

STATE BOARD OF LAND COMMISSIONERS

August 20, 2024

Regular Agenda

Subject

Adoption of Pending Fee Rule, IDAPA 20.03.15 *Rules Governing Geothermal Leasing on Idaho State Lands*

Question Presented

Shall the Land Board adopt the pending fee rule for IDAPA 20.03.15?

Background

The Idaho Department of Lands (Department) administers a geothermal leasing program on behalf of the State Board of Land Commissioners (Land Board) for state endowment lands and lands owned by other state agencies. These activities are authorized by Idaho Code Title 47, Chapter 16 – Geothermal Resources. The adoption of related rules is authorized by Idaho Code § 47-1603.

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2024 for review during the 2025 legislative session.

The Department received Land Board approval on January 16, 2024 to enter negotiated rulemaking.

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 (<https://www.idl.idaho.gov/rulemaking/docket-20-0315-2401/>).
- Posted rulemaking notices to Townhall Idaho.
- Provided notice of negotiated rulemaking to stakeholders through email and direct communication.

Negotiated rulemaking meetings were held on March 28 and April 10, 2024. A total of 3 non-Department affiliated people attended these meetings.

Some discussion occurred regarding the addition and clarification of certain definitions to update the rule language to reflect current industry language and practices. One written comment was received from Eavor, Inc. pointing out that some definitions may need to be reviewed and updated. Minor revisions were suggested for sections 055 and 060 of the rule.

A summary of negotiated rulemaking and submitted written comments is included as Attachment 1. No comments were received after publication of the Proposed Fee Rule (Attachment 2).

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Fee Rule (Attachment 3) to the Office of the Administrative Rules Coordinator for the 2025 legislative session.

Recommendation

Adopt the pending fee rule for IDAPA 20.03.15 *Rules Governing Geothermal Leasing on Idaho State Lands*.

Board Action

Attachments

1. Negotiated Rulemaking Summary
2. Notice of Rulemaking – Proposed Fee Rule with Rule Text
3. Draft Notice of Adoption of Pending Fee Rule

Negotiated Rulemaking Summary

IDAPA 20.03.15, Rules Governing Geothermal Leasing on Idaho State Lands

Docket No. 20-0315-2401

Following Executive Order 2020-01: Zero-Based Regulation, this rule chapter is scheduled for review during the 2025 legislative session.

IDAPA 20.03.15 provides guidance for geothermal leasing on Idaho State Lands. The proposed changes seek to comply with Executive Order 2020-01. The Idaho Department of Lands (IDL) negotiated rulemaking process, includes, but is not limited to, legal and internal reviews of the rule, as well as review with stakeholders to ensure the rules provide appropriate guidance for lessees, interested parties, and the Department.

Negotiated rulemaking for these rules was approved by the Land Board on January 16, 2024. The Notice of Intent to Promulgate Rules – Zero-Based Regulation Negotiated Rulemaking was published in the Idaho Administrative Bulletin on March 6, 2024.

Stakeholder Outreach

The 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-20-0315-2401/>)
- Posted rulemaking notices to Townhall Idaho
- Email and direct communication giving notice of negotiated rulemaking to stakeholders.

Negotiated Rulemaking Public Meetings

Negotiated rulemaking meetings were held on March 28 and April 10, 2024. A total of 3 non-Department affiliated people attended these meetings.

Some discussion occurred regarding the addition and clarification of certain definitions to update the rule language to reflect current industry language and practices.

Written Comments

One written comment was received from Eavor, Inc. pointing out that some definitions may need to be reviewed and updated. Minor revisions were suggested for part 055 and 060 of the rule.

These comments have been posted for public review.

Concluding Negotiated Rulemaking

IDL concluded the negotiated rulemaking process and submitted the rule changes for publication as a proposed rule in the July 3, 2024, edition of the Idaho Administrative Bulletin. Key documents from the rulemaking record are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0315-2401/>, including 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 20.03.15, Rules Governing Geothermal Leasing on Idaho State Lands

Comment	Rule Section	Response
<p>03. Suggest adding an exploration definition that includes the use of drilling rigs. 04. Completion: next generation geothermal technologies will simultaneously complete wells and continue drilling at the same time. Therefore, it makes sense to remove the statement on rig removal from site to consideration geothermal wells completed. 07. Direct use: consider adding a deep direct use definition or remove industrial applications from the existing definition. 09. Field: next generation geothermal technologies do not require the use of fractured aquifers or porous or permeable zones. A field definition might include the presence of hot dry rock. 10. Geothermal Resources: next generation geothermal technologies such as advanced geothermal systems and enhanced geothermal systems do not require aquifers to produce heat from the earth into utility scale heat and power projects. Therefore, to ensure the longevity of the geothermal resource definition as technology advances a definition of geothermal should not include the term aquifer. For best practices on defining geothermal resources, please refer to NREL's 2023 rep.</p>	010	<p>Definitions were reviewed by IDL and many of these comments were implemented into the rule definitions.</p>
<p>Strike geothermal fluids and replace with geothermal resource</p>	055.01	<p>IDL reviewed and implemented this comment.</p>
<p>Drilling records: Eavor recommends that drilling records be turned over to the IDWR and be accessible to industry through a government portal.</p>	060.01	<p>IDL reviewed and implemented this comment, without reference to a government portal.</p>

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.15 – RULES GOVERNING GEOTHERMAL LEASING ON IDAHO STATE LANDS

DOCKET NO. 20-0315-2401 (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.

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 July 17th, 2024.

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:

The Idaho Department of Lands initiated this rulemaking in compliance with [Executive Order 2020-01: Zero-Based Regulation](#) with the goal of simplifying and streamlining the rules for increased clarity and ease of use.

FEE SUMMARY: No changes have been made to any fees in this proposed rule. The application fee (\$250) and assignment fee (\$150) remain the same. Rule language regarding late payment was removed to allow the Department to be consistent with statute as to how late fees are assessed.

FISCAL IMPACT: There is no negative fiscal impact on the state General Fund resulting from this rulemaking.

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 March 6, 2024, Idaho Administrative Bulletin, [Vol. 24-3, pages 18-19](#).

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: Not Applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance with technical questions concerning the proposed rule, contact Mike Murphy at (208) 334-0290 or mmurphy@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 July 24, 2024.

DATED this 3rd day of June, 2024.

Mike Murphy, Minerals Program Manager
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720 Boise, Idaho 83720-0050
Phone: (208)334-0290
Fax: (208)334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 20-0315-2401
(ZBR Chapter Rewrite.)

20.03.15 – RULES GOVERNING GEOTHERMAL LEASING ON IDAHO STATE LANDS

000. LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Sections 58-104(1), 58-104(6), 58-104(9), 58-105, ~~and~~ 58-127, Idaho Code; ~~and~~ Section 58-307, Idaho Code; Title 47, Chapter 7, Idaho Code; Title 47, Chapter 16, Idaho Code; and Title 67, Chapter 52, Idaho Code. (3-18-22)()

001. ~~TITLE AND~~ SCOPE.

