

State Board of Land Commissioners Open Meeting Checklist

Meeting Date: October 17, 2019

Regular Meetings

| | |
|---|--|
| 9/24/19 | Notice of Meeting posted in prominent place in IDL's Boise Headquarters office five (5) or more calendar days before meeting. |
| 9/24/19 | Notice of Meeting posted in prominent place in IDL's Coeur d'Alene Headquarters office five (5) or more calendar days before meeting. |
| 9/24/19 | Notice of Meeting posted in prominent place at meeting location five (5) or more calendar days before meeting. |
| 9/24/19 | 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. |
| 9/24/19 | Notice of Meeting posted electronically on IDL's public website www.idl.idaho.gov five (5) or more calendar days before meeting. |
| 10/9/18 | Agenda posted in prominent place in IDL's Boise Headquarters office forty-eight (48) hours before meeting. |
| 10/9/18 | Agenda posted in prominent place in IDL's Coeur d'Alene Headquarters office forty-eight (48) hours before meeting. |
| 10/9/18 | Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting. |
| 10/9/18 | Agenda emailed/faxed to list of media and interested citizens who have requested such notice forty-eight (48) hours before meeting. |
| 10/9/18 | Agenda posted electronically on IDL's public website www.idl.idaho.gov forty-eight (48) hours before meeting. |
| 12/19/18 8/14/19 9/18/19 10/4/19 | Land Board annual meeting schedule posted – Director's Office, Boise and Staff Office, CDA and IDL's public website www.idl.idaho.gov |

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 www.idl.idaho.gov 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 www.idl.idaho.gov 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

October 9, 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

NOTICE OF PUBLIC MEETING OCTOBER 2019

The Idaho State Board of Land Commissioners will hold a Regular Meeting on **Thursday, October 17, 2019** in the **State Capitol, Hearing Room EW42, Lower Level, East Wing, 700 W Jefferson St., Boise**. The meeting is scheduled to begin at **1:30 PM** (Mountain).

Please note meeting location, date, and time.

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

First Notice Posted: 9/24/2019-IDL Boise; 9/24/2019-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 State Board of Land Commissioners

Brad Little, Governor and President of the Board
Lawrence E. Denney, Secretary of State
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State Board of Land Commissioners Regular Meeting
October 17, 2019 – 1:30 PM (MT)
Final Agenda
Capitol, Hearing Room (EW42), Lower Level, East Wing, 700 W. Jefferson St., Boise, Idaho

Please note meeting location, date, and time.

1. Department Report – Presented by Dustin Miller, Director

Endowment Transactions

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

Status Updates

- C. Land Bank Fund
- D. Fire Season Report - Final

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. Results of September 2019 Grazing and Crop Conflict Auctions** – Presented by Dustin Miller, Director
- 4. Approval of Minutes** – September 13, 2019 Regular Meeting (Boise)

Regular—Action Item(s)

- 5. Adoption of Pending Rule—IDAPA 20.03.03, Rules Governing Administration of the Reclamation Fund** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance

State Board of Land Commissioners
Final Agenda
Regular Meeting (Boise) – October 17, 2019
Page 1 of 2

6. **Adoption of Pending Rule—IDAPA 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho** – Presented by Mick Thomas, Division Administrator, Oil and Gas
7. **Adoption of Pending Rules—Omnibus Rulemaking** – Presented by David Groeschl, Deputy Director
8. **Approval of Lower Cranberry Timber Sale** – Presented by Bill Haagenson, Division Administrator-Operations
9. **Department of Lands' Lease Auction Process** – Presented by Bill Haagenson, Division Administrator-Operations

Information

10. **2020 Grazing Lease Rate and Non-Fee Grazing Cost Study Update** – Presented by Bill Haagenson, Division Administrator-Operations

Executive Session

- A. Idaho Code § 74-206(1)(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. [Topic: Lease M500031]

Regular—Action Item(s)

11. **Settlement Negotiations for Lease M500031**



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

October 17, 2019

Endowment Transactions

Timber Sales

During September 2019, the Department of Lands sold four endowment timber sales at auction. The endowment net sale value represents a 26.5% up bid over the advertised value. The Department of Lands sold three GNA sales at auction. The Willow South GNA Ton sale on the Boise National Forest and the Windy Shingle South GNA Ton sale on the Nez-Clear National Forest sold for the appraised values. The Hanna Flats GNA sale on the Idaho Panhandle National Forest sold with an up bid of 14.9% over the advertised value. The Department of Lands also sold the Beavertail sale (Idaho Department of Parks & Recreation/Idaho Department of Fish & Game) for the appraised value. The Department of Lands had one sale (Westwood) not sell at auction. This was the second auction attempt for the sale. The sale will be offered a third time in the near future.

| TIMBER SALE AUCTIONS | | | | | | | | |
|-----------------------------|-----------|---------------|----------------|------------|------------------------|------------------------|-----------------|--------------------|
| SALE NAME | AREA | SAWLOGS MBF | CEDAR PROD MBF | PULP MBF | APPRAISED NET VALUE | SALE NET VALUE | NET \$/MBF | PURCHASER |
| Kugel Cherries OSR | SJ | 5,565 | | | \$ 885,354.00 | \$ 1,110,843.80 | \$199.61 | PotlatchDeltic |
| Davis Mountain | SJ | 11,495 | 65 | | \$ 2,368,307.00 | \$ 3,552,139.25 | \$307.28 | PotlatchDeltic |
| Hidden Scriver Salvage | SWI | 11,019 | | | \$ 844,418.00 | \$ 844,418.00 | \$76.63 | IFG Timber LLC |
| South Brickel Cedar | MICA | 2,885 | | | \$ 1,382,729.50 | \$ 1,425,809.10 | \$494.21 | McFarland |
| Endowment | | 30,964 | 65 | 0 | \$ 5,480,808.50 | \$ 6,933,210.15 | \$223.44 | |
| Willow South GNA Ton | Boise | 3,330 | | | \$ 177,235.99 | \$ 177,235.99 | \$53.22 | IFG Timber LLC |
| Beavertail | MICA | 1,225 | | | \$ 46,954.00 | \$ 46,954.00 | \$38.33 | Joe Hester Logging |
| Hanna Flats GNA | IPNF | 6,175 | | 250 | \$ 453,314.40 | \$ 520,650.10 | \$81.04 | Stimson Lumber Co |
| Windy Shingle South GNA Ton | Nez-Clear | 6,530 | | | \$ 318,463.88 | \$ 318,463.88 | \$48.77 | IFG Timber LLC |
| Non-Endowment | | 17,260 | 0 | 250 | \$ 995,968.27 | \$ 1,063,303.97 | \$60.73 | |

| 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 | 10/24/2019 |
| Wet Boot | 4,115 | \$ 961,827 | POL | 10/15/2019 2nd Auction |
| Drift Creek | 8,705 | \$ 1,651,974 | POND | 10/30/2019 |
| | 18,120 | \$ 3,399,432 | | |

| VOLUME UNDER CONTRACT as of September 30, 2019 | | | |
|---|----------------|----------------|---------------|
| | Total | Public School | Pooled |
| Active Contracts | 179 | | |
| Estimated residual volume (MBF) | 479,738 | 312,619 | 167,119 |
| Estimated residual length (LF) | 21,110 | 21,110 | 0 |
| Estimated residual weight (Ton) | 492,631 | 322,208 | 170,423 |
| Total Residual MBF Equivalent | 569,728 | 371,510 | 198,218 |
| Estimated residual value | \$ 155,584,495 | \$ 100,555,375 | \$ 55,029,120 |
| Residual Unit Value (\$/MBF) | \$ 273.09 | \$ 270.67 | \$ 277.62 |

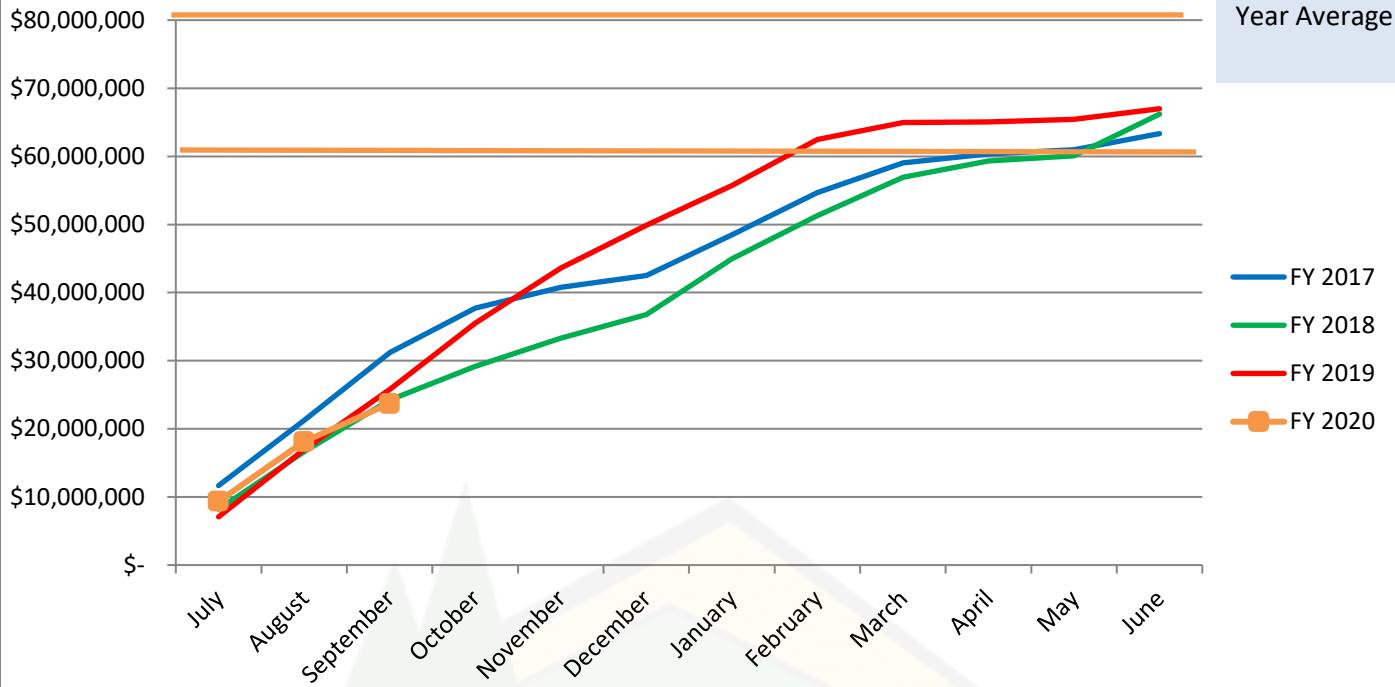
| TIMBER HARVEST RECEIPTS | | | | | | | |
|--------------------------------|-----------------|---------------|------------------|-----------------|-------------------|--|--|
| | September | | FY to date | | October Projected | | |
| | Stumpage | Interest | Harvest Receipts | Stumpage | Interest | | |
| Public School | \$ 3,619,794.25 | \$ 356,312.13 | \$ 15,325,415.65 | \$ 4,426,273.07 | \$ 528,781.06 | | |
| Pooled | \$ 1,478,705.36 | \$ 140,919.84 | \$ 8,385,724.98 | \$ 1,868,494.80 | \$ 186,309.90 | | |
| General Fund | \$ 2.06 | \$ 0.00 | \$ 7.02 | \$ 2.06 | \$ 0.00 | | |
| TOTALS | \$ 5,098,501.67 | \$ 497,231.97 | \$ 23,711,147.65 | \$ 6,294,769.93 | \$ 715,090.96 | | |

| Status of FY 2020 Timber Sale Program | | | | | | |
|--|---------------|--------|----------------|---------------|--------|----------------|
| | MBF Sawlog | | | Number Poles | | |
| | Public School | Pooled | All Endowments | Public School | Pooled | All Endowments |
| Sold as of September 30, 2019 | 60,975 | 5,591 | 66,566 | 0 | 0 | 0 |
| Currently Advertised | 12,569 | 17,569 | 30,138 | 2,003 | 0 | 2,003 |
| In Review | 28,247 | 30,971 | 59,218 | 2,800 | 0 | 2,800 |
| Did Not Sell ¹ | 0 | 0 | 0 | 0 | 0 | 0 |
| TOTALS | 101,791 | 54,131 | 155,922 | 4,803 | 0 | 4,803 |
| FY-2020 Sales Plan | | | 267,395 | | | 17,953 |
| Percent to Date | | | 58% | | | 27% |

¹ After three attempts at auction.

