

State Board of Land Commissioners Open Meeting Checklist

Meeting Date: July 18, 2023

Regular Meetings

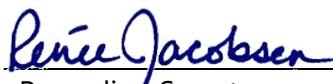
7/11/2023	Meeting Notice posted in prominent place in IDL's Boise Director's office five (5) or more calendar days before meeting.
7/11/2023	Meeting Notice posted in prominent place in IDL's Coeur d'Alene staff office five (5) or more calendar days before meeting.
7/11/2023	Meeting Notice posted in prominent place at meeting location five (5) or more calendar days before meeting.
7/11/2023	Meeting Notice published on Townhall Idaho website https://townhall.idaho.gov five (5) or more calendar days before meeting.
7/11/2023	Meeting Notice posted electronically on IDL's public website https://www.idl.idaho.gov five (5) or more calendar days before meeting.
7/14/2023	Agenda posted in prominent place in IDL's Boise Director's office forty-eight (48) hours before meeting.
7/14/2023	Agenda posted in prominent place in IDL's Coeur d'Alene staff office forty-eight (48) hours before meeting.
7/14/2023	Agenda posted in prominent place at meeting location forty-eight (48) hours before meeting.
7/14/2023	Agenda published on Townhall Idaho website https://townhall.idaho.gov forty-eight (48) hours before meeting.
7/14/2023	Agenda posted electronically on IDL's public website https://www.idl.idaho.gov forty-eight (48) hours before meeting.
1/3/2023	Land Board annual meeting schedule posted – Boise Director's office, Coeur d'Alene staff office, and IDL's public website https://www.idl.idaho.gov .

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 published on Townhall Idaho website https://townhall.idaho.gov twenty-four (24) hours before meeting.
	Meeting Notice and Agenda posted electronically on IDL's public website https://www.idl.idaho.gov 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 posted at meeting location twenty-four (24) hours before meeting.
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	Meeting Notice and Agenda posted electronically on IDL's public website https://www.idl.idaho.gov twenty-four (24) hours before meeting.
	Notice contains reason for the executive session and the applicable provision of Idaho Code § 74-206 that authorizes the executive session.


 Recording Secretary

July 14, 2023

Date



Idaho State Board of Land Commissioners

Brad Little, Governor and President of the Board

Phil McGrane, Secretary of State

Raúl R. Labrador, Attorney General

Brandon D Woolf, State Controller

Debbie Critchfield, Superintendent of Public Instruction

Dustin T. Miller, Secretary to the Board

NOTICE OF PUBLIC MEETING JULY 2023

The Idaho State Board of Land Commissioners will hold a Regular Meeting on Tuesday, July 18, 2023 in the **State Capitol, Lincoln Auditorium (WW02), Lower Level, West Wing, 700 W. Jefferson St., Boise**. The meeting is scheduled to begin at 9:00 AM (Mountain).

Please note location.

The State Board of Land Commissioners will conduct this meeting in person and by virtual means. This meeting is open to the public. No public comment will be taken.

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

https://idl.zoom.us/webinar/register/WN_DsSiO5gASk6hXzefywYNUw

First Notice Posted: 7/11/2023-IDL Boise; 7/11/2023-IDL CDA

This notice is published pursuant to Idaho Code § 74-204. 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



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State Board of Land Commissioners Regular Meeting

July 18, 2023 – 9:00 AM (MT)

Final Agenda

Capitol, Lincoln Auditorium (WW02), Lower Level, West Wing, 700 W. Jefferson St., Boise, Idaho

Please note location.

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1. Department Report – Presented by Dustin Miller, Director

Trust Land Revenue

- A. Timber Sales – June 2023
- B. Leases and Permits – June 2023

Status Updates

- C. Fire Season
- D. Land Bank Fund

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

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

Consent—Action Item(s)

3. Approval of Draft Minutes – June 20, 2023 Regular Meeting (Boise)

Regular—Action Item(s)

4. Ohio Gulch Commercial Ground Lease Request for Proposal (RFP) – Presented by Roger Hall,
Bureau Chief-Real Estate Services

State Board of Land Commissioners

Final Agenda

Regular Meeting – July 18, 2023

Page 1 of 2

Information

5. **Proposed Rule IDAPA 20.03.01, Rules Governing Dredge and Placer Mining Operations in Idaho** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance
6. **Proposed Rule IDAPA 20.03.03, Rules Governing Administration of the Reclamation Fund** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance
7. **Proposed Rule IDAPA 20.03.05, Riverbed Mineral Leasing in Idaho** – Presented by Eric Wilson, Bureau Chief-Resource Protection and Assistance
8. **Endowment Land Leasing Continuum** – Presented by Jim Elbin, Division Administrator-Trust Land Management

Executive Session

None

The logo for the Idaho Department of Lands is a large, stylized diamond shape. It features a central light blue area with a wavy pattern, surrounded by a yellow border with a wavy pattern, and an outer grey border. The text "IDAHO DEPARTMENT OF LANDS" is written in white, bold, uppercase letters across a horizontal grey bar that passes through the center of the diamond.

IDAHO DEPARTMENT OF LANDS



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

July 18, 2023
Trust Land Revenue

Timber Sales

During June 2023, the Department of Lands sold seven endowment timber sales at auction. Five sales had competitive bidding. One endowment timber sale did not sell on its first attempt at auction. The net sale value represents a 18% up bid over the appraised value. Good Neighbor Authority (GNA) sold three timber sales at auction. All three sales had competitive bidding. One GNA sales did not sell at auction. The net sale value represents a 198% up bid over the appraised value.

TIMBER SALE AUCTIONS								
Sale Name	Area	Sawlog MBF	Cedar Prod MBF	Pulp MBF	Appraised Net Value	Sale Net Value	Net \$/MBF	Purchaser
P River Flat	PL	3,000			\$ 888,816.50	\$ 979,269.65	\$326.42	Stimson Lumber
Lower Robinson Cedar	MICA	6,120			\$ 2,161,053.00	\$ 2,750,695.00	\$449.46	IFG Timber LLC
Scenic Lodge Cedar	MICA	4,840			\$ 1,714,304.00	\$ 1,714,304.00	\$354.20	IFG Timber LLC
Devils Gate Ton	EI	4,760			\$ 179,499.11	\$ 228,695.30	\$48.05	Sun Mountain
Stony Point Ton	PAY	3,220			\$ 416,939.12	\$ 525,930.60	\$163.33	IFG Timber LLC
Misery Vinter	MC	2,920			\$ 333,563.50	\$ 333,563.50	\$114.23	IFG Timber LLC
Mudpuppy Ton	PAY	3,205			\$ 381,848.02	\$ 637,468.80	\$198.90	IFG Timber LLC
Endowment		28,065	0	0	\$ 6,076,023.25	\$ 7,169,926.85	\$255.48	
Aldape GNA Ton	GNA	270			\$ 15,668.10	\$ 33,301.80	\$123.34	Tucker's Timber
West Pine GNA Ton	GNA	645			\$ 31,218.10	\$ 37,945.45	\$58.83	Korell Outfitters
Hurd-Wyck GNA Ton	GNA	6,330			\$ 265,639.20	\$ 860,406.00	\$135.93	Woodgrain Inc
Non-Endowment		7,245	0	0	\$ 312,525.40	\$ 931,653.25	\$128.59	

PROPOSED TIMBER SALES FOR AUCTION				
Sale Name	Volume MBF	Advertised Net Value	Area	Estimated Auction Date
North Operations				
Trapper Falls Cedar	3,800	\$ 909,070.50	Priest Lake	7/10/2023
Big Fork Cedar	3,825	\$ 1,252,011.50	Pend Oreille	7/11/2023
Phantom Dennis Cedar	1,800	\$ 439,980.00	St. Joe	7/13/2023
Crystal Bowl Cedar	8,765	\$ 1,915,644.00	St. Joe	7/13/2023
Marble Marten Cedar	6,115	\$ 1,047,442.00	St. Joe	7/13/2023
Benedict Cedar	10,510	\$ 8,554,645.00	Ponderosa	7/18/2023
Boehls Cabeza	6,495	\$ 699,981.00	St. Joe	7/20/2023
McDodge F&G	886	\$ 282,663.60	Mica	7/25/2023
Hoodoo Vally GNA Ton	10,250	\$ 1,065,023.38	Panhandle NF	7/6/2023
TOTALS	52,446	\$ 16,166,460.98		

PROPOSED TIMBER SALES FOR AUCTION continued				
Sale Name	Volume MBF	Advertised Net Value	Area	Estimated Auction Date
South Operations				
Spanish Terrace	6,930	\$ 592,050.00	Southwest	7/6/2023
New York	1,675	\$ 114,720.50	Southwest	7/6/2023
Crane Creek Revival Cedar	6,835	\$ 2,936,381.00	Maggie Creek	7/12/2023
Hazard Salvage GNA	4,490	\$ 258,411.00	Boise NF	7/11/2023
TOTALS	19,930	\$ 3,901,562.50		

VOLUME UNDER CONTRACT as of June 30, 2023				
	Public School	Pooled	Total	3 Year Avg.
Active Contracts			172	178
Total Residual MBF Equivalent	376,030	195,048	571,078	545,009
Estimated residual value	\$108,139,298	\$58,844,395	\$166,983,693	\$148,802,433
Residual Value (\$/MBF)	\$287.58	\$301.69	\$292.40	\$273.03

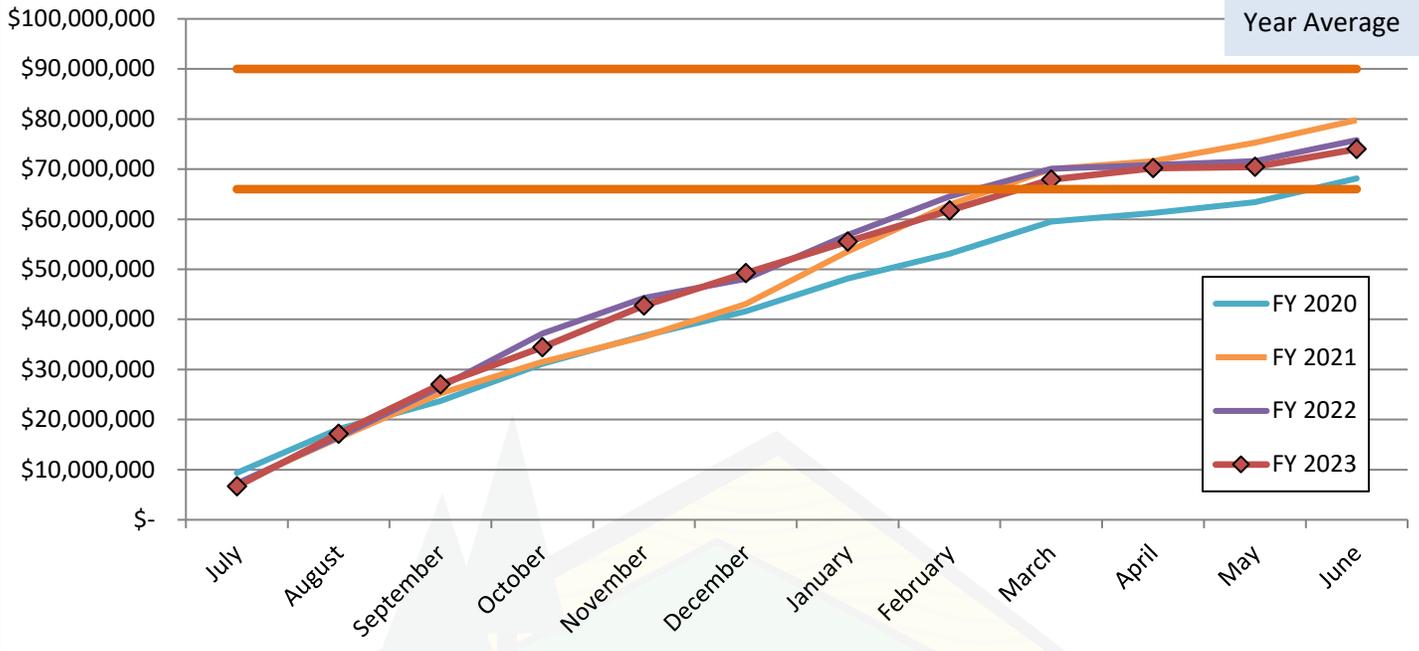
	TIMBER HARVEST RECEIPTS				
	June		FY to date	July Projected	
	Stumpage	Interest	Harvest Receipts	Stumpage	Interest
Public School	\$ 2,618,680.07	\$ 195,002.26	\$ 44,794,027.76	\$ 4,387,054.32	\$ 447,720.64
Pooled	\$ 721,315.18	\$ 48,440.03	\$ 29,215,002.50	\$ 2,287,384.66	\$ 246,933.79
General Fund	\$ 2.07	\$ 0.00	\$ 249.47	\$ 2.07	\$ 0.00
TOTALS	\$ 3,339,997.32	\$ 243,442.29	\$ 74,009,279.73	\$ 6,674,441.05	\$ 694,654.43

	Status of FY2023 Timber Sale Program					
	MBF Sawlog			Number Poles		
	Public School	Pooled	All Endowments	Public School	Pooled	All Endowments
Sold as of June 30, 2023	177,409	96,486	273,895	19,052	2,428	21,480
Currently Advertised	36,481	9,094	45,575	3,170	3,505	6,675
In Review	7,645	0	7,645	0	0	0
Did Not Sell*	0	0	0	0	0	0
TOTALS	221,535	105,580	327,115	22,222	5,933	28,155
FY2023 Sales Plan			326,000			20,000
Percent to Date			100%			141%

* After three attempts at auction.

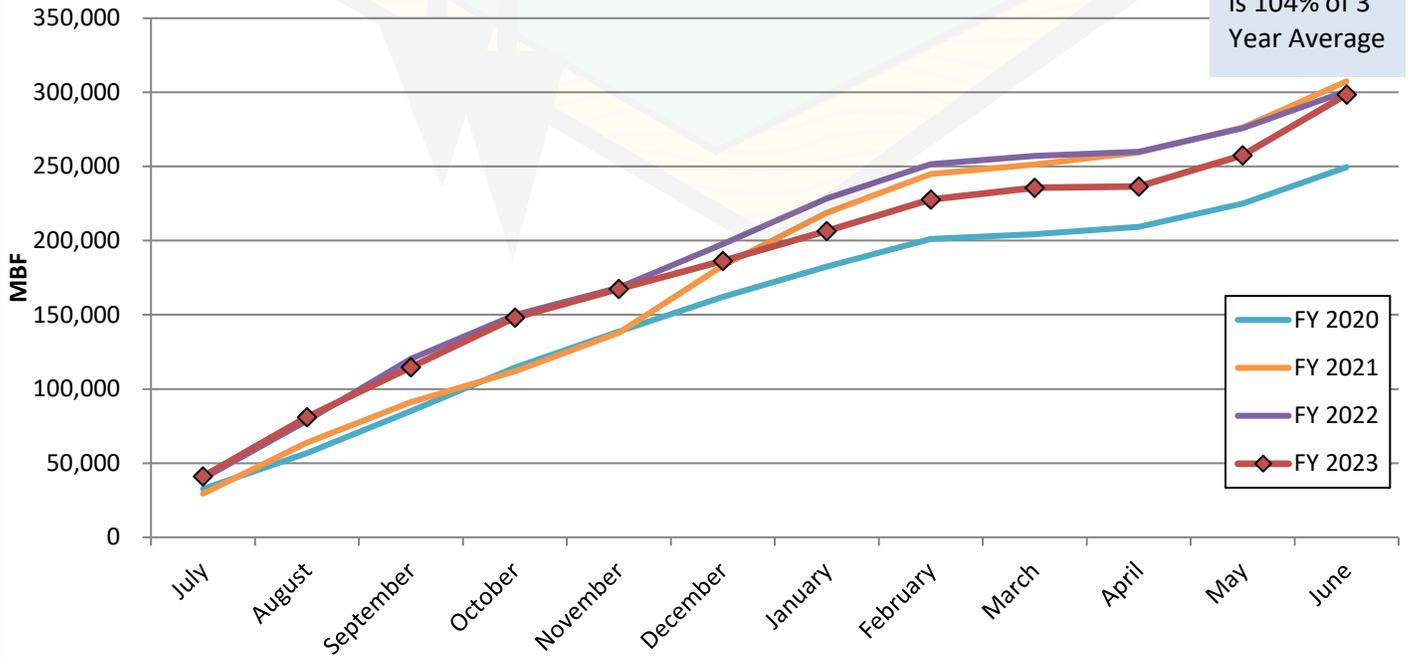
Cumulative Harvest Receipts

Current FYTD is 99% of 3 Year Average

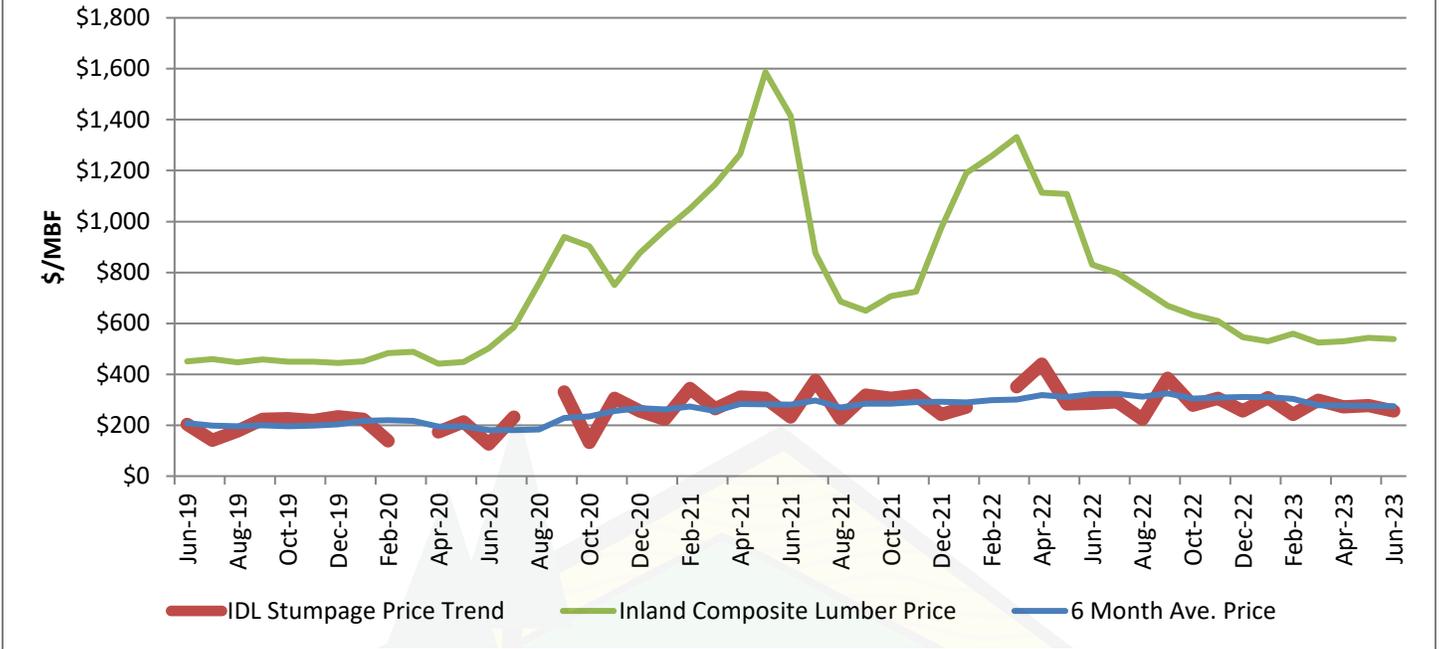


Cumulative Harvest Volume

Current FYTD is 104% of 3 Year Average



Monthly Lumber and Stumpage Price



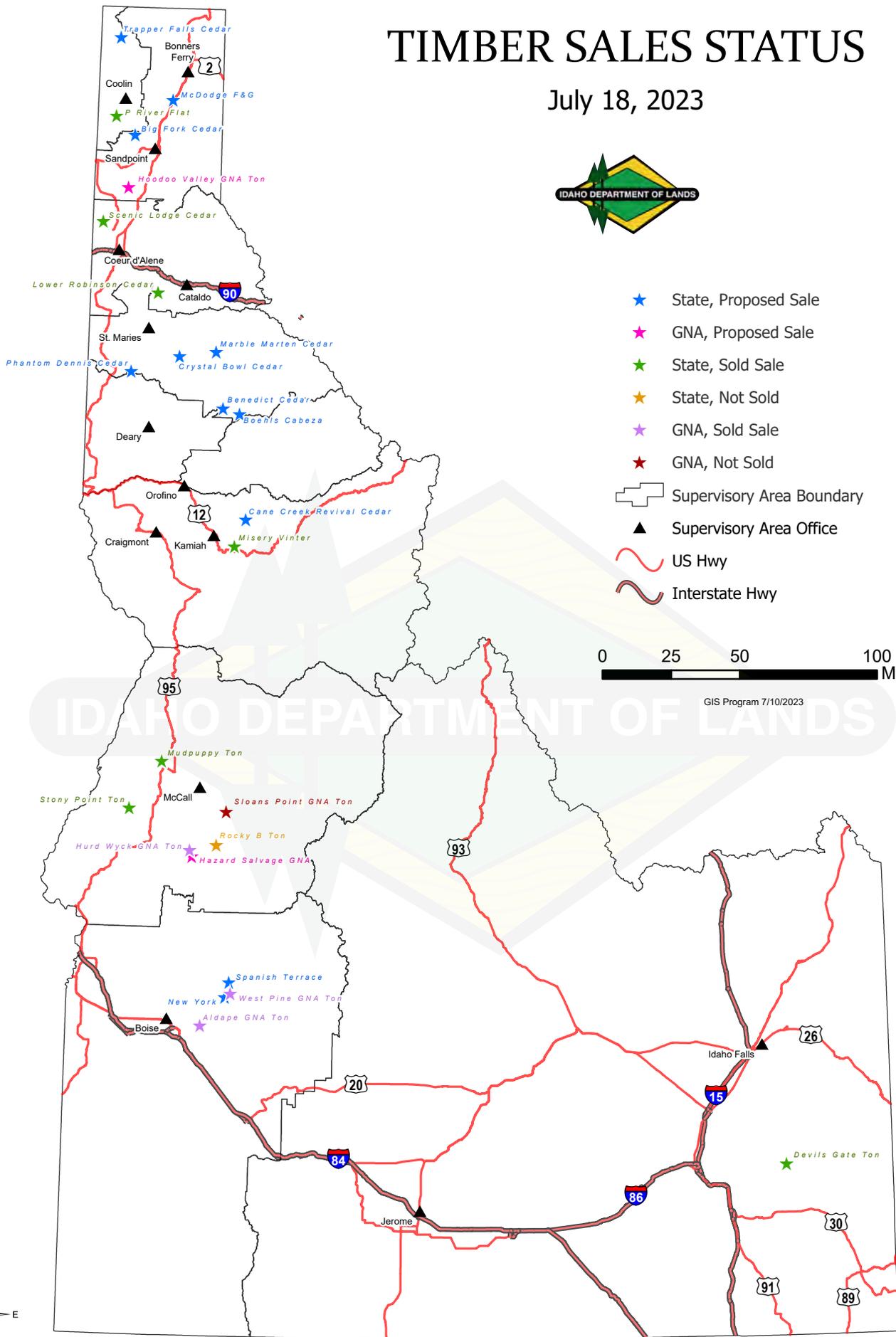
June 2023 6-month average price is \$274.31.

June 2022 6-month average price was \$322.41.

IDAHO DEPARTMENT OF LANDS

TIMBER SALES STATUS

July 18, 2023



- ★ State, Proposed Sale
- ★ GNA, Proposed Sale
- ★ State, Sold Sale
- ★ State, Not Sold
- ★ GNA, Sold Sale
- ★ GNA, Not Sold

- ▭ Supervisory Area Boundary
- ▲ Supervisory Area Office
- US Hwy
- Interstate Hwy



GIS Program 7/10/2023

IDAHO DEPARTMENT OF LANDS



STATE BOARD OF LAND COMMISSIONERS

July 18, 2023

Endowment Transactions

Leases and Permits

FISCAL YEAR 2023 – LEASING & PERMITTING TRANSACTIONS BY MONTH – through June 30, 2023													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	FYTD
SURFACE													
Agriculture	-	1	-	-	1	-	-	-	1	-	1	-	4
<i>Assignments</i>	-	-	-	-	-	-	-	-	-	1	-	-	1
Communication Sites	-	-	-	1	-	-	-	1	1	2	6	-	11
<i>Assignments</i>	1	2	-	-	-	-	-	-	-	-	-	-	3
Grazing	-	-	-	7	1	-	-	3	-	-	-	-	11
<i>Assignments</i>	3	2	-	1	-	-	5	2	-	3	4	1	21
Residential	-	4	-	1	-	-	-	2	-	-	-	-	7
<i>Assignments</i>	-	-	-	-	-	-	-	-	-	-	-	-	0
COMMERCIAL													
Alternative Energy	-	-	-	-	1	-	-	-	-	-	-	-	1
Industrial	-	-	-	-	-	-	-	7	-	-	-	-	7
Military	-	-	-	-	-	-	-	-	-	-	-	-	0
Office/Retail	1	-	-	-	-	-	-	-	-	1	-	-	2
Recreation	-	-	-	-	-	-	-	1	-	-	2	-	3
<i>Assignments</i>	-	-	-	-	-	-	-	-	-	-	1	-	1
OTHER													
Conservation	-	-	-	2	-	-	-	-	-	-	-	-	2
Geothermal	-	-	-	-	-	-	-	-	-	-	-	-	0
Minerals	2	2	1	-	-	-	-	4	1	-	-	-	10
<i>Assignments</i>	1	-	-	-	-	-	1	-	-	-	-	-	2
Non-Comm Recreation	-	-	-	-	-	-	-	-	-	-	-	-	0
Oil & Gas	-	-	-	-	-	-	-	1	-	-	5	-	6
PERMITS													
Land Use Permits	6	5	4	6	2	3	7	5	4	2	11	8	63
TOTAL INSTRUMENTS	14	16	5	18	5	3	13	26	7	9	30	9	155

Real Estate

FISCAL YEAR 2023 – REAL ESTATE TRANSACTIONS BY MONTH – through June 30, 2023													
ACTIVITY	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	FYTD
Deeds Acquired	-	-	-	-	-	-	7	-	3	-	-	1	11
Deeds Granted	-	-	5	3	1	1	-	-	4	-	-	1	15
Deeds Granted - Surplus	-	-	-	-	-	-	-	-	-	-	-	-	0
Easements Acquired	-	1	-	-	-	-	-	-	-	-	-	1	2
Easements Granted	2	1	-	-	-	-	-	-	-	-	-	1	4

Notes

Easements and Deeds executed in June-2023 resulting from the Brisbie Land Exchange

- 1) *Granted Easement: Shoshone County Grantor IDL, Grantee Jamestown Forestlands, LLC*
- 2) *Easement Acquired: Shoshone County, Grantor Jamestown Forestlands, LLC, Grantee IDL*

1) *Special Warranty Deed: Shoshone County, Grantor Jamestown Forestlands, Grantee IDL (Land Board).*

2) *State Deed (mineral estate only): Ada County, Grantor IDL, Grantee Brisbie, LLC*

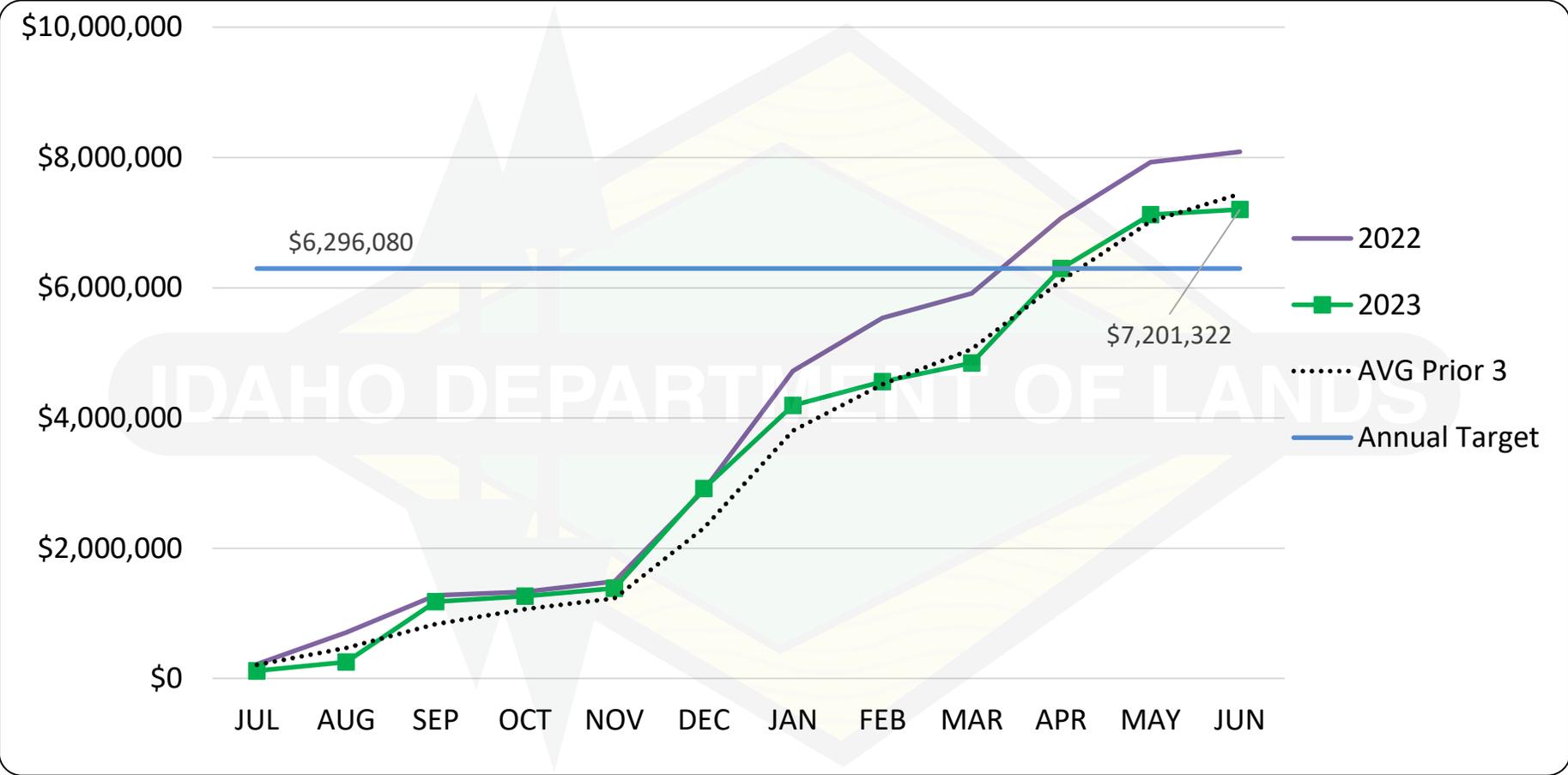
TRUST LAND MANAGEMENT DIVISION
FY2023 GROSS REVENUE (non-timber) - ACTUAL AND FORECASTED
through June 30, 2023

	ACTUAL RECEIPTS AS OF 6.30.2023	REVENUE EXPECTED BY 6.30.2023**
SURFACE		
AGRICULTURE	\$ 544,474	\$ 505,000
COMMUNICATION SITES	\$ 1,183,750	\$ 1,009,239
GRAZING	\$ 1,903,521	\$ 1,870,000
RESIDENTIAL LEASES	\$ 987,811	\$ 1,095,851
COMMERCIAL		
COMMERCIAL ENERGY RESOURCES	\$ 64,253	\$ 47,763
COMMERCIAL INDUSTRIAL	\$ 175,409	\$ 74,504
COMMERCIAL MILITARY FACILITIES	\$ 168,078	\$ 91,117
COMMERCIAL OFFICE/RETAIL LEASES	\$ 842,082	\$ 527,352
COMMERCIAL RECREATION	\$ 1,140,007	\$ 899,978
OTHER		
CONSERVATION LEASES	\$ 70,285	\$ 65,000
GEOHERMAL	\$ (5,339)	\$ -
MINERAL LEASES	\$ 120,729	\$ 105,403
OIL AND GAS LEASES	\$ 6,261	\$ 4,874
Sub Total	\$ 7,201,322	\$ 6,296,081
REAL ESTATE SERVICES	\$ 233,562	*
Grand Total	\$ 7,434,884	

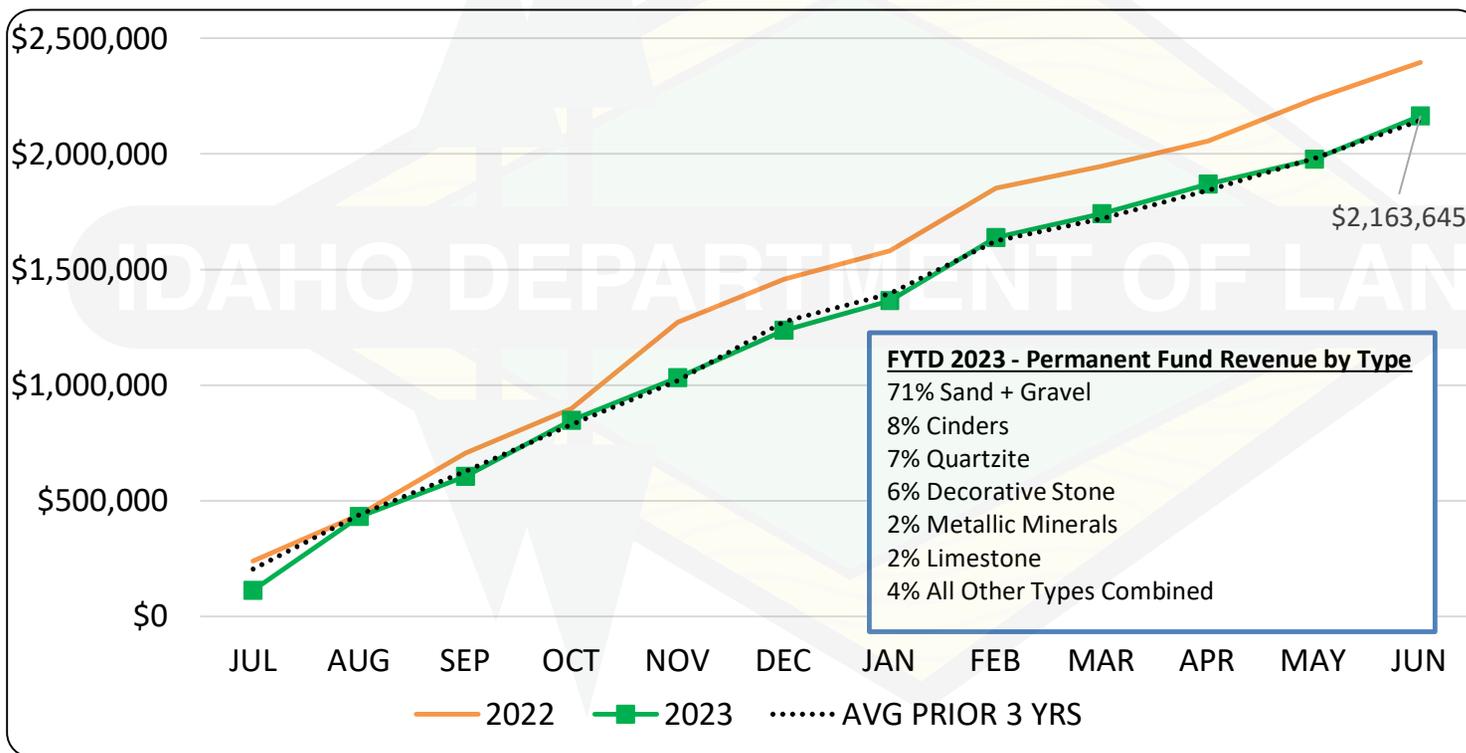
* This category is not included in the annual forecast.

