

# Zero-Based Regulation Prospective Analysis

**Agency Name:** Idaho Department of Lands

**Rule Docket Number:** 20-0305-2301

IDAPA 20.03.05, Riverbed Mineral Leasing in Idaho

**1. What is the specific legal authority for this proposed rule?**

Statute Section (include direct link)	Is the authority mandatory or discretionary?
<a href="#">Idaho Code § 47-714</a> – Leases of Navigable Riverbeds Authorized	Mandatory
<a href="#">Idaho Code § 58-104(6)</a> – State Land Board – Powers and Duties	Discretionary

**2. Define the specific problem that the proposed rule is attempting to solve? Can the problem be addressed by non-regulatory measures?**

IDAPA 20.03.05 applies to the exploration and extraction of minerals from state-owned navigable waterways. By leasing exclusive rights to the waterways, customers may explore areas without competition. Revenue from leasing and royalties from extracted minerals benefits the endowment and the continued stewardship of public trust land. The proposed changes seek to comply with Executive Order 2020-01.

**3. How have other jurisdictions approached the problem this proposed rule intends to address?**

**a. Is this proposed rule related to any existing federal law?**

Federal citation	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
Section 10 of the Rivers and Harbors Appropriation Act of 1899 – U.S. Army Corps of Engineers 33 CFR Part 322	<a href="https://www.govinfo.gov/content/pkg/CFR-2011-title33-vol3/pdf/CFR-2011-title33-vol3-part322.pdf">https://www.govinfo.gov/content/pkg/CFR-2011-title33-vol3/pdf/CFR-2011-title33-vol3-part322.pdf</a> A \$10 fee is charged for non-commercial activities and a \$100 fee is charged for commercial or industrial activities.	Idaho rule affects state-owned navigable waterbodies. The 401 certification is required in addition to state permits.

36 CFR 228	<a href="https://www.ecfr.gov/current/title-36/chapter-II/part-228">https://www.ecfr.gov/current/title-36/chapter-II/part-228</a> No application fees or annual fees are charged for a Plan of Operations, but annual fees of \$165 are charged for each 20-acre mining claim. Bonding is actual cost. Exploration is bonded.	Application fees are \$50 to \$1,000. Annual fees are \$435. If bonding is insufficient, then additional funds may be recovered from the operator after a default.
43 CFR 3809	<a href="https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-C/part-3800/subpart-3809">https://www.ecfr.gov/current/title-43/subtitle-B/chapter-II/subchapter-C/part-3800/subpart-3809</a> No application fees or annual fees are charged for a Plan of Operations, but annual fees of \$165 are charged for each 20-acre mining claim. Bonding is actual cost with ability to recover additional funds if needed. Exploration is bonded.	Application fees are \$50 to \$1,000. Annual fees are \$435. If bonding is insufficient, then additional funds may be recovered from the operator after a default.

**b. How does this proposed rule compare to other state laws?**

State	Summary of Law (include direct link)	How is the proposed Idaho rule more stringent? (if applicable)
Washington	<a href="#">Chapter 79.140 Aquatic Lands – Valuable Materials RCW 79.105.110: Who may purchase or lease— Application—Fees. (wa.gov)</a> Washington State Department of Natural Resources. New Permit fee application is \$4500, assignments are \$2500.	N/A
Oregon	<a href="#">Chapter 141, Division 14, RULES FOR AUTHORIZING LEASES AND LICENSES FOR THE REMOVAL OR USE OF ROCK, SAND, GRAVEL AND SILT DERIVED FROM STATE-OWNED SUBMERGED AND SUBMERSIBLE LAND</a> Oregon Department of State Lands. Lease term is 10 years. Non-exclusive authorization is less than 3 years. Application fee is \$750. Assignment fees are also \$750. Lessees must pay a royalty fee determined by the department. Minimum annual rental is \$20.	N/A

