

Dear Senators BURTENSHAW, Adams, Semmelroth, and
Representatives MENDIVE, Shepherd, Burns:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Idaho Department of Lands:

IDAPA 20.03.03 - Rules Governing Administration of the Reclamation Fund (ZBR Chapter Rewrite,
Fee Rule) - Proposed Rule (Docket No. 20-0303-2301);

IDAPA 20.03.05 - Navigable Waterways Mineral Leasing in Idaho (ZBR Chapter Rewrite, Fee Rule)
- Proposed Rule (Docket No. 20-0305-2301).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/23/2023. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/20/2023.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4854, or send a written request to the address on the
memorandum attached below.



Terri Kondeff
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee
FROM: Deputy Division Manager - Katharine Gerrity
DATE: October 04, 2023
SUBJECT: Idaho Department of Lands

IDAPA 20.03.03 - Rules Governing Administration of the Reclamation Fund (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule (Docket No. 20-0303-2301)

IDAPA 20.03.05 - Navigable Waterways Mineral Leasing in Idaho (ZBR Chapter Rewrite, Fee Rule) - Proposed Rule (Docket No. 20-0305-2301)

1. IDAPA 20.03.03 - Rules Governing Administration of the Reclamation Fund

Summary and Stated Reasons for the Rule

The Idaho Department of Lands submits notice of proposed rule at IDAPA 20.03.03 - Rules Governing Administration of the Reclamation Fund. According to the department, the rule is based on Executive Order 2020-01, Zero-Based Regulation. The department notes that the overall regulatory burden has been reduced by decreasing the total word count and the number of restrictive words in the new rule chapter. The department states the late payment policy was also updated. The monthly late fee is the greater of twenty-five dollars or one percent of the unpaid principal, and an interest charge of one percent of the unpaid principal.

Negotiated Rulemaking / Fiscal Impact

The department notes that negotiated rulemaking was conducted and that there is no fiscal impact to the general fund.

Statutory Authority

The rulemaking appears to be authorized pursuant to sections 58-104, 58-105, and chapter 18, title 47, Idaho Code.

Paul Headlee, Deputy Director Matt Drake, Manager Keith Bybee, Manager April Renfro, Manager Norma Clark, Manager
Legislative Services Office Research & Legislation Budget & Policy Analysis Legislative Audits Information Technology

Statehouse, P.O. Box 83720
Boise, Idaho 83720-0054

Tel: 208-334-2475
legislature.idaho.gov

2. IDAPA 20.03.05 - Navigable Waterways Mineral Leasing in Idaho

Summary and Stated Reasons for the Rule

The Idaho Department of Lands submits notice of proposed rule at IDAPA 20.03.05 - Navigable Waterways Mineral Leasing in Idaho. The department notes that the overall regulatory burden has been reduced by decreasing the total word count and the number of restrictive words in the new rule chapter. The department states that application and assignment fees have been increased to cover the costs of reviewing applications. In addition, the department states that the late payment policy is updated, and revised wording in the rule will now cover all navigable waterways rather than just rivers. The application fee is being increased to \$425 from the \$50 fee that has been in place since 1991. The application advertising fee is increased from \$45 to \$75, the exploration location fee is increased from \$250 to \$500, and the \$50 assignment fee is increased to \$200.

Negotiated Rulemaking / Fiscal Impact

The department notes that negotiated rulemaking was conducted and that there is no fiscal impact to the general fund.

Statutory Authority

The rulemaking appears to be authorized pursuant to sections 58-104, 58-105, and chapter 7, title 47, Idaho Code.

cc: Idaho Department of Lands
Anna Maria Mancini

***** PLEASE NOTE *****

Per the Idaho Constitution, all administrative rules may be reviewed by the Legislature during the next legislative session. The Legislature has 3 options with this rulemaking docket: **1)** Approve the docket in its entirety; **2)** Reject the docket in its entirety; or **3)** Reject the docket in part.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS
20.03.03 – RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND
DOCKET NO. 20-0303-2301 (ZBR CHAPTER REWRITE, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code, and Title 47, Chapter 18, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Following [Executive Order 2020-01, Zero-Based Regulation](#), this rule chapter is scheduled to be repealed and replaced in 2023 for review during the 2024 legislative session. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. The late payment policy was updated.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

A monthly late fee of the greater of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal, and an interest charge of one percent (1%) on the unpaid principal.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2023, Idaho Administrative Bulletin, [Vol. 23-4, pages 38–39](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson at (208) 334-0261 or ewilson@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 6th day of September, 2023.

