

# DRAFT PROPOSED

## WATER DISTRICT 1

### ~~2020~~ 2021 RENTAL POOL PROCEDURES

**9/28/2020 \***

\* This 9/28/2020 draft proposal for the 2021 Rental Pool Procedures updates the previous 9/8/2020 draft discussed at the 9/14/2020 Rental Pool meeting plus a few additional changes suggested at and immediately following the meeting. Changes from the previous 9/8/2020 draft to this updated 9/28/2020 draft include.....

- Changed nomenclature of “RULES” to “PROCEDURES”.
- Procedure 2.18 - Deleted definition for Impact Fee because the Impact Fee is proposed to be eliminated from the procedures beginning in 2021.
- Procedure 3.3 – Deleted because there are no longer any provisions to “generate” additional revenues for the Infrastructure Fund in Procedure 4.5.
- Procedure 5.2.101 – Modified language so that March 15 refers to the “current year” and thus eliminates the need to change the numerical year when new procedures are renewed each year.
- Procedure 5.2.105 – Replaced 2020 procedure language with newly proposed language.
- Procedures 7.3.101 and 7.3.102 – Combined into one rule eliminating reference to “Impact Fees” collected under previous Rule 5.5.107 to be eliminated in 2021.
- Procedures 8.2(a) and 8.2(b)– added phrase “up to” so Mitigation Inc. can choose to lease less than the first 10,000 AF....and removed the requirement that the Committee must approve a Supplemental Pool lease “at the first Committee of Nine meeting in April”.
- Updated numerical references to Procedures that changed because of additions and deletions to 2020 procedures.
- Added Appendix that includes Table 1, rental forms, and lease forms.

Remaining things to be considered:

- Use of the word “liability” in Procedure 4.6.
- Prices for extraordinary circumstances rental for Procedures 5.4.106, 5.4.107, 10.7.105, and 10.7.106.
- Should Option #1 or Option #2 be used for Procedure 10.4?

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**2019  
WATER DISTRICT 1  
RENTAL POOL PROCEDURES**

**PROCEDURE RULE 1.0      LEGAL AUTHORITY**

- 1.1 These procedures have been adopted by the Water District 1 Committee of Nine pursuant to Idaho Code § 42-1765.
- 1.2 These procedures shall not be interpreted to limit the authority of the Idaho Department of Water Resources, the Idaho Water Resource Board, or the Watermaster of Water District 1 in discharging their duties as prescribed by statute or rule.
- 1.3 These procedures shall be interpreted consistent with Idaho Code, rules promulgated by the Idaho Water Resource Board, relevant provisions of spaceholder contracts with the United States, and the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement.
- 1.4 The operation of the rental pool shall in no way recognize any obligation to maintain flows below Milner or to assure minimum stream flows at the United States Geological Survey (USGS) gaging station on the Snake River near Murphy.
- 1.5 These procedures shall not be interpreted in any manner that is inconsistent with or would adversely impact or effect the rights of the Shoshone-Bannock Tribes as set out in the Fort Hall Agreement, the Blackfoot River Equitable Adjustment Settlement Agreement, and the 2015 Settlement Agreement between the Tribes and the Committee of Nine.

**PROCEDURE RULE 2.0      DEFINITIONS**

- 2.1 **Accounting Year:** the Water District 1 accounting year that begins on November 1 and ends on October 31.
- 2.2 **Acre-foot:** a volume of water sufficient to cover one acre of land one foot deep and is equal to 43,560 cubic feet.
- 2.3 **Administrative Fee:** a fee of one dollar and thirty cents (\$1.30) per acre-foot assessed on the total quantity of storage set forth in any rental or lease application, disbursed to the District at the end of the irrigation season.
- 2.4 **Allocation:** the amount of stored water, including carryover that has accrued to a spaceholder's storage space on the date of allocation that is available for the spaceholder's use in the same accounting year.
- 2.5 **Applicant:** a person who files with the Watermaster an application, accompanied by the required fees, to rent or lease storage through the rental pool.
- 2.6 **Assignment:** storage provided by an assignor from the current year's storage allocation for rental through the ~~common~~ **assignment** pool pursuant to ~~Rule 5.3~~ **Procedure 10.0**.
- 2.7 **Assignor:** a participant who assigns storage to the ~~common~~ **assignment** pool pursuant to ~~Rule 5.3~~ **Procedure 10.0** and subject to Rule 7.5.

- 2.8 **Board:** the Idaho Water Resource Board (IWRB).
- 2.9 **Board Surcharge:** a surcharge equal to ten percent (10%) of the rental price or lease price assessed on the total quantity of storage set forth in any rental or lease application, disbursed to the Board at the end of the irrigation season.
- 2.10 **Bureau:** the United States Bureau of Reclamation (USBR).
- 2.11 **Committee:** the Committee of Nine, which is the advisory committee selected by the members of Water District 1 at their annual meeting and appointed as the local committee by the Board pursuant to Idaho Code § 42-1765.
- 2.12 **Common Pool:** storage made available to the Committee through participant contributions and/or assignments for subsequent rental pursuant to ~~Rule~~ [Procedure 5](#).
- 2.13 **Date of Allocation:** the date determined each year by the Watermaster on which the maximum accrual to reservoir spaceholders occurs.
- 2.14 **Date of Publication:** the date on which the Watermaster publishes on the District website the storage allocation for the current accounting year.
- 2.15 **Department:** the Idaho Department of Water Resources (IDWR).
- 2.16 **District:** The District is comprised of the Snake River and tributaries with Basins 01, 21, 22, 23, and 25 points of diversion.
- 2.17 ~~**Impact Fee:** a fee added to the rental price for non-spaceholder rentals pursuant to Rule 5.5.107.~~
- 2.18 **Impact Fund:** a fund maintained by the Watermaster for the mitigation of computed impacts to participants pursuant to ~~Rule~~ [Procedure 7.3](#).
- 2.189 **Infrastructure Fund:** a fund maintained by the Watermaster for the purposes outlined in ~~Rule~~ [Procrdure 4.5](#).
- 2.1920 **Lease:** a written agreement entered into between a lessor and lessee to lease storage through the rental pool pursuant to ~~Rule~~ [Procedure 6](#).
- 2.204 **Lease Price:** a price per acre-foot negotiated between a lessor and lessee as set forth in a lease agreement.
- 2.212 **Lessee:** a person who leases storage from a participant under a lease.
- 2.223 **Lessor:** a participant who leases storage to a person under a lease pursuant to ~~Rule~~ [Procedure 6](#) and subject to ~~Rule~~ [Procedure 7.5](#).
- 2.234 **Milner:** Milner Dam on the Snake River.
- 2.245 **Milner Spill:** water in excess to the amount that can be captured in the reservoir system flowing past Milner dam that is not storage being delivered under Idaho Power's American

- Falls storage water right or other storage that is otherwise authorized pursuant to these rules.
- 2.2~~5~~<sup>6</sup> **Net Price:** the average price per acre-foot of all rentals from the common pool, including flow augmentation, ~~but excluding rentals of assigned storage.~~
- 2.2~~6~~<sup>7</sup> **Net Proceeds:** the net price times the number of acre-feet rented from the common pool, ~~excluding rentals of assigned storage.~~
- 2.2~~7~~<sup>8</sup> **Participant:** a spaceholder who contributes storage to the common pool pursuant to ~~Rule~~ **Procedure 5.2.**
- 2.2~~8~~<sup>9</sup> **Participant Contributions:** storage made available to the common pool by participants, with computed impacts accounted from next year's reservoir fill, which forms the supply for large rentals, small rentals, and flow augmentation, subject to the limitations in ~~Rule~~ **Procedure 5.2.**
- 2.2~~9~~<sup>30</sup> **Person:** an individual, corporation, partnership, irrigation district, canal company, political subdivision, or governmental agency.
- 2.3~~0~~<sup>1</sup> **Rent:** the rental of storage from the common pool or assignment pool.
- 2.3~~1~~<sup>2</sup> **Rental Pool:** the processes established by these procedures for the rental and/or lease of storage, mitigation of computed impacts to spaceholders, and disposition of revenues.
- 2.3~~2~~<sup>3</sup> **Rental Pool Subcommittee:** a subcommittee composed of the Watermaster (advisor), a designated representative from the Bureau (advisor), and three or more members or alternates of the Committee who have been appointed by the chairman of the Committee.
- 2.3~~3~~<sup>4</sup> **Rental Price:** the price per acre-foot of storage rented from the common pool or assignment pool, as set forth in ~~Rule~~ **Procedures 5.4~~5~~ and 10.7**, excluding the administrative fee, the Board surcharge, and the infrastructure fee.
- 2.3~~4~~<sup>5</sup> **Renter:** a person who rents storage from the common pool or assignment pool.
- 2.3~~5~~<sup>6</sup> **Reservoir System:** refers to American Falls, Grassy Lake, Henrys Lake, Island Park, Jackson Lake, Lake Walcott, Milner Pool, Palisades, and Ririe.
- 2.3~~6~~<sup>7</sup> **Space:** the active capacity of a reservoir measured in acre-feet.
- 2.3~~7~~<sup>8</sup> **Spaceholder:** the holder of the contractual right to the water stored in the space of a storage facility within the Reservoir System.
- 2.3~~8~~<sup>9</sup> **Storage:** the portion of the available space that contains stored water.
- 2.3~~9~~<sup>40</sup> **Watermaster:** the watermaster of Water District 1.
- 2.4~~0~~<sup>1</sup> **Water Supply Forecast:** the forecasted unregulated runoff for April 1 to September 30 at the Heise USGS gaging station, referred to in Table 1.

