

State Board of Land Commissioners Open Meeting Checklist

Meeting Date: October 16, 2018

Regular Meetings

9/27/18	Notice of Meeting posted in prominent place in IDL's Boise Headquarters office five (5) calendar days before meeting.
9/27/18	Notice of Meeting posted in prominent place in IDL's Coeur d'Alene Headquarters office five (5) calendar days before meeting.
9/27/18	Notice of Meeting posted in prominent place at meeting location five (5) calendar days before meeting.
9/27/18	Notice of Meeting emailed/faxed to list of media and interested citizens who have requested such notice five (5) calendar days before meeting.
9/27/18	Notice of Meeting posted electronically on IDL's public website www.idl.idaho.gov five (5) calendar days before meeting.
10/10/18	Agenda posted in prominent place in IDL's Boise Headquarters office forty-eight (48) hours before meeting.
10/10/18	Agenda posted in prominent place in IDL's Coeur d'Alene Headquarters office forty-eight (48) hours before meeting.
10/10/18	Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting.
10/10/18	Agenda emailed/faxed to list of media and interested citizens who have requested such notice forty-eight (48) hours before meeting.
10/10/18	Agenda posted electronically on IDL's public website www.idl.idaho.gov forty-eight (48) hours before meeting.
12/22/17	Annual meeting schedule posted – Director's Office, Boise and Staff Office, CDA

Special Meetings

	Notice of Meeting and Agenda posted in a prominent place in IDL's Boise Headquarters office twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted in a prominent place in IDL's Coeur d'Alene Headquarters office twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted at meeting location twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda emailed/faxed to list of media and interested citizens who have requested such notice twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted electronically on IDL's public website www.idl.idaho.gov twenty-four (24) hours before meeting.
	Emergency situation exists – no advance Notice of Meeting or Agenda needed. "Emergency" defined in Idaho Code § 74-204(2).

Executive Sessions *(If only an Executive Session will be held)*

	Notice of Meeting and Agenda posted in IDL's Boise Headquarters office twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted in IDL's Coeur d'Alene Headquarters office twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda emailed/faxed to list of media and interested citizens who have requested such notice twenty-four (24) hours before meeting.
	Notice of Meeting and Agenda posted electronically on IDL's public website www.idl.idaho.gov twenty-four (24) hours before meeting.
	Notice contains reason for the executive session and the applicable provision of Idaho Code § 74-206 that authorizes the executive session.

Renée Miller

Recording Secretary

October 10, 2018

Date



Idaho State Board of Land Commissioners

C. L. "Butch" Otter, Governor and President of the Board

Lawrence E. Denney, Secretary of State

Lawrence G. Wasden, Attorney General

Brandon D Woolf, State Controller

Sherri Ybarra, Superintendent of Public Instruction

Dustin T. Miller, Secretary to the Board

NOTICE OF PUBLIC MEETING OCTOBER 2018

The Idaho State Board of Land Commissioners will hold a Regular Meeting on Tuesday, October 16, 2018 in the **State Capitol, Lincoln Auditorium (WW02), Lower Level, West Wing, 700 W Jefferson St., Boise**. The meeting is scheduled to begin at 9:00 AM (Mountain).

Please note meeting location.

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

First Notice Posted: 9/27/2018-IDL Boise; 9/27/2018-IDL CDA

This notice is published pursuant to § 74-204 Idaho Code. For additional information regarding Idaho's Open Meeting law, please see Idaho Code §§ 74-201 through 74-208.

Idaho Department of Lands, 300 N 6th Street, Suite 103, Boise ID 83702, 208.334.0242



Idaho State Board of Land Commissioners

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State Board of Land Commissioners Regular Meeting

October 16, 2018 – 9:00 AM (MT)

Final Agenda

Capitol, Lincoln Auditorium (WW02), 700 W. Jefferson St., Boise, Idaho

1. Director's Report

Endowment Transactions

- A. Timber Sales – September 2018
- B. Leases and Permits – September 2018

Status Updates

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

2. Endowment Fund Investment Board Manager's Report – *Presented by Chris Halvorson, EFIB Investment Officer*

- A. Manager's Report
- B. Investment Report

Consent—Action Item(s)

- 3. Bonners Ferry Armory Surplus Property (Idaho Military Division)** – *Staffed by Josh Purkiss, Program Manager-Real Estate*
- 4. Approval of Minutes** – September 18, 2018 Regular Meeting (Boise)

Regular—Action Item(s)

- 5. Pending Rule IDAPA 20.04.01, Rules Pertaining to Forest Fire Protection** – *Presented by Craig Foss, Division Administrator-Forestry and Fire*
- 6. Pending Rule IDAPA 20.03.01, Dredge and Placer Mining Operations in Idaho** – *Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance*
- 7. Pending Rule IDAPA 20.03.02, Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities** – *Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance*

8. **Pending Rule IDAPA 20.03.04, Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho** – *Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance*

Information

None

Executive Session

None



Idaho Statutes

TITLE 74 TRANSPARENT AND ETHICAL GOVERNMENT

CHAPTER 2 OPEN MEETINGS LAW

74-206. EXECUTIVE SESSIONS -- WHEN AUTHORIZED.[EFFECTIVE UNTIL JULY 1, 2020] (1) An executive session at which members of the public are excluded may be held, but only for the purposes and only in the manner set forth in this section. The motion to go into executive session shall identify the specific subsections of this section that authorize the executive session. There shall be a roll call vote on the motion and the vote shall be recorded in the minutes. An executive session shall be authorized by a two-thirds (2/3) vote of the governing body. An executive session may be held:

(a) To consider hiring a public officer, employee, staff member or individual agent, wherein the respective qualities of individuals are to be evaluated in order to fill a particular vacancy or need. This paragraph does not apply to filling a vacancy in an elective office or deliberations about staffing needs in general;

(b) To consider the evaluation, dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent, or public school student;

(c) To acquire an interest in real property which is not owned by a public agency;

(d) To consider records that are exempt from disclosure as provided in [chapter 1, title 74](#), Idaho Code;

(e) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations;

(f) To communicate with legal counsel for the public agency to discuss the legal ramifications of and legal options for pending litigation, or controversies not yet being litigated but imminently likely to be litigated. The mere presence of legal counsel at an executive session does not satisfy this requirement;

(g) By the commission of pardons and parole, as provided by law;

(h) By the custody review board of the Idaho department of juvenile corrections, as provided by law;

(i) To engage in communications with a representative of the public agency's risk manager or insurance provider to discuss the adjustment of a pending claim or prevention of a claim imminently likely to be filed. The mere presence of a representative of the public agency's risk manager or insurance provider at an executive session does not satisfy this requirement; or

(j) To consider labor contract matters authorized under section 67-2345A [[74-206A](#)](1)(a) and (b), Idaho Code.

(2) The exceptions to the general policy in favor of open meetings stated in this section shall be narrowly construed. It shall be a violation of this act to change the subject within the executive session to one not identified within the motion to enter the executive session or to any topic for which an executive session is not provided.

(3) No executive session may be held for the purpose of taking any final action or making any final decision.

History:

[74-206, added 2015, ch. 140, sec. 5, p. 371; am. 2015, ch. 271, sec. 1, p. 1125.]

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IDAHO DEPARTMENT OF LANDS

STATE BOARD OF LAND COMMISSIONERS

October 16, 2018

Endowment Transactions

Timber Sales

During September 2018, the Department of Lands sold two endowment timber sales at auction. The endowment net sale value represents a 9% up bid over the advertised value.

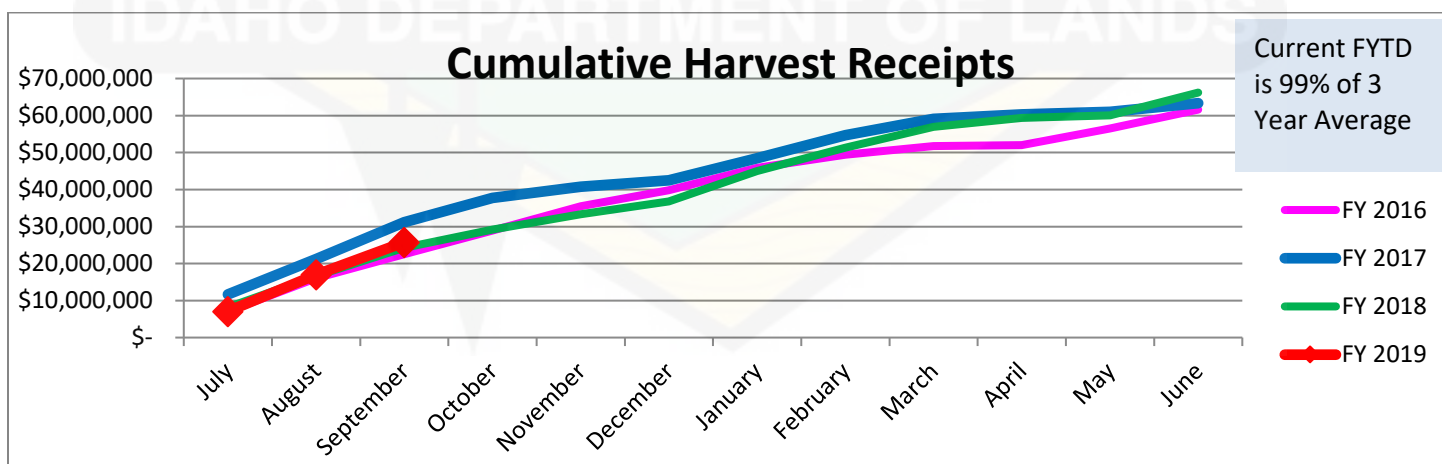
TIMBER SALE AUCTIONS								
SALE NUMBER	SAWLOGS MBF	POLES LF	POLES MBF	CEDAR PROD MBF	PULP MBF	APPRAISED NET VALUE	SALE NET VALUE	NET \$/MBF
TS104329	3,300					\$ 624,070.00	\$ 1,020,724.00	\$309.31
TS404330	5,755		1,635			\$ 3,915,222.00	\$ 3,915,222.00	\$529.80
	9,055	0	1,635	0	0	\$ 4,539,292.00	\$ 4,935,946.00	\$461.73

PROPOSED TIMBER SALES FOR AUCTION				
North Operations				
Sale Name	Volume MBF	Advertised Net Value	Area	Estimated Auction Date
Larch Creek Salvage (Resale)	600	\$ 30,911	MICA	10/25/2018
Crawdad	6,820	\$ 964,088	SJ	11/6/2018
Beaver Butterfly Salvage Ton	2,660	\$ 813,542	SJ	10/23/2018
South Operations				
Canyon Flats	7,390	\$ 1,997,743	CLW	11/16/2018
Snake Face	3,785	\$ 1,199,829	CLW	11/16/2018
Pinehurst Salvage Ton	545	\$ 64,252	PAY	10/31/2018

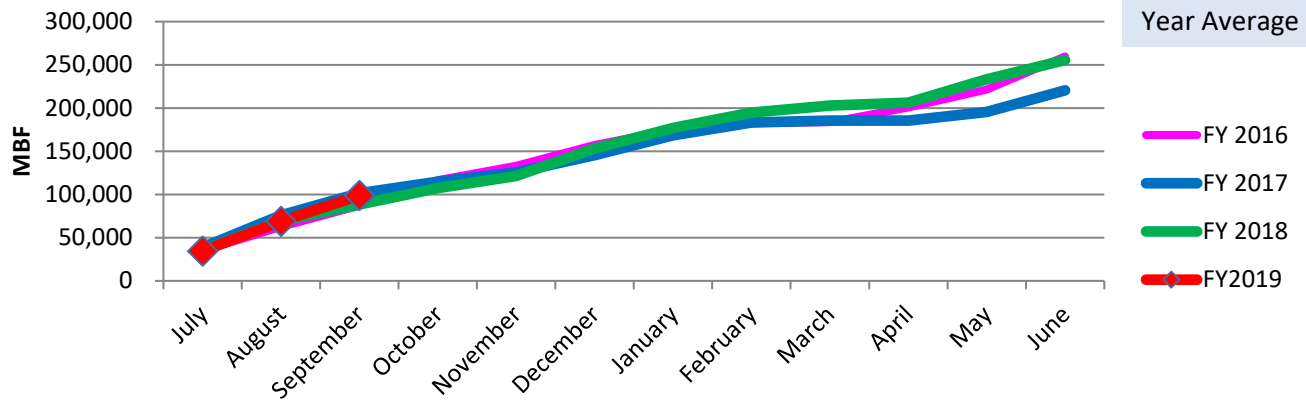
VOLUME UNDER CONTRACT as of September 30, 2018			
	Total	Public School	Pooled
Active Contracts	186		
Estimated residual volume (MBF)	443,510	277,392	166,118
Estimated residual length (LF)	286,390	261,514	24,876
Estimated residual weight (Ton)	549,233	355,032	194,201
Total Residual MBF Equivalent	545,008	343,341	201,667
Estimated residual value	\$ 169,362,348	\$ 105,611,652	\$ 63,750,696
Residual Unit Value (\$/MBF)	\$ 310.75	\$ 307.60	\$ 316.12

TIMBER HARVEST RECEIPTS								
	September			FY to date		October Projected		
	Stumpage		Interest	Harvest Receipts		Stumpage		Interest
Public School	\$	3,905,711.57	\$ 700,494.53	\$	14,703,518.10	\$	3,367,484.59	\$ 398,462.99
Pooled	\$	3,774,511.03	\$ 409,344.13	\$	11,055,889.39	\$	4,195,905.92	\$ 514,037.00
General Fund	\$	2.22	\$ 0.00	\$	687.50	\$	2.22	\$ 0.00
TOTALS	\$	7,680,224.82	\$ 1,109,838.66	\$	25,760,094.99	\$	7,563,392.73	\$ 912,499.99

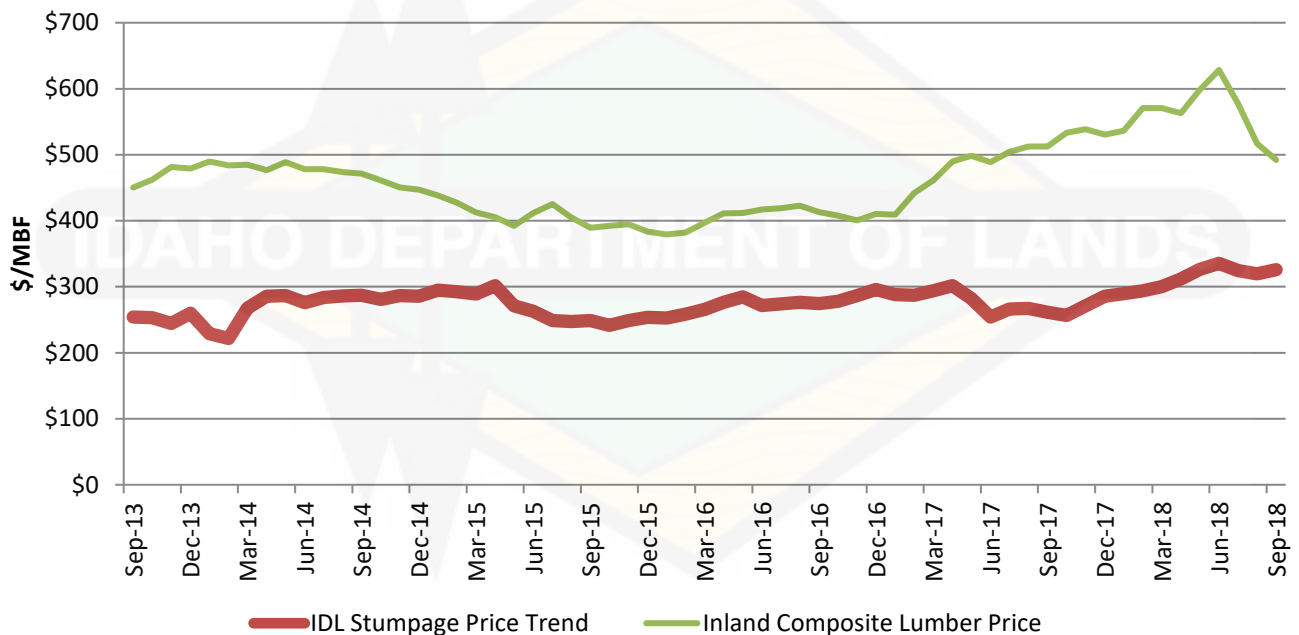
STATUS OF FY 2019 TIMBER SALE PROGRAM						
	MBF Sawlog				Number Poles	
	Public School	Pooled	All Endowments		Public School	All Endowments
Sold as of September 30, 2018	61,832	30,948	92,781		5,191	13,138
Currently Advertised	11,306	15,324	26,630		0	0
In Review	8,316	924	9,240		0	0
Did Not Sell	0	3,700	3,700		0	0
TOTALS	81,454	50,896	132,351		5,191	13,138
FY-2019 Sales Plan			256,000			20,000
Percent to Date			52%			66%



Cumulative Harvest Volume



Monthly Lumber and Stumpage Price



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

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IDAHO DEPARTMENT OF LANDS

STATE BOARD OF LAND COMMISSIONERS

October 16, 2018
Endowment Transactions

Leases and Permits

Over the past six months, the Endowment Leasing Bureau worked closely with the Attorney General's office on revisions to the mineral lease template. Expiring mineral leases were placed on hold until the new mineral lease template was complete. The Department issued seven mineral leases under the new lease template during the month of September for Decorative Stone (3), Sand & Gravel (3), and Basalt Rock (1).

FISCAL YEAR 2019 – LEASING & PERMITTING TRANSACTIONS BY MONTH – through September 30, 2018													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	YTD
SURFACE													
Agriculture													
• <i>Assignments</i>			1										1
Communication Sites	1	1	1										3
• <i>Assignments</i>		1											1
Grazing	2	10	1										13
• <i>Assignments</i>		2	1										3
Residential		1	2										3
• <i>Assignments</i>	1	1											2
Alternative Energy													
Industrial													
Military	2												2
Office/Retail													
• <i>Assignments</i>	1												1
Recreation													
Conservation	1												1
Geothermal													
Minerals			7										7
• <i>Assignments</i>			1										1
• <i>Exploration</i>	5												5
Non-Commercial Recreation													
Oil & Gas													
Land Use Permits	6	8	7										21
TOTAL INSTRUMENTS	19	24	21										64

Real Estate

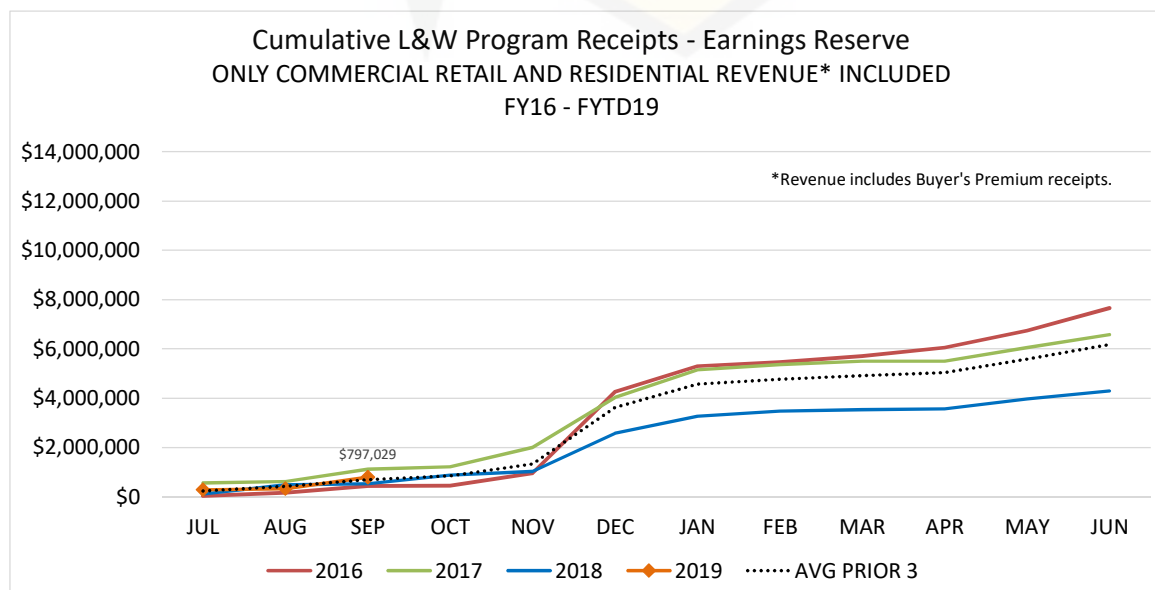
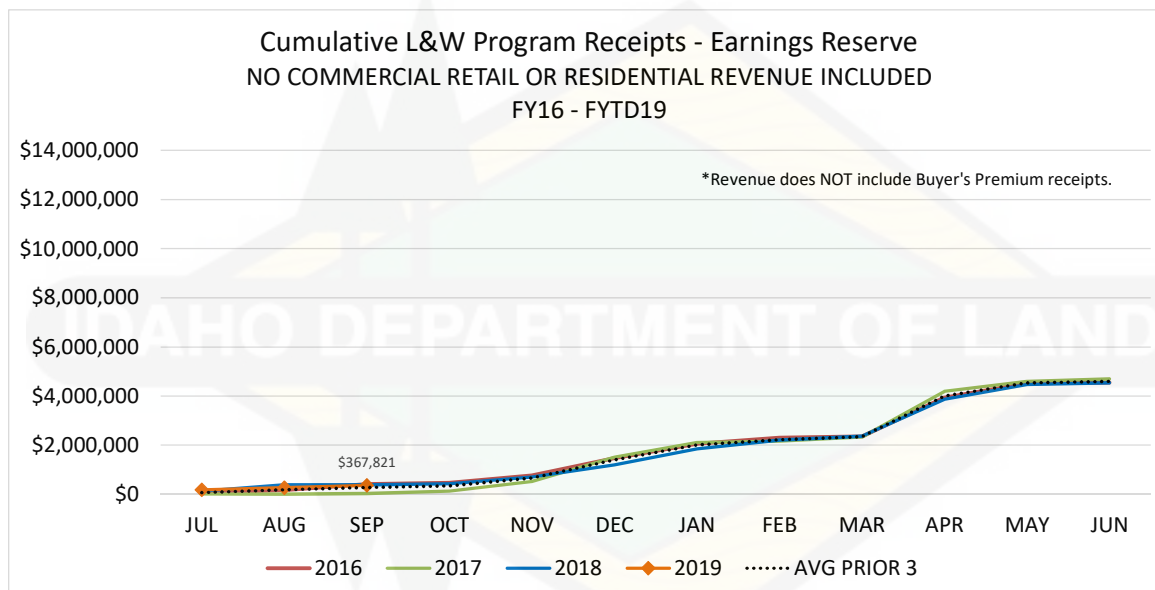
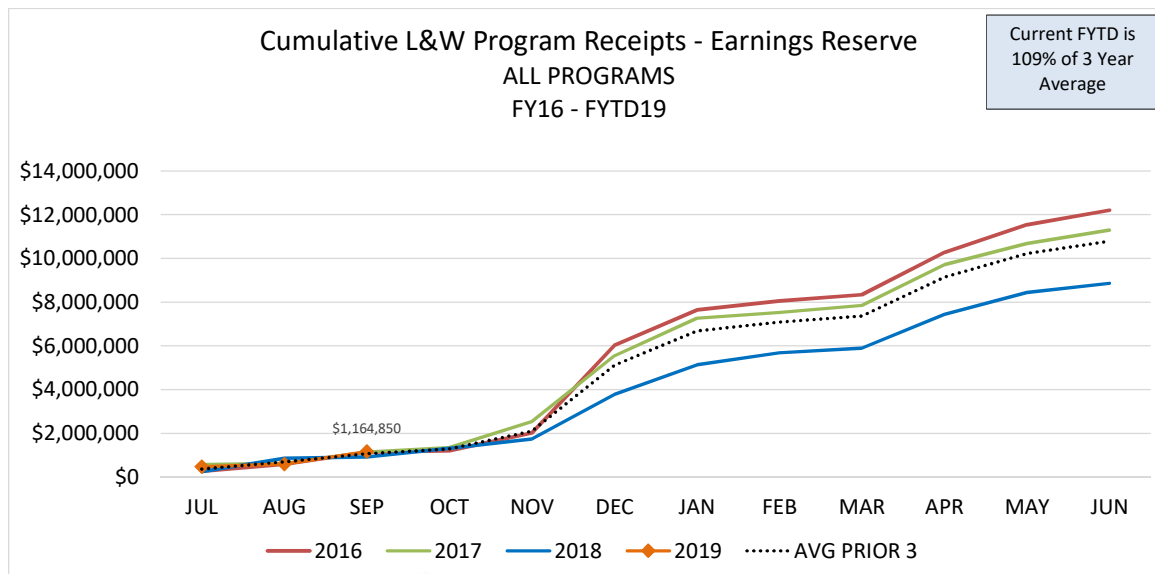
The 14 deeds issued are from the auction of the Priest Lake cottage sites on August 24 and 25. IDL anticipates the remaining 37 cottage sites to close by the end of October.

Easement AE500028 is an acquired easement for access out of the Payette Lakes area.

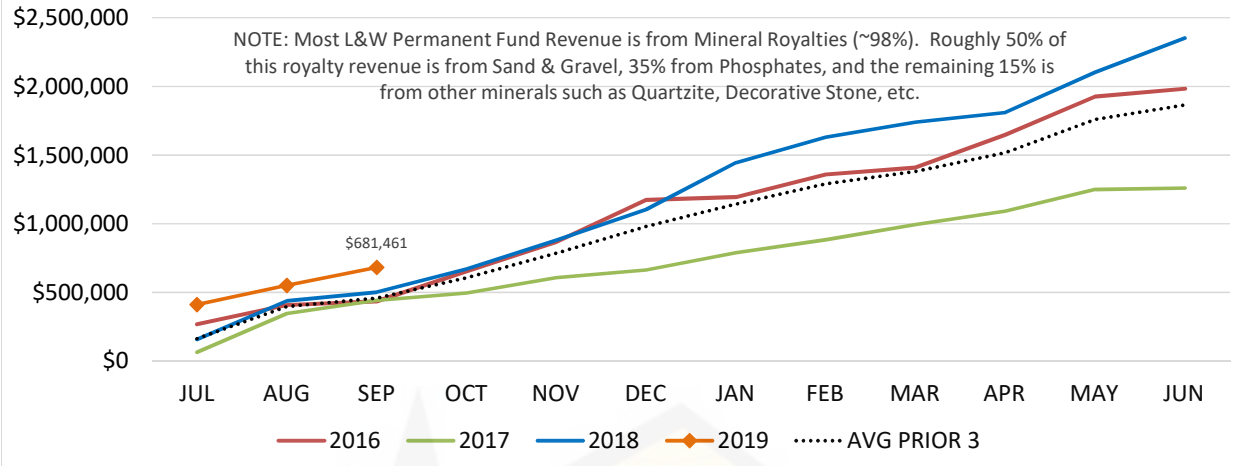
Easement AE800020 is an acquired easement for water testing purposes out of the Eastern area.

FISCAL YEAR 2019 – REAL ESTATE TRANSACTIONS BY MONTH – through September 30, 2018													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	YTD
Deeds Acquired	1												1
Deeds Granted	8	1	14										23
Deeds Granted - Surplus													
Easements Acquired			2										2
Easements Granted	1	1	2										4

LANDS AND WATERWAYS DIVISION 2019 FYTD GROSS REVENUE through September 30, 2018	
ACTIVITY	REVENUE
SURFACE	
Agriculture	\$3,783
Communication Sites	\$122,200
Grazing	\$145,833
Residential	-\$50,178
COMMERCIAL	
Alternative Energy	\$0
Industrial	\$2,700
Military	\$57,520
Office/Retail	\$547,481
Recreation	\$10,972
OTHER	
Conservation	\$0
Geothermal	\$1,280
Minerals	\$17,878
Non-Commercial Recreation	\$3,650
Oil & Gas	\$2,006
RE/Buyer's Premium	\$299,726
TOTAL FYTD REVENUE	\$1,164,851



Cumulative L&W Permanent Fund Revenue/Royalties
 (Does NOT include Land Bank Revenue)
 FY16 - FYTD19



IDAHO DEPARTMENT OF LANDS

STATE BOARD OF LAND COMMISSIONERS

October 16, 2018

Director's Update

Subject

Fire Season Update

Background

As of October 9, 2018, Emergency Fire Suppression expenditures are estimated to be \$25,800,000. The Suppression Account will recover an estimated \$7,000,000 of reimbursable costs, for a net obligation of \$18,800,000. The total obligation above includes the 2018 contracted aircraft costs.

Discussion

The Castaway Fire started on endowment land near Kamiah on September 28. The fire was caused by an escaped prescribed burn and is currently 100 percent contained and controlled. It was managed by a Type 3 team.

All other project fires on Idaho Department of Lands (IDL) protection have been contained and are either in patrol status or called out.

As shown in the table below, fire occurrence to date for 2018 is 78 percent of the 20-year average, while the acres burned is 63 percent of the 20-year average.

Fire Season Comparison to Date

# of Fires Under IDL Protection				
Year	Lightning	Human	Total	Acres
2015	146	141	287	72,145
2016	44	122	166	1,525
2017	62	139	201	52,783
2018	56	202	259	7,721
20 Yr. Average			328	12,252

September had near normal temperatures and very low precipitation. October is forecast to have above normal temperatures and slightly below normal precipitation for IDL Protection Districts. All fire restrictions are rescinded due to moderating fire danger.

Significant Fires Outside of IDL Protection

Indian Butte Fire

The Indian Butte Fire started September 12 and burned eight miles northwest of Dubois. The fire is currently 13,072 acres and is 100 percent contained. A Type 3 team managed the fire. Residences and sage grouse habitat were threatened; all evacuations are lifted at this time.

Wapiti

The Wapiti Fire began on August 25 and is burning near Stanley. The fire was managed by a Type 2 team and is currently 4,571 acres and 95 percent contained.

Sharps

The Sharps Fire started on IDL endowment land on July 29 near Bellevue. This fire is currently 64,853 acres and 98 percent contained. The fire was managed by a Type 1 team.

Grassy Ridge

The Grassy Ridge Fire started on July 26 near Dubois. This fire is currently at 99,502 acres and is 100 percent contained. This fire threatened the city of Dubois; at this time, all evacuation orders due to this fire have been lifted.

