

**RESOURCES & CONSERVATION COMMITTEE**

**ADMINISTRATIVE RULES REVIEW**

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## IDAPA 20 - DEPARTMENT OF LANDS

### 20.03.04 - RULES GOVERNING THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

#### DOCKET NO. 20-0304-1001 (FEE RULE)

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224 Idaho Code and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (Board), Sections 830 through 835, notice is hereby given that this agency has adopted a pending rule. This action is authorized pursuant to Section 58-104(6), Idaho Code.

**DESCRIPTIVE SUMMARY:** This rulemaking will resolve an issue regarding covered slips that arose late in the 2009 rulemaking process.

**Also, a statutory change enacted during the 2010 legislative session requires a rule conflict to be removed. This will allow the replacement of some single and two-family docks without a permitting process. Another statutory change enacted during the 2010 legislative session allows the Department to raise the application fees for some encroachment types. Lastly, the Department proposes to lower the application fee for small domestic waterlines.**

**The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [October 6, 2010 Idaho Administrative Bulletin, Vol. 10-10, pages 359 through 364.](#)**

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

**This fee or charge is being imposed pursuant to Section 58-1307, Idaho Code. Application fees will be increased from \$250 to \$300 for single and two-family docks, and from \$250 to \$550 for bank stabilization and erosion control. In addition, application fees for domestic water intake lines that serve four houses or less will be decreased from \$1,000 to \$300.**

**FISCAL IMPACT:** This is a general fund program. The department does not anticipate any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Eric Wilson, (208) 334-0261 or [ewilson@idl.idaho.gov](mailto:ewilson@idl.idaho.gov). More information is also at <http://www.idl.idaho.gov/adminrule/rulemaking.html>.

DATED this 16<sup>th</sup> day of November, 2010.

Eric Wilson  
Navigable Waters/Minerals Program Manager  
Idaho Department of Lands

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***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED FEE RULE***

**AUTHORITY:** In compliance with Section 67-5221(1) Idaho Code and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (Board), Sections 830 through 835, notice is hereby given that this agency has initiated proposed rulemaking procedures. This proposed rulemaking is authorized pursuant to Section 58-104(6), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

**This rulemaking will resolve an issue regarding covered slips that arose late in the prior rulemaking process. Also, a statutory change enacted during the 2010 legislative session requires a rule conflict to be removed. The latter allows the replacement of some single and two-family docks without a permitting process. Another statutory change enacted during the 2010 legislative session allows the Department to raise the application fees for some encroachment types. Lastly, the Department proposes to lower the application fee for small domestic waterlines.**

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

**Application fees will be increased from \$250 to \$300 for single and two-family docks, and from \$250 to \$550 for bank stabilization and erosion control. In addition, application fees for domestic water intake lines that serve four houses or less will be decreased from \$1,000 to \$300.**

**FISCAL IMPACT:** This is a general fund program. The department does not anticipate a negative fiscal impact on the state general fund due to the proposed changes.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. A meeting with parties interested in the covered slip issue was held in April, 2010, and interested parties from prior rulemakings were notified of all the draft rule changes. Notification was provided via e-mail and the Department's web site, and comments were solicited.

**INCORPORATION BY REFERENCE:** Nothing was incorporated by reference during this rulemaking. N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Eric Wilson, (208) 334-0261 or [ewilson@idl.idaho.gov](mailto:ewilson@idl.idaho.gov). More information is also at <http://www.idl.idaho.gov/adminrule/rulemaking.html>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2007.

DATED this 20th day of August, 2010.

***THE FOLLOWING IS THE TEXT OF DOCKET NO. 20-0304-1001***

**010. DEFINITIONS.**

**01. Adjacent.** Contiguous or touching, and with regard to land or land ownership having a common boundary. (7-1-98)

**02. Aids to Navigation.** Buoys, warning lights, and other encroachments in aid of navigation intended to improve waterways for navigation. (4-2-08)

**03. Artificial High Water Mark.** The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. (4-2-08)

**04. Beds of Navigable Lakes.** The lands lying under or below the "natural or ordinary high water mark" of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. (9-13-90)

**05. Board.** The Idaho State Board of Land Commissioners or its designee. (4-2-08)

**06. Boat Garage.** A structure with one (1) or more slips that is completely enclosed

with walls, roof, and doors, but no temporary or permanent residential area. (4-2-08)