** 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 2022 - FY 2023



Cumulative Trust Land Permanent Fund Revenue/Royalties (Does NOT include Land Bank or Timber Program Revenue) FY2022 - FYTD2023



STATE BOARD OF LAND COMMISSIONERS

July 18, 2023
Department Report

Subject

Fire Season Update

Background

As of July 13, Emergency Fire Suppression expenditures are estimated to be \$4,590,000. The Suppression Account will recover an estimated \$145,000 of reimbursable costs, for a net obligation of \$4,445,000. The total obligation includes the 2023 contracted aircraft costs and prepositioned contract engines to assist with resource scarcity. These engines will be assigned across the state to boost initial attack resources.

Discussion

Currently there are no IDL fires being managed with an Incident Management Team.

Fire Season Comparison to Date

Number and Size of Fires (Year to Date)				
Year	Human	Lightning	Total	Acres
2020	44	11	55	280
2021	137	53	190	61,996
2022	26	10	36	42
2023*	91	26	117	503
20 Yr. Average (2002-2022)			80	9,724

*2023 fires are calculated using the protection boundaries of the new Idaho Master Agreement which has increased the area in which IDL is the protecting agency. Therefore, there is a known inconsistency between 2023 numbers and 20-year averages.

May and June have put northern Idaho on a rapid drying trend with above average temperatures and below normal precipitation. Southern Idaho has been cooler and wetter than average with a generally slow start to the fire season. The long-term weather forecast indicates a warmer than normal fire season with near normal precipitation. The National Significant Wildland Fire Potential Outlook shows most of north and southwest Idaho having elevated fire risk through September.

There are no fire restrictions in place.

Significant Fires Outside of IDL Protection

There are no significant fires in Idaho outside of IDL protection.

Total Acres Burned by Ownership	
7/13/2023	
Surface Owner	Acres
Bureau of Land Management	5,905
Other Federal	0
Private	714
State Endowment	224
Tribal	24
U.S. Forest Service	316
Total Acres	7,185

Only fires with perimeters in the Fire Enterprise Geospatial Portal have been included in the analysis.

Fire Deficiency Warrant Spending - 2023 Fire Season YTD		
Category	Estimated Costs	Notes
Aviation Resources	\$2,750,000	4 SEATS, 2 Fire Bosses, 2 Type 2 Helicopters
Prepositioned Engines	\$885,500	10 Contract engines statewide to boost IA, between 8/1/2023 – 9/15/2023
IDL Non-Team Fires	\$234,500	IDL/Assn fires including pre-positioning
Other Suppression Non-reimbursable	\$575,000	Coeur d'Alene Cache, Dispatch and emergency equipment expenses
Other Suppression Reimbursable	\$145,000	Reimbursable (IDL and Fire Department resources supporting non-IDL fires)
Total Estimate YTD	\$4,590,000	Does not include Cost Share Fires which will be reported in October

LAND BANK AGING REPORT

Current Remaining Principal Balance By Quarter Received - As of June 30, 2023

FY Quarter IN	Public School	Agriculture College	Normal Schools	State Hospital South	University of Idaho	All Endowments	FY Quarter EXPIRES
2021-01	\$ 1,639,575	\$ -	\$ -	\$ -	\$ -	\$ 1,639,575	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
2022-02	\$ 10,140,720	\$ 17,237,620	\$ -	\$ -	\$ -	\$ 27,378,340	2027-02
2022-03	\$ 9,890,500	\$ -	\$ -	\$ -	\$ -	\$ 9,890,500	2027-03
2022-04	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	2027-04
2023-01	\$ 6,125,000	\$ -	\$ -	\$ -	\$ -	\$ 6,125,000	2028-01
2023-02	\$ 9,848,000	\$ -	\$ -	\$ 432,187	\$ -	\$ 10,280,187	2028-02
2023-03	\$ 9,800,000	\$ -	\$ -	\$ -	\$ -	\$ 9,800,000	2028-03
TOTAL PRINCIPAL REMAINING	\$ 55,539,515	\$ 17,237,620	\$ -	\$ 432,187	\$ -	\$ 73,209,322	

LAND BANK CASH BALANCE (with Interest)	\$ 56,411,992	\$ 17,654,663	\$ 11,257	\$ 445,719	\$ -	\$ 74,523,631
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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 June 30, 2023

Month: 4.1% Fiscal year: 10.9%

Financial markets were up during the month of June as Congress reached an agreement to raise the debt ceiling, technology stocks were bolstered by emerging applications for artificial intelligence and inflation continued to moderate. Investors have become increasingly optimistic that the Fed will be able to tame inflation without pushing the economy into a serious recession. Headline inflation which peaked at 9.1% last spring declined to 4.0% in May and is expected to decline to 3.0% - 3.5% over the coming months. Further declines are anticipated because supply chain stresses continue to abate, shelter inflation is rolling over, consumer demand for both goods and services is softening and prior months with elevated inflation are dropping out of the annual inflation calculation. U.S. job growth remained strong in May as employers added 339,000 jobs, surpassing estimates of 195,000.

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:

The Governor appointed Mary Pat Thompson to replace Richelle Sugiyama who has served on the Board for the last seventeen years.

Upcoming issues/events

Board Meeting – August 14, 2023

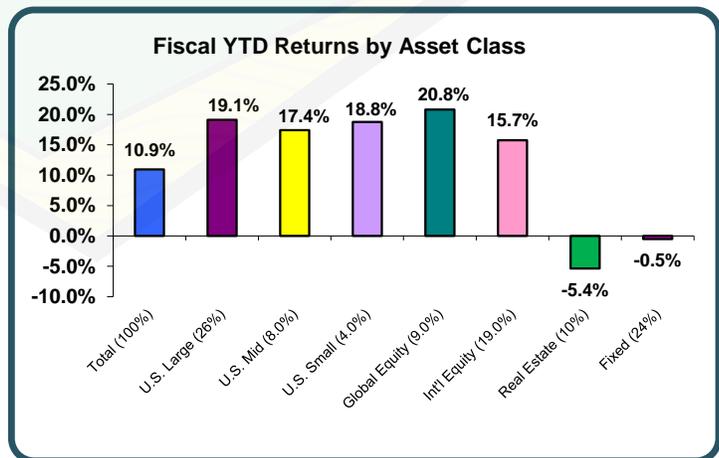
Board Meeting – November 21, 2013 (joint meeting)

	<u>Month</u>	<u>FYTD</u>
Beginning Value of Fund	2,833,875,107	\$ 2,707,410,665
Distributions to Beneficiaries	(9,131,402)	(101,336,815)
Land Revenue net of IDL Expenses	4,206,606	55,864,992
Change in Market Value net of Investment Mgt. Expenses	121,680,450	288,691,919
Current Value of Fund	\$ 2,950,630,761	\$ 2,950,630,761

	<u>Current</u> <u>Month</u>	<u>Calendar</u> <u>Y-T-D</u>	<u>Fiscal</u> <u>Y-T-D</u>	<u>One</u> <u>Year</u>	<u>Three</u> <u>Year</u>	<u>Five</u> <u>Year</u>	<u>Ten</u> <u>Year</u>
Gross Returns							
Total Fund	4.1%	7.9%	10.9%	10.9%	7.8%	7.2%	8.0%
<i>Total Fund Benchmark*</i>	3.5%	8.7%	10.6%	10.6%	7.3%	6.8%	7.6%
Total Fixed	-0.1%	2.6%	-0.5%	-0.5%	-2.9%	1.1%	1.6%
<i>BBG U.S. Agg. (Ag)</i>	-0.4%	2.1%	-0.9%	-0.9%	-3.3%	1.1%	1.6%
Total Equity	6.3%	12.9%	18.2%	18.2%	12.2%	9.7%	10.4%
<i>57% R3 29% Ax 14% AC</i>	6.0%	13.9%	17.0%	17.0%	11.6%	8.7%	9.9%
Domestic Equity	7.5%	13.2%	18.7%	18.7%	13.7%	10.7%	12.1%
<i>Russell 3000 (R3)</i>	6.8%	16.2%	19.0%	19.0%	13.9%	11.4%	12.3%
Global Equity	5.3%	14.0%	20.8%	20.8%	12.1%	10.4%	8.7%
<i>MSCI ACWI (AC)</i>	5.8%	13.9%	16.5%	16.5%	11.0%	8.1%	8.8%
Int'l. Equity	4.4%	11.6%	15.7%	15.7%	9.4%	7.2%	7.0%
<i>MSCI ACWI ex-US (Ax)</i>	4.5%	9.5%	12.7%	12.7%	7.2%	3.5%	4.7%
Real Estate			-5.4%	-5.4%	6.0%	6.1%	

* Benchmark: 38% Russell 3000 19% ACWI ex-US 9% AC 24% BB Agg. 10% OD

	<u>Mkt Value</u>	<u>Allocation</u>
Domestic Equity	\$ 1,146.0	38.8%
Large Cap	784.8	26.6%
Mid Cap	235.4	8.0%
Small Cap	125.8	4.3%
Global Equity	281.2	9.5%
Int'l Equity	563.6	19.1%
Fixed Income	670.1	22.7%
Real Estate	273.7	9.3%
Cash	15.7	0.5%
Total Fund	\$ 2,950.6	100.0%



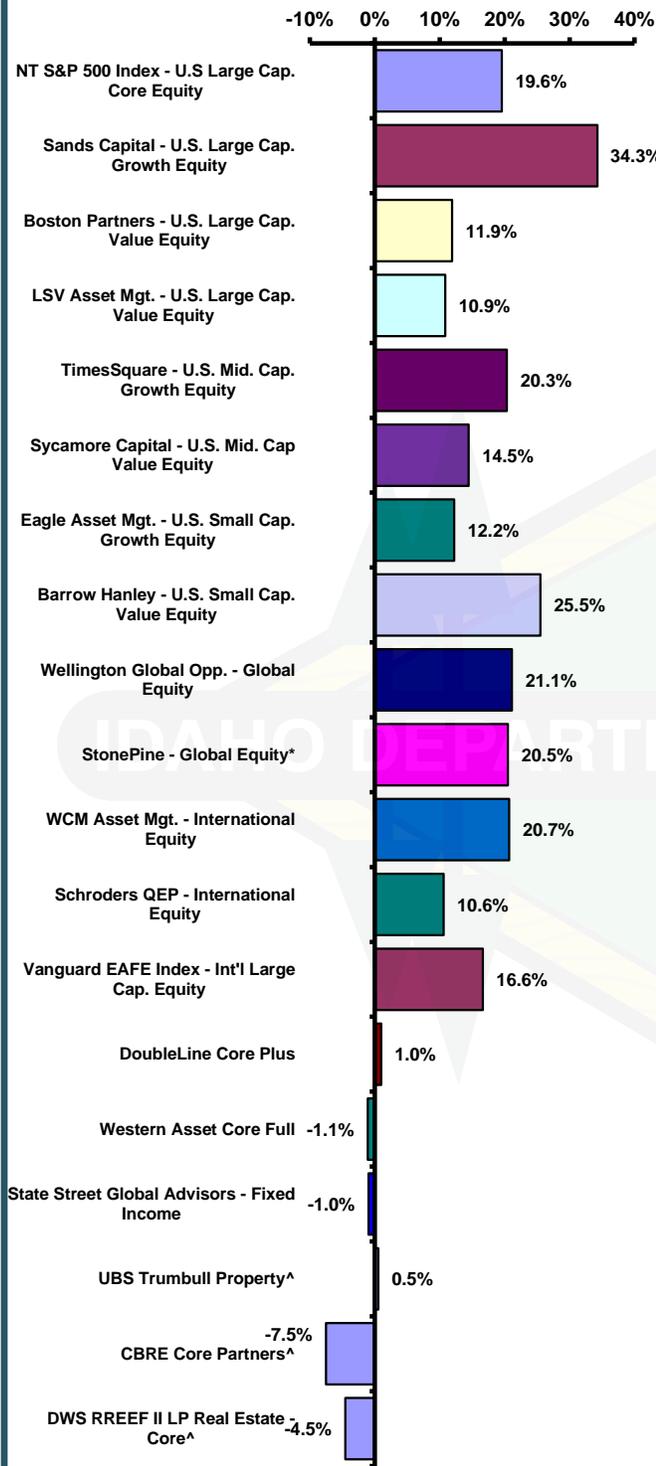
Endowment Fund Staff Comments:

Financial markets were up during the month of June as Congress reached an agreement to raise the debt ceiling, technology stocks were bolstered by emerging applications for artificial intelligence and inflation continued to moderate. Investors have become increasingly optimistic that the Fed will be able to tame inflation without pushing the economy into a serious recession. Headline inflation which peaked at 9.1% last spring declined to 4.0% in May and is expected to decline to 3.0% - 3.5% over the coming months. Further declines are anticipated because supply chain stresses continue to abate, shelter inflation is rolling over, consumer demand for both goods and services is softening and prior months with elevated inflation are dropping out of the annual inflation calculation. U.S. jobs growth remained strong in May as employers added 339,000 jobs, surpassing estimates of 195,000.

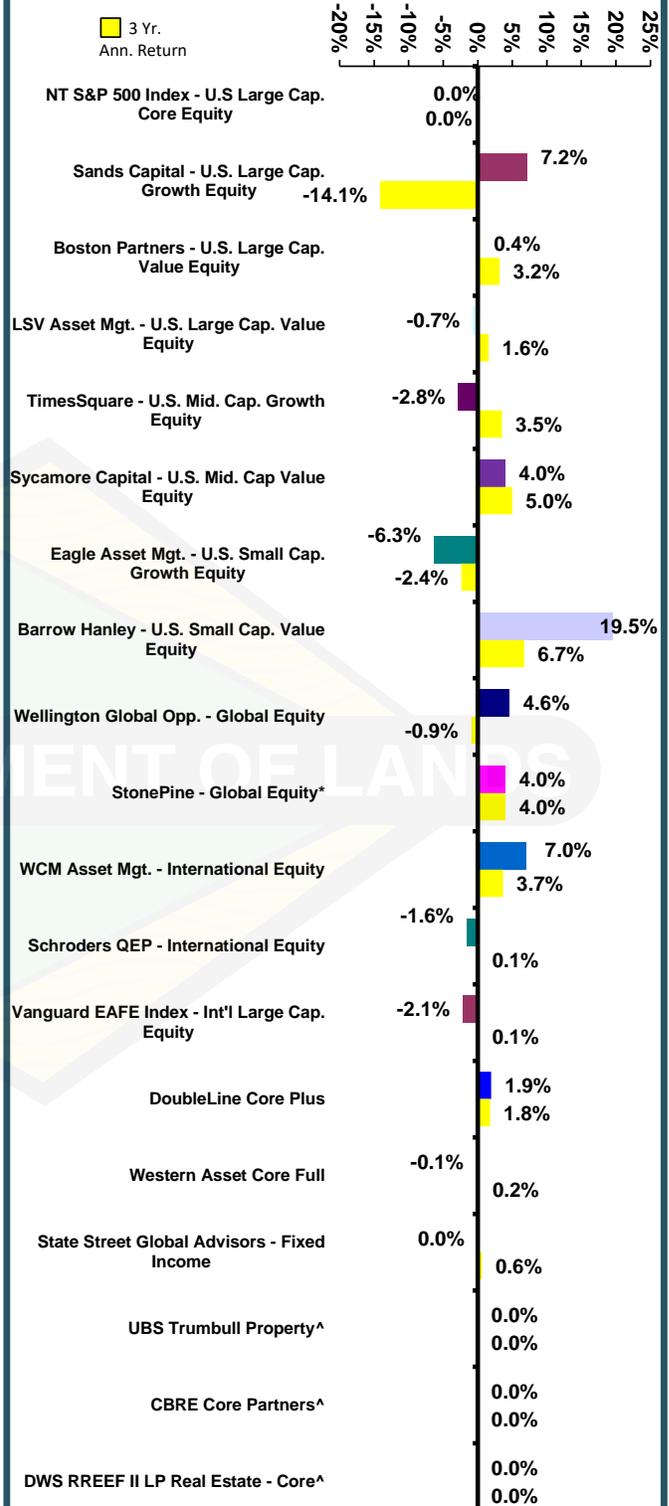
June 30, 2023

INVESTMENT REPORT

FYTD Manager Returns



Manager Relative Returns Fiscal YTD and 3-Yr Ave*



^ Most recent valuation. * I-T-D



Idaho State Board of Land Commissioners

Brad Little, Governor and President of the Board

Phil McGrane, Secretary of State

Raúl R. Labrador, Attorney General

Brandon D Woolf, State Controller

Debbie Critchfield, Superintendent of Public Instruction

Dustin T. Miller, Secretary to the Board

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

Draft Minutes
State Board of Land Commissioners Regular Meeting
June 20, 2023

The regular meeting of the Idaho State Board of Land Commissioners was held on Tuesday, June 20, 2023 at the State Capitol, House Hearing Room EW42, Lower Level, East Wing, 700 West Jefferson St., Boise, Idaho, and via webinar. The meeting began at 9:06 a.m. The Honorable Governor Brad Little presided. The following members were in attendance:

Honorable Governor Brad Little
Honorable Secretary of State Phil McGrane
Honorable Attorney General Raúl Labrador
Honorable State Controller Brandon Woolf
Honorable Superintendent of Public Instruction Debbie Critchfield

For the record, four Land Board members were present at the start of the meeting. Governor Little, Attorney General Labrador, Controller Woolf, and Superintendent Critchfield attended at the physical location. Secretary of State McGrane attended via Zoom webinar.

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

Trust Land Revenue

- A. Timber Sales – May 2023
- B. Leases and Permits – May 2023

Discussion: None.

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

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

Discussion: Mr. Anton reported that domestic financial markets were up modestly in May, but international markets declined as the U.S. dollar strengthened and industrial output, particularly in China, declined; there was also softening in the manufacturing sector. The increase in the U.S. market was primarily driven by excitement surrounding artificial intelligence; NVIDIA specifically

had a huge increase as they forecast stronger than expected revenue in the year ahead. Mr. Anton remarked that the portfolio was down 1.2% during the month of May and up 6.6% fiscal year-to-date; however, through Friday the portfolio had additional gains and the first two weeks of June the fund was up 10.7%. The gains in the first half of June were driven primarily by two things: Congress confirming the increase in the U.S. debt ceiling limits, and solid progress on reducing inflation without dramatically impacting the economy. A little over a year ago Headline CPI was at 9.1% and the annual rate during May was 4%, significant progress was made in bringing down inflation without causing a recession and without causing a dramatic increase in the unemployment rate. The unemployment rate was at 3.7% at the end of May. Mr. Anton mentioned that the Investment Board agreed to make two changes to the portfolio. The first is to replace large cap growth manager, Sands Capital. The rationale for that change is Sands Capital buys rapidly growing companies but companies that are not necessarily profitable; they have great revenue top line growth, but are not making any money, and because of that are very volatile. The Investment Board will look for a quality growth manager, that buys companies with strong balance sheets, that are profitable and growing. Mr. Anton said the second change to the portfolio is to add a third global manager. Currently there are two global managers, Fiera and Wellington; they are both growth-oriented, meaning buying stocks with companies that are growing. The Investment Board wants to add a value manager to balance that out. Mr. Anton noted those changes will be taking place over the next three months. Callan should have their search books completed by the middle of July, then the Investment Board will begin the interview process for those managers.

Governor Little commented on how many months it would take to get a large cap manager, observed the market could make a big run while those funds are out of the market and asked how the Investment Board handles that. Mr. Anton stated the funds will not be out of the market. The money is fully invested and remains with Sands while the search is being conducted.

Controller Woolf inquired how the search process works; does Callan provide a list of three or four potential replacements and then the Investment Board selects from that? Controller Woolf invited Mr. Anton to share with the Land Board how that works. Mr. Anton explained that Callan maintains an extremely large database; all the managers send them quarterly performance data, because they want to be recommended by Callan to their clients. Callan uses that database to conduct a search and prepare books with eight to ten prospects in the categories that the Investment Board wants. The Investments Board will have two independent search books. From that data, prospects will be narrowed to three or four and then interviews conducted. Once a manager is selected, EFIB will move into the legal process of negotiating an engagement agreement, working with the Attorney General's office, and then make the transition.

Governor Little asked about the real estate, how current it is, how often it is marked to market, and how much lag is the real value of real estate investments. Mr. Anton commented the portfolio has two private real estate managers, DWS and CBRE; appraisals are conducted quarterly. Every quarter EFIB looks at both the income and the market value of the investments and adjusts accordingly. Adjustments are fairly current, done within the last couple months. Both managers have taken some write-downs on market values given the higher interest rates and higher mortgage rates but there has been income that offsets some of those market value write-downs, because the real estate does generate income. Mr. Anton noted there may be additional small markdowns in the next couple of quarters, but the investments are in a good place.

For the record, Secretary of State McGrane joined the meeting at approximately 9:19 a.m.

Information

3. Pre-Season Fire Forecast/Update – Introduction by Craig Foss, State Forester/Division Administrator-Forestry and Fire

A. Predictive Services Forecast – Nick Nauslar, Fire Meteorologist, BLM

Discussion: Superintendent Critchfield asked what metrics go into defining in drought and out of drought. Mr. Nauslar replied that a host of authors across the United States, colleagues in other state, local and federal agencies, put that together each week. They look at rainfall, soil moisture, agricultural markers, stream flow, and based on that and past conditions they will delineate areas of different drought. Superintendent Critchfield inquired if that also takes in a comparison three years before now, or a percentage of what it had been. Mr. Nauslar responded that they look short term and long term. Some areas, especially in the Plains or eastern United States, will have flash drought where they will not get much rain for 3-4 weeks and they will rapidly go into drought. Typically, in the western United States, drought is a slower onset and most of it comes in the spring or summer if the usual winter precipitation is not seen. Superintendent Critchfield wondered if drought varies within a season, such as out of drought in June and in drought in July, and if that impacts predictive information. Mr. Nauslar commented it is possible to be in drought one week and out of drought the next week; it can happen quickly. The drought authors look at that and revise it every week. Mr. Nauslar quoted a former professor who said that drought does not always equate wildfire potential. That is one thing that is stressed, especially in southern Idaho. An area may not be in drought but because of all the rain and precipitation received, there is above normal wildfire potential due to the fuel loading.

B. Resource Readiness – Josh Harvey, Bureau Chief-Fire Management

Discussion: Mr. Harvey remarked that he appreciates following the forecasters. The Department works very closely throughout the wintertime and makes a lot of critical decisions on resources based off the information that they provide. Mr. Harvey provided a current fire update, that the Department has had 73 fires for 213 acres; 43 of those fires were human caused, 18 were lightning and 12 are still under investigation. The Department has two 13-person crews assisting Canada on their wildfires, as well as a couple of single resources acting as overhead. Mr. Harvey then continued with his presentation of materials provided. Controller Woolf asked what the length of term is for aviation contracts that are preset for helicopters, SEATs and FireBoss, and are those renewed each year with the same company or do they go out to bid. Mr. Harvey replied that aviation contracts are for 89 days each season and are good for three years. The Department has the option to extend contracts after three years, but then they do go out for public bid.

Governor Little inquired about when the Department measures the fuel in timber. Mr. Harvey answered that it takes place throughout the year. As staff is doing prescribed burning, they are checking fuel moistures and sending data back. Department staff also closely follows information that is posed on the National Interagency Fire Center (NIFC) website; it tracks both live fuel moistures and dead fuel moistures. Governor Little referred to the meteorological analysis in the Kootenai area, asking is that fuel drier than normal or have they had a little less snow? That will

determine the ferocity and the magnitude of big forest fires if that fuel is drier than normal. Mr. Harvey did not have an accurate answer now but said he will provide one after the meeting. The Department really starts paying attention to dead fuel moistures closer to fire season. Mr. Harvey remarked that Secretary of State McGrane participated in the south Idaho guard school this year for which the Department was very honored. Mr. Harvey extended appreciation to Superintendent Critchfield for her visit to the Coeur d'Alene Fire Cache; the Cache staff was extremely excited by her visit.

C. Rangeland Fire Protection Associations – *Josh Harvey, Bureau Chief-Fire Management*

Discussion: Governor Little asked if RFPAs have ever covered forest before, and Mr. Harvey answered yes. Controller Woolf inquired if the Department knows of any new RFPAs being created in the next year or two. Mr. Harvey said there are none known.

Director Miller acknowledged a group of employees from the fire bureau present at the meeting and asked them to stand. Director Miller offered his appreciation for their efforts during fire season.

Consent—Action Item(s)

4. Results of May 15, 2023 Minerals Lease Live Auction – *Presented by Mike Murphy, Program Manager-Minerals Leasing*

Recommendation: Direct the Department to award mineral lease E600116 to Premier, LLC.

Discussion: None.

5. Strategic Plan FY2024-FY2027 – *Presented by Dustin Miller, Director*

Recommendation: Direct the Department to submit its FY2024-FY2027 Strategic Plan to the Division of Financial Management by July 1, 2023.

Discussion: None.

6. State Membership in Timber Protective Associations – *Presented by Dustin Miller, Director*

Recommendation: Authorize state participation as a member of the Clearwater-Potlatch Timber Protective Association and Southern Idaho Timber Protective Association.

Discussion: None.

7. Deficiency Warrant Authority for FY2024 Fire Suppression – *Presented by Dustin Miller, Director*

Recommendation: Authorize issuance of deficiency warrants to pay the fire suppression costs in FY2024.

Discussion: None.

8. Approval of Draft Minutes – May 16, 2023 Regular Meeting (Boise)

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

At 10:06 a.m., a motion was made by Controller Woolf to resolve into Executive session pursuant to Idaho Code § 74-206(1)(b) and (f); (b) is 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, and (f) is 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. Controller Woolf requested that a roll call vote be taken, and that the Secretary record the vote in the minutes of the meeting. Superintendent Critchfield seconded the motion. *Roll Call Vote: Aye: McGrane, Labrador, Woolf, Critchfield, Little; Nay: None; Absent: None.*

Executive Session

A. Performance Evaluation – Director, Department of Lands

Idaho Code § 74-206(1)(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.

B. Bear Lake Management

Idaho Code § 74-206(1)(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.

For the record, Secretary of State McGrane left the meeting at approximately 10:57 a.m., at the conclusion of the Executive Session.

At 10:58 a.m., a motion was made by Controller Woolf to resolve out of Executive session and let the record reflect that no action was taken by the Land Board during the Executive Session. Superintendent Critchfield seconded the motion. A roll call vote was taken. *Roll Call Vote: Aye: Labrador, Woolf, Critchfield, Little; Nay: None; Absent: McGrane.*

Regular—Action Item(s)

9. Personnel Matter – No Board Materials

Discussion: Controller Woolf extended the Land Boards appreciation for the Director's service, his commitment, the work he has done on goals for the past year, and the goals he has lined up with his team. Controller Woolf commented Director Miller has a great staff and the Land Board recognizes his leadership. This 4% solid sustained is commensurate within Director Miller's own staff and with other agency directors throughout the state.

Board Action: A motion was made by Controller Woolf that the Land Board increase Director Dustin Miller's hourly pay rate by 4%, from \$70.62 to \$73.44, with an effective date of June 25th for the July 21st pay date. Superintendent Critchfield seconded the motion. The motion carried on a vote of 4-0.

