

## IDAPA 37 – DEPARTMENT OF WATER RESOURCES

### Planning and Projects Bureau

#### 37.02.03 – Water Supply Bank Rules

##### **Who does this rule apply to?**

*General public.*

##### **What is the purpose of this rule?**

*These rules govern the operation and management of the water supply bank authorized by statute. The purpose of the water supply bank is to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water users; and provide a source of funding for improving water user facilities and efficiencies. It also establishes lease and rental fees that are used to carry out the program.*

##### **What is the legal authority for the agency to promulgate this rule?**

*This rule implements the following statutes passed by the Idaho Legislature:*

Water Resource Board:

- [Section 42-1761, Idaho Code](#) – Water Supply Bank Created
- [Section 42-1762, Idaho Code](#) – Rules and Regulations – Acquisition of Water Rights
- [Section 42-1763, Idaho Code](#) – Rentals from Bank – Approval by Director
- [Section 42-1764, Idaho Code](#) – Substitution for Transfer Proceeding
- [Section 42-1765, Idaho Code](#) – Local Committees – Rental of Stored Water – Apportionment of Rental Proceeds
- [Section 42-1765A, Idaho Code](#) – Lemhi River Basin – Local Rental Committee
- [Section 42-1766, Idaho Code](#) – Appeals Procedure for Water Right Holders

##### **Who do I contact for more information on this rule?**

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### 37.02.03 – WATER SUPPLY BANK RULES

**000. LEGAL AUTHORITY (RULE 0).**

This chapter is adopted under the legal authority of Section 42-1762, Idaho Code. (3-18-22)

**001. TITLE AND SCOPE (RULE 1).**

**01. Title.** The title of this chapter is IDAPA 37.02.03, “Water Supply Bank Rules.” (3-18-22)

**02. Scope.** These rules were first adopted by the Water Resource Board in October 1980 as mandated by Section 42-1762, Idaho Code enacted in 1979. The rules govern the Board’s operation and management of a Water Supply Bank provided for in Sections 42-1761 to 42-1766, Idaho Code. The purposes of the Water Supply Bank, as defined by statute, are to encourage the highest beneficial use of water; provide a source of adequate water supplies to benefit new and supplemental water uses; and provide a source of funding for improving water user facilities and efficiencies. These rules are to be used by the Water Resource Board in considering the purchase, sale, lease or rental of natural flow or stored water, the use of any funds generated therefrom, and the appointment of local committees to facilitate the lease and rental of stored water. The purchase, sale, lease or rental of water shall be in compliance with state and federal law. The adoption of these rules is not intended to prevent any person from directly selling or leasing water by transactions outside the purview of the Water Supply Bank Rules where such transactions are otherwise allowed by law. (3-18-22)

**002. -- 009. (RESERVED)**

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

**01. Board.** The Idaho Water Resource Board. (3-18-22)

**02. Board's Water Supply Bank.** The water exchange market operated directly by the Board to facilitate marketing of water rights. (3-18-22)

**03. Director.** The Director of the Idaho Department of Water Resources. (3-18-22)

**04. Department.** The Idaho Department of Water Resources. (3-18-22)

**05. Lease.** To convey by contract a water right to the Board’s water supply bank or stored water to a rental pool operated by a local committee. (3-18-22)

**06. Local Committee.** The committee which has been designated by action of the Board to facilitate marketing of stored water by operating a rental pool pursuant to Section 42-1765, Idaho Code. (3-18-22)

**07. Natural Flow.** Water or the right to use water that exists in a spring, stream, river, or aquifer at a certain time and which is not the result of the storage of water flowing at a previous time. (3-18-22)

**08. Rent.** To convey by contract a water right from the Board’s water supply bank or stored water from a rental pool. (3-18-22)

**09. Rental Pool.** A market for exchange of stored water operated by a local committee. (3-18-22)

**10. Stored Water.** Water made available by detention in surface reservoirs or storage space in a surface reservoir. (3-18-22)

**11. Water Right.** The right to divert and beneficially use the public waters of the state of Idaho including any storage entitlement. (3-18-22)

**12. Water Supply Bank.** The water exchange market operated by the Water Resource Board pursuant to Section 42-1761 through 42-1766, Idaho Code, and these rules and is a general term which includes the Board’s water supply bank and rental pools. (3-18-22)

**13. Year.** A time period of twelve (12) consecutive months. (3-18-22)

**14. Person.** Any company, corporation, association, firm, agency, individual, partnership, Indian tribe, government or other entity. (3-18-22)