- 07. Boat Lift.** A mechanism for mooring boats partially or entirely out of the water. (4-2-08)
- 08. Boat Ramp.** A structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers. (4-2-08)
- 09. Commercial Marina.** A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. (4-2-08)
- 10. Commercial Navigational Encroachment.** A navigational encroachment used for commercial purposes. (4-2-08)
- 11. Community Dock.** A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner's associations. No public access is required for a community dock. (4-2-08)
- 12. Covered Slip.** A slip, or group of slips, with a ~~tubular~~ frame, fabric canopy, and eaves that do not extend beyond the underlying dock. ~~(3-29-10)~~( )
- 13. Department.** The Idaho Department of Lands or its designee. (4-2-08)
- 14. Director.** The head of the Idaho Department of Lands or his designee. (4-2-08)
- 15. Encroachments in Aid of Navigation.** Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term "encroachments in aid of navigation" may be used interchangeably herein with the term "navigational encroachments." (4-2-08)
- 16. Encroachments Not in Aid of Navigation.** Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It shall also include float homes and boat garages. The term "encroachments not in aid of navigation" may be used interchangeably herein with the term "nonnavigational encroachments." (3-29-10)
- 17. Floating Home or Float Home.** A structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling and is not self-propelled. These structures are usually dependent for utilities upon a continuous utility linkage to a source originating on shore, and must have either a permanent continuous connection to a sewage system on shore, or an alternative method of sewage disposal that does not violate local, state, or federal water quality and sanitation regulations. (4-2-08)
- 18. Floating Toys.** Trampolines, inflatable structures, water ski courses, and other recreational equipment that are not permanently anchored to the lake bed or an encroachment and

are either located between the shoreline and the line of navigability or are waterward of the line of navigability for less than twenty-four (24) consecutive hours. (3-29-10)

**19. Jet Ski Ramp, Port, or Lift.** A mechanism for mooring jet skis or other personal watercraft similar to a boat lift. The lifts may be free standing or attached to a dock or pier. (4-2-08)

**20. Line of Navigability.** A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question. (4-2-08)

**21. Low Water Mark.** That line or elevation on the bed of a lake marked or located by the average low water elevations over a period of years, and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation. (4-2-08)

**22. Moorage.** A place to secure float homes and watercraft including, but not limited to, boats, personal watercraft, jet skis, etc. (4-2-08)

**23. Natural or Ordinary High Water Mark.** The high water elevation in a lake over a period of years, uninfluenced by man made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. (9-13-90)

**24. Navigable Lake.** Any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes. This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. (4-2-08)

**25. 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. (3-29-10)

**26. Person.** A partnership, association, corporation, natural person, or entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. (4-2-08)

**27. Piling.** A metal, concrete, plastic, or wood post that is placed into the lakebed and used to secure floating docks and other structures. (4-2-08)

**28. Plans.** Maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same. (9-13-90)

**29. Public Hearing.** The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who shall act as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not

involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the Department by tape recorder. The hearing coordinator shall exercise such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. (4-2-08)

**30. Public Trust Doctrine.** The duty of the State to its people to ensure that the use of public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code. (3-19-99)

**31. Pylon.** A metal, concrete, or wood post that is placed into the lakebed and used to support fixed piers. (4-2-08)

**32. Riparian or Littoral Rights.** The rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake. (4-2-08)

**33. Riparian or Littoral Owner.** The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant. (3-29-10)

**34. Riparian or Littoral Right Lines.** Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline. (4-2-08)

**35. Side Tie.** Moorage for watercraft where the dock or pier is on only one (1) side of the watercraft. (4-2-08)

**36. Single-Family Dock.** A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. (4-2-08)

**37. Slip.** Moorage for boats with pier or dock structures on at least two (2) sides of the moorage. (4-2-08)

**38. Submerged Lands.** The state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks. (9-13-90)

**39. Two-Family Dock.** A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line. (4-2-08)

**40. Upland.** The land bordering on navigable lakes, rivers, and streams. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. APPLICATIONS.**

**01. Encroachment Applications.** No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the department. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the department is required. If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued. (4-2-08)

**02. Signature Requirement.** Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit. (4-2-08)

**03. Other Permits.** Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies. (9-13-90)

**04. Repairs, Reinstallation of Structures.** No permit is required to clean, maintain, or repair an existing permitted encroachment, but a permit is required to completely replace, enlarge, or extend an existing encroachment. Replacement of single-family and two-family docks may not require a permit if they meet the criteria in Section 58-1305(e), Idaho Code. Reinstalling the top or deck of a dock, wharf or similar structure shall be considered a repair; reinstallation of winter damaged or wind and water damaged pilings, docks, or float logs shall be considered a repair. Repairs, or replacements under Section 58-1305(e), Idaho Code, that adversely affect the bed of the lake will be considered a violation of these rules. ~~(4-2-08)~~( )

