LEMHI RIVER BASIN
WATER SUPPLY BANK PROCEDURES

PROCEDURE 1. AUTHORITY AND STATEMENT OF PURPOSE

1.1 These procedures have been adopted by the Local Rental Committee ("Committee") and approved by the Director of the Idaho Department of Water Resources ("Director") and the Idaho Water Resource Board ("Board"), in accordance with Section 42-1761 to Section 42-1766, Idaho Code, and the Board's Water Supply Bank Rules at IDAPA 37.02.03, in order to further implementation of the Board's Water Supply Bank is the Lemhi River Basin ("Bank"), in accordance with Section 42-1765A, Idaho Code.

1.2 It is the purpose of these procedures to assure the orderly operation of the Bank. Under no circumstances shall these procedures be construed to limit the authority of the Director, the Board, or the watermasters of Water District 74 and tributary streams, in discharging their duties as set forth in the statutes of the state of Idaho and the rules promulgated thereto.

PROCEDURE 2. DEFINITIONS

2.1 APPLICANT. Any person requesting, through the processes specified in these procedures, to lease a water right into or to rent a water right from the Bank.

2.2 BANK. The water exchange market operated by the Committee in the Lemhi River Basin to facilitate marketing of water rights.

2.3 BOARD. The Idaho Water Resource Board.

2.4 COMMITTEE. The Local Rental Committee provided by Section 42-1765A, Idaho Code, IDAPA 37.02.03, and these procedures.

2.5 CONSUMPTIVE USE. The volume of water depleted by diversion and use of the right as defined in Section 42-202B, Idaho Code. This volume is presumed to be 2.5 acre-feet per acre per growing season of any crop in the Lemhi River Basin, absent other information.

2.6 DIRECTOR. The Director of the Idaho Department of Water Resources.

2.7 LEASE. To convey by contract a water right, or a portion thereof, into the Bank.

2.8 LEMHI RIVER BASIN. The hydrologic unit designated by the Idaho Department of Water Resources as Basin 74, comprised of the Lemhi River and all its tributary water sources.

2.9 LESSOR. Any person who conveys by contract a water right, or a portion thereof, into the Bank.

2.10 MANAGER. The individual charged by the Committee to manage the Bank in accordance with these procedures.

2.11 PERSON. Any individual, company, corporation, association, firm, agency, partnership, Indian tribe, government or other entity.

2.12 RENT. To convey by contract a water right from the Bank.

2.13 RENTAL RATE. The amount paid by the renter to the Committee and then disbursed from the Committee to the lessor, upon rental of a water right from the Bank. Such amount does not include administrative charges which are also paid by the renter to the Committee upon rental of a water right from the Bank.

2.14 RENTER. Any person who conveys by contract a water right from the Bank.

2.15 WATER RIGHT. The right to divert and beneficially use the public waters of the state of Idaho.

PROCEDURE 3. MANAGEMENT OF THE BANK

3.1 The members of the Water District 74 Advisory Board will comprise the Committee, if approved by the Director and the Board pursuant to Procedure 3.2 below. The Committee shall administer the Bank in accordance with Section 42-1761 to Section 42-1766, Idaho Code, IDAPA 37.02.03, and these procedures. The Committee may designate a subcommittee to carry out any part or all of these procedures.

3.2 The Director will review the Committee procedures and submit them, along with the Director's recommendation, to the Board. The Board may designate the applying entity as the Local Rental 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 of up to five (5) years, upon written request of the 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 the Committee is no longer serving a necessary purpose or is not abiding by applicable statutes, IDAPA 37.02.03, or its own approved procedures.