10. Bear Lake Management (Order and MOU) – Presented by Mick Thomas-Division Administrator- Minerals, Navigable Waterways, Oil and Gas

Recommendation: Adopt the revised order regarding prohibited activities on the bed and banks of Bear Lake below the ordinary high water mark and provide direction to the Department on which MOU to proceed with, Draft 1 (Attachment 3) or Draft 2 (Attachment 4).

Public Comment: *[Editor's note: public comment is written in first-person format. This is not a verbatim transcript.]*

Governor Little: Sheriff Bart Heslington will present for 3 minutes. He is the sheriff of Bear Lake County. Sheriff, welcome.

Sheriff Bart Heslington: Thank you. That is an ominous little stopwatch up there [on screen]. First of all, Governor, Land Board members, I appreciate the opportunity to be here. I would be remiss if I did not acknowledge all of the hands that have gone into getting us to this process and I really appreciate that work. I would name names but invariably I would leave somebody out. My focus in pursuing this MOU essentially revolves around two primary issues. The first is the preservation of the tremendous resource that is Bear Lake. The second is the preservation of the public's right and ability to use that resource. The bottom line is that with any right comes responsibility; without responsible use and management we have no ability to preserve the resource. This necessitates the ability to control use so that it does not damage the resource and that one person's use does not infringe upon others' right to use the resource. The beauty of this proposed MOU is that it takes great strides in addressing those two issues of focus: preserving Bear Lake and preserving its public use. The proposed guidelines regarding activities have been established using a commonsense approach teamed with years of experience in mitigating points of conflict that arise at Bear Lake. Like many statutes, rules, and regulations, some of the limitations do just seem like common sense – litter, leaving of human waste, removal of native soils – but we all have enough life experience to know that common sense is often an oxymoron. The other guidelines and prohibitions are derived from identifying experience and activities that are primary sources of conflict, and frankly primary sources of safety concerns. The point of the restrictions is not to prevent the use of the lands but to promote safe and responsible use of those lands. The other key component is the ability to allow some sort of funding mechanism. Never has there been a regulation established that was worth anything if you did not have the ability to enforce it. Enforcement requires resources, manpower, and management; a funding mechanism not only allows for that, but it creates a dynamic in which those users creating the need for the regulation help to fund the infrastructure demands that the use creates. This in no way is intended to limit or prohibit use but is strictly aimed to preserving Bear Lake and the public right to use and enjoy the resource. Again, I thank you for your time and I respectfully ask for your endorsement of this proposed MOU.

Governor Little: Commissioner Rex Payne [Bear Lake County].

Commissioner Rex Payne: Thank you, Governor and members of the Land Board, appreciate the opportunity to come and visit with you today and talk to you a little bit about what our present concerns and position is on the public lands of Bear Lake. I was born and raised in Bear Lake County, about five miles from the lake, and as you can tell by the color of my hair, I have had a few years of experience. Lived all my life there except for a few years when I taught school in

Wyoming and went to school at Utah State, so 69 years that I have lived in the county. During that time period I have seen the lake grow immensely. When I was a youth there were only a couple of established recreational facilities on that lake; today we have numerous homes, homes of celebrities such as the families of Merlin Olson, Rich Little, NBA coach Dick Motta and others. Our valley is growing. Governor, if you come down now for Capital for a Day you can land in our airport during a snowstorm, because we do have instrument landing there, two runways and taxiways, and we are currently building four new hangars there. There is 21.7 miles of beach from Idaho line around the lake to the Utah line again. That is a lot of area to patrol and there has been a lot of usage on that lake. We have been told that up to 600 cars were allowed at a time on North Beach when the lake was high and there was not a lot of usage, now there is no limit, but that generally filled up by 10 o'clock on weekends. Then they would wait around until afternoon and then start coming again. Well, as far as the need goes, in recent years it was called to our attention that up Fish Haven Canyon there were some parties taking place up there by people that had come and established that. To take care of that, our sheriff invited police officers from Caribou, Bannock, Bingham, Fremont, and other counties to come and help patrol this on Raspberry Days. This has taken place now for five or six years. There is a lot of usage, there is a lot of need to control that. If in fact the public ever becomes aware that the state lands at this current time does not have anyone with authority to make the proper arrests and control that, we could be putting ourselves in a liability situation. We have talked a little bit about resources and the way to pay for this and certainly we are open to working with you on that, but the main thing is it is imperative that something is done immediately on these public lands and that there is a memorandum of understanding that is signed and a way of generating revenue for expenses. Thank you.

Governor Little: Thank you, Commissioner. We have David and Claudia Cottle from the Bear Lake Watch.

Claudia Cottle: You knew I was coming, that is why you got the 3-minute warning out. Appreciate all of you and the work that you have done and what it takes to manage the lands of Idaho, and we very much appreciate that, even though our little strip of Bear Lake whether it is exposed or not exposed is part of that state lands, and maybe pales in the fact of all the timberlands and other things you have to worry about. As the sheriff and Mick mentioned, this has been an ongoing matter that we personally have worked on for 20 years, and trying to make sure that we could get it resolved. We really appreciate that this has come to this point in time with you all and that you can make a decision and help us clarify that law and the uses of Bear Lake. I support everything that the sheriff and Commissioner Payne have spoken forth; these are big issues, and the lake is really a target of overuse and abuse. I think this will be a great help to bringing order, peace, and safety to our communities. As a citizen, and a person that lives along the lake with littoral rights, we appreciate that this will be resolved. Also, speaking for Bear Lake Watch, all the people that love Bear Lake want to see that lakebed treated with the respect and consideration that it should have. We do feel that users should pay and that we need to have some mechanisms to help our law enforcement. People come from all over the intermountain west, and we really do not have a way for those people to participate in paying for the wonderful services and things that they will enjoy if we can get this Land Board order and MOU put forward. I would encourage that we find a way to help fund that as well. And again, thank you very much for your time, pushing this matter forward, and all the rest of the things that you have done for Bear Lake. Thank you. Any questions?

Governor Little: Thanks for making the trip over; we appreciate that very much.

Controller Woolf: I want to thank our friends from Bear Lake coming up and their time. Little bit of disclaimer, grew up on the other side of the mountain, had many Bear Lake burns on North Beach as a family. I also want to thank the Department, our Attorney General's office for their teamwork in putting this together. The water is a little higher and there may not be an issue right now, but it will be, so we appreciate everyone's effort and work in putting this together.

Discussion: Controller Woolf stated that the Land Board received good legal direction and comments, and this MOU helps move forward from that guidance. This gives time to take care of other key things in the future with the legislature, if needed. Governor Little commented this issue is just going to magnify. The Department of Lands has 2.5 million acres of land and does not have the resources to patrol it all and this is a start. The sunset clause will allow the Department to work with the legislature to make sure everything is compliant with state law. Governor Little remarked the Land Board should never look at one of these without looking at what the ramifications will be on endowment lands; what is a fair way to fulfill that trust obligation and preserve the incredible resources under the responsibility of the Land Board.

Board Action: A motion was made by Controller Woolf that the Land Board adopt the revised order regarding prohibited activities on the bed and banks of Bear Lake below the ordinary high water mark and provide direction to the Department on which MOU to proceed with, which would be Draft 1 (Attachment 3). Controller Woolf made amendments to that MOU, to strike paragraph 4, and add an end date to the MOU of April 30, 2024. Superintendent Critchfield seconded the motion. The motion carried on a vote of 4-0.

There being no further business before the Land Board, at 11:20 a.m. a motion to adjourn was made by Superintendent Critchfield. Controller Woolf seconded the motion. The motion carried on a vote of 4-0.

STATE BOARD OF LAND COMMISSIONERS

July 18, 2023
Regular Agenda

Subject

Ohio Gulch Commercial Ground Lease in Blaine County, Idaho

Question Presented

Shall the Land Board direct the Department to enter into negotiations for a commercial ground lease, and subsequent advertisement and potential auction process, with CZ LLC, an Idaho limited liability company?

Background

On December 8, 2022, under the authority of Idaho Code § 58-101, a Request For Proposals (RFP) was issued for the ground leasing opportunity of approximately 28.3 acres of state endowment trust land located on Ohio Gulch Road in Blaine County, Idaho (Ohio Gulch).

The Ohio Gulch land includes three parcels of Public School endowment land (Attachment 1). Parcel 1 (3.5 acres) was operated under fill permits allowing the dumping of clean dirt and rock fill material only, from approximately 1998-2011. Parcel 2 (12.8 acres) was historically used as grazing land. Parcel 3 was operated as a county landfill from 1967-1978 and was capped in 1980. Currently, all three parcels remain fallow, yet are well positioned for commercial development and income generation. The aggregate value of all three parcels is \$718,000. Through the RFP process it became apparent that a ground lease of these endowment lands would produce value well in excess of a near term disposition, creating a sustainable stream of income to the endowment beneficiaries.

The RFP opportunity was well received, with five (5) total respondents submitting viable proposals. Respondents were required to submit proposals to the Idaho Department of Lands (Department) by 5:00 pm (MT) on March 1, 2023. Responses were required to contain various specific information including proponent qualifications, development plan, proposed lease revenue, along with a nonrefundable application fee.

Over the last four months, the Real Estate Services Bureau (Bureau), with the assistance of CenturyPacific, the Land Board's commercial real estate advisor (Advisor), completed two rounds of evaluations eliminating candidates in stages. The first stage was an evaluation of use acceptability, revenues proposed, and development and financial feasibility. The second round, which included a narrowed field of proponents, consisted of a "final and best" proposal to increase the competition and accuracy of the submissions. Respondents were advised that the revenue component would be heavily weighted with guaranteed revenues (base rent) favored over variable (percentage rent) (Attachments 2 and 3). Finally, interviews were conducted with the top two proponents on May 30, 2023. Following the interviews, the Bureau, area office staff members, and the Advisor conducted a vote to choose the prevailing respondent.

Discussion

While all respondents presented interesting, viable, and worthwhile endeavors, the Department narrowed down the respondents to a single prevailing party. Predicated on project feasibility, strength of financial proposal and income to the endowment beneficiaries, and intensiveness of development, the Department recommends proceeding to the lease negotiations stage with CZ LLC (formally proposed as Wood River Investors, LLC) for the development of self-storage, contractor yard storage, and vehicle storage facilities on Ohio Gulch. CZ LLC is a commercial real estate investment special purpose entity owned and managed by two key principals. The key principals have a diverse real estate background spanning over two decades, with involvement in residential brokerage, residential development, commercial development, and commercial investment management. The managing members of the firm indicated they have the financial capital to perform such a development.

Proposal Summary

The proposed use is a low impact, minimal development for each parcel. Parcel 1 would house portable storage containers that would serve as self-storage, additionally there would be allocated space for RV and vehicle lot storage. Parcels 2 and 3 would be divided into large, fenced lots that would serve as yard, laydown, fleet, or vehicle storage aimed towards contractors in the area. Market research indicated that considerable demand exists for each of the proposed uses. The development of improvements, estimated at \$2,500,000, is to be capitalized on an all-cash basis leaving said improvements free of any encumbrances.

The proposed base rent for the term of the lease is \$120,000 per year beginning in year two (escalating 3% annually), with a commencement fee of \$56,600 due at the mutual execution of the lease. In total, the guaranteed revenue to the State holds a net present value of \$6,629,926 – well in excess of a near term disposition. In addition to the guaranteed revenue, percentage rent of 5% of effective gross income exceeding \$10,000 per month has been proposed. Though gross receipts cannot be guaranteed, conservative estimates suggest significant financial incentive in addition to the committed lease revenue, as indicated in the financial analysis provided by the Advisor (Attachment 4).

The conditional acceptance (Attachment 5) will be based on the satisfactory completion of the next phases of the process including, but not limited to, the following:

1. A review of professionally prepared financial statements
2. Successful negotiation of lease terms and conditions subject to advertisement, potential auction, and subsequent Land Board approval
3. The commitment to lease the entire premises, as proposed
4. Agreement of the use of the premises based on submitted proposal
5. Agreement of the proposed Lease Term
6. Agreement of the proposed commencement date of base rent
7. Agreement of the proposed annual base rent

8. Agreement of the proposed percentage rent
9. The proposed Commencement Fee payment
10. Satisfactory completion of two hard cost milestones in Tenant Improvements

Should the Land Board direct the Department to move on to the next steps, the process would follow the below:

1. Enter negotiations with the potential lessee regarding lease terms, addendums, and/or exhibits, and memorializing the proposed rate. This will be through redlining the Department's lease template with regular input from the deputy attorneys general (DAGs) advising the Department.
2. Once a final lease product is created, advertise said lease for a period of time, no less than 4 weeks.
3. If there is not a conflict, CZ LLC would be awarded the lease, if approved by the Land Board. If there is a conflict, a conflict auction for the lease would be held. The successful bidder would be awarded the lease, subject to approval by the Land Board. If there is an auction, the results will be presented to the Land Board in the following Land Board meeting, for finalization and approval.

Recommendation

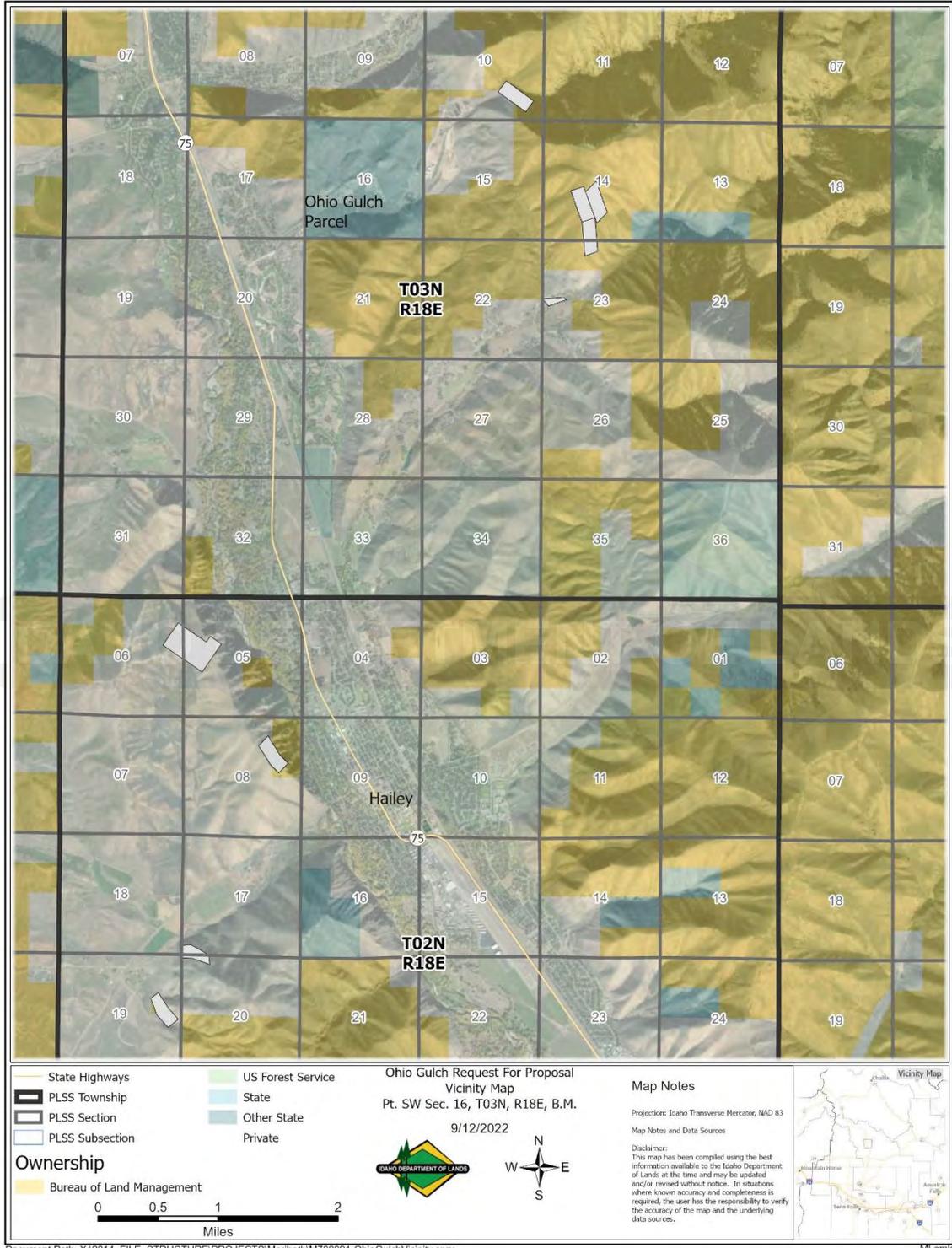
Direct the Department to enter into negotiations for a ground lease of the Ohio Gulch property with CZ LLC, followed by the Department's Conflict Auction Process.

Board Action

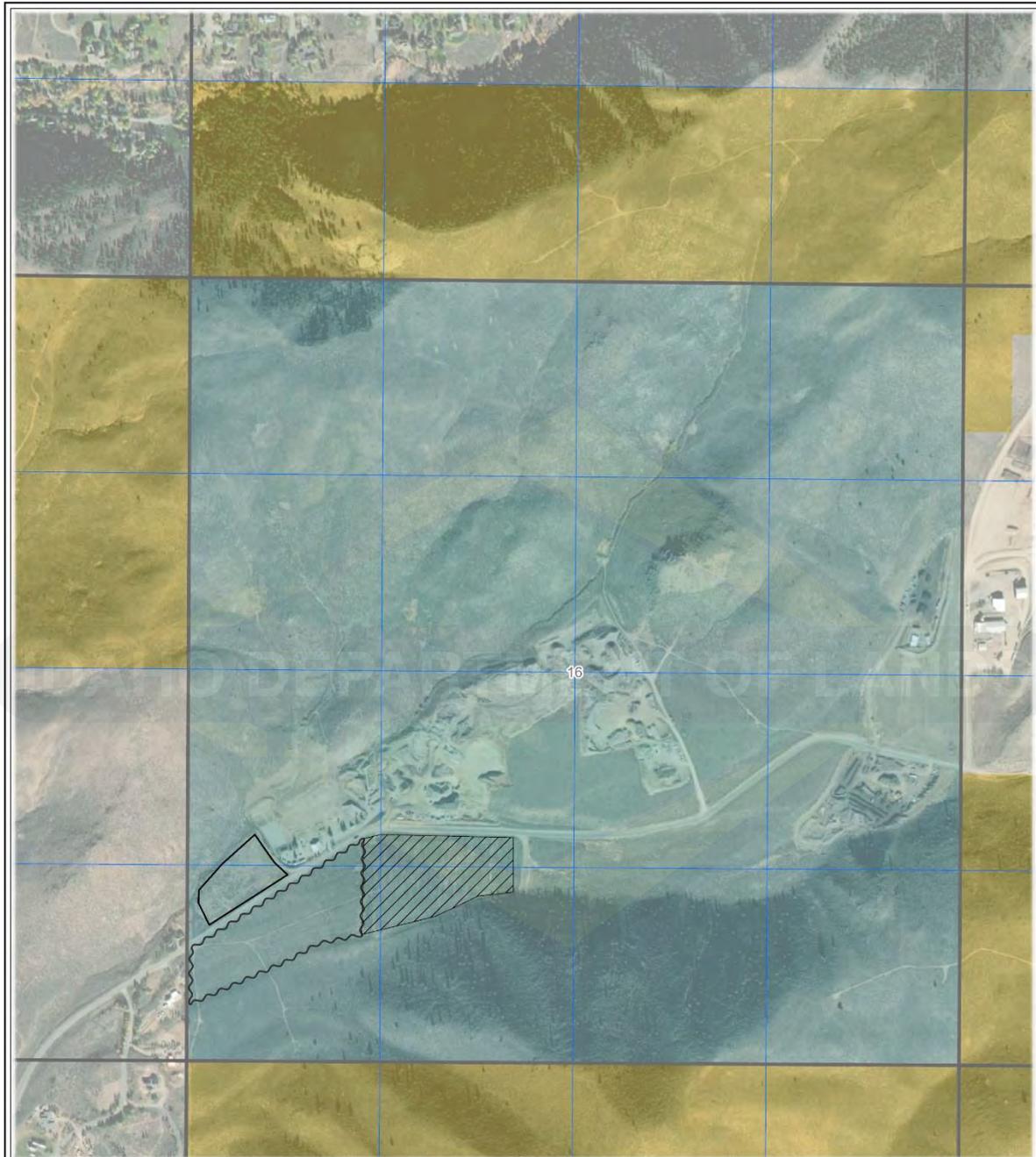
Attachments

1. Site maps
2. Scoring Matrix
3. Respondent Review Highlights
4. CenturyPacific Recommendation
5. Conditional Acceptance Letter

ATTACHMENT 3 Map of Leased Premises - Overview



Map of Leased Premises - Detail



<p>PLSS</p> <ul style="list-style-type: none"> PLSS Section PLSS Subsection <p>Ownership</p> <ul style="list-style-type: none"> Bureau of Land Management State Private 	<p>RFP Parcels</p> <ul style="list-style-type: none"> RFP-Parcel_1 RFP-Parcel_2 RFP-Parcel_3 	<p>Ohio Gulch Request for Proposal Map Pt. SW Sec. 16, T03N, R18E, B.M.</p> <p>6/21/2022</p>  	<p>Map Notes</p> <p>Projection: Idaho Transverse Mercator, NAD 83</p> <p>Map Notes and Data Sources</p> <p>Disclaimer: This map has been compiled using the best information available to the Idaho Department of Lands at the time and may be updated and/or revised without notice. In situations where known accuracy and completeness is required, the user has the responsibility to verify the accuracy of the map and the underlying data sources.</p>	<p>Vicinity Map</p> 
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Ohio Gulch RFP - Proposal Evaluation Matrix

Scoring Category	Defined Criteria	Scoring Value
Qualifications		
Proposal Submitted On-Time	[0 = Proposer did not submit on time] [1 = Proposer submitted on time]	
Submitted with All Requirements	[0 = Proposer did not complete all requirements] [1 = Proposer completed all requirements]	
Overall CRE Experience	[1 = Proposer's CRE experience did not meet expectations for proposed development] [2 = Proposer's CRE experience meets expectations for proposed development] [3 = Proposer's CRE experience exceeds expectations for proposed development]	
Development Experience	[1 = Proposer's development experience did not meet expectations for proposed development] [2 = Proposer's development experience meets expectations for proposed development] [3 = Proposer's development experience exceeds expectations for proposed development]	
Financial Strength of Proposer	[1 = Proposer's financial strength did not meet expectations for proposed development] [2 = Proposer's financial strength meets expectations for proposed development] [3 = Proposer's financial strength exceeds expectations for proposed development]	
	Category Total	0
Proposed Development Plan		
Consistent with Zoning	[0 = Proposed development is generally inconsistent with zoning requirements] [1 = Proposed development is generally consistent with zoning requirements]	
Constructability	[0 = Constructability of proposer's intended development is not feasible] [1 = Constructability of proposer's intended development is feasible] [2 = Constructability of proposer's intended development is easily feasible]	
Financial Feasibility - (Dev. Costs, accuracy of financial assumptions)	[0 = Proposer's intended development is not financially feasible] [1 = Proposer's intended development is financially feasible] [2 = Proposer's intended development is easily financially feasible]	
Feasibility of Total Dev. Timeline (Entitlements - substantial completion)	[0 = Proposer's intended development timeline is not feasible] [1 = Proposer's intended development timeline is feasible] [2 = Proposer's intended development timeline is easily feasible]	
	Category Total	0
Proposed Lease Revenue to IDL		
Anticipated Revenue to IDL	[7 = Anticipated revenue to IDL achieves no more than 200% of designated hurdle rate] [8 = Anticipated revenue to IDL achieves between 200.01% and 225% of designated hurdle rate] [9 = Anticipated revenue to IDL achieves between 225.01% and 250% of designated hurdle rate] [10 = Anticipated revenue to IDL achieves between 250.01% and 275% of designated hurdle rate] [11 = Anticipated revenue to IDL achieves between 275.01% and 300% of designated hurdle rate] [12 = Anticipated revenue to IDL achieves between 300.01% and 325% of designated hurdle rate] [13 = Anticipated revenue to IDL achieves between 325.01% and 350% of designated hurdle rate] [14 = Anticipated revenue to IDL achieves between 350.01% and 375% of designated hurdle rate] [15 = Anticipated revenue to IDL achieves at least 375.01% of designated hurdle rate] *Allocation subject to revision based upon final and best proposals received.	
Overall Confidence/Feasibility to Perform	[1 = Low confidence in ability to perform proposed revenue structure] [2 = Moderate confidence in ability to perform proposed revenue structure] [3 = High confidence in ability to perform proposed revenue structure]	
	Category Total	0
	Subtotal	0
Appraised Fair Market Value - Qualifying Multiplier	[0 = Anticipated compensation to IDL does not achieve the appraised fair market value lease revenue] [1 = Anticipated compensation to IDL does meets/exceeds the appraised fair market value lease revenue]	
	Grand Total	0

Ohio Gulch

RFP Respondents

RESPONDENT NAME	PROPOSED DEVELOPMENT	PARCELS USED	INCOME TO ENDOWMENTS (NPV)	ANNUALIZED RETURN	COMMENCEMENT FEE	NOTES
Axxcess Realty Advisors, LLC & Trail Creek Real Estate Partners, LLC	Outdoor Storage Facility	1,2	\$ 4,900,719.00	23%	\$ 20,000.00	Parcels 1 & 2 used for RV and boat storage with some fleet and contractor equipment storage. Parcel 3 left for grazing.
Charter Equities, Inc.	Storage Facility/Leased Residential	1,2,3	\$ 10,498,055.00	49%	\$ 20,000.00	Problematic proposal, unsure of project timeline. Workforce Housing on Parcel 2.
Elevate Investments	Light Industrial/Self Storage	2	\$ 5,459,263.00	25%	\$ -	Proposal allows for the development of a 2nd and 3rd phase at the sole discretion of the leaseholder.
Philo Development Group, LLC	Multi-family Residential	2	\$ 2,786,396.00	13%	\$ 50,000.00	Selling Condominiums. After 49yrs + 49yr extension, offering IDL assumption of buildings, not included in returns calculation. Proposal may further activate surrounding area providing potential land appreciation.
CZ, LLC	Self Storage/Outdoor Storage	1,2,3	\$ 10,996,347.00	51%	\$ 56,600.00	Parcel 1 will be shipping container and RV Storage. Parcels 2 & 3 are light industrial contractor/yard storage. Proposal offers high flat rate plus percentage rent.
Appraised Value of Land			\$ 718,000.00			

CENTURYPACIFIC, LLLP

REAL ESTATE INVESTMENT BROKERS ▪ ADVISORS ▪ ASSET MANAGERS

MEMORANDUM

DATE: June 6th, 2023
TO: Mr. Roger Hall, Real Estate Bureau Chief
FROM: Michael A. Odegard
RE: Ground Lessee Selection Process
Ohio Gulch Property, Blaine County, Idaho

SUMMARY

Thank you for the opportunity to participate in the selection process for a long-term ground lessee of the Ohio Gulch property – a three parcel, 28.3-acre endowment holding in Blaine County, Idaho (Endowment Lands). A request for proposals (RFP) was issued by Idaho Department of Lands (IDL) to screen and select one or more tenants for the project that would promote the mission of the Idaho State Board of Land Commissioners (Land Board) to maximize long-term financial returns to the endowment beneficiaries.

Based on CenturyPacific's review of the project information provided by IDL, evaluation of the five (5) proposals submitted, cooperation with IDL related to the development of a proposal scoring matrix, and candidate interviews – assuming the recommended additional conditions are satisfied – CenturyPacific supports pursuing the negotiation and finalizing of a ground lease to CZ, LLC (Wood River Investors, LLC) for development of self-storage, contractor yard storage, and vehicle storage facilities. The proposed development, consistent with the highest and best use of the property, creates a diverse income stream that maximizes the long-term financial returns with the anticipated lowest risk to the endowment beneficiaries. CZ, LLC appears to be adequately capable to complete the project as proposed and has provided a rent structure that affords both guaranteed income in excess of IDL's stated return requirements as well as the potential for speculative rent in the form of percentage rent (participation in gross receipts). Of the candidate proposals received, CZ, LLC's proposal best directly addresses IDL's stated leasehold requirements and proposes the highest committed rent over the proposed 49-year term.

SUPPORTING INFORMATION

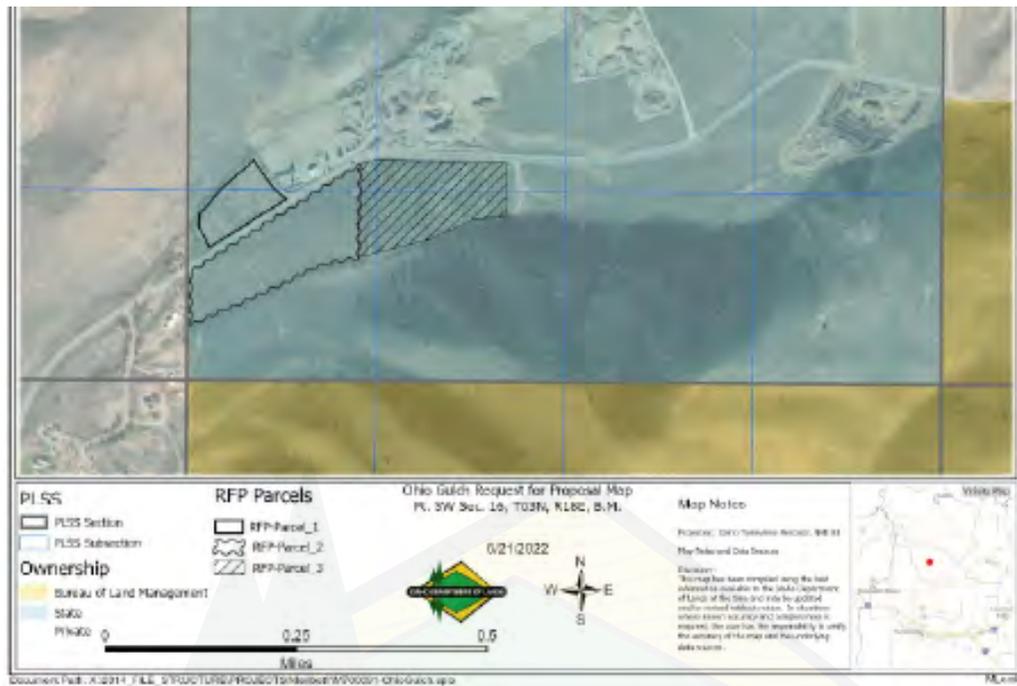
CenturyPacific's evaluation of the proposals and resulting recommendation is informed by the following:

- Ohio Gulch Project - Request for Proposal for Commercial Ground Lease (12/8/2022): The RFP document, produced and distributed by IDL, provides a history of the Endowment Lands, outlines the expectations and qualifications of candidates and

proposals, and identifies parameters for evaluation of proposals received.