~~01. Title.~~ These rules are titled IDAPA 20.03.15, “Rules Governing Geothermal Leasing on Idaho State Lands.” (3-18-22)

~~021. Scope.~~ These rules apply to the exploration and extraction of any ~~and all~~ ~~g~~Geothermal ~~r~~Resources situated in state-owned ~~m~~Mineral ~~l~~Lands. (3-18-22)()

~~032. Other Laws.~~ In addition to these rules, the Lessee must comply with all applicable federal, state and local laws, rules and regulations. ~~The violation of~~ Violating any applicable law, rule, or regulation constitutes a breach of any ~~l~~Lease issued in accordance with these rules. (3-18-22)()

002. ADMINISTRATIVE APPEALS.

Any ~~p~~Person aggrieved by any final agency action will be entitled to judicial review pursuant to ~~the provisions of~~ Title 67, Chapter 52, Idaho Code; ~~i~~ IDAPA 20.01.01; ~~i~~ and Title 47, Chapter 16, Idaho Code. (3-18-22)()

003. -- 009. (RESERVED)

010. DEFINITIONS.

~~The terms Mineral Lands, Mineral Rights, and Mineral are defined in Section 47-701, Idaho Code. The term Casual Exploration and Motorized Exploration are defined in Section 47-703A, Idaho Code. The term Geothermal Resource is defined in Section 47-1602, Idaho Code. In addition to the identified definitions in Idaho Code, the following definitions apply to these rules:~~ ()

01. Associated By-Products or By-Product: (3-18-22)

a. Any ~~m~~Mineral(s) ~~or minerals~~ (exclusive of ~~excluding~~ oil, hydrocarbon gas, ~~any other hydrocarbon compound~~, and helium) that are found in solution or developed in association with ~~g~~Geothermal ~~r~~Resources; or (3-18-22)()

b. Demineralized or mineralized water ~~found or developed in association with Geothermal Resources.~~ (3-18-22)()

02. Board. The Idaho State Board of Land Commissioners or its designee. (3-18-22)

~~03. Casual Exploration.~~ ~~Casual exploration means entry and/or exploration that 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.~~ (3-18-22)

043. Completion. A well is considered to be completed thirty (30) days after drilling operations have ceased and the drill rig is removed from the premises or thirty (30) days after the initial production or injection test has been completed, whichever occurs ~~last~~ first. (3-18-22)()

054. Department. The Idaho Department of Lands ~~or its designee~~. (3-18-22)()

065. Director. The ~~d~~Director of the Idaho Department of Lands or ~~his~~ their designee. (3-18-22)()

07. Direct Use. ~~The use of geothermal resources for direct applications, including, but not limited to, road surface heating, resorts, hot spring bathing and spas, space heating of buildings, recreation, greenhouse warming, aquaculture, or industrial applications where geothermal heat is used in place of other energy inputs.~~ (3-18-22)

086. Electrical Power Generation. The use of ~~g~~Geothermal ~~r~~Resources to either directly generate electricity or to heat a secondary fluid and use it to generate electricity. (3-18-22)()

097. Field. A geographic area overlying a ~~geothermal system~~ geologic setting with ~~one (1) or more~~ g~~Geothermal reservoirs~~ Resource(s) or pool(s), including any porous, permeable geologic layer, that may be formed along one (1) fault or fracture, or a series of connected faults or fractures. (3-18-22)()

10. Geothermal Resources. ~~The natural heat energy of the earth, the energy, in whatever form, that may be found in any position and at any depth below the surface of the earth present in, resulting from, or created by, or that may be extracted from such natural heat, and all minerals in solution or other products obtained from the material medium of any geothermal resource. When used without restriction, it includes associated by-products.~~ (3-18-22)

108. Lease. ~~A lease covering the geothermal resources and associated by-products in state lands written agreement between the Department and a Person containing the terms and conditions upon which the Person will be authorized to use State Lands.~~ (3-18-22)()

1209. Lessee. The ~~p~~Person to whom a geothermal ~~H~~Lease has been issued and ~~his~~ their successor in interest or assignee. It also means any agent of the Lessee or an ~~o~~Operator holding authority by or through the Lessee. (3-18-22)()

130. Market Value. The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which the property or commodity should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. (3-18-22)

14. Motorized Earth-Moving Equipment. ~~Backhoes, bulldozers, front loaders, trenchers, core drills, drill rigs, power augers, and other similar equipment.~~ (3-18-22)

151. Navigable Water Courses. ~~The state-owned beds of active lakes, rivers, and streams that do not include formerly submerged lands where the state retains ownership.~~ excluding formerly submerged public lands. (3-18-22)()

162. Operator. The ~~p~~Person having control or management of operations on the leased lands or a portion thereof. The ~~o~~Operator may be the Lessee, designated operator, or agent of the Lessee, or holder of rights under an approved operating agreement. (3-18-22)()

173. Overriding Royalty. An interest in the ~~g~~Geothermal ~~r~~Resource produced at the surface free of any cost of production. It is a royalty in addition to the royalty reserved to the ~~s~~State. (3-18-22)()

184. Person. ~~Any natural person, corporation, association, partnership, or other entity recognized and authorized to do business in Idaho, receiver, trustee, executor, administrator, guardian, fiduciary, or other representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders~~ Any 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)()

195. Record Title. The publicly recorded ~~L~~ease that ~~is the~~ evidence ~~s of the~~ right that a ~~p~~Person has to the possession of the leased property. (3-18-22)()

2016. Reservoir or Pool. A porous, permeable geologic layer containing ~~g~~Geothermal ~~r~~Resources. (3-18-22)()

2417. Shut In. To close the valves at the wellhead so that the well stops flowing or producing. Also describes a well on which the valves have been closed. (3-18-22)

2218. State Lands. Without limitation, lands in which the title to the ~~m~~Mineral ~~r~~Rights are owned by the state of Idaho and are under the jurisdiction and control of the Board or ~~under the jurisdiction and control of~~ any other state body or agency, having been obtained from any source and by any means whatsoever, including the beds and banks of navigable waters of the state of Idaho. (3-18-22)()

2319. Waste. Any physical loss of ~~g~~Geothermal ~~r~~Resources including, ~~but not limited to:~~ (3-18-22)()

a. Underground loss of ~~g~~Geothermal ~~r~~Resources resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any ~~g~~Geothermal ~~r~~Resource ~~p~~Pool, ~~r~~Reservoir, or other source; ~~or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner that results, or tends to result in, reducing the quantity of geothermal energy to be recovered from any geothermal area in the state;~~ (3-18-22)()

b. ~~The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well.~~ Underground loss of Geothermal Resources resulting from the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results in inefficient, excessive or improper use or dissipation of the quantity of geothermal energy to be recovered; (3-18-22)()

c. The inefficient above-ground transporting or storage of geothermal energy; ()

d. The inefficient above-ground locating, spacing, equipping, operating, or producing of any well, including injection well, in a manner causing unnecessary or excessive surface loss or destruction of geothermal energy; or ()

e. The escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development of or production from a well. ()

011. ABBREVIATIONS.

01. IDWR. Idaho Department of Water Resources. (3-18-22)

012. -- 019. (RESERVED)

020. QUALIFIED APPLICANTS AND LESSEES.

Any ~~p~~Person legally competent to contract may submit an application to lease ~~s~~State ~~L~~and provided such ~~p~~Person ~~is not then in default of~~ does not have any contract in default with the state of Idaho or any department or agency thereof. (3-18-22)()

