

The Committee of Nine has amended the Water District #1 Rental Pool Procedures creating a new “Supplemental Pool” (Rule 8.0) in addition to the “Common Pool”. Under the new Rule 8.0 added to the previous procedures, Water District #1 will notify spaceholders of when they have the opportunity to supply their storage to the Supplemental Pool after an approved request has been received from Idaho Power to rent storage below Milner. Spaceholders will be notified of the amount being requested, the price being paid, and the deadline for designating the amount of their storage (if any) they will make available to the Supplemental Pool for below-Milner rentals. Spaceholders should be aware that any of their storage rented from the Supplemental Pool will become **last-to-fill in the reservoir system in the year(s) following the rental until that space refills**. Moving rented space to last-to-fill ensures that spaceholders who choose not to supply water to the Supplemental Pool are not impacted by the refill of other spaceholders’ space evacuated to fill rentals below Milner.

ANNOUNCEMENT (7/5/2011): Idaho Power has submitted a request to lease 15,000 acre-feet from the Supplemental Pool that will pay \$13.82/acre-foot to spaceholders. Spaceholders choosing to supply a portion of their storage to the Supplemental Pool must complete the attached STANDARD SUPPLEMENTAL RENTAL POOL LEASE CONTRACT. These contracts completed by the spaceholders **must be received in the Water District #1 Office (900 N. Skyline, Idaho Falls, ID 83402) no later than 5:00 PM on July 12, 2011** in order to qualify for the Supplemental Pool leasing of this 15,000 acre-feet.

Water District #1 Staff are available to answer any questions concerning the application, storage rental, or any other inquiries related to the Supplemental Pool at 208-525-7171.

STANDARD SUPPLEMENTAL RENTAL POOL LEASE CONTRACT

THIS AGREEMENT, Entered this ____ day of _____, 201____, by and between _____, of _____, 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 either accrued or which shall become accrued to Lessor’s storage space owned by Lessor within Water Distric 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 \$ 13.82 per acre foot.

WITNESSETH:

Whereas, the Committee of Nine has adopted an amended 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 Rule 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 2011; and

Whereas, Lessor has read and understands the terms and conditions of Rule 8 of the Rental Pool Procedures, including but not limited to Rule 8.7 which states that any water leased pursuant to Rule 8 of the Rental Pool Procedures shall be reduced from Lessor’s storage allocation equal to the defined impacts “until the Lessor’s affected space fills under a priority junior to that required to fill Palisades powerhead space”; and

Whereas, notwithstanding the restrictions on refill required in Rule 8 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 as amended by Rule 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 Water Master 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”

By: Lyle Swank
Watermaster

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 flow augmentation. A supplemental pool shall be created in order to mitigate for 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 Required. 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 Bureau certifies that it has sufficient flow augmentation supplies for the year or that storage to be released past Milner will count toward flow augmentation.

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 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 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 8.3.101 that additional opportunities exist for utilizing the use of water within Idaho through the Supplemental Pool consistent with Rule 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 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;
- (b) the lease price with associated fees as identified by the Committee under Rule 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 8.3.102.

8.4.103 *Application Approval.* An application accepted under Rule 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 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 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 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 01 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 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 8 may not exceed either the maximum quantity set by the Committee under Rule 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 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 8.5.103;
- (d) 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

(e) Notice to the spaceholder that if the spaceholder's lease through the Supplemental Pool causes impacts, the mitigation required under Rule 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 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 8.4.103.

8.7 **Mitigation of Impacts.** If a lease of storage through the Supplemental Pool caused impacts, as determined by the Watermaster, the Lessor's storage allocation shall be reduced by an amount equal to such impacts, not to exceed the quantity of storage leased by the Lessor, and reallocated to mitigate impacts to affected spaceholders until the Lessor's affected space fills under a priority junior to that required to fill Palisades powerhead space.

8.8 **November 1 Carryover Unaffected.** For purposes of determining the amount of storage available for flow augmentation under Rule 5.2.105(a), storage leased through the Supplemental Pool shall not affect the November 1 carryover quantity on Table 1.