- Ground Lease Proposals: CenturyPacific reviewed proposals received by IDL. The following five (5) candidates provided initial round ground lease proposals:
 - Charter Equities, Inc (Ketchum, ID)
 - Philo Development Group, LLC (Lehi, UT)
 - Elevate Investments, LLC (Boise, ID)
 - Wood River Investors, LLC (Hailey, ID)
 - Axxcess Realty Advisors, LLC (San Juan Capistrano, CA)
- Ohio Gulch RFP – Second Round Evaluation and Information Request (May 12, 2023): The “Best and Final” RFP document distributed by IDL to the three (3) candidates with the strongest round one proposals.
- “Best and Final” Proposals: CenturyPacific conducted a thorough review of each of the final round proposals received by IDL in collaboration with IDL. Final round proposals were received by:
 - Axxcess Realty Advisors, LLC (San Juan Capistrano, CA)
 - CZ, LLC (Formerly proposed as Wood River Investors, LLC) (Hailey, ID)
 - Elevate Investments, LLC (Boise, ID)
- IDL Proposal Scoring Matrix: IDL and CenturyPacific developed a scoring matrix in order to allow for a level comparison of proposals with differing qualifications, qualities, uses, intensiveness of development and proposed revenue structures.
- Financial Analysis: A financial analysis was completed for each proposal (see Exhibit B).
- IDL Internal, Restrictive Appraisal of the Ohio Gulch Project (January 30, 2023): An internal appraisal conducted by IDL to determine the as-is land value for the evaluation of financial proposals received and the necessary hurdle rate thresholds.
- IDL Internal Fair Market Rent Analysis (May 10, 2023): An internal evaluation of fair market rent, based on available submarket data, for the evaluation of financial proposals received.

OHIO GULCH PROJECT OVERVIEW



The Endowment Lands are located on Ohio Gulch Road, approximately one mile east of Idaho State Highway 75 between the towns of Hailey and Ketchum, Blaine County, Idaho. The property consists of 3 parcels totaling 28.3 acres within the 640 Acre Section (Sec 16 3N 18E) managed by the Idaho Department of Lands.¹ This 640 acre section is currently encumbered by a livestock grazing lease, of which the Endowment Lands being considered constitute 4.4% of the leased area. Parcel 1, comprised of 3.5 acres, has seen permitted site work including dumping and grading of fill material to create a relatively level parcel. The parcel is currently well-positioned for a number of development endeavors. Parcel 2, consisting of 12.8 acres, is also relatively flat with natural vegetation (grass and brush), and seems to be the parcel of most interest to proposers – presumably due to the lot area and site characteristics. Parcel 3, consisting of an additional 12 acres, also possesses relatively flat topography and amenable physical characteristics for development. Parcel 3, however, is the site of a former Blaine county landfill for at least the period of 1967 – 1976. According to IDL records, the site was leveled with a soil cap of unknown depth over the trash deposits in 1980. Parcel 3 site is relatively flat and well vegetated, however the environmental profile of the site limits the perceived value and utility of the parcel.

The immediate vicinity of the project contains a variety of property uses including single family homes, townhomes/duplexes, and various commercial services. Commercial neighbors include the Hurtig Shooting Center & Gun Club, Winn’s Compost and the Ohio Gulch Transfer Station (Blaine County). The surrounding municipalities of Sun Valley, Ketchum, Hailey and Bellevue, commonly referred to as the greater Sun Valley area, have seen considerable growth in the preceding decade, but notably so since the COVID 19 pandemic. An influx of residents and

¹ [Blaine County Assessors](#)

vacationers alike have placed strain on multiple industries and services creating significant demand for housing (workforce and otherwise), commercial and industrial services (specifically storage solutions), industrial/flex, and secure outdoor storage space (e.g. contractor laydown space).

The subject properties present significant opportunity to develop both residential and commercial assets, presently in high demand, which would allow IDL to realize and maximize long-term financial returns to the endowment beneficiaries. Given the existing uses in the immediate area, the market demand for self-storage and light industrial leased space, the available lease term (49-years) and the goals of the Land Board, the perceived highest and best use of the Ohio Gulch Property is the development of light industrial (storage and/or industrial flex) that will maximize income to the Land Board while minimizing the capital investment of a potential ground lessee.

REQUEST FOR PROPOSAL ROUND 1 - OHIO GULCH GROUND LEASE

Congruent with Land Board directives to maximize income produced by endowment holdings, a request for proposal to solicit ground lessees for the property was issued by IDL on December 8, 2022 (RFP-1). The RFP process provides opportunity for private investors to vie for investment opportunities on endowment lands while maintaining the necessary competitive nature to maximize returns to the endowments.

The Ohio Gulch Project RFP-1 document outlined the requirements for a valid proposal as well as the criteria on which the proposals were to be scored. Among other criteria, proposers must submit statements of qualifications, financial ability, a proposed development plan, a competitive compensation structure for a long-term ground lease and cashflow analysis. This initial round of the RFP process received five (5) responses from seemingly qualified proposers, each of these proposals was carefully evaluated based on the following criteria.

- 1. Qualifications**
 - Overall Real Estate Experience of Proposer
 - Development Experience of Proposer
 - Financial Strength of Proposer

- 2. Proposed Development Plan**
 - General Project Feasibility
 - Perceived Demand for Product
 - Time to Activate

- 3. Proposed Lease Revenue**
 - Guaranteed Revenue (Base Rent)
 - Variable Revenue - Gross Receipts
 - Commencement Fee
 - Confidence in Proposed Revenue Structure

In addition to the above, a comprehensive financial expression for each proposal was created to compare revenue structures, accuracy of financial assumptions, and expected income to the State of Idaho.

Evaluation of Proposals

Following an intensive review of each proposal, it became evident that two candidates could be eliminated due to the intended land uses and general proposal feasibility. Details of these proposals are included below:

Charter Equities

Proposer Overview: Charter Equities, an Idaho Limited Liability Company, is a commercial real estate investment firm owned and operated by a single key principal. The key principal has a history of commercial real estate experience, though in what capacity and how much development is unclear. The proposer's statement of net worth appears to present considerable personal net worth (unconfirmed, no balance sheet submitted).

Proposed Premises: Proposal to lease 100% of the Endowment Lands offered (parcels 1-3).

Proposed Use: Parcel 1 developed for self-storage, parcel 2 developed for multifamily (workforce housing) and parcel 3 would serve as waste-water treatment for multifamily development and yard/lot storage.

Proposed Rent Structure: IDL would receive a flat base rent equal to 5% capitalization of current appraised value. IDL would further participate in 5% of effective gross income from operations.

Overall, Charter Equities provided a creative proposal to activate all three parcels. However, the proposed land use of Parcel 2 for multifamily housing would seem incompatible with goals and directives established by the Land Board (and the likely availability of basic infrastructure to support such uses). The perceived lack of feasibility, errors and omissions found in the proposal, and the materially insufficient financial statements submitted led to the elimination for consideration.

Philo Development Group

Proposer Overview: Philo Development Group is an entity owned by several entities with considerable real estate development experience. The principals and advisors appear to be organized, capitalized, and capable of completing a commercial development project at the subject site.

Proposed Premises: Proposal to lease parcel 2 (only), or 45% of the Endowment Lands offered.

Proposed Use: Development of 48 luxury townhomes (medium-density residential). Proposer would sell 80% of the townhomes and lease the remaining 20%.

Proposed Rent Structure: IDL would share 7.5% of the gross sales realized. IDL would further receive 7.5% of the gross revenue produced through rental operations of the leased units.

In review, Philo Development Group appears to be one of the strongest proposers to submit for this RFP in terms of financial strength, relative experience, depth of talent and ability to perform. Additionally, the improvements to the land would revert to the State of Idaho following the 49 year term (plus a desired 49 year extension option), creating additional potential value for the State. That said, proposed land use of residential units for individual sale

would seem incongruous with Land Board initiatives, as the Land Board seems to be moving away from residential uses (e.g. Cottage Site leases).

SECOND ROUND EVALUATION AND INFORMATION REQUEST - BEST AND FINAL

Second Round Evaluation and Information Request (“RFP-2”) was issued to the three (3) finalists to further clarify and expand on previously requested information, refine the scoring criteria and methodology, and to allow the proposers to submit their “Best and Final” financial proposal to the State. RFP-2 further sought to standardize proposals by establishing uniform lease terms, financial assumptions, and scoring criteria allowing for additional accuracy and comparative attributes of each proposal. The considerable similarities in proposed uses, rent structures, and proposed revenue to the State necessitated this “Best and Final” round of evaluation.

IDL RFP-2 Scoring Methodology

Exhibit A to this memorandum details the scoring criteria on which the proposals were evaluated. A weighted point system was created to adequately delineate the three proposals utilizing a combination of binary and “good, better, best” method of analysis. This methodology eliminates to the greatest extent any subjective review of individual proposal and promotes accuracy of the evaluation. As appropriate, the guaranteed lease revenue proposed was given more weight than other categories. A categorical breakdown of the scoring criteria and their weights is included below.

1. Qualifications	(0/11)
Proposal Submitted on Time	(0/1)
Proposal Submitted with all Requirements	(0/1)
Overall Real Estate Experience	(0/3)
Development Experience	(0/3)
Financial Strength	(0/3)
2. Proposed Development Plan	(0/7)
Consistent with Zoning	(0/1)
Constructability	(0/2)
Financial Feasibility	(0/2)
Feasibility of Dev. Timeline	(0/2)
3. Proposed Lease Revenue	(0/18)
Anticipated Guaranteed Revenue to IDL	(0/15)
Overall Confidence/Feasibility to Perform	(0/3)
 Appraised Fair Market Value Multiplier	 (0/1)
 Total Possible	 (0/36)

The method of evaluation provided above seems to be adequate for the evaluation of the proposing entities and the proposals submitted. As mentioned, the further elaborated on in

Exhibit A provides a defensible methodology of evaluation that is well substantiated through a simplified and applicable defined criteria.

Financial Analysis

In addition to qualitative analysis of RFP-2 responses, CenturyPacific developed financial models of each proposal to evaluate the strength of economic gain to the Endowment Beneficiaries. This financial analysis took into consideration the total anticipated rental income received by IDL, net present value of the anticipated rental income, and the average minimum hurdle rate coverage. Financial assumptions used in the financial analysis included:

Hurdle Rate: Per IDL, a return hurdle rate of 3% net of assumed, long-term inflation must be met for a ground lease to be viable. As given by IDL, this rate amounted to 5.25% of appraised land value.

IDL Appraised Land Value: An internal, restrictive appraisal of the endowment lands was conducted by IDL for the purpose of establishing the assumed hurdle threshold.

IDL Appraised Fair Market Rent: An additional appraisal of the perceived fair market rent of the endowment lands was conducted by IDL to ensure, at a minimum, the proposals met this threshold.

Assumed Land Appreciation: An assumed annual land appreciation was implemented relative to the hurdle rate.

Discount Rate – Guaranteed Revenue: In conjunction with IDL directive, a discount rate of 2.25% was applied to guaranteed revenue over the 49 year lease term.²

Discount Rate – Variable Revenue: As the variable revenue submitted by the proposers is speculative, a 300 basis point risk premium was attributed to all income not guaranteed. Variable revenue was discounted at 5.25% over the 49 year lease term.

Hurdle Rate Coverage: As variable revenue to the state is speculative, the hurdle rate coverage ratio was determined using guaranteed revenue.

Appraised Fair Market Value Multiplier: A final hurdle gate was implemented utilizing the internal fair market rent appraisal provided by IDL. Should proposal not meet or exceed the appraised fair market rent, the proposal would not be viable and would receive a multiplier of zero.

Evaluation of Proposals

Axxcess Realty Advisors, LLC

Proposer Overview: Axxcess Realty Advisors, LLC is a real estate investment and management firm as well as a holding company for additional ventures, largely real estate related. Though Axxcess is proposing, a special purpose entity would be created between Axxcess and Trail Creek Real Estate Partners, LLC for the purpose of this project. Axxcess has seemingly adequate financial strength.

Proposed Premises: Proposal to lease parcels 1 and 2, or 58% of the endowment lands offered.

Proposed Use: Parcel 1 developed for self-storage, drive up structures to house RV's, boats and other vehicles as well as exterior covered parking. Parcel 2 would be developed in two phases to expand on the uses of parcel 1 as well as implement contractor lot/yard storage.

Proposed Project Capitalization: Combination of debt and equity. Axxcess would seek investors to provide the majority of the needed equity.

² CenturyPacific has advised IDL that a discount rate that more closely aligns with the 30-year treasury yield be utilized as a "Risk-Free" rate for establishing an appropriate discount rate of anticipated revenue.

Proposed Commencement Fee: \$20,000 commencement fee offered at the consummation of a ground lease with IDL.

Proposed Rent Structure: Two separate rent structures were proposed. Scenario one consisted of an annual base rent structure of \$3,000 per net acre, escalating 2% year-over-year. An additional IDL participation in 5% of gross income was also proposed. Scenario two would involve a full participation in the ground lease where IDL would receive 20% of net income once the proposer recovered their full development costs. The second rent structure involved excessive risk to IDL as well as an overly prolonged activation period of revenue to the State and thus was not considered in this evaluation.

1. Qualifications	(10/11)
Proposal Submitted on Time	(1/1)
Proposal Submitted with all Requirements	(1/1)
Overall Real Estate Experience	(3/3)
Development Experience	(3/3)
Financial Strength	(2/3)
2. Proposed Development Plan	(4/7)
Consistent with Zoning	(0/1)
Constructability	(2/2)
Financial Feasibility	(1/2)
Feasibility of Dev. Timeline	(1/2)
3. Proposed Lease Revenue	(9/18)
Anticipated Guaranteed Revenue to IDL	(7/15)
Overall Confidence/Feasibility to Perform	(2/3)
Appraised Fair Market Value Multiplier	(1/1)
Total	(23/36)

Total Consideration to IDL	15,860,486
Total Guaranteed Income to IDL	3,877,475
Total Variable Income to IDL	11,983,011
Average Hurdle Rate Coverage	169%
NPV of Guaranteed Income (2.25%)	2,112,462
NPV of Variable Income (5.25%)	2,788,257
Combined NPV of IDL Income	4,900,719

Elevate Investments

Proposer Overview: Elevate Investments, LLC is a commercial real estate development and management company specializing in self-storage and light industrial properties. Elevate

operates out of Boise, ID, is well-capitalized and has a proven track record in the asset development proposed.

Proposed Premises: Proposal to lease parcel 2, or 45% of the Endowment Lands offered.

Proposed Use: Development of a state of the art self-storage facility. Proposer has stated that, pending assessed demand following initial development, additional phases of building would be undertaken to increase the intensity of use of the leased parcel.

Proposed Project Capitalization: Combination of debt and equity at an assumed 70% loan to cost. Elevate would directly provide the needed equity.

Proposed Commencement Fee: No commencement fee was offered.

Proposed Rent Structure: IDL would receive a flat, guaranteed base rent of \$75,000 annually. IDL would also participate in a graduated gross receipts structure receiving 5% of gross receipts over \$1,000,000 and 10% of gross income in excess of \$2,000,000.

1. Qualifications	(11/11)
Proposal Submitted on Time	(1/1)
Proposal Submitted with all Requirements	(1/1)
Overall Real Estate Experience	(3/3)
Development Experience	(3/3)
Financial Strength	(3/3)
2. Proposed Development Plan	(5/7)
Consistent with Zoning	(0/1)
Constructability	(2/2)
Financial Feasibility	(1/2)
Feasibility of Dev. Timeline	(2/2)
3. Proposed Lease Revenue	(11/18)
Anticipated Guaranteed Revenue to IDL	(9/15)
Overall Confidence/Feasibility to Perform	(2/3)
Appraised Fair Market Value Multiplier	(1/1)
Total	(27/36)

Total Consideration to IDL	\$18,717,675
Total Guaranteed Income to IDL	\$3,675,000
Total Variable Income to IDL	\$15,042,675
Average Threshold Coverage	239%
NPV of Guaranteed Revenue (2.25%)	\$2,212,925
NPV of Variable Revenue (5.25%)	\$3,246,337
NPV of Total IDL Revenue	\$5,459,263

CZ, LLC (Wood River Investors, LLC)

Proposer Overview: CZ, LLC (formerly proposed as Wood River Investors, LLC) is a commercial real estate investment special purpose entity that would be owned and managed by two key principals. The key principals seem to have a diverse real estate background, being involved in residential brokerage, residential development, commercial development and commercial investment management. The proposer has a considerable net worth and ability to perform under the terms of their proposal.

Proposed Premises: Proposal to lease parcels 1, 2 and 3 or 100% of Endowment Lands offered.

Proposed Use: Low impact, minimal development proposed for each parcel. Parcel 1 would house portable storage containers that would serve as self-storage, additionally there would be allocated space for RV and vehicle lot storage. Parcels 2 and 3 would be divided into large, fenced lots that would serve as yard, laydown, fleet or vehicle storage aimed towards contractors in the area.

Proposed Project Capitalization: CZ, LLC would internally fund all proposed improvements.

Proposed Commencement Fee: \$56,600 commencement fee offered on the consummation of a ground lease with IDL.

Proposed Rent Structure: IDL would enjoy \$120,000 base annual rent (guaranteed) which would escalate 3% year over year. IDL would further participate in 5% of effective gross income in excess of the base rent paid annually.

1. Qualifications	(9/11)
Proposal Submitted on Time	(1/1)
Proposal Submitted with all Requirements	(1/1)
Overall Real Estate Experience	(2/3)
Development Experience	(2/3)
Financial Strength	(3/3)
2. Proposed Development Plan	(5/7)
Consistent with Zoning	(0/1)
Constructability	(2/2)
Financial Feasibility	(2/2)
Feasibility of Dev. Timeline	(1/2)
3. Proposed Lease Revenue	(14/18)
Anticipated Guaranteed Revenue to IDL	(12/15)
Overall Confidence/Feasibility to Perform	(2/3)
Appraised Fair Market Value Multiplier	(1/1)
Total	(28/36)

Total Consideration to IDL	\$21,022,716
Total Guaranteed Revenue to IDL	\$12,585,008
Total Variable Revenue to IDL	\$8,437,708
Average Hurdle Rate Coverage	306%
NPV of Guaranteed Income (2.25%)	\$6,629,926
NPV of Variable Income (5.50%)	\$4,366,421

CONCLUSION

After a thorough review process of the proposed development plans, a robust financial analysis, and subsequent interviews with candidates, CenturyPacific recommends pursuing the negotiation of a long-term ground lease, with the conditions herein, to CZ, LLC. The CZ, LLC proposal appears to be feasible to perform, offered the most guaranteed revenue to the State, activated the entirety of the offering, and employed the lowest intensiveness of improvements to the Endowment Lands.

Conditions of Award

- | | |
|--|--|
| 1. Review of Financial Statements | Proposer shall submit professionally prepared financial statements and proof of liquidity showing available capital in excess of the anticipated requirements necessary for the execution of the development plan. |
| 2. Premises Commitment | Proposer shall commit to leasing the entirety of the 28.3 acres offered for lease. |
| 3. Use of Premises | The Premises shall be used in a capacity consistent with Light Industrial land use, specifically for self-storage, contractor lay down yard, container storage, and other storage capacities that provide low risk of environmental impact. |
| 4. Commencement Fee | A Lease Commencement Fee of \$56,600 shall be due upon mutual execution of a lease agreement. |
| 5. Term | Proposer shall commit to a lease term of 49 years. |
| 6. Tenant Improvements | Proposer shall invest a minimum of \$1,000,000 towards hard-cost improvements to the leased premises within the first twenty-four months (24) of the lease term - consistent with the proposal and reasonably necessary for the timely activation of the property. Similarly, proposer shall expend not less than a total of \$2,000,000 towards improvements of the leased premises within the first thirty-six (36) months of the lease term. Should these thresholds not be met, IDL reserves the right to terminate the lease agreement. |
| 7. Annual Base Rent Commencement | Annual Base Rent shall commence on the first anniversary of lease execution. |

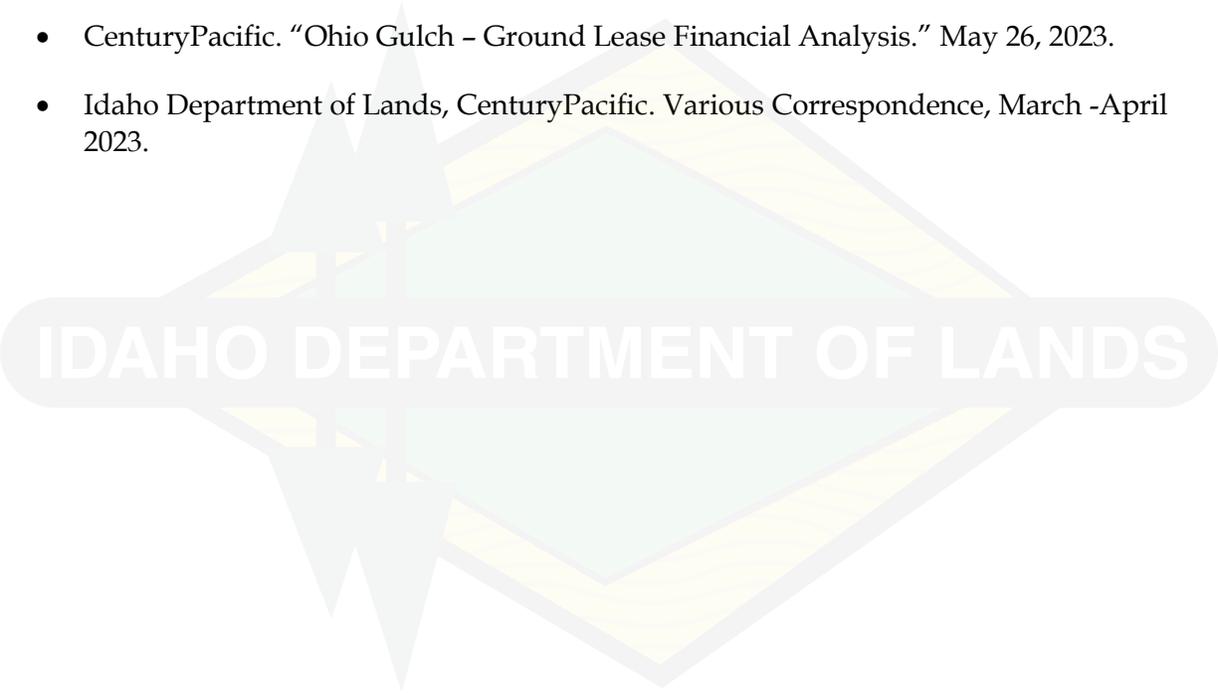
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|--|--|
| 8. Annual Base Rent | Annual Base Rent shall begin at \$120,000 and shall escalate by 3% annually. |
| 9. Variable Rent – Gross Receipts | As set forth in the proposal, IDL shall receive 5% of gross receipts in excess of the guaranteed base rent. This variable rental amount from gross receipts shall not be capped. |

DOCUMENTATION REVIEWED

This memorandum, and CenturyPacific’s support for the proposed ground lease, is informed by the following:

- Idaho Department of Lands. “Ohio Gulch Project, Blaine County, Idaho: Request for Proposals for Commercial Ground Lease of State Endowment Trust Lands.” December 8, 2022.
- Charter Equities, Inc. “Ohio Gulch Project: RFP Submission.” March 1, 2023.
- Philo Development Group. “Commercial Permit Solicitation: Sun Valley Alpine Flats.” February 24, 2023.
- Elevate Investments, LLC. “Ohio Gulch Request for Proposal.” March 1, 2023.
- Wood River Investors, LLC. “Request for Proposal for Commercial Ground Lease of State Endowment Trust Land: Ohio Gulch Project, Blaine County, Idaho.”
- Axxcess Realty Advisors, LLC. “Axxcess Realty Advisors, LLC & Trail Creek Real Estate Partners, LLC’s Response to Idaho Department of Lands Request for Proposals for Commercial Ground Lease of State Endowment Trust Land for Ohio Gulch Project (Blaine County, Idaho).” February 27, 2023.
- Idaho Department of Lands. “Restricted Appraisal Report: Idaho Department of Lands (Ohio Gulch, aka RFP Leased Parcels).” January 30, 2023
- Idaho Department of Lands. “Ohio Gulch Evaluation Matrix”. March 27, 2023.
- CenturyPacific. “Idaho Department of Lands: Ohio Gulch Ground Lease: Evaluation Matrix.” March 27, 2023.
- CenturyPacific. “Idaho Department of Lands: Ohio Gulch Financial Analysis of Proposals.” March 31, 2023.
- Idaho Department of Lands. “Ohio Gulch RFP – Second Round Evaluation and Information Request.” May 12, 2023

- Axxcess Realty Advisors. "Ohio Gulch RFP - ARA and TCREP Response Final" and attachments thereto. May 23, 2023.
- Elevate Investments. "Response to Second Round - signed" and attachments thereto. May 23, 2023.
- CZ LLC. "Second Round Evaluation and Information Request" and attachments thereto. May 22, 2023.
- Idaho Department of Lands. "Supplement of Restricted Study Land Lease Rate to the Restricted Appraisal of property owned by the Idaho Department of Lands." May 10, 2023.
- CenturyPacific. "Ohio Gulch RFP - Proposal Evaluation Matrix." May 26, 2023.
- CenturyPacific. "Ohio Gulch - Ground Lease Financial Analysis." May 26, 2023.
- Idaho Department of Lands, CenturyPacific. Various Correspondence, March -April 2023.

A large, semi-transparent watermark of the Idaho Department of Lands logo is centered on the page. The logo features a stylized mountain range in the background, a central diamond shape containing a green field with wavy lines representing water, and a horizontal banner across the middle with the text "IDAHO DEPARTMENT OF LANDS" in white capital letters.

IDAHO DEPARTMENT OF LANDS

TRUST LAND MANAGEMENT DIVISION
REAL ESTATE SERVICES BUREAU
300 N. 6th Street, Suite 103
PO Box 83720
Boise, ID 83720-0050
Phone (208) 334-0200
Fax (208) 334-3698



STATE BOARD OF LAND COMMISSIONERS
Brad Little, Governor
Phil McGrane, Secretary of State
Raúl R. Labrador, Attorney General
Brandon D Woolf, State Controller
Debbie Critchfield, Sup't of Public Instruction

Month Day, Year

DRAFT

Name via e-mail: xxx@xxx.com
Address
City, ST ZIP

Re: Ohio Gulch RFP – Acceptance with Conditions

Dear []:

The Idaho Department of Lands (“IDL”) has reviewed your company’s proposal to ground lease the property known as the “Ohio Gulch Project” (the “Project”) and is pleased to announce your company’s proposal has been selected for conditional acceptance. The acceptance of the RFP and subsequent ground lease is conditioned on the following, and subject to the advertisement and potential auction process, as well as Land Board approval:

CONDITIONS OF ACCEPTANCE

- 1. Review of Financial Statements** Proposer shall submit financial statements showing available capital in excess of the anticipated capital requirements necessary for the execution of the development plan.
- 2. Premises Commitment** Proposer shall commit to leasing the entirety of the 28.3 acres offered for lease.
- 3. Use of Premises** The Premises shall be used in a capacity consistent with Light Industrial land use, specifically for self-storage, contractor lay down yard, container storage, and other storage capacities that provide low risk of environmental impact, and are consistent with the lease, applicable state, federal and local laws and rules, including local land use laws and county ordinances.
- 4. Commencement Fee** A Lease Commencement Fee of \$56,600 shall be due upon mutual execution of a lease agreement.
- 5. Term** Proposer shall commit to a lease term of 49 years.

- 6. Tenant Improvements** Proposer shall invest a minimum of \$1,000,000 towards improvements to the leased premises within the first twenty-four months (24) of the lease term – consistent with the proposal and reasonably necessary for the timely activation of the property. Similarly, proposer shall expend not less than a total of \$2,000,000 towards improvements of the leased premises within the first thirty-six (36) months of the lease term. Should these thresholds not be met, IDL reserves the right to terminate the lease agreement.
- 7. Annual Base Rent Commencement** Annual Base Rent shall commence on the first anniversary of lease execution.
- 8. Annual Base Rent** Annual Base Rent shall begin at \$120,000 and shall escalate by 3% annually.
- 9. Variable Rent – Gross Receipts** As set forth in the proposal, IDL shall receive 5% of gross receipts in excess of the guaranteed base rent. This variable rental amount from gross receipts shall not be capped.

IDL continues to appreciate the relationship established with CZ LLC and we look forward to the consummation of a ground lease at the Ohio Gulch Project.

Sincerely or Respectfully,

Sender's Name
Sender's Title

cc: John Doe, Title (list all copy recipients/titles)

ec: John Doe, Title, johndoe@idl.idaho.gov

Sent Certified Mail – Return Receipt Requested

STATE BOARD OF LAND COMMISSIONERS

July 18, 2023
Information Agenda

Subject

Proposed Rule for IDAPA 20.03.01 *Rules Governing Dredge and Placer Mining Operations in Idaho*

Background

The Idaho Department of Lands (Department) administers these rules under the authority of the Idaho Dredge and Placer Mining Protection Act (Title 47, Chapter 13, Idaho Code). Dredge and placer mining is the extraction of minerals from a placer deposit left by a stream and containing particles of gold or other valuable minerals. A placer deposit can be in a natural watercourse or an ancient stream channel high above an existing stream. Extraction is done using motorized earth-moving equipment, including suction dredges with an intake nozzle over 8 inches in diameter. IDAPA 20.03.01 allows responsible resource extraction while protecting the lands, streams, and watercourses of the state.

Negotiated rulemaking for these rules was approved by the Land Board on November 15, 2022 (Attachment 1). Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use.

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.
- Posted meeting information on social media and Townhall Idaho.
- Emailed 11 customers and other interested parties.
- Mailed postcards to 13 customers.

Negotiated rulemaking meetings were held on April 19, April 26, May 4, and May 10, 2023. A total of 13 non-Department affiliated people attended these meetings. Below is a summary of the oral discussion during these meetings. No written comments were received.

- Requests were made for the completed Prospective Analysis Form. The Department explained that the research was still ongoing at that time and the fully completed form was not required until later in the rulemaking process.
- Several discussions of the applicability of the rules to suction dredges with an intake diameter of 8 inches or less took place. These smaller dredges are specifically regulated by Idaho Department of Water Resources (IDWR) through permits issued under their Stream Channel Alteration Rules.

- Several questions also came up about whether definitions and other language from the statute should be removed from the rule. The Department responded that the guidance given under Executive Order 2020-01 was specific about eliminating redundant language in the rules. A follow up conversation with staff at the Division of Financial Management affirmed this response.
- A question was asked about potential changes to bonding amounts, and the Department stated that a statutory change was needed first. The current limit of \$1,800 per acre is not sufficient to cover the cost of reclamation.
- A question was asked about the removal of the term "reclamation plan" in Subsection 021.01 and other areas. The Department stated that the term "plan of operations" is now used in Section 021 to describe this portion of the application. The term "reclamation plan" has created confusion in the past because that is the term used in the Mined Land Reclamation rules. The Forest Service and Bureau of Land Management (BLM) use the term "plan of operations," so this change should also reduce confusion for permittees working on federal lands.

No changes were made based on comments received. Some minor changes to the initial draft were made based on internal discussions and to further reduce word count.

Attachment 2 is the draft text that will be submitted for publication in the Administrative Bulletin as a proposed rule and is posted on the Department's rulemaking webpage. The rule is written in legislative format to allow the reader to easily identify changes.

The proposed rule reduces the overall regulatory burden by reducing the total word count and the number of restrictive words. Most of the changes are a result of reorganizing and eliminating redundancies. The proposed rule includes the following changes:

- The annual inspection fees of \$100 for permits on United States Forest Service lands and \$250 for all other permits would be raised to \$435 for all permits. These fees have not changed since 1991. This will cover the Department's cost of conducting these inspections.
- Late payment policy is updated.
- Surety companies issuing bonds must be listed in the U.S. Department of the Treasury's Circular 570.
- The 120 day cancellation notification is reduced to 90 days.
- Time Deposit Receipts are recognized as acceptable forms of bonding.

The proposed rule will be open for public comment upon publication in the September 6, 2023 Administrative Bulletin. The draft Notice of Proposed Rule is found in Attachment 3.