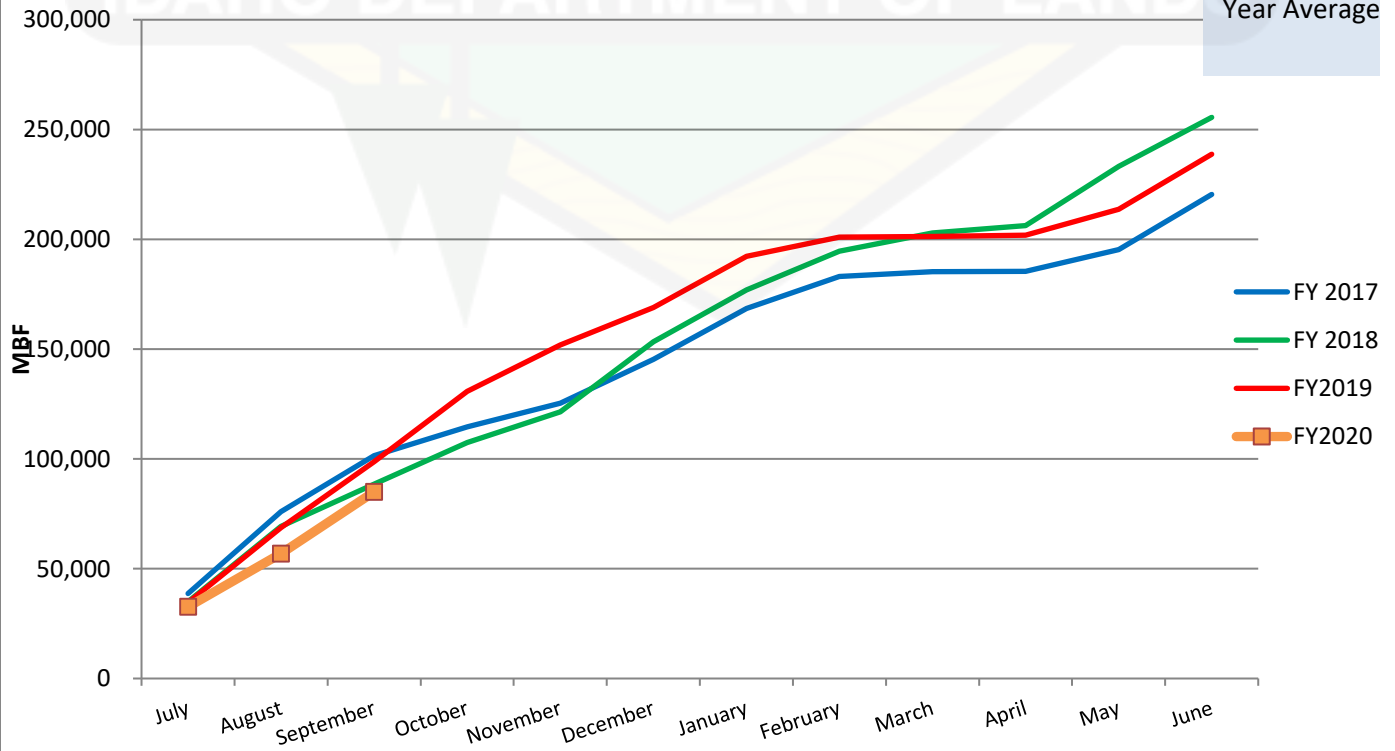
Cumulative Harvest Receipts

Current FYTD is 88% of 3 Year Average

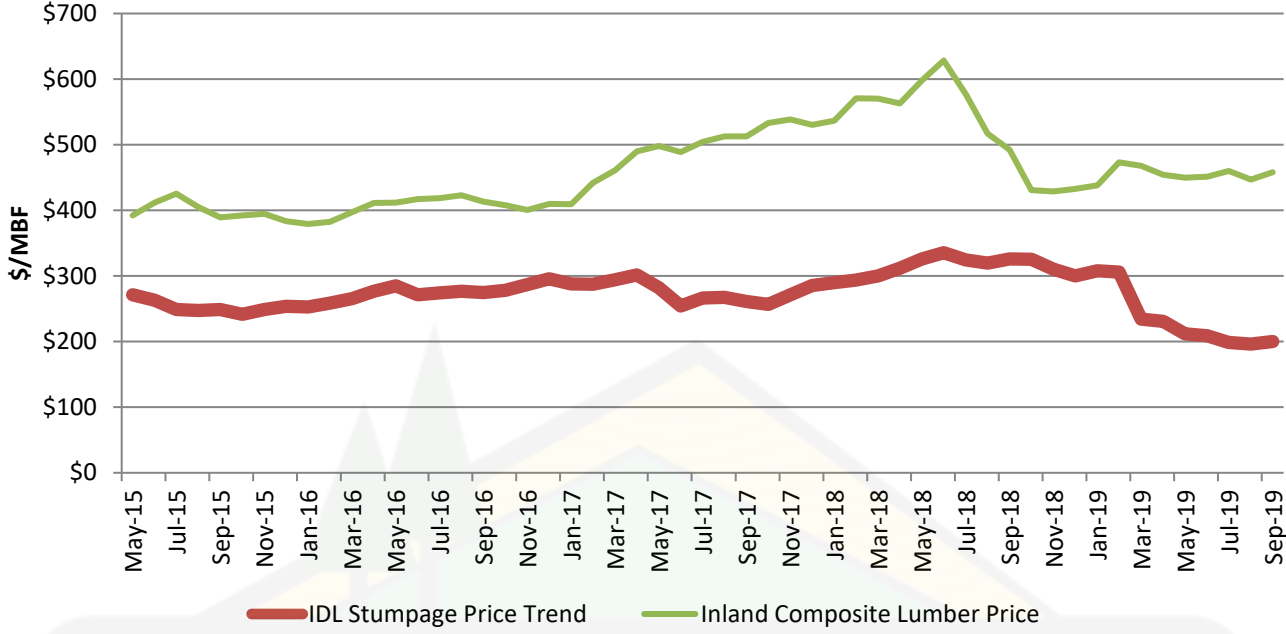


Cumulative Harvest Volume

Current FYTD is 88% of 3 Year Average



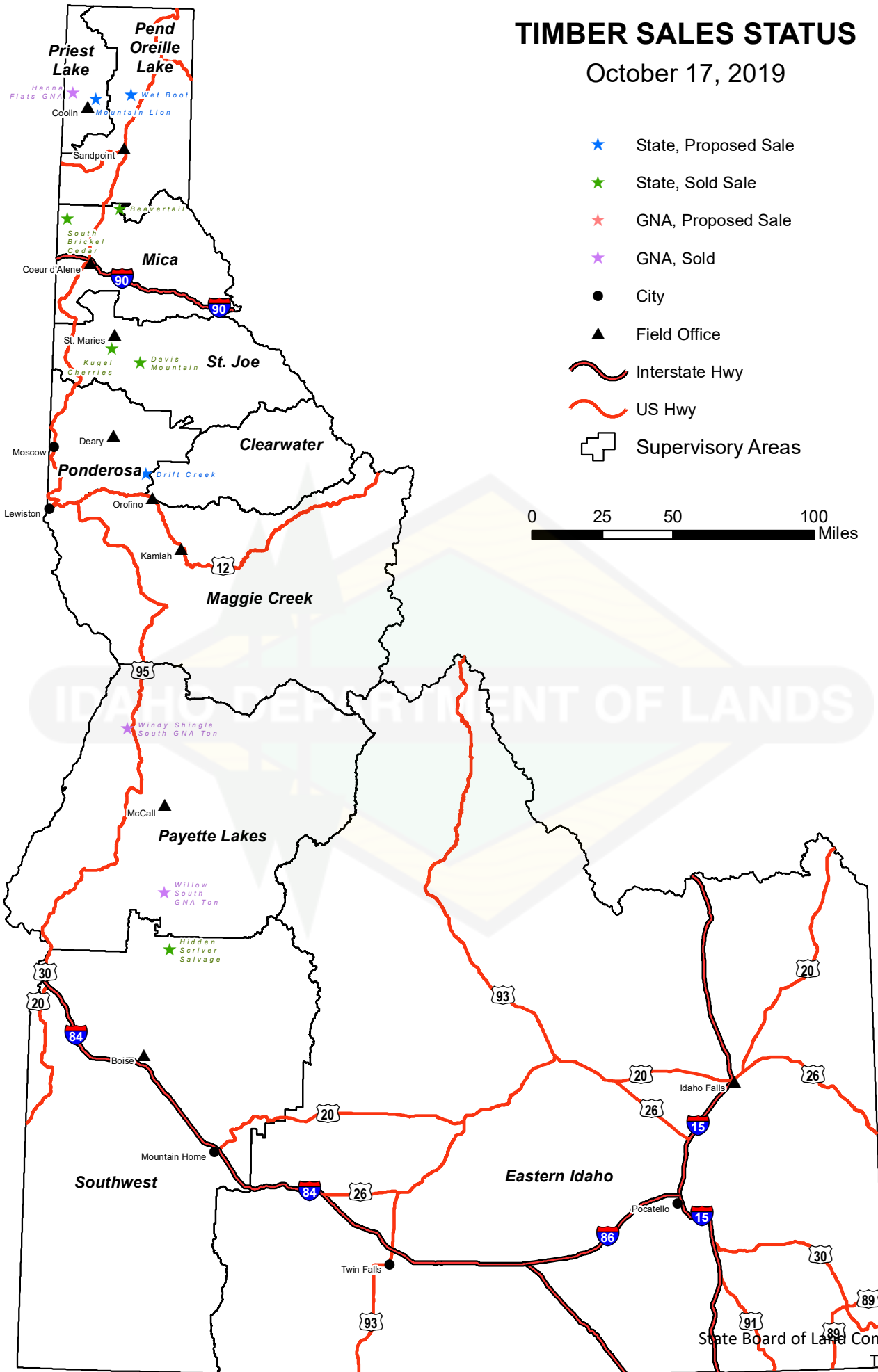
Monthly Lumber and Stumpage Price



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

TIMBER SALES STATUS

October 17, 2019



IDAHO DEPARTMENT OF LANDS

State Board of Land Commissioners
 Timber Sales
 October 17, 2019

STATE BOARD OF LAND COMMISSIONERS
 October 17, 2019
 Endowment Transactions

Leases and Permits

| FISCAL YEAR 2020 – LEASING & PERMITTING TRANSACTIONS BY MONTH – through September 30, 2019 | | | | | | | | | | | | | | |
|--|-----------|----------|-----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|-----------|-----------|
| ACTIVITY | JUL | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | JUN | EST | FYTD |
| SURFACE | | | | | | | | | | | | | | |
| Agriculture | - | - | - | - | - | - | - | - | - | - | - | - | 12 | 0 |
| Communication Sites | - | - | - | - | - | - | - | - | - | - | - | - | 5 | 0 |
| Grazing | - | - | - | - | - | - | - | - | - | - | - | - | 142 | 0 |
| <i>Assignments</i> | 2 | 1 | 1 | - | - | - | - | - | - | - | - | - | - | 4 |
| Residential | - | - | - | - | - | - | - | - | - | - | - | - | 15 | 0 |
| <i>Assignments</i> | - | 1 | 1 | - | - | - | - | - | - | - | - | - | - | 2 |
| COMMERCIAL | | | | | | | | | | | | | | |
| Alternative Energy | - | - | - | - | - | - | - | - | - | - | - | - | - | 0 |
| Industrial | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 0 |
| Military | - | - | - | - | - | - | - | - | - | - | - | - | 3 | 0 |
| Office/Retail | - | - | - | - | - | - | - | - | - | - | - | - | 4 | 0 |
| Recreation | - | - | - | - | - | - | - | - | - | - | - | - | 4 | 0 |
| OTHER | | | | | | | | | | | | | | |
| Conservation | - | - | - | - | - | - | - | - | - | - | - | - | 1 | 0 |
| Geothermal | - | - | - | - | - | - | - | - | - | - | - | - | - | 0 |
| Minerals | - | - | - | - | - | - | - | - | - | - | - | - | 9 | 0 |
| <i>Assignments</i> | 1 | - | - | - | - | - | - | - | - | - | - | - | - | 1 |
| Non-Comm Recreation | - | - | - | - | - | - | - | - | - | - | - | - | - | 0 |
| Oil & Gas | - | - | - | - | - | - | - | - | - | - | - | - | - | 0 |
| PERMITS | | | | | | | | | | | | | | |
| Land Use Permits | 14 | 5 | 8 | - | - | - | - | - | - | - | - | - | NA | 27 |
| TOTAL INSTRUMENTS | 17 | 7 | 10 | - | - | - | - | - | - | - | - | - | NA | 34 |

Real Estate

| FISCAL YEAR 2020 – REAL ESTATE TRANSACTIONS BY MONTH – through September 30, 2019 | | | | | | | | | | | | | | |
|---|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|
| ACTIVITY | JUL | AUG | SEP | OCT | NOV | DEC | JAN | FEB | MAR | APR | MAY | JUN | EST | FYTD |
| Deeds Acquired | - | - | - | - | - | - | - | - | - | - | - | - | - | 0 |
| Deeds Granted | 6 | 1 | 11 | - | - | - | - | - | - | - | - | - | - | 18 |
| Deeds Granted - Surplus | - | - | - | - | - | - | - | - | - | - | - | - | - | 0 |
| Easements Acquired | - | 1 | 3 | - | - | - | - | - | - | - | - | - | - | 4 |
| Easements Granted | 1 | 1 | 2 | - | - | - | - | - | - | - | - | - | - | 4 |
| Three acquired easements were recorded this month, two of which were acquired through reciprocal agreements. Eleven deeds were issued resulting from the sale of cottage sites at Priest and Payette Lakes. | | | | | | | | | | | | | | |

LANDS AND WATERWAYS DIVISION
2020FYTD GROSS REVENUE - ACTUAL AND FORECASTED
through September 30, 2019

| | ACTUAL RECEIPTS AS OF 09.30.2019 | REVENUE EXPECTED BY 09.30.2019** | REVENUE EXPECTED BY 06.30.2020 |
|-----------------------------|-------------------------------------|-------------------------------------|-----------------------------------|
| SURFACE | | | |
| AGRICULTURE | \$ 3,513 | \$ 7,801 | \$ 308,786 |
| COMMUNICATION SITES | \$ 132,457 | \$ 72,102 | \$ 937,019 |
| GRAZING | \$ 237,315 | \$ 164,435 | \$ 1,818,574 |
| RESIDENTIAL | \$ (3,663) | \$ - | \$ 1,820,796 |
| COMMERCIAL | | | |
| COMMERCIAL ENERGY RESOURCES | \$ 500 | \$ - | \$ 22,812 |
| COMMERCIAL INDUSTRIAL | \$ 37,250 | \$ 1,438 | \$ 82,308 |
| COMMERCIAL MILITARY | \$ 250 | \$ 16,600 | \$ 139,976 |
| COMMERCIAL OFFICE/RETAIL | \$ 426,393 | \$ 380,919 | \$ 964,519 |
| COMMERCIAL RECREATION | \$ 6,335 | \$ 6,194 | \$ 322,031 |
| OTHER | | | |
| CONSERVATION LEASES | \$ - | \$ - | \$ 148,078 |
| GEOHERMAL | \$ - | \$ 217 | \$ 4,117 |
| MINERAL | \$ 8,047 | \$ 9,072 | \$ 73,453 |
| NON-COMMERCIAL RECREATION | \$ 2,200 | \$ 2,812 | \$ 80,496 |
| OIL AND GAS LEASES | \$ 726 | \$ 1,659 | \$ 29,096 |
| Sub Total | \$ 851,324 | \$ 663,249 | \$ 6,752,062 |
| *LAND SALES/RECORDS | \$ 235,792 | *** | |
| *REAL ESTATE SERVICES | \$ 15 | | |
| Grand Total | \$ 1,087,131 | | |

* These categories are not included in the annual forecast.

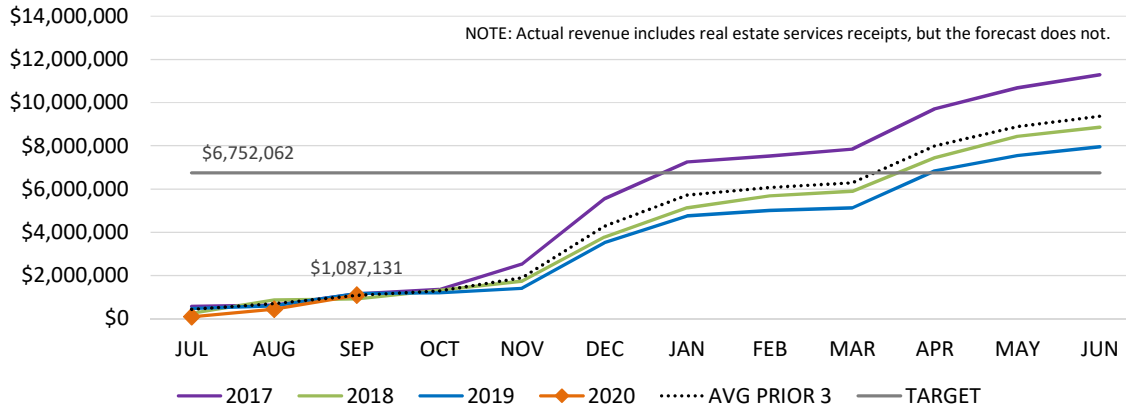
** These figures are based on "normal" timing of revenue/billing throughout the year.

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

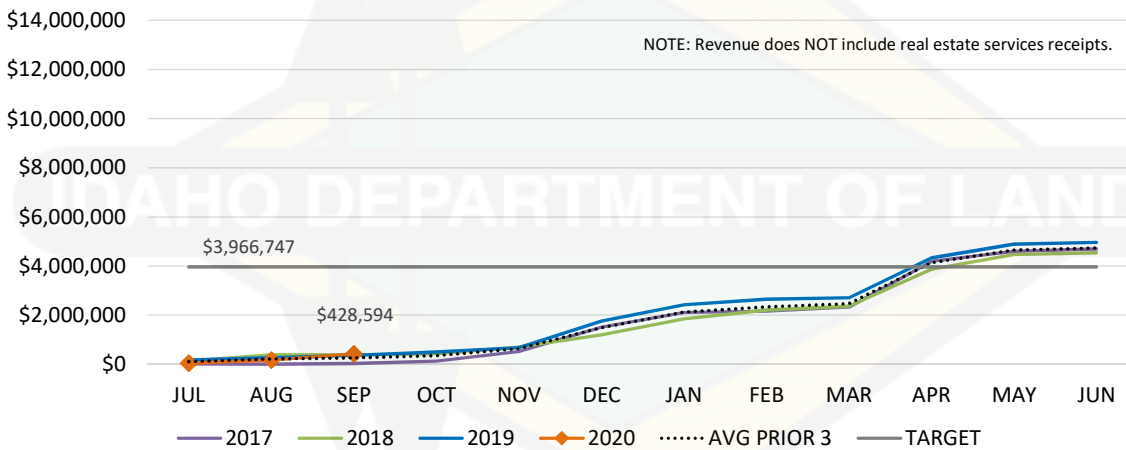
NOTE: The Department prepares the annual endowment revenue forecast by ASSET CLASS (not by Program). For this table, we have attempted to further breakdown the forecast by program by applying trend data.

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

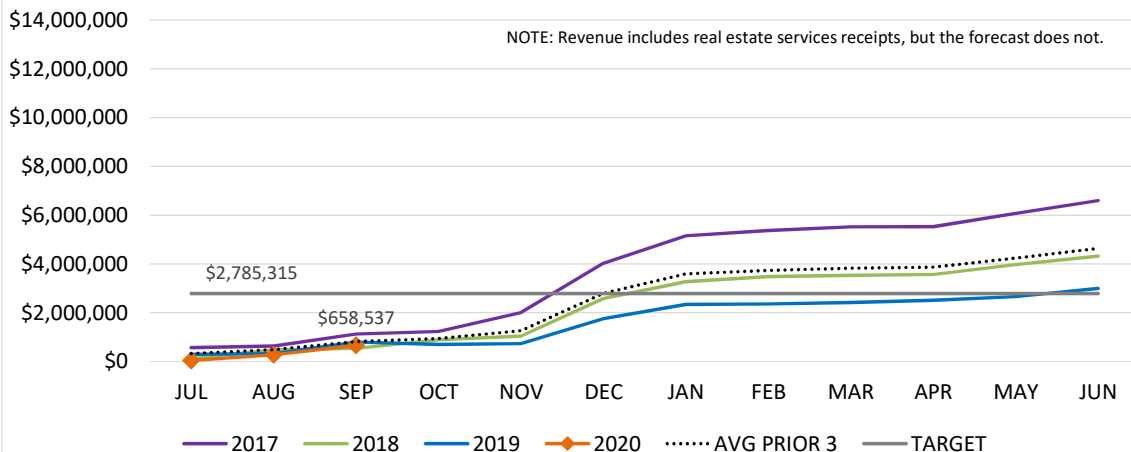
FYDTotal is
101% of 3 Year
Average



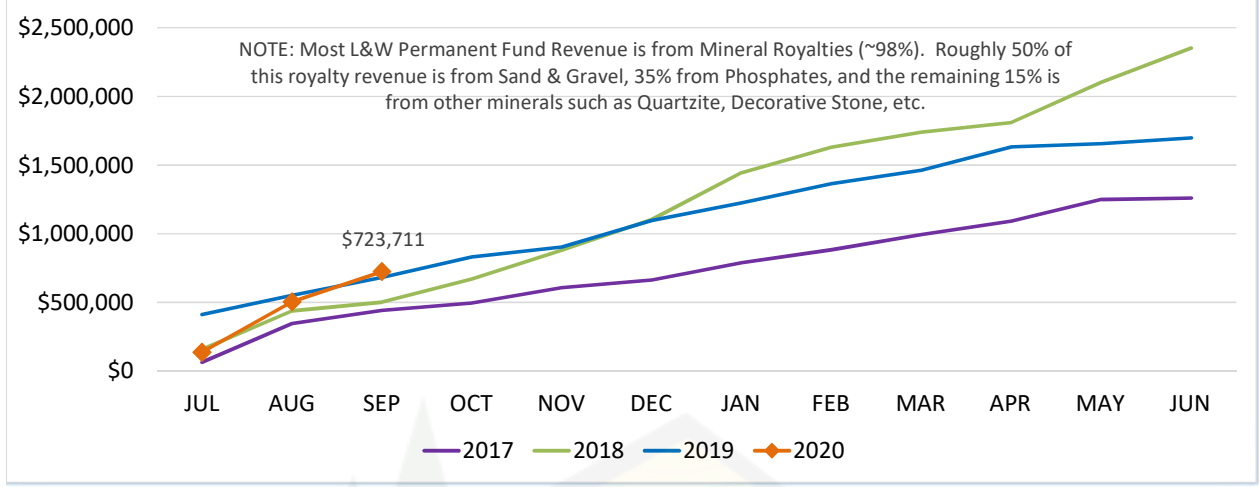
Cumulative L&W Program Receipts - Earnings Reserve
NO COMMERCIAL RETAIL OR RESIDENTIAL REVENUE* INCLUDED
FY17 - FYTD20



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



LAND BANK AGING REPORT

Current Remaining Principal Balance By Quarter Received - As of September 30, 2019

| FY Quarter IN | Public Schools | Normal Schools | State Hospital South | University of Idaho | All Endowments | FY Quarter EXPIRES |
|----------------------------------|-----------------------|-----------------------|-----------------------------|----------------------------|-----------------------|---------------------------|
| 2017-02 | \$ 2,852,032 | \$ 2,161,254 | \$ 9,515,446 | \$ - | \$ 14,528,732 | 2022-02 |
| 2017-03 | \$ 5,766,250 | \$ 10,431,970 | \$ 1,593,780 | \$ - | \$ 17,792,000 | 2022-03 |
| 2017-04 | \$ - | \$ 25,100 | \$ - | \$ - | \$ 25,100 | 2022-04 |
| 2018-01 | \$ - | \$ 3,331,000 | \$ 4,439,000 | \$ - | \$ 7,770,000 | 2023-01 |
| 2018-02 | \$ 27,869,832 | \$ - | \$ 125,500 | \$ - | \$ 27,995,332 | 2023-02 |
| 2018-03 | \$ - | \$ 2,000,712 | \$ 829,888 | \$ 5,650,029 | \$ 8,480,629 | 2023-03 |
| 2018-04 | \$ 10,500 | \$ - | \$ - | \$ - | \$ 10,500 | 2023-04 |
| 2019-01 | \$ - | \$ 2,428,000 | \$ 1,442,000 | \$ - | \$ 3,870,000 | 2024-01 |
| 2019-02 | \$ 25,136,124 | \$ - | \$ - | \$ - | \$ 25,136,124 | 2024-02 |
| 2019-03 | \$ - | \$ - | \$ - | \$ - | \$ - | 2024-03 |
| 2019-04 | \$ - | \$ - | \$ - | \$ - | \$ - | 2024-04 |
| 2020-01 | \$ - | \$ 2,582,500 | \$ 1,670,000 | \$ - | \$ 4,252,500 | 2025-01 |
| TOTAL PRINCIPAL REMAINING | \$ 61,634,738 | \$ 22,960,536 | \$ 19,615,614 | \$ 5,650,029 | \$ 109,860,917 | |

| | | | | | |
|---|----------------------|----------------------|----------------------|---------------------|-----------------------|
| LAND BANK CASH BALANCE (with Interest) | \$ 64,952,952 | \$ 23,893,536 | \$ 20,643,789 | \$ 5,841,920 | \$ 115,332,197 |
|---|----------------------|----------------------|----------------------|---------------------|-----------------------|

IDAHO DEPARTMENT OF LANDS

STATE BOARD OF LAND COMMISSIONERS

October 17, 2019
Department Report

Subject

Fire Season Update

Background

As of October 3, 2019, Emergency Fire Suppression expenditures are estimated to be \$13,600,000. The Suppression Account will recover an estimated \$2,100,000 of reimbursable costs, for a net obligation of \$11,500,000. The total obligation above includes the 2019 contracted aircraft costs.

Discussion

On September 16, the Bed Rock Fire was reported near Lenore along the Clearwater River. The fire grew to 168 acres and was contained on September 17. The fire burned primarily in grass. The fire was handled by a local type 3 incident commander.

As shown in the table below, fire occurrence to date for 2019 is 78% 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 | 122 | 166 | 1,525 |
| 2017 | 62 | 139 | 201 | 52,783 |
| 2018 | 57 | 202 | 259 | 7,721 |
| 2019 | 83 | 124 | 207 | 1,259 |
| 20 Yr. Average | | | 295 | 22,316 |

At this time fire danger and activity has moderated due to weather and shortening days. Prescribed burning has begun in areas where conditions allow.

Fire Season Summary of Expenses and Acreage Burned

| Total Acres Burned by Ownership | |
|--|----------------|
| 9/27/2019 | |
| Surface Owner | Acres |
| Idaho Department of Lands | 7,984 |
| Other State Lands | 28 |
| Private | 11,166 |
| Bureau of Land Management | 101,791 |
| Other Federal | 142,869 |
| U.S. Forest Service | 16,485 |
| Tribal | 35 |
| Total Acres | 280,358 |

Suppression Spending Detail

| 2019 Fire Season YTD | | |
|-----------------------------------|------------------------|--|
| Category | Estimated Costs | Notes |
| Aviation Resources | \$ 2,100,000 | 4 SEATS, 1 Fire Boss, 2 T2 Helicopters |
| External Initial Attack Resources | \$ 218,000 | Alberta and Other States |
| IDL Team Fires | \$ 5,050,000 | Prospect (T2), Mica Creek (T3), CCC (T3) |
| IDL Non-Team Fires | \$ 2,319,000 | |
| Other Suppression | \$ 3,913,000 | Reimbursable (IDL and Fire Department resources supporting non-IDL fires), Coeur d'Alene Cache, Dispatch, Administrative Support, Investigations |
| Total Estimate YTD | \$ 13,600,000 | |

Suppression Spending History

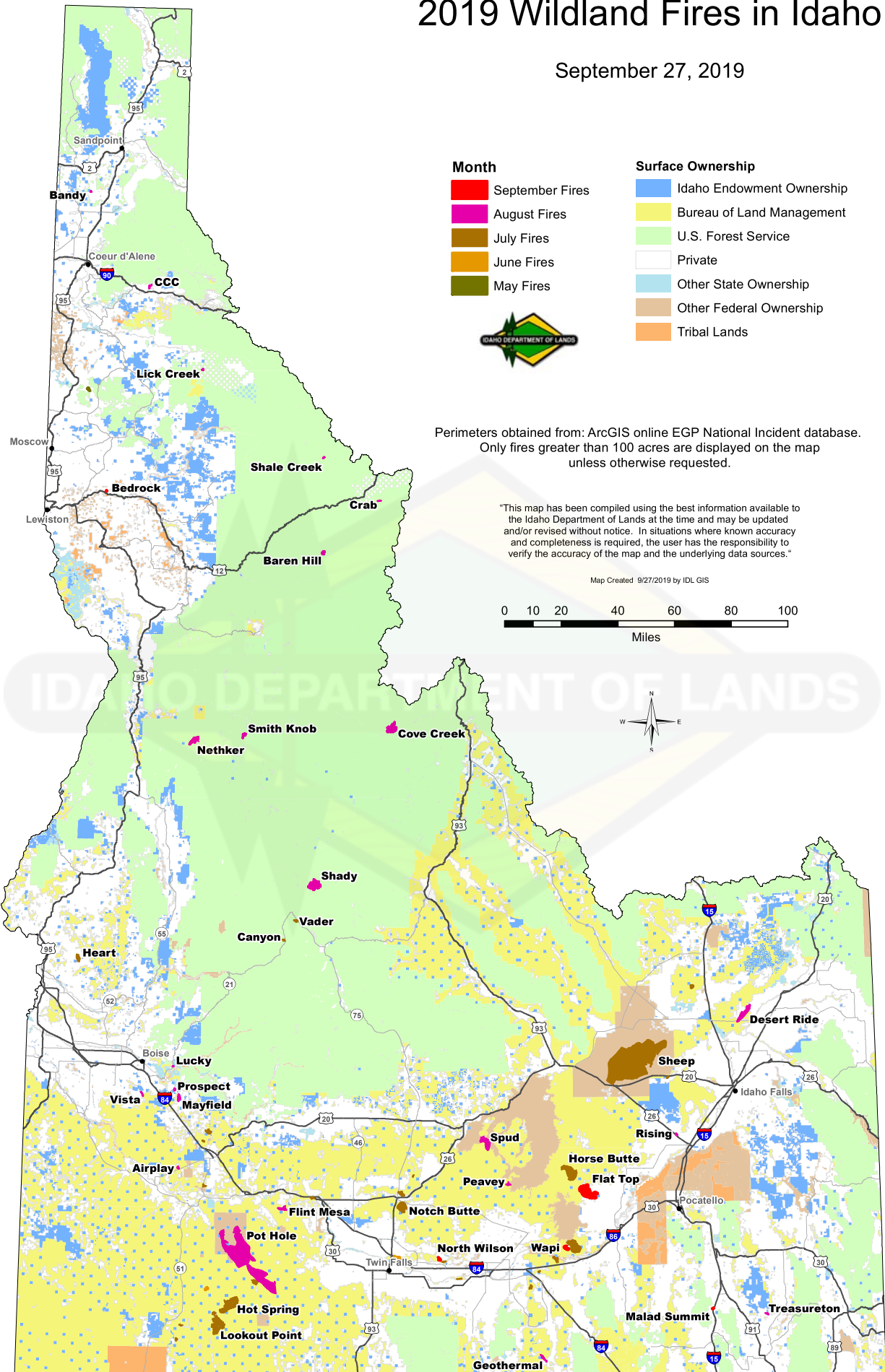
| Fire Season Estimated Costs from Annual Reports | | | |
|--|-------------------------------------|---------------------|-------------------------|
| | Idaho Fire Suppression Costs | Reimbursable | Idaho Obligation |
| 2015 | \$ 78,113,000 | \$ 17,902,000 | \$ 60,211,000 |
| 2016 | \$ 14,802,000 | \$ 4,781,000 | \$ 10,021,000 |
| 2017 | \$ 22,081,000 | \$ 5,632,000 | \$ 16,449,000 |
| 2018 | \$ 28,000,000 | \$ 8,500,000 | \$ 19,500,000 |
| 2019 | \$ 13,600,000 | \$ 2,100,000 | \$ 11,500,000 |

Attachments

1. Significant Fires Throughout Idaho

2019 Wildland Fires in Idaho

September 27, 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 September 30, 2019

Month: 1.0% **Fiscal year: 0.4%**

The global economy has reached a critical juncture. Global economic growth has been slowing since early 2018 and is at a point where economic weakness could begin to feed on itself and trigger a recession. Germany is already in a recession, China continues to slow, and Brexit remains unresolved. Trade negotiations with China seem to be on hold, but the path to a constructive resolution is unclear. The U.S. has been the bastion of economic strength, but cracks are appearing in the manufacturing sector, which could spread to the much larger services sector. Investors have been seeking safety in government bonds and the equity markets seem to be waiting for evidence that we are working through a mid-cycle slowdown rather than moving toward a recession.

