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**IDAPA 37
TITLE 02
CHAPTER 02**

37.02.02 - FUNDING PROGRAMS RULES

000. LEGAL AUTHORITY (RULE 0).

This chapter is adopted by the Idaho Water Resource Board under the legal authority of Sections 42-1734 and 42-1758, Idaho Code. (3-20-97)

001. TITLE, SCOPE AND CITATION (RULE 1).

These rules shall be cited as IDAPA 37.02.02, Rules of the Idaho Water Resource Board, Title 02, Chapter 02, "Funding Programs Rules". These rules implement Sections 42-1750 to 42-1758, Idaho Code, providing for the establishment and use of the Revolving Development Account, and Section 42-2760, Idaho Code, providing for the establishment and use of the Water Management Account. These rules set forth the purposes for which moneys may be allocated from the two (2) accounts and the procedures to be followed in applying for and processing requests for money from the accounts. (3-20-97)

002. ADMINISTRATIVE APPEALS (RULE 2).

Persons may be entitled to appeal final agency actions authorized under this chapter pursuant to Section 67-5270, Idaho Code, and IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources". (3-20-97)

003. WRITTEN INTERPRETATIONS (RULE 3).

The Water Resource Board may have written statements that pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. If available, written statements can be inspected and copied at cost at the Department of Water Resources, 1301 N. Orchard, Boise, Idaho 82706. (3-20-97)

004. CATCHLINES (RULE 4).

Catchlines within this chapter are not to be used in the interpretation of the rules. (3-20-97)

005. -- 024. (RESERVED).

025. PURPOSE OF THE WATER MANAGEMENT ACCOUNT (RULE 25).

01. Purpose. The Idaho Water Resource Board (Board) may make loans or grants from the Water Management Account for new water projects or the rehabilitation of existing water projects limited to the following purposes: (3-20-97)

- a. Reclamation; (7-1-93)
- b. Upstream storage; (7-1-93)
- c. Offstream storage; (7-1-93)
- d. Aquifer recharge; (7-1-93)
- e. Reservoir site acquisition and protection; (7-1-93)
- f. Water supply; (3-20-97)
- g. Water quality; (3-20-97)
- h. Recreation; and (3-20-97)
- i. Water resource studies, including feasibility studies for qualifying projects. (3-20-97)

02. Expenditures. Expenditures may be made from the account to provide public monies for participation in any project constructed with funds from the Revolving Development Account. (7-1-93)

03. Grants and Loans. Grants and loans may be made by the Board from the account for any project in the public interest that satisfies the criteria of Subsection 025.01. No grant for a single project shall exceed fifty thousand dollars (\$50,000) without legislative approval. (3-20-97)

04. Investigations and Studies. The Board may make grants and loans for investigations and studies related to qualified water projects. A commitment for a grant or loan to conduct an investigation or study carries no guarantee of further financial assistance from the Board. (3-20-97)

05. Matching Grants. The Board may require matching funds or specify other conditions on any grant or loan from the Account. (3-20-97)

026. -- 029. (RESERVED).

030. PURPOSE OF REVOLVING DEVELOPMENT ACCOUNT (RULE 30).

The Board may make loans from the Revolving Development Account to financially assist and support the development of the water resources of this state through the construction of water projects, including the rehabilitation, improvement, or extension of existing systems. No loans can be made from the Revolving Development Account to finance feasibility studies except as part of the overall project cost. (3-20-97)

01. Major Items. Major items to be considered by the Board in setting loan priorities include the following: (3-20-97)

- a.** Emergency Nature. The emergency nature of the project; (7-1-93)
- b.** Utilization. The utilization of unappropriated surface and ground waters; (7-1-93)
- c.** Benefits. The economic, environmental, and water conservation benefits of the project compared to the cost of the project; and (3-20-97)
- d.** Public Nature and Benefits. The public nature and benefits of the project. (7-1-93)

02. Maximum Loan Amount. No loan for a single project shall exceed five hundred thousand dollars (\$500,000) without legislative approval. (3-20-97)

031. -- 034. (RESERVED).