3.3 General responsibilities of the Committee include the following:

A. Create application forms for the lease and rental of water rights into and from the Bank and have such forms approved by the Director;

B. Determine whether to accept, deny, or condition applications from potential lessors and renters of water rights into and from the Bank;

C. Collect rental payments and administrative charges;
D. Disburse funds to the Board for administrative charges and to lessors upon the renting of each lessor's water right from the Bank;
E. Invest funds generated through the Bank pursuant to resolutions adopted by Water District 74 and pursuant to the conditions for use of such funds provided in Section 42-613A, Idaho Code;
F. Manage funds generated through the Bank as public funds pursuant to the Public Depository Law, Chapter 1, Title 57, Idaho Code;
G. Evaluate, and propose to the Board, changes to these procedures or other matters pertaining to the management of the Bank, as needed; and
H. Report to the Board annually on the activity of the Bank.

3.4 The watermaster of Water District 74 shall act as Manager of the Bank. General responsibilities of the Manager shall include the following:
A. Have available lease and rental application forms, once created by the Committee and approved by the Director;
B. Receive applications for leases and rentals and inform applicants if such applications are incomplete;
C. Make recommendations to the Committee regarding whether an application to lease a water right into the Bank satisfies the eligibility requirements of Procedure 4.2 and whether the Committee should accept such application to lease or rent water rights into or from the Bank; and
D. Receive and distribute funds, as directed by the Committee.

3.5 Any lessor, renter or applicant aggrieved by a decision of the Committee on matters related to the operations of the Bank may appeal that decision, in writing, to the Board within fifteen (15) days of receiving written notice of the Committee's decision, in accordance with IDAPA 37.01.01.

PROCEDURE 4. LEASING WATER RIGHTS INTO THE BANK

4.1 Any person who owns a water right in the Lemhi River Basin may apply to the Committee to lease, in whole or in part, his or her right into the Bank. A water right may be leased into the Bank for varying periods of time, including partial year, annual, or longer term. However, during any year a water right is leased into the Bank, the lessor is not authorized to resume diversion and use of the right beyond the date when acceptance of the right into the Bank becomes effective.

4.2 Any application to lease a water right into the Bank shall be submitted in writing to the Manager on the proper form obtained from the Manager and shall bear the date it is received by the Manager. The application must state the period of time a water right is offered for lease, the requested rental rate that would be paid to the lessor once the right is rented from the Bank, and an adequate description of the water right offered for lease. The application must be accompanied by the following:
A. Proof of existence and current ownership of the water right by the applicant;

B. Evidence demonstrating the relative availability of water to fill the water right; and

C. The written consent of such company, corporation, or irrigation district to the proposed lease, 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.

4.3 If a lease application is not complete, the Manager will correspond with the applicant to obtain the needed information. If the needed information is not supplied within thirty (30) days, the application will no longer be considered a valid request to place a water right into the Bank.

4.4 The Manager will make a recommendation to the Committee regarding whether an application to lease a water right into the Bank satisfies the eligibility requirements of Procedure 4.2 and whether the Committee should accept such application to lease or rent water rights into or from the Bank. The Committee may reject in whole or in part, or place conditions upon, any application to lease water rights into the Bank. In determining whether to accept water rights into the Bank, the Committee will consider the following:

A. Whether the applicant has satisfied the eligibility requirements of Procedure 4.2;

B. Whether the requested rental rate, if any, is reasonable;

C. Whether the application is in the local public interest as defined in Section 42-1763, Idaho Code;

D. The probability of renting the water right from the Bank;

E. The particular attributes of the water right, such as the location, priority date, quantity, and the nature of use;

F. The designated use upon rental of the water right, if specified by the applicant; and

G. Other factors determined to be appropriate by the Committee.

4.5 A water right is leased into the bank as of the effective date for acceptance, if any, established by the Committee when considering whether to accept a lease application at a regularly scheduled or special meeting. Payment of the rental rate for any water right accepted for lease into the Bank is contingent upon the water right subsequently being rented out of the Bank.

4.6 Unless otherwise provided by the Committee, payment for the leased water right will be disbursed to the lessor, upon rental of the lessor's water right from the Bank. The Committee will not rent water for less than the amount requested by the lessor without written consent from the lessor.