Status of endowment fund reserves

Distributions for FY2019 and FY2020 are well secured. Estimated reserves as of August 2019, were 5.9 years for public schools and 6.7 years or more for the other endowments based on anticipated FY2021 distributions.

Significant actions of the Endowment Fund Investment Board

The Endowment Fund Investment Board held a special meeting on September 19, 2019 to interview Callan and RVK, who were the finalists in the investment consultant search. The Board voted to retain Callan as investment consultant.

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

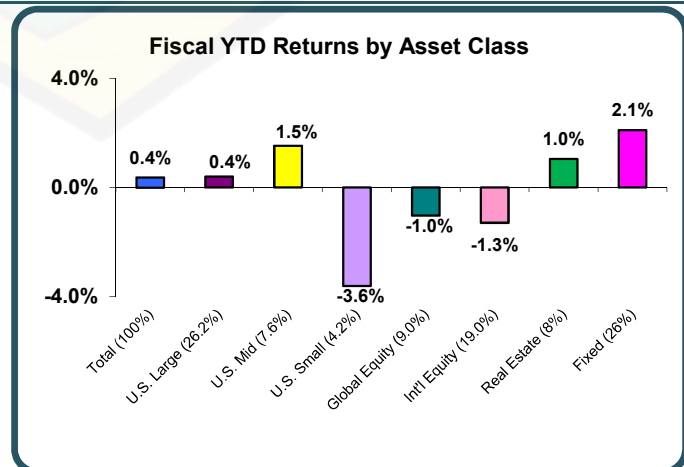
EFIB Board Meeting – November 19th

| | <u>Month</u> | <u>FYTD</u> |
|--|-------------------------|-------------------------|
| Beginning Value of Fund | \$ 2,301,878,487 | \$ 2,318,780,865 |
| Distributions to Beneficiaries | (6,743,167) | (20,229,501) |
| Land Revenue net of IDL Expenses | - | 19,176,895 |
| Change in Market Value net of Investment Mgt. Expenses | 21,732,495 | (860,444) |
| Current Value of Fund | \$ 2,316,867,815 | \$ 2,316,867,815 |

| <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> |
|------------------------------|----------------------|-----------------------|---------------------|-----------------|-------------------|------------------|-----------------|
| Total Fund | 1.0% | 15.2% | 0.4% | 4.5% | 9.0% | 6.9% | 9.2% |
| <i>Total Fund Benchmark*</i> | 1.3% | 13.9% | 0.8% | 4.4% | 8.4% | 6.7% | 8.6% |
| Total Fixed | -0.6% | 8.9% | 2.1% | 10.2% | 3.0% | 3.3% | 3.7% |
| <i>85% BB Agg, 15% TIPS</i> | -0.7% | 8.4% | 2.2% | 9.8% | 2.8% | 3.2% | 3.7% |
| Total Equity | 1.6% | 18.9% | -0.4% | 1.8% | 11.3% | 8.1% | 11.1% |
| <i>38% R3 19% Ax 9% AC</i> | 2.0% | 17.1% | 0.2% | 1.5% | 10.6% | 8.0% | 10.5% |
| Domestic Equity | 1.7% | 19.8% | 0.2% | 1.1% | 13.0% | 10.0% | 13.6% |
| <i>Russell 3000 (R3)</i> | 1.8% | 20.1% | 1.2% | 2.9% | 12.8% | 10.4% | 13.1% |
| Global Equity | 0.9% | 20.0% | -1.0% | 4.4% | 9.3% | 5.3% | |
| <i>MSCI ACWI (AC)</i> | 2.1% | 16.2% | 0.0% | 1.4% | 9.7% | 6.7% | |
| Int'l. Equity | 1.8% | 16.4% | -1.3% | 2.1% | 8.5% | 4.7% | 5.5% |
| <i>MSCI ACWI ex-US (Ax)</i> | 2.6% | 11.6% | -1.8% | -1.2% | 6.3% | 2.9% | 4.5% |
| Real Estate | | | 1.1% | 6.9% | 6.2% | | |
| | | | 0.8% | 5.5% | 6.6% | | |

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

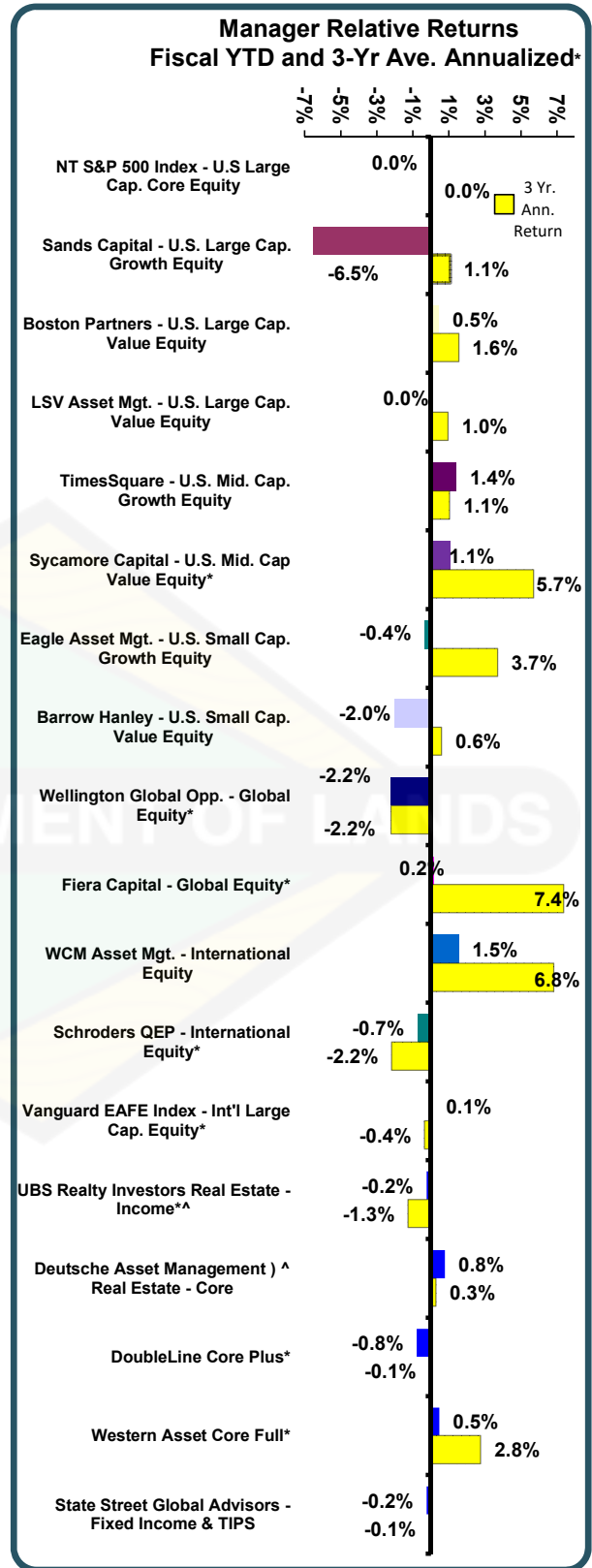
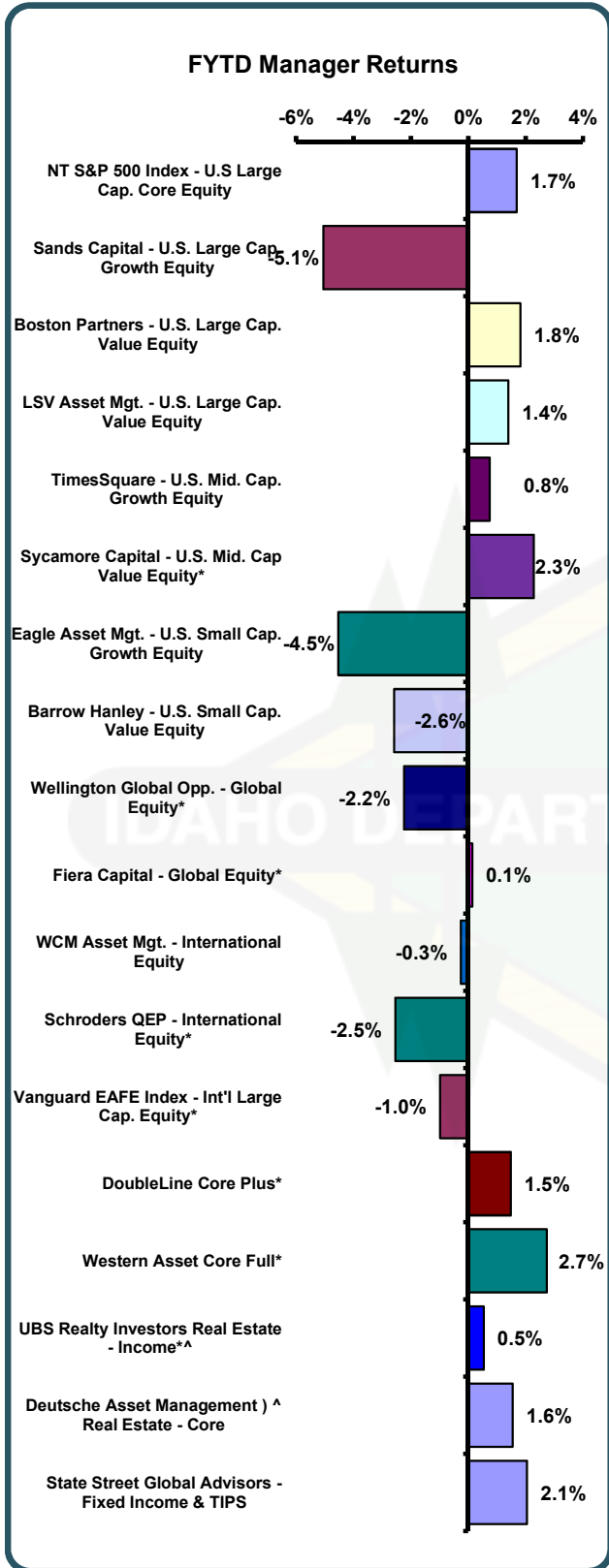
| | <u>Mkt Value (\$M)</u> | <u>Allocation</u> |
|------------------------|------------------------|-------------------|
| Domestic Equity | \$ 896.6 | 38.7% |
| Large Cap | 616.2 | 26.6% |
| Mid Cap | 185.5 | 8.0% |
| Small Cap | 94.9 | 4.1% |
| Global Equity | 215.3 | 9.3% |
| Int'l Equity | 453.2 | 19.6% |
| Fixed Income | 550.6 | 23.8% |
| Real Estate | 190.6 | 8.2% |
| Cash | 10.6 | 0.5% |
| Total Fund | \$ 2,316.9 | 100.0% |



Endowment Fund Staff Comments:

The fund was up 1.0% for the month, 0.3% under the benchmark. The Russell 3000 index was up 1.8%, Russell Midcap up 2.0% and Russell 2000 (small cap) up 2.1%. International equities (MSCI ACWI ex-US) were up 2.6%. Value outperformed Growth, while International equity outperformed Domestic equity. Bonds, as measured by the BBC Aggregate index, were down 0.5% and TIPS were down 1.3%. 7 of 15 active managers beat their benchmark this month. On a FYTD basis, the fund is up 0.4%, 0.4% 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

October 17, 2019

Consent Agenda

Subject

Results of September 2019 Auctions for Conflicted Grazing and Crop Leases

Question Presented

Shall the Land Board Direct the Department to award grazing leases to: Blue Butte Grazing Association (G700316), Star Gate Ranch (G700336), Karl Studer (G700326), Carl Horn (G700338), MaCade Bingham (G800462), Lake Family Ranches (G800460), Neal Ward (G800468 and G800461), Fish Creek Cattle (G800444), and Perry Ward (C800070).

Background

In accordance with IDAPA 20.03.14.105.01, when two or more eligible applicants apply to lease the same state endowment trust land, the Idaho Department of Lands (Department) shall hold a public auction. On or before April 30, 2019, the Department received two or more applications for eleven expiring grazing leases and one expiring crop lease. The Department held ten conflict auctions to resolve the conflict applications. The Department will hold the two remaining conflict auctions before the end of the year. Department staff conducted the lease conflict auctions and determined the highest bidders for each of the leases in accordance with existing statutes, rules and procedures.

Discussion

Four lease conflict auctions were held in the Jerome field office on September 16 and 17, 2019, and six auctions were held in the Idaho Falls field office on September 18 and 19, 2019. Premium bids for the ten auctions totaled \$381,950. All nine of the grazing leases are offered on 20-year terms, and the crop lease is offered on a 17-year term. Attachment 1 is a summary of the results of the lease conflict auctions. The Department informed all auction participants they had 20 days from the date of the auction to file an appeal of the auction proceedings with the State Board of Land Commissioners (Land Board). The 20-day appeal period has expired and no appeals were received by the Department.

According to IDAPA 20.03.14.106, a review and approval of lease conflict auction results by the Land Board is required prior to lease issuance. Idaho Code § 58-310(4) states that the Land Board has the right to reject any and all bids made at lease conflict auctions when, there has been fraud or collusion, or for any reason, which in the judgment of the Land Board, justifies the rejection of said bids. The Department completed the lease conflict auction process in accordance with existing statutes, rules and procedures and did not observe any indication of fraud or collusion related to this process.

Recommendation

Direct the Department to award grazing leases to: Blue Butte Grazing Association (G700316), Star Gate Ranch (G700336), Karl Studer (G700326), Carl Horn (G700338), MaCade Bingham (G800462), Lake Family Ranches (G800460), Neal Ward (G800468 & G800461), Fish Creek Cattle (G800444), and Perry Ward (C800070).

Board Action

Attachments

1. Summary of September 2019 Conflict Auctions



Attachment 1 - Summary of September 2019 Conflict Auctions

| Supervisory Area | Lease Number | Endowment | Lease Term (Years) | AUMs | Acres | Improvement Value | # of Participants | # of Bids | High Bid Amount | High Bid per Year, per AUM | Effective 2020 AUM Rate* | High Bidder |
|-----------------------|--------------|-----------|--------------------|------|---------|-------------------|-------------------|-----------|-----------------|----------------------------|--------------------------|--------------------------------|
| Eastern (Jerome) | G700316 | PS | 20 | 88 | 640 | NA | 1 | 1 | \$250.00 | \$0.14 | \$7.46 | Blue Butte Grazing Association |
| Eastern (Jerome) | G700336 | PS | 20 | 85 | 600 | \$12,884.00 | 1 | 1 | \$1,000.00 | \$0.59 | \$7.91 | Star Gate Ranch |
| Eastern (Jerome) | G700326 | PS | 20 | 28 | 170.52 | NA | 2 | 6 | \$1,000.00 | \$1.79 | \$9.11 | Karl Studer |
| Eastern (Jerome) | G700338 | PS | 20 | 48 | 480 | \$6,623.00 | 4 | 46 | \$7,700.00 | \$8.02 | \$15.34 | Carl Horn |
| Eastern (Idaho Falls) | G800462 | PS | 20 | 275 | 1951.93 | \$55,230.00 | 4 | 38 | \$36,000.00 | \$6.55 | \$13.87 | MaCade Bingham |
| Eastern (Idaho Falls) | G800460 | PS | 20 | 207 | 2320 | \$20,780.00 | 2 | 3 | \$2,000.00 | \$0.48 | \$7.80 | Lake Family Ranches |
| Eastern (Idaho Falls) | G800468 | PS | 20 | 51 | 455.88 | \$3,090.00 | 4 | 4 | \$1,500.00 | \$1.47 | \$8.79 | Neal Ward |
| Eastern (Idaho Falls) | G800461 | PS | 20 | 1004 | 4040.58 | \$48,350.00 | 3 | 89 | \$261,000.00 | \$13.00 | \$20.32 | Neal Ward |
| Eastern (Idaho Falls) | G800444 | PS | 20 | 416 | 3431.39 | \$1,620.00 | 2 | 3 | \$1,500.00 | \$0.18 | \$7.50 | Fish Creek Cattle |
| Eastern (Idaho Falls) | C800070 | PS | 17 | NA | 981.84 | NA | 3 | 86 | \$70,000.00 | NA | NA | Perry Ward |

Total : \$381,950.00

* Effective 2019 AUM Rate is calculated by adding the 2020 AUM Rate (\$7.32) and the High Bid per Year, per AUM.

2018: 6.5%, or 11 out of 168 expiring grazing leases were conflicted

Historical Average: 5% of expiring grazing leases are conflicted



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

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

September 13, 2019

The regular meeting of the Idaho State Board of Land Commissioners was held on Friday, September 13, 2019 in the State Capitol, Lincoln Auditorium (WW02), 700 W Jefferson Street, Boise, Idaho. The meeting began at 1:30 p.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

Honorable Superintendent of Public Instruction Sherri Ybarra (*via teleconference*)

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

For the record, Governor Little announced that testimony would be accepted on agenda item 6 and asked those wanting to testify to please sign in.

1. Department Report – Presented by Dustin Miller, Director

Endowment Transactions

1. Timber Sales – August 2019

Discussion: Controller Woolf asked for additional information on the five timber sales that did not sell. Director Miller explained that two GNA sales, Hanna Flats and Windy Shingle, did not sell due to pending litigation. The Willow South sale was affected by market conditions, including full log yards and salvage sales in the Packer John state forest. Deputy Director David Groeschl said the Wet Boot sale required reappraisal because it had cedar on it. When the appraisal was initially done, cedar was at a higher market rate, but has since dropped \$150-200 per thousand board feet. Governor Little asked if the Department reappraises sales when prices go up. Mr. Groeschl replied that when prices increase it is not usually an issue, because if there are two or more bidders, they will bid up the increase on that product. Governor Little inquired what the hurdle rate is to justify a reappraisal. Mr. Groeschl answered that the Department typically looks at trends. The Department does a six-month

average for the stumpage rates; when the price is dropping quickly, appraisals cannot quite catch up. The Department looks at the last couple of months of sales for that species product category and adjusts accordingly when reappraisal is needed, such as on the Wet Boot sale. The Department only does that on individual sales that have not sold. Governor Little wondered why the Department does not reappraise all that do not sell; a couple hundred bucks a thousand is pretty significant. Mr. Groeschl noted that on some sales cedar is a minor product and price fluctuation has less of an impact. On the Wet Boot sale, and several others, the Department reappraised because cedar was more significant on those sales.

2. Leases and Permits – August 2019

Discussion: None.