035. LETTER OF INTENT (RULE 35).

01. Notification. Any applicant desiring a loan or grant should notify the Idaho Water Resource Board by a letter of intent. This letter should include the following information: (3-20-97)

- a.** Name, address, and telephone number of sponsoring group and principal representative; (7-1-93)
- b.** Project title or name, location, and brief description (including maps or plans); (7-1-93)
- c.** Preliminary estimate of project costs and approximate financial requirements; (7-1-93)
- d.** Brief justification for project or general benefits to be realized; (7-1-93)
- e.** Statement of applicant's willingness to provide project data and information and to prepare engineering and economic feasibility studies of the project if deemed necessary by the Board; and (3-20-97)
- f.** Additional information as needed to fully explain the intent of the project or study. (3-20-97)

02. Receipt of Letter of Intent. The letter of intent must be received twenty-eight (28) calendar days before the Board meeting at which action is to be taken and should be addressed to: Chairman, Idaho Water Resource

Board, 1301 North Orchard Street, Boise, Idaho 83706. The Chairman can waive the twenty-eight (28) day period upon a determination that the public interest is best served by the early consideration of the request. (3-20-97)

03. Method of Review. The Director of the Department of Water Resources shall review the applicant's letter for the Board to determine if: (7-1-93)

- a.** Preliminary analysis indicates that the applicant has the ability to repay a loan if granted; (7-1-93)
- b.** The project is in conformance with the State Water Plan and all applicable provisions of law; (7-1-93)
- c.** Preliminary analysis indicates that project benefits, including social and environmental, outweigh project costs. (7-1-93)

04. Request Application. If the Director finds that the applicant and the project meet the above criteria, the Director may request that the applicant submit additional information for a final loan or grant application. (3-20-97)

05. Inform in Writing. If the Director finds that the applicant or the project does not meet the necessary criteria, the Director shall inform the applicant in writing, listing the reasons for finding against the applicant. (3-20-97)

06. Hearing. The applicant may seek a hearing before the Board to review the Director's decision by filing a petition for review pursuant to the Rules for Practice and Procedure, before the Department of Water Resources. The petition shall be filed with the Director within twenty-eight (28) days of the date of mailing of the decision to the applicant. (3-20-97)

036. -- 039. (RESERVED).

040. FIELD REVIEW (RULE 40).

After receipt and evaluation of the letter of intent, the Director may, contact the applicant to schedule a field review of the project. Department staff, and, when deemed necessary by the Chairman, a Board member will visit the site with the applicant or their representative and other interested parties. (3-20-97)

041. -- 044. (RESERVED).

045. APPLICATION REQUIREMENTS (RULE 45).

01. Preparation. The applicant shall be responsible for providing the necessary data for presentation to the Board. The applicant may apply for a loan or grant from the Water Management Account to conduct necessary investigations or feasibility studies separate from the funding request for the proposed project. (3-20-97)

02. Contents. Application for project or study funding shall include all or part of the following: (3-20-97)

- a.** Project data or a feasibility study for the construction, operation and maintenance of the proposed project, including information as to its expected costs and benefits; (3-20-97)
- b.** A legal description of the project area, including a map showing the layout of the project, and the location and number of acres, residences, or other points served by the project; (3-20-97)
- c.** A copy of the legal description of the property being offered as security for the loan, together with a map on which the proposed security is identified; (3-20-97)
- d.** A discussion of the water required to satisfy project needs including a description of the source and amounts of the supply, rights to the water, and water quality; (3-20-97)

e. An itemized cost estimate of the proposed project (an estimate from a commercial supplier, contractor, or engineer is preferred); (3-20-97)

f. Proof of ownership, easements or agreements, showing that the applicant holds or can acquire all lands, rights-of-way and water rights necessary for the construction and operation of the proposed project; (3-20-97)

g. Information that demonstrates that the project complies with applicable local land use regulations and other applicable regulations and ordinances, including permits or letters of authorization; (7-1-93)

h. A description of the organization sponsoring the project - including the name, type of organization, brief history of organization, powers and authority under state law, taxing or assessing authority, financial status, organization by-laws, articles of incorporation, and physical assets; (3-20-97)

i. For municipal borrowers, a letter from the borrowers' legal counsel affirming that the constitutional issue of borrowing has been satisfactorily resolved; (3-20-97)

j. An application fee of two percent (2%) of the loan amount or one hundred dollars (\$100), whichever is more, to cover initial costs of application review may be charged for loans. This fee must be received before Board action. The fee may be financed in the loan and it is refundable in part or in total if the loan is not approved. (3-20-97)

k. Project authorization by the applicant's governing body as required by law or as required by the applicant's by-laws. (3-20-97)

046. -- 049. (RESERVED).