**PROCEDURE ~~RULE~~ 3.0 PURPOSES**

- 3.1 The primary purpose of the rental pool is to provide supplemental irrigation water to spaceholders for the irrigation of District land with an existing primary irrigation water right and to maintain a rental pool with sufficient incentives such that spaceholders supply, on a voluntary basis, an adequate quantity of storage for rental or lease pursuant to procedures established by the Committee. These procedures are intended to assure that participants have priority over non-participants and non-spaceholders in renting storage through the rental pool ~~and the use of the storage occurs within the District.~~
- 3.2 To maintain adequate controls, priorities, and safeguards to insure that existing water rights are not injured and that a spaceholder’s allocation is not impacted without his or her consent. To compensate an impacted spaceholder to the extent the impact can be determined by the procedures developed by the District.
- 3.3 ~~To generate revenue to offset the costs of the District to operate the rental pool and to fund projects that fall within the parameters of Rule 4.5.~~
- 3.4 To provide storage water at no cost under ~~Rule~~ **Procedure** 5.0 for the benefit of the Tribes consistent with the terms of the Blackfoot River Equitable Adjustment Settlement Agreement and the 2015 Settlement Agreement. Discussions are ongoing to identify the party responsible for mitigating impacts to the Tribes. Nothing in these Procedures should be construed as an admission of liability by Water District 1 or the Committee of Nine.
- 3.45 To prevent further declines in the Eastern Snake Plain Aquifer and tributary spring flows and reach gains, and to ensure new consumptive uses within the District do not further impact the storage supply and the primary purpose of the rental pool as described in ~~Rule~~ **Procedure** 3.1, the following shall apply:
  - 3.45.101 ~~A moratorium on all private leases and common pool rentals that:~~
    - a) ~~deliver water to new lands or mitigate for new lands’ diversions, which have not~~
      - i. ~~historically and legally had a water right delivered from any source prior to 2019, or~~
      - ii. ~~had contracted storage water delivered by the District, or~~
      - iii. ~~had rented or leased storage water, delivered from the District within the last 5 years;~~
    - b) ~~deliver to lands or providing mitigation for lands where a water right or storage use was transferred off said lands , inside or outside the District.~~

A moratorium on all private leases, assignment, and common pool rentals that deliver water to new lands or mitigate for diversion of water on new lands, except when:

    - (a) a water right was legally delivered to the lands from any source prior to 2019; or
    - (b) contracted storage water was delivered by the District prior to 2019 for mitigation for the use of water on new lands; or
    - (c) rented storage water was delivered to the lands from the District within the last 5 years.

The moratorium also prohibits rentals for delivery to lands or providing mitigation for lands where a water right or storage use was transferred off said lands, inside or outside the District.

- 3.45.102 The following exceptions apply to the above moratorium:
- (a) Small rentals under Rule Procedure 5.2.104;
  - (b) Domestic, commercial, municipal, and industrial uses authorized pursuant to a decreed or licensed storage water right and spaceholder contract; and
  - (c) Land that subsequent to the adoption of Rule Procedure 3.5, is authorized for irrigation purposes under a water organization project's owned water right and other provisions of state law.
- 3.45.103 The All private lessees or rental pool applicants shall certify that the respective private lease or rental pool application complies with the requirements set forth above. Lessees and Applicants that have had prior leases or rentals approved prior to 2019 that would otherwise be prohibited by this rule may present such information to the Watermaster and Committee to show why such lease or application should be approved. Further, the Watermaster and any spaceholder may raise any issues derived from this moratorium in regards to any private lease or rental application which shall be resolved by the Committee.

#### **PROCEDURE RULE 4.0      MANAGEMENT**

- 4.1      **Manager.** The Watermaster shall serve as the manager of the rental pool and shall take all reasonable actions necessary to administer the rental pool consistent with these procedures, which include, but are not limited to:
- (a) Determining impacts pursuant to Rule Procedure 7;
  - (b) Calculating payments to participating spaceholders as prescribed by Rules Procedures 5.2 and 7.3;
  - (c) Accepting storage into the common pool, assignment pool, and executing rental agreements on behalf of the Committee;
  - (d) Disbursing and investing rental pool monies with the advice and consent of the Rental Pool Subcommittee; and
  - (e) Taking such additional actions as may be directed by the Committee.
- 4.2      **Rental Pool Subcommittee.** The Rental Pool Subcommittee shall exercise the following general responsibilities:
- (a) Review these procedures and, as appropriate, make recommendations to the Committee for needed changes;
  - (b) Review reports from the Watermaster regarding rental applications, storage assignments to the ~~common~~ assignment pool, and leases of storage through private leases;
  - (c) Advise the Committee regarding rental pool activities;
  - (d) Develop recommendations for annual common pool storage supplies and rental rates;
  - (e) Assist the Watermaster in resolving disputes that may arise from the diversion of excess storage; and
  - (f) Assume such additional responsibilities as may be assigned by the Committee.



### 4.3 Applications

- 4.3.101 Applications to rent or lease storage through the rental pool shall be made each year upon forms approved by the Watermaster and shall include:
- (a) The amount of storage sought to be rented or leased;
  - (b) The purpose(s) for which the storage will be put to beneficial use;
  - (c) The lease price (for private leases); ~~and~~
  - (d) To the extent practicable at the time of filing the application, the point of diversion identified by legal description and common name; and a description of the place of use; and
  - (e) Certification that the rental or lease is not subject to moratorium under ~~Rule Procedure 3.4~~ 3.4 above.
- 4.3.102 *Application Acceptance.* Applications are not deemed accepted until received by the Watermaster together with the appropriate fees required under ~~Rules Procedures 5.4~~ 5.4 and 10.0 (rentals) or 6.4 (leases).
- 4.3.103 *Application Approval.* An application accepted under ~~Rule Procedure~~ Rule Procedure 4.3.102 shall be approved after the Watermaster has determined that the application is in compliance with these procedures and sufficient storage will be available from the common pool, assignment pool, and/or lessor to provide the quantity requested in the application. Upon approval of the application, the Watermaster shall send notice to the renter/lessor/lessee and entity owning the point of diversion designated in the application of such approval and allocation of storage; provided, however, no allocation of storage shall be made until the applicant designates the point of diversion and place of use of the rented and/or leased storage in the application or pursuant to ~~Rule Procedure~~ Rule Procedure 4.3.106.
- 4.3.104 *Timeframe for having Rental Application Accepted to Preserve Rental Priority.* Applications to rent storage will not be accepted until April 5 of the year in which the storage will be used. Applications must be accepted by the Watermaster within 15 days following the date of publication to preserve the applicant's priority under ~~Rule Procedure 5.34.101.~~ Rule Procedure 5.34.101.
- 4.3.105 *Deadline for Accepting Applications to Rent or Lease Storage.* All applications to rent or lease storage must be accepted by the Watermaster pursuant to ~~Rule Procedure~~ Rule Procedure 4.3.102 on or before November 30 in order for the storage identified in such applications to be accounted for as having been diverted prior to October 31 of the same year. Applications accepted after November 30 will be accounted for from storage supplies in the following calendar year, unless an exception is granted by the Rental Pool Subcommittee.
- 4.3.106 *Deadline to Designate Point of Diversion and Place of Use.* If the point of diversion and/or place of use of the rented and/or leased storage was not previously designated in the application, the renter and/or lessee must make such designation in writing to the Watermaster on or before November 30 of the same year, unless an extension is granted by the Rental Pool Subcommittee. Failure to comply with this provision shall cause any unused storage to automatically revert back to the common pool, assignment pool, and/or lessor, respectively.

4.3.107 *Deadline to Use Rental or Lease Storage.* Approved applications pursuant to ~~Rule~~ **Procedure** 4.3 or water leased through a private lease, must be used and diverted on or before November 30 of the same year.

4.3.108 *Reporting Requirements for Leases and Assignments to Points of Diversion on Sources Not Regulated by the Water District #1 Watermaster.* To keep Water District #1 assessments, administrative fees, and regulation costs to a minimum, approved rental leases and assignments to points of diversion on sources not regulated by Water District #1 (e.g. Portneuf River, Wood River, Silver Creek, etc.) must have their daily cfs or acre-feet of rental diversions measured by the watermaster of the water district containing the points of diversion receiving the rental storage and then reported by the watermaster of that district to the Water District #1 Watermaster by November 30 of the year storage is purchased. Daily diversion reports from individual renters in water districts other than Water District #1 will not be accepted by the Water District #1 Watermaster. Failure of the watermasters in other districts to report to the Water District #1 Watermaster the daily rental storage deliveries within their district by November 30 will result in the rental pool storage not being delivered in the Water District #1 final water right accounting. No refunds for rental prices or fees will be issued to lessors, lessees, or renters when daily deliveries are not reported by the watermaster responsible for the regulation of the points of diversion or re-diversion on the source rental storage is being injected or exchanged with sources from Water District #1.

