

## State Board of Land Commissioners Open Meeting Checklist

Meeting Date: October 19, 2021

### Regular Meetings

10/6/2021	Meeting Notice posted in prominent place in IDL's Boise Director's office five (5) or more calendar days before meeting.
10/6/2021	Meeting Notice posted in prominent place in IDL's Coeur d'Alene staff office five (5) or more calendar days before meeting.
10/6/2021	Meeting Notice posted in prominent place at meeting location five (5) or more calendar days before meeting.
10/6/2021	Meeting Notice emailed/faxed to list of media and interested citizens who have requested such notice five (5) or more calendar days before meeting.
10/6/2021	Meeting Notice posted electronically on IDL's public website <a href="http://www.idl.idaho.gov">www.idl.idaho.gov</a> five (5) or more calendar days before meeting.
10/14/2021	Revised Agenda posted in prominent place in IDL's Boise Director's office forty-eight (48) hours before meeting.
10/14/2021	Revised Agenda posted in prominent place in IDL's Coeur d'Alene staff office forty-eight (48) hours before meeting.
10/14/2021	Revised Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting.
10/14/2021	Revised Agenda emailed/faxed to list of media and interested citizens who have requested such notice forty-eight (48) hours before meeting.
10/14/2021	Revised Agenda posted electronically on IDL's public website <a href="http://www.idl.idaho.gov">www.idl.idaho.gov</a> forty-eight (48) hours before meeting.
5/6/2021	Land Board annual meeting schedule posted – Boise Director's office, Coeur d'Alene staff office, and IDL's public website <a href="http://www.idl.idaho.gov">www.idl.idaho.gov</a>

### Special Meetings

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

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

	Meeting Notice and Agenda posted in IDL's Boise Director's office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted in IDL's Coeur d'Alene staff office twenty-four (24) hours before meeting.
	Meeting Notice and Agenda emailed/faxed to list of media and interested citizens who have requested such notice twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted electronically on IDL's public website <a href="http://www.idl.idaho.gov">www.idl.idaho.gov</a> 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.

  
Renee Jacobsen  
Recording Secretary

October 14, 2021

Date



## Idaho State Board of Land Commissioners

Brad Little, 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 2021

The Idaho State Board of Land Commissioners will hold a Regular Meeting on Tuesday, October 19, 2021 in the **State Capitol, House Hearing Room EW42, Lower Level, East Wing, 700 W. Jefferson St., Boise, Idaho**. The meeting is scheduled to begin at 9:00 AM (Mountain).

*Please note meeting location.*

**The State Board of Land Commissioners will conduct this meeting in person and by virtual means. This meeting is open to the public.**

Public comment will be accepted on specified agenda item(s) only.

**Advanced sign up is required.** See details on page 2.

Meeting will be streamed live via IPTV: <https://www.idahoptv.org/shows/idahoinsession/>

Members of the public may register to attend the Zoom webinar through this link:

[https://idl.zoom.us/webinar/register/WN\\_y5U1yxyVRSGDcJfDvUNkaQ](https://idl.zoom.us/webinar/register/WN_y5U1yxyVRSGDcJfDvUNkaQ)

The Governor's [Stage 4 Stay Healthy Guidelines](#) dated 5/11/2021 allows for public meetings of any size with adherence to physical distancing and sanitation requirements. Individuals are encouraged to watch online or via webinar. All in-person attendees must comply with current COVID-19 safety protocols for public gatherings in the City of Boise, including but not limited to guidance regarding face coverings and social distancing.

Physical distancing measures reduce the meeting room's normal attendance capacity.<sup>1</sup>

<sup>1</sup> [www.cityofboise.org/departments/mayor/coronavirus-covid-19-information/](http://www.cityofboise.org/departments/mayor/coronavirus-covid-19-information/) AND [www.cdhd.idaho.gov/dac-coronavirus](http://www.cdhd.idaho.gov/dac-coronavirus)

First Notice Posted: 10/6/2021-IDL Boise; 10/6/2021-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

## Public Comment Procedure

### Agenda Item      2021 Grazing Rate Methodology

Public comment may be submitted in the following manner:

- In writing prior to the meeting. Written comments will be included in the meeting record.
  - Email: [comments@idl.idaho.gov](mailto:comments@idl.idaho.gov)
  - Mail: Idaho Department of Lands  
Attn: Land Board Secretary  
PO Box 83720  
Boise ID 83720-0050
- In person or by webinar during the Land Board meeting.
  - Advanced sign-up is required, *no later than Friday, October 15, 2021 at 2 PM (MT)*.
  - Notify Renée Jacobsen ([rjacobsen@idl.idaho.gov](mailto:rjacobsen@idl.idaho.gov)) if you wish to provide comment.
  - Audience capacity due to physical distancing measures is limited. Participation by webinar is highly encouraged.
  - Complete registration:
    - [https://idl.zoom.us/webinar/register/WN\\_y5U1yxyVRSGDcJfDvUNkaQ](https://idl.zoom.us/webinar/register/WN_y5U1yxyVRSGDcJfDvUNkaQ)
    - Submit registration no later than 2:00 PM (MT) on October 15th.
- A measured amount of time will be allocated for public comment.
- Remarks will be limited to **3 minutes per individual or group representative**.
  - Groups, associations, organizations, etc. with multiple members in attendance must select one individual as spokesperson.
- The Land Board may conclude public comment at its discretion, at any time.

First Notice Posted: 10/6/2021-IDL Boise; 10/6/2021-IDL CDA

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### State Board of Land Commissioners Regular Meeting

October 19, 2021 – 9:00 AM (MT)

Revised Final Agenda

Capitol, House Hearing Room EW42, Lower Level, East Wing, 700 W. Jefferson St., Boise, Idaho

*Please note meeting location.*

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**The State Board of Land Commissioners will conduct this meeting in person and by virtual means. This meeting is open to the public. Public comment will be taken on 2021 Grazing Rate Methodology.**

Meeting will be streamed live via IPTV: <https://www.idahoptv.org/shows/idahoinsession/>

Members of the public may register to attend the Zoom webinar through this link:

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#### 1. Department Report – Presented by Dustin Miller, Director

##### Trust Land Revenue

- A. Timber Sales – September 2021
- B. Leases and Permits – September 2021

##### Status Updates

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

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

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

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<sup>1</sup> [www.cityofboise.org/departments/mayor/coronavirus-covid-19-information/](http://www.cityofboise.org/departments/mayor/coronavirus-covid-19-information/) AND [www.cdhd.idaho.gov/dac-coronavirus](http://www.cdhd.idaho.gov/dac-coronavirus)

## Consent—Action Item(s)

3. **Approval of Draft Minutes** – September 21, 2021 Regular Meeting (Boise)

## Regular—Action Item(s)

~~**Timber Sale Contract Extensions and Stumpage Interest Relief** – Presented by Jim Elbin, Division Administrator-Trust Land Management; and Steve Thomas, Idaho Forest Group – **ITEM WITHDRAWN**~~

4. **2021 Grazing Rate Methodology** – Presented by Dustin Miller, Director
5. **Adoption of Pending Rule IDAPA 20.02.01, Rules Pertaining to the Idaho Forest Practices Act** – Presented by Archie Gray, Bureau Chief-Forestry Assistance
6. **Adoption of Pending Rule IDAPA 20.03.09, Easements on State-Owned Navigable Waterways** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance

## Information

7. **Abandoned Mine Land Fund Revenue** – Presented by Mick Thomas, Division Administrator-Minerals, Pub Trust, Oil and Gas

## Executive Session

None

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### Public Comment Procedure – Agenda Item 4 – 2021 Grazing Rate Methodology

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- In writing prior to the meeting. Written comments will be included in the meeting record.
  - Email: [comments@idl.idaho.gov](mailto:comments@idl.idaho.gov)
  - Mail: Idaho Department of Lands  
Attn: Land Board Secretary  
PO Box 83720  
Boise ID 83720-0050
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# Idaho Statutes

Idaho Statutes are updated to the web July 1 following the legislative session.

## TITLE 74

### TRANSPARENT AND ETHICAL GOVERNMENT

#### CHAPTER 2

##### OPEN MEETINGS LAW

74-206. EXECUTIVE SESSIONS – WHEN AUTHORIZED. (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 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 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 chapter 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.

(4) If the governing board of a public school district, charter district, or public charter school has vacancies such that fewer than two-thirds (2/3) of board members have been seated, then the board may enter into executive session on a simple roll call majority vote.

#### History:

[74-206, added 2015, ch. 140, sec. 5, p. 371; am. 2015, ch. 271, sec. 1, p. 1125; am. 2018, ch. 169, sec. 25, p. 377; am. 2019, ch. 114, sec. 1, p. 439.]

# STATE BOARD OF LAND COMMISSIONERS

October 19, 2021  
Trust Land Revenue

## Timber Sales

During September 2021, the Department of Lands sold eight endowment timber sales at auction. The endowment net sale value represents a 7% up bid over the advertised value. Two sales, East Pine Salvage and Boulder Cop Ton had competitive bidding. The remaining six sales sold at the appraised value.

Four endowment sales did not sell at auction. The Barn Creek Cedar Salvage sale was rescheduled for a second auction on October 6th, and the Little Pioneer Fire Salvage sale is rescheduled for auction on October 19th. The remaining two sales will be reappraised and offered for second auction at a later date.

TIMBER SALE AUCTIONS								
Sale Name	Area	Sawlogs MBF	Cedar Prod MBF	Pulp MBF	Appraised Net Value	Sale Net Value	Net \$/MBF	Purchaser
East Pine Salvage	PAY	2,020			\$ 171,694.00	\$ 363,392.00	\$179.90	Woodgrain Inc
North Porters	CLW	6,760			\$ 1,530,504.00	\$1,580,843.00	\$233.85	IFG Timber LLC
Cedar Creek Salvage	CLW	510			\$ 247,730.00	\$ 247,730.00	\$485.75	Empire Lumber
Benton North Cedar Salvage	CLW	21,605			\$ 7,198,440.00	\$ 7,198,440.00	\$333.18	Stella-Jones
Boulder Cop Ton	PAY	6,745			\$ 975,426.60	\$ 1,612,269.00	\$239.03	Woodgrain Inc
Barn Damage Salvage	SJ	720			\$ 228,297.50	\$ 228,297.50	\$317.08	Waddell Logging
Great Scott Salvage	SJ	810			\$ 525,015.00	\$ 525,015.00	\$648.17	Alta Forest
Cedar Gap	PL	1,700			\$ 1,267,231.50	\$ 1,267,231.50	\$745.43	Stella-Jones
<b>Endowment</b>		<b>40,870</b>	<b>0</b>	<b>0</b>	<b>\$12,144,338.60</b>	<b>\$13,023,218.00</b>	<b>\$318.65</b>	

PROPOSED TIMBER SALES FOR AUCTION				
Sale Name	Volume MBF	Advertised Net Value	Area	Estimated Auction Date
North Operations				
French Hog Salvage	815	\$176,567.00	Ponderosa	10/6/2021
Barn Creek Cedar Salvage	310	\$139,342.00	Ponderosa	10/6/2021 2nd Auction
Wild Scott Cedar Salvage	2,865	\$462,784.50	St. Joe	10/14/2021
Flemming Mica Salvage	470	\$99,791.00	St. Joe	10/14/2021
Little Pioneer Fire Salvage	2,300	\$449,184.00	Pend Oreille Lake	10/19/2021 2nd Auction
Paragon Cedar	8,225	\$2,602,707.50	Ponderosa	10/21/2021
Loopy Line and Tractor Cedar	6,385	\$2,147,410.50	St. Joe	10/26/2021
Hey Wilson Cedar	3,580	\$1,591,355.50	St. Joe	10/26/2021
Something Fishy	6,910	\$1,822,451.00	Mica	10/28/2021
<b>TOTALS</b>	<b>31,860</b>	<b>\$9,491,593.00</b>		
South Operations				
Benton West Cedar Salvage	7,210	\$3,106,293.00	Clearwater	10/7/2021
Benton South Cedar Salvage	9,325	\$1,590,883.50	Clearwater	10/7/2021
<b>TOTALS</b>	<b>16,535</b>	<b>\$4,697,176.50</b>		



### VOLUME UNDER CONTRACT as of September 30, 2021

	Public School	Pooled	Total	3 Year Avg.
Active Contracts			175	180
Total Residual MBF Equivalent	321,931	202,153	524,084	546,273
Estimated residual value	\$82,081,313	\$56,060,641	\$138,141,954	\$154,362,932
Residual Value (\$/MBF)	\$254.97	\$277.32	\$263.59	\$282.48

### TIMBER HARVEST RECEIPTS

	September		FY to date	October Projected	
	Stumpage	Interest	Harvest Receipts	Stumpage	Interest
Public School	\$ 5,164,489.39	\$ 504,029.70	\$ 16,610,802.23	\$ 5,762,466.46	\$ 789,282.24
Pooled	\$ 3,984,258.23	\$ 333,315.96	\$ 9,909,331.30	\$ 4,021,810.13	\$ 383,420.03
General Fund	\$ 2.09	\$ 0.00	\$ 4.67	\$ 2.09	\$ 0.00
<b>TOTALS</b>	<b>\$ 9,148,749.71</b>	<b>\$ 837,345.66</b>	<b>\$ 26,520,138.20</b>	<b>\$ 9,784,278.68</b>	<b>\$ 1,172,702.27</b>

### Status of FY2021 Timber Sale Program

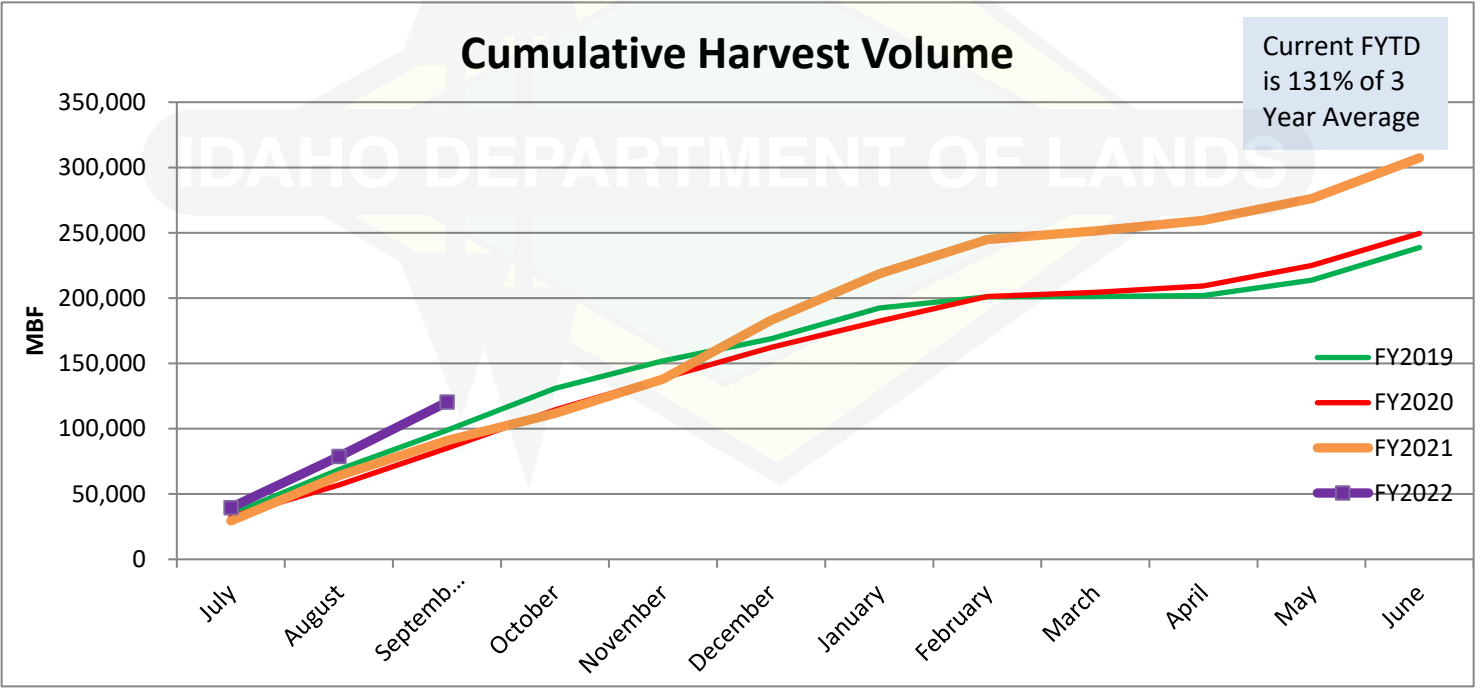
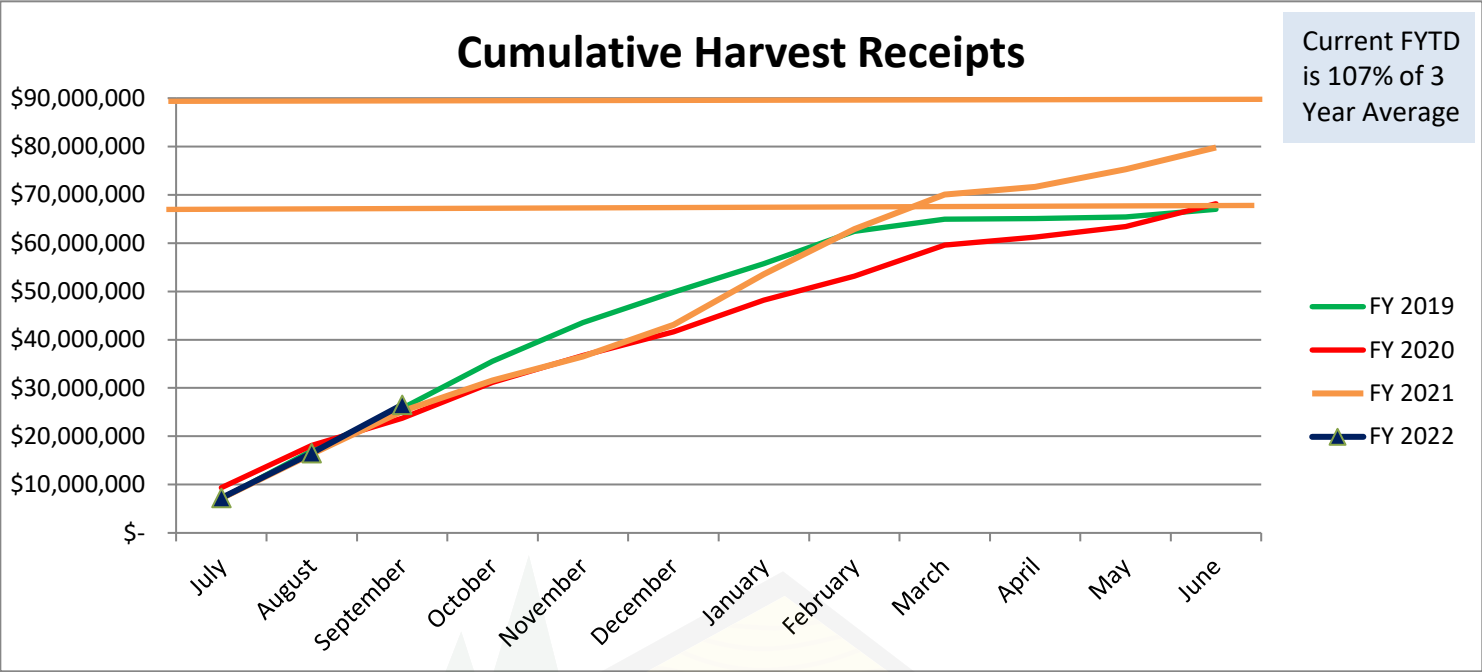
	MBF Sawlog			Number Poles		
	Public School	Pooled	All Endowments	Public School	Pooled	All Endowments
Sold as of September 30, 2021	163,674	113,198	276,872	17,976	12,254	30,230
Currently Advertised	9,327	2,143	11,470	0	0	0
In Review	0	0	0	0	0	0
Did Not Sell <sup>1</sup>	0	0	0	0	0	0
<b>TOTALS</b>	<b>173,001</b>	<b>115,341</b>	<b>288,342</b>	<b>17,976</b>	<b>12,254</b>	<b>30,230</b>
FY2021 Sales Plan			284,238			28,810
Percent to Date			101%			105%

### Status of FY2022 Timber Sale Program

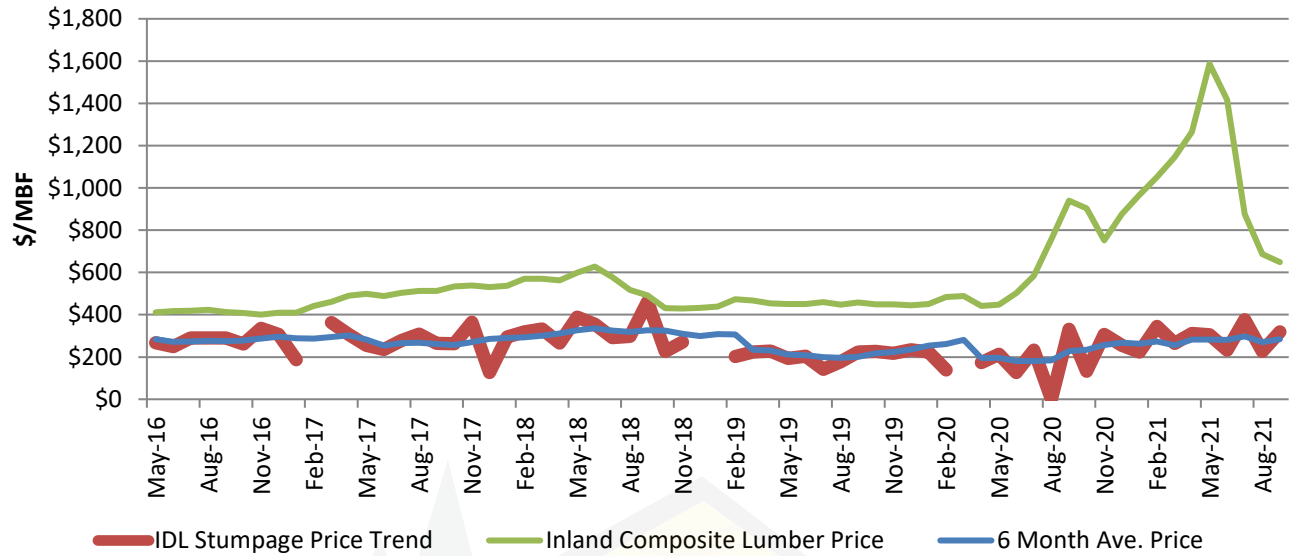
	MBF Sawlog			Number Poles		
	Public School	Pooled	All Endowments	Public School	Pooled	All Endowments
Sold as of September 30, 2021	27,944	23,067	51,011	13,073	4,706	17,779
Currently Advertised	22,325	22,920	45,245	5,931	4,189	10,120
In Review	21,764	17,567	39,331	3,300	1,715	5,015
Did Not Sell <sup>1</sup>	0	0	0	0	0	0
<b>TOTALS</b>	<b>72,033</b>	<b>63,554</b>	<b>135,587</b>	<b>22,304</b>	<b>10,610</b>	<b>32,914</b>
FY2022 Sales Plan			311,195			20,600
Percent to Date			44%			160%

<sup>1</sup> After three attempts at auction.





## Monthly Lumber and Stumpage Price



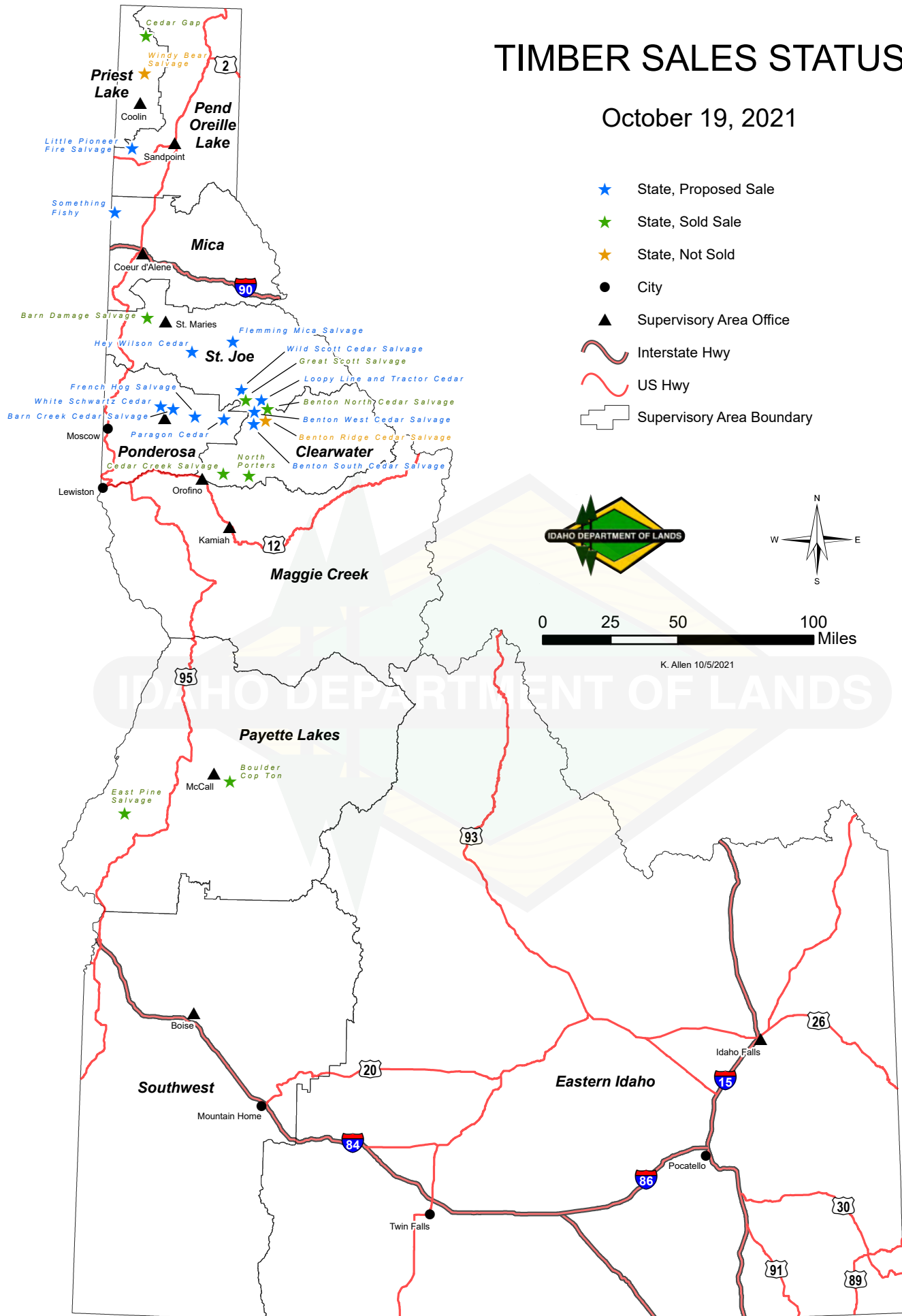
September 2021 6-month average price is \$284.50.

September 2020 6-month average price was \$228.58.

IDAHO DEPARTMENT OF LANDS

# TIMBER SALES STATUS

October 19, 2021



# STATE BOARD OF LAND COMMISSIONERS

October 19, 2021  
Endowment Transactions

## Leases and Permits

FISCAL YEAR 2022 – LEASING & PERMITTING TRANSACTIONS BY MONTH – through September 30,													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	FYTD
<b>SURFACE</b>													
Agriculture	-	-	-										0
Assignments	-	-	-										0
Communication Sites	-	-	2										2
Grazing	-	3	2										5
Assignments	2	-	1										3
Residential	1	-	1										2
Assignments	-	-	1										1
<b>COMMERCIAL</b>													
Alternative Energy	-	-	-										0
Industrial	-	-	-										0
Military	-	-	-										0
Office/Retail	-	-	-										0
Recreation	-	-	-										0
Assignments	-	-	-										0
<b>OTHER</b>													
Conservation	-	-	-										0
Assignments	-	-	-										0
Geothermal	-	-	-										0
Minerals	-	-	-										0
Assignments	-	-	-										0
Non-Comm Recreation	-	-	-										0
Oil & Gas	-	-	-										0
<b>PERMITS</b>													
Land Use Permits	9	9	9										27
<b>TOTAL INSTRUMENTS</b>	<b>12</b>	<b>12</b>	<b>16</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>40</b>

## Real Estate

FISCAL YEAR 2022 – REAL ESTATE TRANSACTIONS BY MONTH – through September 30, 2021													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	FYTD
Deeds Acquired	-	-	-										0
Deeds Granted	-	-	5										5
Deeds Granted - Surplus	-	-	-										0
Easements Acquired	-	-	-										0
Easements Granted	-	-	-										0

### Land Exchange Update

[Owyhee](#) - Scheduled to record on 10/8/21.

[Deatley](#) - Closed and recorded on 10/6/21.

[Idaho Forest Group](#) - Title company delayed the closing.

[Avimor](#) - Title issues are being resolved. Will present to the Land Board in November for final approval to close.

[EIRSWD](#) - The Department is working through the closing process and anticipates that the closing will take place at the end of January 2022.

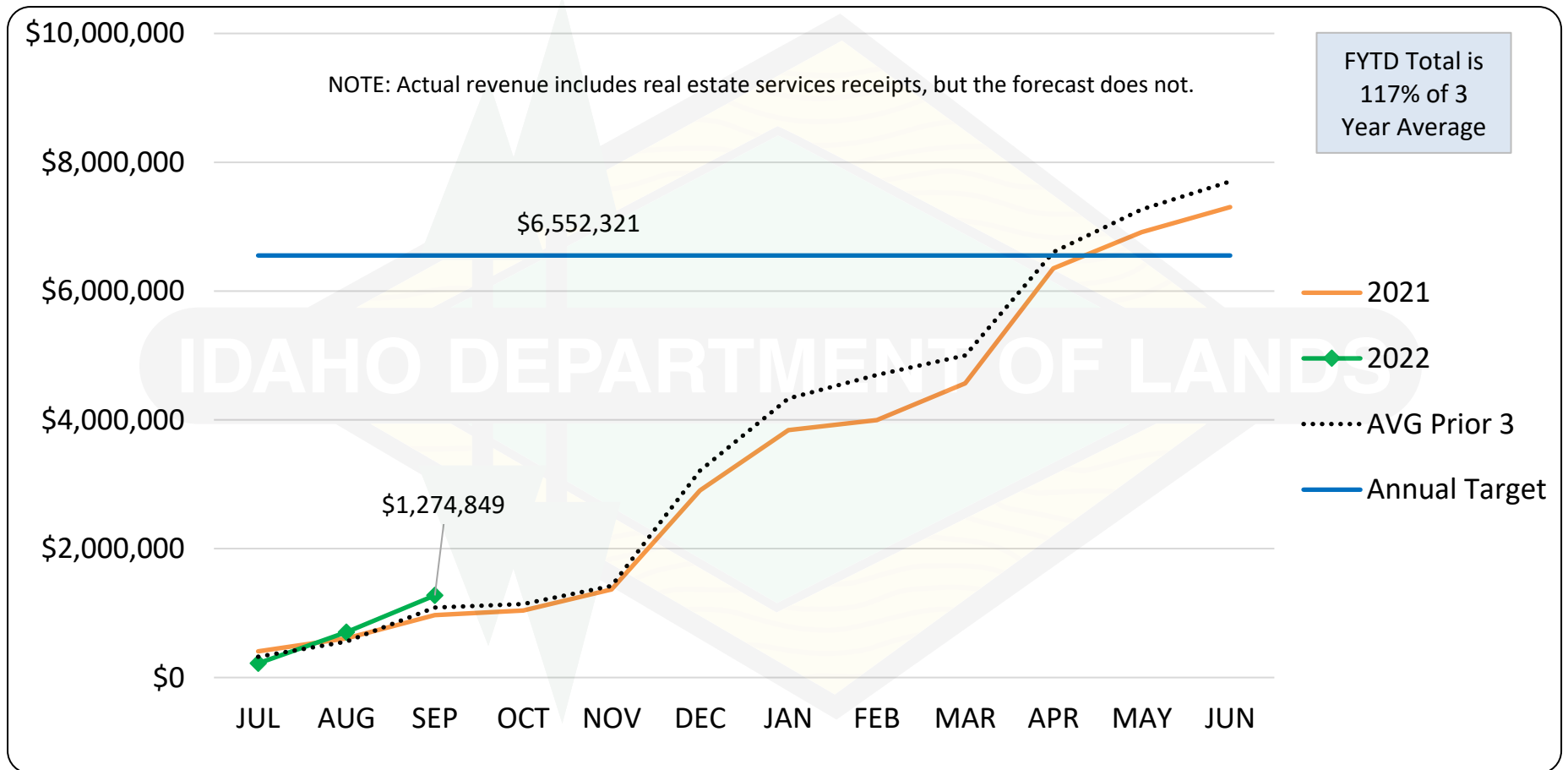
**TRUST LAND MANAGEMENT DIVISION**  
**FY2022 GROSS REVENUE (non-timber) - ACTUAL AND FORECASTED**  
**through September 30, 2021**

	ACTUAL RECEIPTS AS OF 09.30.2021	REVENUE EXPECTED BY 09.30.2021**	REVENUE EXPECTED BY 06.30.2022
<b>SURFACE</b>			
AGRICULTURE	\$ 2,650	\$ 5,700	\$ 491,700
COMMUNICATION SITES	\$ 172,545	\$ 80,880	\$ 1,011,000
GRAZING	\$ 55,241	\$ 70,000	\$ 1,817,000
RESIDENTIAL	\$ (5,378)	\$ 6,200	\$ 1,303,345
<b>COMMERCIAL</b>			
COMMERCIAL ENERGY RESOURCES	\$ -	\$ -	\$ 21,859
COMMERCIAL INDUSTRIAL	\$ 27,043	\$ 3,430	\$ 84,967
COMMERCIAL MILITARY	\$ -	\$ -	\$ 91,463
COMMERCIAL OFFICE/RETAIL	\$ 566,513	\$ 533,188	\$ 923,859
COMMERCIAL RECREATION***	\$ 431,557	\$ 396,500	\$ 531,800
<b>OTHER</b>			
CONSERVATION LEASES	\$ 8,580	\$ -	\$ 65,000
GEO THERMAL	\$ 250	\$ -	\$ -
MINERAL	\$ 4,571	\$ 1,943	\$ 105,403
NON-COMMERCIAL RECREATION	\$ 10,600	\$ 2,050	\$ 98,452
OIL AND GAS LEASES	\$ 465	\$ 715	\$ 6,473
<b>Sub Total</b>	<b>\$ 1,274,638</b>	<b>\$ 1,100,606</b>	<b>\$ 6,552,321</b>
*LAND SALES/RECORDS	\$ -		
*REAL ESTATE SERVICES	\$ 211		
<b>Grand Total</b>	<b>\$ 1,274,849</b>		

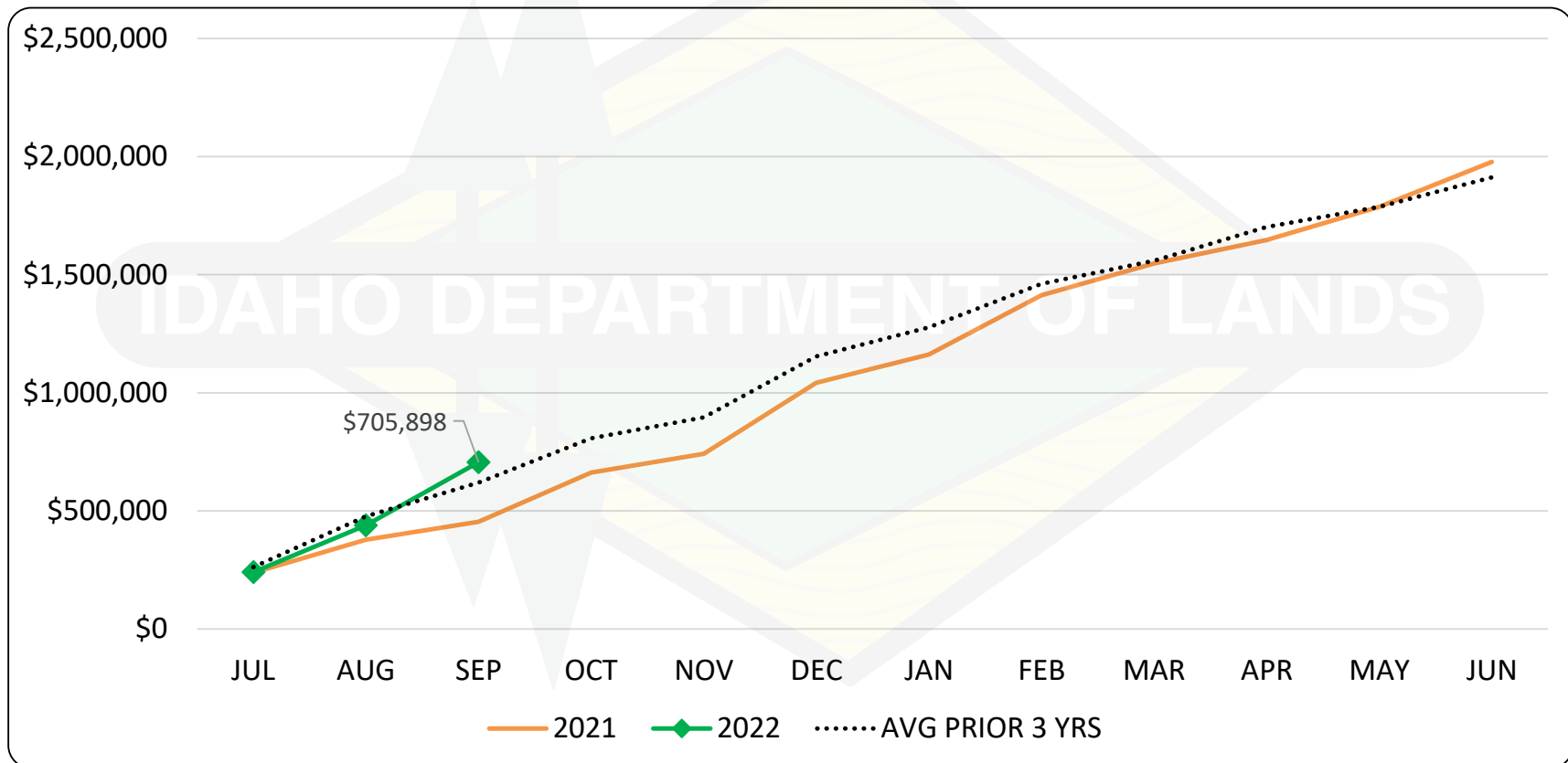
\* These categories are not included in the annual forecast.

\*\* These figures are based on "normal" timing of revenue/billing throughout the year.

# Cumulative Trust Land Program Receipts Earnings Reserve - All Programs excluding Timber FY 2021 - FYTD 2022



Cumulative Trust Land Permanent Fund Revenue/Royalties  
(Does NOT include Land Bank or Timber Program Revenue)  
FY 2021 - FYTD 2022





# STATE BOARD OF LAND COMMISSIONERS

October 19, 2021

Department Report

## Subject

Fire Season Update

## Background

As of October 13, Emergency Fire Suppression expenditures are estimated to be \$74,600,000. The Suppression Account will recover an estimated \$7,200,000 of reimbursable costs, for a net obligation of \$67,400,000. The total obligation includes the 2021 contracted aircraft costs, prepositioned contract engines, and crews to assist with resource scarcity. These engines are assigned across the state to boost initial attack resources.

## Discussion

As shown by the table below, fire occurrence to date for 2021 is 131 percent of the 20-year average, while the acres burned is 565 percent of the 20-year average.

Fire Season Comparison to Date

Number of Fires				
Year	Lightning	Human	Total	Acres
2018	57	207	264	7,734
2019	94	137	231	1,436
2020	50	190	240	6,879
2021	155	240	395	141,997
20 Yr. Average			302	25,110

Numbers in table are YTD for prior years and YTD for the current year.

From spring through early September, weather conditions in IDL fire protection were far warmer and drier than normal creating historically dry fuels. At this time however, most of Idaho has received a significant amount of moisture over the past several weeks and fire danger has significantly dropped off. All statewide fire restrictions have been lifted; limited prescribed burning and pile burning is being conducted where safe to do so.

Total Acres Burned by Ownership 10/13/2021	
Surface Owner	Acres
Idaho Department of Lands	13,266
Other State Lands	63,773
Private	28,991
Bureau of Land Management	42,225
Other Federal	7,731
U.S. Forest Service	269,007
<b>Total Acres</b>	<b>424,993</b>

Only fires with perimeters in the Fire Enterprise Geospatial Portal and the IDL Lands Resource Manager system have been included in the analysis.

Fire Deficiency Warrant Spending - 2021 Fire Season YTD		
Category	Estimated Costs	Notes
Aviation Resources	\$2,000,000	4 SEATS, 2 Fire Bosses, 2 Type 2 Helicopters
Prepositioned Engines	\$800,000	Contract engines statewide to boost IA
Prepositioned Hand Crew	\$400,000	20-person Hand Crew to boost IA
IDL Team Fires	\$51,500,000	Type 2 and Type 3 Fires
IDL Non-Team Fires	\$7,800,000	IDL/Assn. fires including pre-positioning
Other Suppression	\$4,900,000	Coeur d'Alene Cache, Dispatch Centers
Reimbursable	\$7,200,000	Reimbursable (IDL and Fire Department resources supporting non-IDL fires)
<b>Total Estimate YTD</b>	<b>\$74,600,000</b>	

## Suppression Spending History

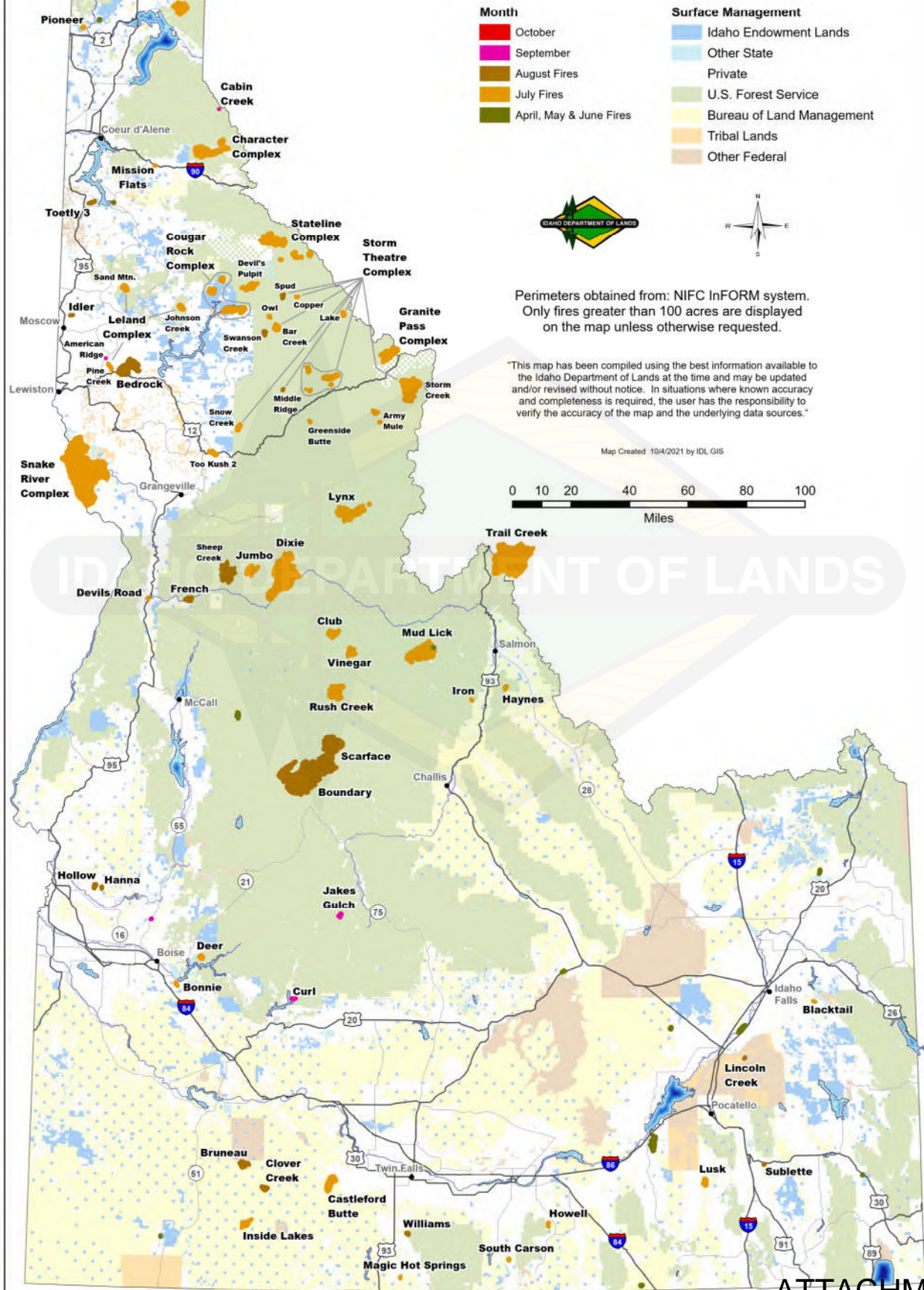
Fire Season Estimated Costs from Annual Reports			
	Idaho Fire Suppression Costs	Reimbursable	Idaho Obligation
2015	\$ 78,113,000	\$ 17,902,000	\$ 60,211,000
2016	\$ 14,802,000	\$ 4,781,000	\$ 10,021,000
2017	\$ 22,081,000	\$ 5,632,000	\$ 16,449,000
2018	\$ 28,000,000	\$ 8,500,000	\$ 19,500,000
2019	\$ 13,600,000	\$ 2,100,000	\$ 11,500,000
2020	\$ 28,500,000	\$ 3,100,000	\$ 25,400,000
2021	\$ 74,600,000	\$ 7,200,000	\$ 67,400,000

## Attachments

1. Map – Significant Fires Throughout Idaho

# 2021 Wildland Fires in Idaho

10/4/2021



ATTACHMENT 1

LAND BANK AGING REPORT						
Current Remaining Principal Balance By Quarter Received - As of September 30, 2021						
FY Quarter IN	Public School	Normal Schools	State Hospital South	University of Idaho	All Endowments	FY Quarter EXPIRES
2018-01	\$ -	\$ 3,331,000	\$ 4,439,000	\$ -	\$ 7,770,000	2023-01
2018-02	\$ 27,856,166	\$ -	\$ 125,500	\$ -	\$ 27,981,666	2023-02
2018-03	\$ -	\$ 2,000,712	\$ 829,888	\$ 5,650,029	\$ 8,480,629	2023-03
2018-04	\$ 10,500	\$ -	\$ -	\$ -	\$ 10,500	2023-04
2019-01	\$ -	\$ 2,428,000	\$ 1,442,000	\$ -	\$ 3,870,000	2024-01
2019-02	\$ 25,136,124	\$ -	\$ -	\$ -	\$ 25,136,124	2024-02
2019-03	\$ -	\$ -	\$ -	\$ -	\$ -	2024-03
2019-04	\$ -	\$ -	\$ -	\$ -	\$ -	2024-04
2020-01	\$ -	\$ 2,582,500	\$ 1,670,000	\$ -	\$ 4,252,500	2025-01
2020-02	\$ 12,793,400	\$ -	\$ -	\$ -	\$ 12,793,400	2025-02
2020-03	\$ 866,000	\$ -	\$ -	\$ -	\$ 866,000	2025-03
2020-04	\$ 52,134	\$ -	\$ -	\$ -	\$ 52,134	2025-04
2021-01	\$ 5,159,720	\$ -	\$ -	\$ -	\$ 5,159,720	2026-01
2021-02	\$ 6,595,000	\$ -	\$ -	\$ -	\$ 6,595,000	2026-02
2021-03	\$ -	\$ -	\$ -	\$ -	\$ -	2026-03
2021-04	\$ -	\$ -	\$ -	\$ -	\$ -	2026-04
2022-01	\$ 1,500,720	\$ -	\$ -	\$ -	\$ 1,500,720	2027-01
<b>TOTAL PRINCIPAL REMAINING</b>	<b>\$ 79,969,764</b>	<b>\$ 10,342,212</b>	<b>\$ 8,506,388</b>	<b>\$ 5,650,029</b>	<b>\$ 104,468,394</b>	

<b>LAND BANK CASH BALANCE (with Interest)</b>	<b>\$ 83,113,118</b>	<b>\$ 10,877,505</b>	<b>\$ 8,965,141</b>	<b>\$ 5,953,709</b>	<b>\$ 108,909,473</b>
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Thomas J. Wilford :: Chairman  
Jerry F. Aldape      Irving Littman  
Bob Donaldson      Richelle A. Sugiyama  
Joseph Forney      Chuck Winder  
Steven C. Harris      Brian Yeargain  
  
Chris J. Anton :: Manager of Investments

## Monthly Report to the Board of Land Commissioners

### Investment performance through September 30, 2021

**Month: -2.9%      Fiscal year: 0.1%**

After seven straight monthly increases, financial markets took a breather in September as employment gains slowed, U.S. economic growth peaked, and the Fed announced it would likely begin tapering its bond buying program later this year. Inflation remains a problematic wildcard with supply chains still struggling to meet demand and energy prices rallying. China's economy slowed with no clear stimulative response from policymakers and financial markets worldwide were rattled by the near-default of real estate developer Evergrande.

These uncertainties and strong valuations merit a pause and may continue to result in some near-term financial market volatility. The U.S. economy, however, remains strong and is expected to grow at a 5% pace next year. Consumer spending and U.S. manufacturing data were both strong during September and U.S. household finances remain in solid shape. It also appears that the recent spike in COVID-19 cases is beginning to roll over and Merck announced that it has created a new drug that can potentially reduce hospitalizations and deaths in people with the virus by 50%. Barring further virus-related setbacks, spending on services is likely to improve heading into the fourth quarter and next year.

### Status of endowment fund reserves

Distributions for FY2022 and FY2023 are well secured.

### Significant actions of the Endowment Fund Investment Board

None.

