

Administrator's Memorandum

This Guidance Document is not new law but is an agency interpretation of existing law. For more information or to provide input on the document, please contact the Water Supply Bank Coordinator at 208-287-4800. (Feb.2020)

Water Supply Bank Memo No. 2

To: Water Allocation Bureau

From: Remington Buyer

Re: Establishing Timeframes and Priorities for Receiving and Reviewing Rental Applications, Guidance on Rental Fee Refund Requests and Guidance on Requests to Release Lease Contracts from the Board's Bank.

Date: March 21, 2014

The following memo pertains to the processing of applications to lease or rent water through the Idaho Water Resource Board's Water Supply Bank (Board's Bank). The memo addresses three administrative topics: 1) the establishment of timeframes for submitting rental applications and prioritization of processing rental applications; 2) establishing a policy on the refunding of rental fees; and, 3) clarifying procedures for considering Lease Contract release requests. The Idaho Water Resource Board made a unanimous motion to approve this procedural guidance at Board Meeting 3-14 on March 21, 2014.

Establishing a Time and Date for Receiving Rental Applications and Priorities for Application Review

The greatest demand to rent water rights through the Board's Bank occurs November through April of every year and Bank personnel prioritize the processing of rental applications during this period. To sustain operational efficiencies, it is imperative that opportunities to improve application processing times be explored and instituted. Rental application processing can be improved by encouraging rental applications to come into the Bank during November through April, as well as by establishing a policy for prioritizing rental applications. It is thus desirable to establish a timeframe for receiving rental applications and a method for prioritizing the processing of rental applications.

Water Supply Bank rules are authorized under Idaho Code 42-1762 and Water Supply Bank Rule 30.01 establishes that the Bank may establish a time and date for receiving applications. Because it is desirable for achieving processing efficiencies, and because it is authorized by Water Supply Bank rules, the Bank here and now establishes that applications to rent water from the Water Supply Bank will be accepted no earlier than November 1 in the year preceding the use of rental water and no application to rent water will be accepted if the season of use authorized under the rental water right has concluded. Furthermore, whereas Rule 30.07 establishes that water rights should be prioritized for rental from the Bank based on the order in which they have been leased into the Bank, the Bank will similarly prioritize the processing of rental applications based on the order in which they are received.

Water Supply Bank staff reserve the right to employ alternative metrics for prioritizing rental applications if such methods will further improve overall processing efficiencies, however extenuating circumstances such as the desire to resolve water use violations through Water Supply Bank Rental Agreements are not considered a valid reason for superseding processing priorities. Any and all such rental applications will be processed based on the application's priority, established by its place in the processing queue. Finally, rental processing priorities will not limit Bank staff from processing companion applications (joint applications to both lease in and rent out a specific water right) and

Administrator's Memorandum

companion applications can continue to be accepted and processed together, consistent with this policy, and all other rules governing the Bank.

Regarding Refunds of Rental Fees for Rental Applications

The Water Supply Bank transacts in a specific good: the right to divert water under Idaho law. Through Lease Contracts and Rental Agreements, Water Supply Bank staff authorize the temporary transfer of the right to divert the state's water resources as per the conditions of licensed and decreed water rights. Unlike access to a water right, which is easily accounted for and enforced through Bank agreements, the volume of water that might actually be diverted under a Bank agreement is variable and subject to ecosystem conditions beyond the control of Departmental staff.

If a renter decides the risk of renting a water right subject to potential curtailment is unacceptable, they can cancel their Rental Agreement in advance of the rental fee due date. There is currently no penalty for cancellation of a Rental Agreement. As such, it is hereby expressed that rental fees for a Water Supply Bank Rental Agreement are due on the date specified in the Rental Agreement and the Bank will consider that the beneficial use of water has occurred once rental fees have been paid and the date specified for commencement of the use of water has passed. No rental fees will be refunded once the fee is collected and the start date for a Rental Agreement has passed.

Policy on Accepting Requests to Release a Water Right from the Board's Water Supply Bank

A Water Supply Bank Lease Contract is a binding agreement between the owner of a water right and the Idaho Water Resource Board. Water Supply Bank Rule 25.08.c establishes that a water right, once accepted into the Board's Bank, shall remain in the Bank unless removed by a resolution of the Board. The Bank currently allows water right owners to petition the Board for early release of water rights from the Bank through submission of a [Request to Release a Water Right from the Water Supply Bank](#) form, however no Water Supply Bank rule or statute requires the Board consider early release requests.

Releasing a water right from the Bank alters the balance of water rights and water volume available for rental from the Bank. Releasing a water right prior to the culmination of a Lease Contract is problematic for Bank administration because it alters the water supply accounting of the Bank as a whole. Enforcing the terms of a Lease Contract provides Bank staff with the certainty needed to make a full account of all water rights available in the Bank and enables them to more efficiently approve rental applications. Releasing rights from the Bank alters water supply accounting and slows down rental applications.

In light of the aforementioned, the Bank hereby establishes that all Lease Contracts, indefinite or finite, are to remain in force for the full duration of the Lease Contract and requests to release a water right from the Board's Bank in advance of a contract's termination will only be considered by the Board's authorized representative after a justifiable need to release the right is demonstrated and it is determined that a release will not adversely impact application processing times or water supply accounting.