

# State Board of Land Commissioners Open Meeting Checklist

Meeting Date: September 13, 2019

## Regular Meetings

8/29/19	Notice of Meeting posted in prominent place in IDL's Boise Headquarters office five (5) or more calendar days before meeting.
8/29/19	Notice of Meeting posted in prominent place in IDL's Coeur d'Alene Headquarters office five (5) or more calendar days before meeting.
8/29/19	Notice of Meeting posted in prominent place at meeting location five (5) or more calendar days before meeting.
8/29/19	Notice of Meeting emailed/faxed to list of media and interested citizens who have requested such notice five (5) or more calendar days before meeting.
8/29/19	Notice of Meeting posted electronically on IDL's public website <a href="http://www.idl.idaho.gov">www.idl.idaho.gov</a> five (5) or more calendar days before meeting.
9/11/19	Agenda posted in prominent place in IDL's Boise Headquarters office forty-eight (48) hours before meeting.
9/11/19	Agenda posted in prominent place in IDL's Coeur d'Alene Headquarters office forty-eight (48) hours before meeting.
9/11/19	Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting.
9/11/19	Agenda emailed/faxed to list of media and interested citizens who have requested such notice forty-eight (48) hours before meeting.
9/11/19	Agenda posted electronically on IDL's public website <a href="http://www.idl.idaho.gov">www.idl.idaho.gov</a> forty-eight (48) hours before meeting.
12/19/18 8/14/19	Annual meeting schedule posted – Director's Office, Boise and Staff Office, CDA and IDL's public website <a href="http://www.idl.idaho.gov">www.idl.idaho.gov</a>

## Special Meetings

	Notice of Meeting and Agenda posted in a prominent place in IDL's Boise Headquarters office twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted in a prominent place in IDL's Coeur d'Alene Headquarters office twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted at meeting location twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda emailed/faxed to list of media and interested citizens who have requested such notice twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted electronically on IDL's public website <a href="http://www.idl.idaho.gov">www.idl.idaho.gov</a> twenty-four (24) hours before meeting.
	Emergency situation exists – no advance Notice of Meeting or Agenda needed. "Emergency" defined in Idaho Code § 74-204(2).

## Executive Sessions *(If only an Executive Session will be held)*

	Notice of Meeting and Agenda posted in IDL's Boise Headquarters office twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted in IDL's Coeur d'Alene Headquarters office twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda emailed/faxed to list of media and interested citizens who have requested such notice twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted electronically on IDL's public website <a href="http://www.idl.idaho.gov">www.idl.idaho.gov</a> twenty-four (24) hours before meeting.
	Notice contains reason for the executive session and the applicable provision of Idaho Code § 74-206 that authorizes the executive session.

*Renee Miller*

Recording Secretary

September 11, 2019

Date



## Idaho State Board of Land Commissioners

Brad Little, Governor and President of the Board

Lawrence E. Denney, Secretary of State

Lawrence G. Wasden, Attorney General

Brandon D Woolf, State Controller

Sherri Ybarra, Superintendent of Public Instruction

Dustin T. Miller, Director and Secretary to the Board

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# NOTICE OF PUBLIC MEETING SEPTEMBER 2019

The Idaho State Board of Land Commissioners will hold a Regular Meeting on **Friday, September 13, 2019** in the **State Capitol, Lincoln Auditorium (WW02), Lower Level, West Wing, 700 W Jefferson St., Boise**. The meeting is scheduled to begin at **1:30 PM** (Mountain).

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*Please note meeting location, date, and time.*

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This meeting will be streamed live via audio at this website address <http://idahoptv.org/insession/other.cfm>

First Notice Posted: 8/29/2019-IDL Boise; 8/29/2019-IDL CDA

This notice is published pursuant to § 74-204 Idaho Code. For additional information regarding Idaho's Open Meeting law, please see Idaho Code §§ 74-201 through 74-208.

Idaho Department of Lands, 300 N 6th Street, Suite 103, Boise ID 83702, 208.334.0242



## Idaho State Board of Land Commissioners

Brad Little, Governor and President of the Board  
Lawrence E. Denney, Secretary of State  
Lawrence G. Wasden, Attorney General  
Brandon D Woolf, State Controller  
Sherri Ybarra, Superintendent of Public Instruction  
Dustin T. Miller, Secretary to the Board

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State Board of Land Commissioners Regular Meeting  
September 13, 2019 – 1:30 PM (MT)  
Amended Final Agenda  
Capitol, Lincoln Auditorium (WW02), Lower Level, West Wing, 700 W. Jefferson St., Boise, Idaho

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***Please note meeting location.***

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**1. Department Report** – Presented by Dustin Miller, Director

**Endowment Transactions**

- A. Timber Sales – August 2019
- B. Leases and Permits – August 2019

**Status Updates**

- C. Fire Season Report

**2. Endowment Fund Investment Board Report** – Presented by Chris Anton, EFIB Manager of Investments

- A. Manager's Report
- B. Investment Report

**Consent—Action Item(s)**

- 3. Idaho Geological Survey Advisory Board, Designated Representative** – Presented by Mick Thomas, Division Administrator-Oil and Gas
- 4. Approval of Minutes** – August 20, 2019 Regular Meeting (Boise)

**Regular—Action Item(s)**

- 5. FY2021 Department of Lands Budget** – Presented by Debbie Buck, Financial Officer
- 6. Department of Lands' Leasing Process** – Presented by Ryan Montoya, Bureau Chief-Real Estate Service

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State Board of Land Commissioners  
Amended Final Agenda  
Regular Meeting (Boise) – September 13, 2019  
Page 1 of 2

## Information

7. **Summary of Comments on Proposed Rule—IDAPA 20.02.01, Rules Pertaining to the Idaho Forest Practices Act** – Presented by Craig Foss, Division Administrator-Forestry and Fire

8. **Summary of Comments on Proposed Rule—IDAPA 20.03.01, Rules Governing Dredge and Placer Mining Operations in Idaho** – Presented by Mick Thomas, Division Administrator-Oil and Gas

*For the record, pursuant to Idaho Code Section 74-204(4)(c), the published agenda was amended prior to the Board resolving into Executive Session. Refer to meeting minutes for detailed information regarding the amendment motion.*

**Executive Session** (Removed during September 13, 2019 Regular Land Board Meeting)

~~A. Idaho Code § 74-206(1)(c) to conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency. [Topic: Property Acquisition Due Diligence Expenses]~~

**Regular—Action Item(s)** (Removed during September 13, 2019 Regular Land Board Meeting)

~~9. Authorize Expenditure of Funds Relating to Due Diligence Work for Property Acquisitions~~

IDAHO DEPARTMENT OF LANDS



# Idaho Statutes

TITLE 74  
TRANSPARENT AND ETHICAL GOVERNMENT  
CHAPTER 2  
OPEN MEETINGS LAW

74-206. EXECUTIVE SESSIONS – WHEN AUTHORIZED. (1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. An executive session may be held:

(a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;

(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;

(c) To acquire an interest in real property not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code;

(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

(f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law;

(i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement; or

(j) To consider labor contract matters authorized under section 74-206A (1)(a) and (b), Idaho Code.

(2) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this chapter to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(3) No executive session may be held for the purpose of taking any final action or making any final decision.

(4) If the governing board of a public school district, charter district, or public charter school has vacancies such that fewer than two-thirds (2/3) of board members have been seated, then the board may enter into executive session on a simple roll call majority vote.

History:

[74-206, added 2015, ch. 140, sec. 5, p. 371; am. 2015, ch. 271, sec. 1, p. 1125; am. 2018, ch. 169, sec. 25, p. 377; am. 2019, ch. 114, sec. 1, p. 439.]

# STATE BOARD OF LAND COMMISSIONERS

September 13, 2019  
Endowment Transactions

## Timber Sales

During August 2019, the Department of Lands sold five endowment timber sales at auction. Two endowment sales did not sell: Wet Boot (POL) and Hidden Scriver Salvage (PAY). The endowment net sale value represents a 1.5% up bid over the advertised value. The Department of Lands sold one GNA sale on the Idaho Panhandle National Forest at auction for the appraised sale value. There were also three GNA sales that did not sell at auction: Hannah Flats GNA on the Idaho Panhandle National Forest, Windy Shingle South GNA Ton on the Nez-Clear National Forest, and the Willow South GNA Ton on the Payette National Forest.

TIMBER SALE AUCTIONS								
SALE NAME	AREA	SAWLOGS MBF	CEDAR PROD MBF	PULP MBF	APPRAISED NET VALUE	SALE NET VALUE	NET \$/MBF	PURCHASER
PS	POL	3,090			\$ 678,967.00	\$ 678,967.00	\$219.73	IFG Timber LLC
Fish Sticks	Mica	4,390			\$ 661,627.50	\$ 661,627.50	\$150.71	IFG Timber LLC
Annis Divide	SJ	3,780	445		\$ 1,088,166.00	\$ 1,088,166.00	\$257.55	IFG Timber LLC
Bacon Salvage	PAY	8,135			\$ 846,012.00	\$ 846,012.00	\$104.00	IFG Timber LLC
High Country Cedar	POL	825			\$ 344,005.00	\$ 396,691.00	\$480.84	McFarland Cascade
		20,220	445		\$ 3,618,777.50	\$ 3,671,463.50	\$177.67	
Black Boulder GNA*		4,680			\$ 435,017.00	\$ 435,017.00	\$92.95	Stimson

PROPOSED TIMBER SALES FOR AUCTION				
Sale Name	Volume MBF	Advertised Net Value	Area	Estimated Auction Date
North Operations				
Mountain Lion	5,300	\$ 785,631	PL	10/10/2019
Westwood	3,220	\$ 466,382	MICA	9/10/2019
Beavertail (IDPR & IDFG)	1,225	\$ 46,954	MICA	9/24/2019
Hannah Flats GNA	6,425	\$ 633,119	IPNF	9/26/2019 2 <sup>nd</sup> Auction
	16,170	\$ 1,932,086		
South Operations				
Hidden Scriver Salvage	11,019	\$ 844,418	SWI	9/5/2019 2 <sup>nd</sup> Auction
Willow South GNA Ton	3,330	\$ 177,236	Boise NF	9/19/2019 2 <sup>nd</sup> Auction
Windy Shingle South GNA Ton	7,635	\$ 415,635	Nez-Clear NF	9/30/2019 2 <sup>nd</sup> Auction
	21,984	\$ 1,437,289		

### VOLUME UNDER CONTRACT as of August 31, 2019

	Total	Public School	Pooled
Active Contracts	177		
Estimated residual volume (MBF)	465,478	296,417	169,061
Estimated residual length (LF)	71,200	71,200	
Estimated residual weight (Ton)	505,908	348,472	157,436
Total Residual MBF Equivalent	558,113	360,323	197,790
Estimated residual value	\$ 153,742,569	\$ 98,454,106	\$ 55,288,463
Residual Unit Value (\$/MBF)	\$ 275.47	\$ 273.24	\$ 279.53

### TIMBER HARVEST RECEIPTS

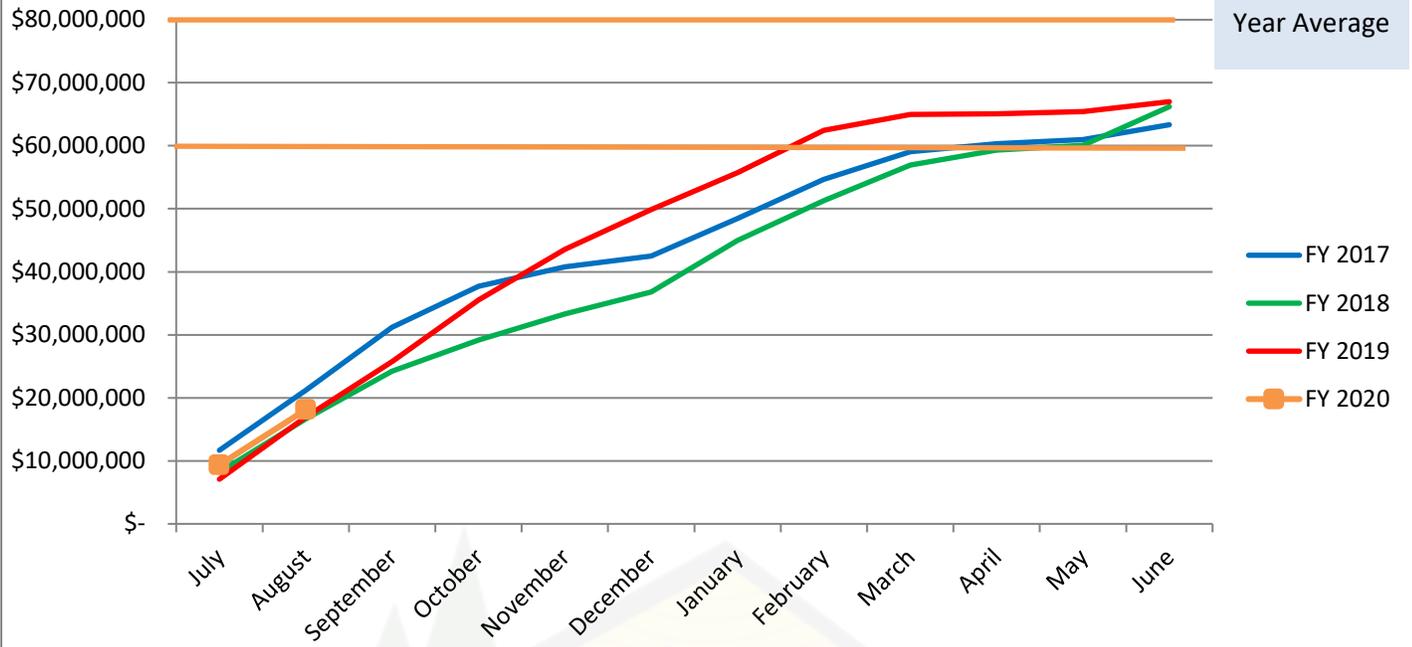
	August						FY to date		September Projected	
	Stumpage		Interest		Harvest Receipts		Stumpage		Interest	
	<b>Public School</b>	\$	5,045,303.15	\$	703,507.54	\$	11,349,309.27	\$	4,690,433.95	\$
<b>Pooled</b>	\$	2,632,654.30	\$	374,172.53	\$	6,766,099.78	\$	1,565,129.21	\$	150,546.12
<b>General Fund</b>	\$	2.04	\$	0.00	\$	4.96	\$	2.04	\$	0.00
<b>TOTALS</b>	\$	7,677,959.49	\$	1,077,680.07	\$	18,115,414.01	\$	6,255,565.20	\$	732,956.26

### Status of FY 2020 Timber Sale Program

	MBF Sawlog			Number Poles		
	Public School	Pooled	All Endowments	Public School	Pooled	All Endowments
Sold as of August 31, 2019	33,286	4,637	37,924	0	0	0
Currently Advertised	32,512	867	33,379	0	0	0
In Review	14,432	25,595	40,027	4,803	0	4,803
Did Not Sell	0	0	0	0	0	0
<b>TOTALS</b>	80,230	31,100	111,330	4,803	0	4,803
FY-2020 Sales Plan			267,395			17,953
Percent to Date			42%			27%

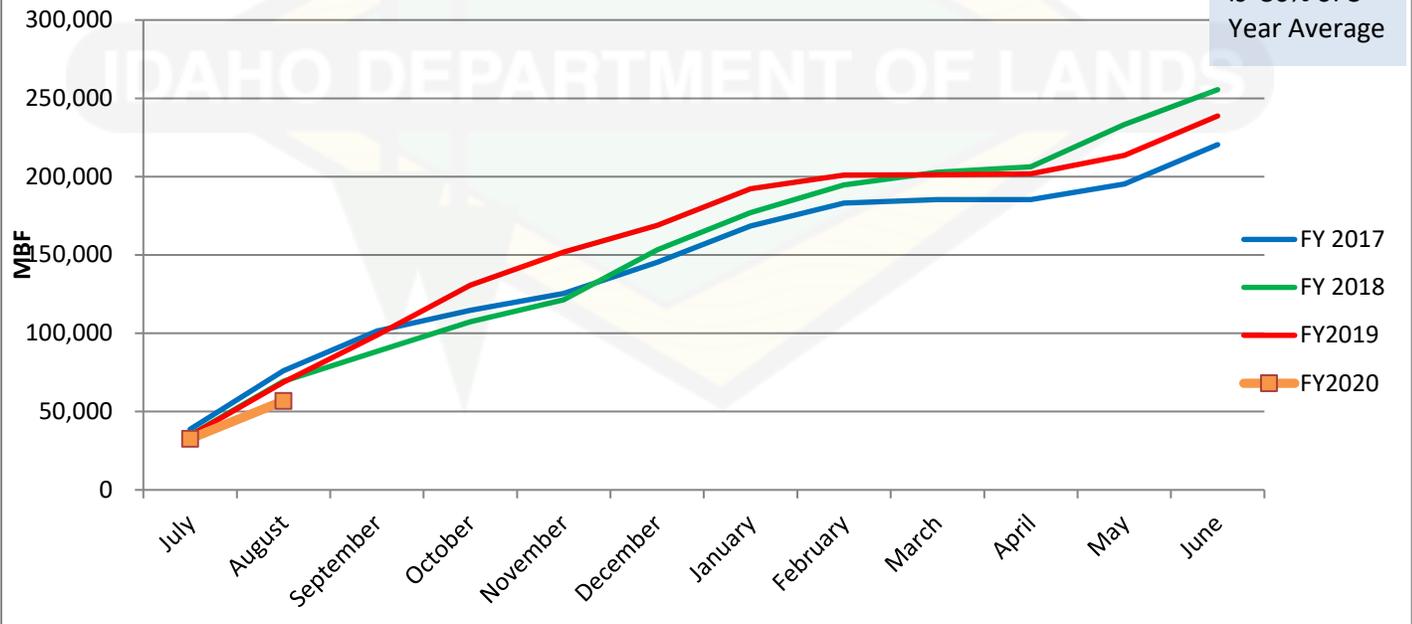
## Cumulative Harvest Receipts

Current FYTD is 99% of 3 Year Average

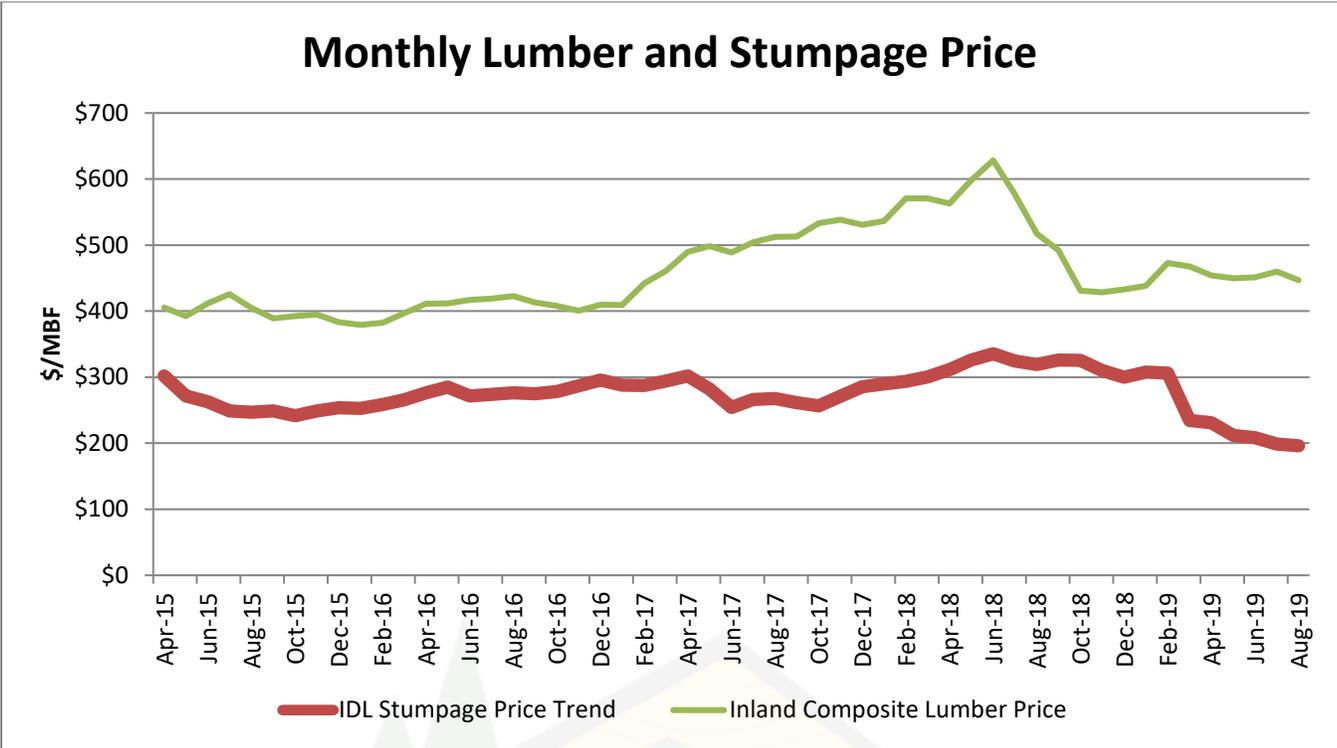


## Cumulative Harvest Volume

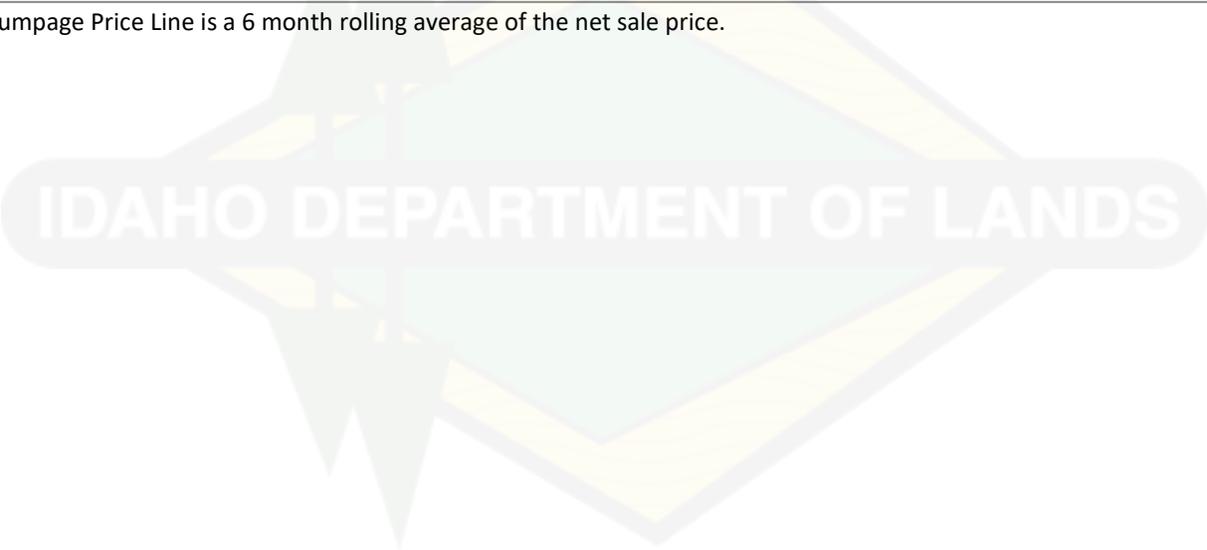
Current FYTD is 80% of 3 Year Average



# Monthly Lumber and Stumpage Price

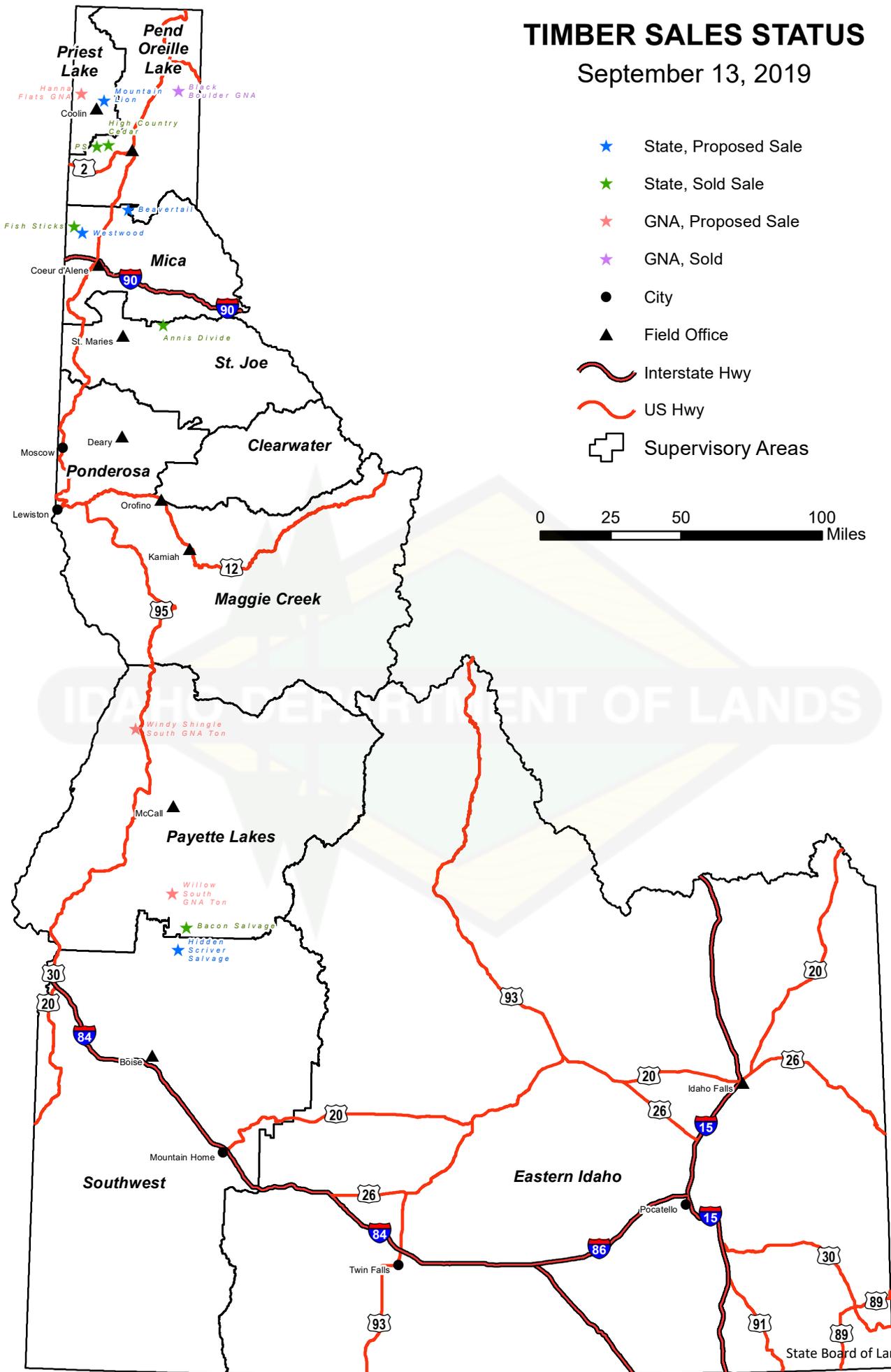


IDL Stumpage Price Line is a 6 month rolling average of the net sale price.



# TIMBER SALES STATUS

September 13, 2019



## STATE BOARD OF LAND COMMISSIONERS

September 13, 2019  
Endowment Transactions

### Leases and Permits

FISCAL YEAR 2020 – LEASING & PERMITTING TRANSACTIONS BY MONTH – through August 31, 2019														
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	EST	YTD
<b>SURFACE</b>														
Agriculture	-	-											12	0
Communication Sites	-	-											5	0
Grazing	-	-											142	0
<i>Assignments</i>	2	1											-	3
Residential	-	-											15	0
<i>Assignments</i>	-	1											-	1
<b>COMMERCIAL</b>														
Alternative Energy	-	-											-	0
Industrial	-	-											1	0
Military	-	-											3	0
Office/Retail	-	-											4	0
Recreation	-	-											4	0
<b>OTHER</b>														
Conservation	-	-											1	0
Geothermal	-	-											-	0
Minerals	-	-											9	0
<i>Assignments</i>	1	-											-	1
Non-Comm Recreation	-	-											-	0
Oil & Gas	-	-											-	0
<b>PERMITS</b>														
Land Use Permits	14	5											-	19
<b>TOTAL INSTRUMENTS</b>	<b>17</b>	<b>7</b>												<b>24</b>

### Real Estate

FISCAL YEAR 2020 – REAL ESTATE TRANSACTIONS BY MONTH – through August 31, 2019														
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	YTD
Deeds Acquired	-	-												0
Deeds Granted	6	1												7
Deeds Granted - Surplus	-	-												0
Easements Acquired	-	1												1
Easements Granted	1	1												2

One deed for the sale of a Payette Lake cottage site was issued in August. The Department granted and acquired an easement as part of a reciprocal easement exchange in Owyhee County for access to endowment land.

**LANDS AND WATERWAYS DIVISION**  
**2020FYTD GROSS REVENUE - ACTUAL AND FORECASTED**  
**through August 31, 2019**

	<b>ACTUAL RECEIPTS AS OF 08.31.2019</b>	<b>REVENUE EXPECTED BY 08.31.2019**</b>	<b>REVENUE EXPECTED BY 06.30.2020</b>
<b>SURFACE</b>			
AGRICULTURE	\$ 900	\$ 696	\$ 308,786
COMMUNICATION SITES	\$ 107,957	\$ 47,132	\$ 937,019
GRAZING	\$ 9,070	\$ 76,896	\$ 1,818,574
RESIDENTIAL	\$ (575)	\$ -	\$ 1,820,796
<b>COMMERCIAL</b>			
COMMERCIAL ENERGY RESOURCES	\$ 500	\$ -	\$ 22,812
COMMERCIAL INDUSTRIAL	\$ 37,000	\$ 1,267	\$ 82,308
COMMERCIAL MILITARY	\$ 250	\$ 16,600	\$ 139,976
COMMERCIAL OFFICE/RETAIL	\$ 49,654	\$ 151,409	\$ 964,519
COMMERCIAL RECREATION	\$ 5,350	\$ 5,340	\$ 322,031
<b>OTHER</b>			
CONSERVATION LEASES	\$ -	\$ -	\$ 148,078
GEOHERMAL	\$ -	\$ 217	\$ 4,117
MINERAL	\$ 6,397	\$ 5,738	\$ 73,453
NON-COMMERCIAL RECREATION	\$ 1,900	\$ 2,407	\$ 80,496
OIL AND GAS LEASES	\$ 726	\$ 257	\$ 29,096
<b>Sub Total</b>	<b>\$ 219,129</b>	<b>\$ 307,959</b>	<b>\$ 6,752,062</b>
*LAND SALES/RECORDS	\$ 174,437	***	
*REAL ESTATE SERVICES	\$ 15		
<b>Grand Total</b>	<b>\$ 393,581</b>		

\* These categories are not included in the annual forecast.

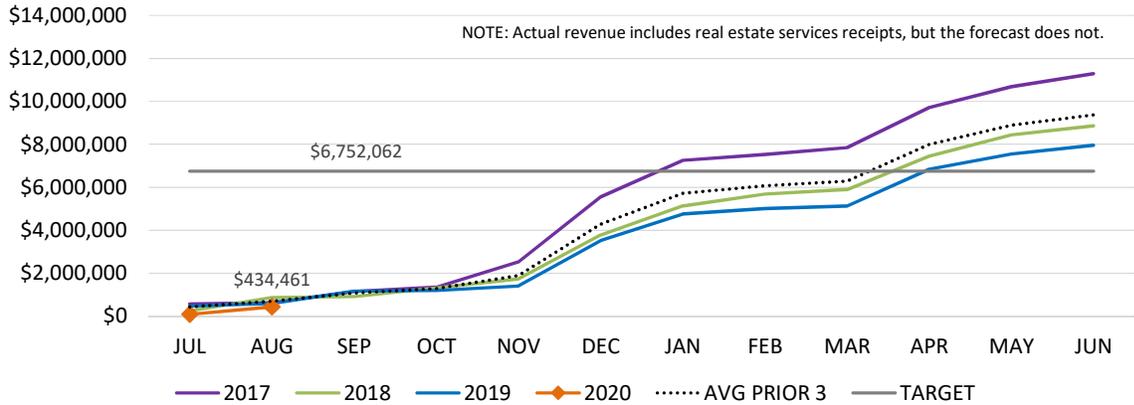
\*\* These figures are based on "normal" timing of revenue/billing throughout the year.

\*\*\* \$40,880 of "revenue" was removed from this total because it is passed through to a real estate broker.

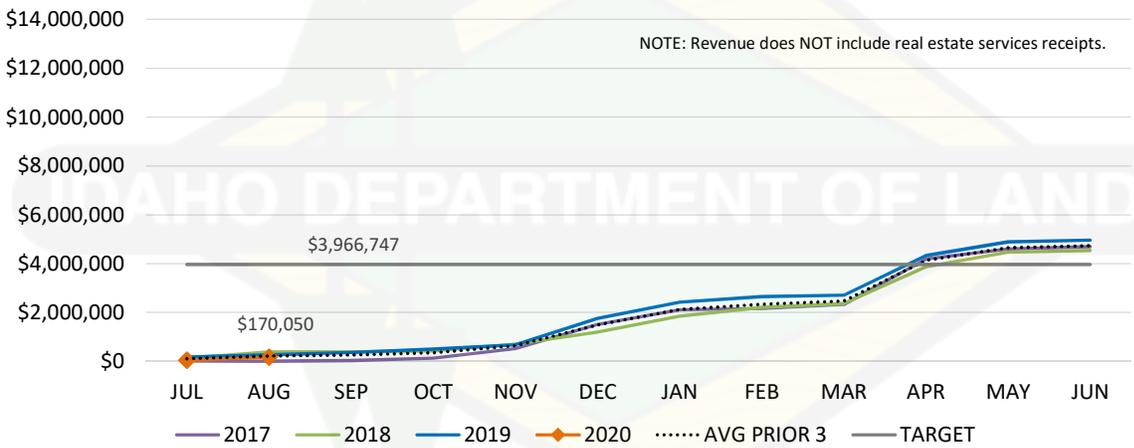
NOTE: The Department prepares the annual endowment revenue forecast by ASSET CLASS (not by Program). For this table, we have attempted to further breakdown the forecast by program by applying trend data.

Cumulative L&W Program Receipts - Earnings Reserve  
ALL PROGRAMS  
FY17 - FYTD20

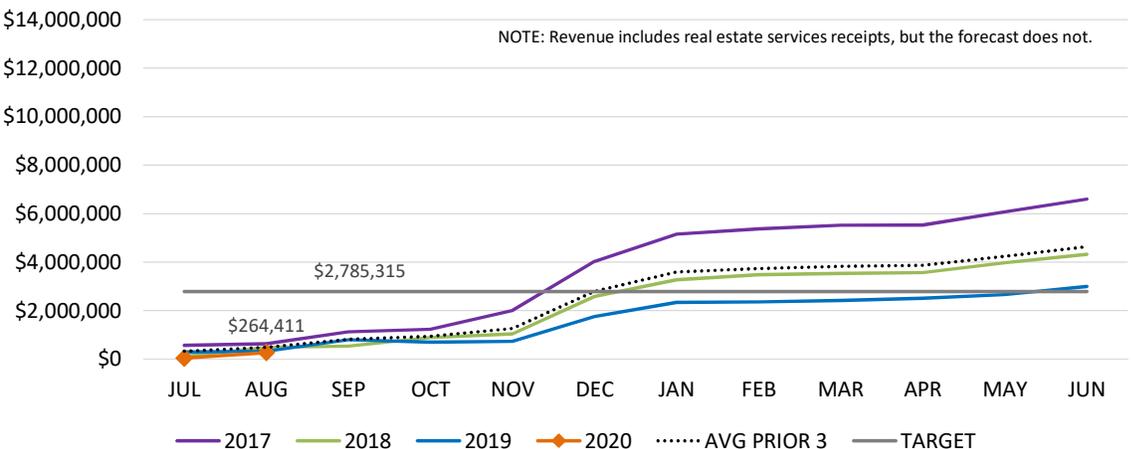
Final FY Total is  
62% of 3 Year  
Average



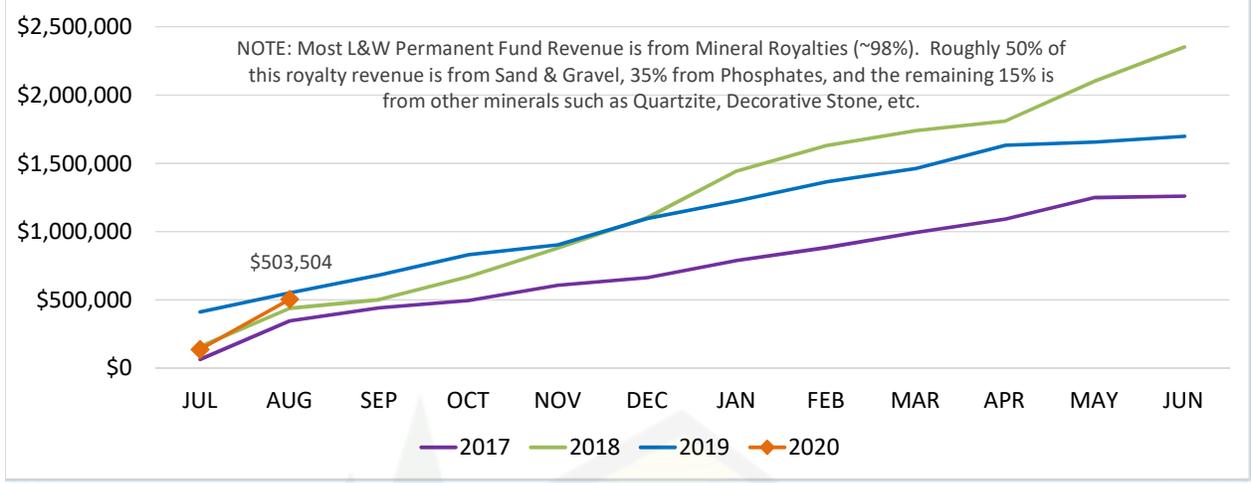
Cumulative L&W Program Receipts - Earnings Reserve  
NO COMMERCIAL RETAIL OR RESIDENTIAL REVENUE\* INCLUDED  
FY17 - FYTD20



Cumulative L&W Program Receipts - Earnings Reserve  
ONLY COMMERCIAL RETAIL AND RESIDENTIAL REVENUE\* INCLUDED  
FY17 - FYTD20



**Cumulative L&W Permanent Fund Revenue/Royalties**  
 (Does NOT include Land Bank Revenue)  
 FY17 - FYTD20



# STATE BOARD OF LAND COMMISSIONERS

September 13, 2019

Department Report

## Subject

Fire Season Update

## Background

As of September 3, 2019, Emergency Fire Suppression expenditures are estimated to be \$12,000,000. The Suppression Account will recover an estimated \$1,500,000 of reimbursable costs, for a net obligation of \$10,500,000. The total obligation above includes the 2019 contracted aircraft costs.

## Discussion

Since the August Land Board Meeting, there have been no fires on IDL protection over 25 acres and none required an incident management team.

As shown in the table below, fire occurrence to date for 2019 is 81% of the 20-year average, while the acres burned is 6% of the 20-year average.

**Fire Season Comparison to Date**

# of Fires Under IDL Protection				
Year	Lightning	Human	Total	Acres
2016	44	103	147	11,925
2017	55	124	179	51,409
2018	53	177	230	7,581
2019	83	124	207	1,259
20 Yr. Average			257	21,973

Temperatures in August were above normal, while we experienced below normal precipitation. Average fire potential outlook is expected to be normal throughout October. September is predicted to have above normal temperatures and normal precipitation. At this time, conditions have not warranted fire restrictions.

## Significant Fires Outside of IDL Protection

### Nethker

This fire is 30 miles northeast of McCall and burning in timber. Area, road, and trail closures are in effect. The fire is currently 2,360 acres and 97% contained. The fire was managed by a Type 2 team.

### Cove Creek

This fire is burning 27 miles northwest of Salmon, in timber and tall grass. There is minimal fire behavior. Structures are threatened. Trail closures are in effect. The fire is 5,332 acres and 79% contained.

### Lick Creek Fire

This fire started on private land 6 miles southwest of Avery, in timber and heavy logging slash. There is minimal fire behavior with backing and creeping. The fire is currently 200 acres and is 100% contained. The fire was managed by a Type 3 team.

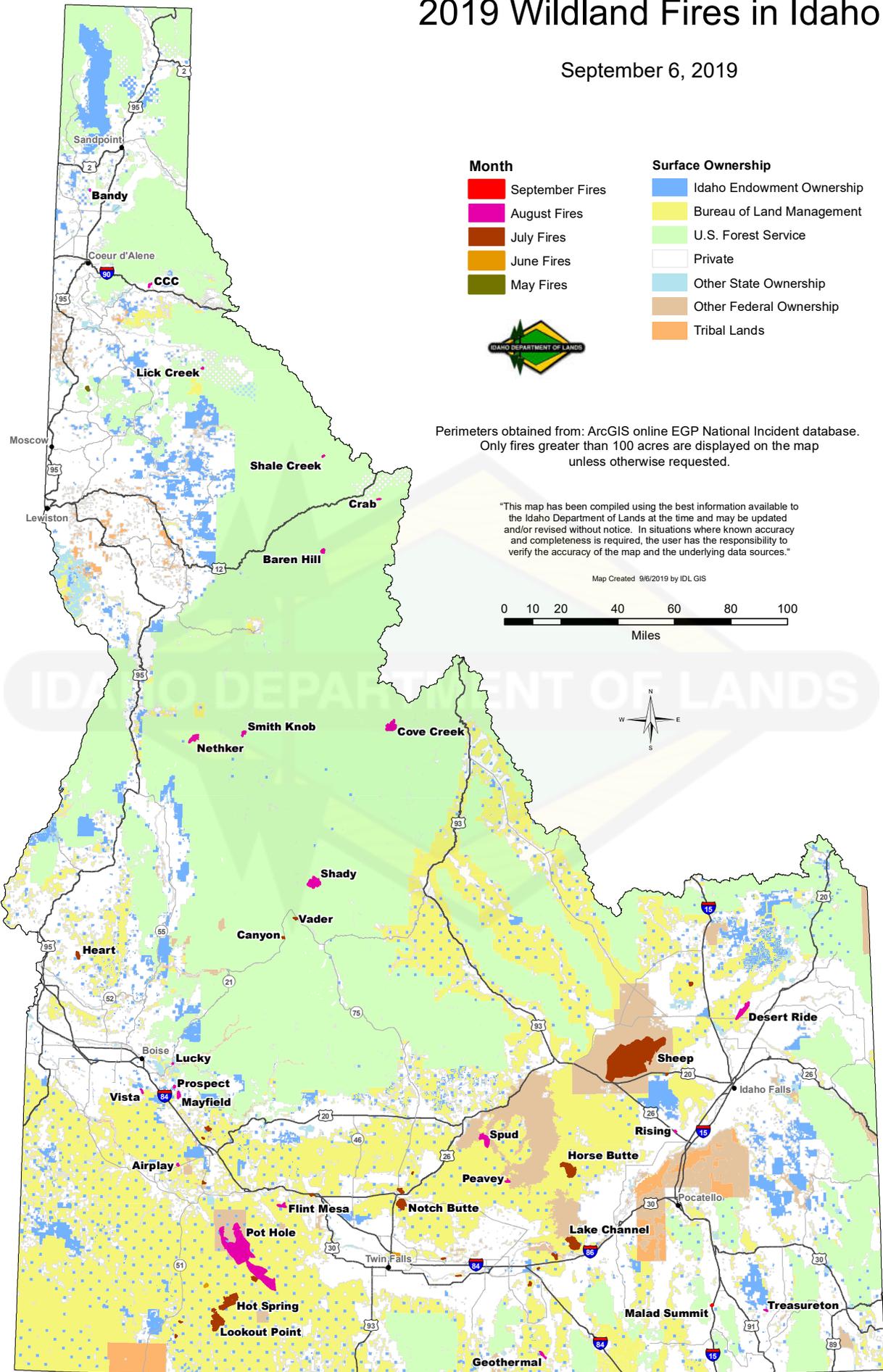
<b>Total Acres Burned by Ownership</b>	
8/30/2019	
<b>Surface Owner</b>	<b>Acres</b>
Idaho Department of Lands	7,244
Other State Lands	28
Private	7,301
Bureau of Land Management	94,600
Other Federal	142,935
U.S. Forest Service	27,563
<b>Total Acres</b>	<b>279,671</b>

### Attachments

1. Significant Fires Throughout Idaho

# 2019 Wildland Fires in Idaho

September 6, 2019





M. Dean Buffington :: Chairman  
Jerry F. Aldape            Gary L. Mahn  
Warren R. Bakes         Richelle A. Sugiyama  
Steven C. Harris         Thomas J. Wilford  
Irving Littman            Chuck Winder  
  
Chris J. Anton :: Manager of Investments

## Monthly Report to the Board of Land Commissioners

### Investment performance through August 31, 2019

*Month: -1.2%      Fiscal year: -0.6%*

Investors looked for ways to reduce risk during the month of August due to weak global growth, uncertainty surrounding trade negotiations and the possibility of a disruptive Brexit. The equity portion of the portfolio was down 2.5% for the month and 2.0% fiscal year-to-date. The fixed income portion of the portfolio was up 2.2% for the month and 2.6% fiscal year-to-date as global investors looking for safety and yield purchased U.S. Treasuries and other fixed income securities. The yield on the ten-year U.S. Treasury bond has declined from 3.2% to less than 1.5% over the last eight months and is very close to an all-time low.

### Status of endowment fund reserves

Distributions for FY2019 and FY2020 are well secured. Estimated reserves as of July 2019, were 6.1 years for public schools and 6.8 or more years for the other endowments based on anticipated FY2021 distributions.

### Significant actions of the Endowment Fund Investment Board

None.

### Compliance/legal issues, areas of concern

*Material deviations from Investment Policy:* None.

*Material legal issues:* None.

*Changes in board membership or agency staffing:* None.