Attachments

1. November 15, 2022 Approved Memo
2. Proposed Rule Text
3. Draft Notice of Proposed Rule

STATE BOARD OF LAND COMMISSIONERS

November 15, 2022

Regular Agenda

Subject

Negotiated rulemaking for IDAPA 20.03.01 *Rules Governing Dredge and Placer Mining Operations in Idaho*

Question Presented

Shall the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.01 *Rules Governing Dredge and Placer Mining Operations in Idaho*?

Background

The Idaho Department of Lands (Department) administers these rules under the authority of the Idaho Dredge and Placer Mining Protection Act (Title 47, Chapter 13, Idaho Code). Dredge and placer mining is the extraction of minerals from a placer deposit left by a stream and containing particles of gold or other valuable minerals. A placer deposit can be in a natural watercourse or an ancient stream channel high above an existing stream. Extraction is done using motorized earth-moving equipment, including suction dredges with an intake nozzle over 8 inches in diameter. IDAPA 20.03.01 allows responsible resource extraction while protecting the lands, streams, and watercourses of the state.

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use.

Discussion

The Department anticipates diminishing the overall regulatory burden by reducing both total word count and the number of restrictive words in the new rule chapter. The Department will review the rule with stakeholders to ensure that it is right-sized.

A proposed timeline for the rulemaking process is provided in Attachment 1.

Recommendation

Authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.01 *Rules Governing Dredge and Placer Mining Operations in Idaho*.

Board Action

A motion was made by Attorney General Wasden that the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.01 Rules Governing Dredge and Placer Mining Operations in Idaho. Superintendent Ybarra seconded the motion. The motion carried on a vote of 4-0.

Attachments

1. Draft rulemaking timeline



IDAHO DEPARTMENT OF LANDS

20.03.01 – RULES GOVERNING DREDGE AND PLACER MINING OPERATIONS IN IDAHO

000. LEGAL AUTHORITY.

~~These rules are promulgated by the Idaho State Board of Land Commissioners pursuant to~~ This Chapter is adopted under the legal authorities of Title 47, Chapter 13, Idaho Code, Section 47-1316; Title 58, Chapter 1, Idaho Code, Sections 58-104(6) and 58-105; and Title 67, Chapter 52, Idaho Code. The Board has delegated to the Director ~~of the Department of Lands (“department”)~~ the duties and powers under the act and these rules; provided that the Board retains responsibility for approval of permits ~~and administrative review.~~ (3-18-22)()

001. TITLE AND SCOPE.

~~01. Title.~~ 01. Title. These rules are titled IDAPA 20.03.01 “Rules Governing Dredge and Placer Mining Operations in Idaho.” (3-18-22)

~~021. Scope.~~ 021. Scope. These rules ~~constitute the Idaho Department of Lands’ administrative procedures for implementation of the Idaho Dredge and Placer Mining Protection Act with the intent and purpose to protect the lands, streams, and watercourses within the state, from destruction by dredge mining and by placer mining, and to preserve the same for the enjoyment, use, and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest.~~ establish the notification requirements for dredge and placer exploration, and the application and operation requirements of dredge and placer mines. In addition, these rules establish the reclamation and financial assurance requirements for all these activities. (3-18-22)()

02. Applicability. These rules are to be read and applied in conjunction with the Act. ()

a. These rules apply to all lands within the state, including private and federal lands, which are disturbed by dredge or placer mining conducted after November 24, 1954. ()

b. These rules apply to the following activities: ()

i. All dredge and placer exploration activities using motorized earth-moving equipment. ()

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

c. These rules do not apply to the following: ()

i. Mining operations regulated by the Mined Land Reclamation Act; ()

ii. Surface disturbance caused by the underground mining of a placer deposit, unless the deposit outcrops on or near the surface and the operation will result in the probable subsidence of the land surface. ()

iii. Dredging operations conducted for the sole purpose of establishing and maintaining a channel for navigation. ()

iv. Dredging operations in streams or rivers using suction dredges with an intake diameter of eight (8) inches or less. ()

03. Other Laws. Dredge and placer exploration and mining operations must comply with all applicable rules and laws of the state of Idaho including, but not limited to, the following: ()

a. Idaho water quality standards established in Title 39, Chapters 1 and 36, Idaho Code and IDAPA 58.01.02, "Water Quality Standards". ()

b. Wastewater treatment or disposal plan and specification review established in IDAPA 58.01.16, and IPDES requirements in IDAPA 58.01.25 administered by DEQ. ()

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

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

002. ADMINISTRATIVE APPEALS.

~~01. Procedures for Appeals.~~ (3-18-22)

~~a. Any applicant or permit holder aggrieved by any final decision or order of the Board is entitled to judicial review in accordance with the provisions and standards set forth in Title 67, Chapter 52, Idaho Code, the Administrative Procedures Act.~~ (3-18-22)

~~b. When the Director or the Board finds that justice so requires, it may postpone the effective date of a final order pending judicial review. The reviewing court, including the court to which a case may be taken on appeal, may issue all necessary and appropriate orders to postpone the effective date of any final order pending conclusion of the review proceedings.~~ (3-18-22)

~~c. Notwithstanding any other provisions of these rules concerning administrative or judicial proceedings, whenever the Board determines that a Permittee has not complied with the provisions of the act or these rules, the Board may file a civil action in the district court for the county wherein the violation or some part occurred, or in the district court for the county where the defendant resides. The Board may request the court to issue an appropriate order to remedy any alleged violation.~~ (3-18-22)

003. -- 009. (RESERVED)

010. DEFINITIONS.

In addition to the definitions set forth in the Act, the following definitions apply to these rules: ()

01. Act. The Idaho ~~Placer and Dredge~~ **and Placer** Mining Protection Act, Title 47, Chapter 13, Idaho Code. (3-18-22)()

02. Approximate Previous Contour. A contour reasonably comparable to that contour existing prior to disturbance, or that blends with the adjacent topography. (3-18-22)

03. Best Management Practices. ~~Methods, measures, or practices to prevent or reduce nonpoint source (NPS) water pollution, including, but not limited to, structural and nonstructural controls, and operation and maintenance procedures. Usually, BMPs are applied as a system of practices rather than a single practice. BMPs are selected on the basis of site specific conditions that reflect natural background conditions; political, social, economic, and technical feasibility; and stated water quality goals.~~ A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals. (3-18-22)()

~~**04. Board.** The State Board of Land Commissioners or any department, commission, or agency that may lawfully succeed to the powers and duties of such Board. (3-18-22)~~

0504. Department. The Idaho Department of Lands. (3-18-22)

~~**06. Director.** The Director of the Department of Lands or such representative as may be designated by the Director. (3-18-22)~~

~~**07. Disturbed Land or Affected Land.** Land, natural watercourses, or existing stockpiles and waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore wastes from placer or dredge mining, or construction of roads, tailings ponds, structures, or facilities appurtenant to placer or dredge mining operations. (3-18-22)~~

~~**08. Final Order of the Board.** A written notice of rejection or approval, the order of a hearing officer at the conclusion of a hearing, or any other order of the Board where additional administrative remedies are not available. (3-18-22)~~

~~**09. Hearing Officer.** That person duly appointed by the Board to hear proceedings under Section 47-1320, Idaho Code. It also means that person selected by the Director to hear proceedings initiated under Section 030 or Section 051 of these rules. (3-18-22)~~

1005. Mine Panel. That area designated by the Permittee as an identifiable portion of a placer or dredge mine on the map submitted pursuant to Section 47-1317, Idaho Code under Subsection 021.04 of these rules. (3-18-22)()

~~**11. Mineral.** Any ore, rock or substance extracted from a placer deposit or from an existing placer stockpile or wastepile, but does not include coal, clay, stone, sand, gravel, phosphate, uranium, oil or gas. (3-18-22)~~

~~**12. Motorized Earth Moving Equipment.** Backhoes, bulldozers, front loaders, trenchers, core drills, draglines, and suction dredges with an intake diameter exceeding eight (8) inches, and other similar equipment. (3-18-22)~~

1306. Mulch. Vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation. (3-18-22)

~~14. Natural Watercourse. Any stream in the state of Idaho having definite bed and banks, and which confines and conducts continuously flowing water. (3-18-22)~~

~~1507. Overburden. Material extracted by a Permittee which is not a part of the material ultimately removed from a placer or dredge mine and marketed by a Permittee, exclusive of mineral stockpiles. Overburden is comprised of topsoil and waste. (3-18-22)~~

~~1608. Overburden Disposal Area. Land surface upon which overburden is piled or planned to be piled. (3-18-22)~~

~~1709. Permanent Cessation. Mining operations as to the whole or any part of the permit area have stopped and there is substantial evidence that such operations will not resume within one (1) year. The date of permanent cessation is the last day when mining operations are known or can be shown to have occurred. (3-18-22)~~

~~18. Permit Area. That area designated under Section 021 as the site of a proposed placer or dredge mining operation, including all lands to be disturbed by the operation. (3-18-22)~~

~~10. Permit. Dredge or placer mining permit issued under the Act and these rules. ()~~

~~1911. Permittee. The person in whose name the permit is issued and who is to be held responsible for compliance with the conditions of the permit by the Department. (3-18-22)()~~

~~20. Person. Any person, corporation, partnership, association, or public or governmental agency engaged in placer or dredge mining, whether individually, jointly, or through subsidiaries, agents, employees, or contractors. (3-18-22)~~

~~2112. Pit. An excavation created by the extraction of minerals or overburden during placer mining or exploration operations. (3-18-22)~~

~~22. Placer Deposit. Naturally occurring unconsolidated surficial detritus containing valuable minerals, whether located inside or outside the confines of a natural watercourse. (3-18-22)~~

~~2313. Placer Stockpile. Placer mineral deposit material extracted during past or present placer or dredge or placer mining operations and retained at the mine for future rather than immediate use. (3-18-22)()~~

~~24. Placer or Dredge Exploration Operation. Activities including, but not limited to, the construction of roads, trenches, and test holes performed on a placer deposit for the purpose of locating and determining the economic feasibility of extracting minerals by placer or dredge mining. (3-18-22)~~

~~25. Placer or Dredge Mining or Dredge or Other Placer Mining. The extraction of minerals from a placer deposit, including remining for sale, processing, or other disposition of earth material excavated from previous placer or dredge mining. (3-18-22)~~

~~26. Placer or Dredge Mining Operation. Placer or dredge mining which disturbs in excess of one-half (1/2) acre of land during the life of the operation. (3-18-22)~~

~~27~~**14. Reclamation.** The process of restoring an area disturbed by a placer or dredge mining operation or exploration operation to its original or another beneficial use, considering land uses, possible future uses, and surrounding topography. The objective is to re-establish a diverse, self-perpetuating plant community, and to minimize erosion, remove hazards, and maintain water quality. (3-18-22)

~~28~~**15. Revegetation.** The establishment of the premining vegetation or a comparable vegetative cover on the land disturbed by placer or dredge mining operations. (3-18-22)

~~29. Road.~~ A way including the bed, slopes, and shoulders constructed within the circular tract circumscribed by a placer or dredge mining operation, or constructed solely for access to a placer or dredge mining operation or placer or dredge exploration operation. A way dedicated to public multiple use or being used by a governmental land manager or private landowner at the time of cessation of operations and not constructed solely for access to a placer or dredge mining operation or exploration operation, is not considered a road. (3-18-22)

~~30~~**16. Settling Pond.** A manmade enclosure or natural impoundment structure constructed and used for the purpose of treating mine process water and/or runoff water from adjacent disturbed areas by the removal or settling of sediment particles. Several types of settling ponds or a series of smaller ponds may be used in water management. The most common type is a recycle or recirculation pond which is used to pump clarified water back to the wash plant operation. (3-18-22)

~~31~~**17. Surface Waters.** The surface waters of the state of Idaho. (3-18-22)

~~32~~**18. Topsoil.** The unconsolidated mineral and organic matter naturally present on the surface of the earth that is necessary for the growth and regeneration of vegetation. (3-18-22)

011. ABBREVIATIONS.

01. BMP. Best Management Practices. (3-18-22)

02. DEQ. Idaho Department of Environmental Quality. (3-18-22)()

~~012. PURPOSE AND GENERAL PROVISIONS.~~

~~01. Policy.~~ It is the policy of the state of Idaho to protect the lands, streams, and watercourses within the state from destruction by placer mining, and to preserve them for the enjoyment, use, and benefit of all of the people, and that clean water in the streams of Idaho is in the public interest. (3-18-22)

~~02. Purpose.~~ These rules are intended to implement the requirements for operation and reclamation of placer and dredge mining set forth in the Idaho Code. Compliance with these rules will allow removal of minerals while preserving water quality and ensuring rehabilitation for beneficial use of the land following mining. Placer and dredge mining is expressly prohibited upon certain waterways included in the federal wild and scenic rivers system. It is also the purpose of these rules to implement the state of Idaho's antidegradation policy as set out in Executive Order No. 88-23 as it pertains to placer mining and exploration operations. (3-18-22)

~~03. General Provisions. In general, these rules establish: (3-18-22)~~

~~a. Requirements for placer mine exploration operations; (3-18-22)~~

~~b. Procedures for securing a placer and dredge mining permit; (3-18-22)~~

~~c. The requirements for posting a performance bond as a condition of such permit to ensure the completion of rehabilitation operations; (3-18-22)~~

~~d. Procedures for initial and periodic inspection of placer and dredge mining operations to ensure compliance with these rules; (3-18-22)~~

~~e. Prohibition of placer and dredge mining on designated watercourses (see Section 060); and (3-18-22)~~

~~f. Prohibitions against placer and dredge mining on certain lands when not in the public interest. (3-18-22)~~

~~04. Compliance with Other Laws. Placer and dredge exploration operations and mining operations must comply with all applicable rules and laws of the state of Idaho including, but not limited to, the following: (3-18-22)~~

~~a. Idaho Environmental Protection and Health Act, Title 39, Chapter 1, Idaho Code, and rules as promulgated and administered by the Idaho Department of Environmental Quality. (3-18-22)~~

~~b. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the Idaho Department of Water Resources. (3-18-22)~~

~~c. Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code, and applicable rules and regulations as promulgated and administered by the Idaho Department of Water Resources. (3-18-22)~~

013. APPLICABILITY.

~~01. All Lands in State. These rules apply to all lands within the state, including private and federal lands, which are disturbed by placer or dredge mining conducted after November 24, 1954. (3-18-22)~~

~~02. Types of Operations. These rules apply to placer and dredge mining operations and placer and dredge exploration operations as defined under Section 47-1313, Idaho Code, and Subsections 010.24, 010.25, and 010.26 and to the following activities: (3-18-22)~~

~~a. The extraction of minerals from a placer deposit, including the removal of vegetation, topsoil, overburden, and minerals; construction, and operation of on-site processing equipment; disposal of overburden and waste materials; design and operation of siltation and other water quality control facilities; and other activities contiguous to the mining site that disturb land and affect water quality and/or water quantity. (3-18-22)~~

~~b.~~ All exploration activities conducted upon a placer deposit using motorized earth-moving equipment. (3-18-22)

~~03. Nonapplicability.~~ These rules do not apply to mining operations regulated by the Idaho Surface Mining Act; neither do they apply to surface disturbance caused by the underground mining of a placer deposit, unless the deposit outcrops on or near the surface and the operation will result in the probable subsidence of the land surface. (3-18-22)

~~04. Stream Channel Alterations.~~ These rules do not exempt the Permittee from obtaining a stream channel alteration permit if required by the Idaho Department of Water Resources. (3-18-22)

~~05. Navigational Improvements.~~ These rules do not apply to dredging operations conducted for the sole purpose of establishing and maintaining a channel for navigation. (3-18-22)

~~06. Suction Dredges.~~ These rules do not apply to dredging operations in streams or riverbeds using suction dredges with an intake diameter of eight (8) inches or less. However, these rules do not affect or exempt the applicability of Section 47-701, Idaho Code, regarding leasing of the state-owned beds of navigable lakes, rivers, and streams, Section 47-703A, Idaho Code, regarding exploration on navigable lakes and streams, and Section 39-118, Idaho Code, regarding review of plans for waste treatment or disposal facilities such as settling or recycle ponds. (3-18-22)

~~014. ADMINISTRATION.~~

The Department of Lands shall administer these rules under the direction of the director. (3-18-22)

~~015~~2. -- 019. (RESERVED)

020. PLACER OR DREDGE EXPLORATION OPERATIONS.

01. Notice. Any person desiring to conduct placer or dredge exploration operations using motorized earth-moving equipment must, prior to or within seven (7) days of commencing exploration, notify the Director. The notice includes the following: (3-18-22)()

a. The name and address of the operator; (3-18-22)

b. The legal description of the exploration operation and a map of sufficient scale to show the location of the exploration and nearby roads and streams. ()

~~c.~~ it's The exploration starting and estimated completion dates; and (3-18-22)()

~~d.~~ The anticipated size of the exploration operation and the general method of operation. (3-18-22)

~~02. Confidentiality.~~ The exploration notice will be treated confidential pursuant to Sections 74-107 and 47-1314, Idaho Code. (3-18-22)

~~03~~02. **One-Half Acre Limit.** Any placer or dredge exploration operation that causes a cumulative surface disturbance in excess of one-half (1/2) acre of land, including roads, is considered a placer or dredge mining operation and subject to the requirements outlined in Sections 021 through 065. Lands

disturbed by any placer or dredge exploration operation that causes a cumulative surface disturbance of less than one-half (1/2) acre of land, including roads, must be restored to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operation and as outlined in Subsection 020.043. ~~(3-18-22)~~()

0403. Reclamation Required. The following reclamation activities, required to be conducted on exploration sites, must be performed in a workmanlike manner with all reasonable diligence, and as to a given exploration drill hole, road, pit, or trench, within one (1) year after abandonment thereof:

(3-18-22)

a. Drill holes must be plugged within one (1) year of abandonment with a permanent concrete or bentonite plug. (3-18-22)

b. Restore all disturbed lands, including roads, to conditions reasonably comparable to conditions existing prior to the placer or dredge exploration operations. ~~(47-1314(b))~~ ~~(3-18-22)~~()

c. Conduct revegetation activities in accordance with Subsection 040.175. Unless otherwise required by a federal agency, one (1) pit or trench on a federal mining claim showing discovery, may be left open pending verification by federal mining examiners. Such abandoned pits and trenches must be reclaimed within one (1) year of verification; ~~(3-18-22)~~()

d. If water runoff from exploration operations causes siltation or other pollution of surface waters, the operator will prepare disturbed lands and adjoining lands under his or her control, as is necessary to meet state water quality standards. (3-18-22)

e. Abandoned lands disturbed by an exploration operation must be top-dressed to the extent that such overburden is reasonably available from any pit or other excavation created by the exploration operation, with that type of overburden that is conducive to the control of erosion or the growth of vegetation that the operator elects to plant thereon; (3-18-22)

f. Any water containment structure created in connection with exploration operations will be constructed, maintained, and reclaimed so as not to constitute a hazard to human health or the environment. (3-18-22)

021. APPLICATION PROCEDURE FOR ~~PLACER OR DREDGE MINING~~ PERMIT.

01. Approved ~~Reclamation Plan~~ ~~Permit~~ Required. No Permittee may conduct placer or dredge mining operations, as defined in these rules, on any lands in the state of Idaho until the ~~placer mining~~ permit has been approved by the Board, the ~~e~~Department has received a bond meeting the requirements of these rules, and the permit has been signed by the Director and the Permittee.

~~(3-18-22)~~()

02. Application Package. The Permittee must submit a complete application package, for each separate placer mine or mine panel, before the ~~placer~~ permit will be reviewed. Separate placer mines are individual, physically disconnected operations. The complete application package consists of:

~~(3-18-22)~~()

a. An application ~~completed by the applicant on a form~~ provided by the Director;

~~(3-18-22)~~()

b. A map or maps of the proposed mining operation which includes the information required under Subsection 021.04; (3-18-22)

c. A ~~reclamation~~ plan of operations, in map and narrative form, which includes the information required under Subsection 021.06. The map and ~~reclamation~~ plan of operations may be combined on one (1) sheet if practical; ~~(3-18-22)~~()

d. Document(s) identifying and assessing foreseeable, site-specific ~~nonpoint~~ sources of water quality impacts upon adjacent surface waters, and the best management practices BMPs or other measures the applicant will take to ~~control such nonpoint source impacts~~ comply with water quality requirements; ~~(3-18-22)~~()

e. When the Director determines, after consultation with DEQ, that there is an unreasonably high potential for ~~nonpoint source~~ pollution of adjacent surface waters, the Director will request, and the applicant will provide to the Director, baseline pre-project surface water monitoring information and furnish ongoing monitoring data during the life of the project. This provision does not require any additional baseline pre-project surface water monitoring information or ongoing monitoring data where such information or data is already required to be provided pursuant to any federal or state law and is available to the Director; ~~(3-18-22)~~()

f. An out-of-state Permittee must designate an in-state agent authorized to act on behalf of the Permittee. In case of an emergency requiring action to be taken to prevent environmental damage, the authorized agent will be notified as well as the Permittee; ~~and~~ ~~(3-18-22)~~()

g. An application fee of fifty dollars (\$50) for each ten (10) acres or fraction of land included in an application for a new ~~mining~~ permit, or of land to be affected or added in an amended application to an existing ~~mining~~ permit, must be included with the application. No application fee will exceed one thousand dollars (\$1,000); ~~and~~ ~~(3-18-22)~~()

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

03. Incomplete Applications. An application for a permit may be returned for correction if the information provided on the application form or associated mine map(s) or ~~reclamation~~ plan of operations is incomplete or otherwise unsatisfactory. The Director will not proceed on the application until all necessary information is submitted. ~~(3-18-22)~~()

~~a. If the applicant is not the owner of the lands described in the application, or any part thereof, the land owner must endorse his approval of the application prior to issuance of a permit. The federal government, as a property owner, will be notified of the application, and asked to endorse the application as property owner. For mining operations proposed upon land under a mining lease, either the signature of the lessor must be affixed to the application or a copy of the complete lease attached to the application. (3-18-22)~~

04. Requirements of Maps. Vicinity maps must be prepared on standard United States Geological Survey, seven and one-half (7.5) minute quadrangle maps, or equivalent. In addition, maps of the proposed placer mining operation site will be of sufficient scale to adequately show the following:
(3-18-22)()

a. The location of existing roads ~~and anticipated,~~ access, and main haulage roads ~~planned for construction~~ constructed or reconstructed in connection with the mining operation, ~~along with and the~~ approximate dates for construction, reconstruction, and abandonment; (3-18-22)()

b. The approximate location, and ~~the~~ names of all known drainages, streams, creeks, ~~springs, wells,~~ or ~~bodies of water~~ bodies within one thousand (1,000) feet of the mining operation; (3-18-22)()

c. The approximate boundaries of all the proposed disturbed lands ~~to be disturbed in the process of~~ for the mining operation, including legal description to the quarter-quarter section; (3-18-22)()

d. The approximate boundaries and acreage of the lands that will become disturbed land ~~as a result of the placer or dredge mining operation~~ during the first year of operations ~~following issuance of a placer mining permit;~~ (3-18-22)()

e. The planned location and configuration of pits, mineral stockpiles, topsoil stockpiles, and waste dumps within the mining property permit area; (3-18-22)()

f. Scaled cross-sections, ~~of by~~ length and ~~width, height~~ which are representative of the placer or dredge mining operation, showing the surface contour prior to mining and the expected surface contour after reclamation ~~activities have been~~ is completed; (3-18-22)()

g. The location of ~~required~~ settling ponds, and the ~~design plans, construction specifications and narrative to show they meet both operating requirements and protection from erosion, seepage, and flooding that can be anticipated in the area. Where a dredge is operating in a stream, describe by drawing and narrative, the operation of the filtration equipment to be used to clarify the water.~~ discharge points, if any; and (3-18-22)()

h. Surface and mineral control or ownership map of appropriate scale for boundary identification. (3-18-22)()

05. Settling Ponds. Detailed plans and specifications for settling ponds must be drawn ~~to a scale of one (1) inch = ten (10) feet and include~~ at an appropriate scale to show the following: (3-18-22)()

a. ~~A detailed map of the~~ Layout of each settling pond ~~location,~~ including: (3-18-22)()

i. Dimensions and orientation of the settling ponds and/or other wastewater treatment components of the operation; (3-18-22)

ii. Distance from surface waters; (3-18-22)

iii. Pond inlet/outlet locations including emergency spillways and detailed description of control structures and piping; (3-18-22)

iv. Location of erosion control structures; ~~and~~ (3-18-22)()

v. Location of any current Ten (10) year floodplain elevation (probable high water mark), in relation to the mining facilities if the floodplain is within one hundred (100) feet of the facilities; and (3-18-22)()

vi. The BMPs to be implemented that will keep surface waters from entering any pits and potentially changing course. ()

b. A ~~detailed~~ cross-section of ~~the~~ each pond(s) including: (3-18-22)()

i. Dimensions and orientation; (3-18-22)

ii. Proposed sidewall elevations; (3-18-22)

iii. Proposed sidewall slope; (3-18-22)

iv. Sidewall width; (3-18-22)

v. Distance from and elevation above all surface water; and (3-18-22)

vi. Slope of settling pond location. (3-18-22)

c. Narrative of the construction method(s) describing: (3-18-22)

i. Bottom material; (3-18-22)

ii. Sidewall material; (3-18-22)

iii. Pond volume; (3-18-22)

iv. Volume of water to be used in the wash plant; (3-18-22)

v. Discharge or land application requirements; (3-18-22)

vi. Any pond liners or filter materials to be installed; and (3-18-22)

viii. Compaction techniques. (3-18-22)

~~d. If the proposed ponds are: (3-18-22)~~

~~i. Less than two thousand five hundred (2,500) feet square surface area; (3-18-22)~~

~~ii. Less than four (4) feet high; (3-18-22)~~

- ~~iii. Greater than fifty (50) feet from surface water; and (3-18-22)~~
- ~~iv. Constructed on slopes of three: one (3:1) or flatter, the plans and specifications for settling ponds must contain information in Subparagraphs 021.05.a.i., 021.05.a.ii., and 021.05.a.iv.; 021.05.b.i., 021.05.b.ii., 021.05.b.v. and 021.05.b.vi. This information may be prepared as a sketch map showing appropriate elevations, distances and other required details. (3-18-22)~~

06. Requirements for ~~Reclamation Plan~~ **of Operations.** A ~~reclamation plan~~ **of operations** must be submitted in map and narrative form and include the following: ~~(3-18-22)~~()

a. Show how watercourses disturbed by the mining operation will be replaced on meander lines with a pool structure conducive to good fish and wildlife habitat and recreational use. Show how and where riprap or other methods of bank stabilization will be used to ensure that, following abandonment, the stream erosion will not exceed the rate normally experienced in the area. If necessary, show how the replaced watercourse will not contribute to degradation of water supplies; (3-18-22)

b. Describe and show the contour of the proposed mine site after final backfilling and/or grading, with grades listed for slopes after mining; ~~(3-18-22)~~()

c. On a drainage control map, show the best management practices to be utilized to minimize erosion on disturbed lands; (3-18-22)

d. Show roads to be reclaimed upon completion of mining; (3-18-22)

e. Show plans for both concurrent and final revegetation of disturbed lands. Indicate soil types, ~~where soils are not present,~~ slopes, precipitation, seed rates, species, topsoil, or other growth medium storage and handling, time of planting, method of planting and, if necessary, fertilizer and mulching rates; ~~(3-18-22)~~()

f. The planned reclamation of tailings or sediment ponds; (3-18-22)

g. An estimate of total reclamation cost to be used in establishing bond amount. The cost estimate should include the approximate cost of grading, revegetation, equipment mobilization, labor, and administrative overhead; ~~and~~ ~~(3-18-22)~~()

h. Make a premining estimate of trees on the site by species and forest lands utilization consideration in reclamation. (3-18-22)

07. State Approval Required. Approval of a ~~placer mining~~ permit must be obtained under these rules, even if approval of such plan has been or is obtained from an appropriate federal agency. ~~(3-18-22)~~()

08. Application Review and Inspection. If the ~~Director~~ ~~Department~~ determines that an inspection is necessary, the applicant may be contacted and asked that he or his duly authorized employee or representative be present for inspection at a reasonable time. An inspection may be required prior to issuance of the permit. The applicant must make such persons available for the purpose of inspection ~~(see~~

~~Subsection 051.01~~. Failure to provide a representative does not mean that the state will not conduct such inspection. (3-18-22)()

022. PROCEDURES FOR REVIEW AND DECISION UPON AN APPLICATION.

~~01. Decision on Application.~~ Following the Director's review of an application for a new permit, or to amend an existing permit and provide an opportunity to correct any deficiencies, the Board will approve or disapprove the application and the Director will notify the applicant of the Board's decision by mail. Such notice will contain any reservations conditioned with the approval, or the information required to be given under Subsections 022.07 and 022.09 if disapproved. If approved, a permit will be issued after the bonding requirements of Section 035 are met. No mining is allowed until the permit is bonded and applicant is notified by mail or telephone of approval. (3-18-22)

0201. Public Hearings. For the purpose of determining whether a proposed application complies with these rules, the Director may call for a public hearing, as described in Section 030. (3-18-22)

0302. Adverse Weather. If weather conditions prevent the ~~Director~~ Department from inspecting the proposed mining site to acquire the information required to evaluate the application, the application may be placed in suspense, pending improved weather conditions. The applicant will be notified in writing of this action. (3-18-22)()

0403. Interagency Comment. Nonconfidential materials submitted under Section 021 will be forwarded by the ~~Director~~ Department to the Departments of Water Resources, Environmental Quality, and Fish and Game for review and comment. If operations are to be located on federal lands, the ~~Department~~ will notify the U. S. Bureau of Land Management or the U.S. Forest Service. ~~The Director may provide public notice on receipt of a reclamation plan. In addition, a copy of an application will be provided to individuals who request the information in writing, subject to Title 74, Chapter 1, Idaho Code.~~ (3-18-22)()

0504. Stream Channel Alteration Permits. No permit will be issued proposing to alter, occupy or to dredge any stream or watercourse without notification to the Department of Water Resources of the pending application. The Department of Water Resources will respond to said notification within twenty (20) days. If a stream channel alteration permit is required, it must be issued prior to issuance of the placer and dredge permit. (3-18-22)()

0605. Water Clarification. No permit will be issued until the ~~Director~~ Department is satisfied that the methods of water clarification proposed by the applicant are of sound engineering design and capable of meeting the water quality standards established under Title 39, Chapters 1 and 36, Idaho Code, and IDAPA 58.01.02, "Water Quality Standards," IDAPA, 58.01.11, "Ground Water Quality Rule." (3-18-22)()

06. Permit Conditions. If an application fails to meet the requirements of these rules, the Department may include permit conditions that bring the application into compliance with these rules. ()

07. Decision on Application. Following the Department's review of an application for a new or amended permit and an opportunity for the applicant to correct any deficiencies, the Board will

approve or disapprove the application and the Director will notify the applicant of the Board's decision by mail. ()

08. Permit Offering. Upon approval by the Board, the applicant will be sent the permit for their signature and submittal of the reclamation bond and first year's inspection fees. If the signed permit, fee, and bond are not received by the Department within twelve (12) months of Board action, the approval will be automatically rescinded. Upon receipt of the signed permit, fee, and bond, the Department will complete the permit with the required state signatures and send the fully executed permit to the permittee. ()

0709. Permit Denial Authority. The Board has the power to deny any application for a permit on state lands, streams, or riverbeds, or on any unpatented mining claims, ~~upon its determination that a placer or dredge mining operation on the area proposed would not be in the public interest, giving consideration to economic factors, recreational use for such lands, fish and wildlife habitat, and other factors which in the judgement of the Board may be pertinent, and may deny any application upon notification by the Department of Water Resources that the granting of such permit would result in permanent damage to the stream channel.~~ (Pursuant to Section 47-1317(j), Idaho Code). (3-18-22)()

