37.02.01 - COMPREHENSIVE STATE WATER PLAN RULES

000. LEGAL AUTHORITY (RULE 0).

The Board promulgates these rules pursuant to authority provided by Sections 42-1734D and 67-520342-1734A, Idaho Code. (7-1-93)

001. TITLE AND SCOPE (RULE 1).

- **01.** Title. The 1988 Idaho Legislature passed House Bill 780, 1988 Session Laws, ch. 370, p. 1090, amending Chapter 17, Title 42, Idaho Code, effective July 1, 1988, to provide for the development of a comprehensive state water plan which may include protected rivers designated either as natural or recreational rivers. The legislative purpose states that selected rivers possessing outstanding fish and wildlife, recreational, aesthetic, historic, cultural, natural or geologic values should be protected for the public benefit and enjoyment. The legislation provides that a waterway may be designated as an interim protected river prior to the preparation of a comprehensive plan for the waterway. The title of this chapter is "Comprehensive State Water Plan Rules."
- **O2. Scope**. The purpose of these rules is to establish the procedures <u>and notice</u> used by the Idaho Water Resource Board for designating a waterway as an interim protected river, <u>adopting a comprehensive plan for a waterway</u>, and providing adequate notice of any petitions filed or actions contemplated pursuant to the State Comprehensive Water Plan Act, 1988 Sess. Laws, ch. 370, p. 1090, codified as Sections 42 1730 1731 and 42-1734A-1734I, Idaho Code. (7-1-93)

002. -- 009. (RESERVED)

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

- **01. Alteration**. Any activity using mechanized equipment that moves or overturns gravel or earth. (7-1-93)
- **O2.** Board. The Idaho Water Resource Board. (7-1-93)
- 03. Comprehensive State Water Plan. The plan adopted by the Board pursuant to Section 42 1734A, Idaho Code, or a component of such plan developed for a particular water resource, waterway or waterways and approved by the Legislature. (7 1 93)
 - 04. Director. The director of the Idaho Department of Water Resources. (7 1 93)
- **05. Dredge or Placer Mining.** Any dredge or other placer mining operation to recover minerals with the use of a dredge boat or sluice washing plant whether fed by bucket line as a part of such dredge or by a separate dragline or any other method including, but not limited to, suction dredges that are capable of moving more than two (2) cubic yards per hour of earth material. (7-1-93)
- **Hydropower Project**. Any development that uses a flow of water as a source of electrical or mechanical power, or that regulates the flow of water for the purpose of generating electrical or mechanical power including. A hydropower project development includes all powerhouses, dams, water conduits, transmission lines, water impoundments, roads, and other appurtenant works and structures. (7-1-93)
- **07. Interim Protected River.** A waterway designated pursuant to Section 42 1734D or 42 1734H, Idaho Code, as protected for up to two (2) years while a component of the comprehensive state water plan is prepared for that waterway.

 (7.1.93)
- 08.04. Natural River. A waterway that possesses outstanding fish and wildlife, recreation, geologic or aesthetic values, is free of substantial existing man-made impoundments, dams or other structures, and has riparian

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areas that are	largely undeveloped, although accessible in places by trails and roads.	(7-1-93)
09	Publicize. To notify the public through press releases to the media, published noti	ice in local
	atewide publications, and other procedures, as may be appropriate to inform and notify the	
_	of an impending action or decision.	(7-1-93)
	Protected River. A waterway protected in the comprehensive state water plan by de-	signation as
	el river or a recreational river.	(7-1-93)
or aesthetic va	lues, and might include some man-made development within the waterway or within the r	
12. 00	Riparian Area . That area within one hundred (100) feet of the mean highwater mark of (7-1-93)	a waterway.
13.	State Agency. Any board, commission, department or executive agency of the state of	Idaho. (7-1-93)
and conducts waterway.	Stream Bed. A natural water course of perceptible extent with definite bed and banks the water of a waterway that lies below and between the ordinary high water mark on either (7-1-93)	
15.08 tributary there		include any (7-1-93)
011 014.	(RESERVED)	
015. INTI	ERIM PROTECTED RIVERS (RULE 15).	
01	Legislative Directive. Pursuant to the legislative directive of Section 42 1734H, Idah	o Codo tha
	lution at a regularly scheduled meeting on July 1, 1988, designated the following waterway	
protected rive		$\frac{(7.1.93)}{}$
a.	Priest River, from the Canadian Border to the confluence of Priest Lake;	(7-1-93)
——————————————————————————————————————	South Fork of the Boise River, from Anderson Ranch Dam to Neal Bridge;	(7-1-93)
.		,
е.	Snake River, from Section 5, Township 11 South, Range 20 East, B.M. to King Hill;	(7-1-93)
d.	The following waterways within the Payette River Basin:	(7-1-93)
<u>i.</u>	North Fork of the Payette River, from Cabarton Bridge to Banks;	(7 1 93)
	South Fork of the Payette River, from the Sawtooth Wilderness Boundary to Banks;	(7 1 93)
	Main Payette River, from Banks to Black Canyon Dam; and	(7-1-93)
111.		,
e.	Henry's Fork of the Snake River from its point of origin at Henry's Lake to the the backwaters of Ashton Reservoir.	point of its (7 1 93)
0.2		
a waterway as	Designation. Prior to the adoption of a comprehensive plan for a waterway the board materian protected river.	ay designate (7-1-93)
03. 01	Board Initiative . The board may consider a waterway for designation as an interim pro	ntected river
upon its own i		(7-1-93)