### Upcoming issues/events

Investment Consultant Presentations – September 19th

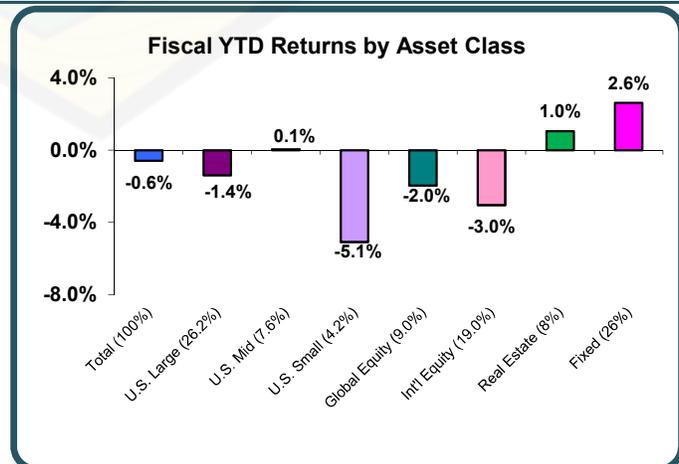
EFIB and Land Board Meetings – November 19th

	<u>Month</u>	<u>FYTD</u>
<b>Beginning Value of Fund</b>	<b>\$ 2,469,418,655</b>	<b>\$ 2,454,835,196</b>
Distributions to Beneficiaries	(6,743,167)	(13,486,334)
Land Revenue net of IDL Expenses	10,167,698	19,176,895
Change in Market Value net of Investment Mgt. Expenses	<u>(36,155,630)</u>	<u>(23,838,201)</u>
<b>Current Value of Fund</b>	<b><u>\$ 2,436,687,556</u></b>	<b><u>\$ 2,436,687,556</u></b>

<u>Gross Returns</u>	<u>Current Month</u>	<u>Calendar Y-T-D</u>	<u>Fiscal Y-T-D</u>	<u>One Year</u>	<u>Three Year</u>	<u>Five Year</u>	<u>Ten Year</u>
<b>Total Fund</b>	<b>-1.2%</b>	<b>14.1%</b>	<b>-0.6%</b>	<b>3.3%</b>	<b>8.7%</b>	<b>6.1%</b>	<b>9.5%</b>
<i>Total Fund Benchmark*</i>	-0.9%	12.5%	-0.5%	3.3%	8.0%	6.0%	8.8%
<b>Total Fixed</b>	<b>2.2%</b>	<b>9.4%</b>	<b>2.6%</b>	<b>10.0%</b>	<b>3.1%</b>	<b>3.2%</b>	<b>3.9%</b>
<i>85% BB Agg, 15% TIPS</i>	2.6%	9.1%	2.8%	9.8%	3.1%	3.2%	3.9%
<b>Total Equity</b>	<b>-2.5%</b>	<b>17.0%</b>	<b>-2.0%</b>	<b>0.3%</b>	<b>10.9%</b>	<b>7.1%</b>	<b>11.4%</b>
<i>38% R3 19% Ax 9% AC</i>	-2.4%	14.7%	-1.9%	-0.2%	10.0%	6.9%	10.7%
<b>Domestic Equity</b>	<b>-2.9%</b>	<b>17.8%</b>	<b>-1.5%</b>	<b>-0.7%</b>	<b>12.5%</b>	<b>9.1%</b>	<b>13.9%</b>
<i>Russell 3000 (R3)</i>	-2.0%	18.0%	-0.6%	1.3%	12.2%	9.6%	13.4%
<b>Global Equity</b>	<b>-2.0%</b>	<b>18.8%</b>	<b>-2.0%</b>	<b>3.4%</b>	<b>9.2%</b>	<b>4.4%</b>	
<i>MSCI ACWI (AC)</i>	-2.4%	13.8%	-2.1%	-0.3%	9.2%	5.5%	
<b>Int'l. Equity</b>	<b>-2.2%</b>	<b>14.4%</b>	<b>-3.0%</b>	<b>0.8%</b>	<b>8.2%</b>	<b>3.3%</b>	<b>5.8%</b>
<i>MSCI ACWI ex-US (Ax)</i>	-3.1%	8.8%	-4.3%	-3.3%	5.9%	1.4%	4.7%
<b>Real Estate</b>				<b>7.1%</b>			
				6.6%			

\* Benchmark: 38% Russell 3000 19% ACWI ex-US 9% AC 26% BB Agg, 8% ODCE

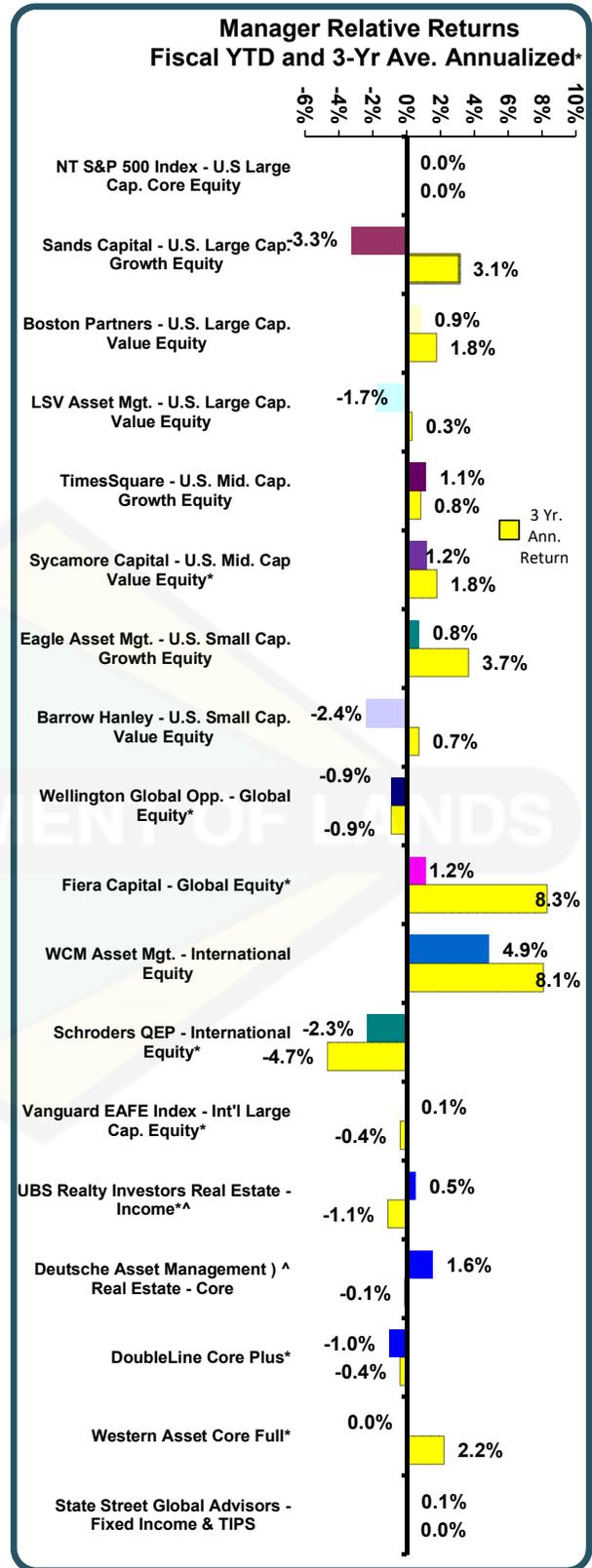
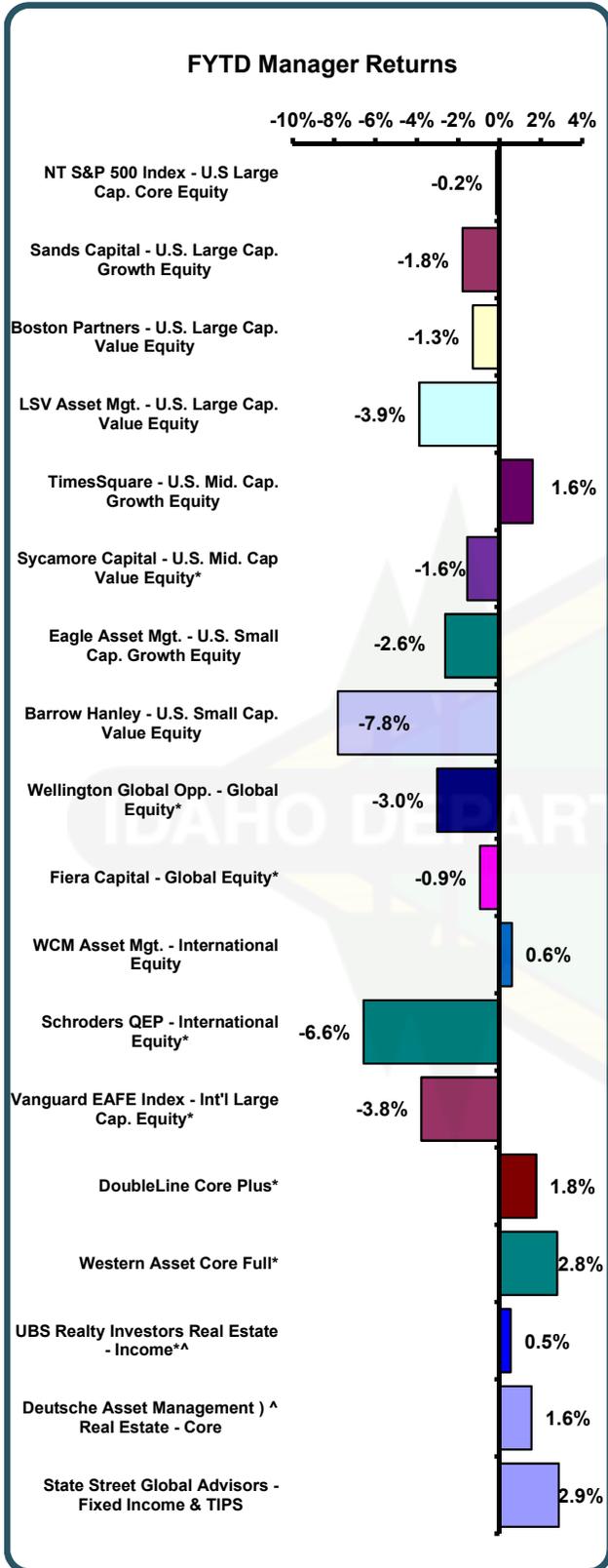
	<u>Mkt Value (\$M)</u>	<u>Allocation</u>
<b>Domestic Equity</b>	<b>\$ 933.2</b>	<b>38.3%</b>
Large Cap	640.7	26.3%
Mid Cap	193.5	7.9%
Small Cap	98.9	4.1%
<b>Global Equity</b>	<b>225.8</b>	<b>9.3%</b>
<b>Int'l Equity</b>	<b>471.3</b>	<b>19.3%</b>
<b>Fixed Income</b>	<b>585.9</b>	<b>24.0%</b>
<b>Real Estate</b>	<b>201.8</b>	<b>8.3%</b>
<b>Cash</b>	<b>18.7</b>	<b>0.8%</b>
<b>Total Fund</b>	<b><u>\$ 2,436.7</u></b>	<b><u>100.0%</u></b>



### Endowment Fund Staff Comments:

The fund was down 1.2% for the month, 0.3% under the benchmark. The Russell 3000 index was down 2.0%, Russell Midcap down 2.9% and Russell 2000 (small cap) down 4.9%. International equities (MSCI ACWI ex-US) were down 3.1%. Growth outperformed Value, while Domestic equity outperformed International equity. Bonds, as measured by the BBC Aggregate index, were up 2.6% and TIPS were up 2.4%. 5 of 15 active managers beat their benchmark this month. On a FYTD basis, the fund is down 0.6%, 0.1% under benchmark, and 8 of 15 active managers beat their benchmark.

# INVESTMENT REPORT



\*ITD return used when manager has less than 3 years. ^ Most recent valuation.

# STATE BOARD OF LAND COMMISSIONERS

September 13, 2019

Consent Agenda

## Subject

Idaho Geological Survey Advisory Board, Designated Representative

## Question Presented

Shall the Land Board designate the Oil and Gas Division Administrator at the Idaho Department of Lands as their representative on the Idaho Geological Survey Advisory Board per Idaho Code § 47-201.

## Background

The Idaho Geological Survey (IGS) is a special program administered at the University of Idaho, under the authority of the Board of Regents of the university. IGS is the lead state agency for the collection, interpretation, and dissemination of geologic and mineral data for Idaho. Such information is acquired through field and laboratory investigations by IGS staff, and through cooperative programs with other governmental and private agencies.

Idaho Code § 47-201 (Attachment 1) established the IGS Advisory Board (Advisory Board) to consist of the following members:

- Director of the survey and board chairperson (nonvoting);
- Chair of the department of geosciences at Boise State University;
- Chair of the department of geosciences at Idaho State University;
- Chair of the department of geological sciences at the University of Idaho;
- Representative from the mining and mineral processing industry selected by the director;
- Governor of the state of Idaho or his designated representative;
- Member of the Board of Land Commissioners or their designated representative;
- The president or his designee of the Idaho Association of Professional Geologists;
- Two members at large selected by the director from other state or federal organizations, or from the private sector with a direct interest in the survey's programs.

The Advisory Board is a non-regulatory body that works with the IGS Director to formulate a strategic plan to accomplish the mission of the Idaho Geological Survey. The Advisory Board and the IGS Director ensure the actions of IGS are in line with their mission while following direction provided in statute. The Advisory Board also aids IGS research-based programs.

## Discussion

Recently, the Department of Lands (Department) was contacted by IGS to confirm representation for the State Board of Land Commissioners (Land Board) to the Advisory Board.

Records indicate that, in the past, either the Director of the Department of Lands or the Bureau Chief of the Minerals Division in the Department of Lands (a position eliminated around 2003) represented the Land Board on the Advisory Board.

The Land Board last discussed this topic on September 15, 2009. At that meeting, the Land Board directed the Department to advance legislation to amend Idaho Code § 47-201 to state "a member of the State Board of Land Commissioners or their designated representative." The statute was amended during the 2010 legislative session to reflect the direction of the Land Board. The Land Board tasked then-director George Bacon to continue to represent the Land Board. There has been no further action taken by the Board to name a designated representative since the statute was revised.

The Idaho Geological Survey's website currently identifies the following members of the Advisory Board:

- Leslie Baker, Chair, Department of Geological Sciences, University of Idaho
- Susan Cleverley, Mitigation Section Chief, Idaho Office of Emergency Management, (member at large)
- Benjamin Crosby, Chair, Department of Geosciences, Idaho State University
- Chris Dail, Exploration Manager, Midas Gold Idaho, Inc., representative from the mining and mineral processing industry selected by the director
- David Hawk, Representative, Office of the Governor
- Peter Isaacson, Ex officio Chair, Interim Director, Idaho Geological Survey (non-voting)
- James McNamara, Chair, Department of Geosciences, Boise State University
- Dan Moore, Professor, Department of Geology, Brigham Young University – Idaho, (member at large)
- Rich Reed, Idaho Association of Professional Geologists, Idaho Engineering and Geology, Inc.

## Recommendation

The Department recommends that the Land Board designate the Division Administrator of Oil and Gas at the Idaho Department of Lands to serve as their representative to the Idaho Geological Survey.

## Board Action

## Attachments

1. Idaho Code § 47-201



# Idaho Statutes

TITLE 47  
MINES AND MINING  
CHAPTER 2

IDAHO GEOLOGICAL SURVEY

47-201. GEOLOGICAL SURVEY CREATED - PURPOSE - ADVISORY BOARD. There is hereby created the Idaho geological survey, to be administered as a special program at the university of Idaho under the authority of the board of regents of the university of Idaho. The survey shall be the lead state agency for the collection, interpretation, and dissemination of geologic and mineral data for Idaho. Such information is to be acquired through field and laboratory investigations by the staff of the survey and through cooperative programs with other governmental and private agencies. There is hereby established an advisory board for the survey, consisting of the following members: The director of the survey and board chairperson (nonvoting); the chair of the department of geosciences at Boise state university; the chair of the department of geosciences at Idaho state university; the chair of the department of geological sciences at the university of Idaho; a representative from the mining and mineral processing industry selected by the director; the governor of the state of Idaho or his designated representative; a member of the board of land commissioners or their designated representative; the president or his designee of the Idaho association of professional geologists; and two (2) members at large selected by the director from other state or federal organizations, or from the private sector with a direct interest in the survey's programs, both serving two (2) year staggered terms; all of whom shall serve as members of the said board and shall be compensated as provided by section 59-509(b), Idaho Code.

History:

[(47-201) 1919, ch. 54, sec. 1, p. 163; C.S., sec. 5481; I.C.A., sec. 46-201; am. 1933, ch. 22, sec. 1, p. 29; am. 1974, ch. 17, sec. 26, p. 308; am. 1980, ch. 247, sec. 45, p. 614; am. 1984, ch. 101, sec. 1, p. 229; am. 2003, ch. 46, sec. 1, p. 175.; am. 2010, ch. 67, sec. 1, p. 116.]



## Idaho State Board of Land Commissioners

Brad Little, Governor and President of the Board

Lawrence E. Denney, Secretary of State

Lawrence G. Wasden, Attorney General

Brandon D Woolf, State Controller

Sherri Ybarra, Superintendent of Public Instruction

Dustin T. Miller, Director and Secretary to the Board

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*Be it remembered, that the following proceedings were had and done by the State Board of Land Commissioners of the State of Idaho, created by Section Seven (7) of Article Nine (IX) of the Constitution.*

Draft Minutes  
State Board of Land Commissioners Regular Meeting  
August 20, 2019

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, August 20, 2019 in the State Capitol, Lincoln Auditorium (WW02), 700 W Jefferson Street, Boise, Idaho. The meeting began at 9:01 a.m. The Honorable Governor Brad Little presided. The following members were in attendance:

Honorable Secretary of State Lawrence Denney  
Honorable Attorney General Lawrence Wasden  
Honorable State Controller Brandon Woolf (*via teleconference*)  
Honorable Superintendent of Public Instruction Sherri Ybarra (*via teleconference*)

For the record, all Board members were present, with Controller Woolf and Superintendent Ybarra joining via conference call.

**1. Department Report** – Presented by Dustin Miller, Director

**Endowment Transactions**

A. Timber Sales – July 2019

**Discussion:** None.

B. Leases and Permits – July 2019

**Discussion:** Governor Little asked if lessees pay early. Director Miller said not usually, but it does happen on occasion. Some lease payments are split into two payments each year, in December or January, and again in June. However, late payments also occur, as happened with residential leases this month. Director Miller mentioned that the Land Board was provided with a memo, as requested at the July meeting, concerning revenue collected from delinquent communication site payments in the latter part of FY2019. Governor Little inquired if there is language in the contracts that calls for a penalty if the payment is late. Director Miller replied that there is such language.

## Status Updates

### C. Land Revenue Forecast

**Discussion:** Governor Little asked how accurate the Department was when this forecast was made four years ago. Director Miller indicated the Department would provide that information to the Board after the meeting.

### D. Fire Season

**Discussion:** Superintendent Ybarra thanked Director Miller and his staff for the great collaboration with the Superintendent's office, and fellow Board members, to produce a series of five fire prevention public service announcements (PSA) for social media in June. Superintendent Ybarra remarked it was a successful joint effort to help prevent forest fires through education; Superintendent Ybarra looks forward to working with the Department to continue that effort. Director Miller appreciated the Superintendent's comments, and mentioned the PSAs have been well-received.

### E. Resource Protection and Assistance Bureau

**Discussion:** Attorney General Wasden noted the reference to buoys on the Spokane River, and recalled that has been a problem in the past. Attorney General Wasden observed the problem appears to have subsided some, and asked if there is anything more the Land Board or Department needs to do in that regard. Mr. Wilson mentioned that the Department sent out postcards to over 600 landowners along the Spokane River; a patrol will go out in the next week or two to see if there are still any buoys remaining. As needed, Department staff will contact landowners and have more follow-up with them. Mr. Wilson noted that buoys are also becoming an issue on Hayden Lake. The Department did a joint patrol with the sheriff's office to help get those issues addressed. Additionally, the county is applying for a permit to set out some more no-wake buoys on Hayden Lake. Mr. Wilson said his understanding is they are trying to do the same thing along the Spokane River, which will help. Mr. Wilson concurred that the problem is much less than it was in 2018.

Governor Little recalled at the April meeting, the Land Board discussed a gravel pit on Highway 55 that the Department was going to try and resolve with the eventual purchaser. Governor Little asked for an update. Mr. Wilson replied the Department has been working on a number of deadline-driven activities, such as negotiated rulemaking, omnibus rulemaking, Triumph Mine and Midas Gold projects. The Department has not followed up on the former Prime Earth property, but intends to have discussions with the landowner, Idaho Transportation Department, and the Pioneer Irrigation District to get a better handle on access and what reclamation is going to be done. Governor Little remembered the Land Board authorized up to \$120,000 to reclaim the property and inquired if the Department has committed any of those resources. Mr. Wilson said no; that project is important but does not have deadlines driving to a specific goal.

### F. Cottage Sites Auction – Priest Lake Results

**Discussion:** None.

## Consent—Action Item(s)

### 2. Approval of Minutes – July 16, 2019 Regular Meeting (Boise)

**Consent Agenda Board Action:** A motion was made by Attorney General Wasden that the Board adopt and approve the Consent Agenda. Secretary of State Denney seconded the motion. The motion carried on a vote of 5-0.

## Regular—Action Item(s)

### 3. Endowment Fund Investment Board Report – Presented by Chris Anton, EFIB Manager of Investments

- A. Manager's Report; and
- B. Investment Report

**Discussion:** Mr. Anton reported that in terms of investments the portfolio was up half a percent during the month of July, the first month of fiscal year 2020. Investors welcomed the fact that the Federal Reserve joined central banks around the world and cut interest rates by 0.25% at the end of the month, due to weak global growth, particularly in China and in Europe. Germany is now technically in a recession. Mr. Anton remarked that manufacturing is slowing in other parts of the world, and there is possibility of a disruptive Brexit and uncertainty surrounding trade negotiations. The interest rate cut was intended to stimulate economic growth in the U.S., which has seen a slowdown, although consumer demand has been very strong. The hope is to keep a strong economy in the U.S. and bring inflation up to target levels.

Mr. Anton stated that early August was fairly volatile in the financial markets, but through the close of the market yesterday, the portfolio was only down 1%. The imposition of new tariffs was a big driver, and then those were delayed until December, so the market came back. There was a lot of discussion surrounding the inversion of the yield curve. Essentially, the yield on shorter duration bonds like two-year Treasuries is now higher than on ten-year Treasuries, which has historically been a forward-looking indicator of possible recession a year and a half or two years down the road. There are a number of reasons for that. First of all, the Federal Reserve has been fairly slow to reduce rates. Additionally, there is about \$15 trillion of bonds outstanding globally now that have negative yields. Many foreign investors had been buying U.S. treasuries in an attempt to get a little extra yield and have driven down rates.

Overall, the fund is in a healthy position. The Investment Board used the higher bond prices as an opportunity to rebalance the portfolio, and the fund is at target allocation at this point.

Reserves are above target for all the funds at fiscal year-end. In other business, Mr. Anton noted that the Land Board Audit Committee met on August 14th and approved EFIB's audit report. EFIB will present that report to the Land Board during the November meeting. The Investment Board held a meeting on August 15th, and the investment consultant presentations from Callan and RVK are scheduled on September 19th.

### C. FY2021 Distributions and Transfers

**Recommendation:** The Endowment Fund Investment Board recommends that the Land Board approve a 4.5% increase in beneficiary distributions, or a total of \$84,520,800 in FY2021; approve a transfer of \$57,803,000 from earnings reserve funds to permanent funds; and, designate the transfers as additions to the gain benchmarks (or permanent corpus).

**Discussion:** Mr. Anton reviewed Attachment 1 and began with a reminder of the distribution policy, which is to distribute 5% of the three-year average of each of the beneficiary's permanent fund balances, with the exception of State Hospital South, which is a 7% distribution. The policy allows for adjustments in case reserves are inadequate or if the fund is below the gain benchmark. The recommendation this year is to follow the policy with no adjustments. Policy also is to maintain earnings reserves at adequate levels based on target years of reserves, and to consider transferring any excess earnings reserves back into the permanent fund.

In fiscal year 2019, the endowment fund generated a return of 7.7%, which represented a real return of 5.6% above inflation of 2.1%, which pushed all the funds above their gain benchmark. While that may not sound like a large number in terms of absolute return, in terms of relative return, the fund ranked in the top 11% of all public funds and the top 8% of all endowments and foundations, so had solid performance during the fiscal year.

The current year and the next year beneficiary distributions are well-secured. In addition, the Department ended the year with solid backlog in terms of timber sales, with \$160.6 million of timber presold, as Director Miller indicated earlier in his presentation.

Mr. Anton explained page four shows the coverage ratio – the years of earnings reserves for each of the beneficiaries calculated based on what is being recommended for FY2021 beneficiary distributions. All of the reserve levels are at or above the target levels.

Page five provides some historical perspective of distributions to the beneficiaries since 2017. The amount distributed in 2019 was \$78.2 million. The amount that the Land Board approved previously for fiscal year 2020 is \$80.9 million, and what is being recommended today for fiscal year 2021 is \$84.5 million. EFIB also recommends returning earnings reserves above target levels back to the permanent fund, which totals \$57.8 million. Page six of the report provides the detail more granularly by beneficiary.

EFIB recommends for the Land Board's consideration fiscal year 2021 beneficiary distributions totaling \$84,520,800, a 4.5% increase from fiscal year 2020, transfer of \$57,803,000 back into the permanent fund, and designate the transfer amounts as additions to the gain benchmarks.

Attorney General Wasden thanked Mr. Anton for the report, and made a point of clarification that the efforts the Land Board is putting forward have to accommodate two things. One of them is increasing inflation. The other is increasing population. Attorney General Wasden shared his perspective that taking in monies in excess of the number of years' reserve is actually the gift that keeps on giving because it accommodates those two variables, increase in inflation and increase in population. Mr. Anton stated that is correct.

Moving excess reserves back into the permanent fund adds to the permanent fund balance, which grows distributions in future years. EFIB is trying to create that balance between supporting current needs of the beneficiaries and the long-term needs. EFIB just completed its strategic plan analysis that includes that very specific goal to grow the endowment, both at the rate of inflation and population growth. EFIB has been able to do that primarily because of the excess earnings that have transferred back into the permanent fund.

**Board Action:** A motion was made by Attorney General Wasden that the Board adopt the proposed Fiscal Year 2021 distributions and transfers. Secretary of State Denney seconded the motion. The motion carried on a vote of 5-0.

**4. Athol 80 Easement Disposition** – Presented by Ryan Montoya, Bureau Chief-Real Estate Services

**Recommendation:** Direct the Department to sell 1.3 miles of easement over an existing road at an appraised price of \$44,000 to Idaho Forest Group (IFG).

**Discussion:** None.

**Board Action:** A motion was made by Attorney General Wasden that the Board adopt the Department recommendation, that is direct the Department to sell 1.3 miles of easement over an existing road at an appraised price of \$44,000 to IFG. Secretary of State Denney seconded the motion. The motion carried on a vote of 5-0.

**5. Forest Asset Management Plan (FAMP)** – Presented by Bill Haagenson, Division Administrator-Operations

**Recommendation:** Adopt the revised Forest Asset Management Plan, and direct the Department to implement the new annual sale volume of 328 MMBF with a four-year phase-in period.

**Discussion:** Attorney General Wasden complimented Mr. Haagenson and Department staff for the work that went into this excellent report. Having more accuracy in understanding what growth rates are is very significant in terms of the Department's management ability. Attorney General Wasden asked a question in reference to the second sentence in the last paragraph of page 2, "Assuming relative market and price stability, the Department expects gross revenue from timber sales would increase proportionately." Attorney General Wasden noted that is a rational statement; is that an appropriate assumption in terms of whether the Land Board should adopt this 20-year plan. Mr. Haagenson replied that when the Department forecasts, when it does the economic analysis, the Department is looking at past trends of timber prices over a five-year period. There have been some ups and downs even during that five-year period, and there will be more as time goes on. The market will move up and down. Mr. Haagenson stated the Department is focused on doing what is right for the timber resource and for the beneficiaries. The Department is confident that the industry can absorb the volume and that endowment sales are high enough quality that they are valued by the industry, and the Department will continue to receive top dollar, based on the dollar at that time.

Attorney General Wasden noted that the Department has a couple of safeguards in here that are really important; that is, the five-year interval review and the four-year phase-in. Department staff has thought that through, and it is a good plan. Attorney General Wasden also noted that a

report earlier in this meeting stated that there were two proposed timber sales that did not sell. That is just a temporary aberration, but the timing of this appropriate, given the fact that there is a weakening timber market, housing starts are lower and so forth; what is the Department's thoughts on that. Mr. Haagenson replied that the Department started this process early to begin to capture the revenue as soon as possible; the annual sales plan has already been ramped up to 271 million. The Department sees this as likely a temporary dip in the market and temporary softness in the market. The Department thinks this is the right time to start this process because of the four-year phase-in period and the ability to make changes if needed. If circumstances change, and it is no longer in the best interest of the endowments to continue down this path, the Department can come back to the Board and make changes. The Department would try to avoid a major increase and a major decrease, to be more predictable and more flat with the volume being put on the market; the Department does have the ability to make changes in the safeguards if necessary.

Attorney General Wasden remarked that this is a 20-year program, that the cut rate is going to increase for 20 years, so there is increase in revenues, that there will be some kind of a cliff at the end of that 20-year program. What happens at the cliff? Mr. Haagenson explained that as the Department selected model alternatives for each area, bureau staff tried to avoid that large cliff. The Department tried to make sure that it was addressing inventory issues in the near term—that 20-year window—and then avoid a major drop-off at that point. The Department will see some response in terms of increased growth with increased management. As more of these mature and over-mature stands are converted to younger, faster-growing stands, there will be more response out there, and inventory data will continue to improve, and there may not be a major drop-off. Mr. Haagenson commented that harvest levels will come down, but it will not be like falling off a cliff. The Department will address the inventory issues, and then ease that back over time to the level that is right based on the growth that is happening on endowment lands.

Attorney General Wasden stated that one of the things the Land Board is contemplating is what to do with the levels of money received from the cottage site sales. One of the recommendations has been to acquire more timberland. In light of the Land Board contemplating acquiring more timberland, and also increasing the cut rate, Attorney General Wasden wondered what the relationship is between the FAMP, as proposed, and the intention to acquire more timberland. Is the Land Board undermining its own market position? Mr. Haagenson responded that everything the Department is doing for the FAMP is based on the ownership that the endowments have today. The Department is not assuming any additional acquisitions in these numbers. If more acquisitions do occur, they would be lands that are already part of the productive timberlands within the state of Idaho. The Department would not be adding to the growing land base out there but simply bringing more of that growing land base into endowment ownership. Any harvest that would come from those lands would shift from private harvests to endowment.

Attorney General Wasden noted that this analysis covers a lot of forest health issues, which is significant. Maintaining that forest health is critical in order for the Land Board to fulfill its duty to current beneficiaries and to future beneficiaries. Attorney General Wasden emphasized he was asking about the economic analysis, not just the forest health aspect. Mr. Haagenson indicated the Department would see an increase in net present value for the beneficiaries under this proposal compared to the previous harvest level. As harvest moves closer to the present day, the

beneficiaries will recover more. Additionally, the Department would see those increased growth rates that will benefit the beneficiaries for the long term. That is the focus really; what is happening out there for future staff to manage 20, 30, and 40 years down the road. The Department believes in the best interests of the future for the endowments. Attorney General Wasden commented that the Land Board's responsibility is to current beneficiaries and to future beneficiaries to obtain the maximum long-term return. Attorney General Wasden asked if this FAMP, the proposed FAMP, is fulfilling that fiduciary responsibility. Mr. Haagenson replied that he, and the Department, believe it is. It is very important to the Department to stay focused on its fiduciary responsibility. It is talked about every day, and it certainly is a key part of this analysis as well. Mr. Haagenson said he previously mentioned average of past return or past income, and then an increase in the percentage of harvests moving forward; what does that mean? That means right now between \$21 and \$22 million annually in increased gross income for the beneficiaries during this term. The Department is focused on long-term fiduciary responsibility, and producing revenue in the short term; the Department needs to continue to play the role that lands have always played in the ultimate distributions to the beneficiaries.

Attorney General Wasden inquired if it is critical for the Land Board to make this decision today, recognizing that this is a 20-year proposal with alterations, four-year phase-in, and five-year review. Attorney General Wasden did not suggest that the Board should not make a decision today, but would it be appropriate for the Land Board to take a little time to think about those economic issues. Mr. Haagenson answered the Department does think that time is important here—to delay a decision ultimately delays revenue received in the short term and delays important management on the ground. There is risk to maintaining a mature and over-mature inventory on endowment lands. The Department is seeing some of that, for example, at the Packer John block with the Douglas-fir tussock moth. If too much of that inventory out there is maintained, there will be damaging agents at some point in time that is going to require action. The Department thinks it is prudent to take action sooner and increase the pace of management as soon as possible. Attorney General Wasden said some of those agents would be fire, insects, storm damage, and also the growth that is happening. There is an ideal size and logs actually become less marketable because of the carriage sizes of the processing facilities. All of those elements go into this analysis and delaying for too long ends up damaging the Department's own economic best interest. Mr. Haagenson remarked that Attorney General's statement was very well said. There is risk of holding trees on the landscape for, exactly as mentioned, outgrowing their prime merchantable size—still merchantable, but at decreased value. In very general terms, the size of the log that is becoming more desirable to industry is smaller than it used to be, and the Department is moving endowment stands to try to address that.

Attorney General Wasden professed some trepidation with the FAMP, but with the planned four-year roll-up, five-year review, if the Department keeps the Land Board informed, it will be a very helpful thing. Course corrections can be made if necessary. Attorney General Wasden acknowledged one of the important elements here is the Department does not know precisely what the additional growth is going to be; it could be more and it could be less than predicted. That element, and market conditions, are items that the Department needs to pay attention to. Mr. Haagenson agreed with the Attorney General. The Department has a keen interest in the growth rates of the younger stands—collecting enough data and accurate data, because they are

key to the long-term sustainability of the proposed management plan. It is an area of focus between now and the next FAMP revision.

Secretary of State Denney inquired about the average annual growth rate on endowment timberlands. Mr. Haagenson replied that it varies based on site, but in terms of board feet per acre, it can be anywhere from the low 200s to over 400 board feet per acre per year. Secretary of State Denney asked when the Department talks about harvesting 328 million board feet, is that adding to the 4 or 8 billion board feet inventory. Mr. Haagenson stated it is the Department's intent to bring that level of inventory down with these increased harvest levels. If growth increases more than expected, that will be revisited down the road. Secretary of State Denney asked if the sales like the Packer John and the fire salvage are included in the 328 million board feet. Mr. Haagenson answered those would typically be included in the Department's annual sale plan. A major event may be handled differently; if, for example, something affected 75 million board feet that could change the plan moving forward.

Governor Little said he understands increasing the volume; is this increased volume number, this increased top line, going to increase net return to the beneficiaries. Mr. Haagenson commented that another area of significant focus for the Department is improving net return. One example is that at past prices, revenues could be expected to increase between \$21 million and \$22 million annually on the gross side. That is happening without adding staff. The Department is really focused on increasing the net and getting as much of that gross netted income to the beneficiaries as possible. Governor Little mentioned the presentation about a Douglas-fir forest health issue that is on the agenda momentarily, some of which is going to be a shared stewardship project. Considering head rig and capacity of logging contractors with those wildcards thrown in—more timber available off forest ground and forest health projects than historically typical—does this model have flexibility in the event there is not sufficient head rig or contractor capacity. Mr. Haagenson responded that Idaho's forest products industry infrastructure can utilize more volume coming on the market. In informal conversations the Department has had, increased harvest is welcomed. The Department is very proud of what is happening with GNA and shared stewardship and the chance to help restore the past role of federal lands in supplying infrastructure, and perhaps take some pressure off of private lands as that happens. Mr. Haagenson noted the Department does have flexibility to adjust its forest management plan if there is not mill capacity at some point in the future.

Public comment was provided by Tom Schultz, Vice President, Government Affairs and Community Outreach, Idaho Forest Group. Mr. Schultz remarked that (IFG) is one of the largest customers for endowment timber sales; IFG appreciates the work done by the Department and supports the FAMP. Mr. Schultz noted that the planned four-year phase in is key to the plan. Another piece that has not been discussed is substitution. About 8% to 10% of what IFG purchases is from out of state in Oregon, Washington, and out of country in Canada. When considering this proposed increase in volume, 80 million board feet over the next four years, do not discount the substitution effect where IFG can buy more state volume locally as opposed to having to procure wood from outside the state. One factor that was mentioned is the decrease in federal timber; that decrease is 80% since the late '80s. The volume used to be about 800 million board feet a year around 1988-90. That volume now fluctuates between 100 to 150 million board feet a year, so there is an increase, but there has been a significant pressure put on private lands.

Mr. Schultz spoke to the question asked about capacity. IFG has made some significant investments at Lewiston recently, and its procurement of timber on just public lands has increased between 2015 and 2018 by about 17%. IFG has seen an increase in volume purchased, and has made significant investments, particularly in Lewiston, but at other mills as well.

Mr. Schultz commented on additional revenue to the endowments. Mr. Haagenson indicated approximately \$20 million in additional revenue likely to be generated for the endowments, and a comment was made by Director Miller that 97% of the net income is from timber sales. Accordingly, the only way the Land Board and Department really has to increase revenue from the land management side is on the timber program. There are safeguards needed in place to evaluate what the Department is doing. Idaho Forest Group is ready to procure the additional volume. IFG purchased a couple of log trucks that are coming in in October to help develop the trucking workforce. A question was asked about capacity, not just of the battery capacity, but also the workforce. IFG is working on all of those ends to increase the capacity both within the mills and the workforce. Governor Little and Attorney General Wasden thanked Mr. Schultz for his comments.

**Board Action:** A motion was made by Attorney General Wasden that the Board adopt the Department recommendation, that is adopt the revised Forest Asset Management Plan, and direct the Department to implement the new annual sale volume of 328 MMBF with a four-year phase-in period. Attorney General Wasden also requested updates on this process. Secretary of State Denney seconded the motion. The motion carried on a vote of 5-0.

**6. FY2021 Budget Enhancements** – *Presented by Debbie Buck, Financial Officer*

**Recommendation:** Direct the Department to include the enhancement requests as outlined in Attachment 1 in the Fiscal Year 2021 budget proposal due on August 30, 2019.

**Discussion:** Attorney General Wasden pointed out that the Department's labor force is aging as endowment trees are aging as well. Attorney General suggested that the Land Board and Department have a discussion about transitioning some of these positions, such as the scaling positions and others that are critical to maintaining the Department's mission.

Governor Little mentioned that a letter was issued from Division of Financial Management (DFM) to all state agencies with a request to temper budget requests, given certain situations happening nationally and internationally, as well as personal income tax receipts. Governor Little indicated DFM will likely follow up with agencies. Governor Little stated he will not vote on this agenda item.

**Board Action:** A motion was made by Attorney General Wasden that the Board adopt the Department recommendation to include the enhancement requests as outlined in Attachment 1 in the Fiscal Year 2021 budget proposal due on August 30, 2019. Secretary of State Denney seconded the motion. For the record, Governor Little recused himself from this vote. The motion carried on a vote of 4-0.

## Information

Background information was provided by the presenter indicated below. No Land Board action is required on the Information Agenda.

### 7. **Packer John Salvage Sales** – Presented by Tom Eckberg, Program Manager-Forest Health, and Jim Elbin, Bureau Chief-Forest Management

**Discussion:** Mr. Eckberg went through the Douglas-fir tussock moth presentation. Attorney General Wasden asked what the solution is. Mr. Eckberg replied that the solution is to have more stands with less inventory of Douglas-fir and grand fir. It is not plausible to eliminate tussock moth; there are reports of infestation going back to the 1920's. Back then, it was less of a concern because white pine was the king up in northern Idaho, but it will always be an issue, and it is difficult to predict when an infestation will hit. It may or may not hit Packer John in ten years. The last time it hit Packer John was 1991, and it was minimal. If the Department has endowment stands with more non-host species like pines and larch, or less suitable hosts—even Engelmann spruce, and move away Douglas-fir and grand fir, the stands will be in better shape.

Governor Little commented that it was approximately \$50-60 per acre to spray insecticide, based on Mr. Eckberg's presentation, and asked what it costs today. Mr. Eckberg said he did not have that figure. In 2001-2002, with that economy of scale, it was about \$30 an acre. The Department administered a small-scale spray program for 11 landowners in 2012; it was about \$60 an acre from a helicopter. Governor Little questioned, if there was a critical area right outside of Idaho City or someplace, where there is endowment land and the Department also bears the fire suppression costs, would the Department calculate into its metrics different places and different locations to spray such that it does not present a hazard to that community and still save some of the timber. Mr. Eckberg replied that with the outbreak in northern Idaho in 2010 through 2012, because of those new spray regulations, the Department decided not to spray as a state entity because another series of restrictions or regulations would kick in if the state administered a spray program or sprayed one acre. The restrictions had to do with reporting, putting the proposal on websites, and it also had to do with any areas that had anadromous fish. Some of these recordkeeping requirements were quite onerous. The Department decided not to spray in northern Idaho because of that reason, and also because endowment timber was not extremely impacted. Governor Little inquired about the effect on the natural predators if stands are sprayed; does it have a counter-effect. Mr. Eckberg responded that the DDT<sup>1</sup> sprayed back then had a large impact. Mr. Eckberg added that in 2001-2002 the products that used were called BT, which is *Bacillus thuringiensis*. It is a naturally occurring bacterial insecticide that will only kill Lepidoptera, or butterflies and moths. The other product that used was Dimilin; that is an insect growth regulator, and it does have some effect on other insects. It causes them to die when they molt. When the Department sprayed in 2012, it used a product called Mimic, which is also an insect growth regulator and is specific to Lepidoptera as well, only moths and caterpillars. It had no effect on predacious insects, beetles, or the parasitic wasps.

Governor Little wondered if there is anything in the science; does anybody go out when these populations occur and try to introduce or increase bio-controls. Mr. Eckberg stated that there

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<sup>1</sup> Dichlorodiphenyltrichloroethane (DDT)

was work in that direction back in the 1970s. There was a lot of work done on this insect, in part due to outbreaks that occurred in the Blue Mountains of northeastern Oregon. However, when augmenting natural enemies is considered, they typically increase in response to the insects. Rearing the number of insects that would be required to have a lasting impact would be prohibitively expensive. Again, as mentioned, the products that are available now that would likely be used would have almost no effect on these parasitic wasps.

For the record, at 10:41 a.m., Controller Woolf excused himself from the meeting.

Governor Little mentioned that there are two sales that the Department is going to do, and time is of the essence, as with any bug-killed tree, as far as the value to be harvested. Governor Little visited the site on Monday, August 19th; there is a lot of mortality and Governor Little inquired if there is enough mill capacity to handle the salvage sales. Governor Little asked how the Department is going to generate some cash and keep the forest from burning up. Mr. Eckberg deferred to Mr. Elbin. Mr. Elbin replied that the Department will sell them. The first salvage sale sold for appraised value. The second sale will be auctioned at 11 o'clock today. If it does not sell, the Department will reappraise and visit with the purchasers. Some of their concern is the larger inventory; purchasers are looking for a different price point, which the Department can explore. Mr. Elbin stated that regarding capacity, it remains to be seen. The volume on these two salvage sales equals two and a half years' worth of the Southwest Area's sales plan, and that is a concern of the area. Of course, their management plan will be adjusted going forward so they do not have a huge amount of other volume under commitment. The Department's focus, the area's focus, is to sell these salvage sales; that is the goal right now. Mr. Elbin added that the Department is contemplating a third sale on this site. As Mr. Eckberg indicated earlier, staff will assess and make sure that a third sale is absolutely necessary. If defoliation is at a level where the Department can wait a year, it will do so. But if staff thinks it will lead to mortality, then more volume will be offered to the market. Governor Little asked if the Department sells the sales for zero, saves the rest of the stand—the pine, the spruce, the larch—and does not have the firefighting costs what is the math on that. Mr. Elbin replied that the Department would default to salvage minimum prices, if that is what the market dictated, to get the wood off the hill.

### **Executive Session**

None

There being no further business before the Board, at 10:50 a.m. a motion to adjourn was made by Attorney General Wasden. Secretary of State Denney seconded the motion. The motion carried on a vote of 4-0.

# STATE BOARD OF LAND COMMISSIONERS

September 13, 2019

Regular Agenda

## Subject

Fiscal Year 2021 Idaho Department of Lands (IDL) Budget Request

## Question Presented

Shall the Board approve the Department's FY2021 budget request as submitted to Division of Financial Management and Legislative Services Office on Friday, August 30, 2019.

## Discussion

The budget was developed in accordance with guidelines provided by the Division of Financial Management (DFM) that prescribe 1% change in employee compensation (CEC), 23.39% variable benefit rate and \$13,850 health benefit per full-time employee for the agency.

On August 20, 2019 the Land Board approved the Department's FY2021 enhancement decision units (Attachment 1). Subsequently, several changes were incorporated into the Department's budget request:

- Per Governor Little's August 19, 2019 memo, all requests for general fund were removed from the agency's enhancement requests. This totaled a reduction in general fund requests of \$122,700 and one (1.0) FTP. The FTP that was removed from the request was a senior program specialist for GNA/shared stewardship.
- The Department removed the request for a shared stewardship program manager position (1.0 FTP). The Department intends to use an existing vacant FTP to create a position to manage shared stewardship initiatives.
- The Department has removed the request for general fund trustee and benefit (pass through) funds for the timber protective associations' (TPAs) CEC and inflationary adjustments.

Attachment 2 is a revised summary of the enhancement decision units that were included in the Department's August 30, 2019 budget submission.

The Department's FY2021 total budget request by funding source is as follows:

FUND TYPE	AMOUNT
General Fund	\$6,405,100
Earnings Reserve Fund	\$32,218,100
Federal Funds	\$6,974,400
Other Funds	\$18,955,100
<b>TOTAL REQUEST</b>	<b>\$64,552,700</b>

The FY2021 budget request reflects the following changes above the maintenance level appropriation:

<b>FUND TYPE</b>	<b>\$ CHANGE</b>	<b>% CHANGE</b>
General Fund	\$0	0.0%
Earnings Reserve Fund	\$2,218,500	7.4%
Federal Funds	\$0	0.0%
Other Funds	\$2,048,700	6.7%

### **Recommendation**

Approve the Department's FY2021 budget request as submitted to the Division of Financial Management and the Legislative Services Office on Friday, August 30, 2019.

### **Board Action**

### **Attachments**

1. August 20, 2019 Approved Board Memo
2. Fiscal Year 2021 Budget Enhancement Request Summary (Revised 8/30/19)



# STATE BOARD OF LAND COMMISSIONERS

August 20, 2019

Regular Agenda

## Subject

Fiscal Year 2021 Department of Lands Budget Enhancements

## Question Presented

Shall the Board Direct the Department to include the enhancement requests as outlined in Attachment 1 in the Fiscal Year 2021 budget proposal due on August 30, 2019.

## Background

The Department is requesting concurrence on the proposed FY21 Enhancement Decision Units. Pursuant to Idaho Code § 67-3502, agencies must submit their budget request to the Division of Financial Management (DFM) and the Legislative Services Office (LSO) by August 30, 2019. The Board briefing and meeting schedules prevent the Department from having the full budget request ready for the August meeting. The complete budget will be presented for Board approval at the September meeting.

## Discussion

The Department is asking for consideration of the attached decision units. The proposed decision units align with the strategic goals that are detailed in the Department's Strategic Plan document. As you may recall, the strategic plan is organized around four major Department-wide goals: (1) Financial Stewardship – Maximize returns through prudent management of resources and funds, (2) Customer Focus – Exemplary professional service to all customers, (3) People – A high performing workforce, and (4) Process – Effective policies, procedures and systems to drive informed decision making.

With these goals in mind, the Department is developing a budget submission for FY21 that includes enhancements to further efforts in meeting Department goals. In Attachment 1, the Department's proposed enhancements for the FY21 budget are listed in order of priority.

- 1) This request is for financial resources to address the increased forest management activities resulting from increased timber harvest on endowment lands (FAMP<sup>1</sup>). On endowment lands, sustainable harvest levels are expected to increase gross timber revenue by over 30% assuming stable forest product markets and prices. While the increase in harvest levels is substantial, the increase in expenses to manage the additional cut is modest.

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<sup>1</sup> Forest Asset Management Plan

- 2) This request is for financial resources to address increased forest and rangeland management activities under the Good Neighbor Authority (GNA) and Shared Stewardship agreements. The state's commitment to working cooperatively with federal agencies to increase management activities including timber harvest, rangeland restoration and watershed restoration on federal land will continue to increase the funds that flow through the Department's GNA program budget. Spending authority and additional FTEs<sup>2</sup> are needed to ensure those important agreements are met. Notably, work done specifically under Shared Stewardship on private lands cannot utilize dedicated funds generated by timber sales on federal lands. For that reason, general funds are being requested to fund 50% of two new employees who would each dedicate half of their time to Shared Stewardship coordination activities. The requested program manager for Shared Stewardship can be funded with existing federal fund appropriation, so no additional funds are being sought for that position.
- 3) This request is for additional support in the Department's Public Trust program. Through an audit, the Department determined approximately 50% of encroachments on navigable waters are out of compliance. With a growing population in Idaho, the areas surrounding our lakes and rivers continue to see increased use. This program needs additional resources to ensure that as Idaho grows, public access and navigability of lakes and rivers in Idaho will not diminish and that safety, property values and customer service are maintained.
- 4) This request is to replace the St. Joe Supervisory Area Office. The existing facility was originally a small house built in the 1940s and has been renovated three times in the last 25 years. The facility does not meet existing needs of today's current digital environment, personnel, or Americans with Disabilities Act (ADA) standards, and requires costly maintenance. The Department is requesting \$1,184,900 of PBFAC<sup>3</sup> funds towards the total cost of \$3,074,300.
- 5) This request is for additional IT support. The Department is requesting an IT Business Analyst to provide support to the Land Information Management System (LIMS) for forestry and fire to ensure "up" time and to prevent cyber-attacks on the data.
- 6) This request is for a partial FTE and dedicated spending authority to allow the Idaho Board of Scaling to prepare for the retirements of the two top positions by hiring a 0.75 FTE for two years to be trained as a replacement.
- 7) This request is for funding to cover the increases to the Department's annual software license and maintenance agreements.

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<sup>2</sup> Full-time Equivalent

<sup>3</sup> Permanent Building Fund Advisory Council

- 8) This request is for 1% CEC<sup>4</sup> and 1% inflation for the two Timber Protective Associations that are funded through the Department as Trustee & Benefit.