### Compliance/legal issues, areas of concern

**Material deviations from Investment Policy:** None.

**Material legal issues:** None.

**Changes in board membership or agency staffing:** None.

### Upcoming issues/events

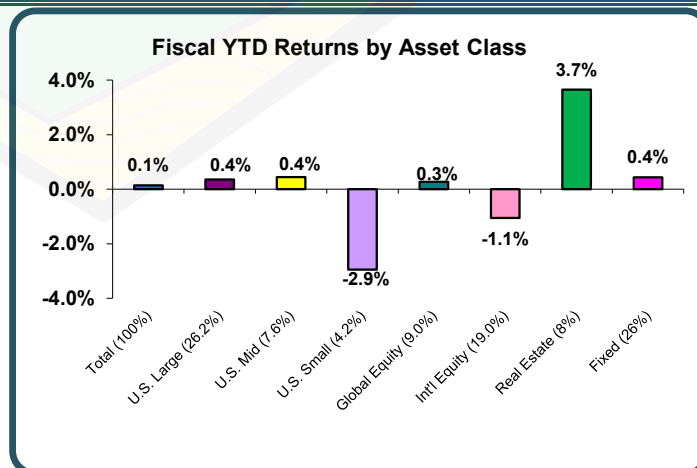
EFIB Board Meeting – November 16, 2021

	Month	FYTD
<b>Beginning Value of Fund</b>	<b>\$ 3,190,197,700</b>	<b>\$ 3,093,456,423</b>
Distributions to Beneficiaries	(7,464,708)	(22,144,124)
Land Revenue net of IDL Expenses (Sept. transfer in Oct.)	-	12,777,142
Change in Market Value net of Investment Mgt. Expenses	(84,233,040)	14,410,511
<b>Current Value of Fund</b>	<b>\$ 3,098,499,952</b>	<b>\$ 3,098,499,952</b>

<b>Gross Returns</b>	<b>Current Month</b>	<b>Calendar Y-T-D</b>	<b>Fiscal Y-T-D</b>	<b>One Year</b>	<b>Three Year</b>	<b>Five Year</b>	<b>Ten Year</b>
<b>Total Fund</b>	<b>-2.9%</b>	<b>9.9%</b>	<b>0.1%</b>	<b>23.0%</b>	<b>12.5%</b>	<b>12.0%</b>	<b>11.3%</b>
<i>Total Fund Benchmark*</i>	-2.6%	7.9%	-0.4%	19.0%	10.9%	10.7%	10.5%
<b>Total Fixed</b>	<b>-0.8%</b>	<b>-0.4%</b>	<b>0.4%</b>	<b>1.2%</b>	<b>5.8%</b>	<b>3.2%</b>	<b>3.1%</b>
<i>85% BB Agg, 15% TIPS</i>	-0.8%	-0.8%	0.3%	0.0%	5.7%	3.2%	3.0%
<b>Total Equity</b>	<b>-3.8%</b>	<b>14.6%</b>	<b>-0.3%</b>	<b>34.6%</b>	<b>15.7%</b>	<b>16.0%</b>	<b>14.7%</b>
<i>38% R3 19% Ax 9% AC</i>	-4.1%	11.8%	-1.1%	29.0%	13.2%	14.1%	13.7%
<b>Domestic Equity</b>	<b>-3.7%</b>	<b>16.5%</b>	<b>0.0%</b>	<b>38.1%</b>	<b>16.6%</b>	<b>17.7%</b>	<b>17.2%</b>
<i>Russell 3000 (R3)</i>	-4.5%	15.0%	-0.1%	31.9%	16.0%	16.9%	16.6%
<b>Global Equity</b>	<b>-4.4%</b>	<b>12.4%</b>	<b>0.3%</b>	<b>26.4%</b>	<b>16.4%</b>	<b>14.5%</b>	<b>11.4%</b>
<i>MSCI ACWI (AC)</i>	-4.1%	11.1%	-1.1%	27.4%	12.6%	13.2%	11.9%
<b>Int'l. Equity</b>	<b>-3.8%</b>	<b>11.8%</b>	<b>-1.1%</b>	<b>31.6%</b>	<b>13.8%</b>	<b>13.0%</b>	<b>9.5%</b>
<i>MSCI ACWI ex-US (Ax)</i>	-3.2%	5.9%	-3.0%	23.9%	8.0%	8.9%	7.5%
<b>Real Estate</b>			<b>3.7%</b>	<b>6.6%</b>	<b>6.1%</b>	<b>5.8%</b>	
			3.7%			5.3%	

\* Benchmark: 38% Russell 3000 19% ACWI ex-US 9% AC 26% BB Agg. 8% ODCE

	<b>Mkt Value</b>	<b>Allocation</b>
<b>Domestic Equity</b>	<b>\$ 1,196.5</b>	<b>38.6%</b>
Large Cap	822.3	26.5%
Mid Cap	244.0	7.9%
Small Cap	130.2	4.2%
<b>Global Equity</b>	<b>292.0</b>	<b>9.4%</b>
<b>Int'l Equity</b>	<b>592.2</b>	<b>19.1%</b>
<b>Fixed Income</b>	<b>791.8</b>	<b>25.6%</b>
<b>Real Estate</b>	<b>214.8</b>	<b>6.9%</b>
<b>Cash</b>	<b>12.0</b>	<b>0.4%</b>
<b>Total Fund</b>	<b>\$ 3,098.5</b>	<b>100.0%</b>



## Endowment Fund Staff Comments:

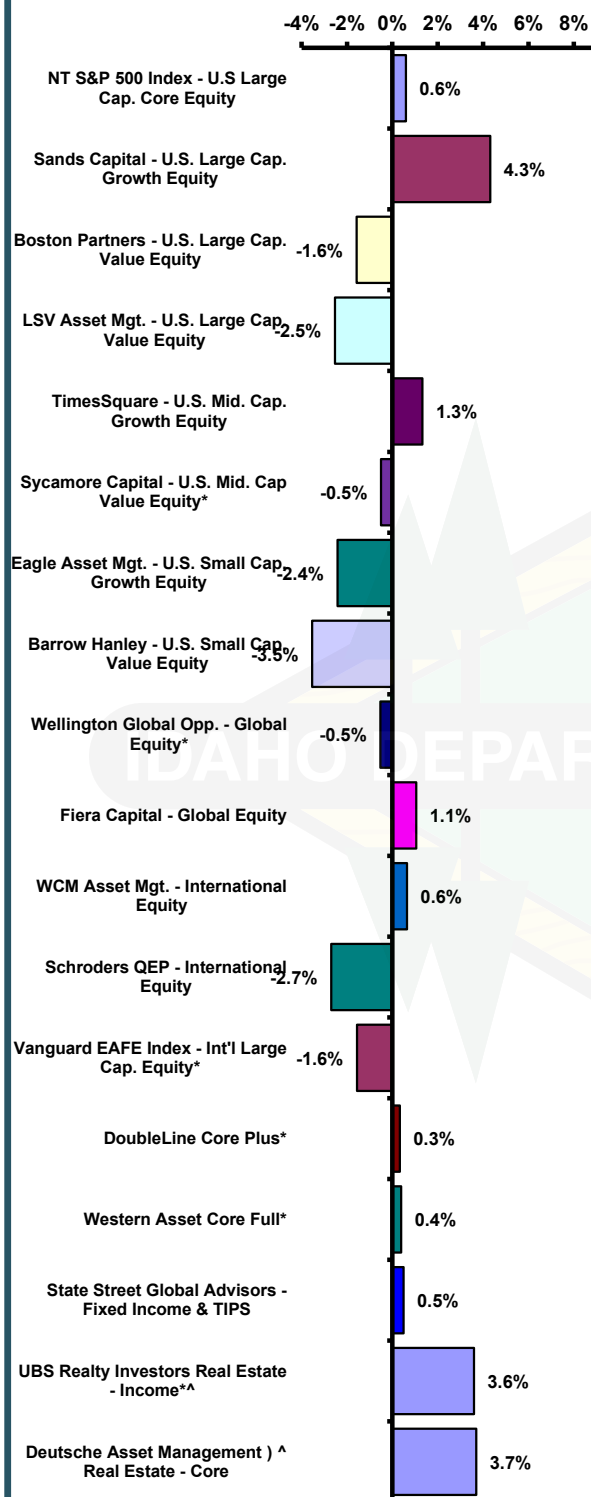
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These uncertainties and strong valuations merit a pause and may continue to result in some near-term financial market volatility. The U.S. economy, however, remains strong and is expected to grow at a 5% pace next year. Consumer spending and U.S. manufacturing data were both strong during September and U.S. household finances remain in solid shape. It also appears that the recent spike in COVID-19 cases is beginning to roll over and Merck announced that it has created a new drug that can potentially reduce hospitalizations and deaths in people with the virus by 50%. Barring further virus-related setbacks, spending on services is likely to improve heading into the fourth quarter and next year.

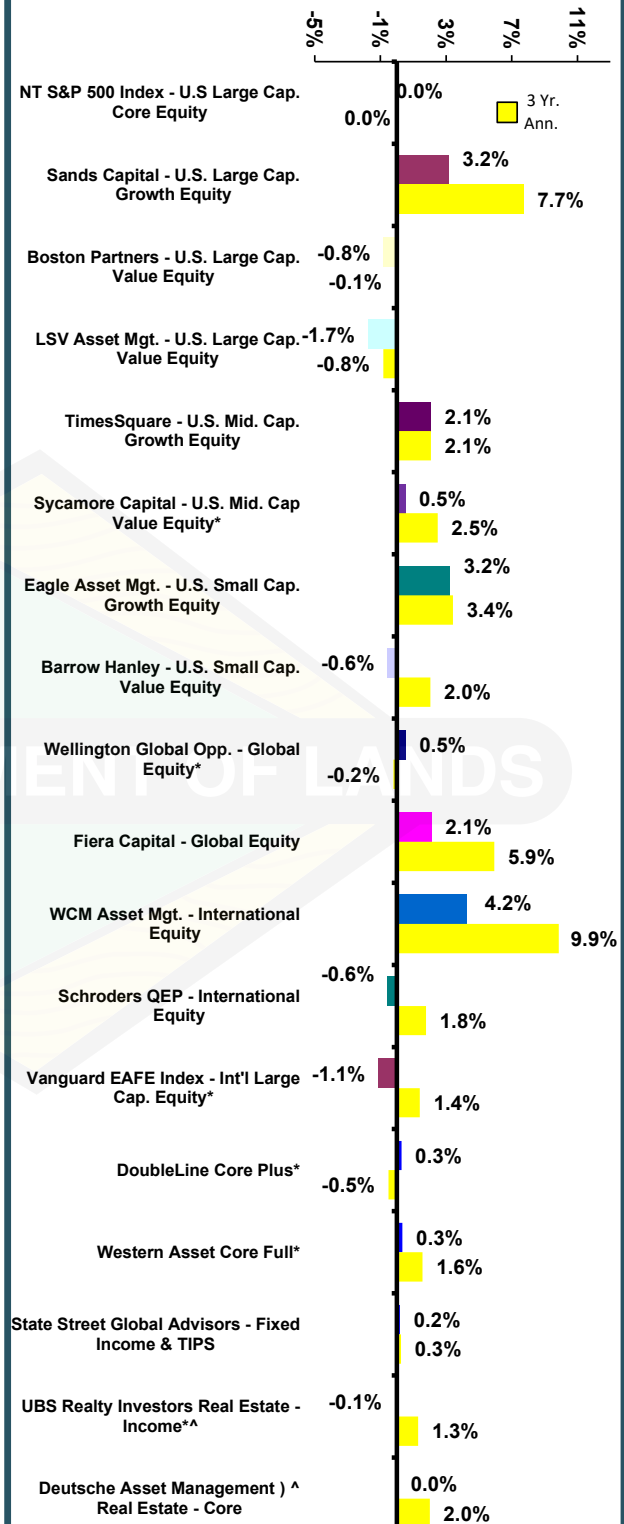
September 30, 2021

# INVESTMENT REPORT

## FYTD Manager Returns



## Manager Relative Returns Fiscal YTD and 3-Yr Ave\*



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





## **Idaho State Board of Land Commissioners**

Brad Little, 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

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*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.*

### **Draft Minutes**

#### **State Board of Land Commissioners Regular Meeting**

**September 21, 2021**

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, September 21, 2021 in the Capitol, Lincoln Auditorium (WW02), Lower Level, West Wing, 700 W Jefferson St., Boise, Idaho, and via webinar. The meeting began at 9:01 a.m. The Honorable Secretary of State Lawrence Denney presided on behalf of Governor Brad Little who participated remotely. The following members were in attendance:

Honorable Governor Brad Little

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, the Governor's Stage 4 Stay Healthy Guidelines, dated 5/11/2021, allowed for public meetings of any size with adherence to physical distancing and sanitation requirements. Four Land Board members were present at the physical meeting location, and Governor Little joined via Zoom webinar.

For the record, Director Miller recommended that the Land Board table agenda item 8, the 2021 Grazing Rate Methodology, until the October 19, 2021 Land Board meeting. Director Miller explained the Department committed to vetting this methodology with a third-party expert. The analysis by the third-party expert recommends that some of the data relied upon in creating the new draft methodology be discarded and replaced with more relevant and current information and studies. Director Miller noted that Land Board staff members had questions and concerns and that tabling the matter will allow the Department to address those concerns, as well as afford the public the opportunity to review and comment on the updates made to the grazing rate model.

A motion was made by Attorney General Wasden that the Land Board table item 8, the 2021 Grazing Rate Methodology until a date certain, that is at the Land Board meeting in October. With his motion, Attorney General Wasden made two requests. Number one, if there is anybody in this audience that traveled here for this matter, they be given an opportunity to address this Board today

rather than having to come a second time. The second request is that the Department resolve these issues and publicly announce the result by a week from today, next Tuesday [9/28], giving the Land Board at least three weeks to be prepared for the October meeting. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

Secretary of State Denney asked if there was anyone in the audience who wished to provide comment on agenda item 8. No one in the audience spoke; however, an individual participating by Zoom webinar, Mark Pratt, provided a brief statement.

**Mark Pratt:** Thank you. A short comment; I appreciate the opportunity to address you this morning. As we evaluate the grazing rate over the course of the last few years, it has given lease holders an opportunity to also evaluate non-use fees and made it very much more clear as to what the overall cost of doing business with IDL has meant. It has been a good process; we appreciate that. Our grazing association has done business with IDL for a hundred years and we look forward to a continued association with them.

**Secretary of State Denney:** Thank you, Mr. Pratt.

*[Editor's note: the Discussion portions, if any, for all agenda items are written in first-person format. This is not a verbatim transcript.]*

**1. Department Report – Presented by Dustin Miller, Director**

**Trust Land Revenue**

A. Timber Sales – August 2021

B. Leases and Permits – August 2021

**Discussion:**

**Secretary of State Denney:** Director, what is the volume of the salvage sales, do you have any estimate on that?

**Director Miller:** I will have Bill Haagenon answer that question.

**Bill Haagenon:** Good morning, Mr. Chairman, and members of the Land Board; for the record, Bill Haagenon, Deputy Director for IDL. Our estimate right now is that we will land somewhere around 90 million board feet of salvage; still working on setting those sales up but that is our estimate at this time.

**Controller Woolf:** Mr. Chairman, maybe one more question for Bill. What is the dollar value of that, from what it would have been when we harvest it at its normal harvest age versus now doing the salvage, and what is the loss impact? I think that is critical for the Department and the Board to share and put out there based on some of our other topics of discussion.

**Mr. Haagenon:** Mr. Chairman and members of the Land Board, the short answer is it depends a bit in terms of what is the species mix and how much cedar is involved in the salvage sales. In situations where we do not have a cedar component, we can expect the price to be down somewhat from what it would have been as a green sale. There is a significant sale that already sold, about 21 million board feet that had a high cedar component, and that did very well in terms of the sale price. It depends on the volume mix by species and the logging system and so

on, but we do expect where we do not have that cedar component, we could see the prices down a little bit for that amount of volume.

**Director Miller:** Mr. Chairman, I have to give credit to our area staff, our folks out in the field that work quickly to set up these salvage sales to recoup that value for the endowments. It is very impressive how quickly they work to get those established.

**Attorney General Wasden:** Just also want to make mention of the fact that when it is a salvage sale there is a limited time when that timber is available to be cut. It rots faster, is destroyed a lot sooner, and its value is gone more quickly; a special thank you to the timely response of the Department.

**Governor Little:** Director Miller is there any reason the Department is paying their rent early? If we are going to forecast it, you think you would be able to forecast your own check.

**Mr. Haagensohn:** Governor, part of the problem with the forecast was a timing in terms of fiscal year and calendar year. The timing of our payment is essentially a time when we are ready to write that check; whether we do that two weeks ago or two weeks later is just the timing of when it gets through our system. There is no real secret or reason behind the timing of that payment.

#### **Status Updates**

- C. Fire Season Report
- D. Cottage Sites Auction – Priest Lake 2021 Results

#### **Discussion:**

**Attorney General Wasden:** What are your plans to increase the rains for next year?

**Director Miller:** The fire bureau is working on a rain dance. *[laughter]*

**Governor Little:** Director Miller, the 63,000 acres of state land – I assume that is Fish and Game land – are those classified as assessed or non-assessed state lands?

**Director Miller:** Governor, thank you for that question. Those acres are assessed if they are timbered acres just like any other state acres. It is \$0.60 per acre and \$40 per structure on those lands.

**Governor Little:** In the report we had last Land Board meeting about unassessed, was the Department going to do a report on the totality and the location of the unassessed acres in state?

**Director Miller:** Governor, yes, we are looking at that. If your question was specific to this fire season, a sizeable amount of acres in IDL protection that are unassessed did burn and we are taking a look at that. We will have those acres tabulated if they are not done already, just to give you an idea of which acres burned that were unassessed versus assessed. We do engage fire in those unassessed acres just like the timbered acres.

For the record, at approximately 9:30 a.m. the recording secretary advised Land Board members that online streaming experienced technical difficulties for about 10 minutes at the beginning of the

meeting, and it is possible the online audience did not hear the motion on agenda item 8. Additionally, one individual who signed up to provide comment, Matt Thompson, had since joined the meeting via Zoom webinar. Secretary Denney restated that there was a motion to table action item 8 until the October meeting and offered Mr. Thompson opportunity to speak at this time. No response was received from Mr. Thompson.

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

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

### **Discussion:**

**Chris Anton:** Mr. Chairman, good morning. Governor, members of the Land Board, thank you for having me. The endowment fund had investment gains of 1.5% during the month of August which left us up 3% fiscal-year-to-date through August 31st. Stocks spent most of August drifting higher; it was the 7th straight month of increases, seemingly ignoring headwinds including the spread of the Delta variant, global supply chain constraints, China's regulatory crackdown, and the withdrawal from Afghanistan. The healthy performance from stocks reflects dissipating worries about global growth. During August, the jobs reports were very strong. Things did not look quite as good in September, but during the month of August global growth continued to remain very strong. Following the Jackson Hole Symposium in late August, Federal Reserve Chairman Jerome Powell said the economy has now met the test of substantial further progress toward the Federal Reserve's inflation objective and labor markets have made clear progress. He indicated the Federal Reserve could begin reducing its bond buying program later in the calendar year and try to disconnect the bond buying program from when they would increase interest rates. Most people believe that they will begin reducing the bond buying program by the end of the year. That typically takes 9-12 months, so it would be late 2022 or into 2023 when they would consider increasing interest rates. That is a support for the equity markets given the fact that interest rates will remain low for quite some time. As we moved into September, we started the month strong; however, the jobs report came in very soft. There began some concerns about the pace of growth and the impact of the Delta variant. Most recently a large real estate developer in China, Evergrande, has had issues and will likely default on its debt this week. To date, the Chinese government has not stepped forward to provide some solutions; investors are concerned this could be a significant default. It could affect not only the real estate industry in China, but the banking industry and have ripples through the global economy. That has been spooking the markets the last week. We were down 1% yesterday; so far in September we are down 1.8% which left us up 1.2% fiscal-year-to-date through yesterday. Overall, our reserves are well secured. Our next [Investment] Board meeting is November 16th.

**Attorney General Wasden:** Mr. Anton, I also received a copy of the audited financial statements, are we raising that today or is that on for next month?

**Mr. Anton:** No, we plan to present that at the November meeting.

**Attorney General Wasden:** Okay, I will hold my questions.

## Consent—Action Item(s)

### 3. Results of August 2021 Grazing Lease Live Auctions – Presented by Dustin Miller, Director

**Recommendation:** Direct the Department to award grazing leases to Russell Pharris (G700072) and Sawtooth Valley Outfitters (G700092); and a conservation lease to Western Watersheds Project (G700070).

**Discussion:**

**Controller Woolf:** Director, no questions on what took place, but I am trying to understand and grasp the lease 700070. Was that initially offered in the auction as a grazing lease or was it initially offered as a conservation lease? Help me understand that piece of it.

**Director Miller:** Mr. Chairman and Mr. Controller, it was initially offered as a grazing lease but it was conflicted by an organization that wanted a conservation lease. Pursuant to the rules, given the nature of those two leases, we are obligated to take the high bid, which in this case was for the conservation lease.

**Controller Woolf:** Is this awardee still bound to follow the same standards set by grazing as on a conservation lease?

**Director Miller:** There are high standards within the conservation lease as with a grazing lease. Really, they are just not running animals on that piece of ground to graze the feed on it. The infrastructure has to be maintained; noxious weed control has to take place on that property. There are stipulations in that conservation lease that have to take place to maintain the integrity and the health of that piece of ground.

**Controller Woolf:** Does that include fuel? One of the key things to me is the fuel load; how is that managed compared to a grazing lease?

**Director Miller:** There is no requirement to run animals on a conservation lease and therefore no requirement to remove the fine fuels.

**Controller Woolf:** Where is this parcel or section? Is this surrounded by the grazing lessee that did not win this lease? Is this an island now in the middle of the holding?

**Director Miller:** This piece of ground is in the central Stanley basin. It is pretty close to Highway 75. I know there is an active gravel pit there; we lease that to the State Department of Transportation. This lease is for about 620 acres; I do not know if there is private land around it, but it is an isolated section of ground.

### 4. Approval of Draft Minutes – August 17, 2021 Regular Meeting (Boise)

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

## Regular—Action Item(s)

### 5. FY2023 Department of Lands Budget – Presented by Debbie Buck, Financial Officer

**Recommendation:** Approve the Department's FY2023 budget request as submitted to Division of Financial Management and Legislative Services Office on Tuesday, August 31, 2021.

**Discussion:**

**Controller Woolf:** I just want to say thank you to Debbie Buck, the Director, and the team for their great work in turning that around. They had one week to implement and get all of these additional things in, and they did amazing work of getting all that. Congratulations.

**Debbie Buck:** Thank you, sir.

**Board Action:** A motion was made by Attorney General Wasden that the Land Board approve the Department's FY2023 budget request as submitted to Division of Financial Management and Legislative Services Office on Tuesday, August 31, 2021. Controller Woolf seconded the motion. For the record, Governor Little recused himself from this vote. The motion carried on a vote of 4-0.

### 6. Eastern Idaho Regional Solid Waste District Land Exchange – Presented by Josh Purkiss, Bureau Chief-Real Estate Services

**Recommendation:** Approve the exchange and direct the Department to complete and close the as-proposed EIRSWD land exchange.

**Discussion:**

**Cameron Arial:** Mr. Chairman, Governor, and members of the Land Board, it is a pleasure to be with you. Cameron Arial with Clearwater Financial, the municipal advisor to the district. Standing with me is Commissioner Todd Smith from Madison County who is also the chair of the district. Wanted to just touch quickly on the benefits to the district and the region particularly. The main purpose in pursuing this exchange with the IDL and the endowment is really to improve the long-term viability and service quality to our citizens in the form of sustainable solid waste services. What the district is looking at is comparing our status quo which is really two options. One is counties own and operate their own operations and facilities. The concerns with that are that they are one off, they can be limited in size, and they are under increased regulatory requirements to maintain. The second is many of the counties in the region essentially rent; they will outsource those services to other counties and therefore really do not control their destiny. With rent there is no investment; it just goes to the neighboring counties. What this proposed exchange will facilitate is truly a long-term regional solution to solid waste management in the region. We have worked long and hard as was mentioned by Josh; Representative Weber, a lot of blood, sweat and tears over a decade working on this trying to find the right piece of ground that is centrally located for the counties in the region. One that we plan to operate at the highest level of technology and regulatory compliance and that gives us plenty of room to expand and meet our needs well into the future. With that, the main quantitative benefit obviously is comparing the status quo with what we are proposing. As we look at that, it really represents tens of millions of dollars over a 40-year time period. We have presented this proposal to our regulators – the Idaho Department of Environmental Quality as well as the Eastern Idaho Public



Health District, who will be our regulators – and they really like what we are proposing and have submitted letters of support that are in your packet. We also have included in your packet letters of support from all of the counties in the region that, whether members or not, see this as a viable option potentially for them in the future. We look forward to any discussion that you may have and really appreciate your consideration of this exchange and what it can mean to area citizens in the eastern Idaho region. With that I will kick it to Todd.

**Todd Smith:** Mr. Chairman, members of the Land Board, we thank you for your time today. I am Todd Smith, chairman of the Madison County Board of County Commissioners as well as chairman of the East Idaho Solid Waste District. As been said earlier by Mr. Purkiss and Mr. Arial, we have been working on this for 10+ years. We have found what we feel is a very win-win situation for both entities as the endowment lands will receive more acreage, higher revenue, and we will have a long-term solution to our landfill issues as we meet those requirements that will serve the counties around. I have no more to add other than just thank you for your time. We are certainly open to any questions you may have.

**Attorney General Wasden:** I have a question for Mr. Arial actually. Cameron, it is nice to see you again. It was great seeing you at the event recognizing Ken Harvard. You and I had a very brief conversation about this; basically you indicated that you would be speaking today and making a presentation on this matter. I just wanted that on the record that we had a conversation. My recollection is, and I am asking for your confirmation, that I made no commitment at all in the matter, you simply told me that you were going to be here today. Is that correct?

**Mr. Arial:** Mr. Chairman and Attorney General Wasden, that is correct and it was good to be with you as well.

**Attorney General Wasden:** Thank you very much, I appreciate that. I do have a follow up question as well. It appears to me that we have a double whammy on this matter and that is first of all, the standard by which the Land Board is to measure – is this in the best interest of the beneficiaries – and the numbers in this instance prove or show that it is in the best interest of the beneficiaries. That is whammy number 1. Whammy number 2 is the way that this exchange is structured also provides benefit to the region itself. We are fortunate in the way that it is structured that we are able to accomplish both of those things at the same time, and I just wanted to see if that was your view of this as well.

**Mr. Arial:** I really appreciate that summation. That is exactly what this exchange represents. It is a win for the state and the endowment where you are getting more acreage at a higher value. Check that box, great benefit to the state, but then you also get the trickledown of what this can mean to the region and the citizens out there that really need this solution and will be extremely beneficial for a number of reasons for many years.

**Governor Little:** My only question is on Mr. Lemoyne's title review there were some exceptions. Do we put language in the deeds that it is as-is, that the acquirer of the state land recognizes that they have access; we are not warranting access. Do the closing documents reflect that they are acknowledging that they have access and that the state would not have any liability as far as some of those exceptions that Mr. Lemoyne pointed out in his analysis?

**Josh Purkiss:** Mr. Chairman, Mr. Governor, yes. The Department of Lands or the Land Board does not warrant any type of deed when we transfer title. The instrument we use is a quit claim deed



and there are no warranties provided. In addition, I know Mr. Lemoyne called out a number of title issues. We have resolved all of the title issues he calls out on his memo with the exception of perfecting access to the proponent's land. The last item that needed to be addressed was a title exception referencing a lack of access to the land that we were acquiring. It is a county maintained road; our records indicate that it is a public road. We just need to work with the title company to address the issue that they are referencing as a U.S. Forest Service easement. That will be resolved prior to closing.

**Board Action:** A motion was made by Attorney General Wasden that the Land Board approve the exchange and direct the Department to complete and close the as-proposed EIRSWD land exchange. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

**7. Trident Holdings, LLC Request for Rescission and Contested Case Hearing – Presented by Steve Strack, Office of the Attorney General; Alec Williams, Trident Holdings; and Nick Warden, Bailey Glasser, LLP**

**Discussion:**

**Steven Strack:** Mr. Chairman, Governor, members of the Board, I am Steven Strack; I am a Deputy Attorney General in the Natural Resources Division. I have been asked here today to address a very limited question. I am not going to address the substance of the exchange at all, but the question is Trident's request for a contested case hearing and the assertion that it would aid the Board in its consideration of Trident's exchange proposal. The starting point for my discussion is going to be Idaho Code § 58-122 which provides that when the Board is making decisions about endowment lands, those decisions do not have to be made through a contested case procedure unless the Board in its discretion decides that a contested case would be useful under the particular circumstances. With that question in mind, I have been asked to make a short presentation on what the purpose of a contested case is and would it render any information of assistance to the Board in its consideration of this particular exchange. The APA defines a contested case as a proceeding by an agency that may result in the issuance of an order. In turn the APA, Administrative Procedure Act, defines an order as an agency action of particular applicability that determines legal rights, duties, privileges, immunities, or other legal interest of one or more specific persons. The basic concept is that when an individual's legal rights or its legally protected interests are affected by an agency action, then that particular individual is entitled to have their concerns heard by an unbiased hearing officer in a contested case. That hearing officer is charged with making findings of fact, with making conclusions of law, and then applying those conclusions to the facts. The purpose of the contested case is to determine whether the agency owes some sort of legal duty to that individual. An example from the Board's own statutes is the Lake Protection Act. If a person who owns lakeside property has a legal right to a dock, if they can make certain factual findings before the Board – they own lakefront property, that lakefront property is 25 feet wide or more – they can put a dock in without interfering with the littoral rights of the neighbor. Those are the kind of particular facts that a hearing officer makes determinations on, applies the law, and then determines whether or not that individual has an entitlement or a legal right to a dock permit. And so if there is an entitlement, then the agency has a legal duty to issue that dock permit. On the other hand, if an agency action does not affect or change an individual's legal rights, or their legally protected interests, then holding a contested case really does not yield any kind of useful information. An extreme example I am going to give is let us say an individual sees that the Department of Lands has some very nice trucks. He contacts the director and says I would like to make a trade for one

of those trucks. Well, there is no statute entitling that individual to trade with the Department for one of those trucks. The Department says no, we are not trading cars with you, we are not trading vehicles. That is not a determination of that applicant's rights because there is no statute to impose any duty on the Department to trade trucks. There is no legal duty to trade, then there is no contested case that would provide any information. It would be just a useless paper exercise. To go back to the law, a contested case is a mechanism that is designed for a single purpose which is to determine what legal duties an agency has to an individual. You may have a legal duty to grant that individual a permit, you may have a legal duty to impose a penalty on that person if they have taken certain actions that are prohibited by the law, but in either event, a contested case is heard before a hearing officer who is required to make unbiased findings of fact and conclusions of law and then determine what legal duties are owed to that individual. One of the key features of the contested case is that the hearing officer must give equal weight to the concerns of the agency and the concerns of the individual. That is one of the key reasons why we have Idaho Code § 58-122 which exempts the Land Board from contested case requirements. Our courts have held time and again – we saw in the Wasden decision, we saw in the Idaho Watershed Project decisions – that the Board, the State, the legislature are all prohibited from giving equal weight to the concerns of individuals versus the concerns of the beneficiaries when we are looking at the lease or acquisition of endowment lands. The Board has to keep its thumbs on the scales in favor of the beneficiaries. It has a sacred duty, the court has said, to the beneficiaries. But it does not have a similar duty to applicants to exchange lands or acquire lands. That concept is embodied in the constitution and statutory provisions that address exchanges. The Board has a clear authority to enter into exchanges, no question about that, but there are no statutes that obligate the Board to exchange land upon an application. There are no statutes that create any kind of expectation or entitlement to exchange lands. There is no enforceable expectation that if you submit an exchange proposal that that exchange is going to move forward if the applicant meets certain criteria. Back to the example of the encroachment permit: if they meet certain criteria, like they have the 25 feet of littoral property, and can put a dock in without interference with a neighbor, they are entitled to have that go forward through a contested case procedure and ultimately a permit. But in the context of an exchange, there is no similar entitlement to the applicant. It is a proposal that the Board has the discretion to say no to at any stage of the proceedings. They could say we are not receiving any applications or they could take a quick look at it and say no. At that point, there is no legal rights, there is no legal duty to the applicant to move forward, no entitlement. In short, there is nothing in the statutes to address exchanges that obligate the Board to have those exchange proposals vetted by a neutral unbiased hearing officer in a contested case. There is certainly no obligation to hold a contested case for the purpose of questioning the credibility of the Department and its employees or the motivation of those employees; that is not what a contested case is designed for. Again, there is no law to apply to the facts there. If the Board has concerns about how the Department has handled a particular exchange analysis or proposal, it has the ability to direct the Department to address those concerns. That is certainly within your discretion but putting the matter before a hearing officer in a contested case really would not be of any benefit because again the purpose of the contested case is to apply the law to the facts, to determine whether the Board has a legal duty to the petitioner. Here the Board has no legal duty with regard to an applicant to move that exchange forward if the Board chooses not to do so, or if it simply appears that it is not a good deal for the Board. In fact you could argue that the Department, as the Board's arm here, is required by law to be biased in favor of beneficiaries. The Department is

required, it should be required, to examine exchange proposals with a very skeptical lens to ensure compliance with the Board's fiduciary obligations. Only proceed if the benefit to those beneficiaries is unquestionable. Even if Trident is correct in asserting that the Department was not a neutral forum, and it certainly is not a neutral forum, then holding a contested case does not provide the Board any information that decides it how to apply or how to proceed because there is no law that really applies here. There are no legal standards against which a hearing officer could say that the Department did not do its duty in this case. In conclusion, how the Board moves forward from this point to fulfill its duty to the beneficiaries is left to the Board's discretion and the Board's business judgment. The Board could stand pat, the Board could direct the Department to examine the proposal further, the Board could request Trident to sweeten the deal, but in any event that is a policy decision. That is an exercise of business judgment, and a contested case is simply not a useful vehicle for making those kinds of policy decisions. I would certainly stand for any questions the Board has.

**Attorney General Wasden:** I do have a comment. Steve, I know that soon you will be moving off into the land of retirement and maybe that is not public, I may be speaking out of turn. I wanted to thank you for many, many years of solid legal service that you have provided the Land Board and the Department of Lands and the great way in which you present legal matters; I wanted to make a public statement to that effect. Thank you very much.

**Mr. Strack:** Thank you, General Wasden, I appreciate that.

**Secretary of State Denney:** Thank you, Steve.

**Director Miller:** Mr. Chairman, next we will hear from Mr. Williams.

**Alec Williams:** I appreciate it, Director. We have Nick Warden from Bailey Glasser online and we might give him a moment to address some of the points we just heard from the Deputy Attorney General before I begin the substantive part of our presentation.

*[Editor's note: Due to technical issues, Mr. Warden did not speak at this time.]*

**Mr. Williams:** Perhaps we will do this. If it makes sense, maybe I can discuss some of the substantive concerns I raise, and then if we can get Nick on the line, or we can send a letter responding to the Deputy Attorney General's points. Is that a fair way to proceed?

**Secretary of State Denney:** That is fine. Please identify yourself.

**Mr. Williams:** I am sorry. Governor, Chairman, and Land Commissioners my name is Alec Williams; I manage Trident Holdings as the financial sponsor for Preserve McCall. The only initial comments I might make to the Deputy Attorney General's statement is that he is absolutely right; the Department is required to view exchanges in a skeptical lens in order to meet its fiduciary duty. But statute does not allow the Department to view an exchange with even more additional skepticism in order to avoid that same fiduciary duty. We submitted the Preserve McCall land exchange in February. Today, we seek a contested case hearing for that application. I ask that our application be processed fairly, without bias, and using standards of valuation that are customary to these types of real estate transactions. On the screen, this is the reason we are here: \$6.4 million of net cash flow from doing an exchange beats \$779,000 of revenue the endowment currently gets. There is an alternative path that requires no contested case. To do

so, I ask that you rescind the letter rejecting our application, due to its many errors, and we will share some of those errors with you today. We will also discuss the benefits our proposed exchange offers the endowment that went unexamined in IDL's analysis. Having IDL's normal existing timber advisor evaluate the exchange's financial effects on the larger portfolio would ensure all its benefits are considered. It is why \$6.4 million beats \$779,000. Lastly, there is cause to question the new \$488,000,000 gross land valuation reached in IDL's August 10th rejection letter. That delta, compared to the valuations reached by our expert consultants and IDL's own \$39,000,000 valuation from March, is so wide that it warrants a qualified independent third-party appraisal. That lets us value the property's highest and best use today. In March, this Board acted by a 5-0 vote...

**Attorney General Wasden:** *[speaking on phone with Mr. Nick Warden]*...what I am going to do is put you on speaker, and I am going to put you on the microphone here. I just did not want to miss the opportunity to hear what you had to say. Alec, I did not mean to interrupt you; I wanted to make sure we have an opportunity to hear what [Mr. Warden] had to say. Can I put you on speaker and put you on the microphone? I will put you on speaker phone so you can hear Alec's presentation and then I will hold you up to the microphone and we will hear what you have to say. Okay, Mr. Warden, I have you on speaker phone now and I am just going to let you hear what Mr. Williams is saying.

**Mr. Williams:** In March, this Board acted by a 5-0 vote; it directed the Department to "begin the process of vetting applications immediately, including the Trident proposal, and hiring third-party experts and negotiating for their payment with applicants as necessary to assist in the evaluation and a recommendation of the applications." Land Board members, do you believe the Department did that? We remain ready to start funding these diligence costs. Why is an appraisal necessary? If you do not know what your asset is worth, it is impossible to make sound investment decisions about what to do with it. Several miscalculations led to the \$488,000,000 valuation. Due to time, we will share only the most startling, but they all emphasize the need for an independent third-party's input. IDL classified lakefront endowment lands as Tier I, captured within the pink boundary line you see in this map. IDL priced that land using lineal lake feet. That meant the three-foot wide strip of land which separates the shore from both East Side Drive and Warren Wagon Road was mistakenly valued using lakefront home lots as comps. The land in this highlighted stretch has no development value because it is impossible to build on land three feet wide. Nonetheless it was valued at \$63.4 million per mile. More than two miles of shore are in this tier, all narrowly sandwiched between a cliff, a road, and a waterline. We disagree that unusable land should be valued by useable lakefront home comps. The comp sets used to determine land values for each tier also had several defects. Tier IV is the land furthest away from the lake. It includes no waterfront. The comps should therefore not include lands with waterfront. However, the Hait Reservoir Waterfront that became the Blackhawk Lake Communities Phase V was used as a comp in Tier IV shown on the left; 44 acres adjoining the Payette River was also used in the Tier IV data set shown in the middle. A peninsula or waterfront home site within the Blackhawk Lake development shown on the right influenced the 1,700 endowment acres in IDL's Tier II. The Department classified Tier II as land 300 to 1,000 feet away from Payette Lake. It is inappropriate to have waterfront comps listed in non-waterfront tiers. One of the largest causes for concern is found in the comp set for Tier IV. Tier IV captures over 17,700 acres, or 83% of the total exchange area. It is all the remote uphill lands that are farthest away from the lake and roads. Two of the 10 sale comps for Tier IV are located right in town,



next door to the schools. These lots were sold with conceptual drawings for a subdivision already in process; they already have access to horizontal infrastructure – things like water, sewer, power, and roads – which would take hundreds of millions of dollars to bring to the 17,000 endowment acres in Tier IV. These data points are not apples to apples. While I am only showing you this one example here, there were many instances across all the tiers of inapt comps corrupting the final valuation. Examples include valley floor infrastructure-served sales being used to value the uphill acres in Tier III, existing subdivision home sites used in Tier II, and multiple waterfront lots in non-waterfront tiers. Industry practice uses a weighted average of comparable sales weighted by size to avoid outliers impacting the result. IDL used the median of each tier's comp set to arrive at the per acre value applied to each tier. The use of the median gave too much weight to smaller, less representative lot sizes. For example in a 17,000 acre Tier IV, only two of the comp sets 10 data points were over 1,000 acres. Half, or five, were under 100 acres. This led to a median price per acre of \$9,108. The price premium associated with these smaller lots located on the valley floor skewed the data set. I want you to just ignore for a moment the issues with the actual comp selection. If just the weighted average of these same 10 comps, instead of the median, had been used, it would result in a per acre value of \$4,338. When applied to Tier IV 17,000 acres, this math error alone overstates value by \$57.8 million. Most of the comps used to value the Payette parcels have access to horizontal infrastructure. Subject land does not. Just for this the cost of the infrastructure investment should have been deducted to accurately reflect the value of the bare land as it exists today. Outside experts estimated running infrastructure would cost hundreds of millions of dollars to achieve the parcel sales outlined in IDL's letter. This is only worth \$488,000,000 million after you spend several hundred million dollars on infrastructure first. Now we have watched the other land exchanges the Department pursues. In the recently approved DeAtley exchange, the subject lands were valued on an as-is basis, with no attention paid to how the land was sandwiched between the hospitality outfitters ownership and may have development value someday. We seek the same treatment for our proposed exchange that the as-is highest and best use land value be computed on both sides of the trade. It is unlikely that a qualified third-party appraiser would make these same errors valuing the Payette parcels. We have assembled a team of expert economists, foresters, and valuation specialists to advise us on every element of this exchange. They are all here today for your questions. This team includes, among others here, Mr. Kevin Boling and Mr. David New. Kevin has 45 years of industry experience buying, selling, trading, and managing lands for companies like Potlatch Deltic and Webster Industries. Importantly, IDL has previously hired both men as asset advisors. Each of these experts valued the Payette parcels using various industry standard methods, and each time arrived at a vastly different conclusion than IDL's new \$488,000,000 value. Here is one example. Based on data from recent LiDAR flights we flew, we determined what is actually on each of these 20,000 acres of exchanged lands down to the sand, rock, and individual tree level. It is pretty cool data. This LiDAR flight allowed these experts to break down the various land classifications so we can see what acreage is productive and what is not. From there we used market pricing for each land type and reached a value of approximately \$44,000,000. In March, IDL released the Payette Endowment Land Strategy. It used thoughtful values for the first 5,300 acres, to determine which lands needed to be transitioned. These values were arrived at by IDL parcel by parcel. This parcel by parcel valuation to determine which parcels needed transition reached a result of \$39.2 million in value, all based on IDL's numbers applied to the entire exchange area. I will now let Kevin Boling speak to the work he did on

assembling his broker's opinion, and you can see that tabbed as the second blue tab on your spiral bound books we handed out.

**Kevin Boling:** Good morning. Mr. Chairman, Governor, fellow Land Board members, I am Kevin Boling; most of you know me. I have spent over 30 years working for different corporate interests managing their timberlands, and then the last 10 years or so I took my broker's license and opened my own company, the Boling Company, and have helped organizations and individuals buy and sell timberland. Over the course of my career, I have worked with IDL several times. Once in the early 2000s to help them stand up their first asset management program and then a few years ago I was retained through Northwest Management, Northwest Rural Properties, as their first designated broker to help them acquire timberland with the assets associated with the sale of commercial property here in Boise. I spent three days on the property back in October of 2020, and I did my best to look at the lion's share of that 20,000+ acres. I looked at it through my pickup window, over the handlebars of my ATV, and walking the property as well. I thought I saw enough of the property to make a qualified market value appraisal of the property, not appraisal but broker's price opinion, which I did. I used a cost approach which I have used hundreds of times, even provided to the IDL when I worked for them in 2017 and '18, to take delivered log values. My estimate of the logging volume that was there, I delivered it to Evergreen Forest Products as the most likely mill that could take the volume, although I got log prices from both IFG in Grangeville as well as Evergreen Forest Products in Tamarack just outside of New Meadows. Anyway, that is how I evaluated the timberland. Then I walked the Deinhard place, 75 acres. There is a mix of commercial surrounded by residential properties. There are even neighbors on the Deinhard property that are mowing the lawn outside of their backyards adjunct to their property. I appraised it originally as timberland, then I decided that really it is commercially developable both for residential as well as commercial opportunities. I found six sold comparables using the intermountain MLS and used one of those comparables as a benchmark to value the Deinhard property, which was about \$15,000 an acre, making the Deinhard property a little over \$1 million. For the lake lots, there is six of them; there is three on the lake in Pilgrim Cove, three off the lake in Pilgrim Cove. There was no sold comparables, frankly, for lake lots on Payette Lake that were immediately available based on the MLS information, so I used the Valley County Assessors information for the neighboring lots and arrived at about \$13,000 per front foot for the lots on Pilgrim Cove that were on the lake and about \$647,000 an acre for the off-lake lots using an appreciation of about 10% for the lake lots from 2019-2020; the off-lake lots actually had appreciated 41% in that same time frame. I was very comfortable with those numbers. As far as Cougar Island and Shellworth Island, I used Corbett Bottles, the primary broker used by IDL to develop the lake lot sales which we were appraised of earlier today; they developed a reserve auction value for the Cougar lake lots and offered those lots in late 2020. There were no bids, but I used that as a benchmark for both the Cougar Island lots and the Shellworth Island lots to develop the values for those properties. In total, the value of the 20,000 acres plus the lake lots and the Deinhard property, I determined in normalized log markets was about \$38,000,000 based on log prices as they were in October of 2020, the fourth quarter of 2020; there was about a \$9 million upside so the difference in the values were \$38 million in normal log markets, \$47 million in really strong log markets. If you average those two together that is a \$43 million value. I am usually within plus or minus 5% on market value of timberland properties and the like, sometimes I am plus or minus 10%. I have never been 1,000% low compared to what the IDL has provided to you. I will answer questions at the end of the presentation. Thank you.

**Mr. Williams:** You know, we commissioned Mr. Boling's broker's opinion of value back in October not because we ever thought it would be a public document; we commissioned it as an internal document. You see handwriting all over it for that reason. We did so because we had an incentive not to be wrong or not to be off on what a true, fair third-party independent appraisal valuing this land as highest and best use would come back at, at the end of the process. You will notice something. All three of these methods reached values within a pretty narrow range of \$39.2 – \$44.2 million. IDL's new value is 12 times greater. The discrepancy between the values we reached using standard industry methods and the new value IDL cited as the reason to reject our proposal is simply too wide to accept without third-party verification. To be fair, IDL also valued our north Idaho lands at \$74 million. We were flattered but that number is extremely overstated. I wish it were true, but it is definitely not. That land approximates the same value as the Payette parcels which should by every standard be closer to \$44 million. Several portfolio level benefits went unexamined in the Department's rejection letter. Members of the Land Board, the consultants who evaluated the Department's work on this exchange on behalf of the Department were never shared all the information needed to reach these conclusions; they stated that in their own formal recommendations to IDL. Perhaps that helps us understand why their work took only three hours and 15 minutes to perform. That is the third blue tab in your books. While we made more than a few attempts over the last several months to provide the north Idaho land data to the Department for their consultants' use, our offers went dismissed. As I mentioned, I feel it is impossible for you to make a fiduciary decision here if not all the data and benefits are considered. Our proposed exchange provides \$6.4 million to the endowment in year one and \$3 million on an averaged annualized basis in perpetuity. Using the endowment's standard discount rates, that is \$80 million of total net present value on an estimated \$40 million of land. That doubling effect is possible because the proposed north Idaho lands were curated to specifically increase the endowment's allowable cut, improve its physical access, and free up Land Bank funds for the EFIB all while reducing the required reserve. \$6.4 million of year one net cash flow for the endowment from an exchange beats \$779,000 of revenue these lands produce today. The reason we cannot compare net cash flows on both sides of this are because IDL's expenses still remain unpublished two years into this. You can see that in their letter; expenses are not mentioned. Do you really want to cast aside Idaho's largest state park and \$6.4 million next year for schools to instead pursue some yet to be determined way of making money? Of course, evaluating this exchange means looking at all possible management strategies for this land; that includes development. The question must be if development by IDL is potentially profitable is it more profitable than performing a land exchange. Our team of economists evaluated the benefits of an exchange against a development strategy. The findings overwhelmingly favor an exchange. Here is why. An exchange creates the new economic benefits for the endowment we just shared without incurring any capital costs to produce those benefits, all at a significantly lower risk level. That means the risk adjusted return, from dividing the IRR by the risk, is three times greater in an exchange since the risk tracks timber, but it still produces those other new income streams. Developments even at its most successful cannot do this for the endowment. That is why an exchange offers lower risk, lower costs, and higher sooner returns; it is an investment that uniquely benefits the endowment for a reason. It is because only the endowment owns the adjacent north Idaho parcels. Only the endowment balances timber assets with equity assets to quell volatility. Only the endowment balances out tree ages to ensure consistent distributions to schools each year. These exchange benefits were never quantified in the rejection letter; this is important. Certain consequences flow from the new IDL



valuation. The earlier \$39 million PELS valuation was the basis for not transitioning many hillside acres this decade, because at the old values, some parcels produced enough income to meet the required rate of return. That is why the PELS values were essential to deciding, in your vote last March, which lands would face transition – shown in red, Tiers I–III. At this new half-billion dollar valuation, every acre now faces transition. Honestly, looking back in time is far more troubling. Land Commissioners, if these lands are really worth \$488,000,000 schools statewide have been deprived of \$19 million each year and we just now found out. Worse, the land value here increases so much that Idaho's entire land endowment would no longer meet its required return. An admission like that deserves more than a 7-page letter. Thankfully though we live in the world on the left side of the page, with land values closer to \$40 million. Everyone can breathe easy that lease rates need not go up twelve-fold over night. An exchange remains a compelling fair investment for the Trust. It is a compelling offer for Valley County as well, to host Idaho's largest park while addressing its housing shortfall. It provides a working forest trust to improve the environment while reducing fire risk. The community council and the working forest trust are co-equal partners alongside Trident in the larger Preserve McCall project. We are grateful for the direction of Gerry Ikola, our community council chairman, in crafting that structure. But most importantly, this remains the only plan that protects both what makes Idahoans want to live here and their continued ability to do so. That is what it really means to Preserve McCall. I hope you will consider the following path forward. Today's evidence merits rescinding the August 10th rejection letter. As you know we were compelled to file a contested case petition to aid the Land Board in evaluating this exchange consistent with your fiduciary obligation. That was not a filing we took lightly. To be clear, we are asking for a contested case in the alternative; should you rescind the rejection letter, there is no more contested case to contest. Judicial review to cure the defects in the Department's process also becomes unnecessary. We can instead follow a transparent, fair review process led by this Land Board and experts. IDL's own timber advisor, and a qualified third-party appraiser will be able to process this application and provide you the missing data needed to make a sound unbiased investment decision that meets your constitutional duty. I am very, very grateful for your time. Mr. Boling, myself, and our forestry, real estate, and land value land experts here today will stand for your questions.

**Attorney General Wasden:** Mr. Warden, I would like to make a record of my attempted phone call. I was concerned there would be a potential claim that there had not been an adequate hearing; therefore, because we were not able to hear Mr. Warden, I personally made a phone call on my cell phone in order to include him in the hearing. During that period, I put him on speaker phone and the line went dead. I made a second call, not realizing that he was in the room. I wanted to make certain everyone knew why I had made that phone call; it was to make certain that our process here today had provided adequate and meaningful opportunity for the party making the claim here. I just wanted to make that record.

