



AGENDA

IDAHO WATER RESOURCE BOARD

Water Supply Bank Committee Meeting No. 1-23

April 24, 2023

3:30 p.m. (MT)

Brad Little

Governor

Jeff Raybould

Chairman

St. Anthony

At Large

Jo Ann Cole-Hansen

Vice Chair

Lewiston

At Large

Dean Stevenson

Secretary

Paul

District 3

Dale Van Stone

Hope

District 1

Albert Barker

Boise

District 2

Brian Olmstead

Twin Falls

At Large

Marcus Gibbs

Grace

District 4

Patrick McMahon

Sun Valley

At Large

Water Center
Conference Rooms 602 C&D / Online Zoom Meeting
322 E. Front St.
BOISE

Board Members & the Public may participate via Zoom

[Click here to join our Zoom Meeting](#)

Dial in Option: 1(253) 215-8782

Meeting ID: 832 3724 2565 Passcode: 831693

1. Introductions and Attendance
2. Water Supply Bank Rules Discussion*
3. Other Items
4. Adjourn

Committee Members: Chair Al Barker, Marc Gibbs, Dale Van Stone, and Brian Olmstead.

* Action Item: A vote regarding this item may be made at this meeting. Identifying an item as an action item on the agenda does not require a vote to be taken on the item.

Americans with Disabilities

The meeting will be held in person and online. If you require special accommodations to attend, participate in, or understand the meeting, please make advance arrangements by contacting Department staff by email jennifer.strange@idwr.idaho.gov or by phone at (208) 287-4800.

Memorandum



To: Water Supply Bank Committee

From: Mary Condon

Date: April 24, 2023

Re: Water Supply Bank Rules – IDAPA 37.02.03

REQUIRED ACTIONS: The Water Resource Board shall adopt rules and regulations governing the management, control, delivery and use and distribution of water to and from the water supply bank in compliance with chapter 52, title 67, Idaho Code

A Water Supply Bank (WSB; Bank) Committee meeting has been convened to discuss the Water Supply Bank Rules, IDAPA 37.02.03, which were rejected and not approved by Legislature, Senate Concurrent [Resolution 108](#). The WSB rules, via pending fee rule changes, were brought to the attention of Legislature in 2023 following the Zero-Based Regulation order and negotiated rulemaking effort.

Per Idaho Code 67-5291, "The agency shall be responsible for implementing legislative intent as expressed in the concurrent resolution, including, as appropriate, the reinstatement of the prior rule, if any, in the case of legislative rejection of a new rule. If a rule, or part of a rule, has been rejected by the legislature, the agency shall publish notice of such rejection in the bulletin."

Attachments: 1 - "Summary of HRES & SRES Committee Questions & Answers"
2 - "Crosswalk of the final redline"

No.	Dist. Rep.	Summary of Questions	Summary of Responses
1	Rep. Blanksma	Why strike “beneficial” from [the definition of “water right”? (RE: Rule 010.12)	Part of the Governor’s ZBR Rulemaking Initiative is to eliminate unnecessary words. “Beneficial” is an unnecessary word since the previous issuance of the water right(s) determined the use of water to be beneficial.
2	Rep. Blanksma	Why add “decreed, licensed or permitted water rights” to rule 12? (RE: Rule 010.12)	Addition of “decreed, licensed, or permitted water rights” to the definition of a “water right” matches statutory language in Idaho Code, 42-1762(2), and further clarifies that other types of water rights, such as a statutory claim or domestic exemption, are not necessarily considered by the rules.
3	Rep. Blanksma	Follow up: So you decided to strike ‘beneficial’ but add additional language that’s already in code?	This structure was the result of the negotiated rulemaking, including internal and external comments received.
4	Rep. Blanksma	Why replace “has” with “may have been” for acceptance criteria for a forfeited water right? (RE: Rule 025.04.c)	The Board is not statutorily authorized to determine abandonment or forfeiture of a water right through its Water Supply Bank processes. However, as a matter of efficiency and to guard against potential injury, the Board may deny a water supply bank lease application where it determines that it is likely the water right has been previously abandoned or forfeited.
5	Rep. Mickelsen	Where in the rules does it “prevent water boards from renting out of their basin”? (Not in rule)	The rules do not expressly prohibit renting a water right out of basin. Rule 30.06, sets forth the criteria for evaluating rentals. Likely the Department would deny out of basin rentals where it was concerned the rental might injure other existing rights. The Department would base its denial on criteria set forth in Rule 30.06 or Idaho Code, § 42-1763 – Rental From Bank – Approval By Director.
6	Rep. Mickelsen	“In follow up...it’s not specifically stated...anytime we allow water outside the basin, into another basin, or sub basin, it will cause injury, it just won’t be recorded right then; I’m concerned that’s not part of these rules”?	Refer to response #5.
7	Rep. Shepherd	“Why was out of state water rentals added under 30.06.e”?	Rules 30.06.e was not added to the pending rule and existed in the previous rule as Rule 030.03. Further, nothing in statute or rule prevents water diverted in Idaho from being used outside of Idaho. Such use can be appropriated through a permit, transfer, or water supply bank rental application process. However, when Idaho water is used outside of Idaho, the approval of such use is subject to evaluation criteria set forth in Idaho Code, § 42-401 – Appropriation For Use Outside State.