050. BOARD ACTION (RULE 50).

01. Prepare Resolution. If a loan or grant is to be obligated, the Board will prepare a resolution committing the funds. The resolution may include findings of fact with respect to: (3-20-97)

a. The project or study does not conflict with the Idaho State Water Plan; (3-20-97)

b. The proposed project or study is feasible from an engineering and legal standpoint and is financially justified; (3-20-97)

c. The applicant is qualified; (3-20-97)

d. There is reasonable assurance that the applicant can and will repay the loan. (3-20-97)

02. Other. The board's resolution will identify the applicant, the purpose of the loan or grant, specify the maximum amount of the loan or grant, the interest rate and repayment period, and other conditions to be placed on the loan or grant. (3-20-97)

03. Analysis and Consideration. During the board meeting, the staff analysis will be presented and the Board will then consider its resolution. The Board may approve, deny, or approve with conditions, or refer the application to the Director for further analysis. (3-20-97)

051. -- 054. (RESERVED).

055. LOAN OR GRANT AGREEMENT (RULE 55).

01. General. The Board will enter into a contract with the applicant for a loan or grant from the Water Management Account or Revolving Development Account, specifying the loan or grant amount, loan or grant disbursement schedule, loan repayment schedule, and other terms, including items covering security and project operation and maintenance. The loan or grant agreement will contain provisions protecting the Idaho Water Resource Board investment in case of forfeiture of contract terms by the applicant. (3-20-97)

02. Modification of Interest Rate. During the course of the loan agreement the Board may take action to reduce the interest rate to be applied to the unpaid principal during the remaining term of the agreement. (3-20-97)

03. Approval. All contract documents developed as part of the loan or grant agreement will be approved by the Attorney General's office or other legal counsel engaged in accordance with the Board's by-laws. (7-1-93)

04. Additional Fees. The Board may charge the applicant the amount required to reimburse the Board for costs that exceed the application fee incurred in connection with the application and loan processing. The applicant shall be advised of these additional costs before they are incurred. (3-20-97)

056. -- 059. (RESERVED).

060. LOAN SECURITY (RULE 60).

01. General. The state of Idaho shall secure any loan with a lien on project property as required by Section 42-1756(e) of Idaho Code. The Board may require additional security for loans from the Revolving Development Account and security for loans from the Water Management Account as it deems necessary. The additional security may be a mortgage, deed of trust, or other security agreement upon the applicant's property, which may include, but is not limited to, the following types of property associated with the project: project facilities, equipment, easements, real property, and water rights. The Board may at the applicants expense require verification of asset value by an independent appraiser. The lien shall be valid until the loan is paid in full or otherwise discharged by the Board. (3-20-97)

02. Reserve Account. The Board may require a loan reserve account equal to one (1) year's loan payment. The applicant shall have two (2) years from the date the Board approves the loan to establish the reserve account in full. The Board, at its option, may choose to not require the reserve, adjust the reserve amount, or adjust the time given to establish the reserve. (3-20-97)

03. Early Payment. At the applicant's option, the applicant may choose to make an early loan payment rather than establish a loan reserve account. If the applicant chooses the early payment option, the applicant shall make an early loan payment within two (2) years of the date the Board approved the loan. The Board, at the Board's option, may choose to not require an early payment, adjust the payment amount, or adjust the time given to make the early payment. (3-20-97)

061. -- 064. (RESERVED).

065. PROJECT APPROVAL (RULE 65).

At the completion of the project, a final review of the project may be made with the sponsor to determine if the project has been satisfactorily completed before disbursement of the final loan or grant payment. (3-20-97)

066. -- 999. (RESERVED).

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