Eric Wilson, Resource Protection and Assistance Bureau Chief
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, Idaho 83720-0050
P.O. Box 83720
Phone: (208) 334-0261
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 20-0303-2301
(ZBR Chapter Rewrite)

20.03.03 – RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

000. LEGAL AUTHORITY.

These rules are promulgated by the ~~Idaho State Board of Land Commissioners~~ under Sections 58-104(3) and (6) ~~and 58-105~~, Idaho Code, and Title 47, Chapter 18, Idaho Code. The Board has delegated to the Director ~~of the Idaho Department of Lands~~ the duties and powers under Title 47, Chapter 18, Idaho Code and these rules, ~~except that the Board retains responsibility for administrative review.~~ (3-18-22)()

001. TITLE AND SCOPE.

~~01. Title.~~ These rules are titled IDAPA 20.03.03, “Rules Governing Administration of the Reclamation Fund,” IDAPA 20, Title 03, Chapter 03. (3-18-22)

~~02. Scope.~~ These rules constitute the Department’s administrative procedures ~~and participation criteria for the Reclamation Fund, which is~~ for implementation of the Act with the intent to provide an alternative form of financial assurance for certain mines in Idaho. These rules are to be construed in a manner consistent with the duties and responsibilities of the Board and of operators, permit holders, or lessees as set forth in ~~Title 47, Chapter 7, Idaho Code, “Mineral Rights in State Lands;” Title 47, Chapter 13, Idaho Code, “Dredge Mining Act;” Title 47, Chapter 15, Idaho Code, “Mined Land Reclamation Act;” Title 47, Chapter 18, Idaho Code, “Financial Assurance;”~~ IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho;” IDAPA 20.03.02, “Rules Governing Mined Land Reclamation;” and IDAPA 20.03.05, “Riverbed Mineral Leasing In Idaho.” (3-18-22)()

~~002. ADMINISTRATIVE APPEALS.~~

~~Any person aggrieved by a final agency action or a party aggrieved by a final order of the Board arising from its administration of the Reclamation Fund Act is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, “Administrative Procedure Act,” and IDAPA 20.01.01, “Rules of Practice and Procedure Before the State Board of Land Commissioners.”~~ (3-18-22)

~~003~~ -- 009. (RESERVED)

010. DEFINITIONS.

Except as provided in these rules, the Board adopts the definitions set forth in the Mineral ~~Leasing Act~~ Rights in State Lands, the Dredge Mining Act, and the Mined Land Reclamation Act. As used in these rules: (3-18-22)()

01. Actual Allowable Cost. The allowable total reclamation cost as set by the Board to allow participation in the Reclamation Fund. ()

02. Actual Allowable Disturbance. The area of disturbed acres or affected land as set by the Board to allow participation in the Reclamation Fund. ()

03. Board. The Idaho State Board of Land Commissioners or its authorized representative. ()

04. Department. The Idaho Department of Lands. ()

05. Disturbed Acres; Affected Lands. ()

a. Any land, natural watercourses, or existing stockpiles or waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore, waste from placer or dredge mining, or construction of roads,

settling ponds, structures, or facilities appurtenant to a placer or dredge mine: ()

b. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at a mine: and ()

c. The land area disturbed by motorized exploration of state land under a mineral lease. (3-18-22)()

06. Dredge Mining Act. Title 47, Chapter 13, Idaho Code, and IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho.” (3-18-22)

07. Financial Assurance. ()

a. Cash, corporate surety bond, collateral bond, or letter of credit as described in the Dredge Mining Act, the Mineral ~~Leasing Act, or a mineral lease.~~ Rights in State Lands; and ()

b. Financial assurance as defined in the Mined Land Reclamation Act. (3-18-22)()

08. Mine; Mine Panel. All areas designated by the operator on the map or plan submitted pursuant to Section 47-703A, Idaho Code, or Section 47-1506, Idaho Code, or as an identifiable portion of a placer or dredge mine on the map submitted under Section 47-1317, Idaho Code. ()

09. Mined Land Reclamation Act. Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02, “Rules Governing Mined Land Reclamation.” ()

10. Mineral Lease. Lease executed by the Board and the mineral lessee pursuant to the Mineral ~~Leasing Act~~ Rights in State Lands. (3-18-22)()

11. Mineral Lessee. The lessee of a mineral lease. ()

12. Mineral ~~Leasing Act~~ Rights in State Lands. Title 47, Chapter 7, Idaho Code. ()

13. Mining Reclamation Plan. Any reclamation plan approved pursuant to the Mined Land Reclamation Act. ()

14. Motorized Exploration. Exploration which may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques which employ the use of earth moving equipment, seismic operations using explosives, and includes sampling with a suction dredge having an intake diameter greater than two (2) inches when operated in a perennial stream. When operated in an intermittent stream, suction dredges ~~shall~~ will be considered motorized exploration regardless of intake size. (3-18-22)()

15. Operator. Any person or entity authorized to conduct business in Idaho, partnership, joint venture, or public or governmental agency required to have any reclamation plan under the Mined Land Reclamation Act or the Mineral ~~Leasing Act~~ Rights in State Lands, or a permit under the Dredge Mining Act, whether individually or jointly through subsidiaries, agents, employees, or contractors. (3-18-22)()

