

# STATE BOARD OF LAND COMMISSIONERS

November 21, 2023

Regular Agenda

## Subject

Adoption of Pending Fee Rule, IDAPA 20.03.05 *Navigable Waterways Mineral Leasing in Idaho*

## Question Presented

Shall the Land Board adopt the pending fee rule for IDAPA 20.03.05?

## Background

Negotiated rulemaking for these rules was approved by the State Board of Land Commissioners (Land Board) on November 15, 2022. 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.

The Idaho Department of Lands (Department) manages the beds of navigable lakes and rivers for the benefit of the public. IDAPA 20.03.05 establishes a consistent process to authorize mineral exploration and extraction on state owned navigable waterways and collect rents and royalties.

## 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 § 47-702, all lands belonging to the state of Idaho are open for mineral exploration. 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. Some minor changes to the initial draft were made based on meeting discussions and to further reduce word count. Substantive comments and the Department's responses are summarized in Attachment 1.

The proposed rule was published in the September 6, 2023 Administrative Bulletin. The Notice of Proposed Rulemaking is in Attachment 2. One comment was received. This comment was addressed in the negotiated rulemaking response to comments.

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 has increased to \$425. This will cover the Department's cost of reviewing and issuing these leases.
- The assignment fee is raised from \$50 to \$200 to cover Department costs.
- The lease application advertising fee is raised from \$45 to \$75.
- The Exploration Location fee has increased from \$250 to \$500.
- The late payment policy is updated.

Upon further review, a few punctuation and grammatical changes were needed for better clarity. Attachment 3 has the draft Pending Rule consisting of the Proposed Rule with the engrossed changes highlighted in yellow.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Fee Rule (Attachment 4) to the Office of the Administrative Rules Coordinator for the 2024 legislative session.

## **Recommendation**

Adopt the pending fee rule for IDAPA 20.03.05 *Navigable Waterways Mineral Leasing in Idaho*

## **Board Action**

## **Attachments**

1. Summary of Negotiated Rulemaking
2. Notice of Proposed Rulemaking
3. Draft Pending Rule
4. Draft Notice of Adoption of Pending Fee Rule

## Negotiated Rulemaking Summary

### IDAPA 20.03.05, Riverbed Mineral Leasing in Idaho

Docket No. 20-0305-2301

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 Idaho Department of Lands (IDL) administers these rules under the authority of Title 47, Chapter 7, Idaho Code. IDAPA 20.03.05 establishes a consistent process to authorize mineral exploration and extraction on state-owned navigable rivers and collect rents and royalties. By leasing exclusive rights to the waterways, customers may explore areas without competition. IDAPA 20.03.05 allows responsible resource extraction while protecting the lands, streams, and watercourses of the state.

Negotiated rulemaking for these rules was approved by the Land Board on November 15, 2022. The Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking was published in the Idaho Administrative Bulletin on April 5, 2023.

#### Stakeholder Outreach

IDL'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 (<https://www.idl.idaho.gov/rulemaking/docket-20-0305-2301/>)
- Posted meeting information on social media
- Posted rulemaking notices to Townhall Idaho
- Emailed 43 customers and other interested parties
- Mailed postcards to 138 customers

#### Public Meeting Participation

Negotiated rulemaking meetings were held on April 19 and April 26, 2023 to discuss draft changes to the rules and receive comments from interested parties. A total of 12 non-IDL affiliated people attended these meetings.

IDL considered all comments received during the negotiated rulemaking process. Summarized comments and IDL's responses are in the attached Response to Comments on Negotiated Rule.

Much of the discussion during public meetings 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 ½ river mile. The discoverer then must file an exact copy with IDL and pay the appropriate fee.

Some comments were made during meetings about which stretches of river are available for exploration. It was clarified during the meeting that IDL has authority under this rule on state-owned navigable waterways, and that some rivers have been withdrawn from mineral entry due to state statutes or Land Board actions.

Discussion was had at each meeting about IDL's regulatory overlap with the Idaho Department of Environmental Quality (IDEQ) and the 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 IPDES multi-sector general permit from IDEQ. Based on this discussion, the proposed rule now includes language referring to the permit requirements from IDEQ. The rule also reflects the same categorization of casual and motorized exploration in Idaho Code § 47-7. These categories are also used by IDWR in their Stream Channel Alteration rules, although they use different terms for them.

### **Written Comments**

Four sets of written comments were received during the public comment period (April 5 to July 19, 2023).