Nevada	<p><a href="#">NRS 322.130 - Fee for permit for dredging or filling, construction or installation of certain structures.</a>  <a href="#">NAC: CHAPTER 519A - RECLAMATION OF LAND SUBJECT TO MINING OPERATIONS OR EXPLORATION PROJECTS (state.nv.us)</a>  <a href="#">NAC: CHAPTER 519A - RECLAMATION OF LAND SUBJECT TO MINING OPERATIONS OR EXPLORATION PROJECTS (state.nv.us)</a></p> <p>Nevada Division of Environmental Protection. Exploration permits application fees are \$1.50 per acre on public land. Annual fees vary from \$500 to \$1500.</p>	Nevada application fees vary based on acreage, so smaller leases may have higher fees in Idaho.
Utah	<p><a href="#">Utah Code Title 65A, Chapter 6 – Mineral Leases</a>  <a href="#">Utah Office of Administrative Rules</a> R652-20 Mineral Resources</p> <p>Utah Division of Forestry, Fire, and State Lands. Salts and other minerals in the waters of navigable lakes and streams are reserved to the state and may be sold by the division only upon a royalty basis. Rental is \$1.10 per acre, application fee is \$40. Assignments are \$50.</p>	Idaho application and assignment fees are higher.
Wyoming	<p><a href="#">W.S. 36-6-101(b). Leasing of Metallic &amp; Non-metallic Rocks &amp; Minerals</a></p> <p>Wyoming Office of State Lands and Investments. Leases are for 10-year terms. Annual rental payments are \$1 per acre for years 1-5, and \$2 per acre for years 6-10. Lease application fee is \$50, assignment fee is \$40.</p>	Idaho application and assignment fees are higher.
Montana	<p><a href="#">Title 77, Chapter 3 Section 102 Mining Leases Authorized 77-1-1115. Navigable riverbed uses -- lease, license, or easement required -- challenges, MCA (mt.gov)</a></p> <p>Montana Department of Natural Resources and Conservation. Lease application is \$50. Assignments are \$25. Lease terms are set by the Board.</p>	Idaho application and assignment fees are higher.
Alaska	<p><a href="#">Sec. 38.05.250. Prospecting permits and leases on tide and submerged land</a></p> <p>Alaska Department of Natural Resources – Division of Mining, Land and Water. Prospecting permit term is 10 years. Leases are for 20 years. Application fee is based on the number of acres for the requested area. Minimum \$280-\$600.</p>	Alaska application fee varies based on the size of the operation, so smaller leases may have higher fees in Idaho.

South Dakota	<a href="https://sdlegislature.gov">Codified Law 5-2   South Dakota Legislature (sdlegislature.gov)</a> <a href="https://sdlegislature.gov/Statutes/Codified_Laws/2034073">https://sdlegislature.gov/Statutes/Codified_Laws/2034073</a> <a href="#">South Dakota Minerals and Mining Exploration - Mine Permits (sd.gov)</a> South Dakota Department of Agriculture and Natural Resources – Small Scale Mine Permit Required. Permit is \$100. Leases require a \$50 annual fee. Leases are for a 5 year period.	Idaho application fee and annual rent is higher.
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**c. If the Idaho proposed rule has a more stringent requirement than the federal government or the reviewed states, describe the evidence base or unique circumstances that justifies the enhanced requirement:**

The proposed mineral lease application fee of \$425 and assignment fee of \$200 for Idaho is higher than similar fees charged in a few of the other states. Funding for Idaho’s Navigable Waterways Program, however, is from a dedicated account. The proposed lease fees are needed to cover the costs of processing these lease transactions. Also, the term of the lease is up to 20 years so the application fee will not be paid as often as it is in other states.

The proposed exploration location fee of \$500 is typically lower than other states with similar permit requirements. The \$75 lease publication fee matches the fee for other navigable waters program submerged land leasing publication fees. Other programs charge a similar fee for publication costs.

The Idaho rule is overall less stringent than other comparable states. Other states typically require extensive environmental permitting.

**4. What evidence is there that the rule, as proposed, will solve the problem?**

Reduced word count will comply with Executive Order 2020-01. Navigable waterways have a management objective and trust responsibility different than state endowment lands, so these rules are needed to provide guidance in addition to Title 47, Chapter 7, Idaho Code. Increased application and assignment fees will cover Department costs associated with processing applications and permits. The current rule fees were established in 1991, and have not increased since that time.

**5. What is the anticipated impact of the proposed rule on various stakeholders? Include, how will you involve them in the negotiated rulemaking process?**

<b>Category</b>	<b>Potential Impact</b>
Fiscal impact to the state General Fund, any dedicated fund, or federal fund	Increased fees will result in an estimated annual increase of \$375 to the dedicated Navigable Waterways Public Trust Fund. No impacts to General or Federal funds are anticipated.
Impact to Idaho businesses, with special consideration for small businesses	Increased fees will result in an estimated annual increase of \$375 and will allow IDL to cover the costs of administrative work on these leases. This will affect future lessees. All current lessees will be notified of the negotiated rulemaking, and public meetings will be held around the state.
Impact to any local government in Idaho	No impact to local government is anticipated.

**6. What cumulative regulatory volume does this proposed rule add?**

<b>Category</b>	<b>Impact</b>
Net change in word count	-529 words
Net change in restrictive word count	-1 restrictive words