16. Permit. Dredge or placer mining permit issued pursuant to the Dredge Mining Act. ()

17. Reclamation Fund. The interest-bearing dedicated fund authorized pursuant to the Reclamation Fund Act. ()

18. Reclamation Fund Act. Title 47, Chapter 18, Idaho Code, and IDAPA 20.03.03, “Rules Governing Administration of the Reclamation Fund.” ()

011. -- 015. (RESERVED)

016. REQUIRED PARTICIPANTS.

Any operator, with the exception of the mines and operators listed in Sections 017 and 019 of these rules, shall will be required to provide alternative financial assurance through the Reclamation Fund to assure the reclamation of disturbed acres or affected lands. Alternative financial assurance pursuant to the Reclamation Fund Act is in lieu of other types of financial assurance as set forth in the Mined Land Reclamation Act, the Mineral Leasing Act Rights in State Lands, or the Dredge Mining Act. (3-18-22)()

017. INELIGIBLE MINES OR OPERATORS.

The following types of mines and operators are not allowed to participate in the Reclamation Fund and must file proof of other acceptable financial assurance as required by the Department. ()

01. Disturbed Acres Limit. A mine or mineral lease with un-reclaimed disturbed acres in excess of the actual allowable disturbance may not provide alternative financial assurance through the Reclamation Fund. Un-reclaimed disturbance is that which does not meet the final financial assurance release criteria in the Dredge Mining Act, the Mined Land Reclamation Act, or a mineral lease the Mineral Rights in State Lands. (3-18-22)()

02. Reclamation Cost Limit. Operators with an estimated reclamation cost in excess of the actual allowable reclamation cost, regardless of the disturbed acres. ()

03. Phosphate Mines. Operators or mineral lessees of phosphate mines. ()

04. Hardrock Mines. Operators or mineral lessees of hardrock mines such as gold, silver, molybdenum, copper, lead, zinc, cobalt, and other precious or base metal mines. (3-18-22)()

05. Potential Heavy Metal Releases. Operators of mines with a reasonable potential to release heavy metals or other substances harmful to human health or the environment, but not including substances such as fuels and other materials commonly used in excavation or construction. ()

06. Oil and Gas Conservation. Oil and gas exploration and development under Title 47, Chapter 3, Idaho Code. ()

07. Oil and Gas Leasing. Oil and gas leases and associated exploration and development under Title 47, Chapter 8, Idaho Code. ()

08. Geothermal. Operators or mineral lessees of geothermal wells and development under Title 47, Chapter 16, Idaho Code. ()

09. Off Lease Exploration. Motorized exploration on state lands that are not under a mineral lease or exploration location. ()

10. Violators. Mines or operators in violation of the Reclamation Fund Act, Dredge Mining Act, Mined Land Reclamation Act, or Mineral Leasing Act, or a mineral lease Rights in State Lands. (3-18-22)()

11. Reclamation Fund Forfeitures. Operators, permittees or lessees who have not reimbursed the Reclamation Fund for a forfeiture from the Reclamation Fund due to their violations of the Reclamation Fund Act, Dredge Mining Act, Mined Land Reclamation Act, or Mineral Leasing Act, or a mineral lease Rights in State Lands. (3-18-22)()

12. Other Forfeitures. An operator who has forfeited any financial assurance. ()

13. Operators Providing Acceptable Financial Assurance. An operator who provides proof of financial assurance accepted by the Department that is greater than or equal to the minimum dollar per acre for each acre of affected land at a mine. ()

018. ACREAGE AND RECLAMATION COST LIMITATIONS.

01. Actual Allowable Participation. The Board will establish by policy the actual allowable

disturbance, actual allowable reclamation cost, and the minimum dollar per acre of disturbance in order to provide financial assurance to opt out of participation in the Reclamation Fund. ()

02. Maximum Disturbance and Reclamation Cost. ~~The maximum disturbance and maximum reclamation costs in these rules are maximums.~~ The maximum allowable disturbance is eighty (80) acres; the maximum allowable reclamation cost is four hundred forty thousand dollars (\$440,000). ~~(3-18-22)()~~

03. Multiple Plans or Permits. An operator who has multiple mining reclamation plans or permits that have a total disturbance in excess of the actual allowable disturbance, or with total reclamation costs in excess of the actual allowable reclamation cost, may participate in the Reclamation Fund with one (1) or more sites that together contain less than both of the Board-established actual allowable limits. ()

019. OPTIONAL PARTICIPATION.

Operators who have one (1) or more mines or mineral leases that are ineligible to participate in the Reclamation Fund as set forth in Section 017 ~~or 018~~ of these rules may choose to not participate in the Reclamation Fund with respect to all other eligible mines or mineral leases in their name. An operator who does not participate in the Reclamation Fund must secure all mines with other types of financial assurance approved by the Department. ~~(3-18-22)()~~