**Secretary of State Denney:** Mr. Warden.

**Nicholas Warden:** Thank you Mr. Attorney General for all of your help and trying to facilitate my participation here today. I am going to be brief. I just wanted to take...

**Secretary of State Denney:** Please state your name.

**Mr. Warden:** I am sorry. My name is Nicholas Warden; I am an attorney with Bailey and Glasser, counsel of record for Trident Holdings LLC. I am largely going to defer to Mr. Williams for purposes of Trident's presentation today. I just briefly wanted to make a couple of remarks, offer a couple of thoughts in response to Mr. Strack's presentation. First of all, I wanted to thank Mr. Strack for all of his years of service and for his presentation here today. I was personally involved with public service myself and that is a laudable calling; I have nothing but the highest respect for all of the attorneys at the Attorney General's Office. With that said, I actually do not disagree with a lot of what Mr. Strack said, although I think we diverge on certain key points. First of all, I agree that when considering whether a contested case is appropriate here, Idaho Code section 58-122 is the place to start. I also agree with Mr. Strack that the way that statute reads, it allows the Land Board to hold a contested case proceeding if the Land Board, in its discretion, determines that doing so would assist the Land Board in exercising its constitutional authorities as a fiduciary to endowment lands under Idaho Constitution sections 7 and 8. Where I diverge slightly from Mr. Strack is his conclusion that a contested case proceeding here would be "a useless paper exercise." I do not believe that would be the case here. I think a contested case proceeding would formalize the process a bit more, would allow the parties to build out a record, and would certainly aid the Land Board in determining whether or not to approve the proposed exchange. I also do not agree with his conclusion that the law is such that contested case proceedings are not applicable to land exchange proposals. The authority granted to the Board under the constitutional provisions speak specifically to land exchanges; Idaho Code section 58-122 talks about contested case proceedings in aid of the Land Board's fulfillment of its duties and obligations under those constitutional provisions in their entirety; there is no parsing out or carve out for land exchanges or any other type of disposition of land under the scope of those constitutional obligations. I would also note that I think this particular exchange...if a contested case is not appropriate here, then it really is not appropriate for any proposed land exchange. In this particular case the project is complex, it is large, we have diverging valuations. There has been evidence put in the record raising concerns regarding the process pursuant to which the proposal has been reviewed to date. I think a contested case proceeding would facilitate not only a formalization of the process and a more robust record but it would increase transparency. I would also note that the APA has a variety of provisions applicable to contested cases that would directly address or respond to some of the concerns raised by Trident to date regarding impartiality and prejudice. Not only do I think it is within the Land Board's authority to hold a contested case here, I think it is perfectly appropriate. I think it would in fact assist the Land Board in its determination. Lastly, I would say there are certain things that the Land Board could do as part of a contested case, or that the presiding officer could put in an order as part of a contested case proceeding in this case, even though as Mr. Strack pointed out Trident does not have a right to the proposal that it has proposed; there are however state endowment land beneficiaries who do have rights pursuant to the constitutional obligations of the Board and an order reviewing the record and making a determination both factual and legal as to whether the constitutional obligations of the Board to the endowment beneficiaries are being fulfilled as part of a consideration of this project is something that could be put in a final order. There are also provisions of parameters in the Ethics in Government Act and other statutory provisions that I believe could be addressed more formally in an order as well. I would just gently push back on Mr. Strack's position that a contested case is useless when it comes to land exchange proposals. With that I would stand for any questions.

**Attorney General Wasden:** Thank you for being here. I want to make certain that we are on the same page and that is that the matter before the Board today is not whether the exchange is approved or not approved, but the matter before the Board today is a very narrow issue and that is in the exercise of the Board's discretion, should it select a contested case hearing? In my view that is the question; do you agree that is the question before the Board today?

**Mr. Warden:** I would disagree with that framing slightly. The reason is because our request was intended to be a request for rescission of the denial letter and a contested case. Mr. Strack pointed out, and he and I agree about this, that because the decision to hold a contested case is entirely discretionary, the Board could instead opt not to hold a contested case but rescind and provide instruction or guidance to the Department of Lands for further consideration of this application. That is an alternative and I believe Mr. Williams included that ask in his final slide. The question that you raised is part of the ask here today, but it is a bit broader than that.

**Attorney General Wasden:** I did not intend to ignore the rescission aspect of that request. There were actually two requests: one, rescission of the letter and two, the contested case matter, which is a legal decision made by this body based upon its discretion based upon the facts that are before the body. Do you agree with that?

**Mr. Warden:** Yes. It is simply our position that the facts justify the exercise of that authority in favor of holding a contested case here.

**Attorney General Wasden:** If this body made the determination that a contested case hearing would be granted, it would go forward with a contested case. If this body made the determination that no contested case would be appropriate for them, which in their discretion they can make that choice, that does not end the matter either because your entity has other options available to it which are other forums where it can raise this issue; is that also correct?

**Mr. Warden:** Are you referring to a judicial forum?

**Attorney General Wasden:** Correct.

**Mr. Warden:** Well, yes, we have filed a petition for judicial review related to IDL's denial of the application. I would agree that all remedial options would not be exhausted by a decision here today. I certainly believe that the judicial review proceeding would be mooted by a rescission and moving forward with consideration of this application. Again, I think this is a proposal that we should all take a hard look at and a contested case proceeding would help us do that effectively. That is really all we are saying.

**Attorney General Wasden:** Mr. Warden would you also agree with me that even given all of the elements of the Trident proposal, if all of those were established clearly by a contested case hearing or by a judicial proceeding or whatever, that still the Board would have an option of whether it chose to engage in this exchange or whether it was not going to, the question being is it in the fulfillment of the fiduciary duty. That is not a decision that any other entity can make; that is our exercise of business judgment, our exercise of our belief in what we have and all the stuff that goes into that decision; it is still a discretionary matter for this Board consistent with its fiduciary duty about whether to engage in that exchange or not. Would you agree with that?

**Mr. Warden:** I would say that I agree with you that of course the Board makes decisions consistent with the confines of any applicable statutory or constitutional obligations.

**Attorney General Wasden:** Great, that is what I am asking. Thank you very much.

**Mr. Warden:** Thank you for your time and again thank you for your help today.

**Mr. Williams:** Thank you Chairman, thank you Land Commissioners. I think this conversation is right on that there are legal ways to do this, but there is a really simple alternative which is rescind the letter, get an appraisal, and have an independent unbiased third party evaluate the portfolio-level benefits. Providing meaningful oversight to ensure an unbiased process is I think the piece that is missing in all of this. With that and with those other elements we would really appreciate your help on behalf of the income and the benefits. We believe in the thousands of hours and two-years' worth of work we have done to assemble this exchange in order to benefit the endowment that the beneficiaries deserve. We are very grateful for your time.

**Secretary of State Denney:** Thank you. Any further questions.

**Controller Woolf:** Mr. Chairman, I wonder if Mr. Strack has anything additional to add after what he has heard.

**Mr. Strack:** Mr. Chairman, Governor, members of the Board, I do agree with Mr. Warden that the questions here regarding valuation are complex. They are complex because they are interlaced with policy decisions and the Board's fiduciary obligations to the beneficiaries. The question before the Board is, is a contested case the vehicle to make those kinds of decisions. General Wasden hit that right on the nose here; this is something that the Board has to consider through the lens of its discretionary obligations to the beneficiaries. A hearing officer simply is not empowered to make those kinds of policy determinations or to exercise that kind of discretion. That is a vehicle that the Board does and has created the Department to exercise those kinds of discretionary reviews on the part of the Board. That is why a contested case decision does not make sense here. Also, as the Board's attorney, I have to look at this through the lens of what is the least risky vehicle to proceed. If you hold a contested case, you are opening up the potential door for additional judicial review because a contested case results in an order of some kind. That order is reviewable; the court can decide if there is substantive evidence to support the hearing officer's decisions rather than having the Board, when that is the question that really is properly addressed to the Board, not a court: is this the kind of thing that we want to proceed, is it in the best interest of the fiduciaries. Again that is a discretionary decision that a hearing officer simply should not, and is not, empowered to make. Thank you very much.

**Mr. Warden:** Briefly, to reiterate, I think a contested case proceeding would actually facilitate and help the meaning of any sort of subsequential judicial review proceeding because it would actually build a formal record and ensure that the application process is formalized and not in the dark or in the shadows. A hearing officer would be in a position to help ensure that impartiality and an absence of prejudice or bias could be maintained as part of the process and that pushes back on some of the concerns that we have had with consideration of the application to date.

**Board Action:** A motion was made by Attorney General Wasden that the Land Board deny the request for rescission and deny the contested case hearing. Attorney General Wasden requested the opportunity to speak to his motion if seconded. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

**Attorney General Wasden:** I respectfully disagree with Mr. Warden. I respect his legal acumen; however, I believe a contested case hearing in this instance would not facilitate the Board, in that essentially what a hearing officer would be doing would be supplanting themselves for the Department. It is the Department's responsibility to make a recommendation to us; they have made the recommendation, it may be good, it may be bad, but nonetheless that is essentially what the Department's responsibility is. They have engaged outside experts; those outside experts have reviewed the matter and they have made recommendations to us. As a consequence, a contested case hearing would only prolong the matter, not really move the matter in another direction. I recognize that there are differences of opinion on that matter but that is my view, and that ultimately there is no legal right in play here because there is not a right to this exchange. That was the point I was attempting to make. We have an obligation under the constitution to exercise fiduciary responsibility to the beneficiaries; that means we need to be careful in how we do things. We approach things from a skeptical perspective, but we also have to take into account all of the relevant facts. I think that a contested case hearing does not assist us in doing that in this instance, in addition to the fact the Department has acted, and has acted in accordance with the outside experts we have received, and therefore from my perspective it is to deny a rescission and to deny a contested case hearing.

**8. 2021 Grazing Rate Methodology** – *Presented by Dustin Miller, Director*

**Recommendation:** Adopt the 2021 Grazing Rate Formula Proposal.

**Discussion:** None.

**Board Action:** A motion was made by Attorney General Wasden that the Land Board table item 8, the 2021 Grazing Rate Methodology until a date certain, that is at the Land Board meeting in October. With his motion, Attorney General Wasden made two requests. Number one, if there is anybody in this audience that traveled here for this matter, they be given an opportunity to address this Board today rather than having to come a second time. The second request is that the Department resolve these issues and publicly announce the result by a week from today, next Tuesday [9/28], giving the Land Board at least three weeks to be prepared for the October meeting. Controller Woolf seconded the motion. The motion carried on a vote of 5-0.

**Information**

None

**Executive Session**

None

There being no further business before the Land Board, at 10:57 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.



# STATE BOARD OF LAND COMMISSIONERS

October 19, 2021

Regular Agenda

## Subject

2021 Grazing Rate Methodology Proposal

## Question Presented

Shall the Land Board adopt the proposed grazing rate formula?

## Background

The State Board of Land Commissioners (Land Board) and Idaho Department of Lands (Department) are reviewing the 1993 rate formula for potential revision or replacement, ensuring the constitutional mandate to maximize long-term revenue is fulfilled. At its August 21, 2018 meeting, the Land Board approved the continued use of the status quo grazing rate formula and directed the Department to continue review of the grazing rate, to include having a study completed regarding non-fee grazing costs. During this time, a study by the University of Wyoming was commissioned to determine the non-fee cost of grazing livestock on state endowment trust lands, but findings were inconclusive due to the low sample size and lessee response. As a result, the grazing rate has remained as calculated by the 1993 status quo formula, with a rate of \$7.32/AUM in 2020 and \$7.07/AUM in 2021. The Department projects the rate to be \$6.86/AUM in 2022 under the status quo formula.

During its October 20, 2020 meeting, the Land Board passed a motion directing the Department to coordinate with Land Board staff, gather and review pertinent information, engage with stakeholders, and conduct any other work necessary to recommend a grazing rate method, which was developed by the Department and presented to the Land Board as an information item at the July 20, 2021 Land Board meeting.

The Department refined and finalized the proposed grazing rate formula, conducted extensive public outreach, completed a public comment period, and commissioned an analysis of its methodology by Dr. Neil Rimbey, retired University of Idaho Agriculture Economist.

## Discussion

### The Grazing Rate Formula

The Department has continued to make use of four key sources in the 2021 Grazing Rate Proposal (Attachment 1):

- 1) 2020 cow-calf beef budgets developed by the University of Idaho
- 2) 2014 University of Idaho Research Bulletin 185 regarding non-fee costs in private lease arrangements

- 3) 2011 University of Idaho study *Grazing Costs: What's the Current Situation* by Rimbey/Torrell, and
- 4) 2021 University of Wyoming study *Evaluating Non-Fee Grazing Permit Costs*

These sources of information represent the best available data for the proposed model that nets the prorated sum of non-fee grazing costs paid by lessees against the USDA-NASS private lease rate for Idaho. Since the July 20, 2021 meeting, some updates to the Grazing Rate Methodology have been made, including:

- Adding a table comparing the most recent state and private grazing rates of the 11 western states.
- Reviewing common concerns about the grazing rate formula from the submission of public comments.
- Updating the model to implement Dr. Rimbey's suggestions for improving the model.
- Indexing non-fee costs to 2021 using USDA-NASS indices, as opposed to CPI.
- Creation of a wolf predation index to account for predation since the reintroduction of wolves (Attachment 2).

The Department's 2021 Grazing Rate Proposal recommends a grazing rate that is 49% of the USDA-NASS reported private lease rate for Idaho and would result in a rate of \$9.07/AUM for the 2022 calendar year.

#### **Analysis of Grazing Rate Methodology by Dr. Neil Rimbey**

In his initial review, Dr. Rimbey raised the following concerns, which the Department addressed in the final update to the grazing rate model:

- Dr. Rimbey expressed concerns about the applicability and age of data from the 1990 Obermiller study from the University of Oregon Extension Service. He recommended the Department not use the Obermiller data in the model, and instead utilize data for water and lost animal non-fee costs from the 2011 University of Idaho study *Grazing Costs: What's the Situation*, and the 2021 University of Wyoming study *Evaluating Non-Fee Grazing Permit Costs*. The Department removed the Obermiller data from the model and replaced it with averaged, indexed values from the newer studies.
- Dr. Rimbey took no issue with the general approach to adjust the non-fee costs identified in the 2020 UI enterprise cattle budgets using the proration data from the 2014 UI report. He did, however, recommend that the Department index the 2014 proration percentages to adjust for non-inflationary factors. The Department explored this recommendation but ultimately could not find non-fee data corresponding with the non-fee deductions for 2014. The next-best data the Department could find that corresponded with the categories of deductions in the model dated to the 1990 Obermiller study. The Department contemplated indexing the 1990 data to 2020 to accommodate inflationary and non-inflationary value changes, then using that data to recalculate the 2014 study's prorations. However, the Department dismissed this approach given age and relevancy concerns Dr. Rimbey expressed about the Obermiller study.



- Dr. Rimbey noted it was unclear if the non-fee costs derived from the 2020 UI enterprise cattle budgets were converted to an AUM basis or not. For those items not presented as per AUM units in the budgets, the Department had already converted those non-fee cost deductions to an AUM basis. The Department updated the study with a footnote to better explain this treatment of the data.
- Based on the new non-fee cost data available in the 2021 Dollerschell study, the Department attempted to crosswalk the Dollerschell non-fee costs to the averages derived from the 2020 UI enterprise cattle budgets with the intention of averaging the Dollerschell and UI data together. However, this was not possible given the differences in services bundled into each of the study's non-fee costs. For example, Dollerschell bundled salt and feed together, while the UI bundled salt and minerals.

Dr. Rimbey provided the Department with a memo summarizing his final review of the model, as amended to reflect changes suggested in his September 9, 2021 correspondence (Attachment 3).

### **Stepping into a New Rate**

In an initial review dated 9/9/2021, which was based on setting the endowment rate at 58% of the USDA-NASS private rate for Idaho, Dr. Rimbey recommended that the Land Board consider stepping into the rate incrementally. However, with the proposed rate of \$9.07 (49% of the USDA-NASS private rate for Idaho), the Department does not recommend stepping in the new rate at this time.

### **Periodic Review**

The Department recommends the Land Board review the new grazing rate model (if adopted) every five years and update the model's underlying non-fee costs (if needed) to ensure the model continues to track with the market. This review should also analyze the market sensitivity to endowment grazing lease rate changes, specific to the question of how rate changes might impact the demand for leasing endowment land for grazing. Additionally, the Department plans on reviewing and analyzing upcoming data from the Idaho Farm Bureau which is working with a graduate student from Utah State University to collect non-fee cost information from Department lessees for potential inclusion into the model.

### **Public Outreach**

As directed by the Land Board, the Department engaged in extensive public outreach activities related to adopting a new grazing rate formula. These efforts included:

- Launching a new "Grazing Rate Review" webpage on July 6, 2021 that was viewed 963 times by 812 unique viewers for an average time of 4 minutes and 11 seconds. The webpage may be viewed at <https://www.idl.idaho.gov/leasing/grazing-farming-conservation-program/grazing-rate-review/>.
- Disseminating a news release on July 7, 2021, to 219 media outlet contacts and 657 other interested parties seeking public comment on the proposed new grazing rate. The news release was also posted to the Department's website and was viewed 119 times by

113 unique viewers for an average time of 2 minutes and 42 seconds. The news release may be viewed at <https://www.idl.idaho.gov/pressrelease/idaho-department-of-lands-seeks-public-input-on-new-grazing-rate-proposal/>.

- Posting 24 times to social media (Facebook, Twitter, LinkedIn, and Instagram) between July and September 2021, to encourage the public to comment on the proposed new grazing rate. In total, these posts reached 12,415 viewers.
- Presenting information about the proposed new grazing rate at four industry-sponsored grazing stakeholder meetings between June and August 2021.
- Sending 808 letters and 1,581 emails to grazing stakeholders about the proposed new grazing rate, including inviting them to comment.
- Meeting four times with Idaho Cattle Association leaders between January and September 2021.
- Completing at least 17 telephone conversations with grazing stakeholders between June and September 2021.

### **Public Comments**

The public comment period opened July 7th, 2021 and closed on September 3rd, 2021. During the comment period the Department received 37 comments. Comments were counted, analyzed, and are available for review. Of the 37 comments received, 7 are in support of the rate proposal or support an even higher rate proposal; 21 of the 37 comments do not support the rate proposal and 9 comments were neutral in their support.

Common themes emerged from the comments which were concerns over drought (11% of comments), recreation impacts (26% of comments), comparison of Department leases to private leases (34% of comments), concerns over previous payment of premium bids (11% of comments), and consideration for fire mitigation/benefits that lessees bring to state leases (17% of comments).

The Department continued to solicit for public feedback after September 3rd, 2021, particularly as the model was refined and updated. Additional public comments are in Attachment 4.

### **Recommendation**


Adopt the 2021 Grazing Rate Formula Proposal.

### **Board Action**

### **Attachments**

1. 2021 Grazing Rate Proposal (version 10/5/2021)
2. IDL Wolf Predation Index
3. Dr. Neil Rimbey Critical Review (9/9/2021) and Memo (9/13/2021)
4. Public comments received after 9/4/2021

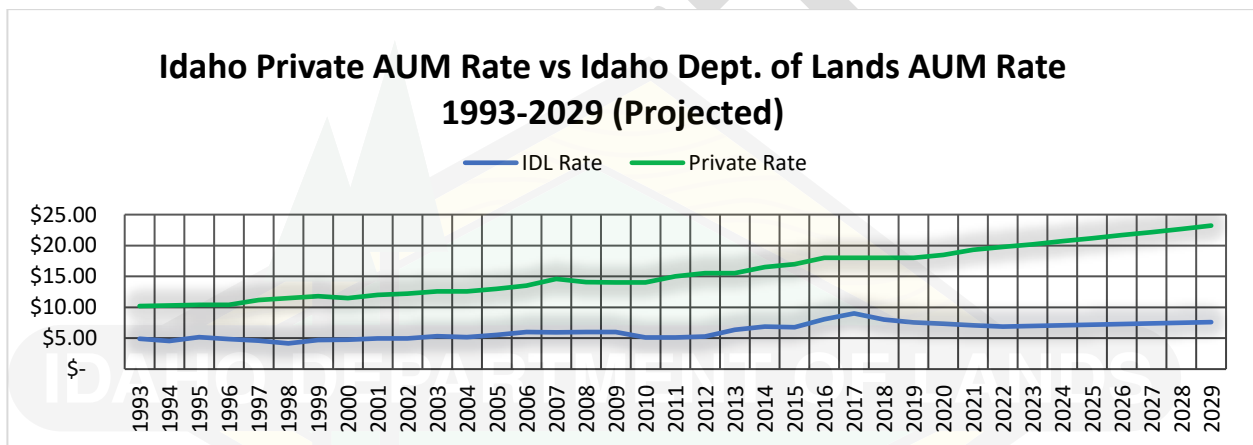
# Determining the Market Rate for Endowment Grazing Leases

The logo of the Idaho Department of Lands is a large, faint watermark in the center of the page. It features a stylized mountain range on the left, a central diamond shape with a green-to-yellow gradient, and the words "IDAHO DEPARTMENT OF LANDS" in a bold, sans-serif font across the middle.

Idaho Department of Lands  
October 5, 2021  
DRAFT

## Preface

With the constitutional obligation to maximize revenue for endowment beneficiaries, the Idaho Department of Lands (Department) analyzes rates of return and financial performance for our land assets. A decade ago, the Department commissioned a study to analyze grazing leases on Idaho endowment land, which determined that the grazing formula was likely not capturing market value ([Attachment A](#)). In recent years, the private grazing lease rate has increased faster than the rate for endowment lands, according to available data. In 1992 the Department rate was approximately 50% of the private lease rate; in 2022 the Department rate is projected to be about 37% of the private lease rate.



The Department and stakeholders have identified the need for a rate that is stable, tracks market trends, and is easy to understand. As directed by the State Board of Land Commissioners (Land Board), the Department has been evaluating the grazing rate, alternate formulas, and non-fee costs related to grazing on endowment land. Attempts to develop a fair, market-value grazing rate formula have been difficult due to limitations in the formulas brought before the Land Board. The Land Board has rejected formulas which contained arbitrary base rates and multipliers as key components and those which did not adequately demonstrate their ability to capture market value.

Prior work to collect data for extrapolating the market value of grazing on endowment rangeland has been inconclusive. Published research is limited, and efforts to ascertain a defensible rate by surveying our customers has failed. The price impacts of inholdings are anecdotal; lessees have indicated that if lease rates increase, they may simply forgo certain endowment leases, placing the cost of fencing out cattle on the endowments. Accurate and detailed data related to the carrying capacities of private and endowment rangeland does not exist; the Department does not have adequate staffing to undertake such a study for the entire rangeland asset class, and the cost may eclipse any potential gains in revenue. Studies of carrying

capacity of certain high quality leased areas can be completed and may increase net revenue in some cases.

Central to the debate of choosing a proper base rate has been the determination of the actual cost of grazing on state endowment trust leases versus private leases. A recent analysis by the University of Idaho offers insight into the expenses incurred by the average ranching operation in Idaho, across various rangeland ownerships and grazing strategies. Using this information, a defensible, data-driven method for the grazing rate can be established.

## **Recent History**

12/5/2017 – The Land Board held a special meeting to discuss the grazing rate review and alternatives presented by the Grazing Subcommittee. During this meeting, the Land Board voted 5-0 to defer a decision on the grazing rate methodology to allow further consideration of information regarding the alternatives ([Attachment B](#)).

8/21/2018 – The Land Board discussed the Grazing Rate Methodology Review agenda item. One topic of discussion related to the existing state grazing rate formula and alternatives previously presented by the Grazing Subcommittee was clarity regarding non-fee costs potentially incurred by state grazing lessees on state endowment trust lands versus private land grazing leases. The Land Board voted 4-1 to continue using the current Status Quo formula until a comprehensive, up-to-date third-party study was completed about non-fee grazing costs incurred by lessees on federal public or state trust lands versus private lands ([Attachment C](#)).

3/6/2019 – Per the August 21, 2018, Land Board meeting, the University of Wyoming initiated a non-fee grazing cost study ([Attachment D](#)).

10/17/2019 – As an informational item, the Land Board received an update on the 2020 grazing rate, as determined by the 1993 formula, and the University of Wyoming study ([Attachment E](#)).

3/31/2020 – The University of Wyoming Grazing Rate Study of non-fee grazing costs in Idaho was completed, but the findings were inconclusive due to the "low number of ranchers that participated." ([Attachment F](#))

## **Fundamental Issue**

Prior to the Land Board's deferral on revising the grazing rate methodology in December of 2017, the Land Board's Grazing Subcommittee had convened a working group of stakeholders, including representatives from the ranching industry, interest groups, conservation organizations, and Land Board staff members. This working group was led by an independent meeting facilitator and charged with developing

alternatives to the grazing rate formula recommended by Dr. Rimbey and adopted by the Land Board in 1993 ([Attachment G](#)).

The proposed formulas submitted to the Land Board for consideration during the December 2017 meeting were predicated on arbitrary, indefensible variables (or multipliers) that ultimately determined the rates generated by the formulas. By charging the 2017 working group with developing alternatives to the status quo grazing rate formula, the fundamental issue was overlooked—developing a defensible methodology for determining the market rate for grazing on endowment land that is not based on an arbitrary multiplier.

## **Approach for Estimating Market Value**

This new approach for determining the market rate for endowment grazing leases solves the decades old problems of formula complexity and volatility, meaning that the rate generated by the current formula is difficult to understand, its calculations are hard for the layman to replicate, and market forces can significantly skew the indices upon which it is based.

The proposed new model is based on two pillars: transparent, defensible, not arbitrary; and periodic review.

### **Pillar 1: Transparent, Defensible, Not Arbitrary**

The new model is based on defensible and transparent datasets. It avoids using arbitrary numeric modifiers and assumptions. At its core, the model can be described as netting non-fee grazing costs against the USDA National Agricultural Statistics Service (NASS) published private Animal Unit Month (AUM) grazing fee for Idaho ([Attachment H](#)). The proposed new model expresses the endowment grazing lease rate as a percentage of the NASS published private lease rate for Idaho and bypasses the four indices used under the current 1993 formula.

### **Pillar 2: Periodic Review**

The Department recommends the Land Board adopt a policy to review the new grazing rate model (if adopted) every five years and update the model's underlying non-fee costs (if needed) to ensure the model continues to track with the market. This review should also analyze the market sensitivity to endowment grazing lease rate changes, specific to the question of how rate changes might impact the demand for leasing endowment land for grazing.

## **Proposed New Model**

The core of the proposed new model is derived from four non-fee grazing costs identified within three cow-calf beef livestock enterprise budgets published by the University of Idaho's College of Agricultural and Life Sciences in 2020 ([Attachment I](#)).

The sums of each of the non-free costs identified within the budgets were averaged, then prorated using data from the 2014 University of Idaho research bulletin Idaho Private Rangeland Grazing – Lease Arrangements to reflect non-free costs under private leases likely borne by lessees ([Attachment J, Table 10](#)). The model also includes two non-free grazing costs derived from averages published in the 2011 University of Idaho study Grazing Costs: What's the Situation ([Attachment K, Table 2](#)) and the 2021 University of Wyoming study Evaluating Non-Fee Grazing Permit Costs ([Attachment L, Table 6](#)). In addition, the Department used USDA-NASS data to estimate the impact of wolf predation on endowment land in the past decade as a non-free cost to endowment leases.

### **Model Rate as a Percentage of the Private Rate**

The proposed new model nets the prorated sum of the non-free grazing costs paid by lessees identified in the University of Idaho enterprise budgets and the non-free costs identified in the Dollerschell and Rimbey/Torell studies against the prior-year USDA NASS private rate for Idaho, then divides this amount by the private rate to express the Idaho endowment grazing rate as a percentage of the USDA NASS private rate for Idaho. For purposes of simplicity, this percentage is rounded to the nearest one percent.

### **Calculating the Model Rate**

#### **Variables**

*A = NASS Idaho Private Rate (as published two years prior)*

*B = Sum of the Average Non-Fee Costs for Salt, Trucking, Labor and Repair (from 2020 UI Cattle Budgets)*

*C = % of Non-Fee Services Provided by Private Lessees (from budgets UI private lease arrangements study)*

*D = Sum of Non-Fee Costs for Lost Animals and Water (Dollerschell & Rimbey/Torell studies)*

#### **Formula**

$$(A - (B \times C) - D) \div A = \text{Endowment Rate as \% of Private Rate}$$

$$(\$18.50 - \$5.21 - \$4.29) \div \$18.50 = 48.66\%$$

$$\$9.00 \div \$18.50 = 48.66\%$$

*Endowment Percentage Rate = 49% of the USDA NASS private Rate for Idaho (48.66% rounded to the nearest percent)*

*USDA NASS Private Rate for Idaho x Endowment Percentage Rate = Idaho Endowment AUM Rate*

$$\mathbf{\$18.50 \times 49\% = \$9.07/AUM}$$



### Non-Fee Grazing Costs from UI Cattle Budgets

Non-Fee Services Lessor Provides*	UI Cattle Budget EBB-CC1-20	UI Cattle Budget EBB-CC7-20	UI Cattle Budget EBB-CC8-20	Average Non-Fee Costs
Salt/Mineral	\$0.50	\$0.54	\$0.37	\$0.47
Trucking to & from Pasture	\$1.50	\$0.75	\$0.83	\$1.03
Hired Labor	\$7.35	\$2.80	\$3.65	\$4.60
Buildings & Improvements (Repair)	\$0.90	\$1.07	\$0.90	\$0.96

\* Non-fee costs accounted for in UI Cattle Budget using measures other than per AUM were converted to per AUM basis.

### Prorated Non-Fee Grazing Costs\*

Non-Fee Grazing Services	Avg. \$/AUM for Non-Fee Services		% of Non-Fee Services Paid by Lessee		Value of Non-Fee Services Provided by Lessee
Salt/Minerals	\$0.47	x	84.4%	=	\$0.40
Trucking to & from Pasture	\$1.03	x	79.4%	=	\$0.82
Hired Labor	\$4.60	x	79.4%	=	\$3.65
Buildings & Improvements (Repair)	\$0.96	x	35.2%	=	\$0.34
<b>Total</b>					<b>\$5.21</b>

\* The independent third-party review of the proposed new grazing rate recommended calculating the prorations using 2014 non-fee costs indexed to 2020 values. However, non-fee cost data for the non-fee costs included in this table is not available for 2014. The alternative, to use 1992 data and index to 2020 was dismissed given age and relevancy concerns of data expressed in the third-party review for other studies.

**Average Non-Fee Costs for Lost Animals and Water  
Non-Fee Grazing Cost from 2021 Dollerschell Study**

Operation	2018 Public
Lost Animals*	\$7.48
Water	\$1.29

\* Data from Evaluating Non-Fee Grazing Permit Costs, Dollerschell, May 2021

**Non-Fee Grazing Costs from 2011 Rimbey Torell Study**

Operation	2010 Public	2010 Private
Lost Animals*	\$5.21	\$2.92
Water*	\$.76	\$.23

\* Data from Grazing Costs: What's the Current Situation, Rimbey Torell, March 2011. This data may be found on page 6, Table 2 and represent data from 1992 indexed to 2010

**Wolf Predation Index**

Given the decision to not use private lease non-fee cost data included in the Dollerschell study, and the fact that the Rimbey 2011 study was based on studies completed before the reintroduction of wolves into Idaho, the grazing model required an additional input to accommodate the cost of wolf predation on endowment land. To date, no significant research has been undertaken to quantify the cost of wolf predation on public rangeland on a per AUM basis. However, IDL used USDA NASS data, the best available information, to estimate this impact.

In 2010 wolves accounted for 30% of all cattle losses by predators in Idaho<sup>1</sup>, which cost beef cattle producers an estimated \$997,200<sup>2</sup>. In 2010, there were an estimated 1,809,400 AUMs in Idaho<sup>3</sup>, with 14.4% of those AUMs attributable to endowment land.

Wolf Predation Formula:  $14.4\% \times \$997,200 = \$140,716.80$   
 $\$140,716.80 / 260,711 \text{ AUMs}^4 = \$0.54/\text{AUM}$

<sup>1</sup> <https://downloads.usda.library.cornell.edu/usda-esmis/files/vh53wv75j/xp68kk00g/v405sd14m/CattDeath-05-12-2011.pdf#page=8>

<sup>2</sup> <https://downloads.usda.library.cornell.edu/usda-esmis/files/vh53wv75j/xp68kk00g/v405sd14m/CattDeath-05-12-2011.pdf#page=7>

<sup>3</sup> <https://quickstats.nass.usda.gov/results/F4D99D10-6636-3624-ABB4-6FA7CE087AF0>

<sup>4</sup> 2010 IDL Annual Report – total number of billed AUMs

This 2010 non-fee cost for wolf predation of \$.54 per AUM was indexed to 2020 using the USDA 2021 Agricultural Prices Received Index for Meat Animals. The estimated beef cattle loss on endowment land to wolf predation for 2020 was \$.48 per AUM. The methodology for estimating the per AUM value of wolf predation on endowment land is detailed in [Attachment M](#).

#### Averaged Figures Indexed for Time and Wolf Predation (2011 Rimbey and 2021 Dollerschell)

Operation	2018 Public	2010 Private	Difference	Total
Lost Animals	\$6.07*	\$2.5955***	\$2.04	\$3.4735
Water	\$1.0624**	\$.2486**	\$.81	\$.8137
			<b>Total Non-Fee Costs for Lost Animals and Water</b>	<b>\$4.2873</b>

\* Rimbey and Dollerschell non-fee costs for lost animals were independently indexed to 2020 values; a Wolf Predation Factor of \$.48 was added to the Rimbey public Lost Animal cost to account for wolves not being reintroduced when the Rimbey data was collected, then this sum was averaged with the Dollerschell Lost Animal cost. The wolf predation factor was calculated using 2010 USDA NASS data and indexed to 2020 values

\*\* Rimbey and Dollerschell non-fee costs for water were independently indexed to 2020 values then averaged

\*\*\* Only Rimbey figures for private lease data were used due to the lack of statistical significance of Dollerschell private survey given the impossibility of determining the size of the private lessee market

#### Rate Change Impacts

The current 2021 endowment grazing rate of \$7.07/AUM is 38.2% of the USDA NASS private rate for Idaho. The model output rate for 2022 is 49% of the USDA NASS private rate for Idaho, or \$9.07/AUM. This change represents a 28.29% increase in grazing rates from 2021 to 2022.

The Department manages 1,107 endowment grazing leases, which range from 1 AUM to 25,253 AUMs, with an average count of 232 AUMs. The largest endowment grazing lease encompasses 25,253 AUMs, while the median lease contains 86 AUMs ([Attachment N](#)).

	AUMs	Current Annual Rate	@ 49% of Private Rate	Net Change	% Change
<b>Total</b>	256703	\$1,814,890.21	\$2,328,296.21	\$513,406	28.29%
<b>Average</b>	232	\$1,639.47	\$2,104.24	\$464.77	
<b>Median</b>	86	\$608.02	\$780.02	\$172.00	
<b>Maximum</b>	25253	\$178,538.71	\$229,044.71	\$50,506.00	

## Sheep Policy

This proposed new model incorporates the AUM fee policy for sheep as previously approved by the Land Board. For sheep, if the previous 12-month average lamb price is less than or equal to 70% of the price for calves under 500 pounds during the same period, the sheep AUM rate will be reduced 25%.

## 11-Western State Grazing Rates

Another metric that may validate this model is to compare the model rate to the 11-Western States private lease rates as reported by USDA-NASS and the rates each state charges for endowment grazing land. A rate of 58% of the USDA-NASS private rate is the average percent of private rates for state grazing rates of the Western States.

### 2021 Grazing Rates for 11 Western States - State vs Private

State	Private Lease Rate (2020)	State Lease Rate (2021)	% of Private Rate
Nevada*	\$10.00	\$13.37	134%
Colorado (avg.)**	\$19.50	\$17.00	87%
Washington (avg.)***	\$14.50	\$11.49	79%
Montana	\$23.50	\$13.41	57%
Oregon	\$18.00	\$9.84	55%
Utah (avg.)****	\$18.00	\$8.75	49%
<b>Idaho</b>	<b>\$18.50</b>	<b>\$7.07</b>	<b>38%</b>
New Mexico	\$16.50	\$4.85	29%
Wyoming	\$22.50	\$5.53	25%
Arizona	\$10.00	\$2.41	24%
California*****	\$23.50	NA	NA
<b>11-State Averages:</b>	<b>\$17.10</b>	<b>\$9.37</b>	<b>58%</b>

\*Nevada private rate for 2020 not available, 2019 rate used

\*\*Colorado sets dozens of regional rates ranging from \$12 to \$22/AUM, this represents a rough average of the range of fees

\*\*\*Washington has a permit rate (\$8.68) and a lease rate (\$14.30). Permit rates are historical allotments grazed in conjunction with Federal lands. New permits are not issued

\*\*\*\*Utah uses a tiered rate, \$6.36 for lower tier (unblocked) and \$11.13 for blocked leases

\*\*\*\*\*Lease rate data not available for CA state leases, each lease is calculated individually. Grazing lease rates can be charged in \$/Acre or \$/AUM

# Wolf Predation Index

## *Estimating the Value of Beef Cattle Lost to Wolf Predation on a Per AUM Basis*

FACT: In 2010 wolves accounted for 30% of all cattle losses by predators in Idaho

SOURCE: <https://downloads.usda.library.cornell.edu/usda-esmis/files/vh53wv75j/xp68kk00g/v405sd14m/CattDeath-05-12-2011.pdf#page=8>

FACT: In 2010 the total value of all cattle and calves lost to predation in Idaho was \$3,324,000 (\$1,837,000 for cattle + \$1,487 for calves)

SOURCE: <https://downloads.usda.library.cornell.edu/usda-esmis/files/vh53wv75j/xp68kk00g/v405sd14m/CattDeath-05-12-2011.pdf#page=7>

FACT: In 2010, the value of all cattle in Idaho lost to wolves was \$997,200

SOURCE: 2010 wolf predation percentage x 2010 total value of all cattle lost to predation (30% x \$3,324,000 = \$997,200)

ASSUMPTION: Given the location and management practices of dairy cattle, wolf predation of dairy cattle is negligible, IDL assumes the total beef cattle value lost to wolves in 2010 is \$997,200.

FACT: In 2010, there were 2,180,000 total cattle number of beef cattle (head) in Idaho

SOURCE: <https://quickstats.nass.usda.gov/results/F4D99D10-6636-3624-ABB4-6FA7CE087AF0>

ASSUMPTION: Convert 2,180,000 head of cattle to AUMs by multiplying the head count by .83, which equals 1,809,400 AUMs

FACT: In 2010, there were 260,711 AUMs on Idaho endowment land

SOURCE: 2010 IDL Annual Report, Page 29

ASSUMPTION: For 2010, an estimated 14.4% of all beef cattle AUMs in Idaho were attributable to endowment land: (260,711 endowment AUMs / 1,809,000 total beef cattle AUMs = 14.4%)

IN CONCLUSION: For 2010, the estimated per AUM value of beef cattle in Idaho lost to wolf predation on endowment land was:  $14.4\% \times \$997,200 = \$140,716.8 / 260,711 \text{ AUMs} = \$0.54 \text{ per AUM}$ . Indexed forward to 2020 using the USDA 2021 Agricultural Prices Received Index for Meat Animals, the per AUM beef cattle loss to wolf predation on Idaho endowment land is estimated to be \$.48.

## **Critical Review: Determining the Market Rate for Endowment Grazing Leases**

Prepared by Neil Rimbey, Emeritus Professor, University of Idaho  
September 9, 2021

### **General Comments**

The draft policy is generally well-written and concise in relation to determining a market rate for Idaho Department of Lands (IDL) grazing leases. Where assumptions are made in the process, they are specified and references cited, where appropriate. I do have several concerns relative to the approach and will detail those in my responses to specific IDL questions in the next sections of this review.

### **Specific Questions Posed by IDL**

#### **1. Is it appropriate to derive a rate for grazing on endowment land that nets non-fee costs against the USDA NASS private rate for Idaho?**

Yes, if done properly. I have concerns about using very dated and non-representative data as embodied in the Obermiller report (Oregon State University Extension Bulletin). First, that report was based upon a non-random survey of grazing permittees in Eastern Oregon. Because there was no sampling done of a population of graziers, we have no idea if they are indicative of what the population is doing. Second, the survey concentrates on Eastern Oregon, which may or may not be appropriate for Idaho graziers. Third, the data is extremely dated and does not reflect changes in policy and management that have taken place since that time. On federal lands, maintenance of range improvements has been shifted to the permittee. Wolves have been re-introduced or migrated into the ecosystems of Oregon, Idaho, Wyoming, Montana and other western states. Vehicle costs and operating expenses have increased dramatically. Technology such as drones, tracking collars and others may be minimizing some costs included in the 1992 data.

There is more recent and better information on non-fee costs available. I have included 3 references of these at the end of this report. Torell, et al. (1995) summarizes a large 3 state study done in 1992. Idaho was one of the states (Wyoming and New Mexico were the other two) studied in this project and those data are much more valid and pertinent to your project than the Obermiller report. There are also 5 or 6 peer-reviewed journal articles from this study that summarize various aspects of the project. I can provide those citations, if you need them. The concerns raised about policy changes impacting grazing costs in the Obermiller report also apply to this study. If those data (from the 3 state study) are used, there is a need to index those values up to current years. An example of indexing those costs is done in the Rimbey and Torell report (2011). This approach uses USDA indices that are specific to each production item included in the cost bundle, as opposed to the CPI or other general index.

A recent thesis from University of Wyoming (Dollerschell, 2021) provides the most recent data on non-fee costs and includes data from Idaho. It is my understanding that Idaho contributed to this study. If so, it should be used in your analysis rather than the Obermiller data.

I can provide electronic versions of the referenced publications, if you so desire.

**2. Is the USDA NASS private rate for Idaho a reliable measure of or proxy for the average private grazing rate in the state?**

Yes. Over the course of my career at the University of Idaho, I was involved in 4 separate studies on private grazing lease arrangements. In 3 of those 4 years, there was no significant difference between our estimate of lease rates and those published by USDA NASS. The 4 studies involved gathering data on actual market transactions associated with private grazing leases. The USDA NASS values were based upon respondents' knowledge of "lease rates in their area". In most cases, the USDA NASS lease rates are based upon minimal responses (40-60 per year) to their survey. In spite of those concerns, the USDA NASS rates do appear to provide a representative estimate of market changes in relation to grazing lease rates.

**3. Are we deducting the correct non-fee costs from the private rate in the model?**

It depends. Lost animals, maintenance, salt/supplement, and herding/moving livestock would appear to be the most important items in the cost array. Salt/supplement can easily be estimated using the UI livestock budgets, as you have done in your approach. Lost animals, maintenance and herding are site-specific and may not be reflected in the livestock budgets. Those items will have to be gathered from other sources (for example, the Wyoming report) and updated using indices appropriate for the expense item.

**4. Is it appropriate to use the data from the 2014 University of Idaho research bulletin Idaho Private Rangeland Grazing – Lease Arrangements to prorate the non-fee deductions derived from the 2020 cow-calf beef livestock enterprise budgets, or would the model be better if this proration was omitted, and the average costs sans proration were deducted from the private rate instead?**

Yes, as long as you index those to 2020 or current year values. The livestock budgets include costs items on the basis of \$/head. Your approach implies an adjustment on the basis of \$/AUM. Are you certain that you are using the same basis going between the livestock budgets and grazing costs/services provided? That is unclear to me in my reading of the document.

**5. Based on the literature we reviewed, it was clear that lost animals/mortality was a significant non-fee cost factor that we needed to address in the model. Unfortunately, we could not find recent data, so we used data from the 1992 University of Oregon Extension Service special report Costs Incurred by Permittees in Grazing Cattle on Public and Private Rangelands and Pastures in Eastern Oregon that were adjusted for inflation. Are you aware of any better data about lost animals/mortality that may be available?**

See responses to Question 1 and references provided at the end of this review.



**6. Do you have any opinions from an economist's point of view regarding stepping in a new rate over a period of 2-5 years as opposed to implementing the new rate immediately?**

From a livestock production perspective, an increase in costs of 50+% for one item in the operating budget is an area of concern. This would be particularly true for your blocked-up grazing leases, through grazing associations or individual lessees. For many of your scattered leases, an increase of this magnitude is not going to break the bank, because that feed source is a relatively small component of their total operating cost. A phased approach to the increase may be appropriate, if nothing more than to maintain relations with your lessees. Does your current policy have caps on annual increases or decreases in lease rates? For example, the federal agencies cannot increase or decrease the grazing fee by more than 25% per year. The feds also have a floor, that essentially says that fees cannot go below a certain level. The sheep fee adjustment based upon relative prices is probably still appropriate, given the basis for your approach is generally slanted toward cattle (through budget analysis, etc.).

**7. Any other input, ideas, criticisms, feedback, you may have.**

I commend you on stating the need to review this approach every 5 years. This same recommendation was included in the development of the 1992 lease rate formula and it was never done! I would take it a step further and advocate doing periodic surveys of graziers on private grazing lease arrangements, including estimating either non-fee costs or grazing services undertaken or provided with the leases. I am not sure this latter item is necessary every 5 years, but it is needed to keep your indexing and general approach "honest". An "unbiased", scientific, third party approach is the best way to do this, through contracts with academic institutions or private consultants.

**References**

Dollerschell, K. 2021. Evaluating Non-fee Grazing Permit Costs. M.S. Thesis. University of Wyoming. College of Graduate Studies. Laramie, WY.

Rimbey, N.R. and L.A. Torell. 2011. Grazing Costs: What is the Current Situation? Univ. of Idaho. Dept. of Ag. Econ. and Rural Soc. AEES 2011-02. Moscow, ID.

Torell, L.A., L.W. VanTassell, N.R. Rimbey, E.T. Bartlett, T. Bagwell, P. Burgener, J. Coen. 1995. The Value of Public Land Forage and the Implications for Grazing Fee Policy. New Mexico State University Exp. Station Bulletin 767. Las Cruces, NM.

September 13, 2021

To Whom it May Concern:

Subject: September 10, 2021 Review Draft

Thank you for the opportunity to review the September 10, 2021 draft of "Determining the Market Rate for Endowment Grazing Leases". I feel confident that you have addressed most of my suggestions from the earlier review. I also feel that you are on much more solid ground, from both a theoretical and practical bent in terms of the figures which you are using as background for your approach. The Torell, et al., and Dollerschell figures in terms of non-fee costs are valid and defensible.

Given the new rate of \$8.33/AUM, I do not think a phase in over a period of years would be warranted. It might warrant another look at the issue if the livestock industry makes that request, in light of the on-going drought conditions and current and projected feed cost increases.

If you have other questions, please feel free to contact me.

Best regards,  
Neil Rimbey  
208-573-3791  
[nrimbey@uidaho.edu](mailto:nrimbey@uidaho.edu)  
16638 Logan Street  
Caldwell, ID 83607

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**From:** Department of Lands <no-reply@idl.idaho.gov>  
**Sent:** Wednesday, September 15, 2021 2:58 PM  
**To:** Comments  
**Subject:** Grazing Rate Comment Submitted

From: JERALD DALLING at jkdalling@gmail.com  
Phone: (208)317-7980  
Address: 1419 N 7TH W  
City: SUGAR CITY  
State: Idaho  
Zip Code: 83448

Comment:

I AM GOING TO TURN 70 YEARS OLD AT MY NEXT BIRTHDAY. I AM A FARMER AND RANCHER WITH A NUMBER OF GRAZING LEASES, ONE OF WHICH IS THROUGH THE FREMONT WOOL GROWERS ASSN. I AM TURNING MY BUSINESS OVER TO TWO OF MY SEVEN CHILDREN AND HOPE THAT THEY WILL BE ABLE TO MAKE A LIVING IN AGRICULTURE. THEY ALL HAVE COLLEGE EDUCATIONS AND ARE GOOD LAW ABIDING CITIZENS. THEY HAVE LARGE FAMILIES AND ALTHOUGH THEY WORK 80+ HOURS PER WEEK, THEY MAKE FAR LESS THAN OTHER YOUNG PEOPLE OF THEIR AGE GROUP WORKING IN OTHER INDUSTRIES. IN AGRICULTURE TODAY THE AVERAGE AGE OF A FARMERRANCHER IS OVER 60 YEARS OLD. IF WE DO NOT MAKE AN EFFORT TO HELP YOUNG PEOPLE FIND SUCCESS IN THIS INDUSTRY WE MAY NOT HAVE ANYONE TO FEED AMERICA IN THE COMING YEARS. I UNDERSTAND THE NEED FOR REVENUE FOR FUNDING EDUCATION IN THIS STATE AND THE DELICATE BALANCE THE STATE LAND BOARD MUST CONSIDER , BUT I WOULD RECOMMEND THAT THE GRAZING FEES BE LEFT AS THEY CURRENTLY ARE NOW. HOPEFULLY BY DOING THIS WE WILL NOT" KILL THE GOOSE THAT LAYS THE GOLDEN EGG". WE NEED TO ENCOURAGE MORE YOUNG PEOPLE TO STAY IN AGRICULTURE PRODUCTION BY HELPING THEM AND THEIR FAMILIES GENERATE A PROFIT IN THEIR BUSINESS BY KEEPING THE GRAZING RIGHTS AFFORDABLE THANKS..