#### 4.4 **Rental Pool Account**

4.4.101 All monies submitted by applicants shall be deposited in an interest-bearing account known as the “Rental Pool Account” and maintained by the Watermaster on behalf of the Committee. Monies in the Rental Pool Account will be disbursed to participants, the District, the Board, the Impact Fund, and the Infrastructure Fund in the proportions set forth in these Rules. Accrued interest to the Rental Pool Account shall be used to maintain the Impact Fund. Rental Pool Funds shall be considered public funds for investment purposes and subject to the Public Depository Law, Chapter 1, Title 57, Idaho Code.

4.4.102 Monies deposited in the Rental Pool Account are non-refundable to the extent the rental and/or lease application is approved pursuant to ~~Rule~~ **Procedure** 4.3.103, regardless of whether the storage is used.

#### 4.5 **Infrastructure Fund**

4.5.101 Monies in the Infrastructure Fund may only be used to fund District costs of projects relating to improvements to the District’s distribution, monitoring, and gaging facilities, and other District projects designed to assist in the adjudication, which includes the cost of Blackfoot River Equitable Adjustment Settlement Water, if any is required, conservation, or efficient distribution of water.

4.5.102 Disbursements from the Infrastructure Fund are subject to two-thirds (2/3) Committee approval.

4.5.103 Monies in the Infrastructure Fund may be carried over from year to year-

- 4.6 ~~**Rentals and Leases Requiring Approved Exchanges from the Department.** Rental and lease deliveries to diversions in basins not regulated by Water District #1 may interfere with natural flow and storage deliveries to diversions. Therefore, rental and lease applications for delivery and/or exchange with natural flow to other diversions not regulated by Water District #1 shall not be permitted.~~

**Diversions Not Regulated by the District.** Rental and lease deliveries in basins not regulated by Water District #1 may interfere with natural flow and storage deliveries to diversions. Therefore, rental and lease deliveries for exchanges with natural flow to other diversions not regulated by Water District #1 shall be the responsibility and liability of the watermaster of the water district (e.g. Portneuf River, Wood River, Silver Creek, etc.) containing the points of diversion receiving the rental storage.

(Note: IDWR Director recommended at the 9/14/20 Rental Pool Committee meeting not to use word “liability” because the watermaster cannot be held liable.)

#### **PROCEDURE RULE 5.0      COMMON POOL**

- 5.1 **Scope.** The common pool consists of storage made available to the Committee through participant contributions ~~and assignments~~. Participants make all of their storage available to the common pool pursuant to the terms of ~~Rule~~ Procedure 5.2, with computed impacts accounted from next year’s reservoir fill. ~~Assignors provide storage to the common pool, pursuant to Rule 5.3, by assigning a portion of their current year’s storage allocation. Rentals from the common pool are subject to the priorities and prices established under this Rule.~~

#### 5.2 **Participant Contributions**

5.2.101 *Participants.* Any spaceholder may, upon submitting written notice to the Watermaster prior to March 15 of the current year ~~2019~~, elect to contribute storage to the common pool for the current year. Any spaceholder making such election shall be deemed a “participant” for the current year and every year thereafter until the spaceholder provides written notice to the Watermaster prior to March 15 of the year ~~2019~~ rescinding its participation. Upon election to participate, a spaceholder is eligible for all the benefits of a participant set forth in these procedures, excluding monetary payment for rentals or computed impacts associated with rentals from the prior year. If after March 15, ~~2019~~, less than seventy-five percent (75%) of the contracted storage space is committed to the common pool by participants, the Committee shall revise the rental pool procedures as necessary prior to April 1.

5.2.102 *Non-Participants.* Spaceholders who are not participants shall not be entitled to supply storage to, or rent storage from, the common pool, assignment pool, or supply or lease storage through a private lease. Notwithstanding this restriction, the Bureau may rent water from the common pool or assignment pool for flow augmentation pursuant to ~~Rule~~ Procedures 5.2.105 and 10.6.

5.2.103 *Large Rentals.* The common pool will make available from participant contributions 50,000 acre-feet of storage for rentals, ~~plus any assigned storage,~~ subject to the priorities and limitations set forth in ~~Rule~~ Procedure 5.

5.2.104 *Small Rentals.* The common pool will make available from participant contributions 5,000 acre-feet for rentals of 100 acre-feet or less per point of diversion for diversions regulated by the Water District #1 Watermaster, subject to the priorities and limitations set forth in Rule 5. Rentals from the small pool shall only be considered for approval following submittal of written consent from the operator of the delivery system. The Committee may approve on a case-by-case basis the additional rental of storage under this provision to exceed the 100 acre-feet limitation. The 100 acre-feet limitation per point of diversion does not apply if the rental is supplied pursuant to ~~Rule~~ Procedure 5.2.103.

5.2.105 *Flow Augmentation*

(a) *Table 1.* The amount of storage, from participant contributions to the common pool, available for rental for flow augmentation shall be determined by Table 1 shown in the Appendix of these procedures.

(b) *Extraordinary Circumstances.* ~~A greater amount of storage may be made available by the Committee, if it determines on or before July 1 that extraordinary circumstances justify a change in the amount of storage made available for flow augmentation. The Bureau and Committee will also consider on years when Milner spill occurs, the preservation of Uncontracted and Powerhead storage for use in subsequent years; provided, the Bureau exercises sole discretion over whether to use storage in its Uncontracted and Powerhead space for flow augmentation, so long as such use is consistent with the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement and applicable law. Upon a request by the Bureau, the Committee shall take reasonable steps to make available a greater amount of storage than provided in 5.2.105(a) if it determines on or before July 1 that extraordinary circumstances justify a change in the amount of storage made available for flow augmentation. The Bureau and Committee will also consider on years when Milner spill occurs, the preservation of uncontracted and powerhead storage for use in subsequent years; provided, the Bureau exercises sole discretion over whether to use storage in its uncontracted and powerhead space for flow augmentation, so long as such use is consistent with the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement and applicable law.~~

Storage available in the assignment pool under Procedure 10.0 may be made available for extraordinary circumstances ahead of common pool storage as determined by the Committee.

5.2.106 *Shoshone-Bannock Tribes.* The Tribes shall be treated as non-participants unless written notice is provided by the Tribes under Procedure 5.2.101.

- (a) *Blackfoot River Equitable Adjustment Settlement Agreement Water.* Storage water not to exceed 20,000 acre-feet shall be made available in accordance with the terms of the Blackfoot River Equitable Adjustment Settlement Agreement. The source and funding of the storage water shall be determined by the Committee at its June meeting. Administrative fees shall be paid by Water District 1.
- (b) *2015 Settlement Agreement.* Storage water not to exceed 10,000 acre-feet (except with the approval of the Committee of Nine) shall be made available in accordance with the terms of the 2015 Settlement Agreement from the current year's Common Pool prior to providing any rental under the priorities of ~~Rule~~ Procedure 5.34.101. Administrative fees shall be paid by Water District 1. Discussions are ongoing to identify the party responsible for mitigating impacts to the Tribes. Nothing in these Procedures should be construed as an admission of liability by Water District 1 or the Committee of Nine.

5.2.107 *Additional Quantities.* In the event rental requests from participants impacted from the prior year's rentals exceed 50,000 acre-feet ~~and insufficient storage has been assigned to the common pool to meet such additional requests,~~ the maximum amount of storage that will be available through the common pool will be equivalent to the amount necessary to meet the demand of those shown to have been impacted from the prior year's rentals.

5.2.108 *Participant Payments.* Monies collected through the rental of the participant contribution portion of the common pool, including flow augmentation, shall be disbursed as follows:

- (a) seventy percent (70%) of the Net Proceeds disbursed to participants; and
- (b) thirty percent (30%) of the Net Proceeds disbursed to the Impact Fund.

5.2.109 *Participant Payment Formula.* Participants will receive payment for storage rented from the participant contribution portion of the common pool pursuant to the following payment formulas:

$$\begin{aligned} 1^{\text{st}} \text{ Installment} &= (R \times SP/TSP) / 2 \\ 2^{\text{nd}} \text{ Installment} &= (R \times ST/TST) / 2 \end{aligned}$$

- R = 70% of net proceeds
- SP = Space of participants
- ST = Storage of participants based on the preliminary storage allocation for the following year
- TSP = Total participating space in system
- TST = Total participating storage in system based on the preliminary storage allocation for the following year

If a specific reservoir's allocation has been reduced as a result of flood-control operations, the ST and TST values in the above formula for those reservoir spaceholders will reflect the values that otherwise would have occurred without any reductions for flood-control.

5.2.110 *Timing of Payments.* Payments to participants will be made in two installments. The first installment will be paid to participants in December of the year in which the proceeds were collected. The second installment will be paid to participants within two weeks of the date of publication for the following irrigation season.

### ~~5.3~~ **Assignments**

~~5.3.101~~ *Assignors.* Any participant may assign storage to the common pool. An assignment of storage shall be made in writing on forms approved by the ~~Watermaster.~~

~~5.3.102~~ *Purposes.* Storage assigned to the common pool may be rented only for purposes above Milner.

~~5.3.103~~ *Limitations.* Storage assigned to the common pool may be rented only after the participant contributions to the common pool have been rented. A participant may not assign storage and rent storage in the same accounting year unless an exception is granted by the Rental Pool Subcommittee.

~~5.3.104~~ *Assignor Payment.* The assignor shall receive one hundred percent (100%) of the rental price per acre foot of the assigned storage that is rented.