**05. Dock Reconfiguration.** (4-2-08)

**a.** Rearrangement of single-family and two-family docks will require a new application for an encroachment permit. (4-2-08)

**b.** Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted: (4-2-08)

i. Overall footprint does not change in dimension or orientation; (4-2-08)

ii No increase in the square footage, as described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks; (3-29-10)

- iii. The entrances and exits of the facility do not change. (4-2-08)

**06. Redredging.** Redredging a channel or basin shall be considered a new encroachment and a permit is required unless redredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how redredging is addressed in any existing or future permit. (4-2-08)

**07. Forms, Filing.** Applications must be in writing on forms provided by the Department or copies. Applications and plans shall be filed in the local office of the Department, whose location is available on the internet at [www.idl.idaho.gov](http://www.idl.idaho.gov), or the director's office in Boise, together with filing fees and costs of publication when required by these rules. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. (4-2-08)

**a.** Plans shall include the following information on paper no larger than eight and one half by fourteen (8 1/2"x14") inches: (4-2-08)

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. (4-2-08)

ii. Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots. (4-2-08)

iii. Proof of current ownership or control of littoral property or littoral rights. (4-2-08)

iv. A general vicinity map. (4-2-08)

v. Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake. (4-2-08)

vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. (4-2-08)

vii. Names and current mailing addresses of adjacent littoral landowners. (4-2-08)

**b.** Applications must be submitted or approved by the littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. When the littoral owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing. (4-2-08)

**c.** If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of a designated homeowner's or property management association. (4-2-08)

**d.** Applications for noncommercial encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements. Application fees are not required for these encroachments. (4-2-08)

**e.** The following applications shall be accompanied by the respective nonrefundable filing fees together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing: (4-2-08)

**i.** Nonnavigational encroachments require a fee of one thousand dollars (\$1,000); (4-2-08)

**ii.** Commercial navigational encroachments require a base fee of two thousand dollars (\$2,000). If the costs of processing an application exceed this amount, then the applicant may be charged additional costs as allowed by Title 58, Chapter 13, Section 58-1307, Idaho Code; (4-2-08)

**iii.** Community navigational encroachments require a fee of two thousand dollars (\$2,000); and (4-2-08)

**iv.** Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars (\$1,000). (4-2-08)

**f.** Applicants shall pay any balance due on publication costs before written approval will be issued. The Department shall refund any excess at or before final action on the application. (9-13-90)

**g.** Application for a single-family or two-family dock not extending beyond the line of navigability or a nonnavigational encroachment for ~~bank stabilization and erosion control or for fisheries and wildlife habitat improvements~~ a buried or submerged water intake line serving four or less households shall be accompanied by a nonrefundable filing fee of ~~two hundred fifty three hundred~~ two hundred fifty three hundred dollars (~~\$25300~~). (4-2-08)( )

**h.** A nonnavigational encroachment for bank stabilization and erosion control shall be accompanied by a nonrefundable filing fee of five hundred fifty dollars (\$550). ( )

**hi.** No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. (9-13-90)

**ij.** Applications and plans shall be stamped with the date of filing. (7-1-98)

**jk.** Applications that are incomplete, not in the proper form, not containing the required signature(s), or not accompanied by filing fees and costs of publication when required, shall not be accepted for filing. The department shall send the applicant a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written consent of the department. If the given deadline is not met,

the department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply at a later date, but will be required to pay another filing fee and publication fee, if applicable. (4-2-08)

**IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION**

**26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK  
AND RECREATION AREAS AND FACILITIES**

**DOCKET NO. 26-0120-1001 (FEE RULE)**

**NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-4210, 67-4223, and 67-4249, Idaho Code.

**DESCRIPTIVE SUMMARY:** **The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010, Idaho Administrative Bulletin, Vol. 10-8, pages 86 through 92.](#)**

**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:  
N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact David M. Ricks, 208.514.2450.

DATED this the 10th day of November, 2010.