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- **Q4.<u>02.</u> Petitions.** The board will accept petitions requesting the board to designate a waterway as an interim protected river only from a state agency. The acceptability of a petition requiring clarification or corrections shall be determined by the director. (7-1-93)
- **65.03. Form.** Petitions shall be in writing, signed by the agency head, and shall describe the waterway, or portion thereof, requested to be designated as an interim protected river. (7-1-93)
- **66.04. Filing.** Petitions shall be filed with the director. No petition will be considered by the board at a board meeting unless it is filed with the director at least thirty (30) days prior to such board meeting. (7-1-93)
- **07.** Notice of Consideration. The petitioning agency will be notified at least ten (10) days prior to the meeting of the time, place, and agenda for the board meeting at which the petition will first be considered. (7-1-93)
- **08.05. Board Agenda**. The board agenda will include time for representatives of the petitioning agency to describe the affected waterway and the agency's reasons for seeking interim protection for that waterway. (7-1-93)
- 93) Public Notice. The board will publicize the proposed interim designation of the waterway. (7 1
- 10. Public Input. The board will hold either a public information meeting or a hearing, as the board deems appropriate, to obtain public input on the merits of a proposed interim protected river designation. The board is not limited to one (1) meeting or hearing, and may elect to hold more than one (1) of each, or any combination thereof, as the board deems appropriate.

 (7 1 93)
- 11.06. Board Determination. At a board meeting not more than six (6) months after a petition for interim protected river designation has been filed with the director, the board shall determine whether the nominated waterway merits designation as an interim protected river. The results of the board decision, including identification of any prohibited activities under Rule 25, shall be publicized. The determination shall be based on a finding that: (7-1-93)
- a. Basis of Determination. Designation of a waterway as an interim protected river shall be based upon a determination by the board that:

 (7.1.93)
- i.a. It is probable that the waterway would be designated a protected river in the comprehensive state water plan; and (7-1-93)
- Interim protected river status is necessary to protect the values that would support such waterway's designation as a protected river in a comprehensive state water plan. (7-1-93)
- b. Staff and Funding Considerations. Since the designation of a waterway as an interim protected river is limited to a term of two (2) years, unless extended by law, the board shall consider in its determination process the availability of staff and funding to complete a comprehensive plan for the designated waterway during the two (2) years following designation.

 (7-1-93)
- c. Repeat Filing of Denied Petitions. If the board determines not to afford interim protection to a nominated waterway, the board shall not subsequently entertain petitions seeking interim designation for that same waterway for a period of one (1) year from the date of board action.

 (7-1-93)
- d. Lack of Review. There shall be no review of any board decision rejecting or accepting a nomination for an interim protected waterway. (7.1.93)
- 12. Relation to Comprehensive Water Plan. If a waterway is designated as an interim protected river, then the board shall, pursuant to Subsection 6 of Section 42-1734D, Idaho Code, proceed to prepare a comprehensive state water plan for the waterway. The board shall in preparing the state comprehensive water plan for the waterway consider, after review of all relevant factors contained in Section 42-1734A, Idaho Code, whether the designation should continue or whether modification of the designation is warranted.