~~5.3.105~~ *Distribution of Assigned Storage.* Assignments can only be made between April 5 and 15 days after the date of publication in the year in which the storage is to be rented. Assignments shall initially be distributed on a pro rata basis, with each pro rata share based on the amount of storage assigned or 10% of the assignor's storage space, whichever is less. If, after this initial distribution, additional rental requests exist, the remaining assigned storage shall be distributed on a pro rata basis.

### 5.34 **Priorities for Renting Storage**

~~5.34.101~~ *Priorities.* Storage rented from the common pool shall be pursuant to the following priorities:

- (a) *First Priority.* Rentals by participants whose storage is determined to have been impacted by the prior year's rental from the common pool not to exceed the amount of the computed impact.
- (b) *Second Priority.* Rentals by participants for their spaceholder contracted purposes up to the amount of their unfilled space.
- (c) *Third Priority.* Rentals by participants for any purposes above Milner in excess of their unfilled space. Applications for such rentals will be reviewed by the Committee and may be approved on a case-by-case basis.
- ~~(d) *Fourth Priority.* Rentals by non spaceholders for any purposes within the District.~~

~~5.34.102~~ *Priority for Late Applications.* Applications received after the deadline set forth in ~~Rule~~ Procedure 4.3.104 will be deemed last in priority and will be filled in the order they are received, only after all timely applications have been filled.

- 5.34.103 *Distribution Within Priority Classes.* If rental supplies are not sufficient to satisfy all of the timely applications within a priority class (those received within 15 days of the date of publication), the available rental supplies will be distributed to the applicants within that priority class on a pro-rata basis. ~~Rentals to the fourth priority shall not be approved prior to August 15 of the current irrigation year.~~
- 5.34.104 *Priority for Small Rentals.* Small rentals made pursuant to ~~Rule Procedure~~ 5.2.104 are not subject to the priorities set forth in ~~Rule Procedure~~ 5.34.101 and will be approved in the same order in which the rental applications are received by the Watermaster, so long as the total amount of all such applications does not exceed 5,000 acre-feet.
- 5.34.105 *Priority for Flow Augmentation.* Rentals for flow augmentation are not subject to the priorities set forth in ~~Rule Procedure~~ 5.34.101 and shall be determined pursuant to ~~Rule Procedure~~ 5.2.105.

5.45 **Rental Prices**

- 5.45.101 *Tier 1:* If the storage system fills, the rental price for purposes above Milner shall be \$7.00 per acre-foot.
- 5.45.102 *Tier 2:* If the storage system does not fill but storage is provided for flow augmentation pursuant to ~~Rule Procedure~~ 5.2.105(a), the rental price for purposes above Milner shall be \$17.00 per acre-foot.
- 5.45.103 *Tier 3:* If the storage system does not fill and no flow augmentation water is provided pursuant to ~~Rule Procedure~~ 5.2.105(a), the rental price for purposes above Milner shall be \$25.00 per acre-foot.
- 5.45.104 *Determination of Tier 1, 2 or 3 Rental Price:* Unless the storage system has filled, the Watermaster shall designate on or before April 5 either Tier 2 or Tier 3 as the rental price for above-Milner rentals. If at any time during the same accounting year, the storage system should subsequently fill, the Watermaster shall designate Tier 1 as the rental price for above-Milner rentals and refund any excess rental fees within 30 days after the date of publication.
- 5.45.105 *Tier 4:* The rental price for storage rented from Table 1 pursuant to Procedure 5.2.105(a) for flow augmentation shall be \$17.00 per acre-foot.
- 5.4.106 Tier 5: The rental price for storage rented for flow augmentation under the extraordinary circumstances provision pursuant to Procedure 5.2.105(b) shall be \$ ????? per acre-foot.



~~5.45.107~~ **Fees & Surcharges.** There shall be added to the rental price for all rentals the Board surcharge and administrative fee, resulting in the following summed amounts charged for common pool rentals for the various tiers described in **Rules Procedures 5.45.101 through 5.45.105:**

- (a) Tier 1: \$7.00 + \$0.70 + \$1.30 = \$9.00
- (b) Tier 2: \$17.00 + \$1.70 + \$1.30 = \$20.00
- (c) Tier 3: \$25.00 + \$2.50 + \$1.30 = \$28.80
- (d) Tier 4: \$17.00 + \$1.70 + \$1.30 = \$20.00
- (e) **Tier 5: \$????? + \$???? + \$1.30 = \$?????**

~~5.5.107~~ **Impact Fee Added to Previous Year's Non-Spaceholder Rentals When Previous Year's Rentals Impact Current Year's Storage Allocations.** There shall also be added to the rental price those applicable Fees & Surcharges described in Rule 5.5.106(a),(b),(c) for rentals pursuant to fourth priority Rule 5.4.101(d) and rentals to non-spaceholders pursuant to Rule 5.2.104 an impact fee to mitigate the computed impacts under Rule 7 from such rentals, payable as follows: The exact amount which is to be set and paid when the full impacts of such rentals, based upon the following year's Common Pool rental price, are determined under said Rule 7, including all additional fees and surcharges. Payment shall then be due and payable on or before 60 days from the day of allocation. Failure of a non-spaceholder to timely pay the fees identified above, shall result in the non-spaceholder's ineligibility to rent water in the future. Such failure to pay shall also subject the non-spaceholder to such legal actions as allowed under state law in the collection of fees.

~~5.45.108~~ **Storage System Fill.** For purposes of **Rule Procedure 5.45** only, the storage system is considered full when all storage rights are filled in Jackson Lake, Palisades (except for powerhead), American Falls, and Island Park.

**5.56 Limitations.**

~~5.6.101~~ **Participant Rental:** A participant cannot rent water from the Common Pool if the participant is replacing storage space or water which has been evacuated due to an assignment to or private lease through the Water District 1 Rental Pool, unless an exception is granted by the Committee.

~~5.6.102~~ **Diversions and Places of use:** Common Pool rentals for uses or diversions in basins outside the District including (but not limited to) the Blackfoot River Basin 27, Portneuf River Basin 29, Raft River Basin 43, Salt River Basin 24, and Wood River Basin 37 are prohibited, excepting rentals pursuant to Rule 5.2.106.



## **PROCEURE ~~RULE~~ 6.0 PRIVATE LEASES**

- 6.1 **General.** All leases must be transacted through the rental pool. Only participants may lease storage to a Lessee subject to the provisions of these rules.
- 6.2 **Purposes.** Storage may be leased through the rental pool only for beneficial use purposes above Milner. A participant may not lease storage to a lessee and rent storage from the common pool in the same accounting year unless an exception is granted by the Rental Pool Subcommittee.
- 6.3 **Payment to Lessor.** The lessor shall receive one-hundred percent (100%) of the lease price.
- 6.4 **Fees & Surcharges.** There shall be added to the lease price the administrative fee and the Board surcharge.
- 6.5 **Non-Applicability to Common Pool.** Storage leased pursuant to this ~~rule~~ procedure does not count against the participant contribution volumes set forth in ~~Rule~~ Procedure 5.2.
- 6.6 **Recharge.** All storage used for the purpose of recharge must be transacted through the rental pool. Unless storage is rented pursuant to ~~Rule~~ Procedures 5.0 or 10.0, storage used for recharge, whether diverted by the storage spaceholder or another person, will be treated as a lease of storage.
- 6.7 **Idaho Water Resource Board (IWRB) Storage.** Notwithstanding the limitations set forth in ~~Rules~~ Procedures 6.1 and 6.2, the IWRB may lease its existing storage (up to 5,000 acre-feet) to Idaho Power and have it released past Milner for the purpose of mitigating minimum flows at Murphy. The administrative fee must be paid by the IWRB for any storage used for such purpose.
- 6.8 **Lease of Storage from Bureau Uncontracted Space.** Notwithstanding the limitations set forth in ~~Rules~~ Procedures 6.1 and 6.2, the Bureau may lease storage from its uncontracted space for flow augmentation as identified in Appendix III of the – Mediator’s Term Sheet of the 2004 Snake River Water Rights Agreement.
- 6.9 **Lease of Storage from Bureau Powerhead Space.** Notwithstanding the limitations set forth in ~~Rules~~ Procedures 6.1 and 6.2, the Bureau may lease storage from its powerhead space for flow augmentation as identified in III.C.7 of the Mediator’s Term Sheet of the 2004 Snake River Water Rights Agreement.

## **PROCEDURE ~~RULE~~ 7.0 IMPACTS**

- 7.1 **Determination.** In any year in which the storage rights in the reservoir system do not fill, the Watermaster will determine the actual computed impacts to spaceholders, if any, associated with the prior year’s rentals and leases. In making this determination, the Watermaster will use a procedure which identifies the following:
- (a) What each computed reservoir fill would have been had the previous year’s rentals and leases not taken place;
  - (b) The storage space from which rented or leased storage was actually supplied for the previous year’s rental or lease; and
  - (c) The amount of storage each spaceholder’s current allocation was reduced by the previous year’s rental or lease activities.

7.2 **Milner Spill.** There are no computed impacts resulting from the previous and current year's rentals or leases used prior to Milner spill ceasing when the use of those rentals or leases result in reducing the spill from the reservoir system prior to the current year's Date of Allocation, as determined by the Watermaster.