Written comments discussed the responsibility of IDL to protect public trust values, and suggested adhering to standards set forth in the Kootenai Environmental Alliance vs. Panhandle Yacht Club case of 1983. While riverbed mineral leases do have a public comment period and provide for public hearings, the exploration locations do not. Idaho Code § 47-703 does not provide public participation for exploration locations, and do not provide a mechanism for IDL to deny them.

IDL's responses to these comments and more are in the attached Response to Comments on Negotiated Rule.

### **Concluding Negotiated Rulemaking**

The issue of IDL's ability to deny or allow public comment on exploration locations remains unresolved. IDL believes that Idaho Code § 47-703 does not give the Department the authority to deny exploration location permits. IDL kept language in the rule that reflects these findings. IDL also continues to follow the guidance given for complying with Executive Order 2020-01.

IDL concluded the negotiated rulemaking process and submitted the rule changes for publication as a proposed rule in the September 6, 2023, edition of the Idaho Administrative Bulletin. Key documents from the rulemaking record are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0305-2301/>, including written public comments, research materials, and the proposed rule text in legislative format to allow the reader to easily identify changes.

**Response to Comments on Negotiated Rule**  
 IDAPA 20.03.05, Rules Governing Riverbed Mineral Leasing in Idaho

Comment	Rule Section	Response	Commenter
<p>Nowhere in the proposed regulations is the Land Board or IDL instructed to weigh the public versus private benefits of any prospective permits or authorizations. Approval of casual exploration, Exploration Locations and/or Riverbed Mineral Leases issued without administrative assurance that the activity does not favor the interests of a private party at the expense of the public appear to violate the Public Trust Doctrine as articulated in <i>Kootenai</i>, even if they may not appear to violate statutory language, on its face.</p> <p>Both existing and proposed Administrative Rules may be inconsistent with the <i>Kootenai</i> requirements and the Land Board’s fiduciary obligation to its public beneficiaries. IDL and the Land Board must verify that all such permits satisfy a public versus private benefit analysis, in order to ensure that the state is not abdicating its role as trustee in favor of private parties. That analysis aims to ensure against the state’s authorization of substantial impairment of trust resources.</p>	<p>General Comment</p>	<p>The requirements of Exploration Location Permits include a condition that all locators shall abide by the provisions of Title 42, Chapter 38, Idaho Code (Stream Channel Protection Act), where applicable and shall maintain stream water quality. This act declares that the public health, safety and welfare requires that the stream channels of the state and their environments be protected against alteration for the protection of fish and wildlife habitat, aquatic life, recreation, aesthetic beauty, and water quality. If an exploration location certificate holder has a Stream Channel Alteration permit, they have met the public benefit requirements of this act.</p> <p>Riverbed mineral lease applications are subject to public comments and public hearings, which assures that IDL is fulfilling its role to the public trust resources.</p>	<p>Idaho Conservation League 6/16/2023</p>

Comment	Rule Section	Response	Commenter
<p>Pursuant to Shokal v. Dunn, 109 Idaho 330, 337-39 (1985), while IDL, IDWR and DEQ have distinct responsibilities as it relates to the protection of public trust resources, stream channels alteration, and water quality, it is essential that each of these various permit approvals be properly conditioned upon each other. That is, approval of casual exploration, Exploration Locations, or Riverbed Mineral Leases must be conditioned on the approval and receipt of a permit from other applicable state agencies.</p>	<p>General Comment</p>	<p>The purpose of this rule is not regulatory in nature. This is a leasing rule. It grants exclusive control over the mineral rights in navigable waterways for a limited period of time and provides revenue to the state. It does not authorize specific mining activities.</p> <p>Under this rule, casual exploration does not require approval from IDL (20.03.05.015.03).</p> <p>Exploration Locations, and IDL’s ability to approve them, is discussed in the Section 016 General Comment in this table below.</p> <p>IDL does include a requirement in the Riverbed Mineral Leasing procedure that an Idaho Department of Water Resources Stream Channel Alteration Permit is required and must be received before a lease can be issued. The procedures will be updated to include a similar requirement for an IPDES General Permit as well.</p>	<p>Idaho Conservation League 6/16/2023</p>
<p>Why do you have the word recreational in your mission statement online, but you have proposed to scratch the word out completely everywhere in your new proposals?</p>	<p>000.02</p>	<p>The definition of and references to recreational mining have been removed due to the 2014 changes to definitions in statute (Idaho Code § 47-703A(6)). The statutory definition of casual exploration now covers what was defined as casual exploration and recreational mining in the rules. This also better aligns with the Idaho Department of Water Resources authority for small scale mining under the Stream Channel Protection Act.</p>	<p>Travis Hollon 4/24/2023</p>

