



Idaho Department of Lands
Agency Guidance Document
Minerals Leasing Program
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Land Board Policies: Minerals Leasing

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

Agency Contact

Minerals Leasing Program Manager

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Index – Minerals Leasing

Attached Land Board Policy	Date	Remarks
1. Bonding - Mineral Leasing	06/25/1980 04/10/1990	<p>6/25/1980 – Established a bond of \$5,000 per lease, and adopted a statewide bond of \$50,000 that would have no more than 15 leases.</p> <p>4/10/1990 – Bond for recreational uses (hand tools and equipment) reduced from \$5,000 to \$1,000, and the state retains the prerogative to increase that bond depending upon the plan of operation. Reduced the bond on private landowner from \$5,000 to \$2,500.</p>
2. Metalliferous Mineral Leases	12/13/1988 11/23/1998	<p>12/13/1988 – Maximize gain to the endowment by putting mineral leases up for competitive bid. Includes a minimum annual royalty in addition to the bonus bid; provides that funds go into the permanent fund as well as the distribution fund.</p> <p>11/23/1998 – The Board approved the royalty rates for mineral commodities.</p>

1. Bonding – Mineral Leasing

Attachments

June 25, 1980 approved memo and final minutes

Summary: Established a bond of \$5,000 per lease, and adopted a statewide bond of \$50,000 that would have no more than 15 leases.

April 10, 1990 approved memo

Bond for recreational uses (hand tools and equipment) reduced from \$5,000 to \$1,000, and the state retains the prerogative to increase that bond depending upon the plan of operation.
Reduced the bond on private landowner from \$5,000 to \$2,500.

MEMO TO THE STATE LAND BOARD

SUBJECT: Mineral Lease Bonding

REMARKS: Currently the State of Idaho requires a five thousand dollar (\$5,000.00) surety bond to cover a State Mineral Lease with a provision for a bond increase prior to initiation of operations using motorized earth-moving equipment. However, in lieu of these bonds the lessee may submit a "Statewide" bond that covers all the lessee's leases and operations carried on under all State of Idaho mineral leases. The amount of this "Statewide" bond is currently set at ten thousand dollars (\$10,000.00).

Several problems arise from this bonding arrangement.

First, should the original bond need to be increased to cover surface damage caused by say an underground mining operation, which is not now covered by any regulatory act, the "Statewide" bond would negate any increase provision.

Second, say a lessee had ten (10) leases and proposed mining each lease (underground) and mill the ore on one of the leased sites, with the "Statewide" bonding clause the lessee would only be required to have the ten thousand dollar bond (\$10,000.00). This amount would be woefully inadequate should the lessee default and have outstanding royalties due plus large areas in need of reclamation

Third, there is no limit to the number of leases that may be placed under the "Statewide" bond. For example, a lessee could have twenty (20) leases under one "Statewide" bond effectively reducing the bond amount on each lease to five hundred dollars (\$500.00).

PROPOSAL: Each lease should contain a bond increase provision as follows:

"Prior to initiation of operations using motorized earth-moving equipment, lessee shall increase the five thousand dollar (\$5,000.00) surety bond in the amount of seven-hundred-fifty dollars (\$750.00) per acre for each acre to be affected during the succeeding twelve (12) month period providing the operation is not bonded under the Idaho Code -- Title 47, Chapter 13 - "Idaho Dredge and Placer Mining Protection Act" or Chapter 15 - "Idaho Surface Mining Act." The aforementioned bond covers without limitation surface affects of underground mining operations."

The "Statewide" bond amount should be increased to fifty-thousand dollars (\$50,000.00) and have a limit of not more than fifteen leases per "Statewide" bond. Upon the lessee obtaining additional leases in excess of fifteen (15) he can provide a five thousand dollar (\$5,000.00) bond for each lease until such time that a second blanket bond is more economical.

RECOMMENDATION:

Approve proposals. ✓

JUN 25 1980

RECOMMENDATION APPROVED:

RECOMMENDATION DENIED:

OTHER ACTION:

LLJ:sjb

6/11/80



P

301
6/25/1980

feels this application should be exempt since they have already posted their bond. Mark Riddoch explained that under the rules the permit is not applicable until it is in-hand, therefore there would be no legal impediment to the motion as drafted. The Board has the power to set the effective date in a reasonable time, which they have done. Motion to approve this application was passed unanimously, effective date of July 2, 1980.

