



Jeff Youtz
Director

Legislative Services Office Idaho State Legislature

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MEMORANDUM

TO: Senators PEARCE, Bair, Werk, and
Representatives STEVENSON, Shepherd, Pence

FROM: Katharine Gerrity- Principal Legislative Research Analyst

DATE: July 15, 2011

SUBJECT: Temporary Rule

IDAPA 20.03.15 - The Issuance of Geothermal Resource Leases - Temporary Rule - Docket No.
20-0315-1101

We are forwarding this temporary rule to you for your information only. No analysis was done by LSO. This rule is posted on our web site. Please call with any questions - 334-4845. Thank you.

Attachment: Temporary Rule

Mike Nugent Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

Don H. Berg, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 20 - DEPARTMENT OF LANDS

20.03.15 - THE ISSUANCE OF GEOTHERMAL RESOURCE LEASES

DOCKET NO. 20-0315-1101

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2011.

AUTHORITY: In compliance with Section 67-5224 Idaho Code and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (Board), Section 840, notice is hereby given that this agency has adopted a temporary rule. This action is authorized pursuant to Section 58-104(6), Idaho Code.

DESCRIPTIVE SUMMARY: Four changes were made to Title 47, Chapter 16, Idaho Code, in the 2011 legislative session. Those changes take effect July 1, 2011, but will be in conflict with the existing administrative rules. This temporary rule has the minimum changes required to implement the revised Section 47-1605, Idaho Code. These changes include extending lease terms up to 49 years, negotiating rent and royalty based on market rates, increasing lease size to cover an entire project, and setting bond amounts based on reasonable reclamation costs.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This rule is needed to ensure compliance with amendments to the governing statute and to confer a benefit.

FEE SUMMARY: No fee is being imposed by this rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this temporary rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov.

DATED this 18th day of May, 2011.

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THE FOLLOWING IS THE TEMPORARY RULE TEXT OF DOCKET NO. 20-0315-1101

030. TERM.

01. ~~Ten-Year~~ Lease **Term**. All leases ~~shall~~ **may** be for a ~~primary~~ term of ~~ten up to forty-nine (40-49)~~ years from the effective date of the lease. ~~The effective date of the lease shall be the first day of the month following Board approval.~~ ~~(9-3-91)~~**(7-1-11)T**

02. **Diligent Drilling**. If, at the expiration of the primary term of the lease, geothermal resources are not being produced or demonstrably capable of being produced from the leased land, but the lessee is actively engaged in drilling operations one thousand (1,000) feet or deeper, then the lease shall continue in force so long as drilling operations are being diligently and continuously prosecuted on the leased land or upon lands with which the leased land is unitized. Drilling operations shall be considered to be diligently and continuously prosecuted if not more than

one hundred twenty (120) days shall elapse between the completion or abandonment of one (1) well and the beginning of operations for the drilling of another well. For good cause shown, the director may extend the time for an additional period, not to exceed one hundred twenty (120) days. A written request must be received by the director at least ten (10) calendar days before the expiration of the initial one hundred twenty (120) day period.

~~(9-3-91)(7-1-11)T~~

03. Continuation of Lease. If geothermal resources are produced or utilized in paying quantities within the ~~primary~~ term of the lease or as extended under Subsection 030.02, that lease shall continue for so long thereafter as geothermal resources are produced or utilized in paying quantities, but the lease shall in no event continue for more than ~~forty-nine (49)~~ years after the end of the ~~primary initial~~ term. The lessee shall have a preferential right to a renewal of his lease for an ~~additional second forty (40) year~~ term ~~of up to forty-nine (49) years~~ upon such terms and conditions as the Board deems appropriate after notice and an opportunity to be heard, if at the end of the first ~~forty (40) year~~ term geothermal resources are produced or utilized in paying quantities; ~~provided, however, that the royalty during the second forty (40) year term shall not exceed fifteen percent (15%).~~ Production or utilization of geothermal resources in paying quantities shall be deemed to include the completion of one or more wells producing or capable of producing geothermal resources for delivery to or utilization by a facility or facilities not yet installed, but scheduled for installation.

~~(9-3-91)(7-1-11)T~~

04. Diligence in Utilization. Lessee shall use due diligence to market or utilize geothermal resources in paying quantities. If leased land is capable of producing geothermal resources in paying quantities, but production is shut-in, the lease shall continue in force upon payment of rentals for the duration of the ~~primary lease~~ term or five (5) years after shut-in, whichever is ~~longer~~ shorter. If the director determines that the lessee is proceeding diligently to acquire a contract to sell or to utilize the production or is progressing with installations needed for production, the lease shall continue in force for an additional five (5) years, upon payment of rentals, otherwise the lease may be terminated by the Board. The director shall continue to review shut-in leases every five (5) years until production and payment of royalties takes place or the lease is terminated by the Board for lessee's lack of diligence or surrendered by the lessee.