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**From:** Department of Lands <no-reply@idl.idaho.gov>  
**Sent:** Thursday, September 30, 2021 5:06 PM  
**To:** Comments  
**Subject:** Grazing Rate Comment Submitted

From: Siddoway Sheep Co., Inc. Jeff Siddoway at siddoway@dcdi.net  
Phone: 2086634585  
Address: 1764 E 1200 N  
City: Terreton  
State: Idaho  
Zip Code: 83450

**Comment:**

I am Jeff Siddoway. I currently serve as President of the Fremont Wool Growers Association in Fremont County, Idaho. The Association has 53,303 acres leased from IDL. Siddoway Sheep Co., Jeff Siddoway and JC Siddoway have approximately 5,000 acres leased of which one section leased under special use pays 10 times the going rate. My comments are slow coming, sorry. There has been several points made on the non fee costs associated with grazing State endowment lands and I would like to submit a comment I have not yet seen. One of the primary reasons we valued State lands was because our state permits within BLM's Twin Butte Allotment were year round permits. Every year is different, weather wise. We have seen the snow so deep by Christmas that all the feed was left untouched as we headed to the haystack. We have seen January thaws that have brought green grass in late February. We have seen cold springs where green grass hasn't come until almost the first of May. One of the most valued benefits of the state lease was that we could decide where, when and how we were going to feed those state leases. Then one year after some lawsuits were lost, BLM denied any access across their lands to get to either private or State lands. That denial alone almost caused me to default on all of our State land leases within the Twin Buttes Allotment. Their value dropped to "ZERO" in one day. We would have had to literally trucked our sheep from one lease to the next even though they were only a couple of hours away by herding. We were also told we would have to guarantee our sheep could not under any circumstance cross onto BLM land. In other words, we would have had to built 4 miles of sheeptight net wire fence on every section of State land on the Twin Buttes. That was not by action by the State but by others, that would have had dire consequences for our schools, ranches and the livestock industry. After some years there was a solution crafted that once again allows for trailing within and between allotments, leases and private lands. I don't know how you measure that but every day lawsuits that jeopardize or threaten use of these leases make them less and less attractive. I also was a member, along with Ennius Pickett of Oakley, of the 1992 grazing fee formula. We were asked to serve on behave of the Idaho Wool Growers. After much work by the members of that committee, of which Dr. Neil Rimbey also served, the Politicians took our good work and simply multiplied the number by 5 and the Land Board adopted it. So, I'm not real sure that our comments will be taken seriously. Our non fee costs seem to have little bearing on the outcome even though the cattle price index, if left in, could have an impact on tuff years (+ 1 year delay). COVID and tariffs and politics have played havoc with the lamb, wool and beef markets over the last year and a half. I don't know if anything is stable enough to to sustain a 30-40% increase. My suggestion is: if we have to increase the grazing fee to look competitive to other states, satisfy environmentalists and increase the money contributed to the endowment, we should just have a set surcharge or a flat fee affixed to the annual bill as a donation to the endowment because we in most cases are already paying more than the lease is worth. Why do I say that? We have leased State land in the Fremont Wool Growers where the sagebrush has grown past climax and the small lambs cannot push through it so their mothers leave them to go out and feed. When they return they may or may not find their lamb again. The lambs become very susceptible to predators of all types. Our losses increase dramatically. Many are never found. Our counts are comparatively short. Not only that but lambs that are separated for more than a day are "bummed" or kicked off or rejected by their mothers. If there is enough feed to survive the "bummed" lambs never recover and come in weighing less at the end of the season. What private land owner is going to allow his land to get to that climax stage without

taking action? Those costs will never be recovered.

Just the reverse is also true. Because no controlled burning or no brush control efforts are being made, when a lightening strike, cigarette, exploding target or catalytic converter causes ignition in these areas it can take tens or hundreds of thousands of acres of vegetation which results in loss of any grazing for 2 years. Yes, efforts are made to relocate by agencies and permittees but there is usually a huge cost involved. That all lessens the value of our State Land leases. Repairing or replacing fences, buildings, water lines and other equipment caught in these fires can be devastating. The wildfires are no respecters of land ownership but out on the open range State land is the one that seem to cost the most.

We have reviewed the various methods of valuation and it would seem to us the prudent thing to do would be for the Land Board to sell the lands and invest those funds in stock which really would maximize the income for the benefit of the students.

Thank you

Jeff Siddoway



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**From:** Department of Lands <no-reply@idl.idaho.gov>  
**Sent:** Monday, October 11, 2021 8:28 AM  
**To:** Comments  
**Subject:** Grazing Rate Comment Submitted

From: Matt Thompson at wadesaddle1@gmail.com  
Phone: 208-589-3185  
Address: 1202E. 900N.  
City: Shelley  
State: Idaho  
Zip Code: 83274

**Comment:**

Before IDL even considers raising the grazing rate it should get a handle on the situation in the Homer Basin in Eastern Idaho with the Van Orden grazing lease.

It's time to cut the losses and start over.

Since the time the lease was put up for bid at renewal in 2010 the state has spent a fortune in staff time and legal fees defending the lease , and the terms of the lease have never been followed or attempted to be followed and IDL has looked the other way and put it head in the sand even after losing in court. When it became necessary to fence the private land away from the State land IDL didn't require the leasee to build the fence and actually paid the bill for the leasee section of the fence and the legal fees incurred because of the leasee. The lease terms covered the State from both of these costs but IDL chose not to pursue them. It is beyond ridiculous that the lease is still in place as there have many other violations and legal challenges including pending litigation to this day ,but IDL seems hell bent on defending the leasee.

It has set legal precedent that will affect other leases in the future. There were promises made by the former Governor and other members of the land board as well as the former director of IDL and the manager of the Idaho Falls office in 2010 that have not been kept and it has cost the State much more than an increase in rates will bring. If the Land Board feels the grazing program needs a rate increase this is the first place it should look and action should be taken. I am against any rate increase until IDL gets it own house in order.

Thanks,

Matt Thompson  
Shelley Idaho



# STATE BOARD OF LAND COMMISSIONERS

October 19, 2021

Regular Agenda

## Subject

Adoption of Pending Rule, IDAPA 20.02.01 *Rules Pertaining to the Idaho Forest Practices Act*

## Question Presented

Shall the Land Board adopt the pending rule for IDAPA 20.02.01?

## Background

The Idaho Department of Lands (Department) administers the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code), which sets standards for logging, road building, reforestation, streamside protection, and other forest management activities.

The *Rules Pertaining to the Idaho Forest Practices Act* set minimum standards to assure the continuous growing and harvesting of forest tree species and to protect and maintain forest soil, water resources, wildlife, and aquatic habitat. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2021 for review during the 2022 legislative session.

The Idaho Forest Practices Advisory Committee (FPAC) provides technical assistance to the Land Board, in cooperation with the Department, in matters relating to the Idaho Forest Practices Act and the rules promulgated thereunder. FPAC is composed of nine voting members from across the state of Idaho that represent family forest owners, industrial forest owners, logging operators, general forest practitioners and fisheries biology. There are also ex officio members from other state agencies and private entities, with technical specialties that advise the Department.

In 2013, FPAC recommended that the Department begin the rule promulgation process to implement changes to stream protection rules, specifically the new Shade Rule. That rule was derived from years of work to develop science-based requirements for retention of shade (trees) adjacent to Class I streams. The rule was approved by the 2014 legislature.

Immediately following legislative approval of the shade rule, the Department began working with the Idaho Department of Environmental Quality (DEQ) and the University of Idaho College of Natural Resources to implement a multi-year Shade Effectiveness study to compare the modeled and measured (actual) changes in shade when applying the two Shade Rule options across different forest types. In January 2020, *The Effectiveness of Idaho's Class I Stream Shade Rule: Analysis of Before – After, Control – Impact Effective Shade Data* was published. The study found that the rule, when applied properly, did in fact limit shade losses from timber harvesting in all but a few cases. One observation made during the study,

and reinforced by communication with forest landowners, was that the rule is considered by many to be too complicated and difficult to implement.

During 2020, DEQ conducted its quadrennial audit titled *Idaho 2020 Interagency Forest Practices Water Quality Audit*. During this audit the Department and DEQ staff visited sites across the state to evaluate forest practices rule implementation and effectiveness. As part of the audit, the Shade Rule was given special emphasis. With the study results, the audit, three years of operator input, and observations, a simpler way to write the rule to achieve the same results was realized. When the idea of the simplified Shade Rule was presented to FPAC, the committee formed a task force to develop specific language. The task force developed new rule language that provides very similar protection but is much easier to understand and implement.

Today's request includes the rule language developed by the task force and approved by FPAC. Other substantial rule changes proposed by FPAC include adding definitions related to new logging technology and a change in the definition of a class I stream.

## Discussion

FPAC meetings are public meetings and offer stakeholders an opportunity to participate in the discussion and development of rule language and guidance. FPAC worked for many years to develop an appropriate Class I tree retention rule; in 2014 a new rule was implemented. The objective of the rule is to provide adequate protection for aquatic resources while still providing landowners the opportunity to conduct appropriate management activities (e.g., maintain the health of the riparian forest and realize value from their property). The rule was based on simulating shade loss assuming shade loss equates to water temperature increases. The Department committed to an adaptive management framework under which the impact of the new rule would be scrutinized and adjusted in the future according to the on the ground results of rule implementation. We have now reached the culmination of that first cycle of adaptive management. With the results of the shade study and landowner implementation observations, FPAC and the Department have adapted the rule based upon the best data available at this time. Along with many other changes the modified rule language was voted upon by FPAC at their December 17, 2020, meeting.

Land Board approval was received on February 16, 2021 to enter negotiated rulemaking. The Department identified a stakeholder base consisting of over 200 individuals and groups that have previously shown interest in the forest practices rules; they were emailed specific details of meetings and comment periods. The Department also issued a press release and created a rulemaking webpage to post documents, scheduling information, and comments.

Four negotiated rulemaking public meetings were held in April and May 2021, in Ponderay, Coeur d'Alene, Orofino, and McCall. Only a handful of people attended the meetings in-person, with many preferring to attend by Zoom. The comment period ended June 7 and the Department received written comments from 16 groups and individuals. Multiple responses

expressed support for the rules, while some responses expressed specific concerns for the rules being too restrictive or not restrictive enough. A summary of negotiated rulemaking comments and the Department's responses is included in Attachment 1.

Proposed rulemaking was held from September 1 through September 22, 2021 and included two public hearings with online and phone attendance options. One was held in Coeur d'Alene (one online attendee only) and the other was held in Lewiston (one in-person attendee only). No testimony was provided at either public hearing. Written testimony was received from seven groups during proposed rulemaking. The only new issue brought up during proposed rulemaking regarded recruitment of large woody debris possibly being affected by the new tree retention rule. Research during the 2013 rulemaking found that large woody debris recruitment was not a limiting variable and in fact was under predicted by simulation. FPAC's goal for the 2014 rule was to limit shade loss to 10% based on simulated modeling. The 2016 – 2018, on-the-ground, effectiveness study demonstrated shade loss less than 3%. FPAC and the Department have adapted the rule, accordingly, as promised in 2014.

During the 2021 rulemaking process, the Department received comments on several proposed rule changes. Most comments focused on the new Class I tree retention rule. The comments received during both negotiated and proposed rulemaking were across a spectrum that ranged from declaring that the rule was essentially a taking of private property to claiming that the new rule would result in substantial and permanent resource damage. The Department asserts that the rule is an appropriate balance between aquatic resource protection and maintaining a mechanism by which landowners may address forest health and make reasonable, sound management decisions.

Another frequently discussed topic in comments regarded the development of a new Class II streamside tree retention rule. The Department and FPAC are aware of the need to address this issue and are including the topic in the agenda for the fall 2021 FPAC meeting.

The Department is recommending adoption of the rule as proposed and published in the September 1, 2021 Administrative Bulletin (Attachment 2). An unofficial version of the proposed rule in legislative format, which shows the changes to the rule, is Attachment 3. The new rule text as proposed resulted in a simplified tree retention rule as well as a reduction of 1,794 words or 14% of text in the rule while maintaining or improving clarity.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Rule to the Office of the Administrative Rules Coordinator for the 2022 legislative session.

## **Recommendation**

Adopt the pending rule for IDAPA 20.02.01 *Rules Pertaining to the Idaho Forest Practices Act*.

## **Board Action**

## **Attachments**

1. Summary of Negotiated Rulemaking, Comments, and Clarification
2. Notice of Rulemaking – Proposed Rule with Rule Text
3. Proposed Rule Text with Strikethrough





## **Negotiated Rulemaking Summary**

### **IDAPA 20.02.01 — Rules Pertaining to the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code)**

#### **Docket No. 20-0201-2101**

This rulemaking was requested by the Forest Practices Advisory Committee (FPAC) after deliberative efforts in public meetings over the last five years. The Notice of Intent to Promulgate Rules was published in the Idaho Administrative Bulletin on April 7, 2021. Upon initiation of negotiated rulemaking, the Idaho Department of Lands (IDL) held four public meetings between April 14 and May 4 to discuss draft changes to the rules and receive comments from interested parties.

Members of the public participated in the negotiated rulemaking process by attending the meetings and submitting written comments. Key information considered by IDL included recommendations from FPAC and results from studies commissioned and conducted by IDL and the Idaho Department of Environmental Quality (DEQ).

Key documents from the rulemaking record are available at <https://www.idl.idaho.gov/rulemaking/docket-20-0201-2101/>, including the draft rule, written public comments, and documents presented during the negotiated rulemaking process. The entire rulemaking record is available for review upon request.

At the conclusion of the negotiated rulemaking process, IDL formatted the draft rule for publication as a proposed rule in the Idaho Administrative Bulletin. Additional non-substantive changes, such as grammatical edits, were included in the proposed rule as suggested by the Deputy Attorney General and the Office of Administrative Rules.

Written comments were received from the Idaho Forest Owners Association (IFOA); Idaho Forest Group (IFG); Idaho Farm Bureau; Idaho Conservation League (ICL); Riley Stegner and Associates representing Bennett Lumber Products Incorporated, Hancock Forest Management, Idaho Forest Group, Molpus Woodlands Group, and Stimson Lumber Company; PotlatchDeltic Corporation; private citizens and private landowners; Idaho Department of Environmental Quality; Coeur d'Alene Tribe; Kootenai Tribe; Nez Perce Tribe; Upper Columbia Unified Tribes; Upper Snake River Tribes Foundation; and EPA Region 10 representatives.

The IDL thoroughly reviewed and considered all comments received during the negotiated rulemaking process; IDL developed informative and comprehensive responses to sets of similar, relevant, summary comments. The following table is organized by rule section and relevancy and is devoted to comments (and responses to those comments) that were not incorporated into the draft rule. Comments supportive of the draft rule are included for completeness.

Commenter	Rule Section	Comment	Response
Upper Snake River Tribes Foundation	010	The new definition for cable yarding should require logs to be fully suspended to prevent trenching and increased sediment transportation.	1 FPAC chose to draw distinctions among traditional harvesting methods such as cable yarding, ground-based skidding and newer, hybrid, traction assisted technologies. IDL relied upon definitions found in: <a href="https://www.fs.fed.us/forestmanagement/equipment-catalog/cable.shtml">https://www.fs.fed.us/forestmanagement/equipment-catalog/cable.shtml</a> to achieve this. Specific rule sections and paragraphs establish minimum best management practices for minimizing erosion and sediment transport (See 030.03, 030.03.05, and 030.03.08).
IFOA	010	The Idaho Forest Owners Association express our full support of the FPAC proposed changes to refine the definition of Class I streams (010.60.a) to apply only to aquatic life beneficial use.	2 ***IDL and FPAC thank you for this comment in support of the draft rule language***
IFG	010	We support the proposed rule changes adding Traction-Assisted Harvesting to the IDAPA ruleset; it is opportune as this “new” method of harvesting provides enhanced operational capacity for ground-based harvesting operations while maintaining low soil disturbance and increasing safety.	
PotlatchDeltic	010	We support addition of definitions for Traction-Assisted Harvesting and elimination of the requirement to obtain a variance for cable-assisted machinery to work immediately adjacent to a stream. Our logging contractors have been utilizing cable-assisted (tethered) equipment since 2016 and our experience has been that cable-assisted machinery has a light footprint and virtually eliminates loss of traction, spinning of tracks and sliding that can cause soil disturbance. Importantly this technology also increases safety for logging contractors.	
IFOA	010	The Idaho Forest Owners Association express our full support of the FPAC proposed changes to use ground-based equipment on steep slopes.	
Upper Snake River Tribes Foundation	010	For Class II streams, the 30’ zone described in 20.02.01.010.60(d) is misleading – it only prevents the use of equipment within that 30’ zone. Timber is still allowed to be harvested to the streambank.	3 Other states use similar terms, such as Riparian Management Zone. which, admittedly, is broader. The term “Stream Protection Zone” has been and will remain the verbiage by which Idaho establishes fixed, stream adjacent, geometric areas of forest land for referencing additional natural resource protection requirements.



Upper Snake River Tribes Foundation	010	There is currently no definition for forest floor filtration. The new language added to 20.02.01.040.03(g) identifies when supplemental filtration is needed (when forest floor filtration isn't available) but doesn't define what adequate forest floor filtration actually is.	4	Not all terms used in IDAPA 20.02.01 are provided with formal definitions (e.g., see 010.13., 030.05.a., and 030.05.b.). IDL depends upon the professional judgement of Private Forestry Advisors, their frequent field calibrations with program staff and Rule Guidance to support rule application. Keeping rule text simple and concise is also consistent with Governor Little's Red Tape Reduction and Zero-Based Regulation Executive Orders.
PotlatchDeltic	030	We agree that Class II stream tree retention rules should not be changed as part of this rulemaking and that any future rules considered should be based on actual resource impacts from forest management and should be well informed by research.	5	For the past few years FPAC and IDL have received comments from all stakeholders regarding the definitions and minimum Best Management Practices (BMPs) in IDAPA 20.02.01 related to streams on forest land in Idaho. IDL, DEQ and landowners have participated in research associated with fish-bearing (Class I) and non-fish-bearing (Class II) streams and the results have been deliberated extensively in FPAC and FPAC task force meetings. This led to the weighted tree count (WTC) concept for tree retention in Class I SPZs. A great deal of progress toward adapting verbiage to the science and developing tools to address many issues associated with rule implementation is apparent in the draft rule. The same can be said for general road construction and maintenance rules which are important to water quality in all streams. During this rulemaking FPAC and IDL decided to postpone additional work on Class II issues due to the complexity and workload related to Class I stream rules. FPAC plans making Class II stream definitions and associated BMPs the next priorities.
Nez Perce Tribe Water Resources Division	030	The 2020 Forest Practices Water Quality Audit recommended that FPAC work to establish minimum tree retention requirements for Class II streams, and we agree with that recommendation. We recommend that all Class II streams receive protection through a minimum 50-foot buffer.		
ICL	030	The proposed rule fails to address minimum tree retention requirements for Class II streams, and we encourage IDL to reinstate the protections that were removed from the 2013-14 rule. We recommend that IDL continue working with FPAC and IDEQ to establish minimum stocking standards for Class II streams that provide meaningful protections against increasing stream temperatures and as bank stabilization and erosion control measures.		
Upper Columbia United Tribes	030	Restore protections for class II streams.		
Kootenai Tribe	030	We recommend that you restore protections for Class II streams using a strategy that identifies perennial and seasonal streams and applies appropriate protections. Perennial Class II streams should protect shade and temperature by requiring a 25 ft. buffer that maintains RS 60. For seasonal streams we recommend limiting compaction and soil disturbance by applying an equipment limitation zone. This strategy benefits by aligning the two rules, the associated buffers, and is easy to understand and implement on the ground.		
Coeur d'Alene Tribe	030	We recommend that you restore protections for Class II streams. On Class II designation, we suggest the same WTC for the inner zone we have suggested for Class 1 streams and require that as a stand-alone 25ft. buffer on the Class II streams. This strategy benefits by aligning the two rules, the associated buffers, and is easy to understand and implement on the ground.		
Coeur d'Alene Tribe	030	For Class II streams, we suggest a strategy that identifies perennial and seasonal streams and then assigns the appropriate protections.		

Upper Snake River Tribes Foundation	030	Class II streams need to have a legitimate protection zone that prohibits timber harvest for at least 25', if not more (as per discussion on Washington State Department of Natural Resources 2018 study).	
EPA	030	Reinstating Class II stream protections in Idaho are necessary to protect water quality and should be included in the negotiated rulemaking. EPA's recommendation is echoed by the recently completed 2020 Forest Practices Water Quality Audit, which recommends FPAC work on establishing a minimum tree retention requirement for Class II streams.	
Upper Snake River Tribes	030	IDL should consider adopting the riparian habitat protection zones set forth in the Finding of No Significant Impact/Environmental Assessment for the Interim Strategies for Managing Anadromous Fish-producing Watersheds in Eastern Oregon and Washington, Idaho, and Portions of California (commonly known as "PACFISH").	<p>6 The IDL appreciates your comments. The independent research upon which our rules are based addresses the regional needs specific to conditions in Idaho. Under a Memorandum of Agreement among the USFS, BLM, IDL and DEQ, every four years DEQ audits timber sales among all forest management entities throughout Idaho in all the IDL Supervisory Areas to ensure they meet DEQ water quality objectives and the terms of the Clean Water Act. The objectives of this audit are to assess the compliance with and the effectiveness of the Idaho Forest Practices Rules. Since 1996, overall percentages greater than 96% are demonstrated in each quadrennial audit. Often, the highest achievement rates are demonstrated by sales on private industrial and federally managed forest land. Every audit assesses rule compliance for operations with fish-bearing, Class I streams and determines if the best management practices called for in rule are effective. FPAC evaluates and recommends modifications to IDAPA 20.02.01 based upon DEQ recommendations in the associated audit reports. In response to several consecutive report conclusions that the pre-2014 stream protection rules were not achieving adequate levels of shade and large wood recruitment objectives, IDL hired Cramer Fish Sciences to conduct research and simulation of riparian conditions of fish-bearing streams in Idaho on state forest land. IDL is implementing the adaptive management framework Cramer Fish Sciences recommended in their 2012 report and FPAC is using this research, described in subsequent Teply articles (2013, 2014), as the basis for rulemaking recommendations. The <a href="#">Cramer Fish Sciences Report</a> on page 4 specifically stated that long-term, landscape level benefits to riparian function result from intensive management activities of stands that are upward trending. This benefit is gained by managing the entire buffer to generally accepted, silvicultural targets less than 55 relative stocking. Thinning targets above this level have limited benefit, and lack of activity in a no harvest buffer could lead to long-term shade levels lower than those attained from active management.</p>
EPA	030	The FPAC and IDL previously concluded the location of retained trees in the SPZ is of critical importance for maintaining shade (Teply, 2014) and, particularly, the need to maintain RS60 in the innermost 0-25ft RPZ.	<p>7 This is not an accurate characterization. The present rule with two options was a compromise from a previous formulation; the IDL and FPAC used the modeling results developed by Cramer Fish Sciences and Mark Teply as a starting point for implementing the adaptive management framework,</p>

Coeur d'Alene Tribe	030	As stated by the EPA, the FPAC and IDL previously concluded the location of retained trees in the SPZ is of critical importance for maintaining shade (Teply 2014) and, particularly, the need to maintain RS60 in the innermost 0-25ft SPZ.	e.g. "For rule-making, effectiveness monitoring conducted within an adaptive management framework should be considered by FPAAC (sic) to validate and refine the models and rules moving forward" Cramer Fish Sciences Report (2012). This report recommended thinning throughout the 75-foot SPZ. The report found that stream adjacent stocking was an important contributor to the overall shade, but thinning the inner zone to levels greater than 55 RS limits the benefit of treatment. As documented in this report there were multiple objectives associated with rulemaking that might result from the study, including balancing economic and forest health considerations with achievements in maintaining or improving water quality.
Kootenai Tribe	030	During development of the 2013-14 shade rule revisions, IDL and FPAC concluded that restricting thinning in the stream-adjacent zone to maintain Relative Stocking (RS) 60 could permit greater overall management flexibility in the outer 25-75 while limiting overall shade loss to 10%. The FPAC and IDL previously concluded the location of retained trees in the SPZ is of critical importance for maintaining shade (Teply, 2014) and, particularly, the need to maintain RS 60 in the innermost 0-25 ft. SPZ. Based on the scientific evidence, the IDL-FPAC should continue to use the rationale they relied upon during the 2013-14 shade rule development, and specifically the need to retain minimum RS 60 stocking levels in the 0-25 ft. SPZ.	
EPA	030	Adhering to the FPAC's desire to have a more easily implemented rule, we offer adding "And at least half of the above weighted tree count must be retained in the inner twenty-five (0-25') feet of the SPZ" after the proposed 4 WTC minimum in the outer 25'.	
Kootenai Tribe	030	Adhering to the FPAC's desire to have a more easily implemented rule, we offer adding "And at least half of the above weighted tree count must be retained in the inner twenty-five (0-25') feet of the SPZ" after the proposed 4 WTC minimum in the outer 25'.	8 IDL has reviewed this suggestion and concluded it would result in several undesirable situations if implemented. Requiring one half of the weighted tree count (WTC) in the inner 25 feet would be equivalent to 65 Relative Stocking, which is not only higher than the present rule but is 10 RS above onset of competition induced mortality (RS 55). Additionally, FPAC and IDL intended to simplify the rule, but this requirement adds complexity. IDL evaluated a similar, less restrictive alternative, but concluded the added complication is not justified when balanced with operational implementation limitations. The draft recommended changes, as written, apply to each 100-foot length of the SPZ. Stream sinuosity, tree size and stem distribution, even over such a short distance, are highly variable. When coupled with log manufacturing decisions and extraction limitations, this additional restriction to the weighted tree count methodology limits an operator's ability to easily comply with the rule. In its present form, a landowner only needs to count trees by size range and confirm the inner 50-foot stocking is greater than the minimum threshold. Adding a requirement to leave a particular count in the inner 25 feet requires an additional calculation and tradeoff for each 100-foot segment of stream. There are no physical data regarding Idaho Class I stream protection levels from 2015 through 2018 that support discontinuing the adaptive management approach recommended by Cramer Fish Sciences. IDL wants to study the impact of this simplification before implementing a complication based on only simulation and will seek funding to conduct additional monitoring.
Coeur d'Alene Tribe	030	Adhering to the FPAC's desire to have a more easily implemented rule, we offer adding "And at least half of the above weighted tree count must be retained in the inner twenty-five (0-25') feet of the SPZ" after the proposed 4 WTC minimum in the outer 25'.	

EPA	030	Modeling shows that applying an average RS43 can mitigate shade loss across the 75-ft SPZ only when the inner 0-25ft SPZ is above RS40.	9	IDL and FPAC reviewed the calculations presented in <a href="#">EPA Memo IFPA WAFactorEvaluation 7120</a> and concluded these calculations (along with results from similar modeling conducted by Mark Teply for IDL) are supportive of the approach FPAC has taken with the recommended rule modification when combined with the effectiveness study results demonstrated by DEQ.
ICL	030	Modeling by the Environmental Protection Agency (EPA) demonstrates that an averaged RS43 only retains adequate trees for shade when the inner 25-foot zone equals or exceeds RS40. The current base average value in the proposed rule is RS37. We recommend that IDL alter language in the proposed rule to establish a minimum Relative Stocking rate of 60 in the inner, pre-harvested 0-25-foot zone.	10	To be precise the Environmental Protection Agency modeling reported in the <a href="#">EPA Memo IFPA WAFactorEvaluation 7120</a> described a minimum threshold pre-harvest value of RS40 for the inner 50-foot zone below which the RS43 SPZ average stocking shade loss would increase above 12%. Their calculations indicate the present 60/10 RS minimum stocking requirements represent the same modeled 12% shade loss when the upland outside the SPZ is clear-cut. The implicit assumption is that all harvest operations clear-cut the area outside the SPZ for the entire length of a stream. Generally, this is not the case. SPZs usually represent stand boundaries. Industry forest land managers follow Sustainable Forestry Initiative Best Management Practices which can require a landowner's average harvest size to be less than 120 acres and an individual unit maximum of 270 acres. For example, timber harvest plans typically involve individual timber stands that average 100 acres in size, and it is rare for a harvest unit size to approach the maximum. Adjacent stands are left untouched until the previous stand plantation reaches 5-foot height or after 3 years. This is easily observable on a landscape basis in time lapse satellite imagery. Watersheds with managed timber stands display a mosaic of small patches that start out dark green, are quickly replaced by site-prepared brown and then, over a several year period, turn light green and eventually dark green again. State forest land managers follow similar adjacency restrictions. Small private landowners rarely clear-cut their property and typically only lightly treat the SPZ. The initial 2014 shade rule objective was to demonstrate that, on average, shade reduction would be no greater than 10%, if either the Option 1 or Option 2 prescription were followed. The DEQ Shade Effectiveness Study demonstrated that shade reduction was less than 3% and less than 5% when shade increases for the control sites were included (this average includes the high shade loss sites). The anomalous high shade loss sites observed in the study mostly resulted from improper application of the minimum Relative Stocking prescription or from treatment of sites with low pre-harvest inner zone stocking. The proposed modification in the draft rule is expected to eliminate this problem. IDL considers the modeled, implicit 6% shade loss from clear-cutting the upland to be overstated given the results of the shade study and therefore is not considered a significant factor in this
EPA	030	As currently written, the proposed WTC approach is likely to result in excessive shade loss when the preharvest 0-25ft SPZ is overstocked (>RS60) and allowed to be harvested below RS60.		
Upper Columbia United Tribes	030	Maintain the minimum Weighted Tree Count (WTC) threshold based on RS 40.		
Upper Columbia United Tribes	030	Maintain RS60 in innermost Stream Protection Zone (SPZ) (0-25-ft from stream).		
Nez Perce Tribe Water Resources Division	030	We recommend that a minimum RS60 be kept for the innermost SPZ (0-25 ft.)		
Kootenai Tribe	030	Maintain the minimum Weighted Tree Count (WTC) threshold based on RS 40.		
Coeur d'Alene Tribe	030	We recommend that modeling serve as the basis for the proposed rule and that the minimum Weighted Tree Count (WTC) threshold must be based on RS40.		

Kootenai Tribe	030	<p>The results that came out of Idaho's Class I Stream Shade Rule (Effectiveness Study) demonstrate a shade loss from a gain of 11.8% to a loss of 26.9% with the existing rule. The proposed changes allow for the removal of additional trees in the inner zone and should be expected in some cases to experience greater shade loss than if harvested under the current rule.</p>	<p>current rulemaking. IDL and FPAC are using all of the science and operational considerations available to adapt Class I stream protections, including the demonstrated average 2% per year increase in shade of the control sites. Treated stands can be expected to show at least that much if not more growth. Further, the RS37 minimum threshold used in FPAC's recommended modification to the shade rule is shown by EPA's calculations to represent a shade reduction of only 13% vs 12% for RS40; less the implicit 6% loss assumption this is only a 7% reduction that will quickly disappear due to vegetation response. Given the demonstrated results from the Shade Effectiveness Study and elimination of the independent "zones", IDL is confident this RS37 minimum threshold requirement in the inner 25' of the SPZ before any harvest can occur in a given 100' segment provides adequate protection for that stream segment without overly restricting a landowner's ability to treat the outer 50' of the SPZ in that segment. Numerous examples from field observation show that the outer 50' (indeed the entire 75') RS can be much greater than the stocking for competition induced mortality and far greater than the common thinning levels described by Cramer Fish Sciences (2012, pg. 17). To avoid stand break-up, such overstocked segments need to be treated. This can be accomplished if there is a minimum threshold for the inner zone to ensure excess shade loss is avoided where there are stream adjacent roads or meadows.</p>
Private landowner	030	<p>I appreciate the simplification of the layout but I strongly disagree with linking the zones. Many class 1 streams in my area are surrounded by marshy vegetation and prohibiting harvest due to a natural lack of trees seems counterproductive to the goals of healthy working forests. Also I think a target RS of 50 might encourage management of SPZs instead of stagnation.</p>	<p>11 The present 030.07.e.ii tree retention rule for Class I streams uses "Zones" with distance parameters that fluctuate based on which rule Option is being exercised. This forces landowners to perform comparative calculations for the entire length of SPZ they intend to manage. FPAC and IDL are recommending a modification that eliminates both the Options and the variable dimension "Zones" and averages the required relative stocking over the entire 75 foot width of the SPZ. The equivalent average relative stocking is RS43 which IDL and FPAC hope will encourage landowners to address stagnating riparian stands and avoid significant mortality which over the long-term will promote healthier, more resilient riparian areas (See Response #13). The DEQ Shade Effectiveness and the IDL Operational Monitoring studies each observed sites with stream adjacent areas that had little or no tree canopy due to roads, grassy meadow conditions, heavy brush cover or swampy ground. In some of these situations, adjacent outer area trees provided the only available shade; promoting too much thinning of that timber for the study or misapplication of the rule resulted in large shade reduction. The recommended modification sets a lower limit for the outer 25 foot area of the SPZ in each 100 foot length of stream and requires the remaining trees for that segment to be left in the interior area of the SPZ. For example, north of Clearwater River if a landowner chooses to leave a no-cut 60' buffer, as is often seen on a landscape basis, they must still have or at least leave a WTC of 33 in the inner 25 feet, 20 WTC in the middle 25 feet and 4 WTC in the outer 25 feet. IDL and</p>



EPA	030	<p>The IDEQ/IDL shade effectiveness study found that when the innermost 0-25ft SPZ is understocked (&lt;RS60) and the outer 25-75ft SPZ is harvested to minimum tree retention requirements it can result in greater than 20% shade loss.</p>	<p>FPAC are confident that operational considerations for well-stocked SPZs will result in greater than the minimum threshold being retained in the inner 25'.</p> <p>The modification also sets a minimum pre-harvest tree density for the interior before any tree removal can occur in that segment. Thus, the rule will adapt to the changing conditions along any length of stream. In cases where an entire length of stream does not have protective levels of shade, trees are left in the outer 50 feet to compensate. Operational Monitoring crews observed similar conditions to what you describe in your area:</p> <p><i>"Relative stocking calculations at un-harvested sites varied widely. Typically, the inner zone RS was less than outer zone RS. Field notes indicate swampy conditions, meadows, and dense understory brush near the streams at these sites."</i></p> <p>The rigid zone boundaries and complexity of the present rule does inhibit riparian area forest management, perhaps in some cases needlessly. (See Response # 18 regarding site-specific riparian management prescription.)</p>
EPA	Other	<p>It is important for IDL and FPAC to maintain the scientific basis of the existing shade rule while addressing ongoing areas of concern.</p>	<p>12 IDL agrees with this statement. IDL and FPAC have used simulation results as well as effectiveness monitoring to implement the adaptive management framework recommended by Cramer Fish Sciences. This draft modification of the shade rule is based on the same science as the existing rule. IDL commissioned additional calculations for this draft rule and FPAC adjusted parameters in the rule based on scaling of the original simulations to compensate for expressed concern that expanded tree size ranges could result in greater shade reduction if operators took trees only at the highest edge of a given size range. There are no data, however, to indicate this would happen in practice. Sawyers evaluate many other constraints in tree harvesting other than cutting the largest trees. Stem distribution and defect, extraction difficulties, number of preferred log lengths in a tree and felling direction all play into the decision. Three trees on the low end of one range might need to be removed to obtain a high-quality pole in the middle of another range. Not one of these four stems out of the total allowed weighted tree count in the segment would be the largest diameter possible. The only way to determine if this more restrictive adjustment, based on scaling of simulations, is valid is with monitoring of actual harvesting. Monitoring may show that this 15% adjustment for all size ranges might have been too large (in the same way the DEQ shade study showed an average shade reduction of only 3% occurred on the ground versus the 10% shade reduction predicted by simulation). Should this be the case, the weighted tree count requirements could be lowered in a future rulemaking.</p>



Upper Snake River Tribes Foundation	030	IDL should not allow timber harvest within the 25' inner zone of fish bearing streams, and limit removal and equipment usage within the 75' inner zone.	13	<p>Completely excluding harvest from the inner 25 foot of the SPZ is not consistent with achieving and maintaining riparian zone forest health (See 030.01. Purpose). Riparian areas in Idaho with more extensive management exclusion restrictions have been devastated by catastrophic wildfire often taking many years for fish populations and habitat to return to pre-fire conditions. Temporary shade reduction from appropriate thinning has minimal impact and more aggressive treatments in some cases can foster increased populations and migration of salmonids into previously uninhabited reaches (Gravelle FPAC November 2018). Forest managers and hazardous fuels experts have observed that when upland areas are treated to reduce wildfire risks, but riparian buffers are left untreated, fire can sweep through the riparian areas in a dramatic and devastating way. Forest landowners that sustainably manage their timber want to avoid this. Regardless of these catastrophes, the Cramer Fish Sciences report concluded that allowing stands to move out of the stem exclusion phase can result in shade loss from mortality that takes longer to recover. Although this does provide important large woody debris for fish habitat, it can also generate dangerous levels of hazardous fuels. Managing riparian forest stands before they reach this condition results in faster shade recovery and greater overall shade on the landscape (Cramer Fish Sciences, 2012, pg. 28). A 75' equipment exclusion zone for Class I streams has been Idaho's Stream Protection Zone for nearly 40 years and is expected to remain in IDAPA 20.02.01. Forest practice advisers prioritize inspection of operations with streams (with and without fish) above all others. Repeated water quality audits have demonstrated no sedimentation on operations that have complied with the basic stream protection rules.</p>
PotlatchDeltic	030	Our experience over the last 10 months has been that use of WTC decreases the amount of time necessary to install Stream Protection Zones (SPZs) and provides equal or greater tree retention and stream shade. The proposed rule's linkage of the WTC in the inner 50' of the SPZ with harvest in the outer 25' of the SPZ within 100' longitudinal sections is a workable solution to those few instances where we encounter a poorly stocked inner zone and a well-stocked outer zone. The value of the proposed rule to landowners and to achieving resource protection is embodied in its simplicity and ease of implementation and we urge IDL to maintain simplicity during this rulemaking.	14	<p>***IDL and FPAC thank you for this comment in support of the draft rule language***</p>
IFOA	030	The Idaho Forest Owners Association express our full support of the FPAC proposed changes to provide for a simplified "Shade Rule" (030.07.e.ii (2014)) next to fish-bearing (Class I) streams.		

IFG	030	The proposed Class I Stream Protection Rule revision to IDAPA 20.02.01.30.07e. ii - viii. Stream Protection, resulting in simplified field application is to be commended. The proposed rule language is easier to understand, more efficient to implement on the ground, and provides for greater management flexibility while maintaining appropriate protections.	
Idaho Farm Bureau	030	Only 8 percent of all Idaho forestland is in NIPF ownership. IDL must demonstrate through data a negative impact on stream temperatures from harvest of NIPF before requiring continued compliance with the shade rule by NIPF landowners. It is an undue burden because they pay property taxes on land they cannot manage.	15 The Rules Pertaining to the Idaho Forest Practices Act (Title 38, Chapter 13, Idaho Code) must be applied equitably to all citizens of Idaho. IDL encourages all landowners to manage their forest land, including the SPZs, where they occur. All forest landowners are required to maintain a minimum amount of timber in their SPZs to protect water quality for all Idaho citizens, and all private forest landowners pay property tax on their SPZ acreage. According to the University of Idaho Policy Analysis Group (Idaho Forest Factbook, 2019), there are 21.7 million acres of forestland in Idaho. Eighty percent of the total forestland is federally managed, 14% is privately owned and 6% is state owned; thus 3 million acres of Idaho forestland is owned by industrial, non-industrial and tribal private landowners. Of the 1.06 billion board feet of timber harvested in 2017, 625 million board feet (59%) came from private forestland. State timber harvest was 21% and federal 20% of the total. In any given year, non-industrial forest landowners typically provide twice as many Forest Practice Notifications as industrial forest landowners, but industrial landowners report far more harvest volume per Notification than non-industrial landowners. In 2020, non-industrial private timber sales accounted for 23% of total private harvest volume (573 million board feet total) and industrial timber sales accounted for 77%. Trends indicate industrial forestland is being subdivided and sold to small private landowners as a highest and best use option as the Wildland/Urban acreage grows. This can lead to more construction that is often near streams, and it is important to maintain stream protections across the landscape as this occurs. Regardless of ownership changes, small private landowners reported 131 million board feet of harvested timber in 2020, which is nearly 50% of what is annually harvested on state lands.

ICL	030	Opening the rule to consider other shade sources that may influence water temperature is outside the scope of forest practices. We believe this rule should remain focused on the retention of live trees within the riparian SPZ.	16	IDL also believes the stream protection rules associated with Class I streams should depend upon retention of live trees in the SPZ, since it is the most reliable metric on a landscape basis. To avoid overly complicated rules, FPAC has steered clear of more descriptive metrics that also have an impact on stream temperature because they are so highly variable and often site-specific. Stream width and orientation, topography and understory vegetation are important contributors to shade and maintenance of stream temperature. The present rule was based on simulations conducted for IDL for average ground conditions, including a fixed 10-foot stream width, trees with 50% live crown ratio on a horizontal plane, using a vegetation simulator that is known to over predict shade reduction from thinning (Teply 2013, 2014). Moreover, the effective shade values used in the simulations were developed from data from 106 IDL Riparian Plots in the Clearwater area. More than 53 of these streams were wider than 30' and fewer than 26 streams were narrower than 10'. The wider streams' outer edge of the inner 25' of the SPZ would be > 40 feet from stream center and clearly would depend more heavily on inner zone stocking than streams less than 10'. The Cramer Fish Sciences report indicated that for narrow streams, branch over-hang rather than canopy cover is the dominant shade component from trees. FPAC members expressed concern during development of the 2014 rule that the simulations were not representative of the narrow streams where the most harvesting occurs. The sites selected for the DEQ Shade Effectiveness Study were based upon typical forest types in areas with historically high levels of forest management. For example, of the 573 million board feet from private lands in 2020, 65% came from Boundary, Bonner, Kootenai, Benewah, Shoshone and Latah counties (i.e., north of Clearwater River) and only 27% came from Clearwater County. The other 8% of harvest volume came from private lands in Idaho, Valley, and Boise counties.
Kootenai Tribe	030	The rule in place before 2013-2014 rule revisions were based on the old strategy which uses RS over 1000 ft. of stream reach to determine the number of leave trees, but now FPAC is proposing the WTC over 100 ft.	17	The pre-2014 rule did not use the Relative Stocking concept but had instead a one-size-fits-all tree-retention table that applied to each 1000-foot length of stream. The recommended simplification of the present rule uses a stream segment approach based on a 100-foot length of stream. Each 100-foot segment in the SPZ treatment will have to follow the rule minimums.
Coeur d'Alene Tribe	030	The rule in place before 2013-2014 rule revisions were based on the old strategy which uses RS over 1000 ft. of stream reach to determine the number of leave trees, but now FPAC is proposing the WTC over 100 ft.		

Idaho Farm Bureau	030	The shade rule is a “one size fits all rule” that is being applied from north to south in the region and over all habitat types with no deviation. IDL should authorize projects on NIPF lands which would allow for data gathering in the SPZ across different forest types and different systems/levels of harvest, to demonstrate the stream temperature impact of increased harvest in SPZ, and the length of time for naturally regenerated shade from both riparian and tree sources.	<p>18 Tension exists in rulemaking in Idaho between simple, understandable, and concise verbiage and the complexity of the rule set. A permit to harvest timber in Idaho is not required, neither is a harvest plan; IDL and FPAC support keeping it that way. The same cannot be said of other regional states whose forest practice programs entail much more stringent, complicated rules. FPAC and IDL go to great lengths to research, deliberate and craft rules based on minimum required best management practices (BMPs) that will provide flexibility for forest land managers to achieve their management objectives while providing adequate protection to water quality consistent with the purpose of the Timber Harvesting rule section (See 030.01) and the landscape observations and recommendations from the quadrennial audits. A rule cannot be made for every landowner and a rule should not be restrictive based on the most extreme example. Shade is commonly used as a proxy for stream temperature in the forest environment. This common use is supported by numerous hydrological and aquatic life biological research efforts. This was done in the shade simulation efforts that established the present tree retention rule, 030.07.e.ii. (Cramer Fish Sciences 2012, Teply 2013 and 2014), which does deviate both regionally and by forest type. In the same way minimum required BMPs cannot accommodate every nuance of forest land ownership, simulations cannot model every nuance of the stream adjacent environment across all Idaho. For that reason, FPAC and IDL are implementing the adaptive management framework recommended by Cramer Fish Sciences. The present rule used habitat-based forest types that varied regionally. These were found to be too difficult to apply and administer by landowners, Private Forestry Advisors and the DEQ and IDL field crews that gathered data for both the DEQ Shade Effectiveness and the IDL Operational Monitoring studies on state, volunteer private industrial and volunteer private non-industrial SPZs in all but the Eastern Supervisory Area.</p> <p>The FPAC crafted recommended modifications to the present rule in response to the following:</p> <ul style="list-style-type: none"> <li>• The tree retention rule itself was found by NIPF landowners to be too complicated and difficult to comply with.</li> <li>• The simulations were not able to account for the narrower width of and surrounding riparian vegetation and topography for most streams in the most actively managed regions of the state and thus predicted greater shade loss than what was observed.</li> <li>• The shade study showed rapid growth in shade on control sites, which implies more rapid shade growth for the harvested sites.</li> <li>• The operational study showed that many landowners chose not to harvest the SPZ or to only remove a few trees.</li> </ul>
Private Landowner, Clearwater Co.	030	I request that methods to waive the Class I Stream Side Protection be added. I propose that IDL add a Waiver process specific to the tree stocking requirement along Class I streams to allow for the harvest in excess of 20% of the timber stocked within the 150-foot Stream Protection Zone.	

			<ul style="list-style-type: none"> <li>The operational study showed that the majority of landowners that do harvest the SPZ do not remove timber from the inner 25 feet of the SPZ and extract only a limited amount in the middle 25 feet.</li> </ul> <p>There are several regional paired watershed studies that show the transient temperature and suspended sediment impacts to streams from different levels of harvest and some specific to North Idaho (See Karwan, Gravelle and Hubbart 2007 and Gravelle and Link 2007). The dominant factor driving temperature increase in headwater streams is incoming solar radiation, although, as the Idaho Farm Bureau points out, there are many factors that can affect stream temperature. Definitive experimental studies of timber harvest on stream temperature are complicated, costly, and time-consuming. It is the view of IDL and FPAC that Idaho taxpayers need not fund additional studies on NIPF forestland at this time.</p>
Idaho Farm Bureau	030	The shade rule focuses on one thing only; shade from trees. What about shade from topography, shade from riparian vegetation and shade from banks. What about temperature impacts from groundwater, springs, and substrate types. There is a dramatic difference in impact on stream temperature resulting from substrate such as bedrock vs alluvial gravel. The one thing the shade rule focuses on (shade from trees) is the one thing that impacts landowner profitability the most. Topography is not factored into the shade protection rule. Shade from all sources must be recognized in the shade rule, not just shade from trees.	19 Response #18 addressed this in part, and it is important to further point out these are site-specific factors that are best addressed on that basis. General Rule 020.01.a. provides the procedure for a variance to practices prescribed by rule if site conditions warrant. In the case of Class I stream protections, the operator is encouraged to submit a Site-specific Riparian Management Plan (SSRMP) to address use of a different practice. Forest Practice Advisors are available to assist landowners with this.
PotlatchDeltic	031	Elimination of Stream Segments of Concern will remove inconsistent language from the FPA rules and will improve understanding.	20 ***IDL and FPAC thank you for this comment in support of the draft rule language***
Private Landowner, Clearwater Co.	040	I request that methods to waive the Culvert Design rules subject to a remediation plan, be included in the revised the new rule; I do not agree that the requirement 040.02.eii, mandating that Culverts 30" and larger must now "armor the inlet or use a flared inlet structure," should be included in the FPA revisions.	21 The modification this refers to is part of a set of road construction design standards commonly used by IDL on state endowment land management and by industrial landowners. It applies to new stream crossing construction or re-construction when an existing culvert is replaced. Rule 020.01.a. provides a procedure by which an operator can obtain a variance when an alternative practice can provide for equivalent or better results over the long term.
IFG	040	IFG supports road specifications that result in actual reductions of sediment delivery including the added measures for rocking of Class I stream crossings and armoring the inlet of new stream crossing culverts greater than 30" diameter. We do note, however, that these measures are an additional management cost that will be a greater burden on small private forest owners.	22 ***IDL and FPAC thank you for this comment in support of the draft rule language***

PotlatchDeltic	040	The road measures and clarified language for road Best Management Practices (BMPs) are well targeted to minimize sediment and increase stream protection.	
Riley Stegner and Assoc. on behalf of: Bennett Lumber, Hancock Forest Mgmt, Idaho Forest Group, Molpus Woodlands Group, Stimson Lumber Co.	Other	Maintaining a robust and defensible FPA developed in consultation with FPAC is paramount to protecting Idaho's natural resources, environment, wildlife, and the forest products industry. As such, we recognize and support the changes IDAPA 20.02.01 proposed by IDL.	23 ***IDL and FPAC thank you for this comment in support of the draft rule language***
IFG	Other	IFG supports the proposed rule changes and believes that the simplified language in the revised rules provide a more concise and clear explanation of IDAPA 20.02.01 rules and regulations. These revisions should allow for more practicable implementation of Forest Practice Act rules as well as Best Management Practices on forest lands in Idaho.	
Private Landowner, Clearwater Co.	Other	I commend your revised rule set simplifying the language and clarifying some of the terminology of the established rule set.	
DEQ	Other	DEQ respectfully, requests the Idaho Department of Lands (IDL) retain unaltered Section 070 SLASHING MANAGEMENT and, Section 071 PRESCRIBED FIRE of this docket per Idaho Code Section 38-1304(1)(e).	24 We thank you for your comments and will retain these sections while IDL and DEQ work on a consistent Smoke Management approach.
Private Landowner, Clearwater Co.	Other	I request that a method for the reduction in tax burden be considered, for the economic costs borne by private landowners subject to these rules.	25 The cost of complying with forest practices rules is difficult to define, but IDL believes the rules are appropriate and reasonable, especially in the context of the regulatory burden on property owners in adjacent states. Tree retention requirements do not represent a taking because the trees retained to comply with rule could become available for future harvest as shade recovers along a stream. The Idaho State Tax Commission and the counties of Idaho levy and collect property tax from landowners. This request is outside the scope of Negotiated Rulemaking for IDAPA 20.02.01.



## Clarification of Negotiated Rulemaking Summary Docket # 20-0201-2101

Overall, the responses of Idaho Department of Lands (IDL) in the [Negotiated Rulemaking Summary](#) were intended to describe the limitations of model-dependent decision making and the difficulty of crafting rules to accommodate every situation across the natural resource and ownership landscape, especially for streams narrower than the 10 foot width simulated to establish the current rule. The proposed rule not only addresses concerns regarding limited pre-harvest stocking in the inner 25-foot of the Stream Protection Zone (SPZ), but the proposed rule is also simpler and provides much more flexibility in implementation where predominant SPZ harvest activity occurs.

In response #11 of the summary (pg. 7), IDL described an example of how an often observed no harvest 60-foot buffer implemented by landowners under the current rule (Option 2, RS 60/10) might be implemented under the proposed rule. Unfortunately, an incomplete statement identified in an early draft was not corrected prior to publication. The example should have read if a landowner wanted to cut the outer 25-foot of a 100-foot segment north of Clearwater River to a weighted tree count (WTC) of 4, they would need to have a pre-harvest WTC equal to or greater than 53 in the inner 50 feet. Operational considerations (see pg. 309 Teply et.al.<sup>1</sup>) would very likely result in more trees being left in the inner 25 feet which might resemble a WTC of 33 in the inner 25 feet and a WTC of 20 in the middle 25 feet.