Deletion of Parcel from Lease - Placer and Gold Mining - Robert D. Mendenhall, et al

Jack Gillette told the Board that due to platting and actual on-the-ground location of leases, two leases were found to be overlapped. One lessee, Mr. Mendenhall, has agreed to delete the 18.9 acres from his lease, No. 7348. The Department will give him credit for that from 1977. Pete Cenarrusa moved to accept the Department recommendation. Joe Williams seconded. The motion passed unanimously.

C & O Mining Co. Mineral Lease Application Withdrawn

This was included on the agenda for information of the Board members. Bill Scribner said that since this application was withdrawn, on Friday afternoon at closing time, the Department had received 46 mining claim filings on the same stretch of river.

Mineral Lease Bonding

Jack Gillette said this is an attempt to protect the State and still not make bonding requirements too objectionable to the individuals or corporations that are bonded. At the present time, the statewide bond is \$10,000 which could be insufficient to cover a number of operations. The Department is suggesting that the statewide bond be increased to \$50,000 which would be optional, and not to have more than 15 leases on a statewide bond. Should the lessee obtain additional leases, he could take the individual leases at \$5,000 per each lease and when it became economically feasible for him, obtain the \$50,000 blanket bond. This is an attempt to prevent a \$10,000 blanket bond from covering too many operations in case there is some defect the State may be required to correct. Mr. Gillette said that basically, this is an increase in blanket bonding. Jerry Evans moved to approve the Department recommendation. The motion was seconded by Joe Williams and passed unanimously.

Riverbed Lease Applications

Bill Scribner was asked to address the Board on these applications. In answer to a question on Application Q-1, Mr. Scribner stated that the applicant proposed to use a 4" suction dredge, which under the emergency rules adopted by the Board, could be assumed to move two cubic yards of earth material per hour. However, the applicant would also use a small hand-operated sluice which would not fall within the purview. The suction dredge would have to be measured on the stream to determine if, in fact, it fell within the purview of the adopted rules. He said this would be the case with all of the applications before the Board today.

Jack Gillette pointed out that once a lease is issued, the individual still must comply with all state rules and regulations and with the requirements of the lease as the lease is only the first step to operate on State land.

Jerry Evans asked if these applications were denied, then would the next step be the filing of claims? Bill Scribner said he would presume so. Governor Evans asked for clarification as to what the Board's position would be at that point. Mr. Scribner explained the State law provides that State land is open for exploration and prospecting; the location or filing of a mineral location notice with the State Land Board gives that individual the exclusive right for a 20-acre segment of the river for exploration and prospecting. He would be required to acquire a stream alteration permit and that would be only if he was going to use motorized equipment. Beyond that, there are no regulations as far as the Land Board is concerned. Mark Riddoch added that the Dredge Mining Act is applicable equally to a lease or a claim. Dave Leroy said he had two items for preliminary discussion: (1) he would like to see, in view of the dredge mining rules, in subsequent meetings, the certification of what kind of equipment will be used, its size, and how that will relate to removal of material; (2) if the applicants come back with mineral location notices in the case of being denied a lease, and the location size is limited to 20 acres maximum, the Board might contemplate a contiguity limit requiring the claims to be more compact. Using the first application as an example, Bill Scribner said that the 160 acres would be about two river miles, and using claims to cover the area would require eight contiguous claims. He also said there is no provision in the law for royalties to accrue to the State under the mineral location notice since the activity is intended for exploration and to identify possible lease sites. There is concern that the State has not received royalties in the past from riverbed leases, particularly those related to precious metals since the old leases allowed the subtraction of beneficiation costs (costs of refinements). This worked to totally eliminate any opportunities for royalties. New leases provide for 5% of the gross value of materials removed.

