60. (4-5-00)
- d.** Have the license number displayed in a conspicuous place on the drill rig using a metal identification plate provided by the department or other permanent marking approved by the director. The displayed license number shall represent the company or individual driller license under which the well is being drilled. One plate will be issued upon initial licensure with replacement and additional plates available for a fee. (4-5-00)
- e.** Keep current the department’s list of operators and drillers employed by the licensed driller or company, including current addresses for the company, drillers, and operators. The licensed driller or principal driller shall be held responsible for all drilling activity of a driller or operator under their supervision until such notification has been submitted in writing to the department that the driller or operator is no longer employed by the licensed driller or company. (4-5-00)
- f.** Have at the drilling site the driller’s license and drilling permit or other written authorization from the director to drill the well. (4-5-00)
- g.** Only drill wells in contaminated areas identified by the department or in areas of drilling concern so designated by the department with specific written authorization of the director. Verbal authorizations to drill and pre-approved drilling permits (start cards) do not authorize drilling in these areas. (4-5-00)
- h.** Only drill a public drinking water supply well, as defined in IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” low temperature geothermal resource or geothermal resource well with specific written authorization from the director. Verbal authorizations and start card permits (start cards) are not authorized for these uses. (4-7-11)
- i.** Monitor and record bottom-hole temperature in areas where low temperature geothermal resources are known or suspected or when the well is being constructed pursuant to IDAPA 37.03.09, Rule 30, as a low temperature geothermal resource well. Bottom-hole temperature of every well being constructed pursuant to IDAPA 37.03.09, Rule 30, must be measured, recorded, and reported on the well drillers report. (4-7-11)
- j.** Maintain a daily well log at the drilling site acceptable to the department and as required by Section 42-238(11), Idaho Code. Pertinent data required to be recorded on the daily log must include information sufficient to complete a well drillers report acceptable to the Director. The driller shall retain the well log for at least one (1) year after the driller’s report is submitted to the department. (4-7-11)
- k.** Submit driller’s reports, acceptable to the Director, on forms approved by the department within thirty (30) days following removal of the drill rig from the drilling site at completion of the well. Driller’s reports shall be prepared from information recorded on the daily well log. Driller’s reports returned to the driller due to deficiencies must be corrected and returned to the department within thirty (30) days of mailing by the department. (4-7-11)
- l.** Attach a well tag supplied by the department to every well drilled for which a drilling permit is required. The tag shall be affixed permanently to the casing, or other permanent object attached to the well, by a method approved by the Director prior to removing the well rig from the drilling site. (4-5-00)
- m.** Cause all drilling activity under the supervision of the driller to cease when the driller’s license expires, becomes invalid, or is suspended or revoked. (4-5-00)
- 02. Companies.** Companies shall: (4-5-00)
- a.** Have a principal driller designated with the department at all times. (4-5-00)

b. Notify the department within ten (10) days of the principal driller leaving employment with the company. The company's license shall immediately become void and of no effect when the principal driller leaves employment with the company and shall remain so until the department has been notified in writing that a new principal driller has been employed and designated by the company. Failure to designate a principal driller within ninety (90) days of the departure of the designated principal driller is cause for the director to take action to cancel the company's license. (4-5-00)

c. Maintain a bond in force at all time as required in Rule 60. (4-5-00)

03. Operators. Operators shall: (4-5-00)

a. Have in their possession a valid operator's permit while drilling wells. (4-5-00)

b. Only drill wells as authorized by the operator's permit. (4-5-00)

c. Maintain a complete and accurate well log at the drilling site. (4-5-00)

d. Co-sign with the driller a driller's report upon completion of the well. (4-5-00)

051. -- 059. (RESERVED)

060. BONDING (RULE 60).

01. Bonding Requirements. Each licensed driller or company shall submit a surety bond or cash bond in an amount determined by the director, within the limits of 42-238, Idaho Code, for each driller employed by the company, payable to the director for the licensing period. (4-5-00)

a. A company shall have a bond, which covers the drilling activities of each driller and operator employed by the company. If the licensed driller drills wells as an individual and not for a company, a separate bond must be filed with the director. (4-5-00)

b. Drillers proposing to drill wells in an area of drilling concern, monitoring wells, public water supply wells, or wells to obtain or likely to encounter water with a bottom hole temperature greater than eighty-five (85) degrees Fahrenheit, shall submit an upgraded bond, in an amount determined by the director, at the time the drilling permit application is processed. Drillers anticipating drilling such wells may, instead, submit adequate bonding at the time of driller license application or renewal. (4-5-00)

c. The amount of the bond, within the limits prescribed in Section 42-238, Idaho Code, will be determined by the director based on the applicant's compliance history, the size and depth of wells the applicant proposes to construct and is authorized to drill, the complexity of the wells, the resource to be recovered, the area of operation of the applicant, the number of drillers and operators employed by a company, and other relevant factors. (4-5-00)

d. All bonds and continuation certificates must be on forms provided or approved by the department. (4-5-00)