In response #16 of the summary (pg. 9), for the sake of brevity, IDL inadvertently mis-characterized some aspects of the simulations reported by Teply et.al.<sup>2</sup> (pgs. 305 and 306). The simulations were not based on a vegetation simulator that overpredicts shade removal from thinning. The authors adapted the model used to develop target shade levels for Idaho's Total Maximum Daily Load (TMDL) regulatory process<sup>3</sup> (pg. 38). They used the Forest Vegetation Simulator COVER extension to provide input to the SHADE model from which the simulation output was obtained. Comparing this output to on-the-ground riparian harvest data for 75-foot riparian buffers, they found the shade models underpredicted effective shade on average by 3.7%. Thus, shade loss from thinning could be overpredicted in some circumstances and underpredicted in others. The authors made adjustments to shade loss estimates to compensate for this.

Also, in response #16 IDL stated that analyses "indicated that for narrow streams, branch overhang rather than canopy cover is the dominant shade component from trees." This statement more precisely should read the Cramer Fish Sciences report<sup>4</sup> (pg. 24) states, "Along narrower streams, riparian stands—

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<sup>1</sup> Using Simulation Models to Develop Riparian Buffer Strip Prescriptions  
<https://academic.oup.com/jof/article/112/3/302/4599045>

<sup>2</sup> Ibid.

<sup>3</sup> Simulating the Effects of Forest Management on Stream Shade in Central Idaho  
<https://academic.oup.com/wjaf/article/28/1/37/4683600>

<sup>4</sup> *Using Stream Shade and Large Wood Recruitment Simulation Models to Inform Forest Practices Regulations in Idaho.* <https://www.idl.idaho.gov/wp-content/uploads/sites/2/2021/06/Cramer-Fish-Sciences-Technical-Report-2012.pdf>

even when managed—tend to cast shadows across the entire stream. Furthermore, according to the Shade.xls model, nearly the entire stream width is shaded by branch overhang. Branch overhang has greater weight in Shade.xls and tends to compensate for canopy cover loss.”

This is a critically important point for narrow streams. Often these streams are already well shaded by topography, stream banks and low understory vegetation not included in the modeling. In addition, the DEQ Shade Effectiveness Study report<sup>5</sup> states on page 15, “The modeling exercise upon which the Rule was based used a stream width of 10 feet, whereas the majority of treated reaches were much narrower and hence effective shade changes may have been less sensitive to overstorey canopy removal...”

Knowing that a larger share of timber harvested in Idaho comes from the NIGF regional forest type, Forest Practices Advisory Committee members expressed concern when the current rule was developed regarding narrow streams; most SPZ harvests occur along streams narrower than those simulated. The effectiveness monitoring effort validated concerns for both the comparatively lower shade removal and the narrower stream widths where predominant harvest activity occurs.

The logo of the Idaho Department of Lands is a large, stylized diamond shape. It features a light green diamond in the center, surrounded by a yellow border. The words "IDAHO DEPARTMENT OF LANDS" are written in white, bold, capital letters across the middle of the diamond.

IDAHO DEPARTMENT OF LANDS

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<sup>5</sup> *The Effectiveness of Idaho’s Class I Stream Shade Rule: Analysis of Before – After, Control – Impact Effective Shade Data.* <https://www.idl.idaho.gov/wp-content/uploads/sites/2/2021/06/Class-I-Shade-Effectiveness-Study-Final-Report.pdf>

## IDAPA 20 – IDAHO DEPARTMENT OF LANDS

### 20.02.01 – RULES PERTAINING TO THE IDAHO FOREST PRACTICES ACT

#### DOCKET NO. 20-0201-2101 (NEW CHAPTER)

#### 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 Section 38-1304, Idaho Code.

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

**Tuesday, September 14, 2021 – 6:00 p.m. (PT)**

**Idaho Department of Lands  
Louise Shadduck Building  
Sundance Conference Room  
3284 West Industrial Loop  
Coeur d'Alene, ID 83815**

**To attend by Zoom:**

<https://idl.zoom.us/j/84370856637?pwd=SVJRTlprN0FHalBHMnFLVmw4YW12Zz09>

**To attend by telephone call: 1 (253) 215 8782  
Meeting ID: 843 7085 6637, Passcode: 861791**

**Monday, September 20, 2021 – 6:00 p.m. (PT)**

**Lewiston Community Center  
Multi-Purpose Room  
1424 Main Street  
Lewiston, ID 83843**

**To attend by Zoom:**

<https://idl.zoom.us/j/83154776344?pwd=ZDQ4Z203M01keWI4MUhQZUIMOEImQT09>

**To attend by telephone call: 1 (253) 215 8782  
Meeting ID: 831 5477 6344, Passcode: 634320**

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

The Forest Practices Advisory Committee (FPAC) voted to recommend language to the State Board of Land Commissioners which will provide for a simplified “Shade Rule” (030.07.e.ii. (2014)) next to fish-bearing (Class I) streams and refine the definition of Class I streams (010.47.a.) to apply only to aquatic life beneficial use. This simplification will promote rule understanding and make compliance easier and less costly. The objective is to retain management options for landowners while still affording appropriate protections to stream shade and large organic debris recruitment.

FPAC also identified a need to update rules specific to the use of ground-based equipment on steep slopes. The technology used in the industry has changed; machinery is now being used on steep slopes while tethered to an anchor with a specialized winch to improve traction. This traction assistance allows the machine to operate safely on steep slopes while minimizing soil disturbance. Reduced incidence of injuries and improvements in harvest efficiency have resulted from their use. Existing rule language does not allow for universal use of this new family of machines; modified rule language is needed to accommodate changing technology.

Additional amendments are proposed to remove words and restrictions, wherever possible, to comply with the Governor's Executive Order 2020-01, Zero-Based Regulation. This includes some non-substantive editorial changes which were not in the draft rule text used for negotiated rulemaking.

Collectively, these proposed changes will reduce the rule set length, simplify the language, promote rule understanding, and provide economic benefit while maintaining or enhancing water-quality protection.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased: Not Applicable.

**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 as a result of this rulemaking: No fiscal impact is anticipated.

**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 April 7, 2021, Idaho Administrative Bulletin, Vol. 21-4, pages 44-46.

**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: Not Applicable.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact Gary Hess at (208) 666-8636 or [ghess@idl.idaho.gov](mailto:ghess@idl.idaho.gov).

**SUBMISSION OF WRITTEN COMMENTS:** 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 22, 2021.

DATED this 30th day of July, 2021.

Gary Hess  
Regulatory and Stewardship Program Manager  
Forestry and Fire Division  
Idaho Department of Lands  
3284 W Industrial Loop  
Coeur d'Alene, Idaho 83815  
Phone: (208) 666-8636  
Fax: (208) 769-1524  
[rulemaking@idl.idaho.gov](mailto:rulemaking@idl.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0201-2101**  
**(New Chapter – Zero-Based Regulation Rulemaking)**

**20.02.01 – RULES PERTAINING TO THE IDAHO FOREST PRACTICES ACT**

**000. LEGAL AUTHORITY.**

In accordance with Section 38-1304, Idaho Code, the Idaho Board of Land Commissioners has authority to adopt rules establishing minimum standards for the conduct of forest practices on forest land. ( )

**001. SCOPE.**

These rules constitute the minimum standards for the conduct of forest practices on forest land and describe administrative procedures necessary to implement those standards. ( )

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

The terms “Best Management Practices (BMP),” “Department,” “Forest Land,” “Forest Practice,” “Forest Regions,” “Harvesting,” “Landowner,” “Operator,” “Rules,” “State,” and “Timber Owner,” have meanings provided in Section 38-1303, Idaho Code. In addition to the definitions set forth in the Act, the following definitions apply to these rules: ( )

**01. Act.** The Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. ( )

**02 Acceptable Tree Species.** Any tree species normally marketable in the region, which are suitable to meet stocking requirements. Acceptable trees must be of sufficient health and vigor to assure growth and harvest. ( )

**03. Additional Hazard.** Debris, slashings, and forest fuel resulting from a forest practice. ( )

**04. Average DBH.** Average diameter in inches of trees cut or to be cut, measured at four and one-half (4.5) feet above mean ground level on standing trees. ( )

**05. Board.** The Idaho State Board of Land Commissioners or its designee. ( )

**06. Buffer Strip.** A protective area adjacent to an area requiring special attention or protection. ( )

**07. Cable Yarding.** Techniques that use winch systems, secured to stationary base machines, to transport fully or partially suspended logs or trees to landings. ( )

**08. Chemicals.** Substances applied to forest lands or timber to accomplish specific purposes and includes pesticides (as defined in Title 22, Chapter 34, Idaho Code), fertilizers, soil amendments, road dust abatement products and other materials that may present hazards to the environment. ( )

**09. Constructed Skid Trail.** A skid trail created by the deliberate cut and fill action of a dozer or skidder blade resulting in a road-type configuration. ( )

**10. Commercial Products.** Saleable forest products of sufficient value to cover cost of harvest and transportation to available markets. ( )

**11. Condition of Adjoining Area.** Those fuel conditions in adjoining areas that relate to spread of fire and to economic values of that area. ( )

**12. Contaminate.** To introduce into the atmosphere, soil, or water sufficient quantities of substances that are injurious to public health, safety, or welfare; domestic, commercial, industrial, agricultural or recreational uses; or livestock, wildlife, fish or other aquatic life. ( )

**13. Cross-Drain.** A diversion, depression, slope, or hump in a trail or road for the purpose of carrying

surface water runoff into the vegetation, duff, ditch, or other dispersion area to minimize volume and velocity of runoff which might cause soil erosion. ( )

**14. Cull.** Non-marketable, live, standing trees taller than twenty (20) feet. ( )

**15. Deterioration Rate.** Rate of natural decomposition and compaction of fuel debris which decreases the hazard and varies by site. ( )

**16. Director.** The Director of the Idaho Department of Lands or his designee. ( )

**17. Emergency Forest Practice.** A forest practice initiated during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event to minimize damage to forest lands, timber, or public resources. ( )

**18. Fertilizers.** Any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment. ( )

**19. Fire Trail.** Access routes that are located and constructed in a manner to be useful in fire control efforts or fire spread deterrence in the hazard area. ( )

**20. Fuel Quantity.** The diameter, number of stems and predominant species to be cut or already cut, and the size of the continuous thinning block, all of which determine quantity of fuel per unit of area. ( )

**21. Ground-based Equipment.** Mobile equipment such as trucks, tractors, dozers, skidders, excavators, loaders, mechanized harvesters and forwarders used for forest practices. ( )

**22. Habitat Types.** Forest land capable of producing similar plant communities at climax. ( )

**23. Hazard.** Any vegetative residue resulting from a forest practice which constitutes fuel. ( )

**24. Hazard Offset.** Improvements or a combination of practices which reduce the spread of fire and increases the ability to control fires. ( )

**25. Hazard Points.** The number of points assigned to certain hazardous conditions on an operating area, to actions designed to modify those conditions or to actions by the operator, timber owner or landowner to offset those conditions on the same operating area. ( )

**26. Hazard Reduction.** The burning or physical reduction of slash by treatment in some manner which will reduce the risk from fire. ( )

**27. Lake.** A body of perennial standing open water, natural or human-made, larger than one (1) acre in size. Lakes include the beds, banks or wetlands below the ordinary high water mark. Lakes do not include drainage or irrigation ditches, farm or stock ponds, settling or gravel ponds. Any reference in these rules to Class I streams also applies to lakes. ( )

**28. Large Organic Debris (LOD).** Live or dead trees and parts thereof that are large enough; or longer than the channel width or twenty (20) feet; or sufficiently buried in the stream bank or bed to be stable during high flows. LOD creates diverse fish habitat and stable stream channels by reducing water velocity, trapping stream gravel and allowing scour pools and side channels to form. ( )

**29. Noncommercial Forest Land.** Habitat types not capable of producing twenty (20) cubic feet of wood fiber per acre per year. ( )

**30. Operating Area.** That area where a forest practice is taking place or will take place. ( )

**31. Ordinary High Water Mark.** That mark on all water courses, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long



continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. ( )

**32. Outstanding Resource Water.** A high-quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, designated by the legislature. ORW constitutes as outstanding national or state resource that requires protection from nonpoint activities, including forest practices, which may lower water quality. ( )

**33. Prescribed Fire.** The controlled application of fire to wildland fuels, in either their natural or modified state, under conditions of weather, fuel moisture and soil moisture that allow the fire to be confined to a predetermined area while producing the intensity of heat and rate of spread required to meet planned objectives. ( )

**34. Present Condition of Area.** The amount or degree of hazard present before a thinning operation commences. ( )

**35. Public Resource.** Water, fish, wildlife, and capital improvements of the State or its political subdivisions. ( )

**36. Reforestation.** Establishment of an adequately stocked stand of trees of species acceptable to the Department to replace those removed by harvesting or a catastrophic event on commercial forest land. ( )

**37. Relative Stocking.** A measure of site occupancy calculated as a ratio of actual stand density to the biological maximum density for a given forest type. This ratio, expressed as a percentage, shows the extent to which trees use a plot of forestland. This term was used in the Class I tree retention rule (030.07.e.ii) and has been replaced with Weighted Tree Count as described in the same rule. ( )

**38. Relief Culvert.** A structure to relieve surface runoff from roadside ditches to prevent excessive volume and velocity. ( )

**39. Slash.** Any vegetative residue three inches (3") or less in diameter resulting from a forest practice or clearing of land. ( )

**40. Site.** An area with the combination of biotic, climatic, and soil conditions or ecological factors that create capacity for forest vegetation. ( )

**41. Site Factor.** A combination of average slope and predominant aspect of the operating area which relate to rate of fire spread. ( )

**42. Site-Specific Best Management Practice.** A BMP that is adapted to and takes account of the specific factors influencing water quality, water quality objectives, on-site conditions, and other factors applicable to the site where a forest practice occurs which has been approved by the Department or by the Board in consultation with the Department and the Forest Practices Advisory Committee. ( )

**43. Size of Thinning Block.** Acres of continuous fuel creating an additional hazard within an operating area. Distance between the perimeter of thinning blocks containing continuous fuel must be a minimum of six (6) chains apart to qualify as more than one (1) block. ( )

**44. Snags.** Dead, standing trees taller than twenty (20) feet. ( )

**45. Soil Erosion.** Movement of soils resulting from forest practices. ( )

**46. Soil Stabilization.** The minimizing of soil movement. ( )

**47. Stream.** A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously or intermittently flowing water. Definite beds are defined as having a sandy or rocky

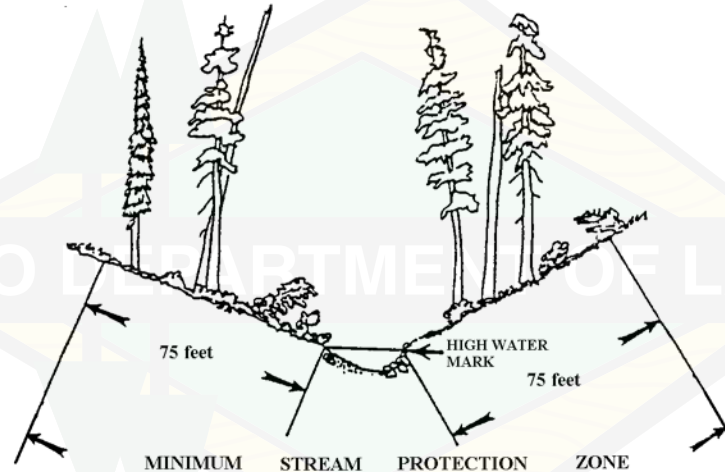
bottom which results from the scouring action of water flow. Any reference in these rules to Class I streams applies to lakes. ( )

a. Class I streams are important for the spawning, rearing or migration of fish. ( )

b. Class II streams are usually headwater streams or minor drainages that are used by only a few, if any, fish for spawning or rearing. Where fish use is unknown, consider streams as Class II where the total upstream watershed is less than two hundred forty (240) acres in the north forest region and four hundred sixty (460) acres in the south forest region. Their principal value lies in their influence on water quality or quantity downstream in Class I streams. ( )

c. Class I Stream Protection Zone (SPZ) means the area encompassed by a slope distance of seventy-five (75) feet on each side of the ordinary high water marks. (Figure 1.)

**FIGURE 1**  
**CLASS 1 STREAM PROTECTION ZONE**

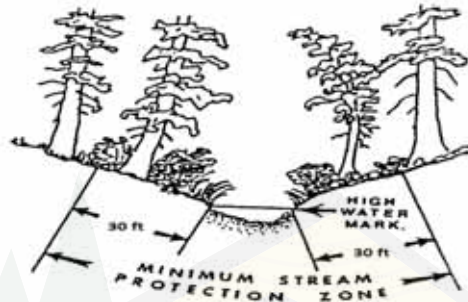


( )

d. Class II Stream Protection Zone (SPZ) means the area encompassed by a minimum slope distance of thirty (30) feet on each side of the ordinary high water marks. (Figure 2.) For Class II streams that do not contribute surface flow into Class I streams, a variance to this requirement may be requested. In no case will this width be less than five (5) feet slope distance on each side of the ordinary high water marks. Operators must provide for soil stabilization and water filtering effects by leaving undisturbed soils in widths sufficient to prevent washing of sediment. ( )

FIGURE 2  
CLASS II STREAM PROTECTION ZONE

## CLASS II STREAM PROTECTION ZONE



( )

**48. Time of Year of Forest Practice.** Parts of a year assigned hazard points when the forest practice takes place. Points are: October through December - two (2) points; August through September - four (4) points; January through April - seven (7) points; May through July - ten (10) points. ( )

**49. Traction-Assisted Harvesting.** Techniques that use winch systems to tether ground-based equipment to a stationary base for stabilizing and assisting steep-slope operation. Cable tension from the winch will be synchronized or automatically held constant. Enhanced traction for the equipment must minimize soil disturbance and risk of sediment delivery to streams. ( )

**50. Watershed Advisory Group.** A formal group of citizens that provides the Idaho Department of Environmental Quality with local public input and guidance regarding specific watersheds during watershed analysis and BMP development. ( )

### 011. ABBREVIATIONS.

**01. BMP.** Best Management Practices. ( )

**02. LOD.** Large Organic Debris. ( )

**03. SPZ.** Stream Protection Zone. ( )

### 012. -- 019. (RESERVED)

### 020. GENERAL RULES.

**01. Compliance.** Operators must comply with practices contained within a rule to accomplish the purpose of the rule. ( )

**a.** If conditions of sites or activities require application of practices which differ from those prescribed by the rules, the operator must obtain a variance according to the following procedure: ( )

**i.** The operator must submit a written request for variance to the Department. The request must

include a description of the site and particular conditions which necessitate a variance and a description of proposed practices which, if applied, will result in a violation of the rules. ( )

ii. The Department will evaluate the request and notify the operator in writing within fourteen (14) calendar days whether the variance is granted or denied. ( )

iii. All authorized variance practices must provide for results over the long term which are equivalent or better than those from rule to ensure site productivity, water quality and fish and wildlife habitat. A variance may be applied only at approved sites. ( )

b. Practices must also be in compliance with the Stream Channel Protection Act (Title 42, Chapter 38, Idaho Code); Idaho Water Quality Standards and Waste Water Treatment Requirements (Title 39, Chapter 1, Idaho Code); the Idaho Pesticide Law (Title 22, Chapter 34, Idaho Code), and the Hazardous Waste Management Act of 1983 (Title 39, Chapter 44, Idaho Code), and rules promulgated thereunder. ( )

c. Water may be diverted from a stream and used at any time to carry out Idaho forest practices and for forest road dust abatement, provided that: 1) The total daily volume diverted is no greater than two-tenths (0.2) acre-feet (65,170 gallons) from a single stream; and 2) The rate of diversion is no greater than twenty-five percent (25%) of the rate of flow then available in the stream at the point of diversion for these purposes. ( )

i. No person may, under this Section 020, divert water from an irrigation canal, irrigation reservoir, or other irrigation facility while water is lawfully diverted, stored, captured, conveyed, used or otherwise physically controlled by an irrigator, irrigation district or canal company. ( )

ii. No person may, under this Section 020, divert water from a stream within a water district, or from which an irrigation delivery entity diverts water, without first providing notice to the watermaster of the intent to divert. ( )

iii. Water diversion intakes used for diversions under Subsection 020.01 must be screened with a maximum screen mesh size as follows: 1) fish-bearing Class I streams: 3/32 inch, and 2) all other streams: 1/4 inch. ( )

d. Any alternative conservation measure having received a favorable Biological Opinion or Incidental Take Permit from the National Marine Fisheries Service or US Fish and Wildlife Service will be considered as complying with these rules. ( )

**02. Conversion of Forest Lands.** Prior to converting forest lands to another use, the person converting the lands must file a written notification with the Department. These rules will continue to apply to the conversion and converting lands, except those relating to reforestation. On converted parcels larger than one (1) acre, acceptable vegetative cover sufficient to maintain soil productivity and minimize erosion must be planted. Cover must be established within one (1) year of forest practice completion, except that the Director may grant an extension of time if weather or other conditions interfere. Within three (3) years of forest practice completion, the Director will determine if the conversion has been accomplished by: ( )

a. The presence or absence of improvements necessary for use of land for its intended purpose;( )

b. Evidence of actual use of the land for the intended purpose. ( )

c. If the conversion has not been accomplished within three (3) years of harvest completion, supplemental reforestation Subsection 050.06 applies. ( )

**03. Annual Review and Consultation.** The Director will, at least annually, meet with other state agencies and the Forest Practices Advisory Committee and review recommendations for amendments to or repeal of these rules. He will then provide the Board a summary of any meetings, together with recommendations regarding these rules. ( )

**04. Consultation.** The Director may consult with other state agencies where expertise from such

agencies would be helpful or necessary. ( )

a. These rules are approved best management practices under IDAPA 58.01.02, "Water Quality Standards." The Water Quality Standards describe a procedure for modifying the practices based on monitoring and surveillance. The Director will review petitions from Idaho Department of Environmental Quality for changes or additions to these rules and make recommendations for modification to the Board. ( )

**05. Notification of Forest Practice.** ( )

a. Before commencing a forest practice or a conversion of forest lands the operator must notify the Department as required in Paragraph 020.05.b. The notification may be provided by the timber owner or landowner. ( )

b. The notification required by Paragraph 020.05.a. must be on forms provided by the Department, will identify each forest practice to be conducted, and include the name and address of the operator, timber owner, and landowner; the legal description of the operating area; whether the forest practice(s) borders an outstanding resource water and other information the Department considers necessary for administration of the rules. No forest practice may begin until the applicable notification is formally accepted by the Department. No later than fourteen (14) calendar days after formal acceptance of the notice, the Department will send a copy of the notice to the operator, timber owner, and landowner. ( )

c. The operator, timber owner, or landowner that filed the original notification, must notify the Department of any subsequent change in information contained in the notice within thirty (30) calendar days of the change. No more than fourteen (14) calendar days from receipt of the notice, the Department will send a copy of the notice to the operator, timber owner, and landowner. ( )

d. The notification is valid for the same period as the certificate of compliance under Section 38-122, Idaho Code. If the forest practice is continuing when the notification expires, the notification must be renewed using the same procedures provided for in this subsection. ( )

e. If the notification required by Paragraph 020.05.a. of this subsection indicates that the forest practice will be continuing at the notification's expiration, the operator, timber owner, or landowner must notify the Department and obtain a renewal of the notification at least thirty (30) calendar days prior. No more than fourteen (14) calendar days from receipt of the request, the Department will send a copy of the renewed notification to the operator, timber owner, and landowner. ( )

**06. Notification Exception.** A notification is required for all forest practices except: ( )

a. Routine road maintenance, recreational uses, grazing by domestic livestock, cone picking, culture and harvest of Christmas trees on lands used solely for the production of Christmas trees, or harvesting of other minor forest products. ( )

b. Non-commercial cutting and removal of forest tree species by a person for their own personal use. ( )

c. Clearing forest land for conversion to surface mining or dredge and placer mining operations under a reclamation plan or dredge mining permit. ( )

**07. Emergency Forest Practices.** No prior notification is required for emergency forest practices. Within forty-eight (48) hours after commencement of such practice, the operator, timber owner, or landowner must notify the Director and explain why emergency action was necessary. Such emergency forest practices are subject to the rules herein, except that the operator, timber owner, or landowner may take any reasonable action to minimize damage to forest lands, timber, or public resource from the direct or indirect effects of the catastrophic event. ( )

**08. Duty of Purchaser.** Before purchasing, contracting to purchase or accepting delivery of a forest tree species harvested from forest lands in Idaho, the initial purchaser must receive and keep on file a copy of the notification of forest practice for the harvesting practice applicable to the acquired forest tree species. The notice

must be available for inspection upon request by the Department at all reasonable times. ( )

**09. State Divided into Regions.** For the purpose of administering the Act and these rules, the State is divided into two (2) forest regions: one (1) north of the Salmon River and one (1) south of the Salmon River. ( )

**10. Regions Divided into Forest Habitat Types.** For administration purposes, the forest regions can be divided into Habitat Types. ( )

**021. -- 029. (RESERVED)**

**030. TIMBER HARVESTING.**

**01. Purpose.** Harvesting of forest tree species is a part of forest management. This is how wood for human use is obtained and how forests are established and tended. During harvesting operations there will be a temporary disturbance to the forest environment. These rules establish minimum standards for forest practices that will maintain the productivity of the forest land, minimize soil and debris entering streams, and protect wildlife and fish habitat. ( )

**02. Quality of Residual Stocking.** Reforestation is required if harvesting reduces stocking of acceptable trees below minimums of Subsection 050.04. ( )

**03. Soil Protection.** For each harvesting operation, operators should select the logging method and type of equipment adapted to the given slope, landscape and soil properties in order to minimize soil erosion. ( )

**a.** An operation that uses ground-based equipment must not be conducted if it will cause rutting, deep soil disturbance, or accelerated erosion. On slopes exceeding forty-five percent (45%) gradient and which are immediately adjacent to a Class I or II stream, ground-based equipment, except for traction-assisted harvesting equipment, must not be used without an approved variance. Where slopes in the area to be logged exceed forty-five percent (45%) gradient, the operator, landowner or timber owner must notify the Department of these steep slopes upon filing the notification as provided for in Subsection 020.05. ( )

**b.** The grade of constructed skid trails on geologically unstable, saturated, or highly erodible or easily compacted soils is limited to a maximum of thirty percent (30%). ( )

**c.** In accordance with appropriate silvicultural prescriptions, keep skid trails to the minimum feasible width and number. Limit tractors used for skidding to that size appropriate for the job. ( )

**d.** Uphill cable yarding is preferred. When downhill yarding, take reasonable care to lift the leading end of the log to minimize downhill movement of slash and soils. ( )

**04. Location of Landings, Skid Trails, and Fire Trails.** Locate landings, skid trails, and fire trails on stable areas to prevent the risk of material entering streams. ( )

**a.** Locate all new or reconstructed landings, skid trails, and fire trails on stable areas outside all SPZs. Locate fire and skid trails where sidecasting is held to a minimum. ( )

**b.** Landing size is limited to that necessary for safe economical operation. ( )

**c.** To prevent landslides, fill material used in landing construction must be free of loose stumps and excessive accumulations of slash. On slopes where sidecasting is necessary, stabilize landings by seeding, compacting, riprapping, benching, mulching or other suitable means. ( )

**05. Drainage Systems.** Provide and maintain a drainage system for each landing, skid trail or fire trail that will control the dispersal of surface water to minimize erosion. ( )

**a.** Stabilize skid trails and fire trails whenever they are subject to erosion, by water-barring, cross-draining, out-sloping, scarifying, seeding or other suitable means. Keep this work current to prevent erosion prior to



seasonal runoff. ( )

b. Reshape landings as needed to facilitate drainage prior to seasonal runoff. Stabilize all landings by establishing ground cover or other means within one (1) year after harvesting is completed. ( )

**06. Treatment of Waste Materials.** Leave or place all debris, overburden, and other waste material associated with harvesting in a way that prevents their entry into streams. ( )

a. Fell, buck, and limb trees, whenever possible, so that the tree or any tree parts fall away from Class I streams. Continuously remove slash that enters Class I streams because of harvesting operations. Continuously remove other debris that enters Class I streams because of harvesting operations whenever there is a potential for stream blockage or if the stream has the ability for transporting such debris. Place removed material five (5) feet slope distance above the ordinary high water mark. ( )

b. Remove slash and other debris that enters Class II streams whenever there is a potential for stream blockage or if the stream has the ability for transporting the debris immediately following skidding and place removed material above the ordinary high water mark or otherwise treat as prescribed by the Department. No formal variance is required. ( )

c. Deposit waste material from construction or maintenance of landings and skid and fire trails in geologically stable locations outside of the appropriate SPZ. ( )

**07. Stream Protection.** During and after forest practice operations, protect stream beds and streamside vegetation to provide the most natural condition possible to maintain water quality and aquatic habitat. ( )

a. Lakes require an approved site-specific riparian management prescription prior to conducting forest practices within the SPZ. ( )

b. Prior to conducting forest practice operations that cross streams using ground-based equipment, install temporary or permanent structures adequate to carry stream flow; skidding or forwarding directly in or through streams or fords is not permitted. Minimize the number of stream crossings and make direct approaches to minimize ground disturbance in the SPZ. Remove all temporary crossings immediately after use and, where applicable, cross-drain the approaches. (Construction of hydraulic structures in stream channels is regulated by the Stream Channel Protection Act - Title 42, Chapter 38, Idaho Code, and Paragraphs 040.02.e. and 040.02.g.). ( )

c. Operation of ground-based equipment is not allowed within the SPZ except at approaches to stream crossings. ( )

d. When cable yarding is necessary, across or inside the SPZs, it must be done in a way that minimizes stream bank vegetation and channel disturbance. ( )

e. Provide for LOD, shading, soil stabilization, wildlife cover and water filtering effects of vegetation along streams. ( )

i. Leave shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream. Landowners are strongly encouraged to leave all trees immediately adjacent to streams. ( )

ii. During commercial harvest within Class I SPZs, retain the following weighted tree count per one-hundred (100) linear feet of stream: ( )

(1) Fifty-seven (57) north of the Clearwater/Lochsa Rivers; ( )

(2) Forty-nine (49) between the Clearwater/Lochsa and Salmon Rivers; ( )

(3) Forty-one (41) south of the Salmon River; and ( )

- (4) Thirty-seven (37) in drier forests with SPZs dominated by Douglas-fir and ponderosa pine. ( )
- (5) At least four (4) of the above weighted tree count must be retained in the outer twenty-five feet (25') of the SPZ. ( )
- iii. Calculate weighted tree count by multiplying the number of live conifers and hardwoods present in each diameter range by the weight below and then sum the results.

Diameter Range (inches)	4-11.9"	12-19.9"	20-27.9"	28-35.9"	≥36"
Weight	1	3	5	8	11

- iv. Prior to and during harvest, cutting in any part of a given one hundred foot (100') Class I SPZ segment is only allowed if the weighted tree count in the inner fifty feet (50') of that segment is above: thirty-three (33) north of the Clearwater/Lochsa Rivers, twenty-eight (28) between the Clearwater/Lochsa and Salmon Rivers, twenty-three (23) South of the Salmon River, and twenty-one (21) in drier forests with SPZs dominated by Douglas-fir and ponderosa pine. Note that the combination of minimum values for the inner fifty feet (50') and outer twenty-five feet (25') do not meet the minimum for the SPZ segment; additional trees must be left in one or both areas to meet the rule. ( )
- v. To protect filtering and shade effects of streamside vegetation adjacent to all Class II streams following harvesting and hazard management activities, retain live trees or establish new trees within thirty (30) feet on each side of the streams' ordinary high water mark to comply with the minimum stocking standards expressed in Subsection 050.04. ( )
- vi. During harvesting, carefully remove timber from the SPZ in such a way that LOD, shading and filtering effects are maintained and protected. When portions of harvested or naturally fallen trees land in or over a Class I stream, leave the portion consistent with the LOD definition of Subsection 010.28. When salvaging uprooted trees, leaving the section with the root ball attached is preferred. ( )
- vii. During harvesting operations, portions of felled or bucked trees not meeting the LOD definition must be removed, consistent with the slash removal requirements of Subsection 030.06. ( )
- viii. To obtain a variance from the tree retention requirements, the operator must develop a site-specific riparian management prescription and submit it to the Department for approval. The prescription should consider stream characteristics and the need for LOD, stream shade and wildlife cover which will achieve the objective of these rules. ( )
- ix. Stream width will be measured as average between ordinary high water marks. ( )
- f. Limit direct ignition of prescribed burns to hand piles within SPZs; all other direct ignitions must occur outside of SPZs, so a backing (cooler) fire will more likely occur within the SPZ. ( )
- i. Hand piles must be at least five (5) feet from the ordinary high water mark of streams. ( )
- ii. No mechanical piling of slash or natural forest fuels is allowed in an SPZ (an exception is filter windrows for erosion control which must not be ignited). ( )
- 08. Maintenance of Productivity and Related Values.** Design harvesting practices to assure the continuous growing and harvesting of forest tree species by suitable economic means and to protect soil, air, water, and wildlife resources. ( )
- a. Where major scenic attractions, highways, recreation areas or other high-use areas are located

within or traverse forest land, give special consideration to scenic values by prompt cleanup and regeneration. ( )

**b.** Give special consideration to preserving any critical aquatic or wildlife habitat, including snags, especially within SPZs. Wherever practical, preserve fruit, nut, and berry producing trees and shrubs. ( )

**c.** Avoid conducting operations along or through bogs, swamps, wet meadows, springs, seeps, wet draws or other locations where the presence of water is indicated by associated vegetation; temporary crossings can be used as referred to in Paragraph 030.07.b. Protect soil and vegetation from disturbance which would cause adverse effects on water quality, quantity and wildlife and aquatic habitat. ( )

**d.** Harvesting operations within a single ownership, in which essentially all trees have been removed in one operation, must be planned so that adequate wildlife escape cover (e.g., topography, vegetation, SPZs, etc.) is available within one-quarter (¼) mile. ( )

### **031. CUMULATIVE WATERSHED EFFECTS.**

**01. Purpose.** In accordance with Section 38-1305(8), Idaho Code, the Department has developed methods for controlling cumulative watershed effects (CWE). The methods and procedures are described in the department manual entitled "Forest Practices Cumulative Watershed Effects Process for Idaho." Proper application of this process will help ensure watersheds are managed to protect water quality so that beneficial uses are supported. This rule describes how the process is to be implemented on forest land. ( )

#### **02. Process Application.** ( )

**a.** Application of the CWE process and any resulting site-specific BMPs are encouraged but not mandatory. ( )

**b.** The process may be initiated by either the Department, a watershed advisory group, or an individual landowner or group of landowners that collectively own at least twenty-five percent (25%) of the forested land in a watershed. In any case, a reasonable effort will be made to notify forest landowners within the watershed, and the landowners will be given the opportunity to participate in the process. ( )

**c.** The Department must be notified prior to the initiation of the CWE process. ( )

**d.** The Department will review and approve the watershed assessment and CWE site-specific BMPs for compliance with the Act. ( )

**03. Site-Specific BMP Implementation.** Site-specific BMPs developed by a watershed advisory group are encouraged and applied on a voluntary basis. ( )

### **032. -- 039. (RESERVED)**

### **040. ROAD CONSTRUCTION, RECONSTRUCTION AND MAINTENANCE.**

**01. Purpose.** Provide standards and guidelines for road construction, reconstruction, and maintenance that will maintain forest productivity, water quality, and fish and wildlife habitat. ( )

**02. Road Specifications and Plans.** Road specifications and plans must be consistent with good safety practices. Landowners and Operators should plan each road to the minimum use standards adapted to the terrain and soil materials to minimize disturbances and damage to forest productivity, water quality, fish, and wildlife habitat. In addition, landowners and operators must: ( )

**a.** Plan transportation networks to avoid road construction within SPZs, except at approaches to stream crossings. Leave or reestablish areas of vegetation between roads and streams. ( )

**b.** Plan roads no wider than necessary to safely accommodate the anticipated use. Minimize cut and fill volumes by aligning the road to fit the natural terrain features as closely as possible. Adequately compact fill

material. Dispose of excess material on geologically stable sites. ( )

c. Plan roads to drain naturally by out-sloping or in-sloping with cross-drainage and by grade changes where possible. Install dips, water bars, cross-drainage, or subsurface drainage on roads when necessary. ( )

d. When natural drainage will not protect the surface, cut slopes or fill slopes, plan roads with relief culverts and roadside ditches. Install culverts to prevent erosion of the fill by properly sizing, bedding and compacting. Ensure drainage structures avoid direct discharge of sediment into streams. ( )

e. This rule applies to new culvert installations, or reinstallations during road reconstructions or because of catastrophic events. Temporary culvert crossings are exempt from the fifty (50) year peak flow design requirement but must be removed before seasonal run-off. ( )

i. Culverts in fish-bearing streams must provide for fish passage. ( )

ii. Design stream crossings to carry the fifty (50) year peak flow using Department accepted engineering methods or the culvert sizing table below. Armor the inlet or use a flared inlet structure on thirty (30) inch or greater diameter culverts. The minimum diameter culvert allowed is eighteen (18) inches.

**CULVERT SIZING TABLE**

The left side of this culvert sizing table will be used for the area of the state north of the Salmon River and within the South Fork Salmon River drainage; the right side will be used for the area of the state south of the Salmon River and outside the South Fork Salmon River drainage. It was developed to carry the fifty (50) year peak flow at a headwater-to-diameter ratio of one (1).

North Forest Region and South Fork Salmon River Drainage			South Forest Region
Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)	Watershed Area (acres)
Ditch relief, seeps, springs, wet areas, draws	12	NA	Ditch relief, seeps, springs, wet areas, draws
less than 32	18	6	Less than 72
33 - 74	24	12	73-150
75 - 141	30	20	151-270
142 - 240	36	32	271-460
241 - 366	42	46	461-720
367 - 546	48	65	471-1025
547 - 787	54	89	1026-1450
788 - 1027	60	112	1451-1870
1028 - 1354	66	142	1871-2415
1355 - 1736	72	176	2416-3355
1737 - 2731	84	260	3356-5335
2732 - 4111	96	370	5336-7410
4112 - 5830	108	500	7411-9565
5831 - 8256	120	675	9566-11780

Culverts larger than one hundred twenty (120) inches must be designed; consider alternative structures. ( )

iii. Relief culverts, and those used for seeps, springs, wet areas, and draws must not be less than twelve (12) inches in diameter for permanent installations. ( )

f. On existing roads that are not reconstructed or damaged by catastrophic events, landowners or operators are encouraged, but not required, to replace or provide mitigation for culverts that do not provide for fish passage in accordance with Subparagraph 040.02.e.i. or cannot carry the fifty (50) year peak flow of Subparagraph 040.02.e.ii. ( )

g. Plan and install stream crossings in compliance with the Stream Channel Protection Act (Title 42, Chapter 38, Idaho Code), Paragraph 030.07.b. and the culvert sizing requirements of Paragraph 040.02.e. Fords are acceptable stream crossing structures on small, shallow streams, with gradients less than four percent (4%). For fords: cross-drain and rock the road surface on each side of the stream for at least seventy-five (75) feet for Class I and at least thirty (30) feet for Class II streams; minimize sediment delivery to streams by limiting use to low water, dry, or frozen conditions; minimize hauling or equipment crossing trips during times of salmonid spawning and egg incubation. ( )

h. Avoid reconstruction of existing roads located in SPZs, except for approaches to stream crossings, unless it will result in the least long-term impact on site productivity, water quality, and fish and wildlife habitat. Reconstruction of existing roads in SPZs requires a variance. Reusing existing roads in SPZs for skidding or landing logs requires a variance. Reusing existing roads in SPZs only for hauling fully suspended logs does not require a variance. ( )

**03. Road Construction.** Landowners and operators must use the following practices to construct or reconstruct roads in a way that prevents debris, overburden, and other material from entering streams. ( )

a. Construct roads in compliance with the planning guidelines of Subsection 040.02. ( )

b. Clear all debris generated during construction or maintenance which potentially interferes with drainage or water quality. Deposit excess material and slash on geologically stable sites outside the SPZs. ( )

c. Where sediments would enter streams, stabilize exposed material (road surface, cut slopes, fill slopes, borrow pits, waste piles, etc.) prior to seasonal runoff. Install supplemental stabilization measures such as seed and mulch, slash mats, or rock. Rock the road surface through the entire SPZ over Class I stream crossings. ( )

d. Compact road fills. Minimize snow, ice, or frozen soil buried in embankments. Significant woody material is not allowed in fills, but slash may be used as a filter windrow along the fill toe in compliance with the Idaho Forestry Act and Fire Hazard Reduction Programs, Title 38, Chapters 1 and 4, Idaho Code. ( )

e. During and following operations on out-sloped roads, retain out-slope drainage and remove berms on the outside edge, except those intentionally constructed for road grade fill protection. ( )

f. Provide for drainage of quarries to prevent sediment from entering streams. ( )

g. Construct cross-drains and relief culverts to minimize erosion. Use riprap, vegetative matter, downspouts, and similar devices to minimize erosion of the fill. Install drainage structures or cross-drain incomplete roads prior to seasonal runoff. If effective forest floor filtration is not available within SPZs, install supplemental filtration at drainage structure outlets or additional drainage structures outside SPZs to prevent road surface erosion from entering streams. ( )

h. Postpone earthwork or material hauling during wet periods if erodible material would enter streams. ( )

i. Remove or stabilize cut-slope material subject to sloughing concurrent with construction. ( )

j. Construct full-bench roads, without fill slope disposal on slopes greater than sixty percent (60%) in unstable or erodible soils. ( )

**04. Road Maintenance.** Landowners and operators must use the following practices for regular preventive maintenance operations to minimize disturbance and damage to forest productivity, water quality, and fish and wildlife habitat. ( )

**a.** Place all debris or slide material associated with road maintenance in a manner to prevent their entry into streams. ( )

**b.** Repair slumps, slides, and other erosion sources causing stream sedimentation to minimize sediment delivery. ( )

**c.** Active forest roads are used for hauling forest products, rock and other road building materials. Conduct the following maintenance on active roads. ( )

**i.** Keep culverts and ditches functional. ( )

**ii.** Crown, out-slope, in-slope, or cross-drain road surfaces during and upon completion of seasonal operations. Remove berms from the outside edge except those intentionally constructed for protection of fills. ( )

**iii.** Maintain the road surface and postpone hauling during wet periods as necessary to minimize erosion of the subgrade and provide proper drainage. ( )

**iv.** Apply road-surface stabilizing materials in a way that prevents their entry into streams. ( )

**v.** During active maintenance, ensure road surfaces within SPZs are sufficiently stabilized. Install supplemental filtration at drainage structure outlets within SPZs if effective forest floor filtration is not available. ( )

**d.** Incidental haul roads are roads with a primary purpose other than forest practices that are used for hauling logs during active harvest. Active road maintenance requirements apply. Once active road maintenance is completed, no other maintenance is required under the Act. ( )

**e.** Inactive forest roads are no longer used for commercial hauling, but maintained for access. Conduct the following maintenance on inactive roads. ( )

**i.** When active use is over, clear ditches and culverts, crown, out-slope, in-slope, cross-drain or otherwise treat the road surface to minimize erosion. Maintain drainage structures as needed. ( )

**ii.** The roads may be permanently or seasonally blocked to vehicle traffic. ( )

**f.** Long-term inactive roads are forest roads that will not be used soon, but may be used again; no subsequent maintenance is required following completion of the practices below: ( )

**i.** Out-slope, cross-drain, seed or treat the surface to control erosion. ( )

**ii.** Block the road to vehicle traffic. ( )

**iii.** The Department may require the removal of bridges, culverts, ditches and unstable fills. The landowner must maintain any bridges or culverts left in place. ( )

**g.** Permanently abandoned roads are forest roads not intended to be used again. Remove all drainage structures and treat road surfaces to minimize erosion. ( )

**i.** Restore stream gradients to their natural slope. ( )

**ii.** Treat the road surface to break up compacted areas. ( )



- iii. Pull back fill slopes of roads within SPZs to a stable configuration unless long-term stability is evident. ( )
- iv. Pull back unstable side-hill fills to a stable configuration. ( )
- v. Control ditch-line erosion by cross-draining, out-sloping, or regrading to eliminate ditches. ( )
- vi. Stabilize soil exposed from regrading, ripping, and drainage removal by seeding, mulching, armoring, or other treatment. ( )

**05. Winter Operations.** To minimize erosion and prevent damage to roads and constructed skid trails from winter logging, operators must implement the practices below: ( )

**a.** Install adequate road drainage prior to winter operations using rolling dips, drivable cross-drains, open-top culverts, out slopes, or other methods. ( )

**b.** Maintain roads to keep the surface drained during thaws or break up. This may require active maintenance of existing drainage, drain holes in snow berms, and installation of additional cross-drains or treatment of the road surface. ( )

**041. -- 049. (RESERVED)**

**050. RESIDUAL STOCKING AND REFORESTATION.**

**01. Purpose.** To provide requirements for residual stocking and reforestation that will maintain a continuous growing and harvesting of forest tree species, and for sites not requiring reforestation, to maintain soil productivity and minimize erosion. The rules specify the minimum number of acceptable trees per acre and the maximum period of time allowed after harvesting for establishment of forest tree species. ( )

**02. Quality of Residual Stocking.** On any operation, trees left for future harvest must be of acceptable species and adequately protected from harvest damage to enhance their survival and growth. Locate roads and landings and conduct felling, bucking, skidding, yarding, and decking operations to minimize damage to residual trees. Acceptable residual trees should have a minimum live crown ratio of thirty percent (30%), minimum basal scarring, and should not have dead or broken tops. When stands have a high percentage of unacceptable trees, consider stand replacement rather than intermediate cuttings. ( )

**03. Sites Impractical to Reforest.** Sites impractical to reforest, generally ponderosa pine and drier Douglas-fir habitat types, must not be harvested below minimum stocking, unless the site is converted to some other use or, in instances of wildfire, insects, disease or other natural causes, where salvage of damaged timber is planned. ( )

**a.** When harvesting timber on these sites, one (1) of the following actions must be taken to ensure minimum stocking: ( )

i. Establish a new stand by leaving seed trees on the site and inter-planting at least once within five (5) years of harvest completion. ( )

ii. Establish a new stand of timber by planting the site with an acceptable tree species, and inter-planting at least once within five (5) years of the original planting. ( )

**b.** If the efforts listed above in a.i. and a.ii. do not provide the minimum stocking level, the landowner will be encouraged but not required to perform additional reforestation efforts. ( )

**04. Stocking.** ( )

**a.** Stocking is satisfactory immediately following harvest if the following number of acceptable trees per acre, within each specified region, for at least one (1) diameter range are reasonably well distributed over the area

affected by harvesting. (NOTE: (1) DBH = Diameter (outside of the bark) of a tree four and one half (4.5) feet above mean ground level):

**MINIMUM STOCKING - ACCEPTABLE TREES**

Idaho Region	Diameter Range DBH (inches)	Average Number of Retained Trees Per Acre	Average Spacing (feet)
North	0" – 2.9"	170	16 x 16
South	0" – 2.9"	125	18 x 18
North	3.0" – 10.9"	110	19 x 19
South	3.0" – 10.9"	75	24 x 24
North	11.0" and greater	20	46 x 46
South	11.0" and greater	15	53 x 53

( )

**b.** If the stand consists of retained trees of mixed diameter ranges reasonably well distributed over the harvested area and none of the diameter ranges individually equal or exceed the minimum trees per acre shown above, stocking is satisfactory if the weighted total of all of the diameter ranges of the retained trees exceeds a value of one hundred seventy (170) for a stand in the North Region and one hundred twenty-five (125) in the South Region. Calculate the weighted total by multiplying the number of retained trees per acre in each diameter range by the weight below and then sum the results.