7.3 **Impacts to Participants due to Rentals from the Common Pool (excluding assignments)**

~~7.3.101~~ ~~Payments to Impacted Participants Using Impact Fees.~~ Participants whose storage allocation has a computed impact from the prior year's rental of storage from the common pool, excluding assignments, shall first receive payment from impact fees collected pursuant to Rule 5.5.107 from the previous year's fourth priority rentals. The amount of impact fees disbursed to impacted participants will be proportional to the total common pool rental, including flow augmentation rentals that occurred during the prior year:

$$\text{Impact Fee Payment} = (\text{Isp} * \text{RP}) * (\text{Fp}/\text{Cp})$$

~~Isp = Participants computed impacted space in current year~~

~~RP = Rental Price in current year~~

~~Fp = Fourth priority rentals in prior year~~

~~Cp = Total common pool rentals (including flow augmentation) in prior year~~

~~Payment to spaceholders for the impacts by non spaceholders pursuant to 7.3.101 shall be paid from the balance remaining in the impact fund after payments are made pursuant to 7.3.102, which shall then be reimbursed pursuant to Rule 5.5.107.~~

7.3.101~~2~~ **Remaining Impact Payment.** Participants whose storage allocation has a computed impact from the prior year's rental of storage from the common pool; excluding assignments, will also receive payment from the Impact Fund (in addition to the Impact Fee Payment pursuant to Rule 7.3.101) equal to the lesser value of the two following formulas:

$$\text{Remaining Impact Payment} = [(\text{Isp} * \text{RP}) - \text{Impact Fee Payment}] \text{ or } [1/2 \text{ IF} * (\text{Isp}/\text{Ispt}) - \text{Impact Fee Payment}]$$

Isp = Participant's computed impacted space in acre-feet

RP = Rental Price

IF = Impact Fund

Ispt = Total of all Participants' computed impacted space in acre-feet

7.3.101~~3~~ **Timing of Payment.** Impact payments, which will be based on preliminary data, will be made to participants on or before July 15.

- 7.4 **Impacts to Non-Participants due to Rentals from the Common Pool (excluding assignments).** If the prior year's rental of storage from the common pool caused computed impacts to non-participants as determined by the Watermaster, the current year's Common Pool shall be reduced to supply such impacts to non-participants (at no cost to non-participants) prior to providing any rental under the priorities of ~~Rule~~ Procedure 5.34.101.
- 7.5 **Impacts to Spaceholders due to all other leases and assignments.** To avoid impacts to spaceholders pursuant to leases under ~~Rules~~ Procedures 5.3, 6, 8, and 9.3, and 10.0, in years when storage is not spilled past Milner, a lessor's and assignor's storage allocation shall be reduced to ensure all non-lessor and non-assignor spaceholders receive a 100% fill to their storage allocations ahead of allocations to space evacuated to supply previous year leases and assignments. If the amount of storage in the reservoir system exceeds the amount necessary to allocate 100% fill to non-lessor and non-assignor space but is insufficient to allocate 100% fill to all system spaceholders, allocations to lessors' and assignors' space shall occur in the following priorities:
- (a) Assigned storage rental under ~~Rule 5.6~~ Procedure 10.0, private leases above Milner under Procedure 6.0, and IWRB storage used for mitigating minimum flows at Murphy under ~~Rule~~ Procedure 6.7. This reallocation will only occur in the year following the lease of storage.
  - (b) Bureau uncontracted storage under ~~Rule~~ Procedure 6.8 until the lessor's affected space fills.
  - (c) Supplemental Pool leases under ~~Rule~~ Procedure 8.0 until the lessor's affected space refills.
  - (d) Bureau Powerhead storage under ~~Rule~~ Procedure 6.9 shall be the last space to refill after all other space in reservoirs in Water District 1 until the lessor's affected space fills as identified in III.C.7.c. of the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement.

#### **PROCEDURE ~~RULE~~ 8.0. SUPPLEMENTAL POOL**

- 8.1 **Purpose.** To provide a voluntary mechanism for the lease of storage water below Milner for hydropower generation within the state of Idaho when storage water supplies, as a result of hydrologic, climate and other conditions, are sufficient to satisfy above Milner uses and Water District 01 commitments for flow augmentation. A supplemental pool shall be created in order to mitigate for computed impacts associated with leases below Milner, consistent with the Idaho Water Resource Board's policy to establish an effective water marketing system consistent with state law and assuring the protection of existing water rights while accommodating the purchase, lease or conveyance of water for use at Idaho Power's hydroelectric facilities, including below Milner Dam.

- 8.2 **Annual Authorization.** In order to provide the opportunity to lease water to generate funding of aging infrastructure projects without impacting individual spaceholder fill, storage may be leased through the Supplemental Pool for the purposes described herein. However, no storage may be leased through the supplemental pool until the Committee on or after April 1 of each year authorizes use of the pool and the Committee is satisfied that the goals and terms of the Mediator’s Term Sheet of the 2004 Snake River Water Rights Agreement are met to provide sufficient flow augmentation supplies for the year or that storage to be released past Milner will count toward flow augmentation.
- (a) Mitigation Inc. shall have the right to lease up to the first 10,000 ac-ft of supplemental pool water storage under Rule Procedure 8.0, as approved annually by the Committee ~~at the first Committee of Nine meeting in April~~. Mitigation Inc. shall provide to the Committee a report summarizing the expenditure of revenue from the annual lease(s) by December 31, 2023. If the Committee determines that the preference granted Mitigation Inc. is no longer justified, the Committee may terminate said preference. The preference granted Mitigation Inc. pursuant to this Rule Procedure shall sunset on December 31, 2029. The 10,000 ac-ft preference shall only be applied once per year.
- (b) Additional leases of storage in excess of the amount provided in Procedure 8.2(a) ~~10,000 ac-ft~~ may be authorized annually by the Committee pursuant to Rule Procedure 8.0. ~~If Mitigation Inc. supplies 10,000 ac-ft to the supplemental pool pursuant to 8.2(a),~~ Mitigation Inc. shall be permitted to supply a pro-rata share of any additional amount made available to the supplemental pool exceeding the initial 10,000 ac-ft in Procedure 8.2(a). If Mitigation Inc. does not supply storage ~~10,000 ac-ft~~ pursuant to Procedure 8.2(a), Mitigation Inc. shall be permitted to supply a pro-rata share of its storage to the supplemental pool along with other spaceholders supplying storage to the supplemental pool.
- 8.3 **Quantity and Price Determinations.**
- 8.3.101 *Quantity Determination.* The maximum quantity of storage authorized to be leased through the supplemental pool shall be determined annually by the Committee taking into account the advice and recommendation of the Rental Pool Subcommittee, together with current and forecasted hydrological conditions and estimated demand on the rental pool for above Milner uses.
- 8.3.102 *Price Determination.* The Committee shall authorize the leasing of water, including price pursuant to Rule Procedure 8 after taking into account spaceholder needs and current market conditions for power generation. There shall be added to the lease price the board surcharge and not to exceed a \$1.80 per acre-foot administrative fee associated with the development and implementation of the supplemental pool, assessed on the total quantity of storage set forth in any lease application approved or conditionally approved under Rule Procedure 8.4.
- 8.3.103 *Subsequent Quantity and Price Determinations.* If within the same accounting year, the Committee subsequently determines based on the criteria set forth in Rule Procedure 8.3.101 that additional opportunities exist for utilizing the use of water within Idaho through the supplemental pool consistent with Rule Procedure 8.1, it shall designate such additional maximum quantity authorized to be leased through the supplemental pool and identify a separate lease price for such additional quantity pursuant to Rule Procedure 8.3.102.

- 8.4 **Application to Lease Storage from the Supplemental Pool.**
- 8.4.101 Applications to lease storage from the supplemental pool for hydropower purposes shall be made upon forms approved by the Watermaster and shall include:
- (a) The amount of storage sought to be leased; and
  - (b) The lease price with associated fees as identified by the Committee under ~~Rule~~ Procedure 8.3.102;
  - ~~(c) The point of diversion identified by legal description and common name; and~~
  - ~~(d) A description of the place of use.~~
- 8.4.102 *Application Acceptance.* Applications are not deemed accepted until received by the Watermaster together with the appropriate fees required under ~~Rule~~ Procedure 8.3.102.
- 8.4.103 *Application Approval.* An application accepted under ~~Rule~~ Procedure 8.4.102 shall be approved after the Watermaster has determined that the application is in compliance with these procedures and sufficient storage will be available from the supplemental pool to provide the quantity requested in the application; provided, however, if the date of publication has not yet occurred, approval of the application shall be conditioned on the ability of spaceholders who have contracted to lease storage through the supplemental pool to have a sufficient storage allocation during the accounting year to satisfy their contracts approved under ~~Rule~~ Procedure 8.5.104. Upon approval or conditional approval of the application, the fees collected from the applicant shall be non-refundable to the extent of the total quantity of storage approved or conditionally approved in supplemental pool lease contract(s) under ~~Rule~~ Procedure 8.5.104. The Watermaster shall provide notice of such approval.
- 8.4.104 *Deadline for Accepting Applications.* All applications to lease storage from the supplemental pool must be accepted by the Watermaster pursuant to ~~Rule~~ Procedure 8.4.102 not later than October 31 in order for the storage identified in such applications to be accounted for as having been diverted as of October 31 of the same year. Applications accepted after October 31 will be accounted for from storage supplies in the following calendar year, unless an exception is granted by the Rental Pool Subcommittee.
- 8.5 **Supplemental Pool Supply.**
- 8.5.101 *Notice to Spaceholders of Opportunity to Lease Storage through the Supplemental Pool.* The Watermaster shall provide notice of the supplemental pool on the Water District 1 website, which shall include the following information:
- (a) The maximum quantity of storage authorized to be leased through the supplemental pool;
  - (b) The lease process, including price and deadlines as authorized by the Committee;
  - (c) Instructions for spaceholders interested in leasing storage through the supplemental pool, including instructions for executing a standardized supplemental pool lease contract; and
  - (d) The deadline, as set by the Committee, for the Watermaster to receive supplemental pool lease contracts from spaceholders interested in leasing storage through the supplemental pool.

