



Riverbed Mineral Leasing Procedures

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

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Section 10 – Riverbed Mineral Leasing Administration & Definitions

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Navigable Waterways Program Manager, Boise Staff Office

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I. Area Responsibilities

A. Processing

Areas will process all lease applications within the Area boundaries. Bureau or other IDL personnel will assist, as requested. Areas will also draft tract lists in response to applications that require a public lease offering.

B. Administration

Areas will answer questions from potential and existing lessees concerning lease administration and compliance.

C. Land Use Permits

Areas are responsible for writing, executing, and administering land use permits.

D. Signatures

Area Managers, or their designee, shall sign all lease set up sheets and Land Use Permits.

E. Inspections

Areas will perform:

1. Site visits
2. Compliance inspections.

All inspections must be documented in writing following Section 30 of these Procedures. Bureau or other IDL personnel will assist with inspections, as requested.

F. File Retention

The Areas will retain complete files for all exploration locations and leases; however, the office of record is the Boise Staff Office. All records, electronic and hard copy, are subject to Public Record Requests.

G. Policy Changes

Area personnel will submit comments concerning recommendations for policy and procedure changes to the applicable Program Manager.

II. Bureau Responsibilities

A. Support to Areas

The Bureau will provide information and guidance to the Areas to ensure consistency and completeness. This may include assistance in processing lease applications, determining riverbed ownership, and reviewing documents, letters, and other materials.

B. Office of Record

The Bureau will receive and maintain exploration location and lease information sent to the Bureau from the Areas at the Boise office, with complete files being retained at the Area offices.

C. Procedures

The Bureau will review procedures on an on-going basis and make adjustments when necessary. In most cases, the Bureau will solicit input from Area staff, Executive staff, and Legal staff on all policy and procedure changes. At the discretion of the Bureau, input will also be solicited from other agencies (local, state and federal), industry representatives, and the public.

III. Definitions

See the Surface Mining Procedures for definitions of additional terms.

Aliquot Part – A portion of a Section described in terms of $\frac{1}{2}$ or $\frac{1}{4}$ of a Section or a portion of a Section.

Base Metals – Iron, lead, zinc, copper, antimony, nickel, aluminum, molybdenum, tin, tungsten, cobalt, titanium, etc.

Exploration – The activity performed to locate mineral bodies and to determine their mineability and merchantability (Idaho Code § 47-1503(8)).

Exploration Location – An instrument used to give the grantee an exclusive right to prospect for minerals on a specific parcel of land for two years.

Government Lot – A portion of a Section that is larger or smaller than the typical ¼-¼ aliquot part of 40 acres due to irregular Township or Section boundaries, navigable waters, mining claims, reservation boundaries, or other surveying irregularities.

Grantee or Lessee – The person leasing land or minerals from the land's owner.

Grantor or Lessor – The land or mineral owner granting a lease on their land to another person. For the purposes of these procedures, the state of Idaho is the Lessor.

Lease – An exclusive right for a specific use of a state parcel over a specific time frame.

Mineral – All coal, oil, oil shale, gas, phosphate, sodium, asbestos, gold, silver, lead, zinc, copper, antimony, geothermal resources, salable minerals, and all other mineral lands, minerals or deposits of minerals of whatsoever kind or character (Idaho Code § 47-701). Fossils are also considered to be part of the mineral estate.

Land Use Permit – An authorization for a specific activity on state lands. These are for periods of no greater than six months. They are non-assignable and revocable at the will of the state. These permits are for no or low impact uses and have a minimum charge of \$100.

Precious Metals – Gold, silver, platinum, and platinum group metals.

Withdrawal or Withdrawn – State mineral lands that are not available for mineral entry or exploration due to action by the Land Board under Idaho Code § 47-702.



Section 20 – Riverbed Mineral Leasing

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I. Riverbed Lease Application

A. Application Processing

Lease application will follow the Riverbed Mineral Leasing Rules, IDAPA 20.03.05. Contact the Navigable Waterways Program Manager if questions arise.

IDL maintains the List of Navigable Waters that identifies rivers that are currently designated as navigable. Sections of rivers where the state has title and which have not been located, leased, or withdrawn from mineral entry may be open to mineral entry or exploration. IDL maintains the list of sections of navigable rivers withdrawn from mineral entry. Withdrawals are also noted on the digital land records and in the Recreational Mining Program Instructions prepared by the Idaho Department of Water Resources (IDWR).

Applications on rivers or sections of rivers that have been withdrawn from mineral entry or exploration will be immediately denied with no refund of the application fees.

B. Application Package

Complete applications for riverbed mineral leases must contain the following:

1. Application for Use. Applicant must specify in the “Describe Proposed Use” section near the bottom of the form that mineral exploration and production are proposed. The specific commodities to be leased must also be included.
2. Map of the proposed lease area.
3. A copy of the Applicant’s IDWR approved Stream Channel Alteration Permit (Recreational Mining Permit is acceptable).
4. Plan of operations for planned exploration or mining activities. A copy of their IDWR approved Stream Channel Alteration or Recreational Mining Permit is acceptable.
5. \$50.00 non-refundable application fee (IDAPA 20.03.05.045.01).
6. \$45.00 non-refundable advertising fee (IDAPA 20.03.05.045.02).

C. Lease Size

Leases are limited to either one (1) mile in length, or the entire length of the river contained in one Section. If the application crosses through more than one Section, then the one (1) mile limit should be imposed by measuring down the approximate center of the river.

D. Legal Description

Riverbeds create a unique dilemma because the Department has to describe the lands that were left out of the original surveys. The adjacent Government Lots, or aliquot parts if the river has moved away from the original meander lines, should be used to describe exploration locations and lease areas on navigable rivers. The parcels on both sides of the river should be used for the description. For example, an exploration location for a ½ mile of river could consist of “the Salmon River adjacent to Government Lots 2, 3, 5, and 6, Section 3, T27N, R1E”.