Governor Evans said he is concerned that before a lease is granted, permits and clearance should be obtained from other agencies before they seek the Board's approval. He would not like to approve here not knowing what the Department of Water Resources is going to do in relation to these requests, since the Board would be working without their recommendation. Jerry Evans commented that he also wonders how this applies to the rules and regulations for dredge and placer mining. He said it seems the permit from Water Resources should be obtained before the lease is approved. Jack Gillette suggested the Department could simultaneously bring before the Board both the lease and the permit. Governor Evans said what is needed is to have all the agencies have a one-stop permit system. Pete Cenarrusa commented he could see no harm being done by initiating this lease and letting the operator know he has a starting place. Bill Scribner said that some of the applicants do already have a stream channel alteration permit, and one of them, Mr. Gossett who has an application on the Salmon River, is here today. Jerry Evans expressed concern that both a dredge mining permit and approval of riverbed leases are handled by the same Board and cannot understand why they should be handled

STATE BOARD OF LAND COMMISSIONERS

April 10, 1990

SUBJECT

Modification of Bonding Requirement Policy for State Mineral Lease to Allow for Reduced Bond Rate

AUTHORITY

Idaho Code section 47-708

BACKGROUND

The present mineral lease document was revised and adopted August 13, 1985. The minimum bonding requirement per section 24 of this document was set at \$5000 per lease.

DISCUSSION

Over the past several months the Department has received requests to reduce the \$5000 bond rate. These requests have been received from (1) lessees who limit their operations to recreational mining activities; or (2) lessees who lease state minerals under their surface ownership.

The "recreational miners" generally conduct small scale operations using hand tools with minimal surface impact. Following the same guideline as has been established for recreational riverbed mineral lessees, a bond rate of not less than \$1000 with the actual bond rate to be established in relation to the scope of the mining operation should be appropriate. This bond amount can be increased at any time it is determined the bond is insufficient to assure compliance with the terms of the lease agreement, including mitigation of the surface values impacted by mining, and to adequately guarantee payment of production royalties. Moreover, any required reclamation bond is in addition to the mineral lease bond.

The exact amount of the bond can be managed by the department staff through review and approval of the plan of operation and corresponding reclamation plan prior to allowing the lessee to commence mining operations.

Landowners leasing state minerals under their surface ownership believe the surface impacts resulting from their mining operations is a loss to them for which they do not need to be bonded. However, IDL staff believe a bond should be of sufficient amount to assure compliance with the lease terms and payment of the royalties generated from production. The recommended minimum amount of bonding in this instance is \$2500.

RECOMMENDATION

- 1) Approve a minimum bond rate of not less than \$1000 for leases that are recreational in scope and have minimal impact.
- 2) Approve a minimum bond rate of \$2500 for landowners leasing state minerals under their surface estate.

BOARD ACTION

Approved (4-1)

APR 10 1990

LL/11



2. Metalliferous Mineral Leases

Attachments

December 13, 1988 approved memo and final minutes

Summary: Maximize gain to the endowment by putting mineral leases up for competitive bid. Includes a minimum annual royalty in addition to the bonus bid; provides that funds go into the permanent fund as well as the distribution fund.

November 23, 1998 approved memo

The Board approved the royalty rates for mineral commodities.

STATE BOARD OF LAND COMMISSIONERS

December 13, 1988

SUBJECT

Competitive Bid for Metalliferous Mineral Leases -- War Eagle Mountain and Vicinity, Owyhee County

AUTHORITY

Idaho Code title 47, chapter 7, section 47-702(2) and 47-704(4)
Allen v. Smylie, 92 Idaho 846, 452 P. 2d 343 (1969)

BACKGROUND

During October, 1988, IDL received mineral lease applications covering over 17,000 acres of state mineral lands in Owyhee County. IDL believes part of this increased interest in Idaho lands was generated by the recent announcement of a large gold discovery located near Owyhee Lake in Oregon. Further investigation disclosed some of the interest may have been generated by a potential discovery on an Idaho mineral lease located south of Silver City in the vicinity of War Eagle Mountain.

DISCUSSION

The area of intense interest in Idaho surrounds the Delamar Silver Mine, the largest open pit silver mine located in the United States. Some leases were recently issued to Nerco Minerals Company, owner and operator of the Delamar Silver Mine prior to the recent filings of applications which have covered all the remaining state lands in the vicinity.

IDL has not offered mineral leases on a competitive bid with the exception of sand and gravel leases located in Ada County. Since the applications on file have not been processed, IDL believes it is an ideal time to establish a competitive bid on the lands in the Owyhee County area of interest. There are several reasons for the recommendation.

- 1) Several individuals wanted to make applications on the lands in question, however there were prior applications on file which blocked the additional filings, since Idaho Code section 47-704(4) reads:

"Right of priority to a mineral leases shall be determined by the first qualified applicant..."