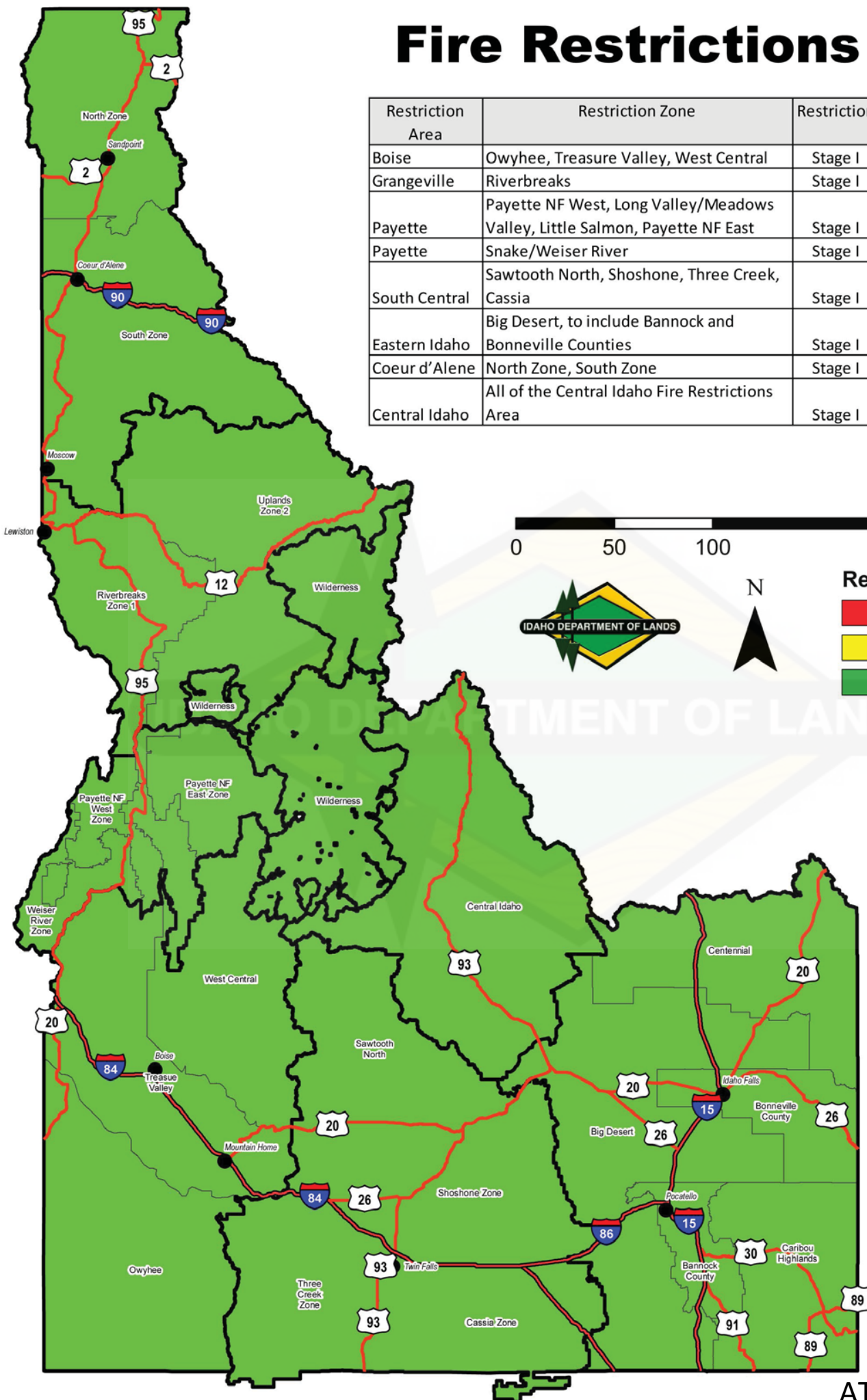
Total Acres Burned by Ownership	
10/5/2018	
Surface Owner	Acres
Idaho Department of Lands	56,029
Idaho Fish and Game	250
Private	95,926
Bureau of Land Management	269,659
Other Federal	16,405
US Forest Service	128,046
Total	566,315

Attachments

1. Idaho Fire Restrictions Map
2. Significant Fires Throughout Idaho

Fire Restrictions 2018

Restriction Area	Restriction Zone	Restriction	Date Enacted	Date Rescinded
Boise	Owyhee, Treasure Valley, West Central	Stage I	3-Aug-18	21-Sep-18
Grangeville	Riverbreaks	Stage I	3-Aug-18	31-Aug-18
Payette	Payette NF West, Long Valley/Meadows Valley, Little Salmon, Payette NF East	Stage I	3-Aug-18	31-Aug-18
Payette	Snake/Weiser River	Stage I	3-Aug-18	21-Sep-18
South Central	Sawtooth North, Shoshone, Three Creek, Cassia	Stage I	3-Aug-18	15-Sep-18
Eastern Idaho	Big Desert, to include Bannock and Bonneville Counties	Stage I	6-Aug-18	31-Aug-18
Coeur d'Alene	North Zone, South Zone	Stage I	10-Aug-18	31-Aug-18
Central Idaho	All of the Central Idaho Fire Restrictions Area	Stage I	11-Aug-18	31-Aug-18



Restriction Stage

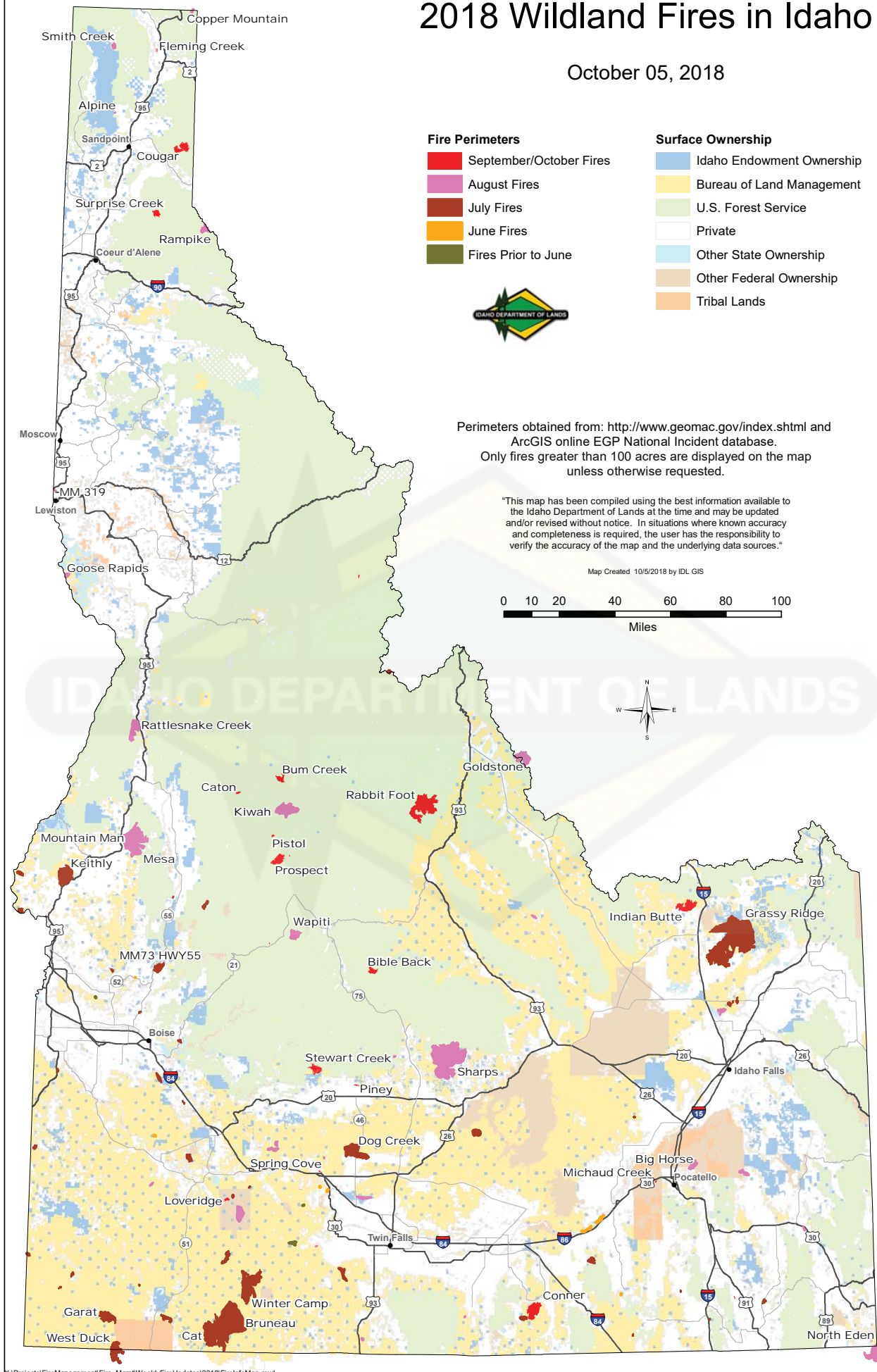
- Stage II
- Stage I
- No Restrictions

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IDAHO DEPARTMENT OF LANDS

2018 Wildland Fires in Idaho

October 05, 2018



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IDAHO DEPARTMENT OF LANDS

LAND BANK AGING REPORT						
Current Remaining Principal Balance By Quarter Received - As of September 30, 2018						
FY Quarter IN	Public School	Normal School	State Hospital South	University of Idaho	All Endowments	FY Quarter EXPIRES
2016-02	\$ 16,628,959	\$ 100,129	\$ 4,741,500	\$ -	\$ 21,470,588	2021-02
2016-03	\$ 1,355,100	\$ 946,000	\$ 1,190,000	\$ -	\$ 3,491,100	2021-03
2016-04	\$ 29,248	\$ -	\$ -	\$ -	\$ 29,248	2021-04
2017-01	\$ 16,590,224	\$ -	\$ -	\$ -	\$ 16,590,224	2022-01
2017-02	\$ 3,721,604	\$ 2,858,000	\$ 9,747,500	\$ -	\$ 16,327,104	2022-02
2017-03	\$ 5,766,250	\$ 10,431,970	\$ 1,593,780	\$ -	\$ 17,792,000	2022-03
2017-04	\$ -	\$ 25,100	\$ -	\$ -	\$ 25,100	2022-04
2018-01	\$ -	\$ 3,331,000	\$ 4,439,000	\$ -	\$ 7,770,000	2023-01
2018-02	\$ 27,869,832	\$ -	\$ 125,500	\$ -	\$ 27,995,332	2023-02
2018-03	\$ -	\$ 2,000,712	\$ 829,888	\$ 5,659,400	\$ 8,490,000	2023-03
2018-04	\$ 10,500	\$ -	\$ -	\$ -	\$ 10,500	2023-04
2019-01		\$ 2,428,000	\$ 1,442,000		\$ 3,870,000	2024-01
TOTAL PRINCIPAL REMAINING	\$ 71,971,717	\$ 22,120,911	\$ 24,109,168	\$ 5,659,400	\$ 123,861,196	

LAND BANK CASH BALANCE (with Interest)	\$ 73,604,917	\$ 22,542,121	\$ 24,651,198	\$ 5,714,044	\$ 126,512,279
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IDAHO DEPARTMENT OF LANDS



M. Dean Buffington :: Chairman
Jerry F. Aldape Irving Littman
Neil A. Anderson Gary L. Mahn
Warren R. Bakes Richelle A. Sugiyama
Gavin M. Gee Chuck Winder

Chris J. Anton :: Manager of Investments

Monthly Report to the Board of Land Commissioners

Investment performance through September 30, 2018

Month: - 0.1% Fiscal year: 3.5%

September was a relatively quiet month in the financial markets. Equities essentially broke-even while we experience losses in fixed income due to rising interest rates. The U.S. economy continues to outperform the rest of the world. In Europe, trade concerns, the Italian budget and Brexit are still stifling sentiment. In Japan, negative interest rates, extreme weather, tariffs and a labor shortage are creating challenges. In China, the economic data reflects slowing growth and they are beginning to feel the impact of tariffs. The sustainability of the U.S. expansion is in large part dependent on the Fed's long-term policy decisions, particularly those related to the pace of interest rate increases and the deleveraging of its balance sheet.

Status of endowment fund reserves

Distributions for FY2019 and FY2020 are well secured. For all endowments, estimated reserves as of September 2018 were at least 6 times the size of the anticipated FY2020 distributions.

Significant actions of the Endowment Fund Investment Board

Meetings: We completed the transition from Aberdeen Asset Management to Wellington Global Opportunities.

Compliance/legal issues, areas of concern

Material deviations from Investment Policy or compliance guidelines for investment managers:
None.

Material legal issues: None.

Changes in board membership or agency staffing: None.

Upcoming issues/events

A special EFIB Board meeting is scheduled on October 30 to interview fixed income managers.

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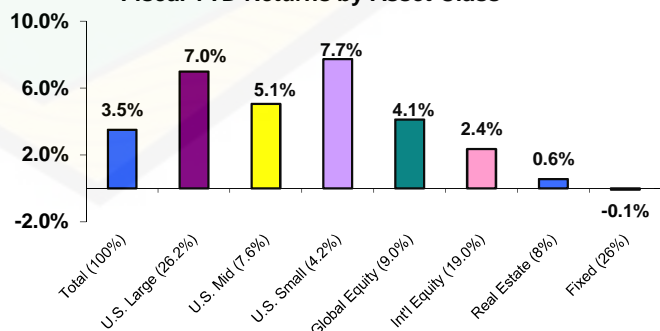
IDAHO DEPARTMENT OF LANDS

	<u>Month</u>	<u>FYTD</u>
Beginning Value of Fund	2,258,303,428	2,189,851,992
Distributions to Beneficiaries	(6,517,200)	(19,551,600)
Land Revenue net of IDL Expenses	15,626,453	19,707,184
Change in Market Value net of EFIB Expenses	(3,729,237)	73,675,868
Current Value of Fund	<u>2,263,683,444</u>	<u>2,263,683,444</u>

<u>September-18</u>		<u>Fiscal Year to Date</u>		<u>Last Five Years</u>	
Total Fund	-0.1%	Total Fund	3.5%	Total Fund	8.1%
38% R3 19% Ax 9% AC 26% BB 8% OD	0.2%	38% R3 19% Ax 9% AC 26% BB 8% OD	3.4%	38% R3 19% Ax 9% AC 26% BB 8% OD	8.0%
Total Fixed	-0.7%	Total Fixed	-0.1%	Total Fixed	2.1%
85% BB Agg, 15% TIPS	-0.7%	85% BB Agg, 15% TIPS	-0.1%	85% BB Agg, 15% TIPS	2.0%
Total Equity	0.1%	Total Equity	5.1%	Total Equity	10.5%
38% R3 19% Ax 9% AC	0.3%	38% R3 19% Ax 9% AC	4.9%	38% R3 30% Ax 9% AC	10.5%
Domestic Equity	-0.1%	Domestic Equity	6.7%	Domestic Equity	13.1%
Russell 3000 (R3)	0.2%	Russell 3000 (R3)	7.1%	Russell 3000 (R3)	13.5%
Global Equity	0.0%	Global Equity	4.1%	Global Equity	6.5%
MSCI ACWI (AC)	0.4%	MSCI ACWI (AC)	4.3%	MSCI ACWI (AC)	8.7%
Int'l. Equity	0.5%	Int'l. Equity	2.4%	Int'l. Equity	5.4%
MSCI ACWI ex-US (Ax)	0.5%	MSCI ACWI ex-US (Ax)	0.7%	MSCI ACWI ex-US (Ax)	4.1%
Real Estate		Real Estate	0.6%		

	<u>Mkt Value</u>	<u>Allocation</u>
Domestic Equity	\$ 900.0	39.8%
Large Cap	612.1	27.0%
Mid Cap	181.2	8.0%
Small Cap	106.8	4.7%
Global Equity	204.7	9.0%
Int'l Equity	420.2	18.6%
Fixed Income	548.2	24.2%
Real Estate	165.8	7.3%
Cash	24.8	1.1%
Total Fund	<u>\$ 2,263.7</u>	<u>100.0%</u>

Fiscal YTD Returns by Asset Class

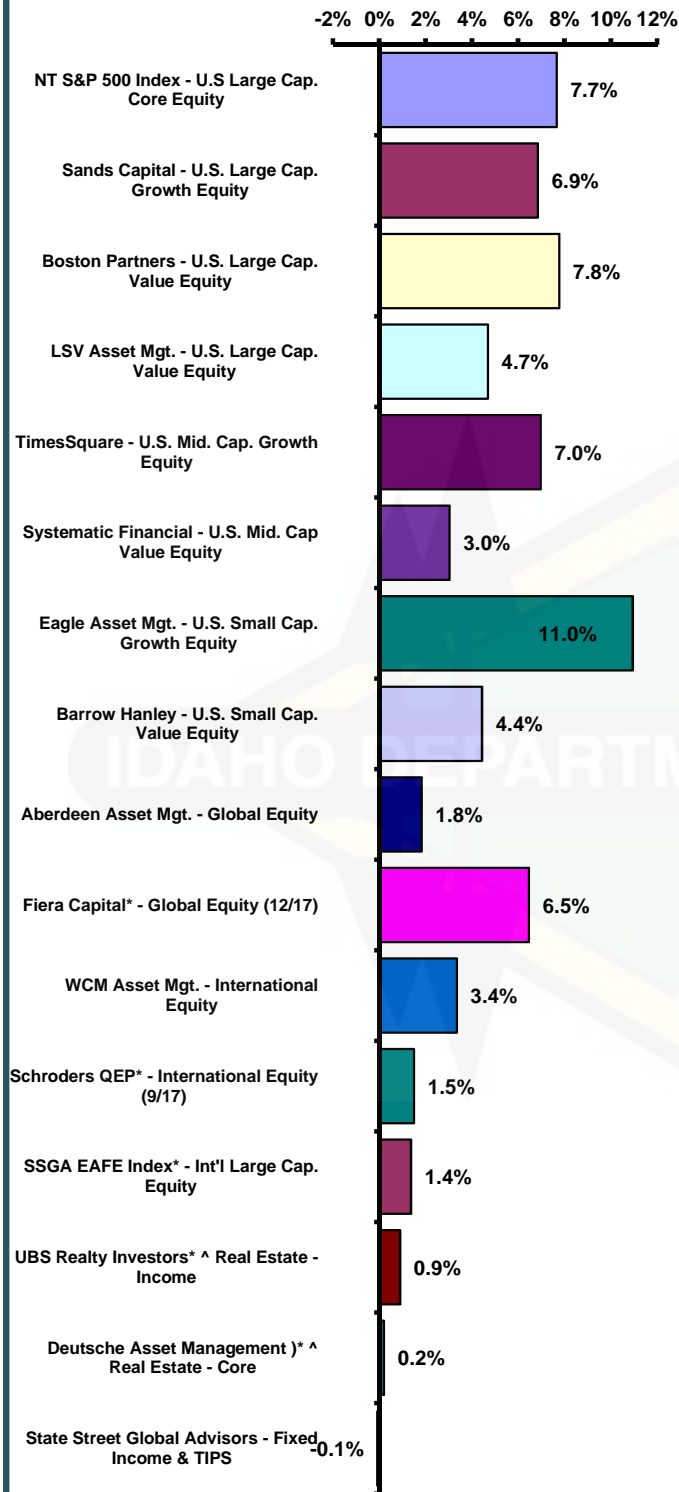
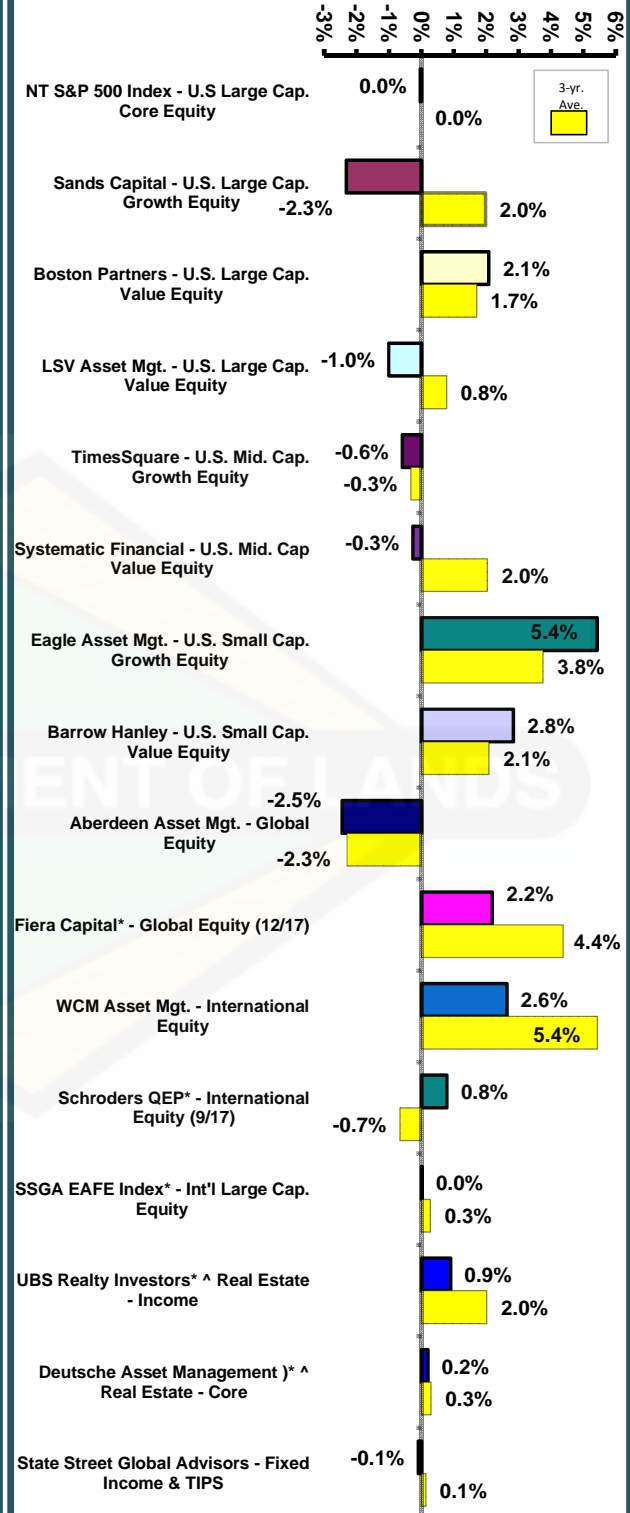


Endowment Fund Staff Comments:

The fund was down 0.1% for the month, 0.3% under the benchmark. The Russell 3000 index was up 0.2%, Russell Midcap down 0.6% and Russell 2000 (small cap) down 2.4%. International equities (MSCI ACWI ex-US) were up 0.5%. Value outperformed Growth, while International equity outperformed Domestic equity. Bonds, as measured by the BBC Aggregate index, were down 0.6% and TIPS were down 1.1%. 8 of 13 active managers beat their benchmark this month. On a FYTD basis, the fund is up 3.5%, 0.1% over benchmark, and 8 of 13 active managers beat their benchmark.

INVESTMENT REPORT

FYTD Manager Returns

Manager Relative Returns
Fiscal YTD and 3-Yr Ave. Annualized*

* ITD return used when manager has less than 3 years. ^ Most recent valuation.

STATE BOARD OF LAND COMMISSIONERS

October 16, 2018

Consent Agenda

Subject

Direction to sell the Idaho Military Division's (IMD) surplus property referred to as "Bonners Ferry Armory" to Boundary County.

Background

On May 15, 2018, the State Board of Land Commissioners (Land Board) directed the Idaho Department of Lands (Department) to solicit interest for the disposition of the Bonners Ferry Armory property, pursuant to the Surplus Property Act (Act), Idaho Code § 58-332 *et seq.* On July 17, 2018, IMD transferred the Bonners Ferry Armory property to the Department (Attachment 1).

Pursuant to the Act, the Department first notified other state agencies to determine whether any were interested in purchasing the property. No state agency expressed interest in the property. The Department then notified and offered the property to tax-supported agencies, including federal, city, and county agencies, to determine if any of them were interested in purchasing the property pursuant to Idaho Code § 58-332(2).

On July 23, 2018, the Boundary County Commissioners submitted a letter expressing interest in the Bonners Ferry Armory property (Attachment 2). No other tax supporting agencies expressed interest in the property. The Department, in accordance with Idaho Code § 58-332(2)(a), scheduled a hearing for public comment regarding the sale of the Bonners Ferry Armory to Boundary County and published notice of the hearing in the local newspaper for five consecutive weeks (Attachment 3).

The public hearing was conducted on September 20, 2018. No one from the public attended the hearing or submitted comments (Attachment 4). IMD then requested that the Department proceed with the sale of the Bonners Ferry Armory property to Boundary County.

Discussion

The Property was appraised in October 2017 and has an "as is" market value of \$675,000. The appraised value includes the improvements. Because IMD has a fifty percent ownership interest in the Property, IMD has agreed to sell the Property for \$337,500. Boundary County holds the remaining fifty percent interest in the property.

If the Land Board approves the sale to Boundary County pursuant to Idaho Code § 58-332(2)(c), Boundary County will have sixty days to accept the terms of the offer outlined in the Purchase and Sale Agreement (Attachment 5). Upon execution of the Purchase and Sale Agreement, Boundary County will have an additional ninety days to fund and close the transaction. Once the proceeds are received at closing, the Department will disburse the funds in accordance with Idaho Code §§ 58-332(4) and 58-333.

Recommendation

Direct the Department to complete the surplus land sale as proposed.

Board Action

Attachments

1. Warranty Deed #491
2. Boundary County Letter of Interest
3. Boundary County Hearing Notice
4. IMD Letter to IDL – Request Proceed with Sale
5. Purchase Sale Agreement

AD 491

WARRANTY DEED

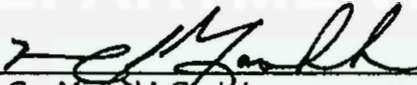
THE STATE OF IDAHO MILITARY DIVISION, an agency of the State of Idaho, with its administrative offices located at 4040 West Guard Street, Building 600, Boise, Idaho 83705-5004 ("Grantor"), does hereby convey, grant and warrant, pursuant to Idaho Code sections 58-331 and 58-332, to THE STATE OF IDAHO, DEPARTMENT OF LANDS, an executive agency of the State of Idaho, for and on behalf of the State Board of Land Commissioners, with its administrative offices located at 300 North 6th Street, Boise, Idaho 83702 ("Grantee"), an undivided fifty percent (50%) interest in the following described real property located in Boundary County, State of Idaho, which is all of Grantor's right, title and interest in the following real property, to wit:

See Exhibit A, attached hereto and incorporated herein.

TO HAVE AND TO HOLD the said premises, with all appurtenances, unto the Grantee, and the Grantee's heirs and assigns, forever. And the Grantor does hereby covenant to and with the Grantee that the Grantor is the owner of an undivided fifty percent (50%) interest in fee simple of said premises; that said premises are free and clear of all liens, judgments, adverse claims, restrictions, easements or encumbrances; and that Grantor will warrant and defend the same from all lawful claims whatsoever.

Executed this 15 day of JUNE, 2018

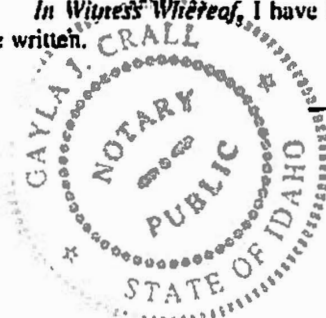
GRANTOR. STATE OF IDAHO MILITARY DIVISION:

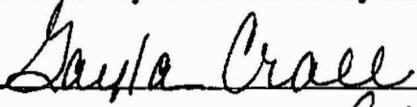

Brig Gen Michael J. Garshak
Commanding General, Idaho National Guard

STATE OF IDAHO }
COUNTY OF ADA } ss.

On this 15 day of June, in the year 2018, before me, a Notary Public in and for said State personally appeared Brig Gen Michael J. Garshak, Commanding General, Idaho National Guard, an Agency of the State of Idaho, known or identified to me to be the person whose name is subscribed to the foregoing instrument on behalf of the State of Idaho Military Division, and acknowledged to me that he executed the same on behalf of the Agency.

In Witness Whereof, I have hereunto set my hand and affixed my official seal on the day and year this certificate above written.




Notary Public residing at: Ada County
My Commission Expires: 03-19-2020

WARRANTY DEED
Page 1 of 1

ATTACHMENT 1

Boundary County Commissioners
Dan R. Dinning, Chairman
LeAlan L. Pinkerton, Commissioner
Walt Kirby, Commissioner



Telephone (208) 267-7723
Fax: (208) 267-7814
commissioners@boundarycountyid.org

BOUNDARY COUNTY
P. O. Box 419
Bonners Ferry, ID 83805

July 23, 2018

Joshua Purkiss, Program Manager
Idaho Department of Lands
Real Estate Services Bureau
Division of Lands and Waterways
300 N. 6th Street, Suite #103
P.O. Box 83720
Boise, Idaho 83720-0050

RE: Bonners Ferry Surplus Property

Dear Mr. Purkiss,

Boundary County, Idaho is in receipt of your letter dated July 13, 2018 regarding the disposition of the property located at 6606 Main St. in Bonners Ferry.

Boundary County Commissioners are in need of and interested in acquiring this property. We look forward to working with you to accomplish this sale.

Respectfully,


Dan R. Dinning, Chairman
Boundary County Board of Commissioners

Order Confirmation

Ad Order Number
0000215319

Customer
IDAHO DEPARTMENT OF LANDS

Payer Customer
IDAHO DEPARTMENT OF LANDS

PO Number

Sales Rep.
bfnhouse

Customer Account
35050

Payer Account
35050

Ordered By
sm

Order Taker
sminehart

Customer Address
PO BOX 83720
BOISE ID 83720 USA

Payer Address
PO BOX 83720
BOISE ID 83720 USA

Customer Fax

Order Source

Customer Phone
2083340288

Payer Phone
2083340288

Special Pricing

Tear Sheets
0

Proofs
0

Affidavits
1

Blind Box

Promo Type

Materials

Invoice Text
Legal #9963 NOTICE OF PUBLIC HEARING

Ad Order Notes

Net Amount
\$287.15

Tax Amount
\$0.00

Total Amount
\$287.15

Payment Method
Invoice

Payment Amount
\$0.00

Amount Due
\$287.15

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that the State of Idaho Military Division is considering the sale of an undivided fifty percent (50%) interest in real property to Boundary County, pursuant to Idaho Code §§ 58-331 and 58-332. The real property is located at 6606 Main Street, Bonners Ferry, Idaho and includes two buildings, a parking, and other acreage that is currently being used by Boundary County, which is also the other fifty percent (50%) owner. The real property considered for disposal is known as Bonners Ferry Readiness Center, and is more particularly described as follows:

Commencing at a point 660 feet East of the West quarter corner of Section Thirty-four (34), Township Sixty-two (62) North, Range One (1) East B.M., thence South 529 feet to the North Side of State Highway No. 95; thence in a Northeast direction on the North Side of said State Highway No. 95, 523 feet to a point; thence North 44 degrees 30 Minutes West 228 feet to a point; thence West 198 feet to the place of beginning.

A public hearing is scheduled to take place at the Boundary County Extension Office Annex Building, 6447 Kootenai Street, Bonners Ferry, Idaho 83805, on the 20 th day of September 2018 from 9:00 am to 12:00 pm. The purpose of the hearing is to receive public comment on the proposed sale of the real property from the State of Idaho Military Division to Boundary County for the appraised value of \$337,500. Any questions should be directed to: Idaho Department of Lands, Zane Lathim, 300 N. 6th Street, Suite 103, P.O. Box 83720, Boise, Idaho 83720-0050. Persons requiring special accommodation at the public hearing must contact Zane Lathim at (208) 334-0288, at least seven (7) days prior to the hearing date to make arrangements.

BY ORDER OF THE STATE BOARD OF LAND COMMISSIONERS

David Groeschl, Director, Idaho Department of Lands.
BFH Legal 9963

August 9, 16, 23, 30, 2018
September 6, 2018

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IDAHO DEPARTMENT OF LANDS



IDAHO ARMY NATIONAL GUARD
CONSTRUCTION AND FACILITIES MANAGEMENT OFFICE
4715 SOUTH BYRD STREET
BOISE, IDAHO 83705-8095



April 25, 2018

State Board of Land Commissioners
Idaho Department of Lands
954 West Jefferson Street
P.O. Box 83720
Boise, ID 83720-0050

Dear Commissioners:

The Military Division of the State of Idaho declares as surplus to its needs the following property: 2.18 acres of land to include the real property on site located at the NW ¼ of the SW ¼ of Sec. 34, T. 62 N., R. 1 E., B.M., Bonners Ferry, Boundary County, Idaho.

We hereby request that the above described lands be approved for sale. If you have questions, please feel free to contact me at 208-272-3728, or email me at james.c.packwood.mil@mail.mil.