	Dist. Rep.	Summary of Question	Summary of Answer
8	Rep. Shepherd	“How would an out of state rental be implemented”? (Rule 30.06.e)	The Department would review and approve or deny an out-of-state rental by applying evaluation criteria set forth in Idaho Code, § 42-401 – Appropriation For Use Outside State. It should be noted that there are no existing or pending rentals to use water outside of Idaho.
9	Rep. Shepherd	“Are we starting down a road we don’t want to go down with this?”	Refer to responses #7 and #8.
10	Rep. Tanner	“Trying to get an understanding of [the Board’s authorities under Idaho Code, §] 42-1763B ...there are no references to the Board and it just states the director may make decisions.”	The Board’s authority is stated in 2a, prior to the Director’s authority in 2b. Idaho Code authorizes the Board to operate the Water Supply Bank (Idaho Code, § 42-1761 – Water Supply Bank Created) and approve leases (Idaho Code, § 52-1762 – Rules and Regulations – Acquisition of Water), whereas it authorizes the Director to review and approve rentals (Idaho Code, § 42-1763 – Rentals From Bank – Approval By Director).
11	Rep. Tanner	“The Board has power over the lease, but only the director has authority over renting?”	Refer to response #10.
12	Rep. Blanksma	Why strike the 30-day cancellation period? (RE: Former Rule 025.08.a)	<p>Upon a receipt of a water supply lease application, the Board will typically complete its review of the adequacy of the application within 30 days. Once the Board determines the application is adequate, it prepares a lease acceptance contract between it and the applicant. Once the Applicant signs the lease contract, it is returned to the Board for execution. Previously, Rule 25.08.a allowed for a 30-day period for the applicant to cancel an executed lease contract, which delayed and confused the subsequent rental of the leased water rights. Under the new rule, upon execution of the contract by the Board, the leased water rights are immediately available for rental.</p> <p>Former Rule 25.08.a was deleted from the pending rule to facilitate timely and efficient processing of lease and rental applications. This change holds lessors accountable to the terms they agree to when they sign their lease contract. Further, a lessor can still petition the Board for an early release at any point from their lease contract.</p>
13	Rep. Blanksma	How many days does it take to return an [approved lease contract]?	Refer to previous response.

Summary from House Resources & Conservation Committee Meeting, 2/7/2023, for Water Supply Bank – IDAPA 37.02.03

14	Rep. Blanksma	Once receiving a [petition to release a water right from the Board's Bank], how long does it take the Board to process the petition?	It typically takes two weeks.
	Dist. Rep.	Summary of Question	Summary of Answer
15	Rep. Vander Woude	What does the Board do if it accepts a water right into the Bank that is subsequently found to be abandoned or forfeited? (Rule 025.06.c)	The Board would cancel the lease contract thereby removing the water right(s) from the water supply bank immediately upon determination of previous abandonment or forfeiture.
16	Rep. Vander Woude	I don't see anywhere in the criteria where it says, if it's abandoned/forfeited, it's not accepted. It doesn't appear to be in the criteria.	Refer to response #4.