David M. Ricks  
Deputy Director  
Idaho Department of Parks and Recreation  
5657 Warm Springs Avenue, Boise, Idaho 83716-8700  
PO Box 83720, Boise, Idaho 83720-0065  
Telephone: 208.514.2450; FAX 208.334.3741

***THIS NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE***

**EFFECTIVE DATE:** **The effective date of the temporary rule is July 1, 2010.**

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is

hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 67-4210, 67-4223, and 67-4249, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than August 18, 2010.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is 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:

**The Idaho Department of Parks and Recreation proposes the following six changes to IDAPA 26.01.20:**

**Proposal # 1 - Establish an Overnight Use Fee (charged to non-camping customers who choose to park a vehicle overnight on park property).**

**Proposal # 2 - Establish Campground Amenity Fees to be charged in addition to the camping fees charged for standard campsite types at locations providing central water amenity, and an additional fee for locations providing flush-toilets/showers as an amenity.**

**Proposal # 3 - Increase Entrance Annual Pass; Increase Entrance Annual Pass Second Pass; and Increase the Entrance Fee Surcharge (penalty levied on customers who fail to pay).**

**Proposal # 4 - Increase Camping Extra Vehicle Fee.**

**Proposal # 5 - Increase Moorage, Overnight; Increase Moorage, Camping on Vessel; Increase Moorage, Camping on Buoy.**

**Proposal # 6 - Strike Subsection 275.02 (Individual campsite and facility reservations) and Subsection 275.03 (Multiple campsite and facility reservations) from this rule.**

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1) Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

**The proposed rule changes are required to better position the IDPR to respond to future economic and budget fluctuations. They are necessary due to the immediate danger to State Park Operations as a result of the current state budget deficit and the resulting decrease of general fund support for the Department of Parks and Recreation.**

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

Five of the six proposed rule changes involve fees collected by the Department of Parks and Recreation based on authority granted in Section 67-4223, Idaho Code. They are as follows:

**Proposal # 1 - New fee of \$10 per night per non-camper vehicle parked overnight.**

**Proposal # 2 - New fee of \$2 per night per amenity provided.**

**Proposal # 3 - Increase Entrance Annual Pass from \$35 to \$40; Increase Entrance Annual Pass Second Pass from \$5 to \$15; and Increase the Entrance Fee Surcharge from \$5 to \$10.**

**Proposal # 4 - Increase Camping Extra Vehicle Fee from \$5 to \$8.**

**Proposal # 5 - Increase Moorage Overnight from \$5 to \$9 per night; Increase Moorage Camping on Vessel from \$8 to \$10 per night; Increase Moorage Camping on Buoy from \$5 to \$9 per night.**

**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:

There will be no negative impact to the state's general fund by any of the proposed rule changes; however, it is anticipated that there will be a positive impact to the agency's dedicated funds. Given the current economic climate, it is impossible to realistically project what that impact will actually be for each of the proposed fee changes; however it is anticipated that the revenue generated by each of the individual proposals will be as follows:

**Proposal # 1 - Approximately \$29,100 based on historical usage patterns.**

**Proposal # 2 - Approximately \$59,080 based on historical usage patterns.**

**Proposal # 3 - Approximately \$138,875 based on historical usage patterns.**

**Proposal # 4 - Approximately \$60,000 based on historical usage patterns.**

**Proposal # 5 - Approximately \$3,700 based on historical usage patterns.**

**Proposal # 6 - While not specifically a fee change, this proposal provides for the potential of increased revenue by allowing for additional opportunities for customers to utilize the fee services offered by the IDPR. This change will allow the agency to respond more quickly to customer demands, market trends, and industry standards.**

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for temporary rulemaking.

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

this rule: Not Applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact David M. Ricks, 208-514-2450.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 25, 2010.

DATED this 15th day of July, 2010.

***THE FOLLOWING IS THE TEXT OF FEE DOCKET NO. 26-0120-1001***

**225. FEES AND SERVICES.**

**01. Authority.** (3-13-97)

**a.** The Board shall adopt fees for the use of lands, facilities, and equipment. Visitors shall pay all applicable fees. (3-7-03)

**b.** Park managers or designees may set fees for goods available for resale and services provided by staff that enhance the users experience unique to the individual park. Fees for lands, facilities and equipment unique to an individual park will be posted at that site.(3-7-03)

**02. General Provisions.** All fees in this chapter are maximum fees unless otherwise stated. Actual fees charged shall be established by Board Policy. (3-7-03)

**03. Camping.** Camping fees include the right to use designated campsites and facilities for the period camp fees are paid. Utilities and facilities may be restricted by weather or other factors. (3-16-04)

**04. Group Use.** (7-1-93)

**a.** Groups of twenty-five (25) persons or more, or any group needing special considerations or deviations from these rules shall obtain a permit. Permits may be issued after arrangements have been made for proper sanitation, population density limitations, safety of persons and property, and regulation of traffic. (3-30-06)