The enhancements in the Department's budget request reflect the following increases over the FY2020 ongoing appropriation:

FUND TYPE	Increase from FY20 Base Budget	
	ONGOING & ONE TIME Requests Combined	ONGOING Requests Only
General Fund	\$122,700 (2.1%)	\$118,300 (2.0%)
Earnings Reserve Fund	\$2,194,300 (7.7%)	\$813,700 (2.9%)
Lands Dedicated Fund	\$2,049,800 (13.2%)	\$1,225,300 (7.9%)
Federal Funds	\$0 (0%)	\$0 (0%)

Throughout the rest of the budgeting submission process, the Department will follow DFM guidelines.

**Recommendation**

Direct the Department to include the enhancement requests as outlined in Attachment 1 in the Fiscal Year 2021 budget proposal due on August 30, 2019.

**Board Action**

A motion was made by Attorney General Wasden that the Board adopt the Department recommendation to include the enhancement requests as outlined in Attachment 1 in the Fiscal Year 2021 budget proposal due on August 30, 2019. Secretary of State Denney seconded the motion. For the record, Governor Little recused himself from this vote. The motion carried on a vote of 4-0.

**Attachments**

1. FY2021 Enhancement Decision Unit Requests




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<sup>4</sup> Change in Employee Compensation

# IDL Enhancement Decision Units - FY2021

Priority	Description	General Fund	Dedicated Fund	Federal Fund	Earnings Reserve Fund	Total	Object	FTPs	Ongoing or OneTime
1	<b><u>LAAB: Forest Asset Management Plan (FAMP)</u></b>								
	<p>This request includes funding for temporary employees needed to implement increased timber harvest levels on endowment lands as harvest levels are expected to increase by over 30% during the next four fiscal years. Seasonal staff will participate in sale preparation, sale administration and post-sale silviculture projects. This request also includes funds to establish a pilot program of delivered product sales of timber to evaluate the potential for greater financial returns for endowment beneficiaries. This request also includes funding to develop a seed orchard in the Lewiston Orchards area providing western larch and Douglas-fir seed. Since IDL's annual timber sale volume is increasing, there is a greater demand for genetically improved seed to regenerate harvested lands. Future phases may add more capacity and introduce western white pine, ponderosa pine and/or other desirable species to meet planting needs.</p>								
	Group Position Funding	\$0	\$0	\$0	\$100,000	\$100,000	PC	0.00	Ongoing
	Delivered Product Sales Implementation	\$0	\$0	\$0	\$500,000	\$500,000	OE	0.00	Ongoing
	Seed Orchard Establishment - Phase I	\$0	\$0	\$0	\$165,000	\$165,000	CO	0.00	One Time
		\$0	\$0	\$0	\$765,000	<b>\$765,000</b>		<b>0.00</b>	

IDAHO DEPARTMENT OF LANDS

Priority	Description	General Fund	Dedicated Fund	Federal Fund	Earnings Reserve Fund	Total	Object	FTP's	Ongoing or OneTime
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**2**    **LAAB: Idaho Good Neighbor Authority (GNA)**

This request includes five (5) FTPs and (4) seasonals funded with a mix of dedicated, general and federal funds. These positions will provide more centralized resources to meet the needs of expanding workload of the GNA and shared stewardship programs. Two of the FTPs will serve as GNA regional foresters and coordinate forest and watershed restoration activities under GNA occurring on the Panhandle and Nez-Clear NFs. Two of the FTPs will serve as GNA/shared stewardship foresters and will increase IDL's engagement in the shared stewardship initiative occurring on the Panhandle, Nez-Clear, Payette and Boise NFs as well as 1.8 mm acres of private lands. One FTP will serve as shared stewardship program manager facilitating stakeholder meetings to prioritize and coordinate management activities to improve the health and resilience of forest and range lands in Idaho. The seasonals will be assigned to help implement specific projects in the field throughout the designated priority areas. Additional ongoing dedicated operating funds are also being requested to utilize GNA timber sale revenue to plan and implement activities on federal lands and to provide operating funding for the new program personnel to include travel, training, supplies and three leased vehicles. Between four and six additional sales will be sold in CY2019 and the anticipated increased operational impact will require an increase in OE spending authority to ensure restoration projects and sale planning activities can be funded. Finally, this request includes one time dedicated and general fund CO to purchase several capital items including computers and two pickup trucks.

Two Lands Program Specialists (Salary & Benefits)	\$0	\$168,700	\$0	\$0	\$168,700	PC	2.00	Ongoing
Two Lands Program Specialists, Senior (Salary & Benefits)	\$76,100	\$76,100	\$0	\$0	\$152,200	PC	2.00	Ongoing
One Lands Program Manager, Shared Stewardship	\$0	\$0	\$0	\$0	\$0	PC	1.00	Ongoing
Group Position Funding (4 Seasonal, Benefitted)	\$0	\$181,500	\$0	\$0	\$181,500	PC	0.00	Ongoing
Training, Travel and Supplies for 5 FTEs	\$7,500	\$39,000	\$0	\$0	\$46,500	OE	0.00	Ongoing
Three Commercially Leased Pickup Trucks (4X4 1/2 ton)	\$0	\$30,000	\$0	\$0	\$30,000	OE	0.00	Ongoing
Contracted Forest and Watershed Restoration Projects	\$0	\$600,000	\$0	\$0	\$600,000	OE	0.00	Ongoing
Computer, Telephone, Table and Software for 5 FTEs	\$3,500	\$14,000	\$0	\$0	\$17,500	CO	0.00	One Time
Two Pickup Trucks (4X4 1/2 ton)	\$0	\$63,800	\$0	\$0	\$63,800	CO	0.00	One Time
	<b>\$87,100</b>	<b>\$1,173,100</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,260,200</b>		<b>5.00</b>	

Priority	Description	General Fund	Dedicated Fund	Federal Fund	Earnings Reserve Fund	Total	Object	FTPs	Ongoing or OneTime
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**3 LAAC: Lands Resource Specialist, Sr. (Public Trust) + Program Rent**

This request is for a FTP 1.0 Lands Resource Specialist, Sr. in the Public Trust program to be located in the Mica office. The Mica office handles about 50% of the entire public trust program workload -- issuing encroachment permits and submerged land leases for docks and other lake facilities. Statewide, approximately 300 encroachment permits are issued annually with over 11,000 active permits administered by the program. A recent survey of Lake Pend Oreille and other north Idaho locations indicated a need for greater focus on non-compliant permitted and non-permitted encroachments. Also requested is spending authority to cover rising office space rental in the Boise staff office, legal services and hearing officers.

Land Resources Specialist, Sr. (Salary & Benefits)	\$0	\$76,200	\$0	\$0	\$76,200	PC	1.00	Ongoing
Training, Travel and Supplies	\$0	\$5,000	\$0	\$0	\$5,000	OE	0.00	Ongoing
Public Trust Office Space Rent in Boise	\$0	\$12,000	\$0	\$0	\$12,000	OE	0.00	Ongoing
Computer, Telephone and Furniture	\$0	\$2,900	\$0	\$0	\$2,900	CO	0.00	One Time
	\$0	\$96,100	\$0	\$0	<b>\$96,100</b>		<b>1.00</b>	

**4 LAAB/LAAD: St. Joe Area Facility Replacement**

Demolish and rebuild St. Joe administrative offices (including soft costs). Total project cost is estimated at \$3,074,300. This request is contingent upon a PFBAC award of \$1,184,900. The facility in St. Maries, ID was build in the 1940's and has had three additions over time. The additions have created separate ineffective heating systems and workspace that is poorly designed for today's digital environment. A facility condition assessment was performed in 2016 and outlined approximately \$266,500 worth of deferred maintenance, repairs and ADA issues that need to be addressed. During the assessment it was recommended to scrape the structure and build new office space on the site.

Design Fees (50% PBFAC)	\$0	\$45,200	\$0	\$96,000	\$141,100	CO	0.00	One Time
Furniture (0% PBFAC)	\$0	\$72,300	\$0	\$153,700	\$226,000	CO	0.00	One Time
Information Technology (50% PBFAC)	\$0	\$36,600	\$0	\$77,800	\$114,500	CO	0.00	One Time
Site Improvements (50% PBFAC)	\$0	\$45,200	\$0	\$96,100	\$141,300	CO	0.00	One Time
Demolition (50% PBFAC)	\$0	\$18,100	\$0	\$38,400	\$56,500	CO	0.00	One Time
Fire Operations Facility (0% PBFAC)	\$0	\$211,300	\$0	\$267,300	\$478,600	CO	0.00	One Time
Contruction of Administration Facility (50% PBFAC)	\$0	\$247,600	\$0	\$483,800	\$731,400	CO	0.00	One Time
	\$0	\$676,300	\$0	\$1,213,100	<b>\$1,889,400</b>		<b>0.00</b>	

Priority	Description	General Fund	Dedicated Fund	Federal Fund	Earnings Reserve Fund	Total	Object	FTPs	Ongoing or OneTime
<b>5</b>	<b><u>LAAA: IT Business Analyst</u></b>								
	This request is for a FTP 1.0 Business Analyst (Grade M) and associated support costs. This position will provide business and systems analysis, project management, and help desk support for the Land Information Management System (LIMS Forestry) enterprise system. Staff will depend on a high percentage of "up" time for staff to perform their daily work and to maintain high levels of service to external customers interacting with IDL in a self-service way. Cybersecurity risk is also present with this system. This position will provide the appropriate level of KSAs to prevent security breaches and to maintain high problem resolution rates when staff is utilizing the system.								
	IT Business Analyst (Salary & Benefits)	\$12,600	\$12,600	\$0	\$59,000	\$84,200	PC	1.00	Ongoing
	Training, Travel and Supplies	\$2,000	\$2,000	\$0	\$6,000	\$10,000	OE	0.00	Ongoing
	Computer, Telephone and Furniture	\$900	\$900	\$0	\$2,500	\$4,300	CO	0.00	One Time
		<b>\$15,500</b>	<b>\$15,500</b>	<b>\$0</b>	<b>\$67,500</b>	<b>\$98,500</b>		<b>1.00</b>	
<b>6</b>	<b><u>LAAF: Check Scaler - Idaho Board of Scaling Practices</u></b>								
	Due to the retirement of both of the two IBSP check scalers, funding and .75 FTE is being requested for a two year period to train a replacement by the current incumbent.								
	Check Scaler (Salary & Benefits)	\$0	\$66,600	\$0	\$0	\$66,600	PC	0.75	
		<b>\$0</b>	<b>\$66,600</b>	<b>\$0</b>	<b>\$0</b>	<b>\$66,600</b>		<b>0.75</b>	
<b>7</b>	<b><u>LAAA: Software Maintenance</u></b>								
	This request is for ongoing funding to cover increased annual software license maintenance costs.								
	Microsoft Licensing	\$7,800	\$15,600	\$0	\$54,600	\$78,000	OE	0.00	Ongoing
	Cisco Smartnet	\$1,700	\$3,400	\$0	\$11,900	\$17,000	OE	0.00	Ongoing
	ESRI	\$1,100	\$2,200	\$0	\$7,700	\$11,000	OE	0.00	Ongoing
	Remsoft	\$0	\$0	\$0	\$12,000	\$12,000	OE	0.00	Ongoing
	Mobile Iron - MDM	\$500	\$1,000	\$0	\$3,500	\$5,000	OE	0.00	Ongoing
	Mason, Bruce and Girard (MBG)	\$0	\$0	\$0	\$59,000	\$59,000	OE	0.00	Ongoing
		<b>\$11,100</b>	<b>\$22,200</b>	<b>\$0</b>	<b>\$148,700</b>	<b>\$182,000</b>		<b>0.00</b>	

Priority	Description	General Fund	Dedicated Fund	Federal Fund	Earnings Reserve Fund	Total	Object	FTPs	Ongoing or OneTime
<b>8</b>	<b><u>LAAD: Timber Protective Associations</u></b>								
	This is a request on behalf of the Clearwater-Potlatch Timber Association and the Southern Idaho Timber Protective Association to fund a 1% change in employee compensation and a 1% inflation for operating expenses. In FY20, IDL has an ongoing GF appropriation of \$902,400 in T&B that is forwarded to fund the two TPAs.								
	CEC and Inflation	\$9,000	\$0	\$0	\$0	\$9,000	TB	0.00	Ongoing
		\$9,000	\$0	\$0	\$0	<b>\$9,000</b>		<b>0.00</b>	
	<b>Grand Totals:</b>	<b>\$122,700</b>	<b>\$ 2,049,800</b>	<b>\$0</b>	<b>\$2,194,300</b>	<b>\$4,366,800</b>		<b>7.75</b>	



# IDL Enhancement Decision Units - FY2021 - as of AUGUST 30, 2019

Priority	Description	General Fund	Dedicated Fund	Federal Fund	Earnings Reserve Fund	Total	Object	FTP	Ongoing or OneTime
1	<b><u>LAAB: Forest Asset Management Plan (FAMP)</u></b>								
	<p>This request includes funding for temporary employees needed to implement increased timber harvest levels on endowment lands as harvest levels are expected to increase by over 30% during the next four fiscal years. Seasonal staff will participate in sale preparation, sale administration and post-sale silviculture projects. This request also includes funds to establish a pilot program of delivered product sales of timber to evaluate the potential for greater financial returns for endowment beneficiaries. This request also includes funding to develop a seed orchard in the Lewiston Orchards area providing western larch and Douglas-fir seed. Since IDL's annual timber sale volume is increasing, there is a greater demand for genetically improved seed to regenerate harvested lands. Future phases may add more capacity and introduce western white pine, ponderosa pine and/or other desirable species to meet planting needs.</p>								
	Group Position Funding	\$0	\$0	\$0	\$100,000	\$100,000	PC	0.00	Ongoing
	Delivered Product Sales Implementation	\$0	\$0	\$0	\$500,000	\$500,000	OE	0.00	Ongoing
	Seed Orchard Establishment - Phase I	\$0	\$0	\$0	\$165,000	\$165,000	CO	0.00	One Time
		\$0	\$0	\$0	\$765,000	<b>\$765,000</b>		<b>0.00</b>	

IDAHO DEPARTMENT OF LANDS

Priority	Description	General Fund	Dedicated Fund	Federal Fund	Earnings Reserve Fund	Total	Object	FTPs	Ongoing or OneTime
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**2** LAAB: Idaho Good Neighbor Authority (GNA)

This request includes three (3) FTPs and (4) seasonals funded with dedicated funds. These positions will provide more centralized resources to meet the needs of expanding workload of the GNA and shared stewardship programs. Two of the FTPs will serve as GNA regional foresters and coordinate forest and watershed restoration activities under GNA occurring on the Panhandle and Nez-Clear NFs. One of the FTPs will serve as a GNA/shared stewardship forester and will increase IDL's engagement in the shared stewardship initiative occurring on the Panhandle, Nez-Clear, Payette and Boise NFs as well as 1.8 mm acres of private lands. The seasonals will be assigned to help implement specific projects in the field throughout the designated priority areas. Additional ongoing dedicated operating funds are also being requested to utilize GNA timber sale revenue to plan and implement activities on federal lands and to provide operating funding for the new program personnel to include travel, training, supplies and three leased vehicles. Between four and six additional sales will be sold in CY2019 and the anticipated increased operational impact will require an increase in OE spending authority to ensure restoration projects and sale planning activities can be funded. Finally, this request includes one time dedicated funding CO to purchase several capital items including computers and two pickup trucks.

Two Lands Program Specialists (Salary & Benefits)	\$0	\$168,700	\$0	\$0	\$168,700	PC	2.00	Ongoing
One Lands Program Specialist, Senior (Salary & Benefits)	\$0	\$76,100	\$0	\$0	\$76,100	PC	1.00	Ongoing
Group Position Funding (4 Seasonal, Benefitted)	\$0	\$181,500	\$0	\$0	\$181,500	PC	0.00	Ongoing
Training, Travel and Supplies for 3 FTEs	\$0	\$39,000	\$0	\$0	\$39,000	OE	0.00	Ongoing
Three Commercially Leased Pickup Trucks (4X4 1/2 ton)	\$0	\$30,000	\$0	\$0	\$30,000	OE	0.00	Ongoing
Contracted Forest and Watershed Restoration Projects	\$0	\$600,000	\$0	\$0	\$600,000	OE	0.00	Ongoing
Computer, Telephone, Table and Software for 3 FTEs	\$0	\$10,500	\$0	\$0	\$10,500	CO	0.00	One Time
Two Pickup Trucks (4X4 1/2 ton)	\$0	\$63,800	\$0	\$0	\$63,800	CO	0.00	One Time
	\$0	\$1,169,600	\$0	\$0	\$1,169,600		<b>3.00</b>	

Priority	Description	General Fund	Dedicated Fund	Federal Fund	Earnings Reserve Fund	Total	Object	FTPs	Ongoing or OneTime
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**3 LAAC: Lands Resource Specialist, Sr. (Public Trust) + Program Rent**

This request is for a FTP 1.0 Lands Resource Specialist, Sr. in the Public Trust program to be located in the Mica office. The Mica office handles about 50% of the entire public trust program workload -- issuing encroachment permits and submerged land leases for docks and other lake facilities. Statewide, approximately 300 encroachment permits are issued annually with over 11,000 active permits administered by the program. A recent survey of Lake Pend Oreille and other north Idaho locations indicated a need for greater focus on non-compliant permitted and non-permitted encroachments. Also requested is spending authority to cover rising office space rental in the Boise staff office, legal services and hearing officers.

Land Resources Specialist, Sr. (Salary & Benefits)	\$0	\$76,200	\$0	\$0	\$76,200	PC	1.00	Ongoing
Training, Travel and Supplies	\$0	\$5,000	\$0	\$0	\$5,000	OE	0.00	Ongoing
Public Trust Office Space Rent in Boise	\$0	\$12,000	\$0	\$0	\$12,000	OE	0.00	Ongoing
Computer, Telephone and Furniture	\$0	\$2,900	\$0	\$0	\$2,900	CO	0.00	One Time
	\$0	\$96,100	\$0	\$0	<b>\$96,100</b>		<b>1.00</b>	

**4 LAAB/LAAD: St. Joe Area Facility Replacement**

Demolish and rebuild St. Joe administrative offices (including soft costs). Total project cost is estimated at \$3,074,300. This request is contingent upon a PFBAC award of \$1,184,900. The facility in St. Maries, ID was build in the 1940's and has had three additions over time. The additions have created separate ineffective heating systems and workspace that is poorly designed for today's digital environment. A facility condition assessment was performed in 2016 and outlined approximately \$266,500 worth of deferred maintenance, repairs and ADA issues that need to be addressed. During the assessment it was recommended to scrape the structure and build new office space on the site.

Design Fees (50% PBFAC)	\$0	\$45,200	\$0	\$96,000	\$141,100	CO	0.00	One Time
Furniture (0% PBFAC)	\$0	\$72,300	\$0	\$153,700	\$226,000	CO	0.00	One Time
Information Technology (50% PBFAC)	\$0	\$36,600	\$0	\$77,800	\$114,500	CO	0.00	One Time
Site Improvements (50% PBFAC)	\$0	\$45,200	\$0	\$96,100	\$141,300	CO	0.00	One Time
Demolition (50% PBFAC)	\$0	\$18,100	\$0	\$38,400	\$56,500	CO	0.00	One Time
Fire Operations Facility (0% PBFAC)	\$0	\$211,300	\$0	\$267,300	\$478,600	CO	0.00	One Time
Contruccion of Administration Facility (50% PBFAC)	\$0	\$247,600	\$0	\$483,800	\$731,400	CO	0.00	One Time
	\$0	\$676,300	\$0	\$1,213,100	<b>\$1,889,400</b>		<b>0.00</b>	

Priority	Description	General Fund	Dedicated Fund	Federal Fund	Earnings Reserve Fund	Total	Object	FTPs	Ongoing or OneTime
<b>5</b>	<b><u>LAAA: IT Business Analyst</u></b>								
	This request is for a FTP 1.0 Business Analyst (Grade M) and associated support costs. This position will provide business and systems analysis, project management, and help desk support for the Land Information Management System (LIMS Forestry) enterprise system. Staff will depend on a high percentage of "up" time for staff to perform their daily work and to maintain high levels of service to external customers interacting with IDL in a self-service way. Cybersecurity risk is also present with this system. This position will provide the appropriate level of KSAs to prevent security breaches and to maintain high problem resolution rates when staff is utilizing the system.								
	IT Business Analyst (Salary & Benefits)	\$0	\$12,600	\$0	\$71,600	\$84,200	PC	1.00	Ongoing
	Training, Travel and Supplies	\$0	\$2,000	\$0	\$8,000	\$10,000	OE	0.00	Ongoing
	Computer, Telephone and Furniture	\$0	\$900	\$0	\$3,400	\$4,300	CO	0.00	One Time
		\$0	\$15,500	\$0	\$83,000	\$98,500		<b>1.00</b>	
<b>6</b>	<b><u>LAAF: Check Scaler - Idaho Board of Scaling Practices</u></b>								
	Due to the retirement of both of the two IBSP check scalers, funding and .75 FTE is being requested for a two year period to train a replacement by the current incumbent.								
	Check Scaler (Salary & Benefits)	\$0	\$66,600	\$0	\$0	\$66,600	PC	0.75	Ongoing
		\$0	\$66,600	\$0	\$0	\$66,600		<b>0.75</b>	
<b>7</b>	<b><u>LAAA: Software Maintenance</u></b>								
	This request is for ongoing funding to cover increased annual software license maintenance costs.								
	Microsoft Licensing	\$0	\$17,300	\$0	\$60,700	\$78,000	OE	0.00	Ongoing
	Cisco Smartnet	\$0	\$3,800	\$0	\$13,200	\$17,000	OE	0.00	Ongoing
	ESRI	\$0	\$2,400	\$0	\$8,600	\$11,000	OE	0.00	Ongoing
	Remsoft	\$0	\$0	\$0	\$12,000	\$12,000	OE	0.00	Ongoing
	Mobile Iron - MDM	\$0	\$1,100	\$0	\$3,900	\$5,000	OE	0.00	Ongoing
	Mason, Bruce and Girard (MBG)	\$0	\$0	\$0	\$59,000	\$59,000	OE	0.00	Ongoing
		\$0	\$24,600	\$0	\$157,400	\$182,000		<b>0.00</b>	
	<b>Grand Totals:</b>	<b>\$0</b>	<b>\$ 2,048,700</b>	<b>\$0</b>	<b>\$2,218,500</b>	<b>\$4,267,200</b>		<b>5.75</b>	

# STATE BOARD OF LAND COMMISSIONERS

September 13, 2019

Regular Agenda

## Subject

Endowment Leasing Update and Auction Process Approval

## Question Presented

Shall the Board approve the Department's proposed lease auction process.

## Background

At the March 19, 2019 State Board of Land Commissioners' (Land Board) regular meeting, Attorney General Wasden made a motion that the Idaho Department of Lands (Department), in association with the Office of the Attorney General (OAG), examine current endowment auction and leasing processes and determine how they could be improved, in fulfilling the Board's fiduciary duty.

As part of the examination, the Department evaluated its auction advertising and public awareness process and determined a need for improvement. With the assistance of the OAG, the Department prepared a new advertising and public awareness process for leasing opportunities and auctions.

On July 16, 2019, the Department provided the Land Board with an update to the lease auction advertising process and the status of certain leases. In that presentation, the Department demonstrated an example of the website and online mapping tool to be used for endowment leasing opportunities.

## Discussion

The Department has implemented its new lease auction advertising process, including the new online leasing page discussed at the July Land Board meeting. Attachment 1 is a presentation of the current website, online map, and proposed timeline for certain leases.<sup>1</sup>

The new advertising process facilitates greater public awareness regarding lease auction opportunities, and provides increased opportunities for alternative proposals and competitive bidding. Advertising that is robust and encourages competitive bidding generates the maximum long-term financial return to endowment beneficiaries, and fulfills the Department's and the Land Board's fiduciary obligations.

The Department will begin the auction process by advertising leases available for application for auction in the newspaper of record for the county where the land is situated, for at least

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<sup>1</sup> The current online map will be replaced by a similar map system once the Department's Land Information Management System (LIMS) is operational. The current functions are similar to the LIMS system.

four weeks.<sup>2</sup> Those advertisements will be posted in the Department's area offices (either on a bulletin board, or on an electronic reader). The Department will also advertise leases that are expiring or otherwise available for application and auction on its website. The website provides readily accessible information, including a detailed description of the property, allowing users to better identify the location and property available for lease application and auction. Certain leases or lease types may be advertised in industry appropriate media; for example, commercial real estate websites. Additionally, properties the Department is promoting for application may have signs placed on the property to foster interest.

The Department temporarily suspended offering certain new leases for auction while it examined its leasing process. As a result, there will be a revised schedule and process to issue the 2020 leases. Generally, the Department will re-start the auction process for leases that have not been executed, auctioned, or conflicted beginning with re-advertisement for application. This means that the previous advertising and applications of leases for 2020 will go through the new auction advertising process. Potential lessees who have already submitted an application may choose to have their previous application processed, or to withdraw their application for an application fee refund. The revised schedule and process will apply only to certain 2020 leases.

Currently, the Department is advertising eleven grazing leases and one crop lease for live auction, because there were two or more applicants for each of those leases prior to the time that the Department temporarily suspended its advertising and auction activities. Additionally, two commercial leases are being advertised for auction.

The following process will be followed for 2020 lease applications for crop, grazing, conservation and residential leases:<sup>3</sup>

- Land Board approval – September 13, 2019
- Week of September 16 – Department begins the auction process by advertising the open application period for crop, grazing, conservation, and residential
- Advertising for application period – 30 days (example: September 17 – October 17)
- Scenario 1
  - If only one application is received by the application deadline, the auction is deemed complete, with the sole applicant deemed the successful bidder
    - Lease and document preparation – 30 days (example: October 17 – November 18)
    - Lease review (OAG)<sup>4</sup> (example: October 17 – November 22)
    - Lease issued and executed (example: as reviewed by OAG – December 31)

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<sup>2</sup> Weekly newspaper advertising in the county where the property is located is consistent with Idaho Code § 58-313.

<sup>3</sup> Certain lease types, such as some commercial leases, will require additional evaluation or review due to their unique nature.

<sup>4</sup> The Department created an instrument approval form (Attachment 2) that a Deputy Attorney General (DAG) will sign after reviewing the lease. DAG review will take place prior to sending the lease to the lessee for execution.

- Scenario 2
  - If two or more applications are received by the application deadline, a live auction (sometimes referred to as a "conflict auction") must be held
    - TBD – the timing depends on the number of applications for a particular lease, as well as other factors. For example, weather may be a factor for grazing leases for which there are two or more applicants, because the Department must value the improvements prior to live auction.

The Department and Land Board have previously promulgated the *Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases* (IDAPA 20.03.14.000 *et seq.*). The Department will continue to adhere to the processes and standards set forth in those rules, including the auction application process (IDAPA 20.03.14.020) and the requirement to hold a **live** auction only if there is more than one application (Idaho Code § 58-310 and IDAPA 20.03.14.105). If there is only one application for auction, the auction will be deemed complete as of the application deadline. The Department will also adhere to other rules concerning leasing activities, including the *Administration of Cottage Site Leases on State Lands* (IDAPA 20.03.13.000), *Rules Governing Geothermal Leasing on Idaho State Lands* (IDAPA 20.03.15.000), and *Rules Governing Oil and Gas Leasing on Idaho State Lands* (IDAPA 20.03.16.000). The Department will continue working with the Office of the Attorney General regarding leases for which there are no applicable administrative rules, such as most commercial leases.

The Department will send letters to auction applicants explaining the proposed process, and will also reach out to certain stakeholders.

### **Recommendation**

Approve the Department's proposed lease advertising and auction process.

### **Board Action**

### **Attachments**

1. Presentation: current website, online map, proposed timeline
2. Instrument Approval Form

# IDL Auction and Leasing Update

LAND BOARD MEETING  
SEPTEMBER 13, 2019



# Previous website lease page

## Lands Available For Lease

### New or Pending Lease Applications

IDL advertises new proposed uses of endowment lands. In other words, when we receive an application that proposes to use endowment trust land in a way that is considered new for that location, we inform the market in order to give other individuals the opportunity to apply for and outbid the other applicant.

- [Applications currently being processed](#) (pdf)

### Expiring Leases

In order to meet our Constitutional mandate to maximize long-term financial returns from the the use of endowment trust land, the IDL advertises leases that are expiring within the next two years so that anyone can apply for the lease.

#### EXPIRING LEASE LISTS

Commercial*	Grazing, Agriculture & Conservation	Energy Resources**	Minerals/Oil & Gas	Residential***
2019	2019	2019	2019	2019
2020	2020	n/a	2020	2020
2021	2021		2021	2021

\*Communications, Recreation & Non-Recreation Commercial, Industrial, Military, Office/Retail

\*\*Geothermal, wind, solar

\*\*\*Cottage sites, other

# Previous expiring lease list

## 2019 EXPIRING LAND LIST - AGRICULTURE - CONSVERVATION - GRAZING

Lease No.	Activity	County	TWN-RNG-SEC	Description	Total-Acres	AUMS	Supervising-Area-Contact	Area-Phone-Number
C600001	Agriculture	Elmore	04S 08E 26	NESW	40.00	0.00	Southwest	208-334-3488
C700002	Agriculture	Elmore	06S 11E 16	Gov Lots 2, 3	116.05	9.00	Eastern (Jerome)	208-334-2561
C800001	Agriculture	Bingham	01S 33E 04	Pts SESW (S of Fence), Pts S2SE (S of Fence)	1.80	8.00	Eastern (Idaho Falls)	208-525-7167
C800001	Agriculture	Bingham	01S 33E 08	Pts E2NE (E of Fence)	5.00	0.00	Eastern (Idaho Falls)	208-525-7167
C800001	Agriculture	Bingham	01S 33E 09	Pts E2NE (W of Fence), Pts W2SW (N of Hwy 26), Pts N2SE (N & W)	73.10	0.00	Eastern (Idaho Falls)	208-525-7167
C800002	Agriculture	Madison	04N 41E 10	Pts SWNE (W of Fence), NESW, Pts NWSE (W of Fence)	88.00	0.00	Eastern (Idaho Falls)	208-525-7167
C800003	Agriculture	Bingham	01S 32E 02	Gov Lots 1, 2	66.90	9.00	Eastern (Idaho Falls)	208-525-7167
C800004	Agriculture	Lemhi	21N 22E 32	Pts NWNWSE (W of Rd)	6.00	0.00	Eastern (Idaho Falls)	208-525-7167
C800005	Agriculture	Fremont	09N 43E 16	N2NE, NENW, W2NW, NESW	240.00	0.00	Eastern (Idaho Falls)	208-525-7167
C800006	Agriculture	Bonneville	02N 40E 12	SWSE	40.00	0.00	Eastern (Idaho Falls)	208-525-7167
C800006	Agriculture	Bonneville	02N 40E 13	NENE, S2NW	120.00	0.00	Eastern (Idaho Falls)	208-525-7167
C800007	Agriculture	Bonneville	02N 40E 14	E2SWSENE, SESENE	15.00	0.00	Eastern (Idaho Falls)	208-525-7167
C800008	Agriculture	Bingham	01N 32E 34	SESE	40.00	0.00	Eastern (Idaho Falls)	208-525-7167
C800008	Agriculture	Bingham	01N 32E 35	Pts NWSW (N of Fence)	1.10	0.00	Eastern (Idaho Falls)	208-525-7167
C800009	Agriculture	Bingham	01S 33E 01	Pts NESW, Pts W2SE (W of Fence)	50.00	10.00	Eastern (Idaho Falls)	208-525-7167
C800010	Agriculture	Madison	05N 41E 12	S2NE, SENW, E2SW, SE	360.00	0.00	Eastern (Idaho Falls)	208-525-7167
C800010	Agriculture	Madison	05N 41E 13	ALL	640.00	0.00	Eastern (Idaho Falls)	208-525-7167
C800010	Agriculture	Madison	05N 41E 24	N2NENE, SWNENE, NWNE, NENENW	80.00	0.00	Eastern (Idaho Falls)	208-525-7167
C800010	Agriculture	Madison	05N 42E 07	Gov Lots 2-4	105.35	0.00	Eastern (Idaho Falls)	208-525-7167
C800010	Agriculture	Madison	05N 42E 18	Gov Lots 1-2, E2	390.42	0.00	Eastern (Idaho Falls)	208-525-7167
M800009	Conservation	Custer	09N 18E 16	ALL	640.00	52.00	Eastern (Idaho Falls)	208-525-7167
G200001	Grazing	Bonner	57N 04W 09	Pts SESW, SE	180.00	6.00	Pend Oreille	208-263-5104
G200001	Grazing	Bonner	57N 04W 15	Pts SWSW, NWSW	55.00	2.00	Pend Oreille	208-263-5104
G200001	Grazing	Bonner	57N 04W 16	NE, E2W2, Pts SWNW, Pts NWSW, E2SE	478.00	22.00	Pend Oreille	208-263-5104
G200001	Grazing	Bonner	57N 04W 21	NENW, NESW	80.00	5.00	Pend Oreille	208-263-5104
G200005	Grazing	Bonner	58N 02W 36	E2SE	80.00	16.00	Pend Oreille	208-263-5104
G300001	Grazing	Benewah	43N 01E 16	SW, S2SE	240.00	24.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01E 32	NE, E2NW, SWNW	280.00	14.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 09	S2SE	80.00	4.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 10	NE, E2NW, S2	560.00	32.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 11	SWSW	40.00	2.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 14	SWNW, S2	360.00	26.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 15	ALL	640.00	38.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 16	ALL	640.00	38.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 21	S2	320.00	16.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 21	N2	320.00	16.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 22	SW	160.00	8.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 22	N2	320.00	16.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 24	S2SW	80.00	4.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 25	ALL	640.00	38.00	St. Joe	208-245-4551
G300001	Grazing	Benewah	43N 01W 26	ALL	640.00	38.00	St. Joe	208-245-4551

# IDL homepage

<https://www.idl.idaho.gov/>

- ▶ Link to maps
- ▶ Link to property information

IDAHO Land Board  
Department of Lands

IDAHO DEPARTMENT OF LANDS

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One million forested acres are actively managed to make money for public schools and other Idaho institutions, and for their long-term health. We regulate forest practices in the state and provide assistance to forest landowners and communities to promote healthy, productive forests for years to come.

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**Featured**  
**Leasing Opportunities**

Interactive map of lands available

- Idaho Department of Lands (IDL) is offering 2 commercial office leases at auction. [Read more here.](#)
- Idaho Department of Lands (IDL) is offering 11 grazing leases and 1 crop lease at auction. [Read more here.](#)

**Featured**  
**Douglas-fir Tussock Moth Infestation: Salvage Sales**

- Idaho Department of Lands (IDL) is working to manage a major Douglas-fir tussock moth infestation in the Packer John State Forest, including planned salvage timber harvests in the most impacted areas. [Read more here.](#)

**Shared Stewardship**

- Idaho's Shared Stewardship efforts emerged as a result of collaboration between the State of Idaho and the USDA Forest Service. [Read more here.](#)

**Oil & Gas Commission**

Information about the Oil & Gas Conservation Commission and Idaho oil and gas regulatory

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# Lands Available for Lease Auction

**IDAHO** Land Board  
Department of Lands **IDAHO DEPARTMENT OF LANDS**

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## Lands Available for Lease Auction

Click on interactive map of lands, with leasing activity

### Lease Types

**Commercial Leasing, and Commercial Ground Leasing options**

- Communications Sites
- Industrial Facilities
- Military Facilities
- **Office/Retail - FOR AUCTION:**
  - **MC-600130** - 7,895 sq ft, 23 parking spaces included, Capitol Park Plaza, 300 N 6th Street, Suite 200. Auction Deposit \$15,557.29. No lessee-owned improvements.
  - **MC-600131** - 2,956 sq ft, Capitol Park Plaza, 300 N 6th Street, Suite 202. Auction Deposit \$5,049.83. No lessee-owned improvements.
- Recreation—Commercial
- Recreation—Non-Commercial

**Grazing, Farming and Conservation Leasing options**

Residential and Cottage Site Leasing options

Minerals and Geothermal Leasing options

Oil and Gas Leasing options

Energy Resources Leasing options

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Jason Laney, Program Manager  
208-334-0278  
[jlaney@idl.idaho.gov](mailto:jlaney@idl.idaho.gov)

Minerals, Geothermal, Oil & Gas Leasing  
Mike Murphy, Program Manager  
208-334-0290  
[mmurphy@idl.idaho.gov](mailto:mmurphy@idl.idaho.gov)

*For questions specific to a location*  
[10 Supervisory Areas](#)

**Additional Resources**

**MAKE PAYMENT**  
CLICK HERE

## Office/Retail - Office/Retail, Parking Lots

Application

Expiration

Pending

Auction



**MC-600130** - 7,895 sq ft, 23 parking spaces included, Capitol Park Plaza, 300 N 6th Street, Suite 200. Auction Deposit \$15,557.29. No lessee-owned improvements.  
Auction Date: 10/03/2019.



**MC-600131** - 2,956 sq ft, Capitol Park Plaza, 300 N 6th Street, Suite 202. Auction Deposit \$5,049.83. No lessee-owned improvements.  
Auction Date: 10/03/2019.

## Recreation—Commercial - Outfitter & Guide, Trails, Sledding Hill, RV Park, Horse Trail Riding, Air Strip, Ski Resort, Ice Cave, State Park

Application

Expiration

Pending

Auction

# Property information

MC-600130 Capitol Park Plaza, 300 N 6th...ise, ID 83702

Sorted by name

MC600130 - Legal Notic... 819.pdf

MC600130 Floor Plan h... ted.pdf

MC600130-CAPITOL PA... TO.pdf

MC600130-FACT SHEET.pdf

MC600130-LEASE-rev20... 26c.pdf

MC600130-LEGAL DESC...-09.pdf

MC600130-MAP-Parking... -09.pdf

MC600130-MARKETING.pdf

MC600130-MC600130 L... cial.pdf

MC600130-VICINITY MAP.pdf



## AUCTION FOR LEASE

- **COMMERCIAL—OFFICE SPACE**
- **300 N 6TH STREET, SUITE 200, BOISE, ID**
- **7,895 SQ FT with 23 parking spaces included**



300 N 6TH STREET, SUITE 200, BOISE, ID

For more information, call:  
Tamiy Armstrong at (208) 334-0202

View related documents at:  
[www.idl.idaho.gov](http://www.idl.idaho.gov)

### CURRENT LEASE:

LEASE PROGRAM: COMMERCIAL—OFFICE SPACE  
LEASE STATUS: EXPIRING  
EXPIRING LEASE TERM: 07/01/11—12/31/19

### PROPOSED NEW LEASE NO. MC-600130:

COUNTY: ADA ACCESS: YES  
SQ FT: 7,895 PARKING: 23 SPACES (NOT INCLUDED IN PRICE PER SQ FT)  
LESSEE PERSONAL PROPERTY: N/A  
LEASE TERM PERIOD: 01/01/20—12/31/28  
LEASE TERM LENGTH: 9 YEARS  
LEASE TYPE: FULL SERVICE LEASE  
FIRST YEAR RENT: \$186,687.50 (includes parking space fees)  
PRICE PER SQ FOOT: \$20.50  
ANNUAL INCREASE: \$0.50



### PUBLIC AUCTION DATE:

Thursday, October 3, 2019,  
10:30 AM, at Idaho Department  
of Lands, 300 N 6th Street,  
Suite 103, Boise, ID 83702.

# Program specific lease auction information

## Grazing, Farming, and Conservation Leasing Opportunities



Click on interactive map of lands, with leasing activity

[Grazing Program Home Page](#)

### Contacts

For questions specific to a location, or to obtain a lease application, contact one of the 10 Supervisory Areas

For statewide programmatic questions

Jason Laney, Program Manager  
[jlaney@idl.idaho.gov](mailto:jlaney@idl.idaho.gov)  
 208-334-0278 Phone

Ryan Montoya, Bureau Chief  
[montoya@idl.idaho.gov](mailto:montoya@idl.idaho.gov)  
 208-334-0221 Phone

Contact information

## Grazing

- Application
- Expiration
- Pending
- Auction

### 2019 Grazing Auctions

New Lease	Old Lease	AUMs	Acres	Valuation	County	Term	Auction	Area
G430029	G430003	100	1,392	n/a	Idaho	10	9/23/19, 10 am MDT	Maggie Creek
G700316	G430005	803	9,268.6	\$ 27,640.00	Idaho	10	9/23/19, 9 am MDT	Maggie Creek
G700326	G700009	88	640	n/a	Lincoln	20	9/16/19, 11 am MDT	South Central
G700336	G700021	28	170.52	n/a	Blaine	20	9/17/19, 9 am MDT	South Central
G700338	G700032	85	600	\$ 12,884.00	Minidoka	20	9/16/19, 1 pm MDT	South Central
G800444	G700034	48	480	\$ 6,623.00	Lincoln	20	9/17/19, 11 am MDT	South Central
G800460	G800018	416	3,431.4	\$ 1,620.00	Bannock/ Caribou	20	9/19/19, 9 am MDT	Eastern
G800461	G800039	207	2,320	\$ 20,780.00	Bingham	20	9/18/19, 11 am MDT	Eastern
G800462	G800041	1,004	4,040.6	\$ 48,350.00	Bingham	20	9/18/19, 2:30 pm MDT	Eastern
G800468	G800042	215	1,797.2	\$ 35,258.00	Bingham	20	9/18/19, 2:30 pm MDT	Eastern
G800468	G800049	51	455.88	\$ 3,090.00	Bingham	20	9/18/19, 1 pm MDT	Eastern

## Farming and Cropland

- Application
- Expiration
- Pending

### Auction - 2019 Cropland Auction

New Lease	Old Lease	AUMs	Acres	Valuation	County	Term	Auction	Area
C800070	C800010	n/a	981.84	n/a	Madison	17	9/19/19, 11 am MDT	Eastern

## G430029 - G430003

Sorted by name

G430029\_FactSheet.pdf

G430029-LEASE-DRAFT.pdf

G430029-Map-2019-06-17.JPG

LegalNotice-AllAuctions...AL.pdf

General information

Detailed information

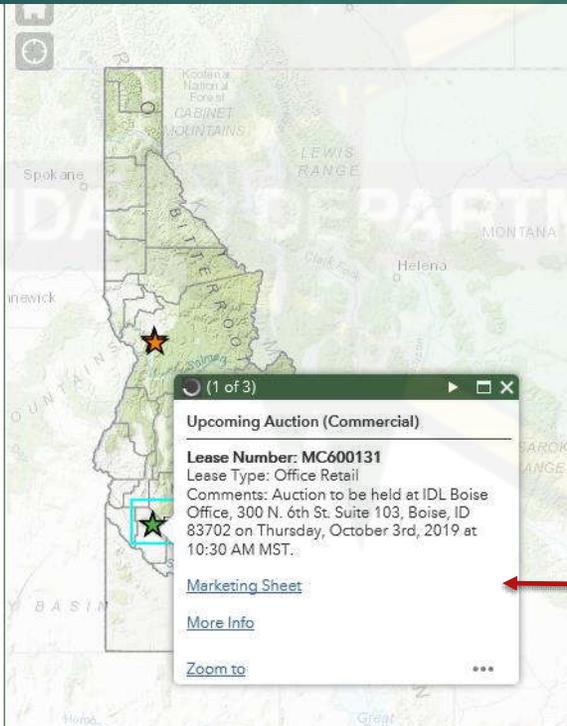
# Land available for lease and auction— online map

- ▶ Interactive online map shows leasing and auction activities

**Leasing Opportunities and Inquiry**

Upcoming Lease Auctions

- Upcoming Auction Point (Residential) ★
- Upcoming Auction Point (Energy Resources) ★
- Upcoming Auction Point (Commercial) ★
- Upcoming Auction Point (Commercial Ground) ★
- Upcoming Auction Point (Mineral/Oil & Gas) ★
- Upcoming Auction Point (Grazing, Agriculture, & Conservation) ★
- County Boundary □



Upcoming Auction (Commercial)

Lease Number: MC600131  
Lease Type: Office Retail  
Comments: Auction to be held at IDL Boise Office, 300 N. 6th St. Suite 103, Boise, ID 83702 on Thursday, October 3rd, 2019 at 10:30 AM MST.

[Marketing Sheet](#)  
[More Info](#)  
[Zoom to](#)

https://gis1.idl.idaho.gov/portal/apps/webappviewer/index.html?id=cfd0a5e63faa4b4987e89f5278b66e7f

adminrules.idaho.gov Leasing Opportunities and Inquiry

File Edit View Favorites Tools Help

IDL Portal DeedOptions Easements Plats Envisio HelpDesk http--www.sco.idaho Idaho Administrative Code Idaho Depart

**Leasing Opportunities and Inquiry Application** Idaho Dept. of Lands GIS

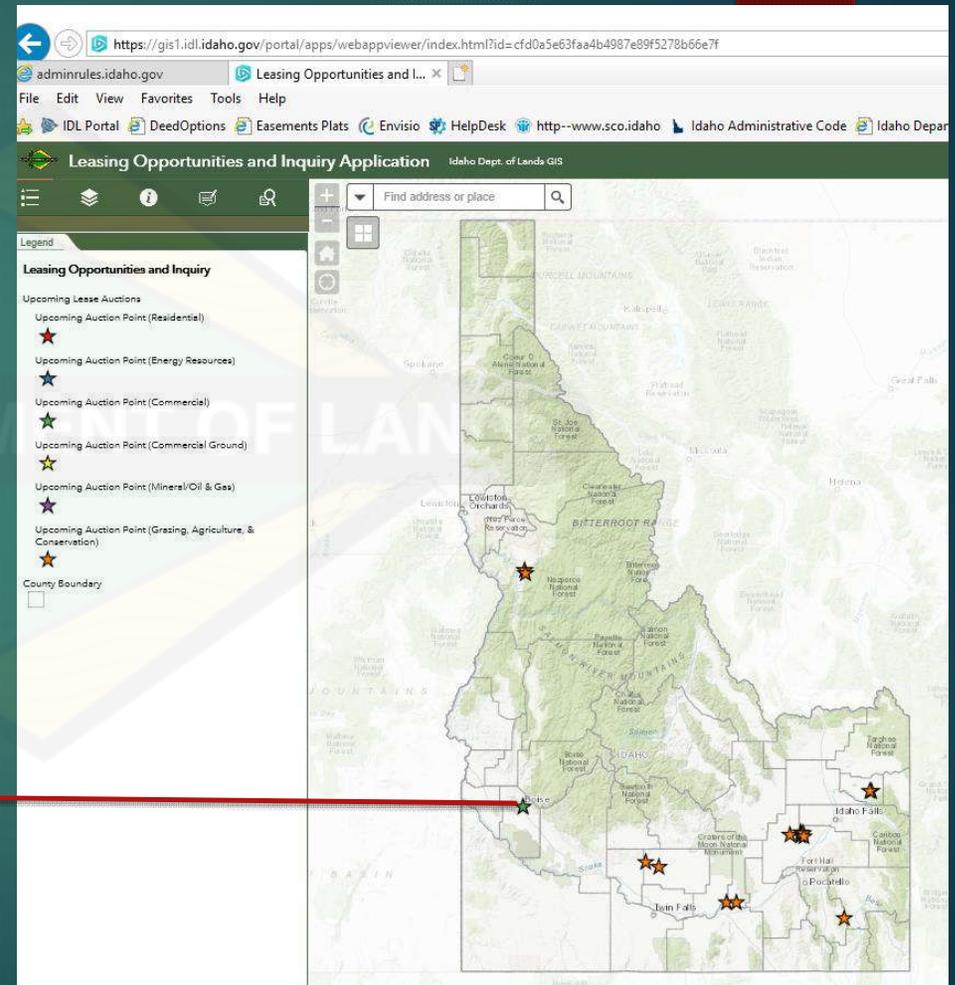
Find address or place

**Legend**

**Leasing Opportunities and Inquiry**

Upcoming Lease Auctions

- Upcoming Auction Point (Residential) ★
- Upcoming Auction Point (Energy Resources) ★
- Upcoming Auction Point (Commercial) ★
- Upcoming Auction Point (Commercial Ground) ★
- Upcoming Auction Point (Mineral/Oil & Gas) ★
- Upcoming Auction Point (Grazing, Agriculture, & Conservation) ★
- County Boundary □



# Newspaper advertisements (print)

Date and time of auction

## Legal Notice STATE OF IDAHO LAND LEASE OPPORTUNITY PUBLIC AUCTION FOR LEASE

Notice is hereby given pursuant to Article IX, § 8 of the Idaho Constitution and Idaho Code §§ 58-307, -310 and -313, that the State of Idaho, Department of Lands (hereinafter "IDL"), will conduct a public auction of the Commercial leases set forth below. **Auction activities will begin on Thursday, October 3, 2019, 10:30AM, at Idaho Department of Lands, located at 300 N 6<sup>th</sup> Street, Suite 103, Boise, ID 83702.** The lease(s) will be awarded to the bidder who will pay the highest premium bid therefore; annual rental rates have been established by IDL and are set forth in the leases to be auctioned. **Detailed information regarding each lease, including a specific legal description of the property to be leased, existing improvements, and rental rates can be obtained by visiting IDL's website at [www.idl.idaho.gov](http://www.idl.idaho.gov) or by contacting Tammy Armstrong at 208-334-0202.**

Leases to be auctioned

**MC-600130 – 7,895 sq ft, 23 parking spaces included, Capitol Park Plaza, 300 N 6th Street, Suite 200. Auction Deposit \$15,557.29. No lessee-owned improvements.**

**MC-600131– 2,956 sq ft, Capitol Park Plaza, 300 N 6th Street, Suite 201. Auction Deposit \$5,049.83. No lessee-owned improvements.**

### LEASE AUCTION TERMS AND CONDITIONS

1. The auction is for the leasehold interest only.
2. The rental rate for the lease(s) to be auctioned has been established by the Idaho Department of Lands ("IDL") as set forth in the lease(s). The auction is for the highest bid in excess of the annual rental amount ("Premium Bid"). The Premium Bid is due and payable in full at close of auction.
3. If the successful bidder for a particular lease is not the current lessee, and if the current or prior lessee made authorized improvements on the leased property, then the successful bidder must compensate the current lessee for the value of the authorized improvements (in accordance with Idaho Code § 58-307(10)), payable to IDL in full at close of auction.

