

37.02.04 – SHOSHONE-BANNOCK WATER BANK RULES

000. LEGAL AUTHORITY.

These rules have been adopted pursuant to Section 42-1762, Idaho Code; Water Supply Bank Rule 40, IDAPA 37.02.03.040; and Article 7.3.4 and 18.1.3 of The 1990 Fort Hall Indian Water Rights Agreement (Agreement).

()

001. SCOPE.

These rules set the procedures for the Tribes to rent for any beneficial use outside the Reservation all or any part of the water accruing to the federal contract storage rights in the American Falls Reservoir and the Palisades Reservoir as described in Article 7.3.1 of the Agreement not used on Indian lands or otherwise required to fulfill the exchange established by Article 8 of the Michaud Contract.

()

01. Intent. These rules do not prohibit the Tribes from renting the storage contract water from Palisades and American Fall Reservoirs for any beneficial use within the exterior boundaries of the Reservation.

()

02. Preservation. The State agrees not to take any action that will interfere with the nature, scope, spirit and purposes of the Shoshone-Bannock Water Bank.

()

002. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions set forth below, the definitions in the Agreement are incorporated to the extent they are applicable.

()

01. Agreement. “The 1990 Fort Hall Indian Water Rights Agreement” as ratified by the Shoshone-Bannock Tribes in June, 1991, and as approved by the United States in Public Law 101-602, 104 Stat. 3061 on November 16, 1990, and by the state of Idaho in 1991 Idaho Session Laws Chapter 228 at 547.

(3-31-22)

02. Bank. The “Shoshone-Bannock Water Bank.”

()

03. Beneficial Use. The diversion or non-diversion of water for a use, such as irrigation or hydropower generation, that provides a benefit to the user of the water and is not wasteful.

()

04. Bureau. The United States Department of Interior Bureau of Reclamation.

(3-31-22)

05. Bureau Snake River Area Manager. A person employed by the Bureau to manage the Minidoka Project in the Upper Snake River Basin.

()

06. Chairperson. The person selected by the Tribal Rental Pool Committee to be the head of the Committee.

(3-31-22)

07. Committee. The Tribal Rental Pool Committee.

(3-31-22)

08. Council. The Fort Hall Business Council.

(3-31-22)

09. IDWR. The Idaho Department of Water Resources.

()

10. IWRB. The Idaho Water Resource Board.

()

11. Rent. A legal conveyance by the Tribes of the right to use storage water from the rental pool for a fixed period of time.

()

12. Rental Pool. The Tribal stored water assigned to and rented from the Bank.

()

13. **Renter.** The person or entity renting water from the rental pool. ()
14. **Reservation.** The Fort Hall Indian Reservation. (3-31-22)
15. **Reservation Watermaster.** The Tribal Water Engineer or any successor designated by the Tribes to administer the Tribal water rights under the Tribal Water Code. (3-31-22)
16. **Snake River Watermaster.** The watermaster of Water District 01 or any successor. (3-31-22)
17. **Tribal Stored Water.** The storage water accruing to the federal contract storage space identified in Article 7.3.1 of the Agreement. (3-31-22)
18. **Tribes.** The Shoshone-Bannock Tribes. ()
011. -- 024. **(RESERVED)**
025. **GENERAL.**
01. **Incorporation of Articles.** These rules incorporate by reference the provisions set forth in Article 7.3.5, 7.3.10 and 7.3.11 of the Agreement. (3-31-22)
02. **Consistency.** The operation of the Bank will be consistent with provisions of the Tribes' spaceholder contracts with the United States. ()
03. **Storage Water.** Tribal stored water rented from the rental pool will be deemed storage water of the renter during the term of the approved rental. ()
04. **Evaporation Losses.** Evaporation losses associated with any Tribal stored water assigned to the rental pool will be charged to storage space from which the water is released. ()
026. -- 029. **(RESERVED)**
030. **MANAGEMENT.**
01. **Bank Operation.** The Bank is to be operated by the Tribal Rental Pool Committee in conformity with these rules and the Agreement. ()
02. **Committee Composition.** The Tribal Rental Pool Committee will be composed of the following members: the Bureau Snake River Area Manager, the Snake River Watermaster, the Tribal Reservation Watermaster and three (3) individuals designated by the Council. The composition of this Committee can only be changed as provided in the Agreement. ()
03. **Chairperson Selection.** The Committee will select its own Chairperson from the Committee as determined by a majority vote of the Committee. Each term of the Chairperson of the Committee will not exceed four (4) years; however, nothing precludes the same person from being re-elected as Chairperson by the members for more than one (1) term. ()
04. **Committee Responsibilities.** The Tribal Rental Pool Committee will have the following responsibilities: ()
- a. The Committee will ensure that the Bank is operated in compliance with these rules and the Agreement and can establish such other policies for the operation of the Bank as are consistent with these rules and the Agreement. ()
- b. The Committee will advise the Fort Hall Business Council on water banking activities upon request.