Sincerely,

J. Cole Packwood
Colonel, Idaho Army National Guard
Construction & Facilities Management Officer

- 4 Encls
1. Property Map
 2. Record of Survey
 3. Bonners Ferry Readiness Center Floor Plan
 4. Warranty Deed Dated February 18, 1957

Enclosure 1
Property Map

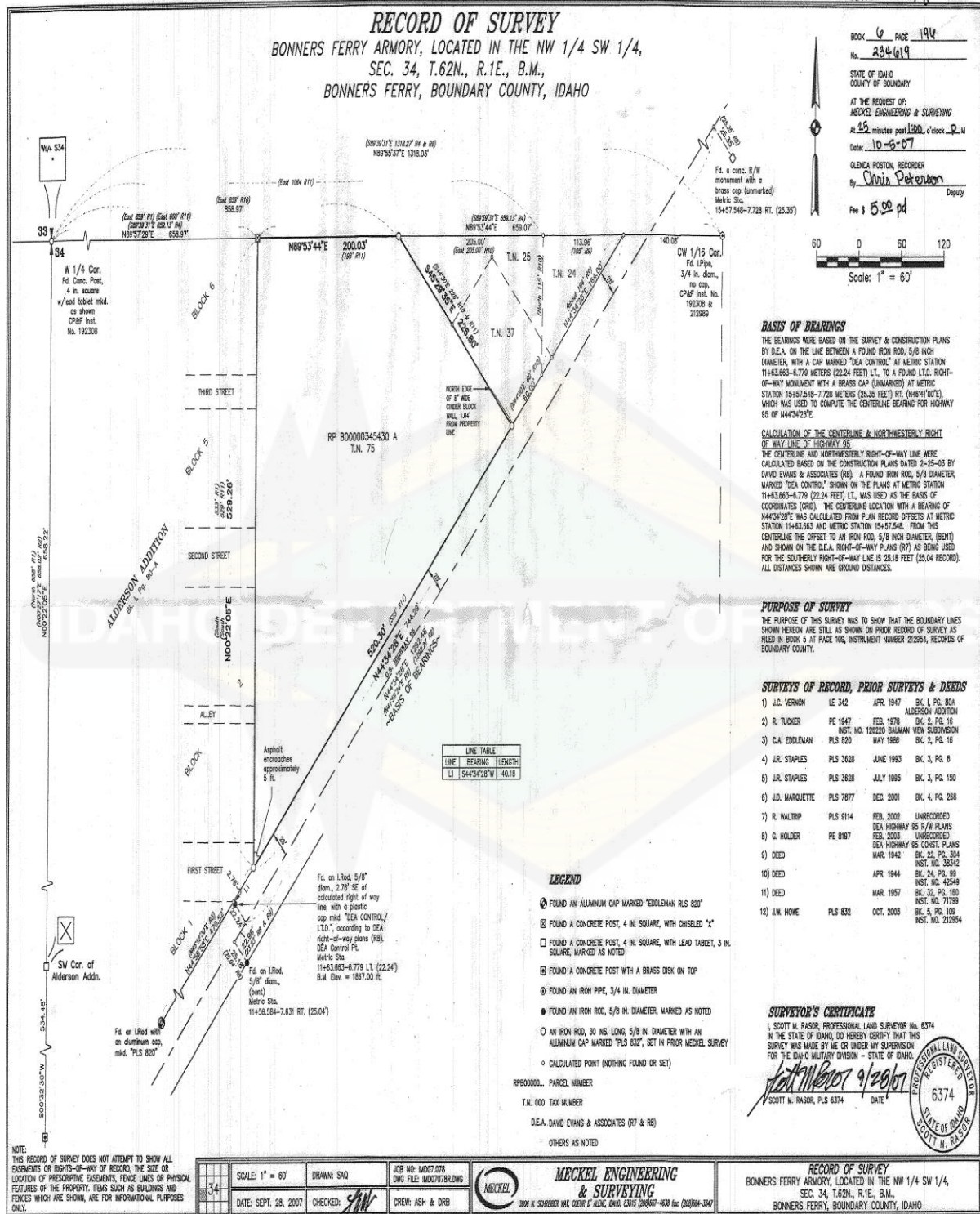
Bonniers Ferry Readiness Center 2018

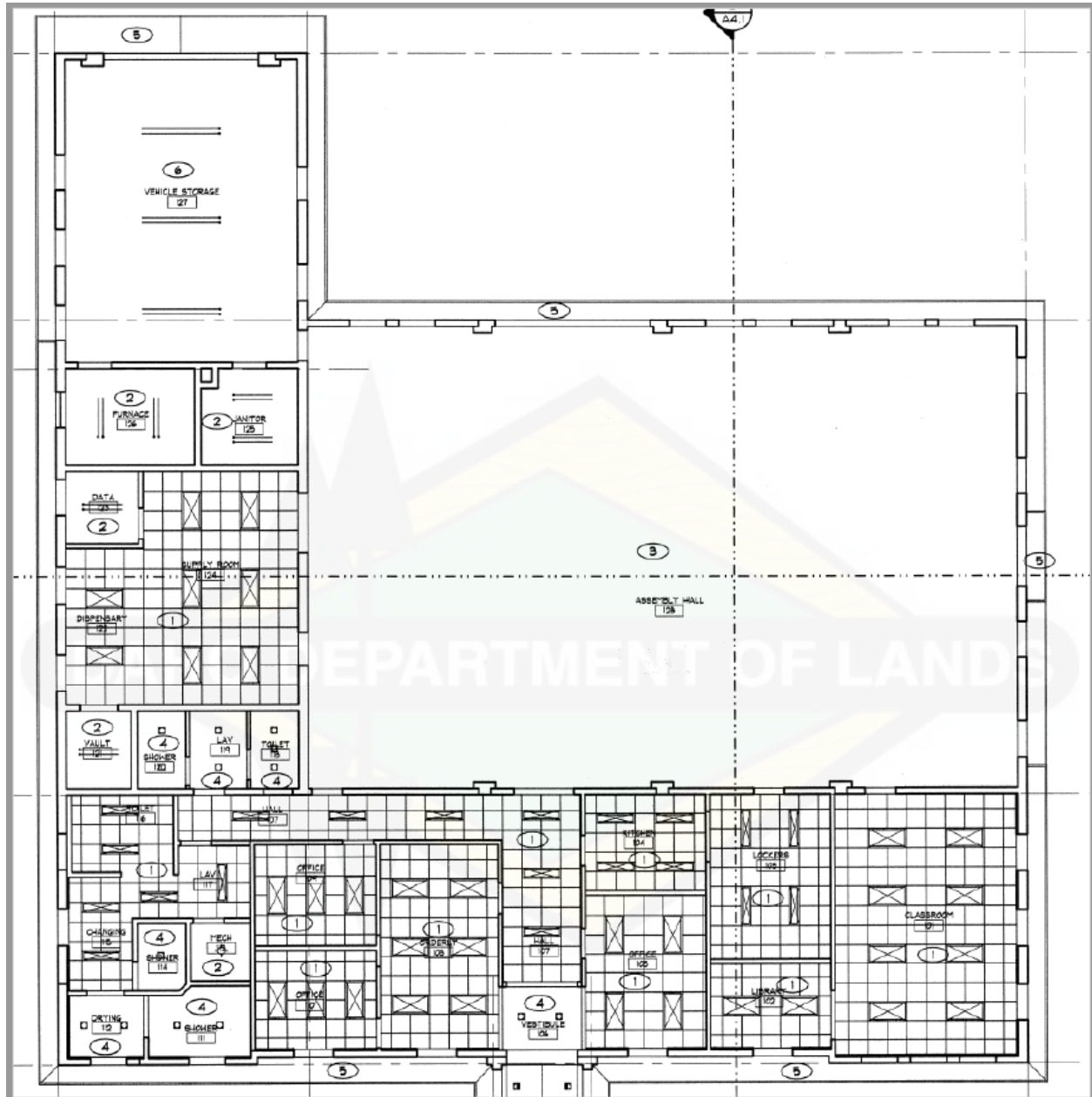


Scale 1:200



Enclosure 2
Record of Survey





Enclosure 4
Warranty Deed

THIS INDENTURE, Made this 18th day of February
in the year of our Lord one thousand nine hundred and Fifty-seven, between
Boundary County

~~xxx~~ ~~County~~, State of Idaho
the part y of the first part, and State of Idaho

~~xxxxxxx~~ ~~xxCountyxx~~ ~~xxStatexx~~
the part y of the second part.

WITNESSETH, That the said part y of the first part, for and in consideration of the sum of
One and no/100-----DOLLARS,
lawful money of the United States of America,
to it in hand paid by the said
party of the second part, the receipt whereof is hereby acknowledged, ha granted, bargained
and sold, and by these presents do grant, bargain, sell, convey and confirm unto the said part y
of the second part, and to its successors heirs and assigns forever, all of the following described real estate,
situated in Bonners Ferry, County of Boundary, State of Idaho, to-wit:

An undivided one-half interest in the following property:

Commencing at a point 660 feet East of the West quarter
corner of Section Thirty-four (34), Township Sixty-two (62) North
Range One (1) East B. M., thence South 529 feet to the North Side
of State Highway No. 95; thence in a Northeast direction on the
North side of said State Highway No. 95, 523 feet to a point; thence
North 44 degrees 30 Minutes West 228 feet to a point; thence West
198 feet to the place of beginning.

TOGETHER, With all and singular the tenements, hereditaments and appurtenances thereunto
belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, rents,
issues and profits thereof; and all estate, right, title and interest in and to the said property, as well
in law as in equity, of the said part y of the first part.

TO HAVE AND TO HOLD, All and singular the above mentioned and described premises, together
with the appurtenances, unto the part y of the second part, and to its successors heirs and assigns forever,
and the said party of the first part, and its successors heirs and assigns forever, in the quiet and peaceable
possession of the said part y of the second part, its successors heirs and assigns, against the said part y
of the first part, and its successors heirs and assigns, and against all and every person and persons whomsoever, lawfully
claiming or to claim the same shall and will WARRANT and by these presents forever DEFEND.

IN WITNESS WHEREOF, The said party and seal the day and year first above written. of the first part has hereunto set its hand

BOARD OF COUNTY COMMISSIONERS

SIGNED, SEALED AND DELIVERED IN PRESENCE OF

William F. Maas [Seal]
Roy W. Glauner [Seal]
J. L. Van Etten [Seal]
[Seal]

STATE OF IDAHO,

COUNTY OF Boundary

} ss.

On this 18th day of February in the year 1957, before me

Estella Wright

, a Notary Public

in and for said State, personally appeared William F. Maas, J. L. Van Etten, and Roy W. Glauner, members of the Board of County Commissioners,

known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

Estella Wright

Notary Public for the State of Idaho,
Residing at Bonners Ferry, Idaho.

My commission expires 10/6/59

COMPAREL 71799
No.

WARRANTY DEED

Boundary County

— TO —

State of Idaho

Dated Feb. 18, 1957

STATE OF IDAHO,

COUNTY OF } ss.

I hereby certify that this instrument was filed for record at request of

Car. Carson
at 30 minutes past 11
o'clock A. M., this 18 day
of March, A. D. 1957

in my office, and duly recorded in Book 32

of *32* at page 60

By *Estella Wright* Ex-officio Recorder.

By *D. Weldon* Deputy.

Fees, \$
Mail to

**REAL ESTATE PURCHASE AND SALE AGREEMENT
SALE NO.**

This Real Estate Purchase and Sale Agreement ("Agreement") is made effective this ____ day of _____, 2018, by and between the **STATE BOARD OF LAND COMMISSIONERS**, acting by and through the **IDAHO DEPARTMENT OF LANDS**, whose mailing address is PO Box 83720, Boise, Idaho 83720-0050 ("**Seller**"), and **BOUNDARY COUNTY**, a political subdivision of the State of Idaho, whose mailing address P.O. Box 419, Bonners Ferry, Idaho 83805, ("**Buyer**"), for the purchase and sale of all of Seller's interest in that certain real property commonly known as the Bonners Ferry Armory parcel, situated in Boundary County, Idaho (the "**Property**"), and legally described as follows:

Beginning at a point 660 feet East of the West quarter corner of Section Thirty-four (34), Township Sixty-two (62) North Range One (1) East B.M., thence South 529 feet to the North side of State Highway No. 95; thence in a Northeast direction on the North side of said State Highway No. 95, 523 feet to a point; thence North 44 degrees 30 minutes West 228 feet to a point; thence West 198 feet to the place of beginning.

1. Purchase Price; Payment. The total purchase price for the Property is Three Hundred Thirty-Seven Thousand, Five Hundred Dollars (\$337,500.00), which amount, including any deposits paid, shall be paid in cash or other readily available funds at closing.

1.1 Earnest Money Deposit. Upon execution of this Agreement, Buyer shall pay a non-refundable deposit equal to five percent (5%) of the purchase price in the amount of Sixteen Thousand Eight Hundred Seventy-Five Dollars (\$16,875.00), which will be held as an earnest money deposit. The deposit shall be applied against the total purchase price at closing.

1.2 Extension of Closing. Buyer may extend the date of closing one time by thirty (30) calendar days with an additional non-refundable deposit equal to five percent (5%) of the purchase price to Seller in the amount of Sixteen Thousand Eight Hundred Seventy-Five Dollars (\$16,875.00); provided however, that in the event of a successful closing, the additional deposit shall be applied to the purchase price at closing.

1.3 Additional Fees. In addition to all other money, deposits, costs, and fees to be paid by Buyer, Buyer shall pay at closing, the following:

1.3.1 All closing costs, escrow fees, title insurance, if desired, and all recording fees;

1.3.2 Appraisal Fee of One Thousand Eight Hundred Dollars (\$1,800.00);

1.3.3 Public Notice – Bonners Ferry Herald Invoice of Two Hundred Thirty-Four Dollars and Seventy-Three Cents (\$234.73); and

1.3.4 Surplus Administration Fee – equal to two and a half percent (2 ½%) of the purchase price in the amount of Eight Thousand Four Hundred Thirty-Seven Dollars, Fifty Cents (\$8,437.50).

2. Included Items. All of Seller's interest in the fixtures and improvements currently existing on the Property.

3. Closing.

3.1 Time for Closing; Termination Date; Closing. The sale shall be closed in the office of the Commonwealth Land Title Insurance Company, whose address is 6977 Main Street, P.O. Box 749, Bonners Ferry, Idaho 83805-5005 ("**Closing Agent**"), within thirty (30) days of execution of this Agreement. As stated in Section 1.2, above, Buyer may extend the closing for up to one separate thirty (30) day period. At closing, Buyer and Seller shall deposit in escrow with Closing Agent all instruments, documents, and monies necessary to complete the sale in accordance with this Agreement. As used herein, "**closing**" or "**date of closing**" means the date on which all appropriate documents are recorded, and proceeds of the sale are available for disbursement to Seller. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available for disbursement to Seller.

3.2 Proration. Taxes and assessments for the current year, if any, shall be prorated as of the date of

closing.

3.3 Possession. Buyer shall be entitled to possession of the Property upon closing.

4. Conveyance of Title. At closing, Seller shall execute and deliver to Buyer a State Deed conveying Seller's interest in the title to the Property.

5. Title Insurance. The costs of a standard title insurance policy and/or endorsements, if any, shall be incurred by Buyer.

6. Representations and Warranties. Buyer acknowledges that Buyer was and is responsible for making a thorough inspection of the Property at its own expense, as well as thoroughly researching any information available about the Property and its surroundings prior to the date of this Agreement. Prior to signing this Agreement, Buyer acknowledges that Buyer or its designee was afforded the right to have an inspection(s) of the physical condition of the Property at Buyer's expense. This Agreement is NOT contingent upon an inspection by Buyer. Buyer has satisfied itself as to the condition of the Property, and no further inspections shall impact Buyer's duty at Closing. Buyer is purchasing the Property "AS IS" and "WHERE IS", without any warranties, express or implied, from Seller. Seller will not make any repair or improvement to the Property. Buyer further acknowledges that Buyer is not relying upon any statement or representation by Seller or by any broker(s) or any other representative of Seller that are not expressly set forth in this Agreement.

BUYER ACKNOWLEDGES AND AGREES THAT BUYER HAS BEEN INFORMED AND UNDERSTANDS THAT SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY ASPECT, IMPROVEMENT, FIXTURE OR CONDITION OF THE PROPERTY OR THE INCLUSIONS, INCLUDING, WITHOUT LIMITATION, THE EXISTENCE OF HAZARDOUS WASTE OR MATERIALS THEREON, OR THE SUITABILITY OF THE PROPERTY FOR BUYER'S INTENDED USE, TO BUYER BEYOND THOSE EXPRESSLY PROVIDED IN THIS AGREEMENT.

6.1 Authority. Seller has full power and authority to execute this Agreement and perform Seller's obligations hereunder.

6.2 Parties In-Possession. The Property is not subject to any lease, tenancy, or rights of any person-in-possession except as have been disclosed to Buyer.

7. Buyer's Authority. Buyer represents and warrants to Seller that at the date of the execution of this Agreement, and at the date of closing, that Buyer, and any person signing on behalf of Buyer, has and shall have full power and authority to execute this Agreement and to perform Buyer's obligations hereunder.

8. Default; Attorney Fees. Time is of the essence of this Agreement. If Seller defaults hereunder, Buyer may seek specific performance of this Agreement, damages or rescission, and in the event of rescission, Buyer shall be entitled to a return of any deposit, whether or not identified as non-refundable, upon demand; and, in such event, Seller hereby releases all claims to any such deposit in the event of such default. If Buyer defaults, all deposits shall be forfeited to Seller as liquidated damages; and, upon retention of such deposits by Seller, Buyer shall have no further obligation or liability hereunder. In any suit, action or appeal therefrom, to enforce this Agreement or any term or provision hereof, or to interpret this Agreement, the prevailing party shall be entitled to recover its costs incurred therein (and on appeal), including reasonable attorney fees.

9. Notices. Any notice under this Agreement shall be in writing and be delivered in person or by public or private courier service (including U.S. Postal Service Express Mail), by certified mail, by email or by facsimile upon confirmation of receipt if sent via email or facsimile. Any notice given by certified mail shall be sent with return receipt requested. Any notice given by email or facsimile shall be verified by telephone. All notices shall be addressed to the parties at the addresses set forth in this Agreement, or at such other addresses as the parties may from time to time direct in writing. Any notice shall be deemed to have been given on the earlier of (a) actual delivery or refusal, (b) three (3) days after mailing by certified mail, or (c) the day email or facsimile delivery is verified.

10. Commissions. Not applicable.

11. Counterparts. This Agreement may be executed in any number of counterparts for the convenience of the parties, all of which, when taken together and after execution by all parties hereto, shall constitute one and the same Agreement.

12. General. This is the entire agreement of Buyer and Seller with respect to the matters covered hereby and supersedes all prior agreements between them, written or oral. This Agreement may be modified only in writing, signed by Buyer and Seller. Any waiver must be in writing. No waiver of any right or remedy in the event of default shall constitute a waiver of such right or remedy in the event of any subsequent default. This Agreement shall be governed by the laws of Idaho. This Agreement is for the benefit only of the parties hereto and shall inure to the benefit of and bind the heirs, personal representatives, successors and assigns of the parties hereto. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.

13. Assignment. Buyer may only assign its rights hereunder to any person(s) or entities with the prior written consent of Seller.

Executed effective the date first set forth above.

SELLER:

STATE BOARD OF LAND COMMISSIONERS,
acting by and through the **IDAHO DEPARTMENT**
OF LANDS

Signed: _____

By: _____

Its: Director of the Idaho Department of Lands

Seller's Address:

300 N. 6th St. Suite 103
P.O. Box 83720
Boise, ID 83720-0050
208-334-0200

Telephone:

BUYER:

BOUNDARY COUNTY,
a political subdivision of the State of Idaho

Signed: _____

By: _____

Its: _____

Buyer's Address:

Boundary County
P.O. Box 419
Bonners Ferry, Idaho 83805

Telephone:

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IDAHO DEPARTMENT OF LANDS



Idaho State Board of Land Commissioners

C. L. "Butch" Otter, Governor and President of the Board

Lawrence E. Denney, Secretary of State

Lawrence G. Wasden, Attorney General

Brandon D Woolf, State Controller

Sherri Ybarra, Superintendent of Public Instruction

David Groeschl, Secretary to the Board

Be it remembered, that the following proceedings were had and done by the State Board of Land Commissioners of the State of Idaho, created by Section Seven (7) of Article Nine (IX) of the Constitution.

State Board of Land Commissioners Regular Meeting

September 18, 2018

Draft Minutes

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, September 18, 2018, in the Capitol, Lincoln Auditorium, Lower Level, West Wing, 700 W. Jefferson St., Boise, Idaho. The meeting began at 9:00 a.m. The Honorable Governor C. L. "Butch" Otter presided. The following members were present:

Honorable Secretary of State Lawrence Denney

Honorable Attorney General Lawrence Wasden

Honorable State Controller Brandon Woolf

Honorable Superintendent of Public Instruction Sherri Ybarra

For the record, Governor Otter recognized the presence of all Board members.

Director Groeschl mentioned that a number of new employees were in attendance at the Land Board meeting as part of the Department's onboarding process.

1. Director's Report

Endowment Transactions

A. Timber Sales – August 2018

Discussion: Director Groeschl noted one correction to the report on page 1 in the Proposed Timber Sales for Auction table—Peterson Face has a volume of 2.5 MMBF; the advertised net value is \$742,798 dollars, not \$2,798 as shown.

B. Leases and Permits – August 2018

Discussion: None.

Status Updates

C. Cottage Site

Discussion: Controller Woolf inquired if all the lots sold that were advertised for the auction. Director Groeschl said, yes, all lots did sell at this auction.

D. Fire Season

Discussion: Governor Otter remarked that the number of human-caused fires continues to grow, seemingly every year, up to 183 this year. Governor Otter asked if the Department is doing a good enough job of alerting folks when they go into the forest, to be careful and not start a wildfire. Director Groeschl replied that the Department is looking at how to beef up its fire prevention messaging. Director Groeschl stated that all agencies, including the Department as well as the Forest Service and BLM, work diligently to get prevention messaging out to the public. Director Groeschl added that although Idaho is not currently in fire restrictions, a new release was sent out by the Department to remind hunters that even though there are no restrictions in place to make sure that their warming and cooking fires are out before they leave because there is still the threat of fire. Director Groeschl commented that Idaho has not yet had a season-ending event. Governor Otter asked if the Department keeps track of subsets of fire starts, such as discarded cigarette as opposed to a campfire that was not attended. Director Groeschl indicated the Department does have several categories—debris burning is one of the biggest ones; also things like campfires, intentionally set fires, equipment started fire, arson-type fires. If the Department can determine cause—if somebody flicks a cigarette butt along the highway the fire investigators can typically find some remnant of that. The Department does track human causes by category to better target its prevention messaging.

Governor Otter mentioned that not the most costly but one of the worst fires early on this season was a fire intentionally set by the Forest Service; it took two weeks before it was declared out of control. Governor Otter wondered if that is a human-caused fire. Director Groeschl said it was probably a prescribed burn that got away and it would be categorized as human-caused. Governor Otter inquired if there is an incident report in that event to record where the failure occurred: was it climate, wind; what did the Forest Service misjudge for that fire to get away like it did. Director Groeschl answered that he did not have details on that specific fire, but after every fire like that one there is an after-action review done by either the agency or the team that is managing the fire. The report from that review would capture lessons learned and what factors may need to be closely considered before conducting future controlled burns.

E. Resource Protection and Assistance

Discussion: None.

2. Endowment Fund Investment Board Manager's Report – Presented by Chris Anton, EFIB Manager of Investments

- A. Manager's Report; and
- B. Investment Report

Discussion: Mr. Anton reported that the endowment fund portfolio was up 1.5% for the month of August and is up 3.6% fiscal year-to-date, adding that through close of business yesterday, the fund was up 2.7%. Mr. Anton remarked that domestic equities had positive gains for the month while international and emerging market equities experienced losses. The U.S. economy continues to be the star of the global economic show, while international and emerging market equities are struggling; they have been under pressure due to rising interest rates, stronger dollar and trade tensions, and lower overall economic growth in the

rest of the world. Mr. Anton referred to Attachment B [Investment Report], the fiscal year-to-date results in the middle column show domestic equities up 6.9% and international equities up 1.8%; again, U.S. stock market has really outperformed. Calendar year-to-date, emerging markets are down almost 20%. Mr. Anton noted that investors have really been watching the yield curve—the yield on treasury bonds for different periods of maturities—because that is a leading economic indicator for potential recession. As the feds raise short-term rates, the difference between the 2-year treasury and the 10-year is only about 0.2%. Right now the 2-year treasury yield is at 2.8%, the 10-year is about 3%, so that is being closely monitored. Other than that there are not any real signs of a recession coming down the road; the U.S. economy is very strong.

Mr. Anton indicated that distributions for FY2019 and FY2020 are well secured. As of the end of August reserves are at least six times the anticipated distributions in FY2020. Mr. Anton advised that the transfer of \$50.3 million from the reserves into the permanent fund approved by the Land Board last month has been completed. Mr. Anton mentioned that on August 17th the Investment Board acted to terminate one of its global equity managers, Aberdeen Asset Management, and replace them with Wellington Global Opportunities; that transition should be complete this month. In conclusion, Mr. Anton noted that a special EFIB board meeting will be held on October 30th to interview fixed income managers. The Land Board was previously informed that the Investment Board elected to move 8% of the portfolio into an actively managed fixed income fund; EFIB expects approval of the fund manager at the conclusion of that meeting.

Consent—Action Item(s)

3. Results of July-August, 2018 Grazing Conflict Auctions – Staffed by Jason Laney, Program Manager-Grazing, Ag, Conservation

Discussion: Controller Woolf inquired if the Department keeps track of the characteristics of these allotments such as if they are fenced, is there water on them, is there easement access. Controller Woolf asked if the Department has a good understanding of the type of allotments these are, how they are different and why they were conflicted. Director Groeschl replied that the Department does look at the characteristics. Typically the improvement value would be fencing or stock water capability. Director Groeschl pointed out that for these conflicted leases, only one lease in the Southwest Supervisory Area had improvement value and that was for fencing on that allotment. Director Groeschl indicated that as the Department has looked at these over the years, staff has not found a real trend as to which ones receive a conflicted auction and which ones do not. It tends to be smaller pieces where there is a variety of private ground around them; some have access, some do not. Some have improvements on them, some do not. The Department has not really found any sort of correlation on grazing leases that receive a conflict auction.

Recommendation: Direct the Department to award the grazing leases to: Grassy Hills, LLC (G700294), 7 J Livestock (G700302), Oneida Farms, Inc. (G700297), Justin Posey (G700299), Forrest Arthur (G700304), and Warren Budell (G600247).

4. Approval of Minutes – August 17, 2018 Special Meeting (Boise)

5. Approval of Minutes – August 21, 2018 Regular Meeting (Boise)

Consent Agenda Board Action: A motion was made by Attorney General Wasden that the Board adopt and approve the Consent Agenda. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Governor Otter remarked that the Board is probably aware of the Supreme Court decision on federal water rights that the feds cannot have a water right because they cannot put it to beneficial use; they do not own the cattle. Governor Otter commented that in some cases state lands are dependent on a water right on federal lands. Governor Otter noted that it would be appropriate for the Department to ask somebody from Water Resources, probably the Director, to come and give the Board an update. Governor Otter said he can see the possibility where, however that turns out, it may not diminish the value of our state lands but the Board needs to be ready in case it does. There are over 17,000 water rights that the feds have, Forest Service and BLM; they are intermingled with state lands and it is important that this Board be informed. Director Groeschl offered to make the necessary arrangements.

Regular—Action Item(s)

Director Groeschl announced that testimony would be taken for agenda item 7-Proposed Legislation, and asked interested persons to add their names to the sign-in sheet available on the back table.

6. FY2020 Department of Lands Budget – *Presented by Debbie Buck, Financial Officer*

Recommendation: Approve the Department's FY 2020 budget request as submitted to the Division of Financial Management and the Legislative Services Office on Tuesday, September 4, 2018.

Discussion: None.

Board Action: For the record, Governor Otter stated the Chair will not vote on this item.

A motion was made by Controller Woolf that the Board adopt the Department's recommendation and approve the Department's FY 2020 budget request as submitted to the Division of Financial Management and the Legislative Services Office on Tuesday, September 4, 2018. Attorney General Wasden seconded the motion. The motion carried on a vote of 4-0. Governor Otter recused himself from voting on this item.

7. Proposed Legislation – *Presented by Bill Haagenson, Deputy Director*

Recommendation: The Department recommends the Land Board approve the legislative proposals and direct the Department to proceed with the 2019 executive agency legislation process.

Discussion, first legislative proposal: Testimony was provided by Mr. David Easley, president of the Idaho Forest Owners Association. Mr. Easley stated Idaho Forest Owners Association submitted a letter in support of the proposal, adding that their Board of Directors voted unanimously to support the proposed fee increase.

Discussion, second legislative proposal: Governor Otter asked about the definition of developed, wondering if that includes roads. Mr. Haagenson said it would not necessarily include roads, noting that the more common definition of developed as it pertains to conservation easements is other uses such as housing developments.

Board Action: A motion was made by Attorney General Wasden that the Board adopt the Department recommendation to approve the legislative proposals and direct the Department to proceed with the 2019 executive agency legislation process. Controller Woolf seconded the motion. Governor Otter noted that the motion was for both issues; Attorney General Wasden concurred. The motion carried on a vote of 5-0.

Information

None

At 9:39 a.m. a motion was made by Attorney General Wasden to resolve into Executive Session pursuant to Idaho Code § 74-206(1)(c), § 74-206(1)(d) and § 74-206(1)(f) to acquire an interest in real property which is not owned by a public agency; to consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code; and to discuss the legal ramifications of and legal options for pending litigation or controversies not yet being litigated but imminently likely to be litigated. Attorney General Wasden requested that a roll call vote be taken and that the Secretary record the vote in the minutes of the meeting. Controller Woolf seconded the motion.

Roll Call Vote: *Aye:* Denney, Wasden, Woolf, Ybarra, Otter; *Nay:* None; *Absent:* None.

For the record, the Board took a brief recess prior to entering into Executive Session.

Executive Session

- A. Idaho Code § 74-206(1)(c)(d) – to conduct deliberations concerning labor negotiations or to acquire an interest in real property which is not owned by a public agency; and to consider records that are exempt from disclosure as provided in chapter 1, title 74, Idaho Code. [TOPIC: Acquisition(s)]

At 10:32 a.m. the Board resolved out of Executive Session by unanimous consent. No action was taken by the Board during the Executive Session.

Regular—Action Item(s)

8. Property Acquisition

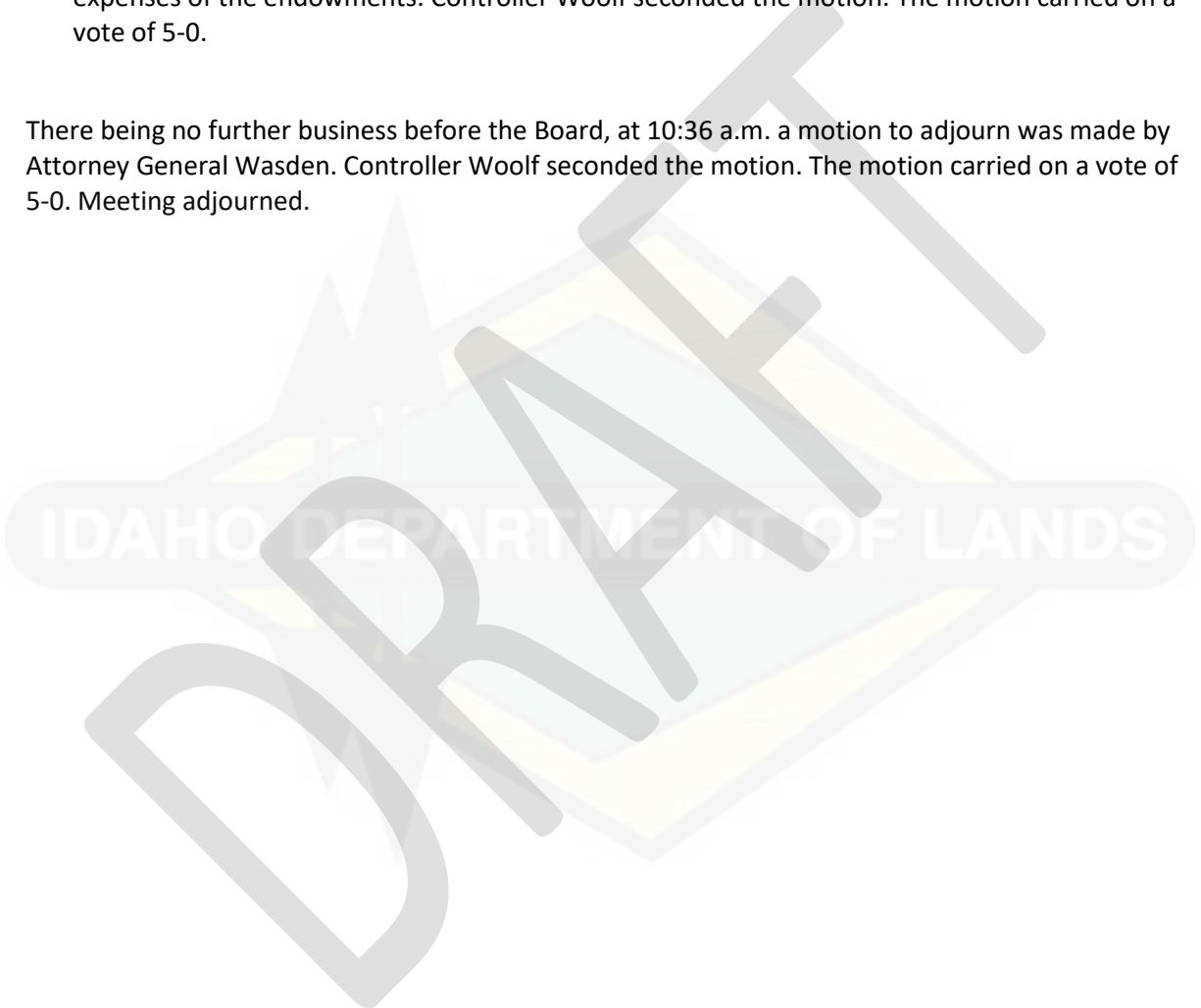
Discussion: None.

Board Action: A motion was made by Attorney General Wasden that the Board authorize the Director of the Department of Lands to proceed with negotiation of purchase and sale agreements to acquire the lands identified as Projects One through Three during the Executive Session, upon prices and terms consistent with the Land Board Acquisition Policy adopted by this Board. Attorney General Wasden further moved that the Board authorize the Director to expend funds in excess of \$100,000 for such purpose from the Land Bank Fund. Controller Woolf seconded the motion. Governor Otter commented the vote is on two items. Attorney General

Wasden clarified the vote is on one matter, explaining that there are three projects involved in this single motion—Projects One, Two and Three. The motion carried on a vote of 5-0.

Board Action: A motion was made by Attorney General Wasden that the Board authorize the Director of the Department of Lands to proceed with negotiation of a contingent purchase and sale agreement to acquire the lands identified as Project Four during the Executive Session, upon prices and terms not to exceed the amount of \$375,000. Attorney General Wasden further moved that the Board authorize the Director to expend funds in excess of \$100,000 for such purposes from funds available to the Department for the payment of administrative costs and/or expenses of the endowments. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

There being no further business before the Board, at 10:36 a.m. a motion to adjourn was made by Attorney General Wasden. Controller Woolf seconded the motion. The motion carried on a vote of 5-0. Meeting adjourned.



STATE BOARD OF LAND COMMISSIONERS

October 16, 2018

Regular Agenda

Subject

Adopt the pending rule for IDAPA 20.04.01 *Rules Pertaining to Forest Fire Protection*

Authority

Title 38, Chapter 1, Idaho Code – Idaho Forestry Act

Title 38, Chapter 4, Idaho Code – Fire Hazard Reduction Law

IDAPA 20.04.01 – Rules Pertaining to Forest Fire Protection

IDAPA 20.04.02 – Rules Pertaining to the Idaho Forestry Act and Fire Hazard Reduction Laws

Background

The Idaho Department of Lands (Department) is responsible for providing fire protection on state and private forest lands in Idaho pursuant to Title 38, Chapters 1 and 4, Idaho Code, and IDAPA 20.04.01 and 20.04.02.

During the 2015 fire season, the Department worked with forest landowners, logging contractors, forest industry representatives, and others to develop and implement fire protection best practices to lessen the risk of fire starts from forest operations. The Department also held post-fire season reviews to discuss the effectiveness of the fire protection best practices and the need to update specific standards in IDAPA 20.04.01 *Rules Pertaining to Forest Fire Protection*.

After further review of the rules and follow-up meetings in 2016 and 2017 with fire managers, forest landowners, logging contractors, and forest industry representatives, the Department received Land Board approval in March 2017 to enter negotiated rulemaking to develop fire protection standards specific to forest operations.