Leases auction terms and conditions

# Newspaper advertisements (online)

[https://www.mtexpress.com/wood\\_river\\_journal/news\\_of\\_record/news-of-record/article\\_3f98520a-ce62-11e9-a9b1-a3e659e50a80.html](https://www.mtexpress.com/wood_river_journal/news_of_record/news-of-record/article_3f98520a-ce62-11e9-a9b1-a3e659e50a80.html)

Idaho Mountain Express

## News of Record

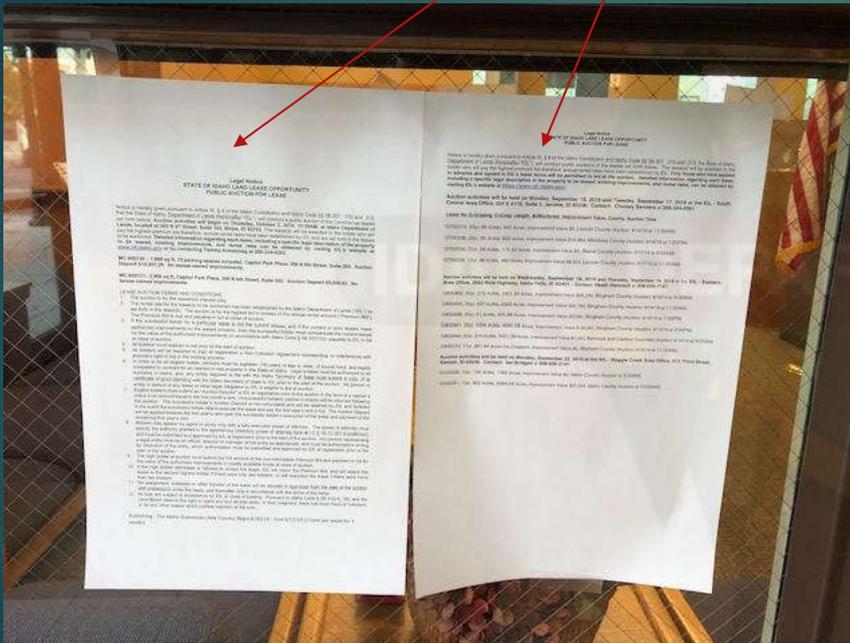
Sept. 4, 2019

### Legal Notice Summary

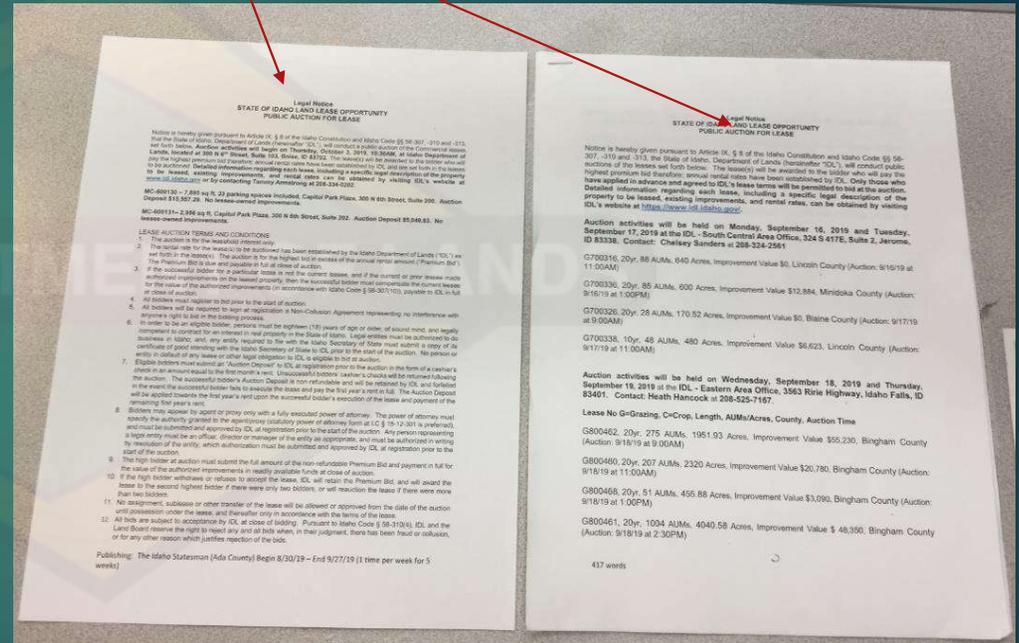
- Piper Lauren Diges (Adult or Emancipated Minor) is petitioning a name change to Corbin Quintin Diges.
- Jennifer Jane Marshall-Halverson (Adult or Emancipated Minor) is petitioning a name change to Jennifer Jane Halverson.
- State of Idaho Department of Lands will conduct Public Auction of leases on Monday, September 16, 2019 & Tuesday, September 17, 2019 at the IDL Eastern Area Office, Wednesday & Thursday, September 18 & 19, 2019 in Idaho Falls and Wednesday, September 23 in Kamiah, Idaho.
- Colleen Williams Mehra has been appointed personal representative of Gordon Keith Williams, deceased.
- Norma Douglas has been appointed personal representative of the Estate of Ruth M. Lieder, deceased.
- Colin Von Heuring has been appointed personal representative of Kenneth James Heuring, deceased.

# Postings in Department offices

Commercial auctions  
Grazing and crop auctions



Boise Staff Office



Southwest Area Office

# National website advertisements

Search by location

CREXi For Sale For Lease Market Intelligence Add Listings My CREXi

Space Type: Office Boise, ID X

Size: Any Size Rate: Any Rate More Filters Save Search

Request Info

Request Info

300 North 6th Street - Suite 200  
Office | 1 suite available  
7,895 sq. ft.  
\$20.50 / Sq Ft / YR  
Request Info

8050 W. Rifleman Street  
Office | 1 suite available  
2,020 sq. ft.  
\$14.50 / Sq Ft / YR  
Request Info

4501 Alamosa  
Office | Single tenant  
1,555 sq. ft.

777 N 4th Street  
Office | Single tenant  
2,027 sq. ft.

Map Satellite Search as I move the map

53

<https://www.crexi.com/lease/properties/110254/idaho-300-n-6th-street>

# National website advertisements

<https://www.crexi.com/lease/properties/110254/idaho-300-n-6th-street>

**CREXi** For Sale For Lease Market Intelligence Request a Demo Add Listings Sign Up or Log In

[All Spaces](#)



**300 North 6th Street - Suite 201**  
 Office | 1 Suite Available | 2,956 Sq. Ft.  
 Boise, ID

[Gallery 1](#) [Map View](#) [Street View](#)

[Brochure](#) [Request Info](#)

**BUILDING** **SUITES**

**Address** Updated: 08/30/2019  
 300 N 6th Street, Suite 201, Boise, ID 83702 [Show on Map](#)

**Building Details**

Property Type	Office	Subtype	Professional
Tenancy	Multiple	Total Building SQFT	26,992
Total Building Suites	1	Lot Size (sq ft)	0.098
Class	B	Buildings	1
Stories	2	Total Parking Spaces	42
Elevators	Yes	Number Of Elevators	1
Cross Street	Bannock Street	Zoning	Commercial
County	Ada County		

<https://www.crexi.com/lease/properties/110254/idaho-300-n-6th-street>

# Number of applications for lease auction

	PROGRAM	APPLICATIONS ON FILE
Phase I	CROP	11
	GRAZING	136
	CONSERVATION	1
	RESIDENTIAL - COTTAGE	15
	COMMERCIAL – OFFICE/RETAIL	2
Phase II	COMMERCIAL - COMMUNICATION	5
	COMMERCIAL - INDUSTRIAL	1
	COMMERCIAL - MILITARY	2
	COMMERCIAL - RECREATION	4
	NON-COMMERCIAL RECREATION	2
	<b>TOTAL</b>	<b>179*</b>
	OIL, GAS, MINERAL (ON HOLD)	8

- ▶ Oil, gas, and mineral lease templates are being updated and lease applications will be processed upon completion
- ▶ \* numbers are approximate

# Timeline

- ▶ Land Board approval – September 13, 2019
- ▶ Week of September 16 – Department **begins the auction process** by advertising the open application period for certain lease types (crop, grazing, conservation, and residential)
- ▶ Advertising for application period – 30 days (example: September 17 – October 17)
- ▶ Scenario 1
  - ▶ One application received by the deadline: the auction is deemed complete, with the sole applicant the successful bidder.
    - ▶ Lease and document preparation – 30 days (example: October 17 – November 18)
    - ▶ Lease review (OAG) (example: October 17 – November 22)
    - ▶ Lease issued and executed (example: as reviewed by OAG – December 31)
- ▶ Scenario 2
  - ▶ Two or more applications received – live auction
    - ▶ TBD – this depends on the number of applications for auction as well as other factors including weather (process includes: improvement valuation, etc.)

# Lease auction review sheet

Once a lease has gone through the process, it will be reviewed by the Office of Attorney General prior to routing for execution.

Advertising information

Multiple applicants

DAG review

**INSTRUMENT APPROVAL FORM**

Instrument Number: \_\_\_\_\_ Instrument Type: \_\_\_\_\_  
Statutory Authority: \_\_\_\_\_ Date of Land Board Approval: \_\_\_\_\_<sup>1</sup>  
Rush review required for lease conflict process:  Yes  No

*Prior to submitting or mailing a lease to a Lessee for signature, all leases must be reviewed by the respective Program Manager and then submitted to the Deputy Attorney Generals (DAGs) assigned to IDL for final review and DAG approval. The DAG Instrument Approval form MUST accompany the lease documents when provided to the DAG for final review and approval. If any changes are made to the lease after DAG review, it must be resubmitted to the DAGs for review.*

All changes made to the most current standard lease template must be shown in red font with track changes enabled, including Special Terms and Conditions embedded within the lease or in the attachments.

New leasing opportunity  New lease offering following an expiring lease or LUP

Applicant Name (future Lessee of Record): \_\_\_\_\_

Lease Set-up Sheet attached:  Yes  No (lease information entered into Landfolio)

Method for establishing lease rate:  Set by Land Board  % of land value - appraisal/estimate  
 % of revenue generated  Other \_\_\_\_\_

Application/Lease advertisement:

IDL Website / Landfolio Customer Activity Portal dates: \_\_\_\_\_  
 Newspaper (name) \_\_\_\_\_ dates: \_\_\_\_\_  
 On-line (name) \_\_\_\_\_ dates: \_\_\_\_\_  
 Other \_\_\_\_\_ dates: \_\_\_\_\_  
 N/A

Multiple applicants:  Yes (attachment of all corresponding conflicted leases required)  
Number of applicants: \_\_\_\_\_  No

**For Mineral Leases Only:** Does the mineral lease include a split mineral estate?  
 Yes (attach deed and notification sent to surface owner to address surface damages)  
 No

PM Review Reviewed by: \_\_\_\_\_ Review date: \_\_\_\_\_  
Email: \_\_\_\_\_ Phone No.: \_\_\_\_\_

DAG Approval Reviewed by: \_\_\_\_\_ Approval date: \_\_\_\_\_

<sup>1</sup> To be used if prior Land Board approval was required.

# Different activities may require different advertising, auction processes, and documents

- ▶ IDAPA 20.03.14 – Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases
  - ▶ Management Plans
  - ▶ Applications Required
    - ▶ Specific terms and conditions
    - ▶ Use and compatibility
    - ▶ Legal access and/or control of the land
    - ▶ Previous management of land leases and experience
    - ▶ Environmental and land management constraints
    - ▶ Mitigation measures
    - ▶ Payment of additional or non-standard administrative costs
    - ▶ Bonding
  - ▶ Live auctions when there is more than one application
- ▶ The Department will work with the Office of Attorney General when the process and valuation of lease types are not set by the rules, statute, or Land Board.

Thank You





# INSTRUMENT APPROVAL FORM

Instrument Number: \_\_\_\_\_

Instrument Type: \_\_\_\_\_

Statutory Authority: \_\_\_\_\_

Date of Land Board Approval: \_\_\_\_\_<sup>1</sup>

Rush review required for lease conflict process:  Yes  No

*Prior to submitting or mailing a lease to a Lessee for signature, all leases must be reviewed by the respective Program Manager and then submitted to the Deputy Attorney Generals (DAGs) assigned to IDL for final review and DAG approval. The DAG Instrument Approval form MUST accompany the lease documents when provided to the DAG for final review and approval. If any changes are made to the lease after DAG review, it must be resubmitted to the DAGs for review.*

**All changes made to the most current standard lease template must be shown in red font with track changes enabled, including Special Terms and Conditions embedded within the lease or in the attachments.**

New leasing opportunity

New lease offering following an expiring lease or LUP

Applicant Name (future Lessee of Record): \_\_\_\_\_

Lease Set-up Sheet attached:  Yes  No (lease information entered into Landfolio)

Method for establishing lease rate:  Set by Land Board  % of land value - appraisal/estimate  
 % of revenue generated  Other \_\_\_\_\_

**Application/Lease advertisement:**

- IDL Website / Landfolio Customer Activity Portal dates: \_\_\_\_\_
- Newspaper (name) \_\_\_\_\_ dates: \_\_\_\_\_
- On-line (name) \_\_\_\_\_ dates: \_\_\_\_\_
- Other \_\_\_\_\_ dates: \_\_\_\_\_
- N/A

Multiple applicants:  Yes (attachment of all corresponding conflicted leases required)

Number of applicants: \_\_\_\_\_  No

**For Mineral Leases Only:** Does the mineral lease include a split mineral estate?

- Yes (attach deed and notification sent to surface owner to address surface damages)
- No

PM Review Reviewed by: \_\_\_\_\_

Review date: \_\_\_\_\_

Email: \_\_\_\_\_

Phone No.: \_\_\_\_\_

DAG Approval Reviewed by: \_\_\_\_\_

Approval date: \_\_\_\_\_

<sup>1</sup> To be used if prior Land Board approval was required.

# STATE BOARD OF LAND COMMISSIONERS

September 13, 2019

Information Agenda

## Subject

Summary of Comments Received on Proposed Rule, IDAPA 20.02.01, *Rules Pertaining to the Idaho Forest Practices Act*

## Background

The Idaho Department of Lands (Department) administers the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code), which sets standards for logging, road building, reforestation, streamside protection, and other forest activities. Under Idaho Code § 38-1304, the Board "shall adopt rules for forest regions establishing minimum standards for the conduct of forest practices on forest land." Further, the Forest Practices Advisory Committee (FPAC), as established by Idaho Code § 38-1305, provides technical assistance to the Board, in cooperation with the Department, in matters relating to the Idaho Forest Practices Act, including the rules promulgated thereunder. IDAPA 20.02.01, *Rules Pertaining to the Idaho Forest Practices Act* ensure the continuous growing and harvesting of forest trees while protecting and sustaining Idaho's forest soil, clean water, and wildlife and aquatic habitat.

In accordance with the federal Clean Water Act, the Idaho Department of Environmental Quality (DEQ) administers Idaho's Water Quality Standards. This includes administration of the Idaho Non-Point Source Management Plan and corresponding silvicultural (forestry) Memorandum of Understanding (MOU). Idaho's Non-Point Source Management Plan<sup>1</sup> specifically identifies the Department's role in NPS management as it relates to forest management activities.

The forestry Best Management Practices (BMPs) for protecting water quality during timber harvesting operations are defined in the Idaho Forest Practices Act rules, and the Department is the designated management agency, per MOU with DEQ, for these BMPs. DEQ leads an audit every four years on Idaho forestlands to check compliance with the Idaho Forest Practices Act rules. When DEQ provides post-audit, rule-changing recommendations, FPAC works with the Department to develop rule changes to address DEQ recommendations.

Following quadrennial audits in 2000 and 2004, DEQ recommended that FPAC and the Department address shortcomings in the streamside tree retention rule ("Shade Rule"). In response, FPAC and the Department worked for nearly a decade to modify the Shade Rule to reflect DEQ recommendations, and to incorporate input from many statewide stakeholder groups. This effort included contracting with a forest hydrologist and modeling scientist to

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<sup>1</sup> Idaho's Non-Point Source Management Plan (<http://www.deq.idaho.gov/media/60153107/idaho-nonpoint-source-management-plan.pdf>)

simulate (model) over-stream shade and large woody debris contributions for multiple forest types and harvest prescriptions. The work was done to develop a science-based rule that addressed shade and large-wood recruitment, and that forest landowners could implement on the ground.

The rules were amended in 2013 through the negotiated rulemaking process, with broad public participation, and all major forest landowner groups in Idaho supported the rule amendments. The current version of the rules became effective in 2014 with the approval of the Idaho Legislature. Attachment 1 is a June 2014 news release explaining the new timber harvesting rules and the resources available to landowners, which included the Department's three additional Private Forestry Specialists. Attachment 2 is a June 2014 fact sheet with information about the rulemaking process and the Shade Rule.

In 2015, the Department commissioned an in-depth study on the revised rule to be conducted by DEQ and the University of Idaho in collaboration with multiple landowners. This multi-year study, conducted on forested sites across the state, is designed to test the effectiveness of the Shade Rule in protecting needed over-stream shade, and to validate the modeled shade-loss calculations which were used in the development of this rule. The Shade Effectiveness Study is expected to be completed by December 2019. The results of the analysis will be presented at a future FPAC meeting and made publicly available.

## Discussion

After the legislature adjourned the 2019 legislative session without reauthorizing Idaho's administrative rules, the governor and his staff directed state agencies to republish all necessary rules as temporary and proposed rules. On May 21, 2019, the Board approved the reauthorization of IDAPA 20.02.01.

On June 19, 2019, the rules were published concurrently as temporary and proposed in a special edition of the Idaho Administrative Bulletin, Volume 19-6SE. Attachment 3 is the *Notice of Omnibus Rulemaking* for docket number 20-000-1900, which includes the publication of the previously approved and codified chapter of IDAPA 20.02.01 as temporary and proposed rules, with a 21-day comment period and a 14-day period for requesting a public hearing.

The Department received 31 individual requests for a public hearing on the proposed rules. Most hearing requests specifically asked for an opportunity to present oral comment on the Shade Rule portion of the rules and requested that the public hearing be held in northern Idaho, preferably in Coeur d'Alene. The hearing requests are on the Department's website at [www.idl.idaho.gov/rulemaking/omnibus](http://www.idl.idaho.gov/rulemaking/omnibus).

The Department held two public hearings on the proposed rules for IDAPA 20.02.01, *Rules Pertaining to the Idaho Forest Practices Act*. Both public hearings were held in Coeur d'Alene on August 15, 2019: one hearing at 9:30 a.m., and a second hearing at 4:30 p.m. The Department also extended the written comment deadline to August 16, 2019. All written

comments and transcribed oral comments received are on the Department's website on the omnibus rulemaking page.

Eleven people testified at the public hearings, and ten written comments were received. The majority of comments supported reauthorizing the proposed rules without amendments and supported reviewing the results of the forthcoming Shade Effectiveness Study to inform possible amendments to the rules.

A summary of all comments is included in Attachment 4. Two comments made specific reference to the Shade Rule being a regulatory taking. Attachment 5 is a Regulatory Taking Analysis of the Shade Rule prepared by the Office of the Attorney General on behalf of the Department.

The Department did not identify any needed rule changes based on these comments. After the Shade Effectiveness Study results have been presented to FPAC, the Department may receive guidance from FPAC on entering negotiated rulemaking in 2020.

## **Attachments**

1. News Release: New Timber Harvesting Rules
2. Shade Rule Fact Sheet
3. Notice of Omnibus Rulemaking – Temporary and Proposed Rulemaking, pages 4099 to 4100, and pages 4125 to 4151
4. Summary of Public Comments Received on Proposed Rule
5. Regulatory Taking Analysis – IDAPA 20.02.01.03.07 (Shade Rule)



## New timber harvesting rules take effect July 1

June 23, 2014

**Idaho forest landowners will follow new State rules for harvesting timber near fish bearing streams starting July 1.**

A revised Class I Tree Retention rule, or "**Shade Rule**," was approved by the Idaho Legislature in 2014 after the Idaho Forest Practices Act Advisory Committee (FPAAC) spent more than 10 years working with multiple partners to create the rule, which **deals with harvesting of trees near Class I streams.**

The FPAAC is a nine-member committee that provides technical advice to the Idaho Department of Lands (IDL) and State Board of Land Commissioners in matters relating to the Idaho Forest Practices Act, which the IDL administers.

**The new Shade Rule applies to all forest landowners in Idaho, large or small, including all private, State, and federal landowners, that have Class I streams on their property.**

Class I streams are fish-bearing or used for domestic water use under Idaho Forest Practices rules. **Trees near streams provide shade that contributes to keeping water cool, which fish species in Idaho need to survive. Trees also occasionally fall across streams, providing large woody debris and nutrient cycling needed for fish habitat.**



*Trees near streams provide shade that contributes to keeping water cool for fish. Trees also fall across streams, providing habitat for fish. The new Shade Rule deals with harvesting of trees near fish bearing streams.*

### What is allowed under the new Shade Rule?

The Shade Rule provides **two options for forest landowners** who want to harvest trees near Class I streams, offering a **level of flexibility in the law that is unique to Idaho.** The rule creates **inner and outer zones to provide greater retention of trees closer to the stream.**



[Detailed information about the new Shade Rule is available in a fact sheet here.](#)

### New tools and resources help Idahoans comply

The IDL is adding **three full time Private Forestry Specialists** to help landowners and operators implement the new rule.

Already more than 1,000 loggers, landowners and foresters in Idaho have attended **presentations provided by IDL and partners** to explain the new Shade Rule.

The IDL also is in the process of creating several tools to help landowners, operators, and foresters implement the rule on the ground.

Tools will include a "**Forester's Forum**," an **IDL informational publication**, to explain the new rule and its implementation, along with **worksheets** with instructions to help people without access to tablets, phones, or computers in the field.

A **spreadsheet to help landowners calculate the Relative Stocking of riparian stands on their land** also is already available on the IDL Web site [here](#). Newer versions of the spreadsheet are in development and will be posted on the IDL Web site with the other tools as they become available.

Additionally, IDL, the Idaho Department of Environmental Quality (DEQ) and the University of Idaho are developing a **new monitoring program** to inform FPAAC of the effectiveness of the new rule so that it can be evaluated in the future and adjustments made as warranted.

### How did we get here?

Following required quadrennial audits in 2000 and 2004, DEQ recommended that FPAAC and IDL address shortcomings in the Streamside Tree Retention rule.

Since then, FPAAC and IDL have worked to incorporate input from many statewide stakeholder groups.

**After more than 10 years of finding and evaluating protective measures to modernize standards in the existing rule, Idaho has a Shade Rule that is based on scientifically sound principles that uses actual Idaho forest stand data.**

### NEWS MEDIA CONTACT:

Emily Callihan, Public Information Officer  
(208) 334-0236 or [ecallihan@idl.idaho.gov](mailto:ecallihan@idl.idaho.gov)

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# The Forest Practices Act Streamside Tree Retention Rule or “Shade Rule”

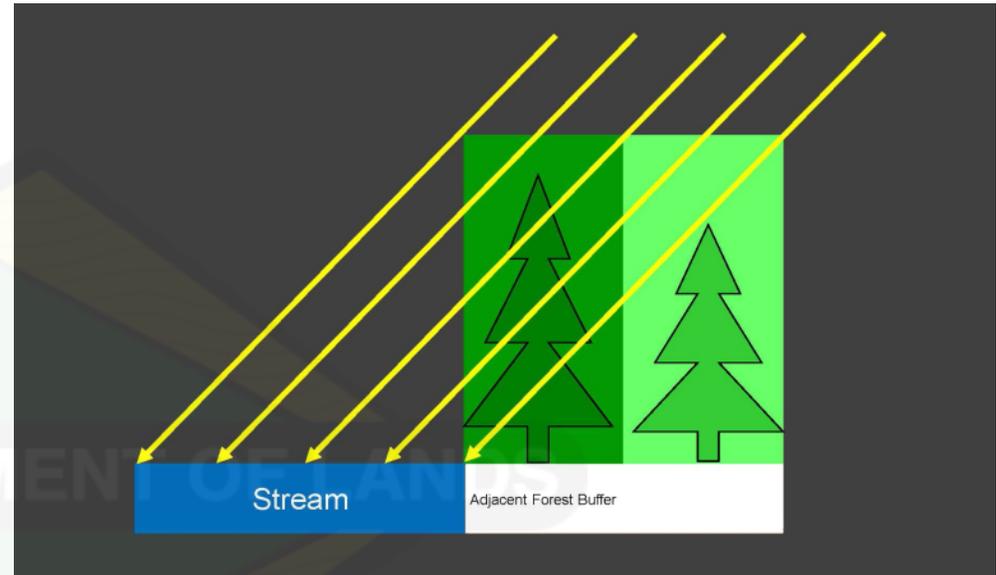
Updated June 2014

Retaining trees near fish-bearing streams is an important component of the Idaho Forest Practices Act.

Shade over streams benefits fish habitat in a myriad of ways, primarily by contributing to keeping water cool enough for successful spawning. Also, fish need the stream structures created when trees fall into the stream channel, forming eddies and pools that enhance the ability of fish to feed, spawn, rest, and migrate upstream. Stream structures also slow runoff.



The immediate adjacent buffer of trees next to the stream typically accounts for the majority of the shadow cast by a riparian buffer.



## Roles and Authorities

The Idaho Department of Lands (IDL) administers the Idaho Forest Practices Act, which regulates harvest operations in Idaho. The Land Board provides oversight of IDL.

The Forest Practices Act Advisory Committee (FPAAC) provides technical advice to IDL and the Land Board in matters relating to the Idaho Forest Practices Act. FPAAC is comprised of nine voting members appointed by the IDL director for three-year terms. Members include a fisheries biologist; a nonindustrial private forest landowner; two forest landowners, one from northern Idaho and one from southern Idaho; two forest operators, one from northern Idaho and one from southern Idaho; two informed citizens from northern and southern Idaho; and an at-large member.

In accordance with the federal Clean Water Act, the Idaho Department of Environmental Quality (DEQ) administers Idaho’s Water Quality Standards.

The corresponding Best Management Practices (BMPs) for protecting water quality during timber harvesting operations are defined in the Idaho Forest Practices Act administrative rules, and IDL is the designated management agency for these BMPs.

DEQ leads an audit every four years on Idaho forestlands to check compliance with the Idaho Forest Practices Act rules (this is called the “Forest Practices/Water Quality Interagency Audit”). DEQ has this responsibility because it administers the Idaho Non-Point Source Management Plan and corresponding silvicultural (forestry) Memorandum of Understanding (MOU). The audit is defined in the MOU.

When DEQ provides post-audit, rule-changing recommendations, then FPAAC works with IDL to develop rule changes to address the DEQ recommendations.

## What are the Shade Rule options?

*The Shade Rule requires a 75-ft.-wide tree-retention buffer in the Stream Protection Zone.*

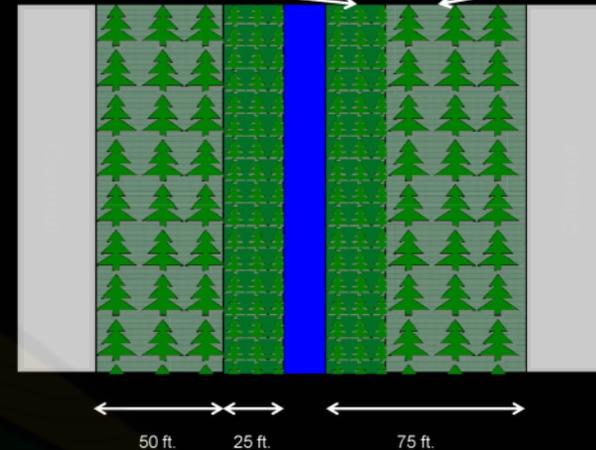
The Shade Rule offers landowners two options for management next to fish-bearing streams:

1. **“60-30 option”** - Requires more trees to be left (60 Relative Stocking) in the inner 25-ft.-wide zone right next to the stream. As long as the 60 Relative Stocking is maintained in the inner 25-ft. zone, trees can still be harvested. Fewer trees (30 Relative Stocking) are required to be left in the outer 50-ft. riparian zone (25-to-75 feet away from the stream edge).
2. **“60-10 option”** - Requires more trees (60 Relative Stocking) to be retained in the inner 50-ft.-wide zone next to the stream edge. Fewer trees (10 Relative Stocking) are required in the outer 25-ft. riparian zone (50-to-75 feet away from the stream edge).

## 75-ft.-wide 60/30 Option

60 RS minimum in stream-adjacent 25-ft. zone

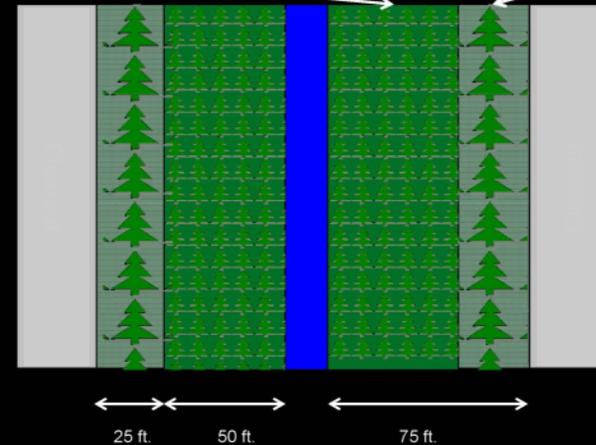
30 RS minimum in 25-to-75-ft. zone



## 75-ft.-wide 60/10 Option

60 RS minimum in stream-adjacent 50-ft. zone

10 RS minimum in 50-to-75-ft. zone





# The Forest Practices Act Streamside Tree Retention Rule or “Shade Rule”

Updated June 2014

## DEQ Recommendations

Following the 2000 and 2004 DEQ-led Forest Practices/Water Quality Interagency Audits, DEQ came to FPAAC with recommendations for changing the streamside tree retention rule standards. FPAAC and IDL worked for nearly a decade (since 2004) to modify the streamside retention rules to reflect the DEQ recommendations.

## The Work Since 2004

Although IDL worked with FPAAC since 2004 on a Shade Rule, it was in 2009 that the intensity of work on the proposed changes ramped up. At that time FPAAC and IDL contracted with a forest hydrology consultant and modeling scientist to use real Idaho stand data to simulate (model) over-stream shade and large woody debris contributions for multiple forest types and harvest prescriptions. The work was done to develop a science-based rule that addressed shade and large-wood recruitment, and that forest landowners could implement on the ground.

FPAAC used the outcomes of these modeling efforts to evaluate trade-offs among different “Stream Protection Zone” thinning prescriptions and develop implementable rule standards.

## Key Issues Addressed

By 2012, FPAAC proposed a new Shade Rule, starting the process of negotiated rulemaking and presenting the science behind the proposed changes to many interested parties including forest industries, the Idaho Forest Owners Association, loggers, Environmental Protection Agency (EPA) and DEQ managers, and multiple tribal organizations.

*Some parties expressed the following concerns about the proposed shade rule, and after further deliberation FPAAC and IDL decided more analysis was warranted and discontinued the 2012 rule promulgation process. The Shade Rule options were revised after completing the additional analysis to address the concerns expressed below:*

- ⇒ EPA sent comments stating the initial modeling efforts underestimated shade loss. IDL contracted an independent validation study to address this comment and found there was some under-prediction of shade loss in the initial modeled outputs. Therefore, tree retention levels were adjusted in the shade rule options to address this concern.
- ⇒ Tribes and environmental organizations sent comments stating that the rule was too lax and would not be compliant with Idaho Water Quality Standards or with existing TMDL’s. After extensive modeling and model validation efforts, the Shade Rule (as revised) will be an effective BMP for water quality and fish habitat protection.
- ⇒ The Idaho Forest Owners Association (non-industrial private forestland owners) was concerned about the infringement on private property owner rights. Therefore, the Shade Rule options were revised to eliminate the no-harvest zone and tree retention levels adjusted in each zone before harvest can occur.

**After additional analysis and modeling efforts, rule promulgation moved forward in 2013.**

**The Shade Rule is scientifically sound and strikes the right balance of input received from a variety of interested parties.**



SUMMARY

*The work that has been done to address issues with the Shade Rule demonstrates that Idaho’s adaptive management process has been implemented exactly as it was designed to work.*

*The FPAAC and IDL began to look at ways to address concerns with the current rules identified in the DEQ quadrennial audit. Then a method to address the concerns was developed and tested, and the public was invited to comment on its merits and deficiencies. When the rule change was proposed in 2012 stakeholders expressed concerns so FPAAC recommended that IDL pull the rule in order to conduct additional analysis. Then the rule was re-evaluated, re-tested, and revised.*

*The “two options approach” is unique in the West and demonstrates Idaho’s leadership in developing solutions that balance landowner rights, provide flexibility, and protect Idaho’s forest and water resources.*



Idaho Department of Lands  
 Forestry Assistance Bureau  
 3284 W. Industrial Loop  
 Coeur d’Alene, ID 83815  
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## IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-1900

### NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED RULEMAKING

**EFFECTIVE DATE:** The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 38-115, 38-132, 38-402, 38-1304, 58-104, 58-105, 67-5201 et seq., and 67-5206(5)(b), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 20, rules of the Idaho Department of Lands:

#### **IDAPA 20**

20.01.01, *Rules of Practice and Procedure Before the State Board of Land Commissioners – All rules except the following Sections: 790 through 860*

20.02.01, *Rules Pertaining to the Idaho Forest Practices Act*

20.04.01, *Rules Pertaining to Forest Fire Protection*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The rules of the Idaho Department of Lands serve the public interest by, for example, regulating forestland management practices to maintain and enhance benefits such as job creation, tax generation, and distributions to endowment beneficiaries, and by conserving resources such as forest tree species, soil, air, water, and wildlife habitat.

**FEE SUMMARY:** This rulemaking does not impose a fee or charge.

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the Legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Amy Johnson at (208) 334-0255 or [rulemaking@idl.idaho.gov](mailto:rulemaking@idl.idaho.gov).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Dustin Miller, Director  
Idaho Department of Lands  
300 N. 6th St, Suite 103  
P.O. Box 83720  
Boise, Idaho 83720-0050  
Phone: (208) 334-0242  
Fax: (208) 334-3698  
[rulemaking@idl.idaho.gov](mailto:rulemaking@idl.idaho.gov)

**IDAPA 20  
TITLE 02  
CHAPTER 01**

**20.02.01 – RULES PERTAINING TO THE IDAHO FOREST PRACTICES ACT**

**000. LEGAL AUTHORITY.**

In accordance with Section 38-1304, Idaho Code, the Idaho Board of Land Commissioners has authority to adopt rules establishing minimum standards for the conduct of forest practices on forest land. (7-1-96)

**001. TITLE AND SCOPE.**

**01. Title.** These rules are titled IDAPA 20.02.01, “Rules Pertaining to the Idaho Forest Practices Act.” (4-11-06)

**02. Scope.** These rules constitute the minimum standards for the conduct of forest practices on forest land and describe administrative procedures necessary to implement those standards. (4-11-06)

**002. WRITTEN INTERPRETATIONS.**

Pursuant to Idaho Code Section 67-5201(19)(b)(iv), the Department maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals, Attorney General formal and informal opinions, and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals are available for public inspection and copying at the Idaho Department of Lands, 300 North 6th Street, Suite 103, Boise, Idaho 83702. (4-11-06)

**003. ADMINISTRATIVE APPEALS.**

All contested forest practice violations shall be governed by the provisions of Section 38-1307(3), Idaho Code. (7-1-96)

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated herein by reference. (4-11-06)

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS.**

The principal place of business of the Idaho Department of Lands is the Director’s Office at 300 North 6th Street, Suite 103, Boise, Idaho 83720 and is open from 8 a.m. to 5 p.m. Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200 and the fax number (208) 334-2339. (4-11-06)

**006. PUBLIC RECORDS ACT COMPLIANCE.**

All records relating to this chapter are public records except to the extent such records are by law exempt from disclosure. (4-11-06)

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

Unless otherwise required by context as used in these rules: (10-14-75)

**01. Act.** The Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. (7-1-96)

**02. Acceptable Tree Species.** Any of the tree species normally marketable in the region, which are suitable to meet stocking requirements. Acceptable trees must be of sufficient health and vigor to assure growth and harvest. (7-1-96)

**03. Additional Hazard.** The debris, slashings, and forest fuel resulting from a forest practice. (10-14-75)

**04. Average DBH.** Average diameter in inches of trees cut or to be cut, measured at four and one-half (4.5) feet above mean ground level on standing trees. All trees to be cut that do not have a measurable DBH will fall

in the one inch (1”) class. (7-1-96)

**05. Best Management Practice (BMP).** A practice or combination of practices determined by the board, in consultation with the department and the forest practices advisory committee, to be the most effective and practicable means of preventing or reducing the amount of nonpoint pollution generated by forest practices. BMPs shall include, but not be limited to, those management practices included in these rules. (9-11-90)

**06. Board.** The Idaho State Board of Land Commissioners or its designee. (10-14-75)

**07. Buffer Strip.** A protective area adjacent to an area requiring special attention or protection. (10-14-75)

**08. Chemicals.** Substances applied to forest lands or timber to accomplish specific purposes and includes pesticides, as defined in the Idaho Pesticide Law, Title 22, Chapter 34, Idaho Code, fertilizers, soil amendments, road dust abatement products and other materials that may present hazards to the environment. (7-1-98)

**09. Constructed Skid Trail.** A skid trail created by the deliberate cut and fill action of a dozer or skidder blade resulting in a road-type configuration. (7-1-96)

**10. Commercial Products.** Saleable forest products of sufficient value to cover cost of harvest and transportation to available markets. (4-11-06)

**11. Condition of Adjoining Area.** Those fuel conditions in adjoining areas that relate to spread of fire and to economic values of the adjoining area. (1-24-78)

**12. Contaminate.** To introduce into the atmosphere, soil, or water sufficient quantities of substances that are injurious to public health, safety, or welfare or to domestic, commercial, industrial, agricultural or recreational uses or to livestock, wildlife, fish or other aquatic life. (4-11-06)

**13. Cross-Ditch.** A diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation, duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion. (3-13-90)

**14. Cull.** Nonmerchantable, alive, standing trees of greater height than twenty (20) feet. (1-24-78)

**15. Department.** The Idaho Department of Lands. (10-14-75)

**16. Deterioration Rate.** Rate of natural decomposition and compaction of fuel debris which decreases the hazard and varies by site. (1-24-78)

**17. Director.** The Director of the Idaho Department of Lands or his designee. (10-14-75)

**18. Emergency Forest Practice.** A forest practice initiated during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event to minimize damage to forest lands, timber, or public resources. (10-14-75)

**19. Fertilizers.** Any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment. (10-14-75)

**20. Fire Trail.** Access routes that are located and constructed in a manner to be either useful in fire control efforts or deterring the fire spread in the hazard area. (10-14-75)

**21. Forest Land.** Federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes federal, state and private land from which forest tree species have been removed but have not yet been restocked. It does not include land affirmatively converted to uses other than the growing of forest tree species. (7-1-96)

- 22. Forest Practice.** (10-14-75)
- a.** The harvesting of forest tree species including felling, bucking, yarding, decking, loading and hauling; road construction, improvement or maintenance including installation or improvement of bridges, culverts or structures which convey stream flows within the operating area; also including the clearing of forest land for conversion to non-forest use when harvest occurs; (7-1-98)
- b.** Road construction, reconstruction or maintenance of existing roads including installation or improvement of bridges, culverts or structures which convey streams not within the operating area associated with harvesting of forest tree species; (7-1-98)
- c.** Reforestation; (10-14-75)
- d.** Use of chemicals for the purpose of managing forest tree species or forest land; (7-1-98)
- e.** The management of slash resulting from harvest, management or improvement of forest tree species or the use of prescribed fire on forest land. (7-1-98)
- f.** “Forest Practice” shall not include preparatory work such as tree marking, surveying, and road flagging or removal or harvesting of incidental vegetation from forest lands; such as berries, ferns, greenery, mistletoe, herbs, mushrooms, or other products which cannot normally be expected to result in damage to forest soils, timber, or public resources. (10-14-75)
- 23. Forest Regions.** Two (2) regions of forest land: one (1) being north of the Salmon River and one (1) being south of the Salmon River. (7-1-96)
- 24. Forest Type.** Five forest types in Idaho are defined as follows: (3-20-14)
- a.** North Idaho grand fir/western red cedar (NIGF): moist to wet interior forests with western red cedar, western hemlock, and grand fir being primary climax species, found in forests north of the Clearwater/ and Lochsa Rivers. (3-20-14)
- b.** Central Idaho grand fir/western red cedar (CIGF): productive conifer forests found in forests between the Lochsa River Basin and the Salmon River, characterized by stands having western red cedar and grand fir as climax species, with a mixed-conifer overstory increasingly comprised of ponderosa pine, Douglas-fir, and larch in the river breaks canyon-lands. Stocking levels are generally lower than that of the NIGF stands. (3-20-14)
- c.** South Idaho grand fir (SIGF): mixed-conifer forests, dominated by ponderosa pine and Douglas-fir, found south of the Salmon River with grand fir and occasionally western red cedar being the stand climax species. (3-20-14)
- d.** Western hemlock-subalpine fir (WH): higher-elevation, moist, cool interior forests dominated by western hemlock, mountain hemlock, and/or subalpine fir. (3-20-14)
- e.** Douglas-fir-ponderosa pine (PP): drier forests dominated by ponderosa pine and Douglas-fir, generally found in lower-elevation, dry sites. (3-20-14)
- 25. Fuel Quantity.** The diameter, the number of stems and the predominate species to be cut or already cut, and the size of the continuous thinning block all of which determine quantity of fuel per unit of area. (1-24-78)
- 26. Ground Based Equipment.** Mobile equipment such as tractors, dozers, skidders, excavators, loaders, mechanized harvesters and forwarders used for harvesting, site preparation or hazard reduction. This does not include cable systems associated with stationary yarding equipment. (4-4-13)
- 27. Habitat Types.** Forest land capable of producing similar plant communities at climax. (7-1-96)

- 28. Harvesting.** A commercial activity related to the cutting or removal of forest tree species to be used as a forest product. A commercial activity does not include the cutting or removal of forest tree species by a person for his own personal use. (10-14-75)
- 29. Hazard.** Any vegetative residue resulting from a forest practice which constitutes fuel. (1-24-78)
- 30. Hazard Offset.** Improvements or a combination of practices which reduces the spread of fire and increases the ability to control fires. (10-14-75)
- 31. Hazard Points.** The number of points assigned to certain hazardous conditions on an operating area, to actions designed to modify conditions on the same area or to actions by the operator, timber owner or landowner to offset the hazardous conditions on the same area. (1-24-78)
- 32. Hazard Reduction.** The burning or physical reduction of slash by treatment in some manner which will reduce the risk from fire after treatment. (10-14-75)
- 33. Lake.** A body of perennial standing open water, natural or human-made, larger than one (1) acre in size. Lakes include the beds, banks or wetlands below the ordinary high water mark. Lakes do not include drainage or irrigation ditches, farm or stock ponds, settling or gravel ponds. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)
- 34. Landowner.** A person, partnership, corporation, or association of whatever nature that holds an ownership interest in forest lands, including the state. (10-14-75)
- 35. Large Organic Debris (LOD).** Live or dead trees and parts or pieces of trees that are large enough or long enough or sufficiently buried in the stream bank or bed to be stable during high flows. Pieces longer than the channel width or longer than twenty (20) feet are considered stable. LOD creates diverse fish habitat and stable stream channels by reducing water velocity, trapping stream gravel and allowing scour pools and side channels to form. (3-13-90)
- 36. Merchantable Material.** That portion of forest tree species suitable for the manufacture of commercial products which can be merchandised under normal market conditions. (10-14-75)
- 37. Merchantable Stand of Timber.** A stand of trees that will yield logs or fiber: (7-1-96)
- a. Suitable in size and quality for the production of lumber, plywood, pulp, or other forest products; (10-14-75)
  - b. Of sufficient value at least to cover all costs of harvest and transportation to available markets. (10-14-75)
- 38. Noncommercial Forest Land.** Habitat types not capable of producing twenty (20) cubic feet per acre per year. (7-1-96)
- 39. Operator.** A person who conducts or is required to conduct a forest practice. (10-14-75)
- 40. Operating Area.** That area where a forest practice is taking place or will take place. (1-24-78)
- 41. Ordinary High Water Mark.** That mark on all water courses, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. (10-14-75)
- 42. Outstanding Resource Water.** A high quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, which has been so designated by the legislature. ORW constitutes as outstanding national or state resource that requires protection from nonpoint

- activities, including forest practices, that may lower water quality. (7-1-96)
- 43. Partial Cutting.** The well distributed removal of a portion of the merchantable volume in a stand of timber. This includes seed tree, shelterwood, or individual tree selection harvesting techniques. (10-14-75)
- 44. Prescribed Fire.** The controlled application of fire to wildland fuels in either their natural or modified state, under such conditions of weather, fuel moisture and soil moisture, to allow the fire to be confined to a predetermined area and at the same time to produce the intensity of heat and rate of spread required to meet planned objectives. (7-1-96)
- 45. Present Condition of Area.** The amount or degree of hazard present before a thinning operation commences. (1-24-78)
- 46. Public Resource.** Water, fish, and wildlife, and in addition means capital improvements of the State or its political subdivisions. (10-14-75)
- 47. Reforestation.** The establishment of an adequately stocked stand of trees of species acceptable to the department to replace the ones removed by a harvesting or a catastrophic event on commercial forest land. (10-14-75)
- 48. Relative Stocking.** A measure of site occupancy calculated as a ratio comparison of actual stand density to the biological maximum density for a given forest type. This ratio, expressed as a percentage, shows the extent to which trees utilize a plot of forestland. (3-20-14)
- 49. Relief Culvert.** A structure to relieve surface runoff from roadside ditches to prevent excessive buildup in volume and velocity. (10-14-75)
- 50. Rules.** Rules adopted by the Board pursuant to Section 38-1304, Idaho Code. (7-1-96)
- 51. Slash.** Any vegetative residue three inches (3”) and under in diameter resulting from a forest practice or the clearing of land. (7-1-96)
- 52. Site.** An area considered as to its ecological factors with reference to capacity to produce forest vegetation; the combination of biotic, climatic, and soil conditions of an area. (10-14-75)
- 53. Site Factor.** A combination of percent of average ground slope and predominate aspect of the forest practice area which relate to rate of fire spread. (1-24-78)
- 54. Site Specific Best Management Practice.** A BMP that is adapted to and takes account of the specific factors influencing water quality, water quality objectives, on-site conditions, and other factors applicable to the site where a forest practice occurs, and which has been approved by the Department, or by the Board in consultation with the Department and the Forest Practices Advisory Committee. (7-1-96)
- 55. Size of Thinning Block.** Acres of continuous fuel creating an additional hazard within a forest practice area. Distance between the perimeter of thinning blocks containing continuous fuel must be a minimum of six (6) chains apart to qualify as more than one (1) block. (1-24-78)
- 56. Snags.** Dead, standing trees twenty (20) feet and greater in height. (1-24-78)
- 57. Soil Erosion.** Movement of soils resulting from forest practices. (10-14-75)
- 58. Soil Stabilization.** The minimizing of soil movement. (10-14-75)
- 59. State.** The state of Idaho or other political subdivision thereof. (10-14-75)
- 60. Stream.** A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously or intermittently flowing water. Definite beds are defined as having a sandy or rocky

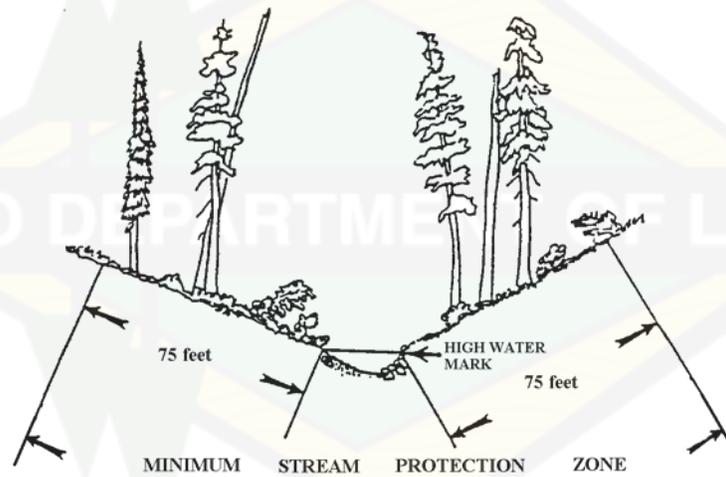
bottom which results from the scouring action of water flow. Any reference in these rules to Class I streams shall also apply to lakes. (7-1-96)

**a.** Class I streams are used for domestic water supply or are important for the spawning, rearing or migration of fish. Such waters shall be considered to be Class I upstream from the point of domestic diversion for a minimum of one thousand three hundred and twenty (1,320) feet. (11-7-86)

**b.** Class II streams are usually headwater streams or minor drainages that are used by only a few, if any, fish for spawning or rearing. Where fish use is unknown, consider streams as Class II where the total upstream watershed is less than two hundred and forty (240) acres in the north forest region and four hundred and sixty (460) acres in the south forest region. Their principle value lies in their influence on water quality or quantity downstream in Class I streams. (7-1-96)

**c.** Class I Stream Protection Zone means the area encompassed by a slope distance of seventy-five (75) feet on each side of the ordinary high water marks. (Figure 1.)