II. Riverbed Lease Application Review

A. Area Review

Area review of the application should be completed within thirty (30) days of receipt of the application. This includes depositing the fees and assigning an instrument number to the application.

B. Incomplete Applications

Applications that do not contain the information in Section I.B are incomplete. The Area must send a letter to the Applicant stating why the application is incomplete, and give them at least 30 days to submit the additional information. If the information is not received by the date given, then the application will be denied and a new application and fee will be required. Application processing should not proceed until IDL has a complete application that describes the proposed operation and has sufficient information for other agencies and the general public to offer comments.

The IDWR approved Stream Channel Alteration Permit or Recreational Mining Permit is a key part of the lease application. These documents act as the operating and reclamation plans for the leases.

C. State Agency Review

After a complete application package is received, the Area will forward the complete application packet to the Idaho Department of Environmental Quality (IDEQ), the Idaho Department of Fish and Game (IDFG), and IDWR. Applications on the Main Salmon River between Long Tom Bar and Hammer Creek should also be sent to the Cottonwood office of the Bureau of Land Management for review and comment.

Agencies shall be given thirty (30) days to provide comments, and arrangements should be made for an on-site review if requested.

D. Legal Notice

Concurrent with notification to other agencies, a legal notice of the riverbed application must also be prepared by the Area and published once a week for two consecutive weeks in a newspaper of general circulation in the county or counties where the riverbed under application is located (IDAPA 20.03.05.25.01).

Comments regarding the application will be accepted for thirty (30) days following the date of the last publication of the legal notice.

III. Public Hearing

A. By Director Order

The Director may order a public hearing on an application if a hearing is in the best interest of the public (IDAPA 20.03.05.025.02). The Area office may recommend this hearing to the Director through the Operations Chief.

B. By Petition

A public hearing will be held on the application if requested by ten (10) or more people whose right to use the waters applied for may be injured by the Applicant's activities. An association presenting a petition with signatures of ten (10) or more aggrieved parties may also cause a public hearing to be held (IDAPA 20.03.05.025.03). Electronic requests or petitions will be accepted.

C. Public Hearing Format

The public hearing shall be in a format similar to that used for encroachment applications. A Hearing Coordinator shall be chosen from within the Department, if possible.

After a Hearing Coordinator is assigned, the Area staff will pick a place of sufficient size to hold the hearing, and determine a time and date that the Applicant, the hearing venue, and the Hearing Coordinator are available. A Notice of Hearing will be published once a week for two consecutive weeks prior to the hearing. Any objectors who called for the hearing will also be notified two weeks prior to the hearing. Written testimony will be accepted up to and including the public hearing.

The hearing must be recorded and a verbatim transcript may be prepared. A court reporter or professional transcription service can be contracted to do the transcript. The transcript must be certified the same way as they are for encroachment permit hearings. A signup sheet will be used to document the attendees and their desire to offer oral testimony

D. Hearing Recommendation

The Hearing Coordinator shall consider fully all written and oral submissions respecting the application (IDAPA 20.03.05.025.03). The Hearing Coordinator shall develop and submit a Preliminary Order to the Director. Internal Hearing Coordinators will provide a copy of the Preliminary Order to the Legal Department for review prior to submission to the Director.

The hearing record usually consists of:

1. IDL Application and map
2. IDWR applications and permits
3. Agency notifications
4. Public Notice and proof of publication
5. Agency comments
6. Public comments
7. Notice of Hearing
8. Hearing transcript and all materials presented or collected at the hearing (including any PowerPoint files or other visual aids)
9. Signed Recommendation
10. Draft Final Order

IV. Riverbed Lease Approval

A. Approval With No Hearing

If a hearing is not held and the Area recommends approval of the lease, then the Area office will complete and submit a lease set up sheet to the Bureau.

B. Approval Following A Hearing

Following completion of the signed Recommendation and draft Final Order by the Hearing Coordinator, the Program Manager will prepare a Land Board Memo as a Regular Agenda item and schedule the presentation for the next available Land Board meeting. The Recommendation should contain most of the information needed to prepare the Board Memo. Attachments should include the map showing the location of the proposed lease area, the signed Recommendation, and the draft Final Order.

Following Board approval, the Area office will complete and submit a lease set up sheet to the Bureau to draft the lease.

V. Riverbed Lease Denial

A. Area Recommended Denial

If the Area recommends denial of the lease, then a hearing should be held to allow the Applicant an opportunity to present their evidence supporting the lease. The Area office will also testify at the hearing to present their recommendation. The hearing process should otherwise commence as described in Subsection III of this procedure.

B. Denial Following A Hearing

The same process as that for Land Board approval in Subsection III of this Procedure should be followed.

VI. Royalty Rates and Prepaid Royalty

See Section 55 of these procedures for details on royalty rates and prepaid royalty.

VII. Lease Bond

Riverbed mineral leases require a \$5,000 bond for commercial operations and a \$1,000 bond for all other operations (IDAPA 20.03.05.040.01). Operators eligible for participation in the Bond Assurance Fund are required to provide bonding through that program.

VIII. Lease Expiration

The Area will provide the lessee an Application for Use one year prior to the lease expiration. The same process is needed for a lease renewal as that for a new lease, with advertising and possibly a hearing. A public offering is not required since these are not endowment lands, and therefore not subject to the Idaho Supreme Court's decision in *Wasden v. Idaho State Board of Land Commissioners*.



Section 30 – Mineral Lease Inspection & Enforcement

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Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

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I. Mineral Lease Inspections

A. Inspection Frequency

Leases should be inspected in accordance with the following schedule:

1. Inactive leases should be inspected at least once every three years.
2. Active leases should be inspected yearly if there is minimal activity, and at least quarterly if fully operational and continuously producing.