020. FEDERAL AGENCY NON-ACCEPTANCE OF RECLAMATION FUND.

If a federal agency will not accept an operator's participation in the Reclamation Fund as proof of reclamation security, the operator will be required to provide the Department with proof of other types of financial assurance acceptable to the Department and the federal agency. ~~(3-18-22)()~~

021. -- 025. (RESERVED)

026. PAYMENT.

01. Board Approved Payment Schedule. The Board will adopt a payment schedule that ~~determines~~ sets the annual Reclamation Fund payment for each operator participating in the Reclamation Fund. Any changes to the payment schedule will must be approved by the Board. ~~Participating operators shall pay all required payments annually. New participants will be assessed a pro-rated payment based on the Department's established billing cycle.~~ ~~(3-18-22)()~~

02. Acreage Calculation. The annual payment for each participant in the Reclamation Fund will be established based upon the number of disturbed acres at each mine. The acres used to calculate the annual payment will include the total current disturbed acres of affected lands and the acres planned to be disturbed or affected during the next twelve (12) months. The total acreage calculation will not be rounded when determining annual payments. ()

03. Annual Payments Non-Refundable. Payments to the Reclamation Fund will be billed annually and are non-refundable. ~~Payments will be billed annually and, if not timely paid, will accrue late fees and interest as established by the Board. New participants will be assessed a pro-rated payment based on the Department's established billing cycle.~~ ~~(3-18-22)()~~

04. Late Payments. Payments not received by the due date are considered late and will result in the following monthly charges: ()

a. A late charge of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal obligation, whichever is greater, and ()

b. An interest charge of one percent (1%) on the unpaid principal obligation. ()

045. Supplemental Payments. If an operator affects more acreage than the acreage secured through the Reclamation Fund for a current period, the Department may require supplemental Reclamation Fund payments. ()

056. Assignment. When a mineral lease, mining reclamation plan, or permit is assigned, all financial

assurance requirements must be assumed by the new operator. No Reclamation Fund payments will be refunded following an assignment. If the new operator is ineligible to participate in the Reclamation Fund, the new operator must provide proof of other acceptable financial assurance before the assignment may be approved. ()

067. Non-Payment Constitutes Lack of Bonding. For any operator participating in the Reclamation Fund, non-payment of the annual payment ~~shall~~ **will** be considered a failure to provide financial assurance as required by the Dredge Mining Act, the Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease~~ **Rights in State Lands.** (3-18-22)()

027. -- 030. (RESERVED)

031. ENFORCEMENT AND FAILURE TO COMPLY.

01. Forfeiture. Prior to withdrawing monies from the Reclamation Fund due to a violation of the Dredge Mining Act, the Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease~~ **Rights in State Lands,** the Department will comply with the respective financial assurance forfeiture procedures. (3-18-22)()

02. Penalties. If an operator fails to provide financial assurance as required by these rules or has forfeited monies from the Reclamation Fund and has not repaid those monies, the Board ~~shall be~~ **is** authorized to file liens against personal property and equipment of the operator to recover costs. The operator ~~shall be~~ **is** liable for actual costs of all unpaid annual payments, interest, and late payment charges, the actual reclamation costs, and administrative costs incurred by the Department in reclaiming the disturbed or affected lands. Authorization to obtain a lien under these rules and Section 47-1804, Idaho Code, ~~shall be~~ **is** in addition to, not in lieu of, any other legal remedy available to the Board and the Department pursuant to the Dredge Mining Act, Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease~~ **Rights in State Lands.** (3-18-22)()

032. MINIMUM BALANCE FOR THE RECLAMATION FUND.

The Board will determine a reasonable minimum balance for the Reclamation Fund. ()

033. -- 999. (RESERVED)

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Idaho Department of Lands

Agency Contact: Eric Wilson **Phone:** 208-334-0261

Date: August 4, 2023

IDAPA, Chapter and Title Number and Chapter Name:

[20.03.03, Rules Governing Administration of the Reclamation Fund](#)

Fee Rule Status: Proposed Temporary

Rulemaking Docket Number: 20-0303-2301

STATEMENT OF ECONOMIC IMPACT:

The proposed rule will not cost more for the department to implement than the existing rules. All Reclamation Fund participants will be subject to a revised late payment rule which replaces a Land Board established late payment policy.

The late payment rule requires a monthly late charge of twenty-five dollars (\$25) or one percent of the unpaid principal, whichever is greater. In addition, the permittee would be assessed an interest charge of 1% of the unpaid principal obligation. This does not change the amount to be collected from late payments, it just moves it from Land Board policy to the rules.