**b.** Permits for groups of up to two hundred fifty (250) people may be approved by the park manager with thirty (30) days advance notice. Permits for groups of two hundred fifty (250) to one thousand (1,000) may be approved by the Director with forty-five (45) days advance notice. Groups over one thousand (1,000) may be approved by the Board with sixty (60) days

advance notice. The Director may approve groups over one thousand (1,000) with thirty (30) days advance notice, if they are repeat users. (1-1-94)

**c.** The day use fee may be charged to groups entering a designated area for a non-camping visit. (3-30-06)

**05. Fees and Deposits.** Fees and deposits may be required for certain uses or the reservation of certain facilities unique to an individual park and will be posted at that site. (3-30-06)

**06. Fee Collection Surcharge.** A ~~five~~ **ten** dollar (\$~~5~~**10**) surcharge may be added to all established fees when the operator of a motorized vehicle or responsible party of a camping unit fails to pay required fees prior to entering a park area or occupying a campsite. If the surcharge is assessed, and the operator of the vehicle or responsible party is not present, all required fees in addition to the ~~five~~ **ten** dollar (\$~~5~~**10**) surcharge will be assessed against the registered owner of the motorized vehicle or camping unit. (~~3-30-06~~)(    )

**07. Admission Fees.** A maximum per person fee of ten dollars (\$10) may be charged for internal park facilities which provide an educational opportunity or require special accommodations. (3-10-00)

**08. Cooperative Fee Programs.** The Department may collect and disperse fees in cooperation with fee programs of other state and federal agencies. (3-10-00)

**226. -- 249. (RESERVED).**

**250. FEE SCHEDULE.**

**01. Campsites.**

<b>CAMPSITE FEE TABLE</b>	
<b>Primitive Campsite</b> No amenities at site, camping area not defined	\$13/day
<b>Standard Campsite</b> Any defined campsite, either tent pad or RV pad/area (may include: table and/or grill)	\$16/day
<b>Serviced Campsite/ W</b> Any defined campsite, either tent pad or RV pad/area, with water at site (may include: table and/or grill)	\$20/day
<b>Serviced Campsite/ E</b> Any defined campsite, either tent pad or RV pad/area, with electricity at site (may include: table and/or grill)	\$20/day
<b>Serviced Campsite/ W, E</b> Any defined campsite, either tent pad or RV pad/area, with water and electricity at site (may include table and/or grill)	\$24/day

<b>CAMPSITE FEE TABLE</b>	
<b>Serviced Campsite/ W, E, SWR</b> Any defined campsite, either tent pad or RV pad/area, with water, electricity, and sewer at site (may include table and/or grill)	\$26/day
<b>Companion Campsite</b> May be any campsite type, regardless of amenities, that has greater equipment/people capacity (may include table and/or grill) Fee determined by actual site type.	Site type multiplied by two (2)
<b><u>Amenity Fee for Central Water</u></b> <u>Applies to "Standard" campsites in campgrounds with a central water supply. The Amenity Fee is charged in addition to the Standard Campsite fee.</u>	<b><u>\$2/night</u></b>
<b><u>Amenity Fee for Flush-Toilets/Showers</u></b> <u>Applies to "Standard" campsites in campgrounds with Flush-Toilets/Showers. The Amenity Fee is charged in addition to the Standard Campsite fee.</u>	<b><u>\$2/night</u></b>
<b>Use of Campground Showers by Non-campers</b>	\$3/person
<b><u>Overnight Use Fee</u></b> <u>Applies to non-campers leaving a vehicle unattended on park property overnight.</u>	<b><u>\$10/night</u></b>
<b>Limited Income Discount</b> - Idaho residents showing proof of limited income (Medicaid card or other evidence approved by the Board) may receive a camping fee discount of:	\$4/day
<b>Resident Disabled Idaho Veterans</b> - Campsite fees are waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability	
<b>Senior Citizen Discount</b> - Pursuant to Section 67-4223, Idaho Code, and at the discretion of the Director, IDPR may provide, at selected under utilized locations and times, a senior citizen discount,	Maximum 50% of RV camping fee
<b>Extra Vehicle Charge</b>	<b><u>\$78/day</u></b>
<b>Camping Cabins and Yurts</b>	\$150/night
Each additional person above the sleeping capacity of camping cabin or yurt	\$12/night

~~(4-9-09)~~( )

**02. Reservation Service Fees, Individual Campsite or Facility.** A non-refundable non-transferable (from one (1) party to another) service charge of ten dollars (\$10) may be assessed for each individual campsite or facility reserved. This fee will be waived for campers with a current Idaho RV registration sticker and reimbursed to the Department by the RV Program. A service charge of ten dollars (\$10) or the first night's fee, whichever is less, will be assessed for the cancellation or modification of each individual campsite or facility reserved that involves reducing the planned length of stay or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window) if notice is received more than twenty-four (24) hours in advance of the scheduled arrival time. Cancellations or modifications made less than twenty-four (24) hours in advance of the scheduled arrival time shall result in assessment of a ten dollar (\$10) service charge and may require the forfeiture of the first night's camping fee. Modifications that change the original stay so that no part of the new stay includes part of the original stay are to be considered a cancellation and a re-book will be required.