Status Updates

3. Fire Season

Discussion: Governor Little observed that it would be helpful to have the Department's fixed costs and variable costs. Governor Little also asked if there are minimums on the number of hours for contracted airplanes and helicopters, and how do fire personnel spend their time if there are no active fires. Director Miller stated the Department will provide those numbers, and noted that contracted aircraft expenses is one of the biggest fixed costs.

2. **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 the endowment portfolio was down 1.2% for the month of August, and down 0.6% fiscal year-to-date. Investors looked for ways to reduce risks during the month of August due to a weak global economy, particularly in Europe and China, and in the manufacturing sector in the U.S. There is also uncertainty surrounding trade negotiations with China and the possibility of a disruptive Brexit, which continues to be very problematic. Mr. Anton remarked that the equity portion of the portfolio was down 2.5% for the month and is down 2% fiscal year-to-date. The fixed-income portion of the portfolio was up 2.2% for the month, and is up 2.6% year-to-date. Looking at item B, the Investment Report, Mr. Anton noted that fixed income is up 10% over the last year. As global yields are negative in many respects—\$17 trillion now in negative yielding bonds, particularly European sovereign bonds and Japanese bonds—investors have looked for safety in yield, and the U.S. has been the best place. Investors have bought U.S. Treasury bonds, which has driven up the price and reduced the yield. The yield came down from over 3.2% last fall to about 1.45%. Mr. Anton stated that in late August EFIB rebalanced the portfolio, because fixed income was getting very expensive. EFIB sold some bonds and bought value stocks. Value outperformed growth by about 6%; the rebalancing, at least in this couple week window, has been very effective. Mr. Anton noted that through yesterday, September 12th, the portfolio was up 1.2% fiscal year-to-date; a slight rebound.

Mr. Anton commented that reserves are very well funded. As Director Miller indicated, the revenue from the Department of Lands was strong in the first two months of the fiscal year; even though the investments were fairly flat, EFIB was able to make beneficiary distributions,

pay Lands and EFIB expenses, and maintain reserves at or near the target levels: 6.1 years for public schools, and 6.8 years or more for all of the other funds.

Mr. Anton mentioned that next Thursday, September 19th, EFIB has presentations from the two investment consultant finalists. EFIB invited Land Board staff, Department of Lands representatives, State Insurance Fund representatives, and the Investment Board. The meeting will be held at 9:00 am on September 19th, in the EFIB Board Room; both Callan and RVK will be presenting. The next EFIB Board meeting is November 19, 2019, in conjunction with the Land Board meeting. During that meeting, EFIB will be presenting the fiscal 2019 audit report. EFIB distributed those reports earlier this week; hopefully all Board members received a copy.

Controller Woolf noticed that the Investment Report, item B, includes all the pooled investments— the Department of Fish and Game, the Department of Environmental Quality, and other trusts that EFIB manages. Controller Woolf asked if the report could be modified to reflect only the Department of Lands fund that is the responsibility of the Land Board. Mr. Anton indicated that the performance numbers, the percent returns, will be the same because they are all invested the same, but said EFIB would adjust the fund balances to reflect just the endowment portfolio portion.

Governor Little commented that at one time, the returns would be shown in red ink if they were negative relative to the benchmark, and shown in green ink if they were positive relative to the benchmark. Governor Little asked if EFIB would re-implement that in the Investment Report. Mr. Anton agreed to do that.

Consent—Action Item(s)

3. Idaho Geological Survey Advisory Board, Designated Representative – Presented by Mick Thomas, Division Administrator-Oil and Gas

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.

Discussion: Attorney General Wasden asked if Mr. Thomas anticipated a conflict between the regulatory function of the Oil and Gas Commission and the non-regulatory function of the Idaho Geological Survey. Mr. Thomas responded that he did not, and he consulted with counsel from the Attorney General's office, who also did not see a conflict. Mr. Thomas said the IGS Advisory Board is just that, an advisory board. There is no regulatory authority encompassed with the advisory board.

4. Approval of Minutes – August 20, 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. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Regular—Action Item(s)

5. FY2021 Department of Lands Budget – 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: None.

Board Action: A motion was made by Attorney General Wasden that the Board adopt and approve the Department recommendation, that is approve the Department's Fiscal Year 2021 Budget Request as submitted to Division of Financial Management and Legislative Services Office on Friday, August 30th, 2019. Controller Woolf seconded the motion. The motion carried on a vote of 4-0. Governor Little recused himself from voting on this item.

6. Department of Lands' Leasing Process – Presented by Ryan Montoya, Bureau Chief-Real Estate Service

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

Discussion: Prior to the presentation, Attorney General Wasden asked the Board members if any member had additional legal questions. Attorney General Wasden noted that he wanted to have time to think about those questions and perhaps, at some later point in the meeting, table this matter to answer those questions. Governor Little observed that there are certain classes of these leases that, as many are keenly aware, over the years has been the tradition of including conflict bids. Governor Little commented his understanding of the policy that the Board adopted was for some of the unique cases that were occurring at that point in time. Governor Little said, like Controller Woolf, he was a little surprised at the interpretation. Governor Little recalled a discussion, which the minutes may reflect, that it was the unique one-offs that the Board was trying to address. Attorney General Wasden suggested that the Board hear the Department's testimony, and comments from members of the public who are here, and then he may suggest tabling this matter. Governor Little agreed, but commented that the Board would have to decide if tabling the matter continues the stay that is in place on leasing, which is part of the issue.

During the presentation of slide 10, Governor Little commented that the legal notice is from a Ketchum newspaper, for a lease in Kamiah. Mr. Montoya explained that the Department provided a list of all the leases that were currently available in all the counties that they touched, for the sake of getting as much notice as possible out to multiple counties. The Department likely will not do that in the future, due to the cost associated with advertising that many leases in that county. Governor Little was concerned about setting a protocol of advertising in Bonner County for a lease in Franklin County, for example, and remarked the Department and the Board should have a policy about how far-reaching advertising will be, because of the cost alone. Mr. Montoya concurred. Mr. Montoya said the Department will also be advertising nationally for certain types of assets, such as for commercial property, as shown on slide 12. Attorney General Wasden commented that based on the scenarios described in slide 15, it appears that the Department is doing an online auction at the commencement of the process. If there are competing bids, there is a live auction portion that is simply a completion of that whole auction process. Mr. Montoya stated that is effectively what is happening. The Department receives an application as a bid, and it is advertised online, so that is opening the auction to receive bids through additional applications. Governor Little stated his interpretation of an auction is there is more than one person. For the

vast majority there is only one applicant, just by virtue of it being an isolated piece of agricultural ground or grazing ground; there is only one application, and that really is not an auction. An auction is what takes place when there is more than one applicant, and then it is a determination to see who comes in first place. Governor Little asked what he was missing in the definition of auction. Attorney General Wasden responded that is one of the legal questions the Board needs to answer. The constitution requires disposal at public auction, so this process has to be an auction. Governor Little commented that every applicant for a state grazing, ag, commercial lease, if there was only one person they do not think they went through an auction. Attorney General Wasden restated the constitution required that there be an auction. Governor Little asked if, for every lease that has been issued over this period of time without an auction, the process was illegal. Attorney General Wasden replied that is one of the issues the Board needs to address.

Public Comment: Mr. Jody Shumway, representing Cottonwood Grazing Association, said their grazing association has been in existence since 1913, and members have been participants in state leases pretty much since their date of incorporation. The association currently holds a state lease, with management of approximately 42,000 acres. The grazing association consists of 25 to 30 members which rely heavily on this state lease for their livelihood. Mr. Shumway mentioned the association was made aware of the current proposal, and the reopening of the lease for the bid process, just this past Monday evening. Mr. Shumway noted the association obviously disagrees with any decision that would open the lease up for bid again. Their grazing lease was up for renewal this year and they went through the process as outlined by the Department of Lands. They adhered to all the processes, and on April 30, 2019, there were no contests to the lease; the only application was theirs. At that point, the association felt they had an implied contract with the State on the new lease, for 20 years. Mr. Shumway reiterated the members rely heavily on this lease; it is important to their grazing association. They have been great stewards of Idaho lands during the course of running and managing this State lease ground. Mr. Shumway asserted their grazing association disagrees with any decision that leads to opening up the 2019 lease renewals to the bid process again. For the record, Controller Woolf disclosed that he and Mr. Shumway attended high school together.

Mr. Russ Hendricks, representing the members of the Idaho Farm Bureau, noted he did not have much to add to what Mr. Shumway said. Mr. Hendricks found out about the proposed auction process last night. His members were surprised to hear that there was a proposal that would retroactively go back and reopen some leases that, for all intents and purposes, the lessees felt were complete and moving forward. Mr. Hendricks commented that based upon the presentation that Mr. Montoya gave, it appears to be a very difficult timing issue for grazers. Lessees thought they had the lease in hand for next year. Now, if the Department is reopening it and lessees do not know until November, or perhaps later, whether they have that portion of their range or not, that could create a very difficult management decision for them to try to find something alternate in a very short time. Mr. Hendricks remarked that the analogy here is that lessees went to an auction, they bid on something, and they thought they had it in their hand as they walk out of the auction house. Then the auctioneer says, "Oh, wait a minute, come back; we have to redo that one." It just does not seem to sit very well. Mr. Hendricks encouraged the Board to not retroactively go back and open those leases. The Farm Bureau understands that there may be many reasons to modernize or update the procedures for advertising moving forward, and the Farm Bureau has no concerns with that, but not retroactively.

Mr. Cameron Mulrony, representing the Idaho Cattle Association, echoed the comments of the previous two testimonies. The cattle association also believes applicants who completed the process in April of 2019, that were the sole applicant, that should be considered an opening and only bid for those leases. There is no need to put unnecessary burden on the Department's staff to take their time and effort to reopen these uncontested leases.

Additional Discussion: Controller Woolf offered Mr. Montoya and the Department huge kudos and thanks, because this is helping the Board meet its fiduciary duty by advertising more widely, and is helping meet the public auction requirement. Controller Woolf noted he was always under the impression that the Board was making these auction process changes prospectively, going forward, and asked, if the process is implemented going forward, what is the legal impact. Controller Woolf requested Attorney General Wasden's thoughts on that. Controller Woolf empathized with those lessees that went through this lease process and now are being asked to do so again. Governor Little expressed concern for delaying the issue; how will that affect the three individuals who testified, and perhaps scores more; what does that do to lessees.

Board Action: A motion was made by Attorney General Wasden that the Board table this matter until a time certain, the October Land Board meeting, to be able to answer legal questions. Attorney General Wasden asked Board members who have questions to propose those questions for consideration. Controller Woolf seconded the motion. The motion carried on a vote of 3-2, with Governor Little and Secretary of State Denney voting against.

Information

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

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

Discussion: Controller Woolf inquired if there were changes made to these rules, from the rules that were approved in 2013 after ten years of negotiation. Mr. Foss replied that no changes have been made since the rules were formally approved by the 2014 legislature. Controller Woolf asked if those ten years of negotiation were extensive; were many parties included or participating in those negotiations. Mr. Foss responded yes. Conversations and all the studies involved the Forest Practice Advisory Committee, and the Department would report periodically to other groups like the Idaho Forest Sellers' Association. All meetings were open to the public. The Department contracted with a well-known forest hydrologist who had a career within the forest industry, and also contracted with a modeling scientist. The Department involved the Environmental Protection Agency, Idaho Department of Environmental Quality, and the conservation community. The Department made special attention to involve as broad a group of individuals as possible, to ensure moving forward with something that would be acceptable to all Idahoans.

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

Discussion: Governor Little expressed appreciation for all the work done on both this rule and the preceding one, particularly efforts by staff to hold hearings throughout the state. Governor Little stated it never hurts to go back through the process and get out to the public and listen. Kudos to Department staff and the Director.

A motion was made by Governor Little to amend the agenda to remove the executive session and agenda item 9, and revisit the issue at the next meeting, if necessary. Controller Woolf seconded the motion. Governor Little stated it is a timing issue; he and Attorney General Wasden have a subcommittee meeting in the next few weeks that will be very germane to these two agenda items. Attorney General Wasden remarked that the record must reflect the reason for this change in the agenda, and that reason is because events have essentially overcome it at this point. Attorney General Wasden noted the Board may need to raise this issue again in the future, but at this point it is probably best that they not. The motion carried on a vote of 5-0.

Executive Session

None

There being no further business before the Board, at 2:52 p.m. a motion to adjourn was made by Attorney General Wasden. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

IDAHO DEPARTMENT OF LANDS

STATE BOARD OF LAND COMMISSIONERS

October 17, 2019

Regular Agenda

Subject

Adoption of Pending Rule, IDAPA 20.03.03, *Rules Governing Administration of the Reclamation Fund*.

Question Presented

Shall the Land Board adopt the pending rule with changes to the proposed rule text to amend IDAPA 20.03.03.

Background

The Idaho Department of Lands (Department) administers Idaho's Reclamation Fund (Fund) pursuant to Title 47, Chapter 18, Idaho Code, and IDAPA 20.03.03. The Fund is a type of state bond pool that was created in 2002 to provide an alternative form of performance bond or financial assurance as required by Idaho mining regulations. The Fund is to be used by the Department to complete reclamation in the event an operator is unable to so.

The Department received approval from the Land Board in April 2019 to enter negotiated rulemaking and listed the following reasons:

1. Address definition and terminology changes that resulted from 2019 legislation that amended Idaho's Mined Land Reclamation Act (Title 47, Chapter 15, Idaho Code)
2. Account for inflation to bring the reclamation liability limit up to 2019 reclamation costs.
3. Address feedback that the Department received since the Fund's creation:
 - a. To remove the mandatory requirement that sand and gravel operators with a single operation participate in the Fund;
 - b. To expand the acreage and reclamation cost liability limits to allow more operations to use the Fund as a means of providing financial assurance for their mining permits with the Department.

Discussion

Prior to holding any negotiated rulemaking meetings, the Department sent out a mailer notifying potential stakeholders of the upcoming meetings, the location of our website where the draft rule language could be found, and a high level summary of the draft rule changes. In total, 700 mailers were sent out; this mailer is included as Attachment 1.

The Department held five negotiated rulemaking meetings with interested stakeholders in June 2019. Meetings were held in Pocatello, Challis, Coeur d'Alene, McCall, and Boise. Five members of the public attended these meetings. During the negotiated rulemaking

meetings, discussion was generally favorable and there were no objections to the draft rule changes. Attachment 2 provides a summary of the negotiated rulemaking.

On September 4, 2019, the Notice of Rulemaking and proposed rule text were published in the Idaho Administrative Bulletin. Attachment 3 is the Notice of Proposed Rulemaking with rule text. The substantive changes to provide for expanded participation in the future and remove mandatory participation are in Sections 010 and 017. Definitions of "Actual Allowable Cost" and "Actual Allowable Disturbance" allow the Board to set these limitations on participation. The Department would use actuarial analysis of the Fund to recommend these limitations. Subsection 017.13 allows operators who provide other forms of financial assurance in a sufficient amount to opt out of participation. Section 018 provides maximums for the acres of affected land and allowable reclamation costs. The last actuarial analysis suggests the current limit of 40 acres will need to be maintained for a few more years at the current payment levels before participation can be increased. The same analysis suggested that it will be a very long time before the Fund could support participation up to 80 acres or beyond.

A public hearing on the proposed rule was held in Boise on September 16, 2019, and the written comment period was open through September 25, 2019. No written comments were received from the public, and no testimony was given at the public hearing. The Department submitted comments to correct a misspelling, address some minor cleanup language, and further shorten the rule (Attachment 4). The Department's comment does not substantively alter the rule content.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Rule with changes to the proposed rule text to the Office of the Administrative Rules Coordinator for the 2020 legislative session (Attachment 5).

Recommendation

Adopt the pending rule with changes to the proposed rule text to amend IDAPA 20.03.03, *Rules Governing Administration of the Reclamation Fund*.

Board Action

Attachments

1. Initial Negotiated Rulemaking Mailer
2. Summary of Negotiated Rulemaking
3. Notice of Rulemaking – Proposed Rule with Rule Text
4. Department's Comment on Proposed Rule for IDAPA 20.03.03
5. Notice of Rulemaking – Adoption of Pending Rule with changes to text (draft)



The Idaho Department of Lands (IDL) would value your participation and input in upcoming negotiated rulemakings for mining regulations covered under IDAPA 20.03.02 and 20.03.03.

Notice Of Upcoming Negotiated Rulemakings for Idaho’s Mining Regulations

IDAPA 20.03.02 — Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities

The passage of House Bill 141 during the 2019 legislative session significantly amended Idaho’s Surface Mining Act. IDL is initiating rulemaking to incorporate key legislative changes into rule, which include:

- Determining surface impacts of underground mines;
- Setting fees for reclamation plans;
- Incorporating water treatment and post-closure activities in reclamation plans, as needed;
- Requiring that all reclamation tasks in a plan be completed and covered by financial assurance;
- Estimating actual cost of reclamation and post-closure activities;
- Allowing additional types of financial assurance, such as corporate guarantees and trusts;
- Reviewing every plan at least once every five years; and
- Implementing a temporary rule by August 1, 2019.

IDAPA 20.03.03 — Rules Governing Administration of the Reclamation Fund

The passage of House Bill 141 during the 2019 legislative session significantly amended definitions and terminology associated with Idaho’s Reclamation Fund, also known as the Bond Assurance Fund.

Pursuant to Title 47, Chapter 18 of Idaho Code, IDL manages the Bond Assurance Fund, which provides affordable and attainable financial assurances for mining operators, allowing compliance with Idaho’s mining regulations.

This rulemaking will address:

- Definitions and terminology;
- Potential expansion of the fund’s acreage limit to allow more participation; and
- Potential removal of mandatory participation requirements, allowing operators to provide other types of financial assurances.

For more details, visit our rulemaking webpage at www.idl.idaho.gov/rulemaking/index.html.

Notice Of Upcoming Negotiated Rulemakings for Idaho’s Mining Regulations

Visit www.idl.idaho.gov/rulemaking/index.html for meeting times, locations, and additional information, including drafts and research materials.

KEY DATES:

May 1 — 20.03.02 Draft rule text posted to IDL’s website

Meeting schedule:

- May 9** — Boise (20.03.02 only)
- May 15** — Boise (20.03.02 only)
- May 22** — Boise (20.03.02 only)
- May 29** — Boise (20.03.02 only)

June 5 — 20.03.03 Draft rule text posted to IDL’s website

Meeting schedule:

- June 12** — Pocatello (20.03.02 and 20.03.03)
- June 13** — Challis (20.03.02 and 20.03.03)
- June 18** — Coeur d’Alene (20.03.02 and 20.03.03)
- June 19** — McCall (20.03.02 and 20.03.03)
- June 20** — Boise (20.03.02 and 20.03.03)
- June 27** — Boise (20.03.02 only)
- July 11** — Boise (20.03.02 only)

July 15 — Last day to submit comments for negotiated rulemaking

Please submit written comments by email to rulemaking@idl.idaho.gov or by mail.



Idaho Department of Lands
PO Box 83720
Boise ID 83720-0050

20.03.02 Primary Contact
Eric Wilson

Phone: 208-334-0261

Email: rulemaking@idl.idaho.gov

20.03.03 Primary Contact
Todd Drage

Phone: 208-334-0247

Email: rulemaking@idl.idaho.gov

PLEASE
PLACE
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HERE

«Entity Name»
«First Name»«Last Name»
«Additional Address
Information»
«City» «State» «ZIP
Code»«ZIP Code2»

“Trusted Stewards From Main Street to Mountaintop”

Summary of Negotiated Rulemaking

IDAPA 20.03.03
Rules Governing Administration of the Reclamation Fund

Docket No. 20-0303-1901

Reason for Rulemaking

This rulemaking was initiated for the following reasons:

- To update definitions and terminology to align with 2019 statute changes
- To consider removing the mandatory participation requirement for operators with a single mining operation with less than 40 acres of disturbance
- To consider potential expansion of the Reclamation Fund's acreage limit to allow more participation

Notice of Intent to Promulgate Rules and Stakeholder Outreach

Notice of Negotiated Rulemaking was published in the June 5, 2019 issue of the Idaho Administrative Bulletin. The Idaho Department of Lands (IDL) issued a press release and mailed postcards to a list of 700 potentially interested parties to invite their participation in the negotiated rulemaking process.

Negotiated Rulemaking Meetings

IDL held five meetings across the state in June 2019 to seek public comments on the draft changes to IDAPA 20.03.03, *Rules Governing Administration of the Reclamation Fund*. The table below is a summary of the meeting locations and public participation:

| Date | Location | No. of public participants |
|---------------|---------------|----------------------------|
| June 12, 2019 | Pocatello | 0 |
| June 13, 2019 | Challis | 0 |
| June 18, 2019 | Coeur d'Alene | 2 |
| June 19, 2019 | McCall | 2 |
| June 20, 2019 | Boise | 1 |

Summary of Meeting Discussions

The negotiated rulemaking meetings opened with a short presentation on the negotiated rulemaking process and an overview of Idaho's Reclamation Fund. The recommended changes to the current rule were then discussed. In general, the discussion at each of the meetings involved questions about participating in and the operation of the Reclamation Fund. IDL did not receive any comments specifically about the language changes or suggestions for additional changes or revisions.

Written Comment

IDL received one written comment. The Bureau of Land Management (BLM) Idaho office submitted a comment that discussed another rulemaking currently being carried out by IDL (IDAPA 20.03.02) and referenced the Reclamation Fund rules (20.03.03) in this comment. The BLM comment cited language in 20.03.03 as an example of language that they would like to see added in IDAPA 20.03.02.