 (7-1-93)

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	13.	Duration of Interim Protected Status. The designation of a waterway as an interim prot	tected river
shall r	emain in	effect, pursuant to Subsection 4 of Section 42 1734D, Idaho Code, until the earliest of:	(7 1 93)
	- 8.	The adoption of a comprehensive state water plan for the waterway designated as	an interim
protec	ted river		(7 1 93)
	h	Two (2) years following the designation of an interim protected river unless extended by	, 10m
	υ.	1 wo (2) years following the designation of an interim protected river timess extended by	(7 1 93)
		The many states of a continuous 2 interior marks at 1 since states by 1 and	(7.1.02)
	c.	The revocation of a waterway's interim protected river status by law.	(7-1-93)
		Subsequent Designations. If the designation of a waterway as an interim protected riv	
		v, or terminated as provided in Section 42-1734D, Idaho Code, then the waterway shall not a as an interim protected river for a period of two (2) years following the revocation or term	
		ected river status.	(7 1 93)
016	- 024.	(RESERVED)	
025.	PD∩I	HIBITED ACTIVITIES ON INTERIM PROTECTED RIVERS PETITIONS TO	FYFMPT
		ROJECTS FROM INTERIM PROTECTED RIVERS (RULE 25).	EXENII I
	01		d 1 1
chall		Board Identification. Upon designating a waterway for interim protected river status, which of the following activities listed in Subsection 5 of Section 42 1734A, Idaho Cod	
prohik		which of the following detrities listed in Subsection 3 of Section 12 1/3 //, Idaho Cod	$\frac{(7.1.93)}{}$
		Construction on any order of laws on invariants	(7.1.02)
	a.	Construction or expansion of dams or impoundments;	(7 1 93)
	b.	Construction of hydropower projects;	(7-1-93)
	е.	Construction of water diversion works;	(7 1 93)
			(5.1.00)
	d.	Dredge or placer mining;	(7 1 93)
	e.	Alterations of the stream bed; and	(7-1-93)
	f	Mineral or sand and gravel extraction within the stream bed.	(7 1 93)
	1.	Willicial of saila and graver extraction within the stream occ.	(7 1)3)
	02. 01.		
		cial of an organization proposing to undertake or construct a prohibited activity or project m	
		ing a determination that the particular proposed action or project will not significantly impair aterway's designation as an interim protected river. Petitions proposing exemption for a spec	
		m protected river designation shall—	(7 1 93)
<u>mom (</u>	ine mierii	In protected fiver designation share	(7 1 73)
		Form. Petitions shall be in writing, signed by the owner, operator, or designated offi	
petitio	ner, and	describe the proposed action or project and its location.	(7 1 93)
	b.	Filing. Petitions shall be filed with the director. No petition will be considered by the	board at a
board		unless filed with the director at least thirty (30) days prior to such board meeting.	(7-1-93)
	03	Notice of Consideration. Petitioning parties will be notified at least ten (10) days p	rior to the
meetin		time, place, and agenda for the board meeting at which their petition will first be considered	

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describe the affected waterway or stream reach and to explain how the particular proposed action or project would not significantly impair the values supporting a waterway's designation as an interim protected river. The burden shall be

04.02. Board Agenda. The board agenda will include time for the petitioner or his representative to

on the petitioner to show that the proposed action will not impair those values supporting a waterway's designation as an interim protected river. (7-1-93)Public Notice. The board will publicize the fact that the board is considering exempting the particular proposed action or project from one or more of the activities prohibited by the designation of the waterway as an interim protected river. Public Input. The board will hold a public hearing, and may hold one (1) or more information meetings in the affected area if the board deems this to be appropriate, to obtain public input on the merits of a proposed exemption. The public hearing may be scheduled in conjunction with the board meeting provided for in Rule Subsection 025.07. Board Determination. At a board meeting not more than four (4) months after a petition for exemption from the prohibitions of interim protected river status has been received by the director, the board shall determine whether the proposed action or project would impair those values being protected by interim designation. In unusual circumstances, the board may extend the four (4) month period allowed for board action. Basis of Determination. In determining whether a particular proposed action or project will significantly impair the values supporting a waterway's designation as an interim protected river, the board may consider any relevant information including environmental impact statements, technical studies and any other relevant comments or recommendations prepared for use before other state or federal agencies. The burden shall be on the petitioner to show that the proposed action will not impair those values supporting a waterway's designation as an interim protected river. Approved Exemptions — Conditions. If the board determines the proposed action or project will not significantly impair the values supporting the waterway's designation as an interim protected river, then the proposed action or project shall be allowed to proceed, except that the board, after consultation with relevant state agencies, may impose appropriate conditions on such action or project, and shall advise any affected regulatory agency of such $\frac{(7-1-93)}{}$ conditions. Emergency Waiver. The board delegates to the director the authority to determine if immediate action is required because of a potential for loss of life, damage to structures, or damage to public utilities or thoroughfares. In such cases alterations of a stream bed shall be allowed even though otherwise prohibited by board action. Such alterations shall meet all other applicable state law. Judicial Review, Pursuant to Subsection 5 of Section 42 1734D, Idaho Code, an aggrieved party may seek judicial review of the board's decision in accordance with Sections 67-5215 and 67-5216, Idaho Code. (7.1.93)026. -- <u>029.999.</u> (RESERVED) **COMPREHENSIVE STATE WATER PLAN (RULE 30).** Planning Authority. Pursuant to the provisions of Sections 42 1734A and 42 1734B, Idaho Code, the board shall, subject to legislative approval, progressively formulate, adopt and implement a comprehensive state water plan for conservation, development, management and optimum use of all unappropriated water resources and waterways of the state in the public interest. As part of the comprehensive state water plan, the board may designate selected waterways as protected rivers. The comprehensive state water plan shall contain a description of existing and planned uses, and the impact of such uses at the local, state, and regional level for those resources and uses identified in Subsection 3 of Section 42 1734A, Idaho Code. The plan shall quantify, insofar as possible, the unappropriated waters of the planning area, and shall plan the allocation of such waters among the various competing uses. (7.1.93)Coordination. The comprehensive state water plan shall be based upon studies and public hearings in affected areas. In addition, the board will encourage the cooperation, participation and assistance of the state departments of Lands, Parks and Recreation, Fish and Game, Health and Welfare, and Transportation, as well as