Discussion

The Department held nine negotiated rulemaking meetings with interested stakeholders in Coeur d'Alene, Orofino, and McCall in October 2017, November 2017, and June 2018. To formulate the proposed rules, the Department considered all comments received during the negotiated rulemaking process (Attachment 1).

On August 1, 2018, the Notice of Rulemaking and proposed rule text (Attachment 2) were published in the Idaho Administrative Bulletin to notify the public of three public hearings and the opportunity to submit public comment. Although public participation was minimal, all testimony and comments received support advancing the proposed rules as written (Attachment 3). No changes were made to the proposed rule.

The proposed rules amend the fire protection requirements for spark arresters, fire tools and fire extinguishers, and fire crews. In addition, the proposed rules introduce new fire protection requirements for forest operation activities involving cable logging operations and the use of metal-tracked harvesters.

Following is a summary of the proposed rule changes that provide needed clarification and improvement to fire protection requirements:

- New rule sections: granting of variances; defining water handling requirements on a forest operation; providing for a fire watchman service after forest operations have been completed or suspended for a shift; and operating area fire prevention requirements.
- Revisions of existing rule sections: adjusting the amount and type of hand tools needed; updating language about fire crews; and eliminating fire extinguisher/fire tool requirements for motorcycles and trailbikes.
- Incorporation by reference: spark arrester standards established by the 2012 San Dimas Technology & Development Center.
- New definitions: block, cable or cable-assisted logging, closed fire season, forest operation, metal-tracked harvester, operator, and operating area.

If approved by the Land Board, the Department will submit the appropriate Notice of Adoption of Pending Rule to the Office of the Administrative Rules Coordinator for the 2019 legislative session.

Recommendation

Authorize the Department to adopt the pending rule to update IDAPA 20.04.01 *Rules Pertaining to Forest Fire Protection*.

Board Action

Attachments

1. Rule Changes Summary (Negotiated Rulemaking)
2. Notice of Rulemaking – Proposed Rule with Rule Text
3. Public Comments Received on Proposed Rule

Negotiated Rulemaking Rule Changes Summary

IDAPA 20.04.01 — Rules Pertaining to Forest Fire Protection

Docket No. 20-0401-1701

Members of the public participated in the Department's negotiated rulemaking process by attending meetings and submitting written comments. Key information considered by the Department included comments provided by the public and the Department's legal counsel during the negotiation process. The Department received information from Idaho Association of Logging Contractors, Idaho Farm Bureau, Idaho Forestland Owners Association, Riley and Associates, Potlatch Corp, Idaho Forest Group, independent logging contractors, Central Idaho Trail Riders Alliance, Idaho Recreation Council, McCall Area Snowmobile Club, and interested public.

Key documents from the rulemaking record, including draft rule texts and written public comments, are available at <https://www.idl.idaho.gov/rulemaking/20.04.01/index.html>. The entire rulemaking record is available for review upon request to the Department. At the conclusion of the negotiated rulemaking process, the Department formatted the final draft rule text for publication as a proposed rule in the Idaho Administrative Bulletin.

In developing the draft rule, the Department considered all comments received during the negotiated rulemaking process. Following is one comment that was not incorporated into the draft rule and the Department's response to that comment:

Comment	Response
"We remain concerned that within these rules is the lack of a clearly articulated release of liability for the operator if all of these requirements are met, the contractor is not negligent but a fire still breaks out and blows up."	Operator compliance with these fire protection rule standards would demonstrate that an operator has met the "Reasonable Effort to control or extinguish" standard established in Idaho Code §38-107 should a fire start within the operation area. Therefore, an operator who experiences a fire as a result of their operation would be alleviated the liability associated with achieving the " <i>Reasonable Effort to control and extinguish</i> " standard. However, liability for fire suppression costs remains should a fire investigation determine the start or existence of the fire is the result of a willful or negligent act on behalf of the operator. Therefore, the Department is unable to incorporate a provision absolving an operator of complete liability of fires resulting from their operation.

The following conclusions were reached during and/or as a result of the negotiated rulemaking process:

000. AUTHORITY

Existing rule failed to cite all statutory sections giving the Department legal authority to promulgate administrative rules for this chapter.

The following new sections were introduced:

These sections are necessary to meet established Administrative Rule standards required by the Administrative Procedures Act:

- TITLE AND SCOPE
- 002. WRITTEN INTERPRETATION
- 003. ADMINISTRATIVE APPEALS
- 004. INCORPORATION BY REFERENCE—The Department proposes to adopt San Dimas Technology & Development Center's 2012 Spark Arrester Guide publications as the spark arrester standards for internal combustion engines operating within the forest environment. No issues were brought forward during negotiated rulemaking with respect to this proposal.
- 005. OFFICE – OFFICE HOURS – MAILING ADDRESS AND STREET ADDRESS
- 006. PUBLIC RECORDS ACT COMPLIANCE

The following new definitions were introduced:

- **Block.** The Department and stakeholders agree to introduce this new definition into rule due to high fire risk associated with the use of this piece of logging equipment that is integral to cable logging harvest systems. The Department and stakeholders agreed that precautionary fire prevention measures are necessary to mitigate the risk of causing an unwanted ignition from the use of this logging equipment.
- **Cable or Cable-Assisted Logging.** The Department and stakeholders recognize that cable logging systems pose a substantially higher risk exposure of experiencing or causing a fire during the fire season as opposed to other conventional logging systems. This is due to the inherent nature of the operating area in which these systems are utilized, the type of equipment associated with these logging systems, and the various harvest system configurations necessary to successfully conduct harvest in steep terrain. The Department and stakeholders agreed to establish best practices as prescribed in Section 150—Operation Area Fire Prevention to mitigate the risk of causing an unwanted ignition when utilizing a cable logging harvest system.
- **Closed Fire Season.** During rulemaking meetings, the Department and stakeholders agreed to specify the closed fire season period and reference where this occurs in Idaho Code.

- **Forest Operation.** During negotiated rulemaking, stakeholders brought forward the following concerns with the previous drafts for this definition:
 - Scope – Comments received from stakeholders expressed that previous drafts of this definition were too broad in scope, potentially capturing activities not intended to be addressed by this rulemaking effort. This could lead to misinterpretation by the public. At the conclusion of negotiated rulemaking, the Department and stakeholders agreed to limit the scope of this definition to forest management operations requiring a Certification of Compliance pursuant to Section 38-122, Idaho Code. This standard communicates a clear differentiation between traditional forest management operations such as logging or forest road construction from non-forest management related activities such as firewood cutting or agricultural operations.
 - Road Maintenance – Stakeholders advocated that road maintenance practices are considered a low fire risk activity since road maintenance activities are typically conducted on existing road prisms devoid of vegetation or forest debris. Stakeholders recommended excluding these operations from the definition.
 - Burning – Although burning practices are an integral part of forest management, the Department and stakeholders recognize that open burning practices are regulated by Section 38-115, Idaho Code, and the Department's administration of the burn permit system. Therefore, the Department and stakeholders agreed to exclude open burning practices from this definition.
- **Metal-Track Harvester.** During negotiated rulemaking, the Department and stakeholders recognized that mechanized harvest system operations using metal-tracked harvesting equipment pose a greater potential of causing a fire during periods of elevated fire danger than other conventional harvest systems. Therefore, the Department and stakeholders agreed to incorporate this definition into rule and recommend establishing additional fire protection measures proposed in Section 130 and Section 140 of the proposed rule.
- **Operator.** No issues were brought forward with respect to this definition.
- **Operating Area.** No issues were brought forward with respect to this definition.

020. VARIANCE

Introduction of new section—Variance. The Department and stakeholders agreed to introduce a process into rule that would allow an operator or landowner the ability to request an alternative practice or Variance that would achieve equal or better fire protection than practices as prescribed in rule. During negotiated rulemaking, stakeholders expressed concern with the Department's decision response period for authorizing a Variance request. In previous draft rule text, an initial decision response period proposed by the Department was 14 days upon receipt of a Variance request. Stakeholder input expressed that the Department's decision period needed to be more responsive to the demands of on-going logging operations and

recommended shortening the Department's decision period. The Department and stakeholders agreed to a decision response period of 5 business days as sufficient to allow the Department to review and process Variance requests.

080. SPARK ARRESTERS

The Department proposes to adopt spark arrester standards established by San Dimas Technology and Development Center's "Spark Arrester Guide"(s). The publications are proposed to be Incorporated by Reference as prescribed in Section 004 of the proposed rule. By incorporating these publications by reference, the Department proposes to eliminate spark arrester standards prescribed in subsection a, b and c currently found in existing rule of Section 080. During negotiated rulemaking, no issues were brought forward with respect to the Department's proposed action.

100. FIRE TOOLS AND FIRE EXTINGUISHERS

Amend subsection 01. Basic Fire Cache. The Department's proposal is to amend Section 100.01 for the purposes of clarifying the intent of this section and specifying activities required to have a fire cache. In addition, the Department's proposal includes the introduction of a methodology to match minimum fire tool equipment standards with the number of personnel engaged in conducting a forest operation.

During negotiated rulemaking, stakeholders and the Department agreed that existing rule requires "*Every person or entity engaged in any activity in forests of the state*" to have a fire cache available for fire response. The Department and stakeholders recognize that the current rule has created confusion among the public and hampered the Department's ability to administer this rule. Input received during negotiated rulemaking supported the Department's observation that the existing rule failed to specify activities that are subject to the basic fire cache requirements and further clarification of the rule's intent was necessary for administration purposes. The Department and stakeholders agreed to revise Section 100.01 and adopt the minimum fire tool standards as prescribed in the proposed rule.

Eliminate existing rule subsection Motor Cycles and Trailbikes. The Department's proposal is to eliminate from rule the entire subsection Motorcycles, Trail Bikes. Comments received during negotiated rulemaking from stakeholders cited the fire tool requirements as prescribed in existing rule create safety hazards to the operator impeding safe operation of these class of vehicles.

In addition, the Department and stakeholders agree that fire risk associated with the use of these vehicles are mitigated or reduced when a vehicle's exhaust or spark arresting system are maintained in good operating order. The Department does not enforce fire tool requirements for motorcycles or trailbikes and maintains a position that effective results are obtained by regulating sources of ignition related to these class of vehicles. The stakeholders support the Department's proposal to eliminate the fire tool requirement for motorcycles and trailbikes from rule.

110. FIRE CREWS

The Department's proposal is to amend Section 110 to clarify intent behind the existing rule and specify activities intended to provide an organized fire crew response to fire caused by their activities. During negotiated rulemaking, stakeholders and the Department agreed the existing rule creates confusion to the public and fails to specify the activities subject to the requirements of this rule. They also concluded that the existing rule was broad in scope and required further clarification regarding specific activities that would be subject to organizing and responding as a fire crew to ignitions resulting from their activity.

Previous agency history has advocated that forest operators and logging companies contribute to the suppression of fires generated from their operations as part of making a "*reasonable effort to control and extinguish*" unwanted fire as required by Section 38-107, Idaho Code. The Department and stakeholders agreed that the original intent behind this rule is directed toward persons or entities engaged in forest management operations where a slash hazard is present or generated resulting from their operation.

In addition, stakeholders expressed concern that previous draft text of the rule failed to recognize that operators are not trained professional wildland fire fighters and requiring them to respond could jeopardize their personal safety. The Department recognized these concerns and incorporated language in the proposed rule to ensure operators and loggers provide a measured response within their respective skills and abilities to ensure individual or crew welfare is not compromised when taking action against a fire.

130. WATER SUPPLY AND EQUIPMENT

Introduction of new section—Water Supply and Equipment. The Department's proposal is to require forest operations utilizing cable logging or mechanical harvesting systems involving use of a metal tracked harvester to have a 200 gallon water supply with delivery apparatus available to respond to fires within their operation area with the objective of successfully suppressing ignitions in their incipient stage of development.

Over the course of negotiated rulemaking, stakeholders brought forward several issues for consideration in the development of the proposed rule. They are as follows:

- The cause of fires associated with a logging or forest operation:

Upon review of Department data, the Department determined that the leading causes attributed to fires associated with a forest operation are equipment use and forest debris burning.
- Fire occurrence and suppression costs associated with a forest operation conducted on forest industry, non-industrial private, and public lands:
 - With regard to forest operation related fire occurrence, Department data demonstrates that operators conducting an operation on public lands were the leading contributors to fires, followed by operators on forest industry lands.

Non-industrial private forest operations experienced the fewest numbers of forest operation related fires.

- With regard to cost of suppressing fires related to a forest operation, Department data demonstrates the majority of costs are experienced from suppressing fires on forest industry ownerships, followed by non-industrial private forestlands and public lands experience the least cost of suppressing forest operation related fires.
- Upon review of Department data, the Department determined that fires attributed to equipment use on a forest operation cost substantially more to suppress than fires attributed to escaped debris burning practices.
- Department data revealed that forest operators engaged in forest operations during closed fire season were most susceptible to experiencing a fire on their operation area during the period of July through September annually.
- Unintended outcomes or management disincentives created by the proposed requirements to small-scale forest operators or non-industrial forest landowners:
 - The Department recognized that small-scale operations on non-industrial forestlands could disproportionately experience adverse cost impacts associated from the procurement of a suitable water supply apparatus to meet rule requirements, creating a disincentive among small-scale forest operators and non-industrial private forest landowners to support active forest management of these lands.
 - To address this concern, the Department revised equipment standards to alleviate some of the equipment costs required by the proposed rule.
 - In addition, the Department incorporated subsection 04. Water Supply and Equipment Exemption into the proposed rule to exempt low fire risk forest operations and maintain incentives for operators and landowners to continue active management of these lands.
- Specification standards for the water supply, delivery apparatus and equipment standards:

The Department evaluated various methods and metrics currently utilized by forest operators, forest industry and other state forestry agencies with similar fire protection regulatory requirements to establish standards for water delivery, hose and appliances in the proposed rule. In addition, the Department evaluated the suitability and effectiveness of utilizing this equipment with various conventional and cable harvest systems. The Department and stakeholders agree that water supply and equipment standards are acceptable to achieve the intent of the proposed rule.

140. FIRE WATCH SERVICE

Introduction of new section—Fire Watch Service. The Department's proposal is to incorporate a fire watch service into rule with the objective to detect and successfully suppress ignitions in their incipient stage of development. Issues addressed during negotiated rulemaking include the following:

- Appropriate fire watch service duration:

The Department determined the need to establish a fire watch service for these operations when fire environment conditions are most conducive to experiencing a high probability of ignition. Fire weather data demonstrates that high probability of ignition of forest fuels is typically experienced during the late afternoon period when air temperature approaches its peak and relative humidity is approaching its lowest level during the day.

- Small-scale forest operations:

The Department recognized the need to exempt small-scale forest operations determined to be a non-hazard through the administration of the Department's Hazard Management Program. Stakeholders expressed concerns regarding the necessity and expense incurred by the operator to provide fire watch service on small-scale logging operations where harvest volumes removed generate limited amounts of residual slash and is determined to be a non-hazard by the Department through its hazard management assessment process.

- Appropriate decision benchmark utilized to implement the fire watch service requirements:

The Department evaluated effectiveness of utilizing various decision benchmarks to initiate implementation of the requirements of Section 140 of the proposed rule. The Department determined the benefits of providing a fire watch service for these operations are realized during periods when fire environment conditions are most conducive to experiencing a high probability of ignition. The agency's current fire prevention business practice is to enter into Stage 2 Fire Restrictions Proclamation when elevated fire environment conditions warrant implementation of additional prevention practices.

- Personal welfare for individuals providing fire watch service: Stakeholders expressed concerns that previous draft text of the proposed rule failed to recognize that operators are not trained professional wildland fire fighters and that they could be placing themselves in a compromising situation which could jeopardize their personal safety when responding to a fire.

The Department recognized these concerns and incorporated language in the proposed rule to ensure operators and loggers provide a measured response within their respective skills and abilities to ensure individual welfare is not compromised when taking action against a fire.

150. OPERATION AREA FIRE PREVENTION

Introduction of new section—Operation Area Fire Prevention. The Department's proposal is to incorporate fire prevention best practices for cable logging operations with the objective to mitigate sources of ignition unique to cable logging harvest systems. Concerns addressed during negotiated rulemaking include the following:

- Appropriate decision benchmark utilized to implement the operation area fire prevention requirements:

The Department evaluated effectiveness of utilizing various decision benchmarks to initiate implementing Section 150 of the proposed rule. Upon review of the Department's fire occurrence data, the Department determined that forest operators engaged in forest operations during closed fire season were most susceptible to experiencing a fire on their operation area during the period of July through September when fire environment conditions are elevated and forest fuels are most conducive to experiencing a successful ignition.

The logo of the Idaho Department of Lands is a large, faint watermark in the background. It features a stylized mountain peak with a sun or starburst at its base. A horizontal banner across the middle of the logo contains the text "IDAHO DEPARTMENT OF LANDS" in a bold, sans-serif font.

IDAHO DEPARTMENT OF LANDS

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.04.01 – RULES PERTAINING TO FOREST FIRE PROTECTION

DOCKET NO. 20-0401-1701

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 38, Chapter 1, including section 38-132, Idaho Code, and Title 38, Chapter 4, including section 38-402, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

PUBLIC HEARINGS ON PROPOSED RULE		
Tuesday, August 7, 2018 5:00 p.m. (MDT)	Wednesday, August 8, 2018 5:00 p.m. (PDT)	Thursday, August 9, 2018 5:00 p.m. (PDT)
Hunt Lodge - Holiday Inn 210 N. 3rd Street McCall, ID 83638	Helgeson Place Hotel Suites 125 Johnson Ave. Orofino, ID 83544	IDL Mica Supervisory Area Office 3528 W. Industrial Loop Coeur d'Alene, ID 83815

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

DESCRIPTIVE SUMMARY: The Idaho Department of Lands is preparing to amend select fire protection standards and introduce new fire protection standards to IDAPA 20.04.01, "Rules Pertaining to Forest Fire Protection," specific to forest operation activities conducted on forest lands. During the 2015 fire season, the Department worked with forest landowners, logging contractors, forest industry representatives, and others to develop and implement fire protection best practices to lessen the risk of fire starts from forest operations on forest lands. Post-fire season reviews were conducted to discuss the effectiveness of the fire protection best practices and the need to update specific standards in IDAPA 20.04.01, "Rules Pertaining to Forest Fire Protection."

After further review of those Rules and follow-up meetings in 2016 and 2017 with fire managers, forest landowners, logging contractors, and forest industry representatives, the Department entered into negotiated rulemaking to develop fire protection standards specific to forest operations. At the conclusion of negotiated rulemaking, the Department determined a need to enter into proposed rulemaking to amend the fire protection requirements for following sections: Spark Arresters; Fire Tools and Fire Extinguishers; and Fire Crews. In addition, the Department will introduce new fire protection requirements for forest operation activities involving cable logging operations and the use of metal tracked harvesters to include on-site water supply, fire watch service and operation area fire prevention practices.

FEE SUMMARY: There are no imposed fees or charges to the public associated with the administration of the proposed rule.

FISCAL IMPACT: No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the October 4, 2017 Idaho Administrative Bulletin, [Vol 17-10, page 334](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: The Department will adopt the spark arrester standards established by the 2012 San Dimas Technology & Development Center (SDTDC) publications titled Spark Arrester Guide – General Purpose and Locomotive (GP/ Loco), Spark Arrester Guide – Multiposition Small Engine (MSE) and Spark Arrester Guide – Off Highway Vehicles (OHV) as the fire protection

standard for internal combustion engines operating within the forest environment. Due to the length of these publications, incorporating the full text of these documents into the rule would impose a significant financial burden to the Department for rule publication purposes. Electronic copy of these publications are available for review at the following website: https://www.fs.fed.us/t-d/programs/fire/spark_arrester_guides/index.htm.

Printed copies or bound copies may be viewed at any Idaho Department of Lands District Office or requested through SDTDC, 444 E. Bonita Ave., San Dimas, CA 91773.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact JT Wensman, Bureau Chief – Fire Management (208) 769-1525. Materials pertaining to the proposed rulemaking, including any available preliminary rule drafts, can be found on the Idaho Department of Lands website at the following web address: <https://www.idl.idaho.gov/rulemaking/20.04.01/index.html>.

Submission of written comments regarding this proposed rulemaking should be directed to the undersigned or to the Idaho Department of Lands website at the website address as noted and must be delivered on or before August 22, 2018.

DATED this 1st day of August, 2018.

JT Wensman
Bureau Chief, Fire Management Bureau
Idaho Department of Lands
3284 W. Industrial Loop
Coeur d'Alene, ID 83815
Phone: (208) 666-8650
Fax: (208) 769-1524

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0401-1701
(Only Those Sections With Amendments Are Shown.)

000. AUTHORITY.

~~These rules are adopted pursuant to the rulemaking authority granted in~~ This chapter is adopted under the legal authority of Sections 38-115, 38-132, 38-402, 58-104(6), 58-105, and 67-5201 et seq., Idaho Code. (10-28-91)()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 20.04.01, "Rules Pertaining to Forest Fire Protection." ()

02. Scope. These rules govern requirements pertaining to forest fire protection. ()

002. WRITTEN INTERPRETATION.

The Idaho Department of Lands maintains written interpretations of its rules that may include, but not be limited to, written procedures manuals and operations manuals, Attorney General's formal and informal opinions, and other written guidance that pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, Attorney General's opinions, and other written interpretations, if applicable, are available for public inspection and copying at the main office of the Idaho Department of Lands. ()

003. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the BOARD shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, (the Administrative Procedure Act) and IDAPA 20.01.01.000, et seq., "Rules of Practice and Procedure Before the State Board of Land Commissioners." ()

004. INCORPORATION BY REFERENCE.

01. Incorporated Document. IDAPA 20.04.01 adopts and incorporates by reference the full text of the following documents published by the San Dimas Technology & Development Center (SDTDC). ()

a. Spark Arrester Guide – General Purpose and Locomotive (GP/Loco), Volume 1, September 2012, 1251 1809-SDTDC. ()

b. Spark Arrester Guide – Multiposition Small Engine (MSE), Volume 2, August 2012, 1251 1808-SDTDC. ()

c. Spark Arrester Guide – Off- Highway Vehicles (OHV), Volume 3, April 2012, 1251 1805-SDTDC. ()

02. Printed and Bound Copies. Printed copies or bound copies may be viewed at any District Office or requested through SDTDC, 444 E. Bonita Ave, San Dimas, 91773. ()

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

The principal place of business of the Idaho Department of Lands is in Boise, Idaho. The office is located at 300 North 6th Street, Suite 103, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, ID 83720-0050. The telephone number is 208-334-0200. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

This rule is subject to and in compliance with the provisions the Public Records Act, Title 74, Chapter 1, Idaho Code. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Block. A piece of logging equipment where steel rope or cable is actively turning the block's pulley and used as part of a cable logging/yarding system for the specific purposes of establishing tail hold anchor points, intermediate support of main lines, or carriage haul-back capability for the purposes of yarding or hauling of logs to a log landing for transportation to a mill or processing facility. ()

02. Cable or Cable Assisted Logging. A harvest system for felling or yarding of forest product materials consisting of the use of a cable assisted harvester or the use of a yarder, spar tree, or intermediate support with motorized or non-motorized carriage to transport logs to the landing for further processing purposes. ()

03. Closed Fire Season. The period from May 10 to October 20, inclusive, of each year or as designated by the Director due to conditions of unusual fire danger pursuant to Section 38-115, Idaho Code. ()

014. Department. The Idaho Department of Lands ~~located at 300 North 6th Street, Suite 103, Boise, ID, P.O. Box 83720, Boise, ID 83720-0050.~~ (10-28-91)()

025. Director. The director of the Idaho Department of Lands or his authorized representative. (10-28-91)

036. District. A designated forest protective district. (10-28-91)

047. Fire Warden. A duly appointed fire warden or deputy. (10-28-91)

~~05~~**8.** **Forest Land.** Any land which has upon it sufficient brush or flammable forest growth of any kind or size, living or dead, standing or down, including debris or growth following a fire or removal of forest products, to constitute a fire menace to life (including animal) or property. (10-28-91)

09. **Forest Operation.** An activity or service conducted on forest lands involving any of the operations as described below where a Certificate of Compliance is required pursuant to Section 38-122, Idaho Code. ()

a. The harvesting of trees using equipment that includes, but is not limited to, felling, bucking, yarding, delimbing, and decking operations; ()

b. Thinning or mastication operations for stand improvement, stand density management or fuel reduction purposes; ()

c. Road construction or reconstruction of existing roads including installation or improvement of bridges, culverts or structures; and ()

d. Slash management including chipping, grinding, or other mechanized reduction activities. ()

10. **Metal-Track Harvester.** Any machine with metal tracks used to fall, bunch or process trees into forest products at the stump. ()

11. **Operator.** A person who conducts a forest operation. ()

12. **Operating Area.** That area where a forest operation is taking place. ()

~~06~~**13.** **Person.** Includes any person or persons, and any corporation, firm or other entity. (10-28-91)

~~07~~**14.** **Range Land.** Any land that is not cultivated and that has upon it native grasses or other forage plants making it best suited for grazing of domestic and wild animals and which land is adjacent to or intermingled with forest land. (10-28-91)

~~08~~**15.** **Slash.** Brush, severed limbs, poles, tops and/or other waste material incident to such cutting or to the clearing of land that are four (4) inches and under in diameter. (10-28-91)

~~09~~**16.** **State.** State of Idaho. (10-28-91)

011. -- ~~02~~19. (RESERVED)

020. VARIANCE.
If conditions or activities require the application of practices that differ from those prescribed in these rules, the Operator must obtain a variance prior to employing any of those differing practices. ()

01. **Obtaining a Variance.** In order to obtain a variance, the Operator must submit a written request for a variance to the local Fire Warden. The request shall include the following: ()

a. A description of the specific Operating Area where the variance is being requested; ()

b. The particular conditions that necessitate a variance; ()

c. A detailed description of the alternative practice; and ()

d. A detailed description of how the alternate practice, if applied, will provide fire protection that is equal to or greater than the fire protection provided by the standards set forth in these rules. ()

02. **Department Response to Request for Variance.** Within five (5) business days from receipt of the variance request, the Department shall evaluate the request and notify the Operator in writing of the Department's determination to allow or disallow the variance request. ()

021. -- 029. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

080. SPARK ARRESTERS.

01. Requirements. The steam or internal combustion engines referred to in Section 38-121, Idaho Code, shall be equipped with properly installed, maintained, and effectively working spark arresters ~~as categorized below: that comply with the standards set forth in the San Dimas Technology and Development Center's "Spark Arrester Guide"(s).~~ (10-28-91)()

~~a. Railroad Locomotives. The spark arrester must be eighty percent (80%) efficient in retention or destruction of all carbon particles twenty-three thousandths (.023) inch in diameter or larger for twenty to one hundred percent (20%-100%) of the locomotive engine's exhaust flow rate. The total manifold exhaust leg-back pressure cannot exceed three (3) inches of mercury. (10-28-91)~~

~~b. Portable Power Saws. The spark arrester shall meet the standards set forth in the Society of Automotive Engineers (SAE) Recommended Practice J335b, "Multi-position Small Engine Exhaust System Fire Ignition Suppression," and be listed in the most recent "Spark Arrester Guide" as having been approved as meeting above standard. Copies of the "Spark Arrester Guide" may be viewed at offices of the Department. (10-28-91)~~

~~c. Other Engines. The spark arrester shall meet the standards set forth in the publication of the USDA Forest Service, entitled "Standard 5100-1a for Spark Arresters of Internal Combustion Engines," as amended under date of July 1970, and be listed in the most recent "Spark Arrester Guide" as having been approved as meeting above standard. Copies of the "Spark Arrester Guide" may be viewed at offices of the Department. (10-28-91)~~

02. Exemptions. The following are exempt from the requirements of the rule: (10-28-91)

a. Turbo-charged internal combustion engines in which one hundred percent (100%) of the exhaust gases pass through the turbo-charger. (10-28-91)

b. Engines of passenger-carrying vehicles and light trucks, equipped with baffle-type muffler and tailpipe through which all exhaust gasses pass, that are kept in good repair. (10-28-91)

c. Engines of heavy-duty trucks equipped with a vertical exhaust stack and muffler extending above the cab of the vehicle. (10-28-91)

d. Engines of water pumping equipment used in firefighting. (10-28-91)

e. Engines of helicopters and other aircraft. (10-28-91)

(BREAK IN CONTINUITY OF SECTIONS)

100. FIRE TOOLS AND FIRE EXTINGUISHERS.

During closed fire season the following fire tool requirements shall apply: (10-28-91)

01. Basic Fire Cache. Every ~~person or entity~~ **Operator** engaged in any ~~activity in forests of the state~~ **Forest Operation on Forest Lands** shall have available for firefighting purposes ~~one (1) basic fire cache for each ten (10) persons so engaged. A basic fire cache shall consist of two (2) axes, five (5) shovels, three (3) pulaski tools, and two (2) water buckets, all in good condition and located at a point immediately accessible for firefighting purposes. The fire cache tools shall be contained in a closed box marked "FOR FIRE USE ONLY." the number of tools and tool boxes set forth in Table 1. A Forest Operation having more than ten (10) people must use multiples of any of the~~

columns in the table to arrive at a tool distribution equal to or in excess of the number of people in the Forest Operation.

TABLE 1			
People in Operation	2 - 5	6 - 8	9 - 10
Tool Box	1	1	1
Shovels	2	4	5
Pulaskis	2	4	4
5 gallon pump cans or bladder bags	1	1	2

(10-28-91)()

a. The tool boxes required by this rule shall be clearly marked “FOR FIRE USE ONLY”; and ()

b. The tools required by Subsection 100.01 shall be in a location immediately accessible for firefighting purposes, maintained in a serviceable condition and be fully functional at the time of deployment. ()

02. **Warming Fires or Campfires.** Except when in designated developed campgrounds or when traveling as a pedestrian, all persons or parties igniting warming fires or campfires shall be equipped with the following: (10-28-91)

a. One (1) serviceable shovel at least twenty-four (24) inches in overall length with six (6) inch or wider blade. (10-28-91)

b. One (1) water container, capacity one (1) gallon or more ~~(motorcycle crash helmets qualify).~~ (10-28-91)()

03. ~~**Motorcycles, Trailbikes.** The above fire tool requirements in section 02(a) and 02(b) apply to all operators of motorcycles, trail bikes, all-terrain vehicles, and similar type motorized vehicles, and persons traveling with pack animals.~~ (10-28-91)

043. **Power Equipment.** Each unit of mobile or stationary power equipment other than portable power saws, trail bikes, motorcycles, all-terrain vehicles and similar type vehicles operating on forest lands of the state shall be equipped with a minimum of one (1) chemical fire extinguisher rated by the Underwriters Laboratory as not less than 4-BC. (10-28-91)

054. **Portable Power Saw.** Any person using a portable power saw on forest land in the state shall have the following immediately available for the prevention and suppression of fire: (10-28-91)

a. A fully charged operable fire extinguisher of at least eight (8) ounce minimum capacity. (10-28-91)

b. A serviceable round-pointed size zero (0) or larger shovel. (10-28-91)

101. -- 109. (RESERVED)

110. FIRE CREWS.

~~On all activities on forest lands of the state, When engaged in a Forest Operation on Forest Lands during closed fire season,~~ the person responsible for ~~same~~ the Forest Operation shall designate a fire crew and a fire foreman, with powers to act for ~~his~~ their employer, to take immediate initial action within the scope of their knowledge, skills and abilities and make a reasonable effort to suppress any fire starting on the ~~activity area.~~ Any or all personnel shall be at all times in readiness and immediately shall go to any fire which originates on the operation, with or without instructions Operating Area without compromising the safety of the crew. (10-28-91)()

(BREAK IN CONTINUITY OF SECTIONS)

121. -- 129. (RESERVED)

130. WATER SUPPLY AND EQUIPMENT.

Every Operator conducting a Forest Operation using a cable logging system or a metal tracked harvester during the period of July 1st through September 30th annually shall provide the following water supply and fire suppression equipment in the Operating Area. ()

01. Water Supply. ()

a. The water supply must consist of a self-propelled motor vehicle or trailer equipped with a water tank containing not less than two hundred (200) gallons of water. ()

b. Trailers used for this purpose shall be equipped with a functional hitch attachment and have a serviceable tow vehicle immediately available to provide for timely fire suppression response. ()

02. Water Delivery. ()

a. Water pump. The size and capacity of the water pump must be sufficient to provide a discharge of not less than twenty (20) gallons per minute when pumping through fifty (50) feet of hose of not less than three quarter (¾) inch inside diameter with an adjustable nozzle at pump level. ()

b. Hose and nozzle. The Operator must have at least five hundred (500) feet of serviceable hose of not less than three quarter (¾) inch inside diameter and a nozzle. ()

03. Readiness. ()

a. All hose, motor vehicles, trailers, tanks, nozzles and pumps shall be kept ready for immediate use during active operations, including fire watch service as set forth in Section 140 of these rules. ()

b. The water supply, pump, a minimum of two hundred (200) feet of hose packaged in a suitable manner for immediate deployment, and the nozzle shall be maintained as a connected, operating unit ready for immediate use. ()

04. Water Supply and Equipment Exemption. A Forest Operation conducted under an Option 1 Certificate of Compliance is exempt from the water supply and equipment requirements of Section 130. ()

131. -- 139. (RESERVED)

140. FIRE WATCH SERVICE.

Every Operator engaged in a Forest Operation within a Stage 2 proclamation area shall provide Fire Watch Service in the Operating Area. ()

01. Duties and Requirements. Fire Watch Service shall consist of at least one (1) person who shall: ()

a. Constantly be on duty for three (3) hours after all power-operated equipment has been shut down for the day. ()

b. Visually observe the Operating Area where activity occurred during the day. ()

c. Have adequate equipment for transportation and communications to summon fire-fighting assistance in a timely manner; and ()

d. Immediately respond to any fire in the Operating Area to initiate such fire suppression actions to suppress the fire within the scope of their knowledge, skills and abilities. ()

02. Fire Watch Service Exemption. A Forest Operation conducted under an Option 1 Certificate of Compliance is exempt from the fire watch service requirements of Section 140. ()

141. -- 149. (RESERVED)

150. OPERATION AREA FIRE PREVENTION.

To prevent the spread of fire on or from an Operating Area, every Operator conducting a Forest Operation during the period of July 1st through September 30th, annually, shall comply with the following precautions: ()

01. Cable or Cable Assisted Logging. The following practices and equipment are required by the operator when conducting a cable logging operation on forest land. ()

a. Clear the ground of all flammable debris for not less than ten (10) feet slope distance from the point directly below any block. ()

b. Prevent moving lines from rubbing on rock or woody material in such a way to cause sparks or sufficient heat that may cause fuel ignition. ()

c. Provide a water supply that complies with the capacity, pump, hose, nozzle and readiness requirements set forth in Section 130 of these rules. ()

d. Provide at each Block: ()

i. One (1) pump equipped can or bladder containing not less than five (5) gallons of water; and ()

ii. One (1) round pointed size zero (0) or larger shovel in a serviceable condition. ()

151. -- 999. (RESERVED)

Proposed Rulemaking—Public Comments Received
IDAPA 20.04.01 – Rules Pertaining to Forest Fire Protection
Docket No. 20-0401-1701

Oral comment received from Rich McMillan on August 8, 2018 at Orofino public hearing:

Rich McMillan, Clearwater District Forester, with PotlatchDeltic. I've been authorized to participate in the rulemaking process by our company. We are a 600,000-acre timberland owner in the state of Idaho. The company has been engaged in this rulemaking process throughout the entire time, we've participated in all of the meetings and have offered verbal comments and written comments earlier to IDL. IDL and other participants, as we've worked our way through this, have made amendments and changes that are appropriate to all of the items brought to light during the rulemaking process. We have discussed the final draft of this within Potlatch with our leadership team, and, really, we think we have arrived at a good spot with the final draft of the rules as we move forward here. And from a company perspective and from that of a large landowner in the state of Idaho, we're fully supportive moving forward with the rule package as it's shown in its final draft, so that concludes our remarks.