~~(9-3-91)(7-1-11)T~~

05. By-Products. A lease that has been extended by reason of production or utilization of geothermal resources and which has been determined by the director to be incapable of further commercial production and utilization may be further extended for five (5) years if one or more valuable by-products are produced in commercial quantities. The Board may extend the lease for one or more additional five (5) year terms upon such terms and conditions as the Board deems fit to allow continued production of one or more valuable by-products in commercial quantities.

(9-3-91)

031. -- 034. (RESERVED)

035. RENTALS.

01. Advance Annual Rental. Lessee shall pay to the state of Idaho in advance each year an annual rental for each acre or fraction thereof under lease. The annual rental for the first year of the term shall be due and payable and shall be received in the offices of the department in Boise, together with a lease agreement executed by lessee within thirty (30) days of the date of notice of approval or award. The department will notify the applicant or his representative designated in the application to lease by certified or registered mail of the Board's approval of a lease and specify the exact amount of rental due thereon and the bond requirement under Section 100. Failure to return an executed lease together with the first year rental and bond within thirty (30) days shall result in automatic rejection of the application without further action of the director or Board. Second year and subsequent rental payments must be received in the office of the department in Boise on or before the anniversary date of the lease. Failure to pay exact rental shall constitute grounds for immediate termination of the lease by the director who shall note the termination on the official records of the department.

(9-3-91)

02. Amount. Annual rentals for each acre or fraction thereof under lease shall be ~~as follows:~~ set by the Board through competitive bidding, negotiation, fixed amounts, formulas, or some any other method so long as it is a minimum of twenty-five (25) cents per acre.

~~(9-3-91)(7-1-11)T~~

~~a. One dollar (\$1) per acre for the first five (5) years;~~

~~(9-3-91)~~

- ~~b. Two dollars (\$2) per acre for the second five (5) years; (9-3-91)~~
~~c. Three dollars (\$3) per acre thereafter. (9-3-91)~~

036. ROYALTIES.

01. Royalty Payments. The lessee shall cause to be paid to the state of Idaho the following royalties on the value of geothermal production from the leased premises. The royalty rate shall be established by the Board based on the market value of the geothermal resources produced from the lands under lease. The royalties specified in geothermal leases shall be fixed in any manner by the state board of land commissioners, including but not limited to competitive bidding, negotiation, fixed amounts, or formulas. The following guidelines will be used for royalty rates not subject to competitive bidding: (9-3-91)(7-1-11)T

a. A royalty of ~~ten percent (10%)~~ between five percent (5%) and twenty percent (20%) of the amount or value of geothermal resources, or any other form of heat or energy excluding electrical power generation, derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee, unless used or consumed by lessee in his production operations; (9-3-91)(7-1-11)T

b. A royalty of ~~five percent (5%)~~ between two percent (2%) and fifteen percent (15%) of the amount or value of any associated by-product derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, including commercially demineralized water, except that no payment of a royalty will be required on such water if it is used in plant operation for cooling or in the generation of electric energy or otherwise. No royalty shall be paid for associated by-products used or consumed by lessee in his production operations. (9-3-91)(7-1-11)T

c. A royalty of two percent (2%) to five percent (5%) of gross receipts for sale of electrical power. (7-1-11)T

02. Calculation of Value. The value of geothermal production from the leased premises for the purpose of computing royalties shall be the following: (9-3-91)

a. The total consideration accruing to the lessee from the sale thereof in cases where geothermal resources are sold by the lessee to another party in an arms-length transaction; or (9-3-91)

b. The value of the end product attributable to the geothermal resource produced from a particular lease where geothermal resources are not sold by the lessee before being utilized, but are instead directly used in manufacturing power production, or other industrial activity; or (9-3-91)

c. When a part of the resource only is utilized by the lessee and the remainder sold, the sum of Subsections 036.02.a. and 036.02.b. immediately above. (9-3-91)

03. Notice of Discovery. Lessee shall within fifteen (15) days notify the director of the discovery upon the leased premises of geothermal resources before any such geothermal resources are used or removed for commercial purposes from the leased land or utilized thereon. (9-3-91)

04. Due Date. Royalties will be due and payable monthly in the office of the department in Boise on or before the last day of the calendar month following the month in which the geothermal resources and/or their associated by-products are produced and utilized or sold. (9-3-91)