021. LEASE AWARD THROUGH AUCTION.

If more than one (1) application is received for geothermal development on the same parcel of land, a lease auction will be held. (3-18-22)

022. -- 029. (RESERVED)

030. **TERM/LEASE PROVISIONS.**

01. ~~Lease Term.~~ All leases may be for a term of up to forty-nine (49) years from the effective date of the lease. (3-18-22)()

021. **Diligence in Utilization.** Lessee will use due diligence to market or utilize ~~g~~Geothermal ~~r~~Resources in paying quantities. If leased land is capable of producing ~~g~~Geothermal ~~r~~Resources in paying quantities, but production is shut-in, the ~~H~~Lease will continue in force upon payment of rentals for the duration of the ~~H~~Lease term or two (2) years after shut-in, whichever is shorter. If the Department determines that the Lessee is proceeding diligently to acquire a contract to sell or to utilize the production or is progressing with installations needed for production, the ~~H~~Lease may continue in force for one (1) additional year if rental payments are kept current. The Department will continue to review a shut-in ~~H~~Lease every year until production and payment of royalties takes place, or the ~~H~~Lease is terminated for Lessee's lack of due diligence or surrendered by the Lessee. (3-18-22)()

032. **Yearly Reporting.** A report of all exploration, development, and production activities must be submitted to the Department at the close of each ~~H~~Lease year. (3-18-22)()

031. -- 034. (RESERVED)

035. **RENTALS.**

01. **Advance Annual Rental.** Lessee will pay ~~to~~ the Department, in advance, ~~each year an~~ yearly annual rental. The annual rental for the first year of the ~~Lease's~~ term will be ~~due and payable and will be received by the Department, paid to the Department within thirty (30) days of the date of notice of Lease approval or award.~~ Together with the payment, the Lessee must submit a lease agreement that it executed ~~by Lessee within thirty (30) days of the date of notice of approval or award.~~ Second year and subsequent rental payments must be received by the Department ~~on or before the anniversary date of the lease~~ before the Lease's anniversary date. (3-18-22)()

02. **Amount.** Annual rentals will be set by the Board through competitive bidding, negotiation, fixed amounts, formulas, or some other method of valuation that a prudent investor might reasonably apply to establish such rental amounts. (3-18-22)

036. **ROYALTIES.**

01. **Royalty Payments.** The Lessee will ~~cause to be paid to~~ pay the Department royalties on the value of geothermal production from the leased ~~premises~~ lands. The royalty rate will be established ~~by the Board based on the market value of the geothermal resources produced from the lands under lease. The royalties specified in geothermal leases will be fixed in any manner by the Board, including but not limited to competitive bidding, negotiation, fixed amounts, or formulas per Section 47-1605(2), Idaho Code.~~ Royalty rates may be adjusted through ~~out the term of the lease in order~~ the Lease's term to keep pace with ~~m~~Market ~~v~~Values. When ~~H~~Leases are issued, the following guidelines will be used for royalty rates not subject to competitive bidding: (3-18-22)()

a. A royalty of ~~between at least~~ five percent (5%) ~~and twenty percent (20%)~~ of the amount or value of ~~g~~Geothermal ~~r~~Resources, or any other form of heat or energy excluding ~~e~~Electrical ~~p~~Power ~~g~~Generation, derived from production under the ~~H~~Lease and sold or utilized by the Lessee or reasonably susceptible to sale or utilization by the Lessee; (3-18-22)()

b. A royalty of ~~between at least~~ two percent (2%) ~~and fifteen percent (15%)~~ of the amount or value of any ~~a~~Associated ~~b~~By-~~p~~Product derived from production under the ~~H~~Lease and sold or utilized or reasonably susceptible of sale or utilization by the Lessee, including commercially demineralized water, and; (3-18-22)()

c. A royalty of ~~between at least~~ two percent (2%) ~~and five percent (5%)~~ of gross receipts for sale of electrical power. (3-18-22)()

02. Calculation of Value. The value of geothermal production from the leased ~~premises lands~~ for the purpose of computing royalties is based on a total of the following: (3-18-22)()

a. The total consideration accruing to the Lessee from the sale of ~~g~~Geothermal ~~r~~Resources to another party in an arms-length transaction; and (3-18-22)()

b. The value of the end product attributable to the ~~g~~Geothermal ~~r~~Resource produced from a particular ~~l~~Lease where ~~g~~Geothermal ~~r~~Resources are not sold by the Lessee before being utilized, but are instead directly used in manufacturing power production, or other industrial activity; and (3-18-22)()

c. The value of all renewable energy credits or similar incentives based on a proportionate share of the leased lands in the entire project area qualifying for the credits. (3-18-22)

03. Due Date. Royalties will be due and payable monthly to the Department on or before the last day of the calendar month following the month in which the ~~g~~Geothermal ~~r~~Resources and/or their ~~a~~Associated ~~b~~By-~~p~~Products are produced and utilized or sold. (3-18-22)()

04. Utilization of Geothermal Resources. The Lessee, within thirty (30) days of execution, must file with the Department ~~within thirty (30) days after execution~~ a copy of any contract for the utilization of ~~g~~Geothermal ~~r~~Resources from the ~~l~~Lease. Unless otherwise authorized, in writing, by the Department, Reports of sales or utilization by Lessee and royalty for each productive ~~l~~Lease must be filed ~~each month~~ monthly once production begins, even though production may be intermittent, ~~unless otherwise authorized by the Department. The report must include T~~otal volumes of ~~g~~Geothermal ~~r~~Resources produced and utilized or sold, including ~~a~~Associated ~~b~~By-~~p~~Product(s), the value of production, and the royalty due to the state of Idaho ~~must be shown. This~~ The report is due on or before the last day of the month following the month in which production was obtained and sold or utilized, together with the royalties due to the state of Idaho. (3-18-22)()

05. Measurement. The Lessee will measure ~~or gauge~~ all production in accordance with Department approved methods ~~approved by the Department~~. The quantity and quality of all production will be determined in accordance with the standard practices, procedures, and specifications generally used in industry. All measuring equipment must be tested consistent with industry practice and, if found defective, the Department will determine the quantity and quality of production from the best evidence available. (3-18-22)()

06. By-Product Testing. The Lessee ~~will periodically~~ must furnish the Department the results of periodic tests consistent with industry practice showing the content of ~~b~~By-~~p~~Products in the produced ~~g~~Geothermal ~~r~~Resources. ~~Such tests will be taken as specified by the Department and by the method of testing approved by him, except that tests not consistent with industry practices will be conducted at the expense of the Department. The Department may require additional tests be taken at Lessee's expense. Any additional tests which are not consistent with industry practices will be conducted at the expense of the Department.~~ (3-18-22)()

07. Commingling Pooling. The Department may authorize a Lessee to ~~commingle~~ pool production from wells on ~~his~~ their State ~~l~~Lease(s) with production from non-state lands. Department approval of ~~commingling~~ pooling will not be unreasonably withheld, and will consider the following: (3-18-22)()

a. The ~~e~~Operator's economic necessity of ~~commingling~~ pooling; (3-18-22)()

b. The type of geothermal use proposed for the ~~commingled~~ pooled waters; and (3-18-22)()

c. Sufficient measurement and accounting of all the ~~commingled~~ pooled waters to ensure that the Department is appropriately compensated by royalties. (3-18-22)()