Summary from Senate Resource & Environment Committee Meeting, 2/5/2023, for Water Supply Bank – IDAPA 37.02.03

	Dist. Sen.	Summary of Question	Summary of Answer
1	Sen. Okuniewicz	Rationale behind House's decision not to approve this rule	Misunderstanding of the rule, role, and function of the water supply bank. The rules continue to uphold the intent of governing statutes.
2	Chairman Burtenshaw	Clarify the 'Periods of time' noted on pg 2 of the redline	Period of time is the contractual arrangement between the water right holder and IWRB for specific amount of time, typically as calendar years, 1 - 5.
3	Chairman Burtenshaw	Explain role of the Director if there is injury, page 5.	IWRB staff ensure contracts will not impact other water users and there is sufficient information for the Director to administer water rights at a new location to avoid injury. Director adds conditions or will only partially approve a rental to avoid injury.
4	Chairman Burtenshaw	Is there a possibility for water to be rented outside the state of Idaho?	With the exception of flow augmentation rentals from rental pools, as specifically authorized by Legislature, there are no requests to do a rental outside the state.
5	Sen. Semmelroth	Would the language for the lease and/or rental of water rights apply to the Cat Creek Project outside of Anderson Ranch?	This is not proposed as a water bank transaction, but as a permanent water right

37.02.03 – WATER SUPPLY BANK RULES

000. LEGAL AUTHORITY.

Section 42-1762, Idaho Code.

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001. SCOPE.

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These rules govern the Board's operation and management of a Water Supply Bank as provided for in Sections 42-1761 to 42-1766, Idaho Code. These rules are to be used by the 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 water from a rental pool.

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002. -- 009. (RESERVED)

010. DEFINITIONS.

01. **Board.** The Idaho Water Resource Board.

(7-1-21)T

02. **Board's Water Supply Bank.** The water exchange market operated directly by the Board to facilitate marketing of water rights.

(7-1-21)T

03. **Director.** The Director of the Idaho Department of Water Resources.

(7-1-21)T

04. **Department.** The Idaho Department of Water Resources.

(7-1-21)T

05. **Lease.** To convey by contract a water right to the Board's water supply bank or stored water to a rental pool operated by a local committee.

(7-1-21)T

06. **Local Committee.** A committee designated by the Board to facilitate marketing of stored water by operating a rental pool pursuant to Section 42-1765, Idaho Code.

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

(7-1-21)T

08. **Person.** Any individual, partnership, corporation, association, governmental subdivision, or public or private organization or entity of any character.

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09. **Rent.** To convey by contract a water right from the Board's water supply bank or rental pool.

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10. **Rental Pool.** A market operated by a local committee for exchange of stored water.

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11. **Stored Water.** Water made available by detention in surface reservoirs or storage space in a surface reservoir.

(7-1-21)T

12. **Water Right.** The legal right to divert and use or to protect in place the public waters of the state of Idaho, including any storage entitlement, where such right is evidenced by a decree, a permit or license issued by the Department.

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13. **Water Supply Bank.** The water exchange market operated by the Board pursuant to Section 42-

1761 through 42-1766, Idaho Code, and these rules and is a general term which includes the Board's water supply bank and rental pools. (7-1-21)T



011. -- 024. (RESERVED)

025. ACQUISITION OF WATER RIGHTS FOR THE BOARD'S WATER SUPPLY BANK.



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, if 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, or to amend an existing lease contract, or to make water available through the water supply bank for the purposes of Section 42-1763B, Idaho Code, shall file a completed application with the Director on forms established by the Department and include additional information required by the Board or Director to evaluate the proposed transaction. The completed application shall state the period a water right is offered for lease, or the period that storage water will be released for fish migration purposes in accordance with Section 42-1763B, Idaho Code, and the payment terms, if any, requested by the applicant. ()



02. Application. Submitted with the completed application shall be: (7-1-21)T



a. Evidence that the water right has been recorded through a court decree or a permit or license issued by the Department. If the right is included in an ongoing adjudication, a copy of the claim is required; ()


b. Proof that the applicant currently owns the water right or has the owner's authorization to submit 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, the written consent of such company, corporation or irrigation district to the proposed sale or lease must accompany the application; ()

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

d. Evidence demonstrating the relative availability of water to satisfy the water right; and ()



e. 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.

03. Inadequate Application If an application is not complete, the Director will correspond with the applicant to obtain the needed information. Failure to submit the requested information within thirty (30) days will be cause for the Director to void the application. 