Diameter Range	Weight
0" – 2.9"	1
3.0" – 10.9"	1.6
11.0" and greater	8.4

( )

**c.** Harvested stands which are not adequately stocked, as defined above, are subject to supplemental reforestation requirements specified in Subsection 050.06. ( )

**05. Reforestation Exemptions.** ( )

**a.** Reforestation is not required for: ( )

i. Noncommercial forest land; ( )

ii. Land converted to another use. This may include land converted to roads used in a forest practice; ( )

iii. A forest practice which will result in ten (10) acres or less below minimum stocking levels. ( )

**b.** On lands where reforestation is not being planned in accordance with Subsection 050.03, establish some form of grass or planted cover within one (1) year in order to maintain soil productivity and minimize erosion. ( )

**06. Supplemental Reforestation.** Seeding and/or planting may be required if after three (3) growing seasons from the date of harvest, stocking levels do not meet the standards in Subsection 050.04. Complete required seeding and/or planting before the end of the fifth growing season following the time of harvest; the Director must grant an extension of time if suitable seeds or seedlings are not available or if weather or other conditions interfere. ( )

a. Reforestation practices must ensure seedlings become established. This can be accomplished by adequate site preparation, using acceptable seed or seedlings, following accepted planting or sowing practices, or other suitable means. ( )

b. The party responsible for reforestation is the landowner during the harvest which reduced stand stocking below the minimum levels stated in Subsection 050.04. ( )

**051. -- 059. (RESERVED)**

**060. USE OF CHEMICALS AND PETROLEUM PRODUCTS.**

**01. Purpose.** Chemicals perform an important function in growing and harvesting forest tree species. These rules regulate chemical handling, storage and application for forest practices so that the public health and aquatic and terrestrial habitats will not be endangered by contamination of streams or other bodies of water. ( )

**02. Other Applicable Laws.** Anyone mixing, loading, applying or otherwise using chemicals must comply with the applicable portions of state and federal law, including but not limited to the Pesticide and Chemigation Law, Title 22, Chapter 34, Idaho Code and IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." ( )

**03. Petroleum Products.** Stationary or mobile petroleum storage containers with capacities greater than two hundred (200) gallons must not be located closer than one hundred (100) feet from any waterway or area of open water. Dikes, berms or embankments must be constructed to contain at least one hundred ten percent (110%) of the volume of petroleum products stored within the tanks. Diked areas must be sufficiently impervious and of adequate capacity to contain spilled petroleum products. In the event any leakage or spillage enters any waterway or area of open water, the operator must immediately notify the Department. ( )

a. During fueling operations or petroleum product transfer to other containers, there must be a person attending the operation at all times. Fueling operations must not take place where the fuel will enter streams, lakes or other areas of open water, if spillage occurs. ( )

b. Equipment and containers used to transport, store or transfer petroleum products must be maintained in a leakproof condition. If the Department finds evidence of petroleum product leakage or spillage, the equipment or containers may not be used until the deficiency has been corrected. ( )

c. Waste resulting from logging operations, such as crankcase oil, filters, grease, oil containers, or other nonbiodegradable waste must be removed from the operating area and disposed of properly. ( )

**04. Equipment Maintenance.** Equipment used to transport, store, or apply chemicals must be maintained in leakproof condition. If the Department finds evidence of chemical leakage, the Department may suspend further use of that equipment until the deficiency has been corrected. ( )

**05. Mixing and Cleaning. ( )**

a. A person using water to mix chemicals must provide an air gap or reservoir between the water source and the mixing tank and use uncontaminated tanks, pumps, hoses and screens to handle and transfer mix water. ( )

b. Chemicals may be mixed and tanks and equipment cleaned only where spills will not enter any water source. ( )

i. Landing areas must be located where spilled chemicals will not enter any water source. ( )

ii. Rinsate and wash water should be recovered and used for make-up water, be applied to the target area, or disposed of according to state and federal laws. ( )

- 06. Aerial Application:** ( )
- a.** With the exception of pesticides approved for aquatic use and applied according to labeled directions, when applying pesticide leave at least one (1) swath width (minimum one hundred (100) feet) untreated on each side of all Class I streams, flowing Class II streams and other areas of open water. When applying pelletized fertilizer, leave a minimum of fifty (50) feet untreated on each side of all Class I streams, flowing Class II streams, and other areas of open water. ( )
- b.** Use a bucket or spray device capable of immediate shutoff. ( )
- c.** Shut off chemical application during turns and over open water. ( )
- 07. Ground Application with Power Equipment.** ( )
- a.** With exception of pesticides approved for aquatic use and applied according to labeled directions, when applying pesticide, leave at least twenty-five (25) feet untreated on each side of all Class I streams, flowing Class II streams and areas of open water. ( )
- b.** When applying fertilizer, leave at least ten (10) feet untreated on each side of all streams and areas of open water. ( )
- 08. Hand Application.** ( )
- a.** Apply only to specific targets, such as a stump, burrow, bait, or trap. ( )
- b.** Keep chemicals out of all water sources or streams. ( )
- 09. Limitations on Applications.** ( )
- a.** Chemicals must be applied in accordance with all limitations and instructions printed on the product registration labels, supplemental labels, and others established by regulation of the Director. ( )
- b.** Do not exceed allowable rates. ( )
- c.** Prevent direct entry of chemicals into any water source or stream. ( )
- 10. Daily Records of Chemical Applications.** ( )
- a.** When pesticides are applied on forest land, the operator must maintain a daily record of spray operations which includes: ( )
- i.** Date and time of day of application. ( )
- ii.** Name and address of owner of property treated. ( )
- iii.** Purpose of the application. ( )
- iv.** Contractor's name and applicator's or pilot's name. ( )
- v.** Location of project (section, township, range and county). ( )
- vi.** Air temperature (hourly). ( )
- vii.** Wind velocity and direction (hourly). ( )
- viii.** Pesticides used including trade or brand name, EPA product registration number, mixture, application rate, carrier used and total amounts applied. ( )

b. Whenever fertilizers or soil amendments are applied, the operator must maintain a daily record of such application which includes Subsection 060.10 and the name of the fertilizer or soil amendment and application rate. ( )

c. The records required in Subsection 060.10 must be maintained in compliance with the record-keeping requirements of IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." ( )

d. All records required in Subsection 060.10 must be retained for three (3) years. ( )

**11. Container Disposal.** Chemical containers must be: cleaned and removed from the forest and disposed of in a manner approved by the Director in accordance with applicable local, state and federal regulations; or removed for reuse in a manner consistent with label directions and applicable regulations of a state or local health department. Open burning of containers is prohibited. ( )

**12. Spills.** In the event of a spill: ( )

a. All chemical accidents and spills must be reported immediately to the Director. ( )

b. Appropriate procedures must be taken immediately to control the spill source and contain the released material. ( )

c. The applicator must collect, remove, and dispose of spilled material in accordance with applicable local, state and federal law and in a manner approved by the Director. ( )

**13. Misapplications.** Whenever chemicals are applied to the wrong site or pesticides are applied in a manner inconsistent with the product label, the applicator must report those misapplications immediately to the Director. ( )

**061. -- 069. (RESERVED)**

**070. SLASHING MANAGEMENT.**

**01. Purpose.** To provide for slashing and fire hazard management resulting from harvesting, forest management, forest tree species improvement, or defoliation caused by chemical applications necessary to protect reproduction and residual stands, reduce risk from fire, insects and disease or optimize the conditions for future forest tree species regeneration and to maintain air and water quality, fish and wildlife-habitat. ( )

**02. Commercial Slash.** Fuels and debris resulting from a forest practice involving removal of a commercial product must be managed as set forth in the Idaho Forestry Act, Title 38, Chapters 1 and 4, Idaho Code and the rules and regulations pertaining to forest fire protection. ( )

**03. Non-Commercial Slash.** Fuels and debris resulting from a forest practice where no commercial product is removed must be managed in a manner as hereinafter designated under authority of the Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. ( )

a. Within ten (10) days or a time mutually agreed upon following receipt by the Department of the "Notification of Forest Practice" as provided in Subsection 020.05, the Department will make a determination of the potential fire hazard and hazard reduction and/or hazard offsets, if any, needed to reduce, abate or offset the fire hazard. This determination will be based on a point system found in Paragraph 070.03.e. ( )

b. The operator, timber owner and landowner will be notified in writing of the determination and of the hazard reductions and/or hazard offsets, if any, that must be accomplished by the operator, timber owner or landowner. The notification will specify a reasonable time period not to exceed twelve (12) months from the date the forest practice commenced the hazard reduction completion and will specify the number of succeeding years that on site improvements or extra protection must be provided. ( )

c. A release of all obligations under Subsection 070.03 will be granted in writing when the hazard reduction and/or hazard offsets have been accomplished. When hazard offsets are to be accomplished during succeeding years, the release will be conditioned upon the completion of the required hazard offsets. Notification of release will be mailed to the operator, timber owner and landowner within seven (7) days of inspection by the Department. Inspections by the Department will be made within ten (10) days of notification by the operator, timber owner or landowner unless otherwise mutually agreed upon. ( )

d. If the Department determines upon inspection that the hazard reduction or hazard offsets have not been accomplished within the specified time limit, the Department may grant extensions of time, each not to exceed three months, if the Director determines that a diligent effort has been made and that conditions beyond the control of the party performing the hazard reduction or hazard offsets prevented completion. If an extension is not granted the Department will proceed as required in Section 38-1307, Idaho Code (Idaho Forest Practices Act). ( )

e. For the purpose of determining the potential fire hazard and the appropriate hazard reduction and/or hazard offsets, the Department will use a point system with the following rating guides. A value of eighty (80) points or less for any individual forest practice under Subsection 070.03, as determined by the Department, will be sufficient to release the operator, timber owner and landowner of all further obligations under Subsection 070.03. Total points of the proposed forest practice will be determined from Tables I and II. If the total points are greater than eighty (80), modification of the thinning practice to reduce points may be made as determined by Tables I and II, slash hazard offsets may be scheduled to reduce points as determined by Table III or a combination of these options may be used to reduce the hazards to a point total of eighty (80) or less. Consideration will be given to the operator's, timber owner's and landowner's preference in selecting the options to reduce the points to eighty (80) or less.

<b>TABLE I – HAZARD POINTS</b>											
<b>Hazard Points for Ponderosa Pine, Western Red Cedar or Western Hemlock</b>											
<b>Thinned Stems Per Acre</b>											
<b>Ave. DBH</b>	<b>250</b>	<b>500</b>	<b>750</b>	<b>1000</b>	<b>1250</b>	<b>1500</b>	<b>1750</b>	<b>2000</b>	<b>2500</b>	<b>3000</b>	<b>4000</b>
1	1	2	3	3	4	5	6	7	9	10	16
2	3	6	9	13	16	22	25	30	36	42	51
3	7	16	25	32	38	46	51	52	56	59	
4	9	22	32	40	50	52	54	56	60		
5	13	28	40	51	54	56	59	60			
6	19	36	51	54	58	60	60				
<b>Hazard Points for Douglas Fir, Grand Fir or Engelmann Spruce</b>											
<b>Thinned Stems Per Acre</b>											
<b>Ave. DBH</b>	<b>250</b>	<b>500</b>	<b>750</b>	<b>1000</b>	<b>1250</b>	<b>1500</b>	<b>1750</b>	<b>2000</b>	<b>2500</b>	<b>3000</b>	<b>4000</b>
1	1	2	3	4	6	7	8	9	13	16	22
2	4	7	13	16	22	28	32	36	42	50	54
3	8	19	28	36	44	51	53	54	58	60	
4	10	25	36	46	51	54	57	59	60		
5	16	32	46	52	56	59	60	60			
6	22	40	52	56	60	60	60				



TABLE I – HAZARD POINTS											
Hazard Points for Western Larch, Lodgepole Pine or Western White Pine											
Thinned Stems Per Acre											
Ave. DBH	250	500	750	1000	1250	1500	1750	2000	2500	3000	4000
1	1	2	2	3	4	4	5	6	8	9	13
2	3	6	8	11	16	19	22	28	32	38	48
3	6	16	25	32	38	46	51	52	56	59	
4	8	16	28	36	44	50	52	54	58		
5	9	22	32	42	50	53	55	57			
6	13	28	40	50	53	56	59				

TABLE II - HAZARD POINTS WORKSHEET

HAZARD CHARACTERISTICS

HAZARD POINTS

Fuel Quantity

Hazard points from Slash Hazard Table I 1/

Record number of trees/acre to be cut

Average D.B.H.

Predominant species

Size of thinning block

Points 0 - 15

16 - 30

31 - 45

46 - 60 1/

Acres 20

20 - 40

40 - 80

80

Site Factor

Record Slope \_\_\_\_\_ % Aspect \_\_\_\_\_

Determine points from table below 1/

ASPECT	PERCENT SLOPE			
	0 - 19	20 - 39	40 - 59	60
E or NE	0	5	10	20
E or NW	0	5	10	30
W or SE	0	10	30	40
S or SW	0	20	40	60
1/	Max. 60 points			

Other Factors	
Condition of operating area before forest practice commences	0 - 20 points
Condition of adjoining area	0 - 20 points
Presence of snags and culls	0 - 5 points
Deterioration rate of slash	0 - 5 points
Time of year forest practice operation	10 points
October thru December	2 points
August thru September	4 points
January thru April	7 points
May thru July	10 points
TOTAL FOREST PRACTICE AREA POINTS	(Max. 240 points)

**TABLE III - HAZARD OFFSETS**

Offsets	Hazard Point Deductions
Physical Changes to the Hazard (1)	
(1) Points will be proportional to the amount of hazard disposed of or modified.	
Disposal by burning or removal.	0 - 160
Modification by reducing depth through crushing, chipping or lopping.	0 - 60
On Site Improvements	
Condition of main access road to forest practice area should allow movement of heavy trucks without difficulty.	0 - 5
Access control to forest practice area provided by closure to public traffic.	0 - 5
Availability of water for tankers within one mile of forest practice area or within three miles for helicopter bucket use. Water supply to be sufficient to supply at least fifty thousand (50,000) gallons.	0 - 15
Buffer zones of unthinned areas at least two chains in width between roadways and thinned areas.	0 - 10
Fuel breaks with slash hazard removal around and/or through forest practice area, located so as to provide optimum fire control effect and of two to four chains in width.	0 - 25
Fire trails with fuel removed to expose mineral soil to a width of twelve (12) feet. Maximum points allowed if combined with a fuel break.	0 - 15

Offsets	Hazard Point Deductions
Extra Protection	
Increased attack capability such as retardant availability, increased attack manpower and equipment. Must be in addition to regular forces normally available during the fire season.	0 - 40
Fire detection and prevention increased beyond that normally available for lands in the fire protection district.	0 - 15
Initial attack time based on proximity of forest practice area to initial attack forces.	0 - 5
Landowner protection plan which would provide extra fire protection on a voluntary basis such as extra equipment and/or manpower.	0 - 5

( )

**071. PRESCRIBED FIRE.**

**01. Purpose.** Prescribed fire is a land management tool. Smoke from prescribed fires can have adverse impacts on ambient air quality or public health. These rules establish a management system for smoke from prescribed fires that will protect air quality. ( )

**02. Notification.** The use of prescribed fire requires a valid notification in accordance with Subsection 020.05 to maintain air quality and to protect public health. Possession of a valid notification will not preclude meeting the fire safety requirements specified in Section 38-115, Idaho Code. ( )

**03. Recommended Practices.** To maintain air quality and protect public health the following practices are recommended: ( )

**a.** Slash and large woody debris piles should be compact and free of stumps, soil, snow, and nonwoody organic material. ( )

**b.** Piles should be fully cured, dried at least two (2) months, prior to ignition. Piles should be at least partially covered with a water-resistant material so they can be ignited after enough precipitation to lower the fire danger. ( )

**c.** Broadcast burns should be conducted within a prescription that minimizes adverse effects on air quality. ( )

**d.** Membership in good standing in a recognized Airshed Group is encouraged. ( )

**072. -- 999. (RESERVED)**

Forest Practices Advisory Committee Recommendations for Proposed Rulemaking, July 2021

Unofficial Copy Submitted as a Proposed Rule for the September 2021 Bulletin

**IDAPA 20.02.01 – RULES PERTAINING TO THE IDAHO FOREST PRACTICES ACT**

**000. LEGAL AUTHORITY.**

In accordance with Section 38-1304, Idaho Code, the Idaho Board of Land Commissioners has authority to adopt rules establishing minimum standards for the conduct of forest practices on forest land. (7-1-96)

**001. ~~TITLE AND SCOPE.~~**

~~01. Title. These rules are titled IDAPA 20.02.01, "Rules Pertaining to the Idaho Forest Practices Act."~~  
(4-11-06)

~~02. Scope. These rules constitute the minimum standards for the conduct of forest practices on forest land and describe administrative procedures necessary to implement those standards.~~  
(4-11-06)

**002. -- 009. (RESERVED)**

**010. DEFINITIONS.**

~~Unless otherwise required by context as used in these rules~~The terms "Best Management Practices (BMP)," "Department," "Forest Land," "Forest Practice," "Forest Regions," "Harvesting," "Landowner," "Operator," "Rules," "State," and "Timber Owner," have meanings provided in Section 38-1303, Idaho Code. In addition to the definitions set forth in the Act, the following definitions apply to these rules:  
(10-14-75)( )

**01. Act.** The Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. (7-1-96)

**02. Acceptable Tree Species.** Any ~~of the~~ tree species normally marketable in the region, which are suitable to meet stocking requirements. Acceptable trees must be of sufficient health and vigor to assure growth and harvest. (7-1-96)( )

**03. Additional Hazard.** ~~The d~~Debris, slashings, and forest fuel resulting from a forest practice.  
(10-14-75)( )

**04. Average DBH.** Average diameter in inches of trees cut or to be cut, measured at four and one-half (4.5) feet above mean ground level on standing trees. ~~All trees to be cut that do not have a measurable DBH will fall in the one inch (1") class.~~  
(7-1-96)

~~05. Best Management Practice (BMP). A practice or combination of practices determined by the board, in consultation with the department and the forest practices advisory committee, to be the most effective and practicable means of preventing or reducing the amount of nonpoint pollution generated by forest practices. BMPs shall include, but not be limited to, those management practices included in these rules.~~  
(9-11-90)

~~06.~~**05. Board.** The Idaho State Board of Land Commissioners or its designee. (10-14-75)

~~07.~~**06. Buffer Strip.** A protective area adjacent to an area requiring special attention or protection.  
(10-14-75)

~~07. Cable Yarding. Techniques that use winch systems, secured to stationary base machines, to transport fully or partially suspended logs or trees to landings.~~  
( )

**08. Chemicals.** Substances applied to forest lands or timber to accomplish specific purposes and includes pesticides, (as defined in ~~the Idaho Pesticide Law, Title 22, Chapter 34, Idaho Code~~), fertilizers, soil amendments, road dust abatement products and other materials that may present hazards to the environment. (7-1-98)

( )

**09. Constructed Skid Trail.** A skid trail created by the deliberate cut and fill action of a dozer or skidder blade resulting in a road-type configuration. (7-1-96)

**10. Commercial Products.** Saleable forest products of sufficient value to cover cost of harvest and transportation to available markets. (4-11-06)

**11. Condition of Adjoining Area.** Those fuel conditions in adjoining areas that relate to spread of fire and to economic values of ~~the adjoining~~ that area. (1-24-78)

**12. Contaminate.** To introduce into the atmosphere, soil, or water sufficient quantities of substances that are injurious to public health, safety, or welfare; ~~or to~~ domestic, commercial, industrial, agricultural or recreational uses; ~~or to~~ livestock, wildlife, fish or other aquatic life. (4-11-06)

**13. Cross-Ditch Drain.** A diversion, ~~ditch and~~ depression, slope, or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation, duff, ditch, or other dispersion area ~~so that it does not gain the volume and velocity which causes soil movement and erosion~~ to minimize volume and velocity of runoff which might cause soil erosion. (3-13-90)( )

**14. Cull.** ~~Nonmerchable~~ Non-marketable, alive, standing trees ~~of greater height~~ taller than twenty (20) feet. (1-24-78)( )

~~15. Department. The Idaho Department of Lands. (10-14-75)~~

**16.15. Deterioration Rate.** Rate of natural decomposition and compaction of fuel debris which decreases the hazard and varies by site. (1-24-78)

~~17.16. Director. The Director of the Idaho Department of Lands or his designee. (10-14-75)~~

**18.17. Emergency Forest Practice.** A forest practice initiated during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event to minimize damage to forest lands, timber, or public resources. (10-14-75)

**19.18. Fertilizers.** Any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment. (10-14-75)

**20.19. Fire Trail.** Access routes that are located and constructed in a manner to be ~~either~~ useful in fire control efforts or ~~detering the fire spread~~ deterrence in the hazard area. (10-14-75)( )

~~21. Forest Land. Federal, state and private land growing forest tree species which are, or could be at maturity, capable of furnishing raw material used in the manufacture of lumber or other forest products. The term includes federal, state and private land from which forest tree species have been removed but have not yet been restocked. It does not include land affirmatively converted to uses other than the growing of forest tree-~~  
(7-1-96)

~~22. Forest Practice. (10-14-75)~~

~~a. The harvesting of forest tree species including felling, bucking, yarding, decking, loading and hauling; road construction, improvement or maintenance including installation or improvement of bridges, culverts or structures which convey stream flows within the operating area; also including the clearing of forest land for conversion to non forest use when harvest occurs; (7-1-98)~~

~~b. Road construction, reconstruction or maintenance of existing roads including installation or improvement of bridges, culverts or structures which convey streams not within the operating area associated with harvesting of forest tree species; (7-1-98)~~

~~c. Reforestation; (10-14-75)~~

~~d. Use of chemicals for the purpose of managing forest tree species or forest land; (7-1-98)~~

~~e. The management of slash resulting from harvest, management or improvement of forest tree species or the use of prescribed fire on forest land. (7-1-98)~~

~~f. "Forest Practice" shall not include preparatory work such as tree marking, surveying, and road flagging or removal or harvesting of incidental vegetation from forest lands; such as berries, ferns, greenery, mistletoe, herbs, mushrooms, or other products which cannot normally be expected to result in damage to forest soils, timber, or public resources. (10-14-75)~~

~~23. Forest Regions. Two (2) regions of forest land: one (1) being north of the Salmon River and one (1) being south of the Salmon River. (7-1-96)~~

~~24. Forest Type. Five forest types in Idaho are defined as follows: (3-20-14)~~

~~a. North Idaho grand fir/western red cedar (NIGF): moist to wet interior forests with western red cedar, western hemlock, and grand fir being primary climax species, found in forests north of the Clearwater/ and Lochsa Rivers. (3-20-14)~~

~~b. Central Idaho grand fir/western red cedar (CIGF): productive conifer forests found in forests between the Lochsa River Basin and the Salmon River, characterized by stands having western red cedar and grand fir as climax species, with a mixed conifer overstory increasingly comprised of ponderosa pine, Douglas fir, and larch in the river breaks canyon lands. Stocking levels are generally lower than that of the NIGF stands. (3-20-14)~~

~~c. South Idaho grand fir (SIGF): mixed conifer forests, dominated by ponderosa pine and Douglas fir, found south of the Salmon River with grand fir and occasionally western red cedar being the stand climax species. (3-20-14)~~

~~d. Western hemlock subalpine fir (WH): higher elevation, moist, cool interior forests dominated by western hemlock, mountain hemlock, and/or subalpine fir. (3-20-14)~~

~~e. Douglas fir ponderosa pine (PP): drier forests dominated by ponderosa pine and Douglas fir, generally found in lower elevation, dry sites. (3-20-14)~~

~~25.20. Fuel Quantity. The diameter, the number of stems and the predominate predominant species to be cut or already cut, and the size of the continuous thinning block, all of which determine quantity of fuel per unit of area. (1-24-78)( )~~

~~26.21. Ground-Based Equipment. Mobile equipment such as trucks, tractors, dozers, skidders, excavators, loaders, mechanized harvesters and forwarders used for harvesting, site preparation or hazard reduction forest practices. This does not include cable systems associated with stationary yarding equipment. (4-4-13)( )~~

~~27.22. Habitat Types. Forest land capable of producing similar plant communities at climax. (7-1-96) ( )~~

~~28. Harvesting. A commercial activity related to the cutting or removal of forest tree species to be used as a forest product. A commercial activity does not include the cutting or removal of forest tree species by a person for his own personal use. (10-14-75)~~

~~29.23. Hazard. Any vegetative residue resulting from a forest practice which constitutes fuel. (1-24-78)~~

~~30.24. Hazard Offset. Improvements or a combination of practices which reduces the spread of fire and increases the ability to control fires. (10-14-75)~~



**31.25. Hazard Points.** The number of points assigned to certain hazardous conditions on an operating area, to actions designed to modify those conditions ~~on the same area~~ or to actions by the operator, timber owner or landowner to offset ~~those the hazardous~~ conditions on the same operating area. (1-24-78) ( )

**32.26. Hazard Reduction.** The burning or physical reduction of slash by treatment in some manner which will reduce the risk from fire ~~after treatment~~. (10-14-75) ( )

**33.27. Lake.** A body of perennial standing open water, natural or human-made, larger than one (1) acre in size. Lakes include the beds, banks or wetlands below the ordinary high water mark. Lakes do not include drainage or irrigation ditches, farm or stock ponds, settling or gravel ponds. Any reference in these rules to Class I streams ~~shall~~ also apply ies to lakes. (7-1-96) ( )

**34. Landowner.** A person, partnership, corporation, or association of whatever nature that holds an ownership interest in forest lands, including the state. (10-14-75)

**35.28. Large Organic Debris (LOD).** Live or dead trees and parts ~~or pieces of trees~~ thereof that are large enough; or longer enough than the channel width or twenty (20) feet; or sufficiently buried in the stream bank or bed to be stable during high flows. ~~Pieces longer than the channel width or longer than twenty (20) feet are considered stable.~~ LOD creates diverse fish habitat and stable stream channels by reducing water velocity, trapping stream gravel and allowing scour pools and side channels to form. (3-13-90) ( )

**36. Merchantable Material.** That portion of forest tree species suitable for the manufacture of commercial products which can be merchandised under normal market conditions. (10-14-75)

**37. Merchantable Stand of Timber.** A stand of trees that will yield logs or fiber. (7-1-96)

a. Suitable in size and quality for the production of lumber, plywood, pulp, or other forest products; (10-14-75)

b. Of sufficient value at least to cover all costs of harvest and transportation to available markets. (10-14-75)

**38.29. Noncommercial Forest Land.** Habitat types not capable of producing twenty (20) cubic feet of wood fiber per acre per year. (7-1-96) ( )

**39. Operator.** A person who conducts or is required to conduct a forest practice. (10-14-75)

**40.30. Operating Area.** That area where a forest practice is taking place or will take place. (1-24-78)

**41.31. Ordinary High Water Mark.** That mark on all water courses, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation, as that condition exists on the effective date of this chapter, or as it may naturally change thereafter. (10-14-75)

**42.32. Outstanding Resource Water.** A high-quality water, such as water of national and state parks and wildlife refuges and water of exceptional recreational or ecological significance, ~~which has been so~~ designated by the legislature. ORW constitutes as outstanding national or state resource that requires protection from nonpoint activities, including forest practices, ~~that which~~ may lower water quality. (7-1-96) ( )

**43. Partial Cutting.** The well distributed removal of a portion of the merchantable volume in a stand of timber. This includes seed tree, shelterwood, or individual tree selection harvesting techniques. (10-14-75)

**44.33. Prescribed Fire.** The controlled application of fire to wildland fuels, in either their natural or modified state, under such conditions of weather, fuel moisture and soil moisture; ~~to that~~ allow the fire to be confined to a predetermined area ~~and at the same time to~~ while produce ing the intensity of heat and rate of spread required to meet planned objectives. (7-1-96) ( )

**45.34. Present Condition of Area.** The amount or degree of hazard present before a thinning operation commences. (1-24-78)

**46.35. Public Resource.** Water, fish, ~~and~~ wildlife, and ~~in addition means~~ capital improvements of the State or its political subdivisions. (10-14-75)( )

**47.36. Reforestation.** ~~The~~ Establishment of an adequately stocked stand of trees of species acceptable to the ~~e~~Department to replace ~~the ones~~those removed by ~~a~~harvesting or a catastrophic event on commercial forest land. (10-14-75)

**48.37. Relative Stocking.** A measure of site occupancy calculated as a ratio ~~comparison~~ of actual stand density to the biological maximum density for a given forest type. This ratio, expressed as a percentage, shows the extent to which trees ~~utilize~~ a plot of forestland. This term was used in the Class I tree retention rule (030.07.e.ii) and has been replaced with Weighted Tree Count as described in the same rule. (3-20-14)( )

**49.38. Relief Culvert.** A structure to relieve surface runoff from roadside ditches to prevent excessive ~~buildup in~~ volume and velocity. (10-14-75)

**50. Rules.** Rules adopted by the Board pursuant to Section 38-1304, Idaho Code. (7-1-96)

**51.39. Slash.** Any vegetative residue three inches (3") ~~and under~~or less in diameter resulting from a forest practice or ~~the~~ clearing of land. (7-1-96)

**52.40. Site.** An area with the combination of biotic, climatic, and soil conditions~~considered as to its or ecological factors with reference to that create~~ capacity ~~to produce~~ for forest vegetation; ~~the combination of biotic, climatic, and soil conditions of an area.~~ (10-14-75)( )

**53.41. Site Factor.** A combination ~~of percent~~ of average ~~ground~~ slope and ~~predominate~~ predominant aspect of the ~~forest practice operating~~ area which relate to rate of fire spread. (1-24-78)( )

**54.42. Site-Specific Best Management Practice.** A BMP that is adapted to and takes account of the specific factors influencing water quality, water quality objectives, on-site conditions, and other factors applicable to the site where a forest practice occurs, ~~and~~ which has been approved by the Department, or by the Board in consultation with the Department and the Forest Practices Advisory Committee. (7-1-96)( )

**55.43. Size of Thinning Block.** Acres of continuous fuel creating an additional hazard within an ~~forest practice operating~~ area. Distance between the perimeter of thinning blocks containing continuous fuel must be a minimum of six (6) chains apart to qualify as more than one (1) block. (1-24-78)( )

**56.44. Snags.** Dead, standing trees taller than twenty (20) feet ~~and greater in height~~. (1-24-78)

**57.45. Soil Erosion.** Movement of soils resulting from forest practices. (10-14-75)

**58.46. Soil Stabilization.** The minimizing of soil movement. (10-14-75)

**59. State.** The state of Idaho or other political subdivision thereof. (10-14-75)

**60.47. Stream.** A natural water course of perceptible extent with definite beds and banks which confines and conducts continuously or intermittently flowing water. Definite beds are defined as having a sandy or rocky bottom which results from the scouring action of water flow. Any reference in these rules to Class I streams ~~shall also apply~~ applies to lakes. (7-1-96)( )

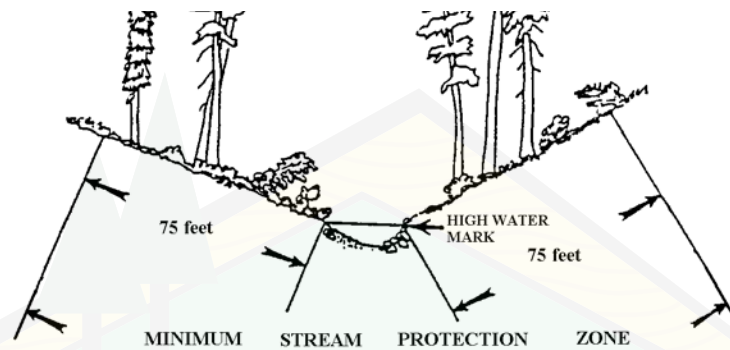
a. Class I streams ~~are used for domestic water supply or~~ are important for the spawning, rearing or migration of fish. ~~Such waters shall be considered to be Class I upstream from the point of domestic diversion for a minimum of one thousand three hundred and twenty (1,320) feet.~~ (1-17-86)( )

b. Class II streams are usually headwater streams or minor drainages that are used by only a few, if

any, fish for spawning or rearing. Where fish use is unknown, consider streams as Class II where the total upstream watershed is less than two hundred ~~and~~ forty (240) acres in the north forest region and four hundred ~~and~~ sixty (460) acres in the south forest region. Their ~~principle~~ principal value lies in their influence on water quality or quantity downstream in Class I streams. (7-1-96)( )

c. Class I Stream Protection Zone (SPZ) means the area encompassed by a slope distance of seventy-five (75) feet on each side of the ordinary high water marks. (Figure 1.)

FIGURE 1



CLASS 1 STREAM PROTECTION ZONE

(7-1-96)( )

d. Class II Stream Protection Zone (SPZ) means the area encompassed by a minimum slope distance of thirty (30) feet on each side of the ordinary high water marks. (Figure 2.) For Class II streams that do not contribute surface flow into Class I streams, a variance to this requirement may be requested. In no case will this width be less than five (5) feet slope distance on each side of the ordinary high water marks. Operators must provide for soil stabilization and water filtering effects by leaving undisturbed soils in widths sufficient to prevent washing of sediment. In no case shall this width be less than five (5) feet slope distance on each side of the ordinary high water marks.

FIGURE 2  
CLASS II STREAM PROTECTION ZONE

## CLASS II STREAM PROTECTION ZONE



(7-1-96)( )

**61. Timber Owner.** A person, partnership, corporation, or association of whatever nature, other than the landowner, that holds an ownership interest in forest tree species on forest land. (10-14-75)

**62.48. Time of Year of Forest Practice.** Parts of a year assigned hazard points when the forest practice is taking place. Points assigned are: October through December - two (2) points; August through September - four (4) points; January through April - seven (7) points; May through July - ten (10) points. (1-24-78)( )

**49. Traction-Assisted Harvesting.** Techniques that use winch systems to tether ground-based equipment to a stationary base for stabilizing and assisting steep-slope operation. Cable tension from the winch will be synchronized or automatically held constant. Enhanced traction for the equipment must minimize soil disturbance and risk of sediment delivery to streams. ( )

**50. Watershed Advisory Group.** A formal group of citizens that provides the Idaho Department of Environmental Quality with local public input and guidance regarding specific watersheds during watershed analysis and BMP development.

### **011. ABBREVIATIONS.**

**01. BMP.** Best Management Practices. ( )

**02. LOD.** Large Organic Debris. ( )

**03. SPZ.** Stream Protection Zone. ( )

**014.2. -- 019. (RESERVED)**

**020. GENERAL RULES.**

**01. Compliance.** Operators must comply with practices contained within a rule ~~shall be complied with~~ to accomplish the purpose ~~to which of~~ the rule ~~is related~~. (8-13-85) ( )

a. If conditions of sites or activities require ~~the~~ application of practices which differ from those prescribed by the rules, the operator ~~shall~~ must obtain a variance according to the following procedure: (8-13-85) ( )

i. The operator ~~shall~~ must submit a written request for variance to the ~~d~~Department ~~in writing~~. The request ~~shall~~ must include a description of the site and particular conditions which necessitate a variance, and a description of proposed practices which, if applied, will result in a violation of the rules. (8-13-85) ( )

ii. ~~Within fourteen (14) calendar days the~~ The dDepartment ~~shall~~ will evaluate the request and notify the operator in writing within fourteen (14) calendar days of the determination to allow or disallow whether the variance is granted or denied request. (7-1-96) ( )

iii. All ~~practices~~ authorized variance practices under this procedure shall must provide for results over the long term which are equivalent or better results over the long term than the those from rule which are superseded to insure site productivity, water quality and fish and wildlife habitat. A variance ~~can~~ may be applied only at approved sites. (8-13-85) ( )

b. Practices ~~shall~~ must also be in compliance with the Stream Channel ~~Alteration~~ Protection Act (Title 42, Chapter 38, Idaho Code); Idaho Water Quality Standards and Waste Water Treatment Requirements (Title 39, Chapter 1, Idaho Code); the Idaho Pesticide Law (Title 22, Chapter 34, Idaho Code), and the Hazardous Waste Management Act of 1983 (Title 39, Chapter 44, Idaho Code), and rules ~~and regulations pursuant thereto~~ promulgated thereunder. (8-13-85) ( )

c. Water may be diverted from a stream and used at any time to carry out Idaho forest practices and for forest road dust abatement, provided that: 1) The total daily volume diverted is no greater than two-tenths (0.2) acre-feet (65,170 gallons) from a single stream; and 2) The rate of diversion ~~shall~~ is no greater than ~~never exceed~~ twenty-five ~~(25)~~ percent (25%) of the rate of flow then available in the stream at the point of diversion for these purposes. (5-8-09) ( )

i. No person ~~shall~~ may, under this Section 020, divert water from an irrigation canal, irrigation reservoir, or other irrigation facility while water is lawfully diverted, stored, captured, conveyed, used or otherwise physically controlled by an irrigator, irrigation district or canal company. (5-8-09) ( )

ii. ~~If water is to be diverted~~ No person may, under this Section 020, divert water from a stream within a water district; or ~~from a stream~~ from which an irrigation delivery entity diverts water, a person diverting water shall give without first providing notice to the watermaster of the intent to divert ~~water for the purposes as authorized herein~~. (5-8-09) ( )

iii. Water diversion intakes used for diversions under Subsection 020.01 ~~shall~~ must be screened with a maximum screen mesh size as follows: 1) fish-bearing Class I streams: 3/32 inch, and 2) all other streams: 1/4 inch. (5-8-09) ( )

d. Any alternative conservation measure having received a favorable Biological Opinion or Incidental Take Permit from the National Marine Fisheries Service or US Fish and Wildlife Service will be considered as complying with these rules. (4-4-13)

**02. Conversion of Forest Lands.** Prior to converting forest lands to another use, the person converting the lands must file a written notification with the Department. Conversions require a notification be filed, and compliance with all These rules will continue to apply to the conversion and converting lands, except those relating to reforestation. On converted parcels larger than one (1) acre, plant acceptable vegetative cover sufficient to maintain soil productivity and minimize erosion must be planted. Cover ~~shall~~ must be established within one (1) year of forest



practice completion ~~of the forest practice~~, except that the ~~d~~Director may grant an extension of time if weather or other conditions interfere. Within three (3) years of forest practice completion ~~of the forest practice~~, the ~~d~~Director shall will determine if the conversion has been accomplished by: (7-1-96) ( )

- a. The presence or absence of improvements necessary for use of land for its intended purpose; (7-1-96)
- b. Evidence of actual use of the land for the intended purpose. (10-14-75)
- c. If the conversion has not been accomplished within three (3) years of ~~the harvest~~ completion ~~of harvest~~, supplemental reforestation Subsection 050.06 applies. (7-1-96)

**03. Annual Review and Consultation.** The ~~d~~Director shall will, at least ~~once each year annually~~, meet with other state agencies and the Forest Practices Advisory Committee and review recommendations for amendments to or repeal of these rules, new rules, or repeal of rules. He shall will then ~~report to provide~~ the ~~b~~Board a summary of ~~such any meetings or meetings~~, together with recommendations ~~for amendments to rules, new rules, or repeal of regarding these rules~~. (10-14-75) ( )

**04. Consultation.** The ~~d~~Director shall may consult with other state agencies ~~and departments concerned with the management of forest environment~~ where expertise from such agencies ~~or departments is desirable would be helpful~~ or necessary. (10-14-75) ( )

a. These se rules are approved best management practices under Idaho's Water Quality Standards ~~and Wastewater Treatment Requirements, IDAPA 58.01.02, (Title 39, Chapter 1, Idaho Code)~~ reference the Forest Practice Rules as approved best management practices and The Water Quality Standards describe a procedure ~~for~~ modifying the practices based on monitoring and surveillance. The ~~d~~Director shall will review petitions from Idaho Department of Environmental Quality for changes or additions to these se rules ~~according to Administrative Procedures Act (Title 67, Chapter 52, Idaho Code)~~ and make recommendations for modification to the Board ~~of Land Commissioners. (9-20-88) ( )~~

**05. Notification of Forest Practice.** (10-14-75)

a. Before commencing a forest practice or a conversion of forest lands the operator must notify the Department ~~shall be notified~~ as required in Paragraph 020.05.b. ~~The notice shall be given by the operator. However, The notification may be provided by the timber owner or landowner satisfies the responsibility of the operator under this Subsection. When more than one forest practice is to be conducted in relation to harvesting of forest tree species, one notice including each forest practice to be conducted shall be filed with the department.~~ (5-8-09) ( )

b. The notification required by Paragraph 020.05.a. shall must be on forms ~~prescribed and~~ provided by the ~~d~~Department, and shall will identify each forest practice to be conducted, and include the name and address of the operator, timber owner, and landowner; the legal description of the operating area ~~in which the forest practice is to be conducted~~; whether the forest practice(s) borders an outstanding resource water and other information the ~~d~~Department considers necessary for ~~the~~ administration of the rules ~~adopted by the board under Section 38-1304, Idaho Code. No forest practice may begin until the applicable All notifications must be is~~ formally accepted by the ~~d~~Department ~~before any forest practice may begin. Promptly upon formal acceptance of the notice but not more No later~~ than fourteen (14) calendar days ~~from after~~ formal acceptance of the notice, the ~~d~~Department shall will mail send a copy of the notice to ~~whichever of the operator, timber owner, or and landowner that did not submit the notification. The department shall make available to the operator, timber owner, and landowner a copy of the rules.~~ (7-1-96) ( )

c. ~~An The~~ operator, timber owner, or landowner, ~~whichever that~~ filed the original notification, shall must notify the ~~d~~Department of any subsequent change in ~~the~~ information contained in the notice within thirty (30) calendar days of the change. ~~Promptly upon receipt of notice of change, but not to No more than exceed~~ fourteen (14) calendar days from receipt of the notice, the ~~d~~Department shall will mail send a copy of the notice to ~~whichever of the operator, timber owner, or and landowner that did not submit the notice of change.~~ (7-1-96) ( )



d. The notification is valid for the same period as ~~set forth in~~ the certificate of compliance under Section 38-122, Idaho Code. ~~At the expiration of the notification, if~~ the forest practice is continuing when the notification expires, the notification shall must be renewed using the same procedures provided for in this Subsection. ~~(4-21-92)~~ ( )

e. If the notification required by Paragraph 020.05.a. of this Subsection indicates that the forest practice will be continuing at the notification's expiration ~~of the notification that the forest practice will be continuing~~, the operator, timber owner, or landowner must notify the Department and obtain a renewal of the notification, at least thirty (30) calendar days prior ~~to the expiration of the notification, shall must notify the department and obtain a renewal of the notification. Promptly upon receipt of the request for renewal, but not to exceed~~ No more than fourteen (14) calendar days from receipt of the request, the ~~d~~Department shall will mail send a copy of the renewed notification to ~~whichever of the operator, timber owner, or and~~ landowner that did not submit the request for renewal. ~~(7-1-96)~~ ( )

**06. Notification Exception.** A notification ~~of Forest Practice~~ is required for all forest practices except ~~for~~: (7-1-98) ( )

a. Routine road maintenance, recreational uses, grazing by domestic livestock, cone picking, culture and harvest of Christmas trees on lands used solely for the production of Christmas trees, or harvesting of other minor forest products. (10-14-75)

b. Non-commercial cutting and removal of forest tree species by a person for ~~his~~ their own personal use. (10-14-75) ( )

c. Clearing forest land for conversion to surface mining or dredge and placer mining operations under a reclamation plan or dredge mining permit. (9-20-88)

**07. Emergency Forest Practices.** No prior notification ~~shall be~~ is required for emergency forest practices ~~necessitated by and commenced during or immediately after a fire, flood, windthrow, earthquake, or other catastrophic event~~. Within forty-eight (48) hours after commencement of such practice, the operator, timber owner, or landowner shall must notify the ~~d~~Director ~~with an explanation of and explain~~ why emergency action was necessary. Such emergency forest practices are subject to the rules herein, except that the operator, timber owner, or landowner may take any reasonable action to minimize damage to forest lands, timber, or public resource from the direct or indirect effects of the catastrophic event. ~~(7-1-96)~~ ( )

**08. Duty of Purchaser.** Before purchasing, contracting to purchase or accepting delivery of a forest tree species harvested from forest lands in Idaho, the initial purchaser ~~of forest tree species which have been harvested from forest lands shall, before making such purchase or contract to purchase or accepting delivery of the same, must~~ receive and keep on file a copy of the notice of forest practice for required by Section 38-1306, Idaho Code relating to the harvesting practice for which applicable to the acquired forest tree species ~~are being acquired by the initial purchaser. Such~~ The notice shall must be available for inspection upon request by the ~~d~~Department at all reasonable times. ~~(7-1-96)~~ ( )

**09. State Divided into Regions.** For the purpose of administering ~~this~~ the Act and these rules, the State is divided into two (2) forest regions: one (1) north of the Salmon River and one (1) south of the Salmon River. ~~(7-1-96)~~ ( )

**10. Regions Divided into Forest Habitat Types.** For ~~the~~ administration purposes, ~~of further refining the on the ground administration of the Act~~, the forest regions can be divided into Habitat Types. ~~(7-1-96)~~ ( )

**030. TIMBER HARVESTING.**

**01. Purpose.** Harvesting of forest tree species is a part of forest management ~~by which~~ This is how wood for human use is obtained and ~~by which~~ how forests are established and tended. ~~It is recognized that during~~ During harvesting operations there will be a temporary disturbance to the forest environment. ~~It is the purpose of these rules to~~ establish minimum standards for forest practices that will maintain the productivity of the forest land ~~and~~ minimize soil and debris entering streams ~~and~~ protect wildlife and fish habitat. (10-14-75) ( )

**02. Quality of Residual Stocking.** Reforestation is required if harvesting reduces stocking of acceptable trees below minimums of Subsection 050.04. (7-1-96)

**03. Soil Protection.** ~~Select~~ For each harvesting operation, operators should select the logging method and type of equipment adapted to the given slope, landscape and soil properties in order to minimize soil erosion. (8-13-85) ( )

a. An operation that uses ground-based equipment ~~shall~~ must not be conducted if it will cause rutting, deep soil disturbance, or accelerated erosion. On slopes exceeding forty-five percent (45%) gradient and which are immediately adjacent to a Class I or II stream, ground-based equipment, except for traction-assisted harvesting equipment, ~~shall~~ must not be used ~~with~~ without an approved variance. Where slopes in the area to be logged exceed forty-five percent (45%) gradient, the operator, landowner or timber owner ~~shall~~ must notify the ~~Department~~ of these steep slopes upon filing the notification as provided for in Subsection 020.05. (4-4-13) ( )

b. ~~Limit~~ The grade of constructed skid trails on geologically unstable, saturated, or highly erodible or easily compacted soils is limited to a maximum of thirty percent (30%). (7-1-96) ( )

c. In accordance with appropriate silvicultural prescriptions, keep skid trails ~~shall be kept~~ to the minimum feasible width and number. ~~Limit~~ Tractors used for skidding ~~shall be limited~~ to the at size appropriate for the job. (8-13-85) ( )

d. Uphill cable yarding is preferred. Where on downhill yarding ~~is used~~, take reasonable care ~~shall be taken to~~ lift the leading end of the log to minimize downhill movement of slash and soils. (8-13-85) ( )

**04. Location of Landings, Skid Trails, and Fire Trails.** Locate landings, skid trails, and fire trails on stable areas to prevent the risk of material entering streams. (10-14-75)

a. Locate ~~All~~ new or reconstructed landings, skid trails, and fire trails ~~shall be located~~ on stable areas outside ~~the appropriate all stream protection zones~~ SPZs. Locate fire and skid trails where sidecasting is held to a minimum. (3-13-90) ( )

b. ~~Minimize the size of a~~ Landing size is limited to that necessary for safe economical operation. (8-13-85) ( )

c. To prevent landslides, fill material used in landing construction ~~shall~~ must be free of loose stumps and excessive accumulations of slash. On slopes where sidecasting is necessary, stabilize landings ~~shall be stabilized~~ by ~~use of~~ seeding, compaction, riprapping, benching, mulching or other suitable means. (8-13-85) ( )

**05. Drainage Systems.** Provide and maintain a drainage system ~~For~~ each landing, skid trail or fire trail ~~a drainage system shall be provided and maintained~~ that will control the dispersal of surface water to minimize erosion. (4-21-92) ( )

a. Stabilize skid trails and fire trails whenever they are subject to erosion, by water barring, cross draining, out sloping, scarifying, seeding or other suitable means. Keep ~~This work shall be kept~~ current to prevent erosion prior to ~~fall and spring~~ seasonal runoff. (8-13-85) ( )

b. Reshape landings as needed to facilitate drainage prior to ~~fall and spring~~ seasonal runoff. Stabilize all landings by establishing ground cover or ~~by some~~ other means within one (1) year after harvesting is completed.

~~(8-13-85)~~ ( )

**06. Treatment of Waste Materials.** ~~Leave or place~~ All debris, overburden, and other waste material associated with harvesting ~~shall be left or placed~~ in ~~such~~ a manner ~~way as to~~ that prevents their entry ~~by erosion, high water, or other means~~ into streams. ~~(10-14-75)~~ ( )

a. ~~Wherever possible trees shall be felled, bucked, and limbed~~ ~~trees, whenever possible, in such a manner so~~ that the tree or any ~~tree~~ parts thereof will fall away from ~~any~~ Class I streams. Continuously remove slash that enters Class I streams ~~as a result because~~ of harvesting operations. Continuously remove other debris that enters Class I streams ~~as a result because~~ of harvesting operations whenever there is a potential for stream blockage or if the stream has the ability for transporting such debris. Place removed material five (5) feet slope distance above the ordinary high water mark. ~~(3-13-90)~~ ( )

b. Remove slash and other debris that enters Class II streams whenever there is a potential for stream blockage or if the stream has the ability for transporting the debris immediately following skidding and place removed material above the ordinary high water mark or otherwise treat as prescribed by the ~~Idaho~~ Department. No formal variance is required. (11-7-86)

c. Deposit waste material from construction or maintenance of landings and skid and fire trails in geologically stable locations outside of the appropriate ~~Stream Protection Zone~~ SPZ. (8-13-85)

**07. Stream Protection.** During and after forest practice operations, ~~protect~~ stream beds and streamside vegetation ~~shall be protected to leave them in~~ provide the most natural condition ~~as possible~~ to maintain water quality and aquatic habitat. ~~(8-13-85)~~ ( )

a. Lakes require an approved site-specific riparian management prescription prior to conducting forest practices within the ~~stream protection zone~~ SPZ. (7-1-96)

b. ~~Operations that utilize ground-based equipment that result in logs being skidded or forwarded in or through streams shall not be permitted. When streams must be crossed, Prior to conducting forest practice operations that cross streams using ground-based equipment, install adequate temporary or permanent structures adequate to carry stream flow; skidding or forwarding directly in or through streams or fords is not permitted shall be installed. Minimize the number of stream crossings and make direct approaches to minimize ground disturbance in the SPZ. Cross the stream at right angles to its channel if at all possible. Remove all temporary crossings immediately after use and, where applicable, cross-drain the approaches.~~ (Construction of hydraulic structures in stream channels is regulated by the Stream Channel Protection Act - Title 42, Chapter 38, Idaho Code ~~and Paragraphs 040.02.e and 040.02.g.~~). ~~Remove all temporary crossings immediately after use and, where applicable, water bar the ends of the skid trails.~~ ~~(4-4-13)~~ ( )

c. Operation of ground-based equipment ~~shall~~ is not be allowed within the ~~Stream Protection Zone~~ SPZ except at approaches to stream crossings. ~~(7-1-96)~~ ( )

d. When cable yarding is necessary, across or inside the ~~Stream Protection Zones~~ SPZs, it ~~shall~~ must be done in ~~such~~ a manner ~~as to~~ way that minimizes stream bank vegetation and channel disturbance. ~~(8-13-85)~~ ( )

e. Provide for ~~large organic debris (LOD)~~, shading, soil stabilization, wildlife cover and water filtering effects of vegetation along streams. (7-1-96)

i. Leave shrubs, grasses, and rocks wherever they afford shade over a stream or maintain the integrity of the soil near a stream. ~~Landowners are strongly encouraged to leave all trees immediately adjacent to streams.~~ ~~(3-20-14)~~ ( )

ii. ~~During commercial harvest within~~ Adjacent to all Class I ~~Streams Protection Zones~~ SPZs, to maintain and enhance shade and large woody debris recruitment, landowners must comply ~~retain~~ with ~~the~~ one of the two following options defining ~~weighted~~ tree retention ~~count per one-hundred (100) linear feet of stream.~~ ~~The Relative Stocking per acre (RS) referenced in the options is calculated according to the relative stocking contribution table in~~

Subparagraph 030.07.e.ii.

- (1) fifty-seven (57) north of the Clearwater/Lochsa Rivers
- (2) forty-nine (49) between the Clearwater/Lochsa and Salmon Rivers
- (3) forty-one (41) south of the Salmon river
- (4) thirty-seven (37) in drier forests with SPZs dominated by Douglas-fir and ponderosa pine.

At least four (4) of the above weighted tree count must be retained in the outer twenty-five feet (25') of the SPZ.

Calculate weighted tree count by multiplying the number of live conifers and hardwoods present in each diameter range by the weight below and then sum the results.