~~**08. Permit Conditions.** If an application fails to meet the requirements of these rules, the Board may issue a permit subject to conditions that bring the application into compliance with these rules. The applicant may accept or refuse the permit. Refusal to accept the permit is considered a denial under Subsection 022.09. (3-18-22)~~

0910. Amended Applications. If the Board disapproves the application, the applicant will be informed of the rules that have not been complied with, the manner in which they have not been complied with, and the requirements necessary to correct the deficiencies. The applicant may then submit an amended application and application fee, which will be processed as described in Section 022 of these rules. (3-18-22)()

~~**10. Permit Offering.** Upon approval by the Board, the applicant will be notified of the action and the amount of bond required. Upon receipt of the required bond, the permit will be sent to the applicant for signature. If the bond and the permit, signed by the applicant, are not received within twelve (12) months of Board action, the approval will be automatically rescinded, except that upon written request of the applicant, and for good cause, the Director may defer decision of the Board's approval for a reasonable period of time not to exceed one (1) year. The Director will notify the applicant of his decision in writing. (3-18-22)~~

11. Reclamation Obligations. The permit issued by the Board governs and determines the nature and extent of the reclamation obligations of the Permittee. (3-18-22)

023. -- 024. (RESERVED)

025. AMENDING AN APPROVED PERMIT.

01. Application to Amend. If circumstances arise that require significant change in the ~~reclamation~~ plan of operations, method of operation, increase in acreage, water management or other details associated with an approved permit, the Permittee will submit an application ~~on a department form or exact copy to amend the permit. Application fees are to be submitted with amended applications~~

~~pursuant to Subsection 021.02.g covering the proposed changes as described in Section 021 of these rules.~~
~~(3-18-22)()~~

02. Processing. An application to amend a permit will be processed in accord with Section 022. (3-18-22)

026. DEVIATION FROM AN APPROVED PERMIT.

01. Unforeseen Events. ~~If a Permittee finds that~~ unforeseen events or unexpected conditions require immediate deviation from an approved permit, the Permittee may continue mining ~~in accord with the procedures as~~ dictated by the changed conditions, pending submission and approval of an amended permit, ~~even though such operations do not comply with the current approved permit.~~ This does not excuse the Permittee from complying with the BMPs and reclamation requirements of Sections 020 and 040. If water quality is being impaired or the stability of settling ponds or other mine features is compromised due to the unforeseen events, then mining must stop until the mine features are stabilized.
~~(3-18-22)()~~

02. Notification. Notification of such unforeseen events must be given to the ~~d~~Department within forty-eight (48) hours after discovery, and an application to amend the permit must be submitted within thirty (30) days of deviation from the approved permit by the Permittee. ~~(3-18-22)()~~

027. TRANSFER OF PERMITS.

~~Placer and dredge mining p~~Permits may be transferred from an existing Permittee to a new Permittee only after the Department's approval. Transfer is made by the new Permittee filing a notarized Department ~~Transfer of Permit~~ form and providing replacement bonding. The new Permittee is then responsible for the past Permittee's obligations under ~~Title 47, Chapter 13, Idaho Code~~ the Act, these rules, ~~the reclamation plan,~~ and the permit. ~~When a replacement bond is submitted relative to an approved placer/dredge mining permit, the following rider must be filed with the department as part of the replacement bond before the existing bond will be released: "(Surety company or principal) understands and expressly agrees that the liability under this bond shall extend to all acts for which reclamation is required on areas disturbed in connection with placer/dredge mining permit No., both prior and subsequent to the date of this rider."~~
~~(3-18-22)()~~

028. -- 029. (RESERVED)

030. PUBLIC HEARING FOR PERMIT APPLICATION.

01. Public Hearings. During any stage of the application process the ~~Director~~ Department may conduct a public hearing. ~~(3-18-22)()~~

02. Basis for Hearing. This action will be based upon the preliminary review of the application and upon any concern registered with the ~~Director~~ Department by the public, affected land owners, ~~federal~~ reviewing agencies ~~having surface management of the affected lands,~~ other interested entities, or upon request by the applicant. ~~(3-18-22)()~~

~~03. Hearing for Water Degradation.~~ The Director will call for a public hearing when he determines, after consultation with the Departments of Water Resources, Environmental Quality, Fish and Game, and affected Indian tribes (pursuant to Paragraph 021.02.e.), that proposed placer or dredge

mining operations can reasonably be expected to significantly degrade adjacent surface waters. A hearing held under this subsection will be conducted to receive comment on the measures the applicant will use to protect surface water quality from nonpoint source water pollution. (3-18-22)

0403. Site of Hearing. The hearing will be held, ~~upon the record,~~ in the locality of the proposed operation, or in Ada County, at a reasonable time and place. (3-18-22)()

0504. Hearing Notice. The ~~Director~~ Department will give notice of the date, time, and place of the hearing to the applicant, ~~to:~~ federal, state, and local agencies, and Indian tribes which may have an interest in ~~the decision, as shown on~~ the application; ~~to all any~~ persons petitioning for the hearing, ~~if any;~~ and ~~to all~~ persons identified ~~by the applicant pursuant to Subsection 021-03.a.~~ as an owner of the specific acreage to be affected by the proposed ~~placer or dredge mining~~ operation. Such hearing notice will be sent by certified mail and postmarked not less than thirty (30) days before the scheduled date of the public hearing. (3-18-22)()

0605. Public Notice. The Director will notify the general public of the date, time, and place of the hearing by placing a newspaper advertisement once a week, for two (2) consecutive weeks, ~~in the locale of the area covered by the application~~ in a newspaper in the county in which the mining is proposed. The ~~two (2) consecutive weekly~~ advertisements ~~begin will be~~ between seven (7) and twenty (20) days prior to the scheduled date of the hearing. A copy of the application is to be placed for review in a conspicuous place in the local area of the proposed mining operations, in the ~~nearest~~ Department's nearest area office, and the ~~Department's~~ administrative office in Boise. (3-18-22)()

~~07. Description of Effects.~~ In the event a hearing is ordered under Subsection 030.03, the notice to the public will describe the potentially significant surface water quality degradation and contain the applicant's description of the measures that will be taken to prevent degradation of adjacent surface waters from nonpoint sources of pollution. The foregoing is to be discussed at the public hearing. (3-18-22)

0806. Hearing Officer. The hearing will be conducted by the Director or his duly authorized representative. Both oral and written testimony will be accepted. (3-18-22)

031. -- 034. (RESERVED)

035. PERFORMANCE BOND REQUIREMENTS.

01. Submittal Amount of Bond. ~~Prior to issuance of a placer or dredge mining permit, an applicant must submit to the Director, on a placer or dredge mining bond form, a performance bond meeting the requirements of this rule. (3-18-22)~~

~~a. The amount of the initial bond is in the amount determined by the Board to be the estimated reasonable costs of reclamation of lands proposed to be disturbed in the permit area, plus ten percent (10%), and subject to the limitations in Idaho Code 47-1317(b). The determination by the Board of the bond amount constitutes a final decision subject to judicial review as set forth in Section 002 of these rules. The bond may be submitted in the form of a surety, cash, certificate of deposit, or other bond acceptable to the Director. (3-18-22)()~~

~~_____ b. _____ Acreage on which reclamation is completed must be reported in accord with Subsections 035.06 and 035.07. Acreage may be released upon approval by the Director. The bond may be reduced by the amount appropriate to reflect the completed reclamation. _____ (3-18-22)~~

02. Form of Performance Bond. (3-18-22)

a. Corporate surety bond~~;~~. This is an indemnity agreement executed for the Permittee by a corporate surety licensed to do business in the state of Idaho and submitted on a placer and dredge mining bond Department form, ~~or exact copy, supplied by the Director.~~ Surety bonds are subject to the following conditions: ()

~~_____ i. _____ The bond is to be conditioned upon the Permittee faithfully performing all requirements of the aAct, these rules, and the permit, and reclamation plan, and must be payable to the state of Idaho~~;~~ _____ (3-18-22)()~~

~~_____ ii. _____ The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties in Circular 570 of the U.S. Department of the Treasury; and _____ ()~~

~~_____ iii. _____ When a replacement bond is submitted, the following rider must be filed with the Department as part of the replacement before the existing bond will be released: “(Surety company or principal) understands and expressly agrees that the liability under this bond will extend to all acts for which reclamation is required on areas disturbed in connection with placer or dredge mining permit [number], both prior to and subsequent to the date of this rider.” _____ ()~~

~~_____ iv. _____ Any surety company canceling a bond must give the Department at least ninety (90) days’ notice prior to cancellation. The Director will not release a surety from liability under an existing bond until the Permittee has submitted an acceptable replacement bond to the Director or reclaimed the site. A replacement bond must be received within thirty (30) days following written notice by the Director or prior to the effective date of cancellation, whichever is later. _____ ()~~

~~_____ v. _____ If a surety’s Idaho business license is suspended or revoked the Permittee must, within thirty (30) days after notice by the Department, submit a replacement bond for such surety to the Department. _____ ()~~

~~_____ vi. _____ If the Permittee fails to submit a replacement bond or complete reclamation as directed in subparagraphs iv and v above, the Director may issue a cease-and-desist order and seek injunctive relief to stop the Permittee from conducting placer and dredge mining operations on the lands covered by the bond until a replacement bond has been submitted. The Permittee must cease mining operations on lands covered by the bond until a bond acceptable to the Department is filed. _____ ()~~

b. Collateral bond~~;~~. This is an indemnity agreement executed by or for the Permittee, and payable to the state of Idaho Department of Lands, pledging cash deposits, governmental securities, or negotiable certificates of deposit of any financial institution doing business in the United States. Collateral bonds are subject to the following conditions: (3-18-22)()

i. The Director will obtain possession, ~~and upon receipt of such collateral bonds,~~ of cash or other collateral bonds and then deposit such cash or securities them with the state treasurer to hold in trust for the purpose of bonding reclamation performance; (3-18-22)()

ii. The Director will value collateral at its current market value minus any penalty for early withdrawal, not its face value; (3-18-22)()

iii. Certificates of deposit ~~will be or~~ time deposit receipts are issued or assigned, in writing, to the ~~Department, in writing,~~ state of Idaho and upon the books of the financial institution issuing such certificates. Interest will be allowed to accrue and may be paid by the bank, upon demand and after written release by the Department, to the Permittee, or other person ~~which~~ who posted the collateral bond; (3-18-22)()

iv. Amount of an individual certificate of deposit or time deposit receipt may not exceed the maximum amount insured by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation or their successors; (3-18-22)()

v. Financial institutions issuing ~~such~~ certificates of deposit or time deposit receipts will waive all rights of set-off or liens which it has or might have against such certificates, and will place holds on those funds that prevent the Permittee from withdrawing funds until the Department sends a written release to the financial institution; (3-18-22)()

vi. ~~Any such~~ Certificates will of deposit and time deposit receipts must be automatically renewable; ~~and~~. (3-18-22)()

~~vii. The certificate of deposit will be of sufficient amount to ensure that the Director would be able to liquidate such certificates prior to maturity, upon forfeiture, for the amount of the required bond, including any penalty for early withdrawal. (3-18-22)~~

c. Letters of credit: A letter of credit is an instrument executed by a bank doing business in Idaho and made at the request of a customer. A letter of credit states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit. Letters of credit are subject to the following conditions: (3-18-22)()

~~i. A letter of credit ("credit") is an instrument executed by a bank doing business in Idaho, made at the request of a customer, that states that the issuing bank will honor drafts for payment upon compliance with the terms of the credit; (3-18-22)~~

ii. All credits are irrevocable and prepared in a format prescribed by the Director; (3-18-22)

iii. All credits must be issued by an institution authorized to do business in the state of Idaho or through a confirming correspondent bank authorized to do business in the state of Idaho ~~which engages that it will itself honor the credit in full. In the alternative, a foreign bank may execute or consent to jurisdiction of Idaho courts on a form prescribed by the Director;~~ and (3-18-22)()

~~iv.~~ ii. The account party on all credits must be identical to the entity identified on the ~~placer mining~~ permit as the Permittee. (3-18-22)()

03. Blanket Bond. Where a Permittee is involved in numerous placer or dredge operations, the Director may accept a blanket bond in lieu of separate bonds under approved permits. The amount of

such bond must comply with other applicable provisions of Section 035 and ~~are~~ **must be** equal to the total of the ~~penalties~~ **amounts** of the separate bonds being combined into a single bond. (3-18-22)()

~~04. Bond Cancellation.~~ Any surety company canceling a bond must give the department at least one hundred twenty (120) days' notice prior to cancellation. The Director will not release a surety from liability under an existing bond until the Permittee has submitted to the Director an acceptable replacement bond or reclaimed the site. Replacement bonds must cover any liability accrued against the bonded principal under the permit. If a Permittee fails to submit an acceptable replacement bond prior to the effective date of cancellation of the original bond, or within thirty (30) days following written notice of cancellation by the Director, whichever is later, the Director may issue a cease and desist order and seek injunctive relief to stop the Permittee from conducting placer or dredge mining operations on the lands covered by the bond until such replacement has been received by the department. The Permittee must cease mining operations on lands covered by the bond until a suitable bond is filed. (3-18-22)

~~05. Substitute Surety.~~ If a surety's Idaho business license is suspended or revoked, the Permittee must, within thirty (30) days after notice by the department, find a substitute for such surety. The substitute surety must be licensed to do business in Idaho. If the Permittee fails to secure such substitute surety, the Director may issue a cease and desist order and seek injunctive relief to stop the Permittee from conducting placer and dredge mining operations on the lands covered by the bond until a substitution has been made. The Permittee must cease mining operations on lands covered by the bond until a bond acceptable to the department is filed. (3-18-22)

0604. Bond Reduction. ()

~~a.~~ Upon finding that any land bonded under a ~~placer or dredge mining~~ permit will not be affected by mining, the Permittee ~~must~~ **will** notify the ~~Director~~ **Department** by submitting an application amending the permitted acreage, pursuant to Section 025 **Department**. When the ~~Director~~ **Department** has verified that the bonding requirement for the ~~amended~~ **remaining** permit **area** is adequate, any excess reclamation bond will be released. Any request for bond reduction will be answered by the Director within thirty (30) days of receiving such request unless weather conditions prevent inspection. (3-18-22)()

~~b.~~ A Permittee may petition the Department for a change in the initial bond rate. The Department will review the petition and if satisfied with the information presented a revised bond amount will be determined. The revised bond amount will be based upon the estimated cost that the Department would incur should a forfeiture of bond occur and it becomes necessary for the Department to complete reclamation to the standards established in the permit. This amount is subject to the limitations in Idaho Code 47-1317(b) ()

0705. Bond Release. Upon completion of the reclamation, specified in the permit, the Permittee must notify the ~~Director~~ **Department** in writing, of ~~his~~ **their** desire to secure release from bonding. When the ~~Director~~ **Department** has verified that the requirements of the ~~placer or dredge mining~~ permit have been met, ~~as stated in the permit~~, the bond will be released. (3-18-22)()

~~a.~~ Any request for bond release will be answered by the ~~Director~~ **Department** within thirty (30) days of receiving such request unless weather conditions prevent inspection. (3-18-22)()

~~b.~~ If the ~~Director~~ **Department** finds that a specific portion of the reclamation has been satisfactorily completed, the bond may be reduced to the amount required to complete the remaining

reclamation. The following schedule will be used to complete these bond reductions unless the Director Department determines in a specific case that this schedule is not appropriate and specifies a different schedule: (3-18-22)()

i. Sixty percent (60%) of the bond may be released when the Permittee completes the required backfilling, regrading, topsoil replacement, and drainage control of the bonded area in accordance with the approved placer mining permit; and (3-18-22)()

ii. ~~After An additional twenty-five percent (25%) of the bond may be released after the Permittee performs~~ revegetation activities ~~have been performed by the Permittee~~ on the regraded lands according to the approved placer mining permit and Section 040 of these rules, ~~the department may release an additional twenty-five percent (25%) of the bond.~~ (3-18-22)()

c. The remaining bond will not be released: (3-18-22)

i. As long as the disturbed lands are contributing sediment or other pollution to surface waters outside the disturbed land in excess of state water quality standards established under Title 39, Chapters 1 and 36, Idaho Code; (3-18-22)()

ii. Until final removal of equipment and structures related to the mining activity, or until any remaining equipment and structures are brought under an approved placer or dredge mining permit and bond by a new Permittee ~~(this rule does not require a Permittee to remove equipment or structures from patented lands when the landowner has authorized the equipment and structures to remain on the site);~~ (3-18-22)()

iii. Until all temporary sediment or erosion control structures have been removed and reclaimed or until such structures are brought under an approved placer mining permit and bond by a new Permittee; and (3-18-22)()

iv. Until vegetation ~~productivity is returned to levels of yields at least comparable to productivity which the disturbed lands supported prior to the permitted mining, except as stated in Subsection 040.17.b~~ meets the standards in Subsection 040.15 of these rules. (3-18-22)()

0806. Forfeiture. In accord with Subsection 0501.02, a bond may be forfeited if the Director determines that the Permittee has not conducted the placer and dredge mining and reclamation in accord with the aAct, these rules, and the ~~approved permit, and the reclamation plan.~~ (3-18-22)()

0907. Correction of Deficiencies. The Director may, through cooperative agreement with the Permittee, devise a schedule to correct deficiencies in complying with the permit and thereby postpone action to recover the bond. (3-18-22)

~~10. Bonding Rate. A Permittee may petition the Director for a change in the initial bond rate. The Director will review the petition, and if satisfied with the information presented, a special bond rate will be set based upon the estimated cost that the Director would incur should a forfeiture of bond occur and it becomes necessary for the Director to complete reclamation to the standards established in the permit and reclamation plan.~~ (3-18-22)

1108. Federal Bonds Recognized. The Director may accept as a bond, evidence of a valid reclamation bond with the United States government. The bond must equal or exceed the amount determined in Subsection 035.01.a. This does not release a Permittee from bonding under these rules if the Permittee fails to continuously maintain a valid federal bond. (3-18-22)

1209. Insufficient Bond. In the event the amount of the bond is insufficient to reclaim the land in compliance with the ~~a~~Act, these rules, the ~~approved~~ permit, and the ~~reclamation~~ plan of operations, the attorney general is empowered to commence legal action against the Permittee in the name of the Board to recover the amount, in excess of the bond, necessary to reclaim the land in compliance with the ~~a~~Act, these rules, the ~~approved~~ permit, and the ~~reclamation~~ plan of operations. (~~3-18-22~~)()

036. -- 039. (RESERVED)

040. BEST MANAGEMENT PRACTICES AND RECLAMATION FOR PLACER AND DREDGE MINING OPERATION.

01. ~~Nonpoint Source Sediment~~ Pollution Control. (~~3-18-22~~)()

a. Appropriate best management practices for nonpoint source sediment or other pollution controls must be designed, constructed, and maintained with respect to site-specific placer or dredge mining operations. ~~Permittees will utilize best management practices designed to achieve state water quality standards and protect existing beneficial uses of adjacent surface waters.~~ (~~3-18-22~~)()

b. State water quality standards, including protection of existing beneficial uses, are the standard that must be achieved by best management practices. In addition to proper mining techniques and reclamation measures, the Permittee will take necessary steps at the close of each operating season to assure that sediment movement or other pollution associated with surface runoff over the area is minimized in order to achieve water quality standards. (3-18-22)

c. Sediment or pollution control measures refer to best management practices that are carried out within and, if necessary, adjacent to the disturbed land and consist of utilization of proper mining and reclamation measures, as well as specific necessary pollution control methods, separately or in combination. Specific pollution control methods may include, but are not limited to: (3-18-22)

i. Keeping the disturbed land to a minimum at any given time through concurrent reclamation; (3-18-22)

ii. Shaping waste to help reduce the rate and volume of water runoff by increasing infiltration; (3-18-22)

iii. Retaining sediment within the disturbed land; (3-18-22)

iv. Diverting surface runoff to limit water coming into the disturbed land and settling ponds; (3-18-22)

v. Routing runoff through the disturbed land using protected channels or pipes so as not to increase sediment load; (3-18-22)

vi. Use of riprap, straw dikes, check dams, mulches, temporary vegetation, or other measures to reduce overland flow velocities, reduce runoff volume, or retain sediment; and (3-18-22)

vii. Use of adequate sediment ponds, with or without chemical treatment. (3-18-22)

02. Modification of Best Management Practices. If best management practices utilized by the Permittee do not result in compliance with Subsection 040.01, the Director will require the Permittee to modify or improve such best management practices to meet state water quality standards.

~~(3-18-22)~~()

03. Clearing and Grubbing. Clearing and grubbing of land in preparation for mining exposes mineral soil to the erosive effects of moving water. Permittees are cautioned to keep such areas as small as possible (preferably no more than one (1) year's mining activity) as the Permittee is required to meet state water quality standards. Trees and slash should be stockpiled for use in seedbed protection and erosion control and such stockpiling may be a requirement of the approved permit. (3-18-22)

04. Overburden/Topsoil. To aid in the revegetation of disturbed land, where placer or dredge mining operations result in the removal of substantial amounts of overburden, including any topsoil, the Permittee must remove, where practicable, the available topsoil or other growth medium as a separate operation for such area. Unless there are previously disturbed lands which are graded and immediately available for placement of the newly removed topsoil or other growth medium, the topsoil or other growth medium must be stockpiled and protected from erosion and contamination until such areas become available. (3-18-22)

a. Overburden/topsoil removal: (3-18-22)

i. Any overburden/topsoil to be removed will be removed prior to any other mining activity to prevent loss or contamination; (3-18-22)

ii. Where overburden/topsoil removal exposes land area to potential erosion, the Director may, as a condition of a permit, limit the size of any one (1) area having topsoil removed at any one (1) time. (3-18-22)

iii. Where the Permittee can show that an overburden material other than topsoil is more conducive to plant growth, or where overburden other than topsoil is the only material reasonably available, such overburden may be allowed as a substitute for or a supplement to the available topsoil. (3-18-22)

b. Topsoil storage. Topsoil stockpiles must be placed to minimize rehandling and exposure and to avoid excessive wind and water erosion. Topsoil stockpiles must be protected, as necessary, from erosion by use of temporary vegetation or by other methods which will control erosion; including, but not limited to, silt fences, chemical binders, seeding, and mulching. ~~(3-18-22)~~()

c. Overburden storage. Stockpiled ridges of overburden must be leveled to a minimum width of ten (10) feet at the top. Peaks of overburden must be leveled to a minimum width of fifteen (15) feet at the top. The overburden piles must be reasonably prepared to control erosion using best management practices such as terracing, silt fences, chemical binders, seeding, and mulching. (3-18-22)

05. Roads. (3-18-22)

a. Roads must be constructed to minimize soil erosion. Such construction may require, but is not limited to, restrictions on length and grade of roadbed, surfacing of roads with durable non-toxic material, stabilization of cut and fill slopes, and other techniques designed to control erosion. (3-18-22)

b. All access and haul roads must be adequately drained. Drainage structures may include, but are not limited to, properly installed ditches, water-bars, cross drains, culverts, and sediment traps. (3-18-22)

c. Culverts that are to be maintained for more than one (1) year must be designed to pass peak flows from not less than a twenty (20) year, twenty-four (24) hour precipitation event and have a minimum diameter of eighteen (18) inches. (3-18-22)

d. Roads and water control structures must be maintained at periodic intervals as needed. Water control structures serving to drain roads may not be blocked or restricted in any manner to impede drainage or significantly alter the intended purpose of the structure. (3-18-22)

e. Roads that are to be abandoned must be cross-ditched, ripped, and revegetated or otherwise obliterated to control erosion. (3-18-22)

f. Roads, ~~not abandoned, which are to continue in~~ that will be used under the jurisdiction of a governmental or private landowner after reclamation is completed, are the Permittee's responsibility ~~to comply with the nonpoint source sediment control provisions of~~ under Subsection 040.01 until the successor assumes control. (3-18-22)()

06. Settling Ponds -- Minimum Criteria. (3-18-22)

a. Settling ponds must provide adequate sediment storage capacity to achieve compliance with applicable water quality standards and protect existing beneficial uses, and may require periodic cleaning and proper disposal of sediment. (3-18-22)

b. No settling pond, used for process water clarification, ~~must~~ may be constructed to block a surface water drainage. (3-18-22)()

c. All settling ponds ~~must~~ will be constructed and designed to prevent surface water runoff from entering the pond. (3-18-22)()

d. All settling ponds ~~must~~ will be constructed and maintained to contain direct precipitation to the pond surface from a fifty (50) year twenty-four (24) hour storm event. (3-18-22)()

e. No chemicals may be used for water clarification or on site gold recovery without prior notification to, and approval from, the DEQ. (3-18-22)

07. Dewatering Settling Ponds. Upon reclamation, settling ponds must be dewatered, detoxified, and stabilized. Stabilization includes regrading ~~the site for erosion control~~, to the approximate original contour, and may require removal and disposal of settling pond contents. (3-18-22)()

~~08. **Topsoil Replacement.** Following completion of the requirements of Subsection 040.07, the settling ponds must be retopped with stockpiled topsoils or other soils conducive to plant growth. Where such soils are limited in quantity or not available, physical or chemical methods of erosion control may be used. All such areas are to be revegetated in accord with Subsection 040.17, unless otherwise specified in the placer mining permit. (3-18-22)~~

~~09. **Dam Safety.** Settling ponds must conform with the Idaho Dam Safety Act, Section 42-1710 through 42-1721, Idaho Code and with the Environmental Protection and Health Act, Section 39-118, Idaho Code, requiring plan and specification review and approval for waste treatment facilities. (3-18-22)~~

1008. Backfilling and Grading. (3-18-22)

a. Every operator who conducts placer mining exploration operations that disturb less than one-half (1/2) acre must contour the disturbed land to its approximate previous contour. These lands must be revegetated in accordance with Subsection 040.175. For showing discovery on federal mining claims, unless otherwise required by a federal agency, one (1) pit may be left open on each claim pending verification by federal mining examiners, but must not create a hazard to humans or animals. Such pits and trenches must be reclaimed within one (1) year of verification. (3-18-22)()

b. Every Permittee who disturbs more than one-half (1/2) acre must shape and smooth the disturbed ground to a grade reasonably comparable with the natural contour of the ground prior to mining, and to a condition that promotes the growth of vegetation except as provided in Paragraph 040.175.m. or minimize erosion through other means. Any disturbed natural watercourse must be restored to a configuration and structure conducive to good fish and wildlife habitat and recreational use. (3-18-22)()

c. Backfill materials must be compacted in a manner to ensure stability of the fill. (3-18-22)

d. After the disturbed land has been graded, slopes will be measured by the Department for compliance with the requirements of the Act, these rules, and the placer or dredge mining permit, and the reclamation plan. (3-18-22)()

1109. Waste Disposal - Disposal of Waste in Areas Other Than Mine Excavations. Waste materials not used in backfilling mined areas must be placed, stabilized, and revegetated to ensure that drainage is compatible with the surrounding drainage and to ensure long-term stability. (3-18-22)

a. The Permittee may, if appropriate, use terraces to stabilize the face of any fill. Slopes of the fill material may not exceed the angle of repose. (3-18-22)

b. Unless adequate drainage is provided through a fill area, all surface water above a fill must be diverted away from a fill area into protected channels, and drainage may not be directed over the unprotected face of a fill. (3-18-22)

1210. Topsoil Redistribution. Topsoil must be spread to achieve a thickness over the regraded area, adequate to support plant life. Excessive compaction of overburden and topsoil is to be avoided. Topsoil redistribution must be timed so that seeding or other protective measures can be readily applied to prevent compaction and erosion. Final grading must be along the contour unless such grading will

expose equipment operators to hazardous operating conditions, in which case the best alternative method must be used in grading. (3-18-22)

1311. Soil Amendments. Nutrients and soil amendments ~~must, if necessary, will~~ be applied as needed to the graded areas to successfully achieve the revegetation requirements of the permit ~~and reclamation plan.~~ (3-18-22)()

1412. Revegetating Waste Piles. The Permittee must conduct revegetation activities with respect to such waste piles in accordance with Subsection 040.175. (3-18-22)()

1513. Mulching. Mulch ~~must~~ should be used on severe sites and may be required by the ~~approved placer or dredge mining~~ permit. Nurse crops such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. (3-18-22)()

1614. Permanent Cessation and Time Limits for Planting. (3-18-22)

a. Wherever possible, but not later than one (1) year after grading, seeding and planting of disturbed lands ~~must will~~ be completed during the first favorable growth period after seedbed preparation. If permanent vegetation is delayed or slow in establishment, temporary cover of small annual grains, grasses, or legumes may be used to control erosion until adequate permanent cover is established. (3-18-22)()

b. Reclamation activities should be concurrent with the mining operation and may be included in the approved ~~placer or dredge mining~~ permit ~~and reclamation plan~~. Final reclamation of the permit area or any part of the permit area must begin within one (1) year after the placer or dredge mining operations have permanently ceased ~~on a mine panel. If the Permittee permanently ceases disposing of overburden on a waste area or permanently ceases removing minerals from a pit or permanently ceases using a road or other disturbed land, the reclamation activity on each given area must start within one (1) year of such cessation, despite the fact that all operations as to the mine panel, which included such pit, road, overburden pile, or other disturbed land, has not permanently ceased~~ on on those parts of the permit area. (3-18-22)()

c. A Permittee will be presumed to have permanently ceased placer or dredge mining operations on a given portion of disturbed land where no substantial amount of mineral or overburden material has been removed or overburden placed on an overburden dump, or no significant use has been made of a road during the previous one (1) year. (3-18-22)

d. If a Permittee does not plan to use disturbed land for one (1) or more years but intends thereafter to use the disturbed land for placer or dredge mining operations and desires to defer final reclamation until after its subsequent use, the Permittee must submit a written notice of intent and request for deferral of reclamation to the ~~Director Department, in writing~~. If the ~~Director Department~~ determines that the Permittee plans to continue the operation within a reasonable period of time, the ~~Director Department~~ will notify the Permittee and may require actions to be taken to ~~reduce degradation of surface resources~~ stabilize stockpiles and maintain water quality until operations resume. If the ~~Director Department~~ determines that the use of the disturbed land for placer or dredge mining operations will not be continued within a reasonable period of time, the ~~Director Department~~ will proceed as though the placer or dredge mining operation has been abandoned, but the ~~Permittee Department~~ will be notified

notify the Permittee of such decision at least thirty (30) days before taking any formal administrative action. (3-18-22)()