**011. -- 024. (RESERVED)**

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

**01. General.** The Board may purchase, lease, accept as a gift or otherwise obtain rights to natural flow or stored water and credit them to the Board's water supply bank. These water rights may then be divided or combined into more marketable blocks provided that there is no injury to other right holders, or enlargement of use of the water rights, and the change is in the local public interest. Any person proposing to sell or lease water rights to the Board's water supply bank, or to otherwise make water available through the water supply bank for the purposes of Section 42-1763A, Idaho Code, shall file a completed application with the Director on a forms or in a format provided by the Department and provide such additional information as the Board or Director may require in evaluating the proposed transaction. The completed application form shall state the period of time a water right is offered for lease, or the period of time that storage water will be released for fish migration purposes in accordance with Section 42-1763A, Idaho Code, and the payment terms, if any, requested by the applicant. (3-18-22)

**02. Application.** Submitted with the completed application shall be: (3-18-22)

**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; (3-18-22)

**b.** Proof of current ownership of the water right by the applicant; (3-18-22)

**c.** Information that the water right has not been lost through abandonment, or forfeiture as defined by Section 42-222(2), Idaho Code; (3-18-22)

**d.** Evidence to demonstrate the relative availability of water in the source to fill the water right; and (3-18-22)

**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. (3-18-22)

**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. (3-18-22)

**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. (3-18-22)

**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. (3-18-22)

**05. Consideration.** The Board may consider an application at any regular or special meeting. (3-18-22)

**06. Criteria.** The Board will consider the following in determining whether to accept an offered water right into the Board's water supply bank: (3-18-22)

**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; (3-18-22)

**b.** Whether all necessary consents have been filed with the Board; (3-18-22)

- c. Whether the information available to the Board indicates that the water right has been abandoned or forfeited; (3-18-22)
- d. Whether the offering price or requested rental rate is reasonable; (3-18-22)
- e. Whether acquisition of the water right will be contrary to the State Water Plan; (3-18-22)
- f. Whether the application is in the local public interest as defined in Section 42-1763, Idaho Code; (3-18-22)
- g. The probability of selling or renting the water right from the Board's water supply bank. (3-18-22)
- 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 (3-18-22)
- i. Such other factors as determined to be appropriate by the Board. (3-18-22)

**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: (3-18-22)

- a. A condition providing the length of time the water right will be retained in the Board's water supply bank. (3-18-22)
- 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. (3-18-22)
- 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. (3-18-22)

**08. Placement of Water Right.** Effect of placement of a water right into the Board's water supply bank. (3-18-22)

- 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. (3-18-22)
- 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. (3-18-22)
- 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. (3-18-22)
- 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. (3-18-22)

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. (3-18-22)

**026. -- 029. (RESERVED)**

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

**01. General.** The Board may in its discretion initiate the process to sell or rent water rights from the Board's water supply bank to achieve the purposes stated in Rule 1. The Board may from time to time, as water rights are available, authorize the Director to announce the availability of the rights from the Board's water supply bank, establishing a time and date for receiving applications in the office of the Director to purchase or rent the water rights. An application shall be on a form or in a format provided by the Director. The sale or rental price shall be the price, if any, as determined by the Board. The Director will evaluate applications with respect to the purposes of Rule 1, as to whether there will be injury to other water rights, whether the proposal would constitute an enlargement of the water right, whether the water will be put to a beneficial use, whether the water supply available from applicable rights in the Board's water supply bank is sufficient for the use intended, and whether the proposal is in the local public interest. For applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code, the Director will only make an evaluation as to whether the proposed use of water will cause injury to other water rights. The Director may defer the evaluation of potential injury to other water rights conditioned upon the right of any affected water right holder to petition the Director pursuant to Section 42-1766, Idaho Code, to revoke or modify the rental approval upon a showing of injury. (3-18-22)

**02. Notice.** The Director may give notice of an intended rental as he deems necessary, provided that prior to approving any application for purchase, or for rental for a period of more than five (5) years, he shall give notice as required in Section 42-222(1), Idaho Code. (3-18-22)

**03. Approval.** Sale or rental shall be approved only for use of water within the state of Idaho. The Director shall consider in determining whether to approve a rental of water for use outside of the state of Idaho those factors enumerated in Section 42-401(3), Idaho Code, except that this evaluation shall not be required for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code. (3-18-22)

**04. Consideration.** All applications received on or prior to the announced date for receiving applications shall be considered as having been received at the same time. Applications received after the close of the application date may be considered only if sufficient available water remains in the Board's water supply bank after all acceptable, timely applications have been filed. (3-18-22)