(3-30-06)

**03. Day Use Fee.**

<b>DAY USE FEE TABLE.</b>	
<b>Daily charge per motorized vehicle.</b> The day use fee expires at 10:00 p.m. on date of purchase or as posted Overnight camping guests are exempt from this fee.	\$5
Daily charge per commercial motor coach (no annual pass available)	\$25
Statewide Annual State Park Passport per motorized vehicle	<del>\$35</del> 40
<b>Disabled Idaho Resident Veterans</b> - The day use fee is waived for resident Idaho veterans showing proof of a one hundred percent (100%) permanent and total service related disability	
Second Vehicle Annual Passport.	<del>\$15</del>

(3-30-06)( )

**04. Special Charges.** The cost to the agency for returned checks will be passed on to the issuer of the insufficient funds check. (3-7-03)

**05. Group Facility Fees.** Reservation service fee, designated group campground or facility. (3-30-06)

**a.** A non-refundable, non-transferable (from one (1) party to another) service charge of twenty-five dollars (\$25) will be assessed per designated group area or facility reserved. This fee will be charged in addition to the usage fees for each group or campsite or facility. (3-30-06)

**b.** Groups using overnight facilities shall be charged three dollars (\$3) per person per night camping fees for each individual above the authorized base occupancy rate for the specific site or facility. (3-30-06)

**c.** Cleaning/damage deposits may be required for certain facilities. Where cleaning/damage deposits are required, they shall be paid prior to check-in. Cleaning/damage deposits shall be fully refunded if the facility is left in the same condition in which it was accepted. (3-30-06)

**d.** Group use fees for day use facilities may be negotiated by the park manager or designee and will generally not fall below the cost of providing services. (3-30-06)

**06. Boating Facilities.**

<b>BOATING FACILITIES FEE TABLE</b>	
<b>Vessel launching</b> (per vessel/per day) (Annual park passport or day use fee apply toward vessel launching fees)	\$5/ day
<b>Overnight moorage</b> - any length of vessel. (Applicable to persons who have paid for a park campsite and are not camping on the vessel)	<del>\$5</del> 9/night

BOATING FACILITIES FEE TABLE	
Overnight moorage - persons camping on vessel	
Any length vessel	\$ <del>8</del> 10/night
Any length vessel moored at buoy	\$ <del>5</del> 9/night

~~(3-30-06)~~( )

**07. Modification of Fees.** Additional fees or deposits may be required for certain uses or for the reservation of certain facilities. The Department reserves the right to waive or reduce fees and charges for Department sponsored promotions. (7-1-93)

**08. Sales Tax.** Applicable sales tax may be added to all sales excluding the day use fee. (3-30-06)

**09. Length of Stay.** Fifteen (15) days in any consecutive thirty (30) day period. (3-30-06)

**10. Nordic Ski Grooming Program Fee.** A fee of four dollars (\$4) per person per day and thirty-five dollars (\$35) per family per season will be required at Board-approved premium Nordic ski grooming program locations. These programs may include: maintained parking areas, warming facilities, winter accessible restroom facilities, regularly groomed ski trails, extensive signing, trail mapping and ski patrol services. (3-16-04)

251. -- 274. (RESERVED).

**275. CRITERIA FOR INDIVIDUAL CAMPSITE, CAMPING CABIN, AND YURT RESERVATIONS.**

**01. Confirmation Requirements.** (3-30-06)

**a.** Confirmation of an Individual Campsite or Facility Reservation. Full payment of all appropriate camping and related service fees shall be made before a reservation is confirmed. (3-30-06)

**b.** Confirmation of a Designated Group Campground or Facility Reservation. (3-30-06)

**i.** Payment of the first night or daily base rate fee for a group facility and all related service fees shall be made before a reservation is confirmed. (3-30-06)

**ii.** Payment of all camping and related service fees applicable for each campsite or facility reserved within a group campground must be paid at the time of booking before a reservation is confirmed. (3-30-06)

**02. Individual Campsite and Facility Reservations.** Reservations for individual campsites, and facilities ~~may be made anytime up to nine (9) months in advance but no less than two (2) days prior to the scheduled date of arrival. Reservations may be accepted greater than~~

