

STATE BOARD OF LAND COMMISSIONERS

July 18, 2023
Information Agenda

Subject

Proposed Rule for IDAPA 20.03.05 *Rules Governing Riverbed Mineral Leasing in Idaho*

Background

The Idaho Department of Lands (Department) manages the beds of navigable lakes and rivers for their commercial, navigational, recreational, or other public use. IDAPA 20.03.05 establishes a consistent process to authorize mineral exploration and extraction on state owned navigable rivers and collect rents and royalties.

Negotiated rulemaking for these rules was approved by the Land Board on November 15, 2022 (Attachment 1). Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2023 for review during the 2024 legislative session.

Discussion

The Department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin.
- Created a rulemaking webpage to post documents, scheduling information, and comments.
- Issued a press release.
- Posted rulemaking meeting notices and details on social media.
- Posted rulemaking notices to Townhall Idaho.
- Emailed 43 customers and other interested parties.
- Mailed postcards to 138 customers.

Negotiated rulemaking meetings were held on April 19 and April 26, 2023. A total of 12 non-Department affiliated people attended these meetings, and four sets of written comments were received. Much of the discussion and one of the written comments centered on public notice on the issuance of exploration location permits. Per Idaho Code § 47-703(3), the Land Board is not given authority to deny exploration location permits, and the discoverer must post their exploration certificate on each 1/2 river mile. Discussion was had at each meeting about the Department's regulatory overlap with Idaho Department of Environmental Quality (IDEQ) and Idaho Department of Water Resources (IDWR). Many activities conducted on exploration locations and riverbed mineral leases require Stream Channel Alteration permits from IDWR and may require an Idaho's Pollutant Discharge Elimination System (IPDES) general permit from IDEQ. The rule now includes language that includes the permit requirements from IDEQ. The rule reflects the same definition of casual exploration that is defined by IDWR

in their Stream Channel Alteration rules. Written comments asked about changes to royalty rates. Royalty rates are set by the Land Board, not written into rule.

No changes were made based on written comments. Some minor changes to the initial draft were made based on meeting discussions and to further reduce word count.

Attachment 2 is the draft text that will be submitted for publication in the Administrative Bulletin as a proposed rule and is posted on the rulemaking webpage. The rule is written in legislative format to allow the reader to easily identify changes.

The proposed rule reduces the overall regulatory burden by reducing the total word count and the number of restrictive words. The proposed rule includes the following changes:

- The rule now includes all state-owned navigable waterbodies rather than just riverbeds.
- The \$50 lease application fee in place since 1991 is increased to \$425. This will cover the Department's cost of reviewing and issuing these leases.
- Assignment fee is raised from \$50 to \$200 to cover Department costs.
- Lease application advertising fee is raised from \$45 to \$75.
- Exploration Location Fee is increased from \$250 to \$500.
- Late payment policy is updated.

The proposed rule will be open for public comment upon publication in the September 6, 2023 Administrative Bulletin. The draft Notice of Proposed Rule is found in Attachment 3.

Attachments

1. November 15, 2022 Approved Memo
2. Proposed Rule Text
3. Draft Notice of Proposed Rule

STATE BOARD OF LAND COMMISSIONERS

November 15, 2022

Regular Agenda

Subject

Negotiated rulemaking for IDAPA 20.03.05 *Riverbed Mineral Leasing in Idaho*

Question Presented

Shall the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.05 *Riverbed Mineral Leasing in Idaho*?

Background

The Idaho Department of Lands (Department) manages the beds of navigable rivers to provide for their commercial, navigational, recreational, or other public use. IDAPA 20.03.05 establishes a consistent process to authorize mineral exploration and extraction on state-owned navigable rivers and collect rents and royalties.

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use.

Discussion

The Department anticipates diminishing the overall regulatory burden by reducing both total word count and the number of restrictive words in the new rule chapter. The Department will review the rule with stakeholders to ensure that it is right-sized. Preliminary research justifies increasing fees to cover the actual costs of processing. These fees have not changed since they were approved in 1991.

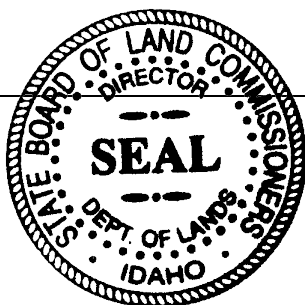
A proposed timeline for the rulemaking process is provided in Attachment 1.

Recommendation

Authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.05 *Riverbed Mineral Leasing in Idaho*.

Board Action

A motion was made by Attorney General Wasden that the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.05 *Riverbed Mineral Leasing in Idaho*. Superintendent Ybarra seconded the motion. The motion carried on a vote of 4-0.



Attachments

1. Draft rulemaking timeline

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)

~~0201. 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)()

~~0302. 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)

~~0201. 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)

~~0402. 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. ()

~~0604. 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)~~

0805. 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)()

0906. 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)~~

1107. River Mile. Five thousand two hundred eighty (5,280) feet of contiguous riverbed as measured along the approximate center of the river. (3-18-22)()

~~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")~~ five (25") inch intake or less and

~~powered equipment rated at fifteen (15) HP or less, or non-powered sluice equipment pans, rockers, hand tools, hand operated sluices and other similar equipment. (3-18-22)()~~

03. No Approval for Casual Exploration Required. No written approval is required from the Director for casual exploration. (3-18-22)

~~**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)~~

~~**0504. 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. (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. (3-18-22)

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. (3-18-22)

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. (3-18-22)

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. (3-18-22)

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. (3-18-22)

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)~~

0402. Royalty Schedule. ~~The appropriate Board approved~~ A royalty schedule for ~~the each~~ each commodity ~~mined~~ leased must be attached and made a part of the mineral lease. (3-18-22)()

0503. 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 (\$25.00) 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. (3-18-22)

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 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)

0302. 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 (~~\$250~~500) per location.
(3-18-22)()

04. ~~Application Fee for Approval of Assignment. Fifty~~ Two hundred dollars (~~\$5~~200) per lease ~~or~~
~~location~~ involved in the assignment. (3-18-22)()

046. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.05 - NAVIGABLE WATERWAYS MINERAL LEASING IN IDAHO

DOCKET NO. 20-0305-2301

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.

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