- 8.5.102 *Supplemental Pool Lease Contracts.* Spaceholders interested in leasing storage through the supplemental pool shall execute a standardized supplemental pool lease contract, which shall be provided by the Watermaster and include provisions for the following:
- (a) Limit eligibility to lease storage through the supplemental pool only to spaceholders who qualify as participants under ~~Rule~~ [Procedure](#) 2.27;
  - (b) The quantity sought to be leased by the spaceholder may be any amount, except that the total amount of storage leased pursuant to ~~Rule~~ [Procedure](#) 8 may not exceed either the maximum quantity set by the Committee under ~~Rule~~ [Procedure](#) 8.3.101 or 10% of the spaceholder's total reservoir system space, unless an exception is approved by the Rental Pool Subcommittee;
  - (c) The 10% limitation described in 8.5.102(b) does not apply to the first 10,000 ac-ft supplied by Mitigation Inc. under ~~Rule~~ [Procedure](#) 8.2(a);
  - (d) The quantity actually leased by the spaceholder may be reduced depending upon the number of spaceholders who elect to lease storage through the supplemental pool as provided in ~~Rule~~ [Procedure](#) 8.5.103;
  - (e) That, in the event the spaceholder elects to sign a standard pool lease contract before the date of publication, the spaceholder assumes the risk that its storage allocation may be less than the spaceholder anticipated; and
  - (f) Notice to the spaceholder that if the spaceholder's lease through the supplemental pool causes computed impacts, the mitigation required under ~~Rule~~ [Procedure](#) 8.7 will result in an amount of the spaceholder's space, not to exceed the quantity of storage leased by the spaceholder, being assigned a junior priority which may not fill for multiple consecutive years, an accounting commonly referred to as "last to fill."

8.5.103 *Distribution of Storage to the Supplemental Pool.* If, following the deadline for receipt of executed supplemental pool lease contracts, the Watermaster determines that the total quantity of storage sought to be leased through the supplemental pool exceeds the quantity limitation established under ~~Rule~~ [Procedure](#) 8.3, then the Watermaster shall reduce the quantity of each supplemental pool lease contract to a pro rata share based on the amount of storage sought to be leased by each spaceholder. The Watermaster shall amend the supplemental pool lease contract(s) to reflect any reduced quantity required by this provision.

8.5.104 *Lease Contract Approval.* Following receipt of a supplemental pool lease contract, the Watermaster shall determine whether the contract is in compliance with these procedures, and, if so, shall approve the same; provided, however, if the date of publication has not yet occurred, approval of the contract shall be conditioned on the spaceholder having a sufficient storage allocation during the accounting year to satisfy the contract.

8.6 **Notice of Contract Approval and Payment to Lessors.** The lessors shall receive one-hundred percent (100%) of the lease price apportioned according to the quantity of storage each lessor leased through the supplemental pool. The Watermaster shall notify spaceholder(s) who submitted supplemental pool lease contracts of the approved amount and distribute the funds to the lessors within 30 days following approval or conditional approval of an application under ~~Rule~~ [Procedure](#) 8.4.103.



- 8.7 **November 1 Carryover Unaffected.** For purposes of determining the amount of storage available for flow augmentation under ~~Rule~~ Procedure 5.2.105(a), storage leased through the supplemental pool shall not affect the November 1 carryover quantity on Table 1.

**PROCEDURE ~~RULE~~ 9.0 STORAGE ALLOCATED TO PALISADES WATER USERS, INC. (PWUI)**

- 9.1 **Background and Purpose.** PWUI is an entity originally organized at the specific request of the Bureau to group, under one entity, all individual water users who applied for an allocation of Palisades Reservoir storage because Reclamation's policy at that time was that it would not enter into repayment contracts with individual water users. PWUI does not own natural flow water rights, has no designated service area, and does not own a water delivery system. Instead, PWUI shareholders call for delivery of water allocated to their shares through their own delivery systems or the systems of other irrigation entities and have historically been able to change the location of PWUI storage deliveries upon simple notification to the District. The shares do not describe specific property where storage allocated to such shares are used. One share of PWUI stock is equivalent to one acre-foot of PWUI space in Palisades Reservoir, and allocations of water to PWUI shareholders are made upon that basis. The provisions of Rule 9.0 are included herein to clarify, between PWUI and the District, how to properly categorize the delivery of PWUI storage to various points of delivery.
- 9.2 **Delivery of PWUI Storage Water.** Storage allocated to PWUI shares shall not be considered a private lease under ~~Rule~~ Procedure 7.56 in the following circumstances:
- 9.2.101 The delivery of storage to an irrigation delivery system where the PWUI shareholder has an ownership interest or leasehold interest in property capable of receiving delivery of water through such system.
  - 9.2.102 The delivery of storage allocated to a PWUI shareholder which is assigned to another PWUI shareholder for an amount up to the assignee's unfilled PWUI allocation for the Accounting Year.
  - 9.2.103 The delivery of storage allocated to PWUI's treasury stock provided to a PWUI shareholder.
- 9.3 **Private Leases of PWUI Storage Water.** Storage allocated to PWUI shares shall be considered a private lease under ~~Rule~~ Procedure 7.56 and subject to impacts under Rule 7.6 in the following circumstances:
- 9.3.101 The delivery of storage allocated to PWUI's treasury stock provided to a non-PWUI shareholder for any purpose.
  - 9.3.102 The delivery of storage allocated to a PWUI shareholder which is assigned to another PWUI shareholder for an amount more than the assignee's unfilled PWUI allocation for the Accounting Year.
  - 9.3.103 The delivery of storage allocated to a PWUI shareholder provided to a non-PWUI shareholder for any purpose.
  - 9.3.104 The delivery of storage to a PWUI shareholder which is used for recharge.

- 9.4 **Applicability of Rule 5.56 To PWUI Storage.**
- 9.4.101 Rule 5.56 shall apply to private leases of PWUI storage described in ~~Rule Procedure~~ 9.3.101.
- 9.4.102 Subject to ~~Rule Procedure~~ 9.4.103, the Committee hereby grants PWUI an exception from the provisions of ~~Rule Procedure~~ 5.56 such that PWUI shall not be prohibited from leasing water from the Common Pool because of private leases by PWUI shareholders under ~~Rules Procedures~~ 9.3.102 through 9.3.104.
- 9.4.103 Water leased from the Common Pool by PWUI under Rule 9.4.102 shall not be allocated to or used by PWUI shareholders who engage in private leases described under ~~Rules Procedures~~ 9.3.102 through 9.3.104.
- 9.5 **Allocation of Impacts to PWUI.** The allocation of impacts described in ~~Rule Procedure~~ 7.56 of these procedures for private leases described under ~~Rule Procedure~~ 9.3 shall be made to PWUI as the spaceholder. PWUI shall thereafter internally allocate the impacts to the individual PWUI shareholders who participate in private leases described under ~~Rules Procedures~~ 9.3.102 through 9.3.104.
- 9.6 **Information Provided to District.** PWUI shall provide sufficient information to the District to allow the District to verify PWUI's characterization of the assignment of PWUI storage under ~~Rule Procedure~~ 9.0.
- 9.7 **Assignment of PWUI Shares to Canal Headings.** PWUI shareholders shall assign its shares to the canal heading where such PWUI shareholder is most likely to request delivery of storage. Water District 1 shall only account for the delivery of PWUI storage when (1) notified by the PWUI shareholder that such shareholder is taking delivery of storage through a canal; or (2) the manager of a canal reports the delivery of PWUI storage to Water District 1.

## **PROCEDURE 10.0 ASSIGNMENT POOL**

- 10.1 Purpose. To provide a voluntary mechanism for participating spaceholders to assign a portion of their storage allocation to be made available for flow augmentation rentals below Milner and also to be made available for other rentals diverted above Milner, including storage rental conveyance and/or exchanges of storage from Water District #1 to other water district diversions that are not regulated by the Water District #1 Watermaster.
- 10.2 Assignors. Any participant may assign storage. An assignment of storage shall be made in writing on forms approved by the Watermaster.
- 10.3 Limitations. A participant may not assign storage and rent storage in the same accounting year unless an exception is granted by the Rental Pool Subcommittee.



## 10.4 Distribution of Assigned Storage.

### OPTION #1 for Rule 10.4 - (June 1<sup>st</sup> segregation date with priorities)

10.4.101 Dates of assignment. Storage assigned by participants on or before June 1 shall be rented on a pro-rata basis until all such storage assigned by June 1 has been purchased. Storage assigned from June 2 through November 30 shall be rented to purchasers after all storage assigned by June 1 has been rented and shall be distributed in the order assignments are received by the District. For example, all storage assignments received on June 2 shall be rented in their entirety before storage assigned on June 3, and all storage assignments received on June 3 will be rented in their entirety before storage assignments received on June 4, and so on.