The late payment rule will not change revenue to IDL or costs to the permittees.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS
20.03.05 – NAVIGABLE WATERWAYS MINERAL LEASING IN IDAHO
DOCKET NO. 20-0305-2301 (ZBR CHAPTER REWRITE, FEE RULE)
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code, and Section 47-7, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2023.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Following [Executive Order 2020-01, Zero-Based Regulation](#), this rule chapter is scheduled to be repealed and replaced in 2023 for review during the 2024 legislative session. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. Application and assignment fees have been increased to cover the costs of reviewing applications. Late payment policy is updated, and revised wording in the rule will now cover all navigable waterways rather than just rivers.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

The \$50 lease application fee in place since 1991 is increased to \$425. The application advertising fee is increased from \$45 to \$75. The exploration location fee is increased from \$250 to \$500. The \$50 assignment fee is increased to \$200. These fees are being imposed pursuant to Sections 58-104 and 58-127, Idaho Code, and Section 47-7, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the April 5, 2023, Idaho Administrative Bulletin, [Vol. 23-4, pages 40-41](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marde Mensinger at (208) 334-0248 or mmensinger@idl.idaho.gov. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2023.

DATED this 6th day of September, 2023.

Marde Mensinger, Navigable Waterways Program Manager
Idaho Department of Lands
300 N. 6th Street, Suite 103
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P.O. Box 83720
Phone: (208) 334-0248
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 20-0305-2301
(ZBR Chapter Rewrite)

20.03.05 – ~~RIVERBED~~ **NAVIGABLE WATERWAYS** MINERAL LEASING IN IDAHO

000. AUTHORITY.

~~01. Statutory Authority.~~ These rules are promulgated by the ~~Idaho State Board of Land Commissioners~~ pursuant to Title 47, ~~Chapter 7, Idaho Code,~~ and Title 58, Chapters ~~7 and 1,~~ **Idaho Code** Sections ~~47-710, 47-714 and 58-104, Idaho Code.~~ (3-18-22)()

~~02. Discretionary Powers.~~ The Board of Land Commissioners is delegated discretionary power to regulate and control the use or disposition of lands in the beds of navigable lakes, rivers, and streams, to the natural or ordinary high water mark thereof, so as to provide for their commercial, navigational, recreational or other public use; provided that the Board will take no action in derogation of or seeking to interfere with the riparian or littoral rights of the owners of upland property abutting or adjoining such lands. (Section ~~58-104(9), Idaho Code.~~ (3-18-22)

001. ~~TITLE AND SCOPE.~~

~~01. Title.~~ These rules are titled IDAPA 20.03.05, “Riverbed Mineral Leasing in Idaho.” (3-18-22)

~~021. Where Applicable.~~ These rules apply to the exploration and extraction of ~~precious metals, minerals, and construction materials~~ **salable minerals** from a ~~placer deposit situated in state-owned submerged lands~~ **navigable waterways.** (3-18-22)()

~~032. Where Not Applicable.~~ These rules do not apply to the ~~application~~ **exploration** and leasing of geothermal resources **covered** by title 47, Chapter 16, Idaho Code, or to the ~~application~~ **exploration** and leasing of oil and gas resources covered by Title 47, Chapter 8, Idaho Code. (3-18-22)()

002. -- 009. (RESERVED)

010. DEFINITIONS.

~~01. Available State Lands.~~ All lands between the ordinary high water marks of a navigable river which have not been located, leased, or withdrawn. (3-18-22)

~~021. Board.~~ The **Idaho** State Board of Land Commissioners or its ~~authorized representative~~ **designee.** (3-18-22)()

~~03. Casual Exploration.~~ Entry and/or exploration which does not appreciably disturb or damage the land or resources thereon. Casual exploration includes, but is not limited to, geochemical and/or geophysical exploration techniques, sampling with hand tools, and entry using wheeled vehicles for transportation to conduct such exploration. Exploration using suction dredges having an intake diameter of two inches (2”) or less are considered casual exploration when operated in a perennial stream and authorized under the stream protection act, Title 42, Chapter 38, Idaho Code. Refer to Section 015 for further clarification regarding casual exploration and recreational mining. (3-18-22)

~~042. Commercial.~~ The type of operation that engages in the removal of ~~construction materials~~ **salable minerals** or uses suction dredges with an intake diameter larger than five inches (5”) or attendant power sources rated at greater than fifteen (15) horsepower and/or other motorized equipment. (3-18-22)()

