

MEMORANDUM

Date: June 30, 2008
To: Aaron Marshall
From: Phil Rassier PJZ
Re: Water Supply Bank Rental Application Review

Question

You have requested guidance on the question of whether the Director of the Department of Water Resources (Director) has authority under the Water Supply Bank Rules of the Idaho Water Resource Board to approve successive rental terms that cumulatively exceed a period of five (5) years.

Analysis

Water Supply Bank Rule 30.05 (IDAPA 37.02.03.030.05) provides:

The Director is authorized to rent water rights offered by the Board from the Board's water supply bank for a period up to five (5) years, but shall submit applications for purchase, or rental for a period of more than five (5) years to the Board for action. The Director will advise the Board on applications which require Board approval under Rule Subsection 025.06 whether he can approve the application in whole or in part or with conditions to comply with Section 42-1763, Idaho Code.

Water Supply Bank Rule 30.06 (IDAPA 37.02.03.030.06) provides:

The Board will review applications for purchase or which propose the rental of water rights for a duration of more than five (5) years, and may approve, approve with conditions or may reject the applications as the Board determines to best meet the purposes of Rule 1 and promote the interest of the people of the state of Idaho.

The question posed is whether Rule 30.05, which limits to five (5) years the term for which the Director may approve applications to rent water from the water supply bank, should also be construed to prohibit the Director from approving successive rental terms that cumulatively exceed a period of five (5) years. Rule 30.5 states that the Director "shall submit applications for purchase, or rental for a period of more than five (5) years to the Board for action." Similarly, Rule 30.06 provides that, "[t]he Board will review applications for purchase or which propose the rental of water rights for a duration of more than five (5) years."

Under the plain reading of Rules 30.05 and 30.06 of the Board's Water Supply Bank Rules, the Director is authorized to approve applications to rent water from the water supply bank for terms up to five (5) years. Neither rule contains any language indicating an intent to prohibit the Director from approving successive rental applications for the same water right that cumulatively exceed a period of five (5) years. Rather, the intent evident from a reading of the rules is to prohibit water right rentals from the bank that would commit use of the resource for periods of greater than five years without Board approval of a long-term lease, or successive opportunities for review by the Director for short-term leases.

Conclusion

Based upon the foregoing discussion, it is concluded that the Director is authorized under the Water Supply Bank Rules to approve successive rental terms that cumulatively exceed a period of five (5) years.