**FIGURE 1**  
**CLASS 1 STREAM PROTECTION ZONE**

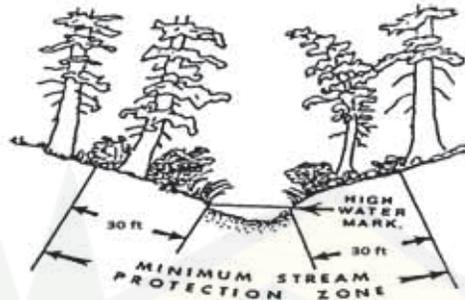


(7-1-96)

**d.** Class II Stream Protection Zone means the area encompassed by a minimum slope distance of thirty (30) feet on each side of the ordinary high water marks. (Figure 2.) For Class II streams that do not contribute surface flow into Class I streams, provide soil stabilization and water filtering effects by leaving undisturbed soils in widths sufficient to prevent washing of sediment. In no case shall this width be less than five (5) feet slope distance on each side of the ordinary high water marks.

FIGURE 2  
CLASS II STREAM PROTECTION ZONE

## CLASS II STREAM PROTECTION ZONE



(7-1-96)

**61. Timber Owner.** A person, partnership, corporation, or association of whatever nature, other than the landowner, that holds an ownership interest in forest tree species on forest land. (10-14-75)

**62. Time of Year of Forest Practice.** Those combinations of months during which time the forest practice is taking place. Points assigned are: October through December - two (2) points; August through September - four (4) points; January through April - seven (7) points; May through July - ten (10) points. (1-24-78)

**011. -- 019. (RESERVED)**

**020. GENERAL RULES.**

**01. Compliance.** Practices contained within a rule shall be complied with to accomplish the purpose to which the rule is related. (8-13-85)

**a.** If conditions of sites or activities require the application of practices which differ from those prescribed by the rules, the operator shall obtain a variance according to the following procedure: (8-13-85)

**i.** The operator shall submit a request for variance to the department in writing. The request shall include a description of the site and particular conditions which necessitate a variance, and a description of proposed practices which, if applied, will result in a violation of the rules. (8-13-85)

**ii.** Within fourteen (14) calendar days the department shall evaluate the request and notify the operator in writing of the determination to allow or disallow the variance request. (7-1-96)

**iii.** All practices authorized under this procedure shall provide for equivalent or better results over the long term than the rules which are superseded to insure site productivity, water quality and fish and wildlife habitat. A variance can be applied only at approved sites. (8-13-85)

**b.** Practices shall also be in compliance with the Stream Channel Alteration Act (Title 42, Chapter 38, Idaho Code), Idaho Water Quality Standards and Waste Water Treatment Requirements (Title 39, Chapter 1, Idaho Code), the Idaho Pesticide Law (Title 22, Chapter 34, Idaho Code), and the Hazardous Waste Management Act of 1983 (Title 39, Chapter 44, Idaho Code), and rules and regulations pursuant thereto. (8-13-85)

c. Water may be diverted from a stream and used at any time to carry out Idaho forest practices and for forest road dust abatement, provided that: 1) The total daily volume diverted is no greater than two-tenths (0.2) acre-feet (65,170 gallons) from a single stream; and 2) The rate of diversion shall never exceed twenty-five (25) percent of the rate of flow then available in the stream at the point of diversion for these purposes. (5-8-09)

i. No person shall, under this Section 020, divert water from an irrigation canal, irrigation reservoir, or other irrigation facility while water is lawfully diverted, stored, captured, conveyed, used or otherwise physically controlled by an irrigator, irrigation district or canal company. (5-8-09)

ii. If water is to be diverted from a stream within a water district, or from a stream from which an irrigation delivery entity diverts water, a person diverting water shall give notice to the watermaster of the intent to divert water for the purposes as authorized herein. (5-8-09)

iii. Water diversion intakes used for diversions under Subsection 020.01 shall be screened with a maximum screen mesh size as follows: 1) fish-bearing Class I streams: 3/32 inch, and 2) all other streams: 1/4 inch. (5-8-09)

d. Any alternative conservation measure having received a favorable Biological Opinion or Incidental Take Permit from the National Marine Fisheries Service or US Fish and Wildlife Service will be considered as complying with these rules. (4-4-13)

**02. Conversion of Forest Lands.** Conversions require a notification be filed, and compliance with all rules except those relating to reforestation. On converted parcels larger than one (1) acre, plant acceptable vegetative cover sufficient to maintain soil productivity and minimize erosion. Cover shall be established within one (1) year of completion of the forest practice except that the director may grant an extension of time if weather or other conditions interfere. Within three (3) years of completion of the forest practice, the director shall determine if the conversion has been accomplished by: (7-1-96)

a. The presence or absence of improvements necessary for use of land for its intended purpose; (7-1-96)

b. Evidence of actual use of the land for the intended purpose. (10-14-75)

c. If the conversion has not been accomplished within three (3) years of the completion of harvest, supplemental reforestation Subsection 050.06 applies. (7-1-96)

**03. Annual Review and Consultation.** The director shall, at least once each year, meet with other state agencies and the Forest Practices Advisory Committee and review recommendations for amendments to rules, new rules, or repeal of rules. He shall then report to the board a summary of such meeting or meetings, together with recommendations for amendments to rules, new rules, or repeal of rules. (10-14-75)

**04. Consultation.** The director shall consult with other state agencies and departments concerned with the management of forest environment where expertise from such agencies or departments is desirable or necessary. (10-14-75)

a. The Idaho Water Quality Standards and Wastewater Treatment Requirements, IDAPA 58.01.02, (Title 39, Chapter 1, Idaho Code) reference the Forest Practice Rules as approved best management practices and describe a procedure of modifying the practices based on monitoring and surveillance. The director shall review petitions from Idaho Department of Environmental Quality for changes or additions to the rules according to Administrative Procedures Act (Title 67, Chapter 52, Idaho Code) and make recommendations for modification to the Board of Land Commissioners. (9-20-88)

**05. Notification of Forest Practice.** (10-14-75)

a. Before commencing a forest practice or a conversion of forest lands the department shall be notified as required in Subsection 020.05.b. The notice shall be given by the operator. However, the timber owner or landowner satisfies the responsibility of the operator under this subsection. When more than one forest practice is to

be conducted in relation to harvesting of forest tree species, one notice including each forest practice to be conducted shall be filed with the department. (5-8-09)

**b.** The notification required by Subsection 020.05.a. shall be on forms prescribed and provided by the department and shall include the name and address of the operator, timber owner, and landowner; the legal description of the area in which the forest practice is to be conducted; whether the forest practice borders an outstanding resource water and other information the department considers necessary for the administration of the rules adopted by the board under Section 38-1304, Idaho Code. All notifications must be formally accepted by the department before any forest practice may begin. Promptly upon formal acceptance of the notice but not more than fourteen (14) calendar days from formal acceptance of the notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notification. The department shall make available to the operator, timber owner, and landowner a copy of the rules. (7-1-96)

**c.** An operator, timber owner, or landowner, whichever filed the original notification, shall notify the department of any subsequent change in the information contained in the notice within thirty (30) calendar days of the change. Promptly upon receipt of notice of change, but not to exceed fourteen (14) calendar days from receipt of notice, the department shall mail a copy of the notice to whichever of the operator, timber owner, or landowner that did not submit the notice of change. (7-1-96)

**d.** The notification is valid for the same period as set forth in the certificate of compliance under Section 38-122, Idaho Code. At the expiration of the notification, if the forest practice is continuing, the notification shall be renewed using the same procedures provided for in this section. (4-21-92)

**e.** If the notification required by Subsection 020.05.a. of this section indicates that at the expiration of the notification that the forest practice will be continuing, the operator, timber owner, or landowner, at least thirty (30) calendar days prior to the expiration of the notification, shall notify the department and obtain a renewal of the notification. Promptly upon receipt of the request for renewal, but not to exceed fourteen (14) calendar days from receipt of the request, the department shall mail a copy of the renewed notification to whichever of the operator, timber owner, or landowner that did not submit the request for renewal. (7-1-96)

**06. Notification Exception.** A notification of Forest Practice is required except for: (7-1-98)

**a.** Routine road maintenance, recreational uses, grazing by domestic livestock, cone picking, culture and harvest of Christmas trees on lands used solely for the production of Christmas trees, or harvesting of other minor forest products. (10-14-75)

**b.** Non-commercial cutting and removal of forest tree species by a person for his own personal use. (10-14-75)

**c.** Clearing forest land for conversion to surface mining or dredge and placer mining operations under a reclamation plan or dredge mining permit. (9-20-88)

**07. Emergency Forest Practices.** No prior notification shall be required for emergency forest practices necessitated by and commenced during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event. Within forty-eight (48) hours after commencement of such practice, the operator, timber owner, or landowner shall notify the director with an explanation of why emergency action was necessary. Such emergency forest practices are subject to the rules herein, except that the operator, timber owner, or landowner may take any reasonable action to minimize damage to forest lands, timber, or public resource from the direct or indirect effects of the catastrophic event. (7-1-96)

**08. Duty of Purchaser.** The initial purchaser of forest tree species which have been harvested from forest lands shall, before making such purchase or contract to purchase or accepting delivery of the same, receive and keep on file a copy of the notice required by Section 38-1306, Idaho Code relating to the harvesting practice for which the forest tree species are being acquired by the initial purchaser. Such notice shall be available for inspection upon request by the department at all reasonable times. (7-1-96)

**09. State Divided into Regions.** For the purpose of administering this Act, the State is divided into two

(2) forest regions: one (1) north of the Salmon River and one (1) south of the Salmon River. (7-1-96)

**10. Regions Divided into Forest Habitat Types.** For the purpose of further refining the on-the-ground administration of the Act, the forest regions can be divided into Habitat Types. (7-1-96)

**021. -- 029. (RESERVED)**

**030. TIMBER HARVESTING.**

**01. Purpose.** Harvesting of forest tree species is a part of forest management by which wood for human use is obtained and by which forests are established and tended. It is recognized that during harvesting operations there will be a temporary disturbance to the forest environment. It is the purpose of these rules to establish minimum standards for forest practices that will maintain the productivity of the forest land and minimize soil and debris entering streams and protect wildlife and fish habitat. (10-14-75)

**02. Quality of Residual Stocking.** Reforestation is required if harvesting reduces stocking of acceptable trees below minimums of Subsection 050.04. (7-1-96)

**03. Soil Protection.** Select for each harvesting operation the logging method and type of equipment adapted to the given slope, landscape and soil properties in order to minimize soil erosion. (8-13-85)

**a.** An operation that uses ground-based equipment shall not be conducted if it will cause rutting, deep soil disturbance, or accelerated erosion. On slopes exceeding forty-five percent (45%) gradient and which are immediately adjacent to a Class I or II stream, ground-based equipment shall not be used except with an approved variance. Where slopes in the area to be logged exceed forty-five percent (45%) gradient the operator, landowner or timber owner shall notify the department of these steep slopes upon filing the notification as provided for in Subsection 020.05. (4-4-13)

**b.** Limit the grade of constructed skid trails on geologically unstable, saturated, or highly erodible or easily compacted soils to a maximum of thirty percent (30%). (7-1-96)

**c.** In accordance with appropriate silvicultural prescriptions, skid trails shall be kept to the minimum feasible width and number. Tractors used for skidding shall be limited to the size appropriate for the job. (8-13-85)

**d.** Uphill cable yarding is preferred. Where downhill yarding is used, reasonable care shall be taken to lift the leading end of the log to minimize downhill movement of slash and soils. (8-13-85)

**04. Location of Landings, Skid Trails, and Fire Trails.** Locate landings, skid trails, and fire trails on stable areas to prevent the risk of material entering streams. (10-14-75)

**a.** All new or reconstructed landings, skid trails, and fire trails shall be located on stable areas outside the appropriate stream protection zones. Locate fire and skid trails where sidecasting is held to a minimum. (3-13-90)

**b.** Minimize the size of a landing to that necessary for safe economical operation. (8-13-85)

**c.** To prevent landslides, fill material used in landing construction shall be free of loose stumps and excessive accumulations of slash. On slopes where sidecasting is necessary, landings shall be stabilized by use of seeding, compaction, riprapping, benching, mulching or other suitable means. (8-13-85)

**05. Drainage Systems.** For each landing, skid trail or fire trail a drainage system shall be provided and maintained that will control the dispersal of surface water to minimize erosion. (4-21-92)

**a.** Stabilize skid trails and fire trails whenever they are subject to erosion, by water barring, cross draining, outsliping, scarifying, seeding or other suitable means. This work shall be kept current to prevent erosion prior to fall and spring runoff. (8-13-85)

**b.** Reshape landings as needed to facilitate drainage prior to fall and spring runoff. Stabilize all

landings by establishing ground cover or by some other means within one (1) year after harvesting is completed. (8-13-85)

**06. Treatment of Waste Materials.** All debris, overburden, and other waste material associated with harvesting shall be left or placed in such a manner as to prevent their entry by erosion, high water, or other means into streams. (10-14-75)

**a.** Wherever possible trees shall be felled, bucked, and limbed in such a manner that the tree or any part thereof will fall away from any Class I streams. Continuously remove slash that enters Class I streams as a result of harvesting operations. Continuously remove other debris that enters Class I streams as a result of harvesting operations whenever there is a potential for stream blockage or if the stream has the ability for transporting such debris. Place removed material five (5) feet slope distance above the ordinary high water mark. (3-13-90)

**b.** Remove slash and other debris that enters Class II streams whenever there is a potential for stream blockage or if the stream has the ability for transporting the debris immediately following skidding and place removed material above the ordinary high water mark or otherwise treat as prescribed by the department. No formal variance is required. (11-7-86)

**c.** Deposit waste material from construction or maintenance of landings and skid and fire trails in geologically stable locations outside of the appropriate Stream Protection Zone. (8-13-85)

**07. Stream Protection.** During and after forest practice operations, stream beds and streamside vegetation shall be protected to leave them in the most natural condition as possible to maintain water quality and aquatic habitat. (8-13-85)

**a.** Lakes require an approved site specific riparian management prescription prior to conducting forest practices within the stream protection zone. (7-1-96)

**b.** Operations that utilize ground-based equipment that result in logs being skidded or forwarded in or through streams shall not be permitted. When streams must be crossed, adequate temporary structures to carry stream flow shall be installed. Cross the stream at right angles to its channel if at all possible. (Construction of hydraulic structures in stream channels is regulated by the Stream Channel Protection Act - Title 42, Chapter 38, Idaho Code). Remove all temporary crossings immediately after use and, where applicable, water bar the ends of the skid trails. (4-4-13)

**c.** Operation of ground based equipment shall not be allowed within the Stream Protection Zone except at approaches to stream crossings. (7-1-96)

**d.** When cable yarding is necessary, across or inside the Stream Protection Zones it shall be done in such a manner as to minimize stream bank vegetation and channel disturbance. (8-13-85)

**e.** Provide for large organic debris (LOD), shading, soil stabilization, wildlife cover and water filtering effects of vegetation along streams. (7-1-96)

**i.** Leave shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream. (3-20-14)

**ii.** Adjacent to all Class I streams, to maintain and enhance shade and large woody debris recruitment, landowners must comply with one of the two following options defining tree retention. The Relative Stocking per acre (RS) referenced in the options is calculated according to the relative-stocking-contribution table in Subsection 030.07.e.ii. (3-20-14)

(1) Option 1: Within twenty-five (25) feet from the ordinary high water mark on each side of the stream, live conifers and hardwoods will be retained to maintain a minimum relative stocking per acre of sixty (60). A relative stocking per acre of thirty (30) must be retained in the stream protection zone between twenty-five (25) feet and seventy-five (75) feet from the ordinary high water mark on both sides of the stream. (3-20-14)

(2) Option 2: Within fifty (50) feet from the ordinary high water mark on each side of a stream, live conifers and hardwoods will be retained to maintain a minimum relative stocking per acre of sixty (60). A relative stocking per acre of ten (10) must be retained in the stream protection zone between fifty (50) feet and seventy-five (75) feet from the ordinary high water mark on both sides of the stream. (3-20-14)

(3) Only one (1) option may be implemented within the stream protection zones of a harvesting unit covered by a single notification. Landowners are strongly encouraged to retain all trees immediately adjacent to the stream. (3-20-14)

Forest Type	Per Tree Contribution to Relative Stocking by Diameter Class						
	Diameter Class (DBH in inches)						
	4-7.9"	8-11.9"	12-15.9"	16-19.9"	20-23.9"	24-27.9"	28-31.9"
NIGF (North Idaho Grand Fir)	0.097	0.209	0.347	0.506	0.683	0.878	1.088
CIGF (Central Idaho Grand Fir)	0.113	0.244	0.405	0.59	0.797	1.024	1.27
SIGF (Southern Idaho Grand Fir)	0.136	0.293	0.486	0.708	0.957	1.229	1.524
WHSF (Western Hemlock-Subalpine Fir)	0.123	0.267	0.442	0.644	0.87	1.117	1.385
DFPP (Douglas-fir-Ponderosa Pine)	0.151	0.326	0.54	0.787	1.063	1.366	1.693

(3-20-14)

iii. To protect filtering and shade effects of streamside vegetation adjacent to all Class II streams following harvesting and hazard management activities, live trees will be retained or new trees established within thirty (30) feet on each side of the streams ordinary high water mark to comply with the minimum stocking standards expressed in Subsection 050.04. (3-20-14)

iv. During harvesting, carefully remove timber from the Stream Protection Zone in such a way that large organic debris, shading and filtering effects are maintained and protected. When portions of felled trees fall into or over a Class I stream, leave the portion consistent with the LOD definition of Subsection 010.35. (4-11-06)

v. When harvesting portions of trees that have fallen naturally into or over a Class I stream, leave the portion(s) over the stream consistent with the LOD definition of Subsection 010.35. Leaving the section with the root ball attached is preferred. (4-11-06)

vi. During harvesting operations, portions of felled or bucked trees not meeting the LOD definition shall be removed, consistent with the slash removal requirements of Subsection 030.06. (4-11-06)

vii. To obtain a variance from the standing tree and shade requirements, the operator must develop a site specific riparian management prescription and submit it to the department for approval. The prescription should consider stream characteristics and the need for large organic debris, stream shading and wildlife cover which will achieve the objective of these rules. (4-11-06)

viii. Stream width shall be measured as average between ordinary high water marks. (3-13-90)

f. Direct ignition of prescribed burns will be limited to hand piles within stream protection zones (SPZ), all other direct ignitions shall occur outside of SPZs, so a backing (cooler) fire will more likely occur within the SPZ. (4-11-06)

i. Hand piles shall be at least five (5) feet from the ordinary high water-mark of streams. (4-11-06)

ii. No mechanical piling of slash or natural forest fuels is allowed in a SPZ (an exception is filter windrows for erosion control which shall not be ignited. (4-11-06)

**08. Maintenance of Productivity and Related Values.** Harvesting practices will first be designed to assure the continuous growing and harvesting of forest tree species by suitable economic means and also to protect soil, air, water, and wildlife resources. (10-14-75)

**a.** Where major scenic attractions, highways, recreation areas or other high-use areas are located within or traverse forest land, give special consideration to scenic values by prompt cleanup and regeneration. (10-14-75)

**b.** Give special consideration to preserving any critical aquatic or wildlife habitat, including snags, especially within stream protection zones. Wherever practical, preserve fruit, nut, and berry producing trees and shrubs. (4-4-13)

**c.** Avoid conducting operations along or through bogs, swamps, wet meadows, springs, seeps, wet draws or other locations where the presence of water is indicated by associated vegetation; temporary crossings can be used as referred to in Paragraph 030.07.b. Protect soil and vegetation from disturbance which would cause adverse affects on water quality, quantity and wildlife and aquatic habitat. (4-4-13)

**d.** Harvesting operations within a single ownership, in which essentially all trees have been removed in one operation, shall be planned so that adequate wildlife escape cover (e.g. topography, vegetation, stream protection zones, etc.) is available within one-quarter (¼) mile. (4-4-13)

**031. CUMULATIVE WATERSHED EFFECTS.**

**01. Purpose.** In accordance with Section 38-1305(8), Idaho Code, the department has developed methods for controlling cumulative watershed effects (CWE). The methods and procedures are described in the department manual entitled “Forest Practices Cumulative Watershed Effects Process for Idaho.” Proper application of this process will help ensure watersheds are managed to protect water quality so that beneficial uses are supported. This rule describes how the process is to be implemented on forest land. (7-1-98)

**02. Process Application.** (7-1-98)

**a.** Application of the CWE process and any resulting site-specific BMPs are encouraged but not mandatory. (7-1-98)

**b.** The process may be initiated by either the department, a watershed advisory group (WAG), or an individual landowner or group of landowners that collectively own at least twenty-five percent (25%) of the forested land in a watershed. In any case, a reasonable effort will be made to notify forest landowners within the watershed, and the landowners will be given the opportunity to participate in the process. (7-1-98)

**c.** The department shall be notified prior to the initiation of the CWE process. (7-1-98)

**d.** The department will review and approve the watershed assessment and CWE site-specific BMPs for compliance with the Forest Practices Act. (7-1-98)

**03. Site-Specific BMP Implementation.** Approved CWE site-specific BMPs are encouraged and applied on a voluntary basis. (7-1-98)

**04. Site-Specific BMPs on Former Stream Segments of Concern.** Practices approved by the department from 1989 through 1995 under former stream segments of concern rules remain in effect until revised by a CWE analysis, at which point the CWE site-specific BMPs would be mandatory. (7-1-98)

**032. -- 039. (RESERVED)**

**040. ROAD CONSTRUCTION, RECONSTRUCTION AND MAINTENANCE.**

**01. Purpose.** Provide standards and guidelines for road construction, reconstruction, and maintenance

that will maintain forest productivity, water quality, and fish and wildlife habitat. (4-5-00)

**02. Road Specifications and Plans.** Road specifications and plans shall be consistent with good safety practices. Plan each road to the minimum use standards adapted to the terrain and soil materials to minimize disturbances and damage to forest productivity, water quality, fish, and wildlife habitat. (4-5-00)

**a.** Plan transportation networks to avoid road construction within stream protection zones, except at approaches to stream crossings. Leave or reestablish areas of vegetation between roads and streams. (4-5-00)

**b.** Roads shall be no wider than necessary to safely accommodate the anticipated use. Minimize cut and fill volumes by aligning the road to fit the natural terrain features as closely as possible. Adequately compact fill material. Dispose of excess material on geologically stable sites. (4-5-00)

**c.** Plan roads to drain naturally by out-sloping or in-sloping with cross-drainage and by grade changes where possible. Plan dips, water bars, cross-drainage, or subsurface drainage on roads when necessary. (4-5-00)

**d.** Relief culverts and roadside ditches shall be planned whenever reliance upon natural drainage would not protect the running surface, cut slopes or fill slopes. Plan culvert installations to prevent erosion of the fill by properly sizing, bedding and compacting. Plan drainage structures to achieve minimum direct discharge of sediment into streams. (4-5-00)

**e.** The following rule applies to installations of new culverts and re-installations during road reconstructions or reinstallations caused by flood or other catastrophic events. Culverts used for temporary crossings are exempt from the fifty (50) year design requirement, but they must be removed immediately after they are no longer needed and before the spring run-off period. (4-5-00)

i. Culvert installations on fish bearing streams must provide for fish passage. (4-5-00)

ii. Design culverts for stream crossings to carry the fifty (50) year peak flow using engineering methods acceptable to the department or determine culvert size by using the culvert sizing tables below. The minimum size culvert required for stream crossings shall not be less than eighteen (18) inches in diameter, with the exception of that area of the Snake River drainage upstream from the mouth of the Malad River, including the Bear River basin, where the minimum size shall be fifteen (15) inches.

**CULVERT SIZING TABLE - I  
USE FOR NORTH IDAHO AND THE SALMON RIVER DRAINAGE**

This culvert sizing table will be used for the area of the state north of the Salmon River and within the South Fork Salmon River drainage. It was developed to carry the fifty (50) year peak flow at a headwater-to-diameter ratio of one (1).

<b>Watershed Area (acres)</b>	<b>Required Culvert Diameter (inches)</b>	<b>Culvert Capacity (in cubic feet/sec)</b>
less than 32	18	6
33 - 74	24	12
75 - 141	30	20
142 - 240	36	32
241 - 366	42	46
367 - 546	48	65
547 - 787	54	89
788 - 1027	60	112

Strongly consider having culverts larger than sixty (60) inches designed, or consider alternative structures, such as bridges, mitered culverts, arches, etc.

<b>Watershed Area (acres)</b>	<b>Required Culvert Diameter (inches)</b>	<b>Culvert Capacity (in cubic feet/sec)</b>
1028 - 1354	66	142
1355 - 1736	72	176
1737 - 2731	84	260
2732 - 4111	96	370
4112 - 5830	108	500
5831 - 8256	120	675

Culverts larger than one hundred twenty (120) inches must be designed; consider alternative structures.

**CULVERT SIZING TABLE - II  
USE FOR SOUTH IDAHO**

This culvert sizing table will be used for the area of the state south of the Salmon River and outside the South Fork Salmon River drainage. It was developed to carry the fifty (50) year peak flow at a headwater-to-diameter ratio of one (1).

<b>Watershed Area (acres)</b>	<b>Required Culvert Diameter (inches)</b>	<b>Culvert Capacity (in cubic feet/sec)</b>
less than 72	18#	6
73 - 150	24	12
151 - 270	30	20
271 - 460	36	32
461 - 720	42	46
721 - 1025	48	65
1026 - 1450	54	89
1451 - 1870	60	112

Strongly consider having culverts larger than sixty (60) inches designed, or consider alternative structures, such as bridges, mitered culverts, arches, etc.

<b>Watershed Area (acres)</b>	<b>Required Culvert Diameter (inches)</b>	<b>Culvert Capacity (in cubic feet/sec)</b>
1871 - 2415	66	142
2416 - 3355	72	176
3356 - 5335	84	260
5336 - 7410	96	370

<b>Watershed Area (acres)</b>	<b>Required Culvert Diameter (inches)</b>	<b>Culvert Capacity (in cubic feet/sec)</b>
7411 - 9565	108	500
9566 - 11780	120	675

Culverts larger than one hundred twenty (120) inches must be designed; consider alternative structures.

# See exception for southeast Idaho in Subsection 040.02.ii. of this rule. (4-5-00)

iii. Relief culverts, and those used for seeps, springs, wet areas, and draws shall not be less than twelve (12) inches in diameter for permanent installations. (7-1-96)

f. On existing roads that are not reconstructed or damaged by catastrophic events, landowners or operators are encouraged, but not required, to replace or provide mitigation for culverts that do not provide for fish passage in accordance with Subsection 040.02.e.i. or cannot carry the fifty (50) year peak flow of Subsection 040.02.e.ii. (4-11-06)

g. Stream crossings, including fords, shall be minimum in number and planned and installed in compliance with the Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and with culvert sizing requirements of Subsection 040.02.e. Fords are an acceptable stream crossing structure on small, shallow streams, with flat, less than four percent (4%) gradients. Fords should cross the stream at right angles. Approaches shall be adequately cross-drained and rocked for at least seventy-five (75) feet. During times of salmonid spawning and egg incubation or to protect active domestic water diversions, use shall be limited to low water, dry, or frozen conditions and hauling or equipment crossing trips limited to minimize sediment delivery to streams. (4-11-06)

h. Avoid reconstruction of existing roads located in stream protection zones, except for approaches to stream crossings, unless it will result in the least long-term impact on site productivity, water quality, and fish and wildlife habitat. Reconstruction of existing roads in stream protection zones will require a variance. Reusing existing roads in stream protection zones for skidding or landing logs shall require a variance. Reusing existing roads in stream protection zones for hauling fully suspended logs only, where no reconstruction will occur, does not require a variance. (4-11-06)

**03. Road Construction.** Construct or reconstruct roads in a manner to prevent debris, overburden, and other material from entering streams. (4-5-00)

a. Roads shall be constructed in compliance with the planning guidelines of Subsection 040.02. (7-1-96)

b. Clear all debris generated during construction or maintenance which potentially interferes with drainage or water quality. Deposit excess material and slash on geologically stable sites outside the stream protection zones. (4-5-00)

c. Where exposed material (road surface, cut slopes or fill slopes, borrow pits, waste piles, etc.) is potentially erodible, and where sediments would enter streams, stabilize prior to fall or spring runoff by seeding, compacting, rocking, riprapping, benching, mulching or other suitable means. (4-5-00)

d. In the construction of road fills, compact the material to reduce the entry of water, minimize erosion, and settling of fill material. Minimize the amount of snow, ice, or frozen soil buried in embankments. No significant amount of woody material shall be incorporated into fills. Available slash and debris may be utilized as a filter windrow along the toe of the fill, but must meet the requirements of the Idaho Forestry Act and Fire Hazard Reduction Laws, Title 38, Chapters 1 and 4, Idaho Code. (4-5-00)

e. During and following operations on out-sloped roads, retain out-slope drainage and remove berms on the outside edge except those intentionally constructed for protection of road grade fills. (8-13-85)

- f. Provide for drainage of quarries to prevent sediment from entering streams. (8-13-85)
- g. Construct cross drains and relief culverts to minimize erosion of embankments. Installation of erosion control devices should be concurrent with road construction. Use riprap, vegetative matter, downspouts and similar devices to minimize erosion of the fill. Install drainage structures or cross drain incompleted roads which are subject to erosion prior to fall or spring runoff. Install relief culverts with a minimum grade of one percent (1%). (4-5-00)
- h. Earthwork or material hauling shall be postponed during wet periods if, as a result, erodible material would enter streams. (4-5-00)
- i. Cut slopes shall be reconstructed to minimize sloughing of material into road surfaces or ditchlines. Remove or stabilize material subject to sloughing concurrent with the construction operation. (4-5-00)
- j. Roads constructed on slopes greater than sixty percent (60%) in unstable or erodible soils shall be full benched without fill slope disposal. At stream and draw crossings keep fills to a minimum. A variance is required if a full bench is not used. (4-5-00)
- 04. Road Maintenance.** Conduct regular preventive maintenance operations to minimize disturbance and damage to forest productivity, water quality, and fish and wildlife habitat. (4-5-00)
- a. Place all debris or slide material associated with road maintenance in a manner to prevent their entry into streams. (4-5-00)
- b. Repair slumps, slides, and other erosion sources causing stream sedimentation to minimize sediment delivery. (4-5-00)
- c. Active roads. An active road is a forest road being used for hauling forest products, rock and other road building materials. The following maintenance shall be conducted on such roads. (8-13-85)
- i. Culverts and ditches shall be kept functional. (8-13-85)
- ii. During and upon completion of seasonal operations, the road surface shall be crowned, out-sloped, in-sloped or cross-ditched, and berms removed from the outside edge except those intentionally constructed for protection of fills. (4-5-00)
- iii. The road surface shall be maintained as necessary to minimize erosion of the subgrade and to provide proper drainage. (8-13-85)
- iv. Hauling shall be postponed during wet periods if necessary to minimize sediment delivery to streams. (4-5-00)
- v. If road surface stabilizing materials are used, apply them in such a manner as to prevent their entry into streams. (4-5-00)
- d. Incidental Haul Road. An incidental haul road is a multi-use road (residential traffic; its primary purpose is other than forest practices) that has log haul during active harvest activities. Active road maintenance requirements apply. Once active road maintenance is completed, no other maintenance is required under the Forest Practices Act (FPA). (4-11-06)
- e. Inactive roads. An inactive road is a forest road (primary purpose is for forest practices) no longer used for commercial hauling but maintained for access (e.g., for fire control, forest management activities, recreational use, and occasional or incidental use for minor forest products harvesting). The following maintenance shall be conducted on inactive roads. (4-11-06)
- i. Following termination of active use, ditches and culverts shall be cleared and the road surface shall

be crowned, out-sloped or in-sloped, water barred or otherwise left in a condition to minimize erosion. Drainage structures shall be maintained thereafter as needed. (7-1-96)

ii. The roads may be permanently or seasonally blocked to vehicular traffic. (8-13-85)

**f. Long-term Inactive Roads.** A long-term inactive road is not intended to be used again in the near future but will likely be used again at some point in the future. No subsequent maintenance of a long-term inactive road is required after the following procedures are completed: (4-5-00)

i. The road is left in a condition suitable to control erosion by out-sloping, water barring, seeding, or other suitable methods. (8-13-85)

ii. The road is blocked to vehicular traffic. (8-13-85)

iii. The department may require the removal of bridges, culverts, ditches and unstable fills. Any bridges or culverts left in place shall be maintained by the landowner. (4-5-00)

**g. Permanently Abandoned Roads.** Permanently abandoned roads are not intended to be used again. All drainage structures must be removed and roadway sections treated so that erosion and landsliding are minimized. (4-5-00)

i. Drainage structures shall be removed and stream gradients restored to their natural slope. (4-5-00)

ii. The road prism shall be treated to break up compacted areas. (4-5-00)

iii. Fill slopes of roads within stream protection zones shall be pulled back to a stable configuration unless long-term stability has already been achieved. (4-5-00)

iv. Unstable sidehill fills shall be pulled back to a stable configuration. (4-5-00)

v. Ditch line erosion shall be controlled by cross-ditching, outsloping, or regrading to eliminate ditches. (4-5-00)

vi. All bare earth areas created by regrading, ripping, and drainage removal shall be stabilized by seeding, mulching, armoring, or other suitable means. (4-5-00)

**05. Winter Operations.** Due to risk of erosion and damage from roads and constructed skid trails inherent in winter logging, at minimum the following shall apply: (4-21-92)

**a.** Roads to be used for winter operations must have adequate surface and cross drainage installed prior to winter operations. Drain winter roads by installing rolling dips, driveable cross ditches, open top culverts, outsloping, or by other suitable means. (4-21-92)

**b.** During winter operations, roads will be maintained as needed to keep the road surface drained during thaws or break up. This may include active maintenance of existing drainage structures, opening of drainage holes in snow berms and installation of additional cross drainage on road surfaces by ripping, placement of native material or other suitable means. (4-21-92)

**041. -- 049. (RESERVED)**

**050. RESIDUAL STOCKING AND REFORESTATION.**

**01. Purpose.** The purpose of these rules is to provide for residual stocking and reforestation that will maintain a continuous growing and harvesting of forest tree species by describing the conditions under which reforestation will be required, specifying the minimum number of acceptable trees per acre, the maximum period of time allowed after harvesting for establishment of forest tree species, and for sites not requiring reforestation, to maintain soil productivity and minimize erosion. (7-1-96)

**02. Quality of Residual Stocking.** On any operation, trees left for future harvest shall be of acceptable species and adequately protected from harvest damage to enhance their survival and growth. This may be accomplished by locating roads and landings and by conducting felling, bucking, skidding, yarding, and decking operations so as to minimize damage to residual trees. Acceptable residual trees should have a minimum live crown ratio of thirty percent (30%), minimum basal scarring, and should not have dead or broken tops. When stands have a high percentage of unacceptable trees, consider stand replacement rather than intermediate cuttings. (7-1-96)

**03. Sites Unpractical to Reforest.** Sites unpractical to reforest, generally ponderosa pine and drier Douglas-fir habitat types, shall not be harvested below minimum stocking, unless the site is converted to some other use, or in instances of wildfire, insects, disease or other natural causes where salvage of the damaged timber is planned. (4-4-13)

**a.** When harvesting timber on these sites, one (1) of the following actions must be taken: (4-4-13)

**i.** Establish a new stand by leaving seed trees on the site and inter-planting at least once within five (5) years of completing the harvest, if needed to meet minimum stocking. (4-4-13)

**ii.** Establish a new stand of timber by planting the site with an acceptable tree species, and inter-planting at least once within five (5) years of the original planting, if needed to meet minimum stocking. (4-4-13)

**b.** If the efforts listed in Subparagraphs 050.03.a.i. and 050.03.a.ii. fall short of meeting the minimum stocking level, the landowner will be encouraged, but not required, to meet the minimum stocking level through additional reforestation efforts. (4-4-13)

**04. Stocking.** Stocking will be deemed adequate immediately following harvest if the following number of acceptable trees per acre, within each specified region, for at least one (1) size class, are reasonably well distributed over the area affected by forest harvesting. (NOTE: (1) DBH = Average Diameter (outside of the bark) of a tree four and one half (4.5) feet above mean ground level):

**MINIMUM STOCKING - ACCEPTABLE TREES**

Idaho Region	Size Class DBH (inches)	Average Number of Retained Trees Per Acre	Average Spacing (feet)
North	0" – 2.9"	170	16 x 16
South	0" – 2.9"	125	18 x 18
North	3.0" – 10.9"	110	19 x 19
South	3.0" – 10.9"	75	24 x 24
North	11.0" and greater	20	46 x 46
South	11.0" and greater	15	53 x 53

If immediately following harvest, the stand consists of retained trees of mixed size classes that are reasonably well distributed over the harvested area, and none of the size classes individually equal or exceed the minimum trees per acre shown above, stocking will also be deemed adequate if the weighted total of all of the size classes of the retained trees exceeds a value of one hundred seventy (170) for a stand in the North Region and one hundred twenty-five (125) in the South Region. The weighted total is calculated by multiplying the number of retained trees per acre in each size class by the weighting factors below, and adding all of these size class totals together.

Size Class	Weight
0" – 2.9"	1

Size Class	Weight
3.0" – 10.9"	1.6
11.0" and greater	8.4

Harvested stands which are not adequately stocked, as defined above, will be subject to supplemental reforestation requirements specified in Subsection 050.06. Minimum stocking requirements for Class I stream protection zones are specified in Subparagraphs 030.07.e.ii. and 030.07.e.vi. (4-4-13)

**05. Reforestation Exemptions.** (7-1-96)

**a.** Reforestation is not required for: (7-1-96)

i. Noncommercial forest land; (7-1-96)

ii. Land converted to another use. This may include land converted to roads used in a forest practice; (7-1-96)

iii. A forest practice which will result in ten (10) acres or less below minimum stocking levels. (7-1-96)

**b.** On lands exempted under Subsection 050.03, where reforestation is not being planned, some form of grass or planted cover shall be established within one (1) year in order to maintain soil productivity and minimize erosion. (7-1-96)

**06. Supplemental Reforestation.** Seeding and/or planting may be required if after three (3) growing seasons from the date of harvest, stocking levels do not meet the standards in Subsection 050.04. Required seeding and/or planting shall be completed before the end of the fifth growing season following the time of harvest, except that the director shall grant an extension of time if suitable seeds or seedlings are not available or if weather or other conditions interfere. (7-1-96)

**a.** Reforestation practices must ensure seedlings become established. This can be accomplished by adequate site preparation, utilizing acceptable seed or seedlings, following accepted planting or sowing practices, or by other suitable means. (7-1-96)

**b.** The party responsible for reforestation is the landowner during the harvest which reduced stand stocking below the minimum levels stated in Subsection 050.04. (4-4-13)

**051. -- 059. (RESERVED)**

**060. USE OF CHEMICALS AND PETROLEUM PRODUCTS.**

**01. Purpose.** Chemicals perform an important function in the growing and harvesting of forest tree species. The purpose of these rules is to regulate handling, storage and application of chemicals in such a way that the public health and aquatic and terrestrial habitats will not be endangered by contamination of streams or other bodies of water. In addition, the application of chemicals are regulated by the Commercial Fertilizer Law, Title 22, Chapter 6; the Soil and Plant Amendment Law, Title 22, Chapter 22, and the Idaho Pesticide Law, Title 22, Chapter 34, Idaho Code and IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." (7-1-98)

**02. Petroleum Products.** Petroleum storage containers with capacities of more than two hundred (200) gallons, stationary or mobile, will be located no closer than one hundred (100) feet from any stream, water course, lake, or area of open water. Dikes, berms or embankments will be constructed to contain at least one hundred ten percent (110%) of the volume of petroleum products stored within the tanks. Diked areas will be sufficiently impervious and of adequate capacity to contain spilled petroleum products. In the event any leakage or spillage enters any stream, water course, lake, or area of open water, the operator will immediately notify the department. (7-1-98)

**a.** Transferring petroleum products. During fueling operations or petroleum product transfer to other containers, there shall be a person attending such operations at all times. Fueling operations should not take place where, if spillage occurs, the fuel will enter streams, lakes or other areas of open water. (7-1-98)

**b.** Equipment and containers used for transportation, storage or transfer of petroleum products shall be maintained in a leakproof condition. If the department determines there is evidence of petroleum product leakage or spillage, the use of such equipment shall be suspended until the deficiency has been corrected. (7-1-98)

**c.** Waste resulting from logging operations, such as crankcase oil, filters, grease, oil containers, or other nonbiodegradable waste shall be removed from the operating area and disposed of properly. (7-1-98)

**03. Licensing.** Any person applying, mixing or loading pesticides shall comply with the licensing requirements of Idaho Pesticide Law and IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." This requirement does not pertain to individuals applying general use pesticides on their own property. (7-1-98)

**04. Maintenance of Equipment.** (10-14-75)

**a.** Equipment used for transportation, storage or application of chemicals shall be maintained in leakproof condition. If, in the director's judgment, there is evidence of chemical leakage, he shall have the authority to suspend the further use of such equipment until the deficiency has been corrected. (10-14-75)

**b.** The storage of pesticide shall also be conducted in accordance with the requirements Rules of the Idaho Pesticide Law and IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." (7-1-98)

**05. Mixing.** (10-14-75)

**a.** When water is used in mixing chemicals: (10-14-75)

**i.** Provide an air gap or reservoir between the water source and the mixing tank. (10-14-75)

**ii.** Use uncontaminated tanks, pumps, hoses and screens to handle and transfer mix water for utilization in pesticide operations. (7-1-98)

**b.** Mixing and landing areas: (10-14-75)

**i.** Mix chemicals and clean tanks and equipment only where spills will not enter any water source or streams. (10-14-75)

**ii.** Landing areas shall be located where spilled chemicals will not enter any water source or stream. (8-13-85)

**iii.** Rinsate and wash water should be recovered and used for make-up water, be applied to the target area, or disposed of according to state and federal laws. (7-1-98)

**06. Aerial Application:** (10-14-75)

**a.** With the exception of pesticides approved for aquatic use and applied according to labeled directions, when applying pesticide leave at least one (1) swath width (minimum one hundred (100) feet) untreated on each side of all Class I streams, flowing Class II streams and other areas of open water. When applying pelletized fertilizer, leave a minimum of fifty (50) feet untreated on each side of all Class I streams, flowing Class II streams, and other areas of open water. (7-1-98)

**b.** Use a bucket or spray device capable of immediate shutoff. (10-14-75)

- c. Shut off chemical application during turns and over open water. (10-14-75)
- d. Aerial application of pesticides shall also be conducted according to the Idaho Pesticide Law and IDAPA 02.03.03, “Rules Governing Pesticide and Chemigation Use and Application.” (7-1-98)
- 07. Ground Application with Power Equipment.** (10-14-75)
- a. With exception of pesticides approved for aquatic use and applied according to labeled directions, when applying pesticide, leave at least twenty-five (25) feet untreated on each side of all Class I streams, flowing Class II streams and areas of open water. (7-1-98)
- b. When applying fertilizer, leave at least ten (10) feet untreated on each side of all streams and areas of open water. (10-14-75)
- 08. Hand Application.** (10-14-75)
- a. Apply only to specific targets; such as, a stump, burrow, bait, or trap. (10-14-75)
- b. Keep chemicals out of all water sources or streams. (10-14-75)
- 09. Limitations on Applications.** (10-14-75)
- a. Chemicals shall be applied in accordance with all limitations and instructions printed on the product registration labels, supplemental labels, and others established by regulation of the director. (7-1-98)
- b. Do not exceed allowable rates. (7-1-98)
- c. Prevent direct entry of chemicals into any water source or stream. (8-13-85)
- 10. Daily Records of Chemical Applications.** (10-14-75)
- a. When pesticides are applied on forest land, the operator shall maintain a daily record of spray operations which includes: (7-1-98)
- i. Date and time of day of application. (8-13-85)
- ii. Name and address of owner of property treated. (8-13-85)
- iii. Purpose of the application (control of vegetation, control of Douglas-fir tussock moth, etc.). (8-13-85)
- iv. Contractor’s name and pilot’s name when applied aerially. Contractor’s name or applicator’s name for ground application. (7-1-96)
- v. Location of project (section, township, range and county). (10-14-75)
- vi. Air temperature (hourly). (10-14-75)
- vii. Wind velocity and direction (hourly). (10-14-75)
- viii. Pesticides used including trade or brand name, EPA product registration number, mixture, application rate, carrier used and total amounts applied. (7-1-98)
- b. Whenever fertilizers or soil amendments are applied, the operator shall maintain a daily record of such application which includes Subsection 060.10 and the name of the fertilizer or soil amendment and application rate. (7-1-98)

**c.** The records required in Subsection 060.10 shall be maintained in compliance with the record-keeping requirements of IDAPA 02.03.03, “Rules Governing Pesticide and Chemigation Use and Application.” (7-1-98)

**d.** All records required in Subsection 060.10 shall be retained for three (3) years. (7-1-98)

**11. Container Disposal.** Chemical containers shall be: cleaned and removed from the forest and disposed of in a manner approved by the director in accordance with applicable local, state and federal regulations; or removed for reuse in a manner consistent with label directions and applicable regulations of a state or local health department. Open burning of containers is prohibited. (7-1-98)

**12. Spills.** Spills shall be reported and appropriate cleanup action taken in accordance with applicable state and federal laws and rules and regulations. (8-13-85)

**a.** All chemical accidents and spills shall be reported immediately to the director. (7-1-98)

**b.** If chemical is spilled, appropriate procedures shall be taken immediately to control the spill source and contain the released material. (7-1-98)

**c.** It is the applicator’s responsibility to collect, remove, and dispose of the spilled material in accordance with applicable local, state and federal rules and regulations and in a manner approved by the director. (7-1-98)

**13. Misapplications.** Whenever chemicals are applied to the wrong site or pesticides are applied outside of the directions on the product label, it is the responsibility of the applicator to report these misapplications immediately to the director. (7-1-98)

**061. -- 069. (RESERVED)**

**070. SLASHING MANAGEMENT.**

**01. Purpose.** To provide for management of slashing and fire hazard resulting from harvesting, forest management, or improvement of forest tree species, or defoliation caused by chemical applications in that manner necessary to protect reproduction and residual stands, reduce risk from fire, insects and disease or optimize the conditions for future regeneration of forest tree species and to maintain air and water quality, fish and wildlife habitat. (10-14-75)

**02. Commercial Slash.** Fuels and debris resulting from a forest practice involving removal of a commercial product shall be managed as set forth in the Idaho Forestry Act, Title 38, Chapters 1 and 4, Idaho Code and the rules and regulations pertaining to forest fire protection. (7-1-96)

**03. Non-Commercial Slash.** Fuels and debris resulting from a forest practice where no commercial product is removed shall be managed in a manner as hereinafter designated under authority of the Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. (1-24-78)

**a.** Within ten (10) days or a time mutually agreed upon following receipt by the department of the “Notification of Forest Practice” as provided in Subsection 020.05, the department shall make a determination of the potential fire hazard and hazard reduction and/or hazard offsets, if any, needed to reduce, abate or offset the fire hazard. Such determination shall be based on a point system found in Subsection 070.03.e. (7-1-96)

**b.** The operator, timber owner and landowner shall be notified in writing of the determination made in Subsection 070.03.a. above (on forms provided by the department) and of the hazard reductions and/or hazard offsets, if any, that must be accomplished by the operator, timber owner or landowner. The notification shall specify a reasonable time period not to exceed twelve (12) months from the date the forest practice commenced in which to complete the hazard reduction and shall specify the number of succeeding years that on site improvements or extra protection must be provided. (7-1-96)

**c.** A release of all obligations under Subsection 070.03 shall be granted in writing on forms provided by the department when the hazard reduction and/or hazard offsets have been accomplished. When hazard offsets are to be accomplished during succeeding years, the release shall be conditioned upon the completion of the required hazard offsets. Notification of release shall be mailed to the operator, timber owner and landowner within seven (7) days of the inspection by the department. Inspections by the department shall be made within ten (10) days of notification by the operator, timber owner or landowner unless otherwise mutually agreed upon. (7-1-96)

**d.** If the department determines upon inspection that the hazard reduction or hazard offsets have not been accomplished within the time limit specified in Subsection 070.03.b., extensions of time, each not to exceed three months, may be granted if the director determines that a diligent effort has been made and that conditions beyond the control of the party performing the hazard reduction or hazard offsets prevented completion. If an extension is not granted the department shall proceed as required in Section 38-1307, Idaho Code (Idaho Forest Practices Act). (7-1-96)

**e.** For the purpose of determining the potential fire hazard and the appropriate hazard reduction and/or hazard offsets, a point system using the following rating guides will be used by the department. A value of eighty (80) points or less for any individual forest practice under Subsection 070.03, as determined by the department, will be sufficient to release the operator, timber owner and landowner of all further obligations under Subsection 070.03. Total points of the proposed forest practice will be determined from Tables I and II. If the total points are greater than eighty (80), modification of the thinning practice to reduce points may be made as determined by Tables I and II, slash hazard offsets may be scheduled to reduce points as determined by Table III or a combination of these options may be used to reduce the hazards to a point total of eighty (80) or less. Consideration will be given to the operator's, timber owner's and landowner's preference in selecting the options to reduce the points to eighty (80) or less.