037. -- 039. (RESERVED)

040. SIZE OF A LEASABLE TRACT.

01. Surface Area. Geothermal ~~l~~Leases are not limited in surface area. The Board will determine the surface area of a ~~l~~Lease after consultation with other state agencies and prospective Lessees. The probable extent of a

geothermal ~~f~~Reservoir, the surface area needed for a viable project, and other relevant factors will be used to help determine ~~f~~Lease surface area. (3-18-22)()

02. Navigable Water Courses. Geothermal ~~f~~Resources ~~f~~Leases may be issued for ~~s~~State ~~f~~Lands underlying ~~n~~Navigable ~~w~~Water ~~e~~Courses ~~in Idaho~~. Such lands are considered “~~s~~State ~~f~~Lands” and will be leased in accordance with these rules. Operations in the beds of ~~n~~Navigable ~~w~~Water ~~e~~Courses will not be authorized except in necessary circumstances and then only with the Board’s express written approval ~~of the Board and~~ upon such conditions and security as the Department deems appropriate. (3-18-22)()

041. -- 049. (RESERVED)

050. LAND SURFACE USE RIGHTS AND OBLIGATIONS.

01. Use and Occupancy. (3-18-22)

a. Lessee will be entitled to use and occupy only so much of the surface of the leased lands as may be required for all purposes reasonably incident to exploration, ~~for, drilling for, production and marketing or drilling, producing, or marketing for~~ gGeothermal ~~f~~Resources and ~~a~~Associated ~~b~~By-~~p~~Products produced from the leased lands, including the right to construct and maintain thereon all works, buildings, plants, waterway, roads, communication lines, pipelines, reservoirs, tanks, pumping stations or other structures necessary to the full enjoyment and development thereof, consistent with Department approved plan of operations and amendments, ~~thereto, as approved by the Department if amended.~~ (3-18-22)()

b. Uses occurring on the leased area related to exploration, development, production, or marketing of ~~g~~Geothermal ~~f~~Resources and ~~a~~Associated ~~b~~By-~~p~~Products ~~produced from off-lease lands may require the Lessee to pay additional rent.~~ (3-18-22)()

~~**02. Supervision.** Uses of state lands within the jurisdiction and control of the Board are subject to the supervision of the Department. Other state lands are subject to the supervision of the appropriate state agency consistent with these rules.~~ (3-18-22)

~~**032. Distance from Residence.** No well may be drilled within two hundred (200) feet of any house or barn on the ~~premises~~ leased lands, without the written consent of the Department and its surface Lessees, grantees, or contract purchasers.~~ (3-18-22)()

~~**043. Disposal of Leased Land.** The Board reserves the right to sell or otherwise dispose of the Leased Land’s surface ~~of the lands embraced with a lease, insofar as said to the extent that the~~ surface is not necessary for ~~the Lessee’s~~ use ~~of the Lessee~~ in the exploration, development, and production of the gGeothermal ~~f~~Resources and ~~a~~Associated ~~b~~By-~~p~~Products, ~~but a~~ Any sale disposal of surface rights made subsequent to ~~execution~~ executing of a ~~f~~Lease will be subject to ~~all of that Lease’s~~ the terms and provisions ~~of that lease during the life thereof for the Lease’s duration.~~ (3-18-22)()~~

~~**054. Damage.** Lessee must pay ~~to~~ the Board, its surface ~~f~~Lessees or grantees, or contract purchasers, for any damage done to the surface of said lands and improvements thereon, including without limitation growing crops, by reason of Lessee’s operations.~~ (3-18-22)()

051. -- 053. (RESERVED)

054. EXPLORATION UNDER THE LEASE.

01. Diligent Exploration. Lessees must perform diligent exploration and development activities in the first five (5) years of the initial ~~f~~Lease term or as otherwise extended by ~~f~~Lease provision. Diligent exploration includes seismic, gravity, and other geophysical surveys, geothermometry studies, drilling temperature gradient wells, or similar activities that seek to determine the presence or extent of gGeothermal ~~f~~Resources. This exploration may occur off of ~~leased~~ lands if it is being done on the same geothermal ~~f~~Field. Failure to perform diligent exploration as described may result in ~~f~~Lease cancellation. (3-18-22)()

02. ~~Casual Exploration.~~ At any time after formal approval by the Board of a lease application, Lessee may enter upon the leased lands for casual exploration or inspection without notice to the department. ~~As an express condition of an application to lease and of the right of casual inspection without notice, Lessee agrees to the indemnity conditions provided in Section 102 of these rules without a formally executed lease.~~ (3-18-22)

032. ~~Plan Required.~~ Lessee must submit a Research and Analysis Plan to the Department before any exploration using motorized equipment or before otherwise engaging in operations that may lead to an appreciable disturbance or damage to lands, timber, other resources, or improvements on or adjacent to the Motorized Exploration on leased lands. The proposed activities may not start until the Department approves the plan and the applicable preconditions in Sections 100 and 101 of these rules have been satisfied. The plan of operations may be amended as needed with Department approval. The plan includes all items that the Department deems necessary or useful in managing the gGeothermal rResources including, ~~but not limited to, the following:~~ (3-18-22)()

a. A narrative statement describing all diligent exploration activities that Lessee will conduct, including the type; location; expected impact, disturbance, or damage to the land or existing natural resources; and schedule of all proposed or planned diligent exploration. ()

ab. A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to the prevention or control of: (3-18-22)

- i. Fires; (3-18-22)
- ii. Soil loss and erosion; (3-18-22)
- iii. Pollution of surface and ground waters; (3-18-22)
- iv. Damage to fish and wildlife or other natural resources; (3-18-22)
- v. Air and noise pollution; and (3-18-22)
- vi. Hazards to public health and safety during lLease activities; (3-18-22)()

bc. All pertinent information or data that the dDepartment may require to support the plan of operations for the utilization of gGeothermal rResources and the protection of the environment; (3-18-22)()

d. A proposed schedule, which includes major milestones with sufficient detail to assess progress. ()

055. DEVELOPMENT AND PRODUCTION UNDER THE LEASE.

01. Diligent Development of Lease and Production. Lessee must develop the gGeothermal rResources on their leased d-area lands for the Lease's duration and start production within the first ten (10) years of the initial lLease term or as otherwise extended by lLease provision. Development of the leased d-area lands requires drilling wells to be drilled and constructing other necessary infrastructure to be built to enable production. Production on the leased d-area lands means that gGeothermal fluids Resources are being used and royalties are being paid to the sState. Failure to develop under the lLease and start production as described may result in lLease cancellation unless the Lessee applies to the Department, for and the Department grants an extension ~~and the extension is granted.~~ (3-18-22)()