**05. Authorized to Rent.** The Director is authorized to rent water rights offered by the Board from the Board's water supply bank for a period up to five (5) years, but shall submit applications for purchase, or rental for a period of more than five (5) years to the Board for action. The Director will advise the Board on applications which require Board approval under Rule Subsection 025.06 whether he can approve the application in whole or in part or with conditions to comply with Section 42-1763, Idaho Code. (3-18-22)

**06. Board Review.** The Board will review applications for purchase or which propose the rental of water rights for a duration of more than five (5) years, and may approve, approve with conditions or may reject the applications as the Board determines to best meet the purposes of Rule 1 and promote the interest of the people of the state of Idaho. (3-18-22)

**07. Order of Consideration.** When renting water from the bank, the Director and the Board shall consider rental of water rights in the order the rights were leased to the bank, with first consideration for the rights which have continuously been in the bank the longest period of time provided the rights are suitable for the purpose of the renter. (3-18-22)

**031. -- 034. (RESERVED)**

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

Payments received by the Department from the sale or rental of water rights from the Board's water supply bank shall be handled as follows: (3-18-22)

**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. (3-18-22)

**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. (3-18-22)

**036. -- 039. (RESERVED)**

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

**01. Board Meetings for Committee Appointments.** The Board may at any regular or special meeting to consider appointing an entity to serve as a local committee to facilitate the lease and rental of stored water. At least ten (10) days prior to the meeting, the entity seeking appointment shall provide to the Director information concerning the organization of the entity, a listing of its officers, a copy of its bylaws and procedures, if applicable, a copy of the proposed local committee procedures, pursuant to which the local committee would facilitate the lease and rental of stored water, together with a copy of each general lease and rental form proposed to be used by the local committee. The local committee procedures must be approved by the Board and must provide for the following: (3-18-22)

- a.** Determination of priority among competing applicants to lease stored water to the rental pool and to rent stored water from the rental pool; (3-18-22)
- b.** Determination of the reimbursement schedule for those leasing stored water into the rental pool; (3-18-22)
- c.** Determination of the rental price charge to those renting stored water from the rental pool; (3-18-22)
- d.** Determination of the administrative charge to be assessed by the local committee; (3-18-22)
- e.** Allocation of stored water leased to the bank but not rented; (3-18-22)
- f.** Notification of the Department and the watermaster of any rentals where stored water will be moved from the place of use authorized by the permit, license, or decree establishing the stored water right; (3-18-22)
- g.** Submittal of applications to rent water from the rental pool for more than five (5) years to the Board for review and approval as a condition of approval by the local committee; (3-18-22)
- h.** Prevention of injury to other water rights; (3-18-22)
- i.** Protection of the local public interest, except for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code; (3-18-22)
- j.** Consistency with the conservation of water resources within the state of Idaho, except for applications submitted pursuant to the interim authority provided by Section 42-1763A, Idaho Code; (3-18-22)

**k.** Management of rental pool funds as public funds pursuant to the Public Depository Law, Chapter 1, Title 57, Idaho Code. (3-18-22)

**02. Local Committee Procedures.** The local committee procedures shall provide that a surcharge of ten percent (10%) of the rental fee charged per acre foot of stored water rented from the rental pool shall be assessed and credited to the revolving development account and the water management account established in Sections 42-1752 and 42-1760, Idaho Code, in such proportion as the Board in its discretion shall determine. Such moneys, together with moneys accruing to or earned thereon, shall be set aside, and made available until expended, to be used by the Board for the purposes of Rule 1 unless the surcharge is prohibited by statute, compact or inter-governmental agreement. (3-18-22)

**03. Review by Director.** The Director will review the local committee procedures and submit them along with the Director's recommendation to the Board. The lease and rental form must receive the Director's approval. The Board may designate the applying entity as the local committee for a period not to exceed five (5) years. A Certificate of Appointment will be issued by the Board. The Board may extend the appointment for additional periods up to five (5) years, upon written request of the local committee. The Board may revoke a designation upon request of the local committee, or after a hearing pursuant to the promulgated Rules of Practice and Procedure of the Board, if the Board determines that the local committee is no longer serving a necessary purpose or is not abiding by its own approved procedures, these rules or applicable statutes. (3-18-22)

**04. Annual Report.** The local committee shall report annually on the activity of the rental pool on forms provided by the Board. (3-18-22)

**05. Submission of Amendments to Procedures to Board.** Amendments to the approved procedures of an appointed local committee which change the amount charged for the rental of stored water shall be submitted to the Board by April 1st of any year. The amendment will be considered approved by the Board unless specifically disapproved at the first regular Board meeting following the amendment action of the local committee. The Board may, upon good cause being determined by the Board, specifically approve of amendments submitted after April 1 of any year. (3-18-22)

**041. -- 999. (RESERVED)**