04. Criteria. The Board will consider the following in determining whether to accept a water right into its water supply bank: ()

a. Whether the applicant is the current owner, title holder, or contract water user of the water right offered to the Board's water supply bank or has authority to act on behalf of the owner; ()

b. Whether all necessary consents have been filed with the Board; (7-1-21)T

c. Whether the information available to the Board indicates that the water right may have been abandoned or forfeited; ()

d. Whether the offering price or requested rental rate is reasonable; (7-1-21)T

e. Whether acquisition of the water right will be contrary to the State Water Plan; (7-1-21)T

f. Whether the application is in the local public interest as defined in Section 42-202B, Idaho Code; ()

g. The likelihood of selling or renting the water right from the Board's water supply bank; and ()

i. Other factors as determined by the Board. (7-1-21)T

05. 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. An application to lease together with the resolution accepting it becomes a lease. Water rights associated with a lease are placed into the Board's water supply bank upon adoption of the resolution. A resolution accepting an application to sell water rights to the Board's water supply bank will provide authority for the chairman of the Board to enter an agreement to purchase the water rights. The resolution may include conditions of approval, including but not limited to, the following: ()

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

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; and ()

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 42-1763B, Idaho Code, for purposes of fish migration. ()

06. Placement of Water Right. Effect of placement of a water right into the Board's water supply bank. (7-1-21)T

a. 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. ()

b. 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. (7-1-21)T

c. 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. (7-1-21)T

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

~~026.~~ 029. (RESERVED)

030. SALE OR RENTAL OF WATER RIGHTS FROM THE BOARD'S WATER SUPPLY BANK.

01. General. The Board may in its discretion initiate the process to sell or rent water rights from the Board's water supply bank. An application to rent, or to amend an existing rental, shall be on forms established by the Director and shall include such additional information as required by the Board or Director to evaluate the proposed

rental. The sale or rental price shall be the price, if any, as determined by the Board.

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02. Application. Submitted with the completed application shall be:

a. Evidence of authority or permission to use water at the proposed place of use, to divert water at the proposed point of diversion, and to deliver water through the proposed conveyance system, including a canal, lateral, or ditch, for delivery of water;

b. The proposed beneficial use of water and the quantity of water to be diverted during the rental, including the number of acres to be irrigated if the application is for irrigation;

c. A map of sufficient scale to show the proposed points of diversion and proposed places of use, including the number of acres to be irrigated if the application is for irrigation; and

d. If the rental application proposes to change the nature of use of a specific water right, evidence sufficient to establish historical consumptive use, as defined in Section 42-202B, Idaho Code, of the right proposed to be rented.

03. Inadequate Application. If an application is not complete, the Director will correspond with the applicant to obtain the needed information. Failure to submit the requested information within thirty (30) days will be cause for the Director to void the application.

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

(7-1-21)T

05. Consideration. All applications received on or prior to November 1 of the calendar year prior to the proposed rental start date will be considered as having been received at the same time. Applications received after November 1 may be considered only if sufficient water remains in the Board's water supply bank.

06. Application Evaluation Criteria.

a. The Director will evaluate applications using the following:

i. Whether the proposal would constitute an enlargement of the water right;

ii. Whether the water will be put to a beneficial use;

iii. Whether the water supply available from applicable rights in the Board's water supply is sufficient for the use intended;

iv. Whether the proposal is in the local public interest; and

v. Such other factors as determined to be appropriate by the Board.

b. The Department may request additional information from a lessor or rental applicant as needed to evaluate the proposed rental relative to the criteria stated in this section. If the information requested from a lessor is not received within thirty (30) days, the Department may consider a different lease to satisfy the proposed rental. If the information requested from a rental applicant is not received within thirty (30) days, the Director may void the rental application.

c. For applications submitted pursuant to Section 42-1763B, Idaho Code, the Director will only make an evaluation as to whether the proposed use of water will cause injury to other water rights.

d. 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.

e. 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 is not required for applications submitted pursuant to Section 42-1763B, Idaho Code. ()

07. **Authorized to Rent.** The Director is authorized to rent water rights offered by the Board from the Board's water supply bank for a period up to five (5) years, but shall submit applications for purchase, or rental for a period of more than five (5) years to the Board for action. The Director will advise the Board on applications which require Board approval under Rule Subsection 025.06 whether he can approve the application in whole or in part or with conditions to comply with Section 42-1763, Idaho Code. (7-1-21)T

08. **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 reject the applications as the Board determines to best meet the purposes of Section 42-1761, Idaho Code and promote the interest of the people of the state of Idaho. ()