- 2) Several companies have contacted IDL stating they hold options on the applications submitted by one of the Owyhee County applicants.

- 3) Several state lessees have either dropped their leases in this area or the leases were cancelled because the lessees failed to file a timely renewal on their leases. These individuals are requesting their leases be reinstated or are requesting the opportunity to refile for the lands they have lost.
- 4) A major U.S. mining company, Noranda Exploration, upon hearing rumors that the state may offer the Owyhee lands on a bid basis called stating they have a vested interest in these state lands and have requested an audience before the Board on this issue. IDL has no record of any mineral leases or claims issued to Noranda.
- 5) Presently IDL is receiving three to four calls a day requesting information on the availability of lands in the Delamar-Silver City area.

For the stated reasons, IDL recommends denying all pending applications as and designating the described lands for competitive lease bid. Refer to the attached tract list and map of the lands being designated for competitive bid.

In researching the reason why there has been so much interest in Idaho's Owyhee County lands the following information was obtained from the involved mining companies and the Vancouver Stock Exchange.

Through an agreement between a state mineral lessee, Nerco Minerals Company and a new Canadian company, War Eagle Mining, an exploratory drilling program was proposed to and approved by IDL. War Eagle completed their initial exploratory work on the lease in September 1988. War Eagle officials after reviewing their test results believe they have discovered a "world class ore body". They reported finding a disseminated gold deposit which grades from .116 to .165 oz per ton gold and up to 1.6 oz per ton silver. This deposit is about 260 feet thick and may trend for several miles.

War Eagle has been actively trading on the Vancouver Stock Exchange. Based on news releases from War Eagle referencing the discovery, their stocks rose in value from a low of \$.33 per share to \$8.00 per share. Further news releases of information from War Eagle has caused their stocks to adjust and drop. They are presently trading in the \$1 to \$3 range per share. After the news release on War Eagle's discovery, IDL began receiving numerous inquiries about available lands in the vicinity of the discovery plus numerous applications.

The Board's authority regarding competitive bidding is based in part on Idaho Code section 47-704(4):

"All applications received, whether by mail or by personal delivery over the counter, shall be immediately stamped with date and hour of filing. Simultaneous filings will be resolved by a drawing within thirty (30) days thereafter. In the absence of a simultaneous filing, and except for lands and resources which may be designated for competitive bidding, right of priority to a mineral lease shall be determined by the first qualified applicant who shall file a completed, signed application on the form of the Department of Lands or exact copy thereof between the hours of eight and five during any business day, together with the application fee set by the Board." (emphasis added)

This statute appears to allow the board to override the priority leasing system if it decides to designate tracts for competitive bidding. However, it provides only the barest outline of the board's authority in mineral leasing matters.

The Idaho Supreme Court case of Allen v. Smylie, 92 Idaho 846, 452 P.2d 343 (1969) discusses the board's authority in mineral leasing matters. In Allen, the court was dealing with the issue of whether a writ of mandate could be issued to compel this board to issue a lease to the plaintiff rather than Monsanto in a conflict lease situation. The court cited article IX, section 8 of the Idaho Constitution and Idaho Code section 47-704 and concluded:

From the above constitutional and statutory language, it is apparent that the State Board of Land Commissioners is required to use considerable judgment in the granting of mineral leases. The constitution required the Board to "secure the maximum possible amount therefore." It is the judgment of the Board whether the leasing to a particular lessee of particular land at a particular time, for whatever rental, would "secure the maximum possible amount therefor." We therefore hold that to grant or reject a lease is a discretionary power of the Board, and thus a writ of mandate would not be available to compel them to do so in the absence of conduct that is arbitrary, capricious or discriminatory.

Id. at 850 (emphasis added.) The court then observed that "[t]he constitutional duty of the board is self-executing.

Therefore, if the legislature has not specified the procedure the board may adopt appropriate procedures to carry out its constitutional duties." Id. at 852 (emphasis added).

Thus, the board is given considerable discretion in determining how best to meet its constitutional duty to maximize endowment income through mineral leasing of state lands.

Unless the lands in question are withdrawn pursuant to Idaho Code 47-702(2), however, the board's discretion may be considerably narrowed. Idaho Code 47-704(5) provides that the holder of a certificate of location on state lands shall be given a preferential right to lease the land covered by the location. No certificates of location have as yet been filed on the areas in question.