02. Best Practices. All operations will conform to the best practice and engineering principles in use in the industry. Operations must be conducted in such a manner as to: protect the natural resources on the leased lands, including without limitation gGeothermal rResources, ~~and to;~~ result in the maximum ultimate recovery of gGeothermal rResources with a minimum of minimal waste; and be consistent with the principles of the land's use ~~of the land~~ for other purposes and of the protection of the environment. Lessee must promptly remove from the leased lands or store, in an orderly manner, all scraps or other materials not in use and not reasonably incident to the operation. (3-18-22)()

03. Plans Required. Prior to development, Lessee must submit a ~~D~~development ~~P~~plan, ~~O~~operating ~~P~~plan, and ~~D~~decommissioning and ~~R~~reclamation ~~P~~plan for the leased lands. All plans must be approved by the Department, in writing, prior to Lessee beginning a phase of the ~~L~~lease in which those plans are performed or as otherwise required by the ~~L~~lease. ~~All required pPlans must include all items that the Department deems necessary or useful in managing the gGeothermal fResources, including, but not limited to, those the items referred to in Paragraphs Sections 054.03.a. and 054.03.b. of these rules.~~ (3-18-22)()

04. Waste and Damage. (3-18-22)

a. Lessee must take all reasonable precautions to prevent the following: (3-18-22)

i. Waste; (3-18-22)

ii. Damage to other natural resources; (3-18-22)

iii. Injury or damage to ~~p~~Persons, real or personal property; and (3-18-22)()

iv. Any environmental pollution or damages that may constitute a violation of state or federal laws. (3-18-22)

b. The Department may inspect Lessee's operations and issue ~~such any orders as are~~ necessary to accomplish the purposes in ~~Paragraph Section 055.04.a.~~ Any significant effect on the environment created by the Lessee's operations or failure to comply with environmental standards must be reported to the Department by Lessee within twenty-four (24) hours and confirmed in writing within thirty (30) days. (3-18-22)()

05. Notice of Production. Lessee must notify the ~~d~~Department within sixty (60) days before any ~~g~~Geothermal ~~f~~Resources are used or removed for commercial purposes. (3-18-22)()

06. Amendments. ~~Lessee may amend T~~the plan of operations ~~must be amended by the Lessee for the Department's approval and submit it to the Department for written approval~~ to reflect changes in operations on the leased lands, including the installation of works, buildings, plants, or structures for the production, marketing, or utilization of ~~g~~Geothermal ~~f~~Resources. (3-18-22)()

056. WASTE PREVENTION, DRILLING AND PRODUCTION OBLIGATIONS.

01. Waste. All ~~L~~leases are subject to the condition that the Lessee will, in conducting ~~his~~ exploration, development, and ~~producing production~~ operations, use all reasonable precautions to prevent ~~w~~Waste of ~~g~~Geothermal ~~f~~Resources and other natural resources found or developed in the leased lands. (3-18-22)()

02. Diligence. The Lessee must, subject to the right to surrender the ~~L~~lease, diligently drill and produce, or unitize such wells as are necessary to protect the Board from loss by reason of production on other properties. (3-18-22)()

03. Prevention of Waste Through Reinjection. ~~Geothermal~~ Lessees must return geothermal waters to the geothermal aquifer in a manner that supports geothermal development. (3-18-22)()

04. Additional Requirements. The selection of the types and weights of drilling fluids and provisions for controlling fluid temperatures, blowout preventers, and other surface control equipment and materials, casing and cementing programs, etc., to be used must be based on sound engineering principles and must take into account apparent geothermal gradients, depths and pressures of the various formations to be penetrated, and other pertinent geologic and engineering data and information about the area. In addition, the Lessee must ~~do the following:~~ (3-18-22)()

a. Take all necessary precautions to keep all wells under control at all times; (3-18-22)

b. Utilize trained and competent personnel; (3-18-22)

- c. Utilize properly maintained equipment and materials; and (3-18-22)
- d. Use operating practices that ensure the safety of life and property. (3-18-22)

05. Unused Wells. Except as provided in Subsection 070.02 ~~of these rules~~, the Lessee must promptly plug and abandon any unused or non-useful well on the leased land ~~that is not used or useful~~ in conformity with IDWR's regulations ~~promulgated by the IDWR~~ or its successor agency. ~~No~~ A production well ~~will may not~~ be abandoned until its lack of capacity for further profitable production of gGeothermal ~~Resources~~ has been demonstrated to the Department's satisfaction ~~of the Department~~ and the Department has been given an opportunity to either acquire the well permit or assign it to another party. A producible well may be abandoned only after ~~receipt of written approval by the Department~~ Department's written approval. Equipment will be removed; and premises at the well site will be restored as near as reasonably possible to its original condition immediately after plugging operations are completed on any well, except as otherwise authorized by the Department in writing. Drilling equipment must not be removed from any suspended drilling well without taking adequate measures to close the well and protect subsurface resources. ~~Upon Lessee's failure of Lessee~~ to comply with any requirements under this rule, may result in the Department ~~is authorized to cause~~ causing the work to be performed at the expense of the Lessee and the surety. (3-18-22)()

057. -- 059. (RESERVED)

060. EXPLORATION AND OPERATION RECORDS, CONFIDENTIALITY.

01. Drilling Records. Lessee must keep or cause to be kept and filed, with the IDWR such careful and accurate well drilling records as are ~~now or may hereafter be~~ required by ~~that Department~~ IDWR. As an express condition of the Lease, the Department may, at any time, inspect and copy well drilling records filed with IDWR. Lessee must file with the Department such production records and exploration evidence as required by Sections 030, 036, and 055 of these rules; ~~which~~ The production records ~~will be are~~ subject to public inspection ~~by the public~~ at the Department's offices, ~~of the Department~~ during regular business hours and under such conditions as the Department deems appropriate, subject, ~~however, to exemptions from~~ except for disclosure ~~as exemptions~~ set forth in Section 74-107, Idaho Code. ~~As an express condition of the lease, the Department may inspect and copy well drilling records filed with the IDWR at any time after the records are filed.~~ (3-18-22)()

02. Continuing Obligations. Lessee's obligations under this rule will continue beyond assignment, surrender, termination, or expiration of the Lease. Unless Lessee is specifically released in writing by the Department the Department releases the Lessee, in writing, of all or any portion of its obligations under the lease upon the assignment, surrender, termination or expiration of the Lease. ~~Lessee's obligations under this rule will continue beyond assignment, surrender, termination or expiration of the lease.~~ Lessee must file all outstanding data and records required by law with the Department, within thirty (30) days after assignment, surrender, termination or expiration, or such additional time as the Department may grant; ~~file all outstanding data and records required by this rule with the Department.~~ (3-18-22)()

03. Well Logs. The confidentiality of well logs is limited to one (1) year from well eCompletion as stated in Section 42-4010(b), Idaho Code. (3-18-22)()

061. -- 064. (RESERVED)

065. LESSEE'S RECORDS, RIGHT OF INSPECTION BY DEPARTMENT.

~~Lessee will permit~~ The Department to may examine, during ~~reasonable~~ business hours, all books, records, and other documents and matters pertaining to operations under a Lease, which are in Lessee's custody or control, and ~~to may~~ make copies of and extracts therefrom. (3-18-22)()

066. -- 069. (RESERVED)