B. Inspection Criteria

Review the lease and any applicable plans or permits and ensure the operations on site are being conducted in accordance with lease terms and any applicable:

1. Land Use Permit for Motorized Exploration
2. Dredge and Placer Mining Permit.

C. Lessee Attendance

The lessee should be contacted prior to an inspection so they can be present if they choose. Their attendance is not mandatory to inspect state owned lands, especially if the inspection is in response to a complaint or an emergency.

D. Inspection Topics

The following questions and issues should be addressed during the inspection:

1. Is production occurring?
2. Are royalty payments accurate and timely?
3. What is the approximate volume of stockpiles on site (if any)?
4. If no active mining is occurring, has material been removed from stockpiles recently?

5. Is the operation in compliance with the lease terms and reclamation plan or dredge and placer permit?
6. Is the lease area adequately bonded through the approved plan or permit?
7. Is reclamation being conducted in a timely manner?

E. Inspection Documentation

Inspections should be documented on the Navigable Waterways Inspection Report Form. The following information is crucial to a good report:

1. Date of inspection
2. Photos with captions (MS PowerPoint is a great tool for doing this)
3. Current summary of operations, including observable changes since last inspection
4. Non-compliance issues with any recommended solutions

F. Distribution of Inspection Reports

A copy of the inspection report and any photos shall be forwarded to the Program Manager.

A copy of the inspection report shall also be mailed to the Lessee.

II. Lease Non-Compliance

A. Permit Non-Compliance

If a lessee is in non-compliance with any provisions of a stream channel alteration or dredge and placer permit required by the lease, they are also in non-compliance with the terms of the mineral or riverbed lease itself.

B. Discussion During Inspection

If the lessee is present during the inspection, all non-compliance issues should be discussed with them at that time. Recommendations and expectations for resolving the non-compliance should be clearly communicated to the lessee.

C. Post-Inspection Action Needed

If follow up action is required by the lessee after an inspection, then a Notice of Noncompliance outlining the corrective actions must accompany the inspection report. The notice should:

1. Describe the non-compliance issue
2. Cite the relevant lease term, statute, or other authority
3. Recommend general solutions or require the lessee to develop a solution
4. Give a deadline for completing the follow up work. Thirty (30) days is usually a reasonable time period.
5. Outline consequences for not resolving the compliance issue

D. Failure of Lessee To Comply

If the lessee does not complete the desired actions as outlined in the letter, then they may either send a follow up letter or refer the matter to legal counsel. When the lessee completes some of the desired tasks, but not all, then a second letter may be justified. If the lessee completely disregards the letter, however, then legal action is probably required to resolve the issue.

III. Legal Action To Resolve Lease Non-Compliance

A. Area Decision

In most cases, the decision to initiate legal action should be coordinated with the Program Manager and the Operations Chief. This will ensure that the Department's legal resources are appropriately used.

If legal action is approved by the Operations Chief, then they will request assignment of a Deputy Attorney General (DAG) to the issue. After a DAG is assigned, the Operations Chief will inform the Area and the Program Manager of the assignment.

B. Lessee Notification

A final letter should be sent to the lessee informing them of the decision to refer the non-compliance to a DAG. The letter should state that the Department may seek civil penalties to cover any costs incurred by the Department to resolve the non-compliance, as allowed by Idaho Code § 47-718(3).

C. Judicial Referral Checklist

The Area office shall prepare a judicial referral checklist (Attachment 39 in the Minerals Regulatory Procedures) and any supporting documents for review by the Program Manager. The Program Manager shall submit the checklist and supporting documents to the DAG. The Program Manager will coordinate any clarifications needed from the DAG. No further actions should be taken unless instructed to by the DAG.



Section 40 – Mineral Lease Cancellation

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I. Lease Cancellation Process

A. Mineral Lease Reclamation

If the lease has produced minerals, then some reclamation of the state land may be required. Reclamation must be completed prior to the Department approving a lessee's request to cancel a lease. Once a lease is cancelled and the Department has released bonding, the lessee's obligations are fulfilled. The Department will not be able to require additional work from the former lessee at that point.

If no production has been reported on the lease, an inspection should still be conducted to determine if any activity occurred that the Department was not aware of. A lessee's request for lease cancellation should not be approved until the Department has documented that all reclamation has been completed.

B. Forced Mineral Lease Cancellation

If the lease is cancelled by the Department due to a missed lease payment, lapsed bonding, or other breach of the lease as allowed by Idaho Code § 47-707, then liability is held against the bond until one of the following happens:

1. Area staff verify that no reclamation is needed and the bond may be released.
2. Replacement bonding is provided by new lessee, and new lessee signs a statement taking responsibility for all reclamation associated with the lease.
3. Former lessee reclaims the lease area, and reclamation is inspected by the Area staff.

If lessee does not reclaim in a timely fashion as determined by the Area office, then the bond should be forfeited so reclamation work can be contracted out.

II. Why Mineral Leases Are Cancelled

A. Request by Lessee

A lessee may request to cancel their mineral lease at any time. The request will be forwarded to the respective Area office. The following issues must be addressed prior to cancellation being approved:

1. Past due payments. Contact Fiscal for total amount due. Part of the bond may be forfeited if outstanding payments are due and lessee refuses to pay.
2. Reclamation. The Department should never agree to a lessee's request for lease cancellation until all reclamation is completed.
3. Dredge/Placer Permit retirement. If this instrument is associated with the mineral lease, they must be retired at the same time.

B. Failure to Pay Rent or Royalty

If payment is not received following the second billing, the Bureau will send the file to the Attorney General's Office for processing.

C. Failure to Maintain Bonding

The Bureau will pursue canceling a mineral lease if bonding lapses and lessee does not respond in a timely manner. This also applies to a missed payment for the Bond Assurance Fund. The payment constitutes bonding, so a lack of timely payment is equivalent to a lapse in bond coverage.