~~nine (9) months in advance or less than two (2) days prior to the scheduled date of arrival only with the approval of the Operations Division Administrator or designee. All non-reservation camping is on a "first come first served" basis shall be managed in accordance with rules promulgated by the Idaho Park and Recreation Board.~~ (3-30-06)( )

~~**03. Multiple Campsite and Facility Reservations.** Multiple reservations for individual campsites or facilities may be made up to nine (9) months in advance of the scheduled arrival date. Multiple campsite reservation limitations are subject to destination park's campground design and capacity. Reservations may be accepted greater than nine (9) months in advance of arrival only with the approval of the Operations Division Administrator or designee. (3-30-06)~~

**043. Reservation Modifications.** Individual and group campsite(s) or facilities. A reservation service fee will be assessed for any modification to a previously made reservation that involves reducing the planned length of stay, or to change the reservation dates where part of the new stay includes part of the original stay booked (rolling window). With the exception of the reservation service fees as defined in Subsection 250.02, any overpaid fees will be reimbursed at the time the reservation is modified. (3-30-06)

**054. Reservation Cancellations.** (3-7-03)

**a.** Individual Site or Facility. A reservation service fee will be assessed for the cancellation of a reservation. This service fee will be assessed for each campsite or facility involved. If the customer cancels after the scheduled arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day's usage fees for the campsite or facility. At no time shall the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer's reservation for insufficient payment of fees due. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. (3-30-06)

**b.** Designated Group Campsite or Facility. A reservation service fee will be assessed for the cancellation of a reservation. If a cancellation for a group facility occurs fewer than twenty-one (21) calendar days prior to arrival, the customer forfeits the first night or daily facility usage fees (base rate). If a cancellation for a group facility occurs more than twenty-one (21) calendar days prior to arrival, a cancellation charge of fifty dollars (\$50.00) will be assessed. If the customer cancels after the arrival date the customer forfeits all usage fees for the time period already expired. Cancellations received after checkout time will result in the forfeiture of that day's usage fees for the campsite or facility. At no time shall the customer be charged a cancellation fee that exceeds the amount originally paid. The IDPR or its reservation service provider may cancel a customer's reservation for insufficient payment of fees due. An individual site cancellation fee applies to each campsite in a group campground. With the exception of the reservation service fees, all fees paid will be reimbursed at the time the reservation is cancelled. (3-30-06)

**065. Park Manager Authority.** The park manager or designee may deny entry to, or reservation of, any Department unit, campsite, or facility, to any individual whose prior documented behavior has violated Department rules or whose in-park activities are incompatible with the park's operation. (3-30-06)

## **IDAPA 37 - DEPARTMENT OF WATER RESOURCES**

### **37.02.03 - WATER SUPPLY BANK RULES**

#### **DOCKET NO. 37-0203-1001 (FEE RULE)**

#### **NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE**

**EFFECTIVE DATE:** This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 42-1762, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The Idaho Department of Water Resources (IDWR) operates the Water Supply Bank (Bank) for the Water Resource Board. IDWR does not have sufficient funding from the general appropriation to subsidize operation of the Bank for the Water Resource Board. IDWR has limited staff resources available to operate the Bank. Interest and activity in the Water Supply Bank has grown considerably over the past few years. The number of rental applications increased 2,533% and lease applications increased 1,011% between 1998 and 2010. Consequently, IDWR has incurred a significant application backlog. If IDWR does not allocate additional staff resources to the program, the application backlog will continue to grow. The application backlog results in unfulfilled expectations for water users, loss of agricultural production, missed economic opportunity for local economies, and reduced tax revenue for the State of Idaho.

The text of the pending rule changes differs from the text of the proposed rule changes in two locations. First, Rule 025, Subsection 025.02.f, was changed to provide that the lease application fee will be capped at \$500 for overlapping water rights and deposited in the Water Administration Account and that the fee does not apply to applications to lease stored water to the rental pools described in Rule 40. Second, Rule 035, Subsection 035.01, was changed to clarify that the lease application fee shall be credited to the Water Administration Account. Rule 035, Subsection 35.01, was also changed to retain the original codified text regarding 10% rental fee and to clarify that the requirement to retain a portion of the rental fee in the Water Administration Account does not apply to the rental of stored water from the local rental pools described in Rule 40.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the [September 1, 2010 Idaho Administrative Bulletin, Vol. 10-9, pages 426 through 430.](#)

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. The increase in the rental fee percentage and the lease fee being imposed are consistent with Sections 42-1762 and 42-1763, Idaho Code.