()

05. Chairperson Duties. The Chairperson will be responsible for such duties as are delegated by the Committee. ()

031. -- 034. (RESERVED)

035. ASSIGNMENTS OF TRIBAL STORED WATER TO THE RENTAL POOL.

01. Assignments of Stored Water. Whenever Tribal stored water is made available for rental, it will be deemed that it is the intention of the Tribes to assign sufficient space to yield the amount of water designated. Assignments of Tribal stored water to the Rental Pool should identify the reservoir from which the assignment is being made to the Committee. If no reservoir is identified, the Tribal stored water will be deemed to come first from the Palisades Reservoir and secondly from American Falls Reservoir. ()

02. Control of Assigned Water. All Tribal stored water assigned to the rental pool by the Council shall be under the control of the Committee for the duration of the term of the assignment to be rented in accordance with these rules and the terms of the assignment. ()

03. Return of Unrented Water. Any Tribal stored water assigned to the rental pool that is not rented will be returned to the credit of the Tribes. (3-31-22)

036. -- 039. (RESERVED)

040. RENTAL OF WATER FROM THE RENTAL POOL.

01. Rental Priorities. Tribal stored water assigned to the rental pool will be made available for rental in accordance with the priorities established by the Committee, provided that the Fort Hall Indian Irrigation Project water users will have a right of first refusal to rent any tribal stored water assigned to the rental pool. Notice is to be given in accordance with procedures established by agreement of the Tribes and the Fort Hall Indian Irrigation Project water users. ()

02. Rental Application. A request to rent water must be in writing on a form provided by the Committee, or as a drafted rental agreement provided by the Reservation Watermaster. A copy of the request will be provided to each member of the Committee for consideration of approval and forwarded to the Council. ()

03. Content of Approved Agreements. All rental agreements shall contain the following information: ()

a. Name and address of the renter, (3-31-22)

b. Amount of tribal stored water obligated, (3-31-22)

c. The beneficial use, (3-31-22)

d. The rental price, (3-31-22)

e. The legal description of the point of diversion and place of use, (3-31-22)

f. The duration of the rental agreement, (3-31-22)

g. The understanding of responsibilities and exposures if reservoir space does not fill at some time during the term of the rental agreement. (3-31-22)

h. The understanding that transportation losses occurring between the reservoir and the place of use will be deducted from water delivered under the rental agreement. ()

041. -- 044. (RESERVED)

045. GEOGRAPHIC SCOPE OF RENTING.

Tribal stored water from the Palisades Reservoir is to be rented for use within the Snake River Basin above Milner Dam and Tribal stored water from the American Falls Reservoir can be rented for use within the Snake River Basin within the state of Idaho, as described in Article 7.3.4 of the Agreement. ()

046. -- 049. (RESERVED)

050. RENTAL PAYMENTS.

01. Rental Price. The price for rental Tribal stored water from the bank will be set by the Council. ()

02. Management of Rental Income. Rental payments will be made directly to the Council. The Council will be responsible for the management of the rental income. If payment is not received by the Council, the Council will promptly notify the Committee to hold back the release of the water until payment is properly received. ()

051. -- 054. (RESERVED)

055. TERM OF RENTALS.

The Committee may rent tribal stored water for a period of up to five (5) years. Any request to rent water for a period in excess of five (5) years will be subject to negotiations between the Tribes and the IWRB pursuant to Water Supply Bank Rule Subsection 040.01.g, IDAPA 37.02.03. ()

056. -- 059. (RESERVED)

060. LIABILITY.

Nothing in these rules will be construed as modifying or altering any provisions of the Agreement, including but not limited to Article 7.3.12. ()

061. -- 999. (RESERVED)