D. Substantive Breach of Lease Terms

Any substantive breach of the lease terms that lessee fails to address after given adequate notice are grounds for lease cancellation. This includes, but is not limited to, the following:

1. Conducting drilling or other motorized exploration without first obtaining a Land Use Permit.
2. Starting mining operations without first obtaining a dredge and placer permit when required.
3. Violations of Idaho Code 47-13 (Dredge and Placer Mining Protection Act).
4. Failure to maintain adequate bonding for approved dredge and placer permits.
5. Unauthorized operations extending outside the leased area.
6. Conducting unauthorized activities on the lease area that are not directly related to production from the lease area.

The area should take steps in accordance with Section 30 of these procedures to rectify any non-compliance issues prior to notifying the Lessee and LMR Admin Support in writing the lease has been cancelled.



Section 45 – Mineral Lease Assignment

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I. Mineral Lease Assignment Process

A. Fee

The assignment fee is \$50 per lease (IDAPA 20.03.05.045.02.b).

B. Dredge/Placer Permit, or Stream Channel Alteration Permit

An application for Assignment of mineral leases must also include submittal of a separate Instrument Assignment Form and fee for the dredge and placer permit, if present or a copy of its IDWR stream channel alteration permit.

C. Assignee With Outstanding BAF Charges

If the assignee has outstanding BAF charges, then the Department cannot approve the assignment (Idaho Code § 47-1805).



Section 50 – Mineral Trespass

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Navigable Waterways Program Manager, Boise Staff Office

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Mineral trespass is a serious issue. As trustees of state lands, IDL must recover lost royalties and damages if the trespasser is identified. Legal counsel and the Program Manager will assist with resolving a trespass, but the Area offices will generally need to conduct inspections and identify the trespasser.

I. Defining Mineral Trespass

A. What Is Trespass?

Trespass occurs when one of the following occurs:

1. Minerals are removed from state owned riverbed without first obtaining a mineral lease, land use permit, or other authorization from IDL.
2. Motorized exploration occurs on state owned riverbed without a mineral lease or other IDL authorization.

II. Identifying Mineral Trespass

A. Unpermitted Mining Operations

If an unpermitted mining operation is either reported to the Area Office or observed while doing other field work, the riverbed ownership should be checked as soon as possible after returning to the office.

Mining operations may be as obvious as a front end loader and several trucks making a large hole and hauling away material. It may also appear to be just a few pallets stacked on a gravel bar.

Recent air photos in the Digital Land Records may also reveal mining activities on riverbeds. If this is observed while looking at the land records for some other purpose, then a site inspection should be conducted as soon as possible to verify the trespass.

III. Resolving Mineral Trespass

A. Request Settlement Agreement Number from LMR Admin Support

Once the trespass has been verified, obtain a Settlement Agreement number from the Bureau. This is needed for several reasons:

1. Allows time to be coded to that project number. This makes expense tracking and cost recovery much easier.
2. If damages are collected, this allows Fiscal to deposit the money correctly.
3. Communications are improved because the number can be used in e-mails and other correspondence.
4. LMR Admin can file all documents associated with the trespass into the correct Settlement Agreement folder.

B. Request Legal Staff

The Area Manager will need to request legal assistance using the legal help desk request. This will allow a Deputy Attorney General to be assigned to the trespass.

C. Identify the Trespasser

If someone is present at the site during the inspection, a polite inquiry may result in a name and a phone number. Write down any license plate numbers and descriptions of equipment being used. See Section 30 of these procedures for more tips on inspections.

If no one is present, complete the inspection with any plate numbers or equipment descriptions as described above.

D. Verbal and Written Notification

The trespasser should be notified verbally as soon as possible that:

1. They are removing minerals owned by the state.
2. Operations must immediately cease and desist until a method of royalty payment to the state can be arranged (Land Use Permit or Mineral Lease) if desired by the state, and a bond to cover reclamation liability is in place.
3. Triple damages will be assessed for all materials removed to date. Additional civil or criminal penalties may apply depending on the specific circumstances and the perpetrator's response.
4. A placer permit may also be needed, depending on the activity being conducted.
5. A letter restating the trespass issue and actions required to resolve it will be forthcoming.

A letter repeating the above should be sent both regular and certified mail, with a 30 day deadline to submit a mineral lease application, if the Department wishes to issue a lease. See Subsection IV below for a discussion of damages.

E. Follow Up Demand for Damages

Once the amount of damages has been calculated (see Subsection IV below), the Area shall send a second letter to the trespasser. This letter shall detail how the damages were calculated and demand payment within 30 days. The trespasser will also be required to sign a Settlement Agreement that requires the payment of damages and reclamation of the state lands. This is particularly needed when the mined area will not be leased.

Depending on the situation, some negotiation may be called for regarding the amount of damages and the timeframe for reclamation. Fall is the best time for seeding, but early spring can also work.

F. Settlement Agreement

If an agreement can be reached with the trespasser, draft a Settlement Agreement. The agreement should be reviewed by legal staff. The agreement should be sent with a cover letter that requests signature and return of the agreement within 15 days.

IV. Calculating Damages

A. Identify Commodity and Use

The specific commodity being removed, and the usage for it, must be identified. Sand used for general fill, for example, will be worth less than sand suitable for use in golf courses or in industrial applications.

B. Determine Royalty Rate

Determine a royalty rate for the minerals removed with the guidance in Subsection 25D of these Procedures. Every effort should be made to establish a defensible royalty rate. This will shift any arguments with the trespasser to the issue of volume removed.

The royalty rate used for trespass actions should be tripled, as allowed by Idaho Code § 6-211 and 47-717.