- ~~05. Construction Materials. Sand, gravel, cobble, boulders, and other similar materials. (3-18-22)~~
- ~~03. Department. The Idaho Department of Lands. ()~~
- ~~064. Director. The Director of the Idaho Department of Lands or his authorized representative designee. (3-18-22)()~~
- ~~07. Motorized Exploration. Exploration that may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques that employ the use of earth moving or other motorized equipment, seismic operations using explosives, and sampling with suction dredges having an intake diameter greater than two inches (2") when operated in a perennial stream. When operated in an intermittent stream, suction dredges are considered motorized exploration regardless of the intake size. (3-18-22)~~
- ~~085. Natural or Ordinary High Water Mark. The line that the water impresses upon the soil by covering it for sufficient periods of time to deprive the soil of its vegetation and destroy its value for agricultural purposes. When the soil, configuration of the surface, or vegetation has been altered by human activity, the natural or ordinary high water mark will be located where it would have been if this alteration had not occurred. (3-18-22)()~~
- ~~096. Person. An individual, corporation, partnership, limited liability company, association, trust, unincorporated organization, or other legal entity qualified to do business in the state of Idaho, and any federal, state, county, or local unit of government. (3-18-22)()~~
- ~~a. An individual of legal age; (3-18-22)~~
- ~~b. Any firm, association or corporation qualified to do business in the state of Idaho; or (3-18-22)~~
- ~~c. Any public agency or government unit, including without limitation, municipalities. (3-18-22)~~
- ~~10. Recreational Mining. Mining with a suction dredge having an intake diameter of five inches (5") or less, and attendant power sources, rated at fifteen (15) horsepower or less, pans, rockers, hand tools, hand operated sluices and other similar equipment. (3-18-22)~~
- ~~107. River Mile. Five thousand two hundred eighty (5,280) feet of contiguous riverbed as measured along the approximate center of the river. ()~~
- ~~12. Navigable River. A natural water course of perceptible extent, with definite bed and banks, which confine and conducts continuously flowing water, and the bed of which is owned by the state of Idaho in trust. (3-18-22)~~
- ~~13. Submerged Lands. All state owned beds of navigable lakes, rivers, and streams between the natural or ordinary high water marks. (3-18-22)~~
- ~~08. State-Owned Navigable Waterways and Navigable Waterways. As used in these rules, the beds of all navigable rivers and lakes up to the natural or ordinary high water mark as of the date Idaho was admitted into statehood. This includes any such bed that was formerly submerged and subsequently filled, and is now uplands because of human activity (e.g., dikes, berms, jetties) or by natural processes, and includes islands within navigable waterways resulting from human activity or by natural processes. ()~~
011. -- 014. (RESERVED)
015. CASUAL EXPLORATION ~~AND RECREATIONAL MINING.~~
01. Lands Open. All beds of navigable ~~rivers~~ waterways that have not been located, leased or withdrawn in accordance with statute or the terms of these rules, are free and open to casual exploration ~~and recreational mining~~ on a nonexclusive and first come basis. (3-18-22)()

02. Equipment Limitations. Mining equipment for casual exploration that may occur prior to the filing of a location or lease application is limited to suction dredges with a ~~two five (25)~~ inch intake or less, ~~pans, rockers, hand tools, hand operated sluices and other similar equipment~~ and powered equipment rated at fifteen (15) HP or less, or non-powered sluice equipment. (3-18-22)()

03. No Approval for Casual Exploration Required. No written approval is required from the Director for casual exploration. ()

~~**04. Recreational Mining Equipment.** Mining equipment for recreational mining is limited to suction dredges with an intake diameter of five (5") inches or less with attendant power sources rated at fifteen (15) horse power or less, pans, rockers, hand tools, hand operated sluices and other similar equipment. (3-18-22)~~

~~**05. Department of Water Resources Permits.** Possession of a valid Stream Protection Act Permit issued by the Idaho Department of Water Resources and a Recreational Mining Permit issued by the Idaho Department of Lands constitutes the Board's waiver of bond, waiver of royalty, and written approval to engage in recreational mining under Section 47-704(6), Idaho Code, and Title 47, Chapter 13, Idaho Code~~Casual exploration requires a valid Stream Channel Alteration Permit issued by the Idaho Department of Water Resources. (3-18-22)()

~~**05. Lake Encroachment Permits.** An encroachment permit pursuant to Title 58, Chapter 13, Idaho Code is required prior to any mineral exploration or extraction in a navigable lake. ()~~

~~**06. Department of Environmental Quality Permits.** Suction dredging requires a valid general or individual permit issued under the Idaho Pollutant Discharge Elimination System. ()~~

016. EXPLORATION LOCATIONS.

01. Lands Open. The beds of navigable ~~rivers~~ waterways that have not been located or withdrawn, or are not under application to lease, in accordance with statute or the terms of these rules, are available for exploration location; provided that salable minerals are not subject to exploration location. Details of exploration locations on state lands can be found in Title 47, Chapter 7, Idaho Code. (3-18-22)()

02. Size of Location. Each exploration location is limited to one-half (1/2) mile in length on a navigable river or stream, or a 20-acre aliquot part on a navigable lake. (3-18-22)()

03. Record Keeping Requirement~~d~~. A locator must keep a record of all minerals recovered during exploration operations and must pay to the state a royalty of five percent (5%) of the gross value of the minerals recovered. Payment must be made each year with the filing of the assessment work report. (3-18-22)()

~~**04. When No Written Approval Required.** No written approval is required from the ~~Director~~ Department for ~~exploratory activity~~ casual exploration in a navigable river on an exploration location ~~when such exploration is limited to mining equipment such as suction dredges with a five (5") inch intake diameter or less and attendant power sources rated at fifteen (15) horsepower or less, pans, rockers, hand operated sluices, and other similar equipment; provided however, that recreational mining activity.~~ Casual exploration performed under a Recreational Mining Stream Channel Alteration Permit ~~as authorized under Section 015~~ does not serve to establish any basis for an exploration location. (3-18-22)()~~