031. -- 034. (RESERVED)

035. HANDLING OF MONEY ASSOCIATED WITH THE BOARD'S WATER SUPPLY BANK.

01. Fees collected pursuant to Rules 025 and 030 from the acquisition, sale, or rental of water rights for or from the Board's water supply bank do not apply to rental pools described in Rule 040 and will be handled as follows: ()

a. **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. ()

b. **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.a shall be credited to the Water Management Account created by Section 42-1760, Idaho Code, for use by the Board. ()

036. -- 039. (RESERVED)






040. APPOINTMENT OF LOCAL RENTAL POOL COMMITTEES.

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 provide for the following: ()

a. Determination of priority among competing applicants to lease stored water to the rental pool and to rent stored water from the rental pool; (7-1-21)T


b. Determination of the reimbursement schedule for those leasing stored water into the rental pool; (7-1-21)T

c. Determination of the rental price charge to those renting stored water from the rental pool;

-  (7-1-21)T
- d. Determination of the administrative charge to be assessed by the local committee; (7-1-21)T
- e.  Allocation of stored water leased to the bank but not rented; (7-1-21)T
- f. Notification of the Department and the watermaster of any rentals where stored water will be moved from the place of use authorized by the permit, license, or decree establishing the stored water right; (7-1-21)T
- g. Submittal of applications to rent water from the rental pool for more than five (5) years to the Board for review and approval as a condition of approval by the local committee; (7-1-21)T
- h. Prevention of injury to other water rights; (7-1-21)T
- i. Protection of the local public interest, except for applications submitted pursuant to Section 42-1763B, Idaho Code;   ()
- j. Consistency with the conservation of water resources within the state of Idaho, except for applications submitted pursuant to Section 42-1763B, Idaho Code;  ()
- k. Management of rental pool funds as public funds pursuant to the Public Depository Law, Chapter 1, Title 57, Idaho Code. (7-1-21)T

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 Section 42-1761, Idaho Code, unless the surcharge is prohibited by statute, compact or inter-governmental agreement. (7-1-21)T

03. Review by Director. The Director will review the local committee procedures and submit them along with the Director's recommendation to the Board. The lease and rental form must receive the Director's approval. The Board may designate the applying entity as the local committee for a period not to exceed five (5) years. A Certificate of Appointment will be issued by the Board. The Board may extend the appointment for additional periods up to five (5) years, upon written request of the local committee. The Board may revoke a designation upon request of the local committee, or after a hearing pursuant to the promulgated Rules of Practice and Procedure of the Board, if the Board determines that the local committee is no longer serving a necessary purpose or is not abiding by its own approved procedures, these rules or applicable statutes. (7-1-21)T

04. Annual Report. The local committee shall report annually on the activity of the rental pool on forms provided by the Board.  (7-1-21)T

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. (7-1-21)T

041. -- 999. (RESERVED)



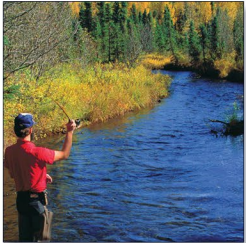



WSB Rules Discussion



Presented by Mary Condon

Date April 24, 2023





Idaho Code § 42-1761 - The Water Resource Board shall adopt rules and regulations governing the management, control, delivery and use and distribution of water to and from the water supply bank in compliance with [chapter 52, title 67](#), Idaho Code

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- WSB Negotiated Rulemaking overview
 - Overview of Changes, IDAPA 37.02.03
 - Idaho Code, §§ 42-1761 – 42-1766
 - Summary of HRC & SRC Questions & Answers
 - Crosswalk of the final redline

Legal Actions

Archived Legal Matters

Orders ▾

Settlements ▾

Curtailment Notices and Orders ▾

Guidance Documents

Statutes, Rules, and Hearing Procedures ▾

Administrative Actions

Delivery Call Actions

District Court Actions

Mitigation Plan Actions

Water Supply Bank Rules

IDAPA 37.02.03

The IWRB is negotiating these rules as part of its requirement to review each rule every 5 years consistent with the Governor's Zero-Based Regulation [Executive Order 2020-01](#).