Attached is a copy of the "Auction Procedure and Requirements" that will be used should the Board elect to competitively offer these listed lands

Basically, there appears to be two alternatives for consideration. They are as follows:

1. Withdraw the described land from mineral entry pursuant to Idaho Code section 47-702(2) and designate these withdrawn lands for leasing under a competitive bidding process pursuant to Idaho Code section 47-704(4).
2. Issue leases on the pending applications to the applicant holding a priority in time (current practice).

RECOMMENDATION

Withdraw the described land from mineral entry pursuant to Idaho Code section 47-702(2) and designate these withdrawn lands for leasing under a competitive bidding process pursuant to Idaho Code section 47-704(4).

BOARD ACTION

Approved *Recommendation (#1) approved with inclusion of minimum annual royalty.*

DEC 13 1988

ATTACHMENTS

- 1) Tract List and Map
- 2) Proposed Auction Procedure and Requirements

LLR:lh
12/06/88



Jim Jones stated that when the changes were made in the Surface Mining Act and the Dredge and Placer Mining Act, people from all aspects of the affected groups were invited to comment and have input. He is opposed to having these regulations worked out in what looks like a fairly cozy arrangement. He doesn't feel this has been done in the open and he is distressed about that. The role model that needs to be followed is that of those earlier endeavors where all the affected groups were brought in and try to get the problems ferreted out and resolved before entering the APA process. Mr. Jones said he will object to this kind of thing in the future because the business of this Board needs to be done in the open.

Jerry Evans asked of Mr. Peterson whether the smaller, perhaps less responsible, mining companies are members of the Idaho Mining Association. Mr. Peterson replied that many of the smaller companies are not members. It was felt that the technical resources of the large companies would provide to those smaller companies the value of that good experience through these regulations. Some smaller companies are now members of their association, but they are very responsible companies. They believe the smaller companies will benefit from plain language set of regulations.

Jerry Evans asked Mr. Peterson how those smaller companies who are not members of the association have been represented in participating in the drafting of these rules. Mr. Peterson replied that they have not been represented; the action before the Board is not to adopt those regulations, but to put them out to the public review process where all groups will have the opportunity to comment and to attend the public hearings. Mr. Evans said that he feels that there has not been a broad enough involvement in the initial set of rules that go out, but in the absence of that, it would be hard to go back and undo the work. Perhaps the Board ought to authorize several hearings under the APA to make certain that there is a great deal of review by all of the interested parties. Should it then come to the Board's attention that there are problems, at that point, redraft the rules and authorize a new beginning.

Craig Gehrke, Regional Director for the Wilderness Society, 413 West Idaho Street, Boise, spoke before the Board. Mr. Gehrke said that these rules incorporate the antidegradation agreement which is the area he wishes to address today. The antidegradation negotiators agreed that before rules and regulations went forward for public review, they would all be in agreement that the rules faithfully reflected the antidegradation agreement. Mr. Gehrke stated that they did not see these regulations until late Friday afternoon and they had a long session yesterday reviewing and making some revisions and need additional time to get some changes put into the regulations. The conservation communities need time to put the regulations before their groups. Governor Andrus asked whether the ten-day period being discussed here would give those groups adequate time to look at these before they go to the public hearing process. Mr. Gehrke replied that he believes it will provide time to review the antidegradation agreement application, but it would not provide enough time to review the entire proposed draft.

Jim Jones made a motion that at the earliest convenient time, this Board convene a group of interested parties to go over the regulations to devise a final version that can then be submitted to either a regular or a special meeting of this Board to initiate the APA process. The Board at this time is not in a position to consider these for initiation of the APA process--there are groups that have not been represented--some of the small miners, environmental groups, and public interest groups. Pete Cenarrusa seconded the motion.

Jerry Evans made a substitute motion that these draft surface mining rules be held for a ten-day period during which time they may be further reviewed and refined by the department staff based on input from others--others meaning wide open--and that the Land Board would then meet in a special session as soon thereafter as possible to consider them for approval under the APA procedure. Joe Williams seconded the motion.

Jerry Evans said his substitute motion allows the Board to take advantage of the work that has been done but allows for the kind of input the Board is desirous of having, and allows the Board to move in a more expeditious manner. He said it is important that those changes have to come back before the Board.