070. WATER RIGHTS.

01. Water Rights. Lessee must comply with all applicable federal and state laws, rules and regulations regarding the appropriation of public waters of Idaho to beneficial uses. The establishment of any new water rights on

~~s~~State ~~L~~ands must be by and for the Lessor and no claim thereto may be made by the Lessee. Such water rights will attach to and become appurtenant to the ~~s~~State ~~L~~ands, and the Lessor will be the owner thereof. (3-18-22)()

02. Potable Water Discovery. ~~All ~~L~~leases issued under these rules will be~~ are subject to the condition that, ~~where if~~ the Lessee finds only potable water ~~of, which has~~ no commercial value as a ~~g~~Geothermal ~~r~~Resource, in any well drilled for exploration or production of ~~g~~Geothermal ~~r~~Resources, and ~~when~~ the water is of such quality and quantity so as to be valuable and usable for agricultural, domestic, or other purpose, the Board, or where appropriate, the surface Lessee, grantee or contract purchaser, will have the right to acquire the well with whatever casing is installed ~~in the well~~ at the casing's fair ~~m~~Market ~~v~~Value ~~of the casing, and upon the assumption assuming~~ of all future liabilities and responsibilities for the well, and with the approval of ~~the IDWR's~~ director ~~of the IDWR~~. (3-18-22)()

071. -- 074. (RESERVED)

075. ASSIGNMENTS.

01. Prior Written Approval. ~~In order for Lessee to effect an assignment, Lessee must, prior to the consummation of an effective sale, transfer or assignment of the lease between Lessee and its proposed assignee, provide to the Department certain information about the proposed assignment, including identification of A Lessee must obtain the Department's written approval for an assignment to be effective. Before consummating a sale, transfer, or assignment of the Lease, Lessee must provide the Department with certain information about the proposed assignment. Such information includes identifying the proposed assignee and the general terms of the proposed assignment on Department assignment application forms provided by the Department. Any proposed total or partial assignment of a lease must be preapproved in writing by the Department prior to any proposed sale, transfer or assignment of the lease is consummated between Lessee and the proposed assignee. Approval will not be unreasonably withheld.~~ Following the Department's written preapproval of the proposed assignee and general terms of the proposed assignment, Lessee and assignee may consummate any such sale, transfer, or assignment of Lessee's leasehold interest in the ~~L~~Lease. The consummation of any assignment agreement by the Lessee without the Department's ~~prior~~ written preapproval constitutes a default of the ~~L~~Lease, and such sale, transfer, or assignment may be rejected in the Department's sole discretion; and, such assignment will only be effective if the default is expressly waived in writing by the Department. ~~In order f~~ For an assignment of Lessee's interest in the ~~L~~Lease to be acceptable for Department approval ~~by the Department~~, the consummated sale, transfer or assignment must include provisions wherein Lessee has sold, transferred, or assigned to the assignee any and all interest that Lessee has in the ~~L~~Lease together with any ~~and all~~ interest Lessee has in any ~~and all~~ improvements located upon the leased ~~premises~~ lands, and assignee must assume all liabilities of Lessee under the ~~L~~Lease together with ownership of all improvements owned by Lessee. An assignment between Lessee and its assignee will only take effect following the Department's final written approval of the assignment following receipt of copies of the final, consummated sale, transfer or assignment agreement between Lessee and assignee. (3-18-22)()

02. Full or Partial. A ~~L~~Lease may be assigned as to all or part of the acreage included therein to any qualified pPerson ~~qualified to hold a state lease~~, provided that neither the assigned nor the retained part created by the assignment contains less than forty (40) acres. ~~No An assignment cannot create an~~ undivided interest in a ~~L~~Lease of less than ten percent (10%) ~~may be created by assignment~~. (3-18-22)()

03. Overriding Royalty Disclosure. Overriding royalty interests created by an assignment are subject to the requirements in Section 080 ~~of these rules~~. (3-18-22)()

04. Responsibility. In ~~an assignment of assigning~~ a partial or complete interest in ~~all of leased~~ the lands ~~in a lease~~, the ~~assignor~~ Lessee and its surety continue to be responsible for ~~performance of any and performing~~ all obligations under the ~~L~~Lease until ~~such time as~~ the Department, in writing, releases Lessee and its surety from obligations arising under the ~~L~~Lease after the Department accepts any such assignment ~~and provides a release of any or all obligations in writing~~. After ~~the an assignment's~~ effective date ~~of any assignment~~, the assignee and its surety will be bound by the terms of the lease to the same extent as if the assignee were the original Lessee, any conditions in the assignment to the contrary notwithstanding. (3-18-22)()

05. Segregation of Assignment. An assignment of all or any portion of Lessee's ~~r~~Record ~~t~~Title of the complete interest in a portion of the leased lands ~~in a lease~~ must clearly identify and segregate the assigned and

retained portions. After the effective date, the assignor will be released and discharged from any obligations thereafter accruing with respect to the assigned portion of the leased lands. Such segregated Hleases continue in full force and effect for the primary term of the original Hlease or as further extended pursuant to the terms of these rules.

(3-18-22)()

06. Joint Principal. Where an assignment does not segregate the ~~R~~Record ~~T~~Title to the Hlease, the assignee, ~~if the assignment so provides,~~ may become a joint principal on the bond with the assignor, ~~if the assignment so provides,~~ The application must ~~also~~ be accompanied by ~~a consent of the~~ assignor's surety's written consent to remain bound under the bond of record, if the bond's ~~by its~~ terms, ~~does~~ not contain such consent. If a party to the assignment has previously furnished a statewide bond, no additional showing by such party is necessary as to the bond requirement.

(3-18-22)()

07. Application. The application for approval of an assignment must be on Department approved forms ~~approved by the Department.~~

(3-18-22)()

08. Denial. If the Lessee is in default of the Hlease at the time of a request for assignment approval, the Department may, ~~at in~~ its sole discretion, reject any proposed assignment until the Hlease is brought into full compliance. The approval of an assignment of a Hlease in good standing will not be unreasonably withheld, provided such consent of the Department is requested and obtained prior to any assignment.

(3-18-22)()

076. -- 079. (RESERVED)

080. OVERRIDING ROYALTY INTERESTS.

01. Statements. An overriding royalty interest, or any similar interest whereby an agreement is made to pay a percentage based on production, must be disclosed at the time of assignment or transfer by filing a statement of such interest with the Department. Assignees must meet the requirements of Section 0210 ~~of these rules.~~ All assignments of overriding royalty interests without a working interest and otherwise not contemplated by Section 075 ~~of these rules,~~ must be filed with the Department within ninety (90) days from the date of execution.

(3-18-22)()

02. Maximum Amount. No ~~o~~Overriding ~~r~~Royalty on the production of ~~g~~Geothermal ~~r~~Resources created by an assignment ~~contemplated by under~~ Section 075, ~~of these rules~~ or otherwise, will exceed five percent (5%) nor will an ~~o~~Overriding ~~r~~Royalty, when added to ~~o~~Overriding ~~r~~Royalties previously created, exceed five percent (5%).