Comment	Rule Section	Response	Commenter
<p>Rule Draft #2 includes a change in IDAPA 20.03.05.015.06. Casual Exploration. “Department of Environmental Quality permits. Suction dredging requires a valid general or individual permit issued under the Idaho Pollutant Discharge Elimination System.”</p> <p>While it is accurate that “suction dredging” does constitute a “point source” under the definitions of the Clean Water Act and requires an IPDES permit, other forms of casual exploration or riverbed mining may also require a permit from DEQ. After all, suction dredge mining is just one of the methods that may be utilized to retrieve minerals via casual exploration, Exploration Location, or a Riverbed Mineral Lease, and other methods of mining or exploration may similarly result in a discharge requiring authorization pursuant to DEQ rules. Instead, ICL recommends that the language be amended to:</p> <p><i>Any activities that may result in a discharge to waters of the United States, including but not limited to suction dredging, require a valid general or individual permit issued under the Idaho Pollutant Discharge Elimination System.</i></p>	015.06	Casual exploration is commonly conducted using suction dredges. IDL specified suction dredging in the rule in order to apply the requirements to the most common practice used in casual exploration.	Idaho Conservation League 6/16/2023

Comment	Rule Section	Response	Commenter
<p>The permitting requirements of other state agencies are only referenced in the aforementioned section related to Casual Exploration (IDAPA 20.03.05 Section 015.06.)</p> <p>Instead, ICL recommends that similar language be added to IDAPA 20.03.05.016 (Exploration Locations) and IDAPA 20.03.05.020 (Riverbed Mineral Lease) sections as well.</p>	015.06	<p>Under Executive Order 2020-01 and guidance from the Division of Financial Management, this rule is seeking to remove duplicative references. The permitting requirements from IDWR and IDEQ are currently stated in section 015 of this rule, and this section applies to both section 016 (Exploration Locations) and section 020 (Riverbed Mineral Leases). Restating these requirements would not meet the requirements from DFM. Requirements for these permits will be included in the Riverbed Mineral Leasing Procedures. Also, Idaho Code § 47-704(8) already requires coordination with IDWR before issuing a lease.</p>	Idaho Conservation League 6/16/2023
<p>The Idaho Supreme Court has found that public input is necessary prior to any decision that alienates, impairs, or encumbers public trust resources. ICL appreciates that public comment is required in the procedures for Riverbed Mineral Leasing, however it must also be applied to Exploration Locations, which similarly encumber navigable rivers, albeit for a shorter time frame than a lease.</p>	016 General Comment	<p>According to Idaho Code § 47-703(1)- All state lands or navigable waters are open to exploration locations unless they are: 1. Covered by a mineral lease or a pending lease application. 2. Under a valid Exploration Location. 3. Have been specifically withdrawn from mineral entry or exploration.</p> <p>The filing of an exploration location pursuant to Idaho Code § 47-703 is a “ministerial” task rather than a “discretionary” task. In other words, if an individual follows regulations set forth in Idaho Code § 47-703, they have met the conditions required for their exploration location, and no action is required on behalf of the Board of IDL. Idaho Code § 58-1203 authorizes the Land Board to reject activities involving the alienation or encumbrance of the beds of navigable rivers, but again, the Land Board exercises its discretion in its decision as to whether the lands are open for exploration or withdrawn, not in the ministerial processing of exploration location notices. Exploration locations are not a significant encumbrance to public trust resources due to their limited size (1/2 mile of riverbed) and duration (2 years).</p>	Idaho Conservation League 6/16/2023

Comment	Rule Section	Response	Commenter
<p>All such permits must be accompanied by a cumulative effects analysis that takes into account other past, present, and reasonably foreseeable future actions, so that the public can be assured that there is no significant impairment of trust resources. Until the IDL adopts regulations consistent with these requirements, it should re-evaluate existing permits and revise proposed rules to ensure that Public Trust values and considerations be closely evaluated prior to the alienation or encumbrance of the beds or banks of navigable waters.</p>	<p>016.01-.05</p>	<p>IDL rules conform to the requirements set by statute. Idaho Code § 47-703A(6)(a) defines casual exploration as “entry and/or exploration which does <u>not</u> appreciably disturb or damage the land or resources thereon.” IDL believes that casual exploration does not significantly impair trust resources. Motorized exploration may appreciably disturb or damage the land or resources, but 47-703A(1) requires that motorized exploration operators must submit an exploration and reclamation plan and a bond prior to any work being done. Operators must comply with the Dredge and Placer mining act requirements and Mined Land Reclamation Act requirements as well. These reclamation plans, bond, and acts provide oversight of and requirements to restrict impairment of trust resources. Casual exploration is also conducted with dredges 5” or less and operators who wish to use larger equipment must obtain a riverbed mineral lease, which is subject to public comments and hearings.</p>	<p>Idaho Conservation League 6/16/2023</p>
<p>Section 030.02 of the proposed rule refers to a royalty schedule. Is the current royalty schedule being modified in any way and if so what changes are being proposed? Should the schedule be modified in the future, will doing so require IDL to conduct further rulemaking?</p>	<p>030.02</p>	<p>The current royalty schedule is not being modified as a result of this rulemaking. The royalty schedule is determined by the Land Board.</p>	<p>Idaho Association of General Contractors 4/18/2023</p>