Jim Jones asked if the substitute motion means to approve anything that has been presented to them. Jerry Evans said that is not the intention of his motion. This is only holding these rules for further review.

The substitute motion passed 4-1; Jim Jones opposed.

Competitive Bid for Metalliferous Mineral Leases

Mr. Hamilton reported that for the past several weeks, there has been increased interest in gold mining in southeastern Oregon and southwestern Idaho. Department staff has looked at that and has developed some background on the situation with a proposal for the Board's consideration on dealing with that particular interest.

Tom Markland, Chief, Bureau of Minerals, stated that in October an applicant filed for about 17,000 acres and immediately after that, two or three other parties also asked to file on those same lands. The statute reads that the first-in-time has the right to a lease. Noranda Minerals, another interested party, called and said they had some interest in the properties through an option of the first applications. Then Mr. Bill Bruner called and asked to reinstate some of his leases which he had dropped just before this happened. People are calling every day about those lands, and the department is reluctant to open these up to a first-in-time lease offering. The department would like to take advantage of the interest and see if it can't maximize gain to the endowment by putting it up for competitive bid. It is felt that the case of Allen v. Smylie supports the state's authority to designate these lands for competitive bid.

December 13, 1988

Mr. Markland clarified for Jerry Evans that there is currently no policy for reinstatement of leases; when a lease is cancelled that party has to re-apply for the lease.

Bill Bruner, Meridian, Idaho, said that he holds sizable mining claims in that area and would like to be a potential bidder on this. His request is that the rent should stay the same after the bid has been won. Mr. Hamilton explained that this proposal includes a minimum annual royalty in addition to the bonus bid; this has been used in the past and provides that funds go into the permanent fund as well as the distribution fund. Mr. Bruner said that it often takes seven to eight years to get into operation, and he thinks it is unfair to pay the \$3.00 minimum royalty.

Jerry Evans moved to approve Recommendation No. 1 in the agenda with the understanding that it does include a minimum annual royalty provision. Joe Williams seconded. The motion passed unanimously.

Proposed Settlement Agreement--State/Templins/Washington Water Power Co.

Governor Andrus explained that this item is a proposed settlement agreement regarding Templins, Washington Water Power Company, and Louisiana-Pacific, a controversy over the log storage area near Templins.

Pat Kole stated that the Board members have had a chance to read the agreement and he pointed out that briefly what the settlement achieves is state ownership of the submerged land in question. The Templin's get a clear titled deed to their property so they won't have to worry about their financing. The state maintains the right to regulate Mr. Templin's marina, but will not charge him for that portion of this land that he owns that is submerged; that is the land that is flooded by Washington Water Power Company through their operation of the dam. The state agrees, as part of achieving ownership over the land in question, not to charge Washington Water Power any fee for their utilization of the state submerged lands in that area. That is the result of the compromise of a disputed claim of ownership between the two parties. This applies to fees only, not taxes. Both the Kootenai Environmental Alliance group and the condominium owners adjacent to Mr. Templin have been notified and no objections have been received.

Joe Piedmont, representing the Washington Water Power Co. of Spokane, spoke to the Board and stated that they do support the compromise. It resolves a lot of ownership and operations issues.

Jim Jones moved to approve the agreement. Joe Williams seconded. The motion passed unanimously.

Lakebed Easement Request -- Joe Threadgill

Mr. Hamilton explained that six years ago Mr. Threadgill constructed an encroachment into the bed of Hayden Lake without a permit and this matter has now come before the Board for resolution. Lance Nielsen stated that the department became aware of this unauthorized bulkhead this last summer. Mr. Threadgill had built it in 1982 and has applied for an after-the-fact encroachment. The department investigated all the circumstances and found that there was very little environmental impact associated with it; it was relatively small in size, and it was serving as stabilization for a very unstable shoreline at that location. The department also found it would be damaging and disruptive to have it removed. Considering the circumstances and comments from the Department of Fish and Game, the staff today is recommending issuance of an easement contingent upon a reversionary clause to not allow any improvements to be built on the site.

Pete Cenarrusa moved to approve the department recommendation. Joe Williams seconded. The motion passed unanimously.