Oral comment received from John Larson on August 8, 2018 at Orofino public hearing:

John Larson, local logging contractor, also I'm the secretary in the ALC, Associated Logging Contractors. I've been pushed to attend meetings and to put in our comments and listen to the local contractors as well as statewide contractors in the proposed new changes to the rules. In attending these meetings have been put forth some of the issues that the contractors are, had questions about. At this point, we're pretty well satisfied with the final outcome of the rulemaking process and where they stand today. Still a few things in 'em that have some contractors concerned, but overall, they're all in acceptance that these are probably the best way to go. There's questions with liability still, but, as it stands, everybody looks to be on board with abiding by the new set of rules once they're in place. With that, I think that concludes my comments. Thank you.

Written comment received as an email from Mark Wood on August 9, 2018:

Mr. Benton,

I appreciate the notification of the public meeting and had hoped to attend but due to a family emergency was unable to.

I would like to extend the appreciation of the motorized single track trail enthusiasts with the direction that has taken place with the removal of the current Rule 100.03 pertaining to motorcycles and trailbikes. This change in the rule is acceptable and appreciated.

thanks,

Mark Wood

McCall Area Snowmobile & ATV Club



RILEY STEGNER AND ASSOCIATES

October 9, 2018

Kevin Benton
Aviation Program Manager
Fire Management Bureau
Idaho Department of Lands
3284 W. Industrial Loop
Coeur d'Alene, ID 83815

RE: Idaho Department of Lands rulemaking pertaining to Forest Fire Protection. Docket No. 20-0401-1701

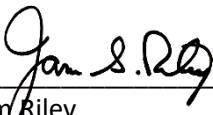
Dear Mr. Benton:

Thank you for the opportunity to comment on the Idaho Department of Lands (IDL) rulemaking pertaining to Forest Fire Protection (Docket No. 20-0401-1701). We represent Stimson Lumber Company, Molpus Woodlands Group, Hancock Forest Management, and Bennett Lumber Products Inc.

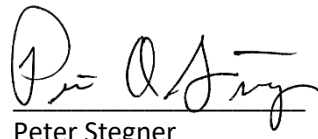
We wish to highlight the inclusive process undertaken by IDL throughout the rulemaking process and commend the Department for working with Idaho landowners, mills, and loggers to draft a rule that will reduce fires at logging operations without creating undue burdens for our forest workers. IDL staff provided ample opportunities for landowners and our state's dedicated forest professionals to participate in the rulemaking process that resulted in a rule that balances the needs for both safe and economically viable forest operations.

We look forward to supporting your proposed rulemaking during the Idaho Legislature's review process.

Sincerely,



Jim Riley
Principal
Riley Stegner and Associates



Peter Stegner
Principal
Riley Stegner and Associates

STATE BOARD OF LAND COMMISSIONERS

October 16, 2018

Regular Agenda

Subject

Adopt the pending rule for IDAPA 20.03.01 *Dredge and Placer Mining Operations in Idaho*

Authority

Title 47, Chapter 13, Idaho Code – Idaho Dredge and Placer Mining Protection Act

IDAPA 20.03.01 – Dredge and Placer Mining Operations in Idaho

Background

The Idaho Department of Lands (Department) is responsible for providing regulatory oversight of dredge and placer mining activities on state, federal, and private lands in Idaho pursuant to Title 47, Chapter 13, Idaho Code, and IDAPA 20.03.01.

The Department is implementing a new Land Information Management system (LIMS) for all permit and leasing administration. This LIMS will have a web-based portal that will allow notifications and applications to be submitted electronically. IDAPA 20.03.01.020 currently requires exploration notices to be submitted via certified mail, and IDAPA 20.03.01.021 requires five copies of permit applications to be submitted.

In preparation for drafting notification and application rule changes, a review of the rules revealed that specific rule sections now required by the Office of Administrative Rules were missing. In addition, references to water quality standards were outdated.

The Department received Land Board approval in April 2018 to enter negotiated rulemaking to allow for the electronic submission of notifications and applications, update rule formatting and sections, and to update references to Idaho water quality standards.

Discussion

The Department held three negotiated rulemaking meetings in Coeur d'Alene, Pocatello, and Boise in June 2018. No comments were received on this rulemaking.

On September 5, 2018, the Notice of Rulemaking and proposed rule text (Attachment 1) were published in the Idaho Administrative Bulletin to notify the public of a public hearing and the opportunity to submit public comment. No written comments were received, and no testimony was given at the public hearing.

The proposed rules add five standard sections near the start of the rules and updates to another introductory section. The requirements for notifications and applications were modified to allow electronic or written submittals. In addition, the state water quality standards were updated.

Following is a summary of the proposed rule changes that update the rule formatting, provide improvements to notice and application processing, and update water quality standards:

- The following sections are added near the start of the rule: Section 001, Title and Scope; Section 002, Written Interpretations; Section 004, Incorporation by Reference; and Section 005, Office – Office Hours – Mailing Address – Street Address – Web Address.
- Section 006, Public Records Act Compliance is updated with current language.
- Abbreviations are moved to Section 011.
- Exploration notices can be sent by any means available.
- Permit applications no longer require five copies.
- The specific surface water quality standards in IDAPA 58.01.02 and ground water standards in IDAPA 58.01.11 are referenced.

If approved by the Land Board, the Department will submit the appropriate Notice of Adoption of Pending Rule to the Office of the Administrative Rules Coordinator for the 2019 legislative session.

Recommendation

Authorize the Department to adopt the pending rule to update IDAPA 20.03.01 *Dredge and Placer Mining Operations in Idaho*.

Board Action

Attachments

1. Notice of Rulemaking – Proposed Rule with Rule Text

IDAPA 20 – IDAHO DEPARTMENT OF LANDS
20.03.01 – DREDGE AND PLACER MINING OPERATIONS IN IDAHO
DOCKET NO. 20-0301-1801
NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 47 Chapter 15, including Section 47-1505, Idaho Code.

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

PUBLIC HEARING
Thursday, September 20, 2018 – 2:30 p.m.

Idaho State Capitol
Room WW55
700 West Jefferson Street
Boise, ID 83702

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

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

The Idaho Department of Lands is developing a web-based portal and information management system that will allow for submittal of applications and other documents electronically. Currently, IDAPA 20.03.01 requires paper copies and, in some instances, certified mail submittals. The proposed changes remove the requirement for paper submittals, which will allow permittees and operators to submit documents by paper copy or in electronic format.

Additional changes include the following:

- Addition of required Sections 001. Title and Scope; 002. Written Interpretations; 004. Incorporation by Reference; 005. Office Hours–Mailing Address–Street Address; and 006. Public Records Act Compliance. These sections are now required in rule but were not when the rules were created and last revised.
- New abbreviations have also been added to the rule.
- IDAPA 20.03.01.022.06 references water quality standards regulations established under Title 39, Chapter 1, Idaho Code. Title 39, Chapter 1 covers multiple areas of the Idaho Department of Environmental Quality's regulatory authority. This rule change proposes adding reference to the specific water quality rules sections of IDAPA: IDAPA 58.01.02 and IDAPA 58.01.11. This change is intended to help clarify and direct potential permittees to pertinent rule sections only.

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

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

NEGOTIATED RULEMAKING: Negotiated rulemaking was conducted pursuant to Section 67-5220(1), Idaho Code. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin [Volume 18-6, Page 80](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Todd Drage, Regulatory Minerals Program Manager, at (208) 334-0247.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

DATED this 5th day of September, 2018.

Todd Drage, Regulatory Minerals Program Manager
Resource Protection and Assistance
Idaho Department of Lands
300 N. 6th St, Suite 103
Boise, ID 83720-0050
Phone: (208) 334-0247
Fax: (208) 769-3698

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0301-1801
(Only Those Sections With Amendments Are Shown.)

001. —~~002.~~ ~~(RESERVED)~~ TITLE AND SCOPE.

01. **Title.** These rules shall be cited as IDAPA 20.03.01 “Rules Governing Dredge and Placer Mining Operations in Idaho,” IDAPA 20, Title 03, Chapter 01. ()

02. **Scope.** These rules constitute the Idaho Department of Lands’ administrative procedures for implementation of the Idaho Dredge and Placer Mining Protection Act with the intent and purpose to protect the lands, streams and watercourses within the state, from destruction by dredge mining and by placer mining, and to preserve the same for the enjoyment, use and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest. These rules shall be construed in a manner consistent with the duties and responsibilities of the Board as set forth in Title 47, Chapter 13. ()

002. WRITTEN INTERPRETATIONS.

The Department maintains written interpretations of its rules which may include, but may not be limited to written procedures manuals and operations manuals and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals, and other written interpretations, if applicable, are available for public inspection and copying at the Idaho Department of Lands, 300 North 6th Street, Suite 103, Boise Idaho 83720. ()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference into this rule. ()

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

The principal place of business of the Department of Lands is in Boise, Idaho. The office is located at 300 North 6th Street, Suite 103, Boise, Idaho and is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200 and the fax number is (208) 334-3698. The Department’s web address is located at

www.idl.idaho.gov

()

0046. PUBLIC RECORDS ACT COMPLIANCE.

~~Confidentiality of Information. Notice of exploration as required under Title 47, Chapter 1314(b), Idaho Code, shall not be disclosed by the board, director, or department employees to any person other than the board, director, and employees of the department without the written permission of the operator. However, the provisions of Title 74, Chapter 1, Idaho Code, shall apply after July 1, 1993.~~ The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (4-1-91)()

0057. -- 009. (RESERVED)

010. DEFINITIONS.

- 01. Act.** The Idaho Placer and Dredge Mining Protection Act, Title 47, Chapter 13, Idaho Code. (4-1-91)
- 02. Approximate Previous Contour.** A contour reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (4-1-91)
- 03. Best Management Practices (“BMPs”).** Methods, measures, or practices to prevent or reduce nonpoint source (NPS) water pollution, including, but not limited to, structural and nonstructural controls, and operation and maintenance procedures. Usually, BMPs are applied as a system of practices rather than a single practice. BMPs are selected on the basis of site-specific conditions that reflect natural background conditions; political, social, economic, and technical feasibility; and stated water quality goals. (4-1-91)()
- 04. Board.** The State Board of Land Commissioners or any department, commission, or agency that may lawfully succeed to the powers and duties of such board. (4-1-91)
- 05. Department.** The Idaho Department of Lands whose business address is 300 North 6th Street, Suite 103, PO Box 83720, Boise, Idaho 83720-0050. (4-1-91)
- 06. DEQ.** The Department of Environmental Quality. (4-1-91)
- 07. Director.** The director of the Department of Lands or such representative as may be designated by the director. (4-1-91)
- 08. Disturbed Land or Affected Land.** Land, natural watercourses, or existing stockpiles and waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore wastes from placer or dredge mining, or construction of roads, tailings ponds, structures, or facilities appurtenant to placer or dredge mining operations. (4-1-91)
- 09. Final Order of the Board.** A written notice of rejection or approval, the order of a hearing officer at the conclusion of a hearing, or any other order of the board where additional administrative remedies are not available. (4-1-91)
- 10. Hearing Officer.** That person duly appointed by the board to hear proceedings under Section 47-1320, Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 030 or Section 051 of these rules. (4-1-91)
- 11. Mine Panel.** That area designated by the permittee as an identifiable portion of a placer or dredge mine on the map submitted pursuant to Section 47-1317, Idaho Code. (4-1-91)
- 12. Mineral.** Any ore, rock or substance extracted from a placer deposit or from an existing placer stockpile or wastepile, but does not include coal, clay, stone, sand, gravel, phosphate, uranium, oil or gas. (4-1-91)
- 13. Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, draglines, and suction dredges with an intake diameter exceeding eight (8) inches, and other similar equipment.

(4-1-91)

14. Mulch. Vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation. (4-1-91)

15. Natural Watercourse. Any stream in the state of Idaho having definite bed and banks, and which confines and conducts continuously flowing water. (4-1-91)

16. Overburden. Material extracted by a permittee which is not a part of the material ultimately removed from a placer or dredge mine and marketed by a permittee, exclusive of mineral stockpiles. Overburden is comprised of topsoil and waste. (4-1-91)

17. Overburden Disposal Area. Land surface upon which overburden is piled or planned to be piled. (4-1-91)

18. Permanent Cessation. Mining operations as to the whole or any part of the permit area have stopped and there is substantial evidence that such operations will not resume within one (1) year. The date of permanent cessation is the last day when mining operations are known or can be shown to have occurred. (4-1-91)

19. Permit Area. That area designated under Section 021 as the site of a proposed placer or dredge mining operation, including all lands to be disturbed by the operation. (4-1-91)

20. Permittee. The person in whose name the permit is issued and who is to be held responsible for compliance with the conditions of the permit by the department. (4-1-91)

21. Person. Any person, corporation, partnership, association, or public or governmental agency engaged in placer or dredge mining, whether individually, jointly, or through subsidiaries, agents, employees, or contractors. (4-1-91)

22. Pit. An excavation created by the extraction of minerals or overburden during placer mining or exploration operations. (4-1-91)

23. Placer Deposit. Naturally occurring unconsolidated surficial detritus containing valuable minerals, whether located inside or outside the confines of a natural watercourse. (4-1-91)

24. Placer Stockpile. Placer mineral extracted during past or present placer or dredge mining operations and retained at the mine for future rather than immediate use. (4-1-91)

25. Placer or Dredge Exploration Operation. Activities including, but not limited to, the construction of roads, trenches, and test holes performed on a placer deposit for the purpose of locating and determining the economic feasibility of extracting minerals by placer or dredge mining. (4-1-91)

26. Placer or Dredge Mining or Dredge or Other Placer Mining. The extraction of minerals from a placer deposit, including remining for sale, processing, or other disposition of earth material excavated from previous placer or dredge mining. (4-1-91)

27. Placer or Dredge Mining Operation. Placer or dredge mining which disturbs in excess of one-half (1/2) acre of land during the life of the operation. (4-1-91)

28. Reclamation. The process of restoring an area disturbed by a placer or dredge mining operation or exploration operation to its original or another beneficial use, considering land uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (4-1-91)

29. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by placer or dredge mining operations. (4-1-91)

30. Road. A way including the bed, slopes, and shoulders constructed within the circular tract circumscribed by a placer or dredge mining operation, or constructed solely for access to a placer or dredge mining operation or placer or dredge exploration operation. A way dedicated to public multiple use or being used by a governmental land manager or private landowner at the time of cessation of operations and not constructed solely for access to a placer or dredge mining operation or exploration operation, shall not be considered a road. (4-1-91)

31. Settling Pond. A manmade enclosure or natural impoundment structure constructed and used for the purpose of treating mine process water and/or runoff water from adjacent disturbed areas by the removal or settling of sediment particles. Several types of settling ponds or a series of smaller ponds may be used in water management. The most common type is a recycle or recirculation pond which is used to pump clarified water back to the wash plant operation. (4-1-91)

32. Surface Waters. The surface waters of the state of Idaho. (4-1-91)

33. Topsoil. The unconsolidated mineral and organic matter naturally present on the surface of the earth that is necessary for the growth and regeneration of vegetation. (4-1-91)

011. ABBREVIATIONS.

01. BMP. Best Management Practices. ()

02. DEO. Department of Environmental Quality. ()

01+2. PURPOSE AND GENERAL PROVISIONS.

01. Policy. It is the policy of the state of Idaho to protect the lands, streams, and watercourses within the state from destruction by placer mining, and to preserve them for the enjoyment, use, and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest. (4-1-91)

02. Purpose. These rules are intended to implement the requirements for operation and reclamation of placer and dredge mining set forth in the Idaho Code. Compliance with these rules will allow removal of minerals while preserving water quality and ensuring rehabilitation for beneficial use of the land following mining. Placer and dredge mining is expressly prohibited upon certain waterways included in the federal wild and scenic rivers system. It is also the purpose of these rules to implement the state of Idaho's antidegradation policy as set out in Executive Order No. 88-23 as it pertains to placer mining and exploration operations. (4-1-91)

03. General Provisions. In general, these rules establish: (4-1-91)

a. Requirements for placer mine exploration operations; (4-1-91)

b. Procedures for securing a placer and dredge mining permit; (4-1-91)

c. The requirements for posting a performance bond as a condition of such permit to ensure the completion of rehabilitation operations; (4-1-91)

d. Procedures for initial and periodic inspection of placer and dredge mining operations to ensure compliance with these rules; (4-1-91)

e. Prohibition of placer and dredge mining on designated watercourses (see Section 060); and (4-1-91)

f. Prohibitions against placer and dredge mining on certain lands when not in the public interest. (4-1-91)

04. Compliance with Other Laws. Placer and dredge exploration operations and mining operations shall comply with all applicable rules and laws of the state of Idaho including, but not limited to, the following: (4-1-91)

a. Idaho Environmental Protection and Health Act, Title 39, Chapter 1, Idaho Code, and rules as promulgated and administered by the Idaho Department of Environmental Quality. (4-1-91)

b. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. (4-1-91)

c. Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations as promulgated and administered by the Idaho Department of Water Resources. (4-1-91)

0123. APPLICABILITY.

01. All Lands in State. These rules apply to all lands within the state, including private and federal lands, which are disturbed by placer or dredge mining conducted after November 24, 1954. (4-1-91)

02. Types of Operations. These rules apply to placer and dredge mining operations and placer and dredge exploration operations as defined under Section 47-1313, Idaho Code, and Subsections 010.25, 010.26, and 010.27 and to the following activities: (4-1-91)

a. The extraction of minerals from a placer deposit, including the removal of vegetation, topsoil, overburden, and minerals; construction, and operation of on-site processing equipment; disposal of overburden and waste materials; design and operation of siltation and other water quality control facilities; and other activities contiguous to the mining site that disturb land and affect water quality and/or water quantity. (4-1-91)

b. All exploration activities conducted upon a placer deposit using motorized earth-moving equipment. (4-1-91)

03. Nonapplicability. These rules do not apply to mining operations regulated by the Idaho Surface Mining Act; neither do they apply to surface disturbance caused by the underground mining of a placer deposit, unless the deposit outcrops on or near the surface and the operation will result in the probable subsidence of the land surface. (4-1-91)

04. Stream Channel Alterations. These rules do not exempt the permittee from obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources. (4-1-91)

05. Navigational Improvements. These rules do not apply to dredging operations conducted for the sole purpose of establishing and maintaining a channel for navigation. (4-1-91)

06. Suction Dredges. These rules do not apply to dredging operations in streams or riverbeds using suction dredges with an intake diameter of eight (8) inches or less. However, these rules do not affect or exempt the applicability of Section 47-701, Idaho Code, regarding leasing of the state-owned beds of navigable lakes, rivers, and streams, Section 47-703A, Idaho Code, regarding exploration on navigable lakes and streams, and Section 39-118, Idaho Code, regarding review of plans for waste treatment or disposal facilities such as settling or recycle ponds. (4-1-91)

0134. ADMINISTRATION.

The Department of Lands shall administer these rules under the direction of the director. (4-1-91)

0145. -- 019. (RESERVED)

020. PLACER OR DREDGE EXPLORATION OPERATIONS.

01. Notice. Any person desiring to conduct placer or dredge exploration operations using motorized earth-moving equipment shall, within seven (7) days of commencing exploration, notify the director ~~by certified mail.~~ (4-1-91) The notice shall include the following:

a. The name and address of the operator; (4-1-91)

and **b.** The legal description of the exploration operation and its starting and estimated completion date; (4-1-91)

c. The anticipated size of the exploration operation and the general method of operation. (4-1-91)

02. Confidentiality. The exploration notice shall be treated confidential pursuant to Sections 74-107 and 47-1314, Idaho Code. (4-1-91)

03. One-Half Acre Limit. Any placer or dredge exploration operation which causes a cumulative surface disturbance in excess of one-half (1/2) acre of land, including roads, shall be considered a placer or dredge mining operation and subject to the requirements outlined in Sections 021 through 065. Lands disturbed by any placer or dredge exploration operation which causes a cumulative surface disturbance of less than one-half (1/2) acre of land, including roads, shall be restored to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operation and as outlined in Subsection 020.04. (4-1-91)

04. Reclamation Required. The following reclamation activities, required to be conducted on exploration sites, shall be performed in a workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, pit, or trench, within one (1) year after abandonment thereof: (4-1-91)

a. Drill holes will be plugged within one (1) year of abandonment with a permanent concrete or bentonite plug. (4-1-91)

b. Restore all disturbed lands, including roads, to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operations. (47-1314(b)) (4-1-91)

c. Conduct revegetation activities in accordance with Subsection 040.17. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification; (4-1-91)

d. If water runoff from exploration operations causes siltation or other pollution of surface waters, the operator shall prepare disturbed lands and adjoining lands under his or her control, as is necessary to meet state water quality standards. (4-1-91)

e. Abandoned lands disturbed by an exploration operation shall be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration operation, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon; (4-1-91)

f. Any water containment structure created in connection with exploration operations shall be constructed, maintained, and reclaimed so as not to constitute a hazard to human health or the environment. (4-1-91)

021. APPLICATION PROCEDURE FOR PLACER OR DREDGE MINING PERMIT.

01. Approved Reclamation Plan Required. No permittee shall conduct placer or dredge mining operations, as defined in these rules, on any lands in the state of Idaho until the placer mining permit has been approved by the board, the department has received a bond meeting the requirements of these rules, and the permit has been signed by the director and the permittee. (4-1-91)

02. Application Package. The permittee must submit ~~five (5) copies of the placer mining~~ **a complete** application package, for each separate placer mine or mine panel, before the placer permit will be reviewed. Separate placer mines are individual, physically disconnected operations. The complete application package consists of: ~~(4-1-91)~~ ()

a. An application completed by the applicant on a form provided by the director; (4-1-91)

b. A map or maps of the proposed mining operation which includes the information required under Subsection 021.04; (4-1-91)

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 021.06. The map and reclamation plan may be combined on one (1) sheet if practical; (4-1-91)

d. Document(s) identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters, and the best management practices the applicant will take to control such nonpoint source impacts; (4-1-91)

e. When the director determines, after consultation with DEQ, that there is an unreasonably high potential for nonpoint source pollution of adjacent surface waters, the director shall request, and the applicant shall provide to the director, baseline pre-project surface water monitoring information and furnish ongoing monitoring data during the life of the project. This provision shall not require any additional baseline preproject surface water monitoring information or ongoing monitoring data where such information or data is already required to be provided pursuant to any federal or state law and is available to the director; (4-1-91)

f. An out-of-state permittee shall designate an in-state agent authorized to act on behalf of the permittee. In case of an emergency requiring action to be taken to prevent environmental damage, the authorized agent will be notified as well as the permittee; and (4-1-91)

g. An application fee of fifty dollars (\$50) for each ten (10) acres or fraction of land included in an application for a new mining permit, or of land to be affected or added in an amended application to an existing mining permit, must be included with the application. No application fee shall exceed one thousand dollars (\$1,000). (4-1-91)

03. Incomplete Applications. An application for a permit may be returned for correction if the information provided on the application form or associated mine map(s) or reclamation plan is incomplete or otherwise unsatisfactory. The director shall not proceed on the application until all necessary information is submitted. (4-1-91)

a. If the applicant is not the owner of the lands described in the application, or any part thereof, the land owner shall endorse his approval of the application prior to issuance of a permit. The federal government, as a property owner, will be notified of the application, and asked to endorse the application as property owner. For mining operations proposed upon land under a mining lease, either the signature of the lessor shall be affixed to the application or a copy of the complete lease attached to the application. (4-1-91)

04. Requirements of Maps. Vicinity maps shall be prepared on standard United States Geological Survey, seven and one-half (7.5) minute quadrangle maps, or equivalent. In addition, maps of the proposed placer mining operation site shall be of sufficient scale to adequately show the following: (4-1-91)

a. The location of existing roads and anticipated access and main haulage roads planned for construction in connection with the mining operation, along with approximate dates for construction, reconstruction, and abandonment; (4-1-91)

b. The approximate location, and the names of all known streams, creeks, springs, wells, or bodies of water within one thousand (1,000) feet of the mining operation; (4-1-91)

c. The approximate boundaries of all lands to be disturbed in the process of mining, including legal description to the quarter-quarter section; (4-1-91)

d. The approximate boundaries and acreage of the lands that will become disturbed land as a result of the placer or dredge mining operation during the first year of operations following issuance of a placer mining permit; (4-1-91)

e. The planned location and configuration of pits, mineral stockpiles, topsoil stockpiles, and waste dumps within the mining property; (4-1-91)

f. Scaled cross-sections, of length and width, which are representative of the placer or dredge mining operation, showing the surface contour prior to mining and the expected surface contour after reclamation activities have been completed; (4-1-91)

g. The location of required settling ponds, the design plans, construction specifications and narrative to show they meet both operating requirements and protection from erosion, seepage, and flooding that can be anticipated in the area. Where a dredge is operating in a stream, describe by drawing and narrative, the operation of the filtration equipment to be used to clarify the water. (4-1-91)

h. Surface and mineral control or ownership of appropriate scale for boundary identification. (4-1-91)

05. Settling Ponds. Detailed plans and specifications for settling ponds shall be drawn to a scale of one (1) inch = ten (10) feet and include the following: (4-1-91)

- a.** A detailed map of the settling pond location, including: (4-1-91)
 - i.** Dimensions and orientation of the settling ponds and/or other wastewater treatment components of the operation; (4-1-91)
 - ii.** Distance from surface waters; (4-1-91)
 - iii.** Pond inlet/outlet locations including emergency spillways and detailed description of control structures and piping; (4-1-91)
 - iv.** Location of erosion control structures; and (4-1-91)
 - v.** Ten (10) year flood elevation (probable high water mark). (4-1-91)
- b.** A detailed cross-section of the pond(s) including: (4-1-91)
 - i.** Dimensions and orientation; (4-1-91)
 - ii.** Proposed sidewall elevations; (4-1-91)
 - iii.** Proposed sidewall slope; (4-1-91)
 - iv.** Sidewall width; (4-1-91)
 - v.** Distance from and elevation above all surface water; and (4-1-91)
 - vi.** Slope of settling pond location. (4-1-91)
- c.** Narrative of the construction method(s) describing: (4-1-91)
 - i.** Bottom material; (4-1-91)
 - ii.** Sidewall material; (4-1-91)
 - iii.** Pond volume; (4-1-91)
 - iv.** Volume of water to be used in the wash plant; (4-1-91)
 - v.** Discharge or land application requirements; (4-1-91)
 - vi.** Any pond liners or filter materials to be installed; and (4-1-91)

- viii. Compaction techniques. (4-1-91)
- d. If the proposed ponds are: (4-1-91)
 - i. Less than two thousand five hundred (2,500) feet square surface area; (4-1-91)
 - ii. Less than four (4) feet high; (4-1-91)
 - iii. Greater than fifty (50) feet from surface water; and (4-1-91)
 - iv. Constructed on slopes of three: one (3:1) or flatter, the plans and specifications for settlings ponds shall contain information in Subsections 021.05.a.i., 021.05.a.ii., and 021.05.a.iv.; 021.05.b.i., 021.05.b.ii., 021.05.b.v. and 021.05.b.vi. This information may be prepared as a sketch map showing appropriate elevations, distances and other required details. (4-1-91)

06. Requirements for Reclamation Plan. A reclamation plan must be submitted in map and narrative form and include the following: (4-1-91)

- a. Show how watercourses disturbed by the mining operation shall be replaced on meander lines with a pool structure conducive to good fish and wildlife habitat and recreational use. Show how and where riprap or other methods of bank stabilization will be used to ensure that, following abandonment, the stream erosion will not exceed the rate normally experienced in the area. If necessary, show how the replaced watercourse will not contribute to degradation of water supplies; (4-1-91)
- b. Describe and show the contour of the proposed mine site after final backfilling and/or grading, with grades listed for slopes after mining; (4-1-91)
- c. On a drainage control map, show the best management practices to be utilized to minimize erosion on disturbed lands; (4-1-91)
- d. Show roads to be reclaimed upon completion of mining; (4-1-91)
- e. Show plans for both concurrent and final revegetation of disturbed lands. Indicate soil types, slopes, precipitation, seed rates, species, topsoil, or other growth medium storage and handling, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (4-1-91)
- f. The planned reclamation of tailings or sediment ponds; (4-1-91)
- g. An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and administrative overhead. (4-1-91)
- h. Make a premining estimate of trees on the site by species and forest lands utilization consideration in reclamation. (4-1-91)

07. State Approval Required. Approval of a placer mining permit must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. (4-1-91)

08. Application Review and Inspection. If the director determines that an inspection is necessary, the applicant may be contacted and asked that he or his duly authorized employee or representative be present for inspection at a reasonable time. An inspection may be required prior to issuance of the permit. The applicant shall make such persons available for the purpose of inspection (see Subsection 051.01). Failure to provide a representative does not mean that the state will not conduct such inspection. (4-1-91)

022. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION.

01. Decision on Application. Following director review of an application for a new permit or to amend

an existing permit and opportunity to correct any deficiencies, the board shall approve or disapprove the application and the director shall notify the applicant of the board's decision by mail. Such notice shall contain any reservations conditioned with the approval, or the information required to be given under Subsections 022.07 and 022.09 if disapproved. If approved, a permit shall be issued after the bonding requirements of Section 035 are met. No mining shall be allowed until the permit is bonded and applicant is notified by mail or telephone of approval. (4-1-91)

02. Public Hearings. For the purpose of determining whether a proposed application complies with these rules, the director may call for a public hearing, as described in Section 030. (4-1-91)

03. Adverse Weather. If weather conditions prevent the director from inspecting the proposed mining site to acquire the information required to evaluate the application, the application may be placed in suspense, pending improved weather conditions. The applicant will be notified in writing of this action. (4-1-91)

04. Interagency Comment. Nonconfidential materials submitted under Section 021 shall be forwarded by the director to the Departments of Water Resources, Environmental Quality (DEQ), and Fish and Game for review and comment. If operations are to be located on federal lands, the department will notify the U. S. Bureau of Land Management or the U.S. Forest Service. The director may provide public notice on receipt of a reclamation plan. In addition, a copy of an application will be provided to individuals who request the information in writing, subject to Title 9, Chapter 3, Idaho Code. (4-1-91)

05. Stream Alteration Permits. No permit will be issued proposing to alter, occupy or to dredge any stream or watercourse without notification to the Department of Water Resources of the pending application. The Department of Water Resources shall respond to said notification within twenty (20) days. If a stream channel alteration permit is required, it must be issued prior to issuance of the placer and dredge permit. (4-1-91)

06. Water Clarification. No permit shall be issued until the director is satisfied that the methods of water clarification proposed by the applicant are of sound engineering design and capable of meeting the water quality standards established under Title 39, Chapter 1, Idaho Code, and IDAPA 58.01.02, "Water Quality Standards," IDAPA, 58.01.11. "Ground Water Quality Rule." ~~(4-1-91)~~ ()

07. Permit Denial Authority. The State Board of Land Commissioners shall have the power to deny any application for a permit on state lands, streams, or riverbeds, or on any unpatented mining claims, upon its determination that a placer or dredge mining operation on the area proposed would not be in the public interest, giving consideration to economic factors, recreational use for such lands, fish and wildlife habitat, and other factors which in the judgement of the board may be pertinent, and may deny any application upon notification by the Department of Water Resources that the granting of such permit would result in permanent damage to the stream channel. (Section 47-1317(j), Idaho Code) (4-1-91)

08. Permit Conditions. If an application fails to meet the requirements of these rules, the board may issue a permit subject to conditions that bring the application into compliance with these rules. The applicant may accept or refuse the permit. Refusal to accept the permit shall be considered a denial under Subsection 022.09. (4-1-91)

09. Amended Applications. If the board disapproves the application, the applicant shall be informed of the rules that have not been complied with, the manner in which they have not been complied with, and the requirements necessary to correct the deficiencies. The applicant may then submit an amended application, which will be processed as described in Section 022. (4-1-91)

10. Permit Offering. Upon approval by the board, the applicant will be notified of the action and the amount of bond required. Upon receipt of the required bond, the permit will be sent to the applicant for signature. If the bond and the permit, signed by the applicant, are not received within twelve (12) months of board action, the approval shall be automatically rescinded, except that upon written request of the applicant, and for good cause, the director may defer decision of the board's approval for a reasonable period of time not to exceed one (1) year. The director shall notify the applicant of his decision in writing. (4-1-91)

11. Reclamation Obligations. The permit issued by the board shall govern and determine the nature and extent of the reclamation obligations of the permittee. (4-1-91)

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IDAHO DEPARTMENT OF LANDS

STATE BOARD OF LAND COMMISSIONERS

October 16, 2018

Regular Agenda

Subject

Adopt the pending rule for IDAPA 20.03.02 *Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities*

Authority

Title 47, Chapter 15, Idaho Code – Idaho Surface Mining Act

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

Background

The Idaho Department of Lands (Department) is responsible for providing regulatory oversight of surface mining activities on state, federal, and private lands in Idaho pursuant to Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02.