Comment: "BLM feels our largest point of cooperation is ensuring adequate bonding and reclamation cost estimates. Attached are several documents that outline current bond estimating guidelines used by the BLM as well as several other references that discuss the complex issues of bonding for mineral development. The BLM would hope to see that through the rulemaking process and any subsequent policy implementation that any changes be congruent to what we are allowed for both reclamation cost estimations and financial guarantee requirements on Public Lands. The current draft rules include two bonding methods that are not allowed by the BLM, those being the use of corporate guarantees and real property. Those financial assurance methods were specifically removed from bonding forms allowed by the BLM in 2000. Currently the BLM is allowed to use surety bonds, cash, CDs, trusts, and insurance (43 CFR 3809.555). The BLM may participate with Idaho's bond pool, under specific guidelines (43 CFR 3809.571) The solution we propose is adopting opt-out language similar to that currently found in Rules Governing Administration of the Reclamation Fund, IDAPA 20.03.03.020. We feel by adding a clause requiring an operator to provide financial assurance in a form acceptable to the Federal Government when on Public Lands would alleviate confusion and the risk of duplicating bonding efforts of various regulatory agencies."

Response: This comment was submitted for two of IDL's current rulemakings, IDAPA 20.03.02 and IDAPA 20.03.03. The comment references and supports language in IDAPA 20.03.03 and requests that it be added to 20.03.02. As IDL is not proposing any changes to the referenced language, it appears no action is necessary for IDAPA 20.03.03 to address this comment.

Concluding Negotiated Rulemaking

With no issues left unresolved, IDL concluded the negotiated rulemaking process and submitted the negotiated rule changes for publication as a proposed rule in the September 2019 edition of the Idaho Administrative Bulletin.

The rulemaking record is available for review upon request, and key documents are available at www.idl.idaho.gov/rulemaking/20.03.03-2019.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.03 – RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

DOCKET NO. 20-0303-1901

NOTICE OF RULEMAKING – PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING

**Monday, September 16, 2019
2:30 p.m. (MDT)**

**Idaho State Capitol
4th Floor, Majority Caucus Room (W-433)
700 West Jefferson Street
Boise, ID 83702**

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

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

The passage of House Bill 141 during the 2019 legislative session amended definitions and terminology associated with Idaho's Reclamation Fund (Fund). Pursuant to Title 47, Chapter 18, Idaho Code, the Idaho Department of Lands (IDL) manages the Fund, which provides affordable and attainable financial assurances for mining operators, allowing compliance with Idaho's mining regulations. IDL is proposing to update definitions and terminology in the rule to comport with the 2019 statute changes. IDL is also proposing to amend the rule to remove the mandatory participation requirement for operators with a single mining operation with less than 40 acres of disturbance. The proposed rule will allow operators to provide alternative forms of financial assurance if it satisfies a minimum reclamation dollar per acre and is provided in a form acceptable to IDL.

Additionally, IDL is proposing changes to allow more flexibility to the limits that restrict participation in the Fund. Currently, operators with a total cumulative mining disturbance greater than 40 acres and greater than \$100,000 of reclamation liability are ineligible to participate in the Fund, and the Land Board is required to set a minimum balance to be maintained in the Fund to cover the Fund's reclamation liabilities. IDL is proposing to remove the limits of 40 acres and \$100,000 reclamation costs liability and instead allow the Land Board to set disturbance and reclamation costs limits based on the Fund's required minimum balance.

Finally, amendments are proposed to remove words and restrictions, wherever possible, to comply with the Red Tape Reduction Act.

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

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 as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 5, 2019, Idaho Administrative Bulletin, [Vol. 19-6, page 63](#).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Todd Drage at (208) 334-0247 or tdrage@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2019.

Dated this 2nd day of August, 2019.

Todd Drage
Minerals Regulatory Program Manager
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0247
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0303-1901
(Only Those Sections With Amendments Are Shown.)

000. LEGAL AUTHORITY.

These rules are promulgated by the Idaho State Board of Land Commissioners ~~pursuant to~~ under Sections 58-104(3) and (6), Idaho Code, and Title 47, Chapter 18, Idaho Code. The Board has delegated to the ~~the~~ Director of the Idaho Department of Lands the duties and powers under Title 47, Chapter 18, Idaho Code and these rules: ~~provided, except~~ that the Board ~~shall~~ retains responsibility for administrative review. (3-16-04)()

001. TITLE AND SCOPE.

01. Title. These rules are titled IDAPA 20.03.03, "Rules Governing Administration of the Reclamation Fund," IDAPA 20, Title 03, Chapter 03. (3-16-04)

02. Scope. These rules constitute the ~~Idaho~~ Department's ~~of Lands'~~ administrative procedures and participation criteria for the implementation of a Reclamation Fund, which is to be used as an alternative form of financial assurance for mining operations certain mines in Idaho. These rules ~~shall are to~~ be construed in a manner consistent with the duties and responsibilities of the Board and of operators, permit holders, or lessees as set forth in Title 47, Chapter ~~7,~~ Idaho Code, "Mineral Rights in the State Lands;" Title 47, Chapter 13, Idaho Code, "Dredge Mining;" Title 47, Chapter 15, Idaho Code, "Mined Land Reclamation;" and Title 47, Chapter 18, Idaho Code, "Financial Assurance;" and IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho;" IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho, Mined Land Reclamation," and IDAPA 20.03.05, "Riverbed Mineral Leasing In Idaho." (3-16-04)()

002. WRITTEN INTERPRETATIONS.

The Board does not rely on any written ~~interpretive statements~~ interpretations concerning these rules. (3-16-04)()

003. ADMINISTRATIVE APPEALS.

~~01. Procedure for Appeals. Any operator, lessee, permit or plan 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, and the Administrative Procedures Act. (3-16-04)~~

~~02. Effective Date of a Final Order. When the director or the Board finds that justice so requires, it may postpone the effective date of a final order pending judicial review. (3-16-04)~~

~~03. Filing a Civil Action in District Court for Noncompliance. Notwithstanding any other provisions of these rules concerning administrative or judicial proceedings, whenever the Board determines that a permittee or lessee has not complied with the provisions of the Dredge Mining Act, the Surface Mining Act, or a mineral lease, 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, in accordance with said acts or mineral lease. The Board may request the court to issue an appropriate order to remedy any alleged violation. Any person aggrieved by a final agency action or a party aggrieved by a final order of the Board arising from its administration of the Reclamation Fund Act is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, "Administrative Procedure Act," and IDAPA 20.01.01, "Rules of Practice and Procedure Before the State Board of Land Commissioners." (3-16-04)()~~

004. INCORPORATION BY REFERENCE.

~~01. Incorporated Documents. The following documents are expressly incorporated herein by reference as part of these rules to the extent that said rules or mineral lease apply to a subject mining operation. (3-16-04)~~

~~a. IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho." (3-16-04)~~

~~b. IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho." (3-16-04)~~

~~c. Title 47, Chapter 7, Idaho Code, Mineral Rights In State Lands. (3-16-04)~~

~~02. Availability of Incorporated Documents. Unofficial copies of the incorporated documents may be obtained from any Idaho Department of Lands Office or on-line at <http://adm.idaho.gov/adminrules/>. Official copies of the incorporated administrative rules may be obtained from the Office of the Administrative Rules Coordinator located at 650 W. State Street, Room 100, Boise, Idaho 83720. There are no documents incorporated by reference into this rule. (3-16-04)()~~

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

~~01. Office. 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. (3-16-04)~~

~~02. Address. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. (3-16-04)~~

~~03. Telephone and Fax. The telephone of the office is (208) 334-0200; and the fax number is (208) 334-2399/3698. The Department's web address is located at <https://www.idl.idaho.gov>. (3-16-04)()~~

006. PUBLIC RECORDS ACT COMPLIANCE.

~~01. Administrative Procedures Act. The rules contained herein have been promulgated in accordance with the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code and are a public record subject to and in compliance with Title 74, Chapter 1, Idaho Code, "Public Records Act." Unless exempt from disclosure under said Act, any document filed with the Department under these rules is a public record. (3-16-04)()~~

~~02. Confidentiality of Information. The following records are exempt from disclosure pursuant to Section 74-107(2), Idaho Code, shall not be disclosed by the Board, director, or department employees, to any person other than the Board, director and employees of the Department without the written permission of the operator;~~

~~permit holder or lessee.~~ (3-16-04)

~~a. Notice of exploration as required pursuant to Section 47-1314(b), Idaho Code, and Section 020, IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho."~~ (3-16-04)

~~b. Notices of exploration as required pursuant to Section 47-1506(c), Idaho Code, and Section 060, IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho."~~ (3-16-04)

~~c. Production records.~~ (3-16-04)

007. – 009. (RESERVED)

010. DEFINITIONS.

Except as provided in these rules, the Board adopts the definitions set forth in the Mineral Leasing Act, the Dredge Mining Act, and the Mined Land Reclamation Act. As used in these rules: ()

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

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

03. Board. The Idaho State Board of Land Commissioners or ~~any department, commission, or agency that may lawfully succeed to the duties and powers of such Board~~ its authorized representative. (3-16-04)()

~~02. Definitions Incorporated.~~ Except as provided in these rules, the definitions set forth in IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho," and in IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho," to the extent not provided in these rules, shall govern actions pursuant to Title 47, Chapter 18, Idaho Code, and these rules. (3-16-04)

034. Department. The Idaho Department of Lands. (3-16-04)

045. Disturbed Acres; ~~or~~ Affected Lands. ~~Any~~ land, natural watercourses, or existing stockpiles or waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore, waste from placer or dredge mining, or construction of roads, settling ponds, structures, or facilities appurtenant to a placer or dredge mining operations mine. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at a surface mining site mine. The land area disturbed by motorized exploration of state land under a mineral lease. (3-16-04)()

056. Dredge Mining Act. Title 47, Chapter 13, Idaho Code, and IDAPA 20.03.01, "Dredge and Placer Mining Operations in Idaho." (3-16-04)

067. Financial Assurance. ~~Performance bonding submitted to ensure reclamation of disturbed acres or affected land or ensure payments under a mineral lease~~ Cash, corporate surety bond, collateral bond, or letter of credit as described in the Dredge Mining Act, the Mineral Leasing Act, or a mineral lease. Financial assurance as defined in the Mined Land Reclamation Act. (3-16-04)()

078. Mine; ~~or~~ Mine Panel. ~~The All~~ areas designated by the operator ~~or permittee as a panel of a surface mine~~ on the map or plan submitted pursuant to Section 47-703A, Idaho Code, or Section 47-1506, Idaho Code, or as an identifiable portion of a placer or dredge mine on the map submitted ~~pursuant to~~ under Section 47-1317, Idaho Code. (3-16-04)()

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

108. Mineral Lease. Lease executed by the Board and the mineral lessee pursuant to ~~Title 47, Chapter 7, Idaho Code~~ the Mineral Leasing Act. (3-16-04)()

- ~~0911.~~ Mineral Lessee. The lessee *of record* of a *State of Idaho M*ineral *L*ease. (3-16-04)()
- ~~102.~~ Mineral Leasing Act. Title 47, Chapter 7, Idaho Code. (3-16-04)
13. Mining Reclamation Plan. Any reclamation plan approved pursuant to the Mined Land Reclamation Act. ()
- ~~114.~~ Motorized Exploration. Exploration which may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques which employ the use of earth moving equipment, seismic operations using explosives, and, *under the Mineral Leasing Act*, includes sampling with a suction dredge having an intake diameter greater than two (2) inches when operated in a perennial stream. When operated in an intermittent stream, suction dredges shall be considered motorized exploration regardless of intake size. (3-16-04)()
- ~~125.~~ Operator. Any person or *persons, any partnership, limited partnership or corporation, or any association of persons, either natural or artificial, including, but not limited to, every public or governmental agency engaged in surface mining, exploration or dredge and placer mining operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every government agency owning or controlling the use of any surface mine or dredge and placer mine where the extraction of minerals is to be used by or for the benefit of such agency. For the purpose of these rules, an operator shall include a party holding a permit or an approved surface mining reclamation plan entity authorized to conduct business in Idaho, partnership, joint venture, or public or governmental agency required to have any reclamation plan under the Mined Land Reclamation Act or the Mineral Leasing Act, or a permit under the Dredge Mining Act, whether individually or jointly through subsidiaries, agents, employees, or contractors. (3-16-04)()*
- ~~136.~~ Permit. Dredge *and P* or placer *M*ining *P*ermit issued pursuant to *Title 47, Chapter 13, Idaho Code* the Dredge Mining Act. (3-16-04)()
- ~~147.~~ Reclamation Fund. The interest-bearing dedicated fund authorized pursuant to *Title 47, Chapter 18, Idaho Code. The Reclamation Fund shall consist of fees paid by participating operators, permittees or lessees, interest and cost recoveries initiated by the Board pursuant to Section 47-1804, Idaho Code* the Reclamation Fund Act. (3-16-04)()
- ~~158.~~ Reclamation Fund Act. Title 47, Chapter 18, Idaho Code, and IDAPA 20.03.03, "Rules Governing Administration of the Reclamation Fund." (3-16-04)()
- ~~16.~~ Surface Mining Act. Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02, "Rules Governing Exploration and Surface Mining in Idaho." (3-16-04)
- ~~17.~~ Surface Mining Reclamation Plan. Reclamation plan approved pursuant to Title 47, Chapter 15, Idaho Code. (3-16-04)
- ~~18.~~ Traditional Performance Bond. Cash, corporate surety bond, collateral bond, or letter of credit as described in the Dredge Mining Act, the Surface Mining Act and the Mineral Leasing Act, or a mineral lease. (3-16-04)
011. -- 015. (RESERVED)
016. REQUIRED PARTICIPANTS.
Any ~~Operators of mineral leases, surface mines, and placer mines,~~ with the exception of the operations ~~mines~~ and operators listed in Section 017 of these rules, shall be required to provide alternative financial assurance through the Reclamation Fund to assure the reclamation of disturbed acres or affected lands. ~~Alternative~~ financial assurance pursuant to the Reclamation Fund Act ~~and this rule shall be~~ is in lieu of ~~traditional performance bonds~~ other types of financial assurance as set forth in the Surface Mining Mined Land Reclamation Act, the Mineral Leasing Act, or the Dredge Mining Act, ~~or a mineral lease.~~ (3-16-04)()

017. INELIGIBLE ~~OPERATIONS~~ MINES OR OPERATORS.

The following types of ~~operations~~ mines and operators are not allowed to participate in the Reclamation Fund and ~~may not provide alternative financial assurance through the Reclamation Fund~~ must file proof of other acceptable financial assurance as required by the Department. (3-16-04)()

01. ~~Forty Disturbed Acres~~ Limit. A ~~surface or placer~~ mine or mineral lease with ~~greater than forty (40) acres of~~ un-reclaimed disturbed acres ~~or affected lands~~ in excess of the actual allowable disturbance, may not provide alternative financial assurance through the Reclamation Fund. Un-reclaimed disturbance is that which does not meet the final ~~traditional performance bond~~ financial assurance release criteria in the Dredge Mining Act, the ~~Surface Mining~~ Mined Land Reclamation Act or a mineral lease. (3-16-04)()

02. ~~One Hundred Thousand Dollar~~ Reclamation Cost Limit. Operators ~~of mines~~ with an estimated reclamation cost in excess of ~~one hundred thousand dollars (\$100,000)~~ the actual allowable reclamation cost, regardless of ~~surface~~ the distributed acreage. (3-16-04)()

03. Phosphate Mines. Operators or mineral lessees of phosphate mines ~~or lease holders of phosphate leases.~~ (3-16-04)()

04. Hardrock Mines. Operators or mineral lessees of hardrock mines such as gold, silver, molybdenum, copper, lead, zinc, cobalt, and other precious metal mines. (3-16-04)()

05. Potential Heavy Metal Releases. Operators of mines with a reasonable potential to release heavy metals or other substances harmful to human health or the environment, but not including substances such as fuels and other materials commonly used in excavation or construction. (3-16-04)

06. Oil and Gas Conservation. Oil and gas exploration and development ~~authorized~~ under Title 47, Chapter 3, Idaho Code. (3-16-04)()

07. Oil and Gas Leasing. Oil and gas leases and associated exploration and development ~~authorized~~ under Title 47, Chapter 8, Idaho Code. (3-16-04)()

08. Geothermal. ~~Operators or mineral lessees of~~ geothermal ~~leases wells~~ and development ~~authorized~~ under Title 47, Chapter 16, Idaho Code. (3-16-04)()

09. Off Lease Exploration. Motorized exploration on state lands that are not under a mineral lease or exploration location. (3-16-04)

10. Violators. ~~Operations Mines~~ or operators, ~~permittees or lessees~~ in violation of the Reclamation Fund Act, Dredge Mining Act, ~~Surface Mining~~ Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease. (3-16-04)()

11. Reclamation Fund Forfeitures. Operators, permittees or lessees who have not reimbursed the Reclamation Fund for a forfeiture from the Reclamation Fund due to their violations of the Reclamation Fund Act, Dredge Mining Act, ~~Surface Mining~~ Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease. (3-16-04)()

12. Other Forfeitures. An operator who has forfeited any traditional performance bond financial assurance. (3-16-04)()

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

018. ACREAGE AND RECLAMATION COST LIMITATIONS.

~~No operator shall be allowed to provide bonding through the Reclamation Fund if said operator has more than forty (40) acres of cumulative surface disturbance at more than one (1) mine site. An operator who has multiple plans and permits with a total disturbance in excess of forty (40) acres may participate in the Reclamation Fund with one (1) or~~

~~more sites that contain less than forty (40) acres of total disturbance. These operators may also choose to not participate in the Reclamation Fund at all. A plan or permit that does not provide alternative financial assistance through the Reclamation Fund must be bonded with a traditional performance bond~~

01. Limitations for Participation. The Board will determine the actual allowable disturbance, actual allowable reclamation cost, and the minimum dollar per acre of disturbance in order to provide financial assurance to opt out of participation in the Reclamation Fund. ()

02. Maximum Affected Lands And Reclamation Costs. The maximum acreage of affected land and maximum allowable reclamation costs in these rules are maximums. Actual allowable acreage of affected lands and reclamation costs shall be established by Board policy. ()

03. Maximum Allowable Disturbance & Reclamation Cost Liability. The maximum allowable disturbance shall be eighty (80) acres; the maximum allowable reclamation cost shall be four hundred forty thousand (\$440,000) dollars. ()

04. Multiple Plans/Permits/Sites. An operator who has multiple mining reclamation plans or permits, which have a total disturbance in excess of the actual allowable disturbance, or with total reclamation costs in excess of the actual allowable reclamation cost, may participate in the Reclamation Fund with one (1) or more sites that together contain less than both of the Board-determined actual allowable limits. (3-16-04)()

019. OPTIONAL PARTICIPATION.

Operators who have one (1) or more ~~mining operations~~ mines or mineral leases that are ineligible to participate in the Reclamation Fund as set forth in Section 017 or 018 of these rules may choose to not participate in the Reclamation Fund with respect to all other ~~mining operations~~ eligible mines or mineral leases in their name. An operator who does not participate in the Reclamation Fund must secure ~~their operation~~ all mines with ~~a traditional performance bond~~ other types of financial assurance approved by the Department. (3-16-04)()

020. FEDERAL AGENCY NON-ACCEPTANCE OF RECLAMATION FUND.

If a federal agency will not accept an operator's participation in the Reclamation Fund as proof of reclamation security, the operator will be required to provide ~~a traditional performance bond~~ the Department with proof of other types of financial assurance acceptable to the Department. (3-16-04)()

021. – 025. (RESERVED)

026. PAYMENT.

01. Board Approved Payment Schedule. The Board shall adopt a payment schedule ~~which will~~ to be used to determine the annual Reclamation Fund payment for each ~~mineral lease, reclamation plan, placer permit or temporary permit required to participate~~ operator participating in the Reclamation Fund. Any changes to the payment structure must ~~schedule will~~ be reviewed and approved by the Board. Participating operators shall pay all required payments annually. (3-16-04)()

02. Acreage Calculation. The annual payment for each participant in the Reclamation Fund shall will be established based upon the number of ~~acres of~~ disturbed ~~or affected land~~ acres at each ~~mining operation~~ mine. The acres used to calculate the annual payment shall will include the ~~acres of total~~ currently disturbed and acres of affected lands and the acres planned to be disturbed or affected during the next twelve (12) months ~~as required by the Surface Mining Act and the Dredge Mining Act, or as may be required by a mineral lease.~~ The ~~acres of~~ disturbed ~~or affected land at the mining operation shall~~ total acreage calculation will not be rounded when determining annual payments. (3-16-04)()

03. Annual Payments Non-Refundable. Payments to the Reclamation Fund are non-refundable. Payments will be billed annually and ~~are subject to late penalties, if not timely paid, will accrue late fees and interest~~ as established by the Board. New participants will be assessed a pro-rated payment based on the Department's established billing cycle. (3-16-04)()

04. Supplemental Payments. If an operator ~~finds it necessary to~~ affects more acreage than the acreage

secured through the Reclamation Fund for ~~the a~~ current period, the Department may require supplemental Reclamation Fund payments. ~~Additional Reclamation Fund payments for mineral leases may be required by the Department based on site specific conditions.~~ (3-16-04)()

05. Assignment ~~or Transfer~~. When a mineral lease, mining reclamation plan, or permit is assigned, all financial assurance requirements must be assumed by the new ~~lessee or~~ operator. No Reclamation Fund payments will be refunded following an assignment. If the new operator ~~or lessee~~ is ineligible to participate in the Reclamation Fund, the new operator ~~or lessee~~ must provide ~~a traditional performance bond~~ proof of other acceptable financial assurance before the assignment ~~with~~ may be approved. (3-16-04)()

06. Non-Payment Constitutes Lack of Bonding. For ~~those any~~ operators ~~or lessees required to~~ participating in the Reclamation Fund, non-payment of the annual fee payment shall be considered a failure to provide ~~a traditional performance bond~~ financial assurance as required by the Dredge Mining Act, the Surface Mining Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease. (3-16-04)()

027. – 030. (RESERVED)

031. ENFORCEMENT AND FAILURE TO COMPLY.

01. Forfeiture. Prior to withdrawing monies from the Reclamation Fund due to a violation of the Dredge Mining Act, the Surface Mining Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease, the Department shall comply with the forfeiture procedures ~~for traditional performance bond forfeiture set forth in Section 47-1513, Idaho Code.~~ (3-16-04)()

02. Penalties. If an operator fails to provide financial assurance as required by these rules or has forfeited monies from the Reclamation Fund and has not repaid those monies, the Board shall be authorized to file liens against personal property and equipment of the operator to recover costs. The operator shall be liable for actual costs of ~~the required financial assurance~~ all unpaid annual payments, interest, and late payment charges, the actual reclamation costs, and administrative costs incurred by the Department in reclaiming the disturbed or affected lands. ~~All legal action by the Department shall be in accordance with the Dredge Mining Act, Surface Mining Act, Mineral Leasing Act, or any mineral lease.~~ Authorization to obtain a lien under ~~this~~ these rules and Section 47-1804, Idaho Code, shall be in addition to, not in lieu of, any other legal remedy available to the Board and the Department pursuant to the Dredge Mining Act, ~~the Surface Mining~~ Mined Land Reclamation Act, Mineral Leasing Act, or ~~any~~ mineral lease. (3-16-04)()

~~**03. Procedure for Appeals.** Any operator or lessee aggrieved by any final order of the Board regarding the Reclamation Fund Act shall be entitled to appeal using the procedures as set forth in the Dredge Mining Act, Surface Mining Act, Mineral Leasing Act or a mineral lease.~~ (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

From: [Eric Wilson](#)
To: [Rule Making](#)
Subject: Comments on Proposed Rule
Date: Tuesday, September 24, 2019 9:54:40 AM
Attachments: [20-03-03comment_2019_09_24.pdf](#)

Please log this comment. Thank you.