<u>Diameter Range (inches)</u>	<u>4-11.9"</u>	<u>12-19.9"</u>	<u>20-27.9"</u>	<u>28-35.9"</u>	<u>≥36"</u>
<u>Weight</u>	<u>1</u>	<u>3</u>	<u>5</u>	<u>8</u>	<u>11</u>

~~(3-20-14)( )~~

~~(1) Option 1: Within twenty five (25) feet from the ordinary high water mark on each side of the stream, live conifers and hardwoods will be retained to maintain a minimum relative stocking per acre of sixty (60). A relative stocking per acre of thirty (30) must be retained in the stream protection zone between twenty five (25) feet and seventy five (75) feet from the ordinary high water mark on both sides of the stream. (3-20-14)~~

~~(2) Option 2: Within fifty (50) feet from the ordinary high water mark on each side of a stream, live conifers and hardwoods will be retained to maintain a minimum relative stocking per acre of sixty (60). A relative stocking per acre of ten (10) must be retained in the stream protection zone between fifty (50) feet and seventy five (75) feet from the ordinary high water mark on both sides of the stream. (3-20-14)~~

~~(3) Only one (1) option may be implemented within the stream protection zones of a harvesting unit covered by a single notification. Landowners are strongly encouraged to retain all trees immediately adjacent to the stream. (3-20-14)~~

<b>Forest Type</b>	<b>Per Tree Contribution to Relative Stocking by Diameter Class</b>						
	<b>Diameter Class (DBH in inches)</b>						
	<b>4-7.9"</b>	<b>8-11.9"</b>	<b>12-15.9"</b>	<b>16-19.9"</b>	<b>20-23.9"</b>	<b>24-27.9"</b>	<b>28-31.9"</b>
NIGF (North Idaho Grand Fir)	0.097	0.209	0.347	0.506	0.683	0.878	1.088
CIGF (Central Idaho Grand Fir)	0.113	0.244	0.405	0.59	0.797	1.024	1.27
SIGF (Southern Idaho Grand Fir)	0.136	0.293	0.486	0.708	0.957	1.229	1.524
WHSE (Western Hemlock-Subalpine Fir)	0.123	0.267	0.442	0.644	0.87	1.117	1.385
DFPP (Douglas-fir-Ponderosa Pine)	0.151	0.326	0.54	0.787	1.063	1.366	1.693

~~(3-20-14)~~

iii. Prior to and during harvest, cutting in any part of a given one hundred foot (100') SPZ segment is only allowed if the weighted tree count in the inner fifty feet (50') of that segment is above: thirty-three (33) north of the Clearwater/Lochsa Rivers, twenty-eight (28) between the Clearwater/Lochsa and Salmon Rivers, twenty-three

(23) South of the Salmon River, and twenty-one (21) in drier forests with SPZs dominated by Douglas-fir and ponderosa pine. Note that the combination of minimum values for the inner fifty feet (50') and outer twenty-five feet (25') do not meet the minimum for the SPZ segment; additional trees must be left in one or both areas to meet the rule. ( )

iii-iv. To protect filtering and shade effects of streamside vegetation adjacent to all Class II streams following harvesting and hazard management activities, retain live trees ~~will be retained~~ or establish new trees ~~established~~ within thirty (30) feet on each side of the streams' ordinary high water mark to comply with the minimum stocking standards expressed in Subsection 050.04. (3-20-14) ( )

ivv. During harvesting, carefully remove timber from the ~~Stream Protection Zone~~ SPZ in such a way that ~~large organic debris~~ LOD, shading and filtering effects are maintained and protected. When portions of harvested or naturally fallen ~~of felled trees fall~~ land ~~into~~ or over a Class I stream, leave the portion consistent with the LOD definition of Subsection ~~010.35~~ 010.28. (4-11-06) ( )

v. ~~When harvesting portions of trees that have fallen naturally into or over a Class I stream, leave the portion(s) over the stream consistent with the LOD definition of Subsection 010.35. I.~~ When salvaging uprooted trees, leaving the section with the root ball attached is preferred. (4-11-06) ( )

vi. During harvesting operations, portions of felled or bucked trees not meeting the LOD definition ~~shall~~ must be removed, consistent with the slash removal requirements of Subsection 030.06. (4-11-06) ( )

vii. To obtain a variance from the ~~standing tree and shade retention~~ requirements, the operator must develop a site-specific riparian management prescription and submit it to the ~~Department~~ for approval. The prescription should consider stream characteristics and the need for ~~large organic debris~~ LOD, stream shading and wildlife cover which will achieve the objective of these rules. (4-11-06) ( )

viii. Stream width ~~shall~~ will be measured as average between ordinary high water marks. (3-13-90) ( )

f. Limit ~~Direct~~ ignition of prescribed burns ~~will be limited~~ to hand piles within stream protection zones (SPZs); all other direct ignitions ~~shall~~ must occur outside of SPZs, so a backing (cooler) fire will more likely occur within the SPZ. (4-11-06) ( )

i. Hand piles ~~shall~~ must be at least five (5) feet from the ordinary high water-mark of streams. (4-11-06) ( )

ii. No mechanical piling of slash or natural forest fuels is allowed in an SPZ (an exception is filter windrows for erosion control which ~~shall~~ must not be ignited). (4-11-06) ( )

**08. Maintenance of Productivity and Related Values.** Design ~~H~~harvesting practices ~~will first be designed~~ to assure the continuous growing and harvesting of forest tree species by suitable economic means and ~~also~~ to protect soil, air, water, and wildlife resources. (10-14-75) ( )

a. Where major scenic attractions, highways, recreation areas or other high-use areas are located within or traverse forest land, give special consideration to scenic values by prompt cleanup and regeneration. (10-14-75)

b. Give special consideration to preserving any critical aquatic or wildlife habitat, including snags, especially within stream protection zones SPZs. Wherever practical, preserve fruit, nut, and berry producing trees and shrubs. (4-4-13)

c. Avoid conducting operations along or through bogs, swamps, wet meadows, springs, seeps, wet draws or other locations where the presence of water is indicated by associated vegetation; temporary crossings can be used as referred to in Paragraph 030.07.b. Protect soil and vegetation from disturbance which would cause adverse ~~affects~~ effects on water quality, quantity and wildlife and aquatic habitat. (4-4-13) ( )



d. Harvesting operations within a single ownership, in which essentially all trees have been removed in one operation, ~~shall~~must be planned so that adequate wildlife escape cover (e.g., topography, vegetation, ~~stream protection zones~~ SPZs, etc.) is available within one-quarter (1/4) mile. ~~(4-4-13)~~ ( )

### 031. CUMULATIVE WATERSHED EFFECTS.

01. **Purpose.** In accordance with Section 38-1305(8), Idaho Code, the ~~d~~IDepartment has developed methods for controlling cumulative watershed effects (CWE). The methods and procedures are described in the department manual entitled "Forest Practices Cumulative Watershed Effects Process for Idaho." Proper application of this process will help ensure watersheds are managed to protect water quality so that beneficial uses are supported. This rule describes how the process is to be implemented on forest land. (7-1-98)

02. **Process Application.** (7-1-98)

a. Application of the CWE process and any resulting site-specific BMPs are encouraged but not mandatory. (7-1-98)

b. The process may be initiated by either the ~~d~~IDepartment, a watershed advisory group (WAG), or an individual landowner or group of landowners that collectively own at least twenty-five percent (25%) of the forested land in a watershed. In any case, a reasonable effort will be made to notify forest landowners within the watershed, and the landowners will be given the opportunity to participate in the process. (7-1-98)

c. The ~~d~~IDepartment ~~shall~~must be notified prior to the initiation of the CWE process. ~~(7-1-98)~~ ( )

d. The ~~d~~IDepartment will review and approve the watershed assessment and CWE site-specific BMPs for compliance with the Forest Practices Act. (7-1-98)

03. **Site-Specific BMP Implementation.** ~~Approved CWE s~~Site-specific BMPs developed by a watershed advisory group are encouraged and applied on a voluntary basis. ~~(7-1-98)~~ ( )

~~04. Site Specific BMPs on Former Stream Segments of Concern. Practices approved by the department from 1989 through 1995 under former stream segments of concern rules remain in effect until revised by a CWE analysis, at which point the CWE site specific BMPs would be mandatory. (7-1-98)~~



**040. ROAD CONSTRUCTION, RECONSTRUCTION AND MAINTENANCE.**

**01. Purpose.** Provide standards and guidelines for road construction, reconstruction, and maintenance that will maintain forest productivity, water quality, and fish and wildlife habitat. (4-5-00)

**02. Road Specifications and Plans.** Road specifications and plans ~~shall~~must be consistent with good safety practices. ~~PLandowners and Operators should~~ plan each road to the minimum use standards adapted to the terrain and soil materials to minimize disturbances and damage to forest productivity, water quality, fish, and wildlife habitat. In addition, landowners and operators must: (4-5-00)( )

a. Plan transportation networks to avoid road construction within ~~stream protection zones~~ SPZs, except at approaches to stream crossings. Leave or reestablish areas of vegetation between roads and streams. (4-5-00)

b. Plan ~~R~~roads ~~shall be~~ no wider than necessary to safely accommodate the anticipated use. Minimize cut and fill volumes by aligning the road to fit the natural terrain features as closely as possible. Adequately compact fill material. Dispose of excess material on geologically stable sites. (4-5-00)( )

c. Plan roads to drain naturally by out-sloping or in-sloping with cross-drainage and by grade changes where possible. ~~Plan~~ Install dips, water bars, cross-drainage, or subsurface drainage on roads when necessary. (4-5-00)( )

d. ~~Relief culverts and roadside ditches shall be planned whenever reliance upon~~ When natural drainage ~~would~~will not protect the ~~running~~ surface, cut slopes or fill slopes. ~~Plan,~~ plan roads with relief culverts and roadside ditches. ~~Plan~~ Install culverts ~~installations~~ to prevent erosion of the fill by properly sizing, bedding and compacting. ~~Plan~~ Ensure drainage structures ~~to achieve minimum~~ avoid direct discharge of sediment into streams. (4-5-00)( )

e. ~~This~~ The following rule applies to new culvert installations, ~~of new culverts and re-~~ or reinstallations during road reconstructions ~~or reinstallations caused by flood or other~~ or because of catastrophic events. ~~Culverts used for~~ Temporary culvert crossings are exempt from the fifty (50) year peak flow design requirement but must be removed ~~immediately after they are no longer needed and~~ before ~~the spring~~ seasonal run-off period. (4-5-00)( )

i. Culverts in ~~installations on~~ fish-bearing streams must provide for fish passage. (4-5-00)( )

ii. Design ~~culverts for~~ stream crossings to carry the fifty (50) year peak flow using department accepted engineering methods ~~acceptable to the department or determine culvert size by using~~ the culvert sizing tables below. Armor the inlet or use a flared inlet structure on thirty (30) inch or greater diameter culverts. The minimum diameter size culvert ~~required for stream crossings shall not be less than~~ allowed is eighteen (18) inches ~~in diameter, with the exception of that area of the Snake River drainage upstream from the mouth of the Malad River, including the Bear River basin, where the minimum size shall be fifteen (15) inches.~~

**CULVERT SIZING TABLE –I**  
~~USE FOR NORTH IDAHO AND THE SALMON RIVER DRAINAGE~~

~~The left side of t~~This culvert sizing table ~~will be~~<sup>is</sup> used for the area of the state north of the Salmon River and within the South Fork Salmon River drainage; ~~the right side will be used for the area of the state south of the Salmon River and outside the South Fork Salmon River drainage.~~ It was developed to carry the fifty (50) year peak flow at a headwater-to-diameter ratio of one (1).

<u>North Forest Region and South Fork Salmon River Drainage</u>			<u>South Forest Region</u>
Watershed Area (acres)	Required Culvert Diameter (inches)	Culvert Capacity (in cubic feet/sec)	Watershed Area (acres)
<u>Ditch relief, seeps, springs, wet areas, draws</u>	<u>12</u>	<u>NA</u>	<u>Ditch relief, seeps, springs, wet areas, draws</u>
less than 32	18	6	<u>Less than 72</u>
33 - 74	24	12	<u>73-150</u>
75 - 141	30	20	<u>151-270</u>
142 - 240	36	32	<u>271-460</u>
241 - 366	42	46	<u>461-720</u>
367 - 546	48	65	<u>471-1025</u>
547 - 787	54	89	<u>1026-1450</u>
788 - 1027	60	112	<u>1451-1870</u>
1028 - 1354	66	142	<u>1871-2415</u>
1355 - 1736	72	176	<u>2416-3355</u>
1737 - 2731	84	260	<u>3356-5335</u>
2732 - 4111	96	370	<u>5336-7410</u>
4112 - 5830	108	500	<u>7411-9565</u>
5831 - 8256	120	675	<u>9566-11780</u>

~~Strongly consider having culverts larger than sixty (60) inches designed, or consider alternative structures, such as bridges, mitered culverts, arches, etc.~~

~~Culverts larger than one hundred twenty (120) inches must be designed; consider alternative structures.~~

**~~CULVERT SIZING TABLE—II~~**  
**~~USE FOR SOUTH IDAHO~~**

~~This culvert sizing table is used for the area of the state south of the Salmon River and outside the South Fork Salmon River drainage. It was developed to carry the fifty (50) year peak flow at a headwater to diameter ratio of one (1).~~

<b>Watershed Area (acres)</b>	<b>Required Culvert Diameter (inches)</b>	<b>Culvert Capacity (in cubic feet/sec)</b>
<del>less than 72</del>	<del>18#</del>	<del>6</del>
<del>73—150</del>	<del>24</del>	<del>12</del>
<del>151—270</del>	<del>30</del>	<del>20</del>
<del>271—460</del>	<del>36</del>	<del>32</del>
<del>461—720</del>	<del>42</del>	<del>46</del>
<del>721—1025</del>	<del>48</del>	<del>65</del>
<del>1026—1450</del>	<del>54</del>	<del>89</del>
<del>1451—1870</del>	<del>60</del>	<del>112</del>

~~Strongly consider having culverts larger than sixty (60) inches designed, or consider alternative structures, such as bridges, mitered culverts, arches, etc.~~

<b>Watershed Area (acres)</b>	<b>Required Culvert Diameter (inches)</b>	<b>Culvert Capacity (in cubic feet/sec)</b>
<del>1871—2415</del>	<del>66</del>	<del>142</del>
<del>2416—3355</del>	<del>72</del>	<del>176</del>
<del>3356—5335</del>	<del>84</del>	<del>260</del>
<del>5336—7410</del>	<del>96</del>	<del>370</del>
<del>7411—9565</del>	<del>108</del>	<del>500</del>
<del>9566—11780</del>	<del>120</del>	<del>675</del>

Culverts larger than one hundred twenty (120) inches must be designed; consider alternative structures.

~~# See exception for southeast Idaho in Subparagraph 040.02.a.ii. of this rule.~~ (4-5-00)( )

iii. Relief culverts, and those used for seeps, springs, wet areas, and draws ~~shall~~**must** not be less than twelve (12) inches in diameter for permanent installations. (7-1-96)( )

f. On existing roads that are not reconstructed or damaged by catastrophic events, landowners or operators are encouraged, but not required, to replace or provide mitigation for culverts that do not provide for fish passage in accordance with Subparagraph 040.02.e.i. or cannot carry the fifty (50) year peak flow of Subparagraph

040.02.e.ii.

(4-11-06)

g. ~~Plan and install s~~Stream crossings, ~~including fords, shall be minimum in number and planned and installed~~ in compliance with the Stream Channel Protection Act, (Title 42, Chapter 38, Idaho Code), ~~Paragraph 030.07.b. and with the~~ culvert sizing requirements of ~~Paragraph~~ 040.02.e. Fords are ~~an~~ acceptable stream crossing structures on small, shallow streams, with ~~gradients~~ flat, less than four percent (4%) ~~gradients~~. ~~For fords, should cross the stream at right angles. Approaches shall be adequately cross-drained and rocked the road surface on each side of the stream~~ for at least seventy-five (75) feet ~~for Class I and at least thirty (30) feet for Class II streams; minimize sediment delivery to streams by~~. ~~During times of salmonid spawning and egg incubation or to protect active domestic water diversions, use shall be limited limiting use~~ to low water, dry, or frozen conditions; ~~minimize and~~ hauling or equipment crossing trips ~~limited to minimize sediment delivery to streams during times of salmonid spawning and egg incubation, or to protect active domestic water diversions.~~ (4-11-06)(    )

h. Avoid reconstruction of existing roads located in ~~stream protection zones~~ SPZs, except for approaches to stream crossings, unless it will result in the least long-term impact on site productivity, water quality, and fish and wildlife habitat. Reconstruction of existing roads in ~~stream protection zones~~ SPZs ~~will require~~s a variance. Reusing existing roads in ~~stream protection zones~~ SPZs for skidding or landing logs ~~shall require~~s a variance. Reusing existing roads in ~~stream protection zones~~ SPZs ~~only~~ for hauling fully suspended logs ~~only, where no reconstruction will occur~~, does not require a variance. (4-11-06)(    )

**03. Road Construction.** ~~Landowners and operators must use the following practices to~~ ~~C~~construct or reconstruct roads in a ~~manner to~~ way that prevents debris, overburden, and other material from entering streams. (4-5-00)(    )

a. ~~Construct r~~Roads ~~shall be constructed~~ in compliance with the planning guidelines of Subsection 040.02. (7-1-96)(    )

b. Clear all debris generated during construction or maintenance which potentially interferes with drainage or water quality. Deposit excess material and slash on geologically stable sites outside the ~~stream protection zones~~ SPZs. (4-5-00)

c. Where ~~sediments would enter streams, stabilize~~ exposed material (road surface, cut slopes, ~~or~~ fill slopes, borrow pits, waste piles, etc.) ~~is potentially erodible, and where sediments would enter streams, stabilize~~ prior to ~~fall or spring seasonal~~ runoff. ~~Install supplemental stabilization measures such as seed and mulch, slash mats, or rock. Rock the road surface through the entire SPZ over Class I stream crossings, by seeding, compacting, rocking, riprapping, benching, mulching or other suitable means.~~ (4-5-00)(    )

d. ~~In the construction of Compact~~ road fills, ~~compact the material to reduce the entry of water, minimize erosion, and settling of fill material.~~ Minimize the amount of snow, ice, or frozen soil buried in embankments. ~~No s~~Significant amount of woody material ~~is not allowed in~~ shall be incorporated into fills, ~~but slash.~~ Available slash and debris may be utilized ~~used~~ as a filter windrow along the ~~fill toe of the fill in compliance with, but must meet the requirements of~~ the Idaho Forestry Act and Fire Hazard Reduction ~~Programs~~ Laws, Title 38, Chapters 1 and 4, Idaho Code. (4-5-00)(    )

e. During and following operations on out-sloped roads, retain out-slope drainage and remove berms on the outside edge, ~~except those intentionally constructed for road grade fill protection of road grade fills.~~ (8-13-85)(    )

f. Provide for drainage of quarries to prevent sediment from entering streams. (8-13-85)

g. Construct cross-drains and relief culverts to minimize erosion ~~of embankments.~~ ~~Installation of erosion control devices should be concurrent with road construction.~~ Use riprap, vegetative matter, downspouts, and similar devices to minimize erosion of the fill. Install drainage structures or cross-drain incompleted roads ~~which are subject to erosion~~ prior to ~~fall or spring seasonal~~ runoff. ~~Install relief culverts with a minimum grade of one percent (1%). If effective forest floor filtration is not available within SPZs, install supplemental filtration at drainage structure outlets or additional drainage structures outside SPZs to prevent road surface erosion from entering streams.~~

~~(4-5-00)~~( )

h. Postpone ~~E~~earthwork or material hauling ~~shall be postponed~~ during wet periods if, ~~as a result,~~ erodible material would enter streams. ~~(4-5-00)~~( )

i. ~~Cut slopes shall be reconstructed to minimize sloughing of material into road surfaces or ditchlines.~~ Remove or stabilize cut-slope material subject to sloughing concurrent with ~~the~~ construction ~~operation~~. ~~(4-5-00)~~( )

j. Construct full-bench r~~Roads, constructed on slopes greater than sixty percent (60%) in unstable or erodible soils shall be full benched~~ without fill slope disposal on slopes greater than sixty percent (60%) in unstable or erodible soils. ~~At stream and draw crossings keep fills to a minimum. A variance is required if a full bench is not used.~~ ~~(4-5-00)~~( )

**04. Road Maintenance.** Landowners and operators must use the following practices for ~~Conduct~~ regular preventive maintenance operations to minimize disturbance and damage to forest productivity, water quality, and fish and wildlife habitat. ~~(4-5-00)~~( )

a. Place all debris or slide material associated with road maintenance in a manner to prevent their entry into streams. ~~(4-5-00)~~

b. Repair slumps, slides, and other erosion sources causing stream sedimentation to minimize sediment delivery. ~~(4-5-00)~~

c. Active forest roads. ~~An active road is a forest road being~~ are used for hauling forest products, rock and other road building materials. Conduct t~~The following maintenance on active~~ shall be conducted on such roads. ~~(8-13-85)~~( )

i. Keep ~~C~~culverts and ditches ~~shall be kept~~ functional. ~~(8-13-85)~~( )

ii. Crown, out-slope, in-slope, or cross-drain road surfaces d~~During and upon completion of seasonal operations, the road surface shall be crowned, out sloped, in sloped or cross ditched, and. Remove~~ berms ~~removed~~ from the outside edge except those intentionally constructed for protection of fills. ~~(4-5-00)~~( )

iii. Maintain t~~The road surface shall and postpone hauling during wet periods be maintained~~ as necessary to minimize erosion of the subgrade and ~~to provide proper drainage.~~ ~~(8-13-85)~~( )

iv. Apply road-surface stabilizing materials in a way that prevents their entry into streams. ~~Hauling shall be postponed during wet periods if necessary to minimize sediment delivery to streams.~~ ~~(4-5-00)~~( )

v. During active maintenance, ensure road surfaces within SPZs are sufficiently stabilized. Install supplemental filtration at drainage structure outlets within SPZs if effective forest floor filtration is not available. If road surface stabilizing materials are used, apply them in such a manner as to prevent their entry into streams. ~~(4-5-00)~~( )

d. Incidental ~~Haul Road. An incidental~~ haul roads are roads with a ~~is a multi use road (residential traffic; its primary purpose is other than forest practices)~~ that are used for ~~has log-hauling logs~~ during active harvest activities. Active road maintenance requirements apply. Once active road maintenance is completed, no other maintenance is required under the ~~Forest Practices Act (FPA).~~ ~~(4-11-06)~~( )

e. Inactive forest roads. ~~An inactive road is a forest road (primary purpose is for forest practices) are~~ no longer used for commercial hauling, but maintained for access ~~(e.g., for fire control, forest management activities, recreational use, and occasional or incidental use for minor forest products harvesting).~~ Conduct T~~The following maintenance shall be conducted~~ on inactive roads. ~~(4-11-06)~~( )

i. When~~Following termination of active use is over, clear~~ ditches and culverts, ~~shall be cleared and the road surface shall be~~ crowned, out-slope, ~~d or in-sloped,~~ cross-drain ~~water barred~~ or otherwise treat the road surface ~~left in a condition~~ to minimize erosion. Maintain d~~Drainage structures shall be maintained thereafter~~ as needed.

(7-1-96)( )

- ii. The roads may be permanently or seasonally blocked to vehicle ~~leular~~ traffic. (8-13-85)( )

f. Long-term ~~Inactive Roads. A long-term~~ inactive roads ~~is~~ are forest roads that will not ~~intended to~~ be used ~~soon, again in the near future~~ but ~~will likely~~ may be used again; ~~at some point in the future. No~~ subsequent maintenance ~~of a long-term inactive road~~ is required ~~following after the following procedures are completed~~ of the practices below: (4-5-00)( )

i. ~~The road is left in a condition suitable~~ Out-slope, cross-drain, seed or treat the surface to control erosion ~~by out-sloping, water barring, seeding, or other suitable methods.~~ (8-13-85)( )

- ii. Block t The road ~~is blocked~~ to vehicle leular traffic. (8-13-85)( )

iii. The department may require the removal of bridges, culverts, ditches and unstable fills. The landowner must maintain ~~Any bridges or culverts left in place shall be maintained by the landowner.~~ (4-5-00)( )

g. ~~Permanently Abandoned Roads.~~ Permanently abandoned roads are forest roads not intended to be used again. Remove a All drainage structures ~~must be removed~~ and ~~roadway sections~~ treated so that road surfaces to minimize erosion ~~and landsliding are minimized.~~ (4-5-00)( )

- i. ~~Drainage structures shall be removed and~~ Restore stream gradients ~~restored~~ to their natural slope. (4-5-00)( )

- ii. Treat t The road ~~prism shall be treated~~ surface to break up compacted areas. (4-5-00)( )

iii. Pull back t Fill slopes of roads within stream protection zones ~~SPZs shall be pulled back~~ to a stable configuration unless long-term stability is evident ~~has already been achieved.~~ (4-5-00)( )

- iv. Pull back u Unstable side-hill fills ~~shall be pulled back~~ to a stable configuration. (4-5-00)( )

v. Control d Ditch-line erosion ~~shall be controlled~~ by cross-ditch draining, out-sloping, or regrading to eliminate ditches. (4-5-00)( )

vi. Stabilize soil exposed ~~All bare earth areas created by~~ from regrading, ripping, and drainage removal ~~shall be stabilized~~ by seeding, mulching, armoring, or other treatment ~~suitable means.~~ (4-5-00)( )

05. **Winter Operations.** ~~Due to risk of~~ To minimize erosion and prevent damage ~~from to~~ roads and constructed skid trails ~~inherent in from~~ winter logging, ~~at minimum the following shall apply~~ operators must implement the practices below: (4-21-92)( )

a. ~~Roads to be used for winter operations must have adequate surface and cross drainage~~ I adequate road drainage prior to winter operations. ~~Drain winter roads by installing~~ using rolling dips, driveable cross-drains ~~ditches, open-top culverts, out-slopesing, or by other suitable means~~ methods. (4-21-92)( )

b. ~~During winter operations, roads will be maintained as needed~~ Maintain roads to keep the road surface drained during thaws or break-up. This may ~~include~~ require active maintenance of existing drainage ~~structures, drain-opening of drainage~~ holes in snow berms, and installation of additional cross-drainages ~~on or treatment of the road surfaces by ripping, placement of native material or other suitable means.~~ (4-21-92)( )

041. -- 049. (RESERVED)



**050. RESIDUAL STOCKING AND REFORESTATION.**

**01. Purpose.** ~~The purpose of these rules is to~~ To provide requirements for residual stocking and reforestation that will maintain a continuous growing and harvesting of forest tree species, and for sites not requiring reforestation, to maintain soil productivity and minimize erosion. ~~by describing the conditions under which reforestation will be required, specifying. The rules specify~~ the minimum number of acceptable trees per acre, and the maximum period of time allowed after harvesting for establishment of forest tree species, ~~and for sites not requiring reforestation, to maintain soil productivity and minimize erosion.~~ (7-1-96)( )

**02. Quality of Residual Stocking.** On any operation, trees left for future harvest ~~shall~~must be of acceptable species and adequately protected from harvest damage to enhance their survival and growth. ~~This may be accomplished by~~ Locating roads and landings and ~~by conducting~~ felling, bucking, skidding, yarding, and decking operations ~~so as~~ to minimize damage to residual trees. Acceptable residual trees should have a minimum live crown ratio of thirty percent (30%), minimum basal scarring, and should not have dead or broken tops. When stands have a high percentage of unacceptable trees, consider stand replacement rather than intermediate cuttings. (7-1-96)( )

**03. Sites ImUnpractical to Reforest.** Sites ~~unpractical~~impractical to reforest, generally ponderosa pine and drier Douglas-fir habitat types, ~~shall~~must not be harvested below minimum stocking, unless the site is converted to some other use; or, in instances of wildfire, insects, disease or other natural causes, where salvage of ~~the~~ damaged timber is planned. (4-4-13)( )

a. When harvesting timber on these sites, one (1) of the following actions must be taken to ensure minimum stocking: (4-4-13)( )

i. Establish a new stand by leaving seed trees on the site and inter-planting at least once within five (5) years of harvest completion ~~on the harvest, if needed to meet minimum stocking.~~ (4-4-13)( )

ii. Establish a new stand of timber by planting the site with an acceptable tree species, and inter-planting at least once within five (5) years of the original planting, ~~if needed to meet minimum stocking.~~ (4-4-13)( )

b. If the efforts listed ~~in Subparagraphs 050.03. above in~~ a.i. and ~~050.03.a.ii. fall short of meeting~~ do not provide the minimum stocking level, the landowner will be encouraged, but not required, to ~~meet the minimum stocking level through~~ perform additional reforestation efforts. (4-4-13)( )

**04. Stocking.** Stocking ~~will be deemed adequate~~ is satisfactory immediately following harvest if the following number of acceptable trees per acre, within each specified region, for at least one (1) ~~size class~~ diameter range, are reasonably well distributed over the area affected by ~~forest~~ harvesting. (NOTE: (1) DBH = Average Diameter (outside of the bark) of a tree four and one half (4.5) feet above mean ground level):

**MINIMUM STOCKING - ACCEPTABLE TREES**

Idaho Region	Size Class Diameter Range DBH (inches)	Average Number of Retained Trees Per Acre	Average Spacing (feet)
North	0" – 2.9"	170	16 x 16
South	0" – 2.9"	125	18 x 18
North	3.0" – 10.9"	110	19 x 19
South	3.0" – 10.9"	75	24 x 24
North	11.0" and greater	20	46 x 46
South	11.0" and greater	15	53 x 53

If ~~immediately following harvest~~, the stand consists of retained trees of mixed ~~size classes that are~~ **diameter ranges** reasonably well distributed over the harvested area, and none of the ~~size classes~~ **diameter ranges** individually equal or exceed the minimum trees per acre shown above, stocking ~~will also be deemed adequate~~ **is satisfactory** if the weighted total of all of the ~~size classes~~ **diameter ranges** of the retained trees exceeds a value of one hundred seventy (170) for a stand in the North Region and one hundred twenty-five (125) in the South Region. ~~The weighted total is calculated by multiplying the number of retained trees per acre in each size class by the weighting factors below and adding all of these classes totals together. Calculate the weighted total by multiplying the number of retained trees per acre in each size range by the weight below and then sum the results.~~

<b>Size Diameter Range</b>	<b>Weight</b>
0" – 2.9"	1
3.0" – 10.9"	1.6
11.0" and greater	8.4

Harvested stands which are not adequately stocked, as defined above, ~~will be~~ **are** subject to supplemental reforestation requirements specified in Subsection 050.06. Minimum stocking requirements for Class I ~~stream protection zones~~ **SPZs** are specified in Subparagraphs 030.07.e.ii. and 07.e.~~iii.~~ **(4-4-13)( )**

**05. Reforestation Exemptions.** (7-1-96)

**a.** Reforestation is not required for: (7-1-96)

- i. Noncommercial forest land; (7-1-96)
- ii. Land converted to another use. This may include land converted to roads used in a forest practice; (7-1-96)
- iii. A forest practice which will result in ten (10) acres or less below minimum stocking levels. (7-1-96)

**b.** On lands ~~exempted under Subsection 050.03, where reforestation is not being planned, where reforestation is not being planned in accordance with Subsection 050.03, establish~~ some form of grass or planted cover ~~shall be established~~ within one (1) year in order to maintain soil productivity and minimize erosion. **(7-1-96)( )**

**06. Supplemental Reforestation.** Seeding and/or planting may be required if after three (3) growing seasons from the date of harvest, stocking levels do not meet the standards in Subsection 050.04. ~~Complete R~~ required seeding and/or planting ~~shall be completed~~ before the end of the fifth growing season following the time of harvest, ~~except that;~~ the ~~d~~Director ~~shall~~**must** grant an extension of time if suitable seeds or seedlings are not available or if weather or other conditions interfere. **(7-1-96)( )**

**a.** Reforestation practices must ensure seedlings become established. This can be accomplished by adequate site preparation, ~~using~~ **utilizing** acceptable seed or seedlings, following accepted planting or sowing practices, or ~~by~~ other suitable means. **(7-1-96)( )**

**b.** The party responsible for reforestation is the landowner during the harvest which reduced stand stocking below the minimum levels stated in Subsection 050.04. **(4-4-13)**

**051. -- 059. (RESERVED)**

**060. USE OF CHEMICALS AND PETROLEUM PRODUCTS.**

**01. Purpose.** Chemicals perform an important function in ~~the~~ growing and harvesting ~~of~~ forest tree species. ~~The purpose of these rules is to regulate chemical handling, storage and application of chemicals in such a way for forest practices so~~ that the public health and aquatic and terrestrial habitats will not be endangered by contamination of streams or other bodies of water. ~~In addition, the application of chemicals are is regulated by the Commercial Fertilizer Law, Title 22, Chapter 6; the Soil and Plant Amendment Law, Title 22, Chapter 22, and the Idaho(7-1-98) ( )~~

**02. Other Applicable Laws.** Anyone mixing, loading, applying or otherwise using chemicals must comply with the applicable portions of state and federal law, including but not limited to the Pesticide and Chemigation Law, Title 22, Chapter 34, Idaho Code and IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application."  
(7-1-98) ( )

**03. Petroleum Products.** Stationary or mobile Ppetroleum storage containers with capacities greater of ~~more~~ than two hundred (200) gallons, ~~stationary or mobile, will~~ must not be located ~~no~~ closer than one hundred (100) feet from any ~~stream, water course, lake,~~ waterway or area of open water. Dikes, berms or embankments ~~will~~ must be constructed to contain at least one hundred ten percent (110%) of the volume of petroleum products stored within the tanks. Diked areas ~~will~~ must be sufficiently impervious and of adequate capacity to contain spilled petroleum products. In the event any leakage or spillage enters any ~~stream, water course, lake,~~ waterway or area of open water, the operator will must immediately notify the ~~d~~Department. (7-1-98) ( )

a. ~~Transferring petroleum products.~~ During fueling operations or petroleum product transfer to other containers, there ~~shall~~ must be a person attending ~~such the~~ operations at all times. Fueling operations ~~should~~ must not take place where, ~~if spillage occurs,~~ the fuel will enter streams, lakes or other areas of open water, if spillage occurs.  
(7-1-98) ( )

b. Equipment and containers used ~~for to~~ transportation, storage or transfer ~~of~~ petroleum products ~~shall~~ must be maintained in a leakproof condition. If the ~~d~~Department ~~determines there is~~ finds evidence of petroleum product leakage or spillage, the ~~use of such equipment shall be suspended~~ equipment or containers may not be used until the deficiency has been corrected. (7-1-98) ( )

c. Waste resulting from logging operations, such as crankcase oil, filters, grease, oil containers, or other nonbiodegradable waste ~~shall~~ must be removed from the operating area and disposed of properly. (7-1-98) ( )

**03. Licensing.** ~~Any person applying, mixing or loading pesticides shall comply with the licensing requirements of Idaho Pesticide Law and IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." This requirement does not pertain to individuals applying general use pesticides on their own property.~~  
(7-1-98)

**04. Equipment Maintenance of Equipment.** (10-14-75) ( )

a. Equipment used ~~for to~~ transportation, storage or apply ~~ication of~~ chemicals ~~shall~~ must be maintained in leakproof condition. If, ~~in the director's judgment, there is~~ Department finds evidence of chemical leakage, ~~he shall have the authority to the Department may~~ suspend ~~the~~ further use of ~~such that~~ equipment until the deficiency has been corrected. (10-14-75) ( )

b. ~~The storage of pesticide shall must also be conducted in accordance with the requirements Rules of the Idaho Pesticide Law and IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application."~~  
(7-1-98)

**05. Mixing and Cleaning.** (10-14-75) ( )

a. A person using ~~When water is used in mixing to mix~~ chemicals must: (10-14-75)

~~i. Provide an air gap or reservoir between the water source and the mixing tank. (10-14-75)~~

~~ii. Use uncontaminated tanks, pumps, hoses and screens to handle and transfer mix water for utilization in pesticide operations. (7-1-98) ( )~~

**b. CMixing and landing areas: (10-14-75)**

~~i. Mix chemicals may be mixed and ~~clean~~ tanks and equipment cleaned only where spills will not enter any water source or streams. (10-14-75)~~

~~ii. Landing areas ~~shall~~ must be located where spilled chemicals will not enter any water source or stream. (8-13-85) ( )~~

~~iii. Rinsate and wash water should be recovered and used for make-up water, be applied to the target area, or disposed of according to state and federal laws. (7-1-98) ( )~~

**06. Aerial Application: (10-14-75)**

**a.** With the exception of pesticides approved for aquatic use and applied according to labeled directions, when applying pesticide leave at least one (1) swath width (minimum one hundred (100) feet) untreated on each side of all Class I streams, flowing Class II streams and other areas of open water. When applying pelletized fertilizer, leave a minimum of fifty (50) feet untreated on each side of all Class I streams, flowing Class II streams, and other areas of open water. (7-1-98)

**b.** Use a bucket or spray device capable of immediate shutoff. (10-14-75)

**c.** Shut off chemical application during turns and over open water. (10-14-75)

~~**d.** Aerial application of pesticides shall also be conducted according to the Idaho Pesticide Law and IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." (7-1-98)~~

**07. Ground Application with Power Equipment. (10-14-75)**

**a.** With exception of pesticides approved for aquatic use and applied according to labeled directions, when applying pesticide, leave at least twenty-five (25) feet untreated on each side of all Class I streams, flowing Class II streams and areas of open water. (7-1-98)

**b.** When applying fertilizer, leave at least ten (10) feet untreated on each side of all streams and areas of open water. (10-14-75)

**08. Hand Application. (10-14-75)**

**a.** Apply only to specific targets; such as, a stump, burrow, bait, or trap. (10-14-75)

**b.** Keep chemicals out of all water sources or streams. (10-14-75)

**09. Limitations on Applications. (10-14-75)**

**a.** Chemicals ~~shall~~ must be applied in accordance with all limitations and instructions printed on the product registration labels, supplemental labels, and others established by regulation of the ~~d~~Director. (7-1-98) ( )

**b.** Do not exceed allowable rates. (7-1-98)

**c.** Prevent direct entry of chemicals into any water source or stream. (8-13-85)

**10. Daily Records of Chemical Applications.** (10-14-75)

a. When pesticides are applied on forest land, the operator ~~shall~~ must maintain a daily record of spray operations which includes: (7-1-98) ( )

i. Date and time of day of application. (8-13-85)

ii. Name and address of owner of property treated. (8-13-85)

iii. Purpose of the application ~~(control of vegetation, control of Douglas fir tussock moth, etc.)~~. (8-13-85) ( )

iv. Contractor's name and applicator or pilot's ~~name when applied aerially. Contractor's name or applicator's name for ground application.~~ (7-1-96) ( )

v. Location of project (section, township, range and county). (10-14-75)

vi. Air temperature (hourly). (10-14-75)

vii. Wind velocity and direction (hourly). (10-14-75)

viii. Pesticides used including trade or brand name, EPA product registration number, mixture, application rate, carrier used and total amounts applied. (7-1-98)

b. Whenever fertilizers or soil amendments are applied, the operator ~~shall~~ must maintain a daily record of such application which includes Subsection 060.10 and the name of the fertilizer or soil amendment and application rate. (7-1-98) ( )

c. The records required in Subsection 060.10 ~~shall~~ must be maintained in compliance with the record-keeping requirements of IDAPA 02.03.03, "Rules Governing Pesticide and Chemigation Use and Application." (7-1-98) ( )

d. All records required in Subsection 060.10 ~~shall~~ must be retained for three (3) years. (7-1-98)

**11. Container Disposal.** Chemical containers ~~shall~~ must be: cleaned and removed from the forest and disposed of in a manner approved by the ~~e~~Director in accordance with applicable local, state and federal regulations; or removed for reuse in a manner consistent with label directions and applicable regulations of a state or local health department. Open burning of containers is prohibited. (7-1-98) ( )

**12. Spills.** ~~Spills shall be reported and appropriate cleanup action taken in accordance with applicable state and federal laws and rules and regulations.~~ In the event of a spill: (8-13-85) ( )

a. All chemical accidents and spills ~~shall~~ must be reported immediately to the ~~e~~Director. (7-1-98) ( )

b. ~~If chemical is spilled, a~~ Appropriate procedures ~~shall~~ must be taken immediately to control the spill source and contain the released material. (7-1-98) ( )

c. ~~It is the applicator's responsibility to~~ The applicator must collect, remove, and dispose of the spilled material in accordance with applicable local, state and federal ~~rules and regulations~~ law and in a manner approved by the ~~e~~Director. (7-1-98) ( )

**13. Misapplications.** Whenever chemicals are applied to the wrong site or pesticides are applied in a



manner inconsistent with ~~outside of the directions on~~ the product label, ~~it is the responsibility of~~ the applicator ~~to~~ must report ~~these~~ those misapplications immediately to the ~~d~~Director. (7-1-98)( )

**061. -- 069. (RESERVED)**

**070. SLASHING MANAGEMENT.**

**01. Purpose.** To provide for ~~management of~~ slashing and fire hazard management resulting from harvesting, forest management, ~~or improvement of~~ forest tree species improvement, or defoliation caused by chemical applications ~~in that manner~~ necessary to protect reproduction and residual stands, reduce risk from fire, insects and disease or optimize the conditions for future forest tree species regeneration ~~of forest tree species~~ and to maintain air and water quality, fish and wildlife ~~habitat~~.  
(10-14-75)

**02. Commercial Slash.** Fuels and debris resulting from a forest practice involving removal of a commercial product ~~shall~~ must be managed as set forth in the Idaho Forestry Act, Title 38, Chapters 1 and 4, Idaho Code and the rules and regulations pertaining to forest fire protection. (7-1-96)( )

**03. Non-Commercial Slash.** Fuels and debris resulting from a forest practice where no commercial product is removed ~~shall~~ must be managed in a manner as hereinafter designated under authority of the Idaho Forest Practices Act, Title 38, Chapter 13, Idaho Code. (1-24-78)( )

**a.** Within ten (10) days or a time mutually agreed upon following receipt by the ~~d~~Department of the "Notification of Forest Practice" as provided in Subsection 020.05, the ~~d~~Department ~~shall~~ will make a determination of the potential fire hazard and hazard reduction and/or hazard offsets, if any, needed to reduce, abate or offset the fire hazard. ~~Such~~ This determination ~~shall~~ will be based on a point system found in Paragraph 070.03.e. (7-1-96)( )

**b.** The operator, timber owner and landowner ~~shall~~ will be notified in writing of the determination ~~made in Paragraph 070.03.a. above (on forms provided by the department)~~ and of the hazard reductions and/or hazard offsets, if any, that must be accomplished by the operator, timber owner or landowner. The notification ~~shall~~ will specify a reasonable time period not to exceed twelve (12) months from the date the forest practice commenced ~~in which to complete~~ the hazard reduction completion and ~~shall~~ will specify the number of succeeding years that on site improvements or extra protection must be provided. (7-1-96)( )

**c.** A release of all obligations under Subsection 070.03 ~~shall~~ will be granted in writing ~~on forms provided by the department~~ when the hazard reduction and/or hazard offsets have been accomplished. When hazard offsets are to be accomplished during succeeding years, the release ~~shall~~ will be conditioned upon the completion of the required hazard offsets. Notification of release ~~shall~~ will be mailed to the operator, timber owner and landowner within seven (7) days of ~~the~~ inspection by the ~~d~~Department. Inspections by the ~~d~~Department ~~shall~~ will be made within ten (10) days of notification by the operator, timber owner or landowner unless otherwise mutually agreed upon.  
(7-1-96)( )

**d.** If the ~~d~~Department determines upon inspection that the hazard reduction or hazard offsets have not been accomplished within the specified time limit, ~~specified in Paragraph 070.03.b., the Department may grant~~ extensions of time, each not to exceed three months, ~~may be granted~~ if the director determines that a diligent effort has been made and that conditions beyond the control of the party performing the hazard reduction or hazard offsets prevented completion. If an extension is not granted the ~~d~~Department ~~shall~~ will proceed as required in Section 38-1307, Idaho Code (Idaho Forest Practices Act).  
(7-1-96)( )

**e.** For the purpose of determining the potential fire hazard and the appropriate hazard reduction and/or hazard offsets, the Department will use a point system ~~with using~~ the following rating guides ~~will be used by the department~~. A value of eighty (80) points or less for any individual forest practice under Paragraph Subsection 070.03, as determined by the ~~d~~Department, will be sufficient to release the operator, timber owner and landowner of all further obligations under Subsection 070.03. Total points of the proposed forest practice will be determined from Tables I



and II. If the total points are greater than eighty (80), modification of the thinning practice to reduce points may be made as determined by Tables I and II, slash hazard offsets may be scheduled to reduce points as determined by Table III or a combination of these options may be used to reduce the hazards to a point total of eighty (80) or less. Consideration will be given to the operator's, timber owner's and landowner's preference in selecting the options to reduce the points to eighty (80) or less.

**TABLE I - HAZARD POINTS****Hazard Points for Ponderosa Pine, Western Red Cedar or Western Hemlock**

Thinned Stems Per Acre											
Ave. DBH	250	500	750	1000	1250	1500	1750	2000	2500	3000	4000
1	1	2	3	3	4	5	6	7	9	10	16
2	3	6	9	13	16	22	25	30	36	42	51
3	7	16	25	32	38	46	51	52	56	59	
4	9	22	32	40	50	52	54	56	60		
5	13	28	40	51	54	56	59	60			
6	19	36	51	54	58	60	60				

**IDAHO DEPARTMENT OF LANDS****Hazard Points for Douglas Fir, Grand Fir or Engelmann Spruce**

Thinned Stems Per Acre											
Ave. DBH	250	500	750	1000	1250	1500	1750	2000	2500	3000	4000
1	1	2	3	4	6	7	8	9	13	16	22
2	4	7	13	16	22	28	32	36	42	50	54
3	8	19	28	36	44	51	53	54	58	60	
4	10	25	36	46	51	54	57	59	60		
5	16	32	46	52	56	59	60	60			
6	22	40	52	56	60	60	60				

**Hazard Points for Western Larch, Lodgepole Pine or Western White Pine**

Ave. DBH	Thinned Stems Per Acre										
	250	500	750	1000	1250	1500	1750	2000	2500	3000	4000
1	1	2	2	3	4	4	5	6	8	9	13
2	3	6	8	11	16	19	22	28	32	38	48
3	6	16	25	32	38	46	51	52	56	59	
4	8	16	28	36	44	50	52	54	58		
5	9	22	32	42	50	53	55	57			
6	13	28	40	50	53	56	59				

**TABLE II - HAZARD POINTS WORKSHEET**

**HAZARD CHARACTERISTICS**

**HAZARD POINTS**

Fuel Quantity

Hazard points from Slash Hazard Table I 1/

Record number of trees/acre to be cut

Average D.B.H.

Predominant species

Size of thinning block

Points 0 - 15 16 - 30 31 - 45 46 - 60 1/

Acres 20 20 - 40 40 - 80 80

Site Factor

Record Slope \_\_\_\_\_% Aspect \_\_\_\_\_

Determine points from table below 1/

ASPECT	PERCENT SLOPE			
	0 - 19	20 - 39	40 - 59	60
E or NE	0	5	10	20
E or NW	0	5	10	30
W or SE	0	10	30	40

S or SW	0	20	40	60
1/	Max. 60 points			

Other Factors	
Condition of operating area before forest practice commences	0 - 20 points
Condition of adjoining area	0 - 20 points
Presence of snags and culls	0 - 5 points
Deterioration rate of slash	0 - 5 points
Time of year forest practice operation	10 points
October thru December	2 points
August thru September	4 points
January thru April	7 points
May thru July	10 points
TOTAL FOREST PRACTICE AREA POINTS	(Max. 240 points)

**TABLE III - HAZARD OFFSETS**

Offsets	Hazard Point Deductions
Physical Changes to the Hazard (1)	
(1) Points will be proportional to the amount of hazard disposed of or modified.	
Disposal by burning or removal.	0 - 160
Modification by reducing depth through crushing, chipping or lopping.	0 - 60
On Site Improvements	
Condition of main access road to forest practice area should allow movement of heavy trucks without difficulty.	0 - 5

Access control to forest practice area provided by closure to public traffic.	0 - 5
Availability of water for tankers within one mile of forest practice area or within three miles for helicopter bucket use. Water supply to be sufficient to supply at least fifty thousand (50,000) gallons.	0 - 15
Buffer zones of unthinned areas at least two chains in width between roadways and thinned areas.	0 - 10
Fuel breaks with slash hazard removal around and/or through forest practice area, located <del>so as</del> to provide optimum fire control effect and of two to four chains in width.	0 - 25
Fire trails with fuel removed to expose mineral soil to a width of twelve (12) feet. Maximum points allowed if combined with a fuel break.	0 - 15
Extra Protection	
Increased attack capability such as retardant availability, increased attack manpower and equipment. Must be in addition to regular forces normally available during the fire season.	0 - 40
Fire detection and prevention increased beyond that normally available for lands in the fire protection district.	0 - 15
Initial attack time based on proximity of forest practice area to initial attack forces.	0 - 5
Landowner protection plan which would provide extra fire protection on a voluntary basis such as extra equipment and/or manpower.	0 - 5

(1-24-78)

#### 071. PRESCRIBED FIRE.

**01. Purpose.** Prescribed fire is a land management tool ~~with application in land management~~. Smoke from prescribed fires can have adverse impacts on ambient air quality or public health. ~~It is the purpose of these rules to establish a management system for smoke from prescribed fires that will protect air quality.~~ (7-1-96)( )

**02. Notification.** The use of prescribed fire requires a valid notification in accordance with Subsection 020.05 to maintain air quality and to protect public health. Possession of a valid notification will not preclude meeting the fire safety requirements specified in Section 38-115, Idaho Code. (7-1-96)

**03. Recommended Practices.** To maintain air quality and protect public health the following practices are recommended: (7-1-96)

**a.** Slash and large woody debris piles should be compact and free of stumps, soil, snow, and nonwoody organic material. (7-1-96)

**b.** Piles should be fully cured, dried at least two (2) months, prior to ignition. Piles should be at least partially covered with a water-resistant material so they can be ignited after enough precipitation to lower the fire danger. (7-1-96)

**c.** Broadcast burns should be conducted within a prescription that minimizes adverse effects on air quality. (7-1-96)

**d.** Membership in good standing in a recognized Airshed Group is encouraged. (7-1-96)

**072. -- 999. (RESERVED)**



# STATE BOARD OF LAND COMMISSIONERS

October 19, 2021

Regular Agenda

## Subject

Adoption of Pending Fee Rule, IDAPA 20.03.09 *Easements on State-Owned Navigable Waterways*

## Question Presented

Shall the Land Board adopt the pending fee rule for IDAPA 20.03.09?

## Background

The Idaho Department of Lands (Department) manages the beds of navigable lakes and rivers for the benefit of the public. IDAPA 20.03.09 establishes a consistent process to authorize specific uses of state-owned submerged lands. These uses include bridges, utility crossings, and some dams.

The Department received Land Board approval on February 16, 2021 to enter negotiated rulemaking. Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2021 for review during the 2022 legislative session.

## Discussion

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

- Published the Notice of Negotiated Rulemaking in the Idaho Administrative Bulletin.
- Created a rulemaking webpage to post documents, scheduling information, and comments.
- Issued a press release.
- Emailed 51 customers and other interested parties.
- Mailed postcards to 81 customers.