C. Estimate Volume Removed

The volume of material removed must be determined. Try to be accurate, and assumptions should err on the side of overestimation instead of underestimation. The trespasser has the option of supplying weigh tickets, sale invoices, and other information to refute our estimation. Volume estimation can be done one of several ways:

1. If a hole has been dug or material removed from the surface, then a bank cubic yard volume can be calculated. This may need to be converted to loose cubic yards in order to apply the correct royalty rate. Use swell or expansion factors found in the CAT Handbook or other publication. Contact the Program Manager if the swell factor cannot be found.

2. Scattered decorative stone, scree slopes, or similar mined areas do not allow an easy volume calculation. Examine adjacent, unmined areas to aid in the estimation of material removed. Stockpiles of the removed material in the trespasser's possession or place of business can also be estimated.
3. Information supplied by the trespasser. This is more likely to happen if they would like to pursue a mineral lease for additional mining activity.

D. Administrative Costs

All Department staff who work on a trespass case should keep track of the time they spend on the trespass. All expenditures related to the trespass should also be noted. All these expenses may be recovered from the trespasser as civil penalties under Idaho Code § 47-718(3). These penalties are usually only sought if the trespasser refuses to cooperate and legal action is required. Unique circumstances may also dictate cost recovery.

E. Reclamation Costs

If the trespasser refuses to reclaim all areas disturbed by their actions, then they are also liable for reclamation costs (Idaho Code § 47-718(1)(b), 47-718(2)(a)).

V. Formal Legal Action

A. Legal Action Required

If the trespasser does not respond to any written requests, or a reasonable agreement cannot be reached, then the matter should be turned over to legal staff. The Area must complete a Judicial Referral Checklist (Attachment 39 of Surface Mining Procedures) complete with timelines, contact information, and inspection reports. Photos, both air photos and site photos, are key pieces of evidence needed to obtain temporary restraining orders and prove the Department's claims. Labeled GIS maps on an air photo base are also effective evidence.

B. Injunctive Relief

If the trespasser refuses to comply with the Department's verbal and written demands to cease operations, then the Area Manager or Operations Chief should immediately ask legal staff to obtain injunctive relief as allowed by Idaho Code § 47-718(1)(a).

C. Maximum Penalties Imposed

The Department should seek the maximum amount of damages as described in Subsection 50D above.

D. Regulatory Coordination

The Department should coordinate mineral trespass actions with regulatory enforcement, including penalties and injunctive relief under the Dredge and Placer Mining Protection Act (Idaho Code § 47-13).



Section 55 – Royalty

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I. Common Royalty Language In Leases

A. Adjustment of Royalty

All mineral leases must include a term that allows royalty rates to be adjusted during the term of the lease. This is needed to ensure that the Department can keep royalty rates competitive with market conditions.

II. Mineral Royalty as a Percentage of Sale Price

A. Minimum Percentage in Statute

The minimum percentage in Idaho Code § 47-704(1) is 2.5%. This is the minimum amount that mineral leases must return to the state and should be based on a gross value or price received by lessee.

B. Percentage Set by Land Board

The Land Board set a royalty rate of 5% for base metals, precious metals, and many industrial minerals not in Idaho Code § 47-701A. The following commodities are EXCLUDED from this royalty rate:

- Oil and gas and other hydrocarbons
- Uranium and other fissionable minerals
- Coal
- Sand and gravel
- Basalt and other aggregate materials

- Limestone and dolomite
- Marble
- Slate, dimension stone, and similar building materials
- Scoria and cinders
- Pumice and similar volcanic rock materials
- Perlite
- Clay and associated minerals
- Lava, sandstone, and other decorative stones

C. Asset Management Target

IDL targets a royalty rate of 5% to 10% of retail value. Mining is a high cost industry, so this modest royalty value is commonly used in other states and by other lessors.

III. Other Mineral Royalty Rates

A. Aggregates and Stone

The Area should establish a royalty rate based on local market conditions for common commodities such as:

- Sand and Gravel
- Cobble

The Area office can determine local market conditions by:

- Consulting with the district offices of the U S Forest Service (USFS) and the Bureau of Land Management (BLM) regarding the prices they charge on community pits and commercial operations. The BLM conducts mineral appraisals and will gladly share this information with IDL.
- Asking nearby private landowners and material suppliers what they charge for their materials.
- Looking at royalty rates for other state leases in the vicinity of the new lease, especially if they have a royalty rate determined in the last five (5) years.
- Contact the nearest district office of the Idaho Department of Transportation or the local highway district. They purchase a lot of material, and may be able to share that information. The cost or royalty for pit run gravel should be obtained, as crushed or screened material is more expensive due to the value added by processing.

B. Statewide Specific Royalty Rates

Royalty rates for the following specific commodities have been established by the Department and are applicable statewide:

- Rare earths
- Uranium and fissionable minerals
- Garnets (industrial)
- Gemstones
- Mineral specimens

IV. Prepaid Royalty on Riverbed Mineral Leases

A. Minimum Prepaid Royalties

Commercial leases require a minimum annual royalty of five hundred dollars (\$500) per year, and recreational leases require a minimum annual royalty of three hundred forty dollars (\$340) per year (IDAPA 20.03.05.030.02).

B. Cost Recovery Prepaid Royalties

The above minimum amounts typically do not cover the cost of processing the lease application, annual inspections, billings, and lease administration. This is especially true if a hearing is held. As a result, prepaid royalties should be used to recoup those costs over the term of the lease.

The costs for approving and administering a lease through the five (5) year term should be added up and averaged to determine a per-year cost. Consultation with the Program Manager will be required to assess all the costs. This should then be added to the above minimum prepaid royalties.



Section 60 – Exploration Locations

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

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Exploration locations on state owned riverbeds are analogous to mining claims located on federal land. The administration of state lands, however, has a different mission than federal lands. The Department also needs to distinguish between state and federal lands and policies. As a result, the name exploration location is used for state lands.