10.4.102 Payment to Assignors. Each participant assigning storage on or before June 1 shall be paid a pro-rata share of all rental prices paid for assignment pool rental until 100% of the storage assigned on or before June 1 has been purchased. Each participant assigning storage after June 1 shall receive 100% of the purchase price for any of their assigned storage rented.

10.4.103 Rental Approval and Priority. Applications to purchase assigned storage may be submitted at any time after April 5 but will not be approved until beginning June 2. If total applications exceed total assignments on June 1, applications will be approved according to the following priorities:

- (a) First Priority. Rental for flow augmentation pursuant to Rule 10.6.
- (b) Second Priority. Water users that have purchased rental or leased storage from the Water District #1 Rental Pool for purposes above Milner in years prior to 2019.
- (c) Third Priority. All other applicants to purchase assigned storage diverted for purposes above Milner.

Applications to purchase assigned storage received after June 1 will be approved in the order received after all purchase applications received on or before June 1 have been satisfied and remaining assigned storage is available to satisfy purchase applications received after June 1.

10.4.104 Assignor Payments and Return of Unrented Assignment Storage. Assignors will be paid the total amount of rental prices collected for assignment rentals. Any unrented assigned storage will be returned to assignors' carryover at the end of the year.

10.4.105 Timing of Payments. Payments will be made to assignors in December of the year in which proceeds were collected.

**OPTION #2 for Rule 10.4 - (No segregation date and no priorities)**

10.4.101 *Dates of assignment.* Storage may be assigned by participants at any time from April 5 to November 30. Assignments will be rented in the order they are received. For example, all storage assignments received on April 5 shall be rented in their entirety before storage assigned on April 6, and all storage assignments received on April 6 will be rented in their entirety before storage assignments received on April 7, and so on.

10.4.102 *Payment to Assignors.* Each participant assigning storage that has been purchased will receive 100% of the rental price.

10.4.103 *Rental Approval.* Applications to rent (purchase) assigned storage may be submitted at any time after April 5 and will be approved in the order received in the Water District #1 Office as the assigned rental supply becomes available.

10.4.104 *Assignor Payments and Return of Unrented Assignment Storage.* Assignors will be paid the total amount of rental prices collected for assignment rentals. Any unrented assigned storage will be returned to the assignors' carryover at the end of the year.

10.4.105 *Timing of Payments.* Payments will be made to assignors in December of the year in which proceeds were collected.

**10.5 Applications to Purchase Assigned Storage for Uses above Milner.** Applications to rent storage from the assignment pool shall be made in writing on forms approved by the Watermaster.

**10.6 Applications to Purchase Assigned Storage for Flow Augmentation.** If the storage supplied from Table 1 for flow augmentation is insufficient to meet the needs described in the Mediator's Term Sheet of the 2004 Snake River Water Rights Agreement, the Committee may make available for flow augmentation rental any remaining storage in the assignment pool instead of providing common pool storage for flow augmentation described in Procedure 5.2.105(b).

**10.7 Rental Prices for Assigned Storage**

10.7.101 *Tier 6:* If the storage system fills, the rental price for purposes above Milner shall be \$30.00 per acre-foot.

10.7.102 *Tier 7:* If the storage system does not fill but storage is provided for flow augmentation pursuant to Procedure 5.2.105(a), the rental price for purposes above Milner shall be \$40.00 per acre-foot.

10.7.103 *Tier 8:* If the storage system does not fill and no flow augmentation water is provided pursuant to Procedure 5.2.105(a), the rental price for purposes above Milner shall be \$50.00 per acre-foot.

10.7.104 *Determination of Tier 6, 7 or 8 Rental Price:* Unless the storage system has filled, the Watermaster shall designate on or before April 5 either Tier 7 or Tier 8 as the rental price for above-Milner rentals. If at any time during the same accounting year, the storage system should subsequently fill, the Watermaster shall designate Tier 6 as the rental price for above-Milner rentals and refund any excess rental fees within 30 days after the date of publication.

10.7.105 *Tier 9:* The rental price for storage rented for flow augmentation shall be \$???? per acre-foot.

10.7.106 *Fees & Surcharges.* There shall be added to the rental price for all rentals the Board surcharge and administrative fee, resulting in the following summed amounts charged for common pool rentals for the various tiers described in Procedures 10.7.101 through 10.7.105:

- (a) Tier 6: \$30.00 + \$3.00 + \$1.30 = \$34.30
- (b) Tier 7: \$40.00 + \$4.00 + \$1.30 = \$45.30
- (c) Tier 8: \$50.00 + \$5.00 + \$1.30 = \$56.30
- (d) Tier 9: \$???? + \$??? + \$1.30 = \$????

10.8 **Application Approval and Deliveries to Diversions in Water Districts other than Water District #1.** Applications submitted with the appropriate forms, rental prices, fees, and surcharges for purchasing assignment pool storage shall be approved according to Procedure 10.4.103 as assignment pool storage becomes available. However, application approval does not guarantee delivery and/or exchange of assignment pool storage to diversions that are not measured or regulated by Water District #1 unless the daily diversion of rental storage is reported by the Watermasters of those districts to the Water District #1 Watermaster to facilitate the proper accounting of storage rental exchanges and deliveries to water districts outside of Water District #1.

10.9 **Rental Refunds.** Funds collected for approved rental applications will not be refunded regardless of whether or not the rental storage was used by the assignee. Applications that were not approved will have their application monies refunded in December of the year in which the proceeds are collected.

# APPENDIX

TABLE 1: Water District 1 Stipulated Flow Augmentation Rental Chart

October 31st Midnight Carryover 1000s AF	April 1 to Sept 30 Heise Forecast (1000s AF)				
	0	2,920	3,450	4,208	5,042
	to	to	to	to	or
	2,919	3,449	4,207	5,041	greater
0 - 99	0	0	0	150000	185000
100 - 199	0	0	0	150000	185000
200 - 299	0	0	0	150000	185000
300 - 399	0	0	0	150000	185000
400 - 499	0	0	0	150000	185000
500 - 599	0	0	0	150000	185000
600 - 699	0	0	60000	150000	185000
700 - 799	0	0	60000	150000	185000
800 - 899	0	0	60000	150000	185000
900 - 999	0	60000	60000	150000	185000
1000 - 1099	0	60000	60000	150000	185000
1100 - 1199	0	60000	60000	150000	185000
1200 - 1299	0	60000	60000	150000	185000
1300 - 1399	0	60000	60000	150000	185000
1400 - 1499	0	60000	60000	150000	185000
1500 - 1599	0	100000	150000	185000	185000
1600 - 1699	0	100000	150000	185000	185000
1700 - 1799	0	100000	150000	185000	185000
1800 - 1899	0	100000	150000	185000	185000
1900 - 1999	0	100000	150000	185000	185000
2000 - 2099	0	100000	150000	185000	185000
2100 - 2199	0	100000	150000	205000	205000
2200 - 2299	0	100000	150000	205000	205000
2300 - 2399	0	100000	150000	205000	205000
2400 - 2499	0	100000	150000	205000	205000
2500 - 2599	0	100000	150000	205000	205000
2600 - 2699	0	185000	185000	205000	205000
2700 - 2799	0	185000	185000	205000	205000
2800 - 2899	0	185000	185000	205000	205000
2900 - 2999	0	185000	185000	205000	205000
3000 - 3099	60000	185000	185000	205000	205000
3100 - 3199	60000	185000	185000	205000	205000
3200 - 3299	100000	185000	185000	205000	205000
3300 - 3399	100000	185000	185000	205000	205000
3400 - 3499	100000	185000	185000	205000	205000
3500 - 3599	100000	185000	185000	205000	205000
3600 - 4000	100000	185000	185000	205000	205000

**WATER DISTRICT #1 RENTAL POOL**  
**APPLICATION TO RENT STORAGE FROM THE COMMON POOL SUPPLY**

\_\_\_\_\_ (applicant) hereby requests to rent \_\_\_\_\_ (acre-feet) of storage from the Water District #1 Rental Pool with the enclosed rental fees of \$ \_\_\_\_\_ for the irrigation season 20\_\_\_\_. The acceptance and approval of this rental request by the Water District #1 Watermaster is subject to the adopted Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765.

Description of Point of Diversion:

Name of River or Stream from which rental is diverted: \_\_\_\_\_

Canal or Pump Name & location: \_\_\_\_\_

Place of Use description: \_\_\_\_\_

Water Right Appurtenant to Lands: \_\_\_\_\_

If the application is for an amount greater than 100 acre-feet for irrigation purposes, the Applicant, by checking this box, certifies that the place-of-use for this rental storage has a primary irrigation water right appurtenant to said land and was legally irrigated prior to the 2019 Irrigation year...or....had approved storage rentals or private leases applied to this place-of-use in any year from 2006 through 2018. Failure to meet these conditions contained in Rule 3.4 of the Rental Pool Procedures may be grounds for denying the application.