Negotiated rulemaking meetings were held on April 28 and May 5, 2021. A total of three non-agency affiliated people attended these meetings. Some minor changes to the initial draft were made based on comments received and internal discussions. Substantive comments and IDL's responses are summarized in Attachment 1.

The proposed rule was published in the September 1, 2021 Administrative Bulletin. The Notice of Proposed Rulemaking and the published rule text are Attachment 2. No comments were received and the Department recommends no changes for the Pending Rule.



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

- The \$300 application fee established in 1993 is increased to \$500. This will cover the Department's cost of reviewing and issuing these easements.
- Appraisals, if needed, will now be paid for by the applicant and will not be performed by qualified Department staff.
- The Director's approval authority is raised from a compensation of \$10,000 up to \$25,000. This corresponds with the same approval authority for easements on endowment lands.

If approved by the Land Board, the Department will submit the Notice of Adoption of Pending Fee Rule (Attachment 3) to the Office of the Administrative Rules Coordinator for the 2022 legislative session.

### **Recommendation**

Adopt the pending fee rule for IDAPA 20.03.09 *Easements on State-Owned Navigable Waterways*.

### **Board Action**

### **Attachments**

1. Summary of Comments from Negotiated Rulemaking
2. Notice of Rulemaking – Proposed Rule with Rule Text
3. Draft Notice of Rulemaking – Adoption of Pending Fee Rule

<p align="center"><b>Response to Comments on Draft Negotiated Rule</b> IDAPA 20.03.09, Easements on Submerged Lands and Formerly Submerged Lands</p>				
<b>Comment</b>	<b>Rule Section</b>	<b>Response</b>	<b>Date</b>	<b>Author</b>
Replacing "Submerged Lands and Formerly Submerged Lands" with "Navigable Waters" makes for a clearer and more concise rule.	General	IDL agrees.	5-May-21	Austin D. Lowe
The term "arm's length sale" detracts from clarity and should be omitted.	010.09	The term "arm's length" is commonly used in real estate and business transactions. This term provides necessary clarity on the desired nature of transactions. The IDL has encountered entities conducting transactions within their ownership groups and a requirement for "arm's length sale" ensures a fair transaction. References added to the research materials and posted on the IDL website at <a href="https://www.idl.idaho.gov/wp-content/uploads/sites/2/2021/05/Arms-Length-References.pdf">https://www.idl.idaho.gov/wp-content/uploads/sites/2/2021/05/Arms-Length-References.pdf</a> .	5-May-21	Austin D. Lowe
"Information is available from the Department" could be clearer if it specified where or how to get the information.	011.02	All posted rules are now prefaced with a cover sheet that provides information regarding that rule. Regarding the information specific to Subsection 011.02, that information is currently available on IDL's website at: <a href="https://www.idl.idaho.gov/wp-content/uploads/sites/2/2020/01/list-navigable-lakes-rivers-1-1.pdf">https://www.idl.idaho.gov/wp-content/uploads/sites/2/2020/01/list-navigable-lakes-rivers-1-1.pdf</a>	5-May-21	Austin D. Lowe
Raising the application fee from \$300 to \$500 does not seem to be best course of action in the current COVID-19 economy.	020.01	These easements are part of a self-funded program that receives no taxpayer funds. As a result, the program must try to recoup the cost of each transaction that occurs from the applicants. The fee has been \$300 since at least 1992. Adjusting for inflation alone, a \$300 fee in 1992 would now cost approximately \$580. Executive Order 2020-01 establishes a five-year review cycle for fee rules; if the shortfall in covering transaction costs is not addressed now, it cannot be revisited for another five years. While the timing with COVID-19 is unfortunate, fees must be raised now or the cost of completing easements will be carried by other functions within this program.	5-May-21	Austin D. Lowe

**IDAPA 20 – IDAHO DEPARTMENT OF LANDS**  
**20.03.09 – EASEMENTS ON STATE-OWNED NAVIGABLE WATERWAYS**  
**DOCKET NO. 20-0309-2101 (NEW CHAPTER, FEE RULE)**  
**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 Section 58-104(6), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 15, 2021.

The hearing site(s) 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:

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2021 for review during the 2022 legislative session. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. Application fees have been increased to cover the costs of reviewing applications. Appraisals, if needed, will now be paid for by the applicant and will not be performed by qualified Department staff. The Director's approval authority is raised from a compensation of \$10,000 up to \$25,000. This corresponds with the same approval authority for easements on endowment lands.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased:

The \$300 application fee established in 1993 is increased to \$500. Supplemental compensation for dams is kept at \$1,000 plus \$5 per megawatt up to a maximum of \$20,000. Supplemental compensation for using navigable waterways in lieu of adjacent uplands will be determined based on the market value of those adjacent uplands. Assignment fees remain \$50. Fees are being imposed pursuant to Sections 58-104, 58-127, and 58-603, Idaho Code.

**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: N/A

**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 April 7, 2021, Idaho Administrative Bulletin, Vol. 21-4, pages 47-48.

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Eric Wilson at (208) 334-0261 or [ewilson@idl.idaho.gov](mailto:ewilson@idl.idaho.gov).

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 22, 2021.

DATED this 30th day of July, 2021.

Eric Wilson, Resource Protection & Assistance Bureau Chief  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
P.O. Box 83720

Boise, Idaho 83720-0050  
Phone: (208) 334-0261  
Fax: (208) 334-3698  
[rulemaking@idl.idaho.gov](mailto:rulemaking@idl.idaho.gov)

**THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0309-2101**  
**(New Chapter – Zero-Based Regulation Rulemaking)**

**20.03.09 – EASEMENTS ON STATE-OWNED NAVIGABLE WATERWAYS**

**000. LEGAL AUTHORITY.**

These rules are promulgated pursuant to, and are to be construed in a manner consistent with, the duties and responsibilities of the Board as set forth in Title 58, Chapters 1, 6, and 13, Idaho Code, and the Equal Footing Doctrine (Idaho Admission Act of July 3, 1890, 26 Stat. 215, Chapter 656). ( )

**001. SCOPE.**

These rules apply to the issuance of easements for all uses above, across, over, in, through, upon, and under the beds of navigable waterways, including dams that span the entire width of a state-owned navigable waterway regardless of the dam's purpose, with the following exceptions: ( )

**01. Small Water Delivery Structures.** Irrigation facilities, diversion facilities, temporary irrigation berms, headgates, and turnouts that do not span the entire width of the navigable waterway, and domestic water supply intake lines capable of drawing less than five (5) cubic feet per second of water; ( )

**02. Uses Authorized by Lease.** When a lease issued under IDAPA 20.03.17 is more usual and customary such as for marinas, docks, float homes, and similar facilities; and ( )

**03. Short Term Uses.** Temporary uses, facilities, and structures with a lifespan of ten (10) years or less that are authorized by revocable temporary permits. ( )

**002. (RESERVED)**

**003. ADMINISTRATIVE APPEALS.**

An applicant aggrieved by a decision of the Director under these rules may request a hearing before the Board, but must do so within thirty (30) calendar days after receipt of written notice of the Director's decision. Failure to make said request within the thirty (30) day period constitutes a waiver of the applicant's right to a hearing before the Board. Pursuant to Title 67, Chapter 52, Idaho Code, the applicant may appeal an adverse decision of the Board. ( )

**004. -- 009. (RESERVED)**

**010. DEFINITIONS.**

**01. Board.** The Idaho State Board of Land Commissioners or its designee. ( )

**02. Dam.** Any artificial barrier placed across a navigable river or stream. ( )

**03. Department.** The Idaho Department of Lands. ( )

**04. Director.** The Director of the Idaho Department of Lands or his designee. ( )

**05. Easement.** A non-possessory interest in land for a specific purpose including rights of way. Such interest may be limited to a specific timeframe. ( )

**06. Grantee.** The party to whom the easement is granted and their assigns and successors-in-interest. ( )

07. **Grantor.** The State of Idaho and its assigns and successors-in-interest ( )
08. **Hydroelectric Facilities.** The dam, diversion, penstock, transmission lines, water storage area, powerhouse and other facilities related to generating electric energy from water power. ( )
09. **Market Value.** The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, that the property should bring in a competitive and open market under all conditions requisite to an arm's-length sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. ( )
10. **Natural or Ordinary High Water Mark.** The line that the water impresses upon the soil by covering it for sufficient periods of time to deprive the soil of its vegetation and destroy its value for agricultural purposes. When the soil, configuration of the surface, or vegetation has been altered by human activity, the natural or ordinary high water mark will be located where it would have been if this alteration had not occurred. ( )
11. **Person.** An individual, corporation, partnership, limited liability company, association, trust, unincorporated organization or other legal entity qualified to do business in the state of Idaho, and any federal, state, county, or local unit of government. ( )
12. **State-Owned Navigable Waterways and Navigable Waterways.** As used in these rules, the beds of all navigable waterways up to the natural or ordinary high water mark as of the date Idaho was admitted into statehood. This includes any such bed that was formerly submerged and subsequently filled, and is now uplands because of human activity (e.g., dikes, berms, jetties) or by natural processes, and includes islands within navigable waterways resulting from human activity or by natural processes. ( )
13. **Temporary Permit.** A revocable instrument authorizing a specific use on navigable waterways usually issued for five (5) years or less, but that may be issued for up to ten (10) years. ( )
14. **Uplands.** The land bordering on navigable waterways. ( )
- 011. POLICY.**
01. **Regulation of the Beds of Navigable Waters.** It is the policy of the State of Idaho to regulate and control the use or disposition of the beds of navigable waterways so as to provide for their commercial, navigational, recreational or other public use; provided, that the Board will take no action in derogation of or seeking to interfere with the riparian or littoral rights of upland land owners. ( )
- a. These rules will not be construed as adversely affecting any valid easement or other right granted by the Department prior to May 23, 1984. ( )
- b. The Board or Director will not grant an easement for any use, facility, or structure that would impair those uses of navigable waterways protected under the public trust doctrine. ( )
02. **Exercise of State Title.** The State of Idaho exercises its title over the beds of all lakes, rivers, and streams that are navigable in fact. Information about lakes, rivers, and streams deemed navigable by the State of Idaho is available from the Department. ( )
03. **Stream Channel and Encroachment Permits.** Issuance of an easement is contingent upon the applicant first obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources, pursuant to Title 42, Chapter 38, Idaho Code, or a lake encroachment permit if required by the Department, pursuant to Title 58, Chapter 13, Idaho Code. ( )
04. **Other Permits.** Issuance of an easement does not relieve an applicant of acquiring other permits and licenses that are required by law. ( )
05. **Existing Easements.** These rules apply to existing easements on navigable waterways. However, it

is not necessary for a person possessing a valid easement obtained on or after May 23, 1984 to file a new easement application if the location or use of the easement has not changed. ( )

**06. Limitation on Easement Grant.** An easement grants only such interest to the grantee as is specified within the document, including the legal right to occupy and use the navigable waterways for the specified purpose in the easement without interference by the grantor, except as otherwise provided by law. The legal right to use the navigable waterways for all other purposes not inconsistent with the grantee's interest remains with the grantor. ( )

**07. Minimum Width.** The minimum width of any easement granted is eight (8) feet. ( )

**012. -- 019. (RESERVED)**

**020. FEES AND COMPENSATION.**

**01. Administrative Fee.** Applications for easements must be accompanied by a one-time nonrefundable administrative fee of five hundred dollars (\$500). No supplemental compensation in excess of this fee is required for the following: ( )

**a.** An easement for a use, facility, or structure for which the navigable waterway poses an obstacle or barrier for construction or operation of the use, facility, or structure, or where the applicant demonstrates, and the Director or Board concurs, that the impact of the use, facility, or structure on the navigable waterways is less than the impact on the other values associated with the adjacent upland such as conservation of resources, significant cost savings to the public, or accessibility. ( )

**b.** An easement for a dam that does not produce hydroelectric power and is less than ten (10) feet in height as measured from the natural bed at the downstream side. ( )

**02. Supplemental Compensation.** In addition to the fee in Subsection 020.01, supplemental compensation is required for: ( )

**a.** New and renewed easements for all dams of any size that produce hydroelectric power and all dams that are ten (10) feet and higher as measured from the natural bed at the downstream side. Supplemental compensation for all such easements is one thousand dollars (\$1,000), and hydroelectric facilities will also have an additional payment of five dollars (\$5) per megawatt of installed capacity as determined by the nameplate rating of that facility. If the facility is situated on a Snake River segment that is a common border with the state of Oregon or the state of Washington, the installed capacity will be prorated based on the location of the common border across the dam's centerline for the purpose of calculating the compensation. Total compensation for a new or renewed easement for a hydroelectric facility is a maximum of twenty thousand dollars (\$20,000). If an easement for a hydroelectric facility has been issued prior to relicensing, the fee will be prorated based on a fifty (50) year use period. The fee for annual extensions that are frequently issued by United States Federal Energy Regulatory Commission (FERC) because of permitting delays prior to issuance of the major FERC license will be prorated based on a fifty (50) year use period. ( )

**b.** An easement over navigable waterways for any use, facility, or structure, that is not a dam or hydroelectric facility, and would use navigable waterways as a substitute for, or to reduce or eliminate the use of, uplands. Supplemental compensation for such easements will be a one-time payment based on the market value of the adjacent uplands on which the use is avoided. In the case of filled lands, the value will be based on the highest and best use of the adjacent uplands. The compensation will be determined by appraisal. ( )

**03. Appraisal.** The easement appraisal will be conducted by a licensed appraiser selected by the Department, although the applicant may propose an appraiser to the Department. The Department will provide appraisal instructions. The appraisal will be performed in a timely manner, and a copy sent to the Department and the applicant. The expense of the appraisal will be borne by the applicant. ( )

**021. -- 029. (RESERVED)**



**030. TERM OF EASEMENT.**

**01. Permanent Uses.** A permanent easement will be issued for uses, facilities, and structures that are normally considered permanent in nature, such as bridges, utility crossings, highway fills, and dams. ( )

**02. Term Easements.** A term easement will be issued for a specific time period of ten (10) to fifty-five (55) years and will be issued for those uses, facilities, and structures not normally considered permanent in nature. ( )

**03. Federally Licensed Facilities.** The term of an easement for all federally licensed hydroelectric facilities on navigable waterways will run concurrently with the term of such license issued by FERC, or its successor, authorizing the facility. Easements for hydroelectric facilities for which FERC has issued a conduit exemption will not exceed fifty-five (55) years. ( )

**031. -- 039. (RESERVED)**

**040. USE, FACILITY, OR STRUCTURE MODIFICATION.**

Modification of an existing use, facility, or structure will require an easement or an amendment to an existing easement and will be processed in the same manner as a new application. Modification includes expanding the use or easement area, or changing the location of the use or easement area. Modification does not include ordinary maintenance, repair, or replacement of existing structures such as poles, wires, and cables. ( )

**041. -- 049. (RESERVED)**

**050. ASSIGNMENTS.**

**01. Assignment Fee.** Easements may be assigned upon prior approval of the Director. The assignor and assignee must complete the Department's standard assignment form and forward it and the nonrefundable assignment fee of fifty dollars (\$50) to any Department office. ( )

**02. Prior Written Consent.** An assignment is not valid without the written consent of the Director which will not be unreasonably withheld. The Department will work diligently to complete assignments within sixty (60) days after receipt of the standard assignment forms and all associated information. ( )

**051. -- 059. (RESERVED)**

**060. ABANDONMENT, RELINQUISHMENT, AND TERMINATION.**

**01. Section 58-603, Idaho Code.** The provisions of Section 58-603, Idaho Code relating to rights-of-way apply to all easements over state-owned navigable waterways. ( )

**02. Non-Use.** Upon termination of an easement for any reason, the Director will provide the grantee with a specific, but reasonable, period of time (up to twelve (12) months) to remove all facilities or structures. Failure to remove all facilities or structures within such time period established by the Director will be deemed a trespass on state-owned navigable waterways. ( )

**03. Voluntary Relinquishment.** The grantee may voluntarily relinquish the easement at any time by submitting a letter or relinquishment form in recordable format to the Department. Voluntary relinquishment of an easement does not waive or forgive any accrued obligation of the easement holder including the obligation to remove facilities as required in Subsection 060.02. ( )

**061. -- 069. (RESERVED)**

**070. PROCEDURE.**

**01. Application.** An easement application submitted to the Department must contain: ( )

- a. A letter of request stating the purpose of the easement; ( )
- b. A survey of the easement; and ( )
- c. One (1) copy of an acceptable written description based on a survey of the centerline or a metes and bounds survey of the easement tract. The applicant may also describe the area occupied by existing uses, facilities, or structures by platting the state-owned navigable waterways affected by the use and showing surveyed or scaled ties to a legal corner at the points where the use enters and/or leaves the navigable waterways. ( )

**02. Engineer Certification.** All maps, plans, and field notes attached to an application for rights-of-way for ditches and reservoirs governed by Section 58-601, Idaho Code, must be certified by the engineer under whose direction such surveys or plans were made and filed with the Department and the Idaho Department of Water Resources. ( )

**03. Decision on Application.** Upon proper application and payment of the fees, appraisal costs, and supplemental compensation required pursuant to these rules, the Director may, after appropriate review and consideration of the facts and the law, grant an easement encumbering navigable waterways for any public or private purpose. The Director may deny an application for easement upon a finding that issuance would not be consistent with law or these rules. Such denial or approval will be in writing within six (6) months of the receipt of a complete application. ( )

**04. Director's Decision.** The Director may grant and renew easements in all cases except when the compensation will exceed twenty-five thousand dollars (\$25,000), exclusive of the payment for any damage or impairment of rights to the remainder of the property. ( )

**05. Board Decision.** Easement applications where compensation exceeds twenty-five thousand dollars (\$25,000), or that are of a complex and unusual nature as determined by the Director, will be presented to the Board for appropriate action. ( )

**06. Notification.** If the application is approved, the applicant will be notified in writing of the amount due to the Department. If the application is denied, the applicant will be notified in writing of the reasons for the denial. ( )

**071. -- 079. (RESERVED)**

**080. EASEMENT ACCESS AND EMERGENCY WORK.**

**01. Use of Land.** The grantee has the right to use such portion of the navigable waterways adjacent to and along said easement as may be reasonably necessary in connection with the installation, repair, and replacement of the use, facility, or structure authorized by the easement. If such activities cause soil disturbance, the destruction of vegetation, and/or entering the bed below the natural or ordinary high water mark, the grantee will obtain prior written authorization from the Department. The grantee is responsible for any damage to lands or other resources outside the easement area. ( )

**02. Emergency Work.** The grantee is authorized to enter upon navigable waterways lying outside the easement area for the purpose of performing emergency repairs on an easement for damage due to floods, high winds, and other acts of God, provided that the grantee provides written notice to the Department within forty-eight (48) hours of the time work commences. The grantee is responsible for any damage to lands or other resources outside the easement area. ( )

**081. -- 999. (RESERVED)**

## IDAPA 20 – IDAHO DEPARTMENT OF LANDS

### 20.03.09 - EASEMENTS ON STATE-OWNED NAVIGABLE WATERWAYS

DOCKET NO. 20-0309-2101

#### NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

**EFFECTIVE DATE:** This rule has been adopted by the agency and the Idaho State Board of Land Commissioners and is now pending review by the 2022 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending fee rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

**AUTHORITY:** In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 58-104(6), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2021 for review during the 2022 legislative session. The overall regulatory burden has been reduced by decreasing both total word count and the number of restrictive words in the new rule chapter. Application fees have been increased to cover the costs of reviewing applications. Appraisals, if needed, will now be paid for by the applicant and will not be performed by qualified Department staff. The Director's approval authority is raised from a compensation of \$10,000 up to \$25,000. This corresponds with the same approval authority for easements on endowment lands.

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the September 1, 2021 Idaho Administrative Bulletin, Vol. 21-9, pages 93-97.

**FEE SUMMARY:** The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Sections 58-104, 58-127, and 58-603, Idaho Code.

The \$300 application fee established in 1993 is increased to \$500.

**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: N/A

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this pending rule, contact Eric Wilson at 208-334-0261 or [ewilson@idl.idaho.gov](mailto:ewilson@idl.idaho.gov).

DATED this 19<sup>th</sup> day October, 2021.

Eric Wilson, Resource Protection and Assistance Bureau Chief  
Idaho Department of Lands  
300 N. 6th Street, Suite 103  
P.O. Box 83720  
Boise, Idaho 83720-0050  
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# STATE BOARD OF LAND COMMISSIONERS

October 19, 2021  
Information Agenda

## Subject

Potential funding solutions for the Abandoned Mine Land fund.

## Background

The Abandoned Mine Land (AML) fund receives 34% of the Mine License Tax. This is a 1% net tax on mines that produce a valuable mineral as defined in Idaho Code § 47-1205. This definition specifically excludes aggregate. The AML fund is used to secure and reclaim abandoned mines throughout Idaho. The Idaho Geological Survey has estimated that up to 16,000 abandoned mines and prospects are present in Idaho. Many sites have not been investigated for hazards.

As noticed by the Governor, the AML fund is being depleted. This is due to declining revenues and increasing costs. This summary describes current revenue and expenses and explores some options to keep this fund solvent into the future.

## Discussion

As shown in Figure 1, several good years between 2007 and 2012 provided over \$5.7 million in revenue. Since 2013 however, revenues have declined dramatically. High tax returns for the Mine License Tax in 2016 resulted in the fund losing over \$125,000. Total revenue since that time has only been about \$102,000.

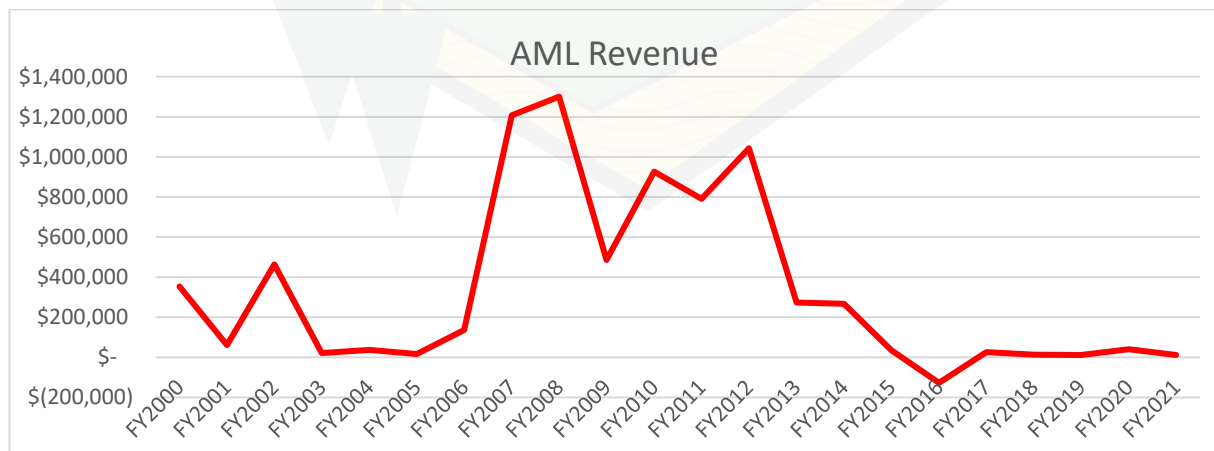


Figure 1: AML Revenue FY2000 through FY2021

Several commodity prices were compared to AML revenue to attempt correlating revenue to a commodity. Figure 2 shows the attempted correlation. The actual prices for the commodities are not shown, but the trends in their prices are shown. The 2009 recession shows a dip in most prices and revenue. Aside from that, correlation ranges from negligible (0 to 0.3) to moderate (0.5 to 0.7) as shown in Figure 3.

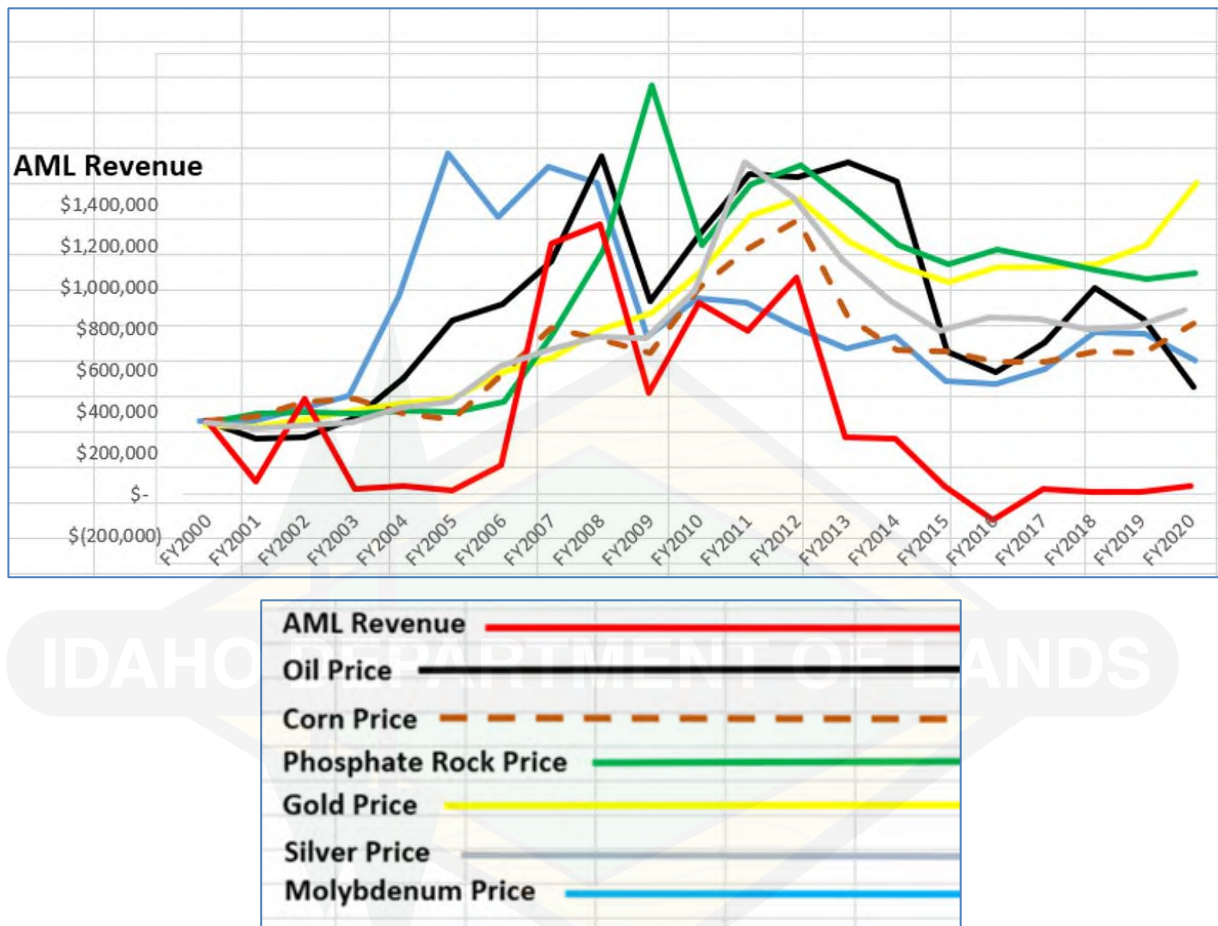
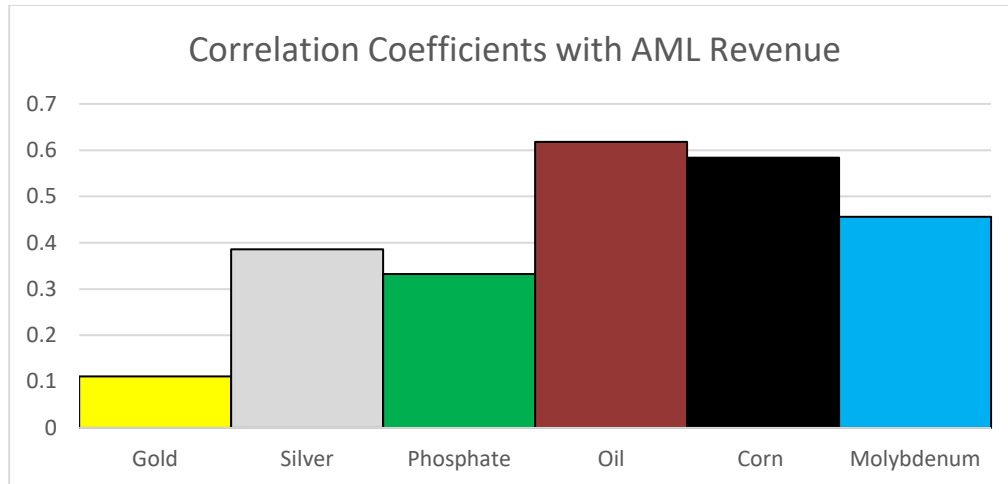


Figure 2: AML Revenue with Commodity Price Changes FY2000 through 2020



*Figure 3: Commodity Correlation Coefficients with AML Revenue*

The Mine License Tax is a net tax, meaning a company's annual expenses affect the amount paid. With phosphate, oil, and molybdenum prices currently depressed, this tax revenue is not expected to return soon to the levels seen in the 2006 to 2012 period.

## Expenses

The Department has expense records back to 2014. The Department started using the AML fund for personnel cost to augment holdbacks beginning in 2008. As shown in Figure 4, spending peaked in 2015 and 2016 due to Triumph and other large projects. Total yearly spending averaged about \$518,000 annually over the last five years.



*Figure 4: AML Fund – Revenue, Expenditures, and Fund Balance 2014 through 2021*



## Options

With no changes to the existing program, the AML Fund could be depleted by 2028. This assumes continuing annual expenses of \$518,000, and annual revenue of about \$99,000 which is the median for revenue since 2000. Given the swings in revenue with recent years, the median appeared to be a more accurate prediction for the future than the average. The average revenue since 2000 is over \$336,000, however this may be optimistic given the recent trend.

Three options were looked at to increase revenue.

Option one: Increase the percentage of the Mine License Tax that goes into the AML fund. Figure 5 shows the fund potential with the tax increase from 34% up to 100%. At 67%, the fund would not be depleted until 2030. At 100%, it would not be depleted until 2033.

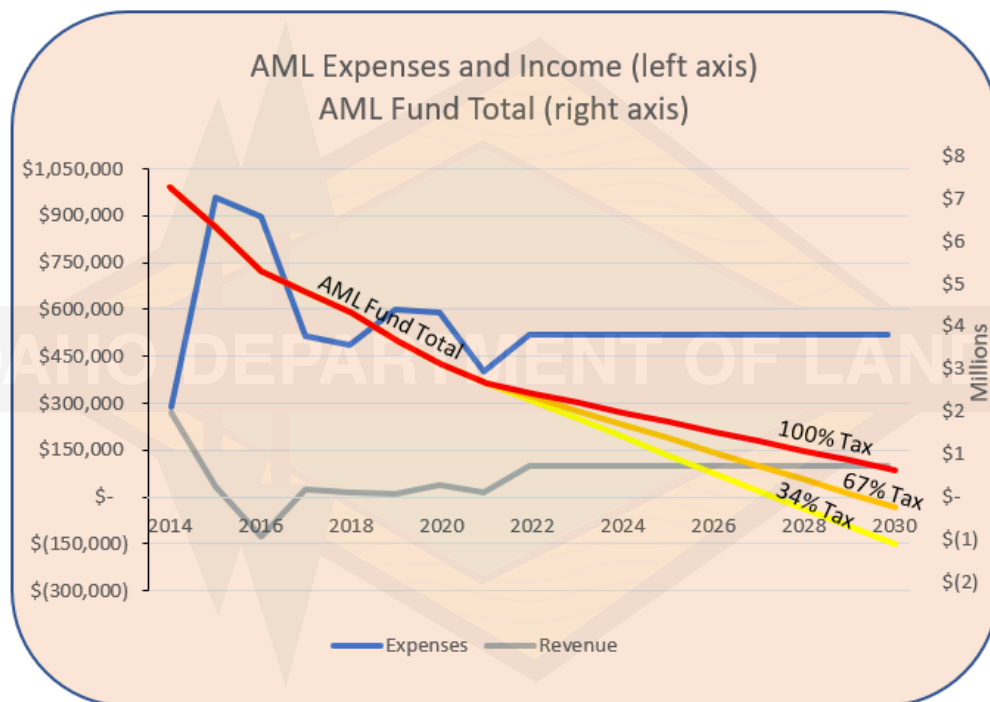


Figure 5: AML Fund Total – Changes due to increased percentage of existing Mine License Tax

Option two: Institute a \$10 charge per federal mining claim in Idaho effective FY2023. This has been done in the state of Nevada. The money is collected by the county recorders when claims are recorded. With almost 40,000 mining claims in Idaho this would generate \$400,000 a year. Figure 6 shows that a combination of a \$10 fee and an increased percentage of the Mine License Tax would sustain the AML with the current projections. At the current 34% of Mine License Tax, the AML Fund would become depleted in over 100 years. At 67% and 100% of the Mine License Tax, revenue outpaces the estimated expenses.

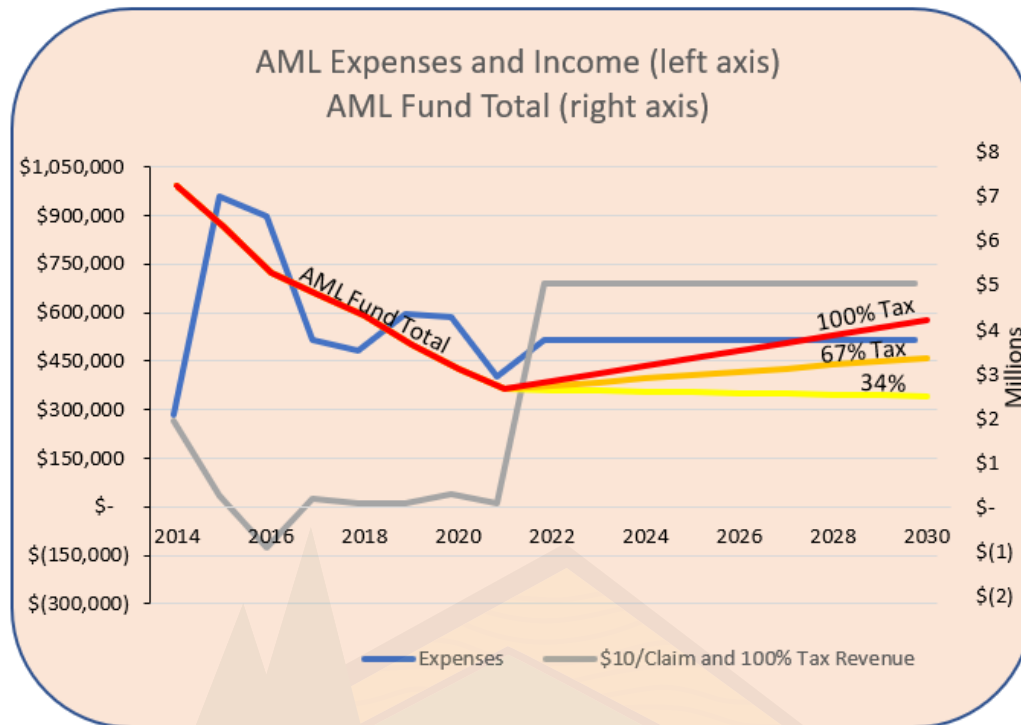


Figure 6: AML Fund Total – Changes due to charge of \$10 per federal mining claim and increased percentage of existing Mine License Tax

Option three: Develop a General Fund request for FY2024 to address the fund depletion. Estimated request would be \$400,000 or more.

Some combination of the above three recommendations could also be evaluated.

## Attachments

1. Title 47 Chapter 17 Idaho Abandoned Mine Reclamation Act
2. Title 47 Chapter 12 Mine License Tax

TITLE 47  
MINES AND MINING

CHAPTER 17  
IDAHO ABANDONED MINE RECLAMATION ACT

47-1701. PURPOSE OF ACT. It is the purpose of this act to provide for the reclamation of abandoned mines on state and federal lands and on certain private lands, thereby protecting human health, safety and welfare, conserving natural resources, aiding in the protection of wildlife, aquatic resources, domestic animals, and reducing soil erosion.

[47-1701, added 1994, ch. 220, sec. 1, p. 703; am. 1999, ch. 44, sec. 3, p. 105.]

47-1702. SHORT TITLE. This act may be known and cited as the "Idaho Abandoned Mine Reclamation Act."

[47-1702, added 1994, ch. 220, sec. 1, p. 703; am. 1999, ch. 44, sec. 4, p. 105.]

47-1703. FUNDING. This chapter shall govern the use of state and federal moneys specifically appropriated for abandoned mine reclamation. This chapter shall not require the state to expend or appropriate state moneys. The board may receive federal funds, state funds, and any other funds, and, within the limits imposed by a specific grant, expend them as directed by this chapter. All grants, funds, fees, fines, penalties and other uncleared money which has been or will be paid to the state for abandoned mine reclamation shall be placed in the state treasury and credited to the abandoned mine reclamation fund, which is hereby created. This fund shall be available to the board, by legislative appropriation, and shall be expended for the reclamation of lands affected by eligible mining operations.

[47-1703, added 1994, ch. 220, sec. 1, p. 703; am. 1999, ch. 44, sec. 5, p. 106; am. 2006, ch. 37, sec. 2, p. 104.]

47-1704. DEFINITIONS. (1) "Abandoned mine" means a mine deserted by the operator, having no regular maintenance, and not covered by a valid mining claim.

(2) "Affected land" means the land adjacent to an eligible mine that is, or may be, adversely affected by past mining operations.

(3) "Board" means the state board of land commissioners or such department, commission, or agency as may lawfully succeed to the powers and duties of such board.

(4) "Director" means the head of the department of lands or such officer as may lawfully succeed to the powers and duties of said director.

(5) "Eligible mine" means an abandoned mine located on land owned by the state or federal government or an abandoned mine located on private land when the owner of the private land has requested, and the board has granted, designation as an eligible mine.

(6) "Mine" means an area where valuable minerals were extracted from the earth and includes all associated development areas including, but not limited to, milling and processing areas, overburden disposal areas, stock-

piles, roads, tailings ponds and other areas disturbed at the mining operation site.

(7) "Operator" means 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 mining or mineral exploration operations, whether individually, jointly, or through subsidiaries, agents, employees, or contractors and shall mean every governmental agency owning or controlling the use of any mine when the mineral extracted is to be used by or for the benefit of such agency. It shall not include any governmental agency with respect to those mining or mineral 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 this chapter.

(8) "Valuable mineral" shall have the same meaning as "valuable mineral" defined in section [47-1205](#), Idaho Code.

[47-1704, added 1994, ch. 220, sec. 1, p. 703; am. 1999, ch. 44, sec. 6, p. 106.]

47-1705. RESPONSIBILITY OF STATE BOARD OF LAND COMMISSIONERS. The state board of land commissioners is charged with the responsibility of administering this act in accordance with the purpose of the act and the intent of the legislature. The director of the department of lands shall, upon authorization of the board, exercise the powers and discharge the duties vested in the board by this act.

[47-1705, added 1994, ch. 220, sec. 1, p. 704.]

47-1706. DUTIES AND POWERS OF BOARD. In addition to the other duties and powers of the board prescribed by law, the board is granted and shall be entitled to exercise the following authority and powers and perform the following duties:

(1) To reclaim any eligible mine and affected lands. Reclamation on federal lands shall be completed only upon consent of the federal agency responsible for the administration of those lands. Reclamation activities may include:

- (a) The reclamation and restoration of abandoned surface mined areas;
- (b) The reclamation of abandoned milling and processing areas;
- (c) The sealing, filling, and grading of abandoned deep mine entries;
- (d) The planting of land adversely affected by past mining to prevent erosion and sedimentation;
- (e) The prevention, abatement, treatment, and control of water pollution created by abandoned mine drainage;
- (f) The control of surface subsidence due to abandoned deep mines; and
- (g) Such other reclamation activities as may be necessary to accomplish the purposes of this act.

(2) To administer and enforce the provisions of this act and the rules and orders promulgated thereunder as provided in this act.

(3) To conduct and promote the coordination and acceleration of research, studies, surveys, experiments, demonstrations and training in carrying out the provisions of this act. In carrying out the activities authorized in this section, the board may enter into contracts with and make

grants to institutions, agencies, organizations and individuals, and shall collect and make available any information obtained therefrom.

(4) To adopt and promulgate reasonable rules respecting the administration of this act and such rules as may be necessary to carry out the intent and purposes of this act. All such rules shall be adopted in accordance with and subject to the provisions of [chapter 52, title 67](#), Idaho Code.

(5) To enter upon eligible mines and affected lands at reasonable times, for inspection purposes and to determine whether the provisions of this act are being complied with. Inspections on private lands shall be conducted in the presence of the landowner or his duly authorized employees or representatives, or with written permission of the landowner.

[47-1706, added 1994, ch. 220, sec. 1, p. 704.]

47-1707. PRIORITIES. Expenditure of funds from the abandoned mine reclamation account shall reflect the following priorities in the order stated:

(1) The protection of public health, safety, and general welfare from the adverse effects of past mining practices.

(2) The restoration of land and water resources previously degraded by the adverse effects of past mining practices.

[47-1707, added 1994, ch. 220, sec. 1, p. 705; am. 1999, ch. 44, sec. 7, p. 107.]

47-1708. INTERAGENCY COORDINATION. The board shall recognize other governmental, educational, and private organizations or agencies which have expertise and information regarding abandoned mines and affected lands. The board shall characterize, prioritize, and complete reclamation of eligible mines and affected lands in coordination with these agencies. In addition, the board may reasonably compensate them from the abandoned mine reclamation account for services that the board requests they provide.

[47-1708, added 1994, ch. 220, sec. 1, p. 705; am. 1999, ch. 44, sec. 8, p. 107.]

TITLE 47  
MINES AND MINING

CHAPTER 12  
LICENSE TAX FOR PRIVILEGE OF MINING AND EXTRACTING ORES

47-1201. LICENSE TAX TO BE MEASURED BY ONE PERCENT OF THE NET VALUE OF ORES MINED -- DEFINITION OF ROYALTY. (a) Tax on mining or on receiving royalties. For the privilege of mining in this state, both placer and rock in place, every person, copartnership, company, joint stock company, trust, corporation or association, however and for whatever purpose organized, engaged in mining, upon or receiving royalties from any quartz vein or lode, or placer or rock in place mining claim, in this state containing gold, silver, copper, lead, zinc, coal, phosphate, limestone, or other precious and valuable metals or minerals, or metal or mineral deposits, shall pay to the state of Idaho, in addition to all other taxes provided by law, a license tax equal in amount to one percent (1%) of the net value of the royalties received or the ores mined or extracted as determined under section [47-1202](#), Idaho Code, said tax to accrue during the taxable year that the product is sold or used and shall on the last day of such taxable year become a lien on property in this state of such person, copartnership, company, joint stock company, trust, corporation, or association, said tax to be due and payable on or before the fifteenth day of the fourth month following the close of the taxable year.

(b) Definition of royalties. For the purpose of paragraph (a) of this section and chapter, the word "royalties" shall be construed to mean the amount in money or value of property received based upon the quantity or value of minerals extracted by any person, copartnership, company, joint stock company, trust, corporation, or association, having any right, title or interest in or to any tract of land, or any economic interest in minerals as defined by section 613 of the Internal Revenue Code, in this state for which permission has been given to another to explore, mine, take out and remove ore therefrom.

(c) Definition of taxable year. The term "taxable year" with respect to any taxpayer means the taxable year elected for income tax purposes under the provisions of section [63-3010](#), Idaho Code.

[47-1201, added 1935 (1st E.S.), ch. 65, sec. 1, p. 182; am. 1941, ch. 106, sec. 1, p. 188; am. 1972, ch. 99, sec. 1, p. 209; am. 1977, ch. 93, sec. 1, p. 189; am. 2001, ch. 207, sec. 1, p. 703.]

47-1202. NET VALUE OF ORE TO BE USED AS MEASURE OF TAX -- HOW DETERMINED. For the purpose of measuring and determining the amount of tax to be paid under the provisions of section [47-1201](#), Idaho Code, the royalties as defined in subsection (b) of section [47-1201](#), Idaho Code, or the net value of ore mined shall be computed under one (1) of the following methods at the election of the taxpayer. Such election, once made, shall be binding for all succeeding years unless the taxpayer secures permission from the state tax commission to change to another method:

(a) Ores mined within the state shall be valued by deducting from the gross value of the ore, all costs of mining and processing such ore, using the formula prescribed in section 613 of the Internal Revenue Code and Treasury Regulation 1.613-5 for computation of the net income from mining for deple-



tion purposes, less the deduction of depletion as computed under section 613 of the Internal Revenue Code and Treasury Regulation 1.613-5; or

(b) Ores mined within the state shall be valued using the gross value determined by the U.S. Department of the Interior for computation of the value of minerals on public lands for federal royalty purposes, less the following deductions:

(1) all costs of mining and transporting such ore to the point at which the value for federal royalty purposes is determined by measurement of the quantity of ore mined; these costs to include only those directly incurred in and attributable to the actual mining and transportation operation in the state of Idaho, and

(2) the applicable portion of the federal deduction for depletion, allocated on the ratio of the gross value of the ore used for this computation, to the gross value of the ore used in the federal depletion computation.

[47-1202, added 1935 (1st E.S.), ch. 65, sec. 2, p. 182; am. 1941, ch. 106, sec. 2, p. 188; am. 1972, ch. 99, sec. 2, p. 209; am. 1973, ch. 43, sec. 1, p. 78; am. 1977, ch. 93, sec. 2, p. 190; am. 1996, ch. 381, sec. 1, p. 1294.]

47-1203. STATEMENT OF NET PROCEEDS FROM MINING OR EXTRACTING ORES -- OR FROM ROYALTY. (a) Every person, copartnership, company, joint stock company, trust, corporation, or association mining or receiving royalties from any quartz vein or lode, or placer or rock in place mining claim, containing gold, silver, copper, lead, zinc, coal, phosphate, limestone, or other precious or valuable minerals or metals, or mineral or metal deposits, must, on or before the fifteenth day of the fourth month following the close of the taxable year make a tax return to the state tax commission, stating specifically the items of income and the deductions allowed by this act. For the purpose of enforcing this act, the income tax returns filed in accordance with the provisions of the Idaho Income Tax Act shall be open to inspection by the officer designated to enforce this act.

(b) In the event the taxpayer is entitled to an automatic extension of time to file the income tax return under section [63-3033](#), Idaho Code, an automatic six (6) month extension is granted to file the return required under this act. In all cases of an extension of time in which to file any return, interest shall be paid on any tax due from due date to date of payment at the rate provided in section [63-3045](#), Idaho Code.

[47-1203, added 1935 (1st E.S.), ch. 65, sec. 3, p. 182; am. 1941, ch. 106, sec. 3, p. 188; am. 1972, ch. 99, sec. 3, p. 209; am. 1977, ch. 93, sec. 3, p. 191; am. 1982, ch. 179, sec. 1, p. 467; am. 2000, ch. 26, sec. 1, p. 45.]

47-1204. STATEMENT AS TO ENTIRE GROUP. Where the same person or persons are operating or leasing to another two (2) or more mines or mining claims under one (1) general system of mining or development, a duplicate copy of the statement herein provided, and the tax herein levied, shall be made as to such entire group and need not be made as to each particular mining claim constituting said group, as provided by section [63-2804](#).

[47-1204, added 1935 (1st E.S.), ch. 65, sec. 4, p. 182; am. 1972, ch. 99, sec. 4, p. 209.]

47-1205. DEFINITION OF VALUABLE MINERAL. The term "valuable mineral" for purposes of this act, shall be deemed to include not only gold, silver, copper, lead, zinc, coal, phosphate and limestone, but also any other substance not gaseous or liquid in its natural state, which makes real property more valuable by reason of its presence thereon or thereunder and upon which depletion is allowable pursuant to section 613 of the Internal Revenue Code, provided, however, that sand and gravel are not included in this definition.

[47-1205, added 1977, ch. 93, sec. 4, p. 192.]

47-1206. PAYMENT OF MINE LICENSE TAX. (1) Except as provided in subsection (2), the license tax imposed by this chapter shall be paid to the state tax commission on or before the due date of the return and the commission shall remit the sums to the state treasurer, who shall place sixty-six percent (66%) to the credit of the general fund of the state and thirty-four percent (34%) to the credit of the abandoned mine reclamation fund created by the provisions of section [47-1703](#), Idaho Code.

(2) The license tax imposed by this chapter only on mining operations that include a cyanidation facility, as defined by section [47-1503](#), Idaho Code, shall be paid to the state tax commission on or before the due date of the return and the commission shall remit the sums to the state treasurer who shall place thirty-three percent (33%) to the credit of the general fund of the state, thirty-three percent (33%) to the credit of the cyanidation facility closure fund created by the provisions of section [47-1513](#), Idaho Code, and thirty-four percent (34%) to the credit of the abandoned mine reclamation fund created by the provisions of section [47-1703](#), Idaho Code.

[47-1206, added 1935 (1st E.S.), ch. 65, sec. 6, p. 182; am. 1939, ch. 173, sec. 8, p. 320; am. 1969, ch. 311, sec. 1, p. 966; am. 1977, ch. 93, sec. 5, p. 192; am. 1999, ch. 44, sec. 1, p. 105; am. 2005, ch. 341, sec. 1, p. 1066.]

47-1208. TAX DEFICIENCY COLLECTION AND ENFORCEMENT PROCEDURES. The deficiency in tax and notice of deficiency as well as the collection and enforcement procedures provided by the Idaho income tax act, sections [63-3030A](#), [63-3033](#), [63-3038](#), [63-3039](#), [63-3040](#), [63-3042](#) through [63-3065A](#), [63-3068](#), [63-3069](#), [63-3071](#), [63-3072](#), [63-3073](#) and [63-3075](#) through [63-3078](#), Idaho Code, shall apply and be available to the state tax commission for enforcement of the provisions of this act and the assessment and collection of any amounts due. Said sections shall for this purpose be considered a part of this act and wherever liens or any other proceedings are defined as income tax liens or proceedings they shall, when applied in enforcement or collection under this act, be described as a license tax for the privilege of mining lien or proceeding.

The state tax commission may be made a party defendant in an action at law or in equity by any person aggrieved by the unlawful seizure or sale of his property, or in any suit for refund or to recover an overpayment, but only the state of Idaho shall be responsible for any final judgment secured against the state tax commission, and said judgment shall be paid or satisfied out of the state refund account created by section [63-3067](#), Idaho Code.

[47-1208, added 1969, ch. 311, sec. 2, p. 966; am. 1977, ch. 93, sec. 6, p. 192; am. 1979, ch. 48, sec. 2, p. 138; am. 1982, ch. 179, sec. 2, p. 467; am. 1986, ch. 73, sec. 6, p. 207; am. 1986, ch. 92, sec. 1, p. 269.]