**TABLE I - HAZARD POINTS**

**Hazard Points for Ponderosa Pine, Western Red Cedar or Western Hemlock**

Thinned Stems Per Acre											
Ave. DBH	250	500	750	1000	1250	1500	1750	2000	2500	3000	4000
1	1	2	3	3	4	5	6	7	9	10	16
2	3	6	9	13	16	22	25	30	36	42	51
3	7	16	25	32	38	46	51	52	56	59	
4	9	22	32	40	50	52	54	56	60		
5	13	28	40	51	54	56	59	60			
6	19	36	51	54	58	60	60				

Hazard Points for Douglas Fir, Grand Fir or Engelmann Spruce

Thinned Stems Per Acre											
Ave. DBH	250	500	750	1000	1250	1500	1750	2000	2500	3000	4000
1	1	2	3	4	6	7	8	9	13	16	22
2	4	7	13	16	22	28	32	36	42	50	54
3	8	19	28	36	44	51	53	54	58	60	
4	10	25	36	46	51	54	57	59	60		
5	16	32	46	52	56	59	60	60			
6	22	40	52	56	60	60	60				

Hazard Points for Western Larch, Lodgepole Pine or Western White Pine

Thinned Stems Per Acre											
Ave. DBH	250	500	750	1000	1250	1500	1750	2000	2500	3000	4000
1	1	2	2	3	4	4	5	6	8	9	13
2	3	6	8	11	16	19	22	28	32	38	48
3	6	16	25	32	38	46	51	52	56	59	
4	8	16	28	36	44	50	52	54	58		
5	9	22	32	42	50	53	55	57			
6	13	28	40	50	53	56	59				

TABLE II - HAZARD POINTS WORKSHEET

HAZARD CHARACTERISTICS

HAZARD POINTS

Fuel Quantity

Hazard points from Slash Hazard Table I 1/

Record number of trees/acre to be cut

Average D.B.H.

Predominant species

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Size of thinning block

Points 0 - 15

16 - 30

31 - 45

46 - 60 1/

Acres 20

20 - 40

40 - 80

80

Site Factor

Record Slope \_\_\_\_\_ % Aspect \_\_\_\_\_

Determine points from table below 1/

ASPECT	PERCENT SLOPE			
	0 - 19	20 - 39	40 - 59	60
E or NE	0	5	10	20
E or NW	0	5	10	30
W or SE	0	10	30	40
S or SW	0	20	40	60
1/	Max. 60 points			

Other Factors	
Condition of operating area before forest practice commences	0 - 20 points
Condition of adjoining area	0 - 20 points
Presence of snags and culls	0 - 5 points
Deterioration rate of slash	0 - 5 points
Time of year forest practice operation	10 points
October thru December	2 points
August thru September	4 points
January thru April	7 points
May thru July	10 points
<b>TOTAL FOREST PRACTICE AREA POINTS</b>	<b>(Max. 240 points)</b>

**TABLE III - HAZARD OFFSETS**

Offsets	Hazard Point Deductions
<b>Physical Changes to the Hazard (1)</b>	
(1) Points will be proportional to the amount of hazard disposed of or modified.	
Disposal by burning or removal.	0 - 160
Modification by reducing depth through crushing, chipping or lopping.	0 - 60
<b>On Site Improvements</b>	
Condition of main access road to forest practice area should allow movement of heavy trucks without difficulty.	0 - 5

Offsets	Hazard Point Deductions
Access control to forest practice area provided by closure to public traffic.	0 - 5
Availability of water for tankers within one mile of forest practice area or within three miles for helicopter bucket use. Water supply to be sufficient to supply at least fifty thousand (50,000) gallons.	0 - 15
Buffer zones of unthinned areas at least two chains in width between roadways and thinned areas.	0 - 10
Fuel breaks with slash hazard removal around and/or through forest practice area, located so as to provide optimum fire control effect and of two to four chains in width.	0 - 25
Fire trails with fuel removed to expose mineral soil to a width of twelve (12) feet. Maximum points allowed if combined with a fuel break.	0 - 15
<b>Extra Protection</b>	
Increased attack capability such as retardant availability, increased attack manpower and equipment. Must be in addition to regular forces normally available during the fire season.	0 - 40
Fire detection and prevention increased beyond that normally available for lands in the fire protection district.	0 - 15
Initial attack time based on proximity of forest practice area to initial attack forces.	0 - 5
Landowner protection plan which would provide extra fire protection on a voluntary basis such as extra equipment and/or manpower.	0 - 5

(1-24-78)

**071. PRESCRIBED FIRE.**

**01. Purpose.** Prescribed fire is a tool with application in land management. Smoke from prescribed fires can have adverse impacts on ambient air quality or public health. It is the purpose of these rules to establish a management system for smoke from prescribed fires that will protect air quality. (7-1-96)

**02. Notification.** The use of prescribed fire requires a valid notification in accordance with Subsection 020.05 to maintain air quality and to protect public health. Possession of a valid notification will not preclude meeting the fire safety requirements specified in Section 38-115, Idaho Code. (7-1-96)

**03. Recommended Practices.** To maintain air quality and protect public health the following practices are recommended: (7-1-96)

**a.** Slash and large woody debris piles should be compact and free of stumps, soil, snow, and nonwoody organic material. (7-1-96)

**b.** Piles should be fully cured, dried at least two (2) months, prior to ignition. Piles should be at least partially covered with a water resistant material so they can be ignited after enough precipitation to lower the fire danger. (7-1-96)

**c.** Broadcast burns should be conducted within a prescription that minimizes adverse effects on air quality. (7-1-96)

**d.** Membership in good standing in a recognized Airshed Group is encouraged. (7-1-96)

**072. -- 999. (RESERVED)**

Summary of Comments Received on IDAPA 20.02.01, Rules Pertaining to the Idaho Forest Practices Act

	<b>Rule Section</b>	<b>Comment</b>	<b>Response</b>
1	Shade Rule	The rule was supported by all major forest landowner groups.	IDL agrees and committed to an adaptive rulemaking process that will meet Idaho Department of Environmental Quality (DEQ) water quality requirements while also providing riparian area forest management flexibility.
2	Shade Rule	The rule is effective at protecting and maintaining the water quality of Class I fish-bearing streams.	The DEQ Shade Effectiveness Study results will inform the validity of this statement.
3	Shade Rule	Idaho Conservation League (ICL), the Nez Perce Tribe, and the Environmental Protection Agency (EPA) have expressed concerns the current rule may not sufficiently protect water quality.	The goal of the 2014 shade requirement modification was to ensure that on average throughout Idaho no more than 10% reduction of shade would result from harvesting under the Class I Stream Protection Zone Relative Stocking harvest-options.
4	Shade Rule	Landowners can more efficiently and effectively manage forestlands under the current shade rule vs the past shade rule.	IDL agrees.
5	Shade Rule	The new shade rule is scientifically defensible and more enforceable.	IDL agrees.
6	Shade Rule	Premature to modify the Shade Rule prior to the results of the Shade Effectiveness Study.	IDL agrees.
7	Shade Rule	Support reauthorization of the current Shade Rule with no changes.	IDL agrees.
8	Shade Rule	ICL is concerned revisions to the shade rule will impede collaborative efforts to reduce hazardous fuels and improve forest health under Shared Stewardship.	Revision of any rule should not impede forest practices that meet or exceed the minimum standards required under IDAPA 20.02.01.

	<b>Rule Section</b>	<b>Comment</b>	<b>Response</b>
9	Shade Rule	Shade retention improvement is critical to meeting water quality standards for temperature.	EPA and Idaho DEQ have indicated that retaining shade over fish-bearing streams minimizes temperature increases that would degrade water quality for aquatic habitat.
10	Shade Rule	The rule premise is flawed because temperature is not directly considered.	Shade is a well-established proxy for temperature.
11	Shade Rule	Domestic use should be removed from the Class I Stream definition, because there is not a water quality temperature requirement for domestic use.	IDL is investigating water quality requirements for domestic use and other states' regulations regarding domestic use and forest practices.
12	Shade Rule	The rule is difficult and costly to implement.	The metrics for the rule are less difficult to determine and IDL offers implementation assistance to landowners. IDL added three Private Forestry Specialist positions at the time of rule passage to assist forest landowners.
13	Shade Rule	Landowners must hire specialized knowledge to implement the rule.	IDL offers implementation assistance to landowners free of charge and has provided hundreds of such assists since the rule was codified.
14	Shade Rule	The IDL added three additional Private Forestry Specialists to assist landowners.	This is correct.
15	Shade Rule	The rule is a disincentive to forest management and will result in conversion of land-use to use that is not subject to the shade rule.	The rule has resulted in more responsible management than in the past.
16	Shade Rule	Agricultural producers and developers are not required to provide shade for Class I streams.	IDL does not have regulatory authority for non-forest related practices in Idaho.
17	Shade Rule	The rule is based on a model and not actual conditions.	The rule is based on Idaho timber stand data and forestry community accepted tools for estimating shade from forest canopy.

	<b>Rule Section</b>	<b>Comment</b>	<b>Response</b>
18	Shade Rule	The rule should take into account the stream width.	Geo-morphology and hydrology for forest streams is very complex and adding additional metrics to the rule would make compliance for landowners extremely challenging.
19	Shade Rule	The rule prevents managing for forest health.	IDL can assist landowners to develop a site-specific, riparian, management plan to address unique situations arising from insect, disease or other tree damage issues.
20	Shade Rule	The rule should take into account hardwoods that provide shade.	The rule counts all trees with diameter at breast height equal to or greater than 4 inches regardless of species.
21	Shade Rule	The shade rule is unconstitutional.	The State of Idaho Attorney General's Office has prepared an analysis confirming constitutionality of the rule.
22	Shade Rule	There is no clear authorization in the Forest Practices Act for the shade rule	Idaho Code § 38-1304(1)(a) provides authorization for the protection of fish habitat.
23	Shade Rule	Changes in the shade rule are barred by the act itself.	Idaho Code § 38-1305(2)(a) provides for a Forest Practices Advisory Committee to assist IDL and the Land Board in rule promulgation.
24	Shade Rule	The rule is a taking of private property/landowner compensation is required.	The State of Idaho Attorney General's Office has prepared an analysis to address comment. Their overall conclusion is the Shade Rule does not constitute a taking under the Idaho Constitution.
25	Shade Rule	Enforcing the shade rule on private landowners provides only an incremental benefit.	Idaho Code § 38-1304(1)(a) provides for the protection of fish habitat, regardless of ownership.
26	Shade Rule	Small landowners are proportionally affected more than large landowners.	Large landowners often have more acreage in the SPZ, higher harvest operating costs and costs for infrastructure development.
27	Shade Rule	None of us think there should be no riparian management rules at all.	This supports the proposed rule. If the Shade Effectiveness Study shows need for further shade rule amendment, IDL will work with FPAAC to develop appropriate rule changes.

	<b>Rule Section</b>	<b>Comment</b>	<b>Response</b>
28	General	Landowners can do a site-specific plan, and utilize the variance process within the rules, for unique situations.	This is correct.
29	General	Other portions of the Forest Practices Act indicate the act is purely voluntary and cooperative.	Idaho Code § 38-1304(1) provides for the adoption of rules that are minimum standards.
30	General	The legislature clearly indicated flexibility in reforestation.	Idaho Code § 38-1312(1) indicates the act does not prevent the conversion in use of forest land, but does require compliance with the rules promulgated pursuant thereto.
31	General	The legislature intended to defer to private owner management decisions.	Idaho Code § 38-1304(1) provides for the adoption of rules that are minimum standards.

IDAHO DEPARTMENT OF LANDS

**REGULATORY TAKING ANALYSIS  
REQUESTED BY TOM MOSMAN AND THE  
IDAHO FARM BUREAU FEDERATION**

This Regulatory Taking Analysis (“Analysis”) is provided pursuant to Idaho Code §§ 67-8001 *et seq.* (“Idaho Regulatory Takings Act” or “IRTA”), the purpose of which is to provide for “an orderly, consistent review process that better enables state agencies . . . to evaluate whether proposed regulatory or administrative actions may result in a taking of private property without due process of law.” I.C. § 67-8001. The IRTA further provides that upon request of a private property owner, a state agency must provide a regulatory taking analysis no longer than forty-two (42) days after the request is filed with an agency. I.C. § 67-8003(2).

**Procedural Background**

On August 12, 2019, Tom Mosman, a private timber lands owner in Idaho, requested that the Idaho Department of Lands (“IDL”) prepare a regulatory taking analysis regarding a portion of the Rules Pertaining to the Idaho Forest Practices Act, IDAPA 20.02.01.000 *et seq.* (“FPA Rules”). Specifically, Mr. Mosman has requested the analysis as to IDAPA 20.02.01.030.07.e, more commonly known as the “Shade Rule,” alleging that the Shade Rule “has deprived me of my right to harvest certain timber on my own private property without any compensation.” Letter from Tom Mosman to Dustin Miller, IDL Director, dated August 12, 2019 (“Request”).

On August 15, 2019, the Idaho Farm Bureau Federation (“Farm Bureau”) provided comments to the FPA Rules, as part of the rulemaking process. While the Farm Bureau did not specifically request a regulatory takings analysis, it asserted that:

The shade rule’s prohibition of harvest of privately owned trees is a deprivation of property within [the regulatory taking definition in I.C. § 67-8002(4)]. It directly takes money out of the pockets of private landowners when they are forced to leave trees that they might otherwise profitably harvest.

I.C. § 67-8002(4).

**Legal Background**

As previously noted, the Shade Rule was amended in 2014, and the Notice of Rulemaking – Adoption of Pending Rule for those amendments provides, in pertinent part:

The Idaho Forest Practices Act Advisory Committee (FPAAC) is comprised of 9 voting members across the state of Idaho representing family forest owners, industrial forest owners, fisheries biologists, citizens at large, and logging operators. This committee is statutorily charged with advising the Idaho State Board of Land Commissioners, in cooperation with the Idaho Department of Lands (IDL), in rulemaking matters associated with the Idaho Forest Practices Act. As a result of quadrennial water-quality audits conducted by the Idaho Department of Environmental Quality (IDEQ) in 2000 and 2004, FPAAC has been working over

the last 10 years to develop a science-based streamside tree-retention rule (shade rule) that is based on Idaho forest riparian data. The proposed shade rule will allow forest landowners to select from two options which are meant to address both shade and large wood recruitment . . .

Idaho Admin. Bulletin Vol. 14-1, p. 127 (January 1, 2014). *See also* Idaho Admin. Bulletin Vol. 13-9, p. 159 (September 4, 2013).

The Shade Rule provides that during and after forest practice operations<sup>1</sup> those conducting the operations must “[p]rovide for large organic debris (LOD), shading, soil stabilization, wildlife cover and water filtering effects of vegetation along streams,” by taking certain steps:

i. Leave shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream.

ii. Adjacent to all Class I streams<sup>2</sup>, to maintain and enhance shade and large woody debris recruitment, landowners must comply with one of the two following options defining tree retention. The Relative Stocking per acre (RS) referenced in the options is calculated according to the relative-stocking-contribution table in Subsection 030.07.e.ii.

(1) Option 1: Within twenty-five (25) feet from the ordinary high water mark on each side of the stream, live conifers and hardwoods will be retained to maintain a minimum relative stocking per acre of sixty (60). A relative stocking per acre of thirty (30) must be retained in the stream protection zone between twenty-five (25) feet and seventy-five (75) feet from the ordinary high water mark on both sides of the stream.

(2) Option 2: Within fifty (50) feet from the ordinary high water mark on each side of a stream, live conifers and hardwoods will be retained to maintain a minimum relative stocking per acre of sixty (60). A relative stocking per acre of ten (10) must be retained in the stream protection zone between fifty (50) and seventy-five (75) feet from the ordinary high water mark on both sides of the stream.

(3) Only one (1) option may be implemented within the stream protection zones of a harvesting unit covered by a single notification. Landowners are strongly encouraged to retain all trees immediately adjacent to the stream.

Forest Type	Per Tree Contribution to Relative Stocking by Diameter Class						
	Diameter Class (DBH in inches)						
	4-7.9"	8-11.9"	12-15.9"	16-19.9"	20-23.9"	24-27.9"	28-31.9"
NIGF (North Idaho Grand Fir)	0.097	0.209	0.347	0.506	0.683	0.878	1.088
CIGF (Central Idaho Grand Fir)	0.113	0.244	0.405	0.59	0.797	1.024	1.27

<sup>1</sup> The term “forest practice” is defined in Idaho Code § 38-1303(1).

<sup>2</sup> Class I streams “are used for domestic water supply or are important for the spawning, rearing or migration of fish. Such waters shall be considered to be Class I upstream from the point of domestic diversion for a minimum of one thousand three hundred and twenty (1,320) feet.” IDAPA 20.02.01.010.60.a.

SIGF (Southern Idaho Grand Fir)	0.136	0.293	0.486	0.708	0.957	1.229	1.524
WHSF (Western Hemlock-Subalpine Fir)	0.123	0.267	0.442	0.644	0.87	1.117	1.385
DFPP (Douglas-fir-Ponderosa Pine)	0.151	0.326	0.54	0.787	1.063	1.366	1.693

iii. To protect filtering and shade effects of streamside vegetation adjacent to all Class II streams<sup>3</sup> following harvesting and hazard management activities, live trees will be retained or new trees established within thirty (30) feet on each side of the streams [sic] ordinary high water mark to comply with the minimum stocking standards expressed in Subsection 050.04.

iv. During harvesting, carefully remove timber from the Stream Protection Zone in such a way that large organic debris, shading and filtering effects are maintained and protected. When portions of felled trees fall into or over a Class I stream, leave the portion consistent with the LOD definition of Subsection 010.35.<sup>4</sup>

v. When harvesting portions of trees that have fallen naturally into or over a Class I stream, leave the portion(s) over the [stream] consistent with the LOD definition of Subsection 010.35. Leaving the section with the root ball attached is preferred.

vi. During harvesting operations, portions of felled or bucked trees not meeting the LOD definition shall be removed, consistent with the slash removal requirements of Subsection 030.06.

vii. To obtain a variance from the standing tree and shade requirements, the operator must develop a site specific riparian management prescription and submit it to the department for approval. The prescription should consider stream characteristics and the need for large organic debris, stream shading and wildlife cover which will achieve the objective of these rules.

viii. Stream width shall be measured as average between ordinary high water marks.

IDAPA 20.02.01.030.07.e. The Shade Rule does not require that particular stream-adjacent trees be retained in perpetuity. Rather, a combination of trees sufficient to meet the minimum relative stocking levels must be retained – trees may be harvested, so long as the minimum stocking levels remain.

<sup>3</sup> Class II streams “are usually headwater streams or minor drainages that are used by only a few, if any, fish for spawning or rearing. Where fish use is unknown, consider streams as Class II where the total upstream watershed is less than two hundred and forty (240) acres in the north forest region and four hundred sixty (46) acres in the south forest region. Their principle value lies in their influence on water quality or quantity downstream in Class I. streams.” IDAPA 20.02.01.010.60.b.

<sup>4</sup> Large Organic Debris is “[l]ive or dead trees and parts or pieces of trees that are large enough or long enough or sufficiently buried in the stream bank or bed to be stable during high flows. Pieces longer than the channel width or longer than twenty (20) feet are considered stable. LOD creates diverse fish habitat and stable stream channels by reducing water velocity, trapping stream gravel and allowing scour pools and side channels to form.” IDAPA 20.02.01.010.35.

Although not entirely clear, it appears that Mr. Mosman and the Farm Bureau’s regulatory takings concerns lie with subsections ii and iii, above, and this analysis will focus on those provisions.

## ANALYSIS

**NOTE:** Mr. Mosman did not provide specific information about the location of his property or his involvement with forest practices, other than to assert that the Shade Rule deprives him of the right to harvest certain timber on his private property. For purposes of this analysis, IDL assumes that Mr. Mosman has a property/ownership interest in land in Idaho, and in harvestable trees located on that land. IDL will also assume that some of those trees are located within seventy-five feet of the ordinary high water mark (“OHWM”) of a Class I stream or thirty feet of a Class II stream, respectively. The Farm Bureau has asserted that “[a] significant number of our members are private timberland owners who are directly impacted by this rule,” but that assertion lacks specific information necessary to conduct a full regulatory takings analysis. Notably, absent a property interest, Mr. Mosman and the Farm Bureau (or its individual members) could not maintain a takings claim. *See Washington Legal Foundation v. Legal Foundation of Washington*, 271 F.3d 835, 949 (9th Cir. 2001) (individual without a property interest in the principal or interest of an IOLTA account could not maintain a taking claim); *Cienega Gardens v. United States*, 331 F.3d 1319, 1328 (Fed. Cir. 2003) (in order to maintain a taking claim, “the complaining party must show it owned a distinct property interest at the time it was allegedly taken, . . .”)

Whether the Shade Rule results in a taking under the Idaho Constitution is analyzed in Section IV, below. In determining whether a regulation or the application thereof results in a taking for which compensation is due under the Fifth Amendment of the United States Constitution, a court must determine whether the regulation:

- Results in a permanent or temporary physical occupation of all or a portion of private property (*Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982));
- Requires a property owner to dedicate a portion of property to public use or grant an easement, in a manner contrary to the standards set forth in *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994);
- Prohibits *all* economically viable uses of land (*Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992));
- Constitutes a taking under the standards enunciated in *Penn Central Transp. Co. v. New York City*, 438 U.S. 104 (1978).

### I. WHETHER THE SHADE RULE PROVIDES FOR OR CONSTITUTES A PHYSICAL TAKING

Neither Mr. Mosman nor the Farm Bureau appear to argue that the Shade Rule results in a physical taking of private property. Nevertheless, in order to be complete, an analysis of whether the Shade Rule may or has resulted in a physical taking follows.

### **A. Physical Takings (Permanent or Temporary)**

A governmental action that results in a “permanent physical occupation of property,” is a taking, regardless of public benefit or economic impact to the owner. *Loretto v. Teleprompter Manhattan CARV Corp.*, 458 U.S. 419, 441 (1982) (holding that a state law which required landlords to permit cable companies to install cable television facilities in apartment buildings resulted in a compensable taking). A temporary physical occupation may also constitute a taking. *See Arkansas Game and Fish Comm’n v. United States*, 133 S.Ct. 511 (2012) (providing that temporary flooding of property by the government may constitute a taking). The physical takings category is “very narrow,” and applied only to *physical occupations* of property – it does not include those circumstances in which the government limits the *use* of one’s property. *Loretto*, 458 U.S. at 441.

The requirements of the Shade Rule, including those regarding tree retention, do not constitute a physical taking – instead, the Shade Rule is a limitation. The Shade Rule does not require nor provide for the permanent or temporary physical occupation of a person’s property by the government. In addition, the government is not physically taking or removing timber or trees from private lands – rather, the Shade Rule requires the retention of a minimum relative stocking of trees per acre, adjacent to a Class I or Class II stream.

### **B. Easement/Dedication of Property (“Land Use Exaction”)**

This type of taking, known as a “land use exaction” taking, results when a government entity requires that a landowner dedicate a part of his or her property to a public use as a condition of receiving a permit or approval. *See Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987) (taking occurred when permit to build a large beachfront house was conditioned on the dedication of a public access easement); *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (taking occurred when requirement that landowner dedicate a portion of the subject property as a public greenway in order to obtain a permit to expand a store and parking lot). *Nollan* and *Dolan* have been described “takings challenges to land-use exactions – specifically, government demands that a landowner dedicate an easement allowing public access to her property as a condition of obtaining a development permit.” *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 546, 125 S.Ct. 2074, 2086 (2005). The Court’s holdings in those cases were based on the premise that had the government outright taken a portion of the beachfront property as an easement, or the store property as a public greenway, it would have been a *per se* physical taking. *See Lingle*, 544 U.S. at 547, 125 S.Ct. at 2087 (“*Nollan* and *Dolan* both involved dedications of property so onerous that, outside the exactions context, they would be deemed *per se* physical takings.”) Courts have concluded that in those specific land-use exaction cases, “the government may not require a person to give up a constitutional right – here the right to receive just compensation when property is taken for a public use – in exchange for a discretionary benefit conferred by the government where the benefit has little or no relationship to the property.” *Dolan*, 512 U.S. at 385.

Neither Mr. Mosman nor the Farm Bureau indicated that they were asserting that a land use exaction or forced dedication occurred by virtue of the Shade Rule, either facially or as applied. The Shade Rule does not require landowners to dedicate any portion of their property for a public “greenway” or easement, including as a condition of receiving a compliance certificate from IDL.

Moreover, unlike the situations in *Nollan* and *Dolan*, the Shade Rule does not require a property owner to dedicate a portion of his or her property for public access. That fact is significant – the *Dolan* court specifically noted that in that case, the city never explained why a **public** greenway, as opposed to a **private** greenway, was necessary to protect the city’s legitimate interest of flood control. *Dolan*, 512 U.S. at 393. The loss of Dolan’s ability to exclude others was significant to the court. In contrast, the Shade Rule does not deprive property owners of their ability to exclude others; rather, the minimum retention provisions are analogous to a private greenway.

## II. PER SE TAKINGS DUE TO LOSS OF ALL ECONOMICALLY BENEFICIAL USE OF PROPERTY

While not a physical occupation, a different type of *per se* taking occurs “when the owner of real property has been called upon to sacrifice *all* economically beneficial uses in the name of the common good, that is, to leave his property economically idle.” *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1019 (1992) (emphasis in original). The *Lucas* “holding [is] limited to ‘the extraordinary circumstance when *no* productive or economically beneficial use of the land is permitted.’” *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Reg’l Planning Agency*, 535 U.S. 302, 330 (2002) (quoting *Lucas*, 505 U.S. at 1017) (emphasis in *Lucas*, bracketed material added). In other words, “the categorical rules would not apply if the diminution in value were 95% instead of 100% . . . . Anything less than a ‘complete elimination of value’ or a ‘total loss’ . . . would require the kind of analysis applied in *Penn Central [Transp. Co. v. New York City]*, 438 U.S. 104 (1978).” *Tahoe-Sierra*, 535 U.S. at 330 (quoting *Lucas*, 505 U.S. at 1019-20, n. 8). This type of regulatory taking has been termed a “categorical taking.”

In order to find a taking under *Lucas*, the landowner must be called upon to “leave his property economically idle.” *Lucas*, 505 U.S. at 1019. This type of taking “is quite narrow and has been confined to facts that substantiate a **permanent** deprivation of **all economic use** on all the parcels purchased by the property owner.” *Sartori v. United States*, 67 Fed. Cl. 263, 275 (Fed. Cl. 2005) (emphasis added). Courts will typically consider an owner’s property as a whole in determining whether a taking has occurred, rather than “divid[ing] a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated.” *Murr v. Wisconsin*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 1933, 1944 (2017) (quoting *Penn Central*, 438 U.S. at 130, 98 S.Ct. at 2646). As an example, the Supreme Court found that even though a property owner was precluded from filling in and developing wetlands on his property, he had not suffered a loss of all economic use, because he retained \$200,000 in development value, and could build a home, on the uplands portion of his property. *Palazzolo v. Rhode Island*, 533 U.S. 606, 630-31, 121 S.Ct. 248, 2464-65 (2001) (“[a] regulation permitting a landowner to build a substantial residence on an 18-acre parcel does not leave the property ‘economically idle.’” (Emphasis added)).

Facially, the Shade Rule does not deprive a timber owner of **all** economically beneficial uses. Owners are permitted to harvest the timber on their property. Moreover, nothing in the Shade Rule prevents landowners from conducting other activities on their land to generate economic value or income. While certain minimum relative stocking levels must be retained adjacent to Class I or II Streams, the Shade Rule does not deprive a landowner of all economically beneficial uses of his

or her land – there may even be instances where the retention of minimum stocking levels enhances certain uses of land.

To the extent that Mr. Mosman contends that the Shade Rule has deprived him of all economically beneficial use of his land, or to the extent that the Farm Bureau contends that the Shade Rule has deprived a particular member of all economically beneficial uses of his or her land (an “as applied” analysis), IDL lacks sufficient information about those specific situations to conduct such an analysis.

### **III. THE PENN CENTRAL REGULATORY TAKINGS ANALYSIS**

Absent a taking under the *Loretto*, *Nollan/Dolan* and *Lucas* standards, a regulatory taking may occur under the standards enunciated in *Penn Central*. See *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 548 (2005). There is no “set formula” for determining whether a non-categorical regulatory taking has occurred, and the Supreme Court has described the analysis as “ad hoc, factual” and dependent upon the particular circumstances of a case. *Penn Central*, 438 U.S. at 124.

In *Penn Central*, the owners of Grand Central Terminal in New York City sought to construct a 55-story office building atop the terminal. The building had previously been designated as an historical landmark, requiring the owners to apply to the Landmarks Preservation Commission for authorization to alter the terminal. After their approval was denied, the owners appealed, asserting in part that prohibiting their development of the “airspace” above the terminal had resulted in a taking. See generally *id.* at 108-119. While acknowledging the ad hoc, factual nature of a regulatory takings analysis, the Court noted

several factors that have particular significance. The economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations are, of course, relevant considerations. [Citation omitted]. So, too, is the character of the governmental action. A “taking” may more readily be found when the interference with property can be characterized as a physical invasion by government, [citation omitted] than when interference arises from some public program adjusting the benefits and burdens of economic life to promote the common good.

“Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law,” [citation omitted] and this Court has accordingly recognized, in a wide variety of contexts, that government may execute laws or programs that adversely affect recognized economic values.

*Id.* at 124. See also *Lingle*, 544 U.S. at 538-39.

The Court applied those factors, and first held that the “air rights” above the Terminal were not separate from other property rights for purposes of determining whether a taking had occurred.

Instead, the Court focused “both on the character of the action and on the nature and extent of the interference with the rights in the parcel as a whole – here, the city tax block designated as the ‘landmark site.’” *Penn Central*, 438 U.S. at 130-31. Second, the Court rejected the Terminal owner’s argument that the landmark law’s application constituted a taking because it significantly reduced the value of the Terminal. Specifically,

Stated baldly, appellants' position appears to be that the only means of ensuring that selected owners are not singled out to endure financial hardship for no reason is to hold that any restriction imposed on individual landmarks pursuant to the New York City scheme is a “taking” requiring the payment of “just compensation.” Agreement with this argument would, of course, invalidate not just New York City's law, but all comparable landmark legislation in the Nation. We find no merit in it.

*Id.* at 131.<sup>5</sup> Third, as to the landmark regulation’s character, the Court held that it was not akin to a situation where the government invaded airspace or private property or appropriated it for its own governmental use. Rather, the regulation’s effect was “simply to prohibit appellants or anyone else from occupying portions of the airspace above the Terminal, while permitting appellants to use the remainder of the parcel in gainful fashion.” *Id.* at 135. The Court therefore concluded that appellants had not established that the landmark regulations effected a taking.

With that framework in mind, IDL turns to an application of the *Penn Central* factors.

**A. Economic Impact of the Regulation on Mr. Mosman or any Farm Bureau Members.**

IDL does not have the information necessary to assess the economic impact of the Shade Rule on Mr. Mosman or any specific Farm Bureau members. However, IDL does note that pursuant to *Penn Central*, a court would consider the economic impact of the Shade Rule on a property owner’s property as a whole – not just a strip of stream-adjacent land.

**B. Interference with Distinct Investment-Backed Expectations**

A property owner’s investment-backed expectations, and the reasonableness of those expectations are “shaped by the regulatory regime in place as of the date it purchased the leases at issue.” *Appollo Fuels, Inc. v. United States*, 381 F.3d 1338, 1348-49 (Fed. Cir. 2004) (citing *Palazzolo v. Rhode Island*, 533 U.S. 606, 633 (2001) (O’Connor, J., concurring)). IDL does not know when Mr. Mosman acquired his property, or parts thereof, and therefore cannot determine what investment-backed expectations may have been reasonable at the time of acquisition. A similar fact-specific inquiry would be required for individual Farm Bureau members.

However, it is notable that the overall Forest Practices Rules have been in effect in some form since 1975. Requirements for a minimum amount of standing trees within thirty feet (30’) of Class

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<sup>5</sup> Having rejected that argument, the Court then asked whether the interference with the Terminal owner’s property rights was so significant that just compensation was required. Answering that question in the negative, the Court noted that appellants had not been prohibited from using or occupying any portion of the airspace. Moreover, the “air rights” were transferable to other properties in the vicinity. *Penn Central*, 438 U.S. at 137-38.

II streams or fifty feet (50') of Class I streams have been in effect since at least 1996. *See* <https://adminrules.idaho.gov/rules/1996/20/0201.pdf> (pp. 12-13). In 2006, the Rules were amended to add a predecessor version of the Shade Rule, which included minimum standing tree requirements. *See* <https://adminrules.idaho.gov/rules/2013/20/0201.pdf> (pp. 11-12). The existing (and proposed) version of the Shade Rule was first adopted in 2014.

More broadly, forestry and timber harvesting activities, even on private land, have long been regulated. The Forest Practices Act, Title 38, Chapter 13, Idaho Code, was first enacted in 1974, and has been amended several times over the years. The Idaho Forestry Act, Title 38, Chapter 1, Idaho Code, was first enacted in 1972 and similarly contains some limitations on forestry activities on private land. *See also*, Rules Pertaining to Forest Fire Protection, IDAPA 20.04.01.000 *et seq.*; Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws, IDAPA 20.04.02.000 *et seq.*

Those long-standing regulations, and particularly the fact that some form of retention rule regarding stream-adjacent trees has been in place for at least twenty-three (23) years and the overall the Forest Practices Rules for forty-five (45) years, and other statutes and regulations would factor into any analysis of a landowner's investment-backed expectations.

### **C. The Character of the Government Action**

Earlier in takings jurisprudence, this factor was characterized as whether the regulation “substantially advances a legitimate state interest.” However, more recently, the United States Supreme Court has removed that test from consideration in a takings analysis:

[T]he “substantially advances” formula is not a valid takings test, and indeed [we] conclude that it has no proper place in our takings jurisprudence. In so doing, we reaffirm that a plaintiff seeking to challenge a government regulation as an uncompensated taking of private property may proceed under one of the other theories. . . by alleging a “physical” taking, a *Lucas*-type “total regulatory taking,” a *Penn Central* taking, or a land-use exaction violating the standards set forth in *Nollan* and *Dolan*. . . .

*Lingle*, 544 U.S. at 548. The Court explained its holding by noting that the questions asked in a *Loretto*, *Lucas* or *Penn Central* analysis

share a common touchstone. Each aims to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain. Accordingly, each of these tests focuses directly upon the severity of the burden that government imposes upon private property rights.

*Id.* at 539. The Court then went on to note that

In stark contrast to the three regulatory takings tests discussed above, the “substantially advances” inquiry reveals nothing about the *magnitude or character of the burden* a particular regulation imposes upon private property rights. Nor does

it provide any information about how any regulatory burden is *distributed* among property owners. In consequence, this test does not help to identify those regulations whose effects are functionally comparable to government appropriation or invasion of private property; it is tethered neither to the text of the Takings Clause nor to the basic justification for allowing regulatory actions to be challenged under the Clause.

*Id.* at 542 (emphasis in original).

The question, then, is not whether the Shade Rule “substantially advances a state interest,” but instead the character of the regulation. As the *Penn Central* court held “[a] ‘taking’ may more readily be found when the interference with property can be characterized as a physical invasion by government than when interference arises from some **public program adjusting the benefits and burdens of economic life** to promote the common good.” *Id.* at 124 (emphasis added).<sup>6</sup> In *Murr*, the Court held that the regulation at issue was “a **reasonable land-use regulation**, enacted as part of a coordinated federal, state and local effort to preserve the river and surrounding land.” *Murr*, 137 S.Ct. at 1949-50 (emphasis added).<sup>7</sup> Finally, courts have indicated that it remains “appropriate to consider the harm-preventing purpose of a regulation in the context of the character prong of a *Penn Central* analysis.” *Rose Acre Farms, Inc. v. United States*, 599 F.3d 1260, 1281 (Fed. Cir. 2009).

The Shade Rule was implemented “[a]s a result of quadrennial water-quality audits conducted by the Idaho Department of Environmental Quality (IDEQ) in 2000 and 2004, . . .” As set forth in the Rule itself, the purpose of the Shade Rule provisions pertaining to Class I streams is “to maintain and enhance shade and large woody debris recruitment . . . .” IDAPA 20.02.01.030.07.ii. Similarly, the purpose of the Shade Rule provisions pertaining to Class II streams is “[t]o protect filtering and shade effects of streamside vegetation . . . .” A court would likely find that the Shade Rule is a reasonable regulation, designed to benefit the public by protecting water quality in certain streams, while carefully balancing that public benefit to the interests of private property owners.

#### **D. Summary**

IDL does not possess the information necessary to sufficiently analyze all of the *Penn Central* factors. Given the *ad hoc* nature of the analysis, it cannot be determined whether, as a facial matter, the Shade Rule constitutes a taking under the Fifth Amendment to the United States Constitution. Any such determination would be fact- and owner-specific.

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<sup>6</sup> The *Penn Central* court further reiterated that “[g]overnment could hardly go on if to some extent values incident to property could not be diminished without paying for every such change in the general law.” *Penn Central*, 438 U.S. at 124 (quoting *Pennsylvania Coal. Co. v. Mahon*, 260 U.S. 393, 413 (1922)).

<sup>7</sup> While a law may have “a more severe impact on some landowners than on others . . . that in itself does not mean that the law effects a ‘taking.’ Legislation designed to promote the general welfare commonly burdens some more than others. . . .” *Penn Central*, 438 U.S. at 134. See also *Rose Acre Farms, Inc. v. United States*, 599 F.3d 1260, 1278 (Fed. Cir. 2009) (upholding a set of regulations that did not single out producers, even though it impacted some producers more than others).

#### IV. TAKING UNDER THE IDAHO CONSTITUTION

##### A. Article I, § 13

Article I, § 13 of the Idaho Constitution provides, in pertinent part, that “[n]o person shall . . . be deprived of . . . property without due process of law.” Under that provision “if the purposes of [the law at issue] are within the police power [of the state] and the means adopted are constitutional then there is no taking of property requiring just compensation.” *State ex rel. Andrus v. Click*, 97 Idaho 791, 800-01, 554 P.2d 969, 978-79 (1976) (bracketed material added). A law or regulation is within a state’s legitimate police power “if it ‘bears a reasonable relationship to the public health, safety, morals or general welfare.’” *Id.* at 801, 544 P.2d at 979 (quoting *Johnston v. Boise City*, 87 Idaho 44, 390 P.2d 291 (1964)); *see also Boise Redevelopment Agency v. Yick Kong Corp.*, 94 Idaho 876, 879, 499 P.2d 575, 578 (1972) (through both eminent domain and its police powers, a state “may legitimately protect the public from disease, crime and perhaps even deterioration, blight and ugliness”).

The purposes of the Shade Rule, described above, are within the state’s legitimate police power to protect water quality. In addition, the Rule is designed to fulfill that legitimate purpose by requiring some trees near streams to be maintained during a forest practice. Therefore, the Shade Rule’s requirements are reasonably related to the public health, safety, morals or general welfare, and the Rule does not constitute a taking under Article I, § 13.

##### B. Article I, § 14

Article I, § 14 of the Idaho Constitution provides, in pertinent part, that “[p]rivate property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor.” If private property is not taken by a direct condemnation action, a party may bring an inverse condemnation action. *Wadsworth v. Dep’t of Transp.*, 128 Idaho 439, 441, 915 P.2d 1, 3 (1996).

The Idaho Supreme Court has found it significant that unlike other states’ constitutions, Article I, § 14 includes the word “taken” but not “damaged.” *Covington v. Jefferson County*, 137 Idaho 777, 781, 53 P.3d 828, 832 (2002) (no compensable taking occurred because the subject property retained residual value, even though its value may have been reduced by the county’s actions). *See also Moon v. North Idaho Farmers Ass’n*, 140 Idaho 536, 542, 96 P.3d 637, 643 (no taking occurred under the Idaho Constitution when there was “less than a total deprivation of use or denial of access.”) In order to find a compensable inverse condemnation, the condition or change must be also permanent. *Covington*, 137 Idaho at 780, 53 P.3d at 828 (citing *Marty v. State*, 122 Idaho 766, 769, 838 P.2d 1384, 1387 (1992)) (additional citations omitted).

The Shade Rule does not facially result in the total deprivation of use of one’s property, or in the total denial of access. Therefore, it does not constitute a taking under the Idaho Constitution.

## STATE BOARD OF LAND COMMISSIONERS

September 13, 2019

Information Agenda

### Subject

Summary of Comments Received on Proposed Rule, IDAPA 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho*

### Background

The Idaho Dredge and Placer Mining Protection Act (Title 47, Chapter 13, Idaho Code) promotes responsible resource extraction while protecting the lands, streams, and watercourses of the state. Dredge and placer mining regulated under this statute is the extraction of minerals from an alluvial deposit containing particles of gold or other valuable minerals. Extraction is done using motorized earth-moving equipment, including suction dredges with an intake nozzle over 8 inches in diameter. A placer deposit can be in a natural watercourse or an ancient stream channel high above an existing stream. Attachment 1 answers frequently asked questions about dredge and placer mining.

Under Idaho Code § 47-1316, the Idaho State Board of Land Commissioners (Board) is designated the administrative agency of the Idaho Dredge and Placer Mining Protection Act and has the power and duty to adopt rules and regulations for its administration. The Board has delegated to the Idaho Department of Lands (Department) administration of IDAPA 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho*. These rules allow removal of minerals while preserving water quality and ensuring rehabilitation for beneficial use of the land following mining. The rules were amended in 2018 through the negotiated rulemaking process and approved by the 2019 Idaho Legislature.

### Discussion

After the legislature adjourned the 2019 legislative session without reauthorizing Idaho's administrative rules, the governor and his staff directed state agencies to republish all necessary rules as temporary and proposed rules. On May 21, 2019, the Board approved the reauthorization of IDAPA 20.03.01. The rules are necessary to "protect the lands, streams, and watercourses within the state, from destruction by dredge mining and by placer mining, and to preserve the same for the enjoyment, use and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest" (Idaho Code § 47-1312).

On June 19, 2019, the rules were published concurrently as temporary and proposed in a special edition of the Idaho Administrative Bulletin, Volume 19-6SE. Attachment 2 is the *Notice of Omnibus Rulemaking* for docket number 20-000-1900F, which includes the publication of the previously approved and codified chapter of IDAPA 20.03.01 as temporary and proposed rules, with a 21-day comment period and a 14-day period for requesting a public hearing.

The Department received one individual request and eight petitions for a public hearing on IDAPA 20.03.01. The petitions included at least 25 signatures and were from the following counties: Ada, Bonner, Canyon, Fremont, Idaho, Kootenai, and Shoshone.

The Department held three public hearings on the proposed rules for IDAPA 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho*. A public hearing was held in Coeur d'Alene on August 14, in Idaho Falls on August 15, and in Boise on August 16, 2019. The Department also extended the written comment deadline to August 16, 2019. All written comments and transcribed oral comments received are on the Department's website on the omnibus rulemaking page.

Five people testified at the public hearings, and written comments were received from seven people. The majority of comments were related to recreational mining, which is regulated by the Idaho Department of Water Resources (IDWR). Suction dredges up to 5 inches in diameter may receive a Recreational Mining Authorization through a Letter Permit available on the IDWR website. Guidelines for operating these dredges is in the Letter Permit. Applications for suction dredging either outside the Letter Permit guidelines or for suction dredges larger than 5 inches are processed as an Individual Stream Channel Alteration Permit.

A number of comments were directed at other state or federal agencies or other rules that cannot be addressed by changes to IDAPA 20.03.01. Several attendees were unaware of the permitting requirements in IDAPA 20.03.01 because their recreational mining is not regulated by this rule.

Comments that did pertain to IDAPA 20.03.01 appear to be due to a misunderstanding of the scope of these rules and how the rules are administered. Most of the participants engage in recreational mining, and they were not aware that this activity is not regulated by IDAPA 20.03.01. A summary of all comments is included in Attachment 3. The Department did not identify any rule changes needed based on these comments. The Department also did not identify any issues that would justify the initiation of negotiated rulemaking for IDAPA 20.03.01 in 2020.

## **Attachments**

1. Dredge and Placer Mining – Frequently Asked Questions
2. Notice of Omnibus Rulemaking – Temporary and Proposed Fee Rulemaking, pages 4160 to 4164, and pages 4169 to 4192.
3. Summary of Public Comments Received on Proposed Rule

**IDAHO DEPARTMENT OF LANDS**  
**RESOURCE PROTECTION AND ASSISTANCE BUREAU**

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**Dredge and Placer Mining – Frequently Asked Questions**

**Does the Idaho Dredge and Placer Mining Protection Act apply to suction dredges?**

Only those larger than 8-inch diameter intake. The rest are regulated on the beds of navigable rivers by the Idaho Department of Water Resources (IDWR) and the Idaho Department of Lands.

**Does the Act apply to patented mining claims?**

Yes. Patented mining claims are treated just like other private lands.

**What is the usual bond rate?**

The actual cost of reclamation is up to a maximum of \$1,800 per acre.

**What about exploration?**

You may explore using motorized earth moving equipment with a Notice of Exploration to the Department of Lands. Holes or trenches must be closed and reseeded within one year. If the exploration exceeds one-half acre of disturbance, a Dredge and Placer Mining Permit is required.

**What about using hazardous chemicals?**

Any use of hazardous chemicals must be reviewed by the Idaho Department of Environmental Quality (IDEQ) to meet State water quality standards.

**What if I build ponds or dams?**

Any water containment dams over ten feet high or tailings ponds over thirty feet high must be reviewed by IDWR. Settling ponds with dams under ten feet in height must be reviewed and approved by IDEQ. Stream ponds or dams are not allowed without a stream channel alteration permit.