05. When Written Approval Required. Written approval is required from the ~~Director~~ Department prior to entry for operators conducting motorized exploration ~~except as allowed in Subsection 016.04.~~ Approved operations must be bonded as outlined in Subsection 040.03~~2~~. (3-18-22)()

017. -- 019. (RESERVED)

020. RIVERBED MINERAL LEASE.

01. Limitations on Suction Dredges. Operators may not use suction dredges with an intake diameter

larger than five inches (5") or attendant power sources rated greater than fifteen (15) horsepower, except under lease. ()

02. Approval Required Before Operations. Prior to entry upon navigable ~~rivers~~ waterways, operators are required to have written approval from the ~~Director~~ Department. (3-18-22)()

03. Bonding. Approved operations must be bonded as outlined in Subsection 040.01. ()

04. Simultaneous Filings. Two (2) or more lease applications received on the same date and hour, covering the same lands, are considered simultaneous filings. Simultaneous filings will be resolved by competitive bidding. ()

021. -- 024. (RESERVED)

025. PUBLIC NOTICE AND HEARING.

01. Publication of Notice. Upon receipt by the Board of an application to lease any lands that may belong to the state of Idaho by reason of being situated between the high water marks of navigable ~~rivers of the state~~ waterways, the Board will cause at the expense of the applicant, a notice of such application to be published once a week for two (2) issues in a newspaper of general circulation in the county or counties in which said lands described in said application are situated. (3-18-22)()

02. Public Hearing. The Board may order a public hearing on an application if it deems this action is in the best interest of the public. ()

03. Petition for Hearing. The Board or its authorized representative will hold a public hearing on the application, if requested in writing no later than thirty (30) days after the last published notice by ten (10) person whose lawful rights to use the waters applied for may be injured thereby, or by an association presenting a petition with signatures of not less than ten (10) such aggrieved parties; provided that the Board may order a public hearing in the first instance. The Board will consider fully all written and oral submissions respecting the application. ()

026. -- 029. (RESERVED)

030. RENTAL AND ROYALTY AND LATE PAYMENTS.

01. Minimum Annual Rental. The minimum annual rental is ~~one five~~ five hundred ~~sixty~~ hundred dollars (\$~~160~~500) ~~for any area up to one hundred sixty (160) acres, and one dollar (\$1) for each additional acre.~~ (3-18-22)()

02. Minimum Annual Royalty. ~~In addition to the annual rental, the commercial lessee pays an annual minimum royalty of five hundred dollars (\$500) per year and all other lessees pay an annual minimum royalty of three hundred forty dollars (\$340) per year.~~ (3-18-22)

03. Deduction of Royalty. ~~The annual minimum royalty and the annual rental for any year is deducted from the actual production royalty as it accrues for that year.~~ (3-18-22)

04. Royalty Schedule. ~~The appropriate Board approved~~ A royalty schedule ~~for each~~ for the commodity ~~mined~~ leased must be attached and made a part of the mineral lease. (3-18-22)()

05. Late Payments. Rental or royalty not paid by the due date is considered late. ~~A twenty-five dollars (\$25) late payment charge or penalty interest from the due date, whichever is greater, will be added to the rental or royalty amount. The penalty interest is one percent (1%) for each calendar month or fraction thereof, and will result in the following monthly charges:~~ (3-18-22)()

a. A late charge of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal obligation, whichever is greater. ()

b. An interest charge of one percent (1%) on the unpaid principal obligation. ()

04. Late Charge Accrual. The Department will send monthly statements with the outstanding balance that will remain on the account and will continue to accrue late charges and interest each month, or any portion of a month, until the balance is paid in full. All payments will be applied first to accrued interest and late charges, and then to principal. ()

031. LEASE SIZE AND COMPOSITION OF LEASABLE TRACT.

01. One Mile Limitation. A riverbed lease may not exceed one (1) contiguous river mile in length or all the riverbed within one (1) section should all the available state lands within the section exceed one (1) river mile. ()

02. Construction Materials Salable Minerals. Leases for ~~construction materials~~ salable minerals may be limited to a smaller size tract at the Board's discretion. (3-18-22)()

032. -- 034. (RESERVED)

035. ASSIGNMENTS.

01. Prior Written Approval. No ~~location or~~ lease assignment is valid until approved in writing by the Director, and no assignment takes effect until after the first day of the month following its approval Department. A lease may be assigned to any person qualified to hold a lease. (3-18-22)()

02. Partition Partial Assignment. A ~~location or~~ lease may be partially assigned ~~to any person qualified to hold a state location or lease, provided that in the event an assignment partitions leased lands between two (2) or more persons, if both the assigned and the retained part created by the assignment contain not less than one-half (1/2) mile length of river bed land. The resulting leases continue in full force and effect for the balance of the term of the original lease unless otherwise terminated in accordance with the terms of the lease.~~ (3-18-22)()