I. Lands Available

All state lands or navigable waters are open to exploration locations unless they are (Idaho Code § 47-703(1)):

1. Covered by a mineral lease or a pending lease application.
2. Under a valid Exploration Location.
3. Have been specifically withdrawn from mineral entry or exploration.

II. Exploration Location Restrictions

A. Locatable Commodities

Exploration Locations are issued for all commodities except saleable minerals as defined in Idaho Code § 47-701A (Idaho Code § 47-703(1)).

B. Size

Exploration Locations on navigable rivers are limited to one-half (½) mile in length (Idaho Code 47-703 (2)) as measured down the middle of the channel. If a river does not travel straight through a Section, then care must be taken to not exceed the ½ mile limitation.

C. Term

Exploration Locations are valid for 2 years from the date of issuance (Idaho Code 47-703 (4)). After that time, the person must either apply for a mineral lease or allow someone else an opportunity to explore or lease that parcel. Successive exploration locations by the same person on the same parcel are not allowed. Exploration locations are meant to be used for exploration. If someone wishes to conduct recreational mining for more than 2 years, then they should apply for a mineral lease.

D. Non-Assignable

Exploration locations are personal to the locator and are not assignable. This is due to the *Wasden v. Idaho State Board of Land Commissioners* ruling. An existing exploration location will have to be released or withdrawn by the current locator, and the new locator will have to file a new exploration location.

III. Exploration Location Filing

A. Forms From the Area Office

Exploration location forms are purposefully not available on the Department's internet site. Someone who wants to explore for minerals on state lands should contact the applicable Area office and discuss their plans with Area staff. This should prevent application on rivers or parcels already leased or located, or those withdrawn from mineral entry and exploration. Applicants must complete the forms. Area staff can assist as needed with legal descriptions, but should never complete the forms for the applicants.

B. Fee Payment

The fee is due when the exploration location is filed. Without the required fee, the location is not valid. The fee is \$250 for riverbed exploration locations on navigable rivers (IDAPA 20.03.05.045).

C. Number Assignment

The Bureau will provide an instrument number for an exploration location upon request by the Area.

New exploration location numbers will begin with the Area number ([L][Area number][four digit location number], e.g. L430007), so please make sure the correct Area, where the exploration location is located, is identified for LMR admin support.

D. Received by the Bureau

If an exploration location is first received by the Bureau, the original will be retained at the Bureau and a copy will be forwarded to the applicable Area office with an exploration location number.

E. Time Stamp

The exploration location must be time stamped on the front the day IDL receives it. Date stamping on the front ensures that the stamp will be retained on photocopies.

IV. Exploration Location Review

Each section of the form should be fully completed before being accepted by the Department.

A. Correct Form Use

Applicants must use the current Exploration Location form.

B. Applicant Information

A complete mailing address is required so the Department can send notifications and forms. Telephone number is also required so the Department can contact the locator in case of emergency.

C. Legal Descriptions

Exploration Locations on riverbeds must be described by legal subdivision (Idaho Code 47-703(2)).

V. Exploration Location Issuance and Reporting

A. Bureau Processing

After the Bureau assigns a number, they will direct GIS staff to enter the exploration location into the digital land records. The location information will then be entered into IMS and the location will be forwarded to the Program Manager.

B. Program Manager Review

The Program Manager will review the exploration location and discuss potential legal description issues with GIS staff. If a problem is found, the Program Manager will contact either the Area office or the locator. If the exploration location is complete and meets the requirements, then the Program Manager will enter the expiration date at the bottom of the cover page and return to the Technical Records Specialist for mailing.

C. Mailing

The Technical Records Specialist will draft an approval letter for the Program Manager's signature. The following documents will be sent to the locator:

1. Approved Exploration Location

2. Affidavit of Assessment Work
3. Description of Assessment Work
4. Royalty Report

A copy of the letter will be forwarded to the Area.

D. Assessment Work Forms

The Bureau will send an Affidavit of Assessment Work and a Description of Assessment Work form to the locator for completion prior to the first and second anniversary date of the exploration location. The location will be cancelled by the Bureau if these reports are not returned in a timely manner (Idaho Code § 47-703(6)).

E. Royal Payments Required

If minerals are removed from the Exploration Location, then royalties must be paid. Royalty rate is 5% for riverbed Exploration Locations (IDAPA 20.03.05.016.03).

VI. Inspections

A. Once a Year

The Area should inspect exploration locations at least once a year. An inspection should also be completed just prior to expiration of the location to make sure no cleanup or reclamation work is needed.

B. Inspection Reports

Written inspection reports should be completed and filed after every inspection. Section 30 of these procedures has information on inspections that also apply to Exploration Locations. Follow up work should also follow this procedure.



Section 65 – Exploration on State Lands

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

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I. Casual Exploration

All beds of navigable rivers which have not been located, leased or withdrawn are free and open to casual exploration (IDAPA 20.03.05.015.01). Equipment is limited to suction dredges with a two inch (2”) intake or less, pans, rockers, hand tools, hand operated sluices and other similar equipment (IDAPA 20.03.05.015.02).

No written approval or Exploration Location is required for casual exploration (IDAPA 20.03.05.015.03).

II. Recreational Mining

All beds of navigable rivers which have not been located, leased or withdrawn are free and open to recreational mining (IDAPA 20.03.05.015.01). Equipment is limited to suction dredges with an intake diameter of five inches (5”) or less with attendant power sources rated at fifteen (15) horse power or less, and any equipment listed above under Casual Exploration (IDAPA 20.03.05.015.04).

Possession of a valid Stream Protection Act Permit issued by the Idaho Department of Water Resources (IDWR) and a Recreational Mining Permit issued by the Idaho Department of Lands shall constitute the Board’s waiver of bond, waiver of royalty, and written approval to engage in recreational mining (IDAPA 20.03.05.015.05). Attachment D of the IDWR permit constitutes a permit from IDL for these activities, and bonding is waived.