Scheduled Meetings and Deadlines

[December 7, 2022](#) – Idaho Administrative Bulletin Vol. 22-12
[November 4, 2022](#) – Notice of Pending Rule Publication (IDAPA 37.02.03)

[October 5, 2022](#) – Notice of Rulemaking – Proposed Rule (Admin. Bulletin Vol. 22-10)

[August 4, 2022](#) – Water Supply Bank Rule Making Discussion

[June 13, 2022](#) – Water Supply Bank Committee Meeting

[March 22, 2022](#) – Water Supply Bank Rule Making Discussion

Documents

[IWRB Resolution Adopting and Authorizing Publication of Pending Rule Notices for Five Rule Chapters](#)

[Resolution Approving WSB Rules – September 6, 2022](#)

[WSB Rules – Redline V4 September 6, 2022](#)

[WSB Rules – Redline V3 July 22, 2022](#)

[Public Presentation – WSB Committee Meeting](#)

[Public Presentation – WSB Rules 25 & 30](#)

[Public Presentation – WSB Rule 40](#)

[2022 WSB Public Meeting Presentation](#)

[WSB Strawman Rules](#)

[WSB Rules – Redline](#)

[WSB Rules – Prospective Analysis](#)

[WSB Rulemaking Recommendation Memo](#)

[WSB Rules – IDAPA 37.02.03](#)

Terminology

[+ Curtailment](#)

[+ Delivery Call](#)

[+ Mitigation Plan](#)

Statutes & Rules

Listed below are legal considerations regarding water rights, irrigation, and floodplain management in Idaho.

Idaho Constitution

- Article XV: Water Rights

Idaho Statute

- Title 42: Irrigation and Drainage — Water Rights and Reclamation
- Title 43: Irrigation Districts
- Title 46, Chapter 10: State Disaster Preparedness Act

Idaho Administrative Code

- IDAPA Chapter 37: Idaho Water Resource Board and Idaho Dept. of Water Resources

Hearing Procedures

Overview of IWRB & IDWR Contested Case Processes



Overview of Changes, IDAPA 37.02.03, WSB Rules Redline v4

Scope, Rule 001 - Remove wording in scope that is historic information, unnecessary, or repetitive from statute or elsewhere described further in rule.

Definitions, Rule 010 – Move ‘person’ in alphabetical order and remove ‘Year’ definition; correct sentence structure for ‘Local Committee’ and ‘Rental Pool’ definitions; adjust definition for ‘Person’ and ‘Water Right’ consistent with Rules of Appropriation, IDAPA 37.03.08.

Update all instances of IC ‘42-1763A’ with IC ‘42-1763B,’ ‘A’ sunset in 1995 and ‘B’ was passed the same year to replace it. There are 7 references to this statute within the WSB rules. (Lease 25.01x2, 25.05.c, Rentals 30.06.c & 30.06.d moved from 30.03 above, and Rental Pools 40.01.i and j)

Acquisition of Water Rights for the Board’s Bank, Rule 025 – 25.01 General, removed unnecessary wording, and added ‘or amend an existing contract’ to ensure amendments to approved contracts are submitted as though they are new applications with the filing fee.

25.02 – Application - Reduced wording or modified language to be consistent with Idaho Code for transfers and/or Rules of Appropriation, move ‘lease filing fee deposit into the Water Administration Account’ to Rule 035 - money handling

25.03 – ‘Review’ removed, covered within ‘Inadequate Application’ and 25.04.i (renumbered).

25.03 (renumbered) - Inadequate Application’ language modified similar to same steps within Water Appropriation Rules

25.05 – ‘Consideration’ removed, covered within ‘Criteria’ and ‘Resolution of Board’

Overview of Changes, cont.

Sale or Rental of Water Rights from the Board's Bank, Rule 030 – 30.01 General, language removed was repeated later or earlier, or moved to new subsections 'Application' under Rule 030.02 or 'Application Evaluation Criteria, Rule 030.06.

Added, 30.02 - 'Application'– structure similar to Rule 025 to create consistency between both application processes for required information– Expected to reduce processing times, reduce confusion from representatives and applicants by setting clear expectations and requirements.

Also, 30.02.d - 'Historic use calculations' under application for rental of specific leased rights if proposal changes the nature of use of leased right, consistent with the department rental application requirement and IDWR transfer processing guidance memo for changes in nature of use evaluations.

Add 30.03 - 'Inadequate Application', same as Acquisition in Rule 025, again for consistency and clear requirements to reduce long processing times.