(3-18-22)()

03. Conformance with Rules. The creation of an ~~o~~Overriding ~~r~~Royalty interest that does not conform to the requirements of this rule is ~~be~~ deemed a violation of the Hlease terms, unless the agreement creating ~~o~~Overriding ~~r~~Royalties provides for a prorated reduction of all ~~o~~Overriding ~~r~~Royalties so that the aggregate rate of ~~o~~Overriding ~~r~~Royalties does not exceed five percent (5%).

(3-18-22)()

04. Director's Authority. In addition to the foregoing limitations, any agreement to create, or any assignment creating, royalties or payments out of production from the leased lands is subject to the authority of the Director, after notice and hearing, to require the proper parties thereto to suspend or modify such royalties or payments out of production in such manner as may be reasonable when and during such periods of time as they may constitute an undue economic burden upon the reasonable operations of such Hlease.

(3-18-22)()

081. -- 084. (RESERVED)

085. UNIT OR COOPERATIVE PLANS OF DEVELOPMENT OR OPERATION.

01. IDWR Approval. Nothing in this rule ~~will~~ excuses the parties to a unit agreement from procuring ~~the IDWR's~~ approval ~~of the IDWR,~~ if required, pursuant to Section 42-4013, Idaho Code, ~~if approval is required.~~

(3-18-22)()

02. Unit Plan. For the purpose of conserving the natural resources of any geothermal ~~p~~Pool, ~~f~~Field, or like area, Lessees ~~under lease issued by the Board are authorized may,~~ with the Department's written consent ~~of the~~

~~Department to~~ commit the ~~s~~State ~~L~~ands to unit, cooperative, or other plans of development or operation with other ~~s~~State ~~L~~ands, federal lands, privately-owned lands, or Indian lands. ~~The Department's~~ consent will not be unreasonably withheld. Applications to unitize, or a copy of the application filed with IDWR, ~~will must~~ be filed with the Department who will certify whether ~~such the~~ plan is necessary or advisable in the public interest. The Department may require whatever documents or data ~~that the Department~~ deemed necessary in ~~its reasonable the~~ Department's discretion. To implement such unitization, the Board may, with the consent of its Lessees, modify and change any ~~and all~~ terms of leases ~~issued by it~~ that are committed to such unit, cooperative, or other plans of development or operations. (3-18-22)()

03. Contents. The agreement must describe the separate tracts comprising the unit; disclose the apportionment of the production of royalties and costs to the several parties; ~~and disclose~~ the name of the ~~o~~Operator; and ~~must~~ contain adequate provisions for the protection of the interests of all parties, including the state of Idaho; ~~be signed by, or on behalf of all interested necessary parties, and be submitted to the Department.~~ The agreement ~~should must~~ be signed by or ~~in on~~ behalf of all interested necessary parties before being submitted to the Department. It will be effective only after written approval by the Department. The unit operator must be a ~~p~~Person, as defined by these rules and ~~must be~~ approved by the Department. (3-18-22)()

04. Lease Modification. Any modification of an approved agreement will require the Department's written approval ~~of the Department~~ under procedures similar to those ~~cited~~ in Subsection 085.02 ~~of these rules.~~ (3-18-22)()

05. Term. At the sole discretion of the Department, the term of any leases included in any cooperative or unit plan of development or operation may be extended for the term of such unit or cooperative agreement, but in no event beyond ~~that the~~ time provided in Subsection 030.01 ~~of these rules.~~ Rentals or royalties on leases so extended may be reassessed for such extended term of the lease. (3-18-22)()

06. Continuation of Lease. Any lease that will be eliminated from any such cooperative or unit plan of development or operation, or any lease that will be in effect at the termination of any such cooperative or unit plan of development or operation, unless relinquished, will continue in effect for the term of the lease. (3-18-22)

07. Evidence of Agreement. Before ~~issuance of issuing~~ a lease for lands within an approved unit agreement, the lease applicant or successful bidder ~~will be required to must~~ file evidence that they have entered into an agreement with the unit operator for the development and operation of the lands in a lease if the lease is issued to ~~him them~~ under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, the lease applicant or successful bidder ~~will be permitted to may~~ operate independently, but ~~will be required to must~~ perform ~~his their~~ operations in a manner that the Department deems to be consistent with the unit operations. (3-18-22)()

086. -- 094. (RESERVED)

095. SURRENDER, TERMINATION, EXPIRATION OF LEASE.

01. Procedure. A Lease, or any surveyed subdivision of the ~~area covered by such lease~~ leased lands, may be surrendered by the ~~R~~ecord ~~T~~itle holder by filing with the Department a written relinquishment on a Department form, in the office of the Department, on a form furnished by the Department, provided that a partial relinquishment ~~does can~~ not reduce the remaining acreage in the Lease to less than forty (40) acres. The minimum acreage provision of this section may be waived by the Department ~~where if~~ the Department finds such exception is justified ~~on the basis of~~ based on exploratory and development data derived from activity on the leasehold. The relinquishment must: (3-18-22)()

- a. Describe the lands to be relinquished; (3-18-22)
- b. Include a statement as to whether the relinquished lands ~~had have~~ been disturbed and, if so, whether they were restored as prescribed by the Lease's terms ~~of the lease~~; and (3-18-22)()
- c. State whether wells ~~had have~~ been drilled on the lands and, if so, whether they have been plugged and abandoned pursuant to ~~the IDWR's~~ rules ~~of the IDWR.~~ (3-18-22)()

02. Continuing Obligations. A relinquishment takes effect on the date it is filed, subject to the continued obligation of the Lessee and ~~his~~ their surety to: (3-18-22)()

- a. ~~To make~~ Make payments of all accrued rentals and royalties; (3-18-22)()
- b. ~~To place~~ Place all wells on the relinquished land ~~to be relinquished~~ in condition for suspension of operations or abandonment; (3-18-22)()
- c. ~~To restore~~ Restore the surface resources in accordance with these rules and the terms of the Lease; and (3-18-22)()
- d. ~~To comply~~ Comply with all other environmental stipulations provided for by ~~these rules or lease~~ the Lease and applicable law. (3-18-22)()

03. Failure to Pay Rental or Royalty. The Director may terminate a Lease for failure to pay rentals or royalties thirty (30) days after mailing a notice of delinquent payment. ~~However, if~~ the time for payment falls upon any day in which the ~~office of the~~ Department is not open, payment received on the next official working day will be deemed to be timely. The termination of the Lease for failure to pay the rental will be noted on the Department's official records ~~of the Department~~. Upon termination the lands included in such lease may become subject to leasing as provided by these rules. (3-18-22)()

04. Termination for Cause. A Lease may be terminated by the Department for any violation of ~~these rules, or the lease terms;~~ the Lease's terms or of applicable laws sixty (60) days after notice of the violation has been given to Lessee by personal service or certified mail, return receipt requested, to the address of record last appearing in the Department's files ~~of the Department~~, unless: (3-18-22)()

- a. The violation has been corrected; or (3-18-22)
- b. The violation is one that cannot be corrected within the notice period and the Lessee has in good faith commenced, within the notice period, ~~to correct~~ ing the violation and ~~thereafter~~ has diligently proceeded ~~diligently~~ to complete the correction. (3-18-22)()