III. Motorized Exploration

Exploration with motorized equipment such as excavators, bulldozers, or other earth moving machines will require a Land Use Permit with a bond. See Section 70 of these procedures for more details. An approved stream channel alteration permit from IDWR will also be required. This should be issued prior to the IDL Land Use Permit. Royalty must be paid on all materials removed.

Use of a suction dredge with an intake diameter in excess of five inches (5") is only allowed under a riverbed mineral lease (IDAPA 20.03.05.020.01).



Section 70 – Land Use Permits

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

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Land Use Permits are personal to the permittee and cannot be assigned.

I. Land Use Permits For Exploration

Land Use Permits will be issued for Motorized Exploration. This exploration may take place before or after issuance of an exploration location or a mineral lease. See Section 65 of these procedures for more information on exploration before attempting to write a Land Use Permit for this purpose.

A. Definition of Motorized Exploration

Motorized exploration includes:

1. Drilling, trenching, blasting.
2. A backhoe attachment for an ATV.
3. Any other exploration activities which employs motorized earth moving equipment.
4. Seismic exploration with explosives.
5. Vibroseis trucks for seismic surveys.
6. Using a suction dredge of any size in an intermittent stream (Idaho Code § 47-703A(4) (b)).
7. Use of a suction dredge that has a nozzle intake diameter in excess of two (2) inches in a perennial stream (Idaho Code § 47-703A(4) (b)), or use of a suction dredge with an intake diameter in excess of five inches (5") in a navigable river (IDAPA 20.03.05.020.01).

B. Casual Exploration Exemption

Casual exploration (non-motorized) does not require a Land Use Permit. Casual exploration includes (Idaho Code § 47-703A(4)(a)):

1. Panning.
2. Geochemical and geophysical exploration.
3. Sampling with hand tools.
4. Use of a suction dredge that has a nozzle intake diameter of two (2) inches or less in a perennial stream, or five (5) inches or less in a navigable river (IDAPA 20.03.05.020.01).
5. Other activities which do not appreciably disturb the land.

II. Other Exploration Requirements for Permittees

A. Bonding

The operator will be required to submit a bond of up to \$750.00 per affected acre (Idaho Code § 47-703(A)). The bond should cover the estimated cost of reclamation.

B. Exploration Data

The Land Use Permit must require the Permittee to provide the Department copies of all survey data, assays, reports, and other data from the exploration. Area staff will ensure all exploration data is collected and forwarded to the Bureau.

Geologic information from exploration is not subject to public records requests and may be kept confidential (Idaho Code § 74-108(2)).

C. Dredge and Placer Permit Requirement

An approved dredge and placer mining permit is required for dredge and placer exploration that causes a cumulative surface disturbance exceeding one-half (1/2) acre of land (Idaho Code § 47-1314(b)).

D. IDWR Permit

A Stream Channel Alteration Permit from IDWR is required for all work in navigable rivers. A Recreational Mining Letter Permit will satisfy this requirement for most recreational mining and suction dredging.

III. Land Use Permits For Mining on State Lands

A. When Used

Land Use Permits may be issued for short term mineral extraction from navigable waterways. Usually these permits are for saleable minerals as defined in Idaho Code § 47-701A.

B. Limited Area

The permit should be issued for the smallest possible area required for the extraction. A map should clearly delineate where the mineral extraction will be conducted, and what roads and access points will be used.

C. Production Reporting

Terms should be included in the Land Use Permit to require the tracking of material removed under the permit. This can be done with weigh tickets or a tally sheet of loads hauled and truck capacity. Reporting should be done with Attachment 1 at least monthly as with mineral leases.

D. Small Volume Royalties

Royalties for small volumes, up to 10,000 cubic yards, shall be paid before the permit is signed and issued.

E. Large Volume Royalties

Royalties for large volumes should be paid with an initial amount that covers the minimum amount of material to be removed the first month. End of month reports and payments should then be submitted by the permittee by the end of the month following the month of production. The initial payment will act as a prepaid royalty and production will be credited against it.

F. Bonding and Reclamation

Bonding and reclamation requirements should be included in the permit where applicable. For Department rock pits, bonding or reclamation may not be needed depending on the circumstances. At a minimum, however, the permit should give some operational sideboards to make sure the source will be left in good condition.

The amount of bond required should be based on an estimate of actual reclamation costs.

Reclamation specifications should be included in the permit as needed based on the level of disturbance.

IV. Permit Termination

A. Inspections

Inspections shall be conducted as needed depending upon the level of activity or duration of the permit.

Upon completion of exploration or mining, the site must be inspected to ensure reclamation is completed prior to bond release.

B. Bond Release

The Area will notify LMR Admin Support, in writing, to retire the permit and release the bond as per the Uniform Procedures.

C. Noncompliance

If the Area wishes to terminate the permit due to noncompliance, the process in Subsection 30, part II (page 11) of these procedures should generally be followed.



Section 80 – Water Diversion & Flood Control in Navigable Waters

This guidance document is not a new law. This document is an agency interpretation of existing law, except as authorized by Idaho Code or incorporated into a contract.

Agency Contact

Navigable Waterways Program Manager, Boise Staff Office

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Area offices that receive an Application for Stream Channel Alteration being processed by the Idaho Department of Water Resources (IDWR) should determine if the proposed work is on a navigable river and involves water diversions or flood control work. If so, then this procedure will apply. The Area office shall notify IDWR whether or not the applicant for a stream channel alteration permit will also need a Land Use Permit from IDL.

I. Water Diversion Activity

A. Water Delivery

A permit is not required to clean, maintain, construct in, or repair any stream channel, diversion structure, canal, ditch, drain or lateral if the work is conducted by a water user or their agent (Idaho Code § 42-3806).