The Department is implementing a new Land Information Management system (LIMS) for all permit and leasing administration. This LIMS will have a web-based portal that will allow notifications and applications to be submitted electronically. IDAPA 20.03.02.060 currently requires exploration notices to be submitted via certified mail, and IDAPA 20.03.02.069, 070, and 071 require five copies of permit applications to be submitted.

In preparation for drafting notification and application rule changes, a review of the rules revealed that several introductory rule sections were incomplete or did not follow the current guidelines of the Office of Administrative Rules. In addition, the impacts of surface mining on flooding needed to be addressed in response to recent flooding issues, and bond amounts needed to be updated in response to statute changes. Lastly, a missing word regarding best management practices was added.

The Department received Land Board approval in April 2018 to enter negotiated rulemaking to allow for the electronic submission of notifications and applications, update rule sections, conform with statutory limits on bonding, and to fix a prior typographical error.

Discussion

The Department held three negotiated rulemaking meetings in Coeur d'Alene, Pocatello, and Boise in June 2018. No comments were received on this rulemaking.

On September 5, 2018, the Notice of Rulemaking and proposed rule text (Attachment 1) were published in the Idaho Administrative Bulletin to notify the public of a public hearing

and the opportunity to submit public comment. No written comments were received, and no testimony was given at the public hearing.

Following is a summary of the proposed rule changes that update the rule formatting, provide improvements to notice and application processing, update bond amounts, and fix a typographical error:

- Standard sections 005 and 006 have been updated.
- Abbreviations are consolidated into Section 011.
- Exploration notices can be sent by any means available.
- Reclamation and Closure Plan applications no longer require five copies.
- Operators of new plans must show 100-year floodplains within 100 feet of their facilities and the best management practices that will be used to keep surface waters from entering their pit.
- The maximum bonding rate without an opportunity to be heard by the Land Board is raised to \$15,000 per acre in conformance with Title 47, Chapter 15, Idaho Code.
- Restriction on bonds to be assessed at actual cost removed because is it outdated and redundant with Title 47, Chapter 15, Idaho Code, Section 47-1513(h).
- The word "standards" is added to clarify water quality requirements for best management practices.

If approved by the Land Board, the Department will submit the appropriate Notice of Adoption of Pending Rule to the Office of the Administrative Rules Coordinator for the 2019 legislative session.

Recommendation

Authorize the Department to adopt the pending rule to update IDAPA 20.03.02 *Rules Governing Exploration, Surface Mining, and Closure of Cyanidation Facilities*.

Board Action

Attachments

1. Notice of Rulemaking – Proposed Rule with Rule Text

IDAPA 20 – IDAHO DEPARTMENT OF LANDS
20.03.02 – RULES GOVERNING EXPLORATION, SURFACE MINING,
AND CLOSURE OF CYANIDATION FACILITIES

DOCKET NO. 20-0302-1801

NOTICE OF RULEMAKING – PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 47 Chapter 15, including Section 47-1505, Idaho Code.

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

PUBLIC HEARING Thursday, September 20, 2018 – 4:00 p.m.
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Idaho State Capitol
Room WW55
700 West Jefferson Street
Boise, ID 83702

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

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

The Idaho Department of Lands is developing a web-based portal and information management system that will allow for submittal of applications and other documents electronically. Currently, IDAPA 20.03.02 requires paper copies and, in some instances, certified mail submittals. The proposed changes remove the requirement for paper submittals, which will allow permittees and operators to submit documents by paper copy or in electronic format.

Additional changes include the following:

- Updates to Section 005-Office Hours – Mailing Address and Street Address.
- Addition of new abbreviations.
- IDAPA 20.03.02.120.03 states that only surface mining reclamation bonds obtained after January 1, 1997, may be addressed at actual costs plus ten percent (10%). As Section 47-1512, Idaho Code, requires bonding for actual costs of reclamation, any bonds calculated prior to 1997 are out of date and do not represent actual costs of reclamation. It is suggested that this section be deleted.
- Section 47-1512, Idaho Code, was changed in 2016 to increase the maximum reclamation bond amount per acre from \$2,500 to \$15,000 per acre, but IDAPA 20.03.02 still lists the \$2,500 maximum amount. This change will update the rules to align with statute.
- Requiring potential and current operators within the 100-year floodplain to illustrate the floodplain and describe the measures that will be implemented to keep surface waters from entering mining operations.

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

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

NEGOTIATED RULEMAKING: Negotiated rulemaking was conducted pursuant to Section 67-5220(1), Idaho Code. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin [Volume 18-6, Page 82](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

No materials are being incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Todd Drage, Regulatory Minerals Program Manager, at (208) 334-0247.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 5th day of September, 2018.

Todd Drage, Regulatory Minerals Program Manager
Resource Protection and Assistance
Idaho Department of Lands
300 N. 6th St, Suite 103
Boise, ID 83720-0050
Phone: (208) 334-0247
Fax: (208) 769-3698

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0302-1801
(Only Those Sections With Amendments Are Shown.)

005. ~~INCLUSIVE GENDER.~~

~~For all sections and subsections of these rules, the terms and references used in the masculine sense include the feminine sense and vice versa, as appropriate.~~ (3-30-06)

~~006.~~ OFFICE – OFFICE HOURS – MAILING ADDRESS ~~AND~~ = STREET ADDRESS – WEB ADDRESS.

The principal place of business of the Department of Lands is in Boise, Idaho. The office is located at 300 North 6th Street, Suite 103, Boise, Idaho and is open from 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone of the office is (208) 334-0200 and the fax number is (208) 334-~~2339~~3698. The Department's web address is located at www.idl.idaho.gov. (3-30-06)()

~~007.~~ PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code and are public records. (3-30-06)

~~008.~~ -- 009. (RESERVED)

010. DEFINITIONS.

01. Affected Land. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at the surface mining operation site. (11-1-89)

02. Approximate Previous Contour. A contour that is reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (11-1-89)

- 03. Best Management Practices** (~~“BMPs”~~). Practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan, as described in IDAPA 58.01.02, “Water Quality Standards and Wastewater Treatment Requirements,” which are determined to be a cost-effective and practicable means of preventing or reducing pollutants generated from nonpoint sources to a level compatible with water quality goals. (3-30-06)()
- 04. Board.** The State Board of Land Commissioners or any Department, commission, or agency that may lawfully succeed to the powers and duties of such Board. (11-1-89)
- 05. Chapter.** The Idaho Surface Mining Act, Title 47, Chapter 15, Idaho Code. (3-30-06)
- 06. Cyanidation.** The method of extracting target precious metals from ores by treatment with cyanide solution, which is the primary leaching agent for extraction. (3-30-06)
- 07. Cyanidation Facility.** That portion of a new ore processing facility, or a material modification or a material expansion of that portion of an existing ore processing facility, that utilizes cyanidation and is intended to contain, treat, or dispose of cyanide containing materials including spent ore, tailings, and process water. (3-30-06)
- 08. Department.** The Idaho Department of Lands. Its business address is 300 North 6th Street, Suite 103, Boise, Idaho 83720. (7-1-98)
- 09. DEQ.** The Department of Environmental Quality. (11-1-89)
- 10. Director.** The head of the Department of Lands or such officer as may lawfully succeed to the powers and duties of said director. It shall also mean such representative as may be designated by the director. (11-1-89)
- 11. Discharge.** With regard to cyanidation facilities, when used without qualification, any spilling, leaking, emitting, escaping, leaching, or disposing of a pollutant into the waters of the state. (3-30-06)
- 12. Exploration Drill Holes.** Holes drilled from the surface to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)
- 13. Exploration Operations.** Activities performed on the surface of lands to locate mineral bodies and to determine the mineability and merchantability thereof. These activities include, but are not limited to, construction of roads, trenches, and exploration drill holes. (11-1-89)
- 14. Exploration Roads.** Roads constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)
- 15. Exploration Trenches.** Trenches constructed to locate mineral bodies and to determine the mineability and merchantability thereof. (11-1-89)
- 16. Final Order of the Board.** A written notice of rejection, the order of a hearing officer at the conclusion of a hearing, or any other order of the Board where additional administrative remedies are not available. (11-1-89)
- 17. Groundwater.** Any water of the state which occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (3-30-06)
- 18. Hearing Officer.** That person selected by the Board to hear proceedings under Section 47-1513, Idaho Code. It also means that person selected by the director to hear proceedings initiated under Section 110 or Section 160 of these rules. (11-1-89)
- 19. Land Application.** With regard to cyanidation facilities, a process or activity involving application of process water, wastewater, surface water, or semi-liquid material to the land for the purpose of disposal, pollutant removal, or groundwater recharge. (3-30-06)

20. Material Change. (3-30-06)

a. For surface mining, a change which deviates from the approved reclamation plan and causes one (1) of the following to occur: (3-30-06)

i. Results in a substantial adverse affect to the geotechnical stability of overburden disposal areas, topsoil, stockpiles, roads, embankments, tailings facilities or pit walls; (7-1-98)

ii. Substantially modifies surface water management, not to include routine implementation and maintenance of BMPs; (3-30-06)

iii. Exceeds the permitted acreage; or (7-1-98)

iv. Increases overall estimated reclamation costs by more than fifteen percent (15%). (7-1-98)

b. For cyanidation facilities, a change which causes one (1) of the following to occur: (3-30-06)

i. A substantial adverse effect to the geotechnical stability of the cyanidation facilities; (3-30-06)

ii. The need for a substantial change in the water management plan. (3-30-06)

iii. Increases in overall estimated permanent closure costs by more than fifteen percent (15%). (3-30-06)

21. Material Modification or Material Expansion. With regard to cyanidation facilities: (3-30-06)

a. The addition of a new beneficiation process, or a significant change in the capacity of an existing beneficiation process, which was not identified in the original application and that significantly increases the potential to degrade the waters of the state. Such process could include, but is not limited to, heap leaching and process components for milling; or (3-30-06)

b. A significant change in the location of a proposed process component or site condition which was not adequately described in the original application; or (3-30-06)

c. A change in the beneficiation process that alters the characteristics of the waste stream in a way that significantly increases the potential to degrade the waters of the state. (3-30-06)

d. For a cyanidation facility with an existing permit that did not actively add cyanide after January 1, 2005, reclamation and closure related activities shall not be considered to be material modifications or material expansions of the cyanidation facility. (3-30-06)

22. Material Stabilization. Managing or treating spent ore, tailings, other solids and/or sludges resulting from the cyanidation process in such a manner to minimize waters or all other applied solutions from migrating through the material and transporting pollutants associated with the cyanidation facility ensuring that all discharges comply with all applicable standards and criteria. (3-30-06)

23. Mine Panel. That area designated by the operator as a panel of a surface mine on the map submitted pursuant to Section 47-1506, Idaho Code. (11-1-89)

24. Mined Area. Surface of land from which overburden or minerals have been removed other than by drilling of exploration drill holes. (11-1-89)

25. Mineral. Coal, clay, stone, sand, gravel, metalliferous and non-metalliferous types of ores, and any other similar, solid material or substance of commercial value to be excavated from natural deposits on or in the earth. (11-1-89)

- 26. Mineral Stockpile.** Mineral extracted during surface mining operations and retained at the surface mine for future rather than immediate use. (11-1-89)
- 27. Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, and other similar equipment. (11-1-89)
- 28. Neutralization.** Treatment of process waters such that discharge or final disposal of those waters does not, or shall not violate all applicable standards and criteria. (3-30-06)
- 29. Operator.** Any person or persons, any partnership, limited partnership, or corporation, or any association of persons, either natural or artificial, including but not limited to every public or governmental agency engaged in surface mining or exploration operations, or engaged in the operation and/or permanent closure of a cyanidation facility, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every governmental agency owning or controlling the use of any surface mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any such governmental agency with respect to those surface mining or exploration operations as to which it grants mineral leases or prospecting permits or similar contracts, but nothing herein shall relieve the operator acting pursuant to a mineral lease, prospecting permit or similar contract from the terms of the chapter. (3-30-06)
- 30. Overburden.** Material extracted by an operator which is not a part of the material ultimately removed from a surface mine and marketed by an operator, exclusive of mineral stockpiles. (11-1-89)
- 31. Overburden Disposal Area.** Land surface upon which overburden is piled or planned to be piled. (11-1-89)
- 32. Peak.** A projecting point of overburden. (11-1-89)
- 33. Permanent Closure.** Those activities which result in neutralization, material stabilization, and decontamination of cyanidation facilities and/or facilities' final reclamation. (3-30-06)
- 34. Permanent Closure Plan.** A description of the procedures, methods, and schedule that will be implemented to meet the intent and purpose of the chapter in treating and disposing of cyanide-containing materials including spent ore, tailings, and process water and in controlling and monitoring discharges and potential discharges for a reasonable period of time based on site specific conditions. (3-30-06)
- 35. Permit.** When used without qualification, any written authorization by the Department of Environmental Quality, issued pursuant to the application, public participation, and appeal procedures in IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," governing the location, operation and maintenance, monitoring, seasonal and permanent closure, discharge response, and design and construction of a new cyanidation facility or a material expansion or material modification to a cyanidation facility. (3-30-06)
- 36. Pilot Facility.** (3-30-06)
- a.** A testing cyanidation facility that is constructed primarily to obtain data on the effectiveness of the beneficiation process to determine: (3-30-06)
- i.** The feasibility of metals recovery from an ore; or (3-30-06)
- ii.** The optimum operating conditions for a predetermined process to extract values from an ore. (3-30-06)
- b.** A pilot or testing cyanidation facility operated for one (1) year for a single test or two (2) years for multiple tests, during which time no more than ten thousand (10,000) tons of ore are evaluated for the testing process(es), unless the applicant can demonstrate that a greater amount is necessary for a specific purpose in the testing process. (3-30-06)
- 37. Pit.** An excavation created by the extraction of minerals or overburden during surface mining

operations. (11-1-89)

38. Pollutant. Chemicals, chemical waste, process water, biological materials, radioactive materials, or other materials which, when discharged cause or contribute adverse effects to any beneficial use, or for any other reason, may impact the surface or ground waters of the state. (3-30-06)

39. Post Closure. The period after completion of permanent closure when the operator is monitoring the effectiveness of the permanent closure activities. Post closure shall last a minimum of twelve (12) months, but may extend until the cyanidation facility is shown to be in compliance with the stated permanent closure objectives and the requirements of the chapter. (3-30-06)

40. Process Waters. Any liquids which are intentionally or unintentionally introduced into any portion of the cyanidation process. These liquids may contain cyanide or other minerals, meteoric water, ground or surface water, elements and compounds added to the process solutions for leaching or the general beneficiation of ore, or hazardous materials that result from the combination of these materials. (3-30-06)

41. Reclamation. The process of restoring an area affected by a surface mining operation to its original or another beneficial use, considering previous uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (11-1-89)

42. Revegetation. The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by surface mining operations. (11-1-89)

43. Ridge. A lengthened elevation of overburden. (11-1-89)

44. Road. A way constructed on a surface mine for the passage of vehicles, including the bed, slopes and shoulders thereof. (11-1-89)

45. Small Cyanidation Processing Facility. A cyanidation facility which chemically processes less than thirty-six thousand five hundred (36,500) tons of ore per year and no more than one hundred twenty thousand (120,000) tons of ore for the life of the project at any one (1) permitted cyanidation facility. No person or operator may concurrently hold more than one (1) small cyanidation processing facility permit, if located within ten (10) miles of each other. (3-30-06)

46. Surface Mine. An area where minerals are extracted by removing the overburden lying above and adjacent to natural deposits thereof and mining directly from the natural deposits thereby exposed. (11-1-89)

47. Surface Mining Operations. The activities performed on a surface mine in the extraction of minerals from the ground, including the excavation of pits, removal of minerals, disposal of overburden, and the construction of haulage roads, exclusive of exploration operations, except that any exploration operations which, exclusive of exploration roads, 1) result during a period of twelve (12) consecutive months in more than five (5) contiguous acres of newly affected land, or 2) which, exclusive of exploration roads, results during a period of twelve (12) consecutive months in newly affected lands consisting of more than ten (10) noncontiguous acres, if such affected land constitutes more than fifteen percent (15%) of the total area of any circular tract which includes such affected land, shall be deemed to be a surface mining operation for the purposes of the act. (11-1-89)

48. Surface Waters. The surface waters of the state of Idaho. (11-1-89)

49. Tailings Pond. An area on a surface mine enclosed by a man-made or natural dam onto which has been discharged the waste material resulting from the primary concentration of minerals in ore excavated from a surface mine. (11-1-89)

50. Treatment. With regard to cyanidation facilities, any method, technique or process, including neutralization, designed to change the physical, chemical, or biological character or composition of a waste for the purpose of disposal. (3-30-06)

51. **Water Balance.** An inventory and accounting process capable of being reconciled that integrates all potential sources of water that are entrained in the cyanidation facility or may enter into or exit from the cyanidation facility. The inventory must include the water holding capacity of specific structures within the facility that contain process water. The water balance is used to ensure that all process water and other pollutants can be contained as engineered and designed within a factor of safety as determined in the permanent closure plan. (3-30-06)

52. **Water Management Plan.** A document that describes the results of the water balance and the methods that will be used to ensure that pollutants are not discharged from a cyanidation facility into waters of the state, unless permitted or otherwise approved by the DEQ. (3-30-06)

53. **Waters of the State.** All the accumulations of water, surface and underground, natural and artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state. These waters shall not include municipal or industrial wastewater treatment or storage structures or private reservoirs, the operation of which has no effect on waters of the state. (3-30-06)

54. **Weak Acid Dissociable ~~(WAD)~~ Cyanide.** The cyanide concentration as determined by Method C, Weak Acid Dissociable Cyanide, D2036, the American Society of Testing Materials Book of Standards, "Standard Methods for the Examination of Water and Wastewater," Method 4500 CN⁻ I, or other methods accepted by the scientific community and deemed appropriate by the DEQ. ~~(3-30-06)~~ ()

011. ABBREVIATIONS.

01. BMP. Best Management Practices. ()

02. DEQ. Department of Environmental Quality. ()

03. U.S.C. United States Code. ()

04. WAD. Weak Acid Dissociable. ()

01~~42~~. -- 049. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

060. EXPLORATION OPERATIONS AND REQUIRED RECLAMATION.

01. **Diligence.** All reclamation activities required to be conducted on exploration sites shall be performed in a good, workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, or trench, within one (1) year after abandonment thereof. (11-1-89)

02. **When Exploration Is Surface Mining.** Exploration operations may under some circumstances constitute surface mining operations (see Subsection 010.46). (3-30-06)

03. **Notification.** Any operator desiring to conduct exploration using motorized earth-moving equipment to locate minerals for immediate or ultimate sale shall notify the Department ~~by certified mail~~ within seven (7) days after beginning exploration operations. ~~(3-30-06)~~ ()

04. **Contents of Notification.** The notification shall include: (3-30-06)

a. The name and address of the operator; (11-1-89)

b. The legal description of the exploration and its starting and estimated completion date; and (3-30-06)

- c. The anticipated size of the exploration and the general method of operation. (3-30-06)
- 05. Confidentiality.** Any such notification shall be treated as confidential in accord with Section 180. (3-30-06)
- 06. Exploration Reclamation (Less Than Two Acres).** Every operator who conducts exploration affecting less than two (2) acres shall: (3-30-06)
- a. Wherever possible, contour the affected lands to their approximate previous contour; and (11-1-89)
- b. Conduct revegetation activities in accordance with Subsection 140.11. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. (3-30-06)
- c. Abandoned exploration drill holes shall be plugged, or otherwise left so as to eliminate hazards to humans and animals. Pits or trenches on mining claims showing discovery may be left open pending verification by federal mining examiners but shall not create a hazard to humans or animals. Such abandoned pits and trenches shall be reclaimed within one (1) year of verification. (3-30-06)
- d. If water runoff from exploration causes siltation of surface waters in amounts more than normally results from runoff, the operator shall reclaim affected lands and adjoining lands under his control as is necessary to re-establish runoff conditions that existed prior to starting exploration, or as is necessary to meet state water quality standards, whichever is the lesser standard. It shall be presumed that state water quality standards will be the applicable standard unless baseline data is provided to rebut the presumption. (3-30-06)
- 07. Exploration Reclamation (More Than Two Acres).** Reclamation of lands where exploration has affected more than two (2) acres shall be completed as set forth in Subsection 060.06 and the following additional requirements: (3-30-06)
- a. Abandoned exploration roads shall be cross-ditched as necessary to minimize erosion. The director may request in writing, or may be petitioned in writing, that a given road or road segment be left for a specific purpose and not be cross-ditched or revegetated. If the director approves the petition, the operator cannot thereafter be required to conduct reclamation activities with respect to that given road or road segment. (3-30-06)
- b. Ridges of overburden shall be leveled so as to have a minimum width of ten (10) feet at the top. (11-1-89)
- c. Peaks of overburden shall be leveled so as to have a minimum width of fifteen (15) feet at the top. (11-1-89)
- d. Overburden piles shall be reasonably prepared to control erosion. (11-1-89)
- e. Abandoned lands affected by exploration shall be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon. (3-30-06)
- f. Any water containment structure created in connection with exploration, shall be reasonably prepared so as not to constitute a hazard to humans or animals. (3-30-06)
- 08. Additional Reclamation.** The operator and the director may agree, in writing, to complete additional reclamation beyond the requirements established in the chapter and these rules. (3-30-06)
- 061. -- 068. (RESERVED)**
- 069. APPLICATION PROCEDURE AND REQUIREMENTS FOR QUARRIES, DECORATIVE STONE, BUILDING STONE, AND AGGREGATE MATERIALS INCLUDING SAND, GRAVEL AND CRUSHED ROCK.**

01. Approval Required. Approval of a reclamation plan by the Department is required even if approval of such plan has been or will be obtained from a federal agency. (3-30-06)

02. No Operator Shall Conduct Surface Mining Operations. No operator shall conduct surface mining operations on any lands in the state until the surface mining reclamation plan has been approved by the director, and the operator has filed a bond that meets the requirements of the chapter and these rules. (3-30-06)

03. Application Package. The operator must submit ~~five (5)~~ a complete ~~copies of the~~ application package, for each separate surface mine or mine panel, before the reclamation plan will be approved. Separate surface mines are individual, physically disconnected operations. A complete application package consists of:

~~(3-30-06)~~ ()

a. An application provided by the director; (7-1-98)

b. A map or maps of the proposed mining operation which includes the information required under Subsection 069.03; (7-1-98)

c. A reclamation plan, in map and narrative form, which includes the information required under Subsection 069.04; and (3-30-06)

d. An out-of-state operator shall designate an in-state agent authorized to act on behalf of the operator. In case of an emergency that requires an action or actions to prevent environmental damage, both the operator and the authorized agent will be notified as well. (3-30-06)

04. Map Requirements. A vicinity map shall be prepared on standard United States Geological Survey ("USGS") seven and one-half (7.5) minute quadrangle maps or equivalent. A map of the proposed surface mining operation site shall be of sufficient scale to show: (3-30-06)

a. The location of existing roads, access, and main haul roads to be constructed or reconstructed in conjunction with the surface mining operation and the approximate dates for construction, reconstruction, and abandonment; (3-30-06)

b. The approximate location and names, if known, of drainages, streams, creeks, or water bodies within one thousand (1,000) feet of the surface mining operation; (3-30-06)

c. The approximate boundaries of the lands to be utilized in the surface mining operations, including a legal description to the quarter-quarter section; (3-30-06)

d. The approximate boundaries and acreage of the lands that will become affected land as a result of the surface mining operation during the first year of operations; (3-30-06)

e. The currently planned storage locations of fuel, equipment maintenance products, wastes, and chemicals that will be utilized in the surface mining operation; (3-30-06)

f. The currently planned location and configuration of pits, overburden piles, crusher reject materials, topsoil storage, wash plant ponds and sediment ponds that will be utilized; (3-30-06)

g. Scaled cross-sections by length and height showing surface profiles prior to mining; and (7-1-98)

h. A surface and mineral control or ownership map of appropriate scale for boundary identification; (7-1-98)

05. Reclamation Plan Requirements. Reclamation plans must be submitted in map and narrative form and include the following: (3-30-06)

a. Where surface waters are likely to be impacted and when requested by the director, documents

identifying and assessing foreseeable, site-specific nonpoint sources of water quality impacts upon adjacent surface waters and the BMPs the operator will use to control such impacts during surface mining and reclamation; (3-30-06)

b. Scaled cross-sections by length and height, showing planned surface profiles and slopes after reclamation; (3-30-06)

c. Roads to be reclaimed; (7-1-98)

d. A plan for revegetation of affected lands including soil types, slopes, precipitation, seed rates, species, handling of topsoil or other growth medium, time of planting, method of planting and, if necessary, fertilizer and mulching rates; (7-1-98)

e. The planned reclamation of wash plant or sediment ponds; (3-30-06)

f. A drainage control map which identifies the location of BMPs that will be implemented to control erosion and such nonpoint source water quality impacts during surface mining and reclamation activities; (3-30-06)

g. The location of any current 100-year floodplain in relation to the mining facilities if the floodplain is within 100 feet of the facilities, and the BMPs to be implemented that will keep surface waters from entering any pits and potentially changing course. ()

070. APPLICATION PROCEDURE AND REQUIREMENTS FOR OTHER SURFACE MINING OPERATIONS INCLUDING HARDROCK AND PHOSPHATE MINING.

01. Reclamation Plan Approval Required. Approval of a reclamation plan by the Department is required even if approval of such plan has been or will be obtained from a federal agency. No operator shall conduct surface mining operations on any lands in the state until the reclamation plan has been approved by the director, and the operator has filed the required performance bond. (3-30-06)

02. Application Package. The operator must submit ~~five (5)~~ a complete ~~copies of the~~ application package for each separate surface mine or mine panel before the reclamation plan will be approved. Separate surface mines are individual, physically disconnected operations. A complete application package consists of: ~~(3-30-06)~~ ()

a. All items and information required under Section 069 of these rules; (3-30-06)

b. Any additional information required by Subsection 070.04; and (3-30-06)

c. An operating plan, if required by Section 47-1506(b), Idaho Code, prepared in accordance with Subsections 070.05 and 070.06 of these rules. (3-30-06)

03. Map Requirements. Maps shall be prepared in accordance with Subsection 069.04 of these rules. (3-30-06)

04. Reclamation Plan Requirements. Reclamation plans must include all of the information required under Subsection 069.05 and the following additional information: (3-30-06)

a. A description of the planned reclamation of tailings or sediment ponds; and (3-30-06)

b. An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and other pertinent costs. (11-1-89)

c. A description of foreseeable, site-specific impacts from acid rock drainage and the BMPs that will be used to mitigate any impacts from such acid rock drainage. (3-30-06)

d. Other pertinent information the Department has determined is necessary to ensure that the operator

will comply with the requirements of the chapter. (3-30-06)

05. Operating Plan Requirements. A complete operating plan shall consist of: (3-30-06)

a. Maps showing: (3-30-06)

i. The location of existing roads and anticipated access and principal haul roads planned to be constructed for surface mining operations. (3-30-06)

ii. The boundaries and acreage of the affected lands. (3-30-06)

iii. The planned location of pits, mineral stockpiles, overburden piles and tailings ponds for the surface mining operation. (3-30-06)

iv. The location and, if known, the names of all streams, creeks, or water bodies within the area of the affected lands. (3-30-06)

v. The drainage adjacent to the area where the surface is being utilized by surface mining operations. (7-1-98)

vi. The approximate boundaries and acreage of the lands that will become affected during the first year of surface mining operations. (3-30-06)

b. Additional information regarding coarse and durable rock armor, if any, is proposed to be used for reclamation of mine facilities. The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to include additional information in the operating plan. Such information may include, but is not limited to, one (1) or more of the following: (3-30-06)

i. A description of the quantities, size, geologic characteristics, and durability of the materials to be used for final reclamation and armoring. (3-30-06)

ii. A description of how the coarse and durable materials will be handled and/or stockpiled, including a schedule for such activities that will ensure adequate quantities are available during reclamation. (3-30-06)

c. The director may, after considering the type, size, and potential environmental impact of the facility, require the operator to prepare a geotechnical analysis and report, signed by an engineer registered in the state of Idaho, which shows that (1) any waste rock or overburden stockpiles, (2) any pit walls proposed to be more than one hundred (100) feet high, or (3) any pit walls where geologic conditions could lead to failure of the wall regardless of the height will be constructed in a manner that is consistent with industry standards to minimize the potential for failure. If failure of these structures can reasonably be expected to impact adjacent surface or ground waters or adjacent private or state-owned lands, the analysis may be required to consider the long-term stability of these structures, the potential for groundwater accumulation, and the expected seismic accelerations at the site. (3-30-06)

071. APPLICATION PROCEDURE AND REQUIREMENTS FOR PERMANENT CLOSURE OF CYANIDATION FACILITIES.

01. Permanent Closure Plan Approval Required. No operator shall construct or operate a new cyanidation facility or materially modify or materially expand an existing cyanidation facility prior to obtaining a permit, approval from the director and before the operator has filed a bond, as required by these rules. (3-30-06)

02. Permanent Closure Plan Requirements. A permanent closure plan shall: (3-30-06)

a. Identify the current owner of the cyanidation facility and the party responsible for the permanent closure and the long-term care and maintenance of the cyanidation facility; (3-30-06)

b. Include a timeline showing: (3-30-06)

- i. The schedule to complete permanent closure activities, including neutralization of process waters and material stabilization, and the time period for which the operator shall be responsible for post-closure activities; and (3-30-06)
- ii. If the operator plans to complete construction, operation, and/or permanent closure of the cyanidation facility in phases, the schedule to begin each phase of construction, operation, and/or permanent closure activities and any associated post-closure activities. (3-30-06)
- c. Provide the objectives, methods, and procedures that will achieve neutralization of process waters and material stabilization during the closure period and through post-closure; (3-30-06)
- d. Provide a water management plan from the time the cyanidation facility is in permanent closure through the defined post-closure period. The plan shall be prepared in accordance with IDAPA 58.01.13, "Rules for Ore Processing by Cyanidation," administered by the DEQ, as required to meet the objectives of the permanent closure plan. (3-30-06)
- e. Include the schematic drawings for all BMPs that will be used during the closure period, through the defined post-closure period, and a description of how the BMPs support the water management plan, and an explanation of the water conveyance systems that are planned for the cyanidation facility. (3-30-06)
- f. Provide proposed post-construction topographic maps and scaled cross-sections showing the configuration of the final heap or tailing facility, including the final cap and cover designs and the plan for long-term operation and maintenance of the cap. Caps and covers used as source control measures for cyanidation facilities must be designed to minimize the interaction of meteoric waters, surface waters, and groundwaters with wastes containing pollutants that are likely to be mobilized and discharged to waters of the state. Prior to approval of a permanent closure plan, engineering designs and specifications for caps and covers must be signed and stamped by a professional engineer registered in the state of Idaho; (3-30-06)
- g. Include monitoring plans for surface and ground water during closure and post-closure periods, adequate to demonstrate water quality trends and to ensure compliance with the stated permanent closure objectives and the requirements of the chapter; (3-30-06)
- h. Provide an assessment of the potential impacts to soils, vegetation, and surface and ground waters for all areas to be used for the land application system and provide a mitigation plan, as appropriate. (3-30-06)
- i. Provide information on how the operator will comply with the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; Idaho Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code; Idaho Solid Waste Management Act, Chapter 74, Title 39, Idaho Code; and appropriate state rules, during operation and permanent closure; (3-30-06)
- j. Provide sufficient detail to allow the operator to prepare an estimate of the reasonable costs to implement the permanent closure plan; (3-30-06)
- k. Provide an estimate of the reasonable estimated costs to complete the permanent closure activities specified in the permanent closure plan in the event the operator fails to complete those activities. The estimate shall: (3-30-06)
 - i. Identify the incremental costs of attaining critical phases of the permanent closure plan and a proposed bond release schedule; (3-30-06)
 - ii. Assume that permanent closure activities will be completed by a third party whose services are contracted for by the Board as a result of a bond forfeiture under Section 47-1513, Idaho Code, and include: (3-30-06)
 - (1) All direct and indirect costs expected to be incurred by a third party including, but not limited to, mobilization, labor, materials, equipment, engineering, and demobilization costs; and (3-30-06)