**Can the Department of Lands deny a permit?**

Yes. The Land Board may deny an application for a permit on state land, any riverbed, or any unpatented mining claim upon its determination that the proposed operation would not be in the public interest or would result in permanent damage to a stream channel.

**Can I post a bond with the U.S. Forest Service?**

Yes. The Act allows the State to recognize valid bonds held by the USFS or BLM for reclamation, as long as they are in an amount as great as the required state bond.

**How do I appeal a decision of the Department of Lands?**

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An appeal of the decision of the Department may be made by filing a letter with the Director of the Department of Lands and requesting an audience before the State Board of Land Commissioners.

### What waters are closed to mining?

Pursuant to the authorities specified in Idaho Code Section 58-104(a), 47-1323 and 47-702, the State Board of Land Commissioners has withdrawn the following segments of navigable rivers from mineral entry and exploration:

- **Boise River** – The bed of the Boise River from Lucky Peak Dam in T2N, R3E, B.M., downstream to Star Road in T4N, R1W, B.M. Withdrawal does not include excavation for flood control purposes.
- **The bed of the South Fork of the Boise River** from the Anderson Ranch Dam in T1S, R8E, B.M., downstream to Neal Bridge in Sec. 34, T3N, R6E, B.M.
- **The bed of the Middle Fork of the Boise River** from the east boundary of T5N, R8E, B.M., downstream to the west boundary of Sec. 1, T3N, R5E, B.M.
- **Payette River** – The bed of the North Fork of the Payette River from Carbarton Bridge in Sec. 31, T13N, R5E, B.M. to Banks in Sec. 32, T9N, R3E, B.M.
- **The bed of the South Fork of the Payette River** from the Sawtooth Wilderness boundary in Sec. 12, T9N, R9E, B.M. to Banks in Sec. 32, T9N, R3E, B.M. This river segment is open for recreational suction dredging and gold panning. No claims or lease applications will be accepted by the Idaho Department of Lands for this river section as it has been designated as open to the general public as a recreational mining site.
- **The bed of the main Payette River** from Banks in Sec. 32, T9N, R3E, B.M. to Black Canyon Dam in Sec. 22, T7N, R1W, B.M.
- **Priest River** – The bed of the Upper Priest River from the Canadian Border in Sec. 12, T65N, R5W, B.M. to the confluence with Priest Lake in Sec. 19, T63N, R4W, B.M.
- **Clearwater River** – The Middle Fork of the Clearwater River from the town of Lowell downstream to the town of Kooskia.
- **Lochsa River** – The Lochsa River from the Powell Ranger Station downstream to its junction with the Selway River at Lowell forming the Middle Fork.

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- **Selway River** – The bed of the Selway River from its origin downstream to the town of Lowell.
- **Salmon River** – The bed of the Salmon River from the mouth of the North Fork of the Salmon River in T24N, R21E, B.M., downstream to Long Tom Bar.
- **The bed of the Salmon River** from Hammer Creek in T28N, R1E, B.M. downstream to the mouth in T29N, R4W, B.M.
- **The bed of the Middle Fork of the Salmon River**, from its origin downstream to its confluence with the Main Salmon River.
- **St. Joe River** – The bed of the St. Joe River, including its tributaries, from its origin downstream to its confluence with Coeur d’Alene Lake, except for the St. Maries River and its tributaries.
- **Snake River** – The bed of the Henry’s Fork of the Snake River from its point of origin at Henry’s Fork in Sec. 21, T15N, R43E, B.M. downstream to its point of confluence with the backwaters of Ashton Reservoir, Sec. 13, T9N, R42E, B.M.
- **The bed of the Snake River** from the east boundary of T6S, R83, B.M., to the west boundary of T1S, R2W, B.M., encompassing the Birds of Prey Area.
- **The Idaho bed of the Snake River** consisting of the east ordinary high water mark to the center of the main channel (State of Idaho ownership in the Hell’s Canyon National Recreation Area), from the north boundary of T20N, R4W, B.M., downstream to the south boundary of T31N, R5W, B.M.

Note: Additional withdrawals of navigable waters may exist. Contact the Idaho Department of Water Resources for additional information.

Web address: <http://www.idwr.idaho.gov/>

**Can my permit application be confidential?**

Test results, reserve calculations, and production data may be kept confidential under the provisions of the Idaho Code Section 9-340 after July 1, 1993.

## IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-1900F

### NOTICE OF OMNIBUS RULEMAKING – TEMPORARY AND PROPOSED FEE RULEMAKING

**EFFECTIVE DATE:** The effective date of the temporary rules listed in the descriptive summary of this notice is June 30, 2019.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to:

- Sections 38-132, 38-402, and 38-1208, Idaho Code;
- Title 47, Chapters 3, 7, 8, 15, 16 and 18, including Sections 47-314(8), 47-315(8), 47-328(1), 47-710, 47-714, and 47-1316, Idaho Code;
- Title 58, Chapters 1, 3, 6, 12 and 13, including Sections 58-104, 58-105, 58-127, and 58-304 through 58-312, Idaho Code;
- Title 67, Chapters 51 and 52, including Sections 67-5201, et seq., Idaho Code;
- Article IX, Sections 7 and 8 of the Idaho Constitution; and
- The Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656).

**PUBLIC HEARING SCHEDULE:** Oral comment concerning this rulemaking will be scheduled in accordance with Section 67-5222, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This temporary and proposed rulemaking adopts and re-publishes the following existing and previously approved and codified chapters under IDAPA 20, rules of the Idaho Department of Lands:

#### **IDAPA 20**

- 20.02.14, *Rules for Selling Forest Products on State-Owned Endowment Lands*
- 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho*
- 20.03.02, *Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities*
- 20.03.03, *Rules Governing Administration of the Reclamation Fund*
- 20.03.04, *Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho*
- 20.03.05, *Riverbed Mineral Leasing in Idaho – All rules except **Section 032 – Term***
- 20.03.08, *Easements on State Owned Lands*
- 20.03.09, *Easements on State Owned Submerged Lands and Formerly Submerged Lands*
  
- 20.03.13, *Administration of Cottage Site Leases on State Lands - All rules except the following Sections/ Subsections: **010.06** – Definition, Leasehold Value; **020.01.a., c., and d.**; **025** – Leasehold Value Determination; **027** – Equity Sharing Premium Rental; **030** – Subleasing*
  
- 20.03.14, *Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases – All rules except the following Sections/Subsections: **051** – Lease Reinstatement; **060.07** – Fees, Lease Reinstatement; **105.02** – Conflict Auctions, Applicant Notification*
  
- 20.03.15, *Rules Governing Geothermal Leasing on Idaho State Lands – All rules except the following Sections/ Subsections: **031** – Lease Expiration; **090** – Preferential Rights Upon Discovery of Unleased Minerals, Oil, Gas and Other Hydrocarbons; **095.01.d***
  
- 20.03.16, *Rules Governing Oil and Gas Leasing on Idaho State Lands – All rules except the following Sections/Subsections: **022.02.a.** – Lease Acquisition Process, Lease Provisions, Term; **071.02** – Termination - Cancellation of Lease, Failure to Pay Rental; **104** – Outstanding Leases -- Grandfather Rights*

- 20.03.17, *Rules Governing Leases on State-Owned Submerged Lands and Formerly Submerged Lands*
- 20.04.02, *Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws*
- 20.06.01, *Rules of the Idaho Board of Scaling Practices*
  
- 20.07.02, *Rules Governing Conservation of Oil and Natural Gas in the State of Idaho – All rules except the following Sections/Subsections: 010.10, .16, .20, .32, .34, .35, .36, .39, .42, .56, .57 – Definitions; 110 – Surface Owner Protections; 120 – Well Spacing; 130 – Integration; 131 – Integration Orders; 140 – Unit Operation Agreements; 400.02 – Production Reports, Frequency; 402.01 – Measurement of Gas, Gas Metering; 410.02 – Meters, Meter Calibration; 420.01 – Tank Batteries, Location; 430.01 – Gas Processing Facilities, Location; 430.06 – Gas Processing Facilities, Reports*

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Sections 67-5226(1) and 67-5226(2), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

These temporary rules are necessary to protect the public health, safety, and welfare of the citizens of Idaho and confer a benefit on its citizens. These previously approved and codified rules implement the duly enacted laws of the state of Idaho, provide citizens with the detailed rules and standards for complying with those laws, and assist in the orderly execution and enforcement of those laws. The expiration of these rules without due consideration and processes would undermine the public health, safety and welfare of the citizens of Idaho and deprive them of the benefit intended by these rules. The rules of the Idaho Department of Lands serve the public interest by, for example, ensuring landowners, royalty owners, producers, and the public realize and enjoy the greatest good from the state's vital natural resources like oil, natural gas, and minerals. The rules also serve the public interest by, for example, regulating forestland management practices to maintain and enhance benefits such as job creation, tax generation, and distributions to endowment beneficiaries, and by conserving resources such as forest tree species, soil, air, water, and wildlife habitat.

Any fee or charge imposed by the rules is necessary to avoid immediate danger. The fees or charges reauthorized in this rulemaking are currently existing and have been previously promulgated by the agency and reviewed and approved by the Legislature. These fees and charges are part of the dedicated fund portion of the state budget, which makes up a material portion of the FY2020 budget. The FY2020 budget has already been set by the Legislature and passed into law. That budget relies upon the existence of these fees and charges to meet the state's obligations and provide necessary state services. Failing to reauthorize these fee rules would create immediate danger to the state budget, immediate danger to necessary state functions and services, and immediate danger of a violation of Idaho's constitutional requirement that it balance its budget.

- 20.02.14 – Fees fund forest management activities on endowment lands. These activities would be limited without the support of these fees, and distributions to endowment beneficiaries would decline.
- 20.03.01 – Fees attempt to achieve cost recovery for operational expenses associated with processing and assigning permits and inspecting dredge and placer mining operations. Without these fees, the department would not be able to administer the minerals regulatory program.
- 20.03.02 – Fees cover operational expenses associated with assigning reclamation plans and permanent closure plans. They also cover costs to process permanent closure plans. Without these fees, the department would not be able to recover these costs.
- 20.03.03 – Fees cover reclamation costs, operational expenses, and personnel expenses to administer Idaho's Reclamation Fund. Fees allow participation into the state's Reclamation Fund, which acts as a self-insurance fund to provide a "bonding mechanism" for small mine operations as required by Idaho's Surface Mining Act. Without these annual fees, the fund would be depleted and mining operations would be forced to obtain bonding through another source.
- 20.03.04 – Fees cover operational expenses associated with processing permits. Without these fees, the department would cease processing permits on navigable waterways.
- 20.03.05 – Fees cover operational expenses associated with processing mineral leases and locations. Without these fees, the department would cease processing mineral leases and locations on navigable waterways.
- 20.03.08 – Fees cover operational expenses associated with processing easements. Easement consideration fees are determined by appraisal and compensate the endowment for easement encumbrances. Without these fees, the department would cease processing easements on state-owned lands.

- 20.03.09 – Fees cover operational expenses associated with processing easements. Without these fees, the department would cease processing easements on navigable waterways.
- 20.03.13 – Annual rental payment for use and occupation of the leased land.
- 20.03.14 – Fees attempt to achieve cost recovery for operational expenses associated with processing new lease applications initiated by applicants, processing lease assignments and subleases initiated by existing lessees, processing requests from lessees to defer rent payments due to financial hardship, and additional billings and staff interactions with lessees when payments are made beyond established deadlines. Mortgage agreement fees attempt to achieve cost recovery for operational expenses and legal review for approval of Consent to Mortgage Agreements requested by existing lessees. Minimum lease fees attempt to achieve cost recovery for operational expenses related to lease management when a leased area is small or temporarily subject to non-use (e.g., wildfire impacts). Without these fees, the department would not have the financial support to administer grazing, farming, conservation, noncommercial recreation, and communication site leases on state endowment trust lands.
- 20.03.15 – Fees attempt to achieve cost recovery for operational expenses associated with processing new lease applications initiated by applicants and lease assignments initiated by existing lessees. Late payment fees attempt to recover costs associated with additional billings and staff interactions with lessees when payments are made beyond established deadlines. Without these fees, the department would not have the financial support to administer geothermal leases on state-owned lands.
- 20.03.16 – Fees attempt to achieve cost recovery for operational expenses associated with processing exploration location permits initiated by applicants, processing nominations for oil and gas leases, and processing lease assignments and other administrative requests initiated by existing lessees. Without these fees, the department would not have the financial support to administer oil and gas leases on state-owned lands.
- 20.03.17 – Fees cover operational expenses associated with processing leases. Without these fees, the department would cease processing leases on navigable waterways.
- 20.04.02 – Fees are held in trust to ensure contractors satisfactorily abate the fire hazard created by harvest operations. Fees levied on contractors who unsuccessfully meet the terms of the fire hazard reduction agreement and elect to transfer the liability for the cost of fire suppression back to the State are used to offset the cost of fire suppression incurred by the department. Fees withheld from hazard management performance bonds are dedicated to offset the costs for forest practices administration and to suppress wildfires on forest lands. Without these fees, the department would be unable to manage fire hazard conditions left by commercial harvest operations, provide an adequate level of protection in the delivery of wildland fire suppression services to extinguish wildfires, or provide necessary support in the delivery of forest landowner assistance services.
- 20.06.01 – Fees cover administrative and operational costs associated with licensing log scalers, check scaling operations, license renewals, and issuing log brands. Without these dedicated funds, the department would not have the financial support to enforce log scaling standards as prescribed by statute and regulations to ensure scaler proficiency and a consistent uniform scale for all parties buying, selling, harvesting, and manufacturing of timber within the state.
- 20.07.02 – Fees cover the costs of reviewing and processing applications and assigning permits if applications are approved. Without these fees, the department would not be able to recover these costs. Idaho Code § 47-316 sets the amounts of each application fee required to be collected. IDAPA 20.07.02 also provides bonding authority and sets minimum bonding amounts for oil and gas activities in Idaho. Statute gives the Commission the authority to require bonds, but the rules provide the amounts and additional details that are not fully addressed in statute. Without these amounts, and the detail provided in rule, the department would not be able to cover the potential cost of reclamation, as well as plugging and abandonment of wells.

**FEE SUMMARY:** The preceding section and the attached rules provide a specific description of the fee or charge imposed or increased by this rulemaking. This rulemaking does not impose a fee or charge, or increase a fee or charge, beyond what was previously approved and codified in the prior rules.

- 20.02.14 – Stumpage payments and associated bonding for removal of state timber from endowment land timber sales
- 20.03.01 – Application fee, amendment fee, assignment fee, and inspection fee for all dredge and placer permits in the state of Idaho

- 20.03.02 – Application fee for permanent closure plans and assignment fee for reclamation plans and permanent closure plans
- 20.03.03 – Annual fee for Reclamation Fund participation
- 20.03.04 – Application fees for encroachment permits and deposits toward the cost of newspaper publication
- 20.03.05 – Fees for applications, advertising applications, exploration locations, and approval of assignments for riverbed mineral leasing
- 20.03.08 – Application fee, easement consideration fee, appraisal costs, and assignment fee for easements on state-owned lands
- 20.03.09 – Administrative fee, appraisal costs, and assignment fee for easements on state-owned submerged lands and formerly submerged lands
- 20.03.13 – Annual rental payment paid to the endowment who owns the property.
- 20.03.14 – Lease application fee, full lease assignment fee, partial lease assignment fee, mortgage agreement fee, sublease fee, late rental payment fee, minimum lease fee, and lease payment extension request fee on state endowment trust lands
- 20.03.15 – Application fee, assignment fee, and late payment fee for leases on state-owned lands
- 20.03.16 – Exploration location permit fee, nomination fee, and processing fee for leases on state-owned lands
- 20.03.17 – Application fee, rental rate, and assignment fee for leases on state-owned submerged lands and formerly submerged lands
- 20.04.02 – Fee imposed upon the harvest and sale of forest products to establish hazard management performance bonds for the abatement of fire hazard created by a timber harvest operation, and fees imposed upon contractors for transferring fire suppression cost liability back to the State
- 20.06.01 – Scaling assessment fee paid to a dedicated scaling account for all scaled timber harvested within the state of Idaho; administrative fees for registration, renewal, and transfer of log brands; fees for testing and issuance of a temporary scaling permit, specialty scaling license, and standard scaling license; fee to renew a specialty or standard scaling license; and fee for a requested check scale involving a scaling dispute
- 20.07.02 – Bonding for oil and gas activities in Idaho and application fees for seismic operations; permit to drill, deepen or plug back; multiple zone completions; well treatment; pits and directional deviated wells

**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: This rulemaking is not anticipated to have any fiscal impact on the state general fund because the FY2020 budget has already been set by the Legislature, and approved by the Governor, anticipating the existence of the rules and fees being reauthorized by this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because of the need to adopt the rules as temporary, and because these existing chapters of IDAPA are being re-published and re-authorized. Negotiated rulemaking also is not feasible because of the need to implement these rules before they expire; the rules form the regulatory framework of the laws of this state and have been previously promulgated and reviewed by the legislature pursuant to the Idaho Administrative Procedures Act, Chapter 52, Title 67, Idaho Code; and because engaging in negotiated rulemaking for all previously existing rules will inhibit the agency from carrying out its ability to serve the citizens of Idaho and to protect their health, safety, and welfare.

**INCORPORATION BY REFERENCE:** Pursuant to Section 67-5229(2)(a), Idaho Code, incorporated material may be obtained or electronically accessed as provided in the text of the temporary and proposed rules attached hereto.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact Amy Johnson at (208) 334-0255 or [rulemaking@idl.idaho.gov](mailto:rulemaking@idl.idaho.gov).

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered within twenty-one (21) days after publication of this Notice in the Idaho Administrative Bulletin. Oral presentation of comments may be requested pursuant to Section 67-5222(2), Idaho Code, and must be delivered to the undersigned within fourteen (14) days of the date of publication of this Notice in the Idaho Administrative Bulletin.

Dated this 19th day of June, 2019.

Dustin Miller, Director  
Idaho Department of Lands  
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P.O. Box 83720  
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**IDAPA 20  
TITLE 03  
CHAPTER 01**

**20.03.01 – RULES GOVERNING DREDGE AND PLACER MINING OPERATIONS IN IDAHO**

**000. LEGAL AUTHORITY.**

These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to Section 47-1316, Idaho Code. The board has delegated to the director of the Department of Lands (“department”) the duties and powers under the act and these rules; provided that the board shall retain responsibility for approval of permit and administrative review. (4-1-91)

**001. TITLE AND SCOPE.**

**01. Title.** These rules are titled IDAPA 20.03.01 “Rules Governing Dredge and Placer Mining Operations in Idaho.” (4-11-19)

**02. Scope.** These rules constitute the Idaho Department of Lands’ administrative procedures for implementation of the Idaho Dredge and Placer Mining Protection Act with the intent and purpose to protect the lands, streams and watercourses within the state, from destruction by dredge mining and by placer mining, and to preserve the same for the enjoyment, use and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest. (4-11-19)

**002. WRITTEN INTERPRETATIONS.**

The Department maintains written interpretations of its rules which may include, but may not be limited to written procedures manuals and operations manuals and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, and other written interpretations, if applicable, are available for public inspection and copying at the Idaho Department of Lands. (4-11-19)

**003. ADMINISTRATIVE APPEALS.**

**01. Procedures for Appeals:** (4-1-91)

**a.** Any applicant or permit holder aggrieved by any final decision or order of the board shall be entitled to judicial review in accordance with the provisions and standards set forth in Title 67, Chapter 52, Idaho Code, the Administrative Procedures Act. (4-1-91)

**b.** When the director or the board finds that justice so requires, it may postpone the effective date of a final order pending judicial review. The reviewing court, including the court to which a case may be taken on appeal, may issue all necessary and appropriate orders to postpone the effective date of any final order pending conclusion of the review proceedings. (4-1-91)

**c.** Notwithstanding any other provisions of these rules concerning administrative or judicial proceedings, whenever the board determines that a permittee has not complied with the provisions of the act or these rules, the board may file a civil action in the district court for the county wherein the violation or some part occurred, or in the district court for the county where the defendant resides. The board may request the court to issue an appropriate order to remedy any alleged violation. (4-1-91)

**004. INCORPORATION BY REFERENCE.**

There are no documents incorporated by reference into this rule. (4-11-19)

**005. OFFICE – OFFICE HOURS – MAILING ADDRESS – STREET ADDRESS – WEB ADDRESS.**

The principal place of business of the Department of Lands is in Boise, Idaho. The office is located at 300 North 6th Street, Suite 103, Boise, Idaho and is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200 and the fax number is (208) 334-3698. The Department’s web address is located at [www.idl.idaho.gov](http://www.idl.idaho.gov). (4-11-19)

**006. PUBLIC RECORDS ACT COMPLIANCE.**

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (4-11-19)

**007. -- 009. (RESERVED)**

**010. DEFINITIONS.**

- 01. Act.** The Idaho Placer and Dredge Mining Protection Act, Title 47, Chapter 13, Idaho Code. (4-1-91)
- 02. Approximate Previous Contour.** A contour reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (4-1-91)
- 03. Best Management Practices.** Methods, measures, or practices to prevent or reduce nonpoint source (NPS) water pollution, including, but not limited to, structural and nonstructural controls, and operation and maintenance procedures. Usually, BMPs are applied as a system of practices rather than a single practice. BMPs are selected on the basis of site-specific conditions that reflect natural background conditions; political, social, economic, and technical feasibility; and stated water quality goals. (4-11-19)
- 04. Board.** The State Board of Land Commissioners or any department, commission, or agency that may lawfully succeed to the powers and duties of such board. (4-1-91)
- 05. Department.** The Idaho Department of Lands whose business address is 300 North 6th Street, Suite 103, PO Box 83720, Boise, Idaho 83720-0050. (4-1-91)
- 06. DEQ.** The Department of Environmental Quality. (4-1-91)
- 07. Director.** The director of the Department of Lands or such representative as may be designated by the director. (4-1-91)
- 08. Disturbed Land or Affected Land.** Land, natural watercourses, or existing stockpiles and waste piles affected by placer or dredge mining, re-mining, exploration, stockpiling of ore wastes from placer or dredge mining, or construction of roads, tailings ponds, structures, or facilities appurtenant to placer or dredge mining operations. (4-1-91)
- 09. Final Order of the Board.** A written notice of rejection or approval, the order of a hearing officer at the conclusion of a hearing, or any other order of the board where additional administrative remedies are not available. (4-1-91)
- 10. Hearing Officer.** That person duly appointed by the board to hear proceedings under Section 47-1320, Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 030 or Section 051 of these rules. (4-1-91)
- 11. Mine Panel.** That area designated by the permittee as an identifiable portion of a placer or dredge mine on the map submitted pursuant to Section 47-1317, Idaho Code. (4-1-91)
- 12. Mineral.** Any ore, rock or substance extracted from a placer deposit or from an existing placer stockpile or wastepile, but does not include coal, clay, stone, sand, gravel, phosphate, uranium, oil or gas. (4-1-91)
- 13. Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, draglines, and suction dredges with an intake diameter exceeding eight (8) inches, and other similar equipment. (4-1-91)
- 14. Mulch.** Vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation. (4-1-91)

15. **Natural Watercourse.** Any stream in the state of Idaho having definite bed and banks, and which confines and conducts continuously flowing water. (4-1-91)
16. **Overburden.** Material extracted by a permittee which is not a part of the material ultimately removed from a placer or dredge mine and marketed by a permittee, exclusive of mineral stockpiles. Overburden is comprised of topsoil and waste. (4-1-91)
17. **Overburden Disposal Area.** Land surface upon which overburden is piled or planned to be piled. (4-1-91)
18. **Permanent Cessation.** Mining operations as to the whole or any part of the permit area have stopped and there is substantial evidence that such operations will not resume within one (1) year. The date of permanent cessation is the last day when mining operations are known or can be shown to have occurred. (4-1-91)
19. **Permit Area.** That area designated under Section 021 as the site of a proposed placer or dredge mining operation, including all lands to be disturbed by the operation. (4-1-91)
20. **Permittee.** The person in whose name the permit is issued and who is to be held responsible for compliance with the conditions of the permit by the department. (4-1-91)
21. **Person.** Any person, corporation, partnership, association, or public or governmental agency engaged in placer or dredge mining, whether individually, jointly, or through subsidiaries, agents, employees, or contractors. (4-1-91)
22. **Pit.** An excavation created by the extraction of minerals or overburden during placer mining or exploration operations. (4-1-91)
23. **Placer Deposit.** Naturally occurring unconsolidated surficial detritus containing valuable minerals, whether located inside or outside the confines of a natural watercourse. (4-1-91)
24. **Placer Stockpile.** Placer mineral extracted during past or present placer or dredge mining operations and retained at the mine for future rather than immediate use. (4-1-91)
25. **Placer or Dredge Exploration Operation.** Activities including, but not limited to, the construction of roads, trenches, and test holes performed on a placer deposit for the purpose of locating and determining the economic feasibility of extracting minerals by placer or dredge mining. (4-1-91)
26. **Placer or Dredge Mining or Dredge or Other Placer Mining.** The extraction of minerals from a placer deposit, including remining for sale, processing, or other disposition of earth material excavated from previous placer or dredge mining. (4-1-91)
27. **Placer or Dredge Mining Operation.** Placer or dredge mining which disturbs in excess of one-half (1/2) acre of land during the life of the operation. (4-1-91)
28. **Reclamation.** The process of restoring an area disturbed by a placer or dredge mining operation or exploration operation to its original or another beneficial use, considering land uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (4-1-91)
29. **Revegetation.** The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by placer or dredge mining operations. (4-1-91)
30. **Road.** A way including the bed, slopes, and shoulders constructed within the circular tract circumscribed by a placer or dredge mining operation, or constructed solely for access to a placer or dredge mining operation or placer or dredge exploration operation. A way dedicated to public multiple use or being used by a governmental land manager or private landowner at the time of cessation of operations and not constructed solely for access to a placer or dredge mining operation or exploration operation, shall not be considered a road. (4-1-91)

**31. Settling Pond.** A manmade enclosure or natural impoundment structure constructed and used for the purpose of treating mine process water and/or runoff water from adjacent disturbed areas by the removal or settling of sediment particles. Several types of settling ponds or a series of smaller ponds may be used in water management. The most common type is a recycle or recirculation pond which is used to pump clarified water back to the wash plant operation. (4-1-91)

**32. Surface Waters.** The surface waters of the state of Idaho. (4-1-91)

**33. Topsoil.** The unconsolidated mineral and organic matter naturally present on the surface of the earth that is necessary for the growth and regeneration of vegetation. (4-1-91)

**011. ABBREVIATIONS.**

**01. BMP.** Best Management Practices. (4-11-19)

**02. DEQ.** Department of Environmental Quality. (4-11-19)

**012. PURPOSE AND GENERAL PROVISIONS.**

**01. Policy.** It is the policy of the state of Idaho to protect the lands, streams, and watercourses within the state from destruction by placer mining, and to preserve them for the enjoyment, use, and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest. (4-1-91)

**02. Purpose.** These rules are intended to implement the requirements for operation and reclamation of placer and dredge mining set forth in the Idaho Code. Compliance with these rules will allow removal of minerals while preserving water quality and ensuring rehabilitation for beneficial use of the land following mining. Placer and dredge mining is expressly prohibited upon certain waterways included in the federal wild and scenic rivers system. It is also the purpose of these rules to implement the state of Idaho's antidegradation policy as set out in Executive Order No. 88-23 as it pertains to placer mining and exploration operations. (4-1-91)

**03. General Provisions.** In general, these rules establish: (4-1-91)

**a.** Requirements for placer mine exploration operations; (4-1-91)

**b.** Procedures for securing a placer and dredge mining permit; (4-1-91)

**c.** The requirements for posting a performance bond as a condition of such permit to ensure the completion of rehabilitation operations; (4-1-91)

**d.** Procedures for initial and periodic inspection of placer and dredge mining operations to ensure compliance with these rules; (4-1-91)

**e.** Prohibition of placer and dredge mining on designated watercourses (see Section 060); and (4-1-91)

**f.** Prohibitions against placer and dredge mining on certain lands when not in the public interest. (4-1-91)

**04. Compliance with Other Laws.** Placer and dredge exploration operations and mining operations shall comply with all applicable rules and laws of the state of Idaho including, but not limited to, the following: (4-1-91)

**a.** Idaho Environmental Protection and Health Act, Title 39, Chapter 1, Idaho Code, and rules as promulgated and administered by the Idaho Department of Environmental Quality. (4-1-91)

**b.** Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as

promulgated and administered by the Idaho Department of Water Resources. (4-1-91)

c. Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations as promulgated and administered by the Idaho Department of Water Resources. (4-1-91)

**013. APPLICABILITY.**

**01. All Lands in State.** These rules apply to all lands within the state, including private and federal lands, which are disturbed by placer or dredge mining conducted after November 24, 1954. (4-1-91)

**02. Types of Operations.** These rules apply to placer and dredge mining operations and placer and dredge exploration operations as defined under Section 47-1313, Idaho Code, and Subsections 010.25, 010.26, and 010.27 and to the following activities: (4-1-91)

a. The extraction of minerals from a placer deposit, including the removal of vegetation, topsoil, overburden, and minerals; construction, and operation of on-site processing equipment; disposal of overburden and waste materials; design and operation of siltation and other water quality control facilities; and other activities contiguous to the mining site that disturb land and affect water quality and/or water quantity. (4-1-91)

b. All exploration activities conducted upon a placer deposit using motorized earth-moving equipment. (4-1-91)

**03. Nonapplicability.** These rules do not apply to mining operations regulated by the Idaho Surface Mining Act; neither do they apply to surface disturbance caused by the underground mining of a placer deposit, unless the deposit outcrops on or near the surface and the operation will result in the probable subsidence of the land surface. (4-1-91)

**04. Stream Channel Alterations.** These rules do not exempt the permittee from obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources. (4-1-91)

**05. Navigational Improvements.** These rules do not apply to dredging operations conducted for the sole purpose of establishing and maintaining a channel for navigation. (4-1-91)

**06. Suction Dredges.** These rules do not apply to dredging operations in streams or riverbeds using suction dredges with an intake diameter of eight (8) inches or less. However, these rules do not affect or exempt the applicability of Section 47-701, Idaho Code, regarding leasing of the state-owned beds of navigable lakes, rivers, and streams, Section 47-703A, Idaho Code, regarding exploration on navigable lakes and streams, and Section 39-118, Idaho Code, regarding review of plans for waste treatment or disposal facilities such as settling or recycle ponds. (4-1-91)

**014. -- 019. (RESERVED)**

**020. PLACER OR DREDGE EXPLORATION OPERATIONS.**

**01. Notice.** Any person desiring to conduct placer or dredge exploration operations using motorized earth-moving equipment shall, within seven (7) days of commencing exploration, notify the director. The notice shall include the following: (4-11-19)

a. The name and address of the operator; (4-1-91)

b. The legal description of the exploration operation and its starting and estimated completion date; (4-1-91)  
and

c. The anticipated size of the exploration operation and the general method of operation. (4-1-91)

**02. Confidentiality.** The exploration notice shall be treated confidential pursuant to Sections 74-107 and 47-1314, Idaho Code. (4-1-91)

**03. One-Half Acre Limit.** Any placer or dredge exploration operation which causes a cumulative surface disturbance in excess of one-half (1/2) acre of land, including roads, shall be considered a placer or dredge mining operation and subject to the requirements outlined in Sections 021 through 065. Lands disturbed by any placer or dredge exploration operation which causes a cumulative surface disturbance of less than one-half (1/2) acre of land, including roads, shall be restored to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operation and as outlined in Subsection 020.04. (4-1-91)

**04. Reclamation Required.** The following reclamation activities, required to be conducted on exploration sites, shall be performed in a workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, pit, or trench, within one (1) year after abandonment thereof: (4-1-91)

**a.** Drill holes will be plugged within one (1) year of abandonment with a permanent concrete or bentonite plug. (4-1-91)

**b.** Restore all disturbed lands, including roads, to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operations. (47-1314(b)) (4-1-91)

**c.** Conduct revegetation activities in accordance with Subsection 040.17. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification; (4-1-91)

**d.** If water runoff from exploration operations causes siltation or other pollution of surface waters, the operator shall prepare disturbed lands and adjoining lands under his or her control, as is necessary to meet state water quality standards. (4-1-91)

**e.** Abandoned lands disturbed by an exploration operation shall be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration operation, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon; (4-1-91)

**f.** Any water containment structure created in connection with exploration operations shall be constructed, maintained, and reclaimed so as not to constitute a hazard to human health or the environment. (4-1-91)

## **021. APPLICATION PROCEDURE FOR PLACER OR DREDGE MINING PERMIT.**

**01. Approved Reclamation Plan Required.** No permittee shall conduct placer or dredge mining operations, as defined in these rules, on any lands in the state of Idaho until the placer mining permit has been approved by the board, the department has received a bond meeting the requirements of these rules, and the permit has been signed by the director and the permittee. (4-1-91)

**02. Application Package.** The permittee must submit a complete application package, for each separate placer mine or mine panel, before the placer permit will be reviewed. Separate placer mines are individual, physically disconnected operations. The complete application package consists of: (4-11-19)

**a.** An application completed by the applicant on a form provided by the director; (4-1-91)

**b.** A map or maps of the proposed mining operation which includes the information required under Subsection 021.04; (4-1-91)

**c.** A reclamation plan, in map and narrative form, which includes the information required under Subsection 021.06. The map and reclamation plan may be combined on one (1) sheet if practical; (4-1-91)

**d.** Document(s) identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices the applicant will take to control such nonpoint source impacts; (4-1-91)

**e.** When the director determines, after consultation with DEQ, that there is an unreasonably high potential for nonpoint source pollution of adjacent surface waters, the director shall request, and the applicant shall provide to the director, baseline pre-project surface water monitoring information and furnish ongoing monitoring data during the life of the project. This provision shall not require any additional baseline preproject surface water monitoring information or ongoing monitoring data where such information or data is already required to be provided pursuant to any federal or state law and is available to the director; (4-1-91)

**f.** An out-of-state permittee shall designate an in-state agent authorized to act on behalf of the permittee. In case of an emergency requiring action to be taken to prevent environmental damage, the authorized agent will be notified as well as the permittee; and (4-1-91)

**g.** An application fee of fifty dollars (\$50) for each ten (10) acres or fraction of land included in an application for a new mining permit, or of land to be affected or added in an amended application to an existing mining permit, must be included with the application. No application fee shall exceed one thousand dollars (\$1,000). (4-1-91)

**03. Incomplete Applications.** An application for a permit may be returned for correction if the information provided on the application form or associated mine map(s) or reclamation plan is incomplete or otherwise unsatisfactory. The director shall not proceed on the application until all necessary information is submitted. (4-1-91)

**a.** If the applicant is not the owner of the lands described in the application, or any part thereof, the land owner shall endorse his approval of the application prior to issuance of a permit. The federal government, as a property owner, will be notified of the application, and asked to endorse the application as property owner. For mining operations proposed upon land under a mining lease, either the signature of the lessor shall be affixed to the application or a copy of the complete lease attached to the application. (4-1-91)

**04. Requirements of Maps.** Vicinity maps shall be prepared on standard United States Geological Survey, seven and one-half (7.5) minute quadrangle maps, or equivalent. In addition, maps of the proposed placer mining operation site shall be of sufficient scale to adequately show the following: (4-1-91)

**a.** The location of existing roads and anticipated access and main haulage roads planned for construction in connection with the mining operation, along with approximate dates for construction, reconstruction, and abandonment; (4-1-91)

**b.** The approximate location, and the names of all known streams, creeks, springs, wells, or bodies of water within one thousand (1,000) feet of the mining operation; (4-1-91)

**c.** The approximate boundaries of all lands to be disturbed in the process of mining, including legal description to the quarter-quarter section; (4-1-91)

**d.** The approximate boundaries and acreage of the lands that will become disturbed land as a result of the placer or dredge mining operation during the first year of operations following issuance of a placer mining permit; (4-1-91)

**e.** The planned location and configuration of pits, mineral stockpiles, topsoil stockpiles, and waste dumps within the mining property; (4-1-91)

**f.** Scaled cross-sections, of length and width, which are representative of the placer or dredge mining operation, showing the surface contour prior to mining and the expected surface contour after reclamation activities have been completed; (4-1-91)

**g.** The location of required settling ponds, the design plans, construction specifications and narrative to show they meet both operating requirements and protection from erosion, seepage, and flooding that can be anticipated in the area. Where a dredge is operating in a stream, describe by drawing and narrative, the operation of the filtration equipment to be used to clarify the water. (4-1-91)

- h.** Surface and mineral control or ownership of appropriate scale for boundary identification. (4-1-91)
- 05. Settling Ponds.** Detailed plans and specifications for settling ponds shall be drawn to a scale of one (1) inch = ten (10) feet and include the following: (4-1-91)

  - a.** A detailed map of the settling pond location, including: (4-1-91)

    - i. Dimensions and orientation of the settling ponds and/or other wastewater treatment components of the operation; (4-1-91)
    - ii. Distance from surface waters; (4-1-91)
    - iii. Pond inlet/outlet locations including emergency spillways and detailed description of control structures and piping; (4-1-91)
    - iv. Location of erosion control structures; and (4-1-91)
    - v. Ten (10) year flood elevation (probable high water mark). (4-1-91)
  - b.** A detailed cross-section of the pond(s) including: (4-1-91)

    - i. Dimensions and orientation; (4-1-91)
    - ii. Proposed sidewall elevations; (4-1-91)
    - iii. Proposed sidewall slope; (4-1-91)
    - iv. Sidewall width; (4-1-91)
    - v. Distance from and elevation above all surface water; and (4-1-91)
    - vi. Slope of settling pond location. (4-1-91)
  - c.** Narrative of the construction method(s) describing: (4-1-91)

    - i. Bottom material; (4-1-91)
    - ii. Sidewall material; (4-1-91)
    - iii. Pond volume; (4-1-91)
    - iv. Volume of water to be used in the wash plant; (4-1-91)
    - v. Discharge or land application requirements; (4-1-91)
    - vi. Any pond liners or filter materials to be installed; and (4-1-91)
    - viii. Compaction techniques. (4-1-91)
  - d.** If the proposed ponds are: (4-1-91)

    - i. Less than two thousand five hundred (2,500) feet square surface area; (4-1-91)
    - ii. Less than four (4) feet high; (4-1-91)
    - iii. Greater than fifty (50) feet from surface water; and (4-1-91)

iv. Constructed on slopes of three: one (3:1) or flatter, the plans and specifications for settlings ponds shall contain information in Subsections 021.05.a.i., 021.05.a.ii., and 021.05.a.iv.; 021.05.b.i., 021.05.b.ii., 021.05.b.v. and 021.05.b.vi. This information may be prepared as a sketch map showing appropriate elevations, distances and other required details. (4-1-91)

**06. Requirements for Reclamation Plan.** A reclamation plan must be submitted in map and narrative form and include the following: (4-1-91)

a. Show how watercourses disturbed by the mining operation shall be replaced on meander lines with a pool structure conducive to good fish and wildlife habitat and recreational use. Show how and where riprap or other methods of bank stabilization will be used to ensure that, following abandonment, the stream erosion will not exceed the rate normally experienced in the area. If necessary, show how the replaced watercourse will not contribute to degradation of water supplies; (4-1-91)

b. Describe and show the contour of the proposed mine site after final backfilling and/or grading, with grades listed for slopes after mining; (4-1-91)

c. On a drainage control map, show the best management practices to be utilized to minimize erosion on disturbed lands; (4-1-91)

d. Show roads to be reclaimed upon completion of mining; (4-1-91)

e. Show plans for both concurrent and final revegetation of disturbed lands. Indicate soil types, slopes, precipitation, seed rates, species, topsoil, or other growth medium storage and handling, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (4-1-91)

f. The planned reclamation of tailings or sediment ponds; (4-1-91)

g. An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and administrative overhead. (4-1-91)

h. Make a premining estimate of trees on the site by species and forest lands utilization consideration in reclamation. (4-1-91)

**07. State Approval Required.** Approval of a placer mining permit must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. (4-1-91)

**08. Application Review and Inspection.** If the director determines that an inspection is necessary, the applicant may be contacted and asked that he or his duly authorized employee or representative be present for inspection at a reasonable time. An inspection may be required prior to issuance of the permit. The applicant shall make such persons available for the purpose of inspection (see Subsection 051.01). Failure to provide a representative does not mean that the state will not conduct such inspection. (4-1-91)

**022. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION.**

**01. Decision on Application.** Following director review of an application for a new permit or to amend an existing permit and opportunity to correct any deficiencies, the board shall approve or disapprove the application and the director shall notify the applicant of the board's decision by mail. Such notice shall contain any reservations conditioned with the approval, or the information required to be given under Subsections 022.07 and 022.09 if disapproved. If approved, a permit shall be issued after the bonding requirements of Section 035 are met. No mining shall be allowed until the permit is bonded and applicant is notified by mail or telephone of approval. (4-1-91)

**02. Public Hearings.** For the purpose of determining whether a proposed application complies with these rules, the director may call for a public hearing, as described in Section 030. (4-1-91)

**03. Adverse Weather.** If weather conditions prevent the director from inspecting the proposed mining site to acquire the information required to evaluate the application, the application may be placed in suspense, pending improved weather conditions. The applicant will be notified in writing of this action. (4-1-91)

**04. Interagency Comment.** Nonconfidential materials submitted under Section 021 shall be forwarded by the director to the Departments of Water Resources, Environmental Quality (DEQ), and Fish and Game for review and comment. If operations are to be located on federal lands, the department will notify the U. S. Bureau of Land Management or the U.S. Forest Service. The director may provide public notice on receipt of a reclamation plan. In addition, a copy of an application will be provided to individuals who request the information in writing, subject to Title 9, Chapter 3, Idaho Code. (4-1-91)

**05. Stream Alteration Permits.** No permit will be issued proposing to alter, occupy or to dredge any stream or watercourse without notification to the Department of Water Resources of the pending application. The Department of Water Resources shall respond to said notification within twenty (20) days. If a stream channel alteration permit is required, it must be issued prior to issuance of the placer and dredge permit. (4-1-91)

**06. Water Clarification.** No permit shall be issued until the director is satisfied that the methods of water clarification proposed by the applicant are of sound engineering design and capable of meeting the water quality standards established under Title 39, Chapter 1, Idaho Code, and IDAPA 58.01.02, "Water Quality Standards," IDAPA, 58.01.11. "Ground Water Quality Rule." (4-11-19)

**07. Permit Denial Authority.** The State Board of Land Commissioners shall have the power to deny any application for a permit on state lands, streams, or riverbeds, or on any unpatented mining claims, upon its determination that a placer or dredge mining operation on the area proposed would not be in the public interest, giving consideration to economic factors, recreational use for such lands, fish and wildlife habitat, and other factors which in the judgement of the board may be pertinent, and may deny any application upon notification by the Department of Water Resources that the granting of such permit would result in permanent damage to the stream channel. (Section 47-1317(j), Idaho Code) (4-1-91)

**08. Permit Conditions.** If an application fails to meet the requirements of these rules, the board may issue a permit subject to conditions that bring the application into compliance with these rules. The applicant may accept or refuse the permit. Refusal to accept the permit shall be considered a denial under Subsection 022.09. (4-1-91)

**09. Amended Applications.** If the board disapproves the application, the applicant shall be informed of the rules that have not been complied with, the manner in which they have not been complied with, and the requirements necessary to correct the deficiencies. The applicant may then submit an amended application, which will be processed as described in Section 022. (4-1-91)

**10. Permit Offering.** Upon approval by the board, the applicant will be notified of the action and the amount of bond required. Upon receipt of the required bond, the permit will be sent to the applicant for signature. If the bond and the permit, signed by the applicant, are not received within twelve (12) months of board action, the approval shall be automatically rescinded, except that upon written request of the applicant, and for good cause, the director may defer decision of the board's approval for a reasonable period of time not to exceed one (1) year. The director shall notify the applicant of his decision in writing. (4-1-91)

**11. Reclamation Obligations.** The permit issued by the board shall govern and determine the nature and extent of the reclamation obligations of the permittee. (4-1-91)

**023. -- 024. (RESERVED)**

**025. AMENDING AN APPROVED PERMIT.**

**01. Application to Amendment.** If circumstances arise which require significant change in the reclamation plan, method of operation, increase in acreage, or other details associated with an approved permit, the permittee shall submit an application on a department form or exact copy to amend the permit. Application fees shall be submitted with amended applications pursuant to Subsection 021.02.g. (4-1-91)

- 02. Processing.** An application to amend a permit will be processed in accord with Section 022. (4-1-91)

**026. DEVIATION FROM AN APPROVED PERMIT.**

**01. Unforeseen Events.** If a permittee finds that unforeseen events or unexpected conditions require immediate deviation from an approved permit, the permittee may continue mining in accord with the procedures dictated by the changed conditions, pending submission and approval of an amended permit, even though such operations do not comply with the current approved permit. This shall not excuse the permittee from complying with the BMPs and reclamation requirements of Sections 020 and 040. (4-1-91)

**02. Notification.** Notification of such unforeseen events shall be given to the department within forty-eight (48) hours after discovery, and an application to amend the permit shall be submitted within thirty (30) days of deviation from the approved permit by the permittee. (4-1-91)

**027. TRANSFER OF PERMITS.**

Placer and dredge mining permits may be transferred from an existing permittee to a new permittee. Transfer is made by the new permittee filing a notarized department Transfer of Permit form. The new permittee shall then be responsible for the past permittee's obligations under Title 47, Chapter 13, Idaho Code, these rules, the reclamation plan, and permit. When a replacement bond is submitted relative to an approved placer/dredge mining permit, the following rider must be filed with the department as part of the replacement bond before the existing bond will be released:

“(Surety company or principal) understands and expressly agrees that the liability under this bond shall extend to all acts for which reclamation is required on areas disturbed in connection with placer/dredge mining permit No., both prior and subsequent to the date of this rider.” (4-1-91)

**028. -- 029. (RESERVED)**

**030. PUBLIC HEARING FOR PERMIT APPLICATION.**

**01. Public Hearings.** During any stage of the application process the director may conduct a public hearing. (4-1-91)

**02. Basis for Hearing.** This action will be based upon the preliminary review of the application and upon any concern registered with the director by the public, affected land owners, federal agencies having surface management of the affected lands, other interested entities, or upon request by the applicant. (4-1-91)

**03. Hearing for Water Degradation** The director shall call for a public hearing when he determines, after consultation with the Departments of Water Resources, Environmental Quality (DEQ), Fish and Game, and affected Indian tribes (pursuant to Subsection 021.02.e.), that proposed placer or dredge mining operations can reasonably be expected to significantly degrade adjacent surface waters. A hearing held under this subsection will be conducted to receive comment on the measures the applicant will use to protect surface water quality from nonpoint source water pollution. (4-1-91)

**04. Site of Hearing.** The hearing shall be held, upon the record, in the locality of the proposed operation, or in Ada County, at a reasonable time and place. (4-1-91)

**05. Hearing Notice.** The director shall give notice of the date, time, and place of the hearing to the applicant, to federal, state, local agencies, and Indian tribes which may have an interest in the decision, as shown on the application; to all persons petitioning for the hearing, if any; and to all persons identified by the applicant pursuant to Subsection 021.03.a. as an owner of the specific acreage to be affected by the proposed placer or dredge mining operation. Such hearing notice shall be sent by certified mail and postmarked not less than thirty (30) days before the scheduled date of the public hearing. (4-1-91)

- 06. Public Notice.** The director shall notify the general public of the date, time, and place of the

hearing by placing a newspaper advertisement once a week, for two (2) consecutive weeks, in the locale of the area covered by the application. The two (2) consecutive weekly advertisements shall begin between seven (7) and twenty (20) days prior to the scheduled date of the hearing. A copy of the application shall be placed for review in a conspicuous place in the local area of the proposed mining operations, in the nearest department's area office, and the department's administrative office in Boise. (4-1-91)

**07. Description of Effects.** In the event a hearing is ordered under Subsection 030.03, the notice to the public shall describe the potentially significant surface water quality degradation and shall contain the applicant's description of the measures that will be taken to prevent degradation of adjacent surface waters from nonpoint sources of pollution. The foregoing shall be discussed at the public hearing. (4-1-91)

**08. Hearing Officer.** The hearing shall be conducted by the director or his duly authorized representative. Both oral and written testimony will be accepted. (4-1-91)

**031. -- 034. (RESERVED)**

**035. PERFORMANCE BOND REQUIREMENTS.**

**01. Submittal of Bond.** Prior to issuance of a placer or dredge mining permit, an applicant shall submit to the director, on a placer or dredge mining bond form, a performance bond meeting the requirements of this rule. (4-1-91)