05. Equipment Removal. Prior to the Lease's expiration, ~~of the lease, or the earlier~~ termination, or surrender ~~thereof pursuant to this rule~~, and provided the Lessee is not in default, the Lessee ~~will have the privilege at any time during the term of the lease to~~ may remove from the leased ~~premises~~ lands any materials, tools, appliances, machinery, structures, and equipment, other than improvements needed for producing wells. ~~Any materials, tools, appliances, machinery, structures and equipment~~ Anything subject to removal, but not removed ~~prior to any termination of the lease or any extension thereof that may be granted because of adverse climatic conditions during that period, will,~~ may become property of the state of Idaho, at the option of the Department, ~~become property of the state of Idaho, but the Lessee must remove any or all such property where so directed by the Department; be removed by the Department, at the Lessee's expense; or be removed by the Lessee, at the Department's request.~~ (3-18-22)()

06. Surrender After Termination. Upon the expiration or termination of a Lease, the Lessee will quietly and peaceably surrender possession of the premises to the state, and if the Lessee is surrendering the leased premises or any portion thereof, the Lessee must deliver to the state a good and sufficient release on a form furnished by the Department. (3-18-22)()

096. -- 099. (RESERVED)

100. BOND REQUIREMENTS.

01. Minimum Bond. ~~Prior to initiation of operations using motorized earth-moving equipment~~ Before using Motorized Exploration Lessee must furnish a bond. This bond will be in favor of the state of Idaho, conditioned on the payment of all damages to the land surface and all improvements thereon, including without limitation crops on the lands, whether or not the leased lands ~~under this lease~~ have been sold or leased by the Board for any other

purpose; conditioned also upon ~~compliance by Lessee of his~~ Lessee complying with their obligations under ~~this their~~ Lease and these rules. The Department may require a new bond in a greater amount at any time after operations have begun, upon a finding that such ~~action bond~~ is reasonably necessary to protect ~~s~~State resources. (3-18-22)()

02. Statewide Bond. In lieu of the aforementioned bonds, Lessee may furnish a good and sufficient “statewide” bond conditioned ~~s-as~~ in Subsection 100.01. This bond will cover all Lessee’s LLeases and operations carried on under all gGeothermal rResource LLeases issued and outstanding to Lessee by the Board at any given time during the period when the “statewide” bond is in effect. The amount of such bond will be equal to the total of the requirements of the separate bonds being combined into a single bond. (3-18-22)()

03. Period of Liability. The period of liability ~~of any for a~~ for a bond will not be terminated until all LLease terms and conditions have been fulfilled and the bond is released in writing by the Department. (3-18-22)()

04. Operator Bond. ~~In the event If~~ If suit is filed to enforce the terms of any bond furnished by an eOperator in which the Lessee (if a different pPerson) is not a named party, the Department may, in its sole discretion, join the Lessee as a party to such suit. (3-18-22)()

101. LIABILITY INSURANCE.

01. Liability Insurance Required. ~~The Department will~~ Lessee is required ~~d-the Lessee~~ to purchase and maintain suitable insurance for the duration of the LLease. The insurance must be obtained prior to entry upon the leased lands for purposes other than eCasual eExploration or inspection ~~as contemplated by Subsection 054.02 of these rules~~. (3-18-22)()

02. Insurance Certificate Required. No work under ~~this a~~ LLease will commence prior to the Department’s receipt of a certificate, signed by a licensed insurance agent, evidencing existence of insurance as required above. ~~Further, such~~ The certificate must reflect that no change or cancellation in such coverage will become effective until after the Department receives written notice of such change or cancellation. (3-18-22)()

102. -- 104. (RESERVED)

105. TITLE.

The state of Idaho does not warrant title to the leased lands, ~~or the~~ gGeothermal rResources, ~~and nor~~ aAssociated bBy-pProducts that may be discovered thereon; ~~t~~The LLease is issued only under such title as the state of Idaho may have as of the Lease’s effective date ~~of the lease~~ or has thereafter acquired. If the interest owned by the state in the leased lands includes less than the entire interest in the gGeothermal rResources and aAssociated bBy-pProducts for which royalty is payable, then the royalties provided for in the LLease will be paid to the state only in the proportion that its interest bears to said whole and undivided interest in said gGeothermal rResources and aAssociated bBy-pProducts for which royalty is payable; ~~provided, however, that t~~ The state is not liable for any damages sustained by the Lessee; nor is the Lessee entitled to, nor may claim any refund of rentals or royalties ~~therefore~~ paid to the state in the event that the state does not own title to said gGeothermal rResources and aAssociated bBy-pProducts, or if its title thereto is less than whole and entire. (3-18-22)()

106. -- 110. (RESERVED)

111. TAXES.

~~Lessee must pay, when due, all taxes and assessments of any kind lawfully assessed and levied against Lessee’s interests or operations under the laws of the state of Idaho.~~ (3-18-22)

112. RENTAL NOTICES.

~~Advance notice of rental due is usually sent to the Lessee by the Department, but f~~ Failure to receive such notices an advance notice of rental due does not ~~act to~~ relieve the Lessee from ~~the payment of~~ paying the rental, ~~and t~~ The LLease will be in default if such payment is not made ~~as provided in these rules~~. (3-18-22)()

113. OUTSTANDING LEASES.

No right to seek, obtain, or use gGeothermal rResources has passed, or will pass, with any existing or future license, permit, or lease of sState Llands, including without limitation, mineral leases and oil and gas development leases,

except upon ~~the issuance of~~ a ~~g~~Geothermal ~~r~~Resources ~~l~~Lease ~~being issued~~. ~~(3-18-22)~~()

114. -- 119. (RESERVED)

120. FEES.

The following fees apply: (3-18-22)

01. Non-Refundable Application Fee for Lease. Two hundred fifty dollars (\$250) per application. (3-18-22)

02. Application Fee for Approval of Assignment. One hundred fifty dollars (\$150) per lease involved in the assignment. (3-18-22)

03. Late Payment Fee. The greater of the following: ~~(3-18-22)~~

~~a. Twenty-five dollars (\$25); or (3-18-22)~~

~~b. One percent (1%) per month (or portion thereof) on the unpaid balance. (3-18-22)~~

121. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.15 - RULES GOVERNING GEOTHERMAL LEASING ON IDAHO STATE LANDS

DOCKET NO. 20-0315-2401

NOTICE OF RULEMAKING - ADOPTION OF PENDING 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 2025 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 on July 1, 2025, after approval by the Legislature.

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 Section 58-104(6) and 58-105, 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:

The Idaho Department of Lands initiated this rulemaking in compliance with [Executive Order 2020-01: Zero-Based Regulation](#) with the goal of simplifying and streamlining the rules for increased clarity and ease of use. There are no changes to the pending rule, and it is being adopted as originally proposed. The complete text of the proposed rule was published in the July 3, 2024, Idaho Administrative Bulletin, [Vol. 24-7, pages 130 -145.](#)

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. No changes have been made to any fees in this proposed rule. The application fee (\$250) and assignment fee (\$150) remain the same. Rule language regarding late payment was removed to allow the Department to be consistent with statute as to how late fees are assessed.

FISCAL IMPACT: There is no negative fiscal impact on the state General Fund resulting from this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Mike Murphy at (208-334-0290 or mmurphy@idl.idaho.gov).

DATED this 30th day of August, 2024.

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