4.7 Once the Committee accepts a lease application, placement of that water right into the Bank is governed as follows:

A. The lessor may withdraw the right any time prior to the effective date for acceptance established by the Committee if he or she does not agree with the terms of the Committee's acceptance;

B. The lessor is not authorized to continue the diversion and use of the right after the effective date of acceptance into the Bank during any year the lease of the water right into the Bank is accepted by the Committee;

C. A leased water right shall remain in the Bank for the period designated by the Committee unless removed by the Committee;

D. The lessor 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; and

E. The forfeiture provisions of Section 42-222(2), Idaho Code, are tolled during the time period the water right is in the Bank, pursuant to Section 42-1764, Idaho Code.

PROCEDURE 5. RENTING WATER RIGHTS FROM THE BANK

5.1 Any person may apply to the Committee to rent a water right from the Bank for use within the Lemhi River Basin. Any rental lasting for a period of more than one (1) year requires approval by the Director. Any rental lasting for a period of more than five (5) years requires approval by the Board.

5.2 Any application to rent a water right from the Bank shall be submitted in writing to the Manager on the proper form obtained from the Manager and shall bear the date it was received by the Manager. Such application must identify which water right from the Bank is proposed for rental; the nature, location, and time period of the proposed use of such rented right; and the offered rental rate, if different from that requested by the lessor.

5.3 If a rental application is not complete, the Manager will correspond with the applicant to obtain the needed information. If the needed information is not supplied within thirty (30) days, the application will no longer be considered a valid request to rent a water right from the Bank. An application is not deemed received until it is submitted in the proper and complete format.

5.4 A person may only rent the consumptive use portion of a water right, as defined in these procedures, from the Bank. If the Committee feels that a greater portion of the water right could be rented from the Bank without causing injury to other water rights, the Committee may seek a determination from the Director as to how much of the water right could be rented.

5.5 The Committee may accept, deny, or condition an application to rent a water right from the Bank based upon consideration of the following factors:

A. Whether the rental would cause injury to other water rights;

B. Whether the rental would constitute an enlargement of the rented water right;

C. Whether the rented water would be put to a beneficial use;

D. Whether the water supply available from applicable rights in the Bank is sufficient for the use intended;

E. Whether the rental is in the local public interest; and

F. Other factors determined to be appropriate by the Committee.

5.6 In choosing among competing rental applications, the Committee shall give priority to applications to rent water to fill the minimum stream flow established by Section 42-1506, Idaho Code.

5.7 The rental rate for renting a water right from the Bank is the same rental rate requested by the lessor of that right, unless a different offer is made by a rental applicant and accepted in writing by the lessor. Once a rental application is accepted, the renter must pay to the Committee the agreed upon rental rate, plus all administrative charges, before water is delivered.

PROCEDURE 6. ADMINISTRATIVE CHARGES

6.1 Operation of the Bank will require substantial administrative oversight by the Idaho Department of Water Resources. To offset at least a portion of the costs incurred by the Idaho Department of Water Resources for administration, the Board shall be paid ten percent (10%) of the rental rate, as defined in these procedures, for each water rental transaction in accordance with IDAPA 37.02.03, Rule 40.02. The renter shall pay this fee for administrative services to the Committee in addition to the rental rate. The Committee shall remit this payment to the Board, which will then be conveyed to the Water Administration Account of the Idaho Department of Water Resources, created by Idaho Code § 42-238a, from the Board's Water Management Account established in Idaho Code § 42-1760. Payment to the Water Administration Account is made pursuant to IDAPA 37.02.03, Rule 35.01.

6.2 Water District 74 will incur significant administrative costs to operate the Bank because of increased work required of the water master for Water District 74, as well as other activities, to ensure delivery of the appropriate quantity of water rented from the Bank. To offset the costs incurred by Water District 74, the Committee may on an annual basis establish a fee not to exceed ten percent (10%) of the rental rate for each water rental transaction to cover these costs in addition to the fee paid to the Board. The renter shall pay any such fee for administrative services to the Committee in addition to the rental rate.