Removal of material from the channel is not required for this work. The water users generally just push the material around in the river bed to make sure water delivery is maintained. Gravel berms to guide river water into a canal are often constructed with excavators or bulldozers using the river gravels. High water will often take out these berms, and they may need to be reconstructed every year.

B. Stream Channel Obstruction

A permit is also not required for a water user or his agent to remove any obstruction from a stream channel if it interferes with the delivery or use of water under a valid water right or water right permit (Idaho Code § 42-3806). This is usually in reference to trees and flood debris.

C. Exception To No Permit

If gravel or other mineral materials are removed from the state-owned riverbed, then the water user has exceeded the activity authorized by Idaho Code § 42-3806 and a Land Use Permit is required.

II. Removal by a Flood Control District

The removal of aggregate from navigable waters by flood control districts is governed by Idaho Code § 42-3119. This procedure only applies to material removal by a bona fide flood control district, as defined in Idaho Code § 42-31. If anyone else proposes to remove materials from a navigable river for flood control purposes, this Section of the procedures does not apply and they must seek a Land Use Permit as described in Section 70 of these procedures or a riverbed mineral lease as described in Section 20 of these procedures.

III. Land Use Permits

A. When a Permit Is Required

If minerals will be removed from below the ordinary high water mark of navigable lakes, rivers or streams without a riverbed mineral lease, then a Land Use Permit will be required.

B. Use Basic Template

The basic template from the Uniform Procedures can be used. Other terms may be needed, as described below.

C. When Royalties Are Not Charged

If minerals are removed by a flood control district, royalties will not be charged if one of the following occurs:

1. The material is donated to a highway district or other public agency (Idaho Code § 42-3119).
2. The material is used for a flood control project, such as construction or reconstruction of dikes, levees, and related access facilities (Idaho Code § 42-3119).
3. The material is too fine grained to have any real value (e.g. silt), and it simply needs to be disposed of. This is a very rare occurrence, and must be discussed with the Program Manager.

D. When Royalties Are Charged

If minerals are removed by a flood control district, royalty must be paid if one of the following occurs:

1. The material is sold (Idaho Code § 42-3119) or used for barter.
2. The material is used for non-flood control related improvements on private land (Idaho Code § 42-3119). Examples include, but are not limited to:
 - i. Fill to raise the private land above a certain flood elevation.
 - ii. Filling in low spots that may have standing water during spring runoff.

- iii. Unengineered berms to deflect high water.
- iv. Landscaping berms.
- v. Constructing or surfacing a private road.

E. Royalty Amounts

See Section 55 of these procedures.

F. Royalty Payments

See Subsection 70C of these procedures.

G. Special Terms for Land Use Permits

The following terms from the IDWR Stream Channel Alteration Rules should be used for in-stream material removal:

1. Sand and gravel must not be removed below the water surface existing at the time of the work. Where work involves clearing a new channel for flow, removal of material below water level will be permitted to allow this flow to occur; however, this must not be done until all other work in the new channel has been completed (IDAPA 37.03.07.063.02).
2. A buffer zone of undisturbed streambed material at least five (5) feet in width shall be maintained between the work area and the existing stream. Exceptions to this buffer must be described in the IDWR Stream Channel Alteration Permit. The applicant shall exercise reasonable precautions to ensure that turbidity is kept to a minimum and does not exceed state water quality standards (IDAPA 37.03.07.063.03).
3. Equipment may cross the existing stream in one (1) location only, but shall not push or pull material along the streambed while crossing the existing stream (IDAPA 37.03.07.063.04).
4. Work must be done in a manner that will least disturb the natural appearance of the area. Sand and gravel shall be removed in a manner that will not leave unsightly pits or other completely unnatural features at the conclusion of the project (IDAPA 37.03.07.063.05).

H. Term

These Land Use Permits should not exceed one year.

I. Bonding

Bonding is not required for bona fide flood control districts. Other entities or private companies may require bonding. These operations are not eligible for participation in the Bond Assurance Fund. Minimum bonding amount should be \$5,000.

IV. Riprap and Erosion Control Projects

These types of projects typically do not involve the removal of materials from the bed of navigable waters. If no materials will be removed from the river bed, then no permit will be required by IDL. Please note this only applies to those sections of rivers where IDWR administers the Stream Channel Protection Act. Rivers that contain slack water from lakes or private reservoirs are governed by the

Lake Protection Act and an IDL encroachment permit will probably be required for the proposed action.



Instructions: Pursuant to IDAPA 20.03.05 Riverbed Mineral Leasing in Idaho and **Term 5(d)** of your Lease, please complete the following form and submit, along with any royalty due, to Idaho Department of Lands, PO Box 83720, Boise, ID 83720, by **April 1, <<>>**. This form must be submitted whether or not royalty is due. Please make checks payable to Idaho Department of Lands.

- [illegible]

- [illegible]



1	Total quantity of <<mineral>> sold (oz)	
2	Total price received from <<mineral>> sold (\$)	
3	Total quantity of <<mineral>> not sold (oz)	
4	COMEX <<mineral>> value (\$/oz)	
5	Date of COMEX value	
6	Value of <<mineral>> not sold. Multiply line 3 by line 4.	
7	Total value of <<mineral>> produced. Add lines 2 and 6.	
8	Royalty rate	<<>>
9	Royalty. Multiply line 7 by line 8.	
10	Paid Annual Rent	<<>>
11	Prepaid Royalties	<<>>
12	Transportation costs to the closest feasible point of sale*	
13	Smelting charges*	
14	Deductions and other treatment costs*	
15	Total Deductions. Add lines 10 through 14.	
16	Royalty Due. Subtract line 15 from line 9. If less than 0, enter 0.	

[illegible]

I swear the statements on this report are true and correct and can be verified by records in possession of the Lessee(s).

State of _____)
) :ss
County of _____)

Notary Signature _____
My Commission Expires: _____