Remove 30.03 - 'Approval' – move language to within 30.08 – 'Criteria'

Modify 30.05 (renumbered) - 'Consideration' from 'announced date' to 'November 1' deadline for priority processing consistent with the Bank operating calendar and staff availability prior to upcoming irrigation season

Add 30.06 – 'Application Evaluation Criteria' –use structure from 'Lease Criteria' and requirements, language from 30.01-General and Idaho Code 42-1763 – Rentals from the Bank.

Remove 30.07 – 'Order of Consideration' – order of consideration is first the closest available rights from same source as rental request and with the same nature of use.

Handling of Money with the Board's Bank, Rule 035 - Language from fees received for lease application filing fees is moved here from Rule 25.02. Structure clarifies appurtenant fee rule and deposit account. Remove unnecessary statement that this does not apply to fees received under Rule 40 – Rental Pools.



Idaho Code, Sections 42-1761 thru 42-1766

42-1761 – Water Supply Bank Created

42-1762 – Rules and Regulations – Acquisition of Water Rights

42-1763 – Rentals from Bank – Approval by Director

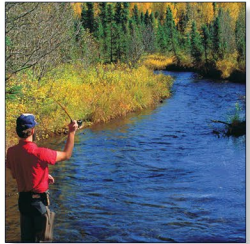
42-1763B – Interim Authority for Rental of Water to Augment Flows

42-1764 – Substitution for Transfer Proceedings – No Forfeiture – No Dedication

42-1765 – Local Committees – Rental of Stored Water – Apportion of Proceeds

42-1765A – Lemhi River Basin – Local Rental Committee

42-1766 – Appeals Procedure for Water Right Holders



Summary from House Resources & Conservation Committee Meeting, 2/7/2023, for Water Supply Bank – IDAPA 37.02.03

No.	Dist. Rep.	Summary of Questions	Summary of Responses
1	Rep. Blanksma	Why strike “beneficial” from [the definition of “water right”]? (RE: Rule 010.12)	Part of the Governor’s ZBR Rulemaking Initiative is to eliminate unnecessary words. “Beneficial” is an unnecessary word since the previous issuance of the water right(s) determined the use of water to be beneficial.
2	Rep. Blanksma	Why add “decreed, licensed or permitted water rights” to rule 12? (RE: Rule 010.12)	Addition of “decreed, licensed, or permitted water rights” to the definition of a “water right” matches statutory language in Idaho Code, 42-1762(2), and further clarifies that other types of water rights, such as a statutory claim or domestic exemption, are not necessarily considered by the rules.
3	Rep. Blanksma	Follow up: <u>So</u> you decided to strike ‘beneficial’ but add additional language that’s already in code?	This structure was the result of the negotiated rulemaking, including internal and external comments received.
4	Rep. Blanksma	Why replace “has” with “may have been” for acceptance criteria for a forfeited water right? (RE: Rule 025.04.c)	The Board is not statutorily authorized to determine abandonment or forfeiture of a water right through its Water Supply Bank processes. However, as a matter of efficiency and to guard against potential injury, the Board may deny a water supply bank lease application where it determines that it is likely the water right has been previously abandoned or forfeited.
5	Rep. Mickelsen	Where in the rules does it “prevent water boards from renting out of their basin”? (Not in rule)	The rules do not expressly prohibit renting a water right out of basin. <u>Rule 30.06</u> , sets forth the criteria for evaluating rentals. Likely the Department would deny out of basin rentals where it was concerned the rental might injure other existing rights. The Department would base its denial on criteria set forth in Rule 30.06 or Idaho Code, § 42-1763 – Rental <u>From</u> Bank – Approval By Director.
6	Rep. Mickelsen	“In follow up...it’s not specifically stated...anytime we allow water outside the basin, into another basin, or sub basin, it will cause injury, it just won’t be recorded right then; I’m concerned that’s not part of these rules”?	Refer to response #5.
7	Rep. Shepherd	“Why was out of state water rentals added under 30.06.e”?	Rules 30.06.e was not added to the pending rule and existed in the previous rule as Rule 030.03. Further, nothing in statute or rule prevents water diverted in Idaho from being used outside of Idaho. Such use can be appropriated through a permit, transfer, or water supply bank rental application process. However, when Idaho water is used outside of Idaho, the approval of such use is subject to evaluation criteria set forth in Idaho Code, § 42-401 – Appropriation <u>For</u> Use Outside State.