03. Segregation of Lease. If an assignment partitions leased lands between two (2) or more persons, it must clearly segregate the assigned and retained portions of the leasehold. Resulting segregated leases continue in full force and effect for the balance of the term of the original lease or as further extended pursuant to statute and these rules. (3-18-22)

036. -- 039. (RESERVED)

040. BOND.

01. Minimum Lease Bond. Concurrent with the lessee's execution of the lease ~~by the lessee~~, lessee must furnish to the ~~Director~~ Department a ~~good and sufficient bond or undertaking in favor of the state of Idaho~~ on a Department form in the amount of five thousand dollars (\$5,000) for commercial operations and one thousand dollars (\$1,000) for all other operations. The bond will be in favor of the state of Idaho, conditioned on the payment of all damages to the land and all improvements thereon which result from the lessee's operation and conditioned on complying with statute, these rules and the lease terms. This bond is in addition to ~~the~~ bonds required by ~~the Idaho Dredge and Placer Mining Protection Act~~ (Title 47, Chapter 13, Idaho Code). (3-18-22)()

02. Statewide Bond. In lieu of the above bond, the 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, to cover all lessee's leases and operations carried on under statute and these rules. (3-18-22)

032. Motorized Exploration. Motorized exploration on an site under exploration location is subject to a minimum bond in the amount of seven hundred fifty dollars (\$750). A larger bond not exceeding seven hundred fifty dollars (\$750) per acre may be required by the Department depending on the size and scope of the operation that covers the estimated reasonable cost of reclamation as provided in Section 47-703A, Idaho Code. (3-18-22)()

041. -- 044. (RESERVED)

045. FEES.

The following fees apply and are nonrefundable: ~~(3-18-22)~~()

**01. ~~Nonrefundable Lease Application Fee for Lease.~~ Fifty Four hundred twenty five dollars (~~\$50425~~)
per application. ~~(3-18-22)~~()**

**02. ~~Nonrefundable Fee for Lease Application Advertising Application.~~ Forty Seventy-five dollars
(~~\$4575~~) per application. ~~(3-18-22)~~()**

**03. ~~Exploration Location Fee.~~ Two hundred fifty Five hundred dollars (~~\$250500~~) per location.
~~(3-18-22)~~()**

**04. ~~Application Fee for Approval of Assignment.~~ Fifty Two hundred dollars (~~\$50200~~) per lease ~~or~~
~~location~~ involved in the assignment. ~~(3-18-22)~~()**

046. -- 999. (RESERVED)

PROPOSED RULE COST/BENEFIT ANALYSIS

Section 67-5223(3), Idaho Code, requires the preparation of an economic impact statement for all proposed rules imposing or increasing fees or charges. This cost/benefit analysis, which must be filed with the proposed rule, must include the reasonably estimated costs to the agency to implement the rule and the reasonably estimated costs to be borne by citizens, or the private sector, or both.

Department or Agency: Idaho Department of Lands

Agency Contact: Marde Mensinger **Phone:** (208) 334-0248

Date: August 4, 2023

IDAPA, Chapter and Title Number and Chapter Name:

IDAPA 20.03.05, Rules Governing Riverbed Mineral Leasing in Idaho

Fee Rule Status: X **Proposed** **Temporary**

Rulemaking Docket Number: 20-0305-2301

STATEMENT OF ECONOMIC IMPACT:

The proposed rule will not cost more for the department to implement than the existing rules. Existing lessees and permittees are unaffected. All new applicants would be subject to the new fees. This rule will allow the department to recover the costs associated with reviewing and granting mineral leases, lease assignments, and exploration location permits over state-owned navigable waterways.

Lease administration is funded by the Navigable Waterways Fund, a state dedicated fund that is self-supporting through program revenue. No taxpayer funds support this program. As a result, the program must try to recoup the cost of each transaction that occurs from the applicants.

Applicants seeking a mineral lease on state-owned navigable waterways would pay an application fee of \$425. A workload analysis was used to estimate the time and cost of reviewing and processing leases. Based on that analysis, \$425 is an appropriate fee. This is an increase over the existing fee of \$50. With an annual average of 1 lease and 2 exploration location permits issued over the last five years, this \$275 increase will cost lessees and permittees approximately \$375 more per year.

In addition, lessees wanting to assign their leases to a new party would pay a fee of \$200. A workload analysis was used to estimate the time and cost of reviewing and processing lease assignments. Based on that analysis, \$200 is an appropriate fee. This is an increase over the existing fee of \$50. This fee would apply to current and future lessee's who would wish to assign their lease.

Applicants seeking an Exploration Location on a state-owned navigable waterway would pay an exploration location fee of \$500. This is an increase over the existing fee of \$250. The new fee was analyzed using the comparative analysis of permits issued in neighboring states, which typically charge higher fees for exploration and small-scale mining projects. Future permittees would pay this fee, which would not affect current permittees.