Applicant Signature and Address:

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

If the applicant is pumping water from a canal that diverts water from the Snake River or its tributary and is applying to rent 100 ac-ft or less conveyed through the canal to the applicant's point of diversion, pursuant to Rule 5.2.104, the applicant must submit written consent from the canal operator to have the rental storage delivered through the canal.

Canal Operator Name and Title: \_\_\_\_\_

Canal Operator Consent Signature: \_\_\_\_\_

=====  
(official use only)

Date Application Accepted by Watermaster: \_\_\_\_\_

Application Approved by Watermaster: \_\_\_\_\_ YES \_\_\_\_\_ No

Watermaster Signature: \_\_\_\_\_

**WATER DISTRICT #1 RENTAL POOL**  
**APPLICATION TO RENT STORAGE FROM THE ASSIGNMENT POOL SUPPLY**

\_\_\_\_\_ (applicant) hereby requests to rent \_\_\_\_\_ (acre-feet) of storage from the Water District #1 Rental Pool with the enclosed rental fees of \$\_\_\_\_\_ for the irrigation season 20\_\_\_\_. The acceptance and approval of this rental request by the Water District #1 Watermaster is subject to the adopted Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765.

Description of Point of Diversion:

Name of River or Stream from which rental is diverted: \_\_\_\_\_

Canal or Pump Name & location: \_\_\_\_\_

Place of Use description: \_\_\_\_\_

Water Right Appurtenant to Lands: \_\_\_\_\_

If the application is for irrigation purposes, the Applicant, by checking this box, certifies that the place-of-use for this leased storage has a primary irrigation water right appurtenant to said land and was legally irrigated prior to the 2019 Irrigation year...or....had approved storage rentals or private leases applied to this place-of-use in any year from 2006 through 2018. Failure to meet these conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

Applicant Signature and Address:

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

=====

*(official use only)*

*Date Application Accepted by Watermaster:* \_\_\_\_\_

*Application Approved by Watermaster:* \_\_\_\_\_ YES \_\_\_\_\_ No

*Watermaster Signature:* \_\_\_\_\_

**WATER DISTRICT #1 RENTAL POOL  
TWO-PARTY PRIVATE LEASE AGREEMENT**

\_\_\_\_\_ (lessor) agrees to lease \_\_\_\_\_ acre-feet of storage to  
\_\_\_\_\_ (lessee) for the 20\_\_\_\_ irrigation season at a price of  
\$\_\_\_\_\_ according to the rules and regulations contained in the Water District #1 Rental Pool Procedures.

An Idaho Water Resources Board surcharge (10% of the purchase price) plus a \$1.30 per acre-foot administrative fee must be received by Water District #1 prior to the approval of the storage lease).

If the reservoir storage system fails to fill in the season following the year leased, the lessor's storage allocation shall be reduced by the amount leased to offset any impacts to other spaceholders' storage accruals according to the approved Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765. The lessor understands the net effect of this rule is to make an amount of the lessor's space (equal to the amount leased) last-to-fill in the reservoir system for the irrigation season following the lease.

If the lease is for irrigation purposes, the Applicant, by checking this box, certifies that the place-of-use for this leased storage has a primary irrigation water right appurtenant to said land and was legally irrigated prior to the 2019 Irrigation year...or....had approved storage rentals or private leases applied to this place-of-use in any year from 2006 through 2018. Failure to meet these conditions contained in Rental Pool Procedure 3.4 may be grounds for denying the application.

\_\_\_\_\_  
Lessor Signature                      Date                      Title, Canal Company

\_\_\_\_\_  
Lessee Signature                      Date                      Canal Company or Diversion Name

=====  
(official use only)

Date Lease Accepted by Watermaster: \_\_\_\_\_

Watermaster Signature: \_\_\_\_\_





**WATER DISTRICT #1 RENTAL POOL**

**APPLICATION FOR SPACEHOLDER TO ASSIGN STORAGE TO THE ASSIGNMENT POOL SUPPLY**

\_\_\_\_\_ (applicant) holds certain storage entitlements in Upper Snake reservoirs for the primary purpose of irrigation. Based upon evaluation of potential needs for the current year, we have determined that a portion of our storage supply will not be required for our primary purpose of irrigation. We therefore wish to assign \_\_\_\_\_ acre-feet of water/space to the Water District #1 Rental Pool supply for the irrigation year 20\_\_\_\_. We understand that the rental of this water is subject to the adopted Water District #1 Rental Pool Procedures pursuant to Idaho Code Section 42-1765.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

Print Assignor Name and Title: \_\_\_\_\_

Assignor Signature: \_\_\_\_\_

Assignor Address: \_\_\_\_\_

\_\_\_\_\_

=====

*(official use only)*

*Date Assignment Accepted by Watermaster:* \_\_\_\_\_

*Watermaster Signature:* \_\_\_\_\_

**STANDARD SUPPLEMENTAL RENTAL POOL LEASE CONTRACT**

THIS AGREEMENT, Entered this \_\_\_\_\_ day of \_\_\_\_\_ (month), by and between \_\_\_\_\_, of \_\_\_\_\_, (name of spaceholder) (address) hereinafter called "Lessor" and, **WATER DISTRICT 01, on behalf of the COMMITTEE OF NINE RENTAL POOL**, of 900 N. Skyline Dr., Suite A, , Idaho Falls, Idaho 83402, hereinafter called "Rental Pool", Lessor agrees to make available for lease below Milner in the Committee of Nine's Supplemental Rental Pool the total sum of \_\_\_\_\_ acre-feet of Lessor's storage water accrued to Lessor's storage space owned by Lessor within Water District 01 (hereinafter "Authorized Acre Feet"). Lessor shall authorize its Authorized Acre Feet to be leased for not less than a net lease price to Lessor of \$\_\_\_\_\_ per acre foot.

**WITNESSETH:**

Whereas, the Committee of Nine has adopted Rule 8 to its Rental Pool Procedures which sets forth the terms and conditions under which Lessor may contract with the Rental Pool in order to lease a certain set amount of Lessor's accrued storage in any given year where Lessor is a "participant" under the Rental Pool Procedures and where the Rental Pool has officially authorized storage water to be leased below Milner Dam pursuant to said Rules 7.5 and 8 in a Supplemental Rental Pool; and

Whereas, notice has been provided to all spaceholders of the Committee of Nine's approval of a Supplemental Rental Pool for the calendar year \_\_\_\_\_; and

Whereas, Lessor has read and understands the terms and conditions of Rules 7.5 and 8 of the Rental Pool Procedures; and

Whereas, notwithstanding the restrictions on refill required in Rule 7.5 of the Rental Pool Procedures, Lessor is nevertheless willing to lease Lessor's accrued storage water below Milner Dam in the amounts specifically described below.

Now Therefore, it is understood and agreed:

1. This Standard Supplemental Rental Pool Lease Contract (hereinafter "Lease Contract") is governed by the current Water District 01 Rental Pool Procedures including Rules 7.5 and 8.
2. Lessor hereby agrees and represents that it is a participant pursuant to the definition of "participant" within the Rental Pool Procedures.
3. Pursuant to the Rental Pool Procedures and particularly pursuant to Rule 8 of said Procedures, the Rental Pool is hereby authorized to enter into a contract with Idaho Power Company (hereinafter "IPCO") to lease up to the full amount of Lessor's Authorized Acre Feet.
4. Lessor understands and agrees that the amount of its storage water leased up to Lessor's Authorized Acre Feet, as well as the net price to be paid to Lessor, is fully governed by Rule 8 of the Rental Pool Procedures and the price negotiated with IPCO by the Rental Pool.

5. Lessor agrees that upon execution of this Lease Contract, Lessor shall not be entitled to withdraw or reduce Lessor's Authorized Acre Feet of storage water and the Rental Pool shall be fully authorized to enter into a subsequent lease with IPCO which shall assign to IPCO up to the total Authorized Acre Feet of this Lease Contract along with other lessors and to allow IPCO to enforce the terms of this Lease Contract against Lessor for any default caused by Lessor. It is being understood and agreed that the Rental Pool shall be authorized to release Lessor's Authorized Acre Feet of storage water to IPCO at any time requested by IPCO, at its option, provided that proper payment is made to the Rental Pool and the release date requested is timely made during the calendar year in which the lease occurs according to the Rental Pool Procedures and the Watermaster of Water District 01.

6. In the event either party hereto shall be required to employ an attorney for the enforcement of this Lease Contract, with or without suit, the defaulting party agrees to pay the prevailing party's reasonable attorneys' fees. This shall include the costs incurred by either party to send any default notice to a defaulting party.

7. This Lease Contract is not only binding upon the parties hereto, but upon their respective successors, heirs, administrators and assigns (including those rights to be assigned to IPCO as provided above).

8. This Lease Contract shall be governed by and interpreted under the laws of the State of Idaho.

9. This Lease Contract, related Rental Pool Procedures and the intended subsequent lease with IPCO specifically contemplated by this Lease Contract constitute and contain the entire agreement of the parties and supersedes and merge all other prior understandings and/or agreements between the parties, if any, whether verbal or written.

IN WITNESS WHEREOF, the parties have executed this Lease Contract.

“LESSOR”

\_\_\_\_\_  
(Lessor's Signature, Title)

\_\_\_\_\_  
(Canal Name or Spaceholder)

“RENTAL POOL”

Approved Amount: \_\_\_\_\_

\_\_\_\_\_  
By: Tony Olenichak Watermaster