Eric Wilson
Resource Protection and Assistance Bureau Chief



DIVISION OF LANDS AND WATERWAYS
RESOURCE PROTECTION & ASSISTANCE BUREAU
300 N 6th Street, Suite 103
PO Box 83720
Boise, ID 83720-0050
Phone (208) 334-0200
Fax (208) 334-3698



STATE BOARD OF LAND COMMISSIONERS
Brad Little, Governor
Lawrence E. Denney, Secretary of State
Lawrence G. Wasden, Attorney General
Brandon D Woolf, State Controller
Sherri Ybarra, Sup't of Public Instruction

September 24, 2019

Todd Drage
300 N. 6th St. Suite 103
Boise, Idaho 83720

via e-mail: tdrage@idl.idaho.gov

Re: Comments on Proposed Rule for IDAPA 20.03.03, Rules Governing Administration of the Reclamation Fund

Dear Mr. Drage:

Please accept these comments on the Proposed Rule for IDAPA 20.03.03. These comments are intended to clarify and shorten the Proposed Rule.

Subsection 017.01. Disturbed Acres Limit — Remove the comma after “disturbance.”

Subsection 017.02. Reclamation Cost Limit — Change “distributed acreage” to “disturbed acres.”

Section 018. ACREAGE AND RECLAMATION COST LIMITATIONS.

01. ~~Limitations for~~Actual Allowable Participation. The Board will ~~determine~~establish by policy the actual allowable disturbance, actual allowable reclamation cost, and the minimum dollar per acre of disturbance in order to provide financial assurance to opt out of participation in the Reclamation Fund.

~~02. Maximum Affected Lands And Reclamation Costs. The maximum acreage of affected land and maximum allowable reclamation costs in these rules are maximums. Actual allowable acreage of affected lands and reclamation costs shall be established by Board policy.~~

~~03. Maximum Allowable Disturbance & and Reclamation Cost Liability. The maximum disturbance and maximum reclamation costs in these rules are maximums.~~ The maximum allowable disturbance shall be eighty (80) acres; the maximum allowable reclamation cost shall be four hundred forty thousand dollars (\$440,000) ~~dollars~~.

~~04. Multiple Plans or Permits/Sites.~~ An operator who has multiple mining reclamation plans or permits, ~~which~~ that have a total disturbance in excess of the actual allowable disturbance, or with total reclamation costs in excess of the actual allowable reclamation cost, may participate in the Reclamation Fund with one (1) or more sites that together contain less than both of the Board-~~determined~~established actual allowable limits.

Subsection 026.01. Board Approved Payment Schedule

The Board shall adopt a payment schedule ~~to be used to that~~ determines the annual Reclamation Fund payment for each mineral lease, reclamation plan, placer permit or temporary permit required to participate operator participating in the Reclamation Fund. Any changes to the payment structure must schedule will be reviewed and approved by the Board. Participating operators shall pay all required payments annually.

Subsection 031.01 Forfeiture

Prior to withdrawing monies from the Reclamation Fund due to a violation of the Dredge Mining Act, the Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease, the Department shall comply with the respective financial assurance forfeiture procedures ~~for traditional performance bond forfeiture set forth in Section 47-1513, Idaho Code.~~

If you have questions, please contact me at 334-0261.

Sincerely,



Eric Wilson
Resource Protection and Assistance Bureau Chief

DEPARTMENT OF LANDS

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.03 - RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

DOCKET NO. 20-0303-1901

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

IDL is proposing to update definitions and terminology in the rule to comport with the 2019 changes to Title 47, Chapter 15, Idaho Code. IDL is also proposing to remove mandatory participation for operators with less than 40 acres of disturbance and less than \$100,000 of reclamation liability. The proposed rule will allow operators to provide an alternative type of financial assurance if it satisfies a minimum reclamation dollar per acre and is on an IDL form. Additionally, IDL is proposing changes to raise the maximum limitations on participation in the Reclamation Fund to 80 acres or \$440,000 of reclamation liability. The Land Board would then set the actual allowed acres and amount of reclamation liability per operator based on the fund's required minimum balance and updated actuarial analysis. This will allow the Land Board to expand access for participants when it becomes financially prudent. Finally, amendments are proposed to remove words and restrictions, wherever possible, to comply with the Red Tape Reduction Act.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. The pending rule was modified to correct a misspelling, provide more clarity, and further shorten the rule in compliance with the Red Tape Reduction Act. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, Vol. 19-9, pages 359-366.

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: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Todd Drage at (208) 334-0247 or tdrage@idl.idaho.gov.

DATED this 17th day of October, 2019.

Todd Drage
Minerals Regulatory Program Manager
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0247
Fax: (208) 334-3698

20.03.03 – RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

DOCKET NO. 20-0303-1901

Changes to the Proposed Rule

Following are the sections or subsections that have changed from the original proposed text:

017. INELIGIBLE ~~Operations~~ MINES OR OPERATORS.

The following types of ~~operations~~ mines and operators are not allowed to participate in the Reclamation Fund and ~~may not provide alternative financial assurance through the Reclamation Fund~~ must file proof of other acceptable financial assurance as required by the Department. (3-16-04)()

[Subsections 017.01 and 017.02]

01. ~~Forty-Disturbed Acres~~ Limit. A ~~surface or placer~~ mine or mineral lease with ~~greater than forty (40) acres of~~ un-reclaimed disturbed acres ~~or affected lands~~ in excess of the actual allowable disturbance; may not provide alternative financial assurance through the Reclamation Fund. Un-reclaimed disturbance is that which does not meet the final ~~traditional performance bond~~ financial assurance release criteria in the Dredge Mining Act, the ~~Surface Mining~~ Mined Land Reclamation Act or a mineral lease. (3-16-04)()

02. ~~One Hundred Thousand Dollar~~ Reclamation Cost Limit. Operators ~~of mines~~ with an estimated reclamation cost in excess of ~~one hundred thousand dollars (\$100,000)~~ the actual allowable reclamation cost, regardless of ~~surface~~ the distributed disturbed acreages. (3-16-04)()

018. ACREAGE AND RECLAMATION COST LIMITATIONS.

~~No operator shall be allowed to provide bonding through the Reclamation Fund if said operator has more than forty (40) acres of cumulative surface disturbance at more than one (1) mine site. An operator who has multiple plans and permits with a total disturbance in excess of forty (40) acres may participate in the Reclamation Fund with one (1) or more sites that contain less than forty (40) acres of total disturbance. These operators may also choose to not participate in the Reclamation Fund at all. A plan or permit that does not provide alternative financial assistance through the Reclamation Fund must be bonded with a traditional performance bond~~

01. ~~Limitations for Actual Allowable Participation.~~ The Board will ~~determine~~ establish by policy the actual allowable disturbance, actual allowable reclamation cost, and the minimum dollar per acre of disturbance in order to provide financial assurance to opt out of participation in the Reclamation Fund. ()

02. ~~Maximum Affected Lands And Reclamation Costs.~~ The maximum acreage of affected land and maximum allowable reclamation costs in these rules are maximums. Actual allowable acreage of affected lands and reclamation costs shall be established by Board policy. ()

03. ~~Maximum Allowable Disturbance & and Reclamation Cost Liability.~~ The maximum disturbance and maximum reclamation costs in these rules are maximums. The maximum allowable disturbance shall be eighty (80) acres; the maximum allowable reclamation cost shall be four hundred forty thousand dollars (\$440,000) dollars. ()

04. ~~Multiple Plans/ or Permits/Sites.~~ An operator who has multiple mining reclamation plans or permits, which that have a total disturbance in excess of the actual allowable disturbance, or with total reclamation costs in excess of the actual allowable reclamation cost, may participate in the Reclamation Fund with one (1) or more sites that together contain less than both of the Board-determined established actual allowable limits. (3-16-04)()

026. PAYMENT.

[Subsections 026.01]

01. Board Approved Payment Schedule. The Board shall adopt a payment schedule ~~which will to be used to that~~ determines the annual Reclamation Fund payment for each ~~mineral lease, reclamation plan, placer permit or temporary permit required to participate~~ operator participating in the Reclamation Fund. Any changes to the payment ~~structure must~~ schedule will be ~~reviewed and~~ approved by the Board. Participating operators shall pay all required payments annually. ~~(3-16-04)()~~

031. ENFORCEMENT AND FAILURE TO COMPLY.

[Subsections 031.01]

01. Forfeiture. Prior to withdrawing monies from the Reclamation Fund due to a violation of the Dredge Mining Act, the ~~Surface Mining~~ Mined Land Reclamation Act, Mineral Leasing Act, or a mineral lease, the Department shall comply with the respective financial assurance forfeiture procedures ~~for traditional performance bond forfeiture~~ set forth in Section 47-1513, Idaho Code. ~~(3-16-04)()~~



STATE BOARD OF LAND COMMISSIONERS

October 17, 2019

Regular Agenda

Subject

Adoption of Pending Fee Rule, IDAPA 20.03.04, *Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in Idaho*

Question Presented

Shall the Land Board adopt the pending fee rule to amend IDAPA 20.03.04.

Background

The Idaho Department of Lands (Department) is responsible for managing encroachments on navigable lakes in Idaho pursuant to Title 58, Chapter 13, Idaho Code, and IDAPA 20.03.04. Funding for the management of navigable waterways comes from fees and rent charged by the Department for the use of these lands.

The costs of processing encroachment permit applications for single-family docks, two-family docks, water-intake lines, and permit assignments exceed the current application fees collected. The Department received Land Board approval in April 2019 to enter negotiated rulemaking to consider raising fees for these four types of applications to ensure fees cover the respective processing costs. The Department also entered negotiated rulemaking to discuss neighbor notification and consider prescribing that the Department shall provide notice to adjacent property owners for all noncommercial navigational encroachments.

Discussion

The Department held five negotiated rulemaking meetings with interested stakeholders in June 2019. Meetings were held in Pocatello, Sandpoint, Coeur d'Alene, McCall, and Boise. Seven members of the public attended these meetings, including marine contractors, a realtor, and a representative of an environmental group. During the negotiated rulemaking meetings, comments were in favor of raising the fees, and there were no objections to the draft rule changes. Attachment 1 provides a summary of the negotiated rulemaking.

On September 4, 2019, the Notice of Rulemaking and proposed rule text were published in the Idaho Administrative Bulletin (Attachment 2). A public hearing on the proposed rule was held in Boise on September 16, 2019, and the written comment period was open through September 25, 2019. No written comments were received, and no testimony was given at the public hearing.

The proposed rule would increase the encroachment permit application fee for single-family docks, two-family docks, and water intake lines from \$300 to \$425, increase the encroachment permit assignment fee from \$150 to \$300, and instruct the Department to

provide notices of applications to the applicant's adjacent littoral owners, if such owners' approvals were not already submitted with the application.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Fee Rule (Attachment 3) to the Office of the Administrative Rules Coordinator for the 2020 legislative session.

Recommendation

Adopt the pending fee rule to amend IDAPA 20.03.04, *Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in Idaho*.

Board Action

Attachments

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



IDAHO DEPARTMENT OF LANDS

Summary of Negotiated Rulemaking

IDAPA 20.03.04

Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho

Docket No. 20-0304-1901

Reason for Rulemaking

This rulemaking was initiated for the following reasons:

- To consider fees for encroachment permit applications for single-family docks, two-family docks, water-intake lines, and assignments; to ensure fees cover the respective processing costs
- To clarify how notice of application is provided to adjacent property owners

Notice of Intent to Promulgate Rules and Stakeholder Outreach

Notice of Negotiated Rulemaking was published in the June 5, 2019 issue of the Idaho Administrative Bulletin. The Idaho Department of Lands (IDL) issued a press release and emailed 65 stakeholders to invite their participation in the negotiated rulemaking process.

Negotiated Rulemaking Meetings

IDL held five meetings across the state in June 2019 to seek public comments on the draft changes to IDAPA 20.03.04, *Rules Governing the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho*. The table below is a summary of the meeting locations and public participation:

| Date | Location | No. of public participants (and affiliation) |
|---------------|---------------|---|
| June 12, 2019 | Pocatello | 0 |
| June 17, 2019 | Sandpoint | 3 (2 marine contractors and 1 environmental group) |
| June 18, 2019 | Coeur d'Alene | 3 (2 marine contractors and 1 member of the general public) |
| June 19, 2019 | McCall | 1 (1 realtor) |
| June 20, 2019 | Boise | 0 |

Summary of Meeting Discussions

There were no objections to the draft changes during the public meetings, and comments were in favor of raising the fees. One marine contractor indicated the recommended fees are small in comparison to the cost to build a dock, estimated to be around \$40,000, and the cost to purchase lakefront property.

Because IDL has seen an increase in the number of hearings in 2019, participants raised concerns that IDL would ask for further fee increases next year if this trend continues. IDL will continue to analyze the number of hearings to determine whether the recent increase is an anomaly or a new trend.

A marine contractor recommended requiring a fee from an objector to an encroachment permit application to help cover the expenses of the resulting hearing, but this idea was met with concerns about equal access to justice.

Written Comment

IDL received one written comment. Wild Idaho Rising Tide's (WIRT) comments were mostly related to a specific encroachment permit application, and the WIRT comments related to the rulemaking are summarized as follows, and the IDL response is provided below.

Comment: WIRT suspects that IDL is raising the fees and adjacent landowner notification standards for noncommercial navigational encroachments to shift the burden to Idaho property owners of the huge costs and rules deficiencies of other encroachment types and recommends raising fees and notification standards for other encroachment types as well.

Response: IDL found the current permit application fees for commercial and nonnavigational encroachments, in general, cover the direct costs to process such applications (which range from \$550 to \$2,000). For this reason, IDL did not seek raising the fees for these types of encroachments this year. In addition, statutes and current rules already allow for IDL to provide notice of application for these other types of encroachments to adjacent littoral owners, government agencies, as well as to the public through a newspaper publication (see [I.C. § 58-1306](#) and [IDAPA 20.03.04.030.01 and .03](#)).

Concluding Negotiated Rulemaking

With no issues left unresolved, IDL concluded the negotiated rulemaking process and submitted the negotiated rule changes for publication as a proposed rule in the September 2019 edition of the Idaho Administrative Bulletin.

The rulemaking record is available for review upon request, and key documents are available at <https://www.idl.idaho.gov/rulemaking/20.03.04-2019/index.html>.

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.04 – RULES FOR THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

DOCKET NO. 20-0304-1901 (FEE RULE)

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6), 58-105, and 58-1304, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

PUBLIC HEARING

**Monday, September 16, 2019
10:00 a.m. (MDT)**

**Idaho State Capitol
4th Floor, Majority Caucus Room (W-433)
700 West Jefferson Street
Boise, ID 83702**

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

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

All funding used to manage the beds of navigable waterways comes from the fees and rent collected from the use of these lands; no general tax dollars support this work. The costs for processing encroachment permit applications for single-family docks, two-family docks, water-intake lines, and assignments exceed the current application fees collected. The Idaho Department of Lands is proposing to raise the fees for these four types of applications to ensure fees cover the respective processing costs within the limitations provided in Section 58-1307, Idaho Code.

Section 58-1305, Idaho Code, does not specify who should provide notice of application to adjacent property owners for all noncommercial navigational encroachments. The proposed rule prescribes that the department shall provide notice.

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

This proposed rule changes the fees charged for encroachment permit applications for single-family docks, two-family docks, and water-intake lines from \$300 to \$425 and the application fee for an encroachment permit assignment from \$150 to \$300.

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 as a result of this rulemaking:

No impact to the general fund is expected. Revenue and expenses associated with administering the Lake Protection Act come from a dedicated fund, and the proposed fee increases are estimated to increase revenue to the dedicated fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 5, 2019, Idaho Administrative Bulletin, [Vol. 19-6, page 64](#).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Andrew Smyth at (208) 334-0248 or asmith@idl.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 25, 2019.

Dated this 2nd day of August, 2019.

Andrew Smyth
Public Trust Program Manager
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0248
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0304-1901
(Only Those Sections With Amendments Are Shown.)