1715. Revegetation Activities. (3-18-22)

a. The Permittee must select and establish plant species that can be expected to result in vegetation comparable to that growing on the disturbed lands prior to placer or dredge mining operations or other species that will be conducive to the post-mining use of the disturbed lands. The Permittee may use available technical data and results of field tests for selecting seeding practices and soil amendments that will result in viable revegetation. (3-18-22)

b. Standards for success of revegetation. Revegetative success, unless otherwise specified in the approved placer mining permit ~~and reclamation plan~~, is measured against the existing vegetation at the site prior to mining, or an adjacent reference area supporting similar vegetation. (3-18-22)()

c. The ground cover of living plants on the revegetated area must be comparable to the ground cover of living plants on the adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation. (3-18-22)

d. For purposes of this rule, ground cover is considered comparable if it has, on the area actually planted, at least seventy percent (70%) of the premining ground cover for the mined land or adjacent reference area. (3-18-22)

e. For locations with an average annual precipitation of more than twenty-six (26) inches, the Director, in approving a placer mining permit, may set a minimum standard for success of revegetation as follows: (3-18-22)

i. Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or (3-18-22)

ii. Fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species. (3-18-22)

f. As used in this section, “herbaceous species” means grasses, legumes, and other forbs; “woody plants” means woody shrubs, trees, and vines; and “ground cover” means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measurement. Rock surface areas, composed of rock three plus (3+) inches in diameter will be excluded from this calculation. For purposes of measuring ground cover, rock greater than three (3) inches in diameter is considered as ground cover. (3-18-22)

g. ~~For p~~Previously mined areas that lack sufficient topsoil and are re-disturbed by a placer or dredge mining operation are not ~~were not reclaimed to the standards~~ required by to meet the revegetation standards in Section 040, ~~and that are disturbed by the placer or dredge mining operations,~~ but vegetation must be established to the extent necessary to control erosion, ~~but~~ and may not be less than that which existed before re-disturbance. (3-18-22)()

h. Introduced species may be planted if they are comparable to previous vegetation, or if known to be of equal or superior use for the approved post-mining use of the disturbed land, or, if

necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous, ~~or~~ noxious weeds, or invasive may not be used in revegetation. (3-18-22)()

i. By mutual agreement of the ~~Director~~ Department, the landowner, and the Permittee, a site may be converted to a different, more desirable, or more economically suitable habitat. (3-18-22)()

j. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for mine revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. (3-18-22)

k. The Permittee should plant shrubs or shrub seed, as required, where shrub communities existed prior to mining. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the landowner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs must be protected from erosion by vegetation, chemical, or other acceptable means during establishment of the shrubs. (3-18-22)

l. Reforestation -- Tree stocking of forestlands should meet the following criteria: (3-18-22)

i. Trees that are adapted to the site should be planted on the land to be revegetated, in a density which can be expected over time to yield a timber stand comparable to premining timber stands. This in no way is to exclude the conversion of sites to a different, more desirable, or more economically suited species; (3-18-22)

ii. Trees must be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and (3-18-22)

iii. Forest lands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. (3-18-22)

m. Revegetation is not required on the following areas: (3-18-22)

i. Disturbed lands, or portions thereof, where planting is not practicable or reasonable because the soil is composed of excessive amounts of sand, gravel, shale, stone, or other material to such an extent to prohibit plant growth; (3-18-22)

ii. Any mined land or overburden piles proposed to be used in the mining operations; (3-18-22)

iii. Any mined land or overburden pile, where lakes are formed by rainfall or drainage runoff from adjoining lands; (3-18-22)

iv. Any mineral stockpile; (3-18-22)

v. Any exploration trench which will become a part of any pit or overburden disposal area; (3-18-22)
and

vi. Any road which is to be used in mining operations, so long as the road is not abandoned. (3-18-22)

041. -- 049. (RESERVED)

050. TERMINATION OF A PERMIT.

01. Completion of Reclamation. A ~~placer or dredge mining~~ permit ~~terminates~~ may be retired upon completion of all reclamation activity to the standards specified in the permit and these rules, a written request from the Permittee, and reclamation plan, and after final inspection and approval has been granted by the Director Department. Upon termination-permit retirement, the Director Department will release the remaining ~~portion of the~~ bond. (3-18-22)()

02. Involuntary Termination. For continuous operation, the bonded permit will remain valid. Administrative action may be taken to terminate a ~~placer and dredge mining~~ permit if: (3-18-22)()

a. The permit does not remain bonded; (3-18-22)

b. The placer and dredge mining operations are not commenced within two (2) years of the date of Board approval; (3-18-22)

c. The placer and dredge mining operations are permanently ceased and final reclamation has not commenced within one (1) year of the date of permanent cessation; (3-18-22)

d. Inspection ~~costs~~ fees are delinquent; or (3-18-22)()

e. Permittee fails to comply with the ~~a~~Act, these rules, or the permit, ~~or the reclamation plan.~~ (3-18-22)()

051. ENFORCEMENT AND FAILURE TO COMPLY.

01. Inspection. The ~~Director Department~~ may inspect the operation under permit ~~from time to time~~ to determine compliance with the ~~a~~Act, these rules, and the permit, ~~and the reclamation plan.~~ The Permittee will pay the cost and expense of such inspections ~~will be borne by the Permittee as required by Section 47-1317, Idaho Code.~~ (3-18-22)()

a. Cost of inspection is assessed at a flat rate of ~~two hundred and fifty~~ four hundred thirty five dollars (\$~~250~~435) per year for each permit. ~~Permits upon U.S. Forest Service administered lands is assessed at a flat rate of one hundred dollars (\$100) per year for each permit, to reflect the reduced inspection work for the department.~~ (3-18-22)()

b. A billing for inspection ~~costs~~ fees will be made in advance each May 1, with the ~~costs~~ bill due and payable within thirty (30) days of receipt ~~of an inspection cost statement.~~ Inspection fees become delinquent if not paid on or before June 1, and the department may assess the greater of the following; either a twenty five dollars (\$25) late payment charge or penalty at the rate of one percent (1%) for each

calendar month or fraction thereof, compounded monthly, for late payments from the date the inspection fee is due. Such costs constitute a lien upon equipment, personal property, or real property of the Permittee and upon minerals produced from the permit area. Should inspection fees be delinquent, the department will send a single notice of delinquent payment by certified mail, return receipt requested, to the Permittee. If payment is not received by the department within thirty (30) days from the date of receipt, the department may take appropriate administrative action to cancel the permit as provided by Subsection 050.02. Fees not received by the due date are considered late. (3-18-22)()

c. Late inspection fees will result in the following monthly charges. ()

i. A late charge of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal obligation, whichever is greater. ()

ii. An interest charge of one percent (1%) on the unpaid principal obligation. ()

d. Failure to pay the inspection fees may result in permit termination and the Department placing a lien upon the Permittee's equipment, personal property, or real property and upon minerals produced from the permit area. ()

ee. Inspection costs-fees related to a reported violation are assessed at actual costs and in addition to those costs-the fees in Paragraph 051.01.a. Costs include mileage to and from the mine site, employee meals, lodging, personnel costs, and administrative overhead. Costs-Fees are due and payable thirty (30) days after receipt of the inspection cost statement. (3-18-22)()

02. Department Remedies. Without affecting the penal and injunctive provisions of these rules, the ~~e~~D Department may pursue the following remedies: (3-18-22)()

a. When the Director-Department determines that a Permittee has not complied with the aAct, these rules, or the permit, or the reclamation plan, the Director-Department will notify the Permittee in writing and set forth the violations claimed and the corrective actions needed. (3-18-22)()

b. If the Permittee fails to commence and diligently proceed to complete the requested corrective action or enter a cooperative agreement as per Subsection 035.07 of these rules within a specified number of days after the timeframe given in the notice of the violation, unless a cooperative agreement has been reached pursuant to Subsection 035.09, the Director may take administrative action as provided within this rule to terminate the permit and forfeit the bond as provided in Sections 47-1318, 1319, and 1329, Idaho Code. (3-18-22)()

c. The Board may cause to have issued and served upon the Permittee alleged to be committing such violation, a formal complaint that specifies the provisions of the act, the permit, the reclamation plan, or these rules which the Permittee allegedly is violating, and a statement of the manner in and the extent to which said Permittee is alleged to be violating the provisions of the act, the permit, the reclamation plan, or these rules. Such complaint may be served by certified mail, and return receipt, signed by the Permittee, an officer of a corporate Permittee, or the designated agent of the Permittee, will constitute service. (3-18-22)

d. The Permittee is required to answer the formal complaint and request a hearing before a hearing officer appointed by the Director, which authority to appoint is hereby delegated by the Board to

the Director, within thirty (30) days of receipt of the complaint if matters asserted in the complaint are disputed. The hearing will be held at a time not less than thirty (30) days after the date the Permittee requests such a hearing. The Board will issue subpoenas at the request of the Director and at the request of the charged Permittee. The hearing will be conducted in accordance with Sections 67-5209 through 67-5213, Idaho Code, and these rules. (3-18-22)

~~e.~~ The hearing officer will enter an order in accordance with Section 67-5212, Idaho Code, that, if adverse to the Permittee, will designate a time period within which prescribed corrective action, if any, should be taken. The designated time period will be sufficient to allow a reasonably diligent Permittee to correct any violation. Procedure for appeal of an order is outlined in Subsection 002.01. (3-18-22)

~~f.~~ Upon the Permittee's compliance with the order, the Director will consider the matter resolved and take no further action with respect to such noncompliance. (3-18-22)

~~g.~~ If the Permittee fails to answer the complaint and request a hearing, the matters asserted in the complaint will be deemed admitted by the Permittee, and the Director may proceed to cancel the placer mining permit and forfeit the bond in the amount necessary to pay all costs and expense of restoring the lands and beds of streams damaged by dredge or other placer mining of said defaulting Permittee and covered by such bond and remaining unrestored, including the department's administrative costs. (3-18-22)

~~03.~~ Violation of an Order. Upon request of the Director, the attorney general may institute proceedings to have the bond of a Permittee forfeited for violation of an order entered pursuant to Subsection 051.02.e. (3-18-22)

0403. Injunctive Procedures. (3-18-22)

~~a.~~ The Director may seek injunctive relief, as provided by Section 47-1324(b), Idaho Code, against ~~any a~~ Permittee ~~who is conducting placer mining or exploration operations when:~~ or other person who violates the Act, these rules, or an approved permit. (3-18-22)()

~~i.~~ Under an existing approved permit, reclamation plan, and bond, a Permittee violates or exceeds the terms of the permit; (3-18-22)

~~ii.~~ A Permittee violates a provision of the act or these rules; or (3-18-22)

~~iii.~~ The bond, if forfeited, would not be sufficient to adequately restore the land; (3-18-22)

~~b.~~ The Director may seek injunctive relief to enjoin a placer mining operation for the Permittee's violation of the terms of an existing approved permit, the reclamation plan, the act, and these rules, and if immediate and irreparable injury, loss, or damage to the state may be expected to occur. (3-18-22)

~~c.~~ The Director will request the court to terminate any injunction when he determines that all conditions, practices, or violations listed in the order have been abated. Termination will not affect the right of the department to pursue civil penalties for these violations in accordance with Subsection 051.06. (3-18-22)

~~05. Civil Action.~~ In addition to the injunctive provisions above, the Board may maintain a civil action against any person who violates any provision of the act or these rules, to collect civil damages in an amount sufficient to pay for all the damages to the state caused by such violation, including but not limited to, costs of restoration in accordance with Section 47-1314, Idaho Code, where a person is conducting placer or dredge mining without an approved permit or bond. (3-18-22)

0604. Civil Penalty. (3-18-22)

a. Pursuant to Section 47-1324(d), Idaho Code, any person violating ~~any of the provisions of the placer and dredge mining act or the Act,~~ these rules ~~or violating any determination or order pursuant to these rules, is,~~ a permit, or a related final order may be liable for a civil penalty ~~of not less than equal to the cost of reclamation. An additional penalty of~~ five hundred dollars (\$500) ~~nor more than to~~ two thousand five hundred dollars (\$2,500) may also be assessed for each day ~~during which such a~~ violation continues. Such penalty is recoverable in an action brought in the name of the state of Idaho by the attorney general. (3-18-22)()

b. Pursuant to Section 47-1324(d), Idaho Code, any person who willfully or knowingly falsifies any records, plans, specifications, or other information required by the Board or willfully fails, neglects, or refuses to comply with any of the provisions of these rules, is guilty of a misdemeanor and will be punished by a fine of not less than one thousand dollars (\$1,000) or more than five thousand dollars (\$5,000) or imprisonment, not to exceed one (1) year, or both. (3-18-22)()

0705. Hearing Procedures. (3-18-22)

a. ~~Process and procedures under these rules will be as summary and simple as may be possible. The Director, Board, or any member thereof, or the hearing officer designated by the Director, has the power to subpoena witnesses and administer oaths. The District Court will enforce the attendance and testimony of witnesses and the production for examination of books, papers, and records. A stenographic record or other recording of the hearing will be made. Witnesses subpoenaed by the Director or the hearing officer will be allowed such fees and traveling expenses as are allowed in civil actions in the District Court, to be paid by the party in whose interest such witnesses are subpoenaed. The Board, Director, or hearing officer will make such inquiries and investigations as deemed relevant. Each hearing will be held at the county seat in the county where any of the lands involved in the hearing are situate, or in the County of Ada, as the Board or Director may designate. Hearings under Section 47-1318, Idaho Code, will be held as directed by Title 67, Chapter 52, Idaho Code.~~ (3-18-22)()

~~b. A notice of hearing will be served by certified mail to the last known address of the Permittee or his agent at least twenty (20) days prior to the hearing. A certified return receipt signed by the Permittee or his agent constitutes service and time thereof.~~ (3-18-22)

~~b.~~ The cost of such hearing including, but not limited to, room rental, hearing officer fees, and transcript will may be assessed against the ~~defaulting~~ Permittee as allowed by Idaho Code 47-1318. The Director may designate a hearing officer to conduct any hearings and make findings of fact, conclusions of law, and decision on issues involving the administration of the act and these rules. (3-18-22)()

~~d.~~ If the hearing involves a permit or application for a permit, the decisions of the Board or the hearing officer, together with the transcript of the evidence, findings of fact, and any other matter pertinent to the questions arising during any hearing will be filed in the office of the Director. A copy of the findings of fact and decision will be sent to the applicant or holder of the permit involved in such hearing, by U.S. mail. If the matter has been assigned for hearing and a claim for review is not filed by any party in the proceeding within thirty (30) days after his decision is filed, the decision may be adopted as the decision of the Board and notice thereof will be sent to the applicant or permit holder involved in such hearing by U. S. mail. (3-18-22)

~~06. Procedures for Appeals. Any applicant or permit holder aggrieved by any final decision or order of the Board is entitled to judicial review in accordance with the provisions and standards set forth in Title 67, Chapter 52, Idaho Code, the Administrative Procedures Act. ()~~

~~052. -- 054. (RESERVED)~~

055. COMPUTATION OF TIME.

Computation of time for these rules will be based on calendar days. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or legal state holiday. In such a case, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Intermediate Saturdays, Sundays, or legal holidays are excluded from the computation when the period of prescribed time is seven (7) days or less. (3-18-22)

~~056. 059. (RESERVED)~~

~~060. PLACER OR DREDGE MINING OF CERTAIN WATERBODIES PROHIBITED.~~

~~01. Prohibited Areas. Placer or dredge mining in any form is prohibited on water bodies making up the national wild and scenic river system: (3-18-22)~~

~~a. The Middle Fork of the Clearwater River, from the town of Kooskia upstream to the town of Lowell; the Lochsa River from its junction with the Selway at Lowell forming the Middle Fork upstream to the Powell Ranger Station; and the Selway River from Lowell upstream to its origin; (3-18-22)~~

~~b. The Middle Fork of the Salmon River, from its origin to its confluence with the main Salmon River; (3-18-22)~~

~~c. The St. Joe River, including tributaries, from its origin to its confluence with Coeur d'Alene Lake, except for the St. Maries River and its tributaries. (3-18-22)~~

~~02. Mining Withdrawals. The Board, under authority provided by Title 47, Chapter 7, Idaho Code, has withdrawn certain other lands from placer and dredge mining. A listing of such withdrawals is available from the administrative offices of the Department. (3-18-22)~~

~~061056. -- 064. (RESERVED)~~

065. DEPOSIT OF FORFEITURES AND DAMAGES.

~~01. Mining Account.~~ All monies, forfeitures, and penalties collected under the provisions of these rules will be deposited in the ~~Placer and Dredge~~ and Placer Mining Account to be used ~~by the Director for placer and dredge mine reclamation purposes and related administrative costs~~ as directed by Idaho Code 47-1319. (3-18-22)()

~~02. Funds for Reclamation.~~ Upon approval of the Board, monies in the account may be used to reclaim lands for which the forfeited bond was insufficient to reclaim in accord with these rules, or for placer or dredge mine sites for which the bond has been released and which have resulted in subsequent damage. Monies received from inspection fees are to be kept separate and used for costs incurred by the Director in conducting such inspections. (3-18-22)

066. -- 069. (RESERVED)

070. COMPLIANCE OF EXISTING PLANS WITH THESE RULES.

These rules, upon their adoption, apply as appropriate to all existing placer or dredge mining operations, but will not affect the validity or modify the duties, terms, or conditions of any existing approved placer or dredge mining permits or impose any additional obligations with respect to reclamation upon any Permittee conducting placer or dredge mining operations pursuant to a placer or dredge mining permit approved prior to ~~adoption of these rules~~ May 1, 2024. (3-18-22)()

071. -- 999. (RESERVED)

IDAHO DEPARTMENT OF LANDS

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.01 - RULES GOVERNING DREDGE AND PLACER MINING OPERATIONS IN IDAHO

DOCKET NO. 20-0301-2301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code, and Title 47, Chapter 13, 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 20, 2023.

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 2023 for review during the 2024 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. Inspection fees have been increased to cover the costs of performing inspections, and the late payment policy was updated. Surety companies issuing bonds must be listed in the U.S Department of the Treasury's Circular 570, and the 120 day cancellation notification was reduced to 90 days. Time Deposit Receipts were recognized as acceptable forms of bonding.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

The annual inspection fee in place since 1991 is increased to \$435 for all permits. This fee is being imposed pursuant to Section 47-1317(d), Idaho Code. The current annual inspection fees are \$100 for permits on United States Forest Service lands and \$250 for all other permits.

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 5, 2023, Idaho Administrative Bulletin, Vol. 23-4, pages 35–37.

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. 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 27, 2023.

DATED this 6th day of September, 2023.

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
Phone: (208) 334-0261
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

STATE BOARD OF LAND COMMISSIONERS

July 18, 2023
Information Agenda

Subject

Proposed Rule for IDAPA 20.03.03 *Rules Governing Administration of the Reclamation Fund*

Background

The Idaho Department of Lands (Department) administers these rules under the authority of Title 47, Chapter 18, Idaho Code. IDAPA 20.03.03 provides consistent guidance in how Idaho's Reclamation Fund (Fund) is implemented. The Fund is a type of state bond pool created in 2002 to provide an alternative form of performance bond or financial assurance as required by Idaho mining regulations. The Fund is to be used by the Department to complete reclamation in the event an operator is unable to do so.

Negotiated rulemaking for these rules was approved by the Land Board on November 15, 2022 (Attachment 1). Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use.

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.
- Posted meeting information on social media and Townhall Idaho.
- Emailed 145 customers and other interested parties.
- Mailed postcards to 371 customers.

Negotiated rulemaking meetings were held on April 26 and May 4, 2023. A total of 6 non-Department affiliated people attended these meetings, and no written comments were received.

A question was asked regarding the elimination of Section 002, Administrative Appeals. The Department responded that the intent is to just refer to Title 67, Chapter 52 for guidance on administrative appeals. A question was asked about Subsection 018.02 and how it relates to the actual limits on participation. The Department responded that the maximum limits are set by rule, but the Land Board has flexibility to set lower actual limits. This is determined through periodic actuarial analysis. The current limits set by the Land Board in 2020 are 40 acres and \$220,000 in reclamation costs. No changes were made based on comments received. Some minor changes to the initial draft were made based on internal discussions and to further reduce word count.

Attachment 2 is the draft text that will be submitted for publication in the Administrative Bulletin as a proposed rule and is posted on the Department's rulemaking webpage. The rule is written in legislative format to allow the reader to easily identify changes.

The proposed rule reduces the overall regulatory burden by reducing the total word count and the number of restrictive words. The late payment policy is updated.

The proposed rule will be open for public comment upon publication in the September 6, 2023 Administrative Bulletin. The draft Notice of Proposed Rule is found in Attachment 3.

Attachments

1. November 15, 2022 Approved Memo
2. Proposed Rule Text
3. Draft Notice of Proposed Rule

The logo for the Idaho Department of Lands is centered on the page. It features a stylized mountain range in the background with a central peak. In the foreground, there is a light blue diamond shape containing a wavy pattern representing water. A horizontal banner with rounded ends is overlaid across the center, containing the text "IDAHO DEPARTMENT OF LANDS" in white, uppercase letters.

IDAHO DEPARTMENT OF LANDS

STATE BOARD OF LAND COMMISSIONERS

November 15, 2022

Regular Agenda

Subject

Negotiated rulemaking for IDAPA 20.03.03 *Rules Governing Administration of the Reclamation Fund*

Question Presented

Shall the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.03 *Rules Governing Administration of the Reclamation Fund*?

Background

The Idaho Department of Lands (Department) administers these rules under the authority of Title 47, Chapter 18, Idaho Code. IDAPA 20.03.03 provides consistent guidance in how Idaho's Reclamation Fund (Fund) is implemented. The Fund is a type of state bond pool created in 2002 to provide an alternative form of performance bond or financial assurance as required by Idaho mining regulations. The Fund is to be used by the Department to complete reclamation in the event an operator is unable to so.

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use.

Discussion

These rules were last reviewed in 2019 under the Red Tape Reduction Act, which reduced the total word count by 22% and the number of restrictive words by 55%. Additional reductions will be evaluated in the new rule chapter. The Department will review the rule with stakeholders to ensure that it is right-sized.

A proposed timeline for the rulemaking process is provided in Attachment 1.

Recommendation

Authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.03 *Rules Governing Administration of the Reclamation Fund*.

Board Action

A motion was made by Attorney General Wasden that the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.03 Rules Governing Administration of the Reclamation Fund. Superintendent Ybarra seconded the motion. The motion carried on a vote of 4-0.

Attachments

1. Draft rulemaking timeline



IDAHO DEPARTMENT OF LANDS

20.03.03 – RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

000. LEGAL AUTHORITY.

These rules are promulgated by the ~~Idaho State Board of Land Commissioners~~ under Sections 58-104(3) and (6) and 58-105, Idaho Code, and Title 47, Chapter 18, Idaho Code. The Board has delegated to the Director ~~of the Idaho Department of Lands~~ the duties and powers under Title 47, Chapter 18, Idaho Code and these rules, ~~except that the Board retains responsibility for administrative review.~~ (3-18-22)()

001. TITLE AND SCOPE.

~~01. Title.~~ These rules are titled IDAPA 20.03.03, “Rules Governing Administration of the Reclamation Fund,” IDAPA 20, Title 03, Chapter 03. (3-18-22)

~~02. Scope.~~ These rules constitute the Department’s administrative procedures ~~and participation criteria for the Reclamation Fund, which is~~ for implementation of the Act with the intent to provide an alternative form of financial assurance for certain mines in Idaho. These rules are to be construed in a manner consistent with the duties and responsibilities of the Board and of operators, permit holders, or lessees as set forth in ~~Title 47, Chapter 7, Idaho Code, “Mineral Rights in State Lands;” Title 47, Chapter 13, Idaho Code, “Dredge Mining Act;” Title 47, Chapter 15, Idaho Code, “Mined Land Reclamation Act;” Title 47, Chapter 18, Idaho Code, “Financial Assurance;”~~ IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho;” IDAPA 20.03.02, “Rules Governing Mined Land Reclamation;” and IDAPA 20.03.05, “Riverbed Mineral Leasing In Idaho.” (3-18-22)()

~~002. ADMINISTRATIVE APPEALS.~~

~~Any person aggrieved by a final agency action or a party aggrieved by a final order of the Board arising from its administration of the Reclamation Fund Act is entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, “Administrative Procedure Act,” and IDAPA 20.01.01, “Rules of Practice and Procedure Before the State Board of Land Commissioners.”~~ (3-18-22)

~~003. -- 009. (RESERVED)~~

010. DEFINITIONS.

Except as provided in these rules, the Board adopts the definitions set forth in the Mineral ~~Leasing Act~~ Rights in State Lands, the Dredge Mining Act, and the Mined Land Reclamation Act. As used in these rules: (3-18-22)()

01. Actual Allowable Cost. The allowable total reclamation cost as set by the Board to allow participation in the Reclamation Fund. (3-18-22)

02. Actual Allowable Disturbance. The area of disturbed acres or affected land as set by the Board to allow participation in the Reclamation Fund. (3-18-22)

03. Board. The Idaho State Board of Land Commissioners or its authorized representative. (3-18-22)

04. Department. The Idaho Department of Lands. (3-18-22)

05. Disturbed Acres; Affected Lands. ()

a. Any land, natural watercourses, or existing stockpiles or waste piles affected by placer or dredge mining, remining, exploration, stockpiling of ore, waste from placer or dredge mining, or construction of roads, settling ponds, structures, or facilities appurtenant to a placer or dredge mine. ()

b. The land area included in overburden disposal areas, mined areas, mineral stockpiles, roads, tailings ponds, and other areas disturbed at a mine. and ()

- c.** The land area disturbed by motorized exploration of state land under a mineral lease. (3-18-22)
- 06. Dredge Mining Act.** Title 47, Chapter 13, Idaho Code, and IDAPA 20.03.01, “Dredge and Placer Mining Operations in Idaho.” (3-18-22)
- 07. Financial Assurance.** ()
- a.** Cash, corporate surety bond, collateral bond, or letter of credit as described in the Dredge Mining Act; or the Mineral ~~Leasing Act, or a mineral lease.~~ Rights in State Lands; and ()
- b.** Financial assurance as defined in the Mined Land Reclamation Act. (3-18-22)
- 08. Mine; Mine Panel.** All areas designated by the operator on the map or plan submitted pursuant to Section 47-703A, Idaho Code, or Section 47-1506, Idaho Code, or as an identifiable portion of a placer or dredge mine on the map submitted under Section 47-1317, Idaho Code. (3-18-22)
- 09. Mined Land Reclamation Act.** Title 47, Chapter 15, Idaho Code, and IDAPA 20.03.02, “Rules Governing Mined Land Reclamation.” (3-18-22)
- 10. Mineral Lease.** Lease executed by the Board and the mineral lessee pursuant to the Mineral ~~Leasing Act~~ Rights in State Lands. (~~3-18-22~~)()
- 11. Mineral Lessee.** The lessee of a mineral lease. (3-18-22)
- 12. Mineral ~~Leasing Act~~ Rights in State Lands.** Title 47, Chapter 7, Idaho Code. (~~3-18-22~~)()
- 13. Mining Reclamation Plan.** Any reclamation plan approved pursuant to the Mined Land Reclamation Act. (3-18-22)
- 14. Motorized Exploration.** Exploration which may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques which employ the use of earth moving equipment, seismic operations using explosives, and includes sampling with a suction dredge having an intake diameter greater than two (2) inches when operated in a perennial stream. When operated in an intermittent stream, suction dredges ~~shall~~ will be considered motorized exploration regardless of intake size. (~~3-18-22~~)()
- 15. Operator.** Any person or entity authorized to conduct business in Idaho, partnership, joint venture, or public or governmental agency required to have any reclamation plan under the Mined Land Reclamation Act or the Mineral ~~Leasing Act~~ Rights in State Lands, or a permit under the Dredge Mining Act, whether individually or jointly through subsidiaries, agents, employees, or contractors. (~~3-18-22~~)()
- 16. Permit.** Dredge or placer mining permit issued pursuant to the Dredge Mining Act. (3-18-22)
- 17. Reclamation Fund.** The interest-bearing dedicated fund authorized pursuant to the Reclamation Fund Act. (3-18-22)
- 18. Reclamation Fund Act.** Title 47, Chapter 18, Idaho Code, and IDAPA 20.03.03, “Rules Governing Administration of the Reclamation Fund.” (3-18-22)
- 011. -- 015. (RESERVED)**
- 016. REQUIRED PARTICIPANTS.**
Any operator, with the exception of the mines and operators listed in Sections 017 and 019 of these rules, ~~shall~~ will be required to provide alternative financial assurance through the Reclamation Fund to assure the reclamation of disturbed acres or affected lands. Alternative financial assurance pursuant to the Reclamation Fund Act is in lieu of

other types of financial assurance as set forth in the Mined Land Reclamation Act, the Mineral ~~Leasing Act~~ Rights in State Lands, or the Dredge Mining Act. (3-18-22)()

017. INELIGIBLE MINES OR OPERATORS.

The following types of mines and operators are not allowed to participate in the Reclamation Fund and must file proof of other acceptable financial assurance as required by the Department. (3-18-22)

01. Disturbed Acres Limit. A mine or mineral lease with un-reclaimed disturbed acres in excess of the actual allowable disturbance may not provide alternative financial assurance through the Reclamation Fund. Un-reclaimed disturbance is that which does not meet the final financial assurance release criteria in the Dredge Mining Act, the Mined Land Reclamation Act, or ~~a mineral lease~~ the Mineral Rights in State Lands. (3-18-22)()

02. Reclamation Cost Limit. Operators with an estimated reclamation cost in excess of the actual allowable reclamation cost, regardless of the disturbed acres. (3-18-22)

03. Phosphate Mines. Operators or mineral lessees of phosphate mines. (3-18-22)

04. Hardrock Mines. Operators or mineral lessees of hardrock mines such as gold, silver, molybdenum, copper, lead, zinc, cobalt, and other precious or base metal mines. (3-18-22)()

05. Potential Heavy Metal Releases. Operators of mines with a reasonable potential to release heavy metals or other substances harmful to human health or the environment, but not including substances such as fuels and other materials commonly used in excavation or construction. (3-18-22)

06. Oil and Gas Conservation. Oil and gas exploration and development under Title 47, Chapter 3, Idaho Code. (3-18-22)

07. Oil and Gas Leasing. Oil and gas leases and associated exploration and development under Title 47, Chapter 8, Idaho Code. (3-18-22)

08. Geothermal. Operators or mineral lessees of geothermal wells and development under Title 47, Chapter 16, Idaho Code. (3-18-22)

09. Off Lease Exploration. Motorized exploration on state lands that are not under a mineral lease or exploration location. (3-18-22)

10. Violators. Mines or operators in violation of the ~~Reclamation Fund Act~~, Dredge Mining Act, Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease~~ Rights in State Lands. (3-18-22)()

11. Reclamation Fund Forfeitures. Operators, permittees or lessees who have not reimbursed the Reclamation Fund for a forfeiture from the Reclamation Fund due to their violations of the Reclamation Fund Act, Dredge Mining Act, Mined Land Reclamation Act, or Mineral ~~Leasing Act, or a mineral lease~~ Rights in State Lands. (3-18-22)()

12. Other Forfeitures. An operator who has forfeited any financial assurance. (3-18-22)

13. Operators Providing Acceptable Financial Assurance. An operator who provides proof of financial assurance accepted by the Department that is greater than or equal to the minimum dollar per acre for each acre of affected land at a mine. (3-18-22)

018. ACREAGE AND RECLAMATION COST LIMITATIONS.

01. Actual Allowable Participation. The Board will establish by policy the actual allowable disturbance, actual allowable reclamation cost, and the minimum dollar per acre of disturbance in order to provide financial assurance to opt out of participation in the Reclamation Fund. (3-18-22)

02. Maximum Disturbance and Reclamation Cost. ~~The maximum disturbance and maximum reclamation costs in these rules are maximums.~~ The maximum allowable disturbance is eighty (80) acres; the maximum allowable reclamation cost is four hundred forty thousand dollars (\$440,000). (3-18-22)()

03. Multiple Plans or Permits. An operator who has multiple mining reclamation plans or permits that have a total disturbance in excess of the actual allowable disturbance, or with total reclamation costs in excess of the actual allowable reclamation cost, may participate in the Reclamation Fund with one (1) or more sites that together contain less than both of the Board-established actual allowable limits. (3-18-22)

019. OPTIONAL PARTICIPATION.

Operators who have one (1) or more mines or mineral leases that are ineligible to participate in the Reclamation Fund as set forth in Section 017 ~~or 018~~ of these rules may choose to not participate in the Reclamation Fund with respect to all other eligible mines or mineral leases in their name. An operator who does not participate in the Reclamation Fund must secure all mines with other types of financial assurance approved by the Department. (3-18-22)()

020. FEDERAL AGENCY NON-ACCEPTANCE OF RECLAMATION FUND.

If a federal agency will not accept an operator's participation in the Reclamation Fund as proof of reclamation security, the operator will be required to provide the Department with proof of other types of financial assurance acceptable to the Department and the federal agency. (3-18-22)()

021. -- 025. (RESERVED)

026. PAYMENT.

01. Board Approved Payment Schedule. The Board will adopt a payment schedule that determines sets the annual Reclamation Fund payment for each operator participating in the Reclamation Fund. Any changes to the payment schedule will must be approved by the Board. ~~Participating operators shall pay all required payments annually.~~ New participants will be assessed a pro-rated payment based on the Department's established billing cycle. (3-18-22)()

02. Acreage Calculation. The annual payment for each participant in the Reclamation Fund will be established based upon the number of disturbed acres at each mine. The acres used to calculate the annual payment will include the total current disturbed acres of affected lands and the acres planned to be disturbed or affected during the next twelve (12) months. The total acreage calculation will not be rounded when determining annual payments. (3-18-22)

03. Annual Payments Non-Refundable. Payments to the Reclamation Fund will be billed annually and are non-refundable. ~~Payments will be billed annually and, if not timely paid, will accrue late fees and interest as established by the Board. New participants will be assessed a pro-rated payment based on the Department's established billing cycle.~~ (3-18-22)()

04. Late Payments. Payments not received by the due date are considered late and will result in the following monthly charges: ()

a. A late charge of twenty-five dollars (\$25.00) or one percent (1%) of the unpaid principal obligation, whichever is greater, and ()

b. An interest charge of one percent (1%) on the unpaid principal obligation. ()

0405. Supplemental Payments. If an operator affects more acreage than the acreage secured through the Reclamation Fund for a current period, the Department may require supplemental Reclamation Fund payments. (3-18-22)

0506. Assignment. When a mineral lease, mining reclamation plan, or permit is assigned, all financial assurance requirements must be assumed by the new operator. No Reclamation Fund payments will be refunded

following an assignment. If the new operator is ineligible to participate in the Reclamation Fund, the new operator must provide proof of other acceptable financial assurance before the assignment may be approved. (3-18-22)

~~0607.~~ **Non-Payment Constitutes Lack of Bonding.** For any operator participating in the Reclamation Fund, non-payment of the annual payment ~~shall will~~ be considered a failure to provide financial assurance as required by the Dredge Mining Act, the Mined Land Reclamation Act, or Mineral Leasing Act, or a mineral lease. Rights in State Lands. ~~(3-18-22)()~~

027. -- 030. (RESERVED)

031. ENFORCEMENT AND FAILURE TO COMPLY.

01. Forfeiture. Prior to withdrawing monies from the Reclamation Fund due to a violation of the Dredge Mining Act, the Mined Land Reclamation Act, or Mineral Leasing Act, or a mineral lease. Rights in State Lands, the Department will comply with the respective financial assurance forfeiture procedures. ~~(3-18-22)()~~

02. Penalties. If an operator fails to provide financial assurance as required by these rules or has forfeited monies from the Reclamation Fund and has not repaid those monies, the Board ~~shall be is~~ authorized to file liens against personal property and equipment of the operator to recover costs. The operator ~~shall be is~~ liable for actual costs of all unpaid annual payments, interest, and late payment charges, the actual reclamation costs, and administrative costs incurred by the Department in reclaiming the disturbed or affected lands. Authorization to obtain a lien under these rules and Section 47-1804, Idaho Code, ~~shall be is~~ in addition to, not in lieu of, any other legal remedy available to the Board and the Department pursuant to the Dredge Mining Act, Mined Land Reclamation Act, or Mineral Leasing Act, or a mineral lease. Rights in State Lands. ~~(3-18-22)()~~

032. MINIMUM BALANCE FOR THE RECLAMATION FUND.

The Board will determine a reasonable minimum balance for the Reclamation Fund. (3-18-22)

033. -- 999. (RESERVED)

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.03 - RULES GOVERNING ADMINISTRATION OF THE RECLAMATION FUND

DOCKET NO. 20-0303-2301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code, and Title 47, Chapter 18, 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 20, 2023.