(2) An amount acceptable to the Department but not to exceed ten percent (10%) of the total estimated closure costs, which is intended to cover costs the Department will incur in association with contract administration. (3-30-06)

l. If the proposal is to complete cyanidation facility construction, operation, and/or permanent closure activities in phases: (3-30-06)

i. Describe how these activities will be phased and how, after the first phase of activities, each subsequent phase will be distinguished from the previous phase or phases; and (3-30-06)

ii. Describe how any required post-closure activities will be addressed during and after each subsequent phase has begun. (3-30-06)

m. Provide any additional information that may be required by the Department to ensure compliance with the objectives of the permanent closure plan and the requirements of the chapter. (3-30-06)

03. Preapplication Conference. Prospective applicants are encouraged to meet with the Department well in advance of preparing and submitting an application package to discuss the anticipated application requirements and application procedures, and to arrange for a visit or visits to the proposed location of the cyanidation facility. The preapplication conference may trigger a period of collaborative effort between the Department, the DEQ, and the applicant in developing checklists to be used by the agencies in reviewing an application for completion, accuracy, and protectiveness. (3-30-06)

04. Application Package for Permanent Closure. An application and its contents submitted to the Department shall be used to determine whether an applicant can complete all permanent closure activities in conformance with all applicable state laws. An application must provide information in sufficient detail to allow the director to make necessary application review decisions regarding cyanidation facility closure and protection of public health, safety, and welfare, in accordance with the chapter. ~~Five (5) copies of the~~ A complete application package must be submitted to the Department. A complete application package for an operator proposing to use cyanidation shall consist of: (3-30-06)()

a. A Department application form completed, signed, and dated by the applicant. This form shall contain the following information: (3-30-06)

i. Name, location, and mailing address of the cyanidation facility; (3-30-06)

ii. Name, mailing address, and phone number of the operator. An out-of-state operator shall designate an in-state agent authorized to act on his behalf. In case of an emergency that requires actions to prevent environmental damage, both the operator and his agent will be notified; (3-30-06)

iii. Land ownership status (federal, state, private or public); (3-30-06)

iv. The legal description to the quarter-quarter section of the location of the proposed cyanidation facility; and (3-30-06)

v. The legal structure (corporation, partnership, etc.) and primary place of business of the operator. (3-30-06)

b. Evidence that the applicant is authorized by the Secretary of State to conduct business in the state of Idaho; (3-30-06)

c. A permanent closure plan as prescribed in Subsection 071.02; (3-30-06)

d. The DEQ application and supporting materials; (3-30-06)

e. The five thousand dollar (\$5,000) application processing and review fee, as defined in Subsection 071.05.a. (3-30-06)

- 05. Application Fee.** The application fee shall consist of two (2) parts: (3-30-06)
- a.** Processing and review fee. (3-30-06)
- i. The applicant shall pay a nonrefundable five thousand dollar (\$5,000) fee upon submission of an application. Within thirty (30) days of receiving an application and this fee, the director shall provide a detailed cost estimate to the operator which includes a description of the scope of the Department's review; the assumptions on which the Department's estimate is based; and an itemized accounting of the anticipated number of labor hours, hourly labor rates, travel expenses and any other direct expenses the Department expects to incur, and indirect expenses equal to ten percent (10%) of the Department's estimated direct costs, as required to satisfy its statutory obligation pursuant to the chapter. (3-30-06)
- ii. If the Department's estimate is greater than five thousand dollars (\$5,000), the applicant may agree to pay a fee equal to the difference between five thousand dollars (\$5,000) and the Department's estimate, or may commence negotiations with the Department to establish a reasonable fee. (3-30-06)
- iii. If, within twenty (20) days from issuance of the Department's estimate, the Department and applicant cannot agree on a reasonable application processing and review fee, the applicant may appeal to the Board. The Board shall: (3-30-06)
- (1) Review the Department's estimate; (3-30-06)
- (2) Conduct a hearing where the applicant is allowed to give testimony to the Board concerning the Department's estimate; and (3-30-06)
- (3) Establish the amount of the application review and processing fee. (3-30-06)
- iv. If the fee is more than five thousand dollars (\$5,000), the applicant shall pay the balance of the fee within fifteen (15) days of the Board's decision or withdraw the application. (3-30-06)
- v. Nothing in this section shall extend the time in which the Board must act on a plan submitted. (3-30-06)
- b.** Permanent closure cost estimate verification fee. (3-30-06)
- i. Pursuant to Sections 47-1506(g) and 47-1513(j), Idaho Code, the Department may employ a qualified independent party, acceptable to the operator and the Board, to verify the accuracy of the permanent closure cost estimate. (3-30-06)
- ii. The applicant shall be solely responsible for paying the Department's cost to employ a qualified independent party to verify the accuracy of the permanent closure cost estimate. The applicant may participate in the Department's processes for identifying qualified parties and selecting a party to perform this work. (3-30-06)
- iii. If a federal agency has responsibility to establish the bond amount for permanent closure of a cyanidation facility on federal land, the Department may employ the firm retained by the federal agency to verify the accuracy of the permanent closure cost estimate. If the director chooses not to employ the firm retained by the federal agency, he shall provide a written justification explaining why the firm was not employed. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

120. PERFORMANCE BOND REQUIREMENTS FOR SURFACE MINING.

01. Submittal of Bond Before Surface Mining. Prior to beginning any surface mining on a mine panel covered by a plan, an operator shall submit to the director, on a surface mining reclamation bond form, a

performance bond meeting the requirements of this rule. The amount shall be the amount necessary to pay the estimated reasonable costs of reclamation required under the reclamation plan for each acre of land to be affected during the first year of operation, plus ten (10%) percent. No performance bond shall exceed ~~two~~ fifteen thousand ~~five~~ hundred dollars (~~\$2,500~~ 15,000) for a given acre of affected land unless: (3-30-06)()

a. The Board has determined that such performance bond is necessary to meet the requirements of Sections 47-1506, 47-1509, 47-1510, and 47-1511, Idaho Code. (3-30-06)

b. The Board has delivered to the operator, in writing, a notice setting forth the reasons it believes such bond is necessary. (7-1-98)

c. The Board has conducted a hearing where the operator is allowed to give testimony to the Board concerning the amount of the proposed bond, as provided by Section 47-1512(c), Idaho Code. This requirement for a hearing may be waived, in writing, by the operator. (3-30-06)

02. Mining Operation Conducted by Public or Government. Notwithstanding any other provision of law to the contrary, the bonding provisions of the chapter and these rules shall not apply to any surface mining operations conducted by a public or governmental agency for maintenance, repair, or construction of a public highway. (3-30-06)

~~**03. Limits.** Only surface mining reclamation bonds obtained after January 1, 1997, may be assessed at actual costs plus ten percent (10%), not to exceed two thousand five hundred dollars (\$2,500) per acre except as provided by the chapter, or if a material change as defined by Subsection 010.20 of these rules. Any revision to the amount, term and conditions of a performance bond due to a material change shall apply only to the affected lands covered by the material change. (3-30-06)~~

~~**04. Annual Bond Review.** At the beginning of each calendar year, the operator shall notify the director of any increase in the acreage of affected land which will result from planned surface mining activity within the next twelve (12) months. A commensurate increase in the bond will be required for an increase in affected acreage. Any additional bond required shall be submitted on the appropriate bond form within ninety (90) days of operator's receipt of notice from the Department that an additional bond amount is required. In no event shall surface mining operations be conducted that would affect additional acreage until the appropriate bond form and bond has been with the Department. Acreage on which reclamation is complete shall be reported in accordance with Subsection 120.07 and after release of this acreage from the plan by the director, the bond may be reduced by the amount appropriate to reflect the completed reclamation. (3-30-06)~~

~~**054. Bond Provided to the Federal Government.** Any bond provided to the federal government that also meets the requirements of Section 120 shall be sufficient for the purposes of these rules. (3-30-06)~~

~~**065. Bond Reduction.** (11-1-89)~~

a. Upon finding that any land bonded under a reclamation plan will not be affected by mining, the operator shall notify the director. The amount of the bond shall be reduced by the amount being held to reclaim those lands. (11-1-89)

b. Any request for bond reduction shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (11-1-89)

~~**076. Bond Release.** Upon completion of the reclamation specified in the plan, the operator shall notify the director of his desire to secure release from bonding. When the director has verified that the requirements of the reclamation plan have been met as stated in the plan, the bond shall be released. (11-1-89)~~

a. Any request for bond release shall be answered by the director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (11-1-89)

b. If the director finds that a specific portion of the reclamation has been satisfactorily completed, the bond may be reduced to the amount required to complete the remaining reclamation. The following schedule will be

used to complete these bond reductions unless the director determines in a specific case that this schedule is not appropriate and specifies a different schedule: (11-1-89)

i. Sixty percent (60%) of the bond may be released when the operator completes the required backfilling, regrading, topsoil replacement, and drainage control of the bonded area in accordance with the approved reclamation plan; and (11-1-89)

ii. After revegetation activities have been performed by the operator on the regraded lands, according to the approved reclamation plan, the Department may release an additional twenty-five percent (25%) of the bond. (11-1-89)

c. The remaining bond shall not be released: (11-1-89)

i. As long as the affected lands are contributing suspended solids to surface waters outside the affected area in excess of state water quality standards and in greater quantities than existed prior to the commencement of surface mining operations; (11-1-89)

ii. Until final removal of equipment and structures related to the mining activity or until any remaining equipment and structures are brought under an approved reclamation plan and bond by a new operator; and (11-1-89)

iii. Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved reclamation plan and bond by a new operator. (11-1-89)

087. Cooperative Agreements. The director may through private conference, conciliation, and persuasion reach a cooperative agreement with the operator to correct deficiencies in complying with the reclamation plan and thereby postpone action to forfeit the bond and cancel the reclamation plan if all deficiencies are satisfactorily corrected within the time specified by the cooperative agreement. (11-1-89)

098. Bonding Rate. An operator may petition the director for a change in the initial bond rate. The director will review the petition, and if satisfied with the information presented, a special bond rate will be set based upon the estimated cost that the director would incur should a forfeiture of bond occur and it became necessary for the director, through contracting with a third party, to complete reclamation to the standards established in the plan. (11-1-89)

409. Liabilities for Unbonded Reclamation Costs. An operator who: (11-1-89)

a. Departs from his approved reclamation plan by performing an act or omission and such deviation is not subsequently approved; (11-1-89)

b. Does not furnish a bond required by these rules; and (11-1-89)

c. Is not required to furnish a bond by these rules, but fails to reclaim; is in violation of these rules and may be subject to civil penalty under Section 47-1513(c), Idaho Code. The amount of civil penalty shall be the estimated cost of reasonable reclamation of affected lands as determined by the director. Reasonable reclamation of the site shall be presumed to be in accordance with the standards established in the approved reclamation plan. The amount of the civil penalty shall be in addition to those described in Subsection 160.06. (11-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

140. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR SURFACE MINING OPERATION AND PERMANENT CLOSURE OF CYANIDATION FACILITIES.

Enumeration of a practice or act in Section 140 shall not be construed to require its specific inclusion in a reclamation or permanent closure plan. (3-30-06)

01. Nonpoint Source Control. (3-30-06)

a. Appropriate BMPs for nonpoint source controls shall be designed, constructed, and maintained with respect to site-specific surface mining operations or permanent closure activities. Operators shall utilize BMPs designed to achieve state water quality standards and to protect existing beneficial uses of adjacent waters of the state, but shall not be required to do more than is necessary to preserve the condition of runoff from the affected land or the cyanidation facility prior to conducting any exploration, surface mining or cyanidation facility operations. These measures shall be among the first to be taken, if necessary, to protect water quality. State water quality standards, including protection of existing beneficial uses, shall be the standard that must be achieved by BMPs unless the operator can show, and the director determines, that a lesser standard existed in the area to be affected prior to the commencement of the subject surface mining or exploration operations. (3-30-06)

b. If the BMPs utilized by the operator do not result in compliance with Subsection 140.01.a., the director shall require the operator to modify or improve such BMPs to meet the controlling, water quality standards as set forth in current laws, rules, and regulations. ~~(3-30-06)~~ ()

02. Sediment Control. In addition to proper mining techniques and reclamation measures, the operator shall take necessary steps at the close of each operating season to assure that sediment movement associated with surface runoff over the area is minimized in order to achieve water quality standards, or to preserve the condition of water runoff from the mined area prior to commencement of the subject surface mining or exploration operations, whichever is the lesser standard. Sediment control measures refer to best management practices carried out within and, if necessary, adjacent to the disturbed area and consist of utilization of proper mining and reclamation measures, as well as specific necessary sediment control methods, separately or in combination. Specific sediment control methods may include, but are not limited to: (3-30-06)

- a. Keeping the disturbed area to a minimum at any given time through progressive reclamation; (3-30-06)
- b. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; (3-30-06)
- c. Retaining sediment within the disturbed area; (3-30-06)
- d. Diverting surface runoff around the disturbed area; (3-30-06)
- e. Routing runoff through the disturbed area using protected channels or pipes so as not to increase sediment load; (3-30-06)
- f. Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and (3-30-06)
- g. Use of adequate sediment ponds, with or without chemical treatment. (3-30-06)

03. Clearing and Grubbing. Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Operators are cautioned to keep such areas as small as possible (preferably no more than one (1) year's mining activity) as the operator shall be required to meet the applicable surface water quality standards on all such areas. Where practicable, trees and slash should be stockpiled for use in seedbed protection and erosion control. (3-30-06)

04. Overburden/Topsoil. To aid in the revegetation of affected lands where surface mining operations result in the removal of substantial amounts of overburden including any topsoil, the operator should remove the available topsoil or other growth medium as a separate operation for such area. Unless there are previously affected lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium shall be stockpiled and protected from erosion and contamination until such areas become available. (3-30-06)

- a. Overburden/Topsoil Removal. (11-1-89)

i. Any overburden/topsoil to be removed should be removed prior to any other mining activity to prevent loss or contamination; (11-1-89)

ii. Where overburden/topsoil removal exposes land area to potential erosion, the director, under the reclamation plan, may require BMPs necessary to prevent violation of water quality standards; and (3-30-06)

iii. Where the operator can show that an overburden material other than topsoil is conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. (3-30-06)

b. **Topsoil Storage.** Topsoil stockpiles shall be placed to minimize rehandling and exposure to excessive wind and water erosion. Topsoil stockpiles shall be protected as necessary from erosion by use of temporary vegetation or by other methods which will control erosion, including, but not limited to, silt fences, chemical binders, seeding, and mulching. (11-1-89)

c. **Overburden Storage.** Stockpiled ridges of overburden shall be leveled in such a manner as to have a minimum width of ten (10) feet at the top. Peaks of overburden shall be leveled in such a manner as to have a minimum width of fifteen (15) feet at the top. The overburden piles shall be reasonably prepared to control erosion using best management practices; such activities may include terracing, silt fences, chemical binders, seeding, mulching or slope reduction. (7-1-98)

d. **Topsoil Placement.** Abandoned affected lands shall be covered with topsoil or other type of overburden that is conducive to plant growth, to the extent such materials are readily available, in order to achieve a stable uniform thickness. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution shall be timed so that seeding, or other protective measures, can be readily applied to prevent compaction and erosion. (3-30-06)

e. **Fill.** Backfill and fill materials should be compacted in a manner to ensure stability. (3-30-06)

05. Roads. (11-1-89)

a. Roads shall be constructed to minimize soil erosion, which may require restrictions on the length and grade of the roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. (3-30-06)

b. All access and haul roads shall be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. (11-1-89)

c. Culverts that are to be maintained for more than one (1) year shall be designed to pass peak flows from not less than a twenty (20) year, twenty-four (24) hour precipitation event and have a minimum diameter of eighteen (18) inches. (11-1-89)

d. Roads and water control structures shall be maintained at periodic intervals as needed. Water control structures serving to drain roads shall not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. (11-1-89)

e. Roads that will not be recontoured to approximate original contours upon abandonment shall be cross-ditched and revegetated, as necessary, to control erosion. (3-30-06)

f. Roads that are not abandoned and continue to be used under the jurisdiction of a governmental or private landowner, shall comply with the nonpoint source sediment control provisions of Subsection 140.02 until the successor assumes control. (3-30-06)

06. Backfilling and Grading. (11-1-89)

a. Every operator who conducts surface mining or cyanidation facility operations which disturb less

than two (2) acres shall, where possible, contour the disturbed land to its approximate previous contour. These lands shall be revegetated in accordance with Subsection 140.11. (3-30-06)

b. An operator who conducts surface mining or cyanidation facility operations which disturb two (2) acres or more shall reduce all waste piles and depressions to the lowest practicable grade. This grade shall not exceed the angle of repose or maximum slope of natural stability for such waste or generate erosion in which sediment enters waters of the state. (3-30-06)

c. Backfill and fill materials should be compacted in a manner to ensure mass and surface stability. (7-1-98)

d. After the disturbed area has been graded, slopes will be measured for consistency with the approved reclamation plan or the permanent closure plan. (3-30-06)

07. Disposal of Waste in Areas Other Than Mine Excavation. Waste material not used to backfill mined areas shall be transported and placed in a manner designed to stabilize the waste piles and control erosion. (3-30-06)

a. The available disposal area should be on a moderately sloped, naturally stable area. The site should be near the head of a drainage to reduce the area of watershed above the fill. (11-1-89)

b. All surface water flows within the disposal area shall be diverted and drained using accepted engineering practices such as a system of French drains, to keep water from entering the waste pile. These measures shall be implemented in accordance with standards prescribed by the Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (11-1-89)

c. The waste material not used in backfilling mined areas should be compacted, where practical, and should be covered and graded to allow surface drainage and ensure long-term stability. (11-1-89)

d. The operator may, if appropriate, use terraces or slope reduction to stabilize the face of any fill. Slopes of the fill material should not exceed angle of repose or generate erosion in which sediment enters waters of the state. (3-30-06)

e. Unless adequate drainage is provided through a fill area, all surface water above the fill shall be diverted away from the fill area into protected channels, and drainage shall not be directed over the unprotected face of the fill. (11-1-89)

f. The operator shall conduct revegetation activities with respect to such waste piles in accordance with Subsection 140.11. (3-30-06)

08. Settling Ponds; Minimum Criteria. (11-1-89)

a. Sediment Storage Volume. Settling ponds shall provide adequate sediment storage capacity to achieve compliance with applicable water quality standards and protect existing beneficial uses, and may require periodic cleaning and proper disposal of sediment. (11-1-89)

b. Water Detention Time. Settling ponds shall have an adequate theoretical detention time for water inflow and runoff entering the pond, but theoretical detention time may be reduced by improvements in pond design, chemical treatment, or other methods. (11-1-89)

c. Emergency Spillway. In addition to the sediment storage volume and water detention time, settling ponds shall be designed to withstand and release storm flows as required by the Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and Safety of Dams Rules, where applicable. (11-1-89)

09. Tailings Impoundments. All tailings, dams, or other types of tailings impoundments shall be designed, constructed, operated, and decommissioned so that upon their abandonment, the dam and impoundment

area will not constitute a hazard to human or animal life. (11-1-89)

a. Design criteria, construction techniques, and decommission techniques for tailings dams and impoundments shall comply with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations. (11-1-89)

b. Topsoil shall be removed from the area to be affected by the impounding structure and tailings reservoir in accordance with Subsection 140.04. (3-30-06)

c. Abandonment and Decommissioning of Tailings Impoundments. (3-30-06)

i. Dewatering. Tailings ponds shall be dewatered to the extent necessary to provide an adequate foundation for the approved post-mining use. (3-30-06)

ii. Control of surface waters. Surface waters shall either be channeled around the reservoir and impoundment structure or through the reservoir and breached structure. Permanent civil structures shall be designed and constructed to implement either method of channeling. The structure shall provide for erosion-free passage of waters and adequate energy dissipation prior to entry into the natural drainage below the impounding structure. (3-30-06)

iii. Detoxification. Hazardous chemical residues within the tailings pond shall be detoxified or covered with an adequate thickness of non-toxic material, to the extent necessary to achieve water quality standards in adjacent surface waters. (3-30-06)

iv. Reclamation. After implementing the required dewatering, detoxification, and surface drainage control measures, the reservoir and impounding structure shall be covered with topsoil or other material conducive to plant growth, in accordance with Subsection 140.04. Where such soils are limited in quantity or not available, and upon approval by the Department, physical or chemical methods for erosion control may be used. All such areas are to be revegetated in accordance with Subsection 140.11, unless specified otherwise. (3-30-06)

d. When the operator requests termination of its reclamation or permanent closure plan, pursuant to Section 150 of these rules, impoundment structures and any reservoirs retained as fresh water reservoirs after final reclamation or permanent closure shall be required to conform with the Idaho Dam Safety Act, Sections 42-1710 through 42-1721, Idaho Code, if applicable. (3-30-06)

10. Permanent Cessation and Time Limits for Planting. (11-1-89)

a. Seeding and planting of affected lands and/or a permanently closed cyanidation facility should be conducted during the first normal period for favorable planting conditions after final seedbed preparation. (3-30-06)

b. Reclamation activities, where possible, are encouraged to be concurrent with the mining operation and may be included in the approved reclamation plan. Final reclamation shall begin within one (1) year after the surface mining operations have permanently ceased on a mine panel. If the operator permanently ceases disposing of overburden on a waste area or permanently ceases removing minerals from a pit or permanently ceases using a road or other affected land, the reclamation activity on each given area shall start within one (1) year of such cessation, despite the fact that all operations as to the mine panel, which included such pit, road, overburden pile, or other affected land, has not permanently ceased. (11-1-89)

c. An operator shall be presumed to have permanently ceased surface mining operations on a given portion of affected land when no substantial amount of mineral or overburden material has been removed or overburden placed on an overburden dump, or no significant use has been made of a road during the prior three (3) years. If an operator does not plan to use an affected area for three (3) or more years but intends thereafter to use the affected area for surface mining operations and desires to defer final reclamation until after its subsequent use, the operator shall submit a notice of intent and request for deferral of reclamation to the director, in writing. If the director determines that the operator plans to continue the operation within a reasonable period of time, the director shall notify the operator and may require actions to be taken to reduce degradation of surface resources until operations resume. If the director determines that use of the affected land for surface mining operations will not be

continued within a reasonable period of time, the director shall proceed as though the surface mining operation has been abandoned, but the operator shall be notified of such decision at least thirty (30) days before taking any formal administrative action. (11-1-89)

11. Revegetation Activities. (11-1-89)

a. The operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands or on a closed cyanidation facility prior to surface mining or cyanidation facility operations, respectively. Certified weed free seed should be used in revegetation. The operator may use available technical data and results of field tests for selecting seeding practices and soil amendments which will result in viable revegetation. These practices of selection may be included in an approved reclamation plan or permanent closure. (3-30-06)

b. Unless otherwise specified in the approved reclamation or permanent closure plan, the success of revegetation efforts shall be measured against the existing vegetation on site prior to the surface mining or cyanidation facility operation, or against an adjacent reference area supporting similar types of vegetation. (3-30-06)

i. The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on the adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation. (11-1-89)

ii. For purposes of this rule, ground cover shall be considered comparable if it has, on the area actually planted at least seventy percent (70%) of the premining ground cover for the mined area or adjacent reference area; (11-1-89)

iii. For locations with an average annual precipitation of more than twenty-six (26) inches, the director, in approving a reclamation or permanent closure plan, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species. (3-30-06)

iv. As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation. (11-1-89)

v. For previously mined areas that were not reclaimed to the standards required by Section 140, and which are affected by the surface mining or cyanidation facility operations, vegetation should be established to the extent necessary to control erosion, but shall not be less than that which existed before redisturbance; and (3-30-06)

vi. Vegetative cover shall not be less than that required to control erosion. (11-1-89)

c. Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the affected land, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species shall not be used in revegetation. (11-1-89)

d. By mutual agreement of the director, the landowner, and the operator, a site may be converted to a different, more desirable or more economically suitable habitat. (3-30-06)

e. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for mine revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. (11-1-89)

f. The operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to mining. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass

seeding. Where the landowner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. (11-1-89)

g. Reforestation. Tree stocking of forestlands should meet the following criteria: (3-30-06)

i. Trees that are adapted to the site should be planted on the area to be revegetated in a density which can be expected over time to yield a timber stand comparable to premining timber stands; (11-1-89)

ii. Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and (11-1-89)

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (11-1-89)

h. Revegetation is not required on the following areas: (11-1-89)

i. Affected lands, or portions thereof, where planting is not practicable or reasonable because the soil is composed of excessive amounts of sand, gravel, shale, stone, or other material to such an extent to prohibit plant growth; (11-1-89)

ii. Any mined area or overburden stockpiles proposed to be used in the mining operations for haulage roads, so long as those roads are not abandoned; (3-30-06)

iii. Any mined area or overburden stockpile, where lakes are formed by rainfall or drainage runoff from adjoining lands; (3-30-06)

iv. Any mineral stockpile; (11-1-89)

v. Any exploration trench which will become a part of a pit or an overburden disposal area; and (3-30-06)

vi. Any road which is to be used in mining operations, so long as the road is not abandoned. (11-1-89)

i. Mulching. Mulch should be used on severe sites and may be required by the reclamation or permanent closure plan where slopes are steeper than three to one (3:1) or the mean annual rainfall is less than twelve (12) inches. When used, straw or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. (3-30-06)

12. Petroleum-Based Products and Chemicals. All refuse, chemical and petroleum products and equipment should be stored and maintained in a designated location away from surface water and disposed of in such a manner as to prevent their entry into a waterway. (3-30-06)

STATE BOARD OF LAND COMMISSIONERS

October 16, 2018

Regular Agenda

Subject

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

Authority

Title 58, Chapter 1, Idaho Code – Idaho Department of Lands

Title 58, Chapter 13, Idaho Code – Navigational Encroachments

IDAPA 20.03.04 – Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho

Background

The Idaho Department of Lands (Department) is responsible for managing encroachments on navigable lakes in Idaho pursuant to Title 58, Chapters 1 and 13, Idaho Code, and IDAPA 20.03.04.

The Department is implementing a new Land Information Management system (LIMS) for all permit and leasing administration. This LIMS will have a web-based portal that will allow applications to be submitted electronically. IDAPA 20.03.04.020 currently requires paper copies for encroachment permit applications.

In preparation for drafting permit application rule changes, a review of the rules revealed that modifications to other portions of the rules were needed to improve program implementation. These other changes affected portions of the rules addressing boat garages, dock rights, bank stabilization fees, and notices of noncompliance.

The Department received Land Board approval in April 2018 to enter negotiated rulemaking to allow for the electronic submission of applications and to modify four other portions of the rules.

Discussion

The Department held four negotiated rulemaking meetings with interested stakeholders in McCall, Coeur d'Alene, Sandpoint, and Idaho Falls in June and July 2018. To formulate the proposed rules, the Department considered all comments received during the negotiated rulemaking process (Attachment 1). As a result, the Department went forward with all of the changes except those regarding dock rights. In addition, and in consultation with the Office of Administrative Rules, the Incorporation by Reference section was updated with current Idaho electrical and plumbing codes, as well as the current version of the United States Aids to Navigation System.

On September 5, 2018, the Notice of Rulemaking and proposed rule text (Attachment 2) were published in the Idaho Administrative Bulletin to notify the public of a public hearing and the opportunity to submit public comment. No written comments were received, and no testimony was given at the public hearing.

The proposed rules update the incorporations by reference, modify boat garage standards, amend the application requirements for encroachment permits, move bank stabilization fees into the proper category, and modify noncompliance processes.

Following is a summary of the proposed rule changes that clarify or improve encroachment permit administration:

- Incorporation by Reference includes the 2017 IDAPA 07.01.06 (Rules Governing the Use of National Electrical Code), the 2017 IDAPA 07.02.06 (Rules Concerning Idaho State Plumbing Code), and the 2015 United States Aids to Navigation System.
- Allow applicants to submit applications either on paper or electronically.
- Boat garage size includes height.
- Bank stabilization application fees are moved into the nonnavigational category to ensure that applicants are aware of the required publication fees. The fee amounts are not changed.
- Notices of noncompliance can also be sent to parties that have unpermitted encroachments.

If approved by the Land Board, the Department will submit the appropriate Notice of Adoption of Pending Rule to the Office of the Administrative Rules Coordinator for the 2019 legislative session.

Recommendation

Authorize the Department to adopt the pending rule to update IDAPA 20.03.04 *Rules for the Regulation of Beds, Waters, and Airspace Over Navigable Lakes in the State of Idaho*.

Board Action

Attachments

1. Negotiated Rulemaking Comments
2. Notice of Rulemaking – Proposed Rule with Rule Text



DAVID H. LEROY

ATTORNEY AT LAW

Via Hand Delivery

David Groeschl, Acting Director
Andrew Smyth, Manager
Idaho Department of Lands
Boise, Idaho 83702

July 19th, 2018

RE: Public Comment on Proposed Rule Changes in IDAPA 20.03.04 Relating to the Regulation of Beds, Waters and Airspace over Navigable Lakes - Docket No. 20-0304-1801

Dear Director Groeschl and Minerals Program Manager Smyth:

I write on behalf of my client, Frank Bruneel, to formally and timely submit in writing the enclosed text which was orally discussed and presented in concept only at your Negotiated Rulemaking Meeting held Monday, June 25, 2018 in McCall, Idaho. We have copied in the Luck's Point Homeowners Association as well as representatives of residents with Davis Beach docks, McCall realtors and the City of McCall to this correspondence.

Of particular interest to Mr. Bruneel is your proposal to amend subsection .020.02 by deleting any reference to persons having "dock rights." This would apparently prevent them from being eligible to apply for or hold encroachment permits to the same extent as are other persons who have been "specifically granted littoral rights" from a littoral owner.

This concept of treating "dock rights" as if they are not, have never been and can not be in the future the basis for an encroachment application or permit recognized and issued by the State raises many problems and issues:

1. Dock rights, as a form of littoral usage and entitlement, have been historically recognized and respected in Anglo-American jurisprudence for hundreds of years.
2. There are numerous structures on Payette Lake and perhaps elsewhere in the State which are "grandfathered" in through dock rights. Eliminating the term does not eliminate this issue.
3. The term "dock rights" is merely a more specific description of what a littoral owners do and can grant or lease to a third party under the first two sentences of subsection .02. It is the

definitive form of the “specifically granted littoral rights” which are referred to in same text.

4. Eliminating a reference to the concept creates uncertainties for both the littoral owner and the State in many circumstances as to whether the right to apply for and use an existing dock is transferrable.

5. Even the City of McCall, has dock right holders. This change invites litigation between the municipality and the State.

6. Numerous homeowner associations and their littoral users will be impacted and are already concerned with the future implications of this unneeded change.

7. The State has presented no specific or cogent reason for eliminating this term.

8. If the State is eliminating existing vested rights, this arguably raises the issue of a “taking” and “just compensation” payments by the State to the affected property owners.

A far preferable treatment for “dock rights” recognizes their historical usage and current existence by defining the same as a subset of and compatably with the littoral and riparian rights, which this State has always respected and proposes to continue regulating.

For this purpose, in the “Definitions” section of IDAPA 20.03.04.010, we would propose the following text be inserted:

“14A. Dock Rights. The rights of identified owners, members or residents of an association, municipality or other entity, granted to said persons by written permission, lease or licensing of the association, municipality or entity to utilize the littoral right of said association, municipality or entity to apply for, locate and enjoy a littoral encroachment, consistent with historical uses and in conformance with these rules.”

This proposal, together with leaving the existing reference in Subsection 20.02, rather than deleting it, offers the following significant advantages:

1. It defines, within the Rules, an existing and longstanding concept, correcting an original drafting oversight.

2. It avoids the problems and conflicts noted above.

3. It clarifies the situation of existing, permitted grandfathered docks.

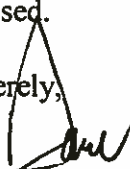
4. It embraces the current usages by the City of McCall and various Associations.

5. It precludes a proliferation of future applications, if that is what the State fears, by requiring any such to comply with both the then current State regulation and past historical uses.

We also believe that this approach of defining dock rights will have significant citizen and legislative support during the regulatory review period beginning next January. If you have questions or observations about this proposed concept or text please advise me as soon as possible to permit further refinements in our testimony.

I and my client, Mr. Bruneel, wish you the best of results in this attempt to refine and strengthen our public policies affecting Idaho's navigable lakes and their users. Adopting and incorporating the change proposed above will solve problems, not create them. We also look forward soon, hopefully, to the receipt of the long awaited Attorney General's Opinion relevant to this topical area and the questions we earlier raised.