020. APPLICATIONS.

01. Encroachment Applications. No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the department. The placing of dredged or fill material, refuse or waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the department is required. If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued. (4-2-08)

02. Signature Requirement. Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit. (4-2-08)

03. Other Permits. Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies. (9-13-90)

04. Repairs, Reinstallation of Structures. No permit is required to clean, maintain, or repair an existing permitted encroachment, but a permit is required to completely replace, enlarge, or extend an existing encroachment. Replacement of single-family and two-family docks may not require a permit if they meet the criteria in Section 58-1305(e), Idaho Code. Reinstalling the top or deck of a dock, wharf or similar structure shall be considered a repair; reinstallation of winter damaged or wind and water damaged pilings, docks, or float logs shall be considered a repair. Repairs, or replacements under Section 58-1305(e), Idaho Code, that adversely affect the bed of the lake will be considered a violation of these rules. (4-7-11)

05. Dock Reconfiguration. (4-2-08)

a. Rearrangement of single-family and two-family docks will require a new application for an

encroachment permit. (4-2-08)

b. Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted: (4-2-08)

i. Overall footprint does not change in dimension or orientation; (4-2-08)

ii. No increase in the square footage, as described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks; (3-29-10)

iii. The entrances and exits of the facility do not change. (4-2-08)

06. Redredging. Redredging a channel or basin shall be considered a new encroachment and a permit is required unless redredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how redredging is addressed in any existing or future permit. (4-2-08)

07. Forms, Filing. Applications and plans shall be filed on forms provided by the Department together with filing fees and costs of publication when required by these rules. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. (4-11-19)

a. Plans shall include the following information at a scale sufficient to show the information requested: (4-11-19)

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. (4-2-08)

ii. Copy of most recent survey or county plat showing the full extent of the applicant's lot and the adjacent littoral lots. (4-2-08)

iii. Proof of current ownership or control of littoral property or littoral rights. (4-2-08)

iv. A general vicinity map. (4-2-08)

v. Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake. (4-2-08)

vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. (4-2-08)

vii. Names and current mailing addresses of adjacent littoral landowners. (4-2-08)

b. Applications must be submitted or approved by the littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. When the littoral owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing. (4-2-08)

c. If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of a designated homeowner's or property management association. (4-2-08)

d. Applications for noncommercial encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements. Application fees are not required for these

encroachments. (4-2-08)

e. The following applications shall be accompanied by the respective nonrefundable filing fees together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing: (4-2-08)

i. Nonnavigational encroachments require a fee of one thousand dollars (\$1,000); except that nonnavigational encroachments for bank stabilization and erosion control require a fee of five hundred fifty dollars (\$550). (4-11-19)

ii. Commercial navigational encroachments require a base fee of two thousand dollars (\$2,000). If the costs of processing an application exceed this amount, then the applicant may be charged additional costs as allowed by Title 58, Chapter 13, Section 58-1307, Idaho Code; (4-2-08)

iii. Community navigational encroachments require a fee of two thousand dollars (\$2,000); and (4-2-08)

iv. Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars (\$1,000). (4-2-08)

f. Applicants shall pay any balance due on publication costs before written approval will be issued. The Department shall refund any excess at or before final action on the application. (9-13-90)

g. Application for a single-family or two-family dock not extending beyond the line of navigability or a nonnavigational encroachment for a buried or submerged water intake line serving four or less households shall be accompanied by a nonrefundable filing fee of ~~three hundred dollars (\$300)~~ **four hundred twenty-five dollars (\$425)**. (4-7-11)()

h. No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. (9-13-90)

i. Applications and plans shall be stamped with the date of filing. (7-1-98)

j. Applications that are incomplete, not in the proper form, not containing the required signature(s), or not accompanied by filing fees and costs of publication when required, shall not be accepted for filing. The department shall send the applicant a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written consent of the department. If the given deadline is not met, the department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply at a later date, but will be required to pay another filing fee and publication fee, if applicable. (4-2-08)

021. -- 024. (RESERVED)

025. PROCESSING OF APPLICATIONS FOR SINGLE-FAMILY AND TWO-FAMILY NAVIGATIONAL ENCROACHMENTS WITHIN LINE OF NAVIGABILITY.

01. Single-Family and Two-Family Navigational Encroachments. Applications for single-family and two-family navigational encroachments not extending beyond the line of navigability will be processed with a minimum of procedural requirements and shall not be denied except in the most unusual of circumstances. No newspaper publication, formal appearance by the applicant, or hearing is contemplated. (4-2-08)

~~**02. Adjacent Littoral Owners.** If a proposed encroachment referred to in Subsection 025.01 may infringe upon the littoral right lines of an adjacent littoral owner, the department shall require the applicant to secure the written consent of the adjacent littoral owner.~~ (4-2-08)

032. Notification of Adjacent Littoral Owners. ~~If the signature of the adjacent littoral owner is not required, the~~ The Department shall will provide a copy of such the application to the littoral owners immediately adjacent to the applicant's property. If the applicant owns one (1) or more adjacent lots, the department shall notify the owner of the next adjacent lot. ~~This notification~~ If the proposed encroachment may infringe upon the littoral rights of an adjacent owner, the department will provide notice of the application by certified mail, return receipt requested; otherwise, the notice will be sent by regular mail. Notification will be mailed to the adjacent littoral owners' usual place of address, which, if not known, shall will be the address shown on the records of the county treasurer or assessor. The applicant may submit the adjacent littoral owners' signatures ~~as concurring with the application,~~ consenting to the proposed encroachment, in lieu of the department's notification. (4-2-08)()

043. Written Objections. (4-2-08)

a. If an adjacent littoral owner files written objections to the application with the department within ten (10) days from the date of service or receipt of notice of the completed application, the department shall fix a time and a place for a hearing. In computing the time to object, the day of service or receipt of notice of the application shall not be counted. Objections must be received within the ten (10) day period by mail or hand delivery in the local department office or the director's office in Boise. If the last day of the period is Saturday, Sunday or a legal holiday, the time within which to object shall run until the end of the first business day thereafter. (4-2-08)

b. The applicant and any objectors may agree to changes in the permit that result in the objections being withdrawn. Department employees may facilitate any such agreement. Participation by department personnel in this informal mediation shall not constitute a conflict of interest for participation in the hearing process. A withdrawal of objections must be in writing, completed prior to a scheduled hearing, and contain: (4-2-08)

- i. Signatures of the applicant and the objecting party; (4-2-08)
- ii. A description of the changes or clarifications to the permit that are acceptable to the applicant, the objecting party, and the department. (4-2-08)

054. Unusual Circumstances. Even though no objection is filed by an adjacent littoral owner to a noncommercial navigational encroachment, if the director deems it advisable because of the existence of unusual circumstances, he may require a hearing. (4-2-08)

065. Hearings. Hearings fixed by the director following an objection pursuant to Subsection 025.043 or the Director's own determination pursuant to Subsection 025.054 shall be fixed as to time and place, but no later than sixty (60) days from date of acceptance for filing of the application. At the hearing the applicant and any adjacent riparian owner filing timely objections may appear personally or through an authorized representative and present evidence. The department may also appear and present evidence at the hearing. In such hearings the hearing coordinator shall act as a fact finder and not a party. The Director, at his discretion, shall will designate a Department representative to sit as the hearing coordinator. Provided, however, that the parties may agree to informal disposition of an application by stipulation, agreed settlement, consent order, or other informal means. (4-2-08)()

076. Decision Following a Hearing. The director shall, within forty-five (45) days after close of the hearing provided for in Subsections 025.043 or 025.055 render a final decision and give notice thereof to the parties appearing before him either personally or by certified or registered mail. The final decision shall be in writing. (4-2-08)()

087. Disposition Without Hearing. If a hearing is not held under Subsection 025.043 or Subsection 025.054, then the department shall act upon a complete application filed under Subsection 025.01 as expeditiously as possible but no later than sixty (60) days from acceptance of the application. Failure to act within this sixty (60) day timeframe shall constitute approval of the application. Applications determined to be incomplete under Subsection 020.07 are not subject to the sixty (60) day timeframe until the information requested by the department and required by the rules has been submitted. (4-2-08)()

098. Judicial Review. Any applicant aggrieved by the Director's final decision, or an aggrieved party appearing at a hearing, shall have a right to have the proceedings and final decision reviewed by the district court in the county where the encroachment is proposed by filing a notice of appeal within thirty (30) days from the date of

the final decision. An adjacent littoral owner shall be required to deposit an appeal bond with the court, in an amount to be determined by the court but not less than five hundred dollars (\$500) insuring payment to the applicant of damages caused by delay and costs and expenses, including reasonable attorney fees, incurred on the appeal in the event the district court sustains the action of the director. The applicant need post no bond with the court to prosecute an appeal. (4-2-08)

060. INSTALLATION.

01. Installation Only After Permit Issued. Installation or on site construction of an encroachment may commence only when the permit is issued or when the department notifies the applicant in writing that installation may be commenced or when the department has failed to act in accordance with Subsection 025.087. (4-2-08)()

02. Removal of Construction Waste. (4-2-08)

a. Pilings, anchors, old docks, and other structures or waste at the site of the installation or reinstatement and not used as a part of the encroachment shall be removed from the water and lakebed at the time of the installation or reinstatement to a point above normal flood water levels; provided, however, that this shall not be construed to prevent the use of trash booms for the temporary control of floatable piling ends and other floatable materials in a securely maintained trash boom, but approval for a trash boom shall be required as part of a permit. (4-2-08)

b. Demolition of encroachments shall be done in a manner that does not unnecessarily damage the lakebed or shoreline. Demolition work must comply with water quality standards administered by the Department of Environmental Quality. (4-2-08)

03. Compliance with Permit. All work shall be done in accordance with these rules, and the application submitted, and is subject to any condition specified in the permit. (7-1-98)

04. Sunset Clause. All activities authorized within the scope of the encroachment permit must be completed within three (3) years of issuance date. If the activities are not completed within three (3) years, the permit shall automatically expire unless it was previously revoked or extended by the department. The department may issue a permit with an initial sunset clause that exceeds three (3) years, if the need is demonstrated by the applicant. (3-29-10)

061. -- 064. (RESERVED)

065. ASSIGNMENTS.

01. Assignment of Encroachment Permit. Encroachment permits may be assigned upon approval of the department provided that the encroachment conforms with the approved permit. The assignor and assignee must complete a department assignment form and forward it to the appropriate area office. (4-2-08)

02. Assignment Fee. The assignment fee ~~shall be one hundred fifty dollars (\$150). The fee shall be paid is three hundred dollars (\$300) and is due~~ at the time the assignment is submitted to the department. (4-2-08)()

03. Approval Required for Assignment. An assignment is not valid until it has been approved by the department. (4-2-08)

04. Assignment With New Permit. Encroachments not in compliance with the approved permit may be assigned only if: (4-2-08)

a. An application for a new permit to correct the noncompliance is submitted at the same time. (4-2-08)

b. The assignee submits written consent to bring the encroachment permit into compliance. (4-2-08)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.04 - RULES FOR THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

DOCKET NO. 20-0304-1901

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 58-104(6), 58-105, and 58-1304, Idaho Code.

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

All funding used to manage the beds of navigable waterways comes from the fees and rent collected from the use of these lands; no general tax dollars support this work. The costs for processing encroachment permit applications for single-family docks, two-family docks, water-intake lines, and assignments exceed the current application fees collected. Increased fees for these four types of applications are necessary to ensure fees cover the respective processing costs within the limitations provided in Section 58-1307, Idaho Code. Further, Section 58-1305, Idaho Code, does not specify who should provide notice of application to adjacent property owners for all noncommercial navigational encroachments, and the pending rule prescribes that the department shall provide notice.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 4, 2019 Idaho Administrative Bulletin, Vol. 19-9, pages 367-372.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 58-1307, Idaho Code.

This pending rule changes the fees charged for encroachment permit applications for single-family docks, two-family docks, and water-intake lines from \$300 to \$425 and the application fee for an encroachment permit assignment from \$150 to \$300.

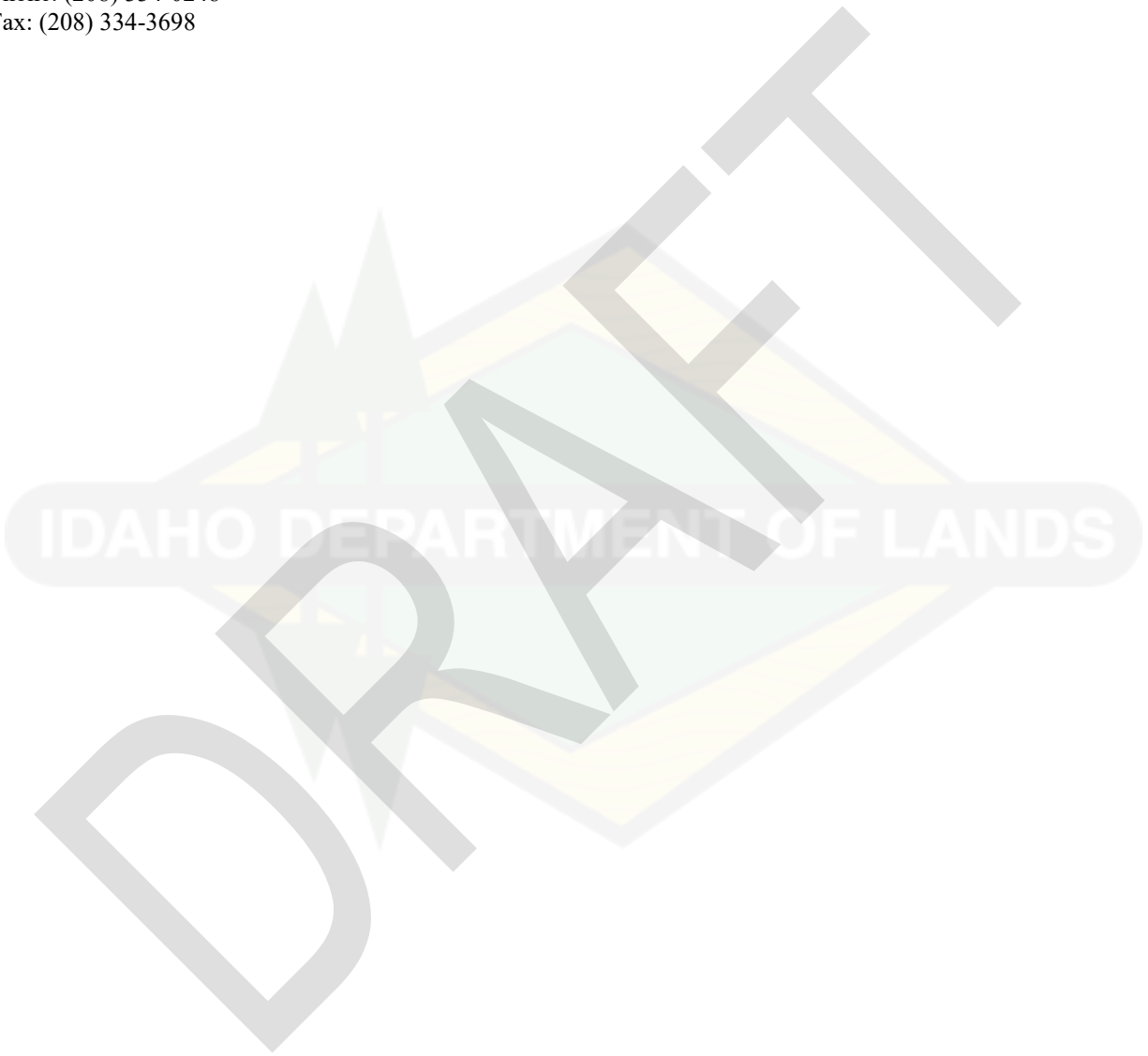
FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

No impact to the general fund is expected. Revenue and expenses associated with administering the Lake Protection Act come from a dedicated fund, and the proposed fee increases are estimated to increase revenue to the dedicated fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Andrew Smyth at (208) 334-0248 or asmith@idl.idaho.gov.

DATED this 17th day of October, 2019.

Andrew Smyth
Public Trust Program Manager
Idaho Department of Lands
300 N. 6th Street, Suite 103
P.O. Box 83720
Boise, Idaho 83720-0050
Phone: (208) 334-0248
Fax: (208) 334-3698



STATE BOARD OF LAND COMMISSIONERS

October 17, 2019

Regular Agenda

Subject

Omnibus Rulemaking – Pending Rules

Question Presented

Shall the Land Board adopt the Department's amended proposed rules as pending rules and approve the Department's Omnibus Rulemaking Notices for Adoption of Pending Rules and Fee Rules.

Background

All existing administrative rules in Idaho expire each year on July 1 unless reauthorized by the legislature. The legislature adjourned the 2019 legislative session without reauthorizing all rules prior to the end of session. Executive administrative action was required to address this unique circumstance and to ensure existing rules stayed in effect after July 1, 2019.

The governor and his staff, in coordination with the Office of the Attorney General, directed all state agencies to republish rules concurrently, as both temporary and proposed, in a special edition of the Idaho Administrative Bulletin.

As part of this reauthorization process, agencies were directed to implement the governor's Executive Order No. 2019-02 Red Tape Reduction Act (Attachment 1). The Red Tape Reduction Act requires agencies to "undertake a critical and comprehensive review of the agency's administrative rules to identify costly, ineffective, or outdated regulations" for elimination by the end of fiscal year 2021.

At its regular meeting on May 21, 2019, the Land Board approved the Idaho Department of Lands' (Department) Notices of Omnibus Rulemaking and authorized the Department to proceed with temporary and proposed rulemaking (Attachment 2). The temporary rules became effective on June 30, 2019, to ensure there was no gap with the expiring rules, and will continue in effect only to the end of the 2020 legislative session. To ensure the rules remain in effect beyond that, the 2020 legislature will need to approve pending rules.

Discussion

After the Department's administrative rules were published as temporary and proposed rules in the June 19, 2019 Administrative Bulletin, hearing requests were received for IDAPA 20.02.01, *Rules Pertaining to the Idaho Forest Practices Act*, and for IDAPA 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho*. In mid-August, two public hearings were conducted on IDAPA 20.02.01, and three public hearings were conducted on

IDAPA 20.03.01. A summary of oral and written comments for both rule chapters were presented at the September 13, 2019 Land Board meeting (Attachments 3 and 4). The Department did not identify any needed changes to either rule chapter based on the public hearings or the written comments received.

Consistent with the Red Tape Reduction Act, other housekeeping and minor edits were made to many of the Department's rules, such as correcting spelling errors and punctuation, fixing outdated references, eliminating definitions not used in the specific rule chapter, and other non-substantive changes. All minor housekeeping edits were reviewed by the Office of the Attorney General.

Attachments 5 and 6 are the Notices of Omnibus Rulemaking for adoption of the Department's pending rules and pending fee rules.

Recommendation

Adopt the Department's amended proposed rules as pending rules and approve the Department's Notices of Omnibus Rulemaking for adoption of pending rules and pending fee rules.

Board Action

Attachments

1. Executive Order No. 2019-02 Red Tape Reduction Act
2. May 21, 2019 Approved Board Memo – Omnibus Temporary and Proposed Rulemaking
3. September 13, 2019 Board Memo – Summary of Comments Received on Proposed Rules IDAPA 20.02.01, *Rules Pertaining to the Idaho Forest Practices Act*
4. September 13, 2019 Board Memo – Summary of Comments Received on Proposed Rules IDAPA 20.03.01, *Rules Governing Dredge and Placer Mining Operations in Idaho*
5. Notice of Omnibus Rulemaking – Adoption of Pending Rule
6. Notice of Omnibus Rulemaking – Adoption of Pending Fee Rule



Executive Department
State of Idaho

State Capitol
Boise

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 2019-02

RED TAPE REDUCTION ACT

WHEREAS, Idaho's strong economic growth is vital to ensuring our citizens and our children are able to find great jobs and raise their families in Idaho; and

WHEREAS, excessive regulation at all levels of government can impose high costs on businesses, inhibit job growth, and impede private sector investment; and

WHEREAS, burdensome regulations continue to be a hardship for many small business owners; and

WHEREAS, Idaho's Administrative Code has grown to 736 chapters, totaling more than 8,200 pages, and containing more than 72,000 restrictions.

NOW, THEREFORE, I, Brad Little, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, do hereby order that:

1. *Each executive department of the state of Idaho as set forth in section 67-2402, Idaho Code, including each division, bureau or self-governing agency that has the authority to issue administrative rules shall designate an existing employee of the agency as its Rules Review Officer (RRO) to undertake a critical and comprehensive review of the agency's administrative rules to identify costly, ineffective, or outdated regulations.*
 - a. *Agencies must submit the name and contact information of the RRO to the Division of Financial Management no later than March 1, 2019.*
2. *Through the end of fiscal year 2021, prior to proposing a new rule for publication in the Idaho Administrative Bulletin, each executive department of the state of Idaho as set forth in section 67-2402, Idaho Code, including each division, bureau or self-governing agency, shall submit to the Division of Financial Management:*
 - a. *A business/competitiveness impact statement that identifies the impact the proposed rule will have on individuals and small businesses; and*

- b. *At least two existing rules to be repealed or significantly simplified, or a statement clearly and thoroughly stating why existing rules cannot be simplified or eliminated.*
3. *The Division of Financial Management shall produce an annual report to the Governor's office outlining the progress made in eliminating burdensome regulations and streamlining state government.*



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 21st day of January, in the year of our Lord two thousand and nineteen.



LAWRENCE DENNEY
SECRETARY OF STATE



BRAD LITTLE
GOVERNOR

STATE BOARD OF LAND COMMISSIONERS

May 21, 2019
Regular Agenda

Subject

Omnibus Temporary and Proposed Rulemaking

Question Presented

Shall the Board approve the Notices of Omnibus Rulemaking and authorize the Department to proceed with omnibus temporary and proposed rulemaking through executive administrative action to ensure administrative rules remain in effect after July 1.

Background

All existing administrative rules in Idaho expire each year on July 1 unless reauthorized by the legislature. The legislature adjourned the 2019 legislative session without reauthorizing all rules prior to the end of session. Executive administrative action is required to address this unique circumstance and to ensure existing rules remain in effect after July 1.

The governor and his staff, in coordination with the Office of the Attorney General, directed all state agencies to republish rules concurrently, as both temporary and proposed rules, in a special edition of the Idaho Administrative Bulletin in June 2019. The temporary rules will have an effective date of June 30, 2019, to ensure there is no gap with the expiring rules. The Office of the Attorney General and Idaho State Board of Land Commissioners must first approve all Idaho Department of Lands (Department) rules reauthorized through this process. Reauthorized rules are also subject to legislative review during the 2020 legislative session.

As part of this reauthorization process, agencies have been directed to let expire chapters or sections of rule in line with the governor's Executive Order No. 2019-02 Red Tape Reduction Act (Attachment 1). The Red Tape Reduction Act requires agencies to "undertake a critical and comprehensive review of the agency's administrative rules to identify costly, ineffective, or outdated regulations" for elimination by the end of fiscal year 2021.

Discussion

The Department has undertaken a comprehensive review of all existing administrative rules and identified the chapters under IDAPA 20, rules of the Idaho Department of Lands, to adopt and republish as temporary and proposed rules, as well as those to let expire. The notices for omnibus fee and non-fee rulemaking contain descriptive summaries for these actions (Attachments 2 and 3). Rationale has been documented for any rule chapter or section proposed for elimination (Attachment 4). The Office of the Attorney General has

reviewed all rules identified for reauthorization or elimination, as well as the omnibus rulemaking notices and associated rationale.

At a May 8, 2019 special meeting, the Idaho Oil and Gas Conservation Commission approved for reauthorization or elimination the rules pertaining to the conservation of oil and natural gas in the state of Idaho, as proposed by the Department in coordination with the Office of the Attorney General.

Recommendation

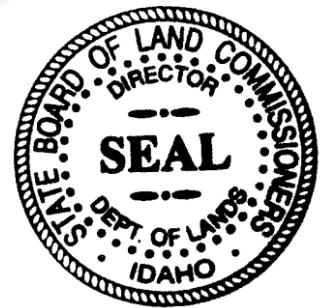
Approve the Notices of Omnibus Rulemaking and authorize the Department to proceed with omnibus temporary and proposed rulemaking through executive administrative action to ensure administrative rules remain in effect after July 1.