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 2023 for review during the 2024 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. The late payment policy was updated.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

A monthly late fee of the greater of twenty-five dollars (\$25) or one percent (1%) of the unpaid principal, and an interest charge of one percent (1%) on the unpaid principal.

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 5, 2023, Idaho Administrative Bulletin, Vol. 23-4, pages 38–39.

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. 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 27, 2023.

DATED this 6th day of September, 2023.

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
Phone: (208) 334-0261
Fax: (208) 334-3698
rulemaking@idl.idaho.gov

STATE BOARD OF LAND COMMISSIONERS

July 18, 2023
Information Agenda

Subject

Proposed Rule for IDAPA 20.03.05 *Rules Governing Riverbed Mineral Leasing in Idaho*

Background

The Idaho Department of Lands (Department) manages the beds of navigable lakes and rivers for their commercial, navigational, recreational, or other public use. IDAPA 20.03.05 establishes a consistent process to authorize mineral exploration and extraction on state owned navigable rivers and collect rents and royalties.

Negotiated rulemaking for these rules was approved by the Land Board on November 15, 2022 (Attachment 1). Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled to be repealed and replaced in 2023 for review during the 2024 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.
- Posted rulemaking meeting notices and details on social media.
- Posted rulemaking notices to Townhall Idaho.
- Emailed 43 customers and other interested parties.
- Mailed postcards to 138 customers.

Negotiated rulemaking meetings were held on April 19 and April 26, 2023. A total of 12 non-Department affiliated people attended these meetings, and four sets of written comments were received. Much of the discussion and one of the written comments centered on public notice on the issuance of exploration location permits. Per Idaho Code § 47-703(3), the Land Board is not given authority to deny exploration location permits, and the discoverer must post their exploration certificate on each 1/2 river mile. Discussion was had at each meeting about the Department's regulatory overlap with Idaho Department of Environmental Quality (IDEQ) and Idaho Department of Water Resources (IDWR). Many activities conducted on exploration locations and riverbed mineral leases require Stream Channel Alteration permits from IDWR and may require an Idaho's Pollutant Discharge Elimination System (IPDES) general permit from IDEQ. The rule now includes language that includes the permit requirements from IDEQ. The rule reflects the same definition of casual exploration that is defined by IDWR

in their Stream Channel Alteration rules. Written comments asked about changes to royalty rates. Royalty rates are set by the Land Board, not written into rule.

No changes were made based on written comments. Some minor changes to the initial draft were made based on meeting discussions and to further reduce word count.

Attachment 2 is the draft text that will be submitted for publication in the Administrative Bulletin as a proposed rule and is posted on the rulemaking webpage. The rule is written in legislative format to allow the reader to easily identify changes.

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

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

The proposed rule will be open for public comment upon publication in the September 6, 2023 Administrative Bulletin. The draft Notice of Proposed Rule is found in Attachment 3.

Attachments

1. November 15, 2022 Approved Memo
2. Proposed Rule Text
3. Draft Notice of Proposed Rule

STATE BOARD OF LAND COMMISSIONERS

November 15, 2022

Regular Agenda

Subject

Negotiated rulemaking for IDAPA 20.03.05 *Riverbed Mineral Leasing in Idaho*

Question Presented

Shall the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.05 *Riverbed Mineral Leasing in Idaho*?

Background

The Idaho Department of Lands (Department) manages the beds of navigable rivers to provide for their commercial, navigational, recreational, or other public use. IDAPA 20.03.05 establishes a consistent process to authorize mineral exploration and extraction on state-owned navigable rivers and collect rents and royalties.

Following Executive Order 2020-01, Zero-Based Regulation, this rule chapter is scheduled for a comprehensive review in 2023 with the goal of simplifying the rules for increased clarity and ease of use.

Discussion

The Department anticipates diminishing the overall regulatory burden by reducing both total word count and the number of restrictive words in the new rule chapter. The Department will review the rule with stakeholders to ensure that it is right-sized. Preliminary research justifies increasing fees to cover the actual costs of processing. These fees have not changed since they were approved in 1991.

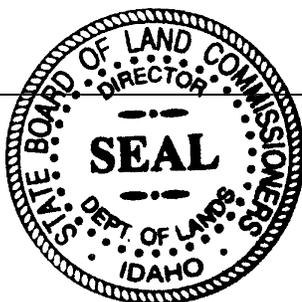
A proposed timeline for the rulemaking process is provided in Attachment 1.

Recommendation

Authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.05 *Riverbed Mineral Leasing in Idaho*.

Board Action

A motion was made by Attorney General Wasden that the Land Board authorize the Department to initiate negotiated rulemaking for IDAPA 20.03.05 *Riverbed Mineral Leasing in Idaho*. Superintendent Ybarra seconded the motion. The motion carried on a vote of 4-0.



Attachments

1. Draft rulemaking timeline



20.03.05 – ~~RIVERBED~~ NAVIGABLE WATERWAYS MINERAL LEASING IN IDAHO

000. AUTHORITY.

~~01. Statutory Authority.~~ These rules are promulgated by the ~~Idaho State Board of Land Commissioners~~ pursuant to Title 47, Chapter 7, Idaho Code, and Title 58, Chapters 7 and 1, Idaho Code, Sections 47-710, 47-714 and 58-104, Idaho Code. (3-18-22)()

~~02. Discretionary Powers.~~ The Board of Land Commissioners is delegated discretionary power to regulate and control the use or disposition of lands in the beds of navigable lakes, rivers, and streams, to the natural or ordinary high water mark thereof, 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 the owners of upland property abutting or adjoining such lands. (Section 58-104(9), Idaho Code). (3-18-22)

001. TITLE AND SCOPE.

~~01. Title.~~ These rules are titled IDAPA 20.03.05, “Riverbed Mineral Leasing in Idaho.” (3-18-22)

~~0201. Where Applicable.~~ These rules apply to the exploration and extraction of precious metals, minerals, and construction materials salable minerals from a placer deposit situated in state-owned submerged lands navigable waterways. (3-18-22)()

~~0302. Where Not Applicable.~~ These rules do not apply to the application exploration and leasing of geothermal resources covered by title 47, Chapter 16, Idaho Code, or to the application exploration and leasing of oil and gas resources covered by Title 47, Chapter 8, Idaho Code. (3-18-22)()

002. -- 009. (RESERVED)

010. DEFINITIONS.

~~01. Available State Lands.~~ All lands between the ordinary high water marks of a navigable river which have not been located, leased, or withdrawn. (3-18-22)

~~0201. Board.~~ The Idaho State Board of Land Commissioners or its authorized representative designee. (3-18-22)()

~~03. Casual Exploration.~~ Entry and/or exploration which does not appreciably disturb or damage the land or resources thereon. Casual exploration includes, but is not limited to, geochemical and/or geophysical exploration techniques, sampling with hand tools, and entry using wheeled vehicles for transportation to conduct such exploration. Exploration using suction dredges having an intake diameter of two inches (2”) or less are considered casual exploration when operated in a perennial stream and authorized under the stream protection act, Title 42, Chapter 38, Idaho Code. Refer to Section 015 for further clarification regarding casual exploration and recreational mining. (3-18-22)

~~0402. Commercial.~~ The type of operation that engages in the removal of construction materials salable minerals or uses suction dredges with an intake diameter larger than five inches (5”) or attendant power sources rated at greater than fifteen (15) horsepower and/or other motorized equipment. (3-18-22)()

~~05. Construction Materials.~~ Sand, gravel, cobble, boulders, and other similar materials. (3-18-22)

~~03. Department.~~ The Idaho Department of Lands. ()

~~0604. Director.~~ The Director of the Idaho Department of Lands or his authorized representative designee. (3-18-22)()

~~07. **Motorized Exploration.** Exploration that may appreciably disturb or damage the land or resources thereon. Motorized exploration includes, but is not limited to, drilling, trenching, dredging, or other techniques that employ the use of earth moving or other motorized equipment, seismic operations using explosives, and sampling with suction dredges having an intake diameter greater than two inches (2") when operated in a perennial stream. When operated in an intermittent stream, suction dredges are considered motorized exploration regardless of the intake size. (3-18-22)~~

0805. 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. (3-18-22)()

0906. 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. (3-18-22)()

a. ~~An individual of legal age;~~ (3-18-22)

b. ~~Any firm, association or corporation qualified to do business in the state of Idaho; or~~ (3-18-22)

c. ~~Any public agency or government unit, including without limitation, municipalities.~~ (3-18-22)

~~10. **Recreational Mining.** Mining with a suction dredge having an intake diameter of five inches (5") or less, and attendant power sources, rated at fifteen (15) horsepower or less, pans, rockers, hand tools, hand operated sluices and other similar equipment. (3-18-22)~~

~~1107. **River Mile.** Five thousand two hundred eighty (5,280) feet of contiguous riverbed as measured along the approximate center of the river. (3-18-22)()~~

~~12. **Navigable River.** A natural water course of perceptible extent, with definite bed and banks, which confine and conducts continuously flowing water, and the bed of which is owned by the state of Idaho in trust. (3-18-22)~~

~~13. **Submerged Lands.** All state-owned beds of navigable lakes, rivers, and streams between the natural or ordinary high water marks. (3-18-22)~~

08. **State-Owned Navigable Waterways and Navigable Waterways.** As used in these rules, the beds of all navigable rivers and lakes 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. ()

011. -- 014. (RESERVED)

015. **CASUAL EXPLORATION AND RECREATIONAL MINING.**

01. **Lands Open.** All beds of navigable rivers waterways that have not been located, leased, or withdrawn in accordance with statute or the terms of these rules, are free and open to casual exploration and recreational mining on a nonexclusive and first come basis. (3-18-22)()

02. **Equipment Limitations.** Mining equipment for casual exploration that may occur prior to the filing of a location or lease application is limited to suction dredges with a two-five (25") inch intake or less and

~~powered equipment rated at fifteen (15) HP or less, or non-powered sluice equipment pans, rockers, hand tools, hand operated sluices and other similar equipment. (3-18-22)()~~

03. No Approval for Casual Exploration Required. No written approval is required from the Director for casual exploration. (3-18-22)

~~**04. Recreational Mining Equipment.** Mining equipment for recreational mining is limited to suction dredges with an intake diameter of five (5") inches or less with attendant power sources rated at fifteen (15) horse power or less, pans, rockers, hand tools, hand operated sluices and other similar equipment. (3-18-22)~~

~~**0504. Department of Water Resources Permits.** Possession of a valid Stream Protection Act Permit issued by the Idaho Department of Water Resources and a Recreational Mining Permit issued by the Idaho Department of Lands constitutes the Board's waiver of bond, waiver of royalty, and written approval to engage in recreational mining under Section 47-704(6), Idaho Code, and Title 47, Chapter 13, Idaho Code. Casual exploration requires a valid Stream Channel Alteration Permit issued by the Idaho Department of Water Resources. (3-18-22)()~~

~~**05. Lake Encroachment Permits.** An encroachment permit pursuant to Title 58, Chapter 13, Idaho Code is required prior to any mineral exploration or extraction in a navigable lake. ()~~

~~**06. Department of Environmental Quality Permits.** Suction dredging requires a valid general or individual permit issued under the Idaho Pollutant Discharge Elimination System. ()~~

016. EXPLORATION LOCATIONS.

01. Lands Open. The beds of navigable ~~rivers~~ waterways that have not been located or withdrawn, or are not under application to lease, in accordance with statute or the terms of these rules, are available for exploration location; provided that salable minerals are not subject to exploration location. Details of exploration locations on state lands can be found in Title 47, Chapter 7, Idaho Code. (3-18-22)()

02. Size of Location. Each exploration location is limited to one-half (1/2) mile in length on a navigable river or stream, or a 20-acre aliquot part on a navigable lake. (3-18-22)()

03. Record Keeping Requirement~~d~~. A locator must keep a record of all minerals recovered during exploration operations and must pay to the state a royalty of five percent (5%) of the gross value of the minerals recovered. Payment must be made each year with the filing of the assessment work report. (3-18-22)()

04. When No Written Approval Required. No written approval is required from the ~~Director~~ Department for ~~exploratory activity~~ casual exploration in a navigable river on an exploration location ~~when such exploration is limited to mining equipment such as suction dredges with a five (5") inch intake diameter or less and attendant power sources rated at fifteen (15) horsepower or less, pans, rockers, hand operated sluices, and other similar equipment; provided however, that recreational mining activity.~~ Casual exploration performed under a Recreational Mining Stream Channel Alteration Permit ~~as authorized under Section 015~~ does not serve to establish any basis for an exploration location. (3-18-22)()

05. When Written Approval Required. Written approval is required from the ~~Director~~ Department prior to entry for operators conducting motorized exploration ~~except as allowed in Subsection 016.04.~~ Approved operations must be bonded as outlined in Subsection 040.03. (3-18-22)()

017. -- 019. (RESERVED)

020. RIVERBED MINERAL LEASE.

01. Limitations on Suction Dredges. Operators may not use suction dredges with an intake diameter larger than five inches (5") or attendant power sources rated greater than fifteen (15) horsepower, except under lease. (3-18-22)

02. Approval Required Before Operations. Prior to entry upon navigable ~~rivers~~ waterways, operators are required to have written approval from the ~~Director~~ Department. (3-18-22)()

03. Bonding. Approved operations must be bonded as outlined in Subsection 040.01. (3-18-22)

04. Simultaneous Filings. Two (2) or more lease applications received on the same date and hour, covering the same lands, are considered simultaneous filings. Simultaneous filings will be resolved by competitive bidding. (3-18-22)

021. -- 024. (RESERVED)

025. PUBLIC NOTICE AND HEARING.

01. Publication of Notice. Upon receipt by the Board of an application to lease any lands that may belong to the state of Idaho by reason of being situated between the high water marks of navigable ~~rivers of the state~~ waterways, the Board will cause at the expense of the applicant, a notice of such application to be published once a week for two (2) issues in a newspaper of general circulation in the county or counties in which said lands described in said application are situated. (3-18-22)()

02. Public Hearing. The Board may order a public hearing on an application if it deems this action is in the best interest of the public. (3-18-22)

03. Petition for Hearing. The Board or its authorized representative will hold a public hearing on the application, if requested in writing no later than thirty (30) days after the last published notice by ten (10) person whose lawful rights to use the waters applied for may be injured thereby, or by an association presenting a petition with signatures of not less than ten (10) such aggrieved parties; provided that the Board may order a public hearing in the first instance. The Board will consider fully all written and oral submissions respecting the application. (3-18-22)

026. -- 029. (RESERVED)

030. RENTAL AND ROYALTY AND LATE PAYMENTS.

01. Minimum Annual Rental. The minimum annual rental is ~~one five~~ five hundred ~~sixty~~ hundred dollars (\$~~160~~500) ~~for any area up to one hundred sixty (160) acres, and one dollar (\$1) for each additional acre.~~ (3-18-22)()

~~**02. Minimum Annual Royalty.** In addition to the annual rental, the commercial lessee pays an annual minimum royalty of five hundred dollars (\$500) per year and all other lessees pay an annual minimum royalty of three hundred forty dollars (\$340) per year. (3-18-22)~~

~~**03. Deduction of Royalty.** The annual minimum royalty and the annual rental for any year is deducted from the actual production royalty as it accrues for that year. (3-18-22)~~

0402. Royalty Schedule. ~~The appropriate Board approved~~ A royalty schedule for ~~the each~~ each commodity ~~mined~~ leased must be attached and made a part of the mineral lease. (3-18-22)()

0503. Late Payments. Rental or royalty not paid by the due date is considered late. ~~A twenty five dollars (\$25) late payment charge or penalty interest from the due date, whichever is greater, will be added to the rental or royalty amount. The penalty interest is one percent (1%) for each calendar month or fraction thereof. and will result in the following monthly charges:~~ (3-18-22)()

a. A late charge of twenty-five dollars (\$25.00) or one percent (1%) of the unpaid principal obligation, whichever is greater. ()

b. An interest charge of one percent (1%) on the unpaid principal obligation. ()

04. **Late Charge Accrual.** The Department will send monthly statements with the outstanding balance that will remain on the account and will continue to accrue late charges and interest each month, or any portion of a month, until the balance is paid in full. All payments will be applied first to accrued interest and late charges, and then to principal. ()

031. LEASE SIZE AND COMPOSITION OF LEASABLE TRACT.

01. One Mile Limitation. A riverbed lease may not exceed one (1) contiguous river mile in length or all the riverbed within one (1) section should all the available state lands within the section exceed one (1) river mile. (3-18-22)

02. Construction Materials Salable Minerals. Leases for ~~construction materials~~ salable minerals may be limited to a smaller size tract at the Board's discretion. (3-18-22)()

032. -- 034. (RESERVED)

035. ASSIGNMENTS.

01. Prior Written Approval. No ~~location or~~ lease assignment is valid until approved in writing by the ~~Director, and no assignment takes effect until after the first day of the month following its approval~~ Department. A lease may be assigned to any person qualified to hold a lease. (3-18-22)()

02. Partition Partial Assignment. A ~~location or~~ lease may be partially assigned to any person ~~qualified to hold a state location or lease, provided that in the event an assignment partitions leased lands between two (2) or more persons, if~~ both the assigned and the retained part created by the assignment contain not less than one-half (1/2) mile length of river-bed ~~land.~~ The resulting leases continue in full force and effect for the balance of the term of the original lease unless otherwise terminated in accordance with the terms of the lease. (3-18-22)()

~~03. Segregation of Lease. If an assignment partitions leased lands between two (2) or more persons, it must clearly segregate the assigned and retained portions of the leasehold. Resulting segregated leases continue in full force and effect for the balance of the term of the original lease or as further extended pursuant to statute and these rules.~~ (3-18-22)

036. -- 039. (RESERVED)

040. BOND.

01. Minimum Lease Bond. Concurrent with the lessee's execution of the lease ~~by the lessee,~~ lessee must furnish to the ~~Director~~ Department a ~~good and sufficient~~ bond ~~or undertaking in favor of the state of Idaho~~ on a Department form in the amount of five thousand dollars (\$5,000) for commercial operations and one thousand dollars (\$1,000) for all other operations. The bond will be conditioned on the payment of all damages to the land and all improvements thereon which result from the lessee's operation and conditioned on complying with statute, these rules, and the lease terms. This bond is in addition to ~~the~~ bonds required by ~~the Idaho Dredge and Placer Mining Protection Act~~ (Title 47, Chapter 13, Idaho Code). (3-18-22)()

~~02. Statewide Bond. In lieu of the above bond, the lessee may furnish a good and sufficient "statewide" bond conditioned as above in the amount of fifty thousand dollars (\$50,000) in favor of the state of Idaho, to cover all lessee's leases and operations carried on under statute and these rules.~~ (3-18-22)

0302. Motorized Exploration. Motorized exploration on an site under exploration location is subject to a minimum bond in the amount of seven hundred fifty dollars (\$750). A larger bond not exceeding seven hundred fifty dollars (\$750) per acre may be required by the Department depending on the size and scope of the operation that covers the estimated reasonable cost of reclamation as provided in Section 47-703A, Idaho Code.

(3-18-22)()

041. -- 044. (RESERVED)

045. FEES.

The following fees apply and are nonrefundable:

(3-18-22)()

01. ~~Nonrefundable Lease Application Fee for Lease.~~ Fifty Four hundred twenty five dollars
(~~\$50425~~) per application. (3-18-22)()

02. ~~Nonrefundable Fee for Lease Application Advertising Application.~~ Forty seventy-five dollars
(~~\$4575~~) per application. (3-18-22)()

03. ~~Exploration Location Fee.~~ Two hundred fifty Five hundred dollars (~~\$250~~500) per location.
(3-18-22)()

04. ~~Application Fee for Approval of Assignment.~~ Fifty Two hundred dollars (~~\$5~~200) per lease ~~or~~
~~location~~ involved in the assignment. (3-18-22)()

046. -- 999. (RESERVED)



IDAHO DEPARTMENT OF LANDS

IDAPA 20 – IDAHO DEPARTMENT OF LANDS

20.03.05 - NAVIGABLE WATERWAYS MINERAL LEASING IN IDAHO

DOCKET NO. 20-0305-2301

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 58-104(6) and 58-105, Idaho Code, and Section 47-7, 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 20, 2023.

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 2023 for review during the 2024 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 and assignment fees have been increased to cover the costs of reviewing applications. Late payment policy is updated, and revised wording in the rule will now cover all navigable waterways rather than just rivers.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

The \$50 lease application fee in place since 1991 is increased to \$425. The application advertising fee is increased from \$45 to \$75. The exploration location fee is increased from \$250 to \$500. The \$50 assignment fee is increased to \$200. These fees are being imposed pursuant to Sections 58-104 and 58-127, Idaho Code, and Section 47-7, 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 5, 2023, Idaho Administrative Bulletin, Vol. 23-4, pages 40–41.

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 Marde Mensinger at (208) 334-0248 or mmensinger@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 27, 2023.

DATED this 6th day of September, 2023.

Marde Mensinger, Navigable Waterways Program Manager
Idaho Department of Lands
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STATE BOARD OF LAND COMMISSIONERS

July 18, 2023
Information Agenda

Subject

Endowment Land Leasing Continuum

Background

Residential and commercial leasing revenues have been on the decline since the State Board of Land Commissioners (Land Board) directed the Idaho Department of Lands (Department) to unify the split estates of the cottage site leases and dispose of endowment owned commercial buildings and properties. Receipts from the sale of land assets enter the Land Bank fund, with a five-year lifecycle for reinvestment.

Department management strategies and guidance come from multiple sources. The Wasden vs. State Board of Land Commissioners decision of 2012 and the long term effort towards endowment reform were catalysts for development or refinement of several Land Board and Department policies and management plans. Examples include, the 2014 Callan Report, the annually updated Statement of Investment Policy, and the 2021 approved Asset Management Plan.

Discussion

Endowment land is organized by asset class. The classifications are based on the primary asset managed: timberland, farmland, rangeland, residential real estate, commercial real estate, minerals, and oil and gas. Lands may be reclassified by the Land Board, such as from timberland or rangeland to residential real estate or commercial real estate. However, that does not change the status as endowment land or the primary purpose of the land, which is maximizing long-term financial returns to the owning beneficiary.

Lands within an asset class may have other uses. Existing examples of this are communication sites (cell or radio towers) located on timberland or rangeland. The Department's annual report shows the income produced from each asset class, regardless of activity. For example, a communication site lease on rangeland will be reported as rangeland income.

As the state of Idaho has grown in population, there is more and more demand for use of endowment land beyond traditional management activities. The Payette Endowment Lands Strategy (PELS) explored possibilities with properties that were likely to transition from a traditional use in multiple five-year tiers. The strategy employs evaluating leasing opportunities immediately and into the future or, if leasing and traditional management activities cannot meet financial benchmarks, evaluating parcels for disposition to achieve appropriate returns through reinvestment or transfer to the permanent fund.

Opportunities to explore new leasing activities are occurring in other parts of the state where land values have seen rapid increase or new industries need land to expand their business or infrastructure. An example of this was presented during this meeting regarding the potential leasing of the Ohio Gulch property.

Attachment 1 shows a draft leasing continuum with a range of leasing, ranked by the Department's perception of feasibility and compatibility with Land Board direction and policy, and Department management objectives. Attachment 2 shows the average revenue generated per acre by the various lease types that exist in the current endowment portfolio.

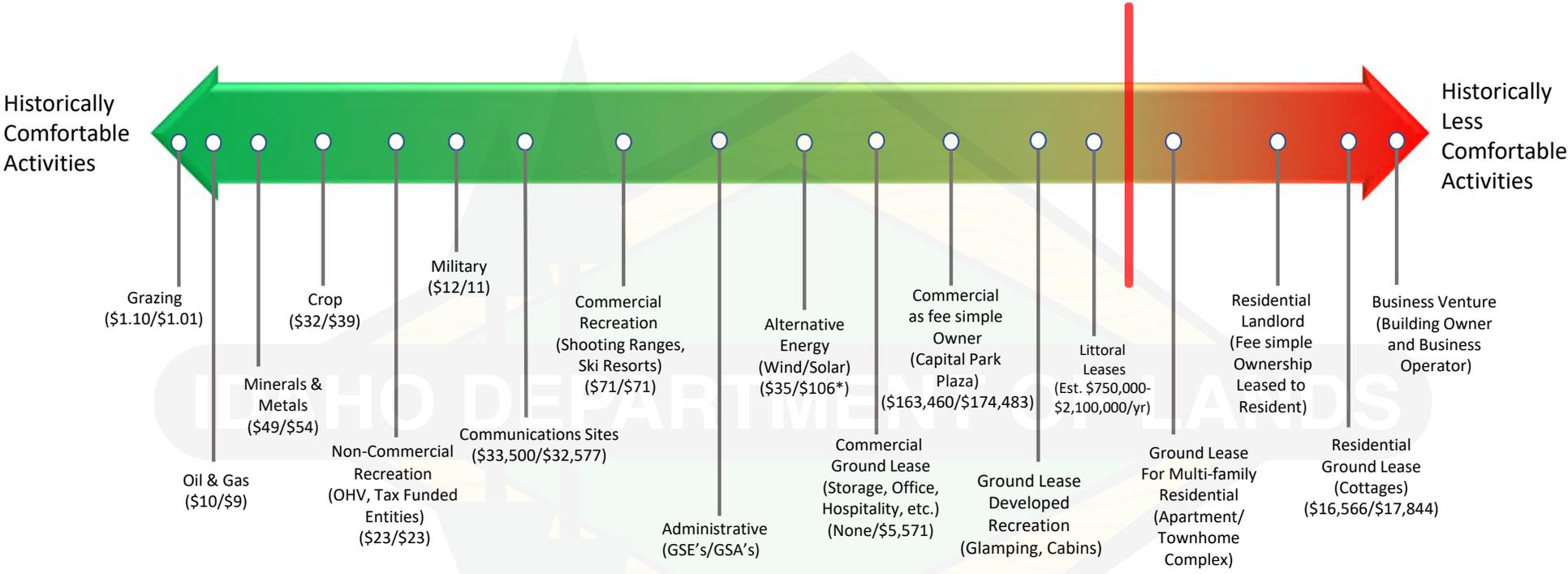
Other opportunities being researched include further alternative energy, carbon credit, and commercial recreational leasing. Alternative energy options include wind, solar, and geothermal. Carbon credit leasing is being investigated to see where it is compatible with the Department's current forest management objectives and rotation lengths. Commercial recreation opportunities are very diverse. Concepts within the initial investigation phase are leasing of littoral rights adjacent to upland endowment ownership and "glamping operations."

There are multiple opportunities for replacing or exceeding the reduced leasing income from the disposition of residential properties and commercial buildings while diversifying the revenue generation from endowment holdings. Currently, the timberland asset class, which is approximately 42% of the endowment land base, produces 95-98% of the net revenue. A Department goal over the next five to ten years is to move this number under 90% and over the longer term bring more balance to the revenue generation without sacrificing the efficacy of the timber program.

Attachments

1. Endowment Leasing Continuum
2. Five-year Endowment Leasing per Acre Revenue

Leasing Opportunities



* Alternative Energy projects have a longer construction period, therefore the leases recently executed will not be receiving royalties until 2028 and beyond. Additionally, IDL's first solar leases are currently in negotiations for \$600-\$1,000/acre. This activity is expected to generate much more revenue in the long-term.

LEGEND
(YTD 2023 Revenue per Acre/5-year avg projection per acre)

Endowment Leasing
2018 - 2023 Avg Revenue Per Acre