Comment	Rule Section	Response	Commenter
<p>Previously existing language requiring a minimum \$750 dollar bonding is proposed to be removed. ICL is concerned that no justification for removal of a minimum bond has been given. Presumably, this language was previously deliberately included and establishing a minimum bond amount was deemed necessary for motorized exploration. The proposed language leaves the door open for bonding below \$750. Furthermore, given the nature of inflation and cost escalation, \$750 may no longer even be an appropriate minimum bond. ICL requests a minimum bond amount be retained and updated to reflect the most up to date cost estimates for motorized exploration.</p>	040.02	<p>This change reflects changes made to Idaho Code § 47-703A, “The bond shall be in an amount determined by the board to be the estimated reasonable costs to perform the reclamation activities described in the exploration and reclamation plan in the event of the failure of the operator to complete those activities, plus ten percent (10%) of such costs, and conditioned on the payment of all damages to the land and resources thereon caused by the motorized exploration.”</p> <p>Bonding should reflect the actual reclamation costs similar to what the Mined Land Reclamation statute and rules currently have. This is typically the cost of reclamation relative to the local wage and equipment rates.</p>	<p>Idaho Conservation League 6/16/2023</p>
<p>Section 040.03 of the proposed rule (pages 5&amp;6) replaces the \$750 minimum bond with an amount equal to an “estimated reasonable cost of reclamation.” We understand that this change reflects changes made to 47-703A, Idaho Code. However, we would like IDL to clearly state how the term “reasonable” is to be defined and the process it will use to establish an “estimated reasonable” fee.</p>	040.02	<p>Bonding should reflect the actual reclamation costs similar to what the Mined Land Reclamation statute and rules currently have. The term reasonable applies to the cost of reclamation relative to the local wage and equipment rates.</p>	<p>Idaho Association of General Contractors 4/18/2023</p>

**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](mailto: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  
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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)(    )

02. -- 009. (RESERVED)

10. 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)~~

**1107. 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")~~ five (5") 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)~~

~~**054. 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~~

CodeCasual 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.** 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~~ 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 the ~~each~~ 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; and ( )~~

~~**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 on-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 (\$~~50~~425) per application. (3-18-22)( )

02. **Nonrefundable Fee for Lease Application Advertising Application.** Forty Seventy-five dollars (\$~~45~~75) 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 (\$~~50~~200) per lease ~~or location~~ involved in the assignment. (3-18-22)( )

046 -- 999. (RESERVED)

## IDAPA 20 – IDAHO DEPARTMENT OF LANDS

### 20.03.05 - RULES GOVERNING NAVIGABLE WATERWAY MINERAL LEASING IN IDAHO

DOCKET NO. 20-0305-2301

#### NOTICE OF RULEMAKING – ADOPTION OF PENDING FEE RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2024 Idaho State Legislature and must be approved by concurrent resolution of the Legislature to go into effect, in accordance with Section 67-5224(2)(c), Idaho Code. The pending rule will become final and effective upon the adjournment, *sine die*, of the Second Regular Session of the Sixty-seventh Idaho Legislature after approval.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code, and Title 47, Chapter 13, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

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.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 6, 2023, Idaho Administrative Bulletin, Vol. 23-9, pages 314-320.

The changes in the pending rule were to fix punctuation and grammatical errors.

**FEE SUMMARY:** Pursuant to Section 67-5224(2)(d), Idaho Code, this pending fee rule shall not become final and effective unless affirmatively approved by concurrent resolution of the Legislature. 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

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Marde Mensinger at (208) 334-0248 or [mmensinger@idl.idaho.gov](mailto:mmensinger@idl.idaho.gov).

DATED this 21st day of November, 2023.

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