02. Cash Bonds. (4-5-00)

a. Acceptable Cash Bonds. Cash bonds shall be in a separate account readily accessible to the director for use as provided in these rules. The director will review cash bond proposals made by an applicant. Cash bonds shall be retained in financial institutions within the state of Idaho unless waived by the director. (4-5-00)

b. Retention. The director will hold cash bonds for two (2) years from the date the driller requests that the bond be released unless replaced by another bond or the director determines that all wells drilled by the driller satisfy well construction standards. The release of a cash bond must be requested in writing. (4-5-00)

03. License Void Without Bond. If the issuing company cancels a bond, the bond expires or otherwise becomes non-effective during the term of a license, the license shall immediately become void and of no further effect until an adequate replacement bond is received by the department. (4-5-00)

061. -- 069. (RESERVED)

070. CONTINUING EDUCATION (RULE 70).

01. Requirements. Every licensed driller or permitted operator must have earned at the time of renewal the applicable number of credit units required by these rules. The credit units shall have been obtained during the licensing period preceding the application for renewal. (4-7-11)

02. Earning Credit Units. Credit units may be earned for time spent in attendance at workshops, seminars, short courses, and other educational opportunities devoted to drilling or related subjects acceptable to the Director and approved by the continuing education committee (CEC) and in compliance with the CEC guidelines. These may include completion of college courses, correspondence courses, videotaped courses, and other endeavors such as authoring appropriate publications. (4-7-11)

03. Documentation. Documentation to support credit units claimed is the responsibility of the licensed driller and permitted operator. Records required include but are not limited to: (4-7-11)

a. A log showing the type of activity claimed, sponsoring organization, duration, instructor's name, and credit units. (4-5-00)

b. Attendance verification records in the form of completion certificates or other official documents providing evidence of attendance and completion. (4-7-11)

04. Submittal and Maintenance of Records. Copies of continuing education records for the preceding license period shall be submitted with applications to renew licenses or permits. These records shall be maintained for a period of three (3) years and shall be available for review by the department at the request of the director. (4-5-00)

05. Insufficient Credit Units. If at the time of renewal, the applicant is unable to provide verification of the required credit units, the director will deny renewal of the driller's license or operator's permit, except as otherwise provided in the following: (4-5-00)

a. The director may withhold action on an application for renewal for a period not to exceed ninety (90) days to allow the applicant to provide verification of the required credit units. The applicant is not authorized to drill until the verification is provided and the renewal is issued. (4-5-00)

b. The director may exempt an applicant from all or part of the continuing education requirements if the applicant served on active duty in the armed forces of the United States for one hundred twenty (120) consecutive days or more during the licensing period prior to filing the application for renewal; or the applicant suffered physical disability, serious illness, or other extenuating circumstances that prevented the applicant from earning the required units. (4-5-00)

c. A licensed driller or operator who has chosen to allow his license or permit to expire or otherwise become of no effect shall be exempt from continuing education requirements unless an application for renewal is filed less than three (3) years after the license or permit expired or otherwise became of no effect. (4-5-00)

06. Out-of-State Residents. The continuing education requirements for a non-resident applicant for a license or operator's permit shall be the same as for resident applicants. (4-5-00)

07. Responsibility for Education Development and Implementation. The Idaho Ground Water Association (IGWA) is delegated responsibility to develop and implement a program for continuing education for review and approval by the director. (4-5-00)

071. CONTINUING EDUCATION COMMITTEE CONTINGENCY PLAN (RULE 71).

Should the memorandum of understanding (MOU) and/or the contract between the department and the IGWA be breached, revoked, or not renewed, the CEC shall be organized and administered by the department. (4-7-11)

072. -- 079. (RESERVED)

080. DRILLER'S ADVISORY COMMITTEE (RULE 80).

01. Selection and Duties. The Director may appoint a driller's advisory committee from the list of drillers holding valid licenses. The Director will solicit appointment recommendations from the IGWA and other licensed drillers. The Director will determine the term of appointment for members of the committee. The committee shall provide recommendations and suggestions concerning revision of these rules, the minimum standards for well construction, significant violations and other matters regarding well drilling. The committee members shall serve on a voluntary basis without compensation. The department will hold meetings at the discretion of the Director. (4-7-11)

02. Reimbursement. Travel costs shall be paid to members of the advisory committee for travel and per diem and for costs associated with attendance of advisory committee meetings held by the department. Reimbursement shall be based on existing department policy covering travel and per diem expenses. (4-5-00)

081. -- 089. (RESERVED)

090. ENFORCEMENT (RULE 90).

01. Violations. Violations of these rules or Sections 42-235 or 42-238, Idaho Code, will be enforced as provided in Sections 42-238 and 42-1701B, Idaho Code. (4-5-00)

02. Enforcement Policy. An administrative policy providing guidelines for enforcement shall be published and maintained by department staff. A copy of the enforcement guidelines is available upon request at no charge. (4-5-00)

091. -- 999. (RESERVED)