

STATE BOARD OF LAND COMMISSIONERS

November 21, 2023

Regular Agenda

Subject

Adoption of Pending Fee Rule, IDAPA 20.03.05 *Navigable Waterways Mineral Leasing in Idaho*

Question Presented

Shall the Land Board adopt the pending fee rule for IDAPA 20.03.05?

Background

Negotiated rulemaking for these rules was approved by the State Board of Land Commissioners (Land Board) on November 15, 2022. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use.

The Idaho Department of Lands (Department) manages the beds of navigable lakes and rivers for the benefit of the public. IDAPA 20.03.05 establishes a consistent process to authorize mineral exploration and extraction on state owned navigable waterways and collect rents and royalties.

Discussion

The Department's outreach for negotiated rulemaking included the following:

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin.
- Created a rulemaking webpage to post documents, scheduling information, and comments.
- Issued a press release.
- Posted rulemaking meeting notices and details on social media.
- Posted rulemaking notices to Townhall Idaho.
- Emailed 43 customers and other interested parties.
- Mailed postcards to 138 customers.

Negotiated rulemaking meetings were held on April 19 and April 26, 2023. A total of 12 non-Department affiliated people attended these meetings, and four sets of written comments were received. Much of the discussion and one of the written comments centered on public notice on the issuance of exploration location permits. Per Idaho Code § 47-702, all lands belonging to the state of Idaho are open for mineral exploration. The Land Board is not given authority to deny exploration location permits, and the discoverer must post their exploration certificate on each 1/2 river mile. Discussion was had at each meeting about the Department's regulatory overlap with Idaho Department of Environmental Quality (IDEQ)

and Idaho Department of Water Resources (IDWR). Many activities conducted on exploration locations and riverbed mineral leases require Stream Channel Alteration permits from IDWR and may require an Idaho's Pollutant Discharge Elimination System (IPDES) general permit from IDEQ. Some minor changes to the initial draft were made based on meeting discussions and to further reduce word count. Substantive comments and the Department's responses are summarized in Attachment 1.

The proposed rule was published in the September 6, 2023 Administrative Bulletin. The Notice of Proposed Rulemaking is in Attachment 2. One comment was received. This comment was addressed in the negotiated rulemaking response to comments.

The proposed rule reduces the overall regulatory burden by reducing the total word count and the number of restrictive words. The proposed rule includes the following changes:

- The rule now includes all state-owned navigable waterbodies rather than just riverbeds.
- The \$50 lease application fee in place since 1991 has increased to \$425. This will cover the Department's cost of reviewing and issuing these leases.
- The assignment fee is raised from \$50 to \$200 to cover Department costs.
- The lease application advertising fee is raised from \$45 to \$75.
- The Exploration Location fee has increased from \$250 to \$500.
- The late payment policy is updated.

Upon further review, a few punctuation and grammatical changes were needed for better clarity. Attachment 3 has the draft Pending Rule consisting of the Proposed Rule with the engrossed changes highlighted in yellow.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Fee Rule (Attachment 4) to the Office of the Administrative Rules Coordinator for the 2024 legislative session.

Recommendation

Adopt the pending fee rule for IDAPA 20.03.05 *Navigable Waterways Mineral Leasing in Idaho*

Board Action

Attachments

1. Summary of Negotiated Rulemaking
2. Notice of Proposed Rulemaking
3. Draft Pending Rule
4. Draft Notice of Adoption of Pending Fee Rule