05. Disposal of Geothermal Resources. The lessee shall file with the director within thirty (30) days after execution a copy of any contract for the disposal of geothermal resources from the lease. Reports of sales or utilization by lessee and royalty for each productive lease must be filed each month once production begins, even though production may be intermittent, unless otherwise authorized by the director. Total volumes of geothermal resources produced and utilized or sold, including associated by-products, the value of production, and the royalty due the state of Idaho must be shown. This report is due on or before the last day of the month following the month in which production was obtained and sold or utilized, together with the royalties due the state of Idaho. (9-3-91)

06. Measurement. The lessee shall measure or gauge all production in accordance with methods approved by the director. The quantity and quality of all production shall be determined in accordance with the standard practices, procedures and specifications generally used in industry. All measuring equipment shall be tested consistent with industry practice and, if found defective, the director will determine the quantity and quality of production from the best evidence available. (9-3-91)

07. By-Product Testing. The lessee shall periodically furnish the director the results of periodic tests showing the content of by-products in the produced geothermal resources. Such tests shall be taken as specified by the director and by the method of testing approved by him, except that tests not consistent with industry practices shall be conducted at the expense of the state of Idaho. (9-3-91)

08. Commingling. The director may authorize a lessee to commingle production from wells on his lease with production from other leases held by him or by other lessees subject to such conditions as he may prescribe, but lessee shall not do so without the director's approval. (9-3-91)

037. -- 039. (RESERVED)

040. SIZE OF A LEASABLE TRACT.

01. ~~Maximum Size.~~ ~~A geothermal resource lease will include all available state lands within a section, at time of lease issuance, with only lands from one (1) section allowed to be included in any one (1) lease. A geothermal resource lease on state lands will therefore be limited to six hundred and forty (640) acres, or one (1) Section, should the entire section be larger than six hundred and forty (640) acres.~~ **Surface Area.** Geothermal leases are not limited in surface area. The Board will determine the surface area of a lease after consultation with other state agencies and prospective lessees. The probable extent of a geothermal reservoir, the surface area needed for a viable project, and other relevant factors will be used to help determine lease surface area. (9-3-91)(7-1-11)T

02. Navigable Water Courses. Geothermal resources leases may be issued for state lands underlying navigable water courses in Idaho. Such lands are considered "state lands" and will be leased in accord with Subsection 040.01. Operations in the beds of navigable water courses will not be authorized except in extraordinary circumstances and then only with express written approval of the Board upon such conditions and security as the director deems appropriate. (9-3-91)

(BREAK IN CONTINUITY OF SECTIONS)

100. BOND REQUIREMENTS.

01. Minimum Bond. ~~Concurrent with the execution of the lease by the lessee, lessee shall furnish to director a good and sufficient bond in the amount of two thousand dollars (\$2,000)~~ Prior to initiation of operations to drill a well, conduct seismic shot surveys, construct roads, or any other surface disturbing activities, lessee shall furnish a bond. This bond shall be in favor of the state of Idaho, conditioned on the payment of all damages to the land surface and all improvements thereon, including without limitation crops on the lands, whether or not the lands under this lease have been sold or leased by the Board for any other purpose; conditioned also upon compliance by lessee of his obligations under this lease and these rules. ~~Prior to initiation of operations to drill a well for any purpose to one thousand (1,000) feet or deeper, lessee shall increase such bond to the amount of ten thousand dollars (\$10,000).~~ The director may require a new bond in a greater amount at any time after operations have begun, upon a finding that such action is reasonably necessary to protect state resources. (9-3-91)(7-1-11)T

02. Statewide Bond. In lieu of the aforementioned bonds, lessee may furnish a good and sufficient "statewide" bond conditioned as ~~above in the amount of fifty thousand dollars (\$50,000) in favor of the state of Idaho,~~ in Subsection 100.01 of this rule. This bond will cover all lessee's leases and operations carried on under all geothermal resource leases issued and outstanding to lessee by the Board at any given time during the period when the "statewide" bond is in effect. The amount of such bond shall be equal to the total of the requirements of the separate bonds being combined into a single bond. (9-3-91)(7-1-11)T

03. Period of Liability. The period of liability of any bond will not be terminated until all lease terms and conditions have been fulfilled and the bond is released in writing by the director. (9-3-91)

~~**04. General Lease Bond.** An operator, or, if there is more than one for different portions of the lease, each operator, may furnish a general lease bond of not less than ten thousand dollars (\$10,000) in his own name as principal on the bond in lieu of the lessee. Where there is more than one operator's bond affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for that portion of the leasehold for which each operator is responsible. (9-3-91)~~

054. Operator Bond. Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond. (9-3-91)