Sincerely,



David H. Leroy, Attorney for Frank Bruneel,
Dock Rights holder at Luck's Point, Payette
Lake and former member, Idaho State House
of Representatives



IDAHO DEPARTMENT OF LANDS

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IDAHO DEPARTMENT OF LANDS

**FAX TRANSMISSION
WILLIAM H. WELLMAN
ATTORNEY AT LAW
228 TWELFTH AVE. ROAD
P.O. BOX 453
NAMPA, IDAHO 83653
208-467-5009
FAX: 208-467-3945**

To: Idaho Department of Lands

Date: August 2, 2018

**Fax #: 208-334-5342
208-334-3698**

Pages: 2, including this cover sheet

**From: WILLIAM H. WELLMAN
ATTORNEY AT LAW/**

SUBJECT: Rule Making Comment IDAPA 20:03:04

COMMENTS: Letter is attached

IDAHO DEPARTMENT OF LANDS

The content of this communication is confidential. If you are not the party to whom this transmission is directed you are to call our office at our expense to report the error in delivery. You are further directed that you are not to make any duplication of this transmission. Please mail the communicated documents to our office and your postage will be reimbursed.

WILLIAM H. WELLMAN

ATTORNEY AT LAW

228 TWELFTH AVENUE ROAD

P. O. BOX 453

NAMPA, IDAHO 83653

August 2, 2018

TELEPHONE

208-467-5000

FACSIMILE

208-467-3945

David Groeschl, Acting Director
Idaho Department of Lands
300 N. 6th St Suite 103
Boise, ID 83702

Re: Public Comment of IDAPA Rule 20:03:04 relating to Regulation of Beds, Waters and
Airspace over Navigable Lakes

Dear Director Groeschl:

I write on behalf of the seven deeded owners of the Davis Beach North Dock located on
Payette Lake in McCall, Idaho.

The land that comprises Davis Beach Park was gifted to the City of McCall in 1947 by the
Dewey Davis Estate. The deed is recorded in the Valley County records as Instrument #36513.
Before the gift to the City of McCall, the North Dock was in place and approved by the Land
Board. Over the next 70+ years the North Dock has been maintained and upgraded as far as its
materials and access conditions are concerned. Each time the owners have upgraded the North
Dock approvals from Land Board and the City of McCall have been given.

There is ample case authority throughout the United States recognizing the "dock rights" of
persons or entities that are not literally "littoral" to the river, lake or other navigable water source.
The deletion of the term "dock rights" from the Rule will not alter the legal status of those rights
held by my co owners of the Davis Beach North Dock.

Without a full recitation of the analysis, I draw your attention to the problems with the rule
making amendment as proposed that are articulated in the comment letter you have received from
David Leroy on behalf of Mr. Frank Bruneel.

Very truly yours,



WILLIAM H. WELLMAN
Attorney at Law

cc: Davis Beach North Dock Association

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

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

DOCKET NO. 20-0304-1801

NOTICE OF RULEMAKING – PROPOSED RULE

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

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

PUBLIC HEARING
Thursday, September 20, 2018 – 10:00 a.m.

Idaho State Capitol
Room WW55
700 West Jefferson Street
Boise, ID 83702

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

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

Currently, IDAPA 20.03.04.020 requires submission of paper copies of applications for encroachment permits. The Idaho Department of Lands (Department) is developing a web-based portal and information management system that will allow applications to be submitted electronically. The proposed changes would allow applicants to submit applications either on paper or electronically.

Currently, IDAPA 20.03.04.015.05 allows existing permitted boat garages to be maintained or replaced at their current size. The proposed change would allow existing permitted boat garages to be maintained or replaced at the existing height and at the same square footage of the existing footprint.

Currently, IDAPA 20.03.04.015.10 requires float homes to comply with the 2003 Uniform Plumbing Code and the 2008 National Electrical Code. These referenced codes are not current. The Department is proposing to reference IDAPA 07.02.06 and IDAPA 07.01.06 in this paragraph to match the proposed change to the incorporation by reference in IDAPA 20.03.04.004.

Section 58-1306, Idaho Code, requires that a notice of application for nonnavigational encroachments be published in the local newspaper. Section 58-1307, Idaho Code, provides that the applicant is responsible for the cost of publication of the notice. Currently, IDAPA 20.03.04.020 does not indicate the cost of publication is to be paid by the applicant for nonnavigational encroachments for bank stabilization and erosion control. The proposed change would align rule with statute and provide that the publication deposit be submitted with an application to permit riprap, which is the primary form of nonnavigational encroachment for bank stabilization and erosion control used in Idaho.

Currently, IDAPA 20.03.04.080 provides that the Department shall provide permittees with a notice of noncompliance/proposed permit revocation when it has determined the rules have been violated and/or a cause exists for revocation of an encroachment permit. However, non-permittees may be in violation of the rules and should receive notification as well. The proposed change would clarify that the Department shall provide notice to anyone who may be in violation of the rules.

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

No fiscal impact to the state general fund is anticipated as a result of this rulemaking.

NEGOTIATED RULEMAKING: Negotiated rulemaking was conducted pursuant to Section 67-5220(1), Idaho Code. The Notice of Intent to Promulgate Rules – Negotiated Rulemaking was published in the June 6, 2018 Idaho Administrative Bulletin [Volume 18-6, Page 84](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Currently, IDAPA 20.03.04.004.01 incorporates by reference the 2008 National Electric Code (NEC). Since 2008, the NEC has been updated three times (2011, 2014, and 2017). Furthermore, the Idaho Electrical Board has adopted IDAPA 07.01.06, the Rules Governing the Use of National Electrical Code, which prescribe which NEC edition is to be administered by the Idaho Electrical Board and identifies certain amendments to the NEC. In order to align with the Idaho Electric Board, the Idaho Department of Lands is proposing to incorporate by reference IDAPA 07.01.06, as opposed to the NEC.

Currently, IDAPA 20.03.04.004.02 incorporates by reference the 2003 Uniform Plumbing Code (UPC). Since 2003, the UPC has been updated five times (2006, 2009, 2012, 2015, and 2018). Furthermore, the Idaho Plumbing Board has adopted IDAPA 07.02.06, the Rules Concerning Idaho State Plumbing Code, which—instead of incorporating by reference the UPC—incorporates the Idaho State Plumbing Code, which is based on the UPC. In order to align with the Idaho Plumbing Board, the Idaho Department of Lands is proposing to incorporate by reference IDAPA 07.02.06, as opposed to the UPC.

The United States Aids to Navigation System was first incorporated by reference in IDAPA 20.03.04 in 2008; however, this incorporated material was not identified with specificity and will now include the date when the code, standard or rule was published, approved or became effective as required by Idaho Code § 67-5229(3). The United States Aids to Navigation System is found in 33 CFR Part 62. Since 2008, two sections have been modified, both in 2015:

1. Section 62.21(c) was modified to reflect discontinuation of print publication of Light List, United States Coast Pilot, Local Notices to Mariners, and Notice to Mariners, in favor of electronic-only publication.
2. § 62.52 Automatic Identification System Aids to Navigation (AIS AtoN) was added, reading:
 - (a) Aids to Navigation (AtoN) may be enhanced by the use of an automatic identification system (AIS). AIS is a maritime navigation safety communications protocol standardized by the International Telecommunication Union and adopted by the International Maritime Organization for the broadcast or exchange of navigation information between vessels, aircraft, and shore stations. AIS AtoN can autonomously and at fixed intervals broadcast the name, position, dimensions, type, characteristics and status from or concerning an aid to navigation.
 - (b) AIS AtoN can be either real (physically fitted to the AtoN), synthetic (physically fitted somewhere other than to the AtoN) or virtual (physically nonexistent, but capable of being portrayed on AIS-capable displays).
 - (c) AIS AtoN can also be used to broadcast both laterally (e.g., Port Hand Mark) and non-laterally significant marine safety information (e.g., environmental data, tidal information, and navigation warnings).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Andrew Smyth, Public Trust Program Manager, at (208) 334-0248.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 26, 2018.

Dated this 5th day of September, 2018.

Andrew Smyth, Public Trust Program Manager
Resource Protection and Assistance
Idaho Department of Lands
300 N. 6th Street, Suite 103
Boise, ID 83720-0050
Phone: (208) 334-0248
Fax: (208) 769-3698

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0304-1801
(Only Those Sections With Amendments Are Shown.)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: (4-2-08)

01. ~~2008 National Electrical Code~~ **IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code" revised as of March 29, 2017.** ~~The 2008 National Electrical Code is available at the office of the Division of Building Safety at 1090 E. Watertower St., Meridian, Idaho 83642~~ **IDAPA 07.01.06 is available at <https://adminrules.idaho.gov/rules/current/07/070106.pdf>.** ~~(3-29-10)()~~

02. ~~2003 Uniform Plumbing Code~~ **IDAPA 07.02.06, "Rules Concerning Idaho State Plumbing Code" revised as of March 29, 2017.** ~~The 2003 Uniform Plumbing Code is available at the Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642; and at the Division of Building Safety, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814~~ **This rule is available at <https://adminrules.idaho.gov/rules/current/07/070206.pdf>.** ~~(3-29-10)()~~

03. ~~United States Aid to Navigation System~~ **33 CFR Part 62, revised as of July 27, 2015 (United States Aids to Navigation System).** ~~Prepared by the United States Coast Guard and available on the Internet at <http://www.uscgboating.org/safety/aton/system.htm>~~ **The Electronic Code of Federal Regulations (eCFR) is available at <http://www.ecfr.gov/cgi-bin/ECFR>.** ~~(4-2-08)()~~

(BREAK IN CONTINUITY OF SECTIONS)

015. ENCROACHMENT STANDARDS.

01. **Single-Family and Two-Family Docks.** The following parameters govern the size and dimensions of single-family docks and two-family docks. (7-1-98)

a. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width, excluding the slip cut out. (4-2-08)

b. Total surface decking area waterward of the natural or ordinary or artificial high water mark shall not exceed seven hundred (700) square feet, including approach ramp and walkway for a single-family dock and shall not exceed one thousand one hundred (1,100) square feet, including approach ramp and walkway for a two-family dock. (4-2-08)

c. No portion of the docking facility shall extend beyond the line of navigability. Shorter docks are

encouraged whenever practical and new docks normally will be installed within the waterward extent of existing docks or the line of navigability. (3-29-10)

d. A variance to the standards contained in Subsection 015.01 of these rules may be approved by the department where it can be justified by site specific considerations such as the distance to the established line of navigability. (3-29-10)

02. Community Docks. (7-1-98)

a. A community dock shall be considered a commercial navigational aid for purposes of processing the application. (4-2-08)

b. No part of the structure waterward of the natural or ordinary high water mark or artificial high water mark shall exceed ten (10) feet in width except breakwaters when justified by site specific conditions and approved by the department. (4-2-08)

c. A community dock shall not have less than fifty (50) feet combined shoreline frontage. Moorage facilities will be limited in size as a function of the length of shoreline dedicated to the community dock. The surface decking area of the community dock shall be limited to the product of the length of shoreline multiplied by seven (7) square feet per lineal foot or a minimum of seven hundred (700) square feet. However, the Department, at its discretion, may limit the ultimate size when evaluating the proposal and public trust values. (4-2-08)

d. If a breakwater will be incorporated into the structure of a dock, and a need for the breakwater can be demonstrated, the department may allow the surface decking area to exceed the size limitations of Paragraph 015.02.c of these rules. (4-2-08)

e. A person with an existing community dock that desires to change the facility to a commercial marina must submit the following information to the department: (4-2-08)

i. A new application for an encroachment permit. (4-2-08)

ii. Text and drawings that describe which moorage will be public and which moorage will be private. (4-2-08)

03. Commercial Marina. (4-2-08)

a. Commercial marinas must have a minimum of fifty percent (50%) of their moorage available for use by the general public on either a first come, first served basis for free or rent, or a rent or lease agreement for a period of time up to one (1) year. Moorage contracts may be renewed annually, so long as a renewal term does not exceed one (1) year. Moorage for use by the general public may not include conditions that result in a transfer of ownership of moorage or real property, or require membership in a club or organization. (3-29-10)

b. Commercial marinas that are converted to a community dock must conform to all the community dock standards, including frontage requirements and square footage restrictions. This change of use must be approved by the department through a new encroachment permit prior to implementing the change. (3-29-10)

c. If local city or county ordinances governing parking requirements for marinas have not been adopted, commercial marinas must provide a minimum of upland vehicle parking equivalent to one (1) parking space per two (2) public watercraft or float home moorages. If private moorage is tied to specific parking spaces or designated parking areas, then one (1) parking space per one (1) private watercraft or float home moorage shall be provided. In the event of conflict, the local ordinances shall prevail. (3-29-10)

d. If a commercial marina can be accessed from a road, marina customers must be allowed access via that road. (4-2-08)

e. Moorage that is not available for public use as described in Paragraph 015.03.a. of these rules is private moorage. (3-29-10)

f. When calculating the moorage percentage, the amount of public moorage shall be compared to the amount of private moorage. Commercial marinas with private float home moorage shall be required to provide either non-private float home moorage or two (2) public use boat moorages for every private float home moorage in addition to any other required public use boat moorages. (4-2-08)

g. When private moorage is permitted, the public moorage must be of similar size and quality as private moorage, except for float home moorage as provided in Paragraph 015.03.f. of these rules. (3-29-10)

h. Commercial marinas with private moorage must form a condominium association, co-op, or other entity that owns and manages the marina, littoral rights, upland property sufficient to maintain and operate a marina, and private submerged land, if present. This entity is responsible for obtaining and maintaining an encroachment permit under these rules and a submerged lands lease under IDAPA 20.03.17, "Rules Governing Leases on State-Owned Submerged lands and Formerly Submerged Lands." (4-2-08)

i. Existing commercial marinas that desire to change their operations and convert some of their moorage to private use must keep at least fifty percent (50%) of their moorage available for use by the general public. This change in operations must be approved by the department through a new encroachment permit prior to implementation of the change. The permit application shall describe, in text and in drawings, which moorage will be public and which moorage will be private. (4-2-08)

04. Covered Slip. (4-2-08)

a. Covered slips, regardless of when constructed, may not have a temporary or permanent residential area. (4-2-08)

b. Slip covers should have colors that blend with the natural surroundings and are approved by the department. (4-2-08)

c. Covered slips may not be supported by extra piling nor constructed with hard roofs. (3-29-10)

d. Slip covers with permanent roofs and up to three (3) walls may be maintained or replaced at their current size if they were previously permitted or if they were constructed prior to January 1, 1975. These structures may not be expanded nor converted to boat garages. (3-29-10)

e. Fabric covered slips must be constructed as canopies without sides unless the following standards are followed: (4-2-08)

i. At least two (2) feet of open space is left between the bottom of the cover and the dock or pier surface; and (4-2-08)

ii. Fabric for canopy and sides will transmit at least seventy-five percent (75%) of the natural light. (4-2-08)

05. Boat Garage. (4-2-08)

a. Boat garages are considered nonnavigational encroachments. (4-2-08)

b. Applications for permits to construct new boat garages, ~~or to~~ expand the total square footage of the existing footprint, or raise the height will not be accepted unless the application is to support local emergency services. (4-2-08)()

c. Existing permitted boat garages may be maintained or replaced ~~at their~~ with the current ~~size square~~ footage of their existing footprint and height. (4-2-08)()

d. Relocation of an existing boat garage will require a permit. (4-2-08)

06. Breakwaters. Breakwaters built upon the lake for use in aid of navigation will not be authorized below the level of normal low water without an extraordinary showing of need, provided, however that this shall not apply to floating breakwaters secured by piling and used to protect private property from recurring wind, wave, or ice damage, or used to control traffic in busy areas of lakes. The breakwater shall be designed to counter wave actions of known wave heights and wave lengths. (4-2-08)

07. Seawalls. Seawalls should be placed at or above the ordinary high water mark, or the artificial high water mark, if applicable. Seawalls are not an aid to navigation, and placement waterward of the ordinary or artificial high water mark will generally not be allowed. (4-2-08)

08. Riprap. (4-2-08)

a. Riprap used to stabilize shorelines will consist of rock that is appropriately sized to resist movement from anticipated wave heights or tractive forces of the water flow. The rock shall be sound, dense, durable, and angular rock resistant to weathering and free of fines. The riprap shall overlie a distinct filter layer which consists of sand, gravel, or nonwoven geotextile fabric. The riprap and filter layer shall be keyed into the bed below the ordinary or artificial high water mark, as applicable. If the applicant wishes to install riprap with different standards, they must submit a design that is signed and stamped for construction purposes by a professional engineer registered in the state of Idaho. (4-2-08)

b. Riprap used to protect the base of a seawall or other vertical walls may not need to be keyed into the bed and may not require a filter layer, at the department's discretion. (4-2-08)

09. Mooring Buoys. Buoys shall be installed a minimum of thirty (30) feet away from littoral right lines of adjacent littoral owners. One (1) mooring buoy per littoral owner shall be allowed. (4-2-08)

10. Float Homes. (4-2-08)

a. Applications for permits to construct new float homes, or to expand the total square footage of the existing footprint, will not be accepted. (4-2-08)

b. Applications for relocation of float homes within a lake or from one (1) lake to another shall be subject to the following requirements: (4-2-08)

i. Proof of ownership or long term lease of the uplands adjacent to the relocation site must be furnished to the Department. (7-1-98)

ii. The applicant must show that all wastes and waste water will be transported to shore disposal systems by a method approved by the Idaho Department of Environmental Quality or the appropriate local health authority. Applicant must either obtain a letter from the local sewer district stating that the district will serve the float home or demonstrate that sewage will be appropriately handled and treated. Applicant must also provide a statement from a professional plumber licensed in the state of Idaho that the plumbing was designed ~~according to the 2003 Uniform Plumbing Code~~ in accordance with IDAPA 07.02.06, "Rules Concerning the Idaho State Plumbing Code," as incorporated by reference in Subsection 004.02 of these rules, installed properly, and has been pressure tested. (3-29-10)()

c. Encroachment applications and approved local permits are required for replacement of, or adding another story to, a float home. (4-2-08)

d. All plumbing ~~and electrical~~ work on float homes must be done in accordance with ~~the 2003 Uniform Plumbing Code and the 2008 National Electrical Code~~ IDAPA 07.02.06, "Rules Concerning the Idaho State Plumbing Code" and IDAPA 07.01.06, "Rules Governing the Use of National Electrical Code," as incorporated by reference in Section 004 of these rules. (3-29-10)()

e. All float homes in Idaho that connect with upland sewer or septic systems must implement the following standards by December 31, 2012: (3-29-10)

i. The holding tank with pump or grinder unit shall be adequately sealed to prevent material from escaping and to prevent lake water from entering. The tank lid shall have a gasket or seal, and the lid shall be securely fastened at all times unless the system is being repaired or maintained. An audible overflow alarm shall also be installed. (3-29-10)

ii. Grinders or solids handling pumps shall be used to move sewage from the float home to the upland system. (3-29-10)

iii. If solids handling pumps are used, they shall have a minimum two (2) inch interior diameter discharge, and the pipe to the shoreline shall also have a minimum two (2) inch interior diameter. Connectors used on either end of this pipe shall not significantly reduce the interior diameter. (3-29-10)

iv. The pipeline from the float home to the shoreline shall be a continuous line with no mechanical connections. Check valves and manual shutoff valves shall be installed at each end of the line. Butt fused HDPE, two hundred (200) psi black polyethylene pipe, or materials with similar properties shall be used. The pipeline shall contain sufficient slack to account for the maximum expected rise and fall of the lake or river level. The pipeline shall be buried in the lakebed for freeze protection where it will be exposed during periods of low water. Pipelines on the bed of the lake shall be appropriately located and anchored so they will not unduly interfere with navigation or other lake related uses. (3-29-10)

v. Manifolds below the ordinary, or artificial if applicable, high water mark that collect two (2) or more sewer lines and then route the discharge to the shore through a single pipe are not allowed. All float homes must have an individual sewer line from the float home to a facility on the shore. (3-29-10)

f. All float home permittees will have their float homes inspected by a professional plumber licensed in the state of Idaho by December 31, 2012. The inspection will be documented with a report prepared by the inspector. The report will document whether or not the float homes meet the standards in Paragraph 015.10.e. of these rules, and will be provided to the department before the above date. (3-29-10)

g. A float home permittee must request an extension, and give cause for the extension, if their float home does not meet the standards in paragraph 015.01.e. of these rules by December 31, 2012. Extensions beyond December 31, 2016 will not be allowed. A permittee's failure to either request the extension, if needed, or to meet the December 31, 2016 deadline will be a violation subject to the provisions of Section 080 of these rules. (3-29-10)

h. Construction or remodel work on a float home that costs fifty percent (50%) or more of its assessed value will require an encroachment application and construction drawings stamped by an engineer licensed in the state of Idaho. (3-29-10)

11. Excavated or Dredged Channel. (4-2-08)

a. Excavating, dredging, or redredging channels shall require an encroachment permit and shall be processed in accordance with Section 030 of these rules. (4-2-08)

b. An excavated or dredged channel or basin to provide access to navigable waters must have a clear environmental, economic, or social benefit to the people of the state, and shall not result in any appreciable environmental degradation. A channel or basin shall not be approved if the cumulative effects of these features in the same navigable lake would be adverse to fisheries or water quality. (3-29-10)

c. Whenever practical, such channels or basins shall be located to serve more than one (1) littoral owner or a commercial marina; provided, however, that no basin or channel will be approved that will provide access for watercraft to nonlittoral owners. (3-29-10)

12. ATONs. Aids to Navigation will conform to the requirements established by the United States Aid to Navigation system. (4-2-08)

13. General Encroachment Standards. (4-2-08)

a. Square Footage. The square footage limitations in Subsections 015.01 and 015.02 include all structures beyond the ordinary or artificial high water mark such as the approach, ramp, pier, dock, and all other floating or suspended structures that cover the lake surface, except for: (3-29-10)

i. Boat lifts as allowed pursuant to Paragraph 015.13.b. (3-29-10)

ii. Jet ski ramp, port, or lift as allowed pursuant to Paragraph 015.13.b. (3-29-10)

iii. Slip covers. (4-2-08)

iv. Undecked portions of breakwaters. (4-2-08)

b. Boat Lifts and Jet Ski Lifts. (4-2-08)

i. Single-family docks are allowed a single boat lift and two (2) jet ski lifts, or two (2) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)

ii. Two-family docks are allowed two (2) boat lifts and four (4) jet ski lifts, or four (4) boat lifts, without adding their footprint to the dock square footage. Additional lifts will require that fifty percent (50%) of the footprint of the largest lifts be included in the allowable square footage of the dock or pier as per Subsection 015.01. (4-2-08)

iii. A boat lift or jet ski lift within lines drawn perpendicular from the shore to the outside dock edges will not require a separate permit if the lift is outside the ten (10) foot adjacent littoral owner setback, the lift does not extend beyond the line of navigability, and the lift does not count toward the square footage of the dock as outlined in Subparagraphs 015.13.b.i. and 015.13.b.ii. The permittee shall send a revised permit drawing with the lift location as an application to the department. If the lift meets the above conditions, the application shall be approved as submitted. Future applications shall include the lifts. (3-29-10)

iv. Community docks are allowed one (1) boat lift or two (2) jet ski lifts per moorage. Boat lifts placed outside of a slip shall be oriented with the long axis parallel to the dock structure. Additional lifts will require that fifty percent (50%) of their footprint be included in the allowable square footage of the dock or pier as per Subsection 015.02. (3-29-10)

c. Angle from Shoreline. (4-2-08)

i. Where feasible, all docks, piers, or similar structures shall be constructed so as to protrude as nearly as possible at right angles to the general shoreline, lessening the potential for infringement on adjacent littoral rights. (4-2-08)

ii. Where it is not feasible to place docks at right angles to the general shoreline, the department shall work with the applicant to review and approve the applicant's proposed configuration and location of the dock and the dock's angle from shore. (4-2-08)

d. Length of Community Docks and Commercial Navigational Encroachments. Docks, piers, or other works may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water, except that no structure may extend beyond the normal accepted line of navigability established through use unless additional length is authorized by permit or order of the director. If a normally accepted line of navigability has not been established through use, the director may from time to time as he deems necessary, designate a line of navigability for the purpose of effective administration of these rules. (4-2-08)

e. Presumed Adverse Effect. It will be presumed, subject to rebuttal, that single-family and two-family navigational encroachments will have an adverse effect upon adjacent littoral rights if located closer than ten (10) feet from adjacent littoral right lines, and that commercial navigational encroachments, community docks or

nonnavigational encroachments will have a like adverse effect upon adjacent littoral rights if located closer than twenty-five (25) feet to adjacent littoral right lines. Written consent of the adjacent littoral owner or owners will automatically rebut the presumption. All boat lifts and other structures attached to the encroachments shall be subject to the above presumptions of adverse affects. (4-2-08)

f. Weather Conditions. Encroachments and their building materials shall be designed and installed to withstand normally anticipated weather conditions in the area. Docks, piers, and similar structures shall be adequately secured to pilings or anchors to prevent displacement due to ice, wind, and waves. Flotation devices for docks, float homes, etc. shall be reasonably resistant to puncture and other damage. (4-2-08)

g. Markers. If the department determines that an encroachment is not of sufficient size to be readily seen or which poses a hazard to navigation, the permit shall specify that aids to navigation be used to clearly identify the potential hazard. (4-2-08)

h. Overhead Clearance. (4-2-08)

i. Overhead clearance between the natural or ordinary high water mark or the artificial high water mark, if there be one, and the structure or wires must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the encroachment. In no case will the clearance be required to exceed thirty (30) feet unless the department determines after public hearing that it is in the overall public interest that the clearance be in excess of thirty (30) feet. Irrespective of height above the water, approval of structures or wires presenting a hazard for boating or other water related activities may be conditioned upon adequate safety marking to show clearance and otherwise to warn the public of the hazard. The department shall specify in the permit the amount of overhead clearance and markings required. (4-2-08)

ii. When the permit provides for overhead clearance or safety markings under Paragraph 015.13.h., the department shall consider the applicable requirements of the United States Coast Guard, the Idaho Transportation Department, the Idaho Public Utilities Commission and any other applicable federal, state, or local regulations. (4-2-08)

i. Beaded Foam Flotation. Beaded foam flotation shall be completely encased in a manner that will maintain the structural integrity of the foam. The encasement shall be resistant to the entry of rodents. (4-2-08)

14. Floating Toys. (3-29-10)

a. Encroachment permits are not required for floating toys, except where noted in Paragraph 015.14.b. Counties and cities may regulate floating toys for public safety and related concerns. (3-29-10)

b. A floating toy becomes a nonnavigational encroachment, and an encroachment permit is required, when one (1) of the following occurs: (3-29-10)

i. It is anchored to the bed of the lake with a device that requires equipment to remove it from the bed of the lake, or; (3-29-10)

ii. It is located waterward of the line of navigability for more than twenty-four (24) consecutive hours. (3-29-10)

15. Lake Specific Encroachment Permit Terms. (3-29-10)

a. The department may use encroachment permit conditions specific to individual lakes if the permit conditions are needed to protect public trust values and the permit condition is approved by the Land Board. (3-29-10)

b. Lake specific encroachment permit conditions may supplement, negate, or alter encroachment standards established in Section 015 of these rules. (3-29-10)

c. Lake specific encroachment permit conditions shall be used to assist with implementing lake

management plans authorized by Title 39, Chapter 66, Idaho Code; Title 39, Chapter 85, Idaho Code; Title 67, Chapter 43, Idaho Code; and Title 70, Chapter 2, Idaho Code. The purpose for using such lake specific permit conditions is to address lake specific environmental concerns that require attention and create a need for a variance from what is allowed on other lakes. (3-29-10)

d. Lake specific encroachment permit terms may be read at the Idaho Department of Lands website: <http://www.idl.idaho.gov/>. (3-29-10)

016. -- 019. (RESERVED)

020. APPLICATIONS.

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

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

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

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

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

a. Rearrangement of single-family and two-family docks will require a new application for an encroachment permit. (4-2-08)

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

- i. Overall footprint does not change in dimension or orientation; (4-2-08)
- ii. No increase in the square footage, as described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks; (3-29-10)
- iii. The entrances and exits of the facility do not change. (4-2-08)

06. Redredging. Redredging a channel or basin shall be considered a new encroachment and a permit

is required unless dredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how dredging is addressed in any existing or future permit. (4-2-08)

07. Forms, Filing. ~~Applications must be in writing on forms provided by the Department or copies.~~ Applications and plans shall be filed ~~in the local office of the Department, whose location is available on the internet at www.idl.idaho.gov, or the director's office in Boise;~~ on forms provided by the Department together with filing fees and costs of publication when required by these rules. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. (4-2-08)()

a. Plans shall include the following information ~~on paper no larger than eight and one half by fourteen (8 1/2"x14") inches~~ at a scale sufficient to show the information requested: (4-2-08)()

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

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

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

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

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

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

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

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

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

d. Applications for noncommercial encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements. Application fees are not required for these encroachments. (4-2-08)

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

i. Nonnavigational encroachments require a fee of one thousand dollars (\$1,000); except that nonnavigational encroachments for bank stabilization and erosion control require a fee of five hundred fifty dollars (\$550). (4-2-08)()

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

- iii. Community navigational encroachments require a fee of two thousand dollars (\$2,000); and (4-2-08)
- iv. Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars (\$1,000). (4-2-08)
- f. Applicants shall pay any balance due on publication costs before written approval will be issued. The Department shall refund any excess at or before final action on the application. (9-13-90)
- g. Application for a single-family or two-family dock not extending beyond the line of navigability or a nonnavigational encroachment for a buried or submerged water intake line serving four or less households shall be accompanied by a nonrefundable filing fee of three hundred dollars (\$300). (4-7-11)
- ~~h. A nonnavigational encroachment for bank stabilization and erosion control shall be accompanied by a nonrefundable filing fee of five hundred fifty dollars (\$550). (4-7-11)~~
- ~~i.~~ No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. (9-13-90)
- ~~j.~~ Applications and plans shall be stamped with the date of filing. (7-1-98)
- ~~k.~~ Applications that are incomplete, not in the proper form, not containing the required signature(s), or not accompanied by filing fees and costs of publication when required, shall not be accepted for filing. The department shall send the applicant a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written consent of the department. If the given deadline is not met, the department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply at a later date, but will be required to pay another filing fee and publication fee, if applicable. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

080. VIOLATIONS - PENALTIES.

- 01. Cease and Desist Order.** When the department determines that a violation of these rules is occurring due to the ongoing construction of an unauthorized encroachment or an unauthorized modification of a permitted encroachment, it may provide the landowner, contractor, or permittee with a written cease and desist order that shall consist of a short and plain statement of what the violation is, the pertinent legal authority, and how the violation may be rectified. This order will be served by personal service or certified mail. The cease and desist order shall be used to maintain the status quo pending formal proceedings by the department to rectify the violation. (4-2-08)
- 02. Notice of Noncompliance/Proposed Permit Revocation.** When the department determines that these rules have been violated, a cause exists for revocation of a lake encroachment permit, or both of these have occurred, it shall provide the permittee or offending person with a notice of noncompliance/proposed permit revocation that shall consist of a short and plain statement of the violation including any pertinent legal authority. This notice shall also inform the permittee or offending person of what steps are needed to either bring the encroachment into compliance, if possible, or avoid revocation, or both. ~~(4-2-08)~~ ()
- 03. Noncompliance Resolution.** The department will attempt to resolve all noncompliance issues through conference with the permittee or other involved party. Any period set by the parties for correction of a violation shall be binding. If the department is unsuccessful in resolving the violations, then the department may pursue other remedies under Section 080 of these rules. (4-2-08)

04. Violations. The following acts or omissions shall subject a person to a civil penalty as allowed by Title 58, Chapter 13, Section 58-1308, Idaho Code: (4-2-08)

a. A violation of the provisions of Title 58, Chapter 13, Idaho Code, or of the rules and general orders adopted thereunder and applicable to navigable lakes; (4-2-08)

b. A violation of any special order of the director applicable to a navigable lake; or (4-2-08)

c. Refusal to cease and desist from any violation in regards to a navigable lake after having received a written cease and desist order from the department by personal service or certified mail, within the time provided in the notice, or within thirty (30) days of service of such notice if no time is provided. (4-2-08)

d. Willfully and knowingly falsifying any records, plans, information, or other data required by these rules. (4-2-08)

e. Violating the terms of an encroachment permit. (4-2-08)

05. Injunctions, Damages. The Board expressly reserves the right, through the director, to seek injunctive relief under Title 58, Chapter 13, Section 58-1308, Idaho Code and mitigation of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties provided for in Subsection 080.04 of these rules. (4-2-08)

06. Mitigation, Restoration. The board expressly reserves the right, through the director, to require mitigation and restoration of damages under Title 58, Chapter 13, Section 58-1309, Idaho Code, in addition to the civil penalties and injunctive relief provided for in Subsections 080.04 and 080.05 of these rules. The department may consult with other state agencies to determine the appropriate type and amount of mitigation and restoration required. (4-2-08)

07. Revocation of Lake Encroachment Permits. (4-2-08)

a. The department may institute an administrative action to revoke a lake encroachment permit for violation of the conditions of a permit, or for any other reason authorized by law. All such proceedings shall be conducted as contested case hearings subject to the provisions of Title 67, Chapter 52, Idaho Code, and IDAPA 20.01.01, "Rules of Practice and Procedure before the State Board of Land Commissioners." (4-2-08)

b. A hearing officer appointed to conduct the revocation hearing shall prepare recommended findings of fact and conclusions of law and forward them to the director for final adoption or rejection. (4-2-08)

c. An aggrieved party who appeared and testified at a hearing shall have the right to have the proceedings and final decision of the director reviewed by the district court of the county in which the violation or revocation occurred by filing a notice of appeal within twenty-eight (28) days from the date of the final decision. (4-2-08)