federal agencies, local units of government, and affected Indian tribes.	(7 1 93)
b. Local Advisory Group. The board will seek the involvement of volunteers from the to be affected by a portion of the comprehensive water plan. These volunteers shall constitute a local that shall inform the board of local concerns.	
Q2. Public Hearings. Prior to developing a comprehensive plan for any waterway, river area, river reach, ground water aquifer or other geographic area, the board will hold at least one inform the affected area at which all interested parties will be given the opportunity to advise the board on proposed planning effort. Prior to adopting a comprehensive plan for any area the board will hold hearing in the affected area at which all interested parties will be given the opportunity to appear or to testimony in response to published proposals for adoption of a comprehensive plan.	mation meeting the scope of the at least one (1)
a. Public Notice. The board will publicize both information meetings and hearings the development or adoption of a comprehensive plan for any area.	nt impact on the (7 1 93)
 b. Written Comments. A minimum of sixty (60) days shall be allowed by the boa announcing of a proposal for the adoption of a comprehensive state water plan or any component there of the comment period for such proposed action. 03. Legislative Review. Upon adoption of a comprehensive state water plan or any component the board shall present such plan for review to the Idaho legislature at the next regular legislative seems. 	of and the close (7-1-93) apponent thereof,
adoption. (7 1 93) 031034. (RESERVED) 035. AMENDING THE COMPREHENSIVE STATE WATER PLAN (RULE 35).	
01. Petitions. The board will accept written petitions seeking amendment of the compared water plan only from a state agency.	orehensive state (7-1-93)
02. Form. Petitions shall be in writing, signed by the agency head, and shall describe the comprehensive water plan to be amended and the reasons for the proposed amendments.	nose portions of (7-1-93)
03. Filing. Petitions shall be filed with the director. No petition shall be considered by board meeting unless filed with the director at least thirty (30) days prior to such board meeting.	y the board at a (7.1.93)
04. Notice of Consideration. The petitioning state agency will be notified at least ten to the meeting of the time, place, and agenda for the board meeting at which the agency's petitic considered.	(10) days prior on will first be (7-1-93)
05. Board Agenda. The board agenda will include time for representatives of the petitic explain why amending the comprehensive state water plan is considered necessary.	oning agency to (7 1 93)
96. Board Determination . At a board meeting not more than six (6) months after a per the comprehensive state water plan has been filed with the director, the board shall either commence of the comprehensive plan or set forth its reason for denying the request in writing.	etition to amend action to amend (7-1-93)
O7. Amending Procedure. If the board chooses to amend the comprehensive state water shall do so in the same manner as provided for adoption of the original plan.	rplan, the board (7-1-93)
08. Amendment by Board Initiative. Nothing in these rules shall prevent the board and reevaluating portions of the plan upon its own initiative, and amending the plan in the same man for adoption of the original plan.	from reviewing ner as provided (3-15-02)

10. Board Evaluation. The board shall determine whether to consider a proposed amendment based on those factors contained in Section 42-1734A(3), Idaho Code, and their charge to plan for the conservation, development, management and optimum use of all unappropriated water resources and waterways of the state in the public interest.

11. Legislative Review. The board shall submit the comprehensive state water plan and any component thereof for a particular waterway, or any modification of the plan, to the legislature for review and possible amendment by law at the next regular legislative session following adoption by the board.

(7-1-93)

036. 999. (RESERVED)