Site Location for Joint Office for Payette Lakes Area and SITPA

Mr. Hamilton stated that this item for the Board's consideration deals with the development of a single administrative site for the Southern Idaho Timber Protective Association (SITPA) and the department's McCall office.

Fred Kisabeth said that this issue had been before the Board in September concerning disposition of the current SITPA site, and everything is moving forward on that. The Permanent Building Fund Advisory Council has given favorable recommendation to our construction project request for this fiscal year budgeting. It will then go to the Governor for approval and then to the legislature. The Permanent Building Fund Council has engaged an architect for development of preliminary plans and for the construction budget estimate. A decision is needed on the location of the site so that the architect can adapt the concept to a specific site. The site being explored is a parcel of state endowment land located just east of the airport. The department is proposing that the Board authorize the concept of a lease arrangement for an administrative site based on a fair market value rental of about a five-acre tract of that site which would be around \$3750 annual rent.

Jerry Evans observed that the policy is that there will be no change of use of any lands in that area until there is an approved land-use plan, and asked how this works with that. Mr. Kisabeth stated that this area is not currently under lease and the areas discussed earlier concerned areas that are currently under lease. Mr. Evans pointed out that the 5% return has to do with the Class II cottage sites which are areas off the shore and how does that work with the discussions earlier regarding the Girl Scout camp. Mr. Kisabeth replied that he thinks that fits in with the fair market value. Mr. Evans said he thinks that is very inconsistent and then asked Mr. Kisabeth to explain the sale proposals on the map. Mr. Kisabeth stated that those are sales held within the last five years that are comparable to the state tract.

STATE BOARD OF LAND COMMISSIONERS
November 4, 1998

SUBJECT

Modification of royalty schedule for metalliferous and non-metalliferous minerals.

OVERVIEW

On September 13, 1978, the board approved a royalty schedule for metalliferous and non-metalliferous minerals. The schedule has been in effect since that time. The ore value per ton in the schedule was based on the average 1978 gold price, which was \$193.23 per ounce. The schedule did not take into account the market prices for other commodities such as silver, lead, zinc and copper, which are, and historically have been, considerably less than the market price of gold.

In 1997 the Department of Lands received a metalliferous mineral lease application from Silver Butte Mining Co. Prior to issuance of the lease it became apparent that the existing royalty rates could be economically cost prohibitive. The bureau's mineral leasing specialist reviewed other western states' royalty rates, along with current and long-term metal prices. Based on this review, the mineral lease was issued with a royalty rate of five (5%) percent of gross receipts. Seven additional mineral leases have been issued under this revised royalty rate.

The average selling price for gold on the world market between 1978 and 1997 was \$380.97 per ounce. This average is almost double the 1978 market price therefore, the existing royalty schedule does not accurately reflect market conditions for any metalliferous or non-metalliferous mineral.

The schedule is very cumbersome to apply, as the royalty rate changes with every \$10 fluctuation in the per ton ore value. The per ton ore value will vary depending on the type of ore produced, beneficiation techniques, processing and transportation costs. The schedule does not work well for placer gold, which is uniformly sold by the ounce, not the ton. It also does not work well for gold processed by heap leaching because the end product at the mine mouth is dore, not ore. The only feasible application of this schedule is for a mine with high grade ore that does not process the material on site.

If this schedule were to remain in effect the royalty rate for gold would always be 10% of the ore value per ton, because the highest figure for the ore value per ton is less than the current price of gold. The royalty for all other metalliferous and non-metalliferous minerals, with the possible exception of silver, would be \$0.25 per ton, because their value would not normally exceed \$10.00 per ton. The schedule was not designed to work this way when approved in 1978.

It is difficult to accurately determine if a 5% royalty on gross receipts would return more money to the endowment than the existing schedule, because the ore value per ton is mine site specific, and there are no producing metalliferous or non-metalliferous leases.

At the current gold price of \$293.35 per ounce a royalty rate of 5% of gross receipts would return \$14.67 to the endowment for every ounce sold. It would take ore with a metal content of at least one-half ounce per ton to match this figure without taking into account deductions for processing and transportation costs. With these costs included the metal value in the ore would have to be higher to return the same amount of money to the endowment. Most primary gold deposits mined today do not have ore values even close to one-half ounce per ton.