	Dist. Rep.	Summary of Question	Summary of Answer
8	Rep. Shepherd	"How would an out of state rental be implemented"? (Rule 30.06.e)	The Department would review and approve or deny an out-of-state rental by applying evaluation criteria set forth in Idaho Code, § 42-401 – Appropriation <u>For</u> Use Outside State. It should be noted that there are no existing or pending rentals to use water outside of Idaho.
9	Rep. Shepherd	"Are we starting down a road we don't want to go down with this?"	Refer to responses #7 and #8.
10	Rep. Tanner	"Trying to get an understanding of [the Board's authorities under Idaho Code, §] 42-1764B...there are no references to the <u>Board</u> and it just states the director may make decisions."	Idaho Code authorizes the Board to operate the Water Supply Bank (Idaho Code, § 42-1761 – Water Supply Bank Created) and approve leases (Idaho Code, § 52-1762 – Rules and Regulations – Acquisition of Water), whereas it authorizes the Director to review and approve rentals (Idaho Code, § 42-1763 – Rentals <u>From</u> Bank – Approval By Director).
11	Rep. Tanner	"The Board has power over the lease, but only the director has authority over renting?"	Refer to response #10.
12	Rep. Blanksma	Why strike the 30-day cancellation period? (RE: Former Rule 025.08.a)	<p>Upon a receipt of a water supply lease application, the Board will typically complete its review of the adequacy of the application within 30 days. Once the Board determines the application is adequate, it prepares a lease acceptance contract between it and the applicant. Once the Applicant signs the lease contract, it is returned to the Board for execution. Previously, Rule 25.08.a allowed for a 30-day period for the applicant to cancel an executed lease contract, which delayed and confused the subsequent rental of the leased water rights. Under the new rule, upon execution of the contract by the Board, the leased water rights are immediately available for rental.</p> <p>Former Rule 25.08.a was deleted from the pending rule to facilitate timely and efficient processing of lease and rental applications. This change holds lessors accountable to the terms they agree to when they sign their lease contract. Further, a lessor can still petition the Board for an early release at any point from their lease contract.</p>
13	Rep. Blanksma	How many days does it take to return an [approved lease contract]?	Refer to previous response.
14	Rep. Blanksma	Once receiving a [petition to release a water right from the Board's Bank], how long does it take the Board to process the petition?	It typically takes two weeks.

	Dist. Rep.	Summary of Question	Summary of Answer
15	Rep. Vander Woude	What does the Board do if it accepts a water right into the Bank that is subsequently found to be abandoned or forfeited? (Rule 025.06.c)	The Board would cancel the lease contract thereby removing the water right(s) from the water supply bank immediately upon determination of previous abandonment or forfeiture.
16	Rep. Vander Woude	I don't see anywhere in the criteria where it says, if it's abandoned/forfeited, it's not accepted. It doesn't appear to be in the criteria.	Refer to response #4.

Summary from Senate Resource & Environment Committee Meeting, 2/5/2023, for Water Supply Bank – IDAPA 37.02.03

	Dist. Sen.	Summary of Question	Summary of Answer
1	Sen. <u>Okuniewicz</u>	Rationale behind House's decision not to approve this rule	Misunderstanding of the rule, role, and function of the water supply bank. The rules continue to uphold the intent of governing statutes.
2	Chairman Burtenshaw	Clarify the 'Periods of time' noted on <u>pg 2</u> of the redline	Period of time is the contractual arrangement between the water right holder and IWRB for specific amount of time, typically as calendar years, 1 - 5.
3	Chairman Burtenshaw	Explain role of the Director if there is injury, page 5.	IWRB staff ensure contracts will not impact other water users and there is sufficient information for the Director to administer water rights at a new location to avoid injury. Director adds conditions or will only partially approve a rental to avoid injury.
4	Chairman Burtenshaw	Is there a possibility for water to be rented outside the state of Idaho?	With the exception of flow augmentation rentals from rental pools, as specifically authorized by Legislature, there are no requests to do a rental outside the state.
5	Sen. <u>Semmelroth</u>	Would the language for the lease and/or rental of water rights apply to the Cat Creek Project outside of Anderson Ranch?	This is not proposed as a water bank transaction, but as a permanent water right

[WSB IDAPA 37.02.03, Redline Crosswalk](#)