Board Action

A motion was made by Attorney General Wasden that the Board approve the Department recommendation, that is approve the Notices of Omnibus Rulemaking and authorize the Department to proceed with omnibus temporary and proposed rulemaking through executive administrative action to ensure administrative rules remain in effect after July 1. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Attachments

1. Executive Order No. 2019-02 – Red Tape Reduction Act
2. Notice of Omnibus Rulemaking – Temporary and Proposed Fee Rulemaking
3. Notice of Omnibus Rulemaking – Temporary and Proposed Rulemaking
4. Rationale for Eliminating Rules of the Idaho Department of Lands



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

| | Rule Section | Comment | Response |
|---|---------------------|--|---|
| 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. |

| | Rule Section | Comment | Response |
|----|---------------------|---|---|
| 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. |

| | Rule Section | Comment | Response |
|----|---------------------|--|---|
| 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. |

| | Rule Section | Comment | Response |
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| 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

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. |

ATTACHMENT 4

| | Rule Section | Comment | Response |
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| 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). |

| | Rule Section | Comment | Response |
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| 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. |

| | Rule Section | Comment | Response |
|----|--|--|--|
| 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. |

| | Rule Section | Comment | Response |
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| 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: https://www.idl.idaho.gov/lakes-rivers/riverbed/withdrawn-rivers_rev.pdf . 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: https://www.usgs.gov/news/interior-releases-2018-s-final-list-35-minerals-deemed-critical-us-national-security-and |
| 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: https://www.idaho.gov/jobs/find-a-job/ |

| | Rule Section | Comment | Response |
|----|---------------------|---|---|
| 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. |

| | Rule Section | Comment | Response |
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| 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. |

| | Rule Section | Comment | Response |
|----|---------------------|---|--|
| 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. |

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-1900

NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2020 Idaho State Legislature for final approval. The pending rule becomes final and effective upon the conclusion of the legislative session, unless the rule is approved or rejected in part by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved or rejected in part by concurrent resolution, the approved or non-rejected portions of the rule become final and in full force and effect upon adoption of the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 38-115, 38-132, 38-402, 38-1304, 58-104, 58-105, and 67-5201 et seq., Idaho Code.

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

This rulemaking was prompted by the expiration of the rules. This pending rule 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
- 20.02.01, Rules Pertaining to the Idaho Forest Practices Act
- 20.04.01, Rules Pertaining to Forest Fire Protection

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. Minor edits to the proposed rule were prompted by the Red Tape Reduction Act and the Department's continued efforts to clarify and streamline its rules. The complete text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4099–4159.

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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Amy Johnson at (208) 334-0255 or rulemaking@idl.idaho.gov.

DATED this 17th day of October, 2019.

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IDAPA 20 – IDAHO DEPARTMENT OF LANDS

DOCKET NO. 20-0000-1900F

NOTICE OF OMNIBUS RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency, the Idaho State Board of Land Commissioners, the Idaho Oil and Gas Conservation Commission (as to IDAPA 20.07.02), and the Idaho Board of Scaling Practices (as to IDAPA 20.06.01), and is now pending review by the 2020 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending fee rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to:

- Sections 38-132 and 38-402, Idaho Code;
- Title 38, Chapter 12, including Section 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, Chapter 52, 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).

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

This rulemaking was prompted by the expiration of the rules. This pending fee rule 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
- 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
- 20.03.14, Rules Governing Grazing, Farming, Conservation, Noncommercial Recreation, and Communication Site Leases
- 20.03.15, Rules Governing Geothermal Leasing on Idaho State Lands
- 20.03.16, Rules Governing Oil and Gas Leasing on Idaho State Lands
- 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

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. Minor edits to the proposed rule were prompted by the Red Tape Reduction Act and the Department's continued efforts to clarify and streamline its rules. The original text of the proposed rule was published in the June 19, 2019 Idaho Administrative Bulletin (Special Edition), Vol. 19-6SE, pages 4160–4375.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. 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 pursuant to timber sales. This charge is being imposed pursuant to Sections 58-104, 58-105 and 58-127, Idaho Code.
- 20.03.01 – Application fee, amendment fee, assignment fee, and inspection fee for all dredge and placer permits in the state of Idaho. This fee is being imposed pursuant to Section 47-1316, Idaho Code.
- 20.03.02 – Application fee for permanent closure plans and assignment fee for reclamation plans and permanent closure plans. This fee is being imposed pursuant to Sections 47-1506(g) and 47-1508(f), Idaho Code.
- 20.03.03 – Annual payment for Reclamation Fund participation. This charge is being imposed pursuant to Section 47-1803, Idaho Code.
- 20.03.04 – Application fees for encroachment permits and deposits toward the cost of newspaper publication. This fee is being imposed pursuant to Sections 58-127 and 58-1307, Idaho Code.
- 20.03.05 – Fees for applications, advertising applications, exploration locations, and approval of assignments for riverbed mineral leasing. This fee is being imposed pursuant to Section 47-710, Idaho Code.
- 20.03.08 – Application fee, easement consideration fee, appraisal costs, and assignment fee for easements on state-owned lands. This fee is being imposed pursuant to Sections 58-127, 58-601, and 58-603, Idaho Code.
- 20.03.09 – Administrative fee, appraisal costs, and assignment fee for easements on state-owned submerged lands and formerly submerged lands. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-603, Idaho Code.
- 20.03.13 – Annual rental payment paid to the endowment for which the property is held. This charge is being imposed pursuant to Section 58-304, Idaho Code.
- 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. This fee is being imposed pursuant to Section 58-304, Idaho Code.
- 20.03.15 – Application fee, assignment fee, and late payment fee for geothermal leases on state-owned lands. This fee is being imposed pursuant to Section 58-127, Idaho Code.
- 20.03.16 – Exploration location permit fee, nomination fee, and processing fee for oil and gas leases on endowment lands. This fee is being imposed pursuant to Section 58-127, Idaho Code.
- 20.03.17 – Application fee, rental rate, and assignment fee for leases on state-owned submerged lands and formerly submerged lands. This fee is being imposed pursuant to Sections 58-104, 58-127 and 58-304, Idaho Code.
- 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. This fee or charge is being imposed pursuant to Sections 38-122 and 38-404, Idaho Code.
- 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. This fee is being imposed pursuant to Section 38-1209, Idaho Code.

- 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. This fee or charge is being imposed pursuant to Sections 47-315(5)(e) and 47-316, Idaho Code.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Amy Johnson at (208) 334-0255 or rulemaking@idl.idaho.gov.

DATED this 17th day of October, 2019.

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STATE BOARD OF LAND COMMISSIONERS

October 17, 2019

Regular Agenda

Subject

Approval of Lower Cranberry timber sale, with clearcut harvest units exceeding 100 acres

Question Presented

Shall the Board approve Lower Cranberry timber sale, with clearcut harvest units exceeding 100 acres.

Background

At its December 15, 2015 meeting the Land Board adopted a timber sale governance structure whereby the Department would only present individual proposed timber sales for Land Board approval that fall outside of established Land Board policies. Timber sales with clearcut harvest units exceeding 100 acres are one type of sale to be submitted for approval.

Discussion

The Clearwater Supervisory Area has submitted the Lower Cranberry timber sale which has adjacent clearcut harvest units exceeding 100 acres in size. Historically, large clearcut harvests are a rare practice for the Department and on average clearcuts of any size make up less than twenty percent of the harvest acres on an annual basis.

The sale is in an area where intensive timber management has taken place in the past by the Department and neighboring private industrial lands. The stands to be harvested were created by management actions that removed the highest value and healthiest trees in the 1950's. Attachments 1 and 2 are maps that show the sale area and an aerial view revealing the level of management in the vicinity.

The adjacent clearcuts in the sale area total 149 acres and are proposed for several reasons. The stand is over-mature with mortality expected to exceed growth in the next few years and is dominated by climax successional species that are prone to insects, disease, and windthrow. The stand has a significant level of defect and there are not enough quality seed trees available to naturally regenerate the area. The sale area requires skyline yarding over sixty-seven percent of the ground with skidding distances of 2,000 feet and rigging the skyline out to 3,500 feet. Long-term financial returns dictate the need to regenerate the stand to take advantage of the site potential for future rotations. This site will be planted with western larch; it is the species most resistant to heavy browse issues that are documented on adjacent sites, and it is more resistant to fire, insects and pathogens.

Lower Cranberry has been prepared to meet or exceed the Forest Practices Act. The proposed clearcut harvest units are economically justified and are appropriate silvicultural treatments as recommended by foresters and approved by the Forest Management Bureau (Attachment 3). The proposed clearcut harvest units meet the objectives of the Clearwater Area Forest Asset Management Plan.

Recommendation

The Department recommends that the Board authorize auction of the Lower Cranberry timber sale which includes clearcut harvest units exceeding 100 acres.

Board Action

Attachments

1. Sale Map
2. Vicinity Map
3. Bureau Approval

The logo for the Idaho Department of Lands is centered on the page. It features a stylized mountain range in shades of green and yellow, with a white banner across the middle containing the text "IDAHO DEPARTMENT OF LANDS" in a bold, sans-serif font.

IDAHO DEPARTMENT OF LANDS



- LOWER CRANBERRY
MTB 6/19
- Sale Boundary
 - Clearcut
 - Gate
 - Tractor
 - Roads
 - Gravel
 - Secondary
 - Spur
 - New Construct
 - Reconstruct
 - STREAMS
 - Dworshak Shoreline
 - Class I
 - Class II
 - Draw
 - Clearwater Ridges
 - OWNER
 - COE
 - IDL
 - Private

14

13

Unit 4

Unit 3
Seed Tree

Cranberry Creek

Cranberry Rim Road

Spur A-1

Spur A

Spur A-4

Spur A-2

Spur A

Spur A-2

23

24

Dworshak Reservoir

Unit 1

Unit 2

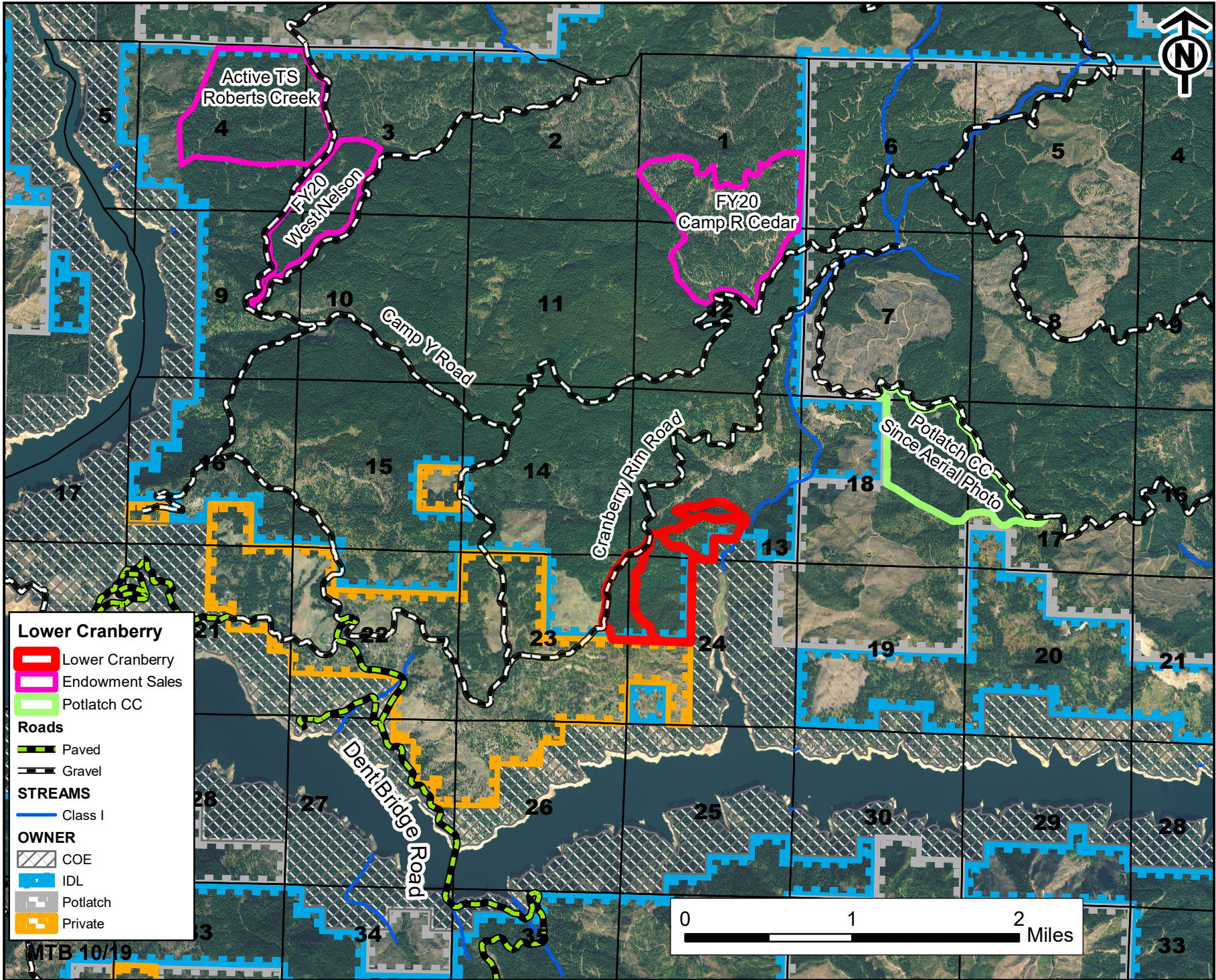
Temp Spur Y

Spur A-3



T 38 N

T 38 N



Lower Cranberry

- ▬ Lower Cranberry
- ▬ Endowment Sales
- ▬ Potlatch CC

Roads

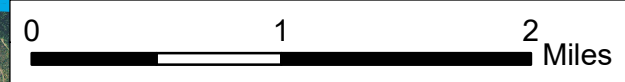
- ▬ Paved
- ▬ Gravel

STREAMS

- ▬ Class I

OWNER

- ▭ COE
- ▭ IDL
- ▭ Potlatch
- ▭ Private



MTB 10/19

Matt Blewett

From: Tony Brede
Sent: Monday, September 24, 2018 1:48 PM
To: Keith Brink
Cc: Matt Blewett; Jim Elbin; Jay Sila
Subject: Lower Cranberry

Keith,

The Clearwater Area has bureau approval to harvest a clearcut of approximately 160 acres on the Lower Cranberry timber sale. The sale will still have to go through the Land Board approval process.

Tony



STATE BOARD OF LAND COMMISSIONERS

October 17, 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, and 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.

At the September 13, 2019 Land Board meeting, the Department presented its new lease auction advertising process, including the new online leasing page discussed at the July Land Board meeting. The presentation included a demonstration of the current website, online map, and proposed timeline for certain leases. At the September 13th meeting, the Land Board tabled the matter until October so that further legal questions could be addressed.

Discussion

The Department has implemented a new advertising process that 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 fulfill 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 four weeks.¹ 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 following process will be followed for 2020 lease applications for crop, grazing, conservation and residential leases:²

- Land Board approval – October 17, 2019
- Week of October 21, 2019 – Department begins the auction process by advertising the open application period for crop, grazing, conservation, and residential
- Advertising for application period – 30 days (example: October 21 – November 20)
- 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 (example: November 21 – December 20)
 - Lease review (OAG) (example: November 21 – December 20)
 - Lease issued and executed (example: as reviewed by OAG – January 31, 2020)

¹ Weekly newspaper advertising in the county where the property is located is consistent with Idaho Code § 58-313.

² Certain lease types, such as some commercial leases, will require additional evaluation or review due to their unique nature.

- 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 and certain stakeholders explaining the proposed process, and schedule.

Recommendation

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

Board Action

Attachments

STATE BOARD OF LAND COMMISSIONERS

October 17, 2019
Information Agenda

Subject

Grazing Lease Rate for Calendar Year 2020 and Non-Fee Grazing Cost Study Update

Background

In 1993, the State Board of Land Commissioners (Land Board) adopted a formula to determine the annual grazing fee for leases on state endowment trust land. The formula is based upon four indices used to approximate the value of forage on state endowment trust land and is applied on an Animal Unit per Month (AUM) basis. These indices include private lease rates, forage value, prices received for beef cattle, and the price of inputs to produce beef cattle. The USDA National Agricultural Statistics Service (NASS) publishes these indices in December and January, reflecting data from the previous 12-month period.

The AUM fee formula as approved by the Land Board states that if the previous 12 month (October 1 - September 30) average lamb price is less than or equal to 70% of the price for calves under 500 pounds during the same period, the sheep AUM rate will be reduced 25%. Price data reviewed this month has shown that a reduction will not be necessary.

The Land Board and Idaho Department of Lands (Department) are reviewing the 1993 rate formula for potential revision or replacement. During the August 21, 2018 Land Board meeting, the Land Board decided to keep the status quo grazing rate formula and directed the Department to continue to review the grazing rate. Pivotal to this review is a study by the University of Wyoming (University) to determine the non-fee cost of grazing livestock on state endowment trust lands. The University projected completion of this study by September 1, 2019, but poor response rates from lessees have delayed the study. The Department is working with the University to increase lessee participation. The projected completion date of the study is now February 2020. Due to the delay in the completion of the study, the Department is moving forward with the status quo grazing rate formula for the 2020 AUM rate in order to meet noticing requirements to lessees.

Discussion

2020 Grazing Rate

Based on the most recent indices reported, the grazing fee for calendar year 2020 will be \$7.32 per AUM (Attachment 1). This figure represents a decrease of approximately 3% from the 2019 AUM rate of \$7.56. The primary driver of the decrease was a small drop in beef cattle prices and an increase in the prices paid for production inputs. Formula value changes are as follows:

| Value | % Change |
|----------------------------------|-------------------|
| FVI – Forage Value Index | Increase of 3.69% |
| BCPI – Beef Cattle Price Index | Decrease of 2.2% |
| PPI – Prices Paid Index | Increase of 3.1% |
| IDFVI – Idaho Forage Value Index | No Change |

All grazing lessees and cropland lessees reporting grazing activities will be notified of the 2020 rate within 6 months of the new rate taking effect.

Non-Fee Grazing Cost Study

On March 6, 2019, the Department executed a contract with the University of Wyoming to conduct a study to determine the non-fee grazing costs associated with the use of a state grazing lease. The University, with input from the Department, developed the research plan, cover letters, and survey questionnaire. The University of Wyoming Ethics Board approved the materials and the research project on June 13, 2019 and the study began. In order to achieve results that were statistically significant, the University determined that at least 90 lessees, chosen at random, should be surveyed. Response rates to this survey have been poor, with only 22 responses from lessees. Based on information gathered by the University and the Department, two issues may be contributing to this low response rate from lessees:

- 1) Survey Timing – Lessees have expressed concern to the University researchers that summer is not ideal for a majority of ranchers to spend time filling out a detailed survey.
- 2) Communication – Letters and notices regarding the study were mailed by the University, which led to some confusion among ranchers as to the authenticity of these communications and the study itself.

To improve survey response rates, the Department and the University will do the following:

- 1) The University will redouble efforts to contact lessees and solicit survey responses from October through January 2020. Ranchers have indicated that these times of the year are more suitable for them to respond.
- 2) The Department will mail letters to all lessees, reminding them of the study and its importance, and notifying lessees to expect communication from out-of-state University of Wyoming contract staff regarding the study.
- 3) Extensive outreach to area staff to better address survey questions from lessees.

Study results are expected by February 2020.

Attachments

1. 2020 AUM Rate Calculation

2020 AUM Rate Calculation

Land Board Adopted AUM Formula:

$$\text{IDFVI}_{t+2} = -6.92 + (0.13 \times \text{FVI}_t) + (0.60 \times \text{BCPI}_t) - (0.33 \times \text{PPI}_t) + (0.74 \times \text{IDFVI}_t)$$

$$\text{AUM Rate} = \text{IDFVI}_{t+2}/100 \times 1.70$$

Where

IDFVI (t+2) is the predicted value of the Idaho Forage Value Index for the year the grazing fee is to be set, i.e. two years hence;

FVI_t is the most recent published Forage Value Index for the 11 western states;

BCPI_t is the most recent published Beef Cattle Price Index for the 11 western states;

PPI_t is the most recent published Prices Paid Index for the 11 western states;

IDFVI_t is the most recent published value for the Forage Value Index for Idaho.

2020 Calculation

| | | |
|--------------------------------|---|-----|
| Forage Value Index (FVI) | = | 562 |
| Beef Cattle Price Index (BCPI) | = | 499 |
| Prices Paid Index (PPI) | = | 993 |
| Idaho FVI (IDFVI) | = | 531 |

$$\begin{aligned} \text{2020 IDFVI: } & -6.92 + (.13 \times 562) + (.6 \times 499) - (.33 \times 993) + (.74 \times 531) \\ & = 430.79 \end{aligned}$$

$$\begin{aligned} \text{2020 Fee} & = 430.79/100 \times \$1.70 \text{ Base Value} \\ & = \$7.32/\text{AUM} \end{aligned}$$

AGENDA ITEM 11

NO BOARD MATERIALS
ARE PROVIDED FOR THIS ITEM

A large, semi-transparent watermark of the Idaho Department of Lands logo is centered on the page. The logo features a stylized mountain range in shades of green and yellow, with a horizontal banner across the middle containing the text "IDAHO DEPARTMENT OF LANDS" in white, uppercase letters.

IDAHO DEPARTMENT OF LANDS