Six western states which lease minerals on endowment lands assess royalties on metalliferous and non-metalliferous minerals as a percentage of the gross selling price of the mineral sold. The percentage ranges from 3% in Alaska to 5% in Washington, Montana and Arizona. Wyoming and Colorado base the royalty on a sliding scale depending on the ore value per ton which allows for deductions for processing and transportation costs. The maximum percentage in Colorado is 7%, and in Wyoming 10%. The proposed 5% rate is within the range applied by other western states.

On September 21, 1998, the bureau sent a letter to our metalliferous mineral lessees explaining the proposed royalty modification and requesting comments. No objections to the royalty schedule change were received by the Department.

RECOMMENDATION

Approve the proposed and attached royalty schedule for new metalliferous and nonmetalliferous mineral leases, and for eight existing mineral leases issued under royalty rate during 1997 and 1998.

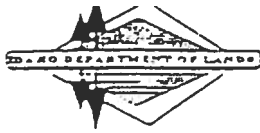
BOARD ACTION

APPROVED NOV 23 1998

ATTACHMENTS

- 1) Existing Royalty Schedule
- 2) Proposed Royalty Schedule

SAM/SHN

METALLIFEROUS AND NON-METALLIFEROUS MINERALS

(With exceptions as noted)

PRODUCTION ROYALTY

This schedule applies to ores of all mineral commodities, from any type of deposit or method, except as follows:

Oil, gas, other hydrocarbons; uranium and other fissionable minerals; coal, sand, gravel, basalt and other common variety minerals mined for highway construction and maintenance and other general construction purposes; limestone, dolomite, marble, slate and similar mineral materials used for dimension stone or other building materials; scoria, perlite, pumice, and forms of volcanic rocks used in the manufacture of building block; clay and associated minerals; lava and other decorative rock; and other mineral commodities that may be excluded at the discretion of the State Board of Land Commissioners.

Lessor reserves, and Lessee agrees to pay to Lessor, a production royalty per the following schedule:

<u>Ore Value</u> <u>Per Ton</u>	<u>Production</u> <u>Royalty Rate</u>
\$0.00 to 10.00	\$.25/ton ore produced
10.01 to 20.00	2.75%
20.01 to 30.00	3.00%
30.01 to 40.00	3.25%
40.01 to 50.00	3.50%
50.01 to 60.00	4.00%
60.01 to 70.00	4.50%
70.01 to 80.00	5.00%
80.01 to 90.00	5.50%
90.01 to 100.00	6.00%
100.01 to 110.00	6.50%
110.01 to 120.00	7.00%
120.01 to 130.00	7.50%
130.01 to 140.00	8.00%
140.01 to 150.00	8.50%
150.01 to 160.00	9.00%
160.01 to 170.00	9.50%
170.01 and up	10.00%

The minimum production royalty acceptable is twenty-five cents (\$.25) per ton of ore produced.

IDL 1801-29(5)
1-1-97

EXHIBIT "A"

ROYALTY SCHEDULE

METALLIFEROUS AND NON-METALLIFEROUS MINERALS (with exceptions as noted)

This schedule applies to ores of all mineral commodities, from any type of deposit or method of extraction and/or processing, except as follows:

Oil, gas, other hydrocarbons; uranium and other fissionable minerals; coal, sand, gravel, basalt and other common variety minerals mined for highway construction and maintenance and other general construction purposes; limestone, dolomite, marble, slate, and similar mineral materials used for dimension stone or other building materials; scoria, perlite, pumice, and forms of volcanic rocks used in the manufacture of building blocks; clay and associated minerals; lava and other decorative stone; and other mineral commodities that may be excluded at the discretion of the State Board of Land Commissioners.

Lessor reserves, and Lessee agrees to pay to Lessor, a production royalty per the following schedule:

Five (5%) Percent of the gross receipts, including all bonuses and allowances paid, earned or received at the point of sale of the first marketable minerals. Reasonable transportation costs to the closest feasible point of sale, and/or smelting charges, deductions and other treatment costs may be deducted from the gross sales receipts for material that requires additional processing to obtain marketable minerals after being mined and removed from the leased land.

GENERAL

Lessee will furnish evidence to the satisfaction of the Lessor that the price received for ores sold are reasonable and fair.

The above listed royalty rate will be reviewed on a yearly basis, and if market conditions so warrant, the above listed minimum royalty may be increased upon a sixty (60) day notification to the lessee.