**Impose a lease application filing fee of \$250 per water right up to a maximum of \$500 for overlapping water rights.**

**Section 42-1762(1), Idaho Code, directs the Water Resource Board to adopt rules and regulations governing the Water Supply Bank. Section 42-1762(2), Idaho Code, authorizes the Water Resource Board to contract with lessors and lessees to facilitate the rental of water. The lease application filing fee being imposed as a rule is necessary to secure a source of money to provide an adequate workforce to efficiently operate and manage the water supply bank.**

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Shelley Keen, (208) 287-4947.

DATED this 5th day of November, 2010.

Shelley Keen, Section Manager	P.O. Box 83720
Water Rights Section	Boise, Idaho 83720
Idaho Department of Water Resources	Phone 208-287-4947
322 East Front Street	Fax 208-287-6700

***THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED FEE RULE***

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 42-1762, Idaho Code.

**PUBLIC HEARING SCHEDULE:** A public hearing concerning this rulemaking will be held as follows:

**Tuesday, September 21, 2010 at 9:00 a.m.**

**Idaho Department of Water Resources  
322 East Front Street, Boise, Idaho  
6th floor conference room A**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a statement in nontechnical language of the substance and purpose of the proposed rulemaking and the principle issues involved:

The Department of Water Resources (IDWR) manages the Water Supply Bank (Bank) for the Water Resource Board. The only fees currently associated with the Bank result from the rental of water from the Bank. In accordance with the Water Supply Bank Rules, IDWR retains 10% of the gross amount received from a rental. The remaining 90% is paid to the water right holder. However, under the current fee structure, the cost of operating the Bank exceeds the net revenue.

One of the more common uses of the Bank is to protect unused water rights from forfeiture. Interest in the Bank as a mechanism to protect water rights from forfeiture will continue to increase as partial decrees are issued in the Snake River Basin Adjudication. Many of those rights may no longer be in use and need protection from forfeiture. Under the current program structure, a right holder receives full protection from forfeiture, but processing lease applications requires a considerable amount of staff time and there are no fees associated with leasing a water right into the Bank. If a water right leased into the Bank is never rented from the Bank, IDWR is not compensated for the cost of processing the application and maintaining the lease.

IDWR does not have sufficient funding from the general appropriation to subsidize operation of the Bank for the Water Resource Board. IDWR has limited staff resources available to operate the Bank. Interest and activity in the Water Supply Bank has grown considerably over the past few years and IDWR has incurred a significant application backlog. If IDWR does not allocate additional staff resources to the program, the application backlog will continue to grow. The application backlog results in unfulfilled expectations for water users, loss of agricultural production, missed economic opportunity for local economies, and reduced tax revenue for the State of Idaho.

The proposed rule change is necessary to pay for additional staff to operate the Water Supply Bank and maintain the level of service essential to satisfy the purpose of the program.

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

1. Increase the rental fee percentage retained by IDWR from 10% to 25%.

Section 42-1763, Idaho Code, provides that the rental of water from the Water Supply Bank must be approved by the director of the Department of Water Resources. Subsection 37.02.03.035.01 of the Water Supply Bank Rules provides that 10% of the gross amount received from a rental shall be credited to the Department's Water Administration Account. In accordance with Section 42-1762, Idaho Code, the Board has adopted rules governing the

management, control and use of water to and from the water supply bank. The increase in the rental fee percentage being retained by IDWR is necessary for the orderly and proper management of the water supply bank and is consistent with Sections 42-1762, and 42-1763, Idaho Code, and the existing Water Supply Bank Rules.

**2. Impose a lease application filing fee of \$250 per water right.**

Section 42-1762(1), Idaho Code, directs the Water Resource Board to adopt rules and regulations governing the Water Supply Bank. Section 42-1762(2), Idaho Code, authorizes the Water Resource Board to contract with lessors and lessees to facilitate the rental of water. The lease application filing fee is being imposed as a rule is necessary to secure a source of money to provide an adequate workforce to efficiently operate and manage the water supply bank and is consistent with Sections 42-1762 and 42-1763, Idaho Code.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted.

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

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule or the hearing schedule, contact Monica VanBussum at 208-287-4907 or [monica.vanbussum@idwr.idaho.gov](mailto:monica.vanbussum@idwr.idaho.gov).

Anyone may submit written comments at the public hearing regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony.

DATED this 30th day of July, 2010.

***THE FOLLOWING IS THE TEXT FOR FEE DOCKET NO. 37-0203-1001***

**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. ( )

**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)

**(BREAK IN CONTINUITY OF SECTIONS)**

**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.* ~~(5-3-03)~~( )

**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)