**a.** The amount of the initial bond shall be in the amount determined by the board to be the estimated reasonable costs of reclamation of lands proposed to be disturbed in the permit area, plus ten percent (10%). The determination by the board of the bond amount shall constitute a final decision subject to judicial review as set forth in Section 003 of these rules. The bond may be submitted in the form of a surety, cash, certificate of deposit, or other bond acceptable to the director. (4-1-91)

**b.** Acreage on which reclamation is completed shall be reported in accord with Subsections 035.06 and 035.07. Acreage may be released upon approval by the director. The bond may be reduced by the amount appropriate to reflect the completed reclamation. (4-1-91)

**02. Form of Performance Bond.** (4-1-91)

**a.** Corporate surety bond: This is an indemnity agreement executed for the permittee by a corporate surety licensed to do business in the state of Idaho submitted on a placer and dredge mining bond form, or exact copy, supplied by the director. The bond is to be conditioned upon the permittee faithfully performing all requirements of the act, these rules, the permit, and reclamation plan, and shall be payable to the state of Idaho. (4-1-91)

**b.** Collateral bond: This is an indemnity agreement executed by or for the permittee, and payable to the Idaho Department of Lands, pledging cash deposits, governmental securities, or negotiable certificates of deposit of any financial institution doing business in the United States. Collateral bonds shall be subject to the following conditions: (4-1-91)

**i.** The director shall obtain possession, and upon receipt of such collateral bonds, deposit such cash or securities with the state treasurer to hold in trust for the purpose of bonding reclamation performance; (4-1-91)

**ii.** The director shall value collateral at its current market value, not face value; (4-1-91)

**iii.** Certificates of deposit shall be issued or assigned to Idaho Department of Lands, in writing, and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand, to the permittee, or other person which posted the collateral bond; (4-1-91)

**iv.** Amount of an individual certificate shall not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors; (4-1-91)

**v.** Financial institutions issuing such certificates shall waive all rights of set-off or liens which it has

or might have against such certificates; (4-1-91)

vi. Any such certificates shall be automatically renewable; and (4-1-91)

vii. The certificate of deposit shall be of sufficient amount to ensure that the director would be able to liquidate such certificates prior to maturity, upon forfeiture, for the amount of the required bond, including any penalty for early withdrawal. (4-1-91)

c. Letters of credit: (4-1-91)

i. A letter of credit (“credit”) is an instrument executed by a bank doing business in Idaho, made at the request of a customer, which states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit; (4-1-91)

ii. All credits shall be irrevocable and prepared in a format prescribed by the director; (4-1-91)

iii. All credits must be issued by an institution authorized to do business in the state of Idaho or through a confirming bank authorized to do business in the state of Idaho which engages that it will itself honor the credit in full. In the alternative, a foreign bank may execute or consent to jurisdiction of Idaho courts on a form prescribed by the director; and (4-1-91)

iv. The account party on all credits must be identical to the entity identified on the placer mining permit as the permittee. (4-1-91)

**03. Blanket Bond.** Where a permittee is involved in numerous placer or dredge operations, the director may accept a blanket bond in lieu of separate bonds under approved permits. The amount of such bond shall comply with other applicable provisions of Section 035 and shall be equal to the total of the penalties of the separate bonds being combined into a single bond. (4-1-91)

**04. Bond Cancellation.** Any surety company canceling a bond shall give the department at least one hundred twenty (120) days notice prior to cancellation. The director shall not release a surety from liability under an existing bond until the permittee has submitted to the director an acceptable replacement bond or reclaimed the site. Replacement bonds shall cover any liability accrued against the bonded principal under the permit. If a permittee fails to submit an acceptable replacement bond prior to the effective date of cancellation of the original bond, or within thirty (30) days following written notice of cancellation by the director, whichever is later, the director may issue a cease and desist order and seek injunctive relief to stop the permittee from conducting placer or dredge mining operations on the lands covered by the bond until such replacement has been received by the department. The permittee shall cease mining operations on lands covered by the bond until a suitable bond is filed. (4-1-91)

**05. Substitute Surety.** If a surety’s Idaho business license is suspended or revoked, the permittee shall, within thirty (30) days after notice by the department, find a substitute for such surety. The substitute surety must be licensed to do business in Idaho. If the permittee fails to secure such substitute surety, the director may issue a cease-and-desist order and seek injunctive relief to stop the permittee from conducting placer and dredge mining operations on the lands covered by the bond until a substitution has been made. The permittee shall cease mining operations on lands covered by the bond until a bond acceptable to the department is filed. (4-1-91)

**06. Bond Reduction.** Upon finding that any land bonded under a placer or dredge mining permit will not be affected by mining, the permittee shall notify the director by submitting an application amending the permitted acreage, pursuant to Section 025. When the director has verified that the bonding requirement for the amended permit is adequate, any excess reclamation bond shall be released. Any request for bond reduction shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (4-1-91)

**07. Bond Release.** Upon completion of the reclamation, specified in the permit, the permittee shall notify the director in writing, of his desire to secure release from bonding. When the director has verified that the requirements of the placer or dredge mining permit have been met, as stated in the permit, the bond shall be released. (4-1-91)

**a.** Any request for bond release shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (4-1-91)

**b.** If the director finds that a specific portion of the reclamation has been satisfactorily completed, the bond may be reduced to the amount required to complete the remaining reclamation. The following schedule will be used to complete these bond reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule: (4-1-91)

**i.** Sixty percent (60%) of the bond may be released when the permittee completes the required backfilling, regrading, topsoil replacement, and drainage control of the bonded area in accordance with the approved placer mining permit; and (4-1-91)

**ii.** After revegetation activities have been performed by the permittee on the regraded lands according to the approved placer mining permit and Section 040, the department may release an additional twenty-five percent (25%) of the bond. (4-1-91)

**c.** The remaining bond shall not be released: (4-1-91)

**i.** As long as the disturbed lands are contributing sediment or other pollution to surface waters outside the disturbed land in excess of state water quality standards established under Title 39, Chapter 1, Idaho Code; (4-1-91)

**ii.** Until final removal of equipment and structures related to the mining activity, or until any remaining equipment and structures are brought under an approved placer or dredge mining permit and bond by a new permittee (this rule shall not require a permittee to remove equipment or structures from patented lands when the landowner has authorized the equipment and structures to remain on the site); (4-1-91)

**iii.** Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved placer mining permit and bond by a new permittee; and (4-1-91)

**iv.** Until vegetation productivity is returned to levels of yields at least comparable to productivity which the disturbed lands supported prior to the permitted mining, except as stated in Subsection 040.17.b. (4-1-91)

**08. Forfeiture.** In accord with Subsection 050.02, a bond may be forfeited if the director determines that the permittee has not conducted the placer and dredge mining and reclamation in accord with the act, these rules, the approved permit, and the reclamation plan. (4-1-91)

**09. Correction of Deficiencies.** The director may, through cooperative agreement with the permittee, devise a schedule to correct deficiencies in complying with the permit and thereby postpone action to recover the bond. (4-1-91)

**10. Bonding Rate.** A permittee may petition the director for a change in the initial bond rate. The director will review the petition, and if satisfied with the information presented, a special bond rate will be set based upon the estimated cost that the director would incur should a forfeiture of bond occur and it becomes necessary for the director to complete reclamation to the standards established in the permit and reclamation plan. (4-1-91)

**11. Federal Bonds Recognized.** The director may accept as a bond, evidence of a valid reclamation bond with the United States government. The bond shall equal or exceed the amount determined in Subsection 035.01.a. This shall not release a permittee from bonding under these rules if the permittee fails to continuously maintain a valid federal bond. (4-1-91)

**12. Insufficient Bond.** In the event the amount of the bond is insufficient to reclaim the land in compliance with the act, these rules, the approved permit, and the reclamation plan, the attorney general is empowered to commence legal action against the permittee in the name of the board to recover the amount, in excess of the bond, necessary to reclaim the land in compliance with the act, these rules, the approved permit, and the reclamation plan. (4-1-91)

**036. -- 039. (RESERVED)**

**040. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR PLACER AND DREDGE MINING OPERATION.**

**01. Nonpoint Source Sediment Control. (4-1-91)**

**a.** Appropriate best management practices for nonpoint source sediment or other pollution controls shall be designed, constructed, and maintained with respect to site-specific placer or dredge mining operations. Permittees shall utilize best management practices designed to achieve state water quality standards and protect existing beneficial uses of adjacent surface waters. (4-1-91)

**b.** State water quality standards, including protection of existing beneficial uses, shall be the standard that must be achieved by best management practices. In addition to proper mining techniques and reclamation measures, the permittee shall take necessary steps at the close of each operating season to assure that sediment movement or other pollution associated with surface runoff over the area is minimized in order to achieve water quality standards. (4-1-91)

**c.** Sediment or pollution control measures refer to best management practices which are carried out within and, if necessary, adjacent to the disturbed land and consist of utilization of proper mining and reclamation measures, as well as specific necessary pollution control methods, separately or in combination. Specific pollution control methods may include, but are not limited to: (4-1-91)

- i. Keeping the disturbed land to a minimum at any given time through concurrent reclamation; (4-1-91)
- ii. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; (4-1-91)
- iii. Retaining sediment within the disturbed land; (4-1-91)
- iv. Diverting surface runoff to limit water coming into the disturbed land and settling ponds; (4-1-91)
- v. Routing runoff through the disturbed land using protected channels or pipes so as not to increase sediment load; (4-1-91)
- vi. Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and (4-1-91)
- vii. Use of adequate sediment ponds, with or without chemical treatment. (4-1-91)

**02. Modification of Management Practices.** If best management practices utilized by the permittee do not result in compliance with Subsection 040.01, the director shall require the permittee to modify or improve such best management practices to meet state water quality standards. (4-1-91)

**03. Clearing and Grubbing.** Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Permittees are cautioned to keep such areas as small as possible (preferably no more than one year's mining activity) as the permittee shall be required to meet state water quality standards. Trees and slash should be stockpiled for use in seedbed protection and erosion control and such stockpiling may be a requirement of the approved permit. (4-1-91)

**04. Overburden/Topsoil.** To aid in the revegetation of disturbed land, where placer or dredge mining operations result in the removal of substantial amounts of overburden, including any topsoil, the permittee shall remove, where practicable, the available topsoil or other growth medium as a separate operation for such area. Unless there are previously disturbed lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium shall be stockpiled and protected from erosion and contamination until such areas become available. (4-1-91)

- a.** Overburden/topsoil removal: (4-1-91)
- i.** Any overburden/topsoil to be removed shall be removed prior to any other mining activity to prevent loss or contamination; (4-1-91)
- ii.** Where overburden/topsoil removal exposes land area to potential erosion, the director may, as a condition of a permit, limit the size of any one (1) area having topsoil removed at any one (1) time. (4-1-91)
- iii.** Where the permittee can show that an overburden material other than topsoil is more conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. (4-1-91)
- b.** Topsoil storage -- Topsoil stockpiles shall be placed to minimize rehandling and exposure and to avoid excessive wind and water erosion. Topsoil stockpiles shall be protected, as necessary, from erosion by use of temporary vegetation or by other methods which will control erosion; including, but not limited to, silt fences, chemical binders, seeding, and mulching. (4-1-91)
- c.** Overburden storage -- Stockpiled ridges of overburden shall be leveled to a minimum width of ten (10) feet at the top. Peaks of overburden shall be leveled to a minimum width of fifteen (15) feet at the top. The overburden piles shall be reasonably prepared to control erosion using best management practices such as terracing, silt fences, chemical binders, seeding, and mulching. (4-1-91)
- 05. Roads.** (4-1-91)
- a.** Roads shall be constructed to minimize soil erosion. Such construction may require, but is not limited to, restrictions on length and grade of roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. (4-1-91)
- b.** All access and haul roads shall be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. (4-1-91)
- c.** Culverts that are to be maintained for more than one (1) year shall be designed to pass peak flows from not less than a twenty (20) year, twenty-four (24) hour precipitation event and have a minimum diameter of eighteen (18) inches. (4-1-91)
- d.** Roads and water control structures shall be maintained at periodic intervals as needed. Water control structures serving to drain roads shall not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. (4-1-91)
- e.** Roads which are to be abandoned shall be cross-ditched, ripped, and revegetated or otherwise obliterated to control erosion. (4-1-91)
- f.** Roads, not abandoned, which are to continue in use under the jurisdiction of a governmental or private landowner, shall be the permittee's responsibility to comply with the nonpoint source sediment control provisions of Subsection 040.01 until the successor assumes control. (4-1-91)
- 06. Settling Ponds -- Minimum Criteria.** (4-1-91)
- a.** Settling ponds shall provide adequate sediment storage capacity to achieve compliance with applicable water quality standards and protect existing beneficial uses, and may require periodic cleaning and proper disposal of sediment. (4-1-91)
- b.** No settling pond, used for process water clarification, shall be constructed to block a surface water drainage. (4-1-91)
- c.** All settling ponds shall be constructed and designed to prevent surface water runoff from entering the pond. (4-1-91)

**d.** All settling ponds shall be constructed and maintained to contain direct precipitation to the pond surface from a fifty (50) year twenty-four (24) hour storm event. (4-1-91)

**e.** No chemicals shall be used for water clarification or on site gold recovery without prior notification to, and approval from, the Department of Environmental Quality (DEQ). (4-1-91)

**07. Dewatering Settling Ponds.** Upon reclamation, settling ponds shall be dewatered, detoxified, and stabilized. Stabilization shall include regrading the site for erosion control, to the approximate original contour, and may require removal and disposal of settling pond contents. (4-1-91)

**08. Topsoil Replacement.** Following completion of the requirements of Subsection 040.07, the settling ponds shall be retopped with stockpiled topsoils or other soils conducive to plant growth. Where such soils are limited in quantity or not available, physical or chemical methods of erosion control may be used. All such areas are to be revegetated in accord with Subsection 040.17, unless otherwise specified in the placer mining permit. (4-1-91)

**09. Dam Safety.** Settling ponds shall conform with the Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code and with the Environmental Protection and Health Act, Section 39-118, Idaho Code, requiring plan and specification review and approval for waste treatment facilities. (4-1-91)

**10. Backfilling and Grading.** (4-1-91)

**a.** Every operator who conducts placer mining exploration operations which disturb less than one-half (1/2) acre shall contour the disturbed land to its approximate previous contour. These lands shall be revegetated in accordance with Subsection 040.17. For showing discovery on federal mining claims, unless otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches shall be reclaimed within one (1) year of verification. (4-1-91)

**b.** Every permittee who disturbs more than one-half (1/2) acre shall shape and smooth the disturbed ground to a grade reasonably comparable with the natural contour of the ground prior to mining, and to a condition which will promote the growth of vegetation except as provided in Subsection 040.17.m. or minimize erosion through other means. Any disturbed natural watercourse shall be restored to a configuration and structure conducive to good fish and wildlife habitat and recreational use. (4-1-91)

**c.** Backfill materials shall be compacted in a manner to ensure stability of the fill. (4-1-91)

**d.** After the disturbed land has been graded, slopes will be measured by the department for compliance with the requirements of the act, these rules, the placer or dredge mining permit, and the reclamation plan. (4-1-91)

**11. Waste Disposal -- Disposal of Waste in Areas Other Than Mine Excavations.** Waste materials not used in backfilling mined areas shall be placed, stabilized, and revegetated to ensure that drainage is compatible with the surrounding drainage and to ensure long-term stability. (4-1-91)

**a.** The permittee may, if appropriate, use terraces to stabilize the face of any fill. Slopes of the fill material shall not exceed the angle of repose. (4-1-91)

**b.** Unless adequate drainage is provided through a fill area, all surface water above a fill shall be diverted away from a fill area into protected channels, and drainage shall not be directed over the unprotected face of a fill. (4-1-91)

**12. Topsoil Redistribution.** Topsoil shall be spread to achieve a thickness over the regraded area, adequate to support plant life. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution shall be timed so that seeding or other protective measures can be readily applied to prevent compaction and erosion. Final grading shall be along the contour unless such grading will expose equipment

operators to hazardous operating conditions, in which case the best alternative method shall be used in grading. (4-1-91)

**13. Soil Amendments.** Nutrients and soil amendments shall, if necessary, be applied to the graded areas to successfully achieve the revegetation requirements of the permit and reclamation plan. (4-1-91)

**14. Revegetating Waste Piles.** The permittee shall conduct revegetation activities with respect to such waste piles in accordance with Subsection 040.17. (4-1-91)

**15. Mulching.** Mulch shall be used on severe sites and may be required by the approved placer or dredge mining permit. Nurse crops such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. (4-1-91)

**16. Permanent Cessation and Time Limits for Planting.** (4-1-91)

**a.** Wherever possible, but not later than one (1) year after grading, seeding and planting of disturbed lands shall be completed during the first favorable growth period after seedbed preparation. If permanent vegetation is delayed or slow in establishment, temporary cover of small annual grains, grasses, or legumes may be used to control erosion until adequate permanent cover is established. (4-1-91)

**b.** Reclamation activities should be concurrent with the mining operation and may be included in the approved placer or dredge mining permit and reclamation plan. Final reclamation shall begin within one (1) year after the placer or dredge mining operations have permanently ceased on a mine panel. If the permittee permanently ceases disposing of overburden on a waste area or permanently ceases removing minerals from a pit or permanently ceases using a road or other disturbed land, the reclamation activity on each given area shall start within one (1) year of such cessation, despite the fact that all operations as to the mine panel, which included such pit, road, overburden pile, or other disturbed land, has not permanently ceased. (4-1-91)

**c.** A permittee shall be presumed to have permanently ceased placer or dredge mining operations on a given portion of disturbed land where no substantial amount of mineral or overburden material has been removed or overburden placed on an overburden dump, or no significant use has been made of a road during the previous one (1) year. (4-1-91)

**d.** If a permittee does not plan to use disturbed land for one (1) or more years but intends thereafter to use the disturbed land for placer or dredge mining operations and desires to defer final reclamation until after its subsequent use, the permittee shall submit a notice of intent and request for deferral of reclamation to the director, in writing. If the director determines that the permittee plans to continue the operation within a reasonable period of time, the director shall notify the permittee and may require actions to be taken to reduce degradation of surface resources until operations resume. If the director determines that the use of the disturbed land for placer or dredge mining operations will not be continued within a reasonable period of time, the director shall proceed as though the placer or dredge mining operation has been abandoned, but the permittee shall be notified of such decision at least thirty (30) days before taking any formal administrative action. (4-1-91)

**17. Revegetation Activities.** (4-1-91)

**a.** The permittee shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the disturbed lands prior to placer or dredge mining operations or other species that will be conducive to the post-mining use of the disturbed lands. The permittee may use available technical data and results of field tests for selecting seeding practices and soil amendments which will result in viable revegetation. (4-1-91)

**b.** Standards for success of revegetation -- Revegetative success, unless otherwise specified in the approved placer mining permit and reclamation plan, shall be measured against the existing vegetation at the site prior to mining, or an adjacent reference area supporting similar vegetation. (4-1-91)

**c.** The ground cover of living plants on the revegetated area shall be comparable to the ground cover of living plants on the adjacent reference area for two (2) full growing seasons after cessation of soil amendment or

irrigation. (4-1-91)

**d.** For purposes of this rule, ground cover shall be considered comparable if it has, on the area actually planted, at least seventy percent (70%) of the premining ground cover for the mined land or adjacent reference area. (4-1-91)

**e.** For locations with an average annual precipitation of more than twenty-six (26) inches, the director, in approving a placer mining permit, may set a minimum standard for success of revegetation as follows: (4-1-91)

**i.** Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or (4-1-91)

**ii.** Fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species. (4-1-91)

**f.** As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measurement. Rock surface areas, composed of rock three plus (3+) inches in diameter will be excluded from this calculation. For purposes of measuring ground cover, rock greater than three (3) inches in diameter shall be considered as ground cover. (4-1-91)

**g.** For previously mined areas that were not reclaimed to the standards required by Section 040, and which are disturbed by the placer or dredge mining operations, vegetation shall be established to the extent necessary to control erosion, but shall not be less than that which existed before redisturbance. (4-1-91)

**h.** Introduced species may be planted if they are comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the disturbed land, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weeds shall not be used in revegetation. (4-1-91)

**i.** By mutual agreement of the director, the landowner, and the permittee, a site may be converted to a different, more desirable, or more economically suitable habitat. (4-1-91)

**j.** Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for mine revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. (4-1-91)

**k.** The permittee should plant shrubs or shrub seed, as required, where shrub communities existed prior to mining. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the landowner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. (4-1-91)

**l.** Reforestation -- Tree stocking of forestlands should meet the following criteria: (4-1-91)

**i.** Trees that are adapted to the site should be planted on the land to be revegetated, in a density which can be expected over time to yield a timber stand comparable to premining timber stands. This in no way is to exclude the conversion of sites to a different, more desirable, or more economically suited species; (4-1-91)

**ii.** Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and (4-1-91)

**iii.** Forest lands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (4-1-91)

- m.** Revegetation is not required on the following areas: (4-1-91)

  - i.** Disturbed lands, or portions thereof, where planting is not practicable or reasonable because the soil is composed of excessive amounts of sand, gravel, shale, stone, or other material to such an extent to prohibit plant growth; (4-1-91)
  - ii.** Any mined land or overburden piles proposed to be used in the mining operations; (4-1-91)
  - iii.** Any mined land or overburden pile, where lakes are formed by rainfall or drainage run-off from adjoining lands; (4-1-91)
  - iv.** Any mineral stockpile; (4-1-91)
  - v.** Any exploration trench which will become a part of any pit or overburden disposal area; and (4-1-91)
  - vi.** Any road which is to be used in mining operations, so long as the road is not abandoned. (4-1-91)

**041. -- 049. (RESERVED)**

**050. TERMINATION OF A PERMIT.**

**01. Completion of Reclamation.** A placer or dredge mining permit shall terminate upon completion of all reclamation activity to the standards specified in the permit and reclamation plan, and final inspection and approval has been granted by the director. Upon termination, the director will release the remaining portion of the bond. (4-1-91)

**02. Involuntary Termination.** For continuous operation, the bonded permit shall remain valid. Administrative action may be taken to terminate a placer and dredge mining permit if: (4-1-91)

- a.** The permit does not remain bonded; (4-1-91)
- b.** The placer and dredge mining operations are not commenced within two (2) years of the date of board approval; (4-1-91)
- c.** The placer and dredge mining operations are permanently ceased and final reclamation has not commenced within one (1) year of the date of permanent cessation; (4-1-91)
- d.** Inspection costs are delinquent; or (4-1-91)
- e.** Permittee fails to comply with the act, these rules, the permit, or the reclamation plan. (4-1-91)

**051. ENFORCEMENT AND FAILURE TO COMPLY.**

**01. Inspection.** The director may inspect the operation under permit from time to time to determine compliance with the act, these rules, the permit, and the reclamation plan. The cost and expense of such inspections shall be borne by the permittee. (4-1-91)

**a.** Cost of inspection shall be assessed at a flat rate of two hundred and fifty dollars (\$250) per year for each permit. Permits upon U.S. Forest Service administered lands shall be assessed at a flat rate of one hundred dollars (\$100) per year for each permit, to reflect the reduced inspection work for the department. (4-1-91)

**b.** A billing for inspection costs shall be made in advance each May 1, with the costs due and payable within thirty (30) days of receipt of an inspection cost statement. Inspection fees become delinquent if not paid on or before June 1, and the department may assess the greater of the following; either a twenty-five dollars (\$25) late payment charge or penalty at the rate of one percent (1%) for each calendar month or fraction thereof, compounded monthly, for late payments from the date the inspection fee is due. Such costs shall constitute a lien upon equipment,

personal property, or real property of the permittee and upon minerals produced from the permit area. Should inspection fees be delinquent, the department will send a single notice of delinquent payment by certified mail, return receipt requested, to the permittee. If payment is not received by the department within thirty (30) days from the date of receipt, the department may take appropriate administrative action to cancel the permit as provided by Subsection 050.02. (4-1-91)

**c.** Inspection costs related to a reported violation shall be assessed at actual costs and shall be in addition to those costs in Subsection 051.01.a. Costs include mileage to and from the mine site, employee meals, lodging, personnel costs, and administrative overhead. Costs are due and payable thirty (30) days after receipt of the inspection cost statement. (4-1-91)

**02. Department Remedies.** Without affecting the penal and injunctive provisions of these rules, the department may pursue the following remedies: (4-1-91)

**a.** When the director determines that a permittee has not complied with the act, these rules, the permit, or the reclamation plan, the director shall notify the permittee in writing and set forth the violations claimed and the corrective actions needed. (4-1-91)

**b.** If the permittee fails to commence and diligently proceed to complete the requested corrective action within a specified number of days after notice of the violation, unless a cooperative agreement has been reached pursuant to Subsection 035.09, the director may take administrative action as provided within this rule to terminate the permit and forfeit the bond. (4-1-91)

**c.** The board may cause to have issued and served upon the permittee alleged to be committing such violation, a formal complaint which shall specify the provisions of the act, the permit, the reclamation plan, or these rules which the permittee allegedly is violating, and a statement of the manner in and the extent to which said permittee is alleged to be violating the provisions of the act, the permit, the reclamation plan, or these rules. Such complaint may be served by certified mail, and return receipt, signed by the permittee, an officer of a corporate permittee, or the designated agent of the permittee, shall constitute service. (4-1-91)

**d.** The permittee shall be required to answer the formal complaint and request a hearing before a hearing officer appointed by the director, which authority to appoint is hereby delegated by the board to the director, within thirty (30) days of receipt of the complaint if matters asserted in the complaint are disputed. The hearing shall be held at a time not less than thirty (30) days after the date the permittee requests such a hearing. The board shall issue subpoenas at the request of the director and at the request of the charged permittee. The hearing will be conducted in accordance with Sections 67-5209 through 67-5213, Idaho Code, and these rules. (4-1-91)

**e.** The hearing officer shall enter an order in accordance with Section 67-5212, Idaho Code, which, if adverse to the permittee, shall designate a time period within which prescribed corrective action, if any, should be taken. The designated time period shall be sufficient to allow a reasonably diligent permittee to correct any violation. Procedure for appeal of an order is outlined in Subsection 003.01. (4-1-91)

**f.** Upon the permittee's compliance with the order, the director will consider the matter resolved and shall take no further action with respect to such noncompliance. (4-1-91)

**g.** If the permittee fails to answer the complaint and request a hearing, the matters asserted in the complaint shall be deemed admitted by the permittee, and the director may proceed to cancel the placer mining permit and forfeit the bond in the amount necessary to pay all costs and expense of restoring the lands and beds of streams damaged by dredge or other placer mining of said defaulting permittee and covered by such bond and remaining unrestored, including the department's administrative costs. (4-1-91)

**03. Violation of an Order.** Upon request of the director, the attorney general may institute proceedings to have the bond of a permittee forfeited for violation of an order entered pursuant to Subsection 051.02.e. (4-1-91)

**04. Injunctive Procedures.** (4-1-91)

**a.** The director may seek injunctive relief, as provided by Section 47-1324(b), Idaho Code, against

any permittee who is conducting placer mining or exploration operations when: (4-1-91)

i. Under an existing approved permit, reclamation plan, and bond, a permittee violates or exceeds the terms of the permit; (4-1-91)

ii. A permittee violates a provision of the act or these rules; or (4-1-91)

iii. The bond, if forfeited, would not be sufficient to adequately restore the land; (4-1-91)

**b.** The director may seek injunctive relief to enjoin a placer mining operation for the permittee's violation of the terms of an existing approved permit, the reclamation plan, the act, and these rules, and if immediate and irreparable injury, loss, or damage to the state may be expected to occur. (4-1-91)

**c.** The director shall request the court to terminate any injunction when he determines that all conditions, practices, or violations listed in the order have been abated. Termination shall not affect the right of the department to pursue civil penalties for these violations in accordance with Subsection 051.06. (4-1-91)

**05. Civil Action.** In addition to the injunctive provisions above, the board may maintain a civil action against any person who violates any provision of the act or these rules, to collect civil damages in an amount sufficient to pay for all the damages to the state caused by such violation, including but not limited to, costs of restoration in accordance with Section 47-1314, Idaho Code, where a person is conducting placer or dredge mining without an approved permit or bond. (4-1-91)

**06. Civil Penalty.** (4-1-91)

**a.** Pursuant to Section 47-1324(d), Idaho Code, any person who violates any of the provisions of the placer and dredge mining act or these rules or who violates any determination or order pursuant to these rules, shall be liable for a civil penalty of not less than five hundred dollars (\$500) nor more than two thousand five hundred dollars (\$2,500) for each day during which such violation continues. Such penalty shall be recoverable in an action brought in the name of the state of Idaho by the attorney general. (4-1-91)

**b.** Pursuant to Section 47-1324(d), Idaho Code, any person who willfully or knowingly falsifies any records, plans, specifications, or other information required by the board or willfully fails, neglects, or refuses to comply with any of the provisions of these rules, shall be guilty of a misdemeanor and shall be punished by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) or imprisonment, not to exceed one (1) year, or both. (4-1-91)

**07. Hearing Procedures.** (4-1-91)

**a.** Process and procedures under these rules shall be as summary and simple as may be possible. The director, board, or any member thereof, or the hearing officer designated by the director, shall have the power to subpoena witnesses and administer oaths. The District Court shall enforce the attendance and testimony of witnesses and the production for examination of books, papers, and records. A stenographic record or other recording of the hearing shall be made. Witnesses subpoenaed by the director or the hearing officer shall be allowed such fees and traveling expenses as are allowed in civil actions in the District Court, to be paid by the party in whose interest such witnesses are subpoenaed. The board, director, or hearing officer shall make such inquiries and investigations as shall be deemed relevant. Each hearing shall be held at the county seat in the county where any of the lands involved in the hearing are situate, or in the County of Ada, as the board or director may designate. (4-1-91)

**b.** A notice of hearing shall be served by certified mail to the last known address of the permittee or his agent at least twenty (20) days prior to the hearing. A certified return receipt signed by the permittee or his agent shall constitute service and time thereof. (4-1-91)

**c.** The cost of such hearing including, but not limited to, room rental, hearing officer fees, and transcript shall be assessed against the defaulting permittee. The director may designate a hearing officer to conduct any hearings and make findings of fact, conclusions of law, and decision on issues involving the administration of the act and these rules. (4-1-91)

**d.** If the hearing involves a permit or application for a permit, the decisions of the board or the hearing officer, together with the transcript of the evidence, findings of fact, and any other matter pertinent to the questions arising during any hearing shall be filed in the office of the director. A copy of the findings of fact and decision shall be sent to the applicant or holder of the permit involved in such hearing, by U.S. mail. If the matter has been assigned for hearing and a claim for review is not filed by any party in the proceeding within thirty (30) days after his decision is filed, the decision may be adopted as the decision of the board and notice thereof shall be sent to the applicant or permit holder involved in such hearing by U. S. mail. (4-1-91)

**052. -- 054. (RESERVED)**

**055. COMPUTATION OF TIME.**

Computation of time for these rules will be based on calendar days. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal state holiday. In such a case, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, or legal holidays are excluded from the computation when the period of prescribed time is seven (7) days or less. (4-1-91)

**056. -- 059. (RESERVED)**

**060. PLACER OR DREDGE MINING OF CERTAIN WATERBODIES PROHIBITED.**

**01. Prohibited Areas.** Placer or dredge mining in any form shall be prohibited on water bodies making up the national wild and scenic river system: (4-1-91)

**a.** The Middle Fork of the Clearwater River, from the town of Kooskia upstream to the town of Lowell; the Lochsa River from its junction with the Selway at Lowell forming the Middle Fork upstream to the Powell Ranger Station; and the Selway River from Lowell upstream to its origin; (4-1-91)

**b.** The Middle Fork of the Salmon River, from its origin to its confluence with the main Salmon River; (4-1-91)

**c.** The St. Joe River, including tributaries, from its origin to its confluence with Coeur d'Alene Lake, except for the St. Maries River and its tributaries. (4-1-91)

**02. Mining Withdrawals.** The State Board of Land Commissioners, under authority provided by Title 47, Chapter 7, Idaho Code, has withdrawn certain other lands from placer and dredge mining. A listing of such withdrawals is available from the administrative offices of the Department of Lands. (4-1-91)

**061. -- 064. (RESERVED)**

**065. DEPOSIT OF FORFEITURES AND DAMAGES.**

**01. Mining Account.** All monies, forfeitures, and penalties collected under the provisions of these rules shall be deposited in the Placer and Dredge Mining Account to be used by the director for placer and dredge mine reclamation purposes and related administrative costs. (4-1-91)

**02. Funds for Reclamation.** Upon approval of the board, monies in the account may be used to reclaim lands for which the forfeited bond was insufficient to reclaim in accord with these rules, or for placer or dredge mine sites for which the bond has been released and which have resulted in subsequent damage. Monies received from inspection fees are to be kept separate and used for costs incurred by the director in conducting such inspections. (4-1-91)

**066. -- 069. (RESERVED)**

**070. COMPLIANCE OF EXISTING PLANS WITH THESE RULES.**

These rules, upon their adoption, shall apply as appropriate to all existing placer or dredge mining operations, but

shall not affect the validity or modify the duties, terms, or conditions of any existing approved placer or dredge mining permits or impose any additional obligations with respect to reclamation upon any permittee conducting placer or dredge mining operations pursuant to a placer or dredge mining permit approved prior to adoption of these rules. (4-1-91)

**071. -- 999. (RESERVED)**



# Summary of Comments Received on IDAPA 20.03.01, Rules Governing Dredge and Placer Mining Operations in Idaho

v0906

	Rule Section	Comment	Response
1	001.02 Scope 012.01 Policy	The ability to accept or reject applications due to the "benefit in the public interest" may be contrary to the Idaho Constitution's protections of mining.	Idaho Code § 47-1312 has similar language as the rule, so the rule language is in keeping with the statute. The only mention of mines or mining in the Idaho Constitution is: Article 1, Section 14 (Right of Eminent Domain); Article XIII, Section 2 (Protection and Hours of Labor) and Section 4 (Child Labor in Mines Prohibited); Article XV, Section 3 (Water of Natural Stream - Right to Appropriate - State's Regulatory Power - Priorities). The Idaho Constitution does not appear to prohibit the regulation of mining activities.
2	010.25 Placer or Dredge Exploration Operation	012.28 has no definition of a placer exploration operation.	There is not a 012.28 section. However, the definition does exist in Subsection 010.25. In addition, Subsection 013.06 specifically exempts suction dredges with an intake diameter of 8 inches or less.
3	012.04 Compliance With Other Laws	A mine operator should not have to also acquire a Stream Channel Alteration Permit for dredge exploration or operation.	IDL has successfully implemented a Joint Review Process for over 30 years. This process resolves potential conflicts between overlapping authorities and jurisdictions. By far the majority of suction dredging in Idaho is classified as recreational, and is only regulated by IDWR through their Letter Permit.
4	013.02 Types of Operations	013.2.b does not mention suction devices that are hand operated, hand dug, electric, or motor driven pump suction on dry land and beaches.	Any hand-worked placer operation that exceeds 1/2 acre would require a permit. See Subsection 010.26 and 27. A complete list of all "motorized earth-moving equipment" is not practical or needed. Electric or motor driven pump suction devices used outside of a streambed would be subject to this rule. Up to 1/2 acre could be disturbed during exploration.
5	013.06 Suction Dredges	No reclamation should be required for suction dredging unless the stream channel is changed.	Subsection 013.06 states that these rules do not apply to the use of suction dredges with an intake diameter of 8 inches or less.

	<b>Rule Section</b>	<b>Comment</b>	<b>Response</b>
6	013.06 Suction Dredges	Riverbed mineral leasing rules should also not apply to suction dredges with an intake diameter of 8 inches or less.	The Riverbed Mineral Leasing Rule, IDAPA 20.03.05, is a completely separate rule that only applies to state-owned navigable rivers. The purpose of IDAPA 20.03.05 is to manage the leasing and extraction of minerals from these state-owned lands; it is not to regulate suction dredging. IDWR regulates recreational suction dredging under the Stream Channel Protection Act and rules. Under IDAPA 20.03.05, any use of a suction dredge with an intake diameter over 5 inches is a commercial endeavor, and the state must be compensated through rents and royalties. Rents go to the Public Trust dedicated fund used to manage state-owned navigable waters. Royalties go to the Public School Endowment Fund.
7	020.03 One-Half Acre Limit	Roads should not be included in the half-acre of disturbance threshold for exploration versus mining.	Roads are also included in the definitions of Disturbed Land in Idaho Code § 47-1313(c) and Placer or Dredge Exploration Operation in Idaho Code § 47-1313(j). Road is defined in Idaho Code § 47-1313(m) and only includes those ways constructed solely for access to a mining or exploration operation. This would not include a public road or a road used for multiple purposes. A rule change cannot modify the statute, so the requirement would remain. Roads are often a primary source of sediment pollution, so eliminating them from exploration activities may expose the state's waterways to increased pollution.
8	020.04 Reclamation Required	If a road already exists, does it get reclaimed back to a road?	As used in this rule, "Road" is defined in Idaho Code § 47-1313(m) and IDAPA 20.03.01.010.30. Road only includes those ways constructed solely for access to a mining or exploration operation, and they would normally be reclaimed. This would not include a public right of way or an access route used for multiple purposes.
9	021.01 Approved Reclamation Plan Required	A permit from a federal agency supersedes a state permit and makes the state permit illegal.	This is incorrect. The Idaho Supreme Court has affirmed the applicability of state regulations on federal lands. See State ex rel. Andrus v. Click, 97 Idaho 791, 554 P.2d 969 (1976).

	<b>Rule Section</b>	<b>Comment</b>	<b>Response</b>
10	021.01 Approved Reclamation Plan Required	Are existing mining operations grandfathered?	The Idaho Dredge and Placer Mining Protection Act was passed by voter initiative in 1954. The rules apply to placer and dredge mining activity conducted from 1955 to the present.
11	021.03.a Incomplete Applications	If landowner signature is required, will the Forest Service sign the application?	The Forest Service will sign as the landowner. Typically, this occurs after they have gone through their NEPA analysis, and before the Land Board reviews the permit. IDL reviews the application package with the Forest Service and other state agencies to ensure that one plan meets all the agencies' requirements.
12	021.04 Requirements of Maps	7.5 minute maps are no longer sold, so are they still required?	As stated in this subsection, an equivalent map may be used. Several digital elevation models are available that mimic the 7.5 minute topographic maps.
13	021.04.g Requirements of Maps	The reclamation section appears to be hiding the requirement for filtering the output of a suction dredge.	All suction dredging with an intake diameter of 8 inches or less does not require a permit under these rules. For dredges with an intake diameter greater than 8 inches, the rule is very specific about the application requirements for describing filtration.
14	022.04 Interagency Comments	Requiring a miner to fill out a permit for all state and federal agencies to dig a hole smaller than 1/2 acre will require too much review time. The operator would spend all their time filling out forms each year.	If the cumulative disturbance is 1/2 acre or less, then no permit is needed. If the cumulative disturbance will be over 1/2 acre, then the operator should develop one plan to mine through a project area. The plan should meet the requirements of all permitting agencies, and then the agencies will review it at the same time. The plan could include keeping the unreclaimed disturbance down to a small level, like 1/2 acre, in order to satisfy the Forest Service if needed. Then only one plan review is needed for the entire property. While annual inspections may be made, no further plan reviews should be required.

	<b>Rule Section</b>	<b>Comment</b>	<b>Response</b>
15	022.05 Stream Alteration Permits	IDAPA 20.03.01.022.05 should exempt suction dredges with an intake diameter of 8 inches or less.	These rules do not apply to the use of suction dredges with an intake diameter of 8 inches or less. See Subsection 013.06, Applicability, Suction Dredges.
16	022.06 Water Clarification	Will water quality be tested at high water or low water? Water is already muddy at high water, and distance from the mining project may also affect results.	In general, the water quality standards cannot be exceeded regardless of the condition of the receiving water. If discharge is direct to surface waters, then a stormwater permit or Idaho Pollution Discharge Elimination System permit may also be needed. The potential need for these permits will be determined through the Joint Review Process if a permit is processed under this rule. It is recommended that an operator contact EPA or IDEQ in advance to inquire about their permit requirements. Those agencies' needs can then be incorporated into the application.
17	022.07 Permit Denial Authority	IDAPA 20.03.01.022.07 should clarify that suction dredging is not covered by this rule because suction dredging cannot cause permanent damage to a stream channel.	Subsection 013.06 states that these rules do not apply to the use of suction dredges with an intake diameter of 8 inches or less. Suction dredging that does not follow the IDWR Letter Permit can damage a stream channel. The banks of rivers and streams are often unconsolidated gravel that is subject to erosion. Stacking dredge spoils or undermining stream banks can alter the flow of a stream and cause bank erosion. Stripping vegetation from streambanks can also cause bank erosion.
18	022.10 Permit Offering	Should an operator submit 20 applications, get approval for the first one right away, and then keep working on the other applications so he can continuously work on mining?	If the cumulative disturbance is 1/2 acre or less, then no permit is needed from IDL. If the cumulative disturbance will be over 1/2 acre, then the operator should develop one plan to mine through a project area. The plan could include keeping the unreclaimed disturbance down to a small level, like 1/2 acre, in order to satisfy the Forest Service if needed. Then only one plan review is needed for the entire property. While annual inspections may be made, no further plan reviews should be required.

	<b>Rule Section</b>	<b>Comment</b>	<b>Response</b>
19	026 Deviation from an Approved Permit	If a miner digs 2 feet outside of a designated boundary, he should be able to get approval from an inspecting agency without going through the amendment process.	If a plan is developed for an entire mine site, this can easily be accommodated if all the excavation occurs within the permit boundary and does not cause instability of the excavated slopes.
20	050 Termination of a Permit	Can the ending time of a permit be indefinite?	If mining operations are continuous and bonding is kept up to date, then the permit never expires. If mining does not commence within two years of permit approval, then it may be cancelled as per Paragraph 050.02.b. If mining or reclamation operations have not occurred for one year, then they are presumed to have ceased and reclamation must begin within the following year. A deferral of the final reclamation may be requested. See Subsection 040.16 for more details.
21	051.01.a	No mention is made of BLM lands for inspection fees.	Correct. Placer permits on BLM lands would be assigned a \$250 inspection fee. Only operations on USFS land have a \$100 inspection fee.
22	060.02 Mining Withdrawals	Withdrawn lands and waterbodies raises concern over whether or not these lands are within the jurisdiction of federal land managers. Mineral development should proceed on federal lands that are more valuable for such mineral deposits due to the strategic national interests.	The list of waterbodies withdrawn from mineral entry by statute or Land Board action is available here: <a href="https://www.idl.idaho.gov/lakes-rivers/riverbed/withdrawn-rivers_rev.pdf">https://www.idl.idaho.gov/lakes-rivers/riverbed/withdrawn-rivers_rev.pdf</a> . All of these waterbodies are considered navigable by the State of Idaho, and are therefore owned by the State of Idaho. At the current time, only garnet and gold are being mined from placer deposits in Idaho. Neither one of these commodities is considered to be a strategic mineral by the U.S. Government. The list of strategic minerals can be found here: <a href="https://www.usgs.gov/news/interior-releases-2018-s-final-list-35-minerals-deemed-critical-us-national-security-and">https://www.usgs.gov/news/interior-releases-2018-s-final-list-35-minerals-deemed-critical-us-national-security-and</a>
23	General	Is IDL hiring mine inspectors? With the thousands of mining claims in Idaho, an estimated 500 inspectors are needed with a budget of over \$20 million.	IDL does not inspect each mining claim in Idaho. Only mining sites with active dredge and placer permits are regularly inspected. 28 permits are currently active. Jobs are posted on the state's website here: <a href="https://www.idaho.gov/jobs/find-a-job/">https://www.idaho.gov/jobs/find-a-job/</a>

	<b>Rule Section</b>	<b>Comment</b>	<b>Response</b>
24	General	Mining districts should be contracted for inspections.	Inspections should be carried out by trained staff knowledgeable in IDL's program. Hiring is governed by the state hiring process, and mining districts have no statutory authority for conducting inspections.
25	General	Is a mining permit needed to dig a basement or drill a well on a patented claim?	General construction and water well development on a patented claim does not require a permit from IDL. If the construction takes on the nature and appearance of a mining operation, then a permit or reclamation plan may be required.
26	General	Why can't miners fill in abandoned mines on Forest Service lands and get paid for it?	IDL does have an Abandoned Mine Lands program, and IDL has done reclamation projects on Forest Service lands through cooperative agreements with them. IDL is bound by our agency's contracting guidelines and the state procurement processes. All contracts over a certain dollar amount must be advertised for bid, and the lowest qualifying bid must be selected. Insurance and other requirements exist for contractors hired by IDL. If an operator is qualified to bid on these projects and wants to be contacted for future reclamation projects, they should contact the local IDL office.
27	General	The rulemaking timeframe is very compressed and does not give much time for comment and analysis.	The proposed rule does not modify the rule that was in place prior to June 29, 2019. It is the same rule approved during the last legislative session. The compressed timeframe is due to the omnibus rulemaking schedule developed in response to the lapse of rules on July 1.
28	General	Recreational Mining should continue to be allowed.	Recreational Mining is generally not regulated by this rule. Suction dredges with an intake diameter of 8 inches or less are regulated by IDWR under the Stream Channel Protection Act and associated rules, not by IDAPA 20.03.01. See Subsection 013.06.
29	General	More restrictions on sluicing and dredging is not needed.	The proposed rule does not add any additional restrictions to the rule that was in place prior to June 29, 2019. It is the same rule approved during the last legislative session. This rule also does not apply to recreational suction dredging with an intake diameter of 8 inches or less, which is the majority of the operations in the state.

	<b>Rule Section</b>	<b>Comment</b>	<b>Response</b>
30	General	The rules should acknowledge that suction dredging does not alter streams and the Stream Channel Protection Act should not apply to suction dredging.	IDAPA 20.03.01 only regulates the use of suction dredges with an intake diameter over 8 inches. No applications for this type of activity has been submitted in at least 25 years. IDL has observed the deleterious effects of recreational suction dredging (intake diameter smaller than 5 inches) in smaller streams where material was piled up to block the flow of a stream, vegetation was stripped from the banks, and the banks were undermined by suction dredging. Those activities are in violation of the Letter Permit used by IDWR for recreational suction dredging, which suggests that this activity does in fact need to be regulated.
31	General	Permits should not be required unless the operation involves stream changes or pollution above what naturally occurs and has occurred in the past.	Permits are required to ensure that the affected lands are reclaimed. Exploration does not require a permit under these rules if kept to a disturbance of 1/2 acre or less, and all suction dredging with an intake diameter of 8 inches or less does not require a permit under these rules.
32	General	If reclamation is successful, can the bond be applied for succeeding projects?	If a portion of one mine is reclaimed, then the bond could be applied to disturbance on additional parts of the same mine. Separate mines can be covered with one blanket bond, but the amount of bond allocated to each mine must be specified. If the amount allocated to each mine changes, then the allocation modification must be documented.
33	General	If a bond is required by the BLM and Forest Service, does IDL also require a bond?	IDL can recognize a federal bond if it meets the requirements of Idaho Code § 47-13.
34	General	Operators with at least 5 successful mine reclamations should be given preference for IDL reclamation projects. A list of good miners could be contacted to see if they wanted to perform the reclamation before other contractors are notified.	IDL is bound by our agency's contracting guidelines and the state procurement processes. All contracts over a certain dollar amount must be advertised for bid, and the lowest qualifying bid must be selected. Insurance and other requirements exist for contractors hired by IDL. If an operator is qualified to bid on these projects and wants to be contacted for future reclamation projects, they should contact the local IDL office.

	<b>Rule Section</b>	<b>Comment</b>	<b>Response</b>
35	General	IDWR is inhibiting development of a riverbed mineral lease, so compliance with IDWR's rules should not be required by the riverbed mineral leasing rules.	Riverbed mineral leasing is governed by IDAPA 20.03.05. Money is not the only factor used by IDL to manage riverbed mineral development. The river resources are subject to the Public Trust Doctrine, and are used by many other segments of the population. As stated in IDAPA 20.03.05 "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;" If IDWR believes that a proposed mining activity jeopardizes other uses of the river, then they should deny a permit. An operator should be able to discuss the mining proposal with them and modify it to address their concerns. IDAPA 20.03.01, however, has no bearing on this issue.
36	General	Federal and state agencies reviews and bonding should be streamlined and better coordinated.	If a project requires a permit from IDL, then IDL does coordinate with other state and federal agencies on the permit reviews. Both federal and state agencies accept proof of bonding with the other agency if it is one of the standard bond types (cash, CD, Letter of Credit, surety) and meets both agencies' requirements. The bond amount will be agreed upon by